

The issue in this question is whether Alice can recover her properties which she had already given to Till, Tessa, Billy, Dolly, Eric, Flossy and Gilly. It should be kept in mind that the disposal of her assets was done by way of an oral pronouncement during a farewell dinner made to celebrate her new life as a nun.

The law applicable to this current legal predicament is the law relating to equity and trusts. In this case, it is necessary to consider whether the disposal of her assets can have any legal effect, and if so, whether she can nevertheless renege on her promise. For the purpose of answering this question, we shall look at the situation on a case-by-case basis.

It should be noted that in cases of trusts, the courts will apply rules of equity in order to put into legal effect such a trust. In this case, it is appropriate to take a look at the formal requirements of a trust, which may require certain procedures to be complied with. Under the authority of the case of *Re Steele's Will Trusts* [1948] Ch 603,¹ the law will put into effect a trust where it is created in writing on the presence and advice of legal professionals and where a clear intention is present.² Does this mean that the entirety of Alice's oral disposition of trusts will be invalid then?

The answer would appropriately be in the negative. This is because the rules with regards to trust are governed under maxims of equity, one of which reads that 'equity looks to the substance and not the form'. As of such, we will take into account these individual situations and the appropriate rules of trusts, principles of equity and case laws in order to determine whether a trust has been established. The trust is not invalid just because it is made orally.

Transfer of Greenacre

Let us first consider the transfer of Greenacre to her trustees, Tilly and Tessa, which is done for the benefit of Billy. Here, although her promise was made through an oral pronouncement, she nevertheless had given the title deed of the land to Tilly and Tessa, on which the words "This is for Billy" had been written.

Under the rules of trust as governed under English law, for an express trust to be valid, there must be a certainty of intention, a certainty of subject matter as well as a certainty in the object. These three requirements are under the authority of the case of *Knight v Knight* (1840) 3 Beav 148.³

¹ *Re Steele's Will Trusts* [1948] Ch 603

² Graham Moffat, Gerry Bean, & John Dewar, *Trust Law: Text and Materials*, (2005), p.156

³ *Knight v Knight* (1840) 3 Beav 148

Here, the certainty of intention can be proven by the fact that Alice had given the title deed of the land to Tilly and Tessa, where she had also wrote or scribbled her intention that the land was to be kept for the benefit of Billy. According to the case of *Re Adams and the Kensington Vestry* (1883) 27 ChD 394,⁴ there must be an absolute clarity of intention to transfer. In the case, the desire of her husband in transferring his property to his wife “in full confidence that she will do what is right as to the disposal thereof between my children” was held to have lacked the certainty of intention, and so there was no binding trust.⁵

With regards to certainty of subject matter, it is a requirement that the property must be clearly identified, as per the authority of the case of *Palmer v Simmonds* (1854) 2 Drew 221.⁶ In this particular legal predicament, it would seem that this requirement has been satisfied, as the clear extent of the subject matter was provided by Alice with no confusion, that is, the subject matter is the entirety of the Greenacre.

The object in this trust is also clear, since Alice has specifically mentioned that the beneficiary to the property is to be Billy. This has satisfied the requirements of certainty of object as prescribed under the case of *Re Hain’s Settlement* [1961] 1 WLR 440, which requires that in such instances, beneficiaries must be clearly ascertained.

Having considered the fact that the express trust has satisfied all the formal requirements, it is necessary to consider if Alice can renege back on this promise. Here, we must take into account of the fact that Greenacre is located on an unregistered land. Here, section 53 of the Law of Property Act of 1925⁷ will now be applicable. Under the section, any oral declaration of a trust of land is void, with the exception of implied, resulting and constructive trusts.

Further, under section 53(1)(b) of the Property Act 1925,⁸ should Billy wish to show that he had been bestowed a trust of land, there is a requirement for a written, signed evidence of such a declaration. In this case, the mere statement “This is for Billy” would fail to satisfy the requirement.

Hence, it is submitted that Alice can renege on her promise to transfer Greenacre to Tilly and Tessa without legal consequence.

Transfer of Jewellery

The next issue to consider is whether the transfer of the jewellery collection to Tilly and Tessa to be held in trust for Cathy can also be valid, or whether Alice can renege on her promise. Here, we shall again consider the three requirements of a valid trust as per the case of *Knight v Knight* (1840) 3 Beav 148.⁹

In this case, certainty of intention, subject matter as well as object can be said to have been satisfied. It would also seem that the gift had been perfected, by virtue of Alice handing over the keys to the safety deposit box where the jewellery box is stored to Tilly and Tessa. Under the case of *Milroy v*

⁴ *Re Adams and the Kensington Vestry* (1883) 27 ChD 394

⁵ Wilkie M, Malcolm R & Luxton P, *Equity and Trusts* (2008)

⁶ *Palmer v Simmonds* (1854) 2 Drew 221

⁷ section 53 of the Law of Property Act of 1925

⁸ section 53(1)(b) of the Property Act 1925

⁹ *Knight v Knight* (1840) 3 Beav 148

Lord (1862) 4 De GF & J 264,¹⁰ equity will not perfect and imperfect gift, and a gift can only be perfected through a transfer of the gifted asset to the donee together with an intention for such a gift.¹¹ Here such intention can clearly be proven by the oral disposition made by Alice, and the transfer acts so as to seal such a transfer.

Transfer of Art Collection

The problem with the disposition of this art collection is that there is no certainty in subject matter. It can be asked by the courts as to which art collection is Alice referring towards? Under the authority of the case of *Palmer v Simmonds* (1854) 2 Drew 221,¹² there must be absolutely no doubt as to the quantum of the subject matter. In the case, the court held that the “bulk of my residuary estate” was not specific enough and so the trust would fail.¹³

It is submitted that for the purpose of ascertaining the existence of a trust, in this situation, it would come down to an issue of fact, as the question did not make it clear whether there is any doubt as to which art collection Alice is referring to. Hence, on the absence of further clarification, it is humbly argued that this disposition should also fail.

Transfer of Beneficial Interest in 10, 000 shares in KO Ltd for Eric

It should be taken into consideration that under section 53(1)(c) of the Law of Property Act 1925,¹⁴ any oral disposition of equitable interests are void. The exception to this rule is with regards to implied, resulting or constructive trusts, which unfortunately is not the case at this present legal predicament. The authority for this would be the case of *Vandervell v IRC*, where the court held that such transfer, in light of the provision, could not be valid.

Hence, it is argued that the transfer of beneficial interest in this case would be invalidated.

Transfer of shares of Sky Airways to Flossy, who is not present at the dinner

It must be noted that under the Companies Act of 2006,¹⁵ share stocks can only be transferred by executing such a transfer using a share transfer form. In this case, Flossy was not present at the dinner, but nevertheless her solicitor had been given the completed transfer form together with the share certificates.

We can see in the case of *Milroy v Lord* (1862) 4 De GF & J 264,¹⁶ a similar situation as in the present situation. In the case, a trust was set up in favour of Medley’s niece, where Lord was supposed to be the trustee to the trust. A written deed was set up to establish such trust, and consideration was given for the transfer of shares, and according to the trust, Medley’s niece will be entitled to receive the dividends resulting from the share on her marriage, and be entitled to receive the entirety of the trust on Medley’s death. However, in the case, only power to distribute the dividends was given but not actual transfer of the shares. As a result, the court held that the trust is invalid.

¹⁰ *Milroy v Lord* (1862) 4 De GF & J 264

¹¹ Alastair Hudson, *Understanding Equity & Trust* (2008), p.29

¹² *Palmer v Simmonds* (1854) 2 Drew 221

¹³ Alastair Hudson, *Equity & Trust*, (2005), p.85

¹⁴ section 53(1)(c) of the Law of Property Act 1925

¹⁵ Companies Act of 2006

¹⁶ *Milroy v Lord* (1862) 4 De GF & J 264

The only exception to this principle is the case of *Re Rose* [1952] Ch 499, where if such transfer is delayed only because of a routine operation of the law, the court would consider such a gift effective.

It is hence humbly argued that there has been a clear intention for the stock to be transferred to Flossy and hence equity should be used to perfect such a gift. In this case, since the transfer form had been completed, procedures under the Companies Act should be followed in order to effect such a transfer, which is through the delivery of the share certificates together with the stock transfer form to Sky Airways for a new certificate to be issued to Flossy. This is considered to be a routine operation of the law, and hence, the writer would like to conclusively submit that Alice should not be able to renege on her disposition of the shares to Alice.

Holding the Rich Bank account on trust for Gilly

Under the authority of the case of *Milroy v Lord* (1862) 4 De GF & J 264, as have been mentioned above, equity will not perfect an imperfect gift. However, an exception is made where the donor had declared himself a trustee in a self-declaration of trust.¹⁷ This would hence seem to perfectly apply in this case, and Alice is bound to hold the trust in favour of Gilly and cannot misappropriate the funds in Rich Bank account.

We can make use of the authority of the case of *Paul v Constance* [1977] 1 WLR 527,¹⁸ which very slightly have some material similarities with the current predicament. In the case of *Paul v Constance* [1977] 1 WLR 527,¹⁹ although there was no express declaration of trust, Mr. Constance nevertheless assured his wife that the joint bingo winnings which were paid into his accounts were “as much yours as mine”. In the case, although there was no transfer of account, nevertheless the court held that such trust is valid, and Mr. Constance has a duty to hold the trust for his wife.

Making use of this authority, it would hence seem that Alice could not renege on her promise to hold the Rich Bank account on trust for Gilly.

Conclusion

In conclusion, generally oral trusts are valid and proper, however, in certain instances, there are additional procedures which must be carried out which may cause such trust disposition to fail. In this case, Alice will be able to renege on her promise with regards to the Greenacre land.

It must be taken into account however, that the requirements for an express trust in favour of another oral disposition is specifically in order to prevent a testator from fraudulently conveying his properties to another in secret without the knowledge of his previous trustees and beneficiaries. Hence, it is also argued that the beneficiaries in this case have a valid claim against Alice for reneging on her oral dispositions of trusts, except where it relates to properties which the trusts have clearly failed to convey by means of an oral disposition.

¹⁷ Graham Moffat, Gerry Bean, & John Dewar, *Trust Law: Text and Materials*, (2005), p.133

¹⁸ *Paul v Constance* [1977] 1 WLR 527

¹⁹ *Paul v Constance* [1977] 1 WLR 527

List of References

List of Cases

Re Steele's Will Trusts [1948] Ch 603
Knight v Knight (1840) 3 Beav 148
Re Adams and the Kensington Vestry (1883) 27 ChD 394
Palmer v Simmonds (1854) 2 Drew 221
Milroy v Lord (1862) 4 De GF & J 264
Paul v Constance [1977] 1 WLR 527

List of Legislations

Law of Property Act of 1925
Companies Act of 2006

List of Legal Texts

Gareth Jones, Section 53 (1) (c) of the Law of Property Act 1925 and Resulting Trusts *The Cambridge Law Journal*, Vol. 25, No. 2 (Nov., 1967), pp. 170-173, Cambridge University Press
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