

= Hunter v Moss =

Hunter v Moss [1994] 1 WLR 452 is an English trusts law case from the Court of Appeal concerning the certainty of subject matter necessary to form a trust . Moss promised Hunter 50 shares in his company as part of an employment contract , but failed to provide them . Hunter brought a claim against Moss for them , arguing that Moss 's promise had created a trust over those 50 shares . The constitution of trusts normally requires that trust property be segregated from non trust property for the trust to be valid , as in *Re London Wine Co (Shippers) Ltd* . On this occasion , however , both Colin Rimer in the High Court of Justice and Dillon , Mann and Hirst LJ in the Court of Appeal felt that , because this case dealt with intangible rather than tangible property , this rule did not have to be applied . Because all the shares were identical , it did not matter that they were not segregated , and the trust was valid . The decision was applied in *Re Harvard Securities* , creating a rule that segregation is not always necessary when the trust concerns intangible , identical property .

The academic reaction to Hunter was mixed . While some called it " fair , sensible and workable " , or noted that " Logically the decision in Hunter v Moss appears a sensible one " , Alastair Hudson felt that " doctrinally , it is suggested that the decision in Hunter v Moss is wrong and should not be relied upon " , because it contradicted existing property law and drew a distinction between tangible and intangible property he felt to be " spurious " .

= = Facts = =

Moss was the founder and director of Moss Electrical Co Ltd , and owned 950 of the 1 ,000 available shares . In September 1986 he said that Hunter , the finance director , could have 50 of these shares as part of his employment . Crucially , he made no statement or trust involving the other 900 shares . This gift of 50 shares was never implemented because of tax concerns , the risks of a takeover , and mainly because Moss changed his mind . Hunter brought a case against Moss claiming his 50 shares , which rested on two issues . First , whether the language used was sufficient to create a trust , and second , whether or not the trust failed to provide the three certainties because of the lack of segregation between the shares .

Prior to Hunter , a valid trust required three certainties ? certainty of intention (that the donor intended to make a trust) certainty of subject matter (that the property to make up the trust was identifiable) and certainty of object (that the beneficiaries were identifiable) . The normal rule for certainty of subject matter is that the property intended to be in the trust be separated from other property , showing clarity in what is intended to be trust property . If there is no clear separation , the trust will fail . *Re London Wine Co* concerned creditors of a bankrupt wine trading company , who argued that they should be able to claim the bottles of wine they had paid for . The problem was that these bottles were not individually identifiable , and Oliver J held that :

I appreciate the point taken that the subject matter is a part of a homogeneous mass so that specific identity is of as little as importance as it is , for instance , in the case of money . Nevertheless , as it seems to me , to create a trust it must be possible to ascertain with certainty not only what the interest of the beneficiary is to be but to what property it is to attach .

= = Judgment = =

In the High Court Colin Rimer QC , sitting as a Deputy High Court Judge , held that since the shares were all identical , the lack of segregation between them did not invalidate the trust . The standard case in this area , *Re London Wine Co (Shippers) Ltd* , was distinguished because the subject matter there was potentially different , while all of Moss 's shares were identical . Rimer J instead cited with approval *Rollestone v National Bank of Commerce in St. Louis* , a decision of the Supreme Court of Minnesota where it was held that there was no need for segregation in such a situation .

On appeal , the Court of Appeal held there was a valid trust . Giving the leading judgment Dillon LJ

said the trust was valid , first , because it was necessary for there to be one to enforce the terms of the employment contract . Second , he distinguished Re London Wine Co , saying , " That case is a long way from the present . It is concerned with the appropriation of chattels and when property in chattels passes . We are concerned with a declaration of trust " . He instead concluded that as there was no tangible distinction between the shares , and as such no reason to hold the trust void just because the shares had not been segregated . As such , the trust was valid .

= = Significance = =

Hunter is commonly cited as having said that with intangible , identical property , it is not necessary to segregate the trust and non @-@ trust sections . In fact Dillon LJ never said such a thing , although " it is the obvious conclusion to draw [from his statement] " . He merely distinguished Re London Wine Co , allowing him to decide the case on the facts alone . Hunter was reluctantly applied in Re Harvard Securities , where Neuberger J reluctantly decided that it had said there was no need to segregate intangible property .

Outside of England and Wales , the decision has not been applied . In White v Shortall , the Supreme Court of New South Wales explicitly rejected Dillon 's reasoning . Campbell J nonetheless reached the same conclusion (that a settlor could declare a valid trust of an unascertained parcel of shares that was part of a larger fund) , albeit by different reasoning .

The case met a mixed reaction from academics . Jill Martin , in an article in the Conveyancer and Property Lawyer , argued that the case was " fair , sensible and workable ... [it] is a welcome example of the court 's policy of preventing a clearly intended trust from failing for uncertainty " . Alison Jones , in a different article for the same journal , said that " Logically the decision in Hunter v Moss appears a sensible one " , but noted that it did create " difficult questions " . Other academics were more critical , with David Hayton writing in the Law Quarterly Review that " the unreserved judgment of Dillon LJ may well come to be stigmatised " .

Alastair Hudson wrote that " doctrinally , it is suggested that the decision in Hunter v Moss is wrong and should not be relied upon " . Firstly , it contradicts an element of property law which requires there be " specific and identifiable property " to be subject to a property right . Secondly , he suggests it is difficult to see why there should be a dividing line between intangible and tangible property , since there are some principles which apply to both . 500 ball bearings are tangible , but identical ; under Hunter , there is no reason these should also not require separation , so the distinction between tangible and intangible is thus " spurious " .