8. Dispositions of an equitable interest

(B) Dispositions of equitable interests.

General reading for this topic: *Hudson*, section 5.7

This topic is subtle and complex. The problem for the clients involved here was their trusts being rendered void by virtue of s.53(1)(c) LPA 1925. There are a range of cases, however, which illustrate the different methods which imaginative lawyers have used to avoid s.53(1)(c). For you as law students, it is important to understand the differences between these various approaches and to analyse factual situations so as to identify which analysis is applicable to those facts. For a trusts lawyer, using the techniques considered in these cases to achieve your client’s goals is a key skill.

Statutory material

*LPAs. 53 (1) (c): "A disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent..."

1) Declarations of trust may sometimes amount to dispositions of an equitable interest and so be caught by s. 53 (1)(c)
Reading: *Hudson*, section 5.7.1 and esp. 5.7.2

2) Direction to transfer legal estate (carrying with it the equitable interest) is not a disposition under s. 53 (1) (c)
Reading: *Hudson*, sections 5.7.3 and 5.7.4

3) Structures falling outside s 53(1)(c)

a) Sub-trusts not a disposition of the equitable interest if some rights retained
Reading: *Hudson*, section 5.7.6
*Re Lashmar* (1891) 1 Ch 258
*Grainge v Wilberforce* (1889) 5 TLR 436

b) Declaration of a new trust, rather than disposition of equitable interest
Reading: *Hudson*, section 5.7.7
*Cohen Moore v. IRC* [1933] All E.R. 950

Se) Contract transfers equitable interest automatically
Reading: *Hudson*, section 5.7.8

d) Transfers in (c) understood to take effect by constructive trust
Reading: *Hudson*, section 5.7.9

**Were Grey and Vandervell correctly decided?**
Reading: *Hudson*, section 5.7.5