



Equity and Trusts Concentrate: Law Revision and Study Guide (8th edn) Iain McDonald and Anne Street

p. 59 5. Formalities

Iain McDonald, Senior Lecturer in Law, University of the West of England, and Anne Street, Visiting Lecturer, SOAS, University of London

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Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more. Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter discusses the formalities needed to create a testamentary (made by a will) and an *inter vivos* trust, and the formalities regulating the transfer of an existing equitable interest. There are different formalities in relation to the creation of trust dependent on the type of property which is subject to the trust. The main formalities considered are set out in s 53 Law of Property Act 1925. Three types of trusts of property are relevant to the chapter: trusts of property other than land, including trusts of personal property; trusts of land or an interest in land; and dispositions of an equitable interest.

Keywords: testamentary, inter vivos trust, equitable interest, Law of Property Act 1925, formalities

Key facts

- There are rules in relation to the creation of an express trust over property.
- A trust can be created *inter vivos* (during the settlor's life) or by will.
- There are different rules in relation to trusts over an interest in land and property other than land.
- It is important to remember that when creating an express trust, the settlor must satisfy the formalities required for both the transfer of the legal interest in property (chapter 4) and the creation of the trust itself.
- There are different rules for the creation of an express trust and the transfer of the legal interest in property.
- There are formalities in transferring an equitable interest in *any* property.

Revision tip

This is a complex area of law and commonly examined. Ensure that you understand the content of chapter 4, which deals with how the ownership of property is transferred (constitution). This chapter will deal with how a trust is created in property, and how to transfer an equitable interest.

Introduction

This chapter discusses the formalities necessary to create a testamentary trust (made by a will) and an *inter vivos* trust and the formalities regulating the transfer of an existing equitable interest. There are different formalities in relation to the *creation* of trust dependent on the type of property subject to it. The main formalities considered in this chapter are set out in s 53 Law of Property Act 1925 (LPA), which is discussed in detail in the section 'Creation of an *inter vivos* trust of an interest in land'. There are three types of transactions relevant to this chapter:

- trusts of property other than land, including trusts of personal property;
- trusts of land or an interest in land; and
- dispositions of an equitable interest.

The need for formalities

One of the purposes of formalities is to create certainty of transactions and prevent fraud. It needs to be clear from the outset who has the benefit of an equitable interest. The certainty created by the formalities has advantages for several parties.

For the trustee

A trustee will need to be certain who the beneficiaries are; the trustees have duties and powers in relation to the trust property. If these powers and duties are performed incorrectly, the trustee may be held personally liable for any breaches.

For the beneficiary

Additionally, the beneficiary must be certain as to his or her actual interest in property. This will prevent fraud by the trustee. The clearer the allocation of property rights the easier for the trustee, the beneficiary, and ultimately the court to allocate the correct interest to the parties.

For the courts

In certain circumstances, the courts may need to intervene with the trust, such as in its variation or exercise of powers. The court will need to ensure it acts correctly in relation to competing interests.

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For Revenue & Customs

A further purpose of the formalities is to be clear who has the benefit of property for the purposes of tax. The trustee will hold the legal title and would appear to be the person who should pay tax on any income the trust produces. Revenue & Customs will seek to recover tax due, which is why so many cases involve the HM Revenue & Customs Commission (HMRC, formerly the IRC).

Testamentary trusts

Many trusts are created by will. A requirement of all wills is that they must comply with the requirements of the **Wills Act 1837** to be valid. Section 9 states that the trust must be:

- in writing;
- signed by the testator, or someone acting at the testator's direction in his or her presence; and
- in the presence of two witnesses who sign and attest the will in the testator's presence.

The reasons for these requirements are evidential and to prevent fraud or coercion. All testamentary documents must comply, as must any amendments made by **codicil**. These requirements will satisfy any need for the evidence of transfer of equitable interests or the creation of trusts. The main purpose of s 53(1) (b) LPA is evidential and the **Wills Act 1837** requirements satisfy this.

Creation of an *inter vivos* trust in property other than land

The creation of trusts of an interest in property other than land requires no formalities, other than the three certainties (see chapter 3). This will apply to such property as shares, money, paintings, etc. The most important thing that must be established is the certainty of intention to create a trust. Remember that this is a question of fact which must be established on a case-by-case basis. The certainty of intention can be demonstrated by words, written statements, or conduct: *Paul v Constance* [1977]. In establishing certainty of intention, the court will take the whole situation into account.

However, where the courts fail to find the sufficient certainty required for trusts (see chapter 3) they will not impose a trust to achieve justice: *Jones v Locke* (1865). This is a clear example of the maxims that 'equity will not perfect an imperfect gift' and 'equity will not assist a volunteer'.

Remember that creating a trust is a 'cruel kindness' as it creates such onerous obligations for the trustee. The courts are happy to create a trust on informal statements, but these must be clear that this is the true intention of the settlor.

Creation of an *inter vivos* trust of an interest in land

An express trust of an interest in land can be declared orally or in writing, but until it is in writing it is unenforceable. The statutory requirements for creating such a trust in land or interest in land are set out in s 53(1)(b) LPA:

A declaration of trusts respecting 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.

So, two formalities must be satisfied (see *Ong v Ping [2017]*):

- there must be evidence of the trust in writing; and
- the evidence must have been signed by the settlor.

Interests affected

This rule applies to freehold, leasehold, and equitable interests in land (see the section 'Dealing with existing equitable interests').

Note: s 53(1)(b) LPA deals only with the *creation* of a trust over an interest in land. It does *not* deal with the transfer of legal title in land, nor does it deal with the creation of a trust in anything but an interest in land.

Evidenced in writing

While a valid trust will come into existence from the moment it is declared, until the requirements of s 53(1)(b) LPA are satisfied the trust will not be enforceable. It is valid at the *moment* it is declared with sufficient certainty, which can have important tax implications for the settlor and the beneficial claimant. It also means that should the trustee exercise his or her powers under the trust he or she will not be in breach. Although the trust is valid, it is unenforceable; the beneficiary cannot enforce the trust, for example by using his or her powers to vary a trust. In this situation there is a gap between validity and enforceability. The evidence, when it is written, must contain all the relevant terms of the trust, that is, the three certainties.

The writing required by s 53(1)(b) LPA does *not* need to be in the form of a *deed*. Written evidence signed by the settlor will suffice. This can be a letter or other informal document. Written and signed evidence of the trust can be provided at a later date: *Gardener v Rowe (1828)*.

Signed by the settlor

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Unlike s 53(1)(c) LPA (see the section 'Direct trustee to hold the beneficial interest for another'), the written evidence must be signed by the settlor; it cannot be signed by an agent. This is a matter of construction of s 53(1)(b) LPA read with s 53(1)(c) LPA, which specifically states that an agent can sign the written evidence, whereas s 53(1)(b) LPA states that this must be a person 'who is able to declare such a trust or by his will'.

Looking for extra marks?

Examiners may have the intention to create a trust communicated by email or perhaps text. This is to stimulate a discussion on the need to have the declaration signed. There is no need to conclude on this but make a reasonable argument *if* it would satisfy the requirement. Perhaps compare with the principle of e-conveyancing in land.

Revision tip

In dealing with an exam question in this area remember to keep the legal transactions, explained in chapter 4, separate from the equitable formalities. Figure 5.1 may help your understanding of this.

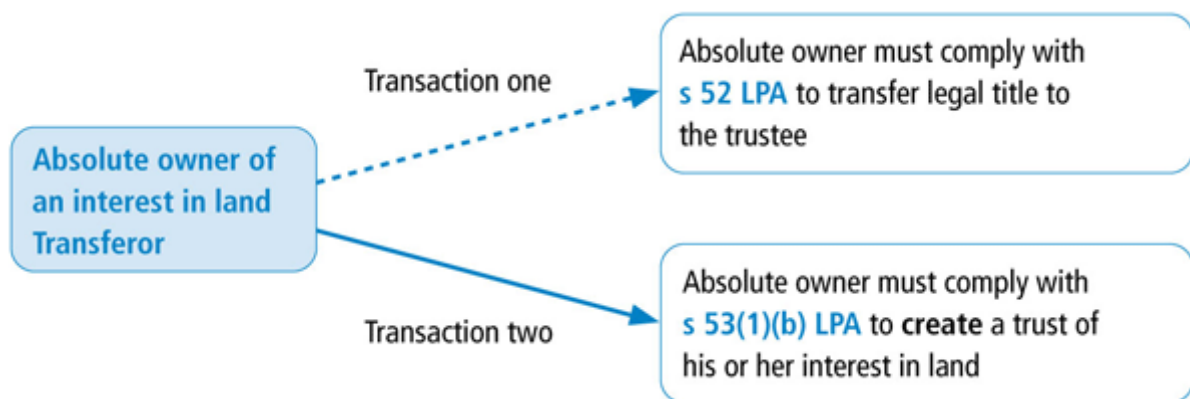


Figure 5.1 Creating a trust in land with another as trustee (see Figure 4.1 (2))

However, where a settlor declares him or herself trustee of an interest in land for a beneficiary, remember that the settlor will only have to declare the trust of land and complete the required formalities of s 53(1)(b) LPA as the settlor as trustee already has legal title to the land (see chapter 4 Figure 4.1 (3) on constitution to remind yourself of these issues).

Avoiding the formalities of s 53(1)(b) LPA

Formalities play an important role in tracking the correct ownership of property. For that reason, the courts are extremely reluctant to allow the required formalities to be avoided. However, the case of *Rochevoucauld v Boustead* [1897] provides an exception to the rule that writing formalities must be completed. If the settlor has transferred legal title to a trustee effectively, intending that it be held on trust, but has failed to evidence this in writing, the courts will usually not consider the trust to be enforceable.

p. 64 If the result of this would be to allow the relevant statute to be used as an instrument of fraud, the court may accept oral evidence as proof of the transaction. ‘Equity will not permit a statute to be used as an instrument of fraud’ and it is commonly thought that an unenforceable trust is given validity by means of a constructive trust, imposed against the conscience of the person trying to misuse the relevant statutory provisions for their own fraudulent ends.

Dealing with existing equitable interests

The first point to remember is that an equitable property interest is property in the same way as land is. It is intangible, forming a **chose in action**, but nevertheless capable of being treated in the same manner as all property. It can be mortgaged, sold, and transferred. If you bear this in mind, you will be able to grasp this topic more easily.

Timpson’s Executors v Yerbury [1936] identified four ways to benefit another person with a beneficial interest:

1. directly assign to a third party;
2. contract for valuable consideration to assign to another;
3. direct the trustees to hold for another;
4. declare that the interest is held by the beneficial owner on trust for another.

Direct assignment of equitable interest to a third party

Section 136 LPA allows for the direct assignment of a chose in action, which can include an interest under a trust: *Re Pain* [1919]. The assignment must be of the whole interest and not just a part of the beneficial interest. For example, if you have an absolute equitable interest in property you cannot directly assign the life interest but retain the **remainder interest**.

Looking for extra marks?

The application of s 136 LPA to an interest under a trust has been doubted. See Snell’s *Principles of Equity*, 32nd edn (2011). In developing an argument on this issue, read what is said on this matter.

The formalities for a direct assignment are:

- the assignment must be in writing;
- it should be signed by the assignor; and
- express notice should be given to the trustee of the assignment.

If the formalities are not complied with, there may still be an assignment in equity which needs no particular formalities: *William Brandt's Sons & Co v Dunlop Rubber Co [1905]*. An assignment in equity requires:

- a clear intention to assign, manifested by words or conduct;
- a clear transfer of the interest from the assignor to the assignee; and

in addition, the interest transferred must be clearly identifiable.

There is no need to notify the trustee of the transfer. However, if notice is given to the trustee the assignee is protected from third-party claims and fraudulent receipt by the assignor: *Kekewich v Manning (1851)*.

p. 65 **Contract for valuable consideration to assign to another**

Where there has been a valid contract to **assign** an equitable interest, the contract may be capable of specific performance (see chapter 13 on equitable remedies). For such a transfer there must be a valid contract; note that, in equity, marriage will be valid consideration: *Pullan v Koe (1913)*. Then it may be possible that such a disposition need not be in writing. The argument is based upon the application of s 53(2) LPA, which states that implied trusts do not need to comply with the requirements of s 53(1) LPA.

Implied trusts are considered in detail in chapter 9. One type of implied trust is a constructive trust. This is a trust that is 'constructed' around property when the courts believe that it would be unconscionable to deny an interest in property to a person who does not have legal title. In a contract, which is specifically enforceable—note that *not all* contracts are specifically enforceable—the parties' consciences are affected by the contract. 'Equity looks upon as done that which ought to be done' and the courts may force perfection of title.

Looking for extra marks?

In *Oughtred v IRC [1960]*, Upjohn J at first instance and Lord Radcliffe in the House of Lords considered that the benefit of the contract—a chose in action—was held by the legal owner on constructive trust for the benefit of the person who had provided valuable consideration. The Court of Appeal in *Neville v Wilson [1997]* endorsed this view. This is an area of academic debate as the House of Lords majority should be binding on the lower courts.

Direct trustee to hold the beneficial interest for another

The beneficial owner of property may direct the trustee to hold that beneficial interest for another person. The legal requirements to transfer a beneficial interest to another are set out in s 53(1)(c) LPA:

a **disposition** of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same or by his agent thereunto lawfully authorised in writing or by will.

This applies to *any* type of property held beneficially, *not* just interests in land.

Looking for extra marks?

The definition of equitable interests within LPA (s 205(1)(x)) defines these as in relation to existing 'in or over land' but this is not the result of its application in *Grey v IRC*.

- The wording of the section refers to **subsisting** equitable interests at the time of the disposition. This means that it applies *not* to the creation of a trust but where one is in existence (subsisting) and a person wants to transfer that benefit to another.
- The transfer must be *in writing*, which means that it is not a valid disposition unless it is in writing: *Grey v IRC*, unlike s 53(1)(b) LPA.
- The transfer may be signed by the person making the transfer *or* by a person who is lawfully authorized to do so. This may be the agent of the equitable owner.

The following examples may help set the scene.

EXAMPLE 1

Johan declares that he will hold his shares in DDD Ltd on trust for his nephew Hendrick.

- There is no need to comply with s 53(1)(c) LPA as this is an original declaration of trust (see Figure 5.2).

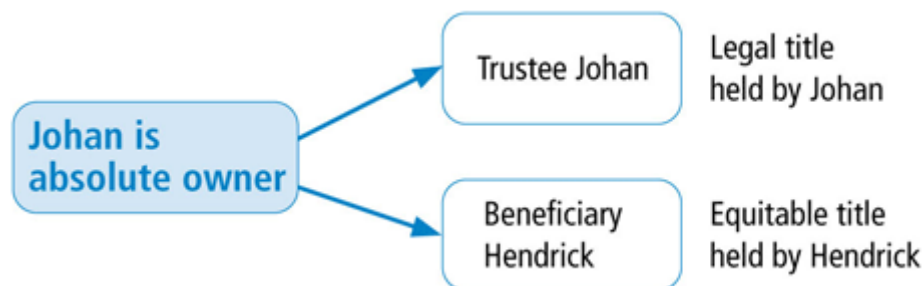


Figure 5.2 Self-declaration of a trust

EXAMPLE 2

Hendrick, who now owns the beneficial interest in the shares, asks his trustee, Johan, to hold his beneficial interest in DDD Ltd for the benefit of his wife, Precious. He later writes a memorandum to confirm the transfer (see Figure 5.3).

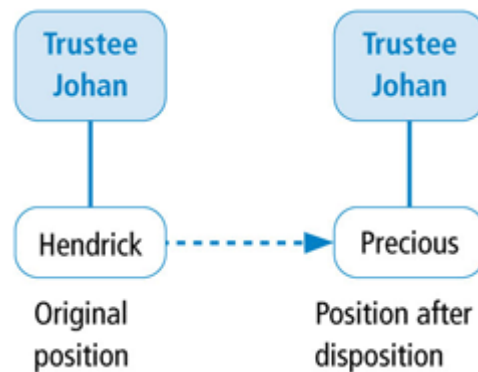


Figure 5.3 Disposing of an existing equitable interest

- Hendrick must comply with s 53(1)(c) LPA as he only holds the beneficial interest, which is subsisting at the time he intends to give the interest away (a disposition) to Precious. The legal title remains with the trustee.
- The transfer is void until it is actually in writing. A claim that the writing is evidence of a previous oral disposition is invalid. As the transfer is void ab initio, you cannot have written evidence of a non-existent transfer. The transfer is said to be void for want of writing: *Grey v IRC [1960]*.

p. 67 **The Vandervell exception to s 53(1)(c) LPA**

The requirements of s 53(1)(c) LPA are to ensure that the ownership of beneficial interest can be clearly identified by the trustee, beneficiary, the courts, and the Inland Revenue (now HMRC): *Grey v IRC [1960]*. Before going on to see how the *Vandervell v IRC (No 1) [1967]* exception operates, it is important to remember the following principle. A beneficiary who is absolutely entitled and competent can ask that the legal title to the trust property be transferred to him or her so that the beneficiary becomes the absolute owner; this is the rule from *Saunders v Vautier (1841)*.

Figure 5.4 shows how the sequence of events would occur.

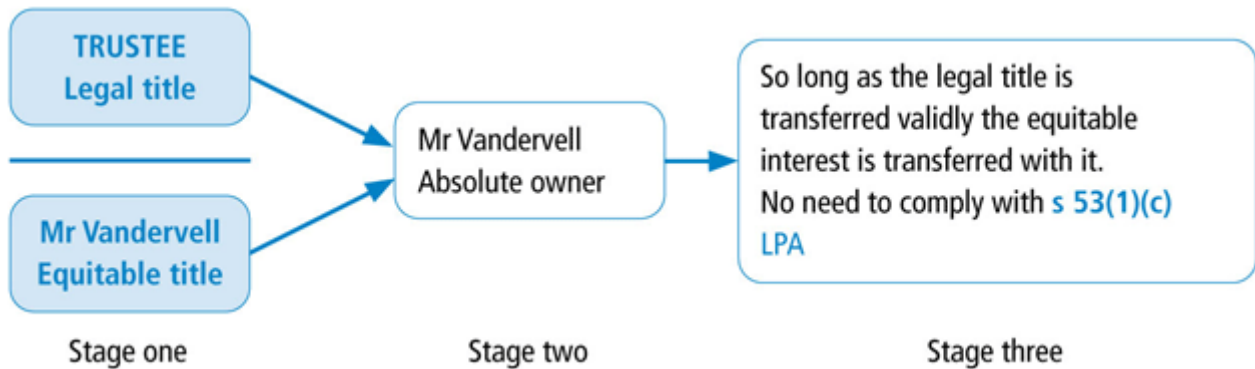


Figure 5.4 How the sequence of events may occur

Once the title is held absolutely, at Stage two, the owner only has to comply with the legal requirements to transfer the legal title. Understanding this will make the principle in *Vandervell v IRC (No 1)* easier to understand.

Where a beneficial owner who is *absolutely* entitled and *competent (sui juris)* makes an *oral declaration* to the trustee that the trustee transfers *the legal title to a third party, intending that at the same time the beneficial title shall transfer to the same third party*, there is no need to comply with s 53(1)(c) LPA.

Looking at Figure 5.5 you can see that it simply removes the *Saunders v Vautier (1841)* step and can be justified on that basis.

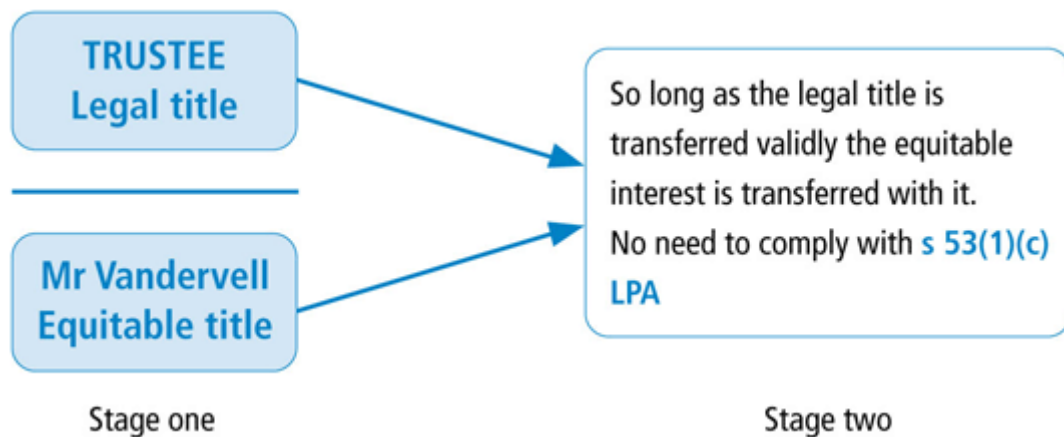


Figure 5.5 The *Vandervell* exception

Revision tip

Examiners often use words that are ambiguous, such as ‘give’, ‘transfer’, ‘convey’. This is because they want students to consider whether *Vandervell* applies.

Formalities are required to protect the trustee from any claim for breach of duty. This exception can be justified as the trustee, in transferring the legal title to another person, has no further obligations to the beneficiary.

Vandervell v IRC (No 2) [1974]

This case is complex and has been subject to academic criticism. There had been protracted litigation over the attempt by Mr Vandervell to benefit the Royal College of Surgeons and his children's trust settlement. Much of it was concerned with Stamp Duty and tax. It may appear that in an attempt to end this litigation Lord Denning used judicial creativity to avoid the requirements of s 53(1)(c) LPA.

Vandervell v IRC (No 2) [1974] Ch 269

On the advice of his accountant, when Mr Vandervell had transferred the shares to the Royal College of Surgeons an option to repurchase was granted to a trust company. At the time, Mr Vandervell had failed to specify the objects of the trust and therefore it was held on resulting trust for him.

The option was then exercised and declared to be held for the benefit of the children's settlement.

The Court of Appeal held that when the option was exercised the resulting trust of that property ceased to exist. Therefore, the property now held for the children was a new trust which required no formalities.

The Court of Appeal made a distinction between the option as one form of property which, when exercised, had ceased to exist. So, when the benefit created by exercising the option was declared to be held on trust for the children this was a completely *new* trust. It was not a 'disposition of a *subsisting* equitable interest'. It was in fact a declaration of trust in shares and required no formalities.

Declare that the interest is held by the beneficial owner on trust for another

As with all property, an equitable interest can be held on trust. It can be argued that this is not a disposition but merely a declaration of trust, creating a sub-trust.

EXAMPLE 3

Anne is the beneficial owner of a bank account at Bigs Banks plc. Herbert is the trustee of the account. Anne wants her son, Luke, to benefit from the account and she states to Herbert that she now holds the interest on trust for Luke (see Figure 5.6).

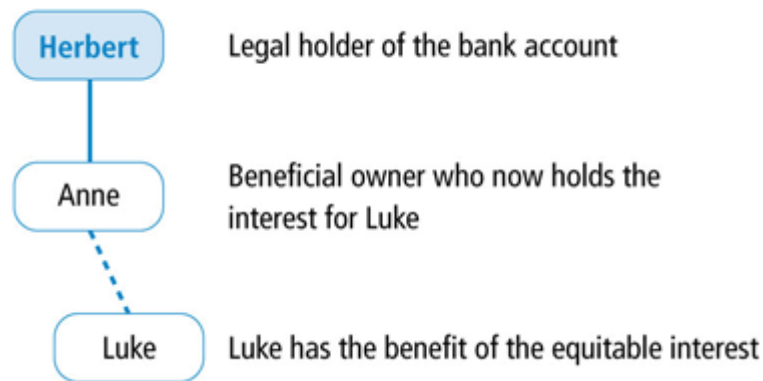


Figure 5.6 Declaring a sub-trust

↩ It is a question of whether the beneficial owner who declares a sub-trust is 'dispossessing' him or herself of an equitable interest. One argument is that the beneficial owner is not doing so as he or she is merely holding the interest on trust.

EXAMPLE 4A

Rishi is the beneficial owner under a bare trust of a house called 'Gills Farm' (see Figure 5.7).

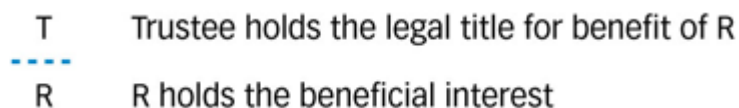


Figure 5.7 Basic trust

This is the starting position, with the trustee holding for Rishi. He wants to give this interest to his son, John. He writes to John telling him of his intention (see Figure 5.8).

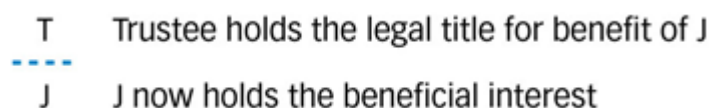


Figure 5.8 Transfer of existing equitable interest

This would be the classic situation where Rishi is giving away (dispossessing himself of) his equitable interest and as such he must comply with s 53(1)(c) LPA. This is the normal trust position with which students are familiar but there are also situations where the beneficiary does not intend that the beneficial interest should be given to another but intends to hold this interest for the benefit of another person.

EXAMPLE 4B

Rishi is the beneficial owner under a bare trust of a house called 'Gills Farm'. He wants to hold this interest on trust for his son, John.

In this situation (see Figure 5.9) it appears that Rishi has not dispossessed himself of his interest; he has merely decided to hold this property on trust for another person. In this situation there is a sub-trust created. On a literal reading of the statute, as there is no 'disposition' then there should be no requirement that Rishi comply with s 53(1)(c) LPA. However, this seems contrary to the intention of the statute, which is to prevent fraud and allow the trustee to know to whom he or she owes an obligation. In fact, it appears that in creating the sub-trust Rishi *effectively* disposes of his interest as he can no longer exert any real control over the trust property other than to hold it for John in exactly the same way as the trustee held it for him. In fact, it is John who has the power to decide how the property should be treated.

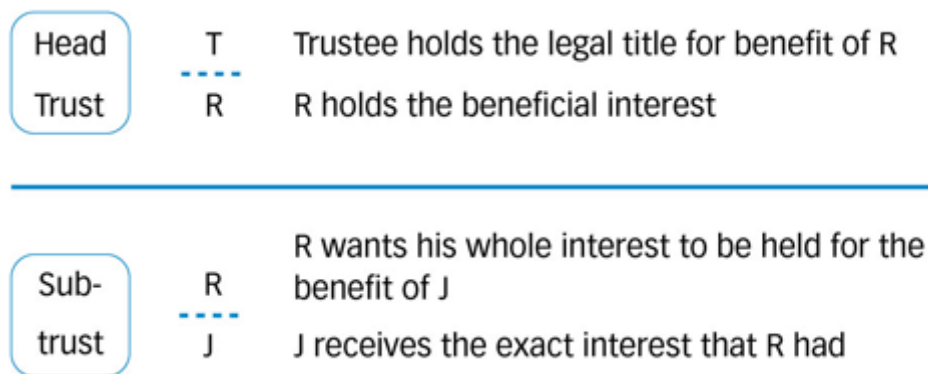


Figure 5.9 Declaring a sub-trust

Implications

If the property produces an income, then the trustee would have paid this money to the benefit of Rishi. Now the trustee would be required to pay the money to the benefit of John. He may do this by paying it to Rishi who then pays it to John, but this is merely a procedural step; it is John who is the real beneficiary of the trust (see Figure 5.10).

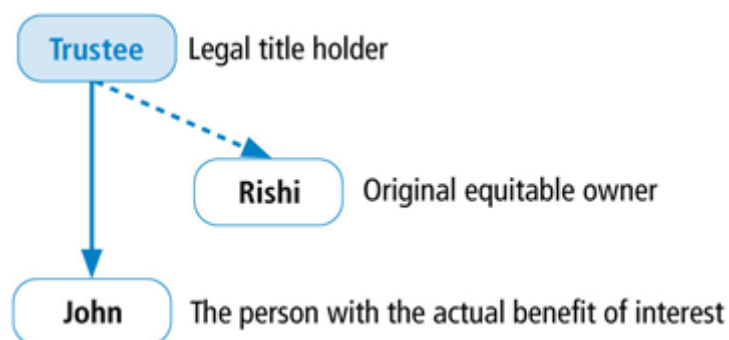


Figure 5.10 Possible implication

This situation illustrates the reason that formalities are required: if the trustee pays the money to Rishi when in reality the benefit belongs to John then the trustee may be in breach, risking the possibility that the trustee may be personally liable for any losses. Remember, one of the purposes of formalities is to enable the trustee to be sure to whom he or she owes a duty.

However, an alternative argument is that there is no need to comply with s 53(1)(c) LPA when the beneficial owner retains some control of the beneficial interest, such as declaring a discretionary trust of the beneficial interest. The reasoning by Chitty J in *Grainge v Wilberforce* (1889) and comments by Upjohn LJ in *Grey v IRC* [1958] would suggest that there is no need to comply with s 53(1)(c) as this is not a disposition of an equitable interest.

p. 71 ↩ The distinction between these two situations was rejected by the Court of Appeal in *Nelson v Greening & Sykes (Builders) Ltd* [2007], where the difference between the effect in practice and the effect in law was made. So, it would seem that declarations of sub-trust are not dispositions of a beneficial interest within the meaning of s 53(1)(c) LPA.

Looking for extra marks?

When dealing with a sub-trust it is important to identify what property is being held on trust because if the equitable interest is in land then, as it is the creation of a new (sub-)trust in land or an interest in land, it must also comply with the requirements of s 53(1)(b) LPA.

Conclusion

This chapter has considered the formalities which are required to create a trust in property—any property—including an equitable interest. Additionally, there are formalities for the transfer of beneficial interests. The purposes of these formalities are evidential. The requirements of a trust in land or an interest in land are particularly stringent, which reflects the importance the law places on land transactions. This chapter should be read with chapter 4 on constitution. Also, in relation to a trust of personalty, remember that there is a close link with the requirements of certainty of intention. Chapters 3, 4, and 5 must be read and understood in relation to each other (see Table 5.1).

Table 5.1 Summary of constitution and formalities

THREE WAYS TO BENEFIT ANOTHER		
Gift	Legal title to be transferred (constitution) Identify the legal rules for the relevant property	Equity may perfect this transfer by: <ul style="list-style-type: none"> every effort principle rule in <i>Strong v Bird</i> (1874)

5. Formalities

THREE WAYS TO BENEFIT ANOTHER		
		<ul style="list-style-type: none"> • <i>donatio mortis causa</i> • unconscionability/estoppel
	<p>Equitable interest to be transferred</p> <p>Section 53(1)(c) LPA required with a direct assignment, contract, or gift</p>	<p>Re Vandervell (No 1) [1967] may provide an exception</p> <p>Declare a sub-trust</p> <p>Constructive trust of a specifically enforceable contract</p>
Declare self a trustee	<p>Personalty—requires the three certainties</p> <p>Land requires the three certainties and fulfilment of s 53(1)(b) LPA 25 ('The formalities')</p>	<p>This may be remedied by</p> <p>Rochefoucauld v Boustead [1897]</p>
Declare another person as trustee of your property	Must satisfy the constitution requirements and formalities	Covenants to settle

Key cases

CASE	FACTS	PRINCIPLE
<p>p. 72</p> <p>← Grey v IRC [1960] AC 1 HL</p>	<p>The transferor wanted to transfer the beneficial interest without attracting Stamp Duty. He made an oral declaration that the beneficial interest was to be held for his grandchildren. He claimed that the documents which stated this merely confirmed the transfer, which he made orally.</p>	<p>An attempt to make an oral disposition of a subsisting equitable interest is void for want of writing.</p>
<p>Jones v Locke (1865) LR 1 Ch App 25</p>	<p>A man returned home from a trip and, being chastised by his wife for bringing no gift for their new son, took a cheque from his pocket. The cheque was made out to the father and he said, 'Look here it is all for baby'. The father died before he could transfer legal title to the baby.</p>	<p>That this was not a valid declaration of trust as there was insufficient certainty of intention. Equity will not create a valid trust out of an imperfect gift.</p>

CASE	FACTS	PRINCIPLE
<i>Oughtred v IRC</i> [1960] AC 206 HL	Mrs Oughtred had the life interest in shares, then to her son P. She was also the absolute beneficiary of shares. To avoid death duties P and Mrs Oughtred agreed to exchange their interests. This was later evidenced in writing.	The House of Lords by a three to two majority did not uphold this argument. Viscount Radcliffe for the minority held that the exchange happened orally, and there was no need for any written evidence. The interest was held on constructive trust and, under s 53(2) LPA , it was outside the scope of s 53(1) . The minority view has, however, found favour in the Court of Appeal in such cases as <i>Neville v Wilson</i> [1996] .
<i>Rochefoucauld v Boustead</i> [1897] 1 Ch 196	The Comtesse de la Rochefoucauld owned land in Ceylon which she transferred to the defendant intending that he hold it on trust for her benefit. This intention was not evidenced in writing. He mortgaged the land and she sought a declaration that he held it on trust for her.	The Court of Appeal held that evidence other than writing could be admitted otherwise the instrument (at that time the Statute of Frauds) could be used as an instrument of fraud.
<i>Vandervell v IRC</i> [1967] 1 All ER 1	Mr Vandervell was the beneficiary under a bare trust of shares. He wanted to endow the Royal College of Surgeons with the shares. He directed that the shares be transferred to the Royal College of Surgeons. At the same time an option to purchase the shares was granted to a trust company. At the point of creation, the objects of the trust of the option were unspecified.	Where an equitable owner, absolutely entitled and capable of doing so, makes an oral declaration to the trustee to transfer legal title to a transferee, intending at the same time that the equitable title be transferred to the same transferee, there is no need to comply with s 53(1)(c) LPA .
		Failure to specify the objects of the trust of the option meant that the trust company held on resulting trust for Mr Vandervell.
← <i>Vandervell v IRC (No 2)</i> [1974] 3 All ER 205	The option was held for Mr Vandervell on resulting trust. It was exercised in 1961 in favour of his children's settlement. Between 1961 and 1965 dividends were declared for the benefit of the children's trust. At Mr Vandervell's death in 1967 his executors claimed that the dividends should have been held on resulting trust for him and should not have been paid to the children's settlement.	The exercise of the option had ended the resulting trust of the option and a new trust had been created of the shares for the benefit of the children. A creation of a trust of shares required no formalities. Per Denning MR and Lawton LJ, in any event Mr Vandervell would have been estopped from denying the children's claim to the benefit because (i) their money had been used to exercise the option; (ii) Mr Vandervell had approved the paying of the dividends to the settlement.

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Key debates

Topic	The decision in <i>Rochefoucauld v Boustead</i> [1897]
Academic/author	Pearce and Barr
Viewpoint	The authors refer to several views. The rule allows other evidence to be used despite the clear words of the statute. Would this still be valid in light of the updating of the principle in the Law of Property Act in 1925 ? Is it better to see this as a constructive trust rather than an exception to the principle of s 53(1)(b) ?
Source	Pearce and Barr, <i>Pearce and Stevens' Trusts and Equitable Obligations</i> , 7th edn (2018), pp 123–4.
Topic	The decision in <i>Rochefoucauld v Boustead</i> [1897] The constructive trust created around a valid contract to assign a beneficial interest
Academic/author	Pearce and Barr
Viewpoint	The authors refer to several views. The majority of the House of Lords felt that a constructive trust did not arise, and the transaction was within s 53(1)(c) but only by three to two. A strong minority was followed by the Court of Appeal in <i>Neville v Wilson</i> [1997] . What should the court do in these situations?
Source	Pearce and Barr, <i>Pearce and Stevens' Trusts and Equitable Obligations</i> , 7th edn (2018), pp 130–3.

Exam questions

Problem question

Kirsty wins the lottery and feels very generous. On 1 March, Kirsty calls George to tell him that she intends to hold her leasehold over Blackacre on trust for him.

p. 74 ↵ On 31 March, Kirsty writes to her friend, Hari. In the letter, Kirsty explains what she has done with Blackacre. The letter is signed.

She then writes to Sanjeev asking him to be the trustee of her freehold cottage, Whiteflower, for the benefit of her friend, Hester.

Kirsty is the absolute beneficial owner of shares in Telico Ltd She calls her trustee Jose and tells him to transfer the shares to Charlie.

Advise the parties as to the ownership of the property.

See the Outline answers section in the end matter for help with this question.

Essay question

The confusion created by the decision in *Neville v Wilson* [1997] is contrary to the clear requirements of s 53(1) Law of Property Act.

Discuss.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- An outline answer [_<https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-outline-answers-to-essay-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-outline-answers-to-essay-questions?options=showName) to the essay question
- Further reading [_<https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-further-reading?options=showName>](https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-further-reading?options=showName)
- Interactive key cases [_<https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-interactive-key-cases?options=showName>](https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-interactive-key-cases?options=showName)
- Looking for extra marks quiz [_<https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-looking-for-extra-marks?options=showName>](https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-looking-for-extra-marks?options=showName)
- Multiple choice questions [_<https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-multiple-choice-questions?options=showName>](https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-multiple-choice-questions?options=showName)
- Key facts checklist [_<https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-key-facts-checklist?options=showName>](https://iws.oup.support.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-5-key-facts-checklist?options=showName)

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