Equity & Trusts
Secret trusts

Secret and half-secret trusts are testamentary trusts which fail to comply with the Wills Act because they are not disclosed or disclosed fully in a valid will. Secret trusts represent a rare exception to the rule that any disposition on death must be by way of a will (or a document incorporated by reference into a will).

### A Fully Secret Trust (FST)
- Arises when:
  - T appears to take and absolute gift under A’s will, but T has informally agreed with A to hold the property on trust for B.

#### Communication and Acceptance requirements:
- Must be communicated to and accepted by the secret trustee before or after the execution of the will but before the testator’s death (Moss v Cooper)

  - The existence of the trust is apparent on the face of the will, but the terms of the trust are not disclosed.
  - Unlike FST there is no position to deny the trust and so the property cannot be fraudulently taken because there will be a clear trustee.

**Communication and Acceptance**

- This must be communicated before or at the same time as the making of the will
- The ‘dehors the will’ theory of HSTs
  - Under this theory, secret trusts are regarded as inter vivos declarations of trust by the testator.
  - Secret trusts operate outside the will and therefore the Wills Act has no application.

**Evidence must show:**
1. The intention of the testator to create a trust.
2. Timely communication of that intention to the intended trustee
3. Timely acceptance by the intended trustee of the trust obligation.

**Moss v Cooper**
**Re Boyes**

**Note communication and acceptance differs for FST and HST**

**Leading Cases:**
- **Re Keen [1937]** – “like a ship blindly sailing”.
- **Re Bateman’s Will Trusts [1970]** – rule was applied as if to doubt could be entertained about it.

### Half Secret Trust
- Arises when:
  - The existence of the trust is apparent on the face of the will, but the terms of the trust are not disclosed.

**Communication and Acceptance**

- This must be communicated before or at the same time as the making of the will
- **The ‘dehors the will’ theory of HSTs**

**Evidence must show:**
1. The intention of the testator to create a trust.
2. Timely communication of that intention to the intended trustee
3. Timely acceptance by the intended trustee of the trust obligation.

**Moss v Cooper**
**Re Boyes**

**Note communication and acceptance differs for FST and HST**

**Leading Cases:**
- **Re Keen [1937]** – “like a ship blindly sailing”.
- **Re Bateman’s Will Trusts [1970]** – rule was applied as if to doubt could be entertained about it.

### Other Key Cases
- **Re Snowden [1979]** – The standard of proof for establishing a secret trust is the same ordinary civil standard of proof.
- **Blackwell v Blackwell [1929]** – The trust must be communicated to the half-secret trustee before the testator’s will is made.
- **Re Gardner (No. 2) [1923]** – where the beneficiary under a secret trust predeceases the testator, his estate may nonetheless benefit under the trust.