# Underhill and Hayton

Law Relating to Trusts and Trustees -

**Eighteenth Edition** 

General Editor

David Hayton LLB, LLD (Newcastle), MA, LLD (Cantab) Justice of the Caribbean Court of Justice, Bencher of Lincoln's Inn and Fellow of King's College, London

with

Paul Matthews - BCL, LLD Solicitor-Advocate (Higher Courts: Civil); Recorder (Civil); Deputy Master, High Court, Chancery Division; Consultant, Withers LLP; Visiting Professor, King's College, London; HM Coroner for the City of London Charles Mitchell MA (Oxon), Dip Law (City), LLM, PhD (London)

Professor of Law, University College London; Visiting Professor of Law, University of Oxford



Preface	v
Table of Statutes	xvii
Table of Statutory Instruments	<b>. xxx</b> v
Table of European Legislation	xxxix
Table of Cases	xli

# Division One Preliminary terminology

#### Chapter 1 Preliminary terminology

1 Terminology of trust, trustee, trust fund, trust property, breach (	of
trust, beneficiary, settlor, equitable interest and beneficial interest	1.1
2 Legal and equitable estates and interests	2.1
3 Express, statutory, resulting and constructive trusts	
4 Simple and special trusts or bare and active trusts	4.1
5 Fixed and discretionary trusts: interest in possession trusts	
6 Executed and executory trusts	

# Division Two Express trusts

#### Chapter 2 Introduction

7 A	nalysis	of an	express trust								• • • •				. 7.	.1
-----	---------	-------	---------------	--	--	--	--	--	--	--	---------	--	--	--	------	----

### Chapter 3 Matters essential to the prima facie validity of an express trust

8 Language sufficient to create a trust for persons	8.1
9 The constitution of trusts	9.1
10 What property is capable of being made the subject of a trust	10.1
11 The legality of the expressed object of the trust	11.1
12 Necessity or otherwise of writing and signature	12.1

#### Chapter 4 Validity of declared trusts in relation to latent matters

13	Who may	be a settlor or the	rustee	 	 	 	13.1
14	Who may	be beneficiaries	• • • • •	 	 • • • • •	 	14.1

15 When a trust is rectifiable or is voidable for mistake, fraud or undue influence       15.1         16 Effect of the bankruptcy of the settlor on the validity of a settlement       16.1         17 Effect of settlements intended to prejudice creditors apart from bankruptcy       17.1         18 When a trust designed to defeat dependants may be set aside pro tanto under a court order       18.1         19 Miscellaneous instances where a trust may be set aside to thwart criminals       19.1
Chapter 5 The interpretation of executory trusts
20 Executory trusts not construed as strictly as executed trusts20.1
Chapter 6 The termination of trusts of property 21 How trusts terminate
Division Three Trusts imposed by law
Chapter 7 Introduction 22 Analysis of trusts of property imposed by law
Chapter 8 Resulting trusts
<ul> <li>23 Resulting trusts arising where property is transferred on an express trust which does not exhaust the beneficial interest</li></ul>

2.1 Resulting class attoing where a class is declared megal	
25 Resulting trusts arising where a purchase is made in another's	
name or property is voluntarily transferred to another	5.1
26 To whom property results2	6.1

# Chapter 9 Constructive trusts

27 Constructive trusts imposed on unauthorised fiduciary gains or
their traceable proceeds
28 Constructive trusts imposed on trust property transferred to
third parties in breach of trust
29 Constructive trusts imposed on the profits of wrongdoing
30 Constructive trusts imposed to prevent the fraudulent or
unconscionable invocation of legal rules to deny the claimant's right
to property
to property
specifically enforceable contract of sale
32 Constructive trusts imposed in response to unjust enrichment 32.1

# Division Four The administration of a trust

•
•

# Chapter 11 The estate of the trustee and its incidents

36 Estate taken by the trustee	
37 The incidents of the trustee's estate	
38 The effect of the Limitation Act 1980 on the trustee's estate .	
39 The effect of the trustee's bankruptcy	

## Chapter 12 Trusts of land

40 Pre-1997 'ol	d' Settled Land Act Settler	ments	.1
41 Post-1996 Ti	usts of Land		.1

### Chapter 13 The trustee's duties

42 Duty of trustee concerning acceptance of trust or additional trust	40.1
property	.42.1
43 Duty of trustee to obey the directions of the settlement unless	
deviation sanctioned by the court	. 43.1
44 Duty of trustee to act impartially in the sense of fairly and	
disinterestedly, between the beneficiaries	. 44.1
45 Duty of trustee to sell improper property	
46 Duty of trustee, as between tenant for life and remainderman, in	
relation to property pending conversion	. 46.1
47 Duty of trustee in relation to the payment of outgoings out of	
corpus and income respectively	. 47.1
48 Duty of trustee to exercise reasonable care and skill	
49 Powers and duties of trustee in relation to the investment of	
trust funds	. 49.1
50 Duty of trustee to see that he transfers trust property only to	
beneficiaries or to object of a power of appointment or only to	
persons authorised under the trust instrument or the general law to	
	EO 1
receive such property (eg as custodian or portfolio manager)	. 50.1
51 Duty of trustees not to delegate their duties or powers unless	
authorised	
52 Duty of trustees to act jointly where more than one	
53 Duty of trustee not to set up jus tertii	. 53.1
54 Duty of trustee to act gratuitously unless otherwise authorised,	
as is usual nowadays	. 54.1
55 Duty of trustee not to traffic with or otherwise profit by trust	
property nor to cause loss from a conflict between his fiduciary	
<b>rr</b> ,	

duty and his self-interest53	5.1
56 Duty of trustee to be ready with his accounts	6.1

#### Chapter 14 The powers of the trustee

57 General principles applicable to powers of trustees	. 57.1
58 Managerial powers of trustees with particular reference to	
sales	. 58.1
59 Power of trustees to give receipts	. 59.1
60 Powers with regard to reversionary interests	. 60.1
61 General administrative powers of trustees	. 61.1
62 Power to allow maintenance to infants	
63 Power of advancement	.63.1
64 Suspension of the trustee's powers by administration action	. 64.1

#### Chapter 15 Powers of the beneficiaries

65 Power of a beneficiary to disclaim benefit under the trust
66 Power of a sole beneficiary or of the beneficiaries collectively to
extinguish the trust
67 Power of one of several beneficiaries partially interested in a
special trust
68 Power of a beneficiary to bring a derivative action on behalf of
the trust

# Chapter 16 The death, retirement, or removal of trustees and the appointment of new trustees

69	Devolution of the office and estate on death of trustees	69.1
	Retirement or removal of a trustee	
	Appointment of new trustees	
	Appointment of trustees for sale of land	
	Vesting of trust property in new trustees	

#### Chapter 17 Appointment of a judicial trustee

#### Chapter 18 The public trustee

75 The nature and functions of the Public Trustee, and the
guarantee of the State to be answerable for his breaches of trust
76 The appointment of the Public Trustee as an ordinary trustee76.1
77 The appointment and removal of the Public Trustee or certain
corporate bodies as mere 'custodian trustee'
78 The respective duties, rights, and liabilities of the custodian
trustee and managing trustees
79 Special rules relating to the Public Trustee

Chapter 19 Administration of new trusts created under limited powers in the original settlement

80 By whom new	trusts created under powers of appointment are	
to be carried out		

#### Chapter 20 The rights of the trustee

81 Right to reimbursement and indemnity	l
82 Right to discharge on completion of trusteeship	l
83 Right to pay trust funds into court in certain circumstances	Ĺ

#### Chapter 21 The right of trustees and beneficiaries to seek the assistance of the Public Trustee or the court in auditing or in administering the trust

84.1
85.1
86.1

# Division Five The consequences of a breach of trust

#### Chapter 22 The liability of the trustees

87 The measure of the trustee's liability for breach of trust	. 87.1
88 Joint and several liability of trustees	. 88.1
89 Set-off of gain on one breach against loss on another not	
allowed	. 89.1
90 Property acquired by a trustee or fiduciary can be traced and	
claimed by the beneficiaries or principal	. 90.1
91 Application by interim claim to safeguard the trust property if	
endangered	. 91.1
92 Dishonest breach of trust may be a crime	

#### Chapter 23 Protection accorded to trustees in case of breach of trust

93 General protection of trustees who have acted reasonably and	
honestly	93.1
94 Limitation of actions by beneficiaries against trustees	94.1
95 Concurrence of or waiver or release by the beneficiaries	95.1
96 Protection against the acts of co-trustee	96.1
97 Trustees' claims for contribution or indemnity against	
co-trustees, beneficiaries who instigated breach, or third parties	
implicated in breach	97.1

# Chapter 24 Liability of third parties and beneficiaries

98 Personal liability of third parties or beneficiaries who are	
involved in a breach of trust	.1
99 Following, tracing and claiming misdirected trust property and	
its proceeds in the hands of third parties	.1

# Division Six The Hague Trusts Convention

# Chapter 25 Conflict of laws and The Hague Trusts Convention

.

SAT .

100 The Hague Convention on the Law Applicable to Trusts and on their Recognition, implemented by the Recognition of Trusts
Act 1987
Index

.