3. Certainty of subject matter

(B) Certainty of Subject Matter.

Reading: *Hudson, section 3.4*

**Question:** What is the necessity of ascertaining subject matter and extent of beneficial interests; and what is the effect of lack of certainty of subject-matter?

(1) The traditional principle – the trust fund must be separately identifiable

*Re London Wine Co. (Shippers) Ltd.* (1986) Palmer’s Co. Cas. 121 (wine bottles to be held on trust not separated from other bottles).

**Re Goldcorp [1995] 1 A.C. 74 (necessity of segregating trust property - bullion “ex bulk”)**

*Westdeutsche Landesbank v Islington [1996] AC 669*

(2) A different principle for intangible or for fungible property?

**Hunter v. Moss [1994] 1 W.L.R. 452 (identification of shares - the nature of intangible property).**

*Re Harvard Securities [1997] 2 BCLC 369*

But see *MacJordan Construction Ltd v Brookmount Erostin Ltd [1992] BCLC 350*

(3) What is the nature of the property which can make up a trust fund?

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

*Re Celtic Extraction [1999] 4 All ER 684*

*Swift v Dairywise Farms [2000] 1 All ER 320*

(4) A different approach in commercial law

*Sale of Goods Act 1979, s 20A – tenants in common of the combined fund*

*Sale of Goods (Amendment) Act 1995*

*Re Wait [1927] 1 Ch 606 – old approach applied trusts law not commercial law*

*Re Staplyton [1994] 1 WLR 1181: SGA applied instead of trusts law*

(5) A note on the nature of property in trusts law

Reading: *Hudson, section 31.1*

*Re Goldcorp [1995] 1 A.C. 74 – the identity of the property is paramount*

*Attorney-General for Hong Kong v. Reid [1994] 1 AC 324, [1993] 3 WLR 1143 – the morality of the situation is paramount*