

## CHAPTER 13

**DEATH, RETIREMENT AND REMOVAL OF TRUSTEES****1. DEATH OF TRUSTEE**

**13-02** NOTE 2. DELETE THE CROSS-REFERENCE TO CHAP.29 AND REPLACE BY: §§ 29-54 to 29-56.

**2. VOLUNTARY RETIREMENT OF TRUSTEE****Retirement under the Trustee Act 1925**

**13-07** AT THE END ADD: It has been held in Jersey, on the basis of expert evidence as to English law, that the requirement for consent by the person empowered to appoint new trustees will be satisfied if such consent is given by a separate deed.<sup>18a</sup>

**3. COMPULSORY RETIREMENT OF TRUSTEE****Directions relating to retirement***Enforcement*

**13-35** NOTE 67. Supreme Court Act 1981 is renamed Senior Courts Act 1981 from October 1 2009, see Constitutional Reform Act 2005, Sch.11, para.1 and Constitutional Reform Act 2005 (Commencement No.11) Order 2009 (SI 2009/1604).

**Vesting of trusts following retirement or appointment**

**13-42** FOURTH AND FIFTH SENTENCES. DELETE section 40(3) of the Trustee Act 1925 AND REPLACE BY: section 40(4) of the Trustee Act 1925. LAST SENTENCE. DELETE section 40(3)(c) of the Trustee Act 1925 AND REPLACE BY: section 40(4)(c) of the Trustee Act 1925.

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<sup>18a</sup> *Re T 1998 Discretionary Settlement* [2008] JRC 062; [2009] W.T.L.R. 87.

## DEATH, RETIREMENT AND REMOVAL OF TRUSTEES

**4. REMOVAL OF TRUSTEE****Under an express power or provision**

**13–44** NOTE 96. DELETE THE CROSS-REFERENCE TO CHAP.29 AND REPLACE BY: §§ 29-16 and 29–17.

NOTE 2. DELETE THE CROSS-REFERENCE TO CHAP.29 AND REPLACE BY: §§ 29–139 *et seq.*

NOTE 8. DELETE THE CROSS-REFERENCE TO CHAP.29 AND REPLACE BY: §§ 29–149 to 29–152.

**By the court under its inherent jurisdiction**

**13–47** AT THE END OF THE TEXT ADD: or other appropriate arrangements are in place for the ongoing administration of the trust, for example where the trust is being administered by the court.<sup>24a</sup>

*Principle guiding court in exercise of its inherent jurisdiction*

**13–49** NOTE 26. ADD: *Critchley v Critchley* [2006] NSSC 219; [2008] W.T.L.R. 1563; *Dobson v Heyman* [2007] EWHC 3503 (Ch); [2010] W.T.L.R. 1151 (removal of executors under statutory jurisdiction on similar principles to removal of trustees under inherent jurisdiction).

NOTE 27. AT THE END ADD: And see *Isaac v Isaac* [2005] EWHC 435 (Ch); [2009] W.T.L.R. 265 at [65]–[73] (citing this paragraph with comments on the welfare of the beneficiaries); *Jones v Firkin-Flood* [2008] EWHC 2417 (Ch); [2008] All E.R. (D) 175 (Oct) (citing with approval this paragraph and § 13–50).

**13–50** NOTE 28. AT THE END ADD: *Re Steel* [2010] EWHC 154 (Ch); [2010] W.T.L.R. 531 (removal of executors under statutory jurisdiction on similar principles to removal of trustees under inherent jurisdiction).

AT THE END OF THE TEXT ADD: In assessing the significance of friction or hostility between original trustees or executors and a beneficiary, it is relevant to have regard to the fact that they were chosen by the settlor or testator and evidence as to his reasons for that choice.<sup>28a</sup>

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<sup>24a</sup> *Gonder v Gonder Estate* [2010] ONCA 172; (2010–11) 13 I.T.E.L.R. 44.

## DEATH, RETIREMENT AND REMOVAL OF TRUSTEES

*Reasons for which a trustee may be removed*

- 13–54** AFTER THE TEXT TO N.38 ADD: where the trustee acted in the administration of the trust for his own benefit and in breach of the self-dealing rule;<sup>38a</sup> where the trustee acted as trustee of two sets of trusts owning shares in the same company and found itself in a plain position of conflict in relation to a dispute which arose between the beneficiaries of the two sets of trusts concerning the company;<sup>38b</sup>

*Trustee will not be removed without reasonable cause*

- 13–56** NOTE 53. ADD: *Kershaw v Micklethwaite* [2010] EWHC 506 (Ch); [2011] W.T.L.R. 413 (executors).

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<sup>28a</sup> *Alkin v Raymond* [2010] W.T.L.R. 1117 at [29]–[39], Ch D.

<sup>38a</sup> *Walker v Walker* [2007] EWHC 597 (Ch); [2010] W.T.L.R. 1617 at [228]–[259].

<sup>38b</sup> *Re E, L, O and R Trusts* [2008] JRC 150; (2009–10) 12 I.T.E.L.R. 1.