

Question 2 – Express Trusts

Introduction to Equity

- **Trust:** a device by which one person (**trustee**) holds property (**trust property**) for the benefit of another person (**beneficiary**) or for certain lawful purposes.

What is equity?

- Fairness
- Separate from Common Law

Equity v Common Law

- Equity prevails
- Common injunction – ordered P to stop proceedings in Common law courts, or to stop them from acting on it. If you breached it, the punishment was imprisonment
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Trusts compared to other legal relationships

Bailment v Trusts

BAILMENT	<i>whereas</i>	TRUST
Transfer of possessory title not ownership. Title to property does not pass to the bailee.		Title to the property passes to the Trustee (essential element)
Personal property only		Personal property and real property
Bailor can recover goods from a 3 rd party (<i>nemo dat</i>)		Trustee has legal title so beneficiary cannot recover from a 3 rd party (bona fide purchaser for value w/o notice of breach)

- Katie may be owner but she can't do with it what she likes because she is holding it for Grace
- Bailment – no transfer of title (loan)
- Trust – no longer the owner of the car, no longer have title

Agency v Trusts

- **AGENCY**
- No property / agent has no title to property
- Agent acts with express ostensible authority/instructions of the principal
- Agent can bind the principal
- **TRUST**
- the Trustee holds legal title to property (by definition)
- Trustee must follow the directions in the trust instrument; not subject to directions of a beneficiary
- Trustee contracts as a principal and cannot bind a beneficiary (unless the Trustee enters into a contract to that effect with the beneficiary)
- **Example**
 - Agent – give you the car so you can be a dodgy used car sales man and sell it on my behalf – until sold Brendan owns the car, but when you sell it good title passed to buyer
 - Trust – still the owner and whatever you do binds Brendan, look after it between trustee and mechanic nothing to do with Brendan

Debtor/creditor vs Trustee/Beneficiary

- Debt – personal obligation to re-pay (chose in action) unrelated to particular property
- Trusts – particular property / money is the subject of the trust
- Distinction between debt vs trust is crucial on insolvency
 - *Walker v Corboy*
 - *Barclays Bank v Quistclose* –
 - trust relationship and debtor/creditor relationship can co-exist in one transaction provided there is a common intention that funds will be held exclusively for designated purpose
- Trust is device used to protect property in insolvency the property of the entity may be protected if that property is the subject of a trust
- Example: Katie has legal title to car, but she owes a lot of people a lot of money and they take bankruptcy proceedings, she lists all assets and see she has laptop – yes okay Katie has the car and handbag but she is holding the car for Grace (its not her car) – car would be protected