

CHAPTER 30

**POWERS OF APPOINTMENT, AMENDMENT AND LIKE
POWERS****2. GENERAL POWERS OF APPOINTMENT****Creation of general power**

- 30-06** NOTE 11. THE CORRECT REFERENCE FOR *Gregory v Hudson* IS [1997] NSWSC 140; (1997) 41 N.S.W.L.R. 573; affirmed [1998] NSWSC 582; (1998) 45 N.S.W.L.R. 300, NSW CA. AT THE END ADD: See further § 4-36 (including online supplement).

Characteristics of a general power*Perpetuities*

- 30-10** DELETE THE SECOND AND THIRD SENTENCES AND N.15 AND REPLACE BY: The Perpetuities and Accumulations Acts 1964 and 2009 have not altered the rule in substance but have refined what counts as a general power for that purpose. A general power exercisable by will alone, however, was void if it might be exercised outside the perpetuity period; but now, under section 3(3) of the 1964 Act and section 7(5) and (6) of the 2009 Act,¹⁵ if the testator dies after the commencement of the relevant Act, it is valid as to any exercise within the period.

3. SPECIAL POWERS OF APPOINTMENT**General**

- 30-16(3)** IN THE FIRST SENTENCE DELETE The Perpetuities and Accumulations Act 1964 provides AND REPLACE BY: The Perpetuities and Accumulations Acts 1964 and 2009 provide.

¹⁵ Respectively July 16, 1964, the date of royal assent, and April 6, 2010.

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30–16(7) DELETE the corresponding principle of equity prescribe that AND REPLACE BY: the corresponding principle of equity so prescribe only in the case of a general power.

Trust power and mere power

30–21 NOTE 51. AT THE END ADD: *Law Shuk Hoi v Lok Fung Kenneth* [2010] HKCFI 641; (2010–11) 13 I.T.E.L.R. 436.

NOTE 58. AT THE END ADD: See too *Law Shuk Hoi v Lok Fung Kenneth*, above.

Whether power fiduciary

30–22 IN THE THIRD SENTENCE DELETE It will be necessarily be AND REPLACE BY: It will necessarily be.

Where power not exercised*Trust power*

30–25 NOTE 80. AT THE END ADD: *Bridge Trustees Ltd v Noel Penny (Turbines) Ltd* [2008] EWHC 2054 (Ch).

30–26 NOTE 84. AT THE END ADD: *Bridge Trustees Ltd v Noel Penny (Turbines) Ltd* [2008] EWHC 2054 (Ch) (a case on a trust power not vested in a trustee).

Mere power

30–27 NOTE 96. DELETE AND REPLACE BY: § 29–137.

4. INTERMEDIATE POWERS OF APPOINTMENT**Characteristics of intermediate power***Perpetuities*

30–39 IN THE LAST SENTENCE DELETE Now the Perpetuities and Accumulations Act 1964 treats AND REPLACE BY: Now the Perpetuities and Accumulations Acts 1964 and 2009 treat.

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5. POWERS OF ADDITION AND EXCLUSION**Power of addition**

30–46 NOTE 60. ADD AT THE END: See too §§ 4–32 and 4–36.

Power of exclusion

30–51 AT THE END INSERT: Nor may it be used for the benefit of the trustee himself (or for any other purpose which would constitute a fraud on the power), such as stifling a claim against the trustee^{65a} or denying a beneficiary access to information.^{65b}

6. POWERS OF AMENDMENT**Scope of power of amendment**

30–59 NOTE 86: INSERT AT THE END: But the test is an objective one and the court does not receive evidence of what the parties actually did consider: *The PNPF Trust Co. Ltd v Taylor* [2010] EWHC 1573 (Ch); [2010] All E.R. (D) 251 (Jun) at [144].

AFTER § 30–60 INSERT THE FOLLOWING NEW PARAGRAPH:

30–60A When the purpose of a power of amendment has been identified, trustees cannot be liable for failing to exercise a power of amendment, or to consider doing so, so as to effect some other purpose.^{98a} Under a company life assurance scheme, for example, where the trustees had a power to amend the scheme but only with the employer’s consent, it was held that the purpose of the power was to facilitate better administration and management of the scheme; hence the trustees were not liable for failing to propose, or to consider proposing, an increase of cover.^{98b}

^{65a} Cf. *Popely v Ayton Ltd*, unreported, October 13, 2008, HC of St. V. and G. (where a corporate trustee purported to exercise a power of exclusion to remove an entire family as beneficiaries so as to stifle a claim brought by them against companies in the same group). For fraud on the power, see §§ 29–255 *et seq.*

^{65b} *Curwen v Vanbreck Pty Ltd* [2009] VSCA 284; (2009–10) 26 V.R. 335.

^{98a} *Power v Trustees of the Open Text (UK) Ltd Group Life Assurance Scheme* [2009] EWHC 3064 (Ch); [2009] All E.R. (D) 236 (Dec).

^{98b} *ibid.*

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8. POWERS OF REVOCATION

Whether fiduciary

30–74 AT THE END OF THE FIRST SENTENCE INSERT A NEW N.28A: *Tassaruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co. (Cayman) Ltd* [2011] UKPC 17; (2011–12) 14 I.T.E.L.R. 102 at [59]–[62], on appeal from (2010–11) 13 I.T.E.L.R. 1, Cayman CA.

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