

LETTERS TO THE EDITORS

Dear Sirs,

Trust Law Developments

I have read with interest Philip Baker's paper "A Short Survey of Recent Developments in Trust Law in Offshore Jurisdictions" in Vol 2, issue 1 of this Review.

I thought it might be of interest to mention one or two points of Scots trust law, since they are clearly quite different from English Law, from the standpoint of which Mr Baker writes.

On p.53 he writes "Most of those who are familiar with English trust law would probably agree that one has to have studied the history and rules of equity before you can really understand trusts". While most might agree with that, it would certainly not be the case in Scotland. The rules of equity have no part in Scots Law. Scots trusts start from independent sources. One source is the Roman doctrine of *fidei commissum*, a means of separating ownership and administration. Whatever the exact roots may have been, it is clear that they had nothing to do with English concepts of equity. Having said that, the present uses of Scottish trusts are very similar to those of English trusts. Some terms are common to Scots and English Law, but much of the terminology is very different.

Scots Law is in general regarded as a mixed law jurisdiction, intermediate between Common Law systems and Civil Law systems, so it is perhaps not surprising that it does not fit easily into Mr Baker's classification of jurisdictions according to their trust law.

Following these general comments, there are a number of specific points to raise.

Firstly, on page 54, Mr Baker refers to the difficulties which may arise when UK resident trustees resign in favour of an offshore trust corporation which may not fall within the definition of trust corporation under the Trustee Act 1925. Those difficulties may arise if the UK resident trustees are trustees of an English Trust. UK resident trustees of a Scottish trust would not have these problems. The Trustee Act 1925 does not apply to Scotland. There is no minimum number of trustees required under Scots Law. There is no such thing as a trust corporation in Scots Law and no similar provisions.

Secondly, on p.56 there is reference to purpose trusts being generally void under English Law unless they are established for charitable purposes. Scots Law accepts that public trusts are valid even if they are not charitable. A trust that is charitable under Scots Law may have wider purposes than under English Law, although for Revenue purposes the narrower English definition has been incorporated in Scotland. Even outside charitable purposes, however defined, a trust established for the public benefit will be upheld. This would seem to represent the first class of purposes mentioned in Alec Anderson's article in the same issue at p.4.

Such a public trust may be enforced by the trustor's heirs, by any person having an interest existing or contingent in the objects of the trust, or by the Lord Advocate as representing the Crown.

Thirdly, also on p.56 there is reference to perpetuity periods. Scots Law manages well without any fixed perpetuity period and in principle, trusts may continue indefinitely. There are other limits on duration and in particular, there are restrictions on accumulation of income which are similar to those of English Law, and also restrictions on the creation of liferents (in English terms life tenancies).

Finally, I would entirely endorse Mr Baker's conclusions. My purpose in writing is to bring to mind that there are sophisticated trust law systems different to English Law near at hand and readily accessible.

Yours faithfully,

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