

CHAPTER 1

DEFINITION AND CLASSIFICATION

1. DEFINITION OF A TRUST

Definitions and descriptions

- 1–01** NOTE 2. Trusts (Guernsey) Law 1989, s.1 HAS BEEN REPLACED BY Trusts (Guernsey) Law 2007, s.1 with effect from March 17, 2008.

Sir Arthur Underhill’s definition

- 1–04** NOTE 16. DELETE AND REPLACE BY: Underhill and Hayton, *Law of Trusts and Trustees* (18th edn), § 1.1. The wording of the 18th edition differs slightly from that of the 16th edition, p.3 and earlier editions. For the editors’ explanation of the change in the definition, see 18th edition, § 1.2.

Enforceable by beneficiaries

- 1–05** NOTE 21. FOR THE REFERENCES TO Cayman Islands Trust Law, SEE NOW (2011 Revision), Pt VIII, Pt VI and s.83(3). FOR THE REFERENCE TO Thomas and Hudson, *The Law of Trusts*, SEE NOW (2nd edn), §§ 42.01 *et seq.*

A proprietary relationship

- 1–07** NOTE 33. FOR THE REFERENCE TO *Snell’s Equity*, SEE NOW (32nd edn), § 21–016.

Settlement and will

- 1–14** NOTE 58. AT THE END ADD: Principle applied in *Re AQ Revocable Trust* [2010] SC (Bda) 40 Civ [2010] SC (Bda) 40 Civ; (2010–11) 13 I.T.E.L.R. 260 where the statement of the law in this paragraph was approved at [9] and [17].

NOTE 68. FOR THE REFERENCE TO Cayman Islands Trust Law, SEE NOW (2011 Revision), ss.13 and 14. AT THE END ADD: Bermuda: Trusts (Special Provisions) Act 1989, s.2(3) (on

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which see *Re AQ Revocable Trust*, above, at [17]); British Virgin Islands: Trustee Ordinance 1961, s.86(2); Guernsey: Trusts (Guernsey) Law 2007, s.15.

Trust and contract

Trust or contract debt

- 1–15** NOTE 72. AT THE END ADD: As to modification of the duty to keep trust property separate from other property, see § 34–34 (online supplement).

2. CLASSIFICATION OF TRUSTS**Bare or simple trusts and special trusts**

Powers of trustee for absolute beneficiary

- 1–25** NOTE 16. ADD: See too *Byrnes v Kendle* [2011] HCA 26; (2011–12) 14 I.T.E.L.R. 299 at [21].

Sub-trusts of absolute trusts and sub-nominees

- 1–31** NOTE 54. AT THE END ADD: See too *Grey v I.R.C.* [1958] Ch. 690 at 715, CA, where Evershed L.J. spoke of “getting rid of” the intermediate trust. But see *Nelson v Greening & Sykes (Builders) Ltd* [2007] EWCA Civ 1358; (2007–08) 10 I.T.E.L.R. 689, where at [56] and [57] Lawrence Collins L.J. said that the authorities cited to the CA (which included the above statement of Evershed L.J. but not the other authorities cited in this footnote) did not bind the CA to hold that the intermediate trust is determined as a matter of law, though the trustees of the head-trust may decide that as a matter of practicality it is more convenient to deal directly with the beneficiary of the sub-trust.

AT THE END OF THE TEXT ADD: Further, the principle does not prevent the creation of a chain of trusts in cases where the intermediate holder is not a mere repository and has continuing obligations in relation to the property which is the subject matter of the trust of which he is trustee. And so A may hold property in trust for B, and B may hold his equitable interest in the property in trust for C, so that A has obligations in relation to the trust property to B and B

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has obligations in relation to the equitable interest in the trust property to C.^{54a} Nor does the principle apply in a case where A contracts to sell land to B who is acting as nominee for C, and C pays the purchase price to A but B fails to complete the transfer in accordance with the contract between A and B: in such a case A continues to hold the land in trust for B and B holds his interest under the uncompleted contract for C.^{54b}

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^{54a} *Re Lehman Brothers International (Europe)* [2010] EWHC 2914 (Ch); [2010] All E.R. (D) 232 at [226].

^{54b} *Nelson v Greening & Sykes (Builders) Ltd*, above, at [58].