

The Law of Trusts, by GEORGE W. KEETON and L. A. SHERIDAN, (10th ed., Professional Books Ltd., London, 1974), pp. i-xci, 1-524, ISBN 0 903486 04 0.

The first edition of Keeton's *Law of Trusts* was published in 1934. The success of the book is measured by the fact that since that date ten editions have been published. The format of the tenth edition, by Keeton and Sheridan, remains unchanged from the previous edition. The book is divided into four parts, the first dealing with the formation of the trust, the second with the administration of trusts, and the third with breach of trust. The fourth part is an appendix containing the Trustee Act 1925, as amended until August 1974 and the Trustee Investments Act 1961. This division is generally useful, particularly for the purposes of students, but it creates some difficulties in Chapter XIV which deals with Constructive Trusts. The authors do not really grapple with the problem of the applicability of the duties of a trustee to the special case of the constructive trustee.

The book deals in some depth with a number of matters frequently omitted or dealt with very briefly in standard works on trusts (e.g. trusts and the conflict of laws, and trustees and the statutes of limitations). Since the body of the work is comprised in some four hundred pages, the comprehensive and detailed treatment of a number of difficult areas is admirable. For example, Chapter XIV entitled Constructive Trusts outlines the history of the constructive trust, discusses the perennial debate as to the fundamental nature of the constructive trust, and describes the situations in which constructive trusts have been held to arise. It would provide a student with a very good introduction to a difficult area. Chapter XII on Charitable Trusts has similar virtues. Without reviewing the hundreds of cases defining charitable purposes, the chapter provides an excellent basis for an understanding of the principles governing charitable trusts.

On the other hand, the book is curiously patchy, and its brevity means that a number of important areas are dealt with superficially. At times this superficiality makes the treatment of the subject matter quite misleading. For example, why do the authors consider that Constructive Trusts deserve thirty-seven pages¹ and the Modern Law Against Perpetuities only five pages.² The section of the book dealing with perpetuities and accumulation is poor. It simply states the common law rule and describes the provisions of the Perpetuities and Accumulations Act 1964. No examples of the operation of the common law principle or of the application of the Act are given. No reference is made to the difficulties of interpretation which may arise under the Act. As for the selection of the life in being for the 'wait and see' period, the authors simply say this:

When it is necessary to wait and see if a fixed period is not chosen as the perpetuity period, the lives in being are specified in section 3(4)(5) of the Act of 1964. But in determining validity *ab initio* any life in being may be selected and it has been the practice to select all the issue of Queen Victoria living at the time when the instrument comes into operation. This practice is not now generally followed owing to difficulty of proof, but if an example arises at the present time, the inquiry will be undertaken and the limitation is valid.³ Issue of George V may be preferred, since if it is in fact impracticable to discover when the selected life ended, the trust is void. Thus, in *Re Moore*, the settlor selected the survivor of all persons then living.⁴

The last sentence of the paragraph is positively misleading, as it omits to point out that in that case the limitation was invalid.

A number of other tantalizingly brief references are made to complex problems,

¹ pp. 191-218.

² pp. 124-128.

³ This proposition is, to say the least, debatable.

⁴ p. 197.

e.g. inalienability is dealt with in a paragraph,⁵ and discretionary trusts are given a cursory treatment.⁶

Generally speaking, the authors adopt a historical, descriptive approach rather than an analytical one. At times this limits the value of the book. This flaw is apparent throughout the whole work and may be illustrated by numerous examples.

The principles governing covenants to settle future-acquired property are complex. The authors describe the decisions in *In re Plumtre's Marriage Settlement*;⁷ *Fletcher v. Fletcher*⁸ and *Re Cooks Settlement Trusts*,⁹ and several other cases in the area, but do not attempt to suggest any rational distinction which may be drawn between them. *Re Kay's Settlement*¹⁰ is described as a decision that the court will not direct the trustee to enforce a covenant against the settlor at the suit of volunteers. The fact that the court in that case appeared to direct the trustee *not to sue* is not mentioned.

Similarly, Chapter XI (Trusts for Non-charitable Institutions and Other Purposes) makes light of a number of difficult problems. The authors describe a number of cases decided before the decision of the Privy Council in *Leahy v. Attorney General for New South Wales*,¹¹ but leave the weight of these decisions uncertain in the light of the statement of the Privy Council in *Leahy's Case* that the beneficiary principle enumerated in *Morice v. Bishop of Durham*,¹² continues to supply a guiding principle. Little reference (only a footnote) is made to the important decision of Brightman J. in *Re Recher's Will Trusts*,¹³ which dealt in great depth with the problem of salvaging gifts to unincorporated non-charitable institutions. It is arguable that the authors' division of this chapter into 'A. Institutions' and 'C. Purposes' is confusing and unhelpful, since in both cases the problem is similar in that there is an apparent infringement of the beneficiary principle.

From the point of view of Australian students and practitioners, the book has limited value. In a work of this length it is not surprising that no reference should be made to Australian legislation even where that legislation has some innovative interest. Part II of the book, dealing extensively with provisions of the Trustee Act 1925 (Eng.), would prove a helpful reference for the interpretation of equivalent sections in the Australian legislation. However, in the sections of the book dealing mainly with case-law (Part I) there is an almost complete omission of Australian cases. For example, Chapter XI does not refer to the decision of the High Court of Australia in *Bacon v. Pianta*.¹⁴ In the section dealing with inalienability no reference is made to the principle that an unlimited gift of income may be saved from invalidity by regarding it as a gift of the corpus, and no mention is made of the High Court decision in *Congregational Union of New South Wales v. Thistlewayte*.¹⁵ The decision in *Lutheran Church of Australia South Australian District Incorporated v. Farmers Co-operative Executors and Trustees Ltd*.¹⁶ is not mentioned. In the section on incompletely constituted trusts the High Court decision in *Anning v. Anning*¹⁷ and *Norman v. Commissioner of Taxation*¹⁸ are not cited.

To sum up, for a student or practitioner the book gives a helpful overview of

⁵ p. 128.

⁶ pp. 151 ff.

⁷ [1910] 1 Ch. 609.

⁸ (1844), 4 Hare 67.

⁹ [1965] Ch. 902.

¹⁰ [1939] Ch. 329.

¹¹ [1959] A.C. 457.

¹² (1804), 9 Ves. 399; 32 E.R. 656.

¹³ [1972] Ch. 526.

¹⁴ (1966), 114 C.L.R. 634.

¹⁵ (1952), 87 C.L.R. 375.

¹⁶ (1970) 44 A.L.J.R. 176.

¹⁷ (1907), 4 C.L.R. 1047.

¹⁸ (1963), 109 C.L.R. 9.

the Law of Trusts. The historical introduction on the Nature of a Trust in Chapter I and the Development of the Law of Trusts in Chapter II is an excellent synthesis of the learning in this area, as is Chapter XII on Charitable Trusts and Chapter XIV on Constructive Trusts. The book would prove a useful reference work and starting point for further research in a number of areas, but its brevity also ensures a cursory treatment of some complex problems.

M. A. NEAVE*

*LL.B. (Hons.), Lecturer in Law in the University of Melbourne.