

FACTUAL SYNOPSES

Concurrent Liability for Negligence and Breach of Trust

The Jersey based trustees of a discretionary settlement, the proper law of which is that of Jersey, hold a trust fund consisting of UK real property. The trustees permit one of the beneficiaries ("Y") to live in one of these properties as his home. The trustees decide to sell another of the properties in order to re-invest elsewhere. They give no apparent thought to the CGT consequences for Y of this course of action, and Y then finds that as a UK resident beneficiary he is faced with a large CGT bill by virtue of the anti-avoidance provisions contained in section 87 TCGA 1992. Unfortunately, the full impact of this only becomes apparent just over 3 years from when the sale took place, by which time the applicable Jersey limitation periods have expired. Can Y obtain a remedy in England?

Issues for Personal Representatives and Trustees

X died in 1990 and was survived by his two adult children: A and B. A was appointed executor and trustee in 1990, obtained a grant in December 1991 and assented assets, including a valuable commercial yard ("the Yard") to himself in June 1992. Between 1991 and 1996, A misappropriated £300,000 for the benefit of his wife (W) and himself. In August 2000, B discovered A had transferred the Yard to his son (S) in August 1999 for no consideration. A summons was issued by B in the Family Division in 2001 for an inventory and account. C was appointed as additional administrator (by consent with A) in January 2004 and issued proceedings in January 2005 (1) against A to remove him and for compensation for breach of trust, (2) against W seeking an indemnity on the basis that she had dishonestly assisted her husband in the fraudulent breaches of trust, and (3) against S to recover the Yard on the basis of knowing assistance.

A Time to Die

Z engages a firm of accountants to indulge in estate planning for him. He owns a commercial investment property, upon the rental income of which he depends for his livelihood. In 1991 upon the advice of the accountants he gives the property to his son, reserving to himself a 100-year lease. In 1993 (when Z is aged 70) the accountants realise that the lease will have considerable value in Z's estate when he dies. On their recommendation the son retransfers the property to Z who then gives it back to the son, this time subject to a 7-year lease. When the lease expires in 2000 the accountants assure Z that he can continue to receive the rent, which he does. In 2005 Z consults new advisers who point out that the property will still be within his estate for IHT purposes by virtue of the provisions in relation to gifts with reservation. Z therefore stops taking the rent. He and the son wish to know what remedies they may have against the accountants.