

## **Byrnes v Kendle (2011) 243 CLR 253**

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### **Facts**

- The Respondent [Kendle] and the Second Appellant [Byrnes] were married.
- The Respondent executed a deed which declared that he holds half of his property on trust for the Second Appellant. He then executed a second deed which was an 'acknowledgement of trusts' which said that he 'stands possessed of and holds one undivided half interest in the [house] as tenant in common upon trust for [the wife] absolutely.'
- Later, the parties left the property and then separated. The Respondent let the property to his son who basically didn't pay rent and no effort was made on behalf of the Second Appellant to recover the arrears.
- Later on, the Second Appellant assigned her interest in the property to the First Appellant (her son).
- The property was sold by the Respondent and the Appellants sued the Respondent for their share of the proceeds, based on the trust.

### **Held**

- The legal effect of a document is not ascertained by extrinsic evidence as to the subjective intentions of its parties, but rather by an objective construction of its words.
- Intention is determined objectively. It is extracted from the words used and is not a subjective intention that may have existed but cannot be extracted from the words used.
- The "terms of the [deed] are clear ... [The husband] might not have fully understood what he was doing, but that is neither here nor there".
- The question was not what the Respondent meant to say, but what was the meaning of what he did say in the deed (Gummow and Hayne JJ).
- While a party's subjective intention is relevant in relation to a claim for mistake, misrepresentation, non est factum, estoppel, illegality and the like, it 'is irrelevant both to the question of whether a trust exists and to the question of what its terms are.'

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