MALAYSIAN LAW OF TRUSTS

EDITOR: DR MOHSIN HINGUN

IIUM Press
Published by:

IIUM Press
International Islamic University Malaysia

First Edition 2011
©IIUM Press, IIUM

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Malaysian Law of Trustees, edited by Dr. Mohsin Hingun.


Member of Majlis Penerbitan Ilmiah Malaysian – MAPIM (Malaysian Scholarly Publishing Council)

Printed by

IIUM PRINTING SDN. BHD.
No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan
CONTENTS

Preface ......................................................................................................................... i
Contents ...................................................................................................................... iii
Table of Cases ........................................................................................................... v

CHAPTER 1
Introduction to Trusts ............................................................................................ 1
(Dr. Mohsin Hingun)

CHAPTER 2
Express Private Trusts ............................................................................................ 23
(Dr. Mohsin Hingun)

CHAPTER 3
Constitution of Express Trusts .............................................................................. 39
(Dr. Zuraidah Ali)

CHAPTER 4
Resulting Trusts ....................................................................................................... 63
(Dr. Zuraidah Ali)

CHAPTER 5
Constructive Trusts ................................................................................................. 87
(Dr. Aiman Nariman Mohd Sulaiman)

CHAPTER 6
Non Charitable Purpose Trusts .............................................................................. 109
(Dr. Hamimah Hamzah)
CHAPTER 7
Charitable Trusts ................................................................. 131
(Dr. Hamimah Hamzah)

CHAPTER 8
Appointment, Retirement, Removal of Trustees... 173
(Dr. Olaitan Sarafadeen Nafiu)

CHAPTER 9
Duties of Trustees ............................................................... 201
(Dr. Mohsin Hingun)

CHAPTER 10
Powers of Trustees .............................................................. 231
(Dr. Halyani Hassan)
CHAPTER 3

CONSTITUTION OF EXPRESS TRUSTS

ZURAIDAH ALI *

A valid express trust must satisfy the requisite formalities, comply with the requirement of the three certainties and the trust be properly constituted.

To constitute a trust the trust must not only be duly declared but the trust property must also be validly transferred and vested in the trustees. For example, in the case of land and shares, registration must be effected in the name of the trustees and in the case of personal property it must be handed over to the care and custody of the trustees. If the settlor declares himself as the trustee the problems related to constitution does not arise. In such a case as long as there is proper declaration the trust is valid.

* LLB(Hons), MCL, PhD, Assistant Professor, AIKOL, International Islamic University, Malaysia. Dr Zuraidah teaches Equity and Trusts and Commercial Law. She was Head of Civil Law Department 2009-2011.