This chapter discusses the role of certainty in questions of trust and power in property management. For an obligation to be legally enforceable, it must be defined with sufficient certainty to allow the courts to control it, and a power conferring authority can only be exercised within the limits subject to which it is created. This range of different types of obligation has implications for the applicable tests for certainty. The court must know who is under an obligation, what the obligation is, to what property the obligation relates, and who can enforce the obligation. In the case of a power, the court needs to know who can exercise the power, how it can be exercised, and whether the power has been validly exercised.

Re Barlow’s Will Trusts [1979] 1 WLR 278, Chancery Division

Derek Whayman

Essential Cases: Equity & Trusts provides a bridge between course textbooks and key case judgments. This case document summarizes the facts and decision in Re Barlow’s Will Trusts [1979] 1 WLR 278, Chancery Division. The document also includes supporting commentary from author Derek Whayman.

Re Baden’s Deed Trusts (No 2) [1973] Ch 9, Court of Appeal

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3. The Essentials of a Trust
Philip H Pettit

This chapter examines the essential elements of a trust, explaining that a trust is not valid unless its creator has the power to create it and the beneficiary has the ability to accept, and discusses the principle of the capacity of the settlor and beneficiaries. It discusses the three ‘certainties’ required of a trust, which include certainty of words, certainty of subject, and certainty of objects, and also considers the concept of beneficiary principle and explores the problems associated with trusts for unincorporated associations that have no legal personality.

15. Mixed Topic Questions
Rosalind Malcolm

The Concentrate Questions and Answers series offer the best preparation for tackling exam questions. Each book includes typical questions, bullet-pointed answer plans, suggested answers and author commentary. This book offers advice on what to expect in exams and how best to prepare. This chapter covers questions on a mixture of topic areas including the three certainties, constitution and formalities for the creation of a trust, charitable trusts and trusts of imperfect obligation.

3. Trusts created expressly
Gary Watt

A person can make a conditional gift or make a gift subject to a charge. One example of an expressly created trust is a transfer of property to one person on trust for another. That property owners can dispose of their property as they choose can be a source of great uncertainty. ‘Three certainties’ must be satisfied before a court will acknowledge that a settlor or testator has created a private express trust: certainty of intention to create a trust, certainty as to the subject (property) of the trust, and certainty as to the object (beneficiaries or purposes) of the trust. This chapter, which deals with expressly created trusts, first considers the capacity to create a trust before turning to trusts established for private purposes, donations to unincorporated associations, and the construction of dispositions.
4. Certainty requirements

Gary Watt

Without assuming prior legal knowledge, books in the Directions series introduce and guide readers through key points of law and legal debate. Questions, diagrams, and exercises help readers to engage fully with each subject and check their understanding as they progress. Three certainties must be satisfied for the creation of an express trust to protect the trustees and also for the benefit of the court: certainty of intention (a certain intention to create a trust), certainty of subject (certainty with regard to the assets subject to the trust and the shares in which it is to be held by the beneficiaries) and certainty of object (certainty with regard to beneficiaries or purposes of the trust). This chapter deals with the certainty requirements in relation to the creation of trusts, the distinction between conceptual and evidential uncertainty, the consequences where a trust fails for lack of certainty and how a settlor can draw up a trust with sufficient certainty. It also examines the construction of a trust, creation of express trusts in commercial contexts, fixed trusts, the class ascertainability test, discretionary trusts and gifts subject to conditions.

3. The Requirements of an Express Trust

Paul S Davies and Graham Virgo

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3. The Requirements of an Express Trust
Paul S Davies, Graham Virgo, and E H Burn

All books in this flagship series contain carefully selected substantial extracts from key cases, legislation, and academic debate, providing able students with a stand-alone resource. This chapter elaborates on the requirements of an express trust, which include certainty of intention, subject matter, and objects — referred to collectively as ‘the three certainties’. A trust requires that it be clear to which objects, whether people or purposes, the trustees can and cannot appoint the property. Also, there needs to be someone in whose favour the trustees, and in default, the court, can enforce the trust. This is known as the ‘beneficiary principle’. Certainty of subject matter is assessed objectively and problems may arise if the property is not clearly ascertained. Different tests are used to establish the certainty of objects: for a fixed trust, a complete list of beneficiaries is needed unless the trust is subject to a condition precedent. For discretionary trusts and fiduciary powers, it needs to be certain whether any given person is or is not within the scope of the class of objects.

3. The three certainties and the significance of the ‘beneficiary principle’
Sarah Wilson

Course-focused and comprehensive, the Textbook on series provide an accessible overview of the key areas on the law curriculum. This chapter is divided into two parts. The first part focuses on certainty requirements. It discusses the certainty-of-intention requirement; the modern law relating to certainty of intention; a core requirement for satisfying certainty of intention; the modern law on precatory words and the significance of intention; criticism
of the modern law on certainty of intention; certainty of subject matter; the certainty-of-objects requirement; and the significance of ‘administrative unworkability’ for the validity of discretionary trusts. The second part of the chapter deals with the beneficiary principle. It discusses the validity of private trusts that are trusts for purposes; other problems with creating valid non-charitable purpose trusts; and attempts to create private purpose trusts that avoid all of these ‘pitfalls’ for validity.

3. Trusts created expressly

Gary Watt

A person can make a conditional gift or make a gift subject to a charge. One example of an expressly created trust is a transfer of property to one person on trust for another. That property owners can dispose of their property as they choose can be a source of great uncertainty. ‘Three certainties’ must be satisfied before a court will acknowledge that a settlor or testator has created a private express trust: certainty of intention to create a trust, certainty as to the subject (property) of the trust, and certainty as to the object (beneficiaries or purposes) of the trust. This chapter, which deals with expressly created trusts, first considers the capacity to create a trust before turning to trusts established for private purposes, donations to unincorporated associations, and the construction of dispositions.

3. The Three Certainties and Formalities

Rosalind Malcolm

The Concentrate Questions and Answers series offer the best preparation for tackling exam questions. Each book includes typical questions, bullet-pointed answer plans, suggested answers and author commentary. This book offers advice on what to expect in exams and how best to prepare. This chapter covers questions on the three certainties and formalities.

6. The formation of the contract

Lee Roach

This chapter examines the legal requirements relating to the formation of a contract. It discusses the five essential elements of a contract, namely offer, acceptance (offer and acceptance are collectively referred to as ‘agreement’), certainty, consideration, and the intention to create legal relations. It analyses these individual requirements in detail and
considers the courts’ approach in determining whether an enforceable contract is present or not. This chapter also explains the principles of different types of contracts, namely the distinction between bilateral and unilateral contracts, and how the normal rules of contractual formation are modified in the cases involving unilateral contracts.

7. Certainty

JE Penner

Titles in the Core Text series take the reader straight to the heart of the subject, providing focused, concise, and reliable guides for students at all levels. A declaration of trust must be ‘certain’, meaning that a settlor must declare the terms of the trust with sufficient ‘certainty’ or precision for the trustees to know what they must do, or the intended trust fails. This chapter discusses the ‘three certainties’, following Knight v Knight (1840): certainty of intention; certainty of subject matter; and certainty of objects, in both the traditional family and commercial contexts. The first concerns the question whether what the putative settlor did or said amounts to a declaration of a trust over his property. The second requires that the property that is to form the trust corpus is identifiable. The third requires that the intended beneficiaries, the ‘objects’ of the trust, are identifiable.