

The law in 101 words

Snippets from *The Reduced Law Dictionary* by **Roderick Ramage**

Company website disclosures

By the Companies (Trading Disclosures) Regulations 2008 (SI 2008/495) regs 6 and 9, made under the Companies Act 2006 Part 41, a company must disclose, not only on its business letters, order forms etc, but also on its website:

- its name;
- the part of the United Kingdom where registered;
- its registered number;
- address of its registered office;
- if exempt from using the word “limited”, the fact that it is a limited company;
- if a community interest company, the fact that it is a limited company; and
- if an investment company within the meaning of section 833 of the Act, that fact.

Discretionary trusts & pension schemes

Lump sums are usually payable in the death of a pension scheme member while still in service and sometimes afterwards. These can include a refund of the member’s contributions, the whole amount of his or her fund, a guaranteed amount of unpaid pension or, but only on death in service, a multiple of salary. These sums are usually held on discretionary trusts to avoid inheritance tax, as the money is therefore not part of the deceased’s estate. Pension scheme members are invited to complete and sign expression of wishes forms, to which trustees may but are not obliged to give effect.

Express & other trusts

A trust is an equitable obligation on a person, who holds property or exercises a power as a trustee for another person or a purpose as beneficiary. An express trust is created or implied by an instrument or declaration or imposed by an enactment. Trusts may also arise by operation of law regardless of intention, ie a resulting trust (from a rebuttable presumption of intention

that property purchased by X in Y’s name or voluntarily transferred to Y is held trust for X) or a constructive trust (if it is unconscionable the owner to hold it purely for his own benefit).

Performance not writing

Equity can order specific performance of a contract, which is unenforceable for want of a written memorandum, if there is oral evidence of the contract, the plaintiff has performed some act of performance directly related to it and reliance on the lack of writing would result in a fraud. Mrs Wakeham, a widow, gave up her council house to look after an elderly widower in poor health, who promised to leave her his house when he died. She contributed to household expenses and received no remuneration. Specified performance to convey the house to her was ordered in *Wakeham v Mackenzie* [1968].

Forty eight hour week —opt out clause

The Working Time Regulations 1998 provide that the average working time including overtime does not exceed 48 hours for each seven-day period. The company and the employee agree that this limit does not apply to the employee. This agreement will remain in force [for a period of [one year] (or) indefinitely]. The employee [or the company] may terminate this agreement at any time by giving not less than [three months] written notice to the [company (or) the other].
date (date).
signed on behalf of (name)
Ltd/plc
signed by (employee)
(For assistant solicitors it should be not less than 48 hours.)



Proprietors’ own pension schemes

An employer typically has power to remove and appoint pension scheme trustees and so power to:

- (i) change the deed and rules;
- (ii) change investments;
- (iii) admit new participating employers;
- (iv) admit new members; and
- (v) refuse to permit early retirement.

If you have your own pension scheme and sell the shares of your company, you will lose control of the scheme, unless before completion you separate the scheme from the company (eg change the employer) or transfer all the employer’s powers to the trustees. If you have no time to do this, the sale agreement must cover these points.

Sirius International [2004]—literal construction

“The tendency should therefore generally speaking be against literalism. What is literalism? It will depend on the context. But an example is given in *The Works of William Paley* [1838]. The example is as follows. The tyrant Temures promised the garrison of Sebastia that no blood would be shed if they surrendered to him. They surrendered. He shed no blood. He buried them all alive. This is literalism. If possible it should be resisted in the interpretative process. This approach was affirmed by the decisions of the House in the *Mannai Investment* case [1997] and the *West Bromwich BS* case [1998].”

Statutory assignment of chose in action

By the Law of Property Act 1925, s136 a legal assignment of a debt or other choses in action is effected if the assignment is absolute, in writing under the hand of the assignor (not purporting to be by way of charge only) is of the entire benefit, and written notice is given to the other contracting party. If any of these conditions is missing, the assignment cannot be a statutory assignment but is an equitable assignment, which means that the assignee cannot bring an action in his own name but must join the assignor as a party to the action. NLJ

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