

Trusts in Prime Jurisdictions, 3rd edn, by A. Kaplan, (Globe Law and Business, 2010), 674pp., hardback, £147, ISBN: 1905783434. (www.gbplawbooks.com).

The third edition of Trusts in Prime Jurisdictions provides a summary of trusts in a number of jurisdictions, as well as providing further detail on the Hague Convention and a number of other topics in relation to trust law. It is a useful starting point for trust practitioners interested in trust law outside the United Kingdom. It contains a surprising depth of analysis in many areas, bearing in mind the size constraints of the book and its breadth of focus.

The third edition of *Trusts in Prime Jurisdictions* is, like its earlier editions, intended to be a concise summary “that provides a bird’s eye view of some important jurisdictions and trust related topics”.¹ This edition contains chapters on some new jurisdictions, as well as updating some of the jurisdictions included previously. It also covers a number of more specialised topics in relation to trusts in an international setting and provides a discussion of the Hague Convention.

Overview

The book opens with a Preface by Geoffrey Shindler OBE who notes some of the changes made to the new edition and briefly refers to the expansion of the concept of trusts to new jurisdictions and the concerns that this may cause.

The book also includes a Foreword by Alon Kaplan and Barbara R Hauser. The Foreword sets out the aims of the third edition, noting that the purpose of the work is “to provide readers with basic knowledge about the use of trusts in a selection of important jurisdictions, as well as an explanation of several related topics”.²

Edition 3 is divided into three parts. Part I contains two chapters on the Hague Convention. The chapters discuss the Hague Convention, of which a draft was first agreed in 1985 but which has to date only been ratified by a limited number of countries. The detail of the Convention is set out in this section, including a breakdown of the important points of the Convention, such as art.2 which describes the features that a trust must possess to be regarded as a trust in the sense of the Convention. The breadth of this definition is noted with the comment that it could potentially be used to apply to a number of legal institutions found in common law countries which fulfil similar functions to trusts. Article 3, however, also limits the applicability of the Convention to some types of trusts found under the law of England and Wales, by noting that the Convention will only apply to trusts created voluntarily and evidenced by writing. Part I also looks at the countries that have not ratified the Convention, focussing particularly on Germany and Japan. The conclusion with regard to Germany is that, whilst it is unlikely that Germany will ratify the Convention in the foreseeable future there have been a number of cases where the German courts have considered the recognition of trusts established abroad and, it is considered, dealt with them fairly well. The section concludes with a study of what the Hague Convention has actually achieved and what changes it has wrought.

Part 2 of the book contains an overview of a number of different jurisdictions. The list is by no means exhaustive. In an earlier review for the 2nd Edition of the book, the reviewer commented that he was surprised to find no entry for Jersey or Bermuda.³ The new edition contains chapters on both Jersey and the new Jersey Foundations, but there is still no section on Bermuda. The editors explain in the Foreword that the limit to the number of the jurisdictions was necessary both due to the need to limit the size of the

¹ *Trusts in Prime Jurisdictions* at p.13.

² *Trusts in Prime Jurisdictions* at p.14.

³ “Book review: Trusts in Prime Jurisdictions — Edited by Alon Kaplan”, M. Woods, [2008] P.C.B. 294.

book and due to the availability of suitable contributors. The current reviewer is however in agreement with the previous reviewer that the continuing omission of Bermuda is surprising, although the sections on Jersey are a welcome addition.

The sections for each jurisdiction are written by a different contributor or contributors and therefore differ somewhat in their approach. Looking in detail at the chapter on Jersey, it outlines the legal system there before considering the development of trust law and the way that Jersey trusts differ from those in England and Wales. Of particular interest are the outlines of specific types of trust in Jersey, such as reserve power trusts, which allow the settlor to retain a great degree of control over the settlement. Such outlines are necessarily brief but do provide guidance to a practitioner unfamiliar with Jersey law on what differences they may encounter when considering a Jersey trust. More detail is also given in relation to a number of specific topics, such as matrimonial disputes and the attempts by English courts to act in relation to Jersey settlements. The chapter also briefly touches upon Jersey foundations, which are covered in more detail in the following chapter. The Foundations (Jersey) Law 2009 came into force on July 17, 2009, making it possible to incorporate foundations in Jersey. The attention given to foundations in Pt.2 of the book is of interest due to their recent development and a useful addition to the 3rd edition.

One comment that my colleagues and I had in relation to the way that Pt.2 is set out was that, whilst detailing the various jurisdictions in alphabetical order made good sense for ease of reference, it does not always make an analysis of the jurisdictions included entirely straightforward. Whilst it was interesting to note the separate chapter on Delaware trusts, for example, it would seem more logical to place this after the more general review of the United States which brought the section on jurisdictions to a close. The two sections are admirably free of overlap in the information provided, but would provide a better understanding of the position of trusts in the United States as a whole were they more easily studied together. This is a small criticism, however, and it is not the reviewer's contention that the chapter on Delaware should be omitted, providing as it does a useful detailed look at one of the more particular forms of trust distinct from a wider general US federal viewpoint. The chapter on the United States, whilst providing an overview of US trust law, focuses more particularly on family trusts.

On this subject, there could also, perhaps, be an argument for placing the chapters on the Austrian private foundation, the Jersey Foundation and the information provided on Liechtenstein foundations in their own sub-section, particularly as it is apparent that the Jersey Foundations were introduced in an attempt to create an entity comparable with the foundation of Civil law jurisdictions. The Civil Law foundations provide an interesting group: distinct, although related to the common law trusts. As such, they could benefit from a more cohesive analysis.

Part 3 of the book is entitled "Special Topics" and contains chapters on a number of more particular issues relating to trusts. The section opens with two chapters on asset protection trusts. The focus for both chapters is on offshore asset protection trusts. The reasons why such a trust might be used are discussed briefly, concentrating mainly on issues such as creditor protection and an attempt to avoid forced heirship. The two chapters provide a fairly comprehensive summary of asset protection trusts, although, as the reviewer to the 2nd edition noted, there is surprisingly little information on marital breakdown. The possibility of a spouse attempting to establish that a fraudulent conveyance of matrimonial assets to a trust has occurred is however noted at the end of the second chapter, in a section which provides a useful summary of suggestions that should be considered when forming an asset protection trust.

Part 3 also contains a separate chapter on trusts and divorce, which discusses the increasing willingness of the courts to make orders regarding trust assets in divorce cases. It provides a useful summary of the powers of an English court to vary a trust, as well as providing examples as to how this is applied in practice in matrimonial law. The enforcement of an English judgment in a foreign jurisdiction is also discussed briefly at the end of the chapter.

The topics covered in Part 3 provide a diverse and concise overview of a number of topics that will be of interest to trust practitioners. As with the rest of the book, the breadth and depth of the information given is limited by size constraints but it does provide an interesting overview to a number of important, and in many cases, topical, areas of trust law. Other areas covered include the taxation of trusts in the United States (something that fits well alongside the overview of the United States as a jurisdiction in the previous section), the UK tax treatment of offshore trusts and Swiss banking secrecy, amongst other topics.

Conclusion

The 3rd edition of *Trusts in Prime Jurisdictions* provides a useful, although by no means comprehensive, overview of a number of important trust jurisdictions and a more detailed discussion of a number of discrete areas that a trust practitioner may come across. The aims of the book are set out very clearly in the Preface and the Foreword and, to a very great extent, have been met. It would be impossible to deliver a full account of international trust law in a little over 600 pages — indeed, this is not something that the editors have set out to do. Instead, *Trusts in Prime Jurisdictions* provides an excellent starting point to a multi-jurisdictional study of trusts and would provide a practitioner with considerable background knowledge in many areas from which to launch a greater consideration of the subject.

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