

CHAPTER 8

**RESULTING AND OTHER TRUSTS
ARISING UPON FAILURE OF DISPOSITIONS**

**2. DISPOSITIONS ON TRUST WHICH FAIL TO EXHAUST THE
BENEFICIAL INTEREST**

General principle

8-02 NOTE 14. FOR THE REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), Chap.14.

Examples of application of general principle

Trusts that fail for perpetuity, etc.

8-04 NOTE 21. FOR THE REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), §§ 22-002 *et seq.*

Surplus assets and surplus income

8-08 NOTE 31. FOR THE REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), §§ 20-016 to 20-026.

To whom the property results

Resulting trusts affecting residuary gifts in testamentary dispositions

8-14 NOTE 46. IN THE REFERENCE TO *Theobald on Wills* DELETE THE WORDS IN BRACKETS AND REPLACE BY: (not considered in 17th edition: see § 29-032).

Resulting trusts affecting general or specific gifts in testamentary dispositions

8-16 NOTE 50. FOR THE REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), §§ 22-031 *et seq.*

NOTE 52. IN THE REFERENCE TO *Theobald on Wills* DELETE THE WORDS IN BRACKETS AND REPLACE BY: (not considered in 17th edition: see § 29-032).

FAILURE OF DISPOSITIONS

Transfer between settlements

- 8–20 NOTE 68. ADD: See §§ 4–59, 29–229 *et seq.* Likewise, where a settlement is rescinded for mistake, see § 4–64.

Circumstances in which a resulting trust does not arise

- 8–30 NOTE 3. FOR THE REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), §§ 16–003 to 16–005.

Failure of beneficial interest in income—acceleration*Subsequent interest expressed to take effect at time of natural termination of preceding interest*

- 8–34 NOTE 16. ADD: *Re Sadick* [2009] HKCU 1957; (2009–10) 12 I.T.E.L.R. 679.

Vested but defeasible interests and contingent interests

- 8–35 NOTE 19. FOR THE FIRST REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), Chap.30. FOR THE SECOND REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), §§ 30–008 and 30–009.

Dispositions containing trusts for unborn persons

- 8–36 NOTE 29. FOR THE REFERENCE TO Scott, *The Law of Trusts*, SEE NOW Scott and Ascher, *The Law of Trusts* (5th edn), Vol.11, § 41.1.2.1, n.7.

Effect of acceleration

- 8–37 NOTE 38. ADD: *Re Sadick* [2009] HKCU 1957; (2009–10) 12 I.T.E.L.R. 679.

3. QUISTCLOSE TRUSTS**Introduction***Testamentary gifts intended to carry beneficial ownership—trust and charge*

- 8–39 NOTE 43. FOR THE REFERENCE TO *Theobald on Wills*, SEE NOW (17th edn), § 22–021.

FAILURE OF DISPOSITIONS

Loans for payment of debts and similar transactions construed as creating trusts*Circumstances in which there is no Quistclose trust*

8–46 AFTER THE THIRD SENTENCE ADD N.66A: It has been held in the Isle of Man that “new money” must be received for the stated purpose in order for a *Quistclose* trust to arise, and that such a trust cannot arise from the appropriation of funds already in the hands of the recipient. The reason is that, unless funds are paid over and accepted for a stated purpose, they become the recipient’s property absolutely (although a trust may later be expressly declared over them): *Habana Ltd v Kaupthing Singer and Friedlander (Isle of Man) Ltd* (2009–10) 12 I.T.E.L.R. 736, Manx HC at [51]–[52], [57] (affirmed *sub nom. Du Preez Ltd v Kaupthing Singer and Friedlander (Isle of Man) Ltd* (2009–10) 12 I.T.E.L.R. 943 at [47], [58]–[59], Manx SGD).

NOTE 67. ADD: See too *McManus Re Pty Ltd v Ward* [2009] NSWSC 440; (2008–09) 74 N.S.W.L.R. 662; *Re Lehman Brothers International (Europe)* [2010] EWHC 2914 (Ch); [2010] All E.R. (D) 232 (Nov) at [375]–[379].

The possibility of a trust rather than a power—when third party has beneficial interest

8–55 NOTE 2. ADD: It was held that a purpose trust had arisen in *Cooper v PRG Powerhouse Ltd* [2008] EWHC 498 (Ch); [2008] 2 All E.R. (Comm) 964 at [15]–[24]. Whilst this is plausible on the facts (money had been paid into a company account for the purpose of buying a car for an individual employee), it was assumed that an express purpose trust arises in every instance of a *Quistclose* trust. The same assumption was made in *Kingate Global Fund Ltd v Knightsbridge (USD) Fund Ltd* [2009] CA (Bda) 17 Civ; (2009–10) 12 I.T.E.L.R. 850, citing the decision in *Cooper*. As set out at § 8–47, this is not the correct analysis in the light of the decision in *Twinsectra Ltd v Yardley* [2002] UKHL 12; [2002] 2 A.C. 164.

Payments other than loans for the payment of debts

8–57 NOTE 6. ADD: *Cooper v PRG Powerhouse Ltd* [2008] EWHC 498 (Ch); [2008] 2 All E.R. (Comm) 964, where the money was lent to buy a car as part of an employee’s severance package.

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NOTE 8. ADD: *Kingate Global Fund Ltd v Knightsbridge (USD) Fund Ltd* [2009] CA (Bda) 17 Civ; (2009–10) 12 I.T.E.L.R. 850.

NOTE 9. ADD: See *Habana Ltd v Kaupthing Singer and Friedlander (Isle of Man) Ltd* (2009–10) 12 I.T.E.L.R. 736, Manx HC at [57], for the view that the *Kayford* line of authorities should be interpreted as involving the creation of an express trust by a company or individual over its own money, and not the creation of a resulting trust (affirmed *sub nom. Du Preez Ltd v Kaupthing Singer and Friedlander (Isle of Man) Ltd* (2009–10) 12 I.T.E.L.R. 943 at [81], Manx SGD).

AFTER THE FOURTH SENTENCE OF THE TEXT INSERT: It has been said that the effect of the authorities is that a requirement to keep moneys separate is normally an indicator that they are impressed with a trust and the absence of such a requirement, if there are no other indicators, normally negatives it.^{10a}

NOTE 14. ADD: *McManus Re Pty Ltd v Ward* [2009] NSWSC 440; (2008–09) 74 N.S.W.L.R. 662.

4. SURPLUS ASSETS OF NON-CHARITABLE UNINCORPORATED ASSOCIATIONS AND RELIEF FUNDS

Dormant associations

8–63 DELETE THE FINAL SENTENCE OF THE TEXT AND REPLACE BY: It has recently been decided that if there is only one surviving member, he is entitled to the assets of the association.⁴⁶ Lewison J. held that the members hold the property of the association subject to a species of joint tenancy, but they are contractually precluded from severing that joint tenancy except in accordance with the rules of the association. He said that there was nothing in the earlier authorities^{46a} that bound him to the conclusion that where there is one identifiable and living

^{10a} *R. v Clowes (No.2)* [1994] 2 All E.R. 316 at 325, CA; *Mills v Sportsdirect.com Retail Ltd* [2010] EWHC 1072 (Ch). But see *Re Multi Guarantee Co. Ltd* [1987] B.C.L.C. 257, CA.

⁴⁶ *Hanchett-Stamford v Att.-Gen.* [2008] EWHC 330 (Ch); [2008] Ch. 173.

^{46a} *Cunnack v Edwards* [1895] 1 Ch. 389; [1896] 2 Ch. 679, CA; *Re Buckinghamshire Constabulary Widows and Orphans Fund Friendly Society (No.2)* [1979] 1 W.L.R. 936. See too *Spiller v Maude* (1864) 13 W.R. 69.

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member of an unincorporated association that has ceased to exist, the assets formerly held by or for that association pass to the Crown as *bona vacantia*.^{46b}

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^{46b} *Hanchett-Stamford v Att.-Gen.* [2008] EWHC 330 (Ch); [2008] Ch. 173 at [47].