## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>v</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>xv</td>
</tr>
<tr>
<td>Table of Statutory Instruments</td>
<td>xxxiii</td>
</tr>
<tr>
<td>Table of European Legislation</td>
<td>xxxvii</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>xxxix</td>
</tr>
</tbody>
</table>

**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 ......................... 3.1
4 Simple and special trusts or bare and active trusts ............................ 4.1
5 Fixed and discretionary trusts ................................................................. 5.1
6 Executed and executory trusts ................................................................. 6.1

**Division Two Express trusts**

Chapter 2 Introduction

7 Analysis 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 express trusts in relation to latent matters

13 Who may be a settlor or trustee .................................................................... 13.1
14 Who may be beneficiaries .............................................................................. 14.1
15 When a trust is voidable for mistake, fraud or undue influence .................. 15.1
Contents

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 trusts .......... 20.1
21 How far the wife is bound by covenants to settle property .......... 21.1
22 Property which is prima facie excluded from a covenant to settle other or after-acquired property ...................... 22.1
23 What property is comprised in a general covenant to settle property to which the wife is presently entitled .......... 23.1
24 What is comprised in a covenant to settle after-acquired property of the wife ......................................................... 24.1
25 Covenants to settle a definite interest in property ...................... 25.1
26 Covenants to settle property exceeding a certain value .......... 26.1

Chapter 6 The Termination of Trusts of Property

27 How trusts terminate .............................................................. 27.1

Division Three Trusts Imposed by Law

Chapter 7 Introduction

28 Analysis of trusts of property imposed by law ......................... 28.1

Chapter 8 Resulting Trusts

29 Resulting trusts where property transferred on an express trust which does not exhaust the beneficial interest .......... 29.1
30 Resulting trusts where a trust declared illegal ......................... 30.1
31 Resulting trusts where a purchase made in another’s name or property voluntarily transferred to another .......... 31.1
32 To whom property results ...................................................... 32.1

Chapter 9 Constructive Trusts

33 Constructive trusts imposed on unauthorised fiduciary gains or their traceable proceeds ........................................ 33.1
34 Constructive trusts imposed on trust assets or their traceable proceeds received by strangers to the trust ............... 34.1
35 Constructive trusts imposed on property to prevent fraudulent or unconscionable conduct ................................ 35.1
36 Constructive trusts imposed on property subject to a specifically enforceable contract of sale .......................... 36.1

Division Four The Administration of a Trust

Chapter 10 Disclaimer and acceptance of trusts
37 The number of trustees permissible .......................... 37.1
38 Disclaimer of a trust ............................................. 38.1
39 Acceptance of a trust ............................................. 39.1

Chapter 11 The estate of the trustee and its incidents
40 Estate taken by the trustee ........................................... 40.1
41 The incidents of the trustee’s estate .............................. 41.1
42 The effect of the Limitation Act 1980 on the trustee’s estate .... 42.1
43 The effect of the trustee’s bankruptcy ............................ 43.1

Chapter 12 Trusts of land
44 Pre-1997 ‘old’ Settled Land Act Settlements .................. 44.1
45 Post-1996 Trusts of Land ........................................... 45.1

Chapter 13 The trustee’s duties
46 Duty of trustee concerning acceptance of trust or additional trust property .................................................. 46.1
47 Duty of trustee to obey the directions of the settlement unless deviation sanctioned by the court ................................ 47.1
48 Duty of trustee to act impartially in the sense of fairly and disinterestedly, between the beneficiaries .......................... 48.1
49 Duty of trustee to sell improper property .......................... 49.1
50 Duty of trustee, as between tenant for life and remainderman, in relation to property pending conversion .................. 50.1
51 Duty of trustee in relation to the payment of outgoings out of corpus and income respectively ................................. 51.1
52 Duty of trustee to exercise reasonable care and skill ............. 52.1
53 Powers and duties of trustee in relation to the investment of trust funds .......................................................... 53.1
54 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 receive such property (eg as custodian or portfolio manager) .... 54.1
55 Duty of trustees not to delegate their duties or powers unless authorised ..................................................... 55.1
56 Duty of trustees to act jointly where more than one .............. 56.1
57 Duty of trustee not to set up jus tertii ............................... 57.1
Contents

58 Duty of trustee to act gratuitously unless otherwise authorised, as is usual nowadays ................................................................. 58.1
59 Duty of trustee not to traffic with or otherwise profit by trust property nor to cause loss from a conflict between his fiduciary duty and his self-interest ................................................................. 59.1
60 Duty of trustee to be ready with his accounts ........................................ 60.1

Chapter 14 The powers of the trustee

61 General principles applicable to powers of trustees ........................................ 61.1
62 Managerial powers of trustees with particular reference to sales ................................................................. 62.1
63 Power of trustees to give receipts ................................................................. 63.1
64 Powers with regard to reversionary interests ..................................................... 64.1
65 General administrative powers of trustees ..................................................... 65.1
66 Power to allow maintenance to infants ............................................................. 66.1
67 Power of advancement ..................................................................................... 67.1
68 Suspension of the trustee’s powers by administration action ................................ 68.1

Chapter 15 Powers of the beneficiaries

69 Power of a sole beneficiary or of the beneficiaries collectively to extinguish the trust ................................................................. 69.1
70 Power of one of several beneficiaries partially interested in a special trust ................................................................. 70.1

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

71 Devolution of the office and estate on death of trustees ..................................................... 71.1
72 Retirement or removal of a trustee ........................................................................ 72.1
73 Appointment of new trustees .............................................................................. 73.1
74 Appointment of trustees for sale of land .................................................................... 74.1
75 Vesting of trust property in new trustees .............................................................. 75.1

Chapter 17 Appointment of a judicial trustee

76 Statutory power of the court to appoint a judicial trustee ........................................ 76.1

Chapter 18 The Public Trustee

77 The nature and functions of the Public Trustee, and the guarantee of the State to be answerable for his breaches of trust ................................................................. 77.1
78 The appointment of the Public Trustee as an ordinary trustee .......................................... 78.1
79 The appointment and removal of the Public Trustee or certain corporate bodies as mere ‘custodian trustee’ ................................................................. 79.1
80 The respective duties, rights, and liabilities of the custodian trustee and managing trustees ................................................................. 80.1
81 Special rules relating to the Public Trustee ............................................................. 81.1
### Chapter 19 Administration of new trusts created under limited powers in the original settlement

82 By whom new trusts created under powers of appointment are to be carried out ...................................................... 82.1

### Chapter 20 The rights of the trustee

83 Right to reimbursement and indemnity ............................... 83.1
84 Right to discharge on completion of trusteeship .................. 84.1
85 Right to pay trust funds into court in certain circumstances ...... 85.1

### 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

86 Right of trustee or beneficiary to official audit of the trust through the Public Trustee .............................................. 86.1
87 Right of trustee or beneficiary to take the direction of the court in relation to specific questions ................................. 87.1
88 Right under certain circumstances to have the trust administered under the direction of the court .............................. 88.1

### Division Five The Consequences of a Breach of Trust

### Chapter 22 The liability of the trustees

89 The measure of the trustee’s liability for breach of trust .......... 89.1
90 Joint and several liability of trustees ................................ 90.1
91 Set-off of gain on one breach against loss on another not allowed ................................................................. 91.1
92 Property acquired by trustee or fiduciary can be traced and claimed by the beneficiaries or principal ............................. 92.1
93 Application by interim claim to safeguard the trust property if endangered ............................................................. 93.1
94 Dishonest breach of trust may be a crime ............................ 94.1

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

95 General protection of trustees who have acted reasonably and honestly ............................................................. 95.1
96 Limitation of actions by beneficiaries against trustees .......... 96.1
97 Concurrence of or waiver or release by the beneficiaries .......... 97.1
98 Protection against the acts of co-trustee .............................. 98.1
99 Trustees’ claims for contribution or indemnity against co-trustees, beneficiaries who instigated breach, or third parties implicated in breach .................................................. 99.1
Contents

Chapter 24 Liability of third parties and beneficiaries

100 Personal liability of third parties or beneficiaries who are involved in a breach of trust .............................................. 100.1
101 Tracing and following trust property and its proceeds into the hands of third parties, and claiming assets in their hands ............... 101.1

Division Six The Hague Trusts Convention

Chapter 25 Conflict of Laws and The Hague Trusts Convention

102 The Hague Convention on the Law Applicable to Trusts and on their Recognition, implemented by the Recognition of Trusts Act 1987 ................................................................. 102.1

Index .............................................................................. 1307