25. Trustees’ duties – general

General reading for this topic: Hudson, chapters 8 and 9.

The trustees’ duties in outline.

1) The core trustees’ duties

This chapter of the course considers a selection of the key duties of trustees. Hudson, 2005, chapter 8 considers 13 general duties [as set out in the textbook], as well as the procedures for the appointment and removal of trustees:

(4) The duty to act even-handedly between beneficiaries, which means that the trustees are required to act impartially between beneficiaries and to avoid conflicts of interest.
(5) The duty to act with reasonable care, meaning generally a duty to act as though a prudent person of business acting on behalf of someone for whom one feels morally bound to provide.
(9) The duty to avoid conflicts of interest, not to earn unauthorised profits from the fiduciary office, not to deal on one’s own behalf with trust property on pain of such transactions being voidable, and the obligation to deal fairly with the trust property.
(10) The duty to preserve the confidence of the beneficiaries, especially in relation to Chinese wall arrangements.
(12) The duty to account and to provide information.
(13) The duty to take into account relevant considerations and to overlook irrelevant considerations, failure to do so may lead to the court setting aside an exercise of the trustees’ powers.

There are other duties considered in Hudson, section 8.1 and in chapter 9 (relating specifically to investment of the trust property); and there are also general powers for trustees considered in Hudson, chapter 10. We will be focusing only on those duties with emboldened numbers.

2) Key concepts in the obligations of trustees

i) The requirement of good conscience
Reading: Hudson, para 8.2.4

ii) The general duty of care and prudence
Reading: Hudson, para 8.3.5

(a) Under case law:-
Speight v Gaunt (1883) 9 App Cas 1

(b) Under statute:-
Trustee Act 2000, s.1:
“(1) Whenever the duty under this subsection applies to a trustee, he must exercise such care and skill as is reasonable in the circumstances, having regard, in particular—
(a) to any special knowledge or experience that he has or holds himself out as having, and
(b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.”

Liability for breach of trust
*Target Holdings v Redfern [1996] 1 AC 421
Fiduciary responsibility of trustees.

Reading: Hudson, section 8.6

1) What it means to be a fiduciary
*Bristol and West Building Society v Mothew [1998] Ch 1 at 18, per Millett LJ:
‘A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. The core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They are the defining characteristics of the fiduciary.’

2) Conflicts of interest not permissible
Reading: Hudson, para 8.3.9
Keech v Sandford (1726) Sel Cas Ch 61
Boardman v. Phipps [1967] 2 AC 46

Validity of exclusion clauses

Reading: Hudson, section 8.5

**Armitage v. Nurse [1998] Ch 241, per Millett LJ:
‘There is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts. But I do not accept the further submission that there core obligations include the duties of skill and care, prudence and diligence. The duty of trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries is the minimum necessary to give substance to the trusts, but in my opinion it is sufficient ... a trustee who relied on the presence of a trustee exemption clause to justify what he proposed to do would thereby lose its protection: he would be acting recklessly in the proper sense of the term.’

*Walker v Stones [2001] QB 902

Trustee’s duty to provide information and to account to the beneficiaries.

Reading: Hudson, section 8.4

1) No general obligation for the trustees to give full information to anyone who considers themselves entitled to an equitable interest under the trust
**O’Rourke v Derbyshire [1920] AC 581 – right to information only if proprietary right
*Re Londonderry [1965] Ch 918 – no obligation to give reasons for decisions nor to disclose confidential information

2) The new approach
**Schmidt v Rosewood Trust Ltd [2003] 2 WLR 1442, 1463, per Lord Walker
… no beneficiary … has any entitlement as of right to disclosure of anything which can plausibly be described as a trust document. Especially when there are issues as to personal or commercial confidentiality, the court may have to balance the competing interests of different beneficiaries, the trustees themselves, and third parties. Disclosure may have to be limited and safeguards may have to be put in place.