

CHAPTER 3

PRINCIPAL METHODS OF CONSTITUTION OF EXPRESS TRUSTS

2. EXPRESS LIFETIME DECLARATIONS OF TRUST

Identification of the property subject to the declaration

- 3–05** AT THE END OF THE TEXT ADD: It is possible for the court to infer a declaration of trust in circumstances where the directors of a company create a settlement and then treat the company as a corporate trustee carrying on the business formerly carried on by the company for the benefit of a constituted settlement.^{23a}

Lifetime declaration, settlor retaining identical assets

- 3–06** NOTE 27. FOR THE REFERENCE TO Underhill and Hayton, *Law of Trusts and Trustees*, SEE NOW (18th edn), §§ 8.18 to 8.22.

NOTE 28. AT THE END OF THE FIRST SENTENCE ADD: *Re Lehman Brothers International (Europe)* [2010] EWHC 2914 (Ch); [2010] All E.R. (D) 232 at [227]–[234].

NOTE 29. FOR THE REFERENCE TO Hanbury and Martin, *Modern Equity*, SEE NOW (18th edn), §§ 3–022 and 3–023.

NOTE 31. AT THE END OF THE FIRST SENTENCE ADD: (containing an analysis in terms of co-ownership which was treated by Briggs J. in *Re Lehman Brothers International (Europe)* [2010] EWHC 2914 (Ch); [2010] All E.R. (D) 232 at [232] as being the most persuasive analysis of the principle).

^{23a} *Levin v Ikuia* [2010] NZCA 509; [2011] 1 N.Z.L.R. 678 at [10], [43], inferring a declaration of trust by the company over its business, despite the lack of any transfer of the business to the trustees of the express trust. The court considered, at [44], that the business may have been held pursuant to a constructive trust as an adjunct to the express trust, by analogy with the principles discussed at § 3–45.

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AFTER THE TEXT TO N.31 INSERT: In the case a trust for value the principle in *Hunter v Moss*^{31a} may be invoked to create a valid trust of part of a fund of shares to be acquired in the future, so long as the fund to be acquired is sufficiently certain.^{31b}

Formal requirements – personalty

3–19 AT THE END OF THE FIRST SENTENCE ADD: and may even be inferred from conduct.^{81a}

When section 53 of the Law of Property Act 1925 is excluded

3–20 NOTE 88. FOR THE REFERENCE TO Underhill and Hayton, *Law of Trusts and Trustees*, SEE NOW (18th edn), § 12.12.

NOTE 90. AT THE END ADD: *Singh v Anand* [2007] EWHC 3346 (Ch).

NOTE 91. AT THE END ADD: It has been said that some of the older cases on the Statute of Frauds, such as *Rochefoucauld v Boustead* [1897] 1 Ch. 196, would now be decided on the principles of common intention constructive trusts: *Samad v Thompson* [2008] EWHC 2809 (Ch); [2008] All E.R. (D) 165 (Nov) at [128].

3. TRANSFERS TO TRUSTEES**Shares and securities**

3–25 NOTE 5. Companies Act 2006, s.544 came into force on October 1, 2009: Companies Act 2006 (Commencement No.8, Transitional Provisions and Savings) Order 2008 (SI 2008/2860). For Companies (Tables A to F) Regulations 1985, see SI 1985/805, and not SI 1985/1062.

^{31a} [1994] 1 W.L.R. 452, CA.

^{31b} *Re Lehman Brothers International (Europe)*, above, at [235]–[248]. On trusts of future property, see § 3–34.

^{81a} See *Dhingra v Dhingra* (1999–00) 2 I.T.E.L.R. 262, CA for a discussion of the requirements for the establishment of a valid trust of personalty.

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Other things in action*Statutory assignment*

3–27 NOTE 10. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–007. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, § 19–012.

NOTE 11. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–007. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, § 19–014.

NOTE 12. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–006. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, § 19–015.

NOTE 13. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–008. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, §§ 19–016 to 19–018.

NOTE 15. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–009. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, § 19–011.

Equitable assignment generally

3–28 NOTE 16. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–002. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, § 19–001.

NOTE 17. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, §§ 19–001 and 19–086.

NOTE 18. FOR THE REFERENCE TO *Chitty on Contracts*, SEE NOW (30th edn), Vol.1, § 19–089.

NOTE 19. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 3–002.

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Rights incapable of legal transfer

- 3–33 AFTER THE TEXT TO N.48 ADD: It would seem that the power of a member to make a revocable nomination under a pension scheme is not a debt or other legal chose in action, or an existing equitable interest, capable of assignment.^{48a}

Future property

The distinction between contingent interests and expectancies under existing trusts

- 3–35 IN THE FOURTH SENTENCE DELETE neither A nor B has a contingent interest AND REPLACE BY: neither B nor C has a contingent interest.

3. WHEN A TRUST IS FULLY CONSTITUTED ON A TRANSFER TO TRUSTEES

The basic principle—equity will not aid a volunteer

- 3–41 NOTE 74. AT THE END ADD: See too *Antle v R*. [2009] TCC 465; (2009–10) 12 I.T.E.L.R. 314 at [50]–[58] (Canadian settlement of shares failed where the settlement recited that the shares had been transferred to the trustee but inadequate steps had been taken to effect a transfer before the date of the settlement, affirmed on grounds not relating to this point [2010] FCA 280; (2010–11) 13 I.T.E.L.R. 591).

Nor will a failed transfer be construed as a declaration of trust

- 3–42 AFTER THE THIRD SENTENCE ADD: Where a signed transfer form of shares without the share certificate was sent to a donee under cover of a letter stating that the donor held the shares for the donee from the date of the letter, the letter took effect as declaration of trust since it showed that the donor intended to make a disposition of the beneficial interest immediately and not merely intended to make a gift upon registration of the shares in the name of the donee.^{77a}

^{48a} *Re an Application by the Police Association of South Australia* [2008] SASC 299; (2008–09) 11 I.T.E.L.R. 484 at [66]–[69], approving *Re Danish Bacon Co. Ltd Staff Pension Fund Trusts* [1971] 1 W.L.R. 248.

^{77a} *Shah v Shah* [2010] EWCA Civ 1408; [2011] 1 P. & C.R. DG42.

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When equity's aid is not required because the trustee has all he needs*Shares in a company*

3–45 NOTE 89. AT THE END ADD: *Kaye v Zeital* [2010] EWCA Civ 159; [2010] W.T.L.R. 913 at [40]. See too *Cheung v Worldcup Investments Inc* [2008] HKCFA 78; (2008–09) 11 I.T.E.L.R. 449 at [40], *per* Lord Scott of Foscote N.P.J. (bearer shares).

NOTE 90. AT THE END ADD: The absence of a share certificate will usually mean that the transfer of shares is not complete. Where the certificate is lost, the transferee must have done all in his power, i.e. to procure the creation of a duplicate, before a trust in favour of the donee of the shares may arise: *Kaye v Zeital* [2010] EWCA Civ 159; [2010] W.T.L.R. 913 at [40]. See too *Curtis v Pulbrook* [2011] EWHC 167 (Ch); [2011] 1 B.C.L.C. 638 at [45].

When equity's aid is not needed because the property has vested in the trustee*The rule in Strong v Bird*

3–50 NOTE 5. FOR THE REFERENCE TO *Snell's Equity*, SEE NOW (32nd edn), § 24–012.

3–51 NOTE 22. FOR THE REFERENCE TO Underhill and Hayton, *Law of Trusts and Trustees*, SEE NOW (18th edn), §§ 9.64 to 9.68.

NOTE 26. FOR THE REFERENCE TO Underhill and Hayton, *Law of Trusts and Trustees*, SEE NOW (18th edn), § 9.67.

Perfection of gift through promissory or proprietary estoppel

3–56 NOTE 34. FOR THE REFERENCE TO *Snell's Equity*, SEE NOW (32nd edn), Chap.12.

Imposition of constructive trust when it is unconscionable for the gift to be recalled

3–57 AT THE END OF THE TEXT ADD NOTE 44A: The text in this sentence was cited with apparent approval in *Gordon v Hing* [2011] HKCFI 143 at [65].

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6. TESTAMENTARY AND SECRET TRUSTS**Secret trusts generally**

3–77 NOTE 95. FOR THE REFERENCE TO *Snell's Equity*, SEE NOW (32nd edn), § 24–030.

Express or constructive trusts

3–80 NOTE 1. FOR THE REFERENCE TO Thomas and Hudson, *The Law of Trusts*, SEE NOW (2nd edn), § 28.63.

NOTE 4. FOR THE REFERENCE TO Hanbury and Martin, *Modern Equity*, SEE NOW (18th edn), § 5–015.

Acceptance

3–87 NOTE 28. FOR THE REFERENCE TO *Snell's Equity*, SEE NOW (32nd edn), § 24–029.

Death of secondary donee

3–94 NOTE 39. FOR THE REFERENCE TO Underhill and Hayton, *Law of Trusts and Trustees*, SEE NOW (18th edn), § 12.104.

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