Lewin on Trusts (17th ed.) BY JOHN MOWBRAY, LYNTON TUCKER, NICHOLAS LE POIDEVIN AND EDWIN SIMPSON [London: Sweet & Maxwell, 2000. ccxlv + 1508 pp. Hardcover: £320 (inclusive of supplement)]

Lewin on Trusts: First Supplement to the Seventeenth Edition BY JOHN MOWBRAY, LYNTON TUCKER, NICHOLAS LE POIDEVIN AND EDWIN SIMPSON [London: Sweet & Maxwell, 2003. xix+128 pp. Softcover: £65]

Underhill and Hayton: Law Relating to Trusts and Trustees (16th ed.) BY DAVID HAYTON [London: Butterworths LexisNexis, 2003. cxlix + 1107 pp. Hardcover: £315]

Both *Lewin on Trusts* [*Lewin*] and *Underhill and Hayton: Law Relating to Trusts and Trustees* [*Underhill and Hayton*] are classic works on the law of trusts, though the former was clearly in danger of becoming of limited historical interest given the 36 year interval between the publication of the 16th and 17th editions. *Underhill and Hayton*, on the other hand, has seen eight years pass between its 15th and 16th incarnations. The shorter time difference notwithstanding, recent years have seen more than a fair number of important judicial pronouncements on the law of trusts as well as significant legislative tinkering in England. Of the legislative amendments, the U.K. *Trustee*

Act 2000 is probably of greatest relevance to local practitioners since a reasonable proportion of the proposed amendments to the Singapore *Trustees Act* (Cap. 337, 1999 Rev. Ed.) (available at <http://notesapp.internet.gov.sg/__48256DF20015A167.nsf/LookupContentDocsByKey/GOVI-5ZREA3?OpenDocument>) are clearly borrowed from the English statute.

Both works adopt somewhat different styles in their presentation. *Underhill and Hayton* is divided into six divisions, with each division (with the exception of "Division One" which content is not assigned a chapter number) containing anything from one ("Division Six: The Hague Trusts Convention") to 11 chapters ("Division Four: The Administration of a Trust") and each chapter being further broken down into articles. These articles reflect the Code-like style of the work, which seeks to extract certain core principles so as to allow the busy reader to see at a glance the general principles governing a particular topic before turning to the detailed commentary for a more in-depth discourse. Whether or not such a Code-like style is desirable will depend on preferences of the individual reader. Personally, I have never appreciated such a style as it is not possible to rely on the summarised principles without also referring to the detailed commentary and when encountered with works adopting such a style, I have tended to simply skip the summary and proceed directly to read the detailed commentary. It will be likely, however, that many others will find such a style extremely helpful.

Lewin, likewise, is first divided into six parts, with each part being comprised of one ("Part Six: Lawful Departure from the Trusts") to 11 chapters ("Part One: Definition, Classification and Creation of Trusts"). Each chapter is likewise further subdivided though the subdivision takes the form of headings and sub-headings rather than the Code-like style favoured by *Underhill and Hayton*. Given my indifference to the Code-like style favoured by *Underhill and Hayton*, I did not find ease of reference in any way deficient in *Lewin* when compared to *Underhill and Hayton*. Indeed, perhaps because there is no need to have each subdivision from a chapter conform to some general principle, the first-level headings in *Lewin* are more detailed compared to those in *Underhill and Hayton*, making searches slightly easier. As a rough illustration of the level of detail in each work in their first-level headings, the contents of *Underhill and Hayton* are spread over four and a half pages whereas those of *Lewin* are spread over just over seven pages.

Neither work enjoys a more detailed contents listing sub-headings in chapters beyond the first-level. This is perhaps understandable as too much detail may lead to the contents being too cumbersome to be useful and, in the case of *Lewin*, does not raise much concern since each first-level heading does not generally run for more than 10–20 pages. However, this deficiency is sometimes felt rather acutely, albeit only on two occasions, in the case of *Underhill and Hayton* as some articles run for a good number of pages. For example, Article 8 "Analysis of an express or declared trust" runs for some 70 pages and Article 102 "The Hague Convention on the Law Applicable to Trusts and on their Recognition, implemented by the Recognition of Trusts Act 1987", which happens to be the sole article of Chapter 23 "Conflict of Laws and The Hague Trusts Convention", in turn the only chapter to Division Six, runs for some 55 pages. Given the length of each discussion, locating the appropriate part of the discussion is perhaps more difficult than it should be. In the case of Article 8, one cannot help but feel that it tries to perhaps cram too

many principles into a single article, setting out, *inter alia*, the three certainties (as well as the requirement of administrative workability and objection on the basis of capriciousness), principles relating to objections to purpose trusts (including their exceptions), as well as principles of interpretation.

Whereas Article 8 is perhaps guilty of too much detail, Article 102 appears completely out of place in the work as a whole. The extracted principle which is supposed to be reflected in each article is no more than a wholesale reproduction of The Hague Convention as well as the U.K. *Recognition of Trusts Act* 1987. This may be the result of the contents of Article 102 being primarily the work of Professor Jonathan Harris rather than Professor David Hayton but more effort could have been put into ensuring consistency of style throughout the entire work and it is somewhat regrettable that Professor Harris' excellent chapter suffers from the lack of proper articles, making searches more tedious.

The major divisions of both works are only very slightly different and merely reflect stylistic choices by their respective authors. Division One of *Underhill and Hayton* sets out "Preliminary Definitions", Division Two deals with "Express or Declared Trusts" (principally, creation, validity and interpretation), Division Three addresses both resulting and constructive trusts under the heading "Trusts Implied by Law", Division Four details "The Administration of a Trust" (covering a wide range of topics from disclaimer, acceptance, retirement, removal and appointment to trustees' duties to their rights and powers as well as the powers of beneficiaries), Division Five deals with "The Consequences of a Breach of Trust" and Division Six, as mentioned before, contains a discourse on "The Hague Trusts Convention".

Part One of *Lewin* deals with the "Definition, Classification and Creation of Trusts", Part Two deals with "The Trustees" (comprising discussions on acceptance, disclaimer, retirement, removal, appointment of new trustees, indemnity, insolvency, unauthorised profits and conflicts of interests), Part Three deals with "The Beneficiaries and Beneficial Interests", Part Four with "Administration of the Trust Property" (including the trustees' administrative duties, as well as investment and administrative powers of trustees), Part Five addresses "Breach of Trust and Remedies", and Part Six deals with "Lawful Departure from the Trusts". It is, perhaps, somewhat curious to have a single part deal exclusively with the topic of lawful departure from the trusts, especially since it is the only part in *Lewin* that comprises a solitary chapter. One would have thought that it could have been included as a chapter within Part Five without any serious objections being raised.

In terms of breadth of coverage, despite its greater length, *Lewin* suffers from a number of omissions. Apart from the intentional and understandable inexplicable omissions, for example of a detailed discussion on the principles of charitable trusts which have mandated their own specialist texts, there is a curious omission of any discussion of the requirement of certainty of subject-matter in creating an express trust. The discussion on formalities is also surprisingly brief, running only some five and a half pages, whereas the same discussion in *Underhill and Hayton*, which runs some 400 pages shorter when compared as an entire work, devotes some $34\frac{1}{2}$ pages to the same.

Any decent student of the law would have noticed that in recent times, the courts, particularly the English courts, have been displaying a greater willingness to take account of and engage academic theses and dissertations. Notable examples in

the context of trusts include engaging in discussions on the nature of the resulting trust (*Westdeutsche Landesbank Girozentrale v. Islington London Borough Council* [1996] A.C. 669), the nature of tracing (*Foskett v. McKeown* [2001] 1 A.C. 102), and the nature of knowing receipt liability (*Bank of Credit and Commerce International (Overseas) Ltd. v. Akindele* [2001] Ch. 437). Where an academic thesis has been engaged by the courts, both works provide an adequate, if sometimes brief, exposition of the relevant debate and a debate is sometimes more elaborately detailed in one work compared to the other. For example, the basis of the resulting trust is explained in *Underhill and Hayton* in a single paragraph (at 322-3), which dismisses in one sentence the suggestion that the resulting trust responds to unjust enrichment and with little explanation as to the significance of the debate. By comparison, the role of intention is studied in somewhat greater detail in *Lewin* (at 184-6), where the unjust enrichment thesis is briefly sketched out, its significance explained and the basis of its rejection set out in greater detail.

Where an academic thesis has yet to be squarely addressed by the courts, both works fare somewhat poorer. So, for example, recent suggestions that the obligations aspect of the express trust should perhaps be emphasised and the implications that follow, are not adequately treated in either work. The significance of such a thesis is completely omitted in *Lewin* whilst the treatment of the same in *Underhill and Hayton* is incomplete. Whereas Professor Hayton quite naturally outlines his own thesis that emphasising the obligation aspect of the trust could lead the English courts to recognise as valid non-charitable purpose trusts provided an enforcer to the trust is appointed (see Hayton, "Developing the Obligation Characteristic of the Trust" [2001] 117 L.Q.R. 96), he does not address the suggestion that such an emphasis could significantly impact the issue of certainty of subject-matter in the creation of express trusts, in particular, by favouring a conclusion that a trust can be validly created by a settlor declaring that he holds certain property which is part of a larger bulk on trust for the beneficiary (see Parkinson, "Reconceptualising the Express Trust" [2002] C.L.J. 657).

Both works are significantly poorer for their failure to include in their respective chapters on the trustees' personal liability any discussion of Dr. Steven Elliott's important work on *Compensation Claims Against Trustees* (D.Phil. Thesis, University of Oxford, 2002), an outline of which can be found in Elliott, "Remoteness Criteria in Equity" (2002) 65 M.L.R. 588. Without distinguishing between the remedy of account and the remedy of equitable compensation, it is difficult (if not impossible), to make sense of the causation rules in equity. Indeed, any proper discussion of the topic, given the current judicial climate in England, would be inadequate without also highlighting and engaging Professor Andrew Burrows' argument that there should be no distinction between the rules of causation at law or in equity (see Burrows, "We Do This At Common Law But That In Equity" [2002] 22 O.J.L.S. 1). With the English courts demonstrating a greater readiness to engage in academic discourse, it is no longer sufficient for a text to simply state the law as laid down in previous cases. Authors must now pay attention to academic writings, including if not particularly those that have yet to be definitively ruled upon by the courts, and include appropriate treatments of these writings.

Finally, a few words need to be said about updates. If past editions are any indication, one can expect supplement(s) to be issued to update the 16th edition of

Underhill and Hayton. The 17th edition of *Lewin*, on the other hand, takes advantage of the Internet to provide regular updates in addition to hardcopy supplements. When it was first published, regular updates were available free of charge online at <http://www.newsquarechambers.co.uk/lewin>. With the publication of the first supplement, access to the regular updates was by password only, which was provided with purchase of the supplement. The updates are regular (typically, more than once a month) and keep the work constantly up to date, making an excellent text even more valuable.

While the online updates are a tremendous asset, the actual hardcopy of the first supplement to the 17th edition of *Lewin* is of questionable value since the online updates, thankfully, include the text of the supplement itself. Rather than force customers to purchase a hardcopy of the supplement in order to access the online updates, which they would eventually discard as being superseded by the online updates, it perhaps makes more sense for the publisher to charge its customers a fee (perhaps annual, after a free updating period of one or two years) to access the online updates. This would save on the cost of printing a hardcopy of the supplement that could be outdated within a month and benefits from the virtue of being environmentally friendly as well. Perhaps another useful feature to consider in a future edition is an e-mail to inform subscribers of an update (as well as a summary of its details where appropriate), so that busy practitioners can more easily keep up to date with developments in trust law. It seems unlikely that a second supplement to the 17th edition of *Lewin* will be produced since the 18th edition is listed with an estimated June 2005 publication date on its publisher's website and the publisher could take these suggestions into consideration in deciding upon the best way to update the 18th edition.

In summary, both texts are excellent works and classics on the law of trusts. They each have their own strengths and weaknesses and ideally should both be in any serious trust collection. If, however, a practitioner is only able to make a single acquisition (a situation not unlikely given the current strength of the Pound Sterling compared to the Singapore Dollar), the regular online updating feature of *Lewin* makes it the more sensible and economical purchase compared to *Underhill and Hayton*.

KELVIN **LOW** FATT KIN