

# Breach of Trust and Expenses Properly Incurred

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## I Breach of Trust

In the draft the breach of trust is divided into two conceptions (§ 27).

- ① If the trustee commits a breach of trust, he is chargeable with
  - (a) any loss in value of the trust estate resulting from the breach of trust; or
  - (b) any profit which would have accrued to the trust estate if there had been no breach of trust; or
  - (c) any reparation if this is reasonable under the circumstances.
- ② If the trustee commits a breach of duty of loyalty, he is chargeable with any profit made by him through the breach of trust.

## II Expenses Properly Incurred

In the draft there are four elements which are concerned with the expenses properly incurred (§ 36).

- ① The trustee can properly incur expenses which are necessary to carry out the purposes of the trust and are not forbidden by the terms of the trust.
- ② The trustee is entitled to indemnity out of the trust estate for expenses properly incurred by him in the administration of the trust.
- ③ To the extent to which the trustee is entitled to indemnity, he has a security interest in the trust property. He will not be compelled to transfer the trust property to the beneficiary until he is paid for the amount of expenses properly incurred in the administration of the trust.
- ④ If the trust estate is not sufficient to indemnify the trustee for expenses properly incurred by him in the administration of the trust, he is entitled to indemnity from the beneficiary personally.