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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

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Lecture-32





LECTURE-32

Distinguishing Trusts and Powers Settlor:

- The person who owns the property absolutely from the beginning. If they give their money to a person and say they shall use it for a specific benefit (imperative instruction), the person is therefore made a trustee under law
 - Initially the absolute owner of property and can settle the property on another person to look after it for the benefit of someone else
 - A settlor can be described as holding absolute title in the property which is to be settled on trust.
 - Once a trust has been declared the settlor ceases to have any active role in the trust
- Trustee:
- On creation of a trust the legal title in the trust property

must be vested in the trustee and held by him on trust for the beneficiaries stated

- Trustees however are not allowed to assert personal, beneficial ownership in the trust property
- Conscience is affected by direction on how to utilise subject matter
- A trustee is obliged to fulfil the directions of the settlor in dealing with the trust subject matter as if he does not then he would be committing a breach of trust
- **THIS IS A TRUST.**

Donee:

- If something is given alongside the power to utilise it in a specific manner, but not definitive instructions, then this will mean a person is deemed a Donee
- If property is given without an imperative instruction (eg you give someone £1000 so that they MAY distribute money to your children) this means the person is not compelled to act in that manner; making them a Donee

- Trustee merely has the power to do something with the asset
- Refers to a personal relationship; one is authorised to hold the money and are objects of the power which is of a personal nature
- Objects under a power as opposed to specific person/group
- **THIS IS A MERE/PERSONAL POWER.**

Fiduciary/Trustee:

- Fiduciary relationship is one where there is a relationship of trust and confidence (eg doctor and solicitor) and there is an expectation that the trustee would only act in the best interest of the client (the settlor)
- Millet LJ in *Bristol & West Building v Mothew* described a fiduciary as someone who has “undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence”
- o Essentially a fiduciary must act in good faith and not profit out of his trust
- o Must not act for

his own benefit or that of a third person without the informed consent of his principal

- Where a trustee has fiduciary power to distribute trust property to the objects they aren't obliged to exercise such a power but need only consider exercising it o Still a power as it is the authorising of the object to hold the property o Creation of a fiduciary/trust power

- The nature and expectation of power is different to that between a settlor and donee, and the law will regulate such a distribution

- A fiduciary is one who owes legal duties of loyalty and utmost good faith in relation to another person

- **THIS IS A FIDUCIARY/TRUST POWER.**

Therefore it can clearly be shown how trusts are imperative whilst powers are discretionary.

Classification of Trusts:

Express trusts:

- As the name suggests is a trust a person intends to create
- Such trusts are those declared intentionally by the Settlor to settle specific property on trust for clearly identifiable beneficiaries. These trusts are held by a trustee appointed by the settlor to act in accordance to the terms set out by him
- Necessary that the trust property is sufficiently identifiable and is certain as to the identity of the beneficiaries. And the legal title in the trust property must be transferred to the trustees before the trust can be held to be effective.

- **Can either be public (Charitable) or private trusts**

- Public is a charitable trust not made for the benefit of private individuals. Those who benefit under this do not have the same rights as those who can in a private trust. Enforced by the Attorney General on behalf of the public.
- A private trust is one that seeks to provide for private persons such as members of family, friends or other class of beneficiaries closely connected with the settlor.

- If you are the beneficiary of a private trust however then equity will enforce it for you.

Implied trusts:

Are trusts that the law in certain circumstances imputes or implies. They come in two forms resulting trusts and constructive trusts.

Resulting trusts:

- When a purpose laid out in the trust is finished, then the law will say that the property results back to whence it came
- Such trusts are essentially implied by the courts and are not created intentionally by the settler,

Constructive trusts:

- A trust constructed by the court and is essentially the opposite of an express trust; arises through the operation of the law

- Where the defendant has acted unconscionably the court will hold the defendant to be a constructive trustee

In the event of unconscionable receipt of property, the defendant will be regarded as holding that property on a constructive trust for the person deemed to be entitled to the property in terms of equity

- Person may be entitled to property but may not have been aware of this fact through the courts construction of a trust; not intentionally or expressly made.

Fixed trusts:

- A fixed trust is one where the beneficial interests of the beneficiaries are fixed.
- For example, a settler may transfer \$20,000 on trust for his three children equally. The beneficiaries are entitled to one-third of the money. The trustees have no discretion in the manner in which the money is distributed to the children.

Discretionary trusts:

- In a discretionary trust, the trustees are given a discretion in the manner in which the trust property is distributed. For instance, the trust may be in favour of the children of the settlor or it may be created in favour of a class of persons. In such trust, the trustees have to power to distribute, however they want to distribute and to whomever of the beneficiaries left at their discretion.

THE CONSTITUTION OF TRUSTS:

A valid trust must be “fully constituted”. This requires that the property which is the subject matter of the trust must be vested in the trustee. This can be done either by the settlor declaring that they will hold the property as trustee for the beneficiary, or the settlor must transfer the trust property to the trustees. The legal requirements for transfer depend upon the type of property: land, shares, copyrights or chattels.

The established principle is simply that the intended beneficiaries will have no proprietary rights in the trust until it is constituted:

- It is not enough to simply declare a trust, for it to be effective it is necessary that title to property has been vested in the trustee
- Where a trust is found to have not been effectively constituted then law has developed in a manner whereby equity could intervene and find it to be valid.

For a trust to be effective, the settlor must not only have an intention to declare a trust over property which they had rights over at the time of declaring the trust, but it is necessary for the person who is to act as the trustee to take legal title in the trust fund; making a trust properly constituted.

MCQs

1. A fixed trust is one where the beneficial interests of the beneficiaries are fixed.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

2. A private trust is one that seeks to provide for private persons such as members of family, friends or other class of beneficiaries closely connected with the settlor.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

3. A valid trust must be “fully constituted”.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

4. Person may be entitled to property but may not have

been aware of this fact through the courts construction of a trust; not intentionally or expressly made.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

5. it is necessary for the person who is to act as the trustee to take legal title in the trust fund; making a trust properly constituted.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**
