

1. Consider whether there is enough guidance in the Trustee Act 2000 for non-professional trustees to be able to invest in a manner that is both profitable and does not endanger the trust property.

Suggested Answer:

Consider all of Chapter 10.

. The “old law” was much more detailed, restricting the investments available to trustees and laying down detailed conditions under which those investments could be made. The Trustee Act 2000 changed all this and in section 3 (1) allows trustees to make “any kind of investment”.

As a counterweight to this, the new Act imposed a statutory duty of care upon trustees in section 1 of the Trustee Act 2000. They must carry out all their duties with reasonable care and skill, which updated the old duty to act as a “prudent man of business” in *Learoyd v Whiteley*. Under that same section, the duty of care is stricter for professional trustees: *Bartlett v Barclays Bank* [1980] Ch. 515

Trustees are instructed to keep the investments under review and abide by the ‘Standard Investment Criteria’ of careful selection of investments and diversification under section 4 of the Act: *Jeffery v Gretton* [2011] WTLR 809.

Trustees, particularly non-professional trustees are obliged to seek expert advice under section 5.

Trustees are encouraged to employ agents to help them in their work and a detailed framework as to how to do this is laid out in the Act, which is a considerable improvement on the old case law position, as exemplified by *Re Vickery* [1931] 1 Ch. 572, which seemed to exclude trustees’ liability for the actions of agents. Trustees must now have a written contract with agents and draw up a policy statement of the type of investments that the trust requires. They must supervise the agent, with reasonable care and skill: *Speight v Gaunt* (1883-4) LR 9 App Cas 1, *Appleby Corporate Services v Citco Trustees* [2016] WTLR 373.

Unfortunately for the beneficiaries, under section 7 of the Act, the trust instrument may exclude trustees’ liabilities and the courts will uphold such a clause: *Armitage v Nurse*.

FURTHER READING: L.M. Clements ‘Bringing Trusts into the Twenty-First Century’ [2004] 2 Web JCLI.

2. Does the law give sufficient rights to beneficiaries? What sort of rights should beneficiaries have?

Suggested Answer:

See 10.12.

Beneficiaries are entitled to see the “trust documents”, whatever that may mean, in *Re Londonderry’s Settlement* [1965] Ch. 918. It probably means the trust instrument itself, the accounts of the trust and legal advice, but not correspondence between the trustees as to how they take their discretionary decisions. Doubt is cast even on this in *Schmidt*

v Rosewood [2003] 3 All ER 76, where it was held that all disclosure was in the discretion of the court.

Trustees do not have to give reasons for their decisions to beneficiaries, otherwise the trustees would not be able to do their job: *Wilson v Law Debenture* [1995] 2 All ER 337. However, if the trustees do choose to give a reason for a decision, the court may investigate the adequacy of that reason: *Breakspear v Ackland* [2009] Ch 32. When the Trustee Act 2000 was passed, Parliament considered giving greater rights to beneficiaries, but decided not to do so for the same reason. It might make the job of trustees impossible and deter trusts from locating in England and Wales. Trusts are already attracted to foreign jurisdictions with looser rules and regulations than England.

See FURTHER READING. G. Lightman 'The Trustees' Duty to Provide Information to Beneficiaries' [2004] Private Client Business 23.

3. Is the liability that trustees have for their agents now clearly defined in law?

Suggested Answer:

See 10.11.

Old case law had built up a reasonably clear picture of what trustees had to do when employing agents and the trustees' liability for their actions. It was based around the concept of the 'ordinary prudent man of business': *Speight v Gaunt* (1883–1884) LR 9 App Cas 1. The wording of sections 23 and 30 of the Trustee Act 1925, as interpreted in *Re Vickery* [1931] 1 Ch 572, threw doubt upon this and suggested that trustees had little liability for the actions of their agents. The Trustee Act 2000 attempted to remedy this by introducing a detailed statutory scheme for the employment of agents., involving written contracts and written policy statements and stating exactly what could be delegated and what could not. Section 22 requires supervision of agents and section 23 makes the trustees liable if they fail to exercise reasonable care and skill. The British Virgin Islands case of *Appleby Corporate Services v Citco Trustees* [2016] WTLR 373 suggests that if trustees fail to supervise their agents adequately, the trustees must restore the fund to what it was before the default.

FURTHER READING: L.M. Clements 'Bringing Trusts into the Twenty-First Century' [2004] 2 Web JCLI.