Intention of life interest

1. (a)

The life interest of Parwinder which on the surface appears to be a vested, immediate and limited interest is coupled with a remainder interest for their daughters.

In this instance, there is a problem with certainty of intention. Although technical words are not necessary, [1] problems arise when precatory words such as ‘ in full confidence’ and ‘ will respect’ are used in this provision.

The wording of this provision is very similar to the wording of another provision featuring in *Comiskey* [2] which stated “ in full confidence that … at her death she will devise it…” between nieces as “ she might see fit.” Therefore, following this judgment it is likely that the courts would construe from her words an intention to leave her estate to her husband with a gift over of the remaining property to be shared between her daughters according to his will and otherwise equally. However, if the court decides that intention cannot be derived from this provision, Parwinder will take the property beneficially and there is a resulting trust. [3] In this instance Parwinder will be appointed trustee of the estate thus, he can be compelled to carry out the trust. Should Parwinder become unable to allocate shares to his daughters the court will operate as trustee and distribute the estate if all certainties are found to be valid.

If Parwinder is held to be a trustee, he must carry out the distribution of the estate as a trust is obligatory. Therefore, he must make a provision in his will allocating the distribution of the estate or else he must create an express

trust making sure he includes valid certainties and follows the beneficiary principle inter vivos.

This provision may also constitute a trust in conjunction with a power of appointment. According to Hanbury & Martin, when a husband gives his estate to his “ widow for her life, and after her death to their children” but allows the wife to decide the shares for each child it is a valid power to “ appoint using her absolute discretion with a gift in default of equal shares “ [4] Therefore, a special power exists whereby Parwinder must distribute the estate to a specified group of appointees [5] however, he is under no obligation to carry out his duty or even consider it as an obligation. [6]

(b)

Firstly, this provision may fail for lack of certainty of subject matter in that the size of each beneficial interest is not expressly declared. [7] However, the court may determine that the settlor has provided an effective method of determining the size of the gift therefore; the court will apply its assumption in order to prevent the gift from failing. [8] Should the courts be unable to determine any certainty of size of the beneficial interest the provision will become a resulting trust for the settlor’s estate.

Assuming the share size may be determined by some means, it would appear that £200, 000 has been made over into a trust held by the trustees of the estate. However, the obligation to distribute the money to the first 100 applicants must be clarified as a discretionary trust or a power of appointment. According to Hanbury & Martin it appears that the trustees

who hold a trust for the benefit of " such members of a class of beneficiaries as the trustees shall in their absolute discretion select" [9] , are in fact the trustees of a discretionary trust.

The first requirement would then be to ascertain if there is certainty of objects using the test encouraged by the House of Lords, the Given Postulant Test. [10] The test requires the trustees to ask " Can it be said with certainty that any given individual is or is not a member of the class?" [11]

Using this test it is valid to say that any postulant who has written in response to the advertisement in the Oxford Gazette and who have made a moral claim for a share will have to be considered a member of the class of beneficiaries. A slight problem arises if in response to the advertisement the following day 100+ letters are received making it impossible for the trustees to determine who the first 100 beneficiaries are as is clearly requested in the provision. This would result in administrative unworkability and the trust would become void and revert back to the settlor's estate.

(c)

The wording of the provision would be construed to impose a fiduciary duty on the trustees and thus, produce an express trust. This is due to all certainties being very explicit and straightforward. Although Charles is in a coma and unlikely to recover, the trustees are still bound under the terms of the trust to distribute property to Charles according to the declaration of trust. Overall, the trustees are under a general duty to act even-handedly

and “ maintain equality between the beneficiaries” [12] especially in the context of successive interests.

The trustees still maintain the legal title of the cars and Charles and the Oxford Motor Museum enjoy merely an equitable and beneficial interest. Therefore, it is possible for the Trustees to maintain the legal title to the cars and give the entire collection of cars to the Museum on trust as they will not automatically acquire the legal title to the cars. Should Charles die his equitable interest in one of the cars will succeed him and become part of his estate, however, if he were to recover he would still have an equitable interest in one of the cars which he could then take advantage of. Once he or a beneficiary of his estate has chosen a car the legal title of the car will be transferred to them through the appropriate procedure and the trustee’s duty to Charles will be fulfilled and the trust will end. The trustees will then hold the remaining cars on trust for the Museum.

The final option available to the trustees is to make an application to the Court for Directions. As Charles is still living, he has an earnest claim on one of the vintage cars; therefore, if the trustees apply to the Court for direction and follow any subsequent directions of the court they will be protected. [13] This process has come into effect to allow difficulties in administration of the trust to be heard by the Court and alleviate the “ risk of making decisions upon a false premise.” [14]

2.

One of the main problems in the current law surrounding interests in the family home is in regards to the sometimes archaic nature of the law in respect to the more level field that man and woman now work and support themselves through their careers. *Pettitt vPettitt* [15] made clear that a women housework, childcare and contributions towards expenses do not equate to contribution towards the purchase price therefore, unless the wife demands the house to be conveyed to the spouses jointly, she may find she has no interest in the house upon dissolution of her marriage, however, the right to invoke discretionary powers of the court to distribute the property is still an option she has upon divorce.

The main problem with the current law today is the lack of statutory power a court has when dealing with cohabiting couples who share a family home. Couples may often live together for years and have children and mutually contribute to the house via renovation, expenses and upkeep, however, often times the house is registered to one of the individuals only. However, a non-legal co-owner may have an equitable interest resulting in a constructive trust even where a direct financial contribution has not been made. [16]

A constructive trust is another solution to this problem whereby the courts will consider contributions made to the mortgage payment by each party, refurbishment the house as this contributed to the maintenance and essential upkeep. This remedy comes into effect if one party has “ acted to his detriment” in reliance on the assurance that he held a beneficial interest. [17]

Lastly, and in most cases preferable is the remedy of proprietary estoppel or when the Courts “ protect the expectations of the non-owner and may award the non-owner as much as a full ownership interest in the land if justice demands” [18] . The essential elements of proprietary estoppel exist where the legal owner of the property has encouraged a third party to believe that he has or will in the future obtain rights in respect of the property and the third party has acted in reliance of this assurance to his detriment. [19] This is the most just remedy available as it will consider mere oral declarations such as “ the house is as much yours as mine” or “ we share everything 50-50” as an assurance and the non-legal owner is likely to be granted an equitable interest in the property upon dissolution of the family home based on the amount of contribution made over the years of communal living.

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Footnotes

[1] *Paul v Constance* [1977] 1 W. L. R. 527

[2] *Comiskey v Bowring-Hanbury* [1905] A. C. 84

[3] *Watson v. Holland* [1985] 1 All E. R. 290.

[4] Martin (2001) page 173.

[5] *Re Gestetner* [1953] Ch. 672.

[6] Martin (2001) page 174

[7] *Boyce v Boyce* (1849) 16 Sim 476.

[8] *Re Golay* [1965] 1 W. L. R. 969

[9] Martin (2001) page 175.

[10] *Re Gulbenkien's Settlements* [1970] AC 508

[11] *Ibid* per Lord Wilberforce [1971] AC 424 at pages 454-6.

[12] Martin (2001) page 553.

[13] *Re Londonderry's Settlement* [1965] Ch. 918.

[14] Martin (2001) page 550.

[15] [1970] AC 777.

[16] *Lloyds Bank v Rossett* [1991] 1 AC 107.

[17] *Ibid* at page 536.

[18] Penner (2001), page 281.

[19] *Gillies v Keogh* [1989] 2 NZLR 327 at page 346 per Richardson J.