

Requirements for the creation of a valid trust

Posted on [May 5, 2021](#) May 5, 2021 Written By [Opeoluwa Sanni](#) Posted in [Equity and Trust](#)

There are rules that govern the creation of a valid trust, essentials that it must contain in order to be valid and enforceable. These requirements were outlined in the case of KNIGHT v KNIGHT by Lord Lonsdale. They are also referred to as the three certainties. They are:

- Certainty of words
- Certainty of subject matter
- Certainty of object.

Certainty of words

The rule, in regard to certainty of words, is that the words used in creating the trust must be clear, direct, unequivocal and unambiguous. They should not be ambiguous or vague. This is because the words used in creating the trust are the most express indication of the settlor's intention to impose an obligation on the trustee for the benefit of the object. The words used may be conditional, but they must evince a clear intention.

In essence, the words used must not be precatory i.e. words that express hope, belief, desire, rather than firm intention. See MUSSOORIE BANK LTD v. RAYNOR (1882) 7 App. Cas. 321 where a testator gave his property to his wife in a will and "feeling confident that she will act justly to our children in dividing the same when no longer required by her." The court held that no trust was created for the children.

Where the words used in creating the trust are uncertain, the gift fails and the donee takes absolutely. This is because an intention to create the trust cannot be properly ascribed to the donor.

Certainty of subject matter

The property that will be subject of the trust must be in existence, identifiable, certain or at least, capable of being made certain. This means that the donor cannot give a gift he doesn't have yet. If the gift is destroyed or is otherwise non-existent at the time of making the trust, it fails.

Thus, the subject matter should not be referred to with general words like "property" or "part". For instance, in SPRANGE v. BARNARD (1789) 2 Bro. C.C. 585, a testatrix gave property to the donee (the testatrix's husband) "for his use and at his death, the remaining part of what is left, that does not want for his use" to be divided between her brothers and sisters. It was held that the donee takes absolutely.

Where there is uncertainty of subject matter, the donee also takes absolutely. This is because while an intention to create a trust is ascribable to the settlor, you can't appoint a trustee over trust property that cannot be ascertained or that is non-existent.

Certainty of object

The object of a trust may be the beneficiary or cause. The rule is that the object must be clearly identified or identifiable with certainty and the interest they are to take in the trust property must be discoverable. Thus, where there is uncertainty as to the object, the trust fails.

The rule regarding certainty object will however be inapplicable in two instances. First, when the trust is a discretionary one, giving power to the trustee to decide who the beneficiaries will be, the trust may be held valid but on the condition that the trustee must have expressly stated an identified or identifiable class of people from which the beneficiaries will be drawn. Second, charitable trusts can still be applied where the object is uncertain, through the application of the cy-pres rule.

Where the object of a trust is uncertain, the trust fails and the property inures in a resulting trust for the estate of the settlor.