9. Covenants to settle after-acquired property

Covenants and promises to create a settlement.

**Question:** What if the settlor promises to put property into trust but does not actually transfer or allocate the property to it?

**Reading:** Hudson, section 5.6

1) Can the intended beneficiaries enforce the settlor’s promise?
   a) A settlement cannot be unmade once it has been made
      **Reading:** Hudson, section 5.6.1
      *Paul v. Paul* (1882) 20 Ch. D. 742

   b) Mere promise unenforceable if beneficiary gave no consideration:
      **Reading:** Hudson, section 5.4.2
      ‘equity will not assist a volunteer’ ‘equity will not perfect an imperfect gift’.
      **Re Brooks ST** [1939] 1 Ch 993
      **Re Ralli’s WT** [1964] 1 Ch 288

   c) But enforceable by someone who has given consideration for the promise at common law or is within marriage consideration...
      **Reading:** Hudson, section 5.6.1
      *Pullan v. Koe* [1913] 1 Ch. 9 (widow and children within marriage consideration).

   d) ... or by someone who is a party to the settlor’s binding covenant to create the trust.
      **Reading:** Hudson, section 5.6.1
      *Cannon v. Hartley* [1949] Ch. 213 (volunteer able to enforce as party to covenant under seal).

2) Trustee not permitted to enforce the promise?
   **Reading:** Hudson, section 5.6.2 “Trustee not permitted to enforce the promise”
   a) Should common law rights to enforce a binding promise/agreement be exercised against the spirit of the maxim ‘equity will not assist a volunteer’?
      **Re Pryce** [1917] 1 Ch. 234 (court won’t direct trustees to enforce covenant for volunteer).
      **Re Kay’s S.T.** [1939] Ch. 329 (trustees must not enforce).
      *Re Cook’s S.T.* [1965] Ch. 902 (trustees cannot be required to enforce).

   b) The law of contract
      Contract (Rights of Third Parties) Act 1999

3) A trust of the promise itself – a means of validating this promise through trusts law
   **Reading:** Hudson, section 5.6.2 “A trust of the promise itself”
   a) the settlor’s binding promise as ‘property’ held on trust by the intended trustee(s); a ‘trust of the benefit of the covenant’.
      **Fletcher v. Fletcher** (1844) 4 Hare 67.
   b) modern cases on whether contracts can themselves form the subject matter of a trust, even if those contracts are unassignable
      **Re Celtic Extraction Ltd (in liq), Re Bluestone Chemicals Ltd (in liq)** [1999] 4 All ER 684
      **Swift v. Dairywise Farms** [2000] 1 All E.R. 320 (milk quotas are property, even if non-transferable)