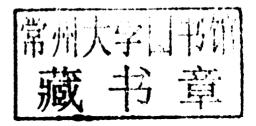
# INTERNATIONAL TRUST LAWS

PAOLO PANICO



# INTERNATIONAL TRUST LAWS

PAOLO PANICO





# OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford 0x2 6DP

Oxford University Press is a department of the University of Oxford. It furthers the University's objective of excellence in research, scholarship, and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi Kuala Lumpur Madrid Melbourne Mexico City Nairobi New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece Guatemala Hungary Italy Japan Poland Portugal Singapore South Korea Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press in the UK and in certain other countries

> Published in the United States by Oxford University Press Inc., New York

> > © Paolo Panico, 2010

The moral rights of the authors have been asserted
Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Database right Oxford University Press (maker)

First published 2010

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, without the prior permission in writing of Oxford University Press, or as expressly permitted by law, or under terms agreed with the appropriate reprographics rights organization. Enquiries concerning reproduction outside the scope of the above should be sent to the Rights Department, Oxford University Press, at the address above

You must not circulate this book in any other binding or cover and you must impose the same condition on any acquirer

British Library Cataloguing in Publication Data

Data available

Library of Congress Cataloging-in-Publication Data Panico, Paolo. International trust laws / Paolo Panico. p. cm. ISBN 978-0-19-955162-0 (hardback) 1. Trusts and trustees. I. Title.

K795.P38 2010 346.05'9---dc22

2009047942

Typeset by Glyph International Ltd., Bangalore, India Printed in Great Britain on acid-free paper by CPI Antony Rowe, Chippenham, Wiltshire

ISBN 978-0-19-955162-0

1 3 5 7 9 10 8 6 4 2

A number of persons have played a key role in allowing this book to come into existence. I would like to specially thank my parents' relentless and unconditional support, my colleagues in the Luxembourg and Geneva offices (especially Catherine and Kathryn), who secured uninterrupted and smooth operations during my protracted 'writing leave', my partner Alina (iubirea vieții mele), who taught me that an end ushers in a new beginning, and whose tactful and lovely presence was of invaluable assistance while 'the book' occupied nearly all of our leisure time, as well as Aida (Frumuşica), our Manx cat, who often sat by my PC, probably ignoring the fact that her breed brought her so close to some topics of this book.

# **CONTENTS**

Table of Cases	xix
Table of Legislation	xxxv
Introduction	
A. Introduction	IN.01
B. The International Circulation of Trusts	IN.04
C. The Main Features of International Trusts	IN.07
D. A Common Core of Trusteeship?	IN.14
E. Purpose and Arrangement of Chapters	IN.19
	IN.26
F. Jurisdictions Covered and 'Reading Paths'	114.20
I CREATION OF TRUSTS	
1. Creation and Validity of Trusts: The Settlor's Intention	
A. Introduction	1.01
B. The 'Three Certainties' and a Gift to the Trustee:	
the Creation of a Valid Trust	1.14
(1) The (lack of) formal requirements to create a trust	1.22
(a) An exception: the formalities required in certain jurisdictions	1.30
(2) Certainty of intention	1.39
(a) Imperfectly stated intention	1.41
(b) Failed transfers and 'imperfect gifts'	1.48 1.56
(c) 'It is as much yours as mine': unilateral declarations of trust	1.65
(3) Certainty of subject matter	1.70
(4) Certainty of objects: a renvoi	·
C. Shams	1.72
(1) Evolution of the sham doctrine in England: from	1.81
hire purchase to trusts	1.89
(2) Shams and the <i>Rahman</i> decision: an incidental remark	1.09
(3) Shams in recent trust judgments offshore and onshore	1.98
<ul><li>(a) Common intention: 'it takes two to tango'</li><li>(b) From sham to trust—but 'no comebacks'</li></ul>	1.107
(c) Settlor's involvement and trustee discretion	1.114
(4) Concluding remark: a careful approach to sham allegations	1.119
D. 'Alter Ego Trusts': Antipodean Developments	1.125
(1) 'Alter ego' and sham: two separate concepts	1.126

	(2) Ownership of an alter ego trust property	1.132 1.133
	(3) Alter ego as evidence of sham	
	E. Family Law and Tax Cases: Beyond the Sham Argument	1.135
	(1) Divorce cases: trust assets as 'resources'	1.136
	(2) Tax cases: trusts in a 'pre-ordained series of transactions'	1.150
	F. Reserved Powers Trusts	1.157
	(1) Reserved powers in offshore trust legislation	1.160
	(a) Reserved powers legislation in the form of statutory lists	1.163
	(b) Reserved powers in special trust legislation (STAR, VISTA)	1.174
	(2) Having one's cake and eating it? Related issues and risks	1.177
	(a) Immediate effect: a trust inter vivos or a will?	1.178
	(b) Family law and tax consequences	1.186
	(c) The Hague Trusts Convention and trustee control	1.192
	(d) Reserved powers and fiduciary duties	1.195
	G. Settlor's Control of Beneficial Interests: Forfeiture Clauses	1.205
	H. Settlor's Intention and the Termination of the Trust	1 21 /
	by the Beneficiaries	1.214
	(1) The English approach: Saunders v Vautier	1.216
	(a) The settlor's intentions: a remark	1.227
	(2) An extension: the Variation of Trusts Act 1958	1.231
	(3) Offshore statutory enactments incorporating the rule	1 2/2
	in Saunders v Vautier	1.243
	(a) The trustee's consent	1.252
	(4) The US way: a settlor's 'material purpose'	1.258
	(5) Canadian and offshore enactments rejecting the rule in Saunders v Vautier	1.267
		1.277
	(6) A clash of the two approaches: Re Barton	
	I. Rectification of a Trust Instrument	1.274
	(1) Rectification: the principles	1.279
	(2) A survey of cases	1.285
	(a) Rectification and tax-planning objectives	1.286
	(b) Rectification of errors not related to tax	1.299
	II THE POWERS AND DUTIES OF TRUST	EES
2.	Trustee Investments: Powers and Duties	
	A. Introduction	2.01
	B. The 'Prudent Man of Business' and Authorized Investment Lis	ts 2.05
	(1) The 'prudent man rule' in England and the USA	2.06
	(2) Applying the rule: authorized investment lists	2.15
	(3) Special investment powers under the Trustee Act 1925	2.21
	(a) Express investment powers and the meaning of 'investment'	2.24
	(b) An experiment: the Trustee Investment Act 1961	2.30
	(4) Diversification and trustee liability: two cases	2.32
	(a) Prudence versus the preservation of the trust principal	2.33
	(b) Diversification and impartiality to the beneficiaries	2.39

C. The 'Prudent Investor': Portfolio Theory in Modern Trust Legislation	2.43
(1) General investment powers	2.50
(a) Trustee's general powers 'as a beneficial owner'	2.52
(b) Trustee's investment powers 'as a beneficial owner'	2.58
(c) General powers following the Uniform Prudent Investor Act	2.66
(2) Investment assets in a portfolio, not in isolation	2.75 2.81
(a) Circumstances to be considered for an investment strategy	2.96
(3) Diversification in statute law	2.105
(4) Diversification in US case law	2.108
<ul><li>(a) Diversification as an absolute duty</li><li>(b) Diversification as a duty under the circumstances</li></ul>	2.119
(c) 'No-diversification is not presumptively imprudent'	2.123
D. Standard of Care	2.130 2.132
(1) The Trustee Act 2000 and the introduction of a duty of care	2.132
(2) Duty of care in offshore trust legislation	2.140
(3) Standard of care under the Uniform Prudent Investor Act	2.143
(4) An application: investment advice	2.154
(a) Trustees' power to obtain advice	2.163
(b) Trustees' duty to seek advice	2.105
3. Delegation of Trustee Functions	
A. Introduction	3.01
B. The Rule of Equity: Delegatus non Potest Delegare	3.04
C. Delegation under Modern Trust Legislation	3.14
(1) Delegation of administrative tasks under the Trustee Act 1925	3.16
(2) Power of attorney under the Trustee Act 1925	3.21
(3) Statutory delegation powers in modern offshore trust law	3.28
(4) Delegation under the Uniform Prudent Investor Act	3.38
(5) 'Delegable functions' under the Trustee Act 2000	3.45
(6) A special case: the 'managing trustee'	3.60
4. The Business Enterprise as a Trust Asset	
A. Introduction	4.01
	4.05
B. The Problems: Diversification and the <i>Bartlett</i> Approach	4.06
(1) Diversification: a cross-reference	4.00
(2) Trustees' duties as informed and active shareholders	4.07
under English case law	4.12
(a) Trust-owned 'underlying companies': some incidental remarks	
C. The Solutions: Onshore and Offshore	4.22
(1) Drafting techniques, 'reserved powers', and 'special entities'	4.22
(a) Drafting techniques	4.23
(b) 'Reserved powers' legislation	4.29
(c) 'Special entities'	4.33
(d) Modern developments under English case law	4.35 4.41
(2) VISTA trusts	4.41
(a) Trust to retain	4.40

		(b) Delegation to the underlying company directors	4.46
		(c) An exception: 'intervention calls'	4.49
		(d) Enforcement and international recognition of VISTA trusts	4.52
		(3) Private trust companies	4.57
		(a) Involvement of family members and corporate governance issues	4.61
		(b) Reduced licensing obligations—or free market alternatives?	4.63
		(c) Overall holding structure: trust and non-trust approaches	4.66
5.	Di	positive Powers and the Rule in <i>Hastings-Bass</i>	
	A.	Introduction	5.01
	B.	Discretionary Trusts and Statutory Dispositive Powers	5.04
		(1) Discretionary powers and their objects	5.06
		(a) Power to add beneficiaries	5.09
		(b) Power of appointment within a class of beneficiaries	5.11
		(c) Offshore statutory enactments	5.14
		(d) 'Objects of powers' and their rights	5.16
		(e) Discretionary trusts and standards of distribution in the Uniform Trust Code	5.20
		(2) Statutory powers of maintenance and of advancement	5.24
		(a) Powers of maintenance and of advancement under the Trustee Act 1925	5.29
		(b) Offshore statutory enactments	5.35
	C.	The Doctrine of 'Fraud on a Power'	5.43
		(1) Distributions to non-beneficiaries	5.46
		(2) Distributions 'for the benefit' of a beneficiary	5.56
		(a) Revocable trust	5.59
		(b) Paying a beneficiary's debts	5.60
		(c) Discharging a beneficiary's moral obligations	5.65
	D.	When Things Go Wrong: the 'Rule in Hastings-Bass'	5.69
		(1) The original case and the 'rule' in England	5.75
		(2) The making of the 'rule'	5.78
		(3) Unintended tax consequences and the operation of the 'rule'	5.81
		(4) Outlying decisions and the Revenue's view	5.89
	E.	Offshore Applications	5.95
		(1) The 'rule' in leading offshore jurisdictions	5.96
		(2) Extending the scope: some recent Jersey decisions	5.102
	F.	A Temporary Conclusion: (Where) will the 'Rule' Last?	5.109
		III TRUSTEE LIABILITY	
6.	Tr	astee Liability to Third Parties	
		Introduction	6.01
	В	Personal Liability, Indemnity, and Subrogation	6.07
	٥.	(1) The personal liability of trustees dealing with third parties	6.09
		(2) Contracting out liability	6.16
		(3) Trustee indemnity and creditor subrogation	6.22

(a) Hurdles to creditor subrogation	6.25
(b) Limitations to the trustee's right of indemnity	6.31
(c) Additional and successor trustees	6.37
(4) Trustee indemnity: lien or equitable interest? An incidental remark	6.39
(a) Indemnity as a charge on the trust property	6.40
(b) Indemnity as a beneficial interest in the trust property	6.42
(c) 'Dual patrimony theory': a reconciling approach	6.45
(5) Indemnity by the beneficiaries	6.50
(6) Extending the indemnity: unjust enrichment	6.57
C. Statutory Limitation of Trustee Liability	6.60
(1) Approaches under uniform legislation in the United States	6.62
(2) Approaches under modern offshore trust legislation	6.73
(a) Limitation of trustee liability	6.75
(b) Removal of hurdles to subrogation	6.87
(c) Protection of third parties dealing with trustees	6.95
D. Civil Law Enactments and the 'Reification' of Trusts	6.105
(1) Italy and Switzerland: some original developments	6.106
(a) Italy: 'trusts interni' as 'trading trusts'	6.108
(b) Switzerland: trust bankruptcy	6.113
(2) Trusts as 'juristic persons'?	6.119
(a) Delaware 'business' or 'statutory' trusts	6.120
(b) Liechtenstein 'trust enterprises'	6.129
(3) Private foundations: a renvoi	6.132
E. Liability of Individual Directors and 'Dog-leg Claims'	6.138
(1) The fiduciary duties of trust company directors	6.141
(2) Directors' statutory role as guarantors	6.142
(3) 'Dog-leg claims'	6.147
7. Trustee Exemption Clauses	
A. Introduction	7.01
B. The English Rule in Armitage v Nurse	7.04
(1) 'No trustee is liable unless by his own actual fraud'	7.06
(2) (Failed) alternative strategies to engage trustee liability	7.15
(a) Exemption clauses and unfair contract terms	7.16
(b) Exemption clauses and improperly incurred expenses	7.19
(3) Narrow construction and rules of practice	7.22
(a) The contra proferentem approach	7.23
(b) A rule of practice for professional trustees	7.33
C. Offshore Applications of the English Rule	7.40
(1) Exemption clauses in offshore case law	7.41
(2) Exemption clauses in offshore statute law	7.47
D. A Stricter Approach: 'Fraud, Wilful Misconduct or Gross Negligence'	7.55
(1) Scottish precedents and culpa lata	7.57
(a) Related decisions following the Scottish authorities	7.63
(2) Leading decisions and the statutory rule in Jersey	7.69
(3) Other offshore enactments of the Jersey rule	7.79

	E. Trustee Exculpation Clauses under the Laws of the USA	7.86
	(1) 'Bad faith and reckless indifference' under the Uniform Trust Code	7.88
	(a) Adequate communication to the settlor	7.93
	(2) A harsher approach in some state legislation and case law	7.99
	(2) 11 maintain approximation (2)	
8.	Trustees' Remuneration and Expenses	
	A. Introduction	8.01
	B. Remuneration of Trustees: From a Moral Duty to	
	a Professional Service	8.04
	(1) The English tradition: 'no allowance for care and trouble'	8.04
	(a) Exceptions: charging clauses and court orders	8.12
	(2) Professional trustees: a statutory right to remuneration	8.29
	(3) The US approach: reasonable compensation	8.42 8.48
	(4) Trustees' entitlement to remuneration under offshore trust legislation	8.52
	(5) An application: directorship fees in underlying companies	
	C. Right to Properly Incurred Expenses	8.58
	(1) Right to expenses in statute law	8.59
	(2) Expenses relating to court directions	8.70
	D. Trust Litigation: Should Trustees Participate?	8.80
	(1) The costs of a neutral trustee	8.87
	IV CONTROL MECHANISMS	
Ω.	. Disclosure of Information to the Beneficiaries and Letters of Wishes	
7	A. Introduction	9.01
	B. Trustees' Duty to Provide Information in Case Law	9.05 9.11
	(1) Pre-Schmidt decisions: absolute rights to the 'trust documents'	9.11
	(a) Trust documents and trustees' discretions: the	9.15
	'Londonderry principle'  (b) Disclosure denied in the beneficiaries' best interests	9.26
	(c) Disclosure to compel proper trust administration	9.32
		9.44
	C. Schmidt and After: the Court's 'Inherent Jurisdiction'	9. <del>44</del> 9.45
	(1) The decision in Schmidt v Rosewood Trust Ltd	9.49
	(2) The 'Schmidt principle' applied	9.50
	<ul><li>(a) Disclosure to objects of powers and excluded beneficiaries</li><li>(b) Extent and contents of disclosure</li></ul>	9.56
	(c) A special case: 'trust accounts'	9.60
	(d) The costs of trustees delaying	9.62
	· · · · ·	9.65
	D. Trustees' Duty to Provide Information in Statute Law	9.70
	<ul><li>(1) India and Israel: early statutory enactments of the English model</li><li>(2) A special issue: disclosure to the settlor</li></ul>	9.78
	(2) A special issue: disclosure to the settlor (3) The Uniform Trust Code	9.79
	(a) Three categories of beneficiary	9.80
	(b) Corresponding disclosure requirements	9.84
	(c) Examples of individual state enactments of the UTC	9.95
	• •	

	(4) Offshore disclosure regimes based on the nature of beneficial interests	9.98
	(a) Trustee's duty to prepare accounts	9.102
	(b) Disclosure for proper enforcement of the trust	9.106
	(c) Disclosure based on beneficial interests	9.113
	(d) Allowing for the interests of all beneficiaries	9.124
	(e) Trustees' right not to disclose the reasons for their discretions	9.128
	(5) Offshore disclosure regimes based on focused statutory requirements	9.133
	(a) Trustee's duty to prepare accounts	9.134
	(b) Trustee's duty to reply to a beneficiary's request	9.138
	(c) Trustee's duty of confidentiality	9.143
	(d) Trustees' right not to disclose the reasons for their discretions	9.147
	(6) Offshore alternative trust regimes	9.157
F	Letters of Wishes	9.162
L.	(1) Validity and disclosure of letters of wishes in case law	9.164
	(a) The validity of letters of wishes vis-à-vis the terms of the trust	9.166
	(2) Disclosure: letters of wishes as confidential documents	9.176
	(3) Disclosure and the court's discretion	9.179
	(4) Letters of wishes in offshore trust legislation	9.183
	(a) Statutory terms for validity and disclosure	9.184
	(b) Statutory references	9.190
10. F	rotectors	
A.	Introduction	10.01
B	Protectors in Case Law: New Wine in Old Bottles?	10.07
D.	(1) Protector powers: validity and exercise	10.08
	(a) The validity of the protector's office	10.09
	(b) The valid exercise of protector powers	10.14
	(2) The protector's powers: personal or fiduciary?	10.16
	(a) Personal or fiduciary powers: introductory remarks	10.17
	(b) The personal powers of beneficiaries acting as protectors	10.22
	(c) The fiduciary powers of protectors with an interest in the trust fund	10.28
	(d) The fiduciary powers of outside protectors	10.35
	(e) The settlor's role as protector	10.44
	(3) Judicial control of the protector	10.49
	(a) Court appointment and removal of protectors	10.50
	(b) Beneficiaries' standing to sue protectors: some US examples	10.57
	(c) Protector's remuneration	10.60
C	Protectors in Offshore Statute Law: Fish or Fowl?	10.63
Ŭ	(1) Protectors in offshore trust legislation	10.66
	(a) Protector's advice and consent under offshore and	
	New Zealand legislation	10.67
	(2) The statutory powers of trust protectors	10.78
	(a) Consent and veto powers	10.79
	(b) Appointment and dismissal of trustees	10.83
	(c) Statutory power checklists	10.85
	(d) Protection of beneficiaries and purposes	10.95
	(3) Protector's powers in offshore statute law: personal or fiduciary?	10.99

(4) Protector's remuneration in offshore trust legislation	10.112
(5) Protection committees: unanimity or majority rules	10.116
(6) Trustees' limitation of liability in the presence of a protector	10.120
D. Protectors in US Trust Legislation	10.129
(1) 'Powers to direct' in the Uniform Trust Code	10.130
(2) US protector legislation	10.134
(a) 'Excluded fiduciary' and fiduciary advisors	10.136
(b) Non-fiduciary protectors and trustees' liability	10.151
V SPECIAL USES OF TRUSTS	
11. Protection from Heirs and Creditors	
A. Introduction	11.01
B. Trusts and 'Forced Heirship' Issues	11.07
(1) 'Forced heirship' regimes: some examples	11.10
(2) Attack strategies and 'anti-forced heirship' offshore trust legislation	11.19
(a) The Cayman Trusts (Foreign Element) Law 1987	11.25
(b) The Hague Trusts Convention	11.33
(c) Offshore statutory enactments	11.41
(3) Trusts and forced heirship in case law	11.80
(a) Offshore litigation	11.81
(b) Onshore civil law cases	11.86
C. 'Asset Protection Trusts'	11.94
(1) Background: the Statute of Elizabeth 1571	11.98
(2) Offshore 'asset protection trusts'	11.110
(a) Offshore fraudulent conveyances legislation	11.113
(b) Offshore 'asset protection trust' legislation	11.142
(c) Asset protection in jurisdictions with no 'asset protection legislation'	11.167
(d) 'Pauline action' in Jersey	11.172
(3) US 'asset protection trusts'	11.189
(a) US 'asset protection trusts' for non-US settlors	11.190
(b) US 'asset protection trusts': the main features	11.195
D. 'Protective' and 'Spendthrift' Trusts	11.214
(1) The English 'protective trust'	11.218
(2) The US 'spendthrift trust'	11.224
(3) Offshore 'protective' and 'spendthrift' trusts	11.232
(a) Protective trusts as determinable interests in income	11.233
(b) Spendthrift trusts implying a restriction against alienation	11.238
E. Conclusions: 'Protected trust structures' in Italy	11.246
(1) 'Revocatory action' setting aside fraudulent dispositions	11.247
(2) 'Self-segregation' and 'asset protection'	11.251
(3) 'Protected trust structures' for the incapacitated	11.257
12. Non-Charitable Purpose Trusts	
A. Introduction	12.01

B. Purpose Trusts under English Law:	
General Prohibition and Exceptions	12.02
(1) The charitable trust exception	12.07
(2) Non-charitable purpose trusts under English law: a reference framework	12.19
(a) Non-charitable purpose trusts and uncertainty	12.22
(b) Non-charitable purpose trusts and enforcement	12.30
(c) Non-charitable purpose trusts and perpetuity	12.38
(d) Non-charitable purpose trusts and public policy	12.57
(e) Non-charitable purpose trusts for ascertainable classes of beneficiary	12.61
(f) Non-charitable purpose trusts and unincorporated associations	12.68
(g) Non-charitable purpose trusts, powers, and conditions	12.77
(3) The 'beneficiary principle': a theoretical remark	12.84
C. Non-charitable Purpose Trusts in Offshore Trust Legislation	12.95
(1) The forerunners and the Hague Trusts Convention	12.98
(a) Offshore purpose trusts with 'domestic' effects in Italy	12.107
(2) Two 'generations' of offshore purpose trusts	12.116
(a) Admitted purpose trusts: definitions and requirements	12.121
(3) Evolutionary purposes: the 'cy-près' doctrine	12.149
(4) Enforcers and enforcement mechanisms	12.159
(a) Enforcers: permissive provisions	12.161
(b) Enforcers: mandatory provisions	12.164
(c) The fiduciary powers of purpose trust enforcers	12.173
(d) Widespread enforcement mechanisms	12.184
(5) Offshore purpose trusts and perpetuity	12.196
(6) 'Designated trustees' and other formalities	12.207
Index	583

583

# TABLE OF CASES

Australia	xix	Hong Kong	xxviii
Bahamas	xx	India	xxviii
Barbados	xx	Ireland	xxviii
Bermuda	xx	Isle of Man	xxviii
British Virgin Islands	xx	Italy	xxviii
Brunei Darussalam	xxi	Jersey	xxix
Canada	xxi	New Zealand	xxxi
Cayman Islands	xxi	Scotland	xxxii
Cook Islands	xxi	South Africa	xxxii
England/Wales	xxii	Spain	xxxii
France	xxvii	Sri Lanka (then Ceylon)	xxxii
Gibraltar	xxvii	Switzerland	xxxii
Guernsey	xxvii	United States	xxxii

In alphabetical order by country/territory.

#### **AUSTRALIA**

Ascot Investments Limited v Harper (1981) 148 CLR 337
Ashton, In the Marriage of (1986) 11 Fam LR 457 1.132, 1.145
Bacon v Pianta (1966) 114 CLR 634
Balkin v Peck (1998) 43 NSWLR 706
Breen v Williams (1996) 186 CLR 719.43
Burton, Re [1994] FCA 55710.11
Collie v Merlaw Nominees Pty Limited [2001] VSC 39 (28 February 2001)
Collie v Merlaw Nominees Pty Ltd [1998] VSC 203
Commissioner of Stamp Duties v Buckle (1998) 192 CLR 226
Commissioners of Stamp Duties (NSW) v Carlenka Pty Ltd
[1995] 41 NSWLR 329
Commissioners of Stamp Duties (Queensland) v Joliffe (1920) 28 CLR 178 1.64
CPT Custodian Pty Ltd v Commissioner of State Revenue of the
State of Victoria [2005] 224 CLR 98 1.254, 6.42
Davidson, In the Marriage of (No 2) (1990) 101 FLR 373, 14 Fam LR 817 1.132, 1.145
Enhill Pty Limited, Re [1983] VR 561
Gatsios Holdings Pty Ltd v Nick Kritharas Holdings Pty Ltd [2002] NSWCA 29 6.30
Goodwin, In the Marriage of (1990) 101 FLR 386
Gould, In the Marriage of (1993) 17 Fam LR 156
Hanel v O'Neill (2004) 46 ACSR 378
Harris, In the Marriage of (1991) 104 FLR 458
Hartigan Nominees Pty Limited v Rydge [1992] 29 NSWLR 4059.163, 9.177, 9.179
JA Pty Ltd v Jonco Holdings Pty Ltd (2000) 33 ACSR 691
JW Broomhead (Vic.) Pty Ltd (in liquidation) v
JW Broomhead Pty Ltd [1985] VR 891

### Table of Cases

Kemtron Industries Pty Ltd v Commissioner of Stamp Duties [1984] 1 Qd R 576
McKnight v Ice Skating Queensland [2007] QSC 273
McLean v Burns Philp Trustee Co Pty Ltd [1985] 2 NSWLR 623
Miskelly v Arnheim [2008] NSWSC 1075
Moyes v J & L Developments Pty Ltd (No 2) [2007] SASC 261
Octavo Investments Pty Ltd v Knight (1979) 144 CLR 360 6.22, 6.42
Pirbright v Salwey [1896] WN 96
Public Trustee v Smith (2008) 10 ITELR 1018 1.78, 1.125, 1.130–1.132, 1.136, 1.145
Raftland Pty Ltd v Commissioner of Taxation (2008) 82 ALJR 934
Richard Watler Property Ltd v FCT [1996] ATR 97
Rouse v IOOF Australia Trustees Limited [1999] SASC 181
RWG Management Ltd v Commissioner for Corporate Affairs [1985] VR 3856.33
Sharrment Pty Limited, Re (1988) 82 ALR 530
Sir Moses Montefiore Jewish Home v Howell and Co (No 7)
Pty Ltd [1984] 2 NSWLR 406
Spellson v George (1987) 11 NSWR
Staff Benefits Pty Ltd and the Companies Act, Re [1979] 1 NSWLR 207
Stephens v Stephens (2007) 212 FLR 3621.146
Suco Gold Pty Limited, Re (1984) 33 SASR 99
Vacuum Oil Company Pty Ltd v Wiltshire (1945) 72 CLR 319
White v Shortall [2006] NSWSC 1379
Young v Murphy [1996] 1 VR 279
BAHAMAS
Diedrichs-Shurland and Excalibur Investments Holdings Ltd v
Talanga-Stiftung and Kohlrautz [2006] UKPC 58
Frey v Royal Bank of Scotland (Nassau) Limited (2001) 3 ITELR 775
Krishna Books Publishing Trust Sutton v Fedrowsky (2002) 4 ITELR 665
Nova Scotia Trust v Barletta Unreported, Eq No 550 of 1984
Private Trust Corporation v Grupo Torras SA (1997/98) 1 OFLR 443
Rawson Trust Company Ltd v Perlman Unreported, 25 April 1990,
Cause 104, 1989, (1990) 1 BOCM 31
Roywest Trust v Nova Scotia Trust Unreported, Eq No 431 of 1985
Sandford v Sandford (1979–80) 1 LRB 469
oundred Coundred (17/7) Coy 1 21CD 107 1111111111111111111111111111111111
BARBADOS
Bank of Nova Scotia v Tremblay (1998–99) 1 ITELR 673
BERMUDA
MacKie v BCB Trust Co Ltd [2006] WTLR 12538.15
Star Trust case see Von Knierem v Bermuda Trust Co Ltd Unreported,
13 July 1994, Eq Nos 154 and 162, (1994) 1 BOCM
Von Knierem v Bermuda Trust Co Ltd Unreported, 13 July 1994,
Eq Nos 154 and 162, (1994) 1 BOCM
Wingate v Butterfield Trust (Bermuda) Limited [2007]
Bda LR 76, [2008] SC (Bda) 6 Civ (11 February 2008)
BRITISH VIRGIN ISLANDS
Choithram International SA v Pagarani [2001] 2 All ER 492

# Table of Cases

Moss v Integro (1997–98) 1 OFLR 427
BRUNEI DARUSSALAM
Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378
CANADA
Ballard Estate, Re (1994) 20 OR (3d) (Gen Div) 350
Bellinger v Fayers Nuyten 2003 BCSC 563 1.207, 11.17
Central Guaranty Trust Company and Sin-Sard, Re (1995)
24 OR (3rd) 820 (Gen Div)
Drescher v Drescher's Estate 2007 NSSC 352
Green Estate, Re (1983) 45 NBR (2d) 17
Haslam v Haslam (1994) 114 DLR (4th) 562 (Ont Gen Div)2.69
Kent v McKay (1982) 139 DLR (3d) 318 (BCSC)
MacInnes, Re [1935] 1 DLR 401
McInerney v McDonald (1992) 93 DLR (4th) 4159.42
Markle v City of Toronto 2002 DLR LEXIS 135
Pfrimmer, Re [1936] 2 DLR 460
Poche, Re (1984) 6 DLR (4th) 40
Rogers, Re (1929) 63 OLR 180
Russ v British Columbia (Public Trustee) (1994) 3 ETR (2d) 170
Thurgood v Baskerville (1992) 100 Sask R 214
Weldon v Canadian Surety Co (1966) 64 DLR (2d) 735
Western Smallwear and Stationery Co. Ltd v Bell (1966) 55 DLR (2d) 193
CAYMAN ISLANDS
A v Rothschild Trust (Cayman) Ltd [2004–2005] CILR 485 5.91, 5.101
AN v Barclays Private Bank and Trust (Cayman) Limited [2006] CILR 367 1.209-1.212
B v Trust Management (1988–89) CILR N-22
Barclays Private Bank and Trust (Cayman) Ltd v
Chamberlain (2004) 9 ITELR 302
Bridge Trust Company Limited v Attorney-General [2001] CILR 132
Briggs v Integritas Trust Management Ltd [1988–89] CILR 456
(2007) 9 ITELR 676
H, Re (1990–91) CILR N–24
Lemos and Lemos v Courts & Company (Cayman) Limited
(1992–93) CILR 460
Lemos v Coutts Ltd [2003] CILR 381
Megerisi v Scotiabank Trust (Cayman) Limited (2004–05) CILR 456
Ojjeh, Re (1992–93) CILR 348
S Trust, Re (1992–93) CILR 268
Z Trust, In re [1997] CILR 248
COOK ISLANDS
515 South Orange Grove Owners v Orange Grove Partners
(1995) No 1/95

# Table of Cases

Trustee Act 1956 (of New Zealand) as extended by Section 639
of the Cook Islands Act 1915, In the Matter of the OA 6/1999
ENGLAND/WALES
A v A and St George Trustees Limited [2007] EWHC 99 (Fam)1.96, 1.104, 1.109, 1.111, 1.116, 1.118, 1.120, 1.143–1.144, 4.38
Adams and the Kensington Vestry, Re (1884) 27 ChD 394
Adams v Adams [1892] 1 Ch 389
Alsop Wilkinson v Neary [1995] 1 All ER 431
Anker-Petersen v Anker-Petersen (1991) 16 LS Gaz 32, [2000] WTLR 581
Armitage v Nurse [1998] Ch 241 2.133, 3.18, 4.28, 4.35, 7.02, 7.04–7.85, 9.60
Astor's Settlement Trust, Re [1952] Ch 534
Attorney-General of the Cayman Islands v Wahr-Hansen [2000] 3 All ER 642 $\dots 12.12$
Attorney-General v Ross [1986] 1 WLR 252
Attorney-General v The Ironmongers Co (1840) 2 Beav 31312.151
Attorney-General v Whorwood (1759) 1 Ves Sen 534
Baird v Baird [1990] 2 AC 548
Barclays Bank v Quistclose Investments Ltd [1970] AC 567
Barlow Clowes International Ltd (in Liquidation) v Eurotrust
International Ltd [2006] 1 All ER 333
Barrett v Hartley (1886) LR 2 Eq 789
Bartlett v Barclays Bank Trust Co Ltd [1980] Ch 515
4.27–4.28, 4.35, 7.11
Barton deceased, Re [2002] WTLR 469
Barton v Briscoe (1822) Jac 603
Bath v Standard Land Co Ltd [1911] 1 Ch 618.       6.141         Beatty's Will Trust [1990] 3 All ER 844.       12.26
Beddoe, Re [1893] 1 Ch 547
Belchier, Ex p (1754) Amb 218
Beloved Wilkes' Charity, Re (1851) 3 Mac & G 440
Biddencare Ltd, Re [1994] 2 BCLC 160
Blundell, In re (1888) 40 Ch D 370
Bogg v Raper (1998/99) 1 ITELR 267
Bonham v Blake Lapthorn Linell [2006] EWHC 2513 (Ch)
Bowes, Re [1896] 1 Ch 507
Bowman v Secular Society Ltd [1917] AC 406
Boyce v Boyce (1849) 16 Sim 476
Breadner v Granville-Grossman [2001] Ch 523
Breakspear v Ackland [2008] WTLR 777
Briscoe v Jackson (1887) 35 Ch D 460
Bristol and West Building Society v Mothew [1996] 4 All ER 698
Bristol and West Building Society v Mothew [1998] Ch 1
British Bank v Turquand (1856) 6 E & B 327
British Power Traction & Lighting Co Ltd, Re [1910] 2 Ch 470
Brown v Burdett (1882) 21 Ch D 667
Browne v Browne [1989] 1 FLR 291 (CA)
Burrell v Burrell [2005] WTLR 3135.85
Butlin's Settlement Trust, Re [1974] 118 SJ 757, [1976] 1 Ch 251
Butterworth, Re (1882) 19 Ch D 58811.104-11.105, 11.107, 11.110
C v C [2003] 2 FLR 493
Cargill Inc v JWH Special Circumstance LLC Del Ch 7 November 2008 6.126, 7.105