4. Certainty of objects

(C) Certainty of Objects.

Reading: Hudson, section 3.5

Question: how certain must the words used by the settlor be in creating a trust, and in what way will the court measure sufficient certainty?

Introduction


*Re Hay's Settlement Trusts* [1982] 1 W.L.R. 202: for the most useful summary of these principles and of the various forms of power.

1) Distinguishing between types of power and of trust

- Fixed trusts and bare trusts obligations
- Discretionary trusts, (once known as “powers in the nature of a trust”)
- Fiduciary powers: powers of appointment and powers of advancement
- Personal, non-fiduciary powers

2) Certainty rules for personal powers.

*Re Hay's Settlement Trusts* [1982] 1 W.L.R. 202

3) Certainty rules for mere (fiduciary) powers.

*Re Gulbenkian's Settlement* [1970] A.C. 508: *the “any given postulant test”; aka the “is or is not test”.

4) Certainty rules for discretionary trusts.

**McPhail v. Doulton* [1971] A.C. 424

5) Certainty rules for fixed trusts (e.g. fixed shares within a class).


6) Mechanisms for eluding the “any given postulant test” (1): conceptual and evidential certainty.

**Re Baden’s Deed Trusts (No 2)* [1973] Ch. 9.
**Re Barlow* [1979] 1 WLR 278