## WS1 & 2  Intention, Subject Matter and Formalities

### Problem Question on Defective Transfers

#### STEP 1: Identify the type of disposition and the necessary declaration

<table>
<thead>
<tr>
<th>Type of Disposition</th>
<th>Declaration</th>
</tr>
</thead>
</table>
| Gift                | The three certainties must be present:  
1) Intention: Donor must have necessary mental capacity – Level required rises with value/size of gift (*Re Beane*)  
2) Subject: Must be a tangible benefit that can be enforced:  
   - “Bulk of” = unclear (*Palmer v Simmonds*)  
   - Subject matter of trust is certain if settlor provides a workable formula e.g. “reasonable income” (but “reasonable” probably will not apply to capital sums) (*Re Golay*)  
   - Must segregate tangible items of trust property from like items (*Re London Wine Co.*)  
   - Need not segregate intangible items if items are indistinguishable (e.g. identical shares) (*Hunter v Moss*)  
3) Object: those who will/may benefit must be certain.  |
| Trust with self as Trustee | 1) Three Certainties  
   - As above except for Intention: There must be a binding obligation on Trustee  
   - Intention is ascertained by words or conduct (*Paul v Constance*)  
   - Merely precatory words will not suffice (*Re Adams & Kensington Vestry*)  
2) Beneficiary principle: There must be identifiable human beneficiaries who can enforce the trust  
3) Rules against perpetuity:  
   - For discretionary trusts: Rule against remoteness of vesting – max 125 years  
   - For non-charitable purpose trusts: Rule against alienability – limited to 21 years, or allow Trustees to spend all trust capital on the purpose  
4) Formalities for declaration:  
   - Land: Evidenced in writing; signed by the Transferor (s.53(1)(b))  
   - Other: None needed (writing desirable)  |
| Trust with someone else/others as Trustee(s)? | 1) Three certainties  
2) Beneficiary principle  
3) Rules against perpetuity  
4) Formalities for declaration |
**STEP 2: Where there is a transfer i.e. Gifts and Trust with someone else/others as Trustee, identify the correct formalities (state: “there must also be a proper constitution”)**

The formality depends on the item being transferred

- **Chattels**: simply physical delivery (*Re Cole*) or deed; if physical delivery is impossible, the item may still be considered transferred (*Jaffa v Taylor*)

- **Shares**: (1) Complete and sign stock transfer form; (2) Send STF and share certificate to Transferee; (3) Transferee must send documents to company to register new owner

- **Land**:
  - Must be done by deed. Send deed to land registry and notify as new legal owner (s.52(1) LPA 1925).
  - Deed must say it’s a deed, be in writing, and be signed, witnessed and delivered as a deed (s.1 LP(MP)A 1989)

- **Equitable interests**: s.53(1)(c) LPA 1925:
  - In writing (*Grey v IRC*)
  - Signed by person disposing of the interest/an authorised agent or in will

  **Exceptions**:
  - Resulting trusts
  - Constructive trusts
  - Proprietary estoppels

**STEP 3: Where transfer (i.e. NOT declaration) has been defective, consider whether equity will perfect any imperfection.**

**Starting point**: There is no equity in this court to protect an imperfect gift; equity will not benefit a volunteer; equity will not construe a trust from an invalid gift (*Milroy v Lord*)

**Exceptions**:

1. Rule in *Strong v Bird*: on death of Donor, Donee can claim legal title if:
   - (a) Transfer fails due to not satisfying formalities;
   - (b) Intention to make immediate gift by Donor (*Re Freeland*)
(c) Intention continues until death (Re Gonin); and
(d) Donee becomes executor/PR/administrator of Donor

2. Every Effort Test (Re Rose): gift complete in equity if Donor has done everything he can
FACTS: Once STF and share certificate handed over, the gift is complete in equity

3. Unconscionable? (Pennington v Waine) – applies to very specific situation only. Extends Re Rose to gifts even when incomplete. Must be unconscionable to invalidate disposition.
FACTS: Transferor told auditor she wanted to transfer shares to nephew; Transferor signed STF and sent to auditor; auditor told nephew that Transferor wanted to transfer shares to him and that he didn’t have to do anything; Transferor passed away with the transfer incomplete. It was held that it would be UNCONSCIONABLE not to treat the transfer as complete, even though every effort had not been made

4. Choithram v Pagaroni: if the transfer is defective, equity will not strive officiously to defeat a gift – rather, may interpret gift as a trust if the settlor is a Trustee
   • Trustee appointed himself and 6 others as Trustees
   • He orally stated that he was giving his shares to the trust without completing the STF; therefore failure to follow the correct formalities
   • Court of equity requires less from the Transferor than demanded in Re: Rose as it is enough that if the Transferor’s conscience is affected- important that the settlor becomes a Trustee
   • Oral declaration is sufficient in intangible assets if settlor remains the Trustee

5. Exception for transfer of equitable interests: If interest is under a bare trust, and Beneficiary directs Trustee to transfer the equitable estate with the intention of transferring the legal estate as well, s.53(1)(c) LPA will not apply, and an oral instruction will be sufficient (Vandervell). However, this rule only applies if the legal estate is being transferred (Zeital v Kaye).