

## TRUSTS - CASE SUMMARIES

### SEMINARS 1 & 2 CREATION OF EXPRESS TRUSTS

*Mallott v Wilson* [1903] 2 Ch 494

#### FACTS

- ➔ S made a voluntary conveyance of land to a 3P to hold the land on trust for his wife for life, and then to his children (**the first trust**).
- ➔ 3P refused the position of trustee. S then purported to cancel the trust.
- ➔ Many years later, S tried to declare another trust over the same parcel of land.
- ➔ After S and his wife died, a person claimed on behalf of S's child that they were entitled to the land as a beneficiary under the first trust.

#### HELD

Byrne J:

- ➔ The first trust was valid. Once the land was transferred the trust was effective.
- ➔ If the trustee disclaimed the office, the legal title to the land would re-vest in the settlor and the settlor would then hold the property on trust for the beneficiaries.

#### PRINCIPLE

- ➔ Once a trust is created, it cannot be revoked, unless the settlor has reserved a right of revocation.
- ➔ The fact that a designated trustee refuses the position should not destroy the intention of the settlor to establish a valid express trust.

*Re Armstrong* [1960] VR 202

#### FACTS

- ➔ George Armstrong sought the advice of his bank manager about investing money for his two sons.
- ➔ The bank manager advised him to play the money on a two year, fixed deposit term with the bank.
- ➔ The title of deposit receipts were 'George Armstrong in re William Armstrong' and 'George Armstrong in re Bernard Armstrong'.
- ➔ The father told the bank manager that he wanted to receive an income from the investment and that his sons would become entitled to the principal amounts on maturity of the investments or on his death.

#### HELD

Herring CJ:

- ➔ The trust relationship was the most appropriate on the fact. The sons name on the deposit receipts was a clear indication that he intended to benefit his sons.
- ➔ The father did not intend to make an immediate gift of the money in the accounts to his sons because he intended collect the interest on the accounts.
- ➔ The father used language that were the equivalent of declarations of trust.

#### PRINCIPLE

- ➔ It is not necessary to use the word "trust" or even precise wording.
- ➔ The court will find a trust arrangement if it is the most appropriate arrangement on the facts.

*Paul v Constance* [1977] 1 All ER 195

#### FACTS

- ➔ Mr Constance's marriage broke down, and he moved in with Ms Paul. After a workplace accident he received £950 in damages, and following discussions with a bank manager, paid it into a new joint account. They were unmarried, so the

account was just put in Mr Constance's sole name. He said repeatedly, 'the money is as much yours as mine'. They paid in joint bingo winnings too, and they made a £150 withdrawal, which they split. But 13 months later, Mr Constance died without a will. Ms Paul claimed the account was hers. Mrs Constance reappeared and claimed the money was hers.

#### HELD

- The Court of Appeal held that the parties' words and conduct demonstrated that he wished for the money to be held on trust for Mr Constance and Ms Paul jointly. Scarman LJ gave the first judgment.  
*"We are dealing with ... people, unaware of the subtleties of equity, but understanding very well indeed their own domestic situation. It is right that one should consider the various things that were said and done by the plaintiff and Mr Constance during their time together against their own background and in their own circumstances. When one bears in mind the unsophisticated character of the deceased and his relationship with the plaintiff during the last few years or his life, Mr. Wilson submits that the words that he did use on more than one occasion, "This money is as much yours as mine," convey clearly a present declaration that the existing fund was as much the plaintiff's as his own. The judge accepted that conclusion. I think that he was well justified in doing so and, indeed, I think that he was right to do so. There are, as Mr. Wilson reminded us, other features in the history of the relationship between the plaintiff and the deceased which support the interpretation of those words as an express declaration of trust. I have already described the interview with the bank manager when the account was opened. I have mentioned also the putting of the "bingo" winnings into the account and the one withdrawal for the benefit of both of them."*
- Bridge LJ concurred, and quoted *Richards v Delbridge* where Sir George Jessel MR said, *"It is true he need not use the words 'I declare myself a trustee,' but he must do something which is equivalent to it, and use expressions which have that meaning, for, however anxious the court may be to carry out a man's intentions, it is not at liberty to construe words otherwise than according to their proper meaning."*
- Cairns LJ also concurred

#### Byrnes v Kendle [2011] HCA 26

##### FACTS

- The Respondent [Kendle] and the Second Appellant [Byrnes] were married
- The Respondent executed a deed which declared that he holds half of his property on trust for the Second Appellant. He then executed a second deed which was an 'acknowledgement of trusts' which said that he 'stands possessed of and holds one undivided half interest in the [house] as tenant in common upon trust for [the wife] absolutely.'
- Later, the parties left the property and then separated. The Respondent let the property to his son who basically didn't pay rent and no effort was made on behalf of the Second Appellant to recover the arrears.
- Later on, the Second Appellant assigned her interest in the property to the First Appellant (her son).
- The property was sold by the Respondent and the Appellants sued the Respondent for their share of the proceeds, based on the trust.

##### ISSUE

- Whether the intention to create a trust should be determined by the husband's 'real', **subjective intention** or the **objective intention** ascertained from the terms of the deed.

#### HELD

- The legal effect of a document is not ascertained by extrinsic evidence as to the subjective intentions of its parties, but rather by an **objective construction of its words**.
- Intention is determined objectively. It is extracted from the words used and is not a subjective intention that may have existed but cannot be extracted from the words used.
- The "terms of the [deed] are clear ... [The husband] might not have fully understood what he was doing, but that is neither here nor there".
- The question was not what the Respondent meant to say, but what was the meaning of what he did say in the deed (Gummow and Hayne JJ).
- While a party's subjective intention is relevant in relation to a claim for mistake, misrepresentation, non est factum, estoppel, illegality and the like, it 'is irrelevant both to the question of whether a trust exists and to the question of what its terms are.'