

Trusts:

Intention has to be that the Trustee has obligations in relation to that property.

Requirements of a trust:

1. At least one beneficiary;
2. A Trustee;
3. Some type Property;
4. Obligations that attach to the Trustee.

Three ways a trust arises:

1. Express Trust
2. Constructive Trust
3. Resulting Trust

Express Trusts:

Step 1:

SAY: An express trust is valid if the three certainties as well as any formalities are met.

Two ways Certainty of Intention Creates a Trust:

(1) **Settlement:** settlor transfers property to the trustee on trust for Ben

(2) **Declaration:** settlor declares herself/himself trustee for beneficiary

- no transfer of legal title as it all rests with settlor

Main difference between the two as a manner of mechanics:

- Settlement Trust requires a transfer of **LT to T**.
 - Inter vivos or will
- In Declaration, **T (who is Settlor) has LT**.
 - Paul v Constance, Re Armstrong.

NOTE: If there is a declaration of trust for land it must be manifested and proved in writing signed by some person who is able to declare such trust: **s 11(1)(b) PLA**.

The Three Certainties:

1) Certainty of Intention:

An intention to divide legal title/ownership from a beneficial interest. Do not have to use the word 'trust' to do this.

SAY: It must be established [SETTLOR] intended to create a trust by imposing an obligation on the trustee in relation to the property. (*Hayes*).

Dean v Cole: **No Trust**: 'trusting she would divide' = No obligation.

Hayes: **Trust**: 'on the understanding' = Created obligation.

Paul v Constance: **Trust**: 'as much yours as mine'

NOTE: courts will give effect to the intention expressed by the settlor: If certainty of intention **passes** = trustee holds on trust for the purpose specified

If certainty of intention **fails** = usually a gift to the trustee to do with the property as he/she pleases: *Dean v Cole*.

Words and Conduct:

Burns v Kendall: intention is interpretation of their conduct. Objective assessment of intentions **at the time**.

Note: use of '**precatory words**'. Words in the nature of a 'wish or a prayer' which are merely a request but not intended to be binding.

Re Armstrong: **TRUST**. Do not need to use precise words. Intention can be shown through **clear actions or conduct**.

Paul v Constance: **TRUST**: Language and context is important – not lawyers & since retained legal title, didn't make a gift. Court said it is clear what C and P intended.

Dean v Cole: **NO TRUST** bc words were **precatory** and not **demanding**. ("hoping / wishing / preying").

Hayes v National Heart Foundation: **TRUST** words **impose an obligation** and created a trust – 'not to sell shares w/in her life' – thus restricted in what she could do

Jones v Lock: **NO TRUST**. Did not declare himself as a trustee. He intended to make a gift but did not complete the requirements.

Milroy v Lord: Whichever mechanism you use to make someone a gift (settling, giving, declaration), you have to complete the requirements for each. Will not substitute one for the other.

Precatory Words:

Re Elizabethan: **NO TRUST**. Words "unconditionally" and "it would be appreciated" were precatory: not imperative leading to an obligation.

Intention to create trust compared with intention to create other legal relationships:

Loans and debts v trusts:

Barclays Bank v Quistclose Investments: **Q was S and B**. Two factors that were critical to why *Quistclose* was a trust:

1. 1) The **condition**:
 - 'You can only use it to pay the SH's'.
2. 2) Keep the **money separate**.
 - 'This is not for you. You have to keep it separately identified'.

Must be mutual intention to show money meant for a specific purposes 'burrower' agreed to: *Stephens Travel*

Gummow J tried to explain Quistclose Trust: ET created with the conditions. If condition fulfilled it reverts back to debtor/creditor r/p HOWEVER if conditions not fulfilled and condition not satisfied then money returns to S (i.e. in event RR went insolvent money was held on trust for Q as B).

Stephens Travel v Qantas Airways: **CH**: was a trust even though money was not kept separate by the trustee. There was a K that said there was trust that includes **obligation to keep money separate and not to do so is a breach of trust** (In *Quistclose*, court implied a trust).

Securing Property:

Quistclose Trust: Trusts used in commercial arrangements to secure property and priority in cases of liquidation or bankruptcy.

Cases

Use of Words or Conduct

Re Armstrong: Do not need to use precise words. Intention can be shown through **clear actions or conduct**. **Facts:** Mr A (Trustee) Bank (Obligor) Sons (Beneficiaries). Mr A made 2 **deposits in bank** (one to each son) – wanted interest on deposits but upon death capital sum was to go to sons. He made it so only he could deal with the money in the bank. **HELD:** At time Mr A put money in bank **intention was to split legal title from benefit of property through conduct** i.e. A was trustee + beneficiary for life with capital to sons upon death w/ trust property being the bank debts

Paul v Constance: **Facts:** Mr C described money in joint account as '**as much yours as mine**' & signed allowance from Mr C to withdraw money and deposited joint bingo winnings = **sufficient intention to hold half the amount on trust for Mrs P**. **HELD:** **Declaration of trust through words** – language and context is important – not lawyers & since retained legal title, didn't make a gift. Court said it is clear what C and P intended.

Dean v Cole: **Facts:** Testator left personal property in will to his wife '**trusting her that she would divide the property between the children**'. **HELD: NO TRUST** bc words were **precatory** and not **demanding**. ("hoping / wishing / preying") Not sufficient to establish intention or obligation for wife to be trustee of property. Wife had absolute ownership w/ **a request to do something but no obligation to do so**

Burns v Kendall: H signed doc whereby he acknowledged he held house on trust for himself and his W in equal shares. Had done this previously in two different occasions. Couple got divorced. H said 'I did not mean to hold it in trust at all. Not my intent'. Gave some reasons why he said he did not intend and evidence that supported that. **HELD:** HC rejected argument that we look behind objective meaning of words and look at what the person really meant. Is objective interpretation of their conduct. HC affirmed **objective assessment of intentions at the time**.

Not an Intention to make a Gift or Assignment

Jones v Lock: **Facts:** Father waived a 900£ cheque in front of his baby and said '**look yee here this is for baby**'. Did NOT sign cheque **HELD:** Conduct **too vague to determine intention** to create a trust. Did not declare himself as a T. He intended to make a gift but did not complete the requirements.

Precatory Words Do not Equal an Obligation: Wish or Hope?

Dean v Cole: **Facts:** Testator left personal property in will to his wife '**trusting her that she would divide the property between the children**'. **HELD: NO TRUST** bc words were **precatory** and not **demanding**. ("hoping / wishing / preying") Not sufficient to establish intention or obligation for W to be T of property. W had absolute ownership with **a request to do something but no obligation to do so**.

Hayes v National Heart Foundation: **Facts:** Testator left certain shares to his daughter and the words were '**on the understanding that at her death she writes into will that the shares go to charities**'

Also could not sell shares in lifetime. **HELD: TRUST** words **impose an obligation** and created a trust: 'not to sell shares w/in her life' – thus restricted in what she could do.

Commercial Trusts

Barclays Bank v Quistclose: **Facts:** Q lent money to RR on provision that it was for 'purpose of paying dividends' and was to be kept in separate account. RR subsequently went insolvent. Issue of whether Q or Bank had right to money i.e. was it a credit loan (Bank) or trust (Q). **HELD:** Intention of parties for **primary ET to pay SH's in the ordinary course of business**: ONCE insolvent RR could NO LONGER pay SH's for intended purpose in ordinary course of business: **secondary RT to be held for Q** i.e. **Q was S and B**.

Re Australian Elizabethan: **Facts:** Donations made to AETT were expressed to be "unconditional" b/c tax purposes BUT w/ a preference that "appreciate" if AETT pass on as gifts to a charity. Donations put into AETT's general operating account before being passed on as gifts and later went into provisional liquidation. **HELD: NO TRUST** bc wording of "unconditionally" and "it would be appreciated" were precatory: not imperative leading to an obligation.

Debt v Trusts

Stephens Travel Agency v Qantas: **Facts:** S contracted w/ Q to make travel bookings by issuing tickets for Q. Under K clause it was expressly stated all monies collected were property of Q and to be held in a separate account 'on trust'. **Issue:** S didn't keep money in separate account and went insolvent. **Was is S holding money for Q on trust?** **HELD: TRUST** binding and effective against S bc **clear intention to create express trust from words 'on trust'** money paid by customers into S account was held immediately on Trust for Q, not keeping money separate was a breach of trust.

2) Certainty of Subject Matter:

SAY: The property of the trust must be certain. The Court will not substitute intention of the subject matter (*Palmer v Simmons*).

STEP 1: Identify which property is subject of the trust:

SAY: Here, the property of the trust is [FACTS].

- Does not mean property is fixed. Initial property has to be certain.

Palmer v Simmons: **Invalid**: 'bulk of my estate was to be held on trust'. **CH:** not valid. How much is 'bulk of my estate'?

Re Golay (Decd): **Valid**: Obligation was to pay a 'reasonable income' from certain rental properties. **CH:** reasonable income could be given objective meaning.

Hunter v Moss: (English CoA): D of Co said he was declaring himself trustee of 5% shares. Q: could we give effect to this declaration? **CH:** it did not matter which 50 b/c we can always simply take any 50.

White v Shortall: reiterates *Hunter*. states: has to be identical property and the same class. Not just similar property; identical. If identical is okay. NOTE: not about identical value. Is about property.

STEP 2: In relation to **Fixed trusts**: Identify or quantify **which part or precise entitlement to be given to beneficiary** as T has NO discretion/power on how much to give out.