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### **Equity Assignment.**

In order to successfully answer a question set on trusts it is essential to first clarify a definition in one's mind. This maybe sought from Martin in Modern Equity, whereby it is stated that "A trust is a relationship recognised by equity where property is vested in (a person or) persons called the trustees, which those trustees are obliged to hold for the benefit of other persons called the beneficiaries.' Bearing this definition in mind it is deemed to possible to begin observing, analysing and debating the enforceability of the various trusts created by John upon his unfortunate death.

#### **The letter to Alice.**

The first letter can be deemed to be a trust in a will and it is also a fixed trust. It can also be seen that it is one of an express nature as John has intentionally declared the change of direction that the trust will follow to reach its original beneficiary. An accurate description is given by Martin as 'created by manifestation of an intention to create a trust'. The wording of the letter also tells the reader it is a three party trust as John, the beneficiary is notifying an outside trustee, Lloyds Bank that he wishes to transfer beneficial interest from himself to that of Alice, the a new beneficiary to the trust created by his father. This transition also demonstrates that this is an existing trust as John's phone call is indicating a change of beneficiaries. Once the basic facts of the trust are identified it is essential to look at the three certainties in order to classify this as legally binding. The first identifiable area is the intention, John's wishes are clearly stated in his letter to Alice and he had instructed the bank regarding the transfer. The subject matter of the trust is also confirmed as John clearly specifies his beneficial interest is the subject and by stating 'existing' he shows that the entirety of the interest must be transferred. The trust also clearly states the object and beneficiaries. This stage of analysis reveals the trust to be a disposition of an equitable

interest as John is arranging to give Alice the sum of his beneficial interest. This can also be seen as the assignment of an equitable interest.

The next stage of analysis is to look at the formalities and constitution. It is clear that the bank have been notified of the transfer so this shows a clear declaration on his part. However his notification method is not specified. If one assumes this was done by telephone then the trust must instantly be viewed as invalid as there is no constitution as specified in section 53 (1)c of the Law of Property Act 1925, which states that for a valid transfer of beneficial interest constitution must be made in writing. The case of precedent for this issue is *Grey v IRC* 1960, where a number of trusts were set up verbally in order to avoid stamp duty. Without valid constitution of the trust the trustees will be unable to identify the new relevant beneficiary. Written confirmation is needed in order to avoid the difficulties of argument for ownership of the trust, also known as the 'Paper Trail'. Without this written document the trust will be assumed as void. However if one assumes the notification was made in writing or by sufficient electronic transfer e.g. by a fax or e-mail, which was accompanied by a letter of written confirmation then the transfer of the trust would be completely valid. Although the various formalities and certainties have been observed and analysed it is not always essential to do so in a trust of this nature.

The reasoning for this is that the trust has already been created by John's father so all the formalities will have been analysed in order to ascertain its validity. John is simply transferring the direction of the beneficial interest. However for the purposes of the other trusts this has been referred to in relation and to create a guideline with which to follow. To conclude one must assume John's declaration was one of a valid nature and in writing. If this is the case the declaration is wholly valid and the trust will pass upon John's Death.

### **The Letter to Ben.**

John's letter to Ben specifies the creation of a new trust and it is immediately evident that this will be a fixed, three party trust with Lloyds acting as the trustee. John's intention in the trust is seen, as John wants to give away his stamp collection. In order to analyse John's certainty of intention the words must be examined to see if his intention was to impose a trust upon the donee, i.e. Ben. In order to do this the

statement must be defined as one with intention separating it from a simple precatory desire. John uses the words 'written' 'instructing' and 'hold', he is therefore clarifying his certainty of intention and once tested it could be confirmed that these are not simply wishes or desires but a definitive statement of intention. The next certainty to be observed is not as easily confirmed. When looking at the subject matter of a trust it is essential for the settlor to clearly specify the exact amount and which items he wishes to dispose of. The problems arising from this word clarity can be seen in *Palmer v Simmonds* (1854). Where the settlor used the words 'the bulk of' this terminology does not accurately define the specified amount of the settlor's estate. This causes in clarity to the subject matter causing the trust to be invalid. The wording of the second sentence in the letter to Ben also falls clear of correctly defining the subject matter 'instructing them to hold most of my stamp collection'. The question must be asked as to how to define 'most' of the collection? If the word 'most' is looked up in the dictionary it is seen to be an adjective which makes it inaccurate in its description. By defining 'most' as the greatest quantity then John could mean 51% of his stamps or 90%. *Re London wine co* 1986 and *Re Goldcorp Exchange* 1995 also dealt with similar difficulties in defining subject matter. As quantities were left in trust but no specification was made on which items, or their quantity were to be delivered. Without the difficulty in defining subject matter in the letter to Ben the trust could be construed as valid but with this said mistake it will automatically be counted as unenforceable. It is primary to remember that although the trust is unenforceable it is not void.

### **The Letter to Clare.**

This letter introduces the two party trust into the affairs as John confirms his role as both settlor and trustee creating a self-declaration of trust. It can also be seen that it is a testamentary and fixed trust. The intention within the letter seems perfectly viable as the words clearly state John's wishes and there is no argument over the subject matter. This document also passes the class ascertainability test whereby a complete list of all the beneficiaries and objects may be identified. The next major point to look at in examining this letter is the formalities and Declaration. This issue can be reinforced by using the case of *Paul v Constance* 1977, whereby it was found that a trust of this nature must demonstrate clear evidence of intention. Bearing this in mind it must be considered that in order for John's trust regarding the house to be valid he must make a

declaration and constitution as stated in s53 (1) b of the Law of Property act. As stated in Milroy v Lord 'For a disposition to be valid settlor must have done everything the law requires him to do according to the type of property to completely constitute the trust'. This is evident in s 53 (1) b as 'A declaration of trust respecting any land 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' This statement relates directly back to the Declaration and Constitution rule. Johns Declaration can be seen clearly in the letter as this serves as evidence in writing. In order to make the trust valid John will have needed to constitute his declaration by completing the relevant deeds to transfer his legal possession under s52 of the law of property act for his property which are known as the formalities. It is essential that all conveyances of land must be done via deed. This is detailed in s53 (1)b of the law of property act and relates directly to the case of Mcblain v Cross 1977 where it was founded that the settlor must be allowed to declare this form of trust To constitute the trust John must also have registered the transference of property at the Land Registry. Once these steps have been undertaken there is no way out of the equation from the settlors point of view without lengthy and expensive legal work.

### **The Letter to David.**

Johns letter to David details the transfer of a gift rather than a trust as John states 'as a birthday gift' in order to validate this as a relevant gift. John must show intention and physical delivery. This is stated legally in The Companies Act s183. In order to validate the gift John must have completed a share transfer form moving ownership of the shares from himself to David which shows his intention while the letter to David acts as supplementary evidence. John also needs to demonstrate physical delivery by passing over the share certificate to David. These points are underpinned by Milroy v Lord (1862) whereby a share transfer form was not completed and therefore the transfer could not commence. Although this case dealt with shares in a trust, rather than a gift, the basic principle may still be implemented. If the letter is observed it can be seen clearly that the physical delivery area has been completed as John has included the share certificate, however it appears that a share transfer form has not been completed therefore the transfer of the gift may not be completed. These two

documents are essential in the transfer to validate the gift, as the law demands legal written evidence unless an electronic transfer is used involving crest systems.

### **The final letter to Lloyds Bank.**

The final letter details the creation of a discretionary trust and is also a new trust so all of the preliminary tests need to be analysed in order to confirm its validity. A discretionary trust is one where a number of beneficiaries are specified and the settlors chosen objects become shared between these people. The settlor can choose people from a specified group or choose what proportion each member receives at his discretion. On first glance it can be seen that this is an exhaustive trust as John wishes the money to be divided amongst individuals once he has passed away rather than leaving the money to accumulate before division. The first test for a discretionary trust is reached by John's declaration. John clearly conveys his certainty of intention as he expressly asks for Lloyds to create a trust fund for him and indicates where he wishes the money to go. The subject matter of the trust also appears to be clearly stated with £400,000 being specified. The difficulties arise when one looks at the objects and beneficiaries area as tests are created to ascertain the validity In *McPhail v Doulton* 1971 Lord Wilberforce used the test;

'the trust is valid if it can be said with certainty that any given individual is or is not a member of the class'.

This dicta can be used to determine power as well as discretion as was shown in *Re Gulbenkians settlements* 1970'. In this case, a claimant must prove him/herself to be of the class specified; in this case, the test is the correct method. Case law has often demonstrated that ambiguous use of words in order to describe class members has often lead to a state of confusion when dealing with trusts of this nature. The correct term for this is conceptual uncertainty. It can be seen from case law that the term 'friends' as used in *Re. Gibbard* 1967 is a highly complicated class member to define. This is due to the simple fact that what one person may define as a friend another may not. Another question is how far the chain of friends must extend to, i.e. should only best friends be given a proportional share of the trust or should this be extended to all of the settlors acquaintances as well. In the above case the court argued that the specified term in question 'old friends' held a higher degree of conceptual certainty. This would lead to validation of the trust, and more importantly a share going to the beneficiaries. This issue was also addressed in *Re Barlows will trusts* 1979, whereby

the settlor simply used the word 'friends' without creating a certainty of which ones. The courts when addressing this issue have followed the belief that the most successful way to deal with this conceptual uncertainty would be to appoint a family member or one of the settlors closest known friends to verify which members would be included in this class. This could be related directly back to Johns case and one may assume that if a suitable figure was chosen to complete the task and assess the members then the trust may be enacted. This issue was also tackled in Re Baden's trusts, however the conceptual certainty related to the area of relatives. It may be considered slightly easier to define relatives although the question still arose as to whether this applied to all relatives or simply next of kin. Brightman believed that the latter term was more applicable to the situation. If this is used in John's case then this section may be viewed as enforceable. It must be stated that if the members of the class cannot be ascertained in either of the beneficiaries then the trust will fail and the specified money will be used to construct a resulting trust. This would cause the total sum to be transferred directly to the estate of the deceased, as he is no longer alive to receive the amount. If John, the settlor has provided a will then the funds may be transferred to specified persons.

To conclude it must be identified to Lloyds Bank that only two of Johns specified trusts can be viewed as enforceable and valid, the disposition of his equitable interest and the two party trust created in order to transfer his residential property. It is clear to see that the gift to David of Bt shares and the trust set up to transfer his stamp collection will most definitely be void. It must also be viewed that if the court, in the situation, cannot ascertain members of the family class then the final discretionary trust will be unable to be administered as detailed above.

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