

First of all, pay close attention to the wording of the statute – here **LPA 1925 s 53(1)** and remember **what, how (and, where applicable, when (in relation to para (b)), and who.**

The what refers to the **subject matter of the provision**

- so para (a) dealing with the **creation of an interest in land**
- para (b) dealing with the **declaration of trust respecting land** (i.e. an express trust of land – resulting / constructive left for **s 53(2)**)
- and para (c) refers to the disposition of an equitable interest subsisting at the time of the disposition.

The how generally refers to the **need for writing** – the absence of which in the context of paras (a) and (c) is to render the transfer void; the absence of writing in para (b) renders the trust unenforceable and would require an order of the court declaring its enforceability.

The who centres upon **whether it is the person** seeking to create the interest in land/declare trust of land/dispose of equitable interest, **or their agent (as in paras (a) and (c)).**

A couple of things to further bear in mind: when dealing with **s 53(1)(c)** in a problem q we can get a general sense of whether the provision is engaged (i.e. that there would need to be some discussion around its potential applicability) from the nature of who is doing what but then it becomes a question of whether the provision actually applies.

In order to get a sense of its application we need to **follow the existence of the equitable interest – if at all:** are we dealing with a situation in which the equitable interest subsists: **does it already exist** (such as when a beneficiary wishes to create a sub-trust) or are we dealing with a situation where an **equitable interest is being created.**

If we are dealing with the latter, then **s 53(1)(c) does not apply** – see **Re Vandervell (No. 2)**.

When looking at the situation in Question 1 part c (Christine, Dominic, Elsa), C starts as the absolute owner – this is key: she owns the whole. When she transfers to D with the oral direction, that direction functions as the **creation of the equitable interest**. But as I intimated – if this is not one whole composite transfer where the direction is contemporaneous but comes later, then questions arise as to where the equitable interest is located. In this instance if she held off giving the direction for D to hold for E, then Equity presumes there to be a resulting trust in which the **beneficial interest jumps back to her** (Equity abhors a vacuum) and then if she were to give the oral direction later **this would amount to a disposition of an equitable interest** in accordance with **Grey v IRC – see also Nolan** on this point.

Situations involving a sub-trust need classifying again: are we dealing with a situation in which there is an **active sub-trust** where the sub-trustee (i.e. the disposer of the equitable interest has different, active management duties over the beneficial interest in contrast to that of their

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Rosalind Malcolm



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Trusts Law Graham Moffat, 2005-09-29 With its unique contextual emphasis and authoritative commentary *Trusts Law Text and Materials* is a book that no serious undergraduate on trust law courses can afford to be without. The book is divided into four main parts: trusts and the preservation of family wealth; trusts and family breakdown; trusts and commerce; and trusts and non-profit activity. Within each of these parts, leading cases, statutes, and historical and research materials are placed alongside the narrative of the author's text to give emphasis both to general theories of trust concepts and to the practical operation of trusts. Attention is also given to important themes such as the developing relationship between trusts law and other areas of private law such as the Law of Restitution. This new edition takes account of all relevant judicial and legislative developments since the third edition and expands discussion of key themes in current developments of the law.

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THE CONSTITUTION OF A TRUST CHAPTER V DEATHBED GIFTS CHAPTER VI THE BENEFICIARY PRINCIPLE CHAPTER VII THE PERPETUITY PRINCIPLE CHAPTER VIII UNINCORPORATED ASSOCIATIONS CHAPTER IX CHARITABLE TRUSTS CHAPTER X DOCTRINE OF CY PR S CHAPTER XI IMPLIED TRUSTS AND TRUSTS IN THE FAMILY HOME CHAPTER XII PROPRIETARY ESTOPPEL CHAPTER XIII QUISTCLOSE TRUSTS CHAPTER XIV SECRET TRUSTS CHAPTER XV TRUSTEE POWERS AND DUTIES CHAPTER XVI FIDUCIARY DUTIES CHAPTER XVII STRANGERS TO A TRUST THIRD PARTY LIABILITY CHAPTER XVIII TRACING TRUST PROPERTY CHAPTER XIX REMEDIES SUMMARY SAMPLE TEST QUESTIONS

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