Byrnes v Kendle

Known to person declaring trust, real and subjective intention inadmissible (unambiguous looking at capital received & divided in equal parts to [3 charities]"

much of my estate] as she may be in the use & enjoyment of'

➔ NO

R: Will be a valid trust if the three certainties are complied with? (Foreman)

trust for a third person.

Trust by declaration:

Trust by transfer:

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Intention may be inferred from

her benefit

inconsistent with notion that it was to be at her absolute disposal.

Language of documents is not conclusively relevant to intention.

Language of document is conclusive only if the words used

at time declared

анс the shares for life and deal with them in particular way under legal restraint requiring her to provide for shares to be sold and proceeds disposed

BB = a 5% shareholding' where only 1 class of shares when declared;

condition that money be used only for purpose of paying dividend to sh and pending payment, money to be held in separate bank account at BB (as any deposits made to

overdrawn account would be taken by bank, set off against what was owed). RR drew up letter which recorded conditions, money deposited in separate account. RR went into liq before paying dividend- accounts frozen and dividend could not be paid. BB sought to set off overdrafts owing against money in separate account. HOr held at all relevant times RR holding money on trust.

(1) Lending $ creates debtor-creditor relationship. But where $ lent for specific purposes can create concurrent trust relationship. Mere fact that relationship b/w RR and Q is one of debtor-creditor does not automatically make trust relationship for other purposes.

(2) Mutual intention of Q and RR and essence of bargain = money should not become part of RR's assets - should be used exclusively for dividend payment. Necessary consequence from this, must be that if dividend could not be paid, money was to be returned to Q. At all relevant times, from moment money left Q's hands, RR was holding on trust for somebody else - no point in time where RR was beneficial owner. BB could only use something owned by RR to set off overdraft.

L: Wilberforce talked about primary (to pay sh) and secondary trust (in favour of Q) - suggests there was actual intention that if sh could not be paid, money held on trust for Q. Secondary = ET rather than RT.

YES: Re Kayford: R ran local order business where customers required to pay all/part of goods at time of order. K was in financial trouble: set up a separate bank account ('Customers Trust Deposit Account'), any deposits received were put into this and not in general bank account and only withdrawn when goods had been delivered. K went into liq, Megarry J found that money held on trust for trustors whose orders had not been met, did not form part of the general assets of K and hence unavailable for distribution amongst general unsecured creditors. Whole purpose of creating the separate account was to ensure that moneys retained in beneficial ownership of those who sent them. Sending money on to goods not yet delivered = creating of an unenforceable entente (merely sending appropriate words when sending, or so, taking suitable steps before receiving money) - obligation in respect of money transferred: contract - property, debt - trust. Payment into separate bank account is a formal trust if not concluded (may be inferred from fact that property was being held on trust for somebody else)

YES: Hayes v National Heart Foundation: balance of estate including ex. shares 'on the understanding that she write into her Will, that, at her death, these Shares are to be sold and the capital received and divided in equal parts [among three named charities]. Language of legal restraint which laid down concrete scheme for distribution of shares. Daughter was B to some extent, but was also A and C could not deal with shares solely for her benefit- duty to retain the shares for life and deal with them in particular way under terms of her will. Trust created requiring her to provide for shares to be sold and proceeds donated.

NO: Gift made = "no the understanding that she will divide in fair & just & equal shares between my children ... as much of my estate as she may be in the use & enjoyment of"

YES: Hawkins v Quistclose Investments: Rolls Razor declared dividend on shares (debt due owing to sh: debtor-creditor relationship between RR and each sh). RR had an overdraft facility with Barclays Bank (i.e. RR overdrawn account, so RR owes BB money - BB = unsecured creditor) and exceeded overdraft limits. RR negotiated loan with Quistclose on