Part I

FUNDAMENTALS OF THE OFFSHORE TRUST

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INTRODUCTION—THE PLACE OF THE OFFSHORE TRUST IN THE OFFSHORE FINANCIAL CENTRE

A. Introduction

1.01 The offshore financial centre remains one of the most important and intriguing new phenomena in the international financial sector today, accounting for billions of investment dollars worldwide.[1] Of the several innovative financial products that the sector has spawned, perhaps none is more deserving of study than the offshore trust, sometimes called an international trust.[2] This type of trust, a modern creation, serves as an important vehicle for the estate planning, asset protection, tax planning, and broader investment objectives of offshore investors.

1.02 Maitland once demonstrated that the trust is one of equity's most ingenious devices.[3] The offshore trust confirms the ingenuity of equity, albeit with the help and intervention of statute. Its elasticity is particularly useful in a commercial context, such as the offshore financial sector. Indeed, some argue that the modern trust is established primarily for business purposes.[4]

[1] For example, in the Cayman Islands, the 2010 statistics reveal that financial services accounted for 54% of the gross domestic product, including US$2.5 trillion dollars: *Peer Review Report, Phase 1: Legal & Regulatory Framework, Cayman Islands*, OECD, 2010. Trust assets in 2002 were more than US$980 billion. See <http://www.trusts-and-trustees.com/trends/td>.

[2] Note the dichotomy between the terms 'offshore trust' and 'international trust' in Barbados, for example. There, an international trust is one established under the International Trusts Act 1995, as amended in 1998, where the settlor and beneficiaries are non-resident and, except where the trustee is another offshore entity or charity, the trustee is non-resident. In an offshore trust, the trustee must be an offshore bank and the settlor and beneficiaries non-resident. The assets must consist solely of foreign securities and currencies. Barbados's trust law must also be considered within the context of its double taxation treaty regime, discussed in chapter 18, at paras 18.109–18.115. For our purposes, it is the international trust regime which may be approximated to offshore trust regimes.

[3] F W Maitland, 'The Origin of Uses' (1894) 8 Harv L Rev 127, 130.

[4] See, eg, J Langbein, 'The Secret Life of the Trust: The Trust as an Instrument of Commerce' (1977) 107 Yale LJ 163, 165. The trust has long been recognized as a useful device for gratuitous transfers, particularly between generations. He notes too, that in the US, most of the wealth placed in trusts is 'incident to business deals': Langbein, 166.

1.03 As we saw in the companion text to this book,[5] offshore jurisdictions[6] offer to investors a wide range of creative and often revolutionary financial and investment products, including international business companies, captive insurance, tax planning vehicles, and offshore banks. The offshore trust is but one of these financial products. Since the trust is created by offshore financial centres, it is useful to review the features of these centres.

1.04 Indeed, the trust is now more properly to be viewed as a commercial entity. It forms the basis for a number of important commercial or financial products in everyday business relations such as unit trusts, employee trusts, debenture trusts, ring-fenced project finance, sinking funds, subordination trusts, retention trusts funds, and pension trusts, many of them structured through offshore financial centres.

1.05 Statutory developments in the offshore trust sector have continued at a pace since the last edition. Several of these reforms have to do with increasing pressures toward transparency by the international community, such as more record keeping, incorporation of tax exchange of information treaties, and the like. However, there have been key substantive developments as well, such as on forced heirship, enforcement, perpetuities, trust liabilities, and new corporate trust formations. Many of these were to respond to what was predicted in the first edition, an expected explosion in offshore trust litigation as the innovative statutory provisions that characterize the offshore trust are tested before the courts. This is expected to continue.

1.06 The term coined in the first edition to describe the characteristic offshore trust—a hybrid trust, is now even more suited. We have witnessed the development of a distinct body of what we described as offshore financial law, or offshore law, terms now seemingly accepted into the legal lexicon of both commerce and law, acquiring legitimacy.

1.07 In addition, the inherent dualistic nature of offshore trust law has acquired a distinct international flavour, introducing another dimension to the already complex interplay between offshore and onshore, local laws and offshore laws, and now, international law. This has occurred because of the increasing array of treaties and international agreements, as well as important judicial decisions interpreting them, that now impact on offshore trust law.

[5] Rose-Marie Belle Antoine, *Confidentiality in Offshore Financial Law* (Oxford University Press, Oxford, 2002).

[6] The use of the term 'offshore' when used to describe countries or jurisdictions is in no way pejorative and should not be taken to mean that those countries do not have well-established and legitimate legal and economic financial structures in place. It is merely used to describe countries which have recognized financial systems that utilize offshore financial law and are engaged in offshore investment, as described below. Onshore countries are simply those which may be distinguished from offshore countries, although we will see that, increasingly, onshore countries are borrowing legal concepts from offshore jurisdictions.

1.08 This dimension has so much depth that we can now identify international law understandings of key offshore trust concepts, such as the residence of the trust, beneficial ownership, restraint orders, and, to a lesser degree, the concept of a sham where tax-related issues involving the trust are concerned.[7] These are fascinating developments which will no doubt be explored further as offshore trust law continues its remarkable journey.

B. Features of Offshore Centres

1.09 An offshore financial centre may itself be defined as:

> a regime which has chosen as a main or important path to development, legislative, financial and business infrastructure which is more flexible than orthodox infrastructure and which caters more specifically, and often exclusively, to the needs of non-resident investors . . . this legislative framework includes innovations in trust, banking, fiscal, insurance, financial and company law.[8]

1.10 This definition recognizes that many financial centres, including those centres in New York and London, do in fact offer special incentives and initiatives to non-residents. However, because of the dominant entrepreneurial thrust of financial centres described as offshore, it makes a distinction between these centres and those which are the subject of this book.

1.11 Yet we should acknowledge that the distinction between offshore and onshore financial centres is becoming blurred with the advent of financial developments in certain states in the US that have emulated the investment functions of offshore financial centres.[9] A new chapter 4 on 'Onshore Offshore Trusts' confronts this little-talked-about reality squarely.

1.12 For the purposes of this book, this writer's definition of offshore financial law which was adopted in the case of *Re Asia Credicom Ltd*[10] is offered as a useful starting point. Offshore financial law is described as:

> legislation, legal practices and law concerned with investment, financial arrangements and entities created by non-residents of a particular jurisdiction but structured within that jurisdiction. Such investments or arrangements are typically focussed on some business advantage, tax avoidance, protection from creditors and judgment debtors or privacy.[11]

[7] See, eg, chapters 18 and 26.
[8] Antoine, n 5, 8.
[9] See in addition the discussion in chapter 6, 'Questions of Legitimacy and the Offshore Trust', at paras 6.27–6.32.
[10] (Sup Ct, BVI) No 20 of 1999, decided 30 July 1999. Moore J's definition is taken from Rose-Marie Belle Antoine, 'Obtaining Mareva Injunctions and Related Orders against Offshore Assets' (1998) Carib LR 212.
[11] *Asia Credicom*, n 10, 31.

The offshore trust operates within such a special legal framework and makes a significant contribution to offshore financial law. Like other offshore entities, it caters essentially to non-resident settlors who wish to avoid the restrictions of domestic law in their own onshore jurisdictions.

C. The Offshore Trust as a Hybrid Trust

1.13 Armed with these definitions about the nature of offshore financial centres and offshore financial law, the offshore trust may be described as a trust which caters to non-residents and subsists in offshore financial regimes. It is subject to the special trust laws and policies enacted exclusively for offshore financial entities. McMullin J, in the case of *South Orange Growers Association v Orange Grove Partners*,[12] in analysing the provisions of the International Trusts Act 1984 of the Cook Islands, made this clear when he noted: 'The International Trusts Act applies only in respect of international trusts and not to what may be called onshore trusts which continue to be governed by the domestic legislation of the Cook Islands.'

1.14 The above definition is qualified to the extent that it must be acknowledged that offshore trusts, being essentially hybrid in nature, sometimes fall under law and policy which apply to all trusts in the offshore jurisdiction. This includes orthodox or traditional domestic trusts serving residents. Yet even where the trust legislation does not apply exclusively to offshore trusts, it will contain provisions which speak directly, or sometimes exclusively, to non-resident or offshore trusts or trusts established by non-residents. A good example of such a model is found under the Belize Trusts Act 1992, as revised in 2000. While the Act does not expressly confine itself to offshore trusts, provisions such as the following clearly address only offshore trusts and the exclusion of onshore law:

> Where a trust is created under the law of Belize, the court shall not . . . set it aside or recognise the validity of any claim against the trust property pursuant to the law of another jurisdiction or the order of a court of another jurisdiction in respect to—[13]

1.15 To the extent that traditional trusts law, as existing in the particular jurisdiction, is not modified by special offshore trusts provisions, it should, therefore, be regarded as saved.[14] This saving of existing trusts law where special offshore legislative provisions are absent, means that the traditional jurisprudence on trusts will be crucial

[12] [1997–1998] 1 OFLR 3, 5 (CA), Cook Islands.

[13] Section 7(6). Under s 64, trusts with non-resident settlors and beneficiaries are exempt from taxes.

[14] Some legislation makes this patently clear. See, eg, s 3 of the International Trusts Act 1984 of the Cook Islands, which reads: 'The law applicable to trusts in force in the Cook Islands shall apply to international trusts except in so far as they are inconsistent with or have been modified by the provisions of this Act.'

to the discussion on offshore law. This is aside from its possible influence even where new offshore legislative provisions are in effect.

1.16 The offshore trust, a statutory creation, is a significant departure from the traditional trust which emerged from the equitable principles of the English legal tradition. Yet it borrows heavily from the traditional trust, evolving into what may be described as a hybrid trust. It is, in essence, a dynamic evolution of the trust and orthodox trust law. It embodies significant and often radical concepts, such as the purpose trust and trusts created specifically to avoid forced heirship regimes. Together with the entity of the company, the trust serves as a basic vehicle for offshore investment. Indeed, the way in which these two entities, the trust and the company, intertwine in offshore financial centres, is itself worthy of mention. Perhaps the most vivid demonstration of this is the new legislative provisions for VISTA trusts,[15] which allow traditional obligations of trustees with respect to the use of shares in investment, grounded in equity, to be exercised by directors of underlying companies.[16]

1.17 In the following chapters, we examine the fascinating legal framework of the offshore trust and its corresponding jurisprudence, now substantial, in detail. In this legislative environment we must also consider the important place of treaties and other international law instruments. These impact significantly on offshore trusts. As tax planning is a common motive for the establishment of offshore trusts and other offshore entities, tax issues arise in several areas concerning the offshore trust. The most significant international instrument in the current legal environment for trusts is the tax information exchange treaty, which has introduced far-reaching disclosure obligations on all offshore financial entities, including offshore trusts.[17] Accordingly, these varied entities are addressed throughout the text, whether directly or indirectly.[18]

D. Offshore Trusts Force a Jurisprudential Review of Trusts

1.18 The offshore trust has compelled jurisprudential rethinking about the nature and functions of the traditional trust. It has invited, and sometimes forced, judges and policy-makers to assess the varied functions and characteristics of trusts in modern commercial settings. Admittedly, to some, the offshore trust is a bastard offspring of equity. Whatever the view, it is undeniable that the offshore trust has been

[15] The name coined for trusts established under the Virgin Islands Special Trusts Act 2003 of the British Virgin Islands.

[16] Virgin Islands Special Trusts Act 2003, s 12.

[17] See below, chapter 18.

[18] See, eg, chapter 9, 'The Offshore Trust as a Sham' and chapter 11, 'Duties of Trustees in Managing Offshore Trusts'. However, Part III, 'The Offshore Tax Function', addresses such issues more directly.

responsible for important new directions in trust law and practice. This writer has argued elsewhere that the offshore trust has contributed significantly to the development of the concept of the common law trust.[19]

1.19 Contentious new principles in offshore jurisdictions, born out of statute, are now steadily seeping into domestic trust law. This book offers an appraisal of the several controversial questions which arise from the institution of this new type of trust. The book should also serve, therefore, as an instrument for re-assessing the traditional trust, and for tracing and understanding the current evolution of the trust in general.

1.20 The offshore trust will be examined both from its statutory origins and its common law progeny in a comparative sense, taking into account presumptions about the trust and other legal principles which impact upon the offshore trust. The fact that the offshore trust is a creation of statute adds to its peculiar existence. Its nature and character continue to challenge onshore courts. Thus, this book is not simply an exposition of offshore legislation but examines how the legislation and jurisprudence offshore interrelate with the law onshore. This enables the practitioner to source solutions to the conflicts which may arise from time to time.

1.21 An assumption is made that the reader is familiar with the principles of trust law. Consequently, such principles are not repeated here, except if necessary to underline important aspects of offshore trust law. In some circumstances, the offshore trust will have to grapple with orthodox questions of trusts law. For example, in what circumstances will breaches of trust be incurred, or third parties or directors become liable for wrongdoing? While traditional trust principles are useful starting points for addressing these questions, the originality of the offshore trust brings to bear different and more complex elements in finding responses to these questions. As anticipated, there has been considerable jurisprudential development in relation to these dynamic issues. The issues raised and the positions articulated in the first edition about some of these new trust questions have now produced concrete judicial confirmations, which are ripe for further inquiry. Indeed, we have seen some predictions come true.

E. Wider Issues Relating to Offshore Financial Centres and Trusts

1.22 Offshore trusts have not been insulated from broader questions surrounding offshore financial centres, questions which touch on the potential for unlawful, or, at minimum, unethical or undesirable conduct. These are critical issues for both

[19] See Rose-Marie Belle Antoine, 'The Offshore Trust: a Catalyst for Development' (2007) 14(3) Journal of Financial Crime.

onshore and offshore jurisdictions. They are also discussed, particularly in relation to tax planning, asset protection, and confidentiality functions. Recent initiatives by the G20 group of countries highlight these concerns.[20]

1.23 The arrival of offshore financial regimes has introduced duality into domestic legal systems. The offshore sector is designed for non-residents. There is often one set of laws for offshore trusts for the benefit of non-nationals and another for domestic trusts established by residents in the offshore jurisdiction. This has led to complaints about 'ring-fencing'. It has been seized upon by the dominant players in the international commercial landscape, on the ground that the regime is inherently discriminatory.

1.24 Public policy concerns therefore emerge as unavoidable elements in these often contentious debates. The inherent tensions within offshore financial law are strikingly evident when the institution of the offshore trust is examined carefully.

F. Suitability of the Trust in International Commerce

1.25 The trust is a popular and important vehicle of investment in the offshore sector, and its ability to conquer the multinational borders of the industry is remarkable. It is the inherent flexibility of the trust that makes it such an attractive tool for offshore investors. However, such flexibility is not without limitations or difficulties.

1.26 A notion of dual ownership is fundamental to the underlying character of the trust. In the traditional trust, the legal interest is vested in the trustee, while the beneficial ownership vests with the beneficiaries. It is this duality which makes the trust such an appropriate and flexible tool in the world of offshore finance. This is a world which often relies on the manipulation of the elements of ownership and control for its success. Most significant in offshore trust planning is the fact that with the establishment of a trust, the original owner of the assets, the settlor, although he or she initially determines the pattern of investment for the trust, is no longer considered to be the owner of the assets under trusts law.

1.27 The anxiety to locate or identify the offshore trust in jurisprudential terms, has led some to argue that the modern trust has a contractual basis, as opposed to being grounded in property law.[21] If so, it appears that the offshore trust is particularly well suited to this analysis, being, as it is, a product developed for commercial needs. As creatures of contract, the parties to offshore trusts may have much more freedom and flexibility to agree to do things, or incorporate trust arrangements

[20] See chapter 18.
[21] See J Langbein, 'The Contractarian Basis of the Law of Trusts' (1995) 105 Yale LJ 625.

hitherto unknown to the onshore trust, provided, of course, that they are not illegal. They may, however, run into danger on grounds of public policy.[22]

1.28 The inherent flexibility of the trust has meant that it is a useful tool for accommodating the often unique demands of the rapidly changing and increasingly sophisticated world of finance, particularly offshore finance. Indeed, we can measure the success of the offshore trust as an international tool of commerce by the fact that today, even civil law nations are having to acknowledge the existence of, and in some cases work directly with, the trust.[23] The development of the foundation in such countries, an institution similar to the trust, is evidence of the impact of trust law internationally.

1.29 Offshore trusts will typically be found in those offshore jurisdictions whose legal traditions stem from English law,[24] since the trust itself is a creature of the English common law legal tradition.[25] Nonetheless, in the context of transnational offshore business, those jurisdictions which do not incorporate the trust concept into their law, apart from merely interacting with the trust, have gone further and emulated trust jurisdictions. In particular, some offshore jurisdictions which belong to the civil law tradition have found it expedient to incorporate the trust or 'trust-like' concepts, so as to capitalize on this lucrative aspect of offshore business.[26] In addition, generally, civil law jurisdictions are increasingly confronting the trust as a result of transnational business. This phenomenon, though welcome from an offshore commercial point of view, inevitably raises issues of private international law which have to be addressed.

1.30 Given that this is a book on trusts and the trust is a creature born and nurtured in the common law, those offshore jurisdictions that are common law jurisdictions form the main focus of this book. However, given that the the trust has been exported to civil law jurisdictions, both onshore and offshore, the latter to create more business, the receipt of offshore trust law in these traditionally non-trust jurisdictions is also considered, though to a lesser degree. At the same time it is acknowledged that non-trust offshore jurisdictions have tended to copy offshore trust laws wholesale.[27]

[22] For example, they may undermine traditional beneficiary rights. See, eg, paras 7.07–7.15, in relation to acquiring information about the trust.

[23] See chapter 23, 'The Recognition of the Offshore Trust in Civil Law Countries'.

[24] In particular, the ex-colonies of the United Kingdom, eg, Bermuda, Dominica, Grenada, Belize, Saint Lucia, Saint Vincent, Saint Christopher and Nevis, The Bahamas, and remaining UK territories such as the Cayman Islands, Anguilla, The British Virgin Islands (BVI), the Isle of Man, Jersey, and Guernsey. However, some non-common law offshore jurisdictions have embraced the trust concept, or a variant of the trust. See, eg, trusts and foundations in Liechtenstein. Other civil law countries which are offshore jurisdictions are Switzerland and The Netherlands.

[25] The trust is, of course, an equitable concept and not a common law concept. When we refer to the common law trust in this book, we mean belonging to this common law legal tradition and not as distinct from equity.

[26] See, eg, Liechtenstein and Panama.

[27] See, eg, the Trusts Law 2005 of Dubai.

The book therefore focuses on the major offshore trust jurisdictions. It is notable that all offshore trust jurisdictions are offshore financial jurisdictions, but not all offshore financial jurisdictions are offshore trust jurisdictions, Switzerland being the prime example of a leading offshore financial centre that is not an offshore trust jurisdiction.[28] **1.31**

G. Direction of the Work—Comparative Issue Analysis

The book does not take the well-known route of a country-by-country description of offshore jurisdictions. Rather, it is concerned with important issues in offshore trust law and, by extension, offshore financial law.[29] As such, it takes a thematic approach—but from a comparative view, describing similarities and differences in legislation and policy in relation to the issues. Whilst the transplantation of the trust to new frontiers is an important theme in our discussions, more emphasis is placed on the offshore trust law in offshore jurisdictions which belong to the common law tradition. This is a justifiable approach since: **1.32**

(1) As we have noted, the trust is essentially a common law phenomenon. While some civil law jurisdictions, such as Liechtenstein, have incorporated it, or some form of it, its natural home is in common law jurisdictions.
(2) The majority of the leading offshore jurisdictions are common law jurisdictions, many of them in the Commonwealth Caribbean.
(3) Those civil law jurisdictions that have incorporated the trust concept have relied extensively, sometimes totally, on offshore trust legislation found in common law countries. The latest example is the Dubai Trusts Law 2005, a fact which Dubai openly acknowledges.

H. Relative Uniformity in Offshore Trusts Law

There is considerable parity in relation to offshore legislative provisions, but they are not identical. Consequently, the choice of location for the offshore trust may be crucial to its effectiveness. Offshore jurisdictions which have more traditional legal provisions relating to the trust will offer less protection than those which have specifically legislated to deter creditors and others seeking to reach assets. However, more offshore financial centres are moving toward the latter. We should note, however, that offshore jurisdictions tend to borrow from one another, so that **1.33**

[28] These will essentially be the common law offshore centres, Jersey, Bermuda, the BVI, the Cayman Islands and the like.

[29] The book is conceptualized as a companion text to Rose-Marie Belle Antoine, *Confidentiality in Offshore Financial Law* (Oxford University Press, Oxford, 2002), which examines another important aspect of offshore financial systems.

there are more similarities than there are differences in relation to offshore trust law. As will be seen, differences in degree and in the interpretation of legislation can be quite important.

1.34 Yet, with few exceptions, policy objectives in offshore jurisdictions are similar. One important difference might be the extent to which the offshore trust is prepared to go to facilitate settlors who are seeking ultimately to avoid creditors, even if those creditors may be in the future. This difference will, of course, be reflected in the relevant legislation.[30]

1.35 In addition, some jurisdictions may be more advanced, in general, in the codification of their trust laws. In particular, they may have progressed further in enacting statutory provisions which mirror more modern developments in traditional case law on trusts. A good example would be the rules on trustees' duties with regard to investments. These more contemporary provisions are evident, for example, in the dependent English territories.[31]

1.36 In a sense, we can argue that there are two modes of offshore trusts law, one evident in the remaining English territories, which has a more pronounced common law flavour. On the other hand, there has been a more marked attempt to introduce radical deviations to traditional trusts law.[32]

1.37 Nonetheless, although other offshore financial centres may have not have codified such jurisprudential developments, we should bear in mind the hybrid nature of offshore trusts law, with its common law overlay. Often this means that, in the absence of statutory provision to the contrary, such case law will continue to define the interpretation of offshore trusts law.

I. Persuasive Precedents in Similar Offshore Jurisdictions

1.38 Because of the shared common law orientation and the similar legislative thrusts of offshore trust jurisdictions, the cases originating in one jurisdiction are important indicators of jurisprudential direction in other offshore jurisdictions. At minimum, they will be persuasive precedents. In the case of the Commonwealth Caribbean states which are offshore jurisdictions, the linkages are even more direct. These jurisdictions have all retained the Judicial Committee of the Privy Council, based

[30] Those prepared to do so will enact more liberal laws on fraudulent conveyancing, discussed in chapter 10, 'The Law on Fraudulent Conveyances and the Offshore Trust'.

[31] See, eg, the Trusts (Jersey) Law 1984, as amended, the Trusts (Guernsey) Law 2007, and the Trustee (Amendment) Act 2003 of the British Virgin Islands. See also the Trusts Act 1992 (rev'd, 2000) of Belize and the Trustee Act 1986 of The Bahamas. Trustees' duties are discussed in chapter 11, 'Duties of Trustees in Managing Offshore Trusts'.

[32] This is perhaps most evident in the Cook Islands, under the International Trusts Act 1984, and its progeny, such as the International Exempt Trust Act 1997 of Dominica and the International Exempt Trust Ordinance 1994 of Nevis.

in the UK, as a final court of appeal. Consequently, jurisprudential practice, if not theory, has determined that precedents from one Commonwealth Caribbean country will be binding in the next.

1.39 The Caribbean Court of Justice (CCJ) has now replaced the Privy Council as the final court of appeal for some of these countries.[33] The Bahamas, for example, a leading offshore jurisdiction, has stated that it is not yet ready to be part of the CCJ arrangement. This opens the possibility of greater differences in legal thinking between Commonwealth Caribbean offshore jurisdictions—those which still retain the Privy Council and those which do utilize the CCJ. However, it is at least arguable that the differences may be more illusory than real.

1.40 The point should be made that these offshore courts are themselves steeped in the English common law legal tradition. It is not to be assumed that they are better equipped to deal with radical trusts law than onshore courts, or, indeed, that they are willing to deviate from traditional trust law principles. At least one court was conservative in its approach in this regard.[34] Even if they were to do so, for those courts which still depend on the Privy Council as a final court of appeal, they cannot count on that court upholding their decisions.

1.41 Where there are omissions or uncertainties in offshore legislation, or where such legislation merely codifies traditional trusts law, the interpretation of offshore trust law, even after consideration of its ultimate purposes, may mirror traditional trusts law according to established principles of equity. As such, in many of our discussions, these traditional trust law principles are addressed. All of these phenomena help to impute a certain uniformity to offshore trusts law.

1.42 The institution of the offshore trust is poised on the brink of an explosion in litigation. Questions remain to be answered if the inherent conflict between the rights of those seeking to reach the trust assets, such as creditors, and those of the owners of assets is to be resolved. Challenges will continue to issue against the sometimes complacent assumptions made under the umbrella of relevant offshore legislation. With the increased use of offshore trusts, one should expect the continued development of relevant jurisprudence on the subject, thereby filling the gaps and clarifying the uncertainties in the present barren legal landscape. Indeed, we are already witnessing this revolution.

[33] Currently, this is the case for Barbados and Belize. The CCJ is also the final court of appeal for Guyana, but that country is not an offshore financial jurisdiction. More countries are expected to join the appellate jurisdiction of the CCJ.

[34] *South Orange Growers Association v Orange Grove Partners* [1997–98] 1 OFLR 3 (CA, Cook Islands), discussed more fully in chapter 10, paras 10.97 and 10.127–128. The court did not accept that the International Trusts Act 1984 aimed to abrogate the rights of onshore creditors in the interest of commercial expediency.