

PARKER & MELLOWS

THE MODERN
LAW OF TRUSTS

8TH EDITION

A.J. OAKLEY

THOMSON

SWEET & MAXWELL TM

PARKER AND MELLOWS:

THE MODERN LAW OF TRUSTS

Eighth Edition

by

A. J. OAKLEY, M.A., LL.B., T.E.P.,
of Lincoln's Inn, Barrister-at-Law,
Sometime Fellow of Trinity Hall, Cambridge

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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. That edition, the seventh edition, and this eighth edition have been entrusted to me. However, while it is now twenty years since an edition was produced by Professor Parker and Professor Mellows and while the work has somehow since almost doubled in length, the debt which this edition 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, save that I have reversed the order of two of the chapters on express private trusts so that the chapter on "The Essential Ingredients of a Trust" now precedes the chapter on "The Formal Requirements for the Creation of a Trust". However, the rationalisation in the Trustee Act 2000 of a number of different pre-existing standards by which the conduct of trustees was judged has meant that the contents of the three separate chapters which previously dealt with different aspects of the administration of trusts have been able to be incorporated into a single chapter. The chapters on "Pensions Trusts" and "Trusts in the Conflict of Laws", both of which appeared for the first time in the last edition, have been considerably expanded. All the remaining chapters have been brought fully up to date.

The most important legislative development since the last edition has been the enactment of the Trustee Act 2000, which has substantially amended the powers of trustees as well as the standards by which their conduct is to be judged. The most important judicial developments have both been provided by the decision of the House of Lords in *Twinsectra v. Yardley* which has restated both the law governing the nature and extent of *Quistclose* Trusts and the definition of dishonesty for the purposes of the imposition of "liability for dishonest assistance". However, many other significant judgments have been handed down at all levels.

The Law Commission and the Trust Law Committee have both remained active. The former has produced proposals for a new Perpetuities and Accumulations Act which is expected to be enacted during the lifetime of this edition; its provisions are already largely known and have therefore been able to be discussed in detail. Both have collaborated in proposals for legislation dealing with Trustee Exemption Clauses, which was still at the consultation stage when this edition had to go to press. However, more significant for trust law in general is likely to prove a report on charitable trusts published in 2002 by the Government's Strategy Unit. This consultation document, entitled

"Private Action, Public Benefit", envisaged a new statutory definition of charity as an organisation which provides public benefit and which has one or more of ten listed purposes; it was hoped that this definition would provide a clearer framework while retaining existing case law and the flexibility to evolve as society changes. The relevant consultation period concluded at the end of 2002 but no further developments had occurred by the time that this edition had to go to press; nevertheless some form of legislation is obviously likely during the lifetime of this edition.

This edition has been produced at the end of a period during which I progressively retired from my academic positions at Cambridge in order to concentrate on practice at the Chancery Bar. During this period I also had for four years the advantage of teaching an LL.M. course on Advanced Trust Law at Cambridge and this edition has benefited greatly from the contributions of both the students and the visiting lecturers on that course. More generally, I hope not only that this work is no less academic for now being written by a full time practitioner but also that it has benefited from the insights which I have acquired as a result of my practice.

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. Among the many friends and colleagues to whom I am grateful for the benefit of their ideas and criticisms over the years, I would on this occasion particularly like to mention Mr. Nicholas Davidson Q.C., Mr. Romie Tager Q.C., and Mr. Hodge Malek Q.C., all of whom have led me in cases which are discussed in this edition. I would also like to thank my wife, Margaret Halliwell, Reader in Law at City University, for her help and support and for the fact that, despite being the author of a rival textbook, she was prepared to tolerate the disruption of her weekends while this edition was being prepared. Finally, I would like to thank the publishers for producing the Index and the Tables of Cases, Statutes, and Statutory Instruments and for their general efficiency.

The law has been stated from the sources which were available to me on May 31, 2003.

A. J. Oakley
11 Old Square
Lincoln's Inn
July 16, 2003

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