

TRUSTS LITIGATION DAY 2020

Wilberforce
CHAMBERS

Monday 20 January 2020

9am – 5.45pm, followed by drinks and dinner
InterContinental London Park Lane

Registration fee:

£299 + VAT for conference only

£360 + VAT for conference & dinner at Theo Randall

6.0 CPD

Timetable

9.00am Registration and breakfast refreshments

9.30am **Welcome from the chairs**

9.35am **Influencing and directing trustees – how far can beneficiaries go?**

Michael Ashdown

- When should trustees follow instructions from beneficiaries? *Lo v HSBC International Trustee Ltd* (Hong Kong)
- How far must the settlor's wishes be respected? *In the Matter of the R Trust* (Bermuda)
- When can a beneficiary terminate the trust and take the whole fund? *Rusnano Capital AG v Molard International (PTC) Ltd* (Guernsey)
- Trustee discretion – powers, purposes, and relevant considerations

9.55am **Insolvency within your trust – bankrupt settlors, insolvent companies and insolvent trusts**

Zoë Barton and Tara Taylor

- Bankrupting the settlor – where does it get you?
- What happens when something goes wrong with the trust's underlying business?
- The use of insolvency practitioners and being ready for them
- 'Insolvent trusts'? The *Z Trust* litigation

10.20am **Attacking trusts in offshore jurisdictions – selecting your target and picking your home jurisdiction**

Michael Furness QC, Lawrence Cohen QC, Gilead Cooper QC, Clare Stanley QC, Tom Roscoe and Jack Watson

A panel of barristers will each be assigned an offshore jurisdiction (or two) and will each take it in turns to provide quick-fire top tips on attacking and defending trusts in their jurisdiction, bringing out the differences between them in this regard. Audience interaction is encouraged!

Jurisdictions include Bahamas, Bermuda, BVI, Cayman, Gibraltar, Guernsey, Hong Kong, Jersey and Nevis.

11.00am **BREAK**

11.30am **Workshop sessions (please select one from the following page)**

12.40pm **LUNCH**

1.45pm **Confidential trust information and court proceedings: can privacy be maintained?**

Edward Sawyer and Jamie Holmes

- Cross-examining the parties' lawyers to get at trust information: *Kerman v Akhmedova* [2018] 4 WLR 52, CA
- Risk of leakage of trust information through Beddoe proceedings
- Publication of judgments without anonymisation: latest developments
- Letters of request and information flow across jurisdictions

2.10pm **Workshop sessions repeated (please select another one from the following page)**

3.20pm **BREAK**

3.50pm **Setting aside and rectifying mistakes in respect of trusts from a tax perspective**

Robert Ham QC and Jia Wei Lee

- The limits on setting aside for mistake since *Pitt v Holt*
- The limits on rectification for tax purposes
- The equitable jurisdiction to remedy defective execution
- Defective administration: actions of invalidly appointed trustees; the Roxburghe principle
- The extent of the jurisdiction of tax tribunals in respect of mistake

4.15pm **Protectors: key questions for settlors, trustees and beneficiaries**

Tiffany Scott QC and Joseph Steadman

- Who might want or need a protector?
- What powers and duties might a protector have?
- When might you be able to replace a protector?
- Where does a protector fit into litigation about the trust?
- Why might a protector do more harm than good?

4.40pm **Would I lie to you?**

A panel of barristers will present a selection of weird and wonderful cases – but which ones are true?

5.10pm **Trusts in the Civilian World**

Guest speaker: Birke Häcker (Professor of Comparative Law, University of Oxford)

5.40pm **Closing remarks from the chairs**

5.45pm Drinks reception

7.00pm Dinner at Theo Randall (pre-booked guests only)

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Workshops

Please choose one workshop for the session at 11.30am and another workshop for the session at 2.10pm

WORKSHOP 1: Stopping the clock – limitation when tracing trust assets

Clare Stanley QC, Tom Roscoe and Daniel Scott

- Section 32 vs. its offshore equivalents
- Type 1/2 constructive trustees
- The position of volunteer recipients
- The use of vehicles to hold diverted assets

WORKSHOP 2: Cross-border estates

Gilead Cooper QC, James Goodwin and Cara Goldthorpe

- Applying the private international law of succession
- Formal and substantive validity of testamentary documents
- The impact of The Succession Regulation

WORKSHOP 3: Beddoe applications

Fenner Moeran QC and Francesca Mitchell

- The Beddoe test vs the approval/directions test
- Consultation/consent and indemnities – the possible role of beneficiaries
- "Negative Beddoes" – where trustees do not want to litigate
- Compromises and the surrender of discretion
- Representative beneficiaries, privilege and confidentiality
- Conflicts of interest

Email your choice of workshops to seminars@wilberforce.co.uk