Index

ABROAD
meaning of, 859
trustee, residence abroad, grounds for removal, 900

ACCELERATION, 1245-1246

ACCEPTANCE OF TRUST see also TRUSTEES, appointment of
express, 883
implied, 884
presumption of, 868, 884
refusal prevented, 884
what constitutes, 867

ACCOUNTING
court, role of, 1123
persons entitled to request, 1122
right to, 503
trustees, duty to, 1127, 1226

ACCOUNTS, passing of, 1152
procedure for, 1123-1124

ACCUMULATION TRUSTS
estate planning, 645, 652
minors, for, 997
protective device, used as, in will, 571
protective devise, 571

ACCUMULATIONS RULE, 379, 697-699, 1457

ACQUIESCENCE see also LACHES
document of, 1321
relation to laches, 1309, 1322
equitable estoppel, 243, 556
nature of, 1304-1305

ADEMPTION, donatio mortis causa, 238

ADMINISTRATION OF DECEASED'S ESTATES, 41, 47-48
executor and trustee, appointment of, 53-54
personal representatives, powers of, 50-52
trustees and personal representatives compared,
ADMINISTRATION OF DECEASEDS’ ESTATES — continued
trustees and personal representatives — continued
    compared, — continued
    present position and reform, 54-56
    roles of, 47-50
    both are fiduciaries, 49
    historical reasons, 48
    personal representative, 47
    remaining differences, 49
    trustee, 48

ADMINISTRATIVE POWERS see POWERS, administrative

ADMINISTRATOR
    estates, of, role of, 132

ADVANCEMENT, presumption of, 191, 372, 395 see also RESULTING TRUST; PRESUMPTION OF ADVANCEMENT

AFTER-ACQUIRED PROPERTY
    gift of, 230
    promise to settle, marriage settlements, 24, 181, 197, 1461

AGENCY, trusts and, 56-66
    agents as express trustees, 60-61
    characterizing relationships, 62-65
    agents for trustees, 66
    settlor and trustee, 65
    trustee and beneficiary, 62-65
    express trusts, compared, 57-59
    consent to, 59
    contracts with third parties, 57
    death of settlor, 59
    freedom from constraint, 59
    principal/beneficiary action, 57
    terms of instrument, 57
    variation of arrangement, 58
    by operation of law, compared, 59-60

ALLOCATION POWER, discretionary, 1111-1112, 1118

ALTER EGO TRUSTS see TAXATION OF TRUSTS

APPOINTMENT, EXECUTOR AND TRUSTEE, AS
    co-executor able to bind estate acting singly, 53-54
    co-trustees only able to bind estate acting jointly, 53-54

APPOINTMENT, POWER OF
    definition, 1199-1200
    discretionary trust, 102, 908, 914, 1024, 1172-1173, 1248
    discretion trust (Quebec), 1441
    express power of
        exercised by, 855
        lack of, 857
APPOINTMENT, POWER OF — continued
  express power of — continued
    requirement for new or additional trustees, 882
    retirement of trustees, 891
    statutory, 860
  mere power of, 99
    discretionary trust, 1248
    inter vivos trust, 225
  objects of, 1381
  review by the court, 985-991, 1165-1170

APPOINTMENT, trustees, of see TRUSTEES, appointment of

APPORTIONMENT, 799, 1042, 1054, 1096
  authorized investments, 1059
  Chesterfield’s Trusts, Re Earl of, rule in, 1041, 1053-1054, 1057-1061, 1085-1086
  conversion, pending, 1040, 1048
  duty of, 1032, 1040-1042, 1047, 1052-1053
  eliminating, possibility of, 803
  future property of, 1044, 1047
  income and capital, between, 1038, 1085
  institutions, among, 797
  life tenant and remainderman, 1093, 1095, 1103, 1105
  successive beneficiaries, 1096, 1102

ASSET PROTECTION TRUSTS see PERSONAL TRUSTS

ASSIGNMENT, equitable, 258, 266, 271, 657

BAILMENT, trusts and, 86-90

BANK ACCOUNTS see RESULTING TRUST

BANKRUPTCY, 371 see also CREDITORS
  intention to defraud, 371-372
  right to restitution, 371
  void transfers
    interpretation of, 368-371
    statutory provisions on, 356-357

BARE TRUSTS, meaning of see TYPES OF TRUST

BENEFICIAL INTEREST
  meaning of see EQUITABLE INTEREST, beneficiary, meaning of
  renunciation of see RENUNCIATION, beneficial interest, of

BENEFICIARIES
  entitled, 861, 996, 1094
  first, 6-8, 1425
  incapacitated, 638, 1002, 1169, 1378
  infant, 51, 638, 902, 956, 1170, 1179, 1327, 1448
  intended, class of, 167, 732
  interest, nature of, 14, 58, 522, 617
  liability of see INDEMNIFICATION, trustees, of
BENEFICIARIES — continued
protected, 1204-1205, 1375, 1440
residuary, 667, 669, 803, 817, 959, 1157
unascertained, 613, 968, 1162, 1260
unborn, 123, 873, 899, 1118, 1169, 1364, 1366, 1448, 1471

BENEVOLENT PURPOSES see CHARITABLE PURPOSE TRUSTS

BLIND TRUST see PERSONAL TRUSTS

BONDHOLDERS see also BUSINESS TRUSTS, security device, as a, debenture trusts
trusts for, 31, 111, 127, 597, 600, 870, 894, 982, 1211-1212, 1464

BREACH OF TRUST

general principles, 1270-1278
to account, 1273-1275
equitable remedies, discretionary, 1278
operation of law, by, 1276-1277
personal liability, 1275-1276
technical breach, 1270-1273
liability among trustees, 1298-1302
to each other, 1300-1302
trust beneficiaries, to, 1298-1299
measure of damage, 1279-1297
compensation,
limits of principle, 1280-1281
special rules, 1281-1284
principle of, 1279-1280
special rules,
non-application of, 1284-1285
reinvigoration and refinement of, 1285-1288
interest and trustee gain, election between, 1295-1297
interest payments, 1293-1295
rate of interest, 1294-1295
punitive damages, 1290
unauthorized transactions, 1291-1292
non-trustees, liability of, 1277-1278
protection from liability, 1302-1331
consent of beneficiary, 1303-1306
impounding beneficiary interest, 1306-1308
laches, 1321-1323
limitations, 1309-1321
statutory power of court, 1324, 1331
elements, 1326-1331
fairly be excused, 1329-1330
honestly and reasonably, 1326-1328
trust property
common law, traceable proceeds, 1339-1340
common law claims, 1338
original assets, 1338-1339
equitable claims, 1340-1342
original trust property, 1340-1341
BREACH OF TRUST — continued
trust property — continued
equitable claims, 1340-1342 — continued
traceable proceeds, 1341-1342
liens, trust or equitable, 1341
subrogation, 1342
motivation for proprietary claims, 1337
proprietary claims, requirements for, 1342-1346
credit risk, 1342-1343
contract, avoidance of, 1344
create a trust, failure to, 1344
personal rights, 1343
security interest, 1345
fiduciary obligation, 1346
proprietary remedies, 1334
recovery of, 1334-1355
tracing,
following and claiming, 1334-1346
principles of, 1347-1355
end of, 1352-1355
bona fide purchaser, 1353
improvements, 1352
payment of debt, 1354
values, mixtures of, 1347-1352
innocent contributors, 1350
subordination, 1347, 1349
trustee, liability of.
damages, measure of, capital, interest, rate of, 1294-1295
operation of law, by, 1276-1277

BUSINESS TRUSTS, 578
business purposes, in furtherance of, 586
business sale trusts, 588
partnership buy-sell agreements, 586
stock purchase agreement, 586
stock voting trust, 586-587
commerce at large, furtherance of, 588-607
incorporation, alternative to, 588-595
advantages, 588
pre-incorporation financial holding, vehicle for, 596
uses, 589-595
business income trusts, 594-595
mutual funds, 590-591
oil and gas royalty trusts, 592-594
real estate investment, 589-590
real estate investment trusts, 591-594
security devise, as a, 596-602
construction lien trusts, 599
defebture trusts, 596-598
equipment trusts, 600-601
BUSINESS TRUSTS — continued
commerce at large, furtherance of — continued
security devise, as a, 596-602 — continued
mortgage trusts, 598-599
Quistclose trusts, 601
sale of goods, payment on, 600
securitization, special purpose vehicle, 601-602
stock escrow trusts, 600
personal purposes, in furtherance of, 579
condominium insurance trusts, 585
employer as trustee, 584-585
CPP and EI, 584
union dues, charitable donations or vacation pay, 584-585
health and welfare benefits, 585
pension trusts, 579-582
pooled investment trusts, 583-584
profit-sharing trusts, 582
registered retirement savings plan trusts, 582-583
Quistclose Trust, 95-96, 452-453, 601

CAPACITY, 115
beneficiary, 132-134
protectors, 134
role of, 135
who can act, 137
settlor
infants see CAPACITY, minors
marriage settlements, 118-119
married women, 120
mental incapacity, 119-120
minors, 116-119
inter vivos trusts, 116-119
testamentary trusts, 116
non-residents, 121
trustee, 121-123
custodian trustee, 131
generally, 121
infants see CAPACITY, minors
mental incapacity, 122
minors, 121-122
non-residents, 123
judicial trustee, 130
public trustee, 123-125
trust company, 125-129

CEMETERY OR PERPETUAL CARE TRUST, 574

CERTAINTIES OF A TRUST, 20, 98, 139, 145, 147, 1233
intention, 141-159
conduct and, 142-143
future intention, and, 143
CERTAINTIES OF A TRUST — continued
intention — continued
pre-Lambe v. Eames language, 153
precatory trusts, 145
absolute gifts, 148-150
Canadian case law, 152-153
generally, 145
judicial attitude, 145
pre and post Lambe v. Eames, 145-148
maintenance and support gifts, 150-152
resulting trust, and, 448-451
revocation, power of, effect, 207-212
sham trust, 154-159
in Canada, 157-159
defined, 154-155
illusory, 155
incidental issues, 156-157
no intention, 155
statutes of frauds, and, 141
objects, 133-134, 166-174
persons, 167-168
ascertainable, meaning of, 167-168
community or commercial settings, 170-172
examples, 169-170
friends, and, 170
practical implications, 172-173
reason for, 168
resulting trust, and, 454
purposes, 173-175, 450-453
charitable, 174
non-charitable, 174
subject-matter, 159-166
beneficial shares, 164-166
changes in, 166
nature of trust property, change in, 166
quantum, determining, 163-164
relationship to certainty of intention, 160
requirement of, 159-160
residuary estates, and, 161-162

CHARGING CLAUSE, 943, 1221-1223, 1225, 1229-1230

CHARITABLE CORPORATIONS, 664, 706, 836-840, 842, 845, 847, 1036, 1252

CHARITABLE PURPOSE TRUSTS, 661
accumulations, and, 701, 710, 826, 830
administration of, 835-845
Charitable Gifts Act, 838
Charitable Institutions Act, 839
Charities Accounting Act, 844
Charity Commissioners, 783, 808, 836-837, 840, 843
CHARITABLE PURPOSE TRUSTS — continued
administration of — continued
prerogative powers, 835
administrative schemes, 807-814
advantages of
certainty of objects, 680
administrative schemes, and, 681
cy-près schemes, distinguished, 682-683
charitable intent, 680-681
degree of certainty required, 683-684
jurisdiction of courts, 681
donations to, tax relief on, 716
income tax, 718
perpetuity, 684-698
accumulations, rule against, 697-698
inalienability, rule against, relationship, 699-701
inalienability, rule against, exemption from, 687-689
remoteness of vesting, application of, 689, 697
charitable purpose, cessation of, 691-692
condition precedent, 692-696
conditional gift, exception, 690-691
controlling charitable gifts, means of, 696-697
legislative anomalies, 692
two elements, 685-686
inalienability, rule against, 686-687
vesting, remoteness of, 685-687
taxation, 701-720
charities of, 705-720
donations, and, 716-720
income tax, 705-713, 716-720
disbursement requirements, 710
low-interest loans, 707, 711
non-qualified investment, 712
privacy, removal of, 709
municipal real property taxation, 713-716
statutory exemption, 714
private foundation, 706, 708
public foundation, 706, 708
overview, 702-704
charity, legal meaning of, 721-788
beneficial to community, 764-780
approach to, generally, 776-780
distress and suffering, relief from, 765-767
ex-service personnel, support for, 767
at large, 773-780
social and recreational, 768-769
sport, promotion of, 769-773
education, advancement of, 736-746
nature of education, 736-742
description of, 736-737
CHARITABLE PURPOSE TRUSTS — continued
charity, legal meaning of — continued
education, advancement of, 736-746 — continued
  nature of education, 736-742 — continued
    institutions, 738-739
    outside schools, 739-740
    political purposes, and, 742
    professional training, 740-741
    quality of, 741-742
    public benefit, 743-746
reform, 781-788
relief of poverty, 722-736
  poverty, nature of, 722-730
    financial need, required degree, 725-730
    forms of need, 723-724
  public benefit, and, 730-736
religion, advancement of, 746-764
  nature of activity, 746-760
    burial places, upkeep of, 748-749
    closed religious orders, 757
    ministers
      gifts to, 751-754
      support of, 749-750
      training of, 751
    missions, 750-751
    private religious practices, 754-756
    religion, limits of scope of, 757-760
    repair of churches, 746-748
  presumption of public benefit, 762-764
  public benefit, 760-762
cy-près schemes, 811, 814-834
  impractical or impossible
    initial, 819-827
    supervening, 827-834
donations to, tax relief on see CHARITABLE PURPOSE TRUSTS, advantages
exemptions, 381, 661, 687-688
exigibility, 845-847
foundation, meaning of see CHARITABLE PURPOSE TRUSTS, advantages, taxation
history, 663-665
limits on charitability, 789-807
  political purposes, 789-795
    gift on trust, 795
    gifts for political objects, 795
    political activities, scope of, 793
  severance, 796-807
  mixed charitable and non-charitable purposes, 796-798
    gift on trust for institutions, 800
    gifts on trust for purposes, 798-800
    perpetuity legislation, 805-807
    reform, 800-805
CHARITABLE PURPOSE TRUSTS — continued
limits on charitability — continued
severance, 796-807 — continued
mixed charitable and non-charitable purposes, 796-798 — continued
reform, 800-805 — continued
other purposes beneficial to the community see CHARITABLE PURPOSE TRUSTS,
charity, legal meaning of
perpetuity see CHARITABLE PURPOSE TRUSTS, advantages of
relief of poverty see CHARITABLE PURPOSE TRUSTS, charity, legal meaning of
religion, advancement of see CHARITABLE PURPOSE TRUSTS, charity, legal
meaning of
remoteness of vesting, and see CHARITABLE PURPOSE TRUSTS, advantages of,
perpetuity
schemes see CHARITABLE PURPOSE TRUSTS, administrative schemes; and
CHARITABLE PURPOSE TRUSTS, cy-près schemes
taxation of see CHARITABLE PURPOSE TRUSTS, advantages of
CHARITABLE REMAINDER TRUSTS see PERSONAL TRUSTS
CHILDREN see also PUBLIC POLICY
born out of wedlock, 182, 315, 319-324, 326, 328
CHOICE OF LAW, 1442 see also CONFLICT OF LAWS
CHOSES IN ACTION, 68
assignment of, 184, 527
transfer of, 190
trusts of, 68
CHOSES IN POSSESSION, 1067
transfer of, 189
CIVIL LAW see QUEBEC TRUSTS
CLAYTON’S CASE, rule in, 1350-1352
CO-TRUSTEES
delegation to, 918
indemnification of, 927, 1216, 1300-1301, 1306 see also INDEMNIFICATION
liability as between trustees, 1275, 1298-1299
special hardship, excluded from liability, 919
COHABITATION, property disputes see RESULTING TRUST, matrimonial and
cohabitation property disputes; and CONSTRUCTIVE TRUST, remedy, as,
differentiation, proprietary remedy
COMMERCIAL TRUSTS see BUSINESS TRUSTS
COMPLETELY AND INCOMPLETELY CONSTITUTED TRUSTS see
CONSTITUTING THE TRUST
CONDITIONAL GIFTS, trust and, 111-113
CONFIDENCE, breach of, 529-530
CONFLICT OF INTEREST AND DUTY see DUTIES OF TRUSTEE
CONFLICT OF LAWS
choice of law rules
  administration, 1469
  common law rules, 1469
    variation of trusts, 1470
  convention and statutes, 1473
constructive trusts, 1473-1475
equitable wrongs, 1475-1476
resulting trusts, 1473
tracing, 1476-1479
validity, 1460
  capacity, 1460-1461
  essential, 1462-1469
    common law rules, 1462
    convention and statutes, 1464
formal, 1461
foreign elements, 1445
  choice of law rules, 1449-1455
preliminary issues, 1459-1460
structure, analysis, 1445-1449
validity and administration, 1456-1458
trusts and, 1445

CONSENT
  court’s, 1195, 1199, 1361-1362, 1381, 1386
  power of, 851, 1014-1015
  prior, 881, 952, 974
  written, 1376, 1379, 1386

CONSIDERATION
  marriage, 181
  quasi-contractual, 247
  role of, 182
  valuable, 181, 183, 195, 212, 355
    nature of, 180
    necessity for, 230
    volunteer, 183, 186, 214

CONSTITUTING THE TRUST, 28, 177
  completely vs. incompletely constituted, 28
  consideration, role of, 180-181
  declaration of trust, 204
    described, 184-185
    evidentiary difficulties, 204
      insufficient evidence, examples of, 206
      sufficient evidence, examples of, 205
    gifts by transfer, distinction, 213-218
      apposition of imperfect gift and declaration of trust, 214-217
      difficulty with, 213-214
      intention of donor, 217
      principles, applicable, 204
CONSTITUTING THE TRUST — continued declaration of trust — continued

transfer to trustee distinguished, 186-187

equitable interests see CONSTITUTING THE TRUST, transfer of property

exceptional modes, 226
donatio mortis causa,
  inter vivos gifts distinction, 236
  described, 235-237
  importance of, 237-238
  Statute of Frauds, effect of, 237
  Wills Act, testamentary dispositions, distinction, 238-240

estoppel or equity by acquiescence, 240-249

Dillwyn v. Llewellyn principle, 241
  Canadian courts, 244
Strong v. Bird, rule in, 226
  historical basis, 226-227

requirements of
  donee appointed executor, 231-235
  intention to give during lifetime, 227-229
  specific subject matter, 230-231

inter vivos trust, when testamentary, 218
  immediate effect, 221-222
  modern trends, 224-226
  Re Pfrimmer, 222-224
  requirements for, 219
  revocation, effect of power of, 220

settlement, binding, 207 see also SETTLEMENT
  declaration of trust, irrevocability, Canadian courts, position of, 208

specific performance see CONSTITUTING THE TRUST, valuable consideration

transfer of property, 183
  declaration of trust, distinction, 186, 213
  equitable interests, 185
  modes of, 183, 191
  chattels, 184
  choses in action, 184, 190-191
  contracts, benefit of third parties, 182, 193-194
  deed, by see gratuitous
  delivery
    actual or constructive, 189
    deed, alternate to, 189-190
donatio mortis causa, 188
donor has done all he can, 191
  gratuitous, 194-203
  deed, by
    existing property, 202
    future property, 202
    identifying, 197
  irrevocability, need for, 207-213
inter vivos, 187

land, 184
CONSTITUTING THE TRUST — continued
   transfer of property — continued
       modes of, 183, 191 — continued
       negotiable instruments, 190
       shares, 184, 191
       volunteers
           complete transfer, importance of, 186
           equity not assisting see transfer of property, modes of, gratuitous
           specific performance and, 182-183
   trust property, vesting in trustee, 178
   valuable consideration, 180-181
   marriage, consideration of, 181
       specific performance and, 182-183

CONSTRUCTION, rule of, 320, 324-325, 327-328, 1253
   children, 324-325, 328

CONSTRUCTIVE TRUST
   express trust, differentiated, 500
   language of, 481, 493, 509, 512
   nature of, 478-479
       historical, 479
           courts of equity, 484
           trustee, conscience of, 482
       imposition of, tests for, 494
       twentieth century, 484
           fraudulent conduct, 485
           new model, 486
           unjust enrichment, 484, 487, 493
               defective transfers, 489
               developments, 488
               law of wrongs, 490, 496
               Pettkus v. Becker, 487-490
       personal property security legislation, and, 96
       remedy, as
           availability, 509
           differentiation
               personal remedy, 502
               proprietary remedy, 503
       motive, 506
           insolvency, 506
           tracing, principle of, 510
           unity and disunity, 504
       vesting order, 512
   secret trust, and see SECRET TRUSTS
   trusteeship, imposition of, 513
       agreements to hold, 540
       avoidance of, 557
       joint and mutual wills
           agreement, whether existing, 544
           trust
CONSTRUCTIVE TRUST — continued
trusteeship, imposition of — continued
agreements to hold, 540 — continued
joint and mutual wills — continued
trust — continued
kind of, 547
property subject to, 552
role of, 554
when arises, 549
land, for, 541
breach of confidence, 529
breach of trust, personal liability, 516
banks, position of, 523
knowing assistance, 516
knowing receipt, 518
without express trust, 523
de facto trustees, 515
estate contracts, 558
fiduciary, profiteering, 525
express trust, 526
fiduciary relationship, 526
four conditions, 527
wrongful gain, 528
indemnity insurers, 562
mortgages, 561
other obligations, 562
personal liabilities, 513
restrictions on use, 560
trustees de son tort, 514
wrongs, kinds of, 530

CONTRACT, trust and, 66-85
assignee of property subject to contractual rights, 83-85
chooses in action, 68-73
promisee as trustee, 68
bonds, 77
constructive trustee, 75
evidence of intention, 69
policy and reform, 75
variation of terms of arrangement, 73
trustee as assignee of contractual rights, 83
trustee upon receipt of property, 80-82

CONTRIBUTIONS
indemnify co-trustee, duty to, 1301, 1327
indirect, 466, 469, 494, 538, 628
trustee-beneficiary, 1348

CONTRIBUTORS, innocent, 1333, 1348, 1350

CONTRIBUTORY NEGLIGENCE, 525, 1280, 1287, 1289-1290

CORPORATE DISTRIBUTIONS, income and capital, 1066, 1084, 1087-1088, 1109, 1112, 1114
CORPORATE TRUSTEE see also TRUST COMPANY
  non-licenced, 129

CORROBORATION, 238, 363, 409, 440

COSTS see INDEMNIFICATION, trustees, of

COVENANT
  after-acquired property, 24
  marriage settlements, 234, 573
  meaning of, 68, 81
  restrictive, doctrine of, 83
  trust, imposition of, 82
  trust of, 198, 201

CREDITORS, 351 see also BANKRUPTCY
  Bankruptcy and Insolvency Act
    interpretation of, 368-371
    void transfers, statutory provisions, on, 356-357
  charitable purpose trust funds, exigibility of see CHARITABLE PURPOSE TRUSTS
  Fraudulent Conveyances Acts, interpretation, 357-367
    actions, who can commence, 364-367
    bona fide purchasers, beneficiaries as, 367
    intent to defeat, hinder, delay or defraud, 360-364
  Fraudulent Preferences Acts
    constitutional validity, 354, 368-369
    interpretation, 368
    statutory provisions, 355-356
  intention to defraud, 371
  right to restitution, 371
  statutory provisions, 351-352
  Canada
    Fraudulent Conveyances Act, 352, 355
    conflict with fraudulent preference legislation, 353-354
    constitutional validity, 352, 354, 368-369
    English legislation, reception of, 352-353
    provincial legislation, 354
  historically, 351
  trusts and, 354
    Bankruptcy and Insolvency Act, 356
    Fraudulent Conveyances Acts, 355
    Fraudulent Preferences Acts, 355

CRIME
  constructive trusts, prevention of benefitting from, 485, 491, 525, 530
  trustees, powers of the court to appoint, 870

CUSTODIAL TRUSTEE, 131-132, 580, 1221, 1469

CY-PRÈS, schemes
  difference between administrative and, 682-683
  impractical or impossible
    initial, 819-827
impractical or impossible — continued
  supervening, 827-834
  itself, 814-819
  remedy without, 811-814
DAMAGES see BREACH OF TRUST, measure of damage

DE FACTO TRUSTEE see TRUSTEE DE SON TORT

DEATH, RETIREMENT AND REMOVAL OF TRUSTEES see also TRUSTEES,
removal of
  death of trustee, 887-890
    power to appoint, trustee, 887-889
    sole or last surviving trustee, 889-890
  removal of trustee, 895-902
    justification for, 897-902
    statutory powers, 896-897
  retirement of trustee, 890-895
    issues arising, 893-895
    legislative provisions, 890-893

DEBT, trust and, 90-96
  bank as debtor, 91
  constructive trust, compared, 94
  Personal Property Security Act, 96
  Quistclose trust, 95
  real estate commission cases, 92-94
    express or implied trust, 93-94
      constructive trust or statutory trust, 94
  security device, trusts as, 596-602
  construction lien trusts, 599
    debenture trusts, 596-598
    equipment trusts, 600
    mortgage trusts, 598-599
    Quistclose trusts, 601
  sale of goods, payment for, 600
  securitization, special purpose vehicle, 601
  stock escrow trusts, 600
  trust as security for loan, and, 94-95
  trust assets, duty to keep separate, 90, 92
  trust property identifiable, 90

DECLARATION OF TRUST, 74, 155, 158, 186, 190
  evidentiary difficulties, 204, 206
  irrevocability, 207-212
  requirements for, 213, 217, 266, 285

DELEGATION see DUTIES OF TRUSTEE

DISABLED PERSON TRUSTS see PERSONAL TRUSTS
INDEX 1521

DISCLAIMER
interest by beneficiary, of, 455, 1244-1246
trust office by trustee, of, 883-885

DISCLOSURE, information of see DUTIES OF TRUSTEE, disclosure

DISCRETION
administrative, 1125, 1152
conferment of, 985-987
exercise of
beneficiary, right to information, 1126
even hand rule, 1023, 1040
Henson trusts and, 572
retaining agents, 921
legislative intervention, 923
trustee’s, 1067, 1155, 1205, 1213, 1248
agency and, 63
restriction on, 348
review by courts, 985-991
uncontrolled
discretionary trusts, 1202
duty to apportion and, 1050
duty to convert and, 1050
even hand rule and (U.S.), 1032
interference by courts and, 986
policy decisions, 915
uncontrolled and absolute, 985

DISCRETIONARY ALLOCATION POWER see ALLOCATION POWER, discretionary

DISCRETIONARY DECISIONS, 101, 986-989, 995, 1020, 1130, 1156

DISCRETIONARY TRUSTS, 36, 105, 1201
disposition of property, 1203
immediate, 572, 613, 1125-1126, 1387, 1405
meaning of, 101, 650
offshore trusts, 607, 627
sprinkling trust, known as, 1202, 1204
tax planning and, 624, 645, 650
trust power, distinction, 908, 910
use of, 571

DISGORGEMENT OF WRONGFUL GAINS, 489-492, 496-500, 525-534

DISPOSITION, modes of, restrictions, 373 see also TRUST

DISPOSITIVE (AND DISTRIBUTIVE) POWERS see POWERS

DONATIO MORTIS CAUSA
intention to give, 228
inter vivos gifts, distinction, 187 see also CONSTITUTING THE TRUST
perfecting gift, 235
requirements of, 188
DONATIO MORTIS CAUSA — continued
requirements of — continued
delivery, 189, 235

DURESS, undue influence, mistake and, 383, 386-387, 389, 397, 453

DUTIES OF TRUSTEE, 942, 967, 1024, 1063, 1065, 1109
account, 1120-1124
administrative, 906-907
care, 974-984
indemnity or exculpatory clauses, 981-984
standard of care, 974-980
delegation, 912-930
between trustees, 918-919
investment powers, 928-930
liability for, 925-928
indemnification, 927
ministerial acts
background, 919-920
legislative intervention, 921-925
policy decisions, 915
disclosure, 1119
accounts, 1120-1124
information, provision of, 1125-1134
other information, 1127
trust
accounts, 1126
existence and terms, 1126
trust instrument, withholding direction, 1134
trust owned corporation, 1133
dispositive, 907-909
impartiality, 1023-1119
as between beneficiaries, 1023
Chesterfield’s Trusts, Re Earl of, rule in, 1060, 1143
exclusion of, 1057-1058, 1060, 1086
manner of conversion, 1041
drafting considerations, 1109-1119
discretionary allocation power, 1111-1115
percentage trust (unitrust), 1115-1119, 1481
power of encroachment, 1110-1111
even hand, principle of, 1023-1027, 1039, 1042, 1064-1065
Howe v. Lord Dartmouth, rule in see DUTIES OF TRUSTEE, impartiality, successive beneficial interests
successive beneficial interests, 1027-1089
capital cost, 1073-1089
corporate distributions, and, 1075-1089
apportionment between income and capital, 1085-1087
income or capital, 1075-1084
form test, 1075-1078
trustees, majority shareholders or directors, 1087-1089
corporations, benefits from, income or capital, later experience, 1078
DUTIES OF TRUSTEE — continued

impartiality — continued

successive beneficial interests, 1027-1089 — continued
depreciation allowances, 1073-1075
depreciation reserves, and, 1066-1073
financial burdens on trust property, responsibility for, 1089
annuities, 1099-1101
bonds discounts and premiums, amortization of, 1103
debts, administrative expenses, taxes and duties

Allhusen v. Whittell, 1091-1096
criticism of, 1096-1098
rule in, 1091-1096
insurance, 1104-1106
losses on secured investments and in businesses, 1102-1103
repairs, 1107-1108
taxes, 1108

investments, choice of, 1061-1066
original assets, Howe v. Lord Dartmouth, 1026-1044, 1061
current application of, 1057-1061
authorized investments, effect of expansion of, 1059-1061
exclusion by trust instrument, 1057-1059
duty to apportion
duty to convert, relation to, 1042-1044
examples, 1044-1048
exclusion of, 1048-1052
manner of, 1054-1057
property subject to, 1052-1053
duty to convert
application, 1031-1033
investment power, relation to, 1033-1035
property subject to, 1036-1041
future property, 1041
rational and scope of, 1029-1031
successive interests, meaning of, 1035-1036

loyalty, 930-974
best interests, act in, 930-934
conflicts of interest, application of rule, when invoked, 942-967
borrowing from trust, 952-954
loan or sale of trustee’s personal assets, 950-952
personal benefit, conduct resulting in, 957-967
exploitation of opportunity, 960-967
approaches, 960
gain, types of, 960-963
leading cases, 963-967
remoteness, 960
profits, 958-959
protection of third parties, 947
purchase of trust property, 945-949
purchasing from beneficiary, 954-957
transactional structures, 946
DUTIES OF TRUSTEE — continued
loyalty — continued
conflicts of interest, application of rule, when invoked, 942-967 — continued
trustee must act gratuitously, 942
express trustees, 931
fiduciaries, duty of loyalty, 931
fiduciary, definition, 934
limitations of principle, 932
nature and scope
best interests of beneficiary, 971-974
consent of beneficiaries, 968
deterrence, based on, 971
who owes, 934-941
powers distinguished, 905-906

EDUCATION see also CHARITABLE PURPOSE TRUSTS, charity, legal meaning of
advancement of, 721, 733, 736-737, 740-742, 751, 772, 777, 807

ENCROACHMENT, power of, 994, 1110-1111, 1119

ENFORCER OF NON-CHARITABLE PURPOSE TRUST, 669, 673-674, 1134

ENVIRONMENTAL TRUSTS
public trust doctrine, 602-603
statutory environmental trust, 604
trusteed environmental (or reclamation) fund, 604

EQUITABLE CHARGE, trust and, 108-111
differences, 109
mortgage, by way of, 108-111
similarities, 109

EQUITABLE DOCTRINES
laches, defence of, 1321
notice, of, 1146
unjust enrichment, 492

EQUITABLE INTEREST, 185 see also RENUNCIATION, beneficial interest, of
beneficiary, meaning of, 14
formalities for assignment of see STATUTE OF FRAUDS
grants and assignments of see STATUTE OF FRAUDS
mortgagee, of, 109
origin of, 10-11
trust property, as, 399

EQUITABLE JURISDICTION
clean hands, principle of, 372
courts, of, 32

EQUITABLE LIEN see LIEN

EQUITABLE REMEDIES
constructive trusts, 503
public policy and, 471
EQUITABLE REMEDIES — continued
restitution, 486

EQUITABLE WRONGS, 1475

EQUITY, trustee and beneficiary share ownership, 11

ESTATE CONTRACTS, 558-560

ESTATE PLANNING
estate freeze, 653-656
forms of, 646
generally, 642-644
gift tax, and, 652
succession duty, and, 652
tools of, 644-646
trusts, use of, 646-660
generally, 656-658
irrevocable, 648-651
accumulation trusts, 652 see also ACCUMULATION TRUSTS
alter ego, 649-650
discretionary trusts, 650-651
joint spousal (or common-law partner) trusts, 649-650
spousal (or common law partner) trusts, 648-649
revocable, 647

ESTOPPEL
acquiescence by, 556, 1322
contract, basis in, 67, 243, 538, 540
_Dillwyn v. Llewellyn_ principle, 242, 246-247
doctrine of, 243, 246-247
equitable, 242-243, 1323
licence, form of a, 243
promissory, 79, 245, 248, 556

EVEN HAND see DUTIES OF TRUSTEE, impartiality

EXCULPATION see INDEMNIFICATION, trustee of

EXCULPATION OF TRUSTEES, 982-984, 1227

EXECUTED TRUST
executory trust, difference, 27
meaning of, 24, 26

EXECUTORS, appointed
_inter vivos_ trustee, 234
requirement, 231

EXECUTORY TRUSTS
executed, distinction, 24-25, 27
execution required, 154
meaning of, 24, 26, 153
modern-day significance, 27
_Shelley’s case_, effect of, 25-28
EXECUTORY TRUSTS — continued

trust property, delivery of, 144

EXPRESS TRUST see also SECRET TRUSTS; AGENCY; and RESULTING TRUST

constructive trust, compared to, 20-23
implied trust, compared to, 20-23
resulting trust, compared to, 20-23

FIDEICOMMISSUM, 15, 1411-1412

FIDUCIA, 15, 1411-1412, 1424, 1452

FIDUCIARY OBLIGATIONS

company directors, 44, 921, 941, 944
Crown as, 45
veterans’ pensions, 33
definition, 934-941
fiduciary relationship, compared to trust
generally, 45-46
government, and, 31-32
important differences, 42-45, 47
origin of, 9
other fiduciary relationships, 44
trustees as fiduciaries, 42
informed consent by beneficiary, 941
no-conflict rule, 942, 967-968, 971
no-profit rule, 942-944, 957-967
ownership, 15, 17, 579, 1430
parent and child, 935
personal representative, 49
powers, 100, 307, 909, 990
purchase of beneficiary’s interest, 954-957
purchase of trust property, 945-949
real estate agents, 44
scope of rule against conflicts, 971-974
tracing and, 1346
trust company, 127
trustees, 42, 49
trustees in bankruptcy, 526

FOLLOWING AND TRACING TRUST PROPERTY see TRACING TRUST PROPERTY

FOUNDATIONS see CHARITABLE PURPOSE TRUSTS, advantages of, taxation

FRAUD

power on a, 1403-1404
trust voidable, 386-388

FRAUDULENT CONVEYANCES

bankruptcy, 368 see also BANKRUPTCY
consideration, 360
creditors, 371 see also CREDITORS
FRAUDULENT CONVEYANCES — continued
  provincial jurisdiction, 352
  Quebec trusts, 1420

FRAUDULENT CONVEYANCES ACTS see also CREDITORS
  application of, 354-355
  bankruptcy, 368
  creditors, intent to defraud, 351
  fraudulent preferences legislation, 353-354
  history, 352-353
  interpretation of, 357
  sham trusts, 156
  time limitation, 361

FRAUDULENT PREFERENCES ACTS see also CREDITORS
  application of, 354-355
  fraudulent conveyances legislation, 354
  history of, 352-353
  interpretation of, 368-369

FRAUDULENT TRUSTEES see TRUSTEES

FROZEN TRUST see PERSONAL TRUSTS, blind trust or frozen trust

FUND see INVESTMENT OF TRUST FUNDS

FUTURE PROPERTY, meaning of, 68, 80-82

GIFT
  endowment, 830
  imperfect, 178, 184, 213-214, 233, 242, 247
  incomplete, 186, 190, 192, 214, 218, 227, 235
  intended, 165, 205, 218, 330, 775
  inter vivos, 187-189, 208, 216, 218, 230, 235-238
  law of, 229, 232, 246, 1442
  mortis causa, 235-240
  residuary, 102, 1048, 1406
  tax, 37, 424, 426, 609, 615, 642, 652, 704, 785, 1360

GIFT TAX PROVISIONS, 37, 614-615

HAGUE TRUSTS CONVENTION, 1451-1452, 1455, 1461, 1464, 1466, 1476

HANCOCK v. WATSON, rule in, 458-460

HARDOON v. BELILIOS PRINCIPLE, 1217, 1219, 1225

HASTINGS-BASS, principle in, 991

HOLDING COMPANY, estate freeze, use of, 654-655

HOWE v. LORD DARTMOUTH, rule in see DUTIES OF TRUSTEE, impartiality, original
  assets

ILLEGALITY, 423-435
  evidence of, 424, 426
  trusts, lawful and unlawful, 28
ILLEGALITY — continued
trusts, lawful and unlawful — continued
to defraud creditors, 351-373

IMPARTIALITY see DUTIES OF TRUSTEE

IMPLIED TRUST, 19-23 see also RESULTING TRUST

INALIENABILITY, 688, 691
rule against, 374-375, 664
charitable trusts, 686-687
exception, 687-688
Quebec trusts, 1440
rule against accumulations see ACCUMULATIONS RULE

INCOME SPLITTING, 567 see also INCOME TAX
inter vivos trust, 629
minor children, 655
testamentary trusts, 638

INCOME TAX
capital gains
alter ego trusts, 633
beneficial interests, 622
flow-through, 625
deemed dispositions, 618, 621
discretionary trusts, 650
estate freeze, 655
income-splitting, 630
non-resident trusts, 626
revocable trusts, 647
spousal trusts, 621, 632, 634, 648, 650
capital gains tax deferral, 568
capital gains tax relief, 702-703, 718
charitable foundations, meaning of, 664, 701, 708
charitable organizations, meaning of, 664, 701, 708
charities, 702 see also CHARITABLE PURPOSE TRUSTS
discretionary trusts, 651
gift tax, 614-615
income splitting, 655 see also INCOME SPLITTING
rates of tax, 618, 645
tax treatment of, 705, 716-720

INCOME TRUST, liability of investors, 1483

INCOMPLETE CONSTITUTION OF TRUSTS see CONSTITUTING THE TRUST

INDEMNIFICATION, trustees, of, 1207-1220
beneficiaries, by, 1216-1220
cotrustees, 1216, 1300-1302
principle of, 1207-1215
legal costs, 1213-1215
INDEMNIFICATION — continued
trust property, lien on, 1215-1216

INFANTS, 118
gifts to, 343-344
*inter vivos* trusts, validity, 116
land, ownership of, 117
marriage settlements, 118 *see also SETTLEMENT*
public trustees, guardianship, 123
trustees, as, 121-122
trusts, variation of, 1364, 1380
wills, ability to make, 116

INFORMATION
disclosure of *see DUTIES OF TRUSTEE*, account; and *DUTIES OF TRUSTEE*, information provision

INFORMED CONSENT *see also CONSENT*
requirement of, 60, 87, 949, 951, 955, 958, 962, 968, 974, 1306

INSURANCE OF TRUST PROPERTY, “goods held in trust,” meaning of, 90

INSURANCE TRUST *see PERSONAL TRUSTS*

*INTER VIVOS* TRUST *see TYPES OF TRUST*

INTERMEDDLING STRANGERS *see CONSTRUCTIVE TRUST*, trusteeship, breach of trust

INTERNATIONAL PRIVATE LAW *see CONFLICT OF LAWS*

INTERNATIONAL TRUSTS
offshore financial centres, 607
offshore trusts, distinction, 607
personal trusts, situated offshore, 606

INVESTMENT ACCOUNTS, 420-421, 436-439

INVESTMENT OF TRUST FUNDS
good investment practice, principles, 1019-1023
history, 997-1009
Canada, 1003-1006
England, 998-1003
prudent investor rule, 1006-1009
prudent person rule, 1007
investment, what constitutes, 1009-1011
going concerns, 1011
land for occupancy, 1009-1010
loans, unsecured, 1010
powers of, express, 1012-1015
consents, subject to, 1014-1015
express investment clause, 1013-1014
mandatory directions, 1012-1013
INVESTMENT OF TRUST FUNDS — continued
   standard of care, prudent person, 1015-1019

INVESTMENT TRUSTS, 127, 132, 580-581, 589-592

JOINT AND SEVERAL LIABILITY see LIABILITY

JOINT BANK ACCOUNTS, 435-446

JOINT SPOUSAL/COMMON LAW PARTNER, trust see TAXATION OF TRUSTS

JOINT TENANCY, 404, 414-418, 420, 438, 440-441, 443, 468
   bank accounts, 436 see also RESULTING TRUST
   jointly, must act, 887
   matrimonial property legislation, 416
   resulting trust, presumption of, 438
   secret trust obligations, 294
   severance of, 185
   trustees, 887
   survivorship, rule of, 878

JUDICIAL TRUSTEES
   appointment of, 131-132, 1231
   Canada, 131
   England, 130
   remuneration, 1221, 1231

KEECH v. SANDFORD, rule in, 962
   conflict of interest, 973, 1365 see also DUTIES OF TRUSTEES, loyalty
   profits, prohibited, 525, 961
   property acquisition by trustee, 525
   purchase from beneficiaries, 956
   right of pre-emption, 964

KNOWING ASSISTANCE, 516-525

KNOWING RECEIPT, 518-525

LACHES, 1321
   doctrine of
      acquiescence, related to, 1309, 1322-1323
      limitation periods, 1309, 1321, 1323
      nature of defence, 1321

LANGUAGE see also CERTAINTIES OF A TRUST, intention
   beneficial shares, certainty of, 165
   construction of, 112-113 see also CONSTRUCTION, rule of
   intention, certainty of, 330, 667

LEGAL ESTATE
   choses in action, 192
   equitable estate, difference from, 10
   incomplete gifts, 190
   resulting trusts and, 398, 401
LEGAL ESTATE — continued
vesting in executor, 233

LIABILITY
among the trustees
joint and several, 1298
strict
  giving way to fault liability, 1270
  rejection of, 522
  technical breach and, 1272

LIEN, 108-109, 471, 493, 495, 502-503, 559, 562, 1216, 1266, 1333, 1341
construction lien legislation, 599
equitable
  generally, 108-110
  insurer, 562
  purchaser’s, 536, 559
  tracing, consequent upon, 1341, 1348
  trustee’s lien over trust property, 1106, 1215-1216, 1224
  vendor’s, 403, 502
equitable charge, compared, 108-111
mechanics’, 31, 79, 1276
Quebec’s trust, trustee’s claim similar to lien, 1437
trust, compared to, 108-111

LIMITATION OF ACTIONS
constructive trustees, 60
constructive trustees application to, 1314
creditors, actions by, 607
differing, 54
express trusts, 1314
fiduciary obligations, 936
fraudulent conveyances, 371, 542
generally, 1309-1310
legal and equitable causes of action (Manitoba), 1318
legislation, history of, 1310-1312
legislation in Canada, 1313-1321
protection of trustees (British Columbia), 1319
six year period, actions against trustees, 1312
trust beneficiaries, 279
trustees, protection of, 1309, 1311

LIVING TRUST see TYPES OF TRUST, inter vivos

LOCUS POENITENTIAE, 431, 433

MAINTENANCE
express power of, 1175, 1179, 1200, 1449
interim, 1179, 1241-1242
power of
  dispositive, 914, 1172
  exercise of, 952
MAINTENANCE — continued
  power of — continued
  express, 1180
    adult beneficiaries, 1181-1182
    parental duty, 1182
  statutory, 991, 1175, 1180, 1183, 1187
    Canada, 1187
    history, 1183

MARRIAGE, restraint of, public policy, 334

MARRIAGE SETTLEMENTS
  capacity to enter, 1460-1461 see also CAPACITY
    infants, 118 see also SETTLEMENT
  marriage contract, distinguished, 573
  property acquired after marriage, 181, 197
  taxation of, 611
  use in Canada, 573
  use of, 611, 1144
  variation of, 1372

MASSES, for the dead, 754-762 see also CHARITABLE PURPOSE TRUSTS, charity,
  legal meaning of, religion, advancement of, public benefit

MATRIMONIAL AND COHABITATION PROPERTY
  see also RESULTING TRUST, matrimonial and cohabitation property disputes
  constructive trust, 487, 508
  presumption of advancement, 435

MERE POWER see POWERS AND TRUSTS

MINORS see CAPACITY, minors, and INFANTS

MIXING/MIXTURES OF TRUST ASSETS, 403-405, 440-441

MORTGAGE, 561

MOTHER, advancement, presumption of, mother and child, 418

MOTIVE see CERTAINTIES OF A TRUST, intention

MUTUAL FUNDS
  trust, as a vehicle for, 590-591
  trustee investment
    authorized by statute, 929, 1008
    unlawful delegation, 917, 1008, 1151

MUTUAL WILLS, 542-558
  agreement, whether it exists, 543-544
  conferring interest on survivor, 551
  joint wills, meaning of, 542
  meaning of, 542
  property subject to, 553
  termination of, 1233
  trust
MUTUAL WILLS — continued
trust — continued
role of, 555, 557
type of, 546, 548
when does it arise, 549

NAKED TRUST see TYPES OF TRUST, bare, naked or simple

NEGLIGENCE, contributory, breach of fiduciary duty, 525, 1287

NEW TRUSTEES (SUBSTITUTE and ADDITIONAL TRUSTEES) see TRUSTEES, appointment of

NON-CHARITABLE PURPOSE TRUSTS
enforcement, beneficiary, lack of, 665-667
invalidity, 665-666
exceptions to, 667
legislative treatment, power, validity as, 668-669
status of, in Canada, 672-674
trust for person, construing as, 670-672
unincorporated associations, gifts to, 674-680
gift to members, as, 675
contract of association, subject to, 678
non-charitable purpose, and, 677
officers of association as agents, and, 678
perpetuity, and, 677
trust for persons, as, 676, 680
trusts for purposes, as, 675-676
uncertainty and, 677

NON-DELEGATION, duty of see DUTIES OF TRUSTEE

NON-RESIDENT TRUSTS, 625, 627-628, 636

NON-RESIDENTS
capacity, 121, 123, 626-628 see also CAPACITY
preferred beneficiary election, not allowed, 626

NUMBER OF TRUSTEES see TRUSTEES, appointment of, number

NUPTIAL SETTLEMENTS see MARRIAGE SETTLEMENTS

OBJECTS, uncertainty of, 22, 134, 172, 454, 664, 668, 677

OFFICIAL GUARDIAN
beneficiaries, unascertained, 1162
minors, representing, 952
remuneration, 1232
role of, 123-124, 133

OFFICIAL TRUSTEE, 124, 132, 1232

ORAL TRUST see TRUST, oral

OUTGOINGS see APPORTIONMENT, income and capital
OWNERSHIP
absolute, 15
common law meaning, 12
Crown, by, 10
dual, 11-12

PAROL EVIDENCE
admissibility, 401, 423
nature of office, 306-307
trust objects, 302
ambiguity in will, 304
secret trusts, 312
vary or contradict a will, 303, 305

PART PERFORMANCE
document of, 272, 275
document of fraud, and, 275

PARTNERSHIP, trust and, distinction between, 589, 619-620

PENSION TRUSTS see BUSINESS TRUSTS

PERCENTAGE TRUST see UNITRUST

PERPETUAL CARE TRUSTS see PERSONAL TRUSTS, cemetery or perpetual care trusts

PERPETUITY RULE
abolition of, 380
accumulations rule, abolition of, 379
charitable intent, degree of, 695
charitable purpose trusts
applicability, 666, 684
exemption from, 734
remoteness of vesting, 685
conflict of laws, characterization, 1459
cy-près doctrine, 767
inalienability, rule against, 374
legal future interests, and, 375-376
legislative reform, 805
meaning of, 373
modern rule see PERPETUITY RULE, unreformed rule
non-charitable purpose trusts, 673
perpetual duration, 374, 380-381
reformed rule, wait and see, 378-379
unreformed rule, 375-377
Whitby v. Mitchell, rule in, 375

PERSONAL OBLIGATION, trust compared, 111-112

PERSONAL REPRESENTATIVES
account, duty to, 1122, 1124
acting severally and jointly, 53
agents, employment of, 923
PERSONAL REPRESENTATIVES — continued
  fiduciaries, 962, 1027
  liability as, 49, 51-52
  powers of, 50-53
  role of, 47 see also ADMINISTRATION OF ESTATES
  rule in Allhusen v. Whittell, 1097
  trustee, similarity of roles, 48

PERSONAL TRUSTS, 567-578
  asset protection trusts, 577-578
  blind or frozen trusts, 576-577
  cemetery or perpetual care trusts, 574
  charitable purpose, 575
  charitable remainder trusts, 575-576
  disabled person trusts, 572-573
  discretionary trusts, 571-572
  funeral arrangement trusts, prepaid, 574-575
  Henson see PERSONAL TRUSTS, disabled person trusts
  insurance trusts, 568-569
  marriage settlements, 573
  separation or divorce trusts, 573-574
  tax considerations, 567-568
    income splitting, 567 see also INCOME SPLITTING
    tax deferral, 568
  testamentary trusts, 569-571

PERSONS
  incapacitated, 120, 122, 202, 359, 478, 612, 638, 1233, 1239, 1375, 1391
  unascertained, 1379-1380, 1382, 1424
  unborn and untraceable, 1386

PETTKUS v. BECKER, 470, 1316, 1450 see also CONSTRUCTIVE TRUST, nature of

POUR-OVER TRUSTS, secret trust, analogy with, 302

POVERTY, relief of
  charitable activities, 721
  class of person, 731
  form of need, 724
    financial, 725
    meaning of, 722-723
  nature of, charitable object, 722
  poor relations, group of, distinguished, 732
  public benefit, 731

POWER OF ADVANCEMENT
  dispositive powers, 1172-1173, 1387
  exclusion of, 1170
  exculpatory clauses, 984
  express, 1193-1196
  meaning, 612, 1190
  scope of, 952
POWER OF ADVANCEMENT — continued
statutory, 1198
successor trustees, 888
taxation and, 623, 889

POWER OF ATTORNEY
co-trustee, to, 924
nature of, 97
trustee, delegation by, 1152

POWER OF ENCROACHMENT
beneficiary, income, 570, 658, 899, 1049
capital, over, 1058, 1172, 1247
conversion, 1032
definition, 1172
discretion, exercise of, 985, 1129, 1160, 1195, 1315
duty of impartiality, even hand, 1024, 1032, 1110
maintenance, for, 1032
power of sale, implied, 1145

POWER OF RESETTLEMENT see TRUST, variation of

POWER OF REVOCATION see REVOCATION

POWERS, 97-108
administrative, 906-907
courts, role of, 1165-1170
defined, 906-907
delegation of, 914
discretionary trust, 909
duty, becoming, 907
express, 1137-1139
impartial, duty to act, 1023, 1032, 1063
investment, 996-997
modern trust drafting, 1137
nature of, 97, 905
object of, 1135
person trusts, 606
scheme of, 1135
statutory, 1136-1137, 1139-1142, 1150, 1166
court advice, 1154-1165
payment into, 1153-1154
seek direction of, 1154-1165
rules of court, under, 1164
trustee acts, under, 1155-1164
dedicate land, 1150
delegate during absence, 1151-1152
employ agents, 1151
grant options, 1149
history of, 1136-1137
insure, 1149-1150
lease land, 1148
POWERS — continued
administrative — continued
statutory, 1136-1137, 1139-1142, 1150, 1166 — continued
liabilities, compounding of, 1150-1151
pass accounts, 1152-1153
postpone sale, 1148
receipts, discharging, issue of, 1150
repair (or improve), 1149
sell, 1143-1148
trustees, scheme of, 1135-1137
appointment of see APPOINTMENT, POWER OF
certainty of objects for, 105-108, 111
mere power, 106
trust power, 106
defined, 905-906
discretionary, court intervention in, 85-91
dispositive (and distributive) powers
advancement
court, inherent jurisdiction, 1193
defined, 1190-1192
express, 1193-1197
power of, 1190
statutory, 1197-1199
Canada, in, 1198-1199
England, in, 1197-1198
defined, 1171-1175
maintenance, 1175-1190
court, jurisdiction of, 1175-1180
express, 1180-1182
statutory, 1183-1190
Canada, in, 1187-1190
England, in, 1183-1187
new trusts, creation of see POWERS, resettlement
resettlement, 1200-1201
types of, 1172
underlying (“substratum”) duties, 907-909
duties, distinction, 905-906, 1172-1175
encroachment, 985, 1172
evidence of power, 102-105
fiduciary power, 100-101
investment see INVESTMENT OF TRUST FUNDS
obligations relating to, 907-910
settlor, of, limitations on, 316

POWERS AND TRUSTS
administrative, compared to legal powers, 97
certainty of objects, standard or degree of certainty, required, 106
mere power, 106
trust power, 106
reasonable choice, 107
POWERS AND TRUSTS — continued

certainty of objects for, 105-108, 111
compared, 97-108, 905-909, 1172-1175
discretionary trusts, 101-102, 1201-1205
evidence of power, 102-105
fiduciary power, 100-101
followed by a trust, 102, 104-105
powers of appointment, 1199-1201
  mere (or pure) powers, 99, 1172-1175
  mere trust, and, 99
  trust power, 99-100, 1172-1175
types of
  administrative, 97 see also POWERS, administrative
dispositive, 97 see also POWERS, dispositive powers
distributive, powers of appointment, 97
  general, 97
  hybrid, 98
  special, 97
  legal, 97

POWERS OF PERSONAL REPRESENTATIVES
appointment of agents, 52

PRECATORY LANGUAGE
existence of, 20, 148, 850
judicial attitude, 145
secret trusts, 303
trusts, construing, 152
uncertainty, creating, 148-149, 162

PRECATORY TRUSTS see CERTAINTIES OF A TRUST

PREJUJUDICIAL ADVANCEMENT
abolished, where, 191
husband and wife, 412-413
joint bank accounts, 435
parent and child, 418-419
rebutting, 372, 405, 408
evidence to, 421-422
illegality, 423, 425

PRIVATE TRUST, public trust contrasted, 28-29

PROFITS see DUTIES OF TRUSTEE, loyalty, conflicts of interest

PROOF OF TRUST see STATUTE OF FRAUDS; and SECRET TRUSTS

PROTECTIVE TRUST see TYPES OF TRUSTS

PROTECTOR, 134-138
  fiduciary duty of loyalty, 137, 934
  judicial assessment of third party control, 934, 1014-1015
  meaning and nature of the term, 135
  offshore trusts, and, 135, 138, 607
PROTECTOR — continued
removal of, 137-138
role of, 134-137
settlor, tax considerations, 850
successors to, 137-138

PUBLIC POLICY
alienation, rule against see PERPETUITY RULE, inalienability, rule against
children born out of wedlock, trusts for, 319-328
born between date of will and death, 322
courts response to, 322
public policy
change in, 322-325
legislative response, 325-328
public policy considerations, 321
rule of interpretation
application of rule, 321
child or children, 320
historical reason, 320
conditions, and
contrary to public policy, 328-329
determinable interest, versus, 330-331
effect of void condition
precedent, 330
subsequent, 330
precedent and subsequent, 329
uncertainty, failure for, 331-334
courts and, 317-319
“illegitimate children” see PUBLIC POLICY, children born out of wedlock
law reform, 348-350
marital relationship, conditions interfering with, 338
family law reform, 338-339
historically, 338
intention to interfere, 339-341
societal change, and, 340
marriage, restraint of, 334-338
intention, 334-335
compelling celibacy, 335
condition subsequent, 334
determinable gift, 334
unmarried, remaining life, 335
partial, 336
widow or widower, constraint on remarriage, 336-338
parental duties, conditions interfering, 341-343
perpetual duration see PERPETUITY RULE
perpetuity see PERPETUITY RULE
racial discrimination, 347-348
conditions, 347-348
religious behaviour, conditions restraining, 343-346
generally, 343-346
PUBLIC POLICY — continued
   religious behaviour, conditions restraining — continued
      marital relations, 344-346
      minors, gifts to, 343-344

PUBLIC TRUST, private trust compared, 28-29

PUBLIC TRUSTEE
   advisory committees, and, 125
   appointment, 124
      consent to, 870
   charitable trusts, and, 125, 174, 669
   corporation sole, 125
   judicial trustee, 131
   legislation, 123-125
   need for, 123
   powers of, 125
   public guardian, 124
   remuneration of, 1232
   requirement for, 123-125
   supervision of trust, 125

PURCHASE IN THE NAME OF ANOTHER see RESULTING TRUST, purchase in the name of another

PURCHASE OF TRUST PROPERTY BY THE FIDUCIARY see DUTIES OF TRUSTEES, loyalty, conflicts of interest

PURCHASER’S LIEN, 536, 559

PURPOSE TRUSTS
   charitable see CHARITABLE PURPOSE TRUSTS
   non-charitable see NON-CHARITABLE PURPOSE TRUSTS

QUEBEC TRUSTS
   administration of, 1436-1440
      beneficiaries and settlor, rights of, 1438-1440
      conflict of laws, 1442
      trustees, 1436
         powers and obligations, 1436-1437
         variation and termination, 1440-1442
   background, 1409-1414
   conceptual structure, 1428-1430
   creation of
      constitution, 1432-1433
      form and publicity, requirements, 1433-1435
      operation of law, 1435-1436
   devices, alternate, 1422-1427
   foundation, 1427
   substitution, 1424-1427
   usufruct, 1422-1424
   introduction, 1427
   modern civil law tradition, 1414-1421
QUEBEC TRUSTS — continued
modern civil law tradition — continued
  civilian solutions, 1418-1421
  theoretical difficulties, 1414-1417
  in practice, 1442-1443
  types of, 1431

QUİSTCLOSE TRUST, 95-96, 452-453, 601 see also BUSINESS TRUSTS

RECEIPT, power of trustee to issue, 1150

RECOVERY OF TRUST PROPERTY see BREACH OF TRUST, trust property

RECREATIONAL TRUSTS see CHARITABLE PURPOSE TRUSTS, charity, legal
  meaning of, beneficial to the community

REGISTERED RETIREMENT INCOME FUND, 409, 568, 583

REGISTERED RETIREMENT SAVINGS PLANS, 568
  description of, 582
  setting up the trust, 225
  trust companies, and, 127
  types of trusts, 38
  whether capital or income, 1047

RELIGION see CHARITABLE PURPOSE TRUSTS

REMEDIES
  beneficiary, of, 1261-1265 see also BREACH OF TRUST

REMOTENESS see PERPETUITY RULE

REMOVAL OF TRUSTEES see DEATH, RETIREMENT AND REMOVAL OF
  TRUSTEES

REMUNERATION
  charging clauses see REMUNERATION, trust instrument, provision by
  express power for see REMUNERATION, trust instrument, provision by
  judicial trustees, 1231
  principle of, 1220-1221
  professional services, and, 1229
  public trustees, 1232
  solicitor-trustee, and, 1223-1224, 1230
  statutory power, courts, of, 1221-1229
    amount, calculation of, 1226-1229
    misconduct by trustee, effect of, 1224-1225
    reasonableness, 1224-1225
    timing (pre-taking) of, 1225
    trust instrument, provision by, 1221-1222, 1229-1231
    trustees of, 1220-1232

RENUNCIATION, beneficial interest, of, 1245-1246, 1423

RESETTLEMENT see TRUST, variation of

RESTITUTION see CONSTRUCTIVE TRUST; and UNJUST ENRICHMENT

RESTRICTIVE COVENANTS, 560
RESULTING TRUST

constructive trust
  distinction, 461
distinguished from, 396
definition, 394-397
essential characteristics
  provision of property or equitable interest, 399
title to property, 398
express trust, failure of, 446-460
equitable interest, disposal of, 448-453
rule in Hancock v. Watson, 446
taking effect, 453-458
  impossibility of objects, 454
  improvidence, 457
  rules of law, non-compliance, 457
  uncertainty of objects, 454
  vitiated intent, 453
implied trust, distinguished from, 397
intent or imposition, 21
joint accounts
  evidence of presumptions, 441-443
gift of survivorship, 443-446
legal analysis, 436
legal interest in, 437
legal title and beneficial interests, 435-446
volunteer against bank, rights of, 446
matrimonial and cohabitation property disputes, 461-475
  common intention, and, 472-475
  historical perspective, 466-472
    Canada, 468-472
    England, 467-468
  role of resulting trusts, 464-466
nature of, 21
personal property security legislation, and, 96
presumption of, 401, 405-406, 408-409, 421
presumption of advancement, 412-435
  husband and wife, 413-418, 433
  introduction, 412
  legal effect of, 420-421
  parent and child, 418-420
  rebutting the presumption, 421-435
    Goodfriend v. Goodfriend, 426-428, 432
    illegality and fraud, 423-432
    Scheuerman v. Scheuerman, 424-426, 432
purchase in the name of another, 401-405
  multiple contributors, 403-405
  purchase or loan, 401-403
situations, essential characteristics, 398-400
situations where occurring, 23, 397
voluntary transfer into name of another or joint names, 405-411
RESULTING TRUST — continued
  voluntary transfer into name of another or joint names — continued
    introduction, 405-408
    rebutting the presumption, 409-411
    passage of time, 411

RETIREMENT
  trustee of
    conditions, 891
    express provision, 890-893
  trustees, of
    costs, 893, 895
    replacement, with, 893-894

REVOCATION, 383-386
  reservation of power for, 383-384
    public policy, not to contravene, 384
    Saunders v. Vautier, relation to rule in, 384-385
    tax implications, 385
    trust for creditors, 385-386
  setting aside trust, 386-391
    duress, fraud or undue influence on settlor, 386-388
    fraud by settlor, 388
    mistake by settlor, 386-388
    mistaken assumptions, 389-391

SAUNDERS v. VAUTIER, RULE IN see also TERMINATION, TRUST OF
  accumulations, 827
  avoidance of, 1241-1243
    annuities, 1247
      Barford v. Street principle, 1249-1252
    gift over, 1243
    instalment gifts, 1246-1247
    trustee’s powers, 1248
  bare or simple trusts, 34
  charities, application to, 827, 830, 1252-1256
  conflict of laws, 1448, 1465, 1472
  discretionary trusts and powers, 1247-1249
  invoking, 1240
  legislation
    abolished, Manitoba and Alberta, 1259-1262, 1375
    effect of, 1246
    postponement to certain age, 1240-1243
    postponement to date, 1243-1244
    prior interest, disclaimer or surrender, 1244-1246
    Quebec, 1441, 1448
    reasons for, 1235-1236, 1240
    revocation, distinct from, 384-385
    termination, requirements for, 1239
    United States, application in, 1256-1258
SAUNDERS v. VAUTIER, RULE IN — continued
variation of trusts, relation to, 1358-1361

SECRET TRUSTS
fully-secret, 289-295, 1246-1247
communication and acceptance
proof of, 291
requirements for, 292-293
sealed instructions during lifetime, 294
time of, 293
two or more persons as trustees, 294-295
generally, 286
communication and acceptance, 288
half-secret trust, 288
trustee, devisee, legatee or intestate successor as, 287
half-secret, 295-307
communication and acceptance, 296-302
prior to will
Canadian courts, 297-302
English courts, 296-297
objects of trust, parol evidence, admission of, 302-307
nature of, 308-313, 542
express or constructive trust, 308-309
testamentary or inter vivos, 309
proof of
intention to create, 289-295
trusteeship and objects, 292
wills acts, and, 286-287

SECURITY TRUST
business trust, type of, 110
debenture trusts, 596
Quebec, in, 1435, 1443

SET-OFF
abolition of common law rule in Canada, 1008, 1291
by trustee, 90-91
trustee, breach of trust, gains against losses, 1008, 1291-1293

SETTLED LAND, statutory powers, power to sell, distinction, 1143

SETTLEMENT
beneficiaries, 235, 359
binding, must be, 117-118, 207
decline in Canada, 1146-1147
meaning
Bankruptcy and Insolvency Act, 368
Fraudulent Conveyances Acts, 355
Fraudulent Preferences Acts, 368
meaning of, 7
strict, 7, 1136, 1144, 1424
SEVERANCE, 417-418, 438

SHAM TRUSTS, 139, 155, 157 see also CERTAINTIES OF A TRUST, intention

SIMPLE TRUSTS see TYPES OF TRUST, bare, naked or simple

SPENDTHRIFT TRUSTS see TYPES OF TRUST

SPORT see CHARITABLE PURPOSE TRUSTS, charity, legal meaning of, benefit to the community

SPOUSAL TRUST, 37-38, 621-622, 632 see also TAXATION OF TRUSTS and ESTATE PLANNING, trusts, use of

STATUTE OF FRAUDS, 260, 262
in Canada, 253-254
contract and trust obligations, avoidance of, 272
equitable interests
  grants and assignments of, 262-263
  meaning of “grants and assignments”, 264-271
fraud as instrument of, 272-286
doctrine of fraud, 272-276
  express trust or constructive trust, 278-282
  fraud meaning of, and, 276-278
  part performance, comparison of, 275-276
  express trust or trust by operation of law, 279-283
  part performance, doctrine of, 272
  resulting trust situations, 278-279
land
  contracts to create trust of, 255-259
  “contract or sale of,” meaning of, 256
  effect of non-compliance, 255
  evidence required, 258
  proceeds of sale, 257-258
  declaration of trust of, 259-262
  effect of non-compliance, 261-262
law reform, 284-286

STATUTORY TRUST see TYPES OF TRUST

STRANGERS TO THE TRUST, 513-525

STRONG v. BIRD, rule in, 178, 228-235
  historical basis, 226
  incomplete gifts, perfecting, 227

SUB-TRUST
  distinct from assignment, 266
  meaning of, 185, 271, 1201
  variation of trusts, 612

SUBJECT-MATTER see also CERTAINTIES OF A TRUST
  certainty of, 159-166
  formula to determine, 163-164
  intention, in relation to, 160
SUBJECT-MATTER — continued
meaning of, 159
property, changing nature of, 166

SUBROGATION
basis of, 502-503
creditors’ right to be subrogated to rights of trustee, 1207
lien or trust for indemnity insurer, 562
real subrogation, as civil law analogy to claims based on tracing, 1439
tracing, consequent upon, 1342

SUCCESSION DUTIES
abolition of, 569, 615, 704
estate duty, distinction, 640-642

SURVIVORSHIP
constructive trust, 485, 554
joint tenancy and, 404, 416-417
mutual wills, 554
resulting trusts, joint bank accounts, 436-440, 443, 1195
   nature of gift, 443-446
trustees, 878, 888-889

TAXATION OF CHARITABLE PURPOSE TRUSTS see CHARITABLE PURPOSE
TRUSTS, advantages of, taxation

TAXATION OF TRUSTS
alter ego trust, 621-622, 632-634
approaches to, possible, 615-618
artificial losses see TAXATION OF TRUSTS, stop-loss rules
beneficial interests
   discretionary trusts, and, 623-624
   flow through treatment, 625
   minor, deferred income of, election, 623
   preferred beneficiary election, 624-625
   recognition of, 622
   transfer by beneficiary, 628-629
capital gains, 619, 621-623
gift tax, 642
history of, 610-614
   Canadian trust taxation, 614-615
   emergence of trust taxation, 610-611
   estate planning, and, 614
   trust modification, due to, 612-613
   types of trusts, effect on, 613
income splitting, 629-630 see also INCOME SPLITTING
joint spousal (or common law partner) trust, 621-622, 632, 634
non-resident beneficiary, withholding tax, 626
non-resident trusts, 625-628
policy, 636-639
qualifying disposition to a trust, 636
self-benefit trust, 635-636
TAXATION OF TRUSTS — continued
spousal (or common law partner) trust, 37-38, 621-622, 632, 648-649
stop-loss rules, 630-632
succession duty, 640-642
trust as a legal persona, 618-622
trust law, and, 615-618

TENANCY IN COMMON, 405

TERMINATION, TRUST OF, 1233
Alberta, in, 1258
Manitoba, in, 1258
Saunders v. Vautier, rule in
  age, postponement to, 1240
  Barford v. Street principle, 1249
  charities, 1252
  date, postponement to, 1243
  gifts, instalment, 1246
  trustee and powers, discretionary, 1247
United States, in, 1256

TESTAMENTARY TRUST see TYPES OF TRUST

THREE CERTAINTIES see CERTAINTIES OF A TRUST

TORRENS TITLE, 408

TRACING TRUST PROPERTY
bona fide purchaser, 1353
choice of law rules, 1476-1478
Clayton's case, rejected, 1350
constructive trust, relationship to, 510
debts, payment of, 1354-1355
end of, 1352
fiduciary relationship, 498, 528, 1289, 1346
following and, 1335
mixed funds, 1347
principles of, 1347
proprietary claims, 1337
recovery of property, 1334
transactional link, requirement, 494, 502, 1336, 1355, 1477
trustee, unauthorized disposition, 1335

TRUST
accelerated, meaning, 37
administration of, intervention, right to, 1263-1267
agency, compared see AGENCY
bailment and see BAILMENT, TRUSTS AND
breach of see BREACH OF TRUST
characteristics see TRUST, essential features
civil law, common law compared, 14-18
common law, characteristics of, 9-14
company see TRUST COMPANY
TRUST — continued
conditional gift, compared see CONDITIONAL GIFT
corporation see TRUST COMPANY
development of, 5-9
disposition, modes of, restrictions
inalienability, 373-375
perpetual duration, 380-381
perpetuity, 375-380
equitable charge, compared see EQUITABLE CHARGE
equitable lien see LIEN
essential features, 9-14
executed see EXECUTED TRUST
executory see EXECUTORY TRUST
fidicommisum see FIDEICOMMISSUM
fiducia see FIDUCIA
fiduciary relationship, compared see FIDUCIARY OBLIGATIONS
governmental obligation, compared, 31-33
history see TRUST, origins
inter vivos see TYPES OF TRUST
meaning of trust, 3-4
oral
enforcement of, 272, 275
express trust, evidence, 279
land, 541
resulting trust, presumption, 279
Statute of Frauds, 281-283
origins, 5-9
personal obligation see PERSONAL OBLIGATION
Quebec, in see QUEBEC TRUSTS
resettlement, of a, 1200
revocation see REVOCAUTION
secret see SECRET TRUSTS
testamentary see TYPES OF TRUST
unlawful, 28 see also PUBLIC POLICY
variation of
court
inherent jurisdiction, 1363-1369
annuities, release of capital, 1368-1369
compromise, 1367-1368
maintenance, 1366-1367
marriage settlements, variation of, 1372-1373
salvage and emergency, 1365-1366
statutory powers, 1369-1373
enlarging management or administrative powers, 1369-1372
variation of marriage settlements, 1372-1373
TRUST — continued
variation of — continued
court — continued
statutory powers, 1369-1373 — continued
variation of wills legislation, 1373
legislation
applicants, 1378-1380
arrangements, 1389-1395
criteria, 1395-1404
benefit, 1395
non-financial, 1397
satisfactory character, 1400
intention of settlor or testator, 1402
power, exercise or release of, 1403
background, 1358-1363
court approval of arrangement, 1380-1389
fully capacitated beneficiaries, 1383-1385
infants and mentally incompetent persons, 1380-1381
objects of discretion, 1387-1388
purpose trusts, 1388-1389
unborn and untraceable persons, 1386
uncertain interest, persons with, 1381-1383
introduction, 1373-1378
resettlement, 1390-1407

TRUST COMPANY
  capital, division of, 127
development in Canada, 125
legislation, object of, 126
work of, 126-129

TRUST POWER see POWERS AND TRUSTS

TRUST PROPERTY see SUBJECT-MATTER

TRUST RES see SUBJECT-MATTER

TRUSTEE DE SON TORT, 514-515

TRUSTEES
  administrator, compared see TRUSTEES, personal representative, compared
agents, appointment of, 66
appointment of, 849
acceptance and refusal of office, 883-885
court, by, 868-875
  inherent jurisdiction, 868-869
  statutory jurisdiction, 869-875
express power, under, 852-855
case examples, 852-854
  Re Robertson, 853-854
  Saunders v. Bradley, 852-853
construction, 852
TRUSTEES — continued

appointment of — continued

express power, under, 852-855 — continued

personal or function of office, 855

statutory power, relationship to, 854

number, 875-877

property vesting in, 877, 882

common law and equity, rules of, 878

declaration, words to constitute, 879-880

statutory declaration, 878

assets excepted, 880-881

form of declaration, 879

settlor, by, 850-852

statutory power, under, 855-868

additional, 865-866

new or substitute, 856-865

exercise of power

when, 857-859

who, 859-860

express or statutory, 863

mode of appointment, 864-865

surviving or continuing

meaning of, 859-860

personal representative of, 860-863

unconstituted trust, 863-864

revocation of, 866-867

custodial see CUSTODIAL TRUSTEE

death of

powers pass to surviving trustees, whether, 887-889

sole or last surviving, 889-890

delegation by see DUTIES OF TRUSTEES, delegation

duties see DUTIES OF TRUSTEE

executor

appointment as executor and trustee, 53-54

compared to trustee see TRUSTEES, personal representative, compared

fiduciary obligation see FIDUCIARY OBLIGATIONS

indemnification of see INDEMNIFICATION, trustees, of

investment of trust funds, 996

judicial see JUDICIAL TRUSTEE

liability of


to account, 1273

court’s jurisdiction to excuse, 1170, 1324-1331

delegating trustee, 925-928

discretionary decisions, 985-991

exculpatory clauses, 981-984

general principles, 1270-1278

insurance for, 1106

limitation periods, 1309-1321

non-trustees, 1277

by operation of law, 1276
TRUSTEES — continued
liability of — continued
  personal, 1275
  protections, 1302-1303
personal representative, compared, 47-56
powers and duties, 905
  administrative, 906 see also POWERS, administrative
dispositive, 907
distinction between, 905-909
removal of, 895 see also DEATH, RETIREMENT AND REMOVAL OF TRUSTEES
  circumstances justifying
    bankruptcy, 899-900
    breach of trust, 900-901
    conflict of interest, 899
    consultation with beneficiaries, lack of, 903
disagreement among trustees, 902
dishonesty, 898-899
court inherent jurisdiction, 896
remuneration of, 1220-1232 see also REMUNERATION, trustees of
replacement, statutory powers of, 896-897
retirement
  legislative provisions, 890-893
  payment into court, and, 895
  reasons for, 893-894
  replacement of, 891, 895
standard of care required, 974-984

TYPES OF TRUST
  alter ego see TAXATION OF TRUSTS
  bare, naked or simple, 33-35
  business, 38-39 see also BUSINESS TRUSTS
discretionary see DISCRETIONARY TRUSTS
environmental, 602-605 see also ENVIRONMENTAL TRUSTS
executed and executory, 24-28
  completely constituted, 28
  incompletely constituted, 28
express, implied, resulting and constructive, 19-23
inter vivos, 35
  when testamentary, 220-221
international trusts, 606-607 see also INTERNATIONAL TRUSTS
living trusts see TYPES OF TRUSTS, inter vivos
personal, 38-39, 566 see also PERSONAL TRUSTS
private and public, 28-29
protective trust, 36-37, 571, 635, 1203, 1374-1375, 1387, 1396
special, trustee duties
  administrative, 35
  discretionary or dispositive, 35
spendthrift, 36-37, 1375
statutory, 29-31
testamentary, 35
TYPES OF TRUST — continued
  testamentary — continued
    requirements for, 219-220
    revocable inter vivos trust, 220-221

UNIT TRUSTS, nature of, 582-583

UNITRUST
  American usage, 1115
  meaning, 809
  percentage trust, 1115-1119
  standard, prudent investor, 1116

UNJUST ENRICHMENT
  cohabitational property disputes, 537-540
  conflict of laws, 1474-1475
  constructive trusts, and, 23, 461, 467, 469-472, 479, 484, 487-500, 534-540
  development of, 489-493
  disgorgement for wrongdoing, contrast with, 496-499
  indemnification of trustee by beneficiary, 1225
  purchase of trust property by trustee, 945
  Quebec, 1435
  restitution, 489-490, 494-496, 521-522, 534-535
  resulting trusts, and, 396, 475, 1475
  secret trusts, and, 308, 542
  tracing claims, 1336, 1477-1478

VARIATION OF TRUSTS see TRUST, variation of

VOLOUNTEER
  constituting trust in favour of, 182-183
  equity will not assist, 82, 182-183, 196-198, 201-203, 217, 229, 241
    exception, 191-193
  voluntary deed of covenant to create a trust, effects of, 194-203
    future property, 198-200

WILLS ACTS see CONSTITUTING THE TRUST; SECRET TRUSTS; and CAPACITY