

legal title did not pass to the customers and the bullion was not held on trust because their property could not be identified in the bulk.

- **Some the difference in the cases in the type of property involved. Bottles of wine are chattels and therefore have tangible existence. They can be separated and set aside from other bottles. Shares though, are intangible property. They are just certificates which grant valuable rights. It is not possible to actually pick up a share and put it in another place.**
- **Another difference is that there was an actual declaration of trust in Hunter where in Re London it was merely a theoretical argument that there could be a trust**

Tutorial 2: Certainty (Intention and Subject-Matter)

Reading:

Textbooks

Virgo (2012): Chapter 4 (pp. 79-94)

Davies & Virgo (2013) Chapter 3 (pp 65-86)

Moffat: chapters 4.1 & 4.2

Cases:

Paul v. Constance [1977] 1 WLR 527

Hunter v. Moss [1994] 1 WLR 452

Re Goldcorp Exchange Ltd [1995] 1 AC 74

Questions

1. Why is intention a requirement in the formation of an express private trust? How do the courts decide whether a settlor trusts or intends to create a trust?

Private Trust - not a charity
Public Trust - charity

Express Private Trust - person meant to create it

Why is intention a requirement: being a trustee involves many responsibilities; can't impose an express private trust unless there is an intention to create it.

A gift can be given at any time; but if you are supposed to be a trustee, obligations are imposed

Courts : Essential Test: whether the creator of the trust wanted somebody to hold property for the benefit of another person , so that he or she is under duty to do so.

use of precatory words not sufficient -must show clear intention to create a trust

2. Tom died recently. Consider the validity of each of the following dispositions in his will and advise the trustees of the will, Edward and Kate, accordingly:

- Tito v Waddell

8. Clarifying identity on death -executors of the will would have been able to resolve any uncertainty as to the identity of the subject matter
9. **Types of share: class of shares/ one or more companies?**
 - Hunter_ v Moss key principle - that a trust of part of a fungible mass, such as shareholding, will not fail for uncertainty where there has not been an appropriation of any specific part of the mass for the beneficiary, as long as the mass itself is sufficiently identified and as long as the beneficiary's proportionate share of the mass is not uncertain

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Page 13 of 13