

## CHAPTER 34

**ADMINISTRATIVE DUTIES OF TRUSTEES****2. GETTING IN THE TRUST PROPERTY****Things in action**

*Duty to press for payment and take proceedings*

- 34–21** NOTE 1. AT THE END OF THE FIRST SENTENCE ADD: *Re Nordea Trust Co. (Isle of Man) Ltd* [2010] W.T.L.R. 1393, Manx HC.

**3. SAFE CUSTODY OF THE TRUST PROPERTY****Money and other fungibles**

- 34–34** NOTE 56. AT THE END OF THE FIRST SENTENCE ADD: *Paragon Finance plc v D.B. Thakerar & Co.* [1999] 1 All E.R. 400 at 416, CA.

AFTER THE FIRST SENTENCE INSERT: It has, however, been held, in the context of a commercial trust, that terms agreed between the parties modifying the legal owner's obligation to keep the property concerned separate from his own or other property does not necessarily preclude the existence of a trust relationship, though the greater the extent to which the duty is disapplied, the harder it will be for the court to determine that the parties objectively intended to create a trust relationship.<sup>56a</sup>

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<sup>56a</sup> *Re Lehman Brothers International (Europe)* [2009] EWHC 2545 (Ch) at [60]–[63] (affirmed [2010] EWCA 917); *Re Lehman Brothers International (Europe)* [2010] EWHC 2914 (Ch); [2010] All E.R. (D) 232 at [254]–[260].

## ADMINISTRATIVE DUTIES OF TRUSTEES

**4. MANAGEMENT OF THE TRUST PROPERTY****Land***Repairs*

AFTER § 34–45 INSERT THE FOLLOWING NEW PARAGRAPH:

**34–45A** If trust land requires repair but there is no cash held by the trust to fund repairs, and other means of funding are not available, such as borrowing or assistance from beneficiaries, then the court will order the sale of the land.<sup>97a</sup>

**Shares**

**34–49** NOTE 7. AT THE END ADD: *Jones v Firkin-Flood* [2008] EWHC 2417 (Ch); [2008] All E.R. (D) 175 (Oct) at [99]–[100], [242].

**34–50** NOTE 25. FOR THE REFERENCE TO Cayman Islands Trust Law, SEE NOW (2011 Revision), Pt VIII.

AFTER § 34–50 INSERT THE FOLLOWING NEW PARAGRAPH:

**34–50A** Where the trustees control a company, the prudence of the management is not their only concern. They will ordinarily be bound also to ensure that the directors exercise their management powers over the company in a manner that is consistent with the terms of the trust and any orders of the court concerning the trust.<sup>25a</sup> An anti-*Bartlett* clause in ordinary form is unlikely to protect them if they fail to do so.

<sup>97a</sup> *Chapman v Bledwin Ltd* [2009] All E.R. (D) 01 (Feb).

<sup>25a</sup> *Banicevich v Gunson* [2006] 2 N.Z.L.R. 11 at [67]–[71], NZ CA (application for leave to appeal refused [2006] NZSC 24; [2006] 2 N.Z.L.R. 25).

## ADMINISTRATIVE DUTIES OF TRUSTEES

**6. NOMINEES AND UNCERTIFICATED HOLDINGS****Uncertificated holdings***CREST*

**34–67** NOTE 84: INSERT AT THE BEGINNING: For a fuller description of the CREST system, see *Palmer's Company Law* (25th edn), para. 6.701 *et seq.* and *Mills v Sportsdirect.com Retail Ltd* [2010] EWHC 1072 (Ch); [2010] All E.R. (D) 111 (May) at [5] *et seq.*

AT THE END OF THE THIRD SENTENCE INSERT A NEW N.84a: If the shares remain uncertificated, transfer of title to them, at any rate when it takes place through the system, is excluded from the operation of Law of Property Act 1925, ss.53(1)(c) and 136: see Uncertificated Securities Regulations 2001, reg.38 and *Mills*, above, at [71]. For the application of the rule that a specifically enforceable contract for the sale of shares passes the beneficial interest to a purchaser, see § 10–09 (online supplement).

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