

CONTENTS

<i>Abbreviations</i>	xvii
<i>Table of Cases</i>	xix
<i>Table of Statutes</i>	xxvii
1. Introduction	1
A. The Use of Protectors in Modern Trusts	1.01
B. This Book	1.19
2. What is a Protector?	7
A. Introduction	2.01
B. Nomenclature	2.05
C. Statutory Definitions	2.11
D. Use of the Term 'Protector' in English Trusts of Settled Land	2.17
E. Testamentary Protectors	2.20
F. Distinction between a Protector and a Trustee	2.24
G. Protectors of Commercial Trusts	2.34
H. Protectors and Advisors	2.35
I. Protectors and Enforcers	2.38
J. Active Protectors and Potential Conflict between the Protector and the Trustee	2.39
K. Drafting Points	2.43
3. Appointment and Removal	20
A. Who May be a Protector?	3.01
B. Who Should be a Protector?	3.27
C. Co-protectors	3.30
D. Appointment out of Court	3.51
E. Appointment by the Court	3.61
F. Retirement	3.67

Contents

G. Removal out of Court	3.75
H. Removal by the Court	3.76
I. Vacancy	3.79
J. Drafting Points	3.82
4. Powers	43
A. Introduction	4.01
B. The Scope of the Power: General, Limited, and Hybrid Dispositive Powers	4.16
C. The Capacity in which Powers are Held	4.25
D. Personal Powers	4.35
E. Fiduciary Powers	4.60
F. Determining the Capacity in which a Protector Holds Powers	4.69
G. Statutory Powers	4.96
H. What Powers Should a Protector Hold?	4.103
I. Drafting Points	4.111
5. The Valid Exercise of Powers by Protectors	69
A. Introduction	5.01
B. Personal Capacity to Act	5.05
C. Formal Requirements	5.29
D. Intention to Exercise the Power	5.32
E. Excessive Execution of Powers	5.38
F. Fraud on a Power	5.47
G. Unauthorized Delegation	5.72
H. Proper Exercise of Discretion	5.80
I. Letters of Wishes	5.100
J. Statutory Powers	5.109
K. Drafting Points	5.112
6. Powers Commonly Given to Protectors	97
A. Powers to Appoint or Remove the Trustee	6.01
B. Powers to Amend the Trust Instrument	6.44
C. Powers to Add or Remove Beneficiaries	6.56

Contents

D. Powers to Change Governing Law and Forum for Administration	6.78
E. Powers Relating to Investment	6.97
F. Powers to Consent to Exercise of Trustee Powers	6.126
G. Powers to Consent to Exercise of Beneficiary Rights	6.146
H. Powers to Obtain Information	6.157
I. Drafting Points	6.165
7. Indemnity and Remuneration	136
A. Introduction	7.01
B. Indemnity	7.04
C. Remuneration	7.30
D. Drafting points	7.48
8. Liability	147
A. Introduction	8.01
B. Liability for Defective Exercise of Personal Powers	8.04
C. Liability for Breach of Fiduciary Duty	8.17
D. Liability for Breach of Duty of Care and Skill	8.27
E. Liability to Account for Profits	8.37
F. Accessory Liability	8.41
G. Equitable Defences and Limitation	8.49
H. Liability of Co-protectors	8.60
I. Statutory Modification of Liability	8.68
J. Court's Power to Excuse a Protector from Liability	8.78
K. Exoneration and Limitation of Liability in the Trust Instrument	8.80
L. Impact of Protector Powers on Trustee Liability	8.85
M. Drafting Points	8.100
9. Litigation by and against protectors	173
A. Introduction	9.01
B. Jurisdiction	9.04
C. A Protector's Standing to Bring Proceedings	9.22
D. A Protector as a Party to Proceedings	9.48
E. Costs	9.56

Contents

10. Enforcers of Purpose Trusts	191
A. Introduction	10.01
B. Purpose Trusts in English Law	10.02
C. Statutory Purpose Trusts	10.16
D. Appointment, Removal, and Replacement	10.29
E. Powers, Rights, and Duties	10.61
F. Liability	10.81
11. Whose Law Is it Anyway?	213
A. Introduction	11.01
B. The Spread and Development of the English Domestic Trust	11.03
C. The Development of the International Trust	11.06
D. The Recognition of International Trusts	11.19
E. Limits of the International Character of Trust Law	11.29
F. US Law	11.31
Appendix 1: Drafting	223
Appendix 2: Statutory Excerpts	232
Appendix 3: Gazette of Purpose Trust Legislation	271
<i>Index</i>	273