

Introduction advise
hugh on the will that



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Introduction Establishing a valid trust, Lord Langdale MR mentioned in *Knight v Knight*¹ that three certainties were required: certainty of intention, subject matter and objects. Trust is of utmost importance as it imposes a binding obligation on the trustees, which ensure that a trustee can manage a trust properly. ² In order to advise Hugh on the will that he has previously made, the issue is whether the words used are sufficiently obligatory to impose a trust.

Hugh, as a settlor, has the power to appoint benefits during lifetime. Noted that these powers will only vest in the trustees, Kay Oss and Anna Key, after Hugh's death. Will Fayle In the three certainties, we have to first look at the certainty of intention, which considers whether the settlor showed sufficient intention to set up a trust. In essence, it focuses on conduct or the words used by the settlor (*Paul v Constance*³) and the settlor's words had to be 'construed as imperative'.

⁴ There is a turning point after the implementation of the Executors Act 1830, as the courts are reluctant to construe trust with merely precatory words. Although this will does not have explicit legal words like 'on trust for', it is not necessary for every settlor to use a particular set of 'special' words to satisfy this certainty, equity looks to the substance of equitable maxim and not the form of actions or words used. ⁵ For a trust to be valid, the subject matter must also be certain. The requirements are as such, it must be clear what the property is held on trust, and the beneficial interest must be clear.

Applying the law in here, giving 'reasonable amount to my old friend Will Fayle' will not be sufficient to create a trust as it is hard to defined what is 'reasonable'. It might be reasonable to the settlor but it won't be necessarily reasonable to Will. Also, it does not clearly state out giving a reasonable amount of what substance to Will, i. e. It could be a reasonable amount of his savings or a reasonable amount of his property. Hence, with the use of such ambiguous word, it is difficult to identify the subject matter and trust is not found. If there is a lack of certainty on the subject matter of the trust, whether the settlor truly intended to create a trust will be doubted (Mussoorie bank Ltd v Raynor)⁶. Whilst defining the property, if the settlor has not set out the beneficial interests with sufficient clarity, the property will return to his estate on resulting trust (Boyce v Boyce)⁷.

Arguably, knowing that Will has in fact been the chairman of the National Kayak Club for many years, he may argue that charitable trust can be construed. Noted that charity's work must sufficiently numerous to constitute a section of the public rather than a private class or individuals (Attorney-General v Charity Commission for England and Wales and others ⁸). In here, it does not specify in what way should he use the money. Hence, it is not sufficient to argue that it is for charitable purpose and charitable trust cannot be established. Mother Tess Similarly, we have to first identify the issue on 'part' of the asset which concerns the subject matter of trust. Dealing with trust over part of a bulk of tangible property, trust can only be valid if it has been separated from the rest.

Here, giving 'reasonable income' from his estate to his mother Tess is distinguished from terms like 'reasonable legacy' or 'reasonable amount'. In <https://assignbuster.com/introduction-advise-hugh-on-the-will-that/>

such case, we should be able to define the part with sufficient certainty and differentiate it from the rest, which may beneficially belong to the trustee or other beneficiaries. Distinguishing from *Palmer v Simmonds*⁹, the trust is held void as it only attached to the 'bulk' of testatrix's estate, which shows that the definition of the subject matter was not clear enough. However, if the settlor provides a viable formula, the subject matter of trust can be certain. As in *Re Golay's Will Trusts*¹⁰, testator stated that his 'friend' would be allowed to take a 'reasonable income' from the trust, this term is not too vague it was held to be valid. It also added that 'reasonable income' is calculable.

Then as well, as it stated on the will that Hugh will give 'reasonable income' from his estate to his mother Tess, it will be valid as a trust, which will be at the discretion of the trustees, Kay Oss and Anna Key. Jose Moving on, the main consideration will be the certainty of words. We know precatory words don't suffice unless corroborative evidence that trust was intended.

Also, regarding moral obligation, it does not equate to a fiduciary one. As in *Lamb v Eames*¹¹, disposing of in any way the wife thinks best for the family held no trust. Also, in *Re Adams and the Kensington Vestry*¹², when looking at the context of the words entirely, the court held that no trust had been intended. Believing that the wife would use the property to benefit the children, he may only place her under a moral obligation to make such use of the property instead of imposing her a binding legal obligation to do so. Hence, there could be no trust of the land in favour of her children.

13 Applying this case, as Hugh had only placed Jose under a moral obligation to take care of their father rather than a binding legal obligation to do so, there could be no trust on the money for his father. When the subject matter is certain, knowing the exact amount of £80, 000 and the beneficiary is identified, which will be Jose. Hence, Jose is free to use the £80, 000 according to his own will. Kay Oss and Anna Key

The matter of concern in here would be establishing the certainty of objects as apparently there is an intention to create a trust as the trustees have an obligation to distribute the £100, 000. For certainty of objects, we have to first identify whether it is a fixed or discretionary trust as different tests would be applied according to that.

Apparently, it is a discretionary trust as this is a type of trust in which the trustees are given the power to appoint. Noted that the class of the potential beneficiaries do not hold any beneficial interests until trustees exercise their discretion to appoint in the beneficiaries' favour. For discretionary trust, the complete list test is no longer needed as a different approach was taken in the key decision of *McPhail v Doulton*¹⁴. Instead, the focus will be on individuals and the is or is not test will be applied on whether any individual falls within the settlor set out.

However, the validity of the test is being questioned in *Re Baden's Trusts*¹⁵ on the matter of conceptual certainty. The class of beneficiaries will be conceptually certain when the description is defined clearly enough for the group to be identified. The issue in here is whether ' amongst the gifted paddlers I have met over the years' would be regarded as conceptual certain. In here, the description of the group of is indeed too subjective to be

clearly identified. Hence, there is a contest over whether conceptual uncertainty can be remedied with respect to the decision or opinion of the trustees or a third party. However, ' amongst the gifted paddlers that I met' comes within the class will not cure this uncertainty as there is no objective way to determine what Hugh means.

Yet, if he says ' those whom my trustees consider I have met over the years' would be conceptually certain as the membership is decided by his trustees, it is not difficult on how the class is to be determined. Seen in this light, no trust is found in such circumstances due to lack of certainty of objects and return on resulting trust to the settlor. Water Aid In here, there is an intention to create a trust as Hugh plans to leave the remainder of his estate to Water Aid. However, there is uncertainty of subject matter because the money that Water Aid receives is not necessarily certain.

In *Sprange v Barnard*¹⁶, a gift to the testatrix's husband with a provision that ' at his death, the remaining part of what is left, that he does not want for his own wants and use' was to be divided between the testatrix's siblings, trust failed due to uncertainty of subject matter. Hence, trust will be void in such circumstance. Knowing that Water is a reputable Registered UK charity, they would argue that trust can be found by establishing charitable trust, as such certainty of object would not be concerned. Yet, there are few legal requirements to fulfil in order to enable a valid charitable trust, including the trust must have a recognised charitable purpose, the trust is for the public benefit and it must have exclusively charitable purposes.

Charitable purposes were set out in the case of Commissioners for Special Purposes of Income Tax v Pemsel¹⁷, which Lord Macnaghten identified four principles of charity: the relief of poverty, the advancement of education, the advancement of religion and other purposes beneficial to the community. As it is a reputable registered UK charity, it shows that there are recognised charitable purposes. For public benefit, Re Scarisbrick¹⁸ lays out that the general rule: charitable trust must be of benefit to the public or to some section of the public. Hence, Water Aid has to benefit the community in a numerous way and the benefited public group must be large enough in order to establish a valid charitable trust. Also, it has to be proven that there are exclusively charitable purposes. Despite that, trust is probably invalid here due to the uncertainty of subject matter.

In conclusion, trust can only be found for Mother Tess and Jose in such circumstances. However, as Hugh returned safely from his holiday, the trust will not vest in the trustees. However, it is a fixed trust for Mother Tess and Jose, it may be argued that it will be the power of Hugh to appoint benefit to them during lifetime. Yet, the will only be valid when settlor dies, which will not be the case in here.

1 1840 3 Beav 1482 Scott Akins, Equity and Trusts (Routledge, 2013), p. 1163 1977 1 WLR 5274 ibid n15 ibid n2, p. 1176 1882 App Cas 3217 1849 60 ER 9598 2012 WTLR 9779 1854 2 Drew 22110 1965 1 WLR 96911 1871 6 Ch App 59712 1884 27 Ch D 39413 ibid n2, p. 11814 1971 AC 42415 (No. 2) 1973 Ch 916 1789 2 Bro CC 58517 1891 AC 53118 1951 Ch 622