

Certainty of subject matter



**ASSIGN
BUSTER**

No special form is normally required for the creation of a trust, except that a declaration or any interest, therein, must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will. It should be noted, that where trust applies to land or any interests therein. No writing is necessary to create an inter vivo trust of pure personality. This does not affect the creation or operation of resulting, implied or constructive trust; a trust caught by this provision need not be declared by writing; it need only be evidenced (i. e. proved by some writing); Absence of writing does not render the declaration of the trust void, merely unenforceable and the writing must contain all the material terms of the trust. The writing must be signed by some person who is able to declare the trust: the signature of an agent is unacceptable; a trust of any property to arise on death must be created by will just like Hild did, where she wanted her property to be administered by Oliver and RJ.

The creation of trusts requires three certainties. This means that a trust will be valid only, if the three certainties are present, i. e. certainty of words, certainty of subjects, and certainty of objects.

Certainty of Words

There is no need for a settlor to use the word trust in order to constitute a trust; it is enough, if the words used in the instrument clearly establish an intention to create a trust.

The Words must be imperative and not merely a request i. e. predatory words (Re Adams and the Kensington Vestry).

Where the property subject to the purported trust cannot be identified, there will be no trust (*Sprange v Barnard*). Where the beneficial interests to be taken by the beneficiaries are not certain, the trust will be a resulting trust for the settlor (*Boyce v Boyce*).

Certainty of Objects

The objects of a trust must be certain i. e. a trust will only be valid, if it can be said with any certainty that any given individual is or is not a member of the class of beneficiaries. Generally, trusts which fail to meet these requirements are void for uncertainty. In the case in hand, it was very certain that it was Yolanda who was to be the beneficiary. Charitable trusts constitute an exception to this rule. However, such trusts do fail, if the gift is not exclusively for charitable purposes (*Re Astor's Settlement Trusts*).

Absence of the certainties

1) In the absence of certainty of words the donee generally takes beneficially. 2) In the absence of the other certainties, there is generally a resulting trust in favor of the settler or his estate.

The appointment of trustees is done on meeting the following basic requirements, (a) Capacity - Any person with legal capacity to hold property may be a trustee, except an infant. But the following people cannot be appointed to be trustees: persons under a disability; persons resident outside of the country; beneficiaries or their spouses or solicitors. In this case, Oliver and RJ qualified to be administrators of the estate, since they meet this basic requirement. (b) Numbers - If the trust property includes

land, the maximum number is four (in the case of a private trust; and the minimum two, or a trust corporation, a sole trustee cannot give a receipt for capital money arising under a trust for sale of land or under a settlement of land; If not, there is no maximum or minimum number, but additional trustees may not be appointed to take the number above four, and a trustee cannot retire to leave only one trustee, unless a sole trustee was originally appointed. (c) Original trustees - These are appointed by the settlor; if he fails to appoint, he or his personal representatives act as trustees. (d) New trustees - they may be appointed in writing to replace a trustee who: Is dead; remains continuously out of the country for more than one year; desires to be discharged; refuses to act; is (legally) unfit to act, e. g. Bankrupt; is (physically) incapable of acting, e. g. infirm; is removed under a power in the trust instrument; or being a corporation, is discovered. Additional trustees - Apart from the appointment of the trustees (above), additional trustees may be appointed in writing at any time by: persons given power to appoint by the trust instrument; or if no such person willing and able to act then (e) Appointment by beneficiaries-The beneficiaries have no power to appoint or to direct the trustees to do so (e. g. re Brock bank), but - If all are sui juris and absolutely entitled, they may terminate the trust; and otherwise, they may apply to the court to appoint or remove a trustee.

Advice to executors

The fact that RJ was not informed of the intended plan does not change the facts, this is because powers and duties may be imposed or conferred on trustees either by the trust instrument, and or by the general law. Yolanda can, therefore, claim the gift successfully.

In conclusion, the law of succession deals with the disposal and administration of the estate of the deceased. The law of succession in death is a law, which governs the discharging of the wishes of the deceased on to his dependants through the executors. The transmission occurs in two stages, which include a passing by operation of law to one or more representatives of the deceased person for the purposes of administration, and transference, usually by the act of representatives, to the persons entitled to the beneficial enjoyment of the net property. It is advantageous to transfer property to a personal representative, because it enables the assets of the deceased to be preserved and protected pending its distribution.