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CONTENTS

Articles

According to received wisdom, ‘sham trusts’ is a doctrine which provides an exception to the normal objective process of ascertaining intentions to create a trust by permitting courts to give effect to subjective intentions as the ‘true’ intention. This article makes three points. First, that approach does not properly reflect how courts deal with sham trusts: courts are not concerned with ascertaining subjective intentions when dealing with ‘sham trusts’. Second, ‘sham trust’ cases are but specific factual applications of a general approach, namely that an objective intention to create a trust is ascertained from any admissible evidence accepted by the court as being relevant to its inquiry. Thus, there is no separate ‘sham trust’ doctrine, and therefore no special requirements to be fulfilled (such as an intention to deceive) for legal effect to be withheld from a trust instrument. Third, the general approach can be particularised in the form of a flexible framework, which explains how courts deal with the admissible evidence. While any relevant evidence is admissible, certain types of evidence are given more weight than others.

At the heart of the case for the unification of common law and equitable tracing rules is an assumption, namely, that common law tracing rules exist and are separate from equitable tracing rules. In this article we challenge the correctness of that assumption in Australian law. We demonstrate that as a matter of authority and principle, tracing at common law is not, and has never been, possible. The erroneous assumption began with a misreading of *Taylor v Plumer*. English courts have since recognised this error but have held, in effect, that it is now too late to turn back. We show that Australian law has not yet taken this step and offer several reasons why it should not do so. The position that obtains is that there are only equitable tracing rules in Australian law. We demonstrate that these rules are sufficient, noting in particular that the equitable rules can support certain actions for money had and received (as demonstrated by *Heperu Pty Ltd v Belle*). The result is not a unification of tracing rules but rather the removal of a historical anomaly based upon an error.