

### 3.2 What is Property?

It is always possible for new types of property to be recognised.

***Yearworth & others v North Bristol NHS Trust* [2009] 2 All ER 986**

Six men were awaiting chemotherapy as a treatment for cancer. They followed clinical advice and donated samples of their sperm to be frozen and stored, in case their treatment rendered them infertile. Unfortunately, their samples thawed and were destroyed. The men sued and it had to be determined whether the sperm was the property of the men.

HELD: Lord Judge CJ

Historically the parts or products of a living human body were not regarded as property, but developments in medical science meant that the common law had to evolve.

At p. 1002

“...the men had ownership of the sperm which they ejaculated.”

It could be regarded as a type of personal property, a chattel.

North Bristol had a duty to look after the samples, under what is called a “bailment”. So there is probably no logical reason why sperm samples could not be held on trust.

#### 3.6.7 Bare Trusts

and

#### 12.1 Adult Beneficiaries

The rule in ***Saunders v Vautier*** [1841] 4 Beav 115 is often misunderstood. The beneficiaries may only instruct the trustees to end the trust and hand over the trust property to them if absolutely all the beneficiaries agree. This includes beneficiaries who are yet to be born or ascertained, so in many trusts the rule will be inoperable.

***Thorpe v Revenue and Customs Commissioners* [2009] Pens. L.R. 139**

Mr Thorpe had a pension scheme held in trust for himself, his wife and dependants. His wife had died and he had no children so he asked the pension trustees to transfer the trust fund to him, as the sole beneficiary, under the rule in ***Saunders v Vautier***.

HELD: at para 14.

“...it is fundamental to the application of the rule that the beneficiaries must be together entitled to the whole of the beneficial interest. In my judgment, it is clear that the rule can have no application where there are potential beneficiaries not yet in existence, however remote their interests might be or however unlikely it might be that those beneficiaries should come into existence.

The Appellant accepted that there was a theoretical possibility that he might remarry or that he might have dependants within the meaning of the rules of the Scheme.”

So Mr. Thorpe could not end the trust, because it was possible, though unlikely, that there could be other beneficiaries.