

Index

- Aaronson, Graham, 84
 Aberfan coal-tip disaster, 10–11
 accessory liability and dishonest assistance, 709–22
 accountability and transparency of charities.
See under regulation of charities
 accounts
 charity accounts, receiving and checking, 1029–31
 trustee's duty to keep, 544–5
 accumulation and maintenance (A and M) trusts, and IHT, 113, 118–20, 123–4, 129
 accumulations
 creation of trust and non-infringement of rules of, 138
 destination of, 398–400
 perpetuities and rule against, 345–6
 administrative powers, 232
 administrative unworkability criterion, 261–6
 advancement, power of, 384–94
 advertising and marketing by charities, 1043–5
 age 18–25 trusts
 accumulations and, 398–400
 application of income for maintenance purposes, 397
 IHT and, 113, 119, 121
 age of majority, reduction of, 396
 agents. *See* delegation
 Alexander, Gregory, 292
 alienation of property, freedom of, 292–5
 amateur sport, as charitable purpose, 965–6
 Amnesty International
 hiving off political from charitable activities, 999
 refusal of charitable status to, 995–7
 Anderson, B L, 47
 animal welfare, as charitable purpose, 968–9
 ante-nuptial settlements, 202
 Anton Piller orders (search orders), 730–1, 737
 applicable law, settlor's autonomy to decide, 1065–6
 application of income
 after forfeiture, 304–5
 for maintenance, 397–8
 appointment and removal of trustees, 520–9
 beneficiaries and, 524–6
 cause, removal for, 522, 524
 court
 appointment by, 523–4
 forcible removal by, 527–9
 initial appointments, 520–1
 new, replacement, or additional trustees, appointing, 521–6
 retirement, 526–7
 settlor's role in, 520–1
 appointment, powers of, 232–6
 armed forces, efficiency of, as charitable purpose, 969–70
 Arthur Andersen, collapse of, 822
 arts, culture, heritage or science, advancement of, as charitable purpose, 964–5
 Ashburner, Walter, 66
 Ashworth, Michael, 1005
 asset management function, delegation of, 509–11
 asset protection trusts, 330–1, 1062
 Association of Corporate Trustees (TACT), 407–9
 Australia. *See also specific statutes, statutory instruments and cases, in separate tables*
 rationales for remedial constructive trusts in, 26
 reallocation scheme for termination of cohabiting relationship, 657

- Australia. (cont.)
 Scientology, as religion for charitable purposes in, 955
 unconscionability and implied trusts for family homes in, 651–4
 automatic resulting trusts, 21, 214–19
- backward tracing, 678
 Bacon, Francis, Lord, 57, 64
 bank and building society investments, 453
 bank term deposits, 453
 bankruptcy. *See* creditors, insolvency and bankruptcy
 bare or mere powers, 234, 238–41, 243–6, 261–6
 bare trustees or nominees, 414
 beneficial entitlement, 350–401. *See also* premature termination of trusts; variation of trusts
 benefit, defining
 capital entitlement and power of advancement, 387–94
 variation of trusts, for purposes of, 373–9
 capital entitlement and power of advancement, 384–94
 maintenance and income entitlement, 394–401
 beneficial interest, 270–8
 certainty of, 199–200
 civilian re-conceptualisation of, 1074–5
 debate over classification as *in rem* versus *in personam*, 270–3
 under discretionary trust
 certainty of, 199
 equitable ownership, 273–4
 from equitable ownership to equitable right, 276–8
 reasons for focusing on, 270
 rights attached to, 274–6
 joint legal ownership of family home not automatically connoting shared ownership of, 615 (*See also under* implied trusts and the family home)
 trustee purchasing, 438–41
 variation of trusts before 1958 and, 357–62
 beneficiaries
 appointment and removal of trustees and, 524–6
 dealings of trustee with trust fund or, 434–41
 direct remuneration of trustees by contract with, 426
 discretion of trustees, access to information regarding, 543–53
 impartiality of trustees regarding, 491
 IT on, 100–1
 relief of trustee liability due to involvement of, 584–6
 vulnerable beneficiaries, IT on trusts with, 101, 129
 beneficiary principle, 278–90
 establishment of, 278–82
 evolution of, 228–31
 mixed persons–purposes trusts, 282–9
 problems posed by, 278
 purpose trusts and, 278, 281, 285, 288–90
 bequests to unincorporated associations, 854–67
 bereaved minor trusts (BMTs) and IHT, 113, 121
 Birks, Peter, 29, 559
 'black-hole' trusts, 268–9, 277
 Blake, George, 747–9
 BMTs (bereaved minor trusts) and IHT, 113, 121
 bond or debenture trusts, 9
 bonds
 Capital Bonds, 453
 insurance company income and growth bonds, 453
 National Savings Income Bonds (National Savings Guaranteed Equity Bonds), 453
 Savings Bonds, 453
 Book X on Trusts, DCFR, 1071–2
 Braun, Alexandra, 1067
 breach of contract, equitable damages for, 747–9
 breaches of fiduciary duty, remedies for, 843–50
 breaches of trust, 558–601. *See also* liability of trustees; remedies
 accessory liability and dishonest assistance requiring, 710–12, 721
 causation of loss by breach, 563–5
 compensation claims, 558–63
 failure to demonstrate necessary standard of care, 559
 judicious, 584
 laches, 599–601
 limitation of actions on, 596–600
 realignment of equity rules on money remedies with common law rules on damages, 576–81

- remedies for, 558–9
 remoteness of loss from, 565–8
 types of, 558
 unauthorised profits, trustees held liable to
 account for, 559
 wrongful acts, 559
 Brenton, M, 899
 bribes of fiduciaries, 844–9
 British government stocks ('gilt-edged securities' or 'gilts'), 453
 Brown, Gordon, 83
 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 1968, 272
 building society investments, 453
 Burgess, R, 176
 Burrows, Andrew, 69, 686
- Canada. *See also specific statutes, statutory instruments and cases in separate tables*
 Charter of Rights and Freedoms, 335
 Manitoba Law Reform Commission, on
 accommodations and perpetuities, 344, 348, 383
 Ontario Law Reform Commission Report on trusts, 308–9, 316
 rationales for remedial constructive trusts in, 26
 unjust enrichment in, 26, 648–51
- capacity
 to be a trustee, 410
 to create trust, 137
 removal of trustee for incapacity, 522
- capital and income
 fair balance between, maintaining, 501–3
 legal concepts of, 493–5
- Capital Bonds, 453
 capital entitlement and power of advancement, 384–94
 capital gains tax (CGT), 103–7
 on actual disposal by trustees, 106
 charitable donor exemptions, 926
 charitable exemption from, 925
 on creation of settlement, 106
 on deemed disposals by trustees, 106–7
 hold over relief, 104
 methodology of, 104
 offshore trusts as means of avoiding, 1060–2
 purpose of, 104
 scope of, variations in, 104
 settled property for purposes of, 105, 787
 in tax structure, 90
- capital transfer tax (CTT), 109–10. *See also* inheritance tax
- capitalism
 law reform process and, 367
 trusts viewed through lens of critique of, 1
 'capriciousness' criterion, 265–7, 269, 529–30
 care, trustee duty of, 444–9, 505, 559
 caretaker trusts, 75
 Cayman Islands STAR Trusts, 1076
- certainty
 of beneficial interest, 199–200
 of conditions precedent and subsequent, 293
 creation of trusts and, 137–8 (*See also* certainty of objects)
 of intention, 179–93
 of subject-matter, 137–8, 193–200
 as tax principle, 87–8, 128
 of words, 137–8
- certainty of objects, 238–70
 accountability and control, move to, 269
 administrative unworkability criterion, 261–6
 bare or mere powers and, 238–41, 243–6, 261–6
 'black-hole' trusts, 268–9
 'capriciousness' criterion, 265–7, 269
 charitable trust privilege regarding, 908–9
 criterion certainty test, 254, 259, 261
 discretionary trusts and, 238–43, 245–54, 261–6
 duty to survey and, 260–1
 evidential versus conceptual (semantic or linguistic) certainty, 255–60
 evolution of, 228–31, 266–8
 fixed trusts and, 254
 'list certainty' requirement/test, 236–7, 241–4, 254, 260–1
 as requirement to create trust, 137–8
- CGT. *See* capital gains tax
- Chancery
 equity rules for trusts and, 13–15
 medieval 'uses' of land and evolution of trusts, 38–40
- Charitable Incorporated Organisations (CIOs), 884
- charities and charitable trusts, 880–933. *See also* political activities and charity; presumption of public benefit; privileges of charitable trusts; regulation of charities

- charities and charitable trusts (cont.)
- advantages and disadvantages of trusts as
 - legal forms for charities, 882–4
 - advertising and marketing, 1043–5
 - for amateur sport, 965–6
 - for animal welfare, 968–9
 - appeal funds, 919–20
 - armed forces, police or emergency services,
 - promoting efficiency of, 969–70
 - arts, culture, heritage or science,
 - advancement of, 964–5
 - beneficiary principle and, 278
 - certainty of objects, 908–30
 - for citizenship and community
 - development, 962–4
 - for conflict resolution/reconciliation, 966
 - cy-près* doctrine, 911–20, 1016
 - defined/described, 11, 889, 934, 936, 938–9, 1004–7
 - for disabled or disadvantaged, 967–8
 - education, 949–53, 979–81
 - enforcement issues, 882
 - for environmental protection or
 - improvement, 966–7
 - equality and diversity, promoting, 966
 - European integration and, 1006
 - evolution of, 887–97
 - from medieval period to eighteenth century, 881, 887–90
 - from Industrial Revolution to First World War, 890–7
 - in modern welfare state, 897–903
 - reviews and reforms of late twentieth and early twenty-first centuries, 934–6, 1008–10
 - fiscal privileges, 921–4, 1004–7
 - presumption of public benefit, 937, 939–41
 - failure of purposes, 913–16
 - financial sources and patterns, 905–7
 - fund-raising
 - charitable status affecting, 931–2
 - criminal liability for unlawful fund-raising activities, 1042–3
 - regulatory controls, 1009, 1038–43
 - general charitable intention of gift, 916–19
 - health and life, advancement of, 945
 - for human rights, 966
 - international charities, 977
 - investments of, 501, 911, 1013
 - judicial attitudes, fluctuations in, 941–2
 - lapse and the *cy-près* doctrine, 911–20
 - legal versus popular concepts of charity, 884–5
 - lottery funding, 906–7
 - moral implications of, 880–1
 - new charitable purposes, recognising, 970–4
 - Official Custodian for Charities, 883, 1012–3
 - perpetuities, 909–11
 - poverty, prevention and relief of, 945–8, 981–3
 - public policy and
 - in nineteenth century, 896
 - citizenship and community development, 962–4
 - discrimination provisions, exemptions from, 929–30
 - HSA, charities construed as public authorities under, 885
 - tax reliefs and exemptions, 922–3
 - purpose trusts, 883, 909, 921, 984–5
 - purposes listed as potentially charitable in CA 2011, s 3(1), 936–8, 945–78
 - racial or religious harmony, promoting, 966
 - for recreational purposes, 975–8
 - registration procedures, 943–5
 - relative scarcity of judicial decisions as to what counts as, 942
 - religion, advancement of, 953–61
 - as service providers, 974–5, 1005
 - size of charity sector, 903–4
 - small charities, 1024–5
 - social needs, matching charitable purposes to, 1016
 - state–charity relations, 927–9, 974–5
 - tax reliefs and exemptions (*See under* privileges of charitable trusts)
 - terminological distinctions, 903
 - total return approach to investment, 501
 - urban and rural regeneration, 962
 - welfare state and, 897–903
- Charity Commission, 1010–6. *See also* regulation of charities
- advice, duty to give, 1012
 - establishment of, 896, 1008
 - holding of charity property by, 1012
 - investment, facilitating, 1013
 - Official Custodian for Charities, 1012–3
 - on reform agenda, 1009
 - structure and functions, 1010–2
 - transactions, sanctioning, 1013–5
 - Tribunal, 1015–6

- children
 BMTs (bereaved minor trusts) and IHT, 113, 121
 public policy and interests of, 332
 relief of, as charitable purpose, 967–8
 of unmarried couples, 613
 Children with Cancer (CwC), 1038–9
 citizenship and community development, as charitable purpose, 962–4
 civil partners. *See* implied trusts and the family home
 civilian law
 adaptations of trust law in, 1067–70
 common law and civil jurisdictions, trust operations crossing, 1053
 re-conceptualisation of trust law in, 1072–5
 class within a class test, 988–9
 Clements, Alan, 1038–9
 Coke, Sir Edward, 1, 38, 64
 Cole, C G, 468
 collective liability, 581–3
 commercial participators and charities, 1039–41
 commercial trusts
 creditors, insolvency and bankruptcy, 750–2 (*See also* consumer prepayment; loan security; reservation of title and equitable tracing)
 equitable remedies for (*See* equitable remedies; tracing)
 fiduciary relationships (*See* fiduciary relationships)
 commissions and analogous profits for trustees, 434
communis error facit jus, 865
 community development and citizenship, as charitable purpose, 962–4
 Community Interest Companies (CICs), 963
 compensation, as remedy
 for breaches of trust by trustees, 558–63
 fiduciary breaches, equitable compensation for, 849–50
 compensation, of trustees. *See* remuneration of trustees
 complete constitution, 138
 elements required for, 139
 of *inter vivos* trusts, 153–63
 compromise and variation of trusts, 358–61
 Conaglen, Matthew, 440
 conceptual (semantic or linguistic) certainty, 255–60
 conditions precedent and subsequent, 292–4
 confidentiality
 fiduciary's duty of, 812
 of offshore financial centres, 1055–7
 conflict of laws
 applicable law, settlor's autonomy to decide, 1065–6
 common law and civil jurisdictions, trust operations crossing, 1053
 Hague Trusts Convention and, 1054, 1063–7
 offshore trusts, 1063
 conflict resolution/reconciliation, as charitable purpose, 966
 conflicts of interest, 417–19, 441–2, 793–4, 816–22
 consideration
 ante-nuptial settlements, 202
 contracts for valuable consideration
 to assign equitable interest, 149–52, 207–8
 equity recognising, 138
 express trusts, enforcement of, 202
 constructive trusts and trusteeships, 22–6, 31
 equitable remedies and constructive trusteeship, 663–4, 692–722 (*See also* equitable remedies)
 family home and, 607, 626–39 (*See also* implied trusts and the family home)
 institutional constructive trusts, 24
 'knowing receipt' and constructive trusteeship, 626–39
Quistclose trusts as remedial constructive trusts, 773
 remedial constructive trusts, 24–6, 31, 773, 805–11
 secret and half-secret trusts, 173–4
 sole legal ownership of family home, 626–39
 wrongful transactions, liability as constructive trustee arising from, 597–600
 consumer prepayment, 752–9
 defined, 752
 Kayford trusts, 753–8, 789
 limitations trust as remedy for, 756–8
 remedies for problem of, 752–5
 trade association compensation schemes, 752
 contingent testamentary gifts, 397
 contracts
 compared to trusts, 16–17, 200–2
 direct remuneration of trustees by, 426

- contracts (cont.)
 equitable damages for breach of, 747–9
 fiduciary relationships and commercial contracts, 838
 reservation of title clauses based on freedom of contract principle, 775
 unincorporated associations, contract-holding approach to
 bequests, 859–65
 dissolution of association, 867
 for valuable consideration to assign equitable interest, 149–52, 207–8
- control of trustees, 517–602. *See also*
 appointment and removal of trustees;
 breaches of trust; discretion of trustees;
 liability of trustees
 evolution of, 517–20
 protectors or enforcers, 277, 289–90, 519
- conversion, doctrine of, 45
- Cook, W W, 271
- Cooke, Sir Robin, 69
- Cork, Sir Kenneth, and Cork Report, 297–8, 306, 309–10, 316, 750, 759
- corporate and professional trustees. *See under* trustees and trusteeship
- co-trustees, collective liability of, 581–3
- Cottenham, Lord Chancellor, 404
- Cotterrell, R, 59–63
- covenants
 of future property, 204–7
 intention and legal policy, 208–12
 to settle, 203–4
- creation of trusts, requirements for, 136–9, 228–31. *See also specific requirements, eg, formalities*
- creditors, insolvency and bankruptcy, 295–331.
See also protective trusts
 application of income after forfeiture, 304–5
 commercial trusts, 750–2 (*See also* consumer prepayment; loan security; reservation of title and equitable tracing)
 Cork Report, 297–8, 306, 309–10, 316
 creation of trust without intention of defrauding, 136
 exempt property and assets, 305–10
 family homes and other co-owned property, 310–14
 forfeitures, 302–4
 IA (Insolvency Act) 1986, 298
 illegal purposes, trusts formed for, 337–43
 separation of trust property from insolvent trustee's assets as cornerstone of, 750–1
- settlor, safeguarding property from creditors of, 317–31
 asset protection trusts and offshore jurisdictions, 330–1
 in common law, 317–18
 statutory provisions, 318–29
 transactions with intent to defeat creditors, 319–26
 undervalued transactions, 326–9
 trustees, bankrupt or insolvent, 522, 601
 US and English law compared, 314–17
 criminal liability for unlawful charitable fund-raising activities, 1042–3
- criterion certainty test, 254, 259, 261
- Crowder, F P, 365
- Cullity, M C, 529
- culture, arts, heritage, or science, advancement of, as charitable purpose, 964–5
- custodian trustees, 412–13
- custodians, delegation to, 511–12
- cy-près* doctrine, 911–20, 1016
- damages
 equitable (*See* equitable damages)
 realignment of equity rules on money remedies with common law rules on, 576–81
- David, E M, 500
- dealings of trustee with trust fund or beneficiaries, 434–41
- death duties. *See* inheritance tax
- debenture or bond trusts, 9
- debt, compared to trusts, 21
- declaration of oneself as trustee, 140
- declaration of trust, 138
 certainty of intention and, 184–8
inter vivos trusts, 141–3
Vandervell saga and, 225
- deemed disposals by trustees, CGT on, 106–7
- deferred testamentary gifts, 397
- delegation, 503–16
 of asset management function, 509–11
 authority to delegate, 513–14
 evolution of, 503–4
 functions, delegable, 459
 historical development of, 47
 land trusts, 514–15
 liability of trustee
 for delegated agents, 504–5
 effects of delegation on, 512–13

- nominees, 511–12
- non-delegation, principle of, 503
- pension scheme trusts and, 514
- persons delegable as agents, 507
- scope of power to appoint agents, 458
- terms of appointment, 507–9
- under Trustee Act 2000, 505–16
- Delius, Frederick, 964–5
- Denning, Lord, 23, 25, 27, 66, 150
- derivatives, 456
- determinable interest, 294, 332
- detrimental reliance, 631–4
- development of trusts. *See* evolution of trusts
- Dicey, A V, 56
- Dickens, Charles, *Little Dorrit and Pickwick Papers*, 300
- Diplock, Lord, 66
- direct remuneration of trustees, 420–30
 - calculation of charges, 423
 - by contract with beneficiaries, 426
 - inherent jurisdiction of court to authorise, 427–30
 - lay trustees, trust corporations and professional trustees defined for purposes of, 421
 - for litigation work by solicitor-trustees, 426–7
 - non-remuneration rule, 420–1
 - statute, authorised by, 425–6
 - statutory default charging clause, introduction of, 421–2
 - trust instrument authorising, 422–5
- directors' fees for trustees, 430–4
- disabled persons, trusts for
 - charities and charitable trusts, 967–8
 - IHT and, 113, 121
- disclosure and discretion of trustee. *See under* discretion of trustees
- discretion of trustees, 529–57
 - beneficiaries' access to information regarding, 543–53
 - capricious exercise of, 535
 - court, seeking directions from or surrendering to, 583–4
 - different treatment for private family trusts versus pension cases, 542–3
 - disclosure regarding
 - accounts and records, duty of trustee to keep, 544–5
 - decision-making process of trustees and, 549–53
 - proprietary right versus inherent jurisdiction, 547–8
 - right to seek, 545–9
 - exercise of, court interference in, 531–43
 - fiduciary relationships, power and discretion test for, 798
 - fraud on a power doctrine and, 534
 - judicial review concepts adopted for purposes of, 554–5
 - letters of wishes and, 545, 556
 - nature of mistake regarding, 538–41
 - powers distinguished, 529–30
 - remedies for problematic exercise of, 545
 - void or voidable, 541–2
- discretionary trusts. *See also under* beneficial interest
 - certainty of objects and, 238–43, 245–54, 261–6
 - exhaustive, 275
 - historical development of, 49
 - IHT and, 123–4
 - intentions of settlor and, 76
 - 'list certainty' requirement for, 236–7, 241–4, 254
 - mere powers distinguished, 261–6
 - protective trusts and, 238, 304–5
 - re-emergence of, 230, 238, 350
 - tax planning and, 93
 - trust powers and, 234–6
 - use of term, 237
- discrimination provisions
 - charitable exemptions from, 929–30
 - public policy and, 332
- dishonest assistance and accessory liability, 709–22
- disposition of property, freedom of, 292–5
- dissolution of unincorporated associations, 867–79
- diversity and equality, as charitable purpose, 966
- divorce. *See* marriage
- Dixon, Martin, 616, 634, 660
- donatio mortis causa* (DMC), 176–9, 213
- Douglas, G F, 615, 617
- Draft Common Frame of Reference (DCFR), Book X on Trusts, 1071–2
- duty to survey, 260–1
- dynamic trusts, 75
- ECHR. *See* European Convention on Human Rights

- education, as charitable purpose, 949–53, 979–81
- elderly, relief of, as charitable purpose, 967–8
- Eldon, John Scott, Lord, 65, 418
- Ellesmere, Lord, 64
- emergency services, efficiency of, as charitable purpose, 969–70
- enforcers or protectors of trusts, 277, 289–90, 519, 531, 1062–3, 1076
- Enron Corporation, collapse of, 822
- environmental protection or improvement, as charitable purpose, 966–7
- equality and diversity, as charitable purpose, 966
- 'equality is equity' maxim, 200, 229, 237, 242, 251, 253
- equitable compensation, as remedy
 for breaches of trust by trustees, 558–63
 fiduciary breaches, equitable compensation for, 849–50
- equitable damages, 743–9
 breach of contract awards, 747–9
 factors influencing court to award, 744–6
 jurisdiction, power versus discretion of, 743–4
 measure of, 746–7
- equitable interests, dispositions of, 139–41
 contract for valuable consideration to assign equitable interest, 149–52
 direct assignment to third party, 145
 inter vivos trusts, 143–53
 sub-trusts (equitable owner's self-declaration as trustee), 147–8
 third party, direction to trustees to hold in trust for, 145–7
- equitable remedies, 661–749. *See also* equitable damages; injunctions; tracing
 accessory liability and dishonest assistance, 709–22
 commerce and knowledge requirement, 698–701
 constructive trusteeship and, 663–4, 692–722
 defined, 662
 equitable personal liability and, 692–722
 fraud and interest in, 661
 'knowing receipt', 695
 restitution, law of, 705–9
 specific performance, 601–2
 subrogation, 690–2
 unconscionability, 702–5, 718
- equitable tracing, 673–80. *See also* tracing equity, 13–15
 common law and, 63–5, 661
 consideration recognised by, 138
 'equality is equity' maxim, 200, 229, 237, 242, 251, 253
 evolution of private express trusts and, 63–71
 fraud, statutes not allowed to be used as engines or instruments of, 135, 164–6
 harmonisation of law and, 66–71, 661, 705, 709
 intent rather than form, looking to, 135, 180
 Judicature Acts 1873 and 1875, 65
 married women, trusts for property holding by, 50, 53–6
 maxims of equity and trust creation, 134–6
 personal claims in, 688–90
 realignment of equity rules on money remedies with common law rules on damages, 576–81
 regarding as done what ought to be done, 136
 volunteers, not coming to aid of, 135, 158, 212–13
- estate duty. *See* inheritance tax
- estoppel, proprietary, 213, 640–2
- European Convention on Human Rights (ECHR)
 charities and, 887, 955
 equitable remedies and, 729
 public policy and, 333, 335
- European Union, 1071–2. *See also specific statutes, statutory instruments and cases in separate tables*
 Book X on Trusts, DCFR, 1071–2
 charities and, 1006
 protected funds directive, 1072
 Uniform Trust Code, 1071–2
- evidential certainty, 255–60
- evolution of trusts, 34–71. *See also under* charities and charitable trusts
 in beneficiary principle, 228–31
 in certainty of objects, 228–31, 266–8
 control of trustees, 517–20
 delegation, 503–4
 development as feature of trust instrument, 1–3
 equity jurisdiction and, 63–71
 historical origins, 34
 investment assets, emergence of trusts of, 44–50

- married women, property holding by, 50, 53–6
- medieval 'uses' of land, 35–40
- protective trusts, 49, 299–300
- role in English law, 55–63
- Statute of Uses 1535, 40–5
- strict settlements, 50–4
- use of word 'trust', 44
- exemption clauses, 586–91
- exhaustive discretionary trusts, 275
- existing property, certainty of subject-matter regarding, 193–7
- exporting trusts, 379–81
- express trusts
 - defined/described, 3
 - implied trusts distinguished, 605–7
 - imputed trusts distinguished, 21
 - secret and half-secret trusts, 173–4
 - valuable consideration and enforcement of, 202
- 'fair-dealing' rule for trustees, 434–41
- family home. *See also* implied trusts and the family home
 - increase in home ownership, 604
 - informal expression of entitlements regarding, 604
 - insolvency protections, 310–14
 - situations leading to ownership and trust issues regarding, 603–4
- family property law. *See under* implied trusts and the family home
- fee-charging organisations, charitable status of, 988
- feudal decline
 - medieval 'uses' of land and, 35–40
 - Statute of Uses 1535 and, 40–4
- fideicommissum*, 36
- fiduciary relationships, 791–851
 - bribes, 844–9
 - commercial contracts and, 838
 - confidentiality, duty of, 812
 - definition of fiduciary, 793
 - equitable compensation for breaches of duty, 849–50
 - identification of, 794–800
 - judicial application of standards, 825–32
 - liability standards, 836–9
 - no secret profits rule, 822–32
 - no conflict of interest rule, 793–4, 816–22
 - ongoing business relationships and conflicts of interest, 821–2
 - power and discretion test, 798
 - powers of appointment, fiduciary, 233
 - public policy considerations, 836–43
 - in regulatory context, 841–3
 - remedial constructive trusts and, 805–11
 - remedies for breaches of fiduciary duty, 843–50
 - as remedy versus relationship, 802–5
 - scope of, 801–2
 - solicitors and conflicts of interest, 817–21
 - trusteeship as, 403
 - undertaking test, 797
 - undue influence, exerting, 813–15
- Finn, Paul, 403
- fire and rescue services, efficiency of, as charitable purpose, 969–70
- fiscal privileges (tax reliefs and exemptions) of charities. *See under* privileges of charitable trusts
- fixed trusts and certainty of objects, 254
- Flower, J, 493–4
- following, distinguished from tracing, 665
- forced heirship rules, offshore trusts
 - circumventing, 1062–3
- forfeitures and protective trusts, 302–4
- formalities, 139–79
 - equitable interests, dispositions of, 139–41, 143–53
 - for fully secret trusts, 166–8
 - for half-secret trusts, 168
 - inter vivos* trusts, 141–53
 - non-compliance with, 141
 - requirement to observe, 138
 - testamentary trusts, 163–79
 - in *Vandervell* saga, 221–3, 226
- founders of trusts. *See* settlors
- France, *la fiducie* in, 32, 1069–70
- Franklin, Mitchell, 405
- fraud
 - creation of trust without intention of, 136
 - equitable remedies and, 661
 - limitation of actions for breach of trust in cases of, 596–9
 - secret trusts and, 169, 178
 - statutes not allowed to be used as engines or instruments of, in equity, 135, 164–6
- fraud on a power doctrine and exercise of discretion, 534
- freedom of contract, 775

- freedom of disposition of property, 292–5
 freezing orders, 730–7
 Friedman, Laurence M, 75–6, 178, 405
 Fries, Richard, 1046
 fund-raising for charities. *See under* charities
 and charitable trusts
 future property
 certainty of subject-matter regarding, 197–9
 covenants of, 204–7
- Galsworthy, John, *The Forsyte Saga*, 406
 Gardner, Simon, 136, 208, 634
 general powers of appointment, 232
 Getzler, Joshua, 71
 Gibson, Sir Ralph, 376
 Gierke, Otto Von, 1053
 gifts, versus trusts, 108, 132–4
 ‘gilt-edged securities’ or ‘gilts’, 453
 Gladstone, William, 88, 127, 893, 984
 global economic crisis (2007–2008), 931
 globalisation. *See* international dimensions of
 trusts
 Goff, Lord, 27–31
 good faith standards, 48
 Gray, John Chipman, 315
 Grbich, Yuri, 238
 Griswold, E, 315–16
- Habakkuk, Sir John, 51–2
 Hague Trusts Convention, 1054, 1063–9, 1074
 half-secret trusts. *See* secret and half-secret
 trusts
 hard cases, 226–7
 harmonisation of law, 66–71, 661, 705, 709
 Harris, Ron, 58–9, 236, 269, 273, 355, 358, 371,
 383
 Hayton, David, 577, 1064
 Healey, Denis, 122
 health care
 advancement of life and health, as charitable
 purpose, 945, 974–5
 emergency medical services, efficiency of, as
 charitable purpose, 969–70
 NHS, 63, 974–5
 hedge funds, 456
 Helmsley, Leona, 282
 Hendrix, Jimi, 749
 Henry VIII, 40–1
 heritage, arts, culture or science, advancement
 of, as charitable purpose, 964–5
 high-coupon stocks, 454
- Hilliard, J J B, 557
 historical development of IHT, 107–10
 historical development of trusts. *See* evolution
 of trusts
 HMRC. *See* taxation and private express trusts
 Hobhouse, Sir Arthur, 138
 Hoffmann, Lord, 79
 hold-over relief, 104
 Holmes, Oliver Wendell, 58
 Honoré, A M, 1073
 horizontal equity, as tax principle, 87
 Horne, Cozens-Hardy, 238
 human rights, as charitable purpose, 966
 Hutchinson, J D, 468
 hybrid (intermediate) powers of appointment,
 232
- IHT. *See* inheritance tax
 illegal purposes and public policy, 337–43
 immediate post-death interest in possession
 trusts and IHT, 113, 121
 implied trusts. *See also* constructive trusts and
 trusteeships; resulting trusts
 concept of, 22
 express trusts distinguished, 605–7
 implied trusts and the family home, 603.
 See also joint legal ownership of family
 home; sole legal ownership of family
 home
 constructive trusts, 607
 contributions to acquisition, 656–7
 increase in home ownership, 604
 informal expression of entitlements, 604
 Law Commission, *Sharing Homes*,
 656–7
 under matrimonial and family property law,
 608–14
 common law and matrimonial property,
 608
 community property concepts, 609–10
 familial relationships other than marriage,
 614
 foundations for implied trust doctrine,
 610–11
 ownership of matrimonial property
 during marriage, 612–13
 reforms in family law, 611–12
 separate spousal property, concept of,
 608–9
 unmarried couples who are not civil
 partners, 613–14

- reallocation schemes for termination of
 - cohabiting relationship, 657–60
- reasonable expectations concept in New Zealand, 654–6
- resulting trusts, 607
- situations leading to ownership and trust issues, 603–4
- social contexts, importance of considering, 623–5, 642–7
- unconscionability in Australia, 651–4
- unjust enrichment in Canada and, 648–51
- imputed trusts, 21–7
 - defined/described, 4
 - express trusts distinguished, 21
- inalienability rules
 - creation of trust and non-infringement of, 138
 - perpetuities and, 345
- income and capital
 - fair balance between, maintaining, 501–3
 - legal concepts of, 493–5
- income, application of
 - after forfeiture, 304–5
 - for maintenance, 397–8
- income entitlement and maintenance. *See* maintenance
- income payment orders (IPOs), 307
- income tax (IT), 97–103
 - anti-avoidance measures, 101–3
 - on beneficiaries, 100–1
 - charitable donor exemptions, 926
 - charitable reliefs and exemptions, 924
 - defining income, 97
 - on pre-owned assets, 124
 - in tax structure, 90
 - taxable income, determining, 97–8
 - on trustees, 98–100
 - trusts, taxation of, 98–101
 - vulnerable beneficiaries, trusts with, 101
- incomplete constitution and intention, 200–13
- index-linked instruments, 454
- indirect remuneration of trustees, 430–4
 - commissions and analogous profits, 434
 - directors' fees, 430–4
- indispensability test for general charitable intentions, 917
- inheritance tax (IHT). *See also* interest in possession trusts and IHT
 - charitable donor exemptions, 926
 - evolution of, 107–10
 - Finance Act 2006 and, 97, 112, 120–3
- A and M trusts, 113, 118–20
 - methodology of, 110–13
 - parity considerations, 114, 125–6
 - relevant property trusts, 113, 117–18, 121
 - in tax structure, 90
 - time element in, 123–5
- injunctions, 723–40
 - defined, 723
 - freezing orders, 730–7
 - interim (interlocutory), 724–30
 - permanent and temporary, 724
 - prohibitory, 723
 - quia timet*, 724
 - search orders, 730–1, 737
 - super-injunctions, 730
 - typology of, 723–4
- inland revenue. *See* taxation
- inquiries and investigations by Charity Commission, 1032–3
- insolvency. *See* creditors, insolvency and bankruptcy
- institutional constructive trusts, 24
- insurance company income and growth bonds, 453
- intelligibility, of taxation, 127
- intentions of settlors, 132–4, 179–214
 - certainty of intention, 179–93
 - certainty of subject-matter and, 179–214
 - covenants and legal policy, 208–12
 - creditors, intent to defeat, 319
 - declaration of intent, 138, 184–8 (*See also* declaration of trust)
 - discretionary trusts, 76
 - equity looking to intent rather than form, 135, 180
 - fraud, creation of trust requiring no intention of, 139
 - incomplete constitution and, 200–13
 - non-compliance with formalities and, 141
 - precatory words, 181–3
 - secret trusts, 188–93
 - sham intention, 183–4
 - solely owned family home as constructive trust, intention inferred from conduct regarding, 634–8
 - taxation and, 75–7
 - variation of trusts and, 373–6
- inter vivos* gifts or subscriptions to unincorporated associations, 866
- inter vivos* trusts
 - creation without formalities, 138

- inter vivos* trusts (cont.)
 declaration of trust, 141–3
 defined, 140
 equitable interests, dispositions of, 143–53
 formalities for creating, 141–53
- interest in possession trusts and IHT
 definition of interest in possession, 115–17
 before FA 2006, 113–17
 immediate post-death, 113, 121
- interim (interlocutory) injunctions, 724–30
- intermediate (hybrid) powers of appointment, 232
- international dimensions of trusts, 1052–76.
See also conflict of laws; European Union
 charities, international, 977
 civilian adaptations of trust law, 1067–70
 civilian re-conceptualisations of trust law, 1072–5
 common law and civil jurisdictions, trust operations crossing, 1053
 defining trusts for purposes of, 1064–5, 1073–4
 France, *la fiducie* in, 32, 1069–70
 Hague Trusts Convention, 1054, 1063–9, 1074
 Italian *trusts interni*, 32, 1067–9
 offshore financial centres, 1055–7
 tax havens, 1054–7
- investigations and inquiries by Charity Commission, 1032–3
- investment assets, emergence of trusts of, 44–50
- investment trusts, 455
- investments, managing, 450–503
 advice requirement, 478–80, 486–7
 apportionment pending conversion, 497–8
 capital and income, legal concepts of, 493–5
 charities, 501, 911, 1013
 conversion and reinvestment, 495–6
 defining ‘invest’ and ‘investment’, 462–4
 duties of trustees and, 476–7
 express investment clauses, 461–4
 fair balance between income and capital, maintaining, 501–3
 guidelines, historical development of, 47
 impartiality requirement, 491–503
 interpretation of investment clauses, 461–2
 liability for risks and loss, 480–6
 non-financial criteria (social investing), 468–74
 portfolio theory, 464–8, 487–91
 powers of investment under TA 2000, 474–80
 prudent man of business standard, 450, 464, 487–91
 receipts, trustee control over, 498–501
 returns on investment, 457–8
 shareholders, trustees as, 483–6
 small trust funds, 486–7
 speculation versus security, balancing, 458–61
 standard investment criteria, 477–8
 statutory list of authorised investments, 458–61
 TA 2000 and, 474–80, 486–91
 total return approach, 501, 911
 as two-step process, 495
 typology of investments, 452–7
 unitrusts or percentage trusts, 500–1
 varying investment clauses, 475–6
- IT. *See* income tax
- Italian *trusts interni*, 32, 1067–9
- James I, 64
- joint legal ownership of family home, 614–25
 beneficial interest not automatically shared due to, 615
 economic factors driving, 614
 express declarations of beneficial interests, 615–18
 interpretation and application of law in context, 623–5
 no express declaration of beneficial interests, 618–25
- Jones, Gareth, 887
- judicial trustees, 413–14
- judicious breaches of trust, 584
- Kayford* trusts, 753–8, 789
- Keeton, G W, 297–305, 406, 503
- Knightley, Phillip, *The Rise and Fall of the House of Vestey*, 1058–9
- knowing assistance, 716–17, 720
- ‘knowing receipt’, 597–600, 695
- knowledge requirement, commerce and recipient liability, 698–701
- knowledge versus dishonesty, 712–14, 718
- Kramer, Ralph, 1003
- Kristol, Irving, 928
- lashes, 599–601
- land, medieval ‘uses’ of, 35–40

- land, trusts of
 delegation and, 514–15
 written evidence required for, 138
- Langbein, John H, 464, 466, 1075
- lapse and the *cy-près* doctrine for charities, 911–20
- Law Commission
 reallocation scheme for termination of cohabiting relationship, 657–60
Sharing Homes, 656–7
- Lawson, F H, 232, 633
- Lawson, Nigel, 104
- lay trustees, 421
- Leach, Barton, 346–8
- Leat, Diana, 1050
- legitimate expectations, 31
- letters of wishes, 545, 556, 1075
- Lewin on Trusts*, 3–4, 566, 580
- liability, criminal, for unlawful charitable fund-raising activities, 1042–3
- liability of fiduciaries, standards for, 836–9
- liability of non-trustees. *See also* constructive trusts and trusteeships; equitable remedies; recipient liability
 accessory liability and dishonest assistance, 709–22
 equitable remedies and, 663–4, 692–722
 vicarious liability, 721–2
 wrongful transactions, liability as constructive trustee arising from, 597–600
- liability of trustees, 558–601. *See also* breaches of trust; relief of trustee liability
 alternative analysis of, 569–73
 application of principles, 574–6
 causation of loss by breach, 563–5
 charities, 1035–7
 collective liability, 581–3
 court, seeking directions from or surrendering to, 583–4
 for delegated agents, 504–5
 effects of delegation on, 512–13
 for investment risks and loss, 480–6
 laches, 599–601
 limitation of actions, 596–600
 personal liability, 558, 581–3
 principles of, 563–74
 realignment of equity rules on money remedies with common law rules on damages, 576–81
 remoteness of loss from breach, 565–8
 unauthorised profits, trustees held liable to account for, 559
- life and health, advancement of, as charitable purpose, 945, 974–5
- limitation of actions
 on dispositions to defeat spousal claims, 336
 on freedom of testation, 335–6
 on liability of trustees for breaches, 596–600
- limited liability companies, compared to trusts, 19–21
- linguistic or semantic (conceptual) certainty, 255–60
- 'list certainty' requirement/test, 236–7, 241–4, 254, 261
- loan security, 759–75
 enforceability issues, 763–6
 protecting lender's interest, 759–60
Quistclose trusts, 760, 764–74, 788–9
 remedial constructive trusts, *Quistclose* trusts as, 773
 resulting trusts, *Quistclose* trusts viewed as type of, 770–1
- local government authorities
 charities contracting with, 974–5
 investments, local authority loans as, 453
- lottery funding for charities, 906–7
- Lovell, P A, 93
- lowest intermediate balance rule, 677
- Lupoi, Maurizio, 1074
- Macnaghten, Lord, 97
- maintenance
 application of income for, 397–8
 availability of income for, 396–7
 as beneficial entitlement, 394–401
 variation of trusts for, 358
- Maitland, F W, 1–2, 5–13, 16, 26, 32, 59–63, 133, 138, 1052–3, 1058
- maladministration of charities, preventing and detecting, 1029–45
- management of trusts, 443–516. *See also* delegation; investments, managing care, duty and standard of, 444–9
 prudent man of business standard, 444–5, 450, 464, 487–91, 504
- managing trustees, 413
- Manitoba Law Reform Commission, on accommodations and perpetuities, 344, 348, 383
- Mansfield, Lord, 68
- Mareva* orders (freezing orders), 730–7

- marketing and advertising by charities, 1043–5
- marriage. *See also* implied trusts and the family home
- limitation of actions on dispositions to defeat spousal claims, 336
 - offshore trusts and divorce litigation, 1062
 - social contexts, importance of considering, 623–5, 642–7
 - trust conditions intended to prevent or to encourage divorce, 332
 - trusts for property holding by married women, 50, 53–6, 608
- marriage settlements, 202
- Marsh, David Reginald, 460
- Mason, Sir Anthony, 67–8
- Maudsley, R H, 169, 348
- McBarnett, Doreen, 128
- medical care. *See* health care
- medieval period, charities in, 881, 887–90
- medieval ‘uses’ of land, 35–40
- Megarry, R E, 240
- mere or bare powers, 234, 238–41, 243–6, 261–6
- military, efficiency of, as charitable purpose, 969–70
- Millett, Peter, Lord, 67, 560–1, 663–4, 685, 765
- Milsom, F S C, 34, 230
- minor children. *See* children
- Mirlees, Sir James, 89, 127
- Mitchell, Charles, 598, 600
- mixing
- mixed persons–purposes trusts, 282–9
 - reservation of title and tracing of mixed goods, 783–8
 - trust property with trustee’s own property, 674–8
 - two trust funds or trust fund and money of innocent volunteer, 678–80
- mobility and tax planning, 95
- modernisation of charities. *See under* regulation of charities
- modified deterrence, 836–9
- money laundering, 661, 695, 719
- Monroe, Hubert, 72
- More, Francis, 889
- Morris, J H C, 346–8
- motivations of settlors. *See* intentions of settlors
- Mulgan, Geoffrey, 934
- Murphy, W T, 117
- mutual wills, 174–6, 179
- Nairne, Sir Patrick, 1003
- National Health Service (NHS), 63, 974–5
- National Lottery funding for charities, 906–7
- National Savings Certificates, 453
- National Savings Income Bonds (National Savings Guaranteed Equity Bonds), 453
- National Savings investment accounts, 453
- National Trust, 1050–1
- negligence and accessory liability, 712
- neutrality, as tax principle, 88–9, 126–7
- New Zealand. *See also specific statutes, statutory instruments and cases in separate tables*
- insolvency law in, 313
 - rationales for remedial constructive trusts in, 26
 - reallocation scheme for termination of cohabiting relationship, 657
 - reasonable expectations doctrine and implied trusts for family homes in, 654–6
- Nolan, R C, 79, 276
- nominees
- bare trustees, 414
 - delegation of, 511–12
- not-for-profit sector, versus charities, 903
- Nottingham, Lord, 43–4
- objects, certainty of. *See* certainty of objects
- Official Custodian for Charities, 883, 1012–3
- offshore financial centres, 1055–7
- offshore trusts, 1057–63
- conflict of laws and, 1063
 - creditors of settlor, efforts to evade, 330–1
 - divorce litigation and, 1062
 - forced heirship rules, circumventing, 1062–3
 - future of trusts generally affected by, 1075–6
 - legislative responses to, 1060–2
 - purpose trusts, 95, 1062
 - as tax planning tool, 1057–60
 - Vestey family manipulation of, 1058–60
- ongoing business relationships, fiduciaries and conflicts of interest, 821–2
- Ontario Law Reform Commission Report on trusts, 308–9, 316
- Open Ended Investment Companies (OEICs), 455
- ordinary shares, 455
- Owen, David, 891

- ownership. *See also* implied trusts and the family home
 beneficial interest, under discretionary trust
 equitable ownership of, 273–4
 from equitable ownership to equitable right, 276–8
 trust 'tricks' for manipulating, 5
- parity considerations and IHT, 114, 125–6
- payment of trustees. *See* remuneration of trustees
- Pearce, J, 615, 617
- pensions
 delegation by pension scheme trustees, 514
 discretion of trustees, court control over, 542–3
 private pension funds, defined/described, 10
- percentage trusts or unitrusts, 500–1
- perpetuities, 343–9
 charitable exemption from, 909–11
 creation of trust and non-infringement of rules of, 138
 reform and abolition proposals for rules on, 346–9
 rule against accumulations, 345–6
 rule against inalienability, 345
 rule against perpetuities, 344, 346–9
 variation of trusts and, 383–4
- personal liability, 558, 581–3
- personal nexus text, 979–81, 983, 986, 988, 993
- personal representation, compared to trusts, 17–19
- personification (taxing trust as separate entity), 97
- Pettit, D M, 276, 372
- Philips, W A, 242
- Phillips of Sudbury, Lord, 994
- Pilkington, Sir Richard, 116
- Pinion, Harry, 964–5
- police, efficiency of, as charitable purpose, 969–70
- political activities and charity, 994–1004
 assessment of principle, 1000–4
 campaigning and lobbying activities, 997–9
 practical application of principle, 997–9
 scope of principle, 994–6
- Pollock, Sir Frederick, 51
- portfolio theory, 464–8, 487–91
- Posner, R A, 383, 466
- potentially exempt transfers (PETs), IHT tax, 110, 113, 118, 120
- poverty, prevention and relief of, as charitable purpose, 945–8, 981–3
- powers, 231–8
 administrative, 232
 of advancement, 384–94
 of appointment, 232–6
 bare or mere, 234, 238–41, 243–6, 261–6
 compared to trusts, 21, 234–6
 confusion over use of terms, 237
 defined, 231
 of delegation (*See* delegation)
 discretionary trusts and, 234–6
 discretions distinguished, 529–30
 distinguished from trusts, 232–4
 equitable damages power versus discretion of jurisdiction regarding, 743–4
 fiduciary relationships, power and discretion test for, 798
 fraud on a power doctrine and exercise of discretion, 534
 of investment, under Trustee Act 2000, 474–80
 trust powers, 236–7
 of trustees, 415–17
- Pozen, R, 465
- precatory words, 181–3
- premature termination of trusts, 352–6
 development of, 48
 limits to rule, 355–6
 rationale for rule, 354–5
 rule for, 352–4
 for tax planning purposes, 361
- prepayment by consumers. *See* consumer prepayment
- preservation of wealth, trust aim of, 73
- presumed resulting trusts, 21–3, 214–19, 337–43
- presumption of advancement, 337–43
- presumption of public benefit (charities), 979–94
 altruism, diverting attention from issue of, 994
 animal welfare, 969
 class within a class test, 988–9
 educational purposes, 952, 979–81
 fee-charging organisations, 988
 historical evolution of concept, 937, 939–41
 international charities, 977
 personal nexus text, 979–81, 983, 986, 988, 993
- poor relatives and poor employees, 981–3
- question of degree test, 983–8
- religion, advancement of, 953, 957–61

- Primarolo, Dawn, 122
- private pension funds, 10
- privileges of charitable trusts, 908–30
- certainty of objects, 908–9
 - declining importance of, 920–1
 - discrimination provisions, exemptions from, 929–30
 - favourable treatment in law generally, 885
 - investments, total return approach to, 911
 - lapse and the *cy-près* doctrine, 911–20, 1016
 - perpetuities, 909–11
 - tax reliefs and exemptions (fiscal privileges), 921–9
 - for charities, 924–6
 - for donors, 926–7
 - equated with other forms of government expenditure, 927–9
 - evolution of, 921–4, 1004–7
 - public policy regarding, 922–3
 - severing link between charitable status and, 1004–7
 - tainted charity donations, 927
 - value of, 927
 - withdrawal of, 1037–8
- professional fund-raisers and charities, 1039–41
- professional trustees. *See under* trustees and trusteeship
- proprietary estoppel, 213, 640–2
- protective trusts, 299–317
- application of income after forfeiture, 304–5
 - discretionary trusts and, 238, 304–5
 - exempt property and assets, 305–10
 - family homes and other co-owned property, 310–14
 - forfeitures, 302–4
 - historical development of, 49, 299–300
 - under TA 1925, s 33, 300–4
 - US spendthrift trust compared, 314–17
- protectors or enforcers of trusts, 277, 289–90, 519, 531, 1062–3, 1076
- prudent man of business standard, 444–5, 450, 464, 487–91, 504
- public benefit, presumption of. *See* presumption of public benefit
- public policy, 291–349. *See also* charities and charitable trusts; creditors, insolvency and bankruptcy; perpetuities
- applicable law, settlor's autonomy to decide, 1066
 - children, interests of, 332
 - conditions precedent and subsequent, 292–4
 - covenants, intention and legal policy, 208–12
 - creation of trust and, 139
 - determinable interest and, 294, 332
 - fiduciary relationships and, 836–43
 - freedom of disposition and restriction of donee disposition, 292–5
 - illegal purposes, 337–43
 - limitation of actions
 - on dispositions to defeat spousal claims, 336
 - on freedom of testation, 335–6
 - marriage, conditions tending to undermine, 332
 - 'other purposes contrary to public policy', 331–7
 - presumed resulting trusts and presumption of advancement, 337–43
 - racial and religious discrimination, 332
 - repugnancy doctrine and, 294–5, 299–300
 - secret and half-secret trusts and, 178–9
 - taxation
 - charitable exemptions and reliefs, 922–3
 - purposes of, 85–6
 - wealth redistribution, 73, 86
- Public Trustee, 410–11, 423, 483
- purchases of trust property by trustee, 435–9
- purpose trusts
- beneficiary principle and, 278, 281, 285, 288–90, 763
 - charities and, 883, 909, 921, 984–5
 - enforcers/protectors and, 519, 883
 - inalienability rule and, 345
 - offshore trusts, 95, 1062
 - Quistclose* trusts and, 763–4, 773
 - unincorporated associations and, 862, 865, 867, 874
- question of degree test, 983–8
- quia timet* injunctions, 724
- Quistclose* trusts
- accessory liability and dishonest assistance, 714
 - beneficiary principle and, 278
 - fiduciary relationship and remedial constructive trusts, 808
 - loan security and, 760, 764–74, 788–9
 - reservation of title and, 782, 788–9
- racial issues
- charitable exemptions from discrimination provisions, 929–30

- charitable purpose, racial harmony as, 966
- public policy and racial discrimination, 332
- receipts on investments, trustee control over, 498–501
- recipient liability. *See also* constructive trusts and trusteeships; equitable remedies
 - commerce and knowledge requirement, 698–701
 - equitable remedies and, 663–4, 692–722
 - 'knowing receipt', 597–600, 695
 - restitution and commerce, 705–9
 - unconscionability and commerce, 702–5, 718
 - wrongful transactions, liability as
 - constructive trustee arising from, 597–600
- reconciliation, as charitable purpose, 966
- records and accounts, duty of trustee to keep, 544–5
- recreational purposes, charities for, 975–8
- redistribution of wealth. *See under* taxation
- Reeves, John, 57
- registration as a charity, 943–5
- regulation of charities, 1008. *See also* Charity Commission
 - accounts, receiving and checking, 1029–31
 - actions to protect charity property, 1033–5
 - advertising and marketing, 1043–5
 - coordination of activities of local charities, 1018
 - criminal liability for unlawful fund-raising activities, 1042–3
 - cy-près* doctrine and, 1016
 - fund-raising, 1009, 1038–43
 - inquiries and investigations, 1032–3
 - liability imposed on trustees, 1035–7
 - limits of supervisory framework, 1045–51
 - modernisation
 - under *cy-près* doctrine, 1016–26
 - defined, 1010
 - on reform agenda, 1009
 - social needs, matching charitable purposes to, 1016–7
 - Official Custodian for Charities, 883, 1012–3
 - small charities, assistance for, 1024–5
 - social needs, matching charitable purposes to, 1016
 - sources of information other than accounts, 1031–2
 - tax privileges, withdrawal of, 1037–8
 - transparency and accountability
 - defined, 1010
 - maladministration, preventing and detecting, 1029–45
 - promotion of honesty and efficiency, 1026–8
 - on reform agenda, 1009
- Reid, Lord, 220
- relevant property trusts and IHT, 113, 117–18, 121
- relief of trustee liability, 583–95
 - beneficiary involvement and, 584–6
 - at discretion of court, 591
 - exemption clauses, 586–91
 - seeking directions from or surrendering to court, 583–4
- religion, advancement of
 - as charitable purpose, 953–61
 - definition of religion, 954–7
 - means of advancement, 961
 - public benefit limitations, 953, 957–61
- religious discrimination and public policy, 332
- religious or racial harmony, as charitable purpose, 966
- remedial constructive trusts, 24–6, 31, 805–11, 773
- remedies, 558–9. *See also* equitable remedies
 - common law, 661–2
 - compensation claims
 - fiduciary breaches, equitable compensation for, 849–50
 - against trustees, 558–63
 - consumer prepayment problems, 752–5
 - discretion of trustee, for problematic exercise of, 545
 - fiduciary duty, breaches of, 843–50
 - fiduciary status as, 802–5
 - proprietary remedies, 601–2
 - realignment of equity rules on money
 - remedies with common law rules on damages, 576–81
- removal of trustees. *See* appointment and removal of trustees
- remuneration of trustees. *See also* direct remuneration of trustees
 - commissions and analogous profits, 434
 - directors' fees, 430–4
 - indirect, 430–4
 - non-remuneration rule, 420–1
 - statutory default charging clause, introduction of, 421–2

- repugnancy doctrine, 294–5, 299–300, 355, 587
- rescue services, efficiency of, as charitable purpose, 969–70
- reservation of benefit rules, IHT tax, 111
- reservation of title (*Romalpa* clauses) and equitable tracing, 775–90
- claims made by means of, 775
- commercial framework for, 777–8
- defined, 775
- fiduciary relationship and remedial constructive trusts, 808
- freedom of contract, based on principle of, 775
- limitations of, 783–8
- meeting requirements for equitable tracing claim, 778–83
- mixed goods, 783–8
- as protection for unsecured commercial creditors and unpaid suppliers, 775–90
- right to trace in equity, 776
- unmixed goods, 778–83
- residuary estates, certainty of, for subject-matter purposes, 200
- Resler, Henrietta, 367
- restitution, law of, 27–32, 685–7, 693, 705–9
- resulting trusts, 21–2, 29
- automatic resulting trusts, 21, 214–19
- creation of, 214–19
- family home and, 607, 639–40 (*See also* implied trusts and the family home)
- presumed resulting trusts, 21–3, 214–19, 337–43
- Quistclose* trusts viewed as type of, 770–1
- sole legal ownership of family home, 639–40
- unincorporated association assets and, 867
- in *Vandervell* saga, 221–3
- retirement of trustees, 526–7
- retrospective assessment, 836–9
- Revell, Jack, 382, 584
- Romalpa* clauses. *See* reservation of title and equitable tracing
- Roman law. *See also* civilian law
- DMCs based in, 177
- fideicommissum*, 36
- Royal College of Surgeons (RCS) and *Vandervell* saga. *See* Vandervell, Guy Anthony and *Vandervell* saga
- Royal Society for the Prevention of Cruelty to Animals (RSPCA), 1051
- Rudden, Bernard, 232
- rural and urban regeneration, as charitable purpose, 962
- 'salman', 36
- same-sex couples registering as civil partners, 657. *See also* implied trusts and the family home
- Sandford, Cedric, 76, 78, 86
- Savings Bonds, 453
- science, arts, culture or heritage, advancement of, as charitable purpose, 964–5
- Scientology, as religion for charitable purposes, 954–5
- Scotland
- remedies for cohabitants in, 657
- separate trust law of, 1052
- Scott, Austin Wakeman, 57–60, 419, 1069
- Scott, Sir Richard, 69
- search orders, 730–1, 737
- secrecy, of offshore financial centres, 1055–7
- secret and half-secret trusts, 24, 164–6
- certainty of intention in, 188–93
- DMCs compared, 176–9
- as express or constructive, 173–4
- mutual wills compared, 174–6, 179
- policy justification for allowing, 178–9
- requirements for fully secret trusts, 166–8
- requirements for half-secret trusts, 168
- theoretical basis of, 169–73
- secret profits, fiduciary rule against, 822–32
- security for loans. *See* loan security
- 'seisin', 37, 40–1
- 'self-dealing' rule for trustees, 434–41
- Selznick, Philip, 864
- semantic or linguistic (conceptual) certainty, 255–60
- separate spousal property, concept of, 608–9
- separation of couples, trust conditions intended to encourage, 332
- separation of trust property from insolvent trustee's assets, 750–1
- settlers. *See also* intentions of settlers
- applicable law, autonomy to decide, 1065–6
- appointment and removal of trustees, role in, 520–1
- creditors of (*See under* creditors, insolvency and bankruptcy)
- discretionary trusts and intentions of, 76
- letters of wishes from, 545, 556, 1075
- relief of trustee liability through exemption clauses, 586–91
- Shaffer, T L, 75
- sham trusts, 15
- shareholders, trustees as, 483–6

- shares, ordinary, 455
- Sheridan, L A, 178
- Simmonds, N E, 130
- Simonds, Viscount, 365
- simplicity, of taxation, 127
- Simpson, A W B, 344
- Sinfield, Adrian, 126
- small charities, 1024–5
- small trust funds, managing investments of, 486–7
- Smith, Adam, *Wealth of Nations*, 86, 901
- Snell's Equity*, 134–6, 176, 420, 504
- social contexts in which trusts are used, 32–3, 623–5, 642–7
- social investing, 468–74
- social needs, matching charitable purposes to, 1016
- sole legal ownership of family home, 625–42
 - conduct, intention inferred from, 634–8
 - constructive trusts, 626–39
 - detrimental reliance on agreement regarding, 631–4
 - informal agreements, arrangements, or understandings, 628–31
 - proprietary estoppel, 640–2
 - quantifying shares, 638–9
 - resulting trusts, 638–9
- solicitors and conflicts of interest, 817–21
- South Sea Bubble (1720), 48, 458
- special powers of appointment, 232
- specific performance, 601–2
- spendthrift trusts (US), 314–17
- sport, amateur, as charitable purpose, 965–6
- spouses. *See entries at marriage*
- standard investment criteria, 477–8
- standards for trustees
 - of good faith, 48
 - of skill and care, 47
- STAR Trusts, in Cayman Islands, 1076
- statutory limitations. *See limitation of actions*
- stocks
 - British government stocks ('gilt-edged securities' or 'gilts'), 453
 - high-coupon stocks, 454
- stranger liability. *See liability of non-trustees*
- strict deterrence, 836–9
- strict settlements, 50–4
- subject-matter, certainty of, 137–8, 193–200
- subordination trusts, 10
- subrogation, 690–2
- sub-trusts (equitable owner's self-declaration as trustee), 147–8
- Sumner, Viscount, 170–1
- super-injunctions, 730
- surrendering discretion to court, 583–4
- swap agreements, 27
- Switzerland, bank secrecy laws in, 1056
- TACT (Association of Corporate Trustees), 407–9
- tainted charity donations, 927
- Tawney, R H, 890
- tax avoidance and tax evasion
 - defining, 77–9
 - IT and anti-avoidance measures, 101–3
 - judicial responses to, 79–83
 - legislative reactions to, 83–5
 - offshore financial centres, 1055–7
 - offshore trusts, legislative responses to, 1060–2
 - tainted charity donations, 927
 - variation of trusts and, 376–9
- tax havens, 1054–7. *See also offshore financial centres; offshore trusts*
- Tax Law Rewrite Project, 97
- tax planning and trusts, 93–5, 361, 1057–60
- taxation, 72–131. *See also capital gains tax; income tax; inheritance tax*
 - certainty in, 87–8, 128
 - charitable reliefs and exemptions (*See under privileges of charitable trusts*)
 - complexity of legislation regarding, 95–6
 - 'creative compliance' with, 128
 - government departments responsible for, 74
 - horizontal equity in, 87
 - intelligibility of, 127
 - intentions of settlors and, 75–7
 - neutrality in, 88–9, 126–7
 - personification (taxing trust as separate entity), 97
 - principles of, 86–9
 - purposes of, 85–6
 - simplicity of, 127
 - structure of, 89–90
 - transparency (taxing trust by reference to circumstances of beneficiary), 97
- VAT
 - charities and, 922, 925–6
 - on trustee charges, 423
- vertical equity in, 86–7
- wealth redistribution, 89–93

- taxation (cont.)
 in conflict with trust aim of wealth preservation, 73
 defined, 86
 estimation of wealth concentration in trusts, 92–3
 estimation of wealth-holding in UK and, 91–2
 as purpose of, 73, 86
 termination of trusts, premature. *See* premature termination of trusts
 'testament' of personal chattels, 36
 testamentary trusts. *See also* secret and half-secret trusts
 defined, 140
 DMCs, 176–9, 213
 formalities, 163–79
 investment assets, historical emergence of trusts of, 46
 mutual wills, 174–6, 179
 residuary estates, certainty of, for subject-matter purposes, 200
 Wills Act requirements for, 138
 Thelluson, Peter, 345
 third sector, versus charities, 903
 Thomas, Geraint, 127, 129
 Thompson, E P, 393
 Tiley, John, 83
 Titmuss, Richard, 94–5, 898
 tracing, 665–90
 ascertainability limits, 680–2
 backward tracing, 678
 in common law, 669–73
 creditors, insolvency and bankruptcy of commercial trusts, 750–2 (*See also* reservation of title and equitable tracing)
 in equity, 673–80
 following distinguished, 665
 inequity defence, 683–5
 limits in equity, 680–7
 lowest intermediate balance rule, 677
 mixing of trust property with trustee's own property, 674–8
 mixing two trust funds or trust fund and money of innocent volunteer, 678–80
 personal claims in equity and, 688–90
 as process versus remedy or claim, 668
 restitution, as part of law of, 685–7
 right to trace in equity, 666–8
 unjust enrichment and, 685–7
 tracker funds, 457
 transfers of value, IHT tax, 111
 transparency and accountability of charities. *See under* regulation of charities
 Tribunal, Charity Commission, 1015–6
 trust founders. *See* settlors
 trust powers, 236–7
 trustees and trusteeship, 402, 442, 1051. *See also* appointment and removal of trustees; breaches of trust; control of trustees; discretion of trustees; liability of trustees; management of trusts; remuneration of trustees
 capacity to be a trustee, 410
 CGT
 on actual disposal by trustees, 106
 on deemed disposals by trustees, 106–7
 conflicts of interest, 417–19
 court, seeking directions from or surrendering to, 583–4
 creation of trust and transfer of property to trustees, 138
 custodian trustees, 412–13
 dealings with trust fund or beneficiaries, 434–41
 demography of current trustees, 407
 duties of trustees, 414–15
 accounts and records, 544–5
 care, duty and standard of, 444–9, 505, 559
 conflict of interest and, 417–19, 441–2
 investment management, 476–7
 powers and, 416–17
 prudent man of business standard, 444–5, 450, 464, 487–91, 504
 'fair-dealing' rule, 434–41
 as fiduciary relationship, 403
 impartiality requirement, 491–503
 IT on, 98–100
 judicial trustees, 413–14
 lay trustees, 421
 managing trustees, 413
 moral obligation versus profit motive, tension between, 403–7
 nominees or bare trustees, 414
 number of trustees, 410
 powers of trustees, 415–17
 professional and corporate trustees
 calculation of charges, 423
 direct remuneration of, 421

- historical development of, 47, 407
- non-remuneration rule and, 421
- trust corporations, 411–12, 421
- Public Trustee, 410–11, 423, 483
- purchase of beneficial interest by, 438–41
- purchases of trust property, 435–9
- retirement of trustees, 526–7
- 'self-dealing' rule, 434–41
- shareholders, trustees as, 483–6
- Trustee Act 2000, 409–10
- trusts, 1–33. *See also* express trusts; *inter vivos* trusts; interest in possession trusts and IHT; purpose trusts; testamentary trusts
 - beneficial entitlement, 350–401 (*See also* beneficial entitlement)
 - certainty requirements, 137–8 (*See also* certainty of objects)
 - charitable, 880–933 (*See also* charities and charitable trusts)
 - commercial
 - creditors, insolvency and bankruptcy, 750–2 (*See also* consumer prepayment; loan security; reservation of title and equitable tracing)
 - equitable remedies for (*See* equitable remedies; tracing)
 - fiduciary relationships (*See* fiduciary relationships)
 - compared to similar legal institutions, 16–21
 - constructive, 22–6, 31 (*See also* constructive trusts and trusteeships)
 - contracts compared, 16–17, 200–2
 - declaration of, 138 (*See also* declaration of trust)
 - defined/described, 1–4, 1064–5, 1073–4
 - enforcers or protectors of, 277, 289–90, 519, 531, 1062–3, 1076
 - in equity, 13–15 (*See also* equity)
 - evolution of, 34–71 (*See also* evolution of trusts)
 - exportation into other jurisdictions, 32
 - fixed trusts and certainty of objects, 254
 - formalities, 139–79 (*See also* formalities)
 - future of, 1073–6
 - gifts versus, 108, 132–4
 - implied (*See entries at* implied)
 - imputed, 21–7 (*See also* imputed trusts)
 - intentions of settlors and, 132–4 (*See also* intentions of settlors)
 - investment trusts, 455
 - of land
 - delegation and, 514–15
 - written evidence required for, 138
 - law of restitution and, 27–32
 - management of, 443–516 (*See also* management of trusts)
 - offshore, 1057–63 (*See also* offshore trusts)
 - percentage trusts or unitrusts, 500–1
 - powers and, 231–8 (*See also* powers)
 - premature termination of, 352–6 (*See also* premature termination of trusts)
 - protective, 299–317 (*See also* protective trusts)
 - public policy and, 291–349 (*See also* public policy)
 - relevant property trusts and IHT, 113, 117–18, 121
 - requirements for creating, 136–9, 228–31 (*See also specific requirements, eg, formalities*)
 - resulting trusts, 21–2, 29 (*See also* resulting trusts)
 - secret and half-secret, 24, 164–6 (*See also* secret and half-secret trusts)
 - sham trusts, 15
 - social contexts of, 32–3, 623–5, 642–7
 - spendthrift trusts (US), 314–17
 - subordination trusts, 10
 - sub-trusts, 147–8
 - taxation and, 72–131 (*See also entries at* tax)
 - 'tricks' for manipulating ownership
 - through, 5
 - typology of, 21–7
 - unincorporated associations and, 852–79 (*See also* unincorporated associations)
 - unit trusts, 10, 455
 - variation of, 356–84 (*See also* variation of trusts)
 - versatility and flexibility of, 1, 5, 73, 605
- Turner, R W, 271
- unconscionability, 31, 158–63, 607, 651–4, 702–5, 718
- undertaking test, for fiduciary relationships, 797
- undervalued transactions, 326–9
- undue influence, 31, 813–15
- Ungoed-Thomas, Sir L, 365
- Uniform Trust Code, EU, 1071–2
- unincorporated associations, 852–79
 - bequests to, 854–67

- unincorporated associations (cont.)
 contract-holding approach
 to bequests, 859–65
 to dissolution, 867
 dissolution, distribution of assets on, 867–79
 features of, 852
 gift to individual members at date of gift,
 bequests regarded as, 856–9
inter vivos gifts or subscriptions, 866
 not a legal entity separate from its members,
 852
 purpose trusts and, 862, 865, 867, 874
 resulting trust basis, entitlement of members
 to assets centred on, 867
 types and purposes, 853
- unit trusts, 10, 455
- United States. *See also specific statutes,
 statutory instruments and cases in
 separate tables*
 insolvency law in, 314–17
 perpetuities, abolition of rule against, 348
 remuneration of trustees in, 421
 spendthrift trusts in, 314–17
- unitrusts or percentage trusts, 500–1
- unjust enrichment
 in Canada, 26, 648–51
 law of restitution and, 28–31
 tracing and, 685–7
- unmixed goods, reservation of title and tracing,
 778–83
- unsecured commercial creditors. *See*
 reservation of title and equitable tracing
- urban and rural regeneration, as charitable
 purpose, 962
- 'uses'
 medieval 'uses' of land, 35–40
 Statute of Uses 1535, 40–5
- valuable consideration. *See* consideration
- Value Added Tax (VAT)
 charities and, 922, 925–6
 on trustee charges, 423
- value transferred, IHT tax, 111
- Vandervell, Guy Anthony and *Vandervell* saga,
 219–27
 background to, 219–20
 death of Vandervell (1967), 224
 outcomes of, 227
 stage 1 (1958–1961), 220–3
 stage 2 (from 1961), 223–6
 variation of trusts, 356–84
- before 1958, 357–62
 benefit defined for purposes of, 373–9
 compromise, 358–61
 exporting trusts and, 379–81
 intention of settlor and, 373–6
 investment clauses, 475–6
 Law Reform Committee Report, 362–4
 maintenance, 358
 perpetuities and, 383–4
 power of courts to sanction, 362–4
 tax avoidance and, 376–9
 for tax planning purposes, 361
 Variation of Trusts Bill, 365–8
 VTA (Variation of Trusts Act), 1958,
 368–83
- VAT. *See* Value Added Tax
- Venables, R, 94–5, 130
- vertical equity, as tax principle, 86–7
- Vestey family offshore trust, 1058–60
- vicarious liability, 721–2
- Vincent, Sir Howard, 406
- Virgo, Graham, 686
- voluntary sector, versus charities, 903
- volunteers, equity not assisting, 135, 158,
 212–13
- Walker, Robert, Lord, 79, 537–42
- 'waqf', 36
- Waters, Donovan, 403, 418, 432, 1076
- Watt, Peter, 703
- wealth preservation, trust aim of, 73
- wealth redistribution. *See under* taxation
- Wednesbury* test, 554–5
- welfare state, charity in, 897–903
- Westergaard, John, 367
- WFOs (worldwide freezing orders),
 734–6
- Wheatcroft, G S A, 77
- Whitaker, Ben, 1004
- Wilberforce, Lord, 144
- Williams, Glanville, 294
- Wolfenden Report, 899
- Woodward, H, 615, 617
- words, certainty of, 137–8
- worldwide freezing orders (WFOs), 734–6
- written requirements. *See* formalities
- Yeats, W B, 'Meditations in Time of Civil
 War – My Descendants' (*The Tower*,
 1928), 296
- Younger, Sam, 1046