

The certainty of subject matter law equity essay

Law



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' The three certainties are essential to justify the validity of an express trust. However, surrounding case law has detrimentally affected their efficacy.'

Discuss critically this statement.

For the creation of the trust, the property must be vested in the trustee, the formalities must be fulfilled and also, the three certainties should be present. It is the responsibility and duty of the trustee to look after the trust property for the beneficiary on the terms set out by the settlor. Thus, trustee must be aware of all the terms of the trusts, beneficiary and the property subject to it. Therefore, the declaration of trust must be ' certain'. While considering the certainty requirements, the initial point to use is the Lord Langdale's judgement in Knight v Knight. Thus, according to Lord Langdale', elements that are acknowledged as the ' three- certainties' are: Certainty of words or intention to create a trust Certainty of subject matter Certainty of object Therefore, according to Lord Langdale, for the creation of a valid trust, it must be certain that the settlor has the intention to create of property, it must be certain that what is the intended trust property and also it must be certain that who will benefitted from the trust property at time of settlement of the trust property. CERTAINTY OF INTENTION: It is important that the settlor intends to create a trust. Then the intended trustee accepts the decision to be the trustee of the trust property. If in case, the intended trustee decides against it, the trust would still exist and the beneficiaries will still have their equitable interest in the trust property. In most of the cases, by getting agreed to the settlor's terms trustees know that they are the trustees and also the beneficiaries know that they are the beneficiary. But, a settlor can unilaterally create a trust where the trustee doesn't know that

they are the trustee and the beneficiary doesn't know that they are the beneficiary. Equity does not allow a trust to fail when there is no trustee, in this situation; the property falls to be held on by the executor or administrator of the estate. Courts will however, look at the overall intention of the settlor while considering the certainty of intention to create the trust rather than just the exact wordings. Courts will consider all the circumstances while considering the evidence of intention. In *Re Adams and the Kensington Vestry*, as per LJ Cotton : ' I have no hesitation in saying myself, that I think some of the older authorities went a great deal too far in holding that some particular words appearing in a will were sufficient to create a trust. Undoubtedly confidence, if the rest of the context shews the will which we have to construe, and if the confidence is that she will do what is right as regards the disposal of the property, I cannot say that that is, on the true construction of the will, a trust imposed upon her'. Therefore, according to *Re Adams*, there should be no confusion as to the purpose of the trust and the words used to create a trust must be completely clear. However, it is not necessary that the trust is to be written and evidenced. But, the exception applies to the trust of land where it is necessary to be evidence in writing and also must sign on behalf of settlor. No specific formula not even the word ' trust ' or ' confidence' is required for the declaration of the trust[1]; the maxim ' Equity looks to intent, not form' applies fully. Therefore, it is important for the courts to examine the words which are used by property's owner. It is not essential that the owner of the property states that he is the trustee or he expressly calls the arrangement a trust. However, his conduct must demonstrate his intention and the words used which are to the same effect[2]. For instance, in *Paul v Constance*, the <https://assignbuster.com/the-certainty-of-subject-matter-law-equity-essay/>

trust was not expressly declared by Mr. Constance but he assured his wife that the money is "as much yours as mine". Also, the winnings from the bingo were also deposited in their joint account. Therefore, courts held that the words and conduct of Mr. Constance were found as if he intended a trust. In case of precatory words[3], such a kind of expressions[4] was held to be satisfactory for the creation of trust obligations[5]. However, the different approach was taken in *Lambe v Eames* where the precatory words will not impose a trust on their own but all the circumstances and reading the statement as a whole are the issues to be considered as well. The 'doctrine of precatory trust' was however abolished in *Mussoorie Bank*. The words 'in full confidence' were used again in *Comiskey*, but the further clauses in the will were interpreted as to create a trust. The context of the words changed the meaning. The words 'in full confidence' was considered to be merely precatory in *Re Adams* but was considered to be intended trust in *Comiskey*. Therefore, the whole document will be looked while considering the testator's intention rather than dismissing the trust on the individual clauses. Commercial trusts are mainly involved in protecting against insolvency. It is the case where supplier wants to retain some rights over their components over the manufacturer. There are three ways to do this: (1) Retention of legal title (2) Registering a company (3) Claiming that goods are held on trust. Number of legal arrangements may underlie when supplier (S) supplies raw material to manufacturer (M). For instance, where M is provided with the raw material by S on credit, it might be thing that M may become insolvent. Therefore, S may employ what we call a 'Romalpa'[6] clause under a contract of sale which includes the legal title to be remained with S until (a) after incorporating into the manufactured products they are sold by M and as <https://assignbuster.com/the-certainty-of-subject-matter-law-equity-essay/>

a result of which the title passes to the buyer of the product (b) when all the outstanding debts are paid by M upon which the title then passes to M. All the material can be reclaimed by S which M has on his hands if in case M becomes insolvent. No trust was intended in this case; until (a) and (b) applies, the legal title remains with S. In commercial cases, there should be a use of words trust or trustee in order to create a trust arrangement.

However, trust was found to be created in an Australian case[7]. The clause under the contract in this case expressly provided for the proportionate share. The wordings showed that those proceeds were held on trust. By using express words the valid intention to create a trust was found. The proportionate part of the proceed was ring fenced and therefore, the supplier was protected. CERTAINTY OF SUBJECT MATTER: In order a trust to be validly created it must be exactly certain by the settlor whether which property is to be held on trust or else nothing will be specific to which a trust can be attach[8]. In case of Sprange v Barnard, the wordings 'in his sole use; and at his death[9]', were considered to be too vague. The property was not identified in this case, therefore, it went as an outright gift to Sprange. In Boyce, three houses were left by the testator to his widow. The testator instructed his widow to give one house to his daughter Maria and when chooses which house she wants to keep then give the other two houses to Charlotte. But, Maria died before choosing any house and so the gift failed on the lack of uncertainty as to the subject matter. Also, in Re London Wine, it was held by Oliver J that creditors could assert their rights as beneficiaries only if each creditor shows that the particular bottles of wines had been segregated on their account. If the bottles have not been segregated then there would not be any proprietary rights over the wine bottles. No

segregation was found in this case and for that reason there was no trust. This principle was approved by PC in case of *Re Goldcorp*. There was no segregation of shares in case of *Hunter*, the courts in this case held that there was a valid trust despite the segregation of shares. Court of Appeal held that all the shares were in the same company and were of the same class therefore no need to segregate. In this case, some shares were held subject to English law and the other shares were subject to Australian law. The judge followed *Hunter v Moss* for the shares subject to English law. But for the purposes of the shares subject to Australian law judge applied the *Re London Wine* principle. The *Hunter v Moss* is applied in the recent case of *Pearson v Lehman* where it is held that no need to segregate the shares in order to create a valid trust.

CERTAINTY OF OBJECT: The trust is an obligation i. e., a legal duty that has to be carried out by the trustee. It is to be certain who the beneficiaries are and also, if trustees fails to do their jobs the beneficiary can sue them on the basis of breach of their duty. Therefore, it is necessary to have ascertainable beneficiaries to enforce the trust. Trustee needs to know who benefits under the trust. The beneficiary principle requires that for a trust to be valid ‘ there must be somebody, in whose favour the court can decree performance’[10]. There are two tests that courts apply while considering whether the trust satisfies the certainty of object requirements: ‘ is/is not test (class ascertainability): is it possible to say that with certainty whether a given individual is or is not within the class. It is essential to know that whether the individual is a class of objects or not. Complete list test (individual ascertainability) : list of all the objects within the class is required which can actually be drawn up. The ‘ complete list test’[11]applies to the fixed trust, in which the size of the share depends on

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the number of beneficiaries. For the determination whether or not the trust is valid under a class ascertainability, McPhail was sent to the High Court. Afterwards, it went to Court of Appeal as Re Baden. The three judges in Re Baden have different point of views as stated below: Sachs LJ: He went to say that 'the court is never defeated by evidential uncertainty' and the 'class ascertainability test applies to the former'. According to Sachs LJ, the burden of proof would be on each person saying that they are a beneficiary to try and show they were a member of class. Megaw LJ: According to him, objects would be certain as long as it could be shown with the certainty that a 'substantial number' of people fell within this class. Stamp LJ: held that trustees must be able to make a comprehensive theory of the field, must be able to say yes or no to each person, but it will not be fatal if it is impossible to draw up a list of every single person. The best test to be followed is of Sachs LJ because Megaw test was rejected for the powers in Re Gulbenkian and Stamp test was too strict for the practical justification. Also, the justification for the Sachs LJ comments is that courts can always resolve the evidential distinctions and in further resolve the conceptual uncertainties. Once the principle of fixed trust in Broadway is being abandoned, the justification for certainty of rules is to assist the trustees.