

COMMONWEALTH CARIBBEAN LAW OF TRUSTS

Third Edition

Gilbert Kodilinye and Trevor Carmichael



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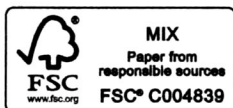
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COMMONWEALTH CARIBBEAN LAW OF TRUSTS

Third Edition

The law of trusts is a subject of considerable importance in the Commonwealth Caribbean. Traditional areas, such as testamentary trusts, resulting and constructive trusts, and charitable trusts, are now fully incorporated into the mainstream substantive law of the region, while the principles associated with offshore trust regimes are constantly expanding and developing.

This third edition of *Commonwealth Caribbean Law of Trusts* has been updated to reflect new case law and legislation, and to highlight recent trends relating to both traditional and offshore trusts. The book provides a core text for students of trusts law in the Commonwealth Caribbean, comprehensively covering general legal principles and analysing key Caribbean and English cases. This established text will also serve as a useful reference source for practitioners of trusts law.

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COMMONWEALTH CARIBBEAN LAW SERIES

The Commonwealth Caribbean Law Series is the only series of law books that covers the jurisdiction of the English speaking Caribbean nations. The titles in the series were first published in 1995 to acclaim from academics, practitioners and the judiciary in the region. Several editions followed, and they have now become essential reading for those learning and practising Caribbean law.

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FOREWORD¹

The publication of the third edition of *Commonwealth Caribbean Law of Trusts* serves as an important and gratifying step in the ongoing development of Commonwealth Caribbean legal education and research. When the Faculty of Law and the Council of Legal Education were established in 1970 and 1971 respectively, it was expected that they would provide the stimulus for furthering the high standard set for the region by the Federal Supreme Court, whose all too short life ended when the Federation of the West Indies collapsed.

While these institutions have delivered on their early promise, there is no room for complacency. The establishment of the Caribbean Court of Justice signals our growing maturity as a region prepared to take ultimate responsibility for the administration of justice within CARICOM. At the same time, it places on our teaching institutions the obligation to produce a pool of the brightest and best minds to service the region's needs. How and what students of the Law are taught and how they are mentored, both in the classroom and in their formative years at the Bar, becomes even more important. For the probity of Caribbean jurisdictions in the modern era depends not only on sound Government policy and regulation, but also on the setting and maintenance of the highest standards of professionalism, integrity and scholarship for legal practitioners in all spheres. The existence of first class libraries at the Law Faculty and Law Schools facilitates the search for relevant authorities from legal systems throughout the Commonwealth and beyond. It also meets the increasing demand for specialisation, which is necessary to cope with the complexities of modern international relations in a variety of fields, including trade and commerce; economics and finance; politics and diplomacy; globalisation and multinational corporations; the environment and natural resources; and aid and development. Equally as important, available library resources enable the search for legislative solutions to all these problems to be focused on best practice wherever it is to be found.

It is in this context that *Commonwealth Caribbean Law of Trusts* is such an impressive and important piece of work. Its strength lies in the combination of academic and practical expertise and experience of its authors, Professor Gilbert Kodilinye and Dr. Trevor Carmichael, the range of topics it covers and the wealth of source material it draws upon. Of particular interest in this new edition is the material dealing with the evolving beneficiary principle as well as the role now played by the Foundation as an entity in the law of Trusts.

Commonwealth Caribbean Law of Trusts is essential reading for academic and practising lawyers, accountants and officers of government department and agencies, banks and financial institutions. The authors are to be warmly congratulated once more on the scope of their work, the clarity of their exposition and the depth of their insight.

Sir Roy Marshall

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January 2012

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PREFACE

The law of trusts is an area of growing importance in the Commonwealth Caribbean. Several islands in the region have developed, or are in the process of developing, facilities for offshore financial services and trust management, which has led to a great increase in the number of trusts established in those jurisdictions. In addition, economic development throughout the Caribbean has brought into focus such diverse aspects of trusts law as the nature of beneficial interests in the matrimonial or family home, *donationes mortis causa*, charitable trusts, pension scheme trusts and the fiduciary duties of trustees.

Many Caribbean jurisdictions have also implemented specialist ‘offshore’ trust legislation which seeks to make the trust a more attractive instrument for persons outside the jurisdictions. While this new development is complex and dynamic, we have sought to consider it in this edition in a multi-layered sense, so that the reader may be able to appreciate an integrated perspective on the subject.

The aim of this book is to provide a basic text for students of trusts law in the Commonwealth Caribbean by means of an account of general principles accompanied by analysis of selected Caribbean and English cases, both reported and unreported, which best illustrate the application of trust principles, and which deal with the kinds of issues that are most likely to be encountered in the Caribbean. It is hoped that practitioners will also find the book useful as a work of ready reference, particularly with respect to the unreported judgments which might otherwise be unavailable or inaccessible.

We are extremely grateful to persons who have assisted with the previous editions, and particularly to Vanessa Kodilinye, whose legal and editorial skills were again of great value in research. Andrea Mullin Henry and Giles Carmichael assisted us with some of the new developments relating to the ‘offshore’ trust environment. Colleagues at Chancery Chambers in Barbados were as always encouraging.

We would also like to thank the editorial staff at Routledge for delivering a most attractive finished product, and to again extend special gratitude to Sir Roy Marshall for his very insightful and generous foreword.

**Gilbert Kodilinye
Trevor Carmichael**

January 2012

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