

When is a Trust Not a Trust?

by

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Steven Gallagher was awarded a first class LL.B. He was called to the Bar of England and Wales in 2006. Steven teaches equity and trusts, property law, and a course on art, antiquities, cultural heritage and the law. In September 2023, Steven began teaching a new course on digital technology and law. Steven has presented over 200 continuing professional development courses for solicitors in Hong Kong on many topics associated with property. Steven's research interests include equity and the law of trusts, cultural heritage law, Chinese custom and law, and legal history. In 2023, Steven published a textbook on Digital Technology and Law. He is not a technologist.

This three-hour course will consider the law regarding disputes that arise over whether the transfer of property has constituted a trust or is for some other purpose - a gift, a loan, or to hide some other transaction.

In recent years the appellate courts in England and Hong Kong have reasserted the basic principles involved in deciding who is the owner of property - this has been part of a concerted effort by the courts to clarify these principles and minimise recourse to litigation. The cases in which these principles have been considered include disputes over whether there is an express and/or an implied trust, whether there is a gift or trust of the beneficial interest in a trust of land (and the existence of new presumptions to assist in these cases), whether a trust is in different terms to those expressed in its instrument, and allegations that a trust is not a trust, merely a sham.

In this seminar we will consider the presumptions seemingly identified in *Stack v Dowden* and *Laskar v Laskar*; the importance of the intention of the transferor when property is transferred into the name of another (*Leung Wing Yi Asther v Kwok Yu Wah*) or into the joint names of the donee or settlor and the name of another (*Marr v Collie*); beneficial ownership of money held in joint bank accounts (*Whitlock v Moree*); and, the importance of considering more than just the written terms of the trust (*Webb v Webb*).

The seminar will conclude with a consideration of whether these decisions may have clarified or confused the law and reduced litigation. In effect, has this guidance provided an "equitable toolkit" from "first principles" for a "plain man's guide" to the law of ownership of personal property, money in bank accounts and real property?

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Some of the topics considered in this seminar will be:

- The development of legal principles dealing with disputed ownership of property;
- The relationship between the common intention constructive trust and the presumption of resulting trust;
- The new presumptions?
- The domestic presumption: *Stack v Dowden* [2007] UKHL 17;
- The commercial presumption: *Laskar v Laskar* [2008] EWCA Civ 347;
- Clarifying the presumptions: *Jones v Kernott* [2011] UKSC 53;
- Evidential issues: *Leung Wing Yi Asther v Kwok Yu Wah* (2015) 18 HKCFAR 605;
- Clarifying everything: The Privy Council in *Marr v Collie* (Bahamas) [2017] UKPC 17;
- Joint bank accounts: The Privy Council in *Whitlock v Moree* (Bahamas) [2017] UKPC 44;
- Allegations of sham and the true terms of the trust: *Webb v Webb* (Cook Islands) [2020] UKPC 22.

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Code:	EVT000000439	Level:	Intermediate
Date:	16 August 2024 (Friday)	Language:	English
Time:	14:30 - 17:45 (Reception starts at 14:00)	Accreditation(s):	LSHK 3.0 CPD Points
Venue:	Online via Zoom	Request for Rerun:	Please Contact Us for Details



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