

PARKER AND MELLOWS:
THE MODERN LAW OF TRUSTS

Seventh Edition

by

A. J. OAKLEY, M.A., LL.B.,
*of Lincoln's Inn, Barrister-at-Law,
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PREFACE

In the preface to the first edition of this work in 1966, its authors stated that the law of trusts "is a branch of the law which is developing at a rapid pace and which is highly relevant to modern conditions, not merely to a bygone age". The accuracy of this statement was demonstrated by the fact that four further editions rapidly followed, culminating in the fifth edition in 1983. The unexpected and untimely death of Professor Parker in 1987, just when the authors might have been expected to have been thinking about a further edition, delayed the production of the sixth edition until 1994. Both that edition and this seventh edition have been entrusted to me. However, while it is now fifteen years since an edition was produced by Professor Parker and Professor Mellows, the immense debt which this work owes to their erudition and scholarship will be apparent to anyone familiar with the editions produced by them and will continue to be apparent for many editions to come.

This edition generally follows the same order as its predecessor. I have divided the extremely long Chapter on Express Private Trusts into three Chapters dealing, respectively, with The Formal Requirements for the Creation of a Trust, The Essential Ingredients of a Trust, and The Constitution of a Trust, while I have inserted the extremely short Chapter on Action on Appointment as Trustee into the Chapter on The Appointment, Retirement and Removal of Trustees. Two wholly new Chapters, on Pension Trusts and Trusts in the Conflict of Laws, have been incorporated, the latter having been placed at the end together with the Chapter on Exporting Trusts. The entire text has been updated and reformatted in the hope that each Chapter will now appear to have a similar style.

The principal legislative change since the last edition has been the enactment of The Trusts of Land and Appointment of Trustees Act 1996; its importance is demonstrated by the number of references which it has been necessary to make to its provisions. There have also been significant legislative changes in relation to trustee investment powers and to the taxation of trusts, most of the latter in the most recent Budget. The most important judicial developments have been produced by three decisions of the Law Lords, the decisions of the House of Lords in *Target Holdings v. Redfurns* and *Westdeutsche Landesbank Girozentrale v. Islington L.B.C.* and the decision of the Privy Council in *Royal Brunei Airlines v. Tan*. However, many other significant judgments have been handed down at all levels, particularly in the Court of Appeal.

In the prefaces to both the fifth and the sixth editions of this work, reference was made to the Twenty-Third Report of the Law Reform Committee produced in 1982 and the hope was expressed that most of its recommendations would be enacted by the time of the following edition. Some of the ground covered by that Report has now been considered by the Trust Law Committee, established in 1994 under the Chairmanship of Sir John

Vinelott. Its First Working Party, under the Chairmanship of Professor David Hayton, has produced Reports on the Investment Powers of Trustees (which led to the legislative changes in this area already referred to), on Collective Delegation by Trustees (which was incorporated into the Law Commission's subsequent Consultation Paper on Trustees' Powers and Duties) and the Rights of Creditors against Trustees and Trust Funds. Details of most of these proposals for much needed reform of the law of trusts have been incorporated into the text of this edition. This Working Party is also about to produce a Report on the Proper Ambit of Protection of Trustees. A Second Working Party, under the Chairmanship of Mr. John Mowbray, Q.C., has been set up to produce a Report on Apportionment between Capital and Income and the Committee as a whole is to produce what has been described as a new Table A of Trustees' Powers. Legislation to implement some or all of these proposals for reform can be anticipated during the lifetime of this edition.

I would like to thank Professor Mellows for continuing to repose his confidence in me by entrusting me with this further edition, for which I alone am responsible. I would as always like to thank those of my friends and colleagues with whom I have discussed the subject matter of this work over the years for the benefit of their ideas and criticisms and on this occasion I would particularly like to mention Mr Brian Green, Q.C., of Wilberforce Chambers, 8 New Square, Lincoln's Inn, Professor David Hayton, Barrister, Recorder, and Professor of Law in the University of London at King's College London, and Professor Paul Matthews, Solicitor, Coroner, and Visiting Professor of Law at King's College London, from all of whom I have learnt a very great deal in the last two years. I would also like to thank the members of my Chambers for their support and my clerks for their forbearance. Finally, I would like to thank the publishers for producing the Index and the Tables of Cases, Statutes, and Statutory Instruments and for their patience and efficiency.

The law has been stated from the sources which were available to me on April 30, 1998.

June 9, 1998

A. J. Oakley
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Lincoln's Inn

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