

The Estate of Tim Parsons

Legal Opinion

[Pick the date]

The Estate of Tim Parsons

Introduction

A will is a person's plan, generally written, for the disposition of their property after death. The requirements to execute, modify and revoke a will are governed by the succession code of each state. The solicitation of a will is related to the English law of Trust and Equity (Hudson, 2015). The aim of this legal assignment is to offer a succinct legal advice to solicitor of Tim who is here responsible for implementing his will.

Legal opinion on Nature of Equity and Trusts & Powers

The given case study in the assignment and legal issues concerning to the disposition of the will of Jim are related to law of Trust. Jim, wealthy man, having earned a large sum of money as a very successful television actor has left lot of his property in the given scenario. As per Law of Property Act 1925 (53(1)(b)) a trust is a legal instrument primarily used to hold any right of ownership. When the trust is intentionally created, it is called express trust. A trust may also result judicially, by operation of the law or by legal fiction, without the intention of the grantor. The resulting trust is one that is presumed by the court, it is limited to certain types of property.

In addition, As per Law of Property Act 1925 Section 53(1)(c) the express trusts are those that are created deliberately by declaration, gift, or will contract by precisely identifying the recipient to achieve a particular goal. The Trust can be constituted by inter vivos act or by testament, and can be constituted on goods of any nature, present or future. Other assets may be transferred to the trust by the settlor after the creation of the trust, with the acceptance of the fiduciary.

Through the trust agreement, under the law of Property Act 1925 (section 101(1) (iii), certain assets are transferred to a trustee, in particular or part of a patrimony to dispose of them or their products, according to the will of the person delivering them, called trustor, for the realisation of an end, in their benefit or that of a third party named beneficiary or trustee.

Under the Under the Wills Act 1837 S9, the will to constitute the trust must be declared expressly and in writing, consequently, the verbal, presumed or implicit will not be valid as trusts. However, the complexity in the given scenario lies in dual forms of trust that Jim created. Hence, there is one written will of Tim but during one of party, Tim handed over one envelope to this friend Bernadette calling his wishes and making him to hold that for some money and his wishes to be revealed after his death. Bernadette took the letter and agreed to comply with Tim's wishes. Hence , the solicitor in the given scenario has to give due consideration to those written letters by Tim along with his formal will for deciding which property belongs to whom.

The criteria for the creation of express trust are consistent with the principles relating to the creation of the trust. The common law proposes four characteristics related to the constitution of an express trust: the grantor must have the legal capacity; the three certainties must be met with either intention; subject and object. The trust must be constituted by the transfer of ownership to the trustee and finally; the required formalities must be fulfilled. In Common Law, for a trust to be legally constituted, three certainties must coexist, namely (Gary et al., 2016):

1. Certainty of intent - clear intent of the settlor to create a trust;
2. Certainty about goods - goods must be clearly identifiable;

3. Certainty about beneficiaries - the beneficiary must be clearly identifiable by name or by category.

For Tim's express trust to be valid, it must be clear that the grantor intended to create a trust. In cases where it is unclear whether the grantor wanted to transfer the property for a gift or simply wanted to impose a moral obligation on another person, no trust can be created. In addition, one must be able to identify with certainty the assets subject to the trust. Trust property must be completely separate from other property of the trustee that is not in trust. Finally, the settlor must clearly indicate the identity of the beneficiary. A trust may have more than one beneficiary, but it must be possible to determine with certainty the identity of all beneficiaries at the time of creation (McDonald and Street, 2018).

Legal opinion to on London flat

During a conversation, Tim told one of his friends "Leonard, you have been such a good friend – from now on, I am going to hold my flat in London on trust for you." The subsequent letter found in his will also reiterated that "Leonard, my friend, I am holding the London flat on trust for you. Enjoy, Tim."

the settlor is required to use imperative and specific words for the intention certainty, in famous case of *Wright v Atkyns* (1823) court directed that for imposing a mandatory binding obligation, imperative wording is required to make it certain who is trustees and what is trusted upon in unequivocal terms. Hence in the disposition of London flat to Leonard, as per Tim's will the wording "*I am holding the London flat on trust for you*" is sufficient to show an intention by Tim for establishing a trust, thus certainty of intention is somewhat evident. Regarding the object matter requirement of the trust, there also

appears a certainty in Tim's word. As far as the object matter is concern, Tim identified Leonard as a sole beneficiary of the London apartment.

It was stated in *Milroy v Lord (1862)* case that the settlor should amount an express trust by either by a means of trust's self-declaration or property transferring to the trustee. However, the wording "you are now my good friend from now on", lacked precise definition of object. In the *Brown vs. Gould (1972)*, court held that terms like "old friend" cannot amounts to object certainty. However, the fact that London apartment are registered in Tim's name, make the property as his discretionary Trust.

As per Hudson (2016) the discretionary trust under the English law of Trust, describes a beneficiary as an entitled individual, under a trust to benefit or discretionary power of property holder and who held a certain property in trust to that particular individual.

Hence, based on the above analysis solicitor is advised that London flat do not legally belong to Leonard, as it the latter and verbal instruction of Tim do not meet the objective requirement but also contradictory to the will.

Besides, Tim in cases of his London apartment as per s.52 (1) Law of Property Act 1925 had to attach the property deed to establish a legal trust in the name of beneficiaries he intended. It was also required that property deed was dully signed by him in the presence of witnesses and delivered subsequently. However, Tim did not meet any of the formalities of creating a trust.

Legal opinion to on Essex Mansion

In this given scenario of Raj and Essex Mansion it's quite very evident that the subject matter of the trust though do not qualify as Tim did not specified what he wants to trust on Raj, the mere fact that he was holding the picture is not adequate enough to

establish the subject matter requirement of Trust or to coven what Tim exactly intending.

This scenario also does not appear to fulfil the object matter of Trust; the words if I do not pull it through are also very ambiguous to convey settler's intention. *Morice v Bishop (1805)* case have clearly established that that no particular mention of Essex mansion property was made by Tim in his dying words to Raj, nor his subsequent written will gives any such hints.

This is the case pertaining to Death Bed Gift (DBG); it's described as a gift of a living nature, in in *Re Beaumont (1902)* case. It's neither being entirely testamentary, nor inter vivos act. DBG can be considered inter vivos for beneficiary gain complete title to the gift's subject matter, on the death of settlor but not before it (Manley, 2015).

Though, In case of Essex mansion, unlike London apartment there is no written letter or instruction for the disposition of that mansion. Even the very letter despite fulfilling specific requirements of s.53(1)(b) and s.52(1) of the Property Act 1925, will only stand as a piece of acknowledgement (as ruled *Re London Wine Co Ltd* case) and will not override the written final will of Tim.

Hence, in this situation trust validity is not explicitly established and the fact that Raj, who was appointed sole executor of Tim's will, there appears a clash of intended and validity appears compromised in the absence of certainty of subject and objects, However, Law of Property Act 1925 and the Wills Act 1837 provision exemption of certain requirement for DBF and settlor is entitle to pass on his property ownership with formalities such as writing a will and its registration etc (Penner, 2016).

Legal Opinion on 200 shares in a television company

Another important matter to be decided in the given scenario is about Shares in a television company. During a dance with Amy, a well-known singer, Tim told her that he is going to trust 200 shares of Comic Enterprises Ltd to her. A subsequent letter upon the death of Tim was also discovered stating ““Amy, baby, remember that you now own my shares.”

In this scenario, the disposition of 200 shares to Amy on the basis of above letter certainly qualifies the subject matter requirement of the Trust. There is also a clear identification of object and beneficiary to meet object matter. However, for this to be successful, a stock transfer was essential to comply with the Property Act 1925 (section 53(1)(b)) since the TV channel was a Listed company, shares transfer were also required to be stock exchange or those instructions should be delivered to stock exchange and Amy

Though, it's very evident that Tim did not fulfil any of those requirements, no share certificate is accompanied in the letter nor did Tim make any attempt to transfer those shares to Amy, hence these shares would fall back to the residue of the estate.

Hence, it could be said the given scenario certainly adds to inadequate certainty on the trust. In the *Green v Ontario* (1972), the case court ruled that circumstantial factors must substantiate to clear out these uncertainties in the creation of Trust.

The fact that Tim only made a verbal intent to Amy while trying to create a Trust in the first place, do not substantiate his intention revealed by a subsequent letter. However, lack of any share transfer and the fact his final Will do not prove any such intent, do not entitle Amy to have trust on those shares, due to lack of meeting criterion under section 1 of the Law of Property (Martin and Hanbury, 2005).

Legal Opinion on furniture collection

Tim in a party told his brother, Howard, that he wants to trust his entire furniture collection to a friend Leslie and he wish no one even Leslie shall no one about this intention, before his death. This clearly appears to be a case related to secrete trust, section 9 of the Will Act provision few exception for the creation of secrete trust (Gary et al., 2016). Tim in this situation has meet the intention requirement and subject requirement is also fulfilled, with regard to object matter requirement, in the light of court's decision in *Boyce v Boyce (1849)* case there is a clear indication that Tim wanted this will or intention to be implemented after his death and this make him meet the object matter requirement as well.

Though, in the case of entire furniture collection, there is no written evidence to establish that Tim intended to trust the mansion upon Leslie Winkle. However, it was suggested in *Ottaway v Norman (1972)* case that situations where involving complete secret trust, no writing evidence is essential to establish the intention of settlor.

The *Re young (1951)* case accepted the scenario that in case of secrete trust the beneficiary can be expected of unaware of any such secrete trust by the settlor, or when such trust was created , hence lack of his absence of witnessing do not qualify Leslie Winkle from transferring of the pottery (furniture collection) in her name.

Legal opinion on lottery

This is the scenario in which Tim's daughter Beverly, claims after his death that her father has left her £250,000 money which he promised to trust in her, in case he will ever win a lottery. The intention criteria appears to be fulfilled to some extent in this case but there is a legal barrier in this regard as court in *Re Gardner (1923)* limited the

settlor's capacity for making a trust on his property and belonging, courts do not recognise future earnings to be included in intention for the great uncertainty. The subject matter on this future property is also not fulfilled as no specific amount or lottery was mentioned, s.53 of the Law of Property Act 1925 necessitates that for the validity of an equitable disposition property ought to exist at the time of creating a trust (Manley, 2015).

Though, *McPhail v Doulton (1970)* case recognised that if a beneficiary carries the lottery ticket or document, by means of trust on him or her by settlor, the beneficiary is entitled to receive lottery money. However, in this given scenario, Beverly does not appear to carry any such proof to establish that Tim fulfilled object matter requirement of establishing that trust to her. Hence solicitor must pay close attention to the fact that neither the beneficial interests nor the property is certain in this case.

Legal opinion on Charitable Trust

The last legal issue in the will of Tim is about the fact that his will also contained a sealed envelope which contained instructions to hold £100,000 on trust for the "Television Young Actors Guild. The Charities Act 2011 which provides different categories that permit for a charitable trust to be created for a clear and explicit public benefit, however it appears the Television Young Actors Guild do not amount to that broader category of Charitable Trusts.

The difficult problem in this type of case is to ascertain whether the charitable intention of the settlor was precise alone, or if the core intent was of the nature which fall in the category of a general charitable, the Law of Property Act provision applying cy-pres doctrine (Hudson, 2015). In the *Hemmens v Wilson Browne (1994)* case the court ruled

that the predominant purpose of settlor was to devote the rest of its patrimony to general charities of the kind (such as hospital, orphanage etc) and applied the doctrine of cy pres. In the interpretation of the will, the Court emphasised the fact that the tester made legacies to other charities and also that the legatee hospital existed at the time of testing. These facts were sufficient to discover the intention of favouring general charitable purposes in the legacy to the hospital.

In the given scenario of Tim, it's quite evident that it appears that the Television Young Actors Guild has been wound up, ahead of the death of time and it was sort of merged into the "Theatre Actors Society" which provides grants to drama students wishing to take up a degree in the performing arts.

The application of cy-pres concept is very common in the cases of charitable trusts which are not function and their operation nature significantly hampers the implementation of settlors' wishes or intention (McDonald and Street, 2018). In this scenario court by means of cy-press redirect the property for a purpose closer to the intention of settlor, as ruled in *Harrison v Gibson (2006)* case. Hence, it's advised to the solicitor of Jim's property that the amount Jim left for the Television Young Actors Guild shall be transferred to Bernadette as per his last will.

Legal opinion on Estates issue with regards to Stuart

The issue here is that Tim has trust in Stuart remainder of his estate and not his daughter, as her inheritance. In the absence of a written will in the favour of Stuart, it could have been much easier to the solicitor to implement it as per the intention of the Tim. However, in the light of law of Property Act, the estate is what remainder is, prior legal and rights and debts are paid. Section 2 clearly defines the distribution order that

marks that the beneficiary of the estate can only be blood relatives, unless no such one exists (Manley, 2015).

It is thus clear that Tim's will does not meet three certainties, the intention to trust the estate to Stuart does not meet the intention requirement and the wording remainder of the estate does not meet the subject matter, as well the certainty about object (the beneficiary) is contradicting to section (23) 1, as Stuart is not a blood relative of Tim.

Conclusion

1. In the light of per Law of Property Act 1925 (53(1) (b)), regarding London apartment all three uncertainties are not fulfilled to establish that Tim established a Trust. Hence, the solicitor should leave the matter for the further legal interpretation by the court or should hold the assets on trust for the benefit of the settlor's heirs, which is Tim daughter.
2. When reading combine the Law of Property Act 1925 and the Wills Act 1837 both establish that Tim created a Trust for Raj, fluffing the requirements of Death bed gift doctrine. Hence Raj owns Essex Mansion. However, section (53(1)(b)), is still not fully met to ascertain, if Tim intended to Trust the entire property to Raj and solicitor may obtain further legal verdict from court.
3. Regarding the furniture collection which Tim Trust upon Leslie Winkle, it's established that Tim created a secret Trust for Leslie and his brother had given his consent as a Trustee. Hence, the furniture collection, as per Wills Act 1837 S9
4. In the light of Property Act 1925 (section 53(1)(b)) TV channel shares were not fully transferred to Amy and a Trust was not fully established by Tim, hence these shares should go to the assets on trust.

5. Regarding the lottery Prince , which Tim daughter is trying to claim, the section 53(1) and various case laws prohibit creation of Trust on the property which settlor did not own, at the time of creating the Trust. Hence, Beverly claim on £250,000 do not meet the object matter of requirement of the Trust.
6. The cy-pres doctrine should be applied for the settlement of Tim instruction on to hold £100,000 on trust for the "Television Young Actors Guild. This implies Tim's instruction should be considered by solicitor as not feasible or impossible to be fulfilled and thus the amount of £100,000 should be hold on to the estate of Tim.
7. Legal opinion on Estates issue with regards to Stuart, since he is not blood relative of Tim , entitle for free trust and subject matter requirement of law is also not meet, hence solicitor must take further opinion from the court of law in this regard.

References

- Gary, S. N., Borison, J., Cahn, N. R., & Monopoli, P. A. (2016). *Contemporary Trusts and Estates*. Wolters Kluwer Law & Business.
- Hudson, A. (2015). *Principles of Equity and Trusts*. Routledge.
- Hudson, A. (2016). *Understanding equity & trusts*. Routledge.
- Manley, S. (2015). Reconceptualising the fully-secret trust. *Trusts & Trustees*, 21(7), 802-818.
- Martin, J. E., & Hanbury, H. G. (2005). *Modern equity* (p. 540). Sweet & Maxwell.
- McDonald, I., & Street, A. (2018). *Equity & Trusts Concentrate: Law Revision and Study Guide*. Oxford University Press.
- Penner, J. (2016). *The law of trusts*. Oxford University Press.

Case Law

- Boyce v Boyce (1849) 60 ER 959
- Brown v Gould [1972] Ch 53
- Green v Ontario (1972), [1973] 2 OR 396
- Harrison v Gibson [2006] 1 All ER 858
- Hemmens v Wilson Browne (1994) ChD 30 Jun 1993
- McPhail v Doulton [1970] UKHL 1
- Milroy v Lord (1862) 4 DE GF & J 264
- Morice v Bishop of Durham [1805] EWHC Ch J80
- Ottaway v Norman [1972] Ch 698
- Re Gardner No. (1923) 2 Ch
- Re Young [1951] Ch 344

Wright v Atkyns [1823] turn & r 143

Statutes

The Law of Property Act 1925

The Wills Act 1837