

CONTENTS

	Page
<i>Foreword</i>	v
<i>Preface</i>	vii
<i>Thomas Lewin</i>	ix
<i>Table of Cases</i>	xxi
<i>Table of Statutes</i>	ccxliii
<i>Table of Court Rules and Practice Directions</i>	ccclxxxiii
<i>Table of Statutory Instruments</i>	cclxxxvii
<i>Table of Legislation of the Commonwealth and the British Islands</i>	ccxciii
<i>Table of European and International Conventions, Legislation and Regulations</i>	ccxcv

PART ONE

DEFINITION, CLASSIFICATION AND CREATION OF TRUSTS

1. DEFINITION AND CLASSIFICATION	3
1. Definition of a trust	3
2. Classification of trusts	15
2. PARTIES AND PROPERTY FOR EXPRESS TRUSTS	25
1. Requisites for the creation of an express trust	25
2. Who may be a settlor	26
3. Who may be a trustee	31
4. Who may be a beneficiary	34
5. What property may be made subject to a trust	36
3. PRINCIPAL METHODS OF CONSTITUTION OF EXPRESS TRUSTS	37
1. Introduction	37
2. Express lifetime declarations of trust	39
3. Transfers to trustees	47
4. When a trust is fully constituted on a transfer to trustees	57
5. Creation of new settlements in the exercise of powers	67
6. Testamentary and secret trusts	74
4. REQUIREMENTS FOR ESSENTIAL VALIDITY OF EXPRESS TRUSTS	83
1. The requisite intention to create a trust	83
2. Trusts held to be shams	92
3. Certainty of objects of the trust	99
4. Trusts for non-charitable purposes and unincorporated non-charitable associations	102

5. Rectification, rescission and cancellation	111
5. LEGALITY OF OBJECT OF TRUST	121
1. Introduction	121
2. Trusts against the policy of the law	122
3. Perpetuities	136
4. Accumulations	165
5. Restrictions on alienation and trusts against the policy of insolvency law	177
6. Trusts that prejudice creditors	191
6. INTERPRETATION OF EXPRESS TRUSTS	199
1. Introduction	199
2. Evidence to interpret settlements	200
3. Interpretation of trusts for children	206
4. Interpretation of executory trusts	220
5. Interpretation of executed trusts	223
6. Referential trusts	227
7. TRUSTS ARISING BY OPERATION OF LAW GENERALLY	229
1. Introduction	229
2. Classification of resulting trusts	232
3. Classification of constructive trusts and constructive trusteeship	235
4. Constructive trusts imposed on certain acquisitions	242
8. RESULTING AND OTHER TRUSTS ARISING UPON FAILURE OF DISPOSITIONS	251
1. Scope of chapter	251
2. Dispositions on trust which fail to exhaust the beneficial interest	252
3. <i>Quistclose</i> trusts	267
4. Surplus assets of non-charitable unincorporated associations and relief funds	280
9. TRUSTS ARISING IN RELATION TO THE ACQUISITION OF PROPERTY	289
1. Scope of chapter	289
2. Resulting trusts on gratuitous lifetime transfers	290
3. Purchase in the name of another	297
4. Beneficial interests of two or more persons	309
5. Joint bank accounts	333
10. CREATION OF TRUSTS BY CONTRACT	337
1. Scope of chapter	337
2. The seller under a specifically enforceable contract	337
3. Covenants to settle property	341
4. Mutual wills	351
5. Other contracts and covenants to make a will	361
11. FOREIGN ELEMENTS	365
1. Introduction	365
2. The jurisdiction of the English court	367
3. The validity of trusts and choice of law	391
4. Forced heirship rights	418

5. Foreign incapacities	423
PART TWO	
THE TRUSTEES	
12. BECOMING A TRUSTEE	427
1. Number of trustees	427
2. Acceptance and disclaimer of trusts	429
3. Considerations before acceptance	435
4. Duties of a new trustee on acceptance of a trust	437
13. DEATH, RETIREMENT AND REMOVAL OF TRUSTEES	441
1. Death of trustee	441
2. Voluntary retirement of trustee	443
3. Compulsory retirement of trustee	447
4. Removal of trustee	459
14. APPOINTMENT OF NEW TRUSTEES OUT OF COURT	467
1. Express powers	467
2. Section 36 of the Trustee Act 1925	469
3. General considerations	486
15. APPOINTMENT OF NEW TRUSTEES BY THE COURT	503
16. APPOINTMENT OF NEW TRUSTEES IN PLACE OF TRUSTEES LACKING MENTAL CAPACITY	511
1. Introduction	511
2. Appointment under statutory and express powers	516
3. Appointment at the instance of beneficiaries	522
4. Appointment by the court	525
5. Retirement or removal without new appointment	527
17. VESTING TRUST PROPERTY OUT OF COURT ON CHANGE OF TRUSTEES	529
18. VESTING AND SIMILAR ORDERS	535
19. PARTICULAR TRUSTEES	547
1. Judicial trustees	547
2. The Public Trustee	551
3. Custodian trustees	563
4. Trust corporations	568
20. UNAUTHORISED PROFITS AND CONFLICTS OF INTEREST	575
1. The general principle	575
2. Renewal of leases and purchase of reversions by trustees	576
3. Profits from transactions with third parties	586
4. Purchase of trust property by trustees and other self dealing transactions	607
5. Interest of trustees in exercise of dispositive powers	637
6. Purchase of beneficial interest from beneficiary	645
7. Remuneration of trustees	647
8. <i>Bona vacantia</i> ; adverse title; <i>jus tertii</i>	671
21. INDEMNITY OF TRUSTEES	673
1. Introduction	673

2. Indemnity out of trust property in respect of administration expenses	674
3. Personal rights of indemnity against beneficiaries	698
4. Costs of third party proceedings	700
5. Costs of trust proceedings	710
6. Costs of proceedings against the trust or the trust property	741
7. <i>Beddoe</i> applications	751
22. INSOLVENCY OF A TRUSTEE	763
1. Trusteeship	763
2. Effect on trust property	766
3. Trustee's right of indemnity	771
4. Breach of trust	775
PART THREE	
THE BENEFICIARIES AND BENEFICIAL INTERESTS	
23. DISCLOSURE TO PERSONS INTERESTED UNDER THE TRUST	785
1. Introduction	785
2. Trustees duty to notify beneficiaries of their interests	788
3. Disclosure by trustees to beneficiaries on demand	793
4. Voluntary disclosure by trustees to beneficiaries	834
5. Disclosure in trust litigation	836
6. Disclosure by outgoing trustees to their successors	840
7. Disclosure by and to settlors and protectors	841
24. THE RIGHT TO CALL FOR THE TRUST PROPERTY	845
1. Distribution at the end of the trust	845
2. Bringing the trust to an end	850
25. CAPITAL AND INCOME	861
1. Scope of chapter	861
2. What receipts are capital and what are income	863
3. Usual incidence of expenses	884
4. Implied duty to convert residuary personalty— first branch of the rule in <i>Howe v Lord Dartmouth</i>	893
5. Income of parts of estate later applied to debts and legacies— <i>Allhusen v Whittell</i>	899
6. Apportionment of income pending conversion— second branch of the rule in <i>Howe v Lord Dartmouth</i>	902
7. Life Tenant's rights in reversionary interests— <i>Re Earl of Chesterfield's Trusts</i>	908
8. Apportionment of deficient securities— <i>Re Atkinson</i>	910
9. Time apportionment	912
26. DISTRIBUTION OF THE TRUST FUND WITHOUT THE INTERVENTION OF THE COURT	917
1. Introduction	917
2. General duty of trustee	918
3. Advertisement, searches and inquiries for those entitled	920

4. Distribution notwithstanding third party claims	925
5. Circumstances affecting distribution	933
6. Effect of dealings by beneficiaries	941
7. Manner of payment	945
8. Final distribution—settling accounts: release	946
27. DISTRIBUTION OF THE TRUST FUND WITH THE INTERVENTION OF THE COURT	949
1. Introduction	949
2. Application to court	950
3. Approval of legal opinion	965
4. Payment into court	968
28. HOTCHPOT	973
29. POWERS GENERALLY	981
1. Scope of chapter	981
2. Classification and terminology of powers	982
3. Creation of powers	993
4. Third party powers and consents	995
5. Who can exercise a power	1001
6. Delegation of powers	1013
7. Duties of donees—preliminary matters	1024
8. Duties of donees—considering exercise of powers	1035
9. Manner of exercise of powers	1046
10. Defective execution of powers	1053
11. Time for exercise of powers	1058
12. Giving reasons for decisions	1064
13. Excessive execution	1066
14. Mistake, misapprehension and inadvertence	1071
15. Fraud on a power—ulterior purposes	1083
16. Disclaimer and release of powers	1095
17. Control by the court	1098
30. POWERS OF APPOINTMENT, AMENDMENT AND LIKE POWERS	1115
1. Scope of chapter	1115
2. General powers of appointment	1115
3. Special powers of appointment	1119
4. Intermediate powers of appointment	1130
5. Powers of addition and exclusion	1133
6. Powers of amendment	1135
7. Powers of transfer to other settlements	1139
8. Powers of revocation	1140
31. POWERS OF MAINTENANCE	1145
1. Section 31 of the Trustee Act 1925	1145
2. Points in regard to maintenance	1162
3. Vesting orders with a view to maintenance or benefit	1164
32. POWERS OF ADVANCEMENT	1167
1. Express powers of advancement	1167
2. Advancement by the court	1169
3. The statutory power	1170

4. Exercise of the power	1181
33. ASSIGNMENT OF EQUITABLE INTERESTS AND PRIORITIES	1183
1. Scope of chapter	1183
2. Assignability	1184
3. Priority and equities affecting assignees of interests	1188
4. Priority from notice—the rule in <i>Dearle v Hall</i>	1195
5. Stop orders on funds in court	1208
PART FOUR	
ADMINISTRATION OF THE TRUST PROPERTY	
34. ADMINISTRATIVE DUTIES OF TRUSTEES	1213
1. Duties of care	1213
2. Getting in the trust property	1221
3. Safe custody of the trust property	1225
4. Management of the trust property	1235
5. Insurance	1239
6. Nominees and uncertificated holdings	1246
7. Income of stocks and shares	1253
35. INVESTMENT BY TRUSTEES	1255
1. Statutory powers of investment	1255
2. Express powers of investment	1260
3. Former statutory powers of investment	1270
4. Auxiliary powers	1272
5. Exercise of powers of investment	1279
6. Investment on mortgage	1294
7. Acquisition of land	1309
36. ADMINISTRATIVE POWERS OF TRUSTEES	1335
1. General	1335
2. Power to employ agents	1338
3. Powers of appropriation	1361
4. Powers of compromise	1367
5. Power to carry on business	1369
6. Powers in relation to mortgages	1372
7. Powers of borrowing	1373
8. Miscellaneous powers	1375
9. Effect of order for administration	1378
37. TRUSTS AFFECTING LAND	1379
1. Introduction	1379
2. Trusts of land	1381
3. Powers of trustees of land	1385
4. Rights of beneficiaries of trusts of land	1405
5. The Settled Land Act 1925	1421
6. Who can exercise the Settled Land Act powers	1424
7. The tenant for life of settled land as trustee	1439
8. General provisions affecting the powers of a tenant for life	1445

9. The powers and duties of Settled Land Act trustees	1457
10. Settled Land Act powers of sale and exchange	1465
11. Settled Land Act leasing powers	1470
12. Further Settled Land Act powers	1479
13. Special classes of property under the Settled Land Act	1496
14. Incumbrances on settled land	1501
15. Application of capital money under the Settled Land Act	1506
16. Powers of improvement of settled land generally	1515
17. Procedure for raising capital money for improvements to settled land	1516
18. Incidence of costs of improvements to settled land as between capital and income	1518
19. Improvements to settled agricultural land	1521
20. Miscellaneous provisions affecting improvements to settled land	1524
21. Scheduled improvements	1526
22. Entailed interests	1532
23. Chattels	1535
PART FIVE	
BREACH OF TRUST AND REMEDIES	
38. SAFEGUARDING TRUST PROPERTY FROM BREACH OF TRUST	1541
1. Methods of safeguarding surveyed	1541
2. Securing proper trustees	1542
3. Stop notices	1542
4. Injunctions	1543
5. Compulsory payment into court	1546
6. Summary orders for accounts	1550
7. Appointment of a receiver	1551
39. REMEDIES AGAINST TRUSTEES PERSONALLY	1557
1. Introduction	1557
2. Personal accountability and compensation for breach of trust	1558
3. <i>Locus standi</i> for a breach of trust action	1583
4. Contribution between trustees	1588
5. A trustee's responsibility for others	1593
6. Defence of concurrence, acquiescence or release and confirmation by a beneficiary	1597
7. Defence under exculpatory provisions	1603
8. Power of court to relieve a trustee from personal liability	1615
9. Civil imprisonment and criminal restitution	1618
40. REMEDIES AGAINST ACCESSORIES	1623
1. Scope of chapter	1623
2. Impounding to indemnify trustees	1623
3. Impounding to indemnify beneficiaries	1625

4. Dishonest assistance	1627
5. Directors of corporate trustee	1649
6. Remedies in tort	1651
41. PROPRIETARY REMEDY AND TRACING AGAINST TRUSTEES AND THIRD PARTIES	1655
1. Introduction	1655
2. General	1659
3. Mixed substitutions—bank accounts	1688
4. Mixed substitutions—acquisitions and insurance	1695
5. Mixtures and problems of identification	1705
6. Improvements to land and chattels	1709
7. When trust assets become untraceable	1714
8. Purchase without notice	1720
42. PERSONAL REMEDIES AGAINST RECIPIENTS	1733
1. Scope of chapter	1733
2. Common law action for recovery of money paid by mistake	1735
3. Equitable recoupment	1737
4. Personal <i>Diplock</i> remedy	1739
5. Knowing receipt	1742
6. Trustee <i>de son tort</i>	1773
7. Inconsistent dealing by lawful recipients of trust property	1777
43. REMEDIES AGAINST THIRD PARTIES OTHERWISE THAN IN RESPECT OF BREACH OF TRUST	1783
1. The general rule and derivative actions	1783
2. Claims in tort by beneficiaries for negligence	1787
44. LIMITATION OF ACTIONS	1791
1. Scheme of chapter	1791
2. Fraud and retention of trust property	1792
3. Other claims	1797
4. Constructive trusts and similar liabilities	1812
5. Future interests in land	1823
6. Extension and postponement of limitation periods	1842

PART SIX

LAWFUL DEPARTURE FROM THE TRUSTS

45. LAWFUL DEPARTURE FROM THE TRUSTS	1853
1. Introduction	1853
2. By agreement	1854
3. The inherent jurisdiction	1854
4. Management and administration—section 57 of the Trustee Act 1925	1858
5. Transactions affecting land—section 64 of the Settled Land Act 1925	1862
6. The Variation of Trusts Act 1958	1867

PART SEVEN

TRUSTS, REGULATION AND CRIME

46. TRUSTEES INVOLVED WITH CRIMINAL AND TERRORIST PROPERTY	1907
1. Scope of chapter	1907
2. The legislation	1908
3. Registration and supervision of trustees	1909
4. Proceeds of crime	1911
5. Property connected with terrorism	1921
6. Duties of disclosure and non-disclosure	1926
7. Customer due diligence and other systems	1932
8. Guidance for trustees	1959
9. Civil recovery of proceeds of crime	1965
10. Confiscation and similar orders	1971
<i>Index</i>	1975