

INDEX

ABORIGINAL LAND CLAIMS

generally, 58-70
settlement and other trusts, 70-71

ACCOUNTING FOR PROFITS, 1039-1046

ACCUMULATIONS, 450

ADMINISTRATION OF DECEASED PERSON'S ESTATE, TRUST AND, 94-99

AGENCY, TRUST AND, 73-78

APPOINTMENT

powers of
certainty of objects of, 158-171
definition, 20
discretionary trust vs., 151-157
powers, generally, 143-145
types of powers, 145-151

trustees
additional trustees, 878
generally, 873-874
judicial appointment, 879-883
non-judicial appointment, 874-878
number of
maximum, 883-884
minimum, 884-85
substitute trustees, 874-878

BAILMENT, TRUST AND, 91-93

BENEFICIARY (CESTUI QUE TRUST)

capacity, 177-178
constructive trust, under, 701-702
defined, 18
estate beneficiary, 44-51
nature of interest, 34-44
remedies for breach of trust, *see* LIABILITY OF TRUSTEES
termination by, 316-328, *see also* TERMINATION BY BENEFICIARY

BREACH OF CONFIDENCE, *see also* WRONGFUL GAINS

confidential circumstances, 732
confidential information, 732
detriment, 733
elements of claim, 732-733
nature of claim, 733-734
remedies for, 734-752

BREACH OF FIDUCIARY DUTY, *see also* WRONGFUL GAINS

compensation, 753
confidential information, use of, 769-773
conflicting duties, 798-800
constructive trust remedy, 753-755
corporate and other opportunities

Canadian Aero Service Ltd. v. O'Malley, 775-788
Peso Silver Mines Ltd. v. Cropper, 774-775
Regal (Hastings) Ltd. v. Gulliver, 773-774
disgorgement, 730, 754-755
generally, 752-758
purchase of trust property
application and exceptions, 760
codification of rule, 759-760
confidential information, use of, 769-773
conflicting duties, 798-800
corporate and other opportunities, 773-788
miscellaneous examples, 801-803
remedies, 760-767
sale to trust, 767-769
secret commissions and bribes, 788-798
self-hiring, 801
statement of rule, 758-759

BREACH OF TRUST, *see* KNOWING ASSISTANCE AND RECEIPT; LIABILITY OF TRUSTEES; TRACING AND RECOVERY OF TRUST ASSETS

CAPACITY, 175-178, *see also* EXPRESS TRUSTS

CERTAINTIES, THREE, *see also* EXPRESS TRUSTS

generally, 178-179
intention
generally, 179-183
sham trusts, 184-185

objects
class ascertainability, fixed trust, 205-206
consequences of uncertainty, 205
evidentiary and conceptual certainty, 203
generally, 202
individual ascertainability
discretionary trust, 206-216
outstanding issues, 217-228
persons and purposes, 202-203
saving potentially uncertain objects, 203-204
tests, 203
timing, 204-205

subject-matter
generally, 185
identification of property, 186
uncertainty as to "anything left", 196-198
uncertainty in quantum, 198-202

CHARGES, *see* SECURITY INTEREST

CHARITABLE TRUSTS

accumulations, 450
advantages of charity
generally, 366-370

INDEX

- tort claims, immunity from, 370-372
- charity, meaning of
 - Charities Act 2011* (U.K.), 378-380
 - generally, 372-373, 392
 - historical background, 373-383
 - public benefit element, necessity of, 383-392
 - statutory definitions, 377-381
- cy-près doctrine
 - administration vs. cy-près schemes, 451-453
 - case law, 454-463
 - discriminatory trusts, 475-484
 - divisions in charitable organizations, 484-487
 - initial impossibility/impracticability, 463-470
 - prerogative cy-près, 453-454
 - supervening impossibility/impracticability, 470-475
- generally, 365
- governance, 501-502
- heads of charity
 - advancement of education
 - education, meaning of, 409-420
 - public benefit requirement, 420-423
 - advancement of religion, 399-409
 - other purposes beneficial to community
 - benefit of locality/country, 425
 - care of young persons, 424
 - health and medicine, 428-429
 - preservation of public order and administration of justice, 425-427
 - promotion of economic activity, 427
 - public works, 424-425
 - relief of old and disabled, 424
 - relief of prisoners, 427
 - resettlement and rehabilitation, 427
 - social and recreational purposes, 429-430
 - sports, 430-437
 - trusts for animals, 427-428
 - relief of poverty, 393-399
- imperfect charitable trusts
 - exclusivity rule, exceptions to, 444-447
 - generally, 440-444
- perpetuity rules, 447-450
 - accumulations, 450
- public benefit requirement
 - exclusivity, 391-392
 - extra-territorial trusts, 386-387
 - generally, 383-386
 - political purposes, 387-391
- regulation of charities
 - case law, 494-501
 - fundraising, 492-493
 - judicial activity, 494-501
 - reform proposals, 493-494
 - statutory scheme, 487-492
- CIVIL LAW, TRUST IN**
 - generally, 51-55
 - Quebec practice, 55-58
- CLAYTON'S CASE, RULE IN**
 - tracing and, 1180, 1181, 1186, 1187, 1188, 1190, 1195-1198, 1200
- COMMON INTENTION RESULTING TRUSTS, 590-599, see also RESULTING TRUSTS**
- COMPENSATION**
 - action against trustee for compensation for loss, 1016-1039
 - trustees, of, 975-985
- CONDITIONAL GIFT, TRUST AND, 99-102**
- CONSTITUTION OF TRUSTS, see also EXPRESS TRUSTS**
 - declaration of self as trustee, 238-244
 - equity and, 231-238
 - future property, 229-231
 - generally, 229
 - modes of, 229
 - transfer of property to trustees, 244-261
- CONSTRUCTIVE TRUSTS, see also KNOWING ASSISTANCE AND RECEIPT; PERFECTING INTENTIONS; WRONGFUL GAINS**
 - beneficiary under, 701-702
 - constructive trustees, 673-674, 702
 - effect of, 703-704
 - fraud and, 672
 - generally, 25, 671-674
 - good conscience and, 687-700
 - historical developments, 674-675
 - perfecting intentions, 673
 - proprietary restitution, guidelines for
 - academic proposals
 - Professor Burrows' vitiated intention approach, 723-725
 - Professor Chambers' principled approach, 722-723
 - adequacy of monetary relief, 719-721
 - Canadian cases, 712-713
 - clear and substantial connection, 716-717
 - generally, 711-712
 - discretion, 713-715
 - identifiable property, 715-716
 - reasonable expectations, 717-719
 - remedial constructive trusts, 675-682
 - restitutionary trusts and
 - generally, 705-710
 - guidelines for proprietary restitution
 - academic proposals, 722-727
 - adequacy of monetary relief, 719-721
 - Canadian cases, 712-713
 - clear and substantial connection, 716-717
 - discretion, 713-715
 - generally, 711-712
 - identifiable property, 715-716

- reasonable expectations, 717-719
- resulting vs. constructive trust, 710-711
- tracing and, 701
- trustee under, 702
- unjust enrichment
 - action in, 683-684, 705
 - good conscience and, 687-700
 - generally, 682-683
 - remedial constructive trusts and, 675-682
 - restitution and, 683, 684
 - restitutionary trusts, 705-710
 - wrongdoing, by, 684-686, 705
- wrongs, 673

CONTRACT, TRUST AND, 78-83

COVENANTS IN FAVOUR OF VOLUNTEER, *see also* EXPRESS TRUSTS

- beneficiary as promise, 266-268
- consideration and seals, 263-264
- Fletcher v. Fletcher*, 274-275
- future property, 275-276
- generally, 262-263
- marriage settlements, 263-264
- monetary relief and specific performance, 265-266
- privity of contract, 264-265
- proof of intention, 275
- recharacterization of subject matter, 273-275
- self-declared trust, 273
- trustee as promise, 268-273

CREDITORS

- trusts defrauding, 306-309
- trusts to secure, 32

CUSTODIAL TRUSTS, 32-33

CY-PRÈS DOCTRINE, *see also* CHARITABLE TRUSTS

- administration vs. cy-près schemes, 451-453
- case law, 454-463
- discriminatory trusts, 475-484
- divisions in charitable organizations, 484-487
- initial impossibility/impracticability, 463-470
- prerogative cy-près, 453-454
- supervening impossibility / impracticability, 470-475

DEATH

- transfers upon death
 - mutual wills, 854-870
 - secret trusts, 830-854
- wrongful acquisition through
 - acquisition of property by murder, 803-806
 - testamentary context, 806-809

DEBT, TRUST AND, 83-91

DEEMED TRUSTS

- deemed statutory trusts, 107-114
- described, 27-28

- DENLEY'S TRUST DEED*, 522, 533-536, 538, 546

DISCRETION, TRUSTEE'S EXERCISE OF, *see also* DUTIES AND POWERS OF TRUSTEES

- administrative powers, 916-917
- advancement, power of, 20, 922-923
- delegation, 910-915
- distributive powers, 917-921
- encroachment, power of, 20, 923-924
- generally, 901, 915
- judicial review of, 924-925
- maintenance, powers of, 20, 921-922
- mistakes, correction of
 - generally, 925-930
 - rectification, 930-931
 - rescission, 931-933
- misuse of discretion, 933-943
- powers and duties
 - initial duties, 901-902
 - seeking court's advice, 903-910
 - trustees must act jointly, 902-903

DISCRETIONARY TRUSTS

- beneficiary's rights, 119
- certainty of objects, 203
 - individual ascertainability, 206-217
- described, 19, 20
- distributive powers, and, 917
- generally, 40, 299
- power of appointment vs., 151-157
- protective trust, as, 299
- Saunders v. Vautier*, and, 318

DISCRIMINATORY TRUSTS

- cy-près doctrine, 475-484
- public policy, contrary to, 292-296

DONATIO MORTIS CAUSA, DOCTRINE OF, 235-236

DUTIES AND POWERS OF TRUSTEES, *see also* POWERS OF APPOINTMENT

- administrative powers, 916-917
- advancement, power of, 20, 922-923
- court advice, seeking, 903-910
- delegation of, 910-915
- discretion, *see* DISCRETION, TRUSTEE'S EXERCISE OF
- distributive powers, 917-921
- duties vs. powers, 115
- duty of care, 136-143
- duty to account, 115-128
- fiduciary duty, 128-136
- generally, 115
- impartiality, duty of
 - allocation of outgoings, 967-969
 - apportionments and allocations under statute, 969-973
 - apportionments between capital and income

- common law, at, 955-963
- corporate distributions, 963-967
 - generally, 951-955
- initial duties, 901-902
- investment of trust funds
 - duty of care
 - common law, at, 946-947
 - statutory, 947-951
 - generally, 945-946
- joint action, 902-903
- judicial review
 - generally, 924-925
 - mistakes, correction of
 - generally, 925-930
 - rectification, 930-931
 - rescission, 931-933
 - misuse of discretion, 933-943
- maintenance, powers of, 20, 921-922
- trust powers, 143-145

EQUITY

- described, 3-8
- law and, relationship today, 15-16
- legal procedure vs., 6-7

ESTATES PRACTICE, TRUST AND, 94-99

EXPRESS TRUSTS

- capacity
 - beneficiary, 177-178
 - creator of trust, 175-176
 - trustee, 176
- certainties, required
 - generally, 178-179
 - intention to create trust, 179-185
 - objects, 202-228, *see also* objects, certainty of
 - subject-matter, 185-202, *see also* subject-matter of trust, certainty of
- constitution of trusts
 - declaration of self as trustee, 238-244, *see also* declaration of self as trustee
 - equity and, 231-238, *see also* equity will not assist a volunteer
 - future property, 229-231
 - generally, 229
 - modes of, 229
 - transfer of property to trustees, 244-261, *see also* transfer of property to trustees
- covenants in favour of volunteer
 - beneficiary as promise, 266-268
 - consideration and seals, 263-264
 - Fletcher v. Fletcher*, 274-275
 - future property, 275-276
 - generally, 262-263
 - marriage settlements, 263-264
 - monetary relief and specific performance, 265-266
 - privity of contract, 264-265
 - proof of intention, 275

- recharacterization of subject matter, 273-275
- self-declared trust, 273
- trustee as promise, 268-273
- declaration of self as trustee
 - intention to create trust, 239-244
 - settlor as one of several trustees, 238-239
- described, 23, 175
- equity will not assist a volunteer
 - donatio mortis causa*, doctrine of, 235-236
 - equity will not enforce a gratuitous promise, 231
 - equity will not perfect an imperfect gift, 231-234
 - exceptions, 234-238
 - generally, 231
 - proprietary estoppel, doctrine of, 235
 - Strong v. Bird*, rule in, 236-238
- failure of express trusts, *see also* RESULTING TRUSTS

RESULTING TRUSTS

- extension of, 666, 668
- failure, 564-565
- generally, 562-564
- Hancock v. Watson*, rule in, 568-569
- pension trusts, 569-584
- settlor's intention for gift of surplus, 584-589
- trust or gift, 565-568
- formal requirements
 - generally, 277-278
 - inter vivos* formalities
 - circumvention of statute, 284
 - contracts to create trust, 280-282
 - creation of *inter vivos* trusts, 282-283
 - equitable interests, transfers of, 283-284
 - statutory provisions, 278-280
 - inter vivos* trusts, creation of, 297
 - Statute of Frauds*
 - circumvention of statute, 284
 - generally, 277, 278-284
 - testamentary formalities
 - circumvention of legislation, 286-287
 - statutory provisions, 285-286
- intention to create trust, 179-185
- objects, certainty of
 - consequences of uncertainty, 205
 - discretionary trust, individual ascertainability, 206-216
 - evidentiary and conceptual certainty, 203
 - fixed trust, class ascertainability, 205-206
 - generally, 202
 - individual ascertainability
 - any given individual, 217-228
 - certain and uncertain, 217
 - discretionary trust, 206-216
 - inclusion and exclusion, 217
 - persons and purposes, 202-203
 - saving potentially uncertain objects, 203-204
 - tests of, 203

timing issues, 204
subject-matter of trust, certainty of
“anything left”, uncertainty re, 196-198
identification, uncertainty in
ascertained/ascertainable, 187
generally, 186
portion of undifferentiated mass, 188-196
timing issues, 187-188
types of property, 186-187
quantum, uncertainty re, 198-202
testamentary formalities
circumvention of legislation, 286-287
statutory provisions, 285-286
transfer of property to trustees
by settlor, 244-257
by third party, 257-261
placing beneficial interest into trust, 261-262
settlor’s gratuitous transfer to trustee of pre-existing trust, 252-257

FIDUCIARY RELATIONSHIP

breach, 752-803
categories, 129
generally, 17, 25, 128-134

FIXED TRUSTS

class ascertainability, 205-206
generally, 19, 21, 42

FLETCHER v. FLETCHER, 274-275, 276

FORMAL REQUIREMENTS, see EXPRESS TRUSTS

GIFTS, see PERFECTING INTENTIONS; RESULTING TRUSTS

HALLET’S ESTATE, RULE IN, 1181-1183
HANCOCK v. WATSON, RULE IN, 568-569

ILLEGAL PURPOSES, TRUSTS, see also LIMITATIONS ON CREATION

consequences of illegality, 290-291
generally, 289-290

IMPARTIALITY, DUTY OF

allocation of outgoings, 967-969
apportionments and allocations under statute, 969-973
apportionments between capital and income
common law, at, 955-963
corporate distributions, 963-967
generally, 951-955

IMPLIED TRUSTS, 25, 26

INTENTION, CERTAINTY OF, see also CERTAINTIES, THREE

generally, 179-183
sham trusts, 184-185

INTER VIVOS EXPRESS TRUSTS

inter vivos formalities

circumvention of statute, 284
contracts to create trust, 280-282
creation of *inter vivos* trusts, 282-283
equitable interests, transfers of, 283-284
statutory provisions, 278-280
inter vivos trusts, creation of, 297

INTER VIVOS TRANSFERS, PERFECTING INTENTIONS

cohabitational property disputes, 828-830
incomplete gifts, 825-826
oral trusts of land
generally, 818-820
nature and basis of trust, 820-825
Statute of Frauds and, 818-820, 822
proprietary estoppel, 826-828
specifically enforceable contracts for sale
generally, 814-815
operation and consequences, 816-818
scope of application, 815
triggering event, 816

INVALID CONDITIONS, see LIMITATIONS ON CREATION

INVESTMENT OF TRUST FUNDS

duty of care
common law, at, 946-947
statutory, 947-951
generally, 945-946

JUDICIAL REVIEW OF TRUSTEE DECISIONS

generally, 924-925
mistakes, correction of
generally, 925-930
rectification, 930-931
rescission, 931-933
misuse of discretion, 933-943

KNOWING ASSISTANCE AND RECEIPT, see also CONSTRUCTIVE TRUSTS

constructive trustee
categories of, 1099-1100
nature of, 1097-1099
knowing assistance in breach of trust
action, 1100-1101
relief, 1106
stranger’s assistance, nature of, 1102-1103
stranger’s knowledge, nature of, 1103-1105
underlying breach, 1105-1106
underlying relationship, 1101-1102
knowing receipt
bona fide purchase for value without notice, 1127-1129
cause of action, isolating, 1126-1127
elements of proof, 1130
nature of claim, 1129
nature of relief, 1131-1151
trustee *de son tort*, 1151-1153

LIABILITY OF TRUSTEES

beneficiaries’ miscellaneous remedies

- administration action, 1094
- appointment of receiver, 1094
- declaratory judgment, 1094
- injunction, 1094
- refusal of specific performance, 1094
- setting aside transactions, 1094
- compensation for loss, action re, 1016-1039
- defences
 - acquiescence, 1058
 - consent, 1052-1054
 - defendant not trustee, 1049-1051
 - impounding beneficiary's interest, 1054-1058
 - laches, 1070-1076
 - limitations, 1059-1070
 - release, 1058-1059
- generally, 1003
- personal liability
 - accounting for profits, 1039-1046
 - choice of remedy, 1013-1015
 - compensation for loss, action re, 1016-1039
 - generally, 1003-1013
 - interest, liability for, 1046-1049
 - liability, principles of, 1015-1016
- protection of trustee
 - court's power to excuse, 1088-1093
 - exculpation by statute, 1076
 - exemption clauses, 1077-1088
 - removal of duties, 1077

LIMITATIONS ON CREATION

- accumulation of income, 450
- creditors, trusts defrauding, 306-309
- illegal purposes, trusts for
 - consequences of illegality, 290-291
 - generally, 289-290
- invalid conditions, trusts imposing
 - generally, 291-292
 - impossibility of performance, 296-297
 - public policy, conditions contrary to, 292-296
 - uncertain conditions, 297-298
 - voidable conditions, 291-292
- perpetuities, trusts contravening, 304-306
- protective trust, 298-304
- restraint on alienation, 298-304

MATRIMONIAL PROPERTY

LEGISLATION, 639-644, *see also*
RESULTING TRUSTS

MIXED TRUST ASSETS

- Clayton's Case*, rule in, 1180, 1181, 1186, 1187, 1188, 1190, 1195-1198, 1200
- generally, 1179-1180
- Oatway*, principle in, 1183, 1185
- presumptions against wrongdoers, 1180-1185
- pro rata* sharing, 1185-1201
- tracing into payment of debt, 1201-1210

NON-CHARITABLE PURPOSE TRUSTS

- generally, 503-504

- invalidity
 - effect of, 508-509
 - reasons for, 504-508
- persons, trusts for
 - class of beneficiaries, finding, 533-536
 - generally, 533
 - rule against perpetuities, 546-549
 - unincorporated associations, 536-545
- powers
 - anomalous cases, 510-516
 - generally, 509-510
 - Quistclose* trusts, 521-530
 - statutory powers of appointment, 516-521
- public appeals, 530-532

OATWAY, PRINCIPLE IN, 1183, 1185

OBJECTS, CERTAINTY OF, *see also* **CERTAINTIES, THREE; EXPRESS TRUSTS**

- class ascertainability, fixed trust, 205-206
- consequences of uncertainty, 205
- evidentiary and conceptual certainty, 203
- generally, 202
- individual ascertainability
 - discretionary trust, 206-216
 - outstanding issues, 217-228
- persons and purposes, 202-203
- saving potentially uncertain objects, 203-204
- tests, 203
- timing, 204-205

ORAL TRUSTS OF LAND

- generally, 673, 812, 818-820
- nature and basis of trust, 820-825
- Statute of Frauds* and, 675, 818-820, 822

PENSION TRUSTS, 32, 569-584

PERFECTING INTENTIONS

- cohabitational property disputes, 828-830
- generally, 811-814
- incomplete gifts, 825-826
- inter vivos* transfers
 - cohabitational property disputes, 828-830
 - incomplete gifts, 825-826
- oral trusts of land
 - generally, 818-820
 - nature and basis of trust, 820-825
 - Statute of Frauds* and, 818-820, 822
- proprietary estoppel, 826-828
- specifically enforceable contracts for sale
 - generally, 814-815
 - operation and consequences, 816-818
 - scope of application, 815
 - triggering event, 816

mutual wills

- basis of doctrine, 856-857
- explanation for trust, 857-870
- reciprocal vs. mutual wills, 854-856
- oral trusts of land
 - generally, 818-820

nature and basis of trust, 820-825
Statute of Frauds and, 818-820, 822
proprietary estoppel, 826-828
secret trusts
 fully-secret trusts
 failure of, consequences, 838
 generally, 837-838
 proof of intention, 839-843
 generally, 830-831
 nature and basis of constructive trust, 831-837
 semi-secret trusts
 failure of, consequences, 845-854
 timing, 843-845
specifically enforceable contracts for sale
 generally, 814-815
 operation and consequences, 816-818
 scope of application, 815
 triggering event, 816
transfers upon death
 mutual wills, 854-870
 secret trusts, 830-854

PERPETUITIES, RULE AGAINST, 304-306, 546-549, see also LIMITATIONS ON CREATION; NON-CHARITABLE PURPOSE TRUSTS

PERSONAL REPRESENTATIVE, OFFICE OF, 44, 94-95

POWERS OF TRUSTEES, see DUTIES AND POWERS OF TRUSTEES

POWERS OF APPOINTMENT, see also DUTIES AND POWERS OF TRUSTEES; TRUSTS

certainty of objects of, 158-171
definition, 20
discretionary trust vs., 151-157
powers, generally, 143-145
types of powers, 145-151

PRESUMPTION OF ADVANCEMENT, see also RESULTING TRUSTS

husbands and wives, 636-639
parents and children, 621-636
rebutting, 646-647

PRESUMPTIONS, REBUTTING

advancement, 646-647
effect of rebuttal, 647-648
generally, 644-646
illegal purposes, 651-666
resulting trust, 647
standard of proof, 648-651

PROPRIETARY RESTITUTION, GUIDELINES FOR

academic proposals, 722-727
adequacy of monetary relief, 719-721
Canadian cases, 712-713
clear and substantial connection, 716-717

discretion, 713-715
generally, 711-712
identifiable property, 715-716
reasonable expectations, 717-719

PROTECTIVE TRUSTS, 298-304

PUBLIC APPEALS, 530-532

PURCHASE MONEY RESULTING TRUSTS, see also RESULTING TRUSTS

contribution to purchase price, 608-611
generally, 599-600
gifts, debt payments and loans, 600-608

QUISTCLOSE TRUSTS, 78, 84, 510, 521-530, 533, 537, 538

RESTITUTIONARY TRUSTS, see also CONSTRUCTIVE TRUSTS

generally, 705-710
guidelines for proprietary restitution
 academic proposals, 722-727
 adequacy of monetary relief, 719-721
 Canadian cases, 712-713
 clear and substantial connection, 716-717
 discretion, 713-715
 generally, 711-712
 identifiable property, 715-716
 reasonable expectations, 717-719
resulting vs. constructive trust, 710-711

RESULTING TRUSTS

apparent gifts
 “common intention” resulting trust, 590-599
 generally, 589-590
 matrimonial property legislation, 639-644
 presumption of advancement
 husbands and wives, 636-639
 parents and children, 621-636
 rebutting, 646-647
 presumptions, rebutting
 advancement, 646-647
 effect of rebuttal, 647-648
 generally, 644-646
 illegal purposes, 651-666
 resulting trust, 647
 standard of proof, 648-651
 purchase money resulting trust
 contribution to purchase price, 608-611
 generally, 599-600
 gifts, debt payments and loans, 600-608
 voluntary transfer resulting trusts
 Canada, 614-620
 England and Wales, 612-614
 generally, 611-612
 U.S.A., 614
arising of, circumstances re, 556-559, 561-562
constructive vs. resulting trust, 667-670
development of, 554-555
distinguished, different trusts, 559-561
failure of express trusts
 extension of, 666, 668

- failure, 564-565
 - generally, 562-564
 - Hancock v. Watson*, rule in, 568-569
 - pension trusts, 569-584
 - settlor's intention for gift of surplus, 584-589
 - trust or gift, 565-568
- generally, 24-25, 553
- intention to buy asset but not make gift, 667-668
- land, *see* voluntary transfer resulting trusts
- matrimonial property legislation, 639-644
- presumption of advancement
 - husbands and wives, 636-639
 - parents and children, 621-636
 - rebutting, 646-647
- presumptions, rebutting
 - advancement, 646-647
 - effect of rebuttal, 647-648
 - generally, 644-646
 - illegal purposes, 651-666
 - resulting trust, 647
 - standard of proof, 648-651
- property obtained by fraud or theft, 667
- purchase money resulting trust
 - contribution to purchase price, 608-611
 - generally, 599-600
 - gifts, debt payments and loans, 600-608
- unjust enrichment, 668-670
- voluntary transfer resulting trusts
 - Canada, 614-620
 - England and Wales, 612-614
 - generally, 611-612
 - U.S.A., 614

REVOCAION BY SETTLOR

- exceptions to rule against revocation, 312
- generally, 311-312
- power of revocation
 - intention problems, 313
 - tax problems, 315
 - testamentary implications, 313-315
- setting trust aside, 316

RIGHTS OF TRUSTEES

- compensation, 975-985
- contribution/indemnification from fellow trustees, 995-1000
- indemnification, 985-994
- rights *inter se*, 995-1000

SAUNDERS v. VAUTIER, RULE IN, 37, 202, 296, 299, 300, 312, 316-324, 339

SECRET COMMISSIONS AND BRIBES, 788-798

SECRET TRUSTS

- fully-secret trusts
 - failure of, consequences, 838
 - generally, 837-838
 - proof of intention, 839-843

- generally, 830-831
- nature and basis of constructive trust, 831-837
- semi-secret trusts
 - failure of, consequences, 845-854
 - timing, 843-845

SECURITY INTEREST

- charges attached to gifts, 103-107
- deemed statutory trusts, 107-114
- generally, 102-103

SETTING ASIDE, 316

SETTLOR

- as one of several trustees, 238-239
- capacity, 175-176
- defined, 18
- revocation of trust by, 311-316, *see also* REVOCAION BY SETTLOR
- surplus, intention re, gift issue, 584-589
- transfer of property to trustees, 244-261

SHAM TRUSTS, 184-185

STATUTE OF FRAUDS

- application, 820
- constructive trusts
 - oral trust of land, 675, 818-820
 - secret trusts, and, 831
- express trusts
 - circumvention of statute, 284
 - contract to create a trust, 280-281
 - evidence of, inadmissibility of, 557, 559
 - failure of, and imposition of constructive trust, 675
 - formal requirements, 262, 277-280
 - inter vivos* trusts, creation, 282-283
 - testamentary formalities, 285
 - transfer of equitable interests, 283
- historical requirement for writing in creation of trusts of land, 26
- resulting trusts
 - inter vivos* disposition of interest, 645
 - oral contract to sell land, 601

STATUTE OF WILLS, 13-14, 838

STATUTORY TRUSTS

- deemed, 27-28, 107-114
- described, 27
- modern uses, 33

STRONG v. BIRD, RULE IN, 236-238, 257, 259

SUBJECT-MATTER, CERTAINTY OF, *see also* CERTAINTIES, THREE

- generally, 185
- identification of property, 186
- uncertainty as to "anything left", 196-198
- uncertainty in quantum, 198-202

TERMINATION BY BENEFICIARY

- case law, 325-328
- Saunders v. Vautier*, rule in, 316-324

TRACING AND RECOVERY OF

TRUST ASSETS

bona fide purchaser, transfer of trust property to, 1210-1213

common law, at, 1156-1163

equity, in

 fiduciary relationship, need for, 1176-1179

 generally, 1163

 trust vs. lien, 1164-1176

generally, 1155

mixed trust assets

Clayton's Case, rule in, 1180, 1181, 1186,

 1187, 1188, 1190, 1195-1198, 1200

 generally, 1179-1180

Oatway, principle in, 1183, 1185

 presumptions against wrongdoers, 1180-1185

pro rata sharing, 1185-1201

 tracing into payment of debt, 1201-1210

property claim, generally, 1155

TRANSFERS UPON DEATH, see also

PERFECTING INTENTIONS

mutual wills, 854-870

secret trusts, 830-854

TRUST ASSETS, RECOVERY OF, see

TRACING AND RECOVERY OF TRUST ASSETS

TRUSTEES

appointment of

 additional trustees, 878

 generally, 873-874

 judicial appointment, 879-883

 non-judicial appointment, 874-878

 number of

 maximum, 883-884

 minimum, 884-85

 substitute trustees, 874-878

capacity, 176

constructive trustee, *see* KNOWING

ASSISTANCE AND RECEIPT

deadlocked, 898-900

defined, 18

duties, *see* DUTIES AND POWERS

OF TRUSTEES

liability, *see* LIABILITY OF TRUSTEES

powers, *see* DUTIES AND POWERS

OF TRUSTEES

removal

 deadlocked trustees, 898-900

 generally, 890-898

retirement of, 885-890

rights of

 compensation, 975-985

 contribution/indemnification from fellow trustees, 995-1000

 indemnification, 985-994

 rights *inter se*, 995-1000

variation of trust by, 329-330

TRUSTS

aboriginal land claims and, 58-70

 settlement trusts, 70-71

agency and, 73-78

alteration, *see* VARIATION OF TRUST

arising by operation of law, 24-27

bailment and, 91-92

bare trust, 19

beneficiary, 18, *see also* BENEFICIARY

cestui que trust, 18

charitable trusts, *see* CHARITABLE TRUSTS

classification of, 22-29

conditional gift and, 99-102

constructive trusts, 25, *see also*

CONSTRUCTIVE TRUSTS

contract and, 78-83

corpus, 18

creditors, to secure, 32

debt and, 83-91

deemed trust, 27-28

definitions, 17-22

development of, 12-13

discretionary, 19, 20

dry trust, 19

express trust, 23

fiduciary relationship and, 17, 25

fixed trusts, 19, *see also* FIXED TRUSTS

historical background, 3-8

implied trusts, 25, 26

in the higher and lower senses, 28-29

modern uses of

 business/"income" trusts, 30-31

 custodial trusts, 32-33

 estate planning, 29

 insurance trusts, 31

 investment trusts, 31

 liquidation trusts, 31-32

 pension trusts, 32

 public trusts, 30

 settlor, 18

 statutory trusts, 27, 33

 tax planning, 30

 trusts to secure creditors, 32

 voting trusts, 32

 naked trusts, 19

non-charitable purpose trusts, *see*

NON-CHARITABLE PURPOSES TRUSTS

oral trusts of land

 generally, 673, 812, 818-820

 nature and basis of trust, 820-825

Statute of Frauds and, 675, 818-820, 822

pension trusts, 32, 569-584

personal representative and, 44, 94-95

personality, of, 14

power of appointment, 20

protective trusts, 298-304, *see also*

LIMITATIONS ON CREATION

Quistclose trusts, 521-530

resulting trusts, 24-25, *see also*

RESULTING TRUSTS

revocation, 311-316, *see also*
REVOCATION BY SETTLOR
secret trusts, 830-854
security interest and, 102-103
self-declared trust, 273
setting aside, 316
settlement trusts, 70-71
sham trusts, 184-185
simple trust, 19
Statute of Wills, 13-14
statutory trusts, 27, *see also*
STATUTORY TRUSTS
termination, 316-328, *see also*
TERMINATION BY BENEFICIARY
trust corpus, 18
trust instrument, 19
trust property, 18
trust res, 18
trust subject-matter, 18
variation, 328-361, *see also* VARIATION OF TRUST

UNINCORPORATED ASSOCIATIONS
charitable organization, as, 367-368, 484
disentitlement to act as trustee/beneficiary, 176, 177
trusts for, 536-5445

UNJUST ENRICHMENT, *see also*
CONSTRUCTIVE TRUSTS

constructive trusts, and
action in, 683-684, 705
generally, 682-683
good conscience and, 687-700
remedial constructive trusts and, 675-682
restitution and, 683, 684
restitutionary trusts, 705-710
wrongdoing, by, 684-686, 705
resulting trusts, and, 561, 668-670

USES, 8-12

VARIATION OF TRUST
application of statute
approval, 338-341
arrangement requirement, 341-350
benefit requirement, 351-361
generally, 331-338
common law, at, 328-329
resettlement by settlor, 331
trustee, by, 329-330

VOLUNTARY TRANSFER RESULTING TRUSTS, *see also* RESULTING TRUSTS
Canada, 614-620
England and Wales, 612-614
generally, 611-612

U.S.A., 614

VOLUNTEERS, EQUITY WILL NOT ASSIST, *see also* EXPRESS TRUSTS
donatio mortis causa, doctrine of, 235-236
equity will not enforce a gratuitous promise, 231
equity will not perfect an imperfect gift, 231-234
exceptions, 234-238
generally, 231
proprietary estoppel, doctrine of, 235
Strong v. Bird, rule in, 236-238

WRONGFUL GAINS

breach of confidence
confidential circumstances, 732
confidential information, 732
detriment, 733
elements of claim, 732-733
nature of claim, 733-734
remedies for, 734-752
breach of fiduciary duty
compensation, 753
confidential information, use of, 769-773
conflicting duties, 798-800
constructive trust remedy, 753-755
corporate and other opportunities
Canadian Aero Service Ltd. v. O'Malley, 775-788
Peso Silver Mines Ltd. v. Cropper, 774-775
Regal (Hastings) Ltd. v. Gulliver, 773-774
disgorgement, 730, 754-755
generally, 752-758
purchase of trust property
application and exceptions, 760
codification of rule, 759-760
confidential information, use of, 769-773
conflicting duties, 798-800
corporate and other opportunities, 773-788
miscellaneous examples, 801-803
remedies, 760-767
sale to trust, 767-769
secret commissions and bribes, 788-798
self-hiring, 801
statement of rule, 758-759
constructive trusts and, 730-731
death, wrongful acquisition through
acquisition of property by murder, 803-806
testamentary context, 806-809
generally, 729-732