agency, 299–300
assignments, 181
chooses in action at common law, 196–8
equity and consideration and, 181–2
future property, 182, 187–95
legal property, equity’s intervention in, 181
presently existing property, 182
statutory choses in action, 199–202
transfers of choses in action, 182
writing requirements, 182 , 202–6
bailment, 300–1
bars to relief, 31–6 , 105
acquiescence, 110–11
effect of order on third parties, 119–21
hardship, 116–9
laches, 105–10
unclean hands, 111–16
breach of confidence
defences, 283–6
elements of, 270
elements of cause of, 270–2
remedies, 286–91
See also equitable confidentiality
breach of trust
beneficiary’s consent to, 447–50
defences to. See defences to breach of trust
remedy by removal of trustee, 450–2
who can sue for, 439
bribes and secret commissions, 532–8
certainty requirements in trusts
certainty of intention to create trust, 316, 318–26
certainty of object, 317, 329–34
certainty of subject matter, 316–17, 326–8
champerty, 196, 197–8
See also maintenance charitable trusts, 317, 349
charitable purpose, 350–1
for advancement of education, 352–3
for benefit of the community, 356–8
for relief of poverty, 351–2
for the advancement of religion, 353–6
requirement of public benefit. See requirement of public benefit, charitable trusts
chooses in action assignment at common law, 196–8
statutory, 199–202
transfer of, 182
common law
assignments of choses in action, 196–8
equitable compensation and, 75–7
equity and. See law and equity
types of property recognised under, 181
confidential information
quality of confidence, 274–8
specification of, 272–4
unauthorised use, 281–3
constructive trusts, 512–15
as remedy for estoppel, 525–8
as restitutional remedy for unjust enrichment, 542–8
common intention constructive trusts, 513–17
forms of, 512
imposed over property transferred under specially enforceable contracts, 550–4
imposed over stolen money and its proceeds, 539–42
in response to breach of fiduciary obligation. See fiduciary obligation, constructive trusts and mutual wills and, 548–50
unconscionability and constructive trusts, 517–25
contracts equitable intervention into, 125
fiduciary relationships, 221–2
for the sale of chattels, 28–9
in favour of third parties, 30–1
prevention of breaches of by injunctions, 42–4
rescission. See rescission
sale of land, 24–8
specially enforceable, constructive trusts and, 550–4
statutory exculpation as defence to breach of, 443–7
trust obligations and, 303–5
creation of express trust, 337
by transfer to intended trustee, 340–3
declaration of trust, 337–40
exceptions to statutory writing requirements, 343–5
criteria for fiduciary relationships, 212
characteristics of relationship approach, 213–17
horizontal relationships, 218–21
damages equitable. See equitable damages
exemplary, 78–82
inadequacy of. See inadequacy of damages
debts, 306–9
defences to breach of trust, 439–40
exculpation clauses, 440–2
equitable charge, 301–3
equitable compensation, 59, 52
account, 59–61
common law principles and, 75–7
Index

equitable compensation (cont.)
distinction between
substantive and reparative, 61–2
reparative, 69–74
substantive compensation, 63–8
equitable confidentiality, 270
circumstances imposing obligation of, 278–81
See also breach of confidence; confidential information
equitable damages, 45–8, 24
criteria for, 46–7
inadequacy of. See inadequacy of damages
quantification, 48–9
wrongful act, 39, 45–6, 71
equitable estoppel
constructive trust as remedy for, 525–8
promissory estoppel, 125–30
proprietary estoppel, 131–4
equitable proprietary interests, 163
distinction between mandatory and prohibitory, 39–40
fiduciary obligation, 528
constructive trusts, 528
bribes and secret commissions, 532–8
fiduciary obtains benefit in possible conflict of interest and duty, 529–31
fiduciary obligations, 227–8
breach of, third party participation in. See third party participation in breach of fiduciary obligations
constructive trusts. See fiduciary obligation, constructive trusts
contracting out from, 243–7
informed consent, 239–40
status of conflict and profit principles, 241–3
unauthorised profit, 228–39
fiduciary relationships, 209
contractual context, 221–2
criteria for. See criteria for fiduciary relationships recognised or status based, 209–12
scope, 222–7
fusion, 31–4
gifts
equitable property, 195–6
legal property, ineffective, 182, 183–7
inadequacy of damages, 24–31
contracts for the sale of chattels, 28–9
contracts for the sale of land, 24–8
contracts in favour of third parties, 30–1
injunctions, 36–7
distinction between mandatory and prohibitory, 39–40
general principles, 37–8
interlocutory, 44
prevention of breach of contract by, 42–4
social considerations, 40–2
investment of trust funds, 396
compensation for loss, 411–12
ethical considerations, 406–11
modern approach to ‘prudence’, 399–406
sources and content of trustees’ investment powers, 396–7
trustee duties in, 397–9
laches, 105–10
law and equity
conflict between, 28–9
fusion, 31–4
New South Wales, 32–3
Lord Cairns’ Act, 52, 287
damages, 48, 49, 299, 290, 291
maintenance, 196, 197–8
See also champerty
mistake, 103, 544, 545, 548
mixing money in bank account by recipients of property from fiduciary, 472
competition between beneficiaries, 465–7
competition between fiduciary and beneficiary, 462–4
monetary remedies in equity account of profits, 52–9
discretionary nature of, 52
equitable compensation. See equitable compensation exemplary damages, 78–2
mutual wills, 548–50
mutuality, 36
affirmative, 36
negative, 36
partnerships, 309–14
presumed resulting trusts, 484
non applicability of presumption of resulting trust, 488–97
presumption of resulting trust, 484–8
property assignments. See assignments constructive trusts and, 550–4 future, 182, 187–95 gifts of, 182, 183–7, 195–6 knowing receipt of, breach of fiduciary obligations, 251, 252 presently existing, 182 removal from trust and exchange with other property. See tracing types recognised under common law, 181

Quistclose trusts, 296, 297–8, 303, 307–8, 310–11, 311–12, 314, 316, 317, 481, 501–5, 505