Foskett v McKeown [2001] 1 AC 102


Facts

- A man was entrusted with money to invest overseas
- The man used the money to pay the premium on a life insurance policy
- He committed suicide
- The beneficiaries wanted the life insurance policy
- The children argued against it because they said they had not done anything wrong

Issue

- Were the investors able to trace their funds through to the pay out?

Held

- Investors and children held in the proportions that they had paid the policy
- The purchasers could clearly trace the money
- Mixed funds belong proportionately to those who contributed
- You can either follow the asset or the value
- Tracing is a process establishing a proprietary right; it is not a claim or a remedy
- Can make a claim against trustee for breach of trust to restore; or asset ownership over the property representing the funds taken.

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