ACTIVITY 9

Transfer of legal title (allow 45 minutes)

Please read the section on *Re Rose* [1952] Ch 499 in *Moffat*, pp. 137–141, and using Westlaw, find and read the case of *Mascall* v. *Mascall* (1985) 50 P & CR 119. If you have difficulty finding it, on the Westlaw Cases home page enter 'Mascall v Mascall' in the Party Names box. This will lead you to the case. Note that the system for transferring and registering land is similar to company shares. The transferor signs the deed of transfer form (Land Registry Form TR1) and

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hands it to the transferee, who then applies for registration as the new owner (known as the 'proprietor'). A Land Certificate is mentioned in the judgment. Since this case was decided, Land Certificates are no longer issued, and so no longer have to be handed over to the transferee.

Please then consider the following questions:

1 **What was the reason for the case of *Re Rose* coming to court?**

2 **Given that the court decided that the gift was valid in equity on 30 March 1943 (the date the transfers were executed), what was the position of the donor from that time until the donee was registered?**

3 It was argued that the 30 March transfer (intended as a gift) which was not then effective, was validated by the imposition of a trust.

   (a) **How can this be reconciled with the maxim 'equity will not assist a volunteer'?**

   (b) **Is this imposition of a trust consistent with Turner LJ's judgment in *Milroy* v. *Lord*?**

COMMENT

1 The reason for the litigation was a possible estate duty (now inheritance tax) liability. At that time, if a donor survived five years after the making of a gift, the gift escaped tax. The actual date of the gift is therefore crucial. (The equivalent is now seven years survival, and the decision is just as relevant to tax liability today.)

2 Mr Rose (the donor) was regarded as a trustee for Mrs Rose (the donee) in the period before she was registered (at which point the legal title would pass). There was no express trust. The court implied a trust to recognise the relative positions of Mr and Mrs Rose. This type of trust is known as a constructive trust, and will be discussed in later Units.

3 (a) The reason is explained by Browne-Wilkinson LJ in *Mascall* v. *Mascall* (1985) 50 P & CR 119:

> The basic principle underlying all the cases is that equity will not come to the aid of a volunteer. Therefore, if a donee needs to get an order from a court of equity in order to complete his title, he will not get it. If, on the other hand, the donee has under his control everything necessary to constitute his title completely without any further assistance from the donor, the donee needs no assistance from equity and the gift is complete. It is on that principle, which is laid down in *Re Rose*, that in equity it is held that a gift is complete as soon as the settlor or donor has done everything that the donor has to do, that is to say, as soon as the donee has within his control all those things necessary to enable him, the donee, to complete his title.

   (b) In *Milroy* v. *Lord*, Turner LJ said:

> if the settlement is intended to be effectuated by one of the modes (*e.g. a gift*) … the court will not give effect to it by applying another of those modes (*e.g. a declaration of trust*)

   (my additional words in italics).

   Again, the answer would seem to lie in the fact that once the donor has done everything necessary, the donee does not have to ask the court for assistance, and therefore the court is not 'applying' a trust.