2. Certainty of intention

The need for the three certainties

Reading: *Hudson, sections 3.1 and 3.2*

*Wright v. Arkyns* (1823) Turn. & R. 143, 157, *per* Lord Eldon: “…first...the words must be imperative...; secondly...the subject must be certain...; and thirdly...the object must be as certain as the subject”

*Knight v Knight* (1840) 3 Beav 148

(A) Certainty of Intention.

Reading: *Hudson, section 2.6, and especially 3.3*

(1) Intention to create a trust inferred from the circumstances

**Paul v Constance** [1977] 1 W.L.R. 527

*Re Kayford* [1975] 1 WLR 279

*Don King Productions v. Warren* [1998] 2 All E.R. 608

*Re Farepak* [2006]

(2) Trusts as opposed to merely moral obligations

*Re Adams and the Kensington Vestry* (1884) 27 Ch. D. 394 (“unto and to the absolute use of my dear wife ... in full confidence that she will do what is right as to the disposal thereof between my children” — a merely moral obligation).

*Cf. Comiskey v. Bowering-Hanbury* [1905] A.C. 84 (HL) (“in full confidence that... she will devise it to one or more of my nieces as she may think fit...” — a trust).

*Re Hamilton* [1895] 2 Ch 370 (“take the will you have to construe and see what it means, and if you come to the conclusion that no trust was intended you say so”, *per* Lindley LJ)

(3) Lack of intention where a joke or an imperfect gift

*Jones v Lock* (1865) 1 Ch App 25 (“... look you here, I give this to the baby …”)

*Richards v Delbridge* (1874) LR 18 Eq 11 (failure to effect transfer of lease)

(4) Sham trusts and trusts intended to defraud creditors

*Snook v London and West Riding Investments Ltd* [1967] 2 QB 786, esp 802