

INDEX

- accounts of profits, 63–70
- acquiescence, 127–8
- administrative workability test, 385–6
- agency, 349–50
- Aristotle, 4
- bars to relief, 120
 - acquiescence, 127–8
 - effect of order on third parties, 138–9
 - hardship, 134–8
 - laches, 120–7
 - unclean hands, 129–34
- beneficiaries, 187
 - consent to a breach of trust, 512–14
 - sui juris* beneficiaries, 428
 - trustees' duty to give information to, 431–9
- beneficiary principle, 404
- breach of confidence, 318
 - elements of cause of action for, 318–20
 - circumstances imposing an obligation of confidence, 326–9
 - specifying the confidential material, 320–2
 - unauthorised use of confidential information, 329–31
 - quality of confidential information, 322–6
- breach of contract
 - accounts of profits, 63
 - damages, 59
 - prevention of by injunction, 53–5
- breach of fiduciary duty, 113, 291–2
 - corporations, 289
 - liability of third parties for, 289–91
- breach of trust, 125, 501
 - beneficiary's consent to, 512–14
 - defences, 504
 - exculpation clauses, 504–7
 - statutory exculpation, 507–11
 - remedying, removing the trustee, 515–16
 - who can sue for, 501–3
- bribes and secret commissions, constructive trusts and, 616–23
- Brickenden* principle, 113
- champerty, 206, 221
- charitable trusts, 380, 404
 - meaning of charitable purpose, 405–6
 - requirement of public benefit
 - 'benefit', 414–18
 - 'public or section of the public', 419–22
 - trusts for purposes beneficial to the community, 412–14
- trusts for the advancement of education, 408–9
- trusts for the advancement of religion, 409–12
- trusts for the relief of poverty, 407
- chattels, 525
 - contracts for the sale of, 31–2
- choses in action, 205
 - assignment of at common law, 221–4
 - assignment of equitable choses in action, 225–7
 - statutory assignment of, 224–5
 - transfer of, 206
- common intention constructive trusts, 591–600
- consent, fiduciary obligations and, 277–9
- consideration, equity and, 205–6
- constructive trusts
 - as a remedy for estoppel, 610–13
 - as restitutionary remedy for unjust enrichment, 627–34
- common intention constructive trusts, 591–600
- differences between express and constructive trusts, 590
- distinction between remedial constructive trusts and institutional constructive trusts, 589
- duties of constructive trustees, 590
- imposed over property transferred under specifically enforceable contracts, 636–41
- imposed over stolen money and its proceeds, 624–7
- labelling of, 589
- mutual wills and, 634–6
- raised in response to a breach of fiduciary obligation, 613
 - bribes and secret commissions, 616–23
 - fiduciary obtains benefit where there was a conflict of interest, 613–16
- unconscionability based constructive trusts, 601–9
- writing requirements, 590
- contracts
 - equity and
 - identifying fiduciary relationships, 251–3
 - termination of contract, 253–9
 - for the benefit of third parties, 32–3
 - for the sale of chattels, 31–2
 - for the sale of land, 27–30
 - trusts and, 353–5

- corporations
 - breach of fiduciary duty by, 289
 - trustees' duty of care and, 443
- creating an express trust, 388
 - application of trusts to avoid creditors, 399–402
 - by transfer to the intended trustee, 392–4
 - declaration of trust, 388–91
 - exceptions to statutory writing requirement, 394–6
 - testamentary trusts, 396–8, 650
 - trusts and public policy, non-statutory public policy, 398–9
- cy-près scheme, 404, 428
- debt, trusts and, 355–9
- Dickens, Charles, *Bleak House*, 8
- discretionary trusts, 379–80
- doctrine of cy-près, 404, 577
- doctrine of notice, 196–8
- elements of cause of action for breach of
 - confidence
 - defences, 331–4
 - remedies, 335–9
- equitable assignments
 - assignment of choses in action at common law, 221–4
 - assignments of future property, 211–20
 - equitable recognition of ineffective gifts of legal property, 207–11
 - equity and consideration, 205–6
 - equity's intervention in assignments of legal property, 205
 - gifts of equitable property, 205–6, 220
 - legal property and equitable property, 205
 - presently existing or future property, 206
 - requirement for writing in, 206
 - statutory assignment of choses in action, 224–5
 - equitable choses in action, 225–7
 - statutory requirements for the assignment of equitable property, 228–32
 - transfers of choses in action, 206
- equitable charge, 351–2
- equitable compensation, 20, 56, 63, 71
 - account, 71–3
 - common law principles and, 87–90
 - reparative compensation, 80–7
 - substitutive compensation, 74–80
 - substitutive and reparative compensation, 73–4
- equitable damages, 26, 55–6
 - criteria for determining award of, 57–8
 - exemplary damages, 90–5
 - 'good working rule', 58
 - legislation, 56
 - Lord Cairns' Act* damages, 59, 335, 337, 339
 - quantifying damages, 59–61
- equitable estoppel, contracts and, 143
- equitable ownership, nature of, 187–9
- equitable proprietary interests, 187
 - doctrine of notice, 196–8
 - equitable interests and equities, 189–96
 - nature of equitable ownership, 187–9
 - proprietary estoppel, 187, 198–203
- equitable remedies, 17
 - examples of, 17–24
 - monetary remedies, *see* monetary remedies in equity
- equity
 - dictionary definition of, 3
 - history of
 - conflict between common law and equity, 6–7
 - origins, 5–6
 - reform and renewal, 8–12
 - substantive fusion achieved by *Judicature Act 1873* (UK), 12
 - justification of, 4
 - maxims of, 12
 - monetary remedies in, *see* monetary remedies in equity
- equity and voidable contracts, undue influence, third parties and, 156
- equity and voidable transactions
 - unconscionability in equity, 156–65
 - asset-based lending, 163
 - special disadvantage, 162–3
 - supply of financial services, 163–4
 - undue influence, 149–55
 - Yerkey v Jones* liability, 166–70
- equity in contract law, 143
- equitable estoppel, promissory estoppel, 143–8
- equitable relief against penalties and forfeiture, 171
 - relief against forfeiture, 182–5
 - relief against penalties, 171–81
- voidable transactions, *see* equity and voidable transactions
- estoppel
 - constructive trusts as a remedy for, 610–13
 - equitable estoppel and contracts, 143
 - promissory estoppel, 143–8
 - proprietary estoppel, 148, 187, 198–203
- Everett assignments, 227
- exculpation clauses, 504–7

- express trust, 343
 - creating, *see* creating an express trust
 - existence of trust obligations, 345
 - public policy in relation to trusts, 348–9
 - quarantining assets from creditors of the ‘trustee’, 346–7
 - trusts as ‘entities’ in a statutory context, 347–8
 - towards a definition of, 343–4
- fiduciary obligations, 235, 265
 - conflict and profits principles, 279–83
 - contracting out of obligations, 283–7
 - informed consent, 277–9
 - obligation not to be in a position of conflict, 267–7
 - obligation not to obtain any unauthorised profit from the relationship, 266–7
 - participants in a breach of fiduciary obligation, *see* participants in a breach of fiduciary obligation
- fiduciary relationships, 235
 - identifying fiduciary relationships. *see* identifying fiduciary relationships
 - scope of, 259–64
- fixed trusts, 379, 385
- forfeiture, relief against, 171, 182–5
- ‘fusion by analogy’, 87
- future property, assignments of, 206, 211–20
- gifts
 - of equitable property, 205–6, 220
 - equitable recognition of ineffective gifts of legal property, 207–11
- guarantors, 163–4
- half-secret trusts, 396
- hardship, 134–8
- identifying fiduciary relationships
 - criteria, 239
 - ‘distill the essence’, 239–43
 - ‘entitlement to expect’ approach, 246–7
 - equity and contract, 251–9
 - horizontal approach, 247–51
 - ‘multifactorial’ approach, 244–6
 - recognised or status-based fiduciary relationships, 235–8
- injunctions, 40
 - distinction between mandatory and prohibitory injunctions, 42–50
 - general principles, 40–2
 - interlocutory injunctions, 55
 - preventing breaches of contract by, 53–5
 - quia timet* injunction, 59
 - social considerations, 50–2
- inter vivos trusts, 344, 366, 371
- knowing assistance, 305
 - assistance in the breach, 308
 - dishonest and fraudulent breach of trust, 305–8
 - knowledge, 309–12
 - remedies for knowing assistance, 313–16
- knowing receipt, 291
 - alternative grounds of personal recipient liability, 300–4
 - breach of fiduciary duty, 291–2
 - knowledge, 295–9
 - receipt of a property by a third party, 292–5
 - remedy, 299
- laches, 120–7
- legal property
 - equitable recognition of ineffective gifts of, 207–11
 - equity’s intervention in assignment of, 205
- Lord Cairns’ Act* damages, 59, 335, 337, 339
- maintenance, 221
- monetary remedies in equity, 63
 - accounts of profits, 63–70
 - equitable compensation, 63, 71
 - account, 71–3
 - common law principles and, 87–90
 - reparative compensation, 80–7
 - substitutive compensation, 74–80
 - substitutive and reparative compensation, 73–4
 - exemplary damages, 90–5
- mutuality
 - affirmative mutuality, 39–40
 - lack of, 39–40
 - negative mutuality, 40
- non-charitable trusts, 422–3
- novus actus interveniens*, 87
- participants in a breach of fiduciary obligation, 289–91
 - knowing assistance, 305
 - assistance in the breach, 308
 - dishonest and fraudulent breach of trust, 305–8
 - knowledge, 309–12
 - remedies for knowing assistance, 313–16

- participants in a breach (*cont.*)
 - knowing receipt, 291
 - alternative grounds of personal liability, 300–4
 - breach of fiduciary duty, 291–2
 - knowledge, 295–9
 - receipt of a property by a third party, 292–5
 - remedy, 299
 - other forms of participatory liability, 316
- partnership, trusts and, 359–64
- penalties, relief against, 171–81
- precatory words, 366, 371
- presumed resulting trusts, 556
 - presumption of resulting trust, 556–61
 - when presumption of resulting trust does not apply, 561–73
- promissory estoppel, 148
- property
 - equitable property, statutory requirements for the assignment of, 228–32
 - future property, assignments of, 211–20
 - gifts of, 205–6, 220
 - knowing receipt of by third party, 292–5
 - legal property
 - equitable property and, 205
 - equity's intervention in assignment of, 205
 - recognition of ineffective gifts of, 207–11
 - presently existing or future property, 206
- proprietary estoppel, 148, 187, 198–203
- quia timet* injunction, 59
- Quistclose* trusts, 353, 366, 577–82
- rectification, 114–18
- rescission, 97
 - Brickenden* principle, 113
 - election requirement, 102–6
 - pecuniary rescission, 109
 - restoration process, 107–14
 - total and partial rescission, 98–102
- resulting trusts, 553
 - categories of, 553
 - incomplete dispositions of a beneficial interest, 574–7
 - overview, 553–6
 - presumed resulting trusts, 556
 - presumption of resulting trust, 556–61
 - when presumption of resulting trust does not apply, 561–73
 - Quistclose* trusts, 577–82
 - rationale of, 582–7
- right of exoneration, 475
- right of recoupment, 475
- right to exoneration, 479
- Saunders v Vautier* rule, 645, 647–8, 650, 656, 657
 - limits on its application, 647–55
 - statement of the principle, 646
- specific performance, 26
 - bars to equitable relief, 34
 - continuous supervision, 34–9
 - lack of mutuality, 39–40
- inadequacy of damages
 - contracts for the benefit of third parties, 32–3
 - contracts for the sale of chattels, 31–2
 - contracts for the sale of land, 27–30
- purpose of orders of, 26
- statutory exculpation, 507–11
- stolen money, constructive trusts imposed over, 624–7
- testamentary trusts, 366, 396–8
- tracing, 519–22
 - defences to equitable tracing claims, 549
 - distinguishable from following trust property, 519–22
 - fiduciary requirement, 523–5
 - mixing money in a bank account, 526–9
 - backward tracing, 529–30
 - competition between beneficiaries, 530–3
 - lowest intermediate balance rule, 533–8
 - mixing by recipients of property from the fiduciary, 538–42
 - tracing into profits, 543–8
- trust declarations
 - bilateral, 366, 369
 - unilateral, 369
- trust funds, investment of, 457
 - case for trustees having regard to ethical consideration, 467–72
 - compensation for loss, 472–3
 - modern approach to 'prudence', 460–6
 - sources and content of trustees' investment powers, 457–8
- trustee duties in the context of investment, 458–60
- trust obligations, existence of, 345
 - public policy in relation to trusts, 348–9
- quarantining assets from creditors of the 'trustee', 346–7
- trusts as 'entities' in a statutory context, 347–8
- trustee
 - removal of, 515–16
 - trustee de son tort, 289, 291
- trustees' duties, 427
 - duties of constructive trustees, 590

- duty of care, 440–3
- duty to act impartially, 444–8
- duty to adhere to the terms of the trust, 428
- duty to consider exercise of powers, 448
 - consequences of an invalid exercise of power, 452–5
 - trustees' powers, 448–52
- duty to 'get in' the trust assets, 428–9
- duty to give information to beneficiaries, 431–9
 - trust documents, 432, 439
- duty to keep assets separate, 429–30
 - in the context of investment, 458–60
 - investment of trust funds, 429
 - keeping and rendering accounts, 431
 - sources of, 427
- trustees' rights, 475
 - nature of trustees' right of indemnity, 476–7
 - 'properly incurred' expenses, 478–86
 - recovery against beneficiaries personally, 486–91
 - right to seek directions from the Court, 492–6
- trusts
 - certainty requirements in trusts law, 366
 - certainty of intention to create a trust, 366–76
 - certainty of object, 379–86
 - certainty of subject matter, 376–9
 - charitable trusts, *see* charitable trusts
 - constructive trusts, *see* constructive trusts
 - discretionary trusts, 379–80
 - distinguishing trusts from similar concepts, 349
 - agency, 349–50
 - equitable charge, 351–2
 - trust and contract, 353–5
 - trust and debt, 355–9
 - trust and partnership, 359–64
 - express trust, *see* express trust
 - features facilitating avoidance activities, 348–9
 - fixed trusts, 379, 385
 - for non-charitable purposes, 422–3
 - half-secret trusts, 396
 - inter vivos trusts, 366
 - presumed resulting trusts, *see* presumed resulting trusts
 - Quistclose* trusts, 353, 366, 577–82
 - resulting trusts, *see* resulting trusts
 - Saunders v Vautier* rule, 645, 647–8, 650, 651, 656, 657
 - limits on its application, 647–55
 - statement of the principle, 646
 - termination of, 645
 - testamentary trusts, 366, 396–8
 - variation of, 655–8
- unclean hands, 129–34
- unconscionability, 143, 156–5
 - asset-based lending, 163
 - legislative proscription against unconscionable conduct, 164
 - special disadvantage, 162–3
 - supply of financial services, 163–4
- unconscionability based constructive trusts, 601–9
- undue influence, voidable transactions and, 149–55
- unjust enrichment, constructive trusts as restitutionary remedy for, 627–34
- voidable transactions, 97
 - equity and, *see* equity and voidable transactions
 - undue influence and, 149–55
- volunteers, 353
- Wednesbury* irrationality test, 452
- wills, mutual wills and constructive trusts, 634–6
- writing requirement
 - constructive trusts, 590
 - equitable assignments, 206
 - exceptions to statutory writing requirement, 394–6
 - statutory requirements of the assignment of equitable property, 228–32