

Index

Aberfan coal-tip disaster, 10-11 forcible removal by, 468-9 accessory liability, 656-69 initial appointments, 462-3 accountability and transparency of charities. new, replacement, or additional trustees, appointment of, 463-8 See under regulation of charities accounts, trustee's duty to keep, 487 retirement, 468-9 accumulations settlor's role in, 462-3 creation of trust and non-infringement of armed forces, promotion of efficiency as rules of, 79 charitable purpose, 918 destination of, 340-1 arts (advancement of), 912-13 perpetuities and rule against, 287-8 Ashburner, Walter, 66 administrative powers, 172 Ashworth, Michael, 952 administrative unworkability criterion, 202-7 asset management function, delegation of, advancement, power of, 326-35 age 18-25 trusts asset protection trusts, 271-2, 967 accumulations and, 340-1 Association of Corporate Trustees (TACT), 348 application of income for maintenance purposes, 339 Australia. See also specific statutes, statutory age of majority, reduction of, 337 instruments, and cases in separate tables agents. See delegation rationales for remedial constructive trusts Alexander, Gregory, 233 alienation of property, freedom of, 233-6 reallocation scheme for termination of amateur sport (advancement of), 913-14 cohabiting relationship, 602 Anderson, B L, 47 Scientology and charitable status, 903 animal welfare (advancement of), 917-18 unconscionability doctrine, 596-9 unjust enrichment in, 26 ante-nuptial settlements, 143 Anton Piller orders. See search orders automatic resulting trusts, 22, 155-60 applicable law limitations of, 970 backward tracing, 623-4 settlor's autonomy to decide, 970 Bacon, Francis, 57, 63 bankruptcy. See creditors, insolvency, and application of income after forfeiture, 245-6 bankruptcy for maintenance, 339 bare powers, 175, 202-7, See also mere powers appointment, powers of, 172-7 bare trusts, 355 appointment and removal of trustees, 462-71 beneficial entitlement. See also premature beneficiaries and, 466-8 termination of trusts; variation of trusts cause, removal for, 464, 466 benefit, defining, 329-35 court capital entitlement and power of appointment by, 465-6 advancement, 326-35



983 Index

variation of trusts, for purposes of, 314-21 breaches of trust. See also liability of trustees; flexibility in relation to, 291-3 remedies maintenance and income entitlement. accessory liability and dishonest assistance requiring, 657-8, 667 beneficial interest. See also under beneficial causation of loss by breach, 506-8 compensation claims, 502-5 interest certainty of, 140-1 failure to demonstrate necessary standard of civilian re-conceptualisation of, 978 care, 502 creation of trusts, 211-19 introduction to, 500-2 joint legal ownership of family home not judicious, 526 automatically connoting shared laches 542-3 ownership of, 557 limitation of actions on, 537-42 trustee purchasing, 380-2 realignment of equity rules on money under discretionary trust remedies with common law rules on certainty of, 140 damages, 518-23 equitable ownership, 214-15 remedies for, 500-2 from equitable ownership to equitable remoteness of loss from, 508-11 right, 217-19 tracing of misappropriated assets, 543-4 reasons for focusing on, 211 types of, 500 rights attached to, 215-17 unauthorised profits, trustees held liable to variation of trusts before 1958 and, 298-303 account for, 502 beneficiaries wrongful acts, 502 access to information regarding trustees' Brenton, M, 844 decisions, 486-96 bribing of fiduciaries, 791-6 appointment and removal of trustees and, Brussels Convention on Jurisdiction and the 466-8 Enforcement of Judgments in Civil and dealings of trustee with trust fund or, 375-82 Commercial Matters 1968, 213 direct remuneration of trustees by contract Burgess, R, 116 with, 367 Burrows, Andrew, 69, 631 impartiality of trustees regarding, 432 relief of trustee liability due to involvement Canada. See also specific statutes, statutory of. 526-8 instruments, and cases in separate tables beneficiary principle Charter of Rights and Freedoms, 276 charities and charitable trusts and, 219 Manitoba Law Reform Commission, on creation of trusts, 219-31 accommodations and perpetuities, 285, establishment of, 219-23 Ontario Law Reform Commission Report on evolution of, 169-72 trusts, 249, 257 mixed persons-purposes trusts, 226 rationales for remedial constructive trusts problems posed by, 219 purpose trusts and, 219, 222, 225, 229 in. 26 undermining of, 223-30 unjust enrichment, 26, 592-6 bequests to unincorporated associations, capacity 801-14 be a trustee, 351 Birks, Peter, 28, 502 create trust, 77 'black-hole' trusts, 209-10, 218 removal of trustee for incapacity, 464 bond or debenture trusts, 9 capital and income Book X on Trusts (EU), 976 balancing of, 443-4 Braun, Alexandra, 972 legal concepts of, 434-6 breach of contract, equitable damages for, capital entitlement and power of advancement, 693-5 breaches of fiduciary duty, remedies for, 790-7 capital gains tax (CGT), avoidance of, 965-6



984 Index

capital transfer tax (CTT). See also advantages and disadvantages of trusts as inheritance tax legal forms for charities, 829 capitalism amateur sport (advancement of), 913-14 law reform process and, 308 animal welfare, 917-18 trusts viewed through lens of critique of, 1 appeal funds, 860-1 'capricious' power, 206, 210, 477 beneficiary principle and, 219 'capriciousness' criterion, 471-3 categories, 894-918 care, trustee duty of, 385-90, 446, 502 certainty of objects, 849-50 Cayman Islands STAR Trusts, 980 charitable purposes matched to social needs, certainty 872-3 beneficial interest, 140-1 citizenship and community development, conditions precedent and subsequent, 234 911 - 12creation of trusts and, 77, See also certainty conflict resolution and reconciliation, of objects intention, 120-34 cv-près doctrine, 852-61, 872 subject-matter, 77, 134-41 defined/described, 11, 834, 883, 885, 887, words, 77 certainty of objects disabled or disadvantaged persons, 916-17 accountability and control, move to, 210-11 education (advancement of), 897-901, administrative unworkability criterion, efficiency of armed forces and emergency bare or mere powers and, 179-82, 202-7 services (promotion of), 918 'black-hole' trusts, 209-10 enforcement issues, 830 'capricious' power, 206, 210 environmental protection or improvement charitable trust privilege regarding, 849-50 (advancement of), 915-16 creation of trusts, 179-211 equality and diversity (advancement of), criterion certainty test, 195, 200, 201 914 - 15discretionary trusts and, 179-84, 187-95, European integration and, 955 202 - 7evolution of fiscal privileges, 861-4, 953-6 duty to survey and, 201-2 evidential versus conceptual (semantic or Industrial Revolution to First World War, linguistic) certainty, 196-201 835-43 evolution of, 169-72, 207-9 medieval period to eighteenth century, fixed trusts and 195 833-5 'list certainty' requirement/test, 177-8, modern welfare state, 843-8 182-5, 195, 201-2 presumption of public benefit, 886, mere powers, 184-7 887-91 as requirement to create trust, 77 regulatory reform, 865-6 CGT, avoidance of. See capital gains tax reviews and reforms of late twentieth and Chancery early twenty-first centuries, 883-5 equity rules for trusts and, 13-15 failure of purposes, 854-7 medieval 'uses' of land and evolution of fiscal privileges. See privileges of charitable trusts, 38-40 Charitable Incorporated Organisations fund-raising, regulatory controls, 866 (CIOs), 831 general charitable intention of gift, 857-9 charities and charitable trusts. See also political health or saving of lives (advancement of), activities and charity; presumption of public benefit; privileges of charitable human rights (advancement of), 914-15 trusts; regulation of charities international aspect, 927 advancement of arts, culture, heritage or introduction to, 827-33

investments of, 443, 852

science, 912-13



985 Index

iudicial attitudes, fluctuations in, 890 re-conceptualisation of trust law in, 977-80 lack of case law as to definition, 890 civil partners. See implied trusts and the family lapsed trusts and cy-près doctrine for home Coke, Sir Edward, 1, 38, 63 charities, 852-61 Cole, C G, 410 legal versus popular concepts of charity, 832 moral implications of, 827 collective liability, 523-5 new charitable purposes, recognising, commercial trusts 919-23 creditors, insolvency, and bankruptcy, perpetuities, 850-2 696-8, See also consumer prepayment; loan security; reservation of title and potentially charitable purposes under Charities Act 2011, s 3(1), 885 equitable tracing prevention and relief of poverty, 894-7, 930-1 equitable remedies for. See equitable remedies; tracing privileges under trusts law. See privileges of charitable trusts fiduciary relationships. See fiduciary public policy and relationships citizenship and community development, commercial uses of trusts, 32 commissions and analogous profits for discrimination provisions, exemptions trustees, 375 from, 864-5 communis error facit jus (a common error nineteenth century, 842 becomes the law), 812 tax reliefs and exemptions, 862 community development (advancement of), purpose trusts, 830, 850, 932 racial or religious harmony (advancement Community Interest Companies (CICs), 912 of), 914-15 companies, compared to trusts, 19-21 recreational purposes, 924-7 compensation registration procedures, 891-4 as remedy, 502-5 religion (advancement of), 901-10 breaches of trust by trustees, 502-5 rural and urban regeneration, 911 equitable compensation for fiduciary service provision by, 923-4, 954 breaches, 796-7 small charities, 880-1 of trustees. See remuneration of trustees state-charity relations, 923-4 compromise and variation of trusts, 299-303 tax reliefs and exemptions. See under privileges Conaglen, Matthew, 381 of charitable trusts conceptual (semantic or linguistic) certainty, terminological distinctions, 848 total return approach to investment, 443 conditions precedent and subsequent, 233-5 welfare state and, 843-8 confidentiality fiduciary's duty of, 758-9 Charity Commission. See also regulation of charities offshore financial centres, 960-1 establishment of, 842 conflict of laws reform agenda, 866 applicable law structure and functions, 867-8 limitations of, 970 Tribunal, 868-9 settlor's autonomy to decide, 970 common law and civil jurisdictions, trust public policy and interests of, 273 operations crossing, 957 relief as charitable purpose, 916-17 Hague Trusts Convention and, 959, of unmarried couples, 556 968-77 citizenship (advancement of), 911-12 offshore trusts, 968 civil law conflict resolution and reconciliation adaptations of trust law in, 971-5 (advancement of), 914-15 common law and civil jurisdictions, trust conflicts of interest, 358-60, 382-3, 739-40, operations crossing, 957 762 - 83



986 Index

consideration enforcers, powers and duties of, 218, 461 ante-nuptial settlements, 143 evolution of, 459-62 contracts for valuable consideration to protectors, powers and duties of, 218, assign equitable interest, 89-92, 148-9 230-1, 461 equity recognising, 78 conversion, doctrine of, 45 Cook, W W, 212 express trusts, enforcement of, 143 constitutional requirements Cooke, Robin, Sir, 69 inter vivos trusts, 93-104 Cork, Sir Kenneth, and Cork Report, 238, 246, trust to be completely constituted, 78 250, 257, 696, 704 constructive trusts and trusteeships, 22-7, 31 corporate and professional trustees. See under equitable remedies and constructive trustees and trusteeship trusteeship, 608, 638-69, See also co-trustees, collective liability of, 523-5 Cottenham, Charles Pepys, 1st Earl of, 345 equitable remedies family home and, 549-50, 569-83, See also Cotterrell, R, 59-63 implied trusts and the family home covenants institutional constructive trusts, 24 future property, 145-8 'knowing receipt' and constructive intention and legal policy, 149-52 trusteeship, 569-83 settle or transfer property, 143-5 Quistclose trusts as remedial constructive creation of trusts, requirements for, 77-9, trusts, 719-20 169-72, See also specific requirements, remedial constructive trusts, 24-6, 31, e.g. formalities 719-20, 751-7 creditors, insolvency, and bankruptcy, 79, secret and half-secret trusts, 113-14 236-40, 243-5, 246-58, 696-8 sole legal ownership of family home, 569-83 application of income after forfeiture, 245-6 wrongful transactions, liability as constructive commercial trusts, 696-8, See also consumer trustee arising from, 537-42 prepayment; loan security; reservation consumer prepayment, 698-705 of title and equitable tracing defined, 698 Cork Report, 238 Kayford trusts, 699-703, 734 creation of trust without intention of limitations of trust as remedy, 702-4 defrauding, 79 remedies for problem of, 698-704 exempt property and assets, 246-51 trade association compensation schemes, 698 family homes and other co-owned property, 251-5 contingent testamentary gifts, 338 contracts forfeitures, 243-5 compared to trusts, 17-18, 141-3 illegal purposes, trusts formed for, 278-84 direct remuneration of trustees by, 367 public policy and, 236-40 separation of trust property from insolvent equitable damages for breach of, 693-5 fiduciary relationships and commercial trustee's assets, 696 contracts, 785-8 settlor, safeguarding property from creditors reservation of title clauses based on freedom of, 258-72 of contract principle, 721 asset protection trusts and offshore unincorporated associations, contractjurisdictions, 271-2 holding approach to, 803-12, 814 common law, 258-9 bequests, 803-12 statutory provisions, 259-70 dissolution of association, 814 transactions with intent to defeat valuable consideration to assign equitable creditors, 260-7 interest, 89-92, 148-9 undervalued transactions, 267-70 control of trustees. See also appointment and trustees, bankrupt or insolvent, 464, 543 removal of trustees; breaches of trust; US and English law compared, 255-8. See also protective trusts discretion of trustees; liability of

trustees

criterion certainty test, 195, 200, 201



987 Index

Crowder, F P, 306 Cullity, M C, 471 culture (advancement of), 912-13 custodian trustees, 353-4 custodians, delegation to, 453 cy-près doctrine, 852-61, 872 damages equitable. See equitable damages realignment of equity rules on money remedies with common law rules on, 518-23 David, EM, 442 dealings of trustee with trust fund or beneficiaries, 375-82 death duties. See inheritance tax debenture or bond trusts, 9 debt, compared to trusts, 21 declaration of oneself as trustee, 80 declaration of trust certainty of intention and, 125-9 inter vivos trusts, 81-3 requirement for, 78 Vandervell litigation, 166 deferred testamentary gifts, 338 delegation asset management function, 451-2 authority to delegate, 455-6 custodians, 453 delegable functions, 448-9 effectiveness of reform, 457-8 evolution of, 445-7 historical development of, 47 individual delegation, 455-6 land trusts, 456 liability of trustee for delegated agents, 446 effects of delegation on, 453-5 nominees, 453 non-delegation, principle of, 445 pension scheme trusts and, 456 persons delegable as agents, 449 scope of power to appoint agents, 447-51 terms of appointment, 449-51 Trustee Act 2000, 447-58 Denning, Lord, 23, 25, 27, 66, 90 derivatives, 396

determinable interest, 235-6, 273

development of trusts. See evolution of trusts

detrimental reliance, 570-5

Dicey, A V, 56

Diplock, Kenneth Diplock, Baron, 66 directors' fees for trustees, 371-5 disabled persons, relief as charitable purpose, 916-17 disadvantaged persons, relief as charitable purpose, 916-17 disclosure and discretion of trustee. See under discretion of trustees discretion of trustees, 471-500 beneficiaries' access to information regarding, 486-96 capricious exercise of, 477 court, seeking directions from or surrendering to, 525-6 different treatment for private family trusts versus pension cases, 484-5 disclosure regarding accounts and records, duty of trustee to keep, 487 Data Protection Act 2018, 496 decision-making process of trustees and, 492-6 proprietary right versus inherent jurisdiction, 491-2 right to seek, 487-92 exercise of, court interference in, 473-8 fraud on a power doctrine and, 476 judicial review concepts adopted for purposes of, 497 letters of wishes and, 487, 499 nature of mistake regarding, 480-4 power and discretion test for fiduciary relationships, 744-7 powers distinguished, 471-3 void or voidable, 484 discretionary trusts. See also under beneficial interest certainty of objects and, 179-84, 187-95, 202-7 exhaustive, 203 historical development of, 49 'list certainty' requirement for, 177-8, 182-5, 195 mere powers distinguished, 202-7 protective trusts and, 179, 245-6 re-emergence of, 171, 179, 291 trust powers and, 175-7 use of term, 178 discrimination provisions charitable exemptions from, 864-5 public policy and, 273-6



988 Index

dishonest assistance and accessory liability, 656-69 disposition of property, freedom of, 233 dissolution of unincorporated associations, 814 - 26diversity and equality (advancement of), 914-15 divorce. See marriage Dixon, Martin, 558, 578, 605 donatio mortis causa (DMC), 117-19, 153 Douglas, G F, 557, 559 Draft Common Frame of Reference (DCFR) on Trusts, 976 duty to survey, 201-2 ECHR. See European Convention on Human education (advancement of), 897-901 education, as charitable purpose, 928-30 elderly, relief as charitable purpose, 916-17 Eldon, John Scott, 1st Earl of, 65, 359 Ellesmere, Thomas Egerton, Baron, 63 emergency services, promotion of efficiency as charitable purpose, 918 enforcers, powers and duties of, 218, 461, 966, 980 environmental protection or improvement (advancement of), 915-16 equality and diversity (advancement of), 914 - 15'equality is equity' maxim, 140, 170, 177, 183, 191, 194 equitable compensation, as remedy, 502-5 breaches of trust by trustees, 502-5 equitable compensation for fiduciary breaches, 796-7 equitable damages breach of contract awards, 693-5 factors influencing court to award, 690-2 introduction to, 689-90 jurisdiction, power versus discretion of, 690 measure of damages, 692-3 equitable interests, dispositions of, 79-93 contract for valuable consideration to assign equitable interest, 89-92 direct assignment to third party, 86

equitable remedies. See also equitable damages; injunctions; tracing accessory liability and dishonest assistance, 656-69 commerce and 'knowledge' requirement, 644-8 constructive trusteeship and, 608, 638-69 defined 607 equitable personal liability and, 638-69 fraud and interest in, 606 introduction to 606-10 restitution, law of, 651-6 specific performance, 543-4 subrogation, 635-8 unconscionability, 648-51, 664 equitable remedies for. See equitable remedies; tracing equitable tracing, 618-33, See also tracing equity common law and, 63-5, 606 consideration recognised by, 78 emphasis on intent over form, 75, 120 'equality is equity' maxim, 140, 170, 177, 183, 191, 194 evolution of private express trusts and, 63 - 71exceptions to 'equity will not assist a volunteer' maxim, 153-4 fraud, statutes not allowed to be used as engines or instruments of, 105-6 harmonisation of law and, 66-71, 606, 651, 655 Judicature Acts 1873 and 1875, 65 married women, trusts for property holding by, 50-4 personal claims in, 633-5 realignment of equity rules on money remedies with common law rules on damages, 518-23 regarding as done what ought to be done, 76 rules for trusts, 13-15 'statutory' fraud, 75 trust creation, 74-6 trusts for separate income for wives, 53-4 volunteers, equity not assisting, 75, 153-4 volunteers, not coming to aid of, 98 estate duty. See inheritance tax estoppel, proprietary, 153, 584-6 European Convention on Human Rights (ECHR) charities and, 903

inter vivos trusts, 81-93

trust for, 86-9

sub-trusts (equitable owner's self-

declaration as trustee), 88-9

third party, direction to trustees to hold in



989 Index

equitable remedies and, 675 family home public policy and, 274, 276 implied trusts and. See implied trusts European Union. See also specific statutes, increase in home ownership, 546 statutory instruments, and cases in informal expression of entitlements separate tables regarding, 546 Book X on Trusts, 976 insolvency protections, 251-5 charities and, 955 situations leading to ownership and trust Draft Common Frame of Reference (DCFR) issues regarding, 545-7 on Trusts, 976 family property law. See under implied trusts draft protected funds directive, 976-7 and the family home trust law initiatives 975-7 family wealth, trusts for preservation of, 32 Uniform Trust Code, 976 fee-charging organisations, charitable status of, evidential certainty, 196-201 evolution of trusts, 34-71, See also under feudalism, decline of, 35-44 beneficial interest medieval 'uses' of land, 35-40 beneficiary principle, 169-72 Statute of Uses 1535, 35-40 certainty of objects, 169-72, 207-9 fideicommissum, 36 control of trustees, 459-62 fiduciary relationships delegation, 445-7 approaches by other Commonwealth development of trust concept, 1-3 jurisdictions, 797-8 discretionary trusts, 49 bribery, 791-6 equity jurisdiction and, 63-71 commercial contracts and, 785-8 development of concept, 740-2 historical origins, 34 investment assets, emergence of trusts of, duty of confidentiality, 758-9 equitable compensation for breaches of married women, property holding by, 50-4 duty, 796-7 'fiduciary' defined, 739 medieval 'uses' of land, 35-40 protective trusts, 49, 240-1 identification of, 742-7 introduction to, 737-9 role in English law, 56-63 Statute of Uses, 1535, 40-4 judicial application of standards, 771-9 statutory interventions, 49 liability standards, 783-90 strict settlements, 50-4 'no conflict of interest' rule, 739-40, 762-9 trusts for separate income for wives, 53-4 'no secret profits' rule, 769-83 executors, Germanic form of ('salman'), 36 ongoing business relationships and conflicts exemption clauses, 528-33 of interest, 767-9 exhaustive discretionary trusts, 203 power and discretion test, 744-7 powers of appointment, fiduciary, 174 existing property, certainty of subject-matter regarding, 134-8 public policy considerations, 783-90 regulatory context, 788-90 exporting trusts, 321-3 express trusts remedial constructive trusts and, 751-7 defined/described, 89 remedies for breaches of fiduciary duty, implied trusts distinguished, 547-9 790-7 imputed trusts distinguished, 22 scope of, 747-8 solicitors and conflicts of interest, 764-7 secret and half-secret trusts, 113-14 valuable consideration and enforcement trusteeship as, 344 of. 143 undertaking test, 743-4 undue influence, exerting, 759-62 failure of charitable purposes, redefinition of, financial sector uses of trusts, 32 Finn, Paul, 344

'fair-dealing' rule for trustees, 375-82

family breakdown, trusts and, 32

fire and rescue services, promotion of

efficiency as charitable purpose, 918



990 Index

fiscal privileges (tax reliefs and exemptions) of good faith standards, 48 charities. See under privileges of chari-Gray, John Chipman, 256 Grbich, Yuri, 179 table trusts fixed trusts and certainty of objects, 195 Griswold, E, 256 Flower, J, 434 'following' and 'tracing' distinguished, 610 Habakkuk, Sir John, 50 forced heirship rules, offshore trusts Hague Trusts Convention, 959, 968-77, 978 circumventing, 967 half-secret trusts. See secret and half-secret forfeitures and protective trusts, 243-5 formalities hard cases, avoidance of, 167 harmonisation of law, 66-71, 606, 651, 655 creation of trusts, 79-120 Harris, Ron, 58, 177, 210, 214, 296, 298, equitable interests, dispositions of, 79-81, 83-93 313, 325 fully secret trusts, 106-9 Hayton, David, 519, 969 half-secret trusts, 109 health care inter vivos trusts, 81-93 advancement of life and health as charitable purpose, 910-11, 923-4 non-compliance with, 81 emergency medical services, promotion of requirement to observe, 78 testamentary trusts, 104-20 efficiency as charitable purpose, 918 Vandervell litigation, 162-4, 167 NHS, 923-4 founders of trusts. See settlors NHS trusts, 62 France, fiducie, 33, 974-5 hedge funds, 396 Franklin, Mitchell, 345 Helmsley, Leona, 223 fraud Henry VIII, 40 creation of trust without intention of, 79 heritage (advancement of), 912-13 equitable remedies and, 606 Hilliard, J J B, 500 equity and 'statutory' fraud, 75 historical development of trusts. See evolution improper purposes, concept of, 476 limitation of actions for breach of trust in HMRC. See taxation and private express trusts cases of 537-42 Hobhouse, Arthur, Sir, 78 secret trusts and, 109, 119 Holmes, Oliver Wendell, 57 statutes not allowed to be used as engines or home. See family home instruments of, in equity, 105-6 Honoré, A M, 978 freedom of contract, 721 Horne, Cozens-Hardy, 179 freedom of disposition of property, 233 human rights (advancement of), 914-15 freezing orders, 677-83 Hutchinson, J D, 410 Friedman, Laurence M, 119, 346 hybrid (intermediate) powers of fund-raising for charities. See under charities appointment, 173 and charitable trusts IHT. See inheritance tax future property certainty of subject-matter regarding, illegal purposes and public policy, 278-84 138-40 implied. See entries at implied covenants of, 145-8 implied trusts. See also joint legal ownership of family home Gardner, Simon, 76, 149, 578 concept of, 22 Getzler, Joshua, 71 constructive trusts, 549-50 Gierke, Otto Von, 957 express trusts distinguished, 547-9 gifts, versus trusts, 72-4 family home and, 545-7 globalisation. See international dimensions of family property law and, 550-7 common law rules, 550 trusts

Goff of Chieveley, Robert Goff, Baron, 27, 28

community property concepts, 551-2



991 Index

familial relationships other than marriage, inland revenue. See taxation insolvency. See creditors, insolvency, and foundations for implied trust doctrine, bankruptcy institutional constructive trusts, 24 552 - 3ownership of matrimonial property intentions of settlors, 72-4 during marriage, 554-5 certainty of intention, 120-34 reforms in family law, 553-4 covenants and legal policy, 149-52 separate spousal property, concept of, 551 creation of binding trust obligation, 120-55 unmarried couples who are not civil creditors, intent to defeat, 265-7 partners, 555-6 declaration of intent, 78, 125-9, See also informal expression of entitlements, 546 declaration of trust equity's emphasis on intent over form. reallocation schemes for termination of cohabiting relationship, 602-5 75, 120 Sharing Homes (Law Commission), 601-2 fraud, creation of trust requiring no social contexts, importance of considering, intention of, 79 565-8, 587-92 incomplete constitution and, 141-54 unconscionability doctrine, 596-9 non-compliance with formalities and, 81 improper purposes, concept of, 476 precatory words, 122-4 imputed trusts secret trusts, 129-34 defined/described, 3, 21-7 sham intention, 124-5 express trusts distinguished, 22 solely owned family home as constructive family breakdown and, 32 trust, intention inferred from conduct inalienability rules regarding, 578-82 creation of trust and non-infringement variation of trusts and, 315-18 of. 79 inter vivos gifts to unincorporated perpetuities and, 287 associations, 813 income and capital inter vivos trusts balancing of, 443-4 creation without formalities, 78 legal concepts of, 434-6 declaration of trust, 81-3 defined, 80 income, application of after forfeiture, 245-6 equitable interests, dispositions of, 83-93 for maintenance, 339 formalities for creating, 81-93 income entitlement and maintenance. See interim (interlocutory) injunctions, 671-6 maintenance intermediate (hybrid) powers of income payment orders (IPOs), 248 appointment, 173 incomplete constitution and intention, 141-54 international dimensions of trusts. See also indispensability test for general charitable conflict of laws; European Union intentions, 858 charities, 927 inheritance tax (IHT). See also interest in poscivil law re-conceptualisations of trust law, session trusts and IHT injunctions civilian adaptations of trust law, 971-5 defined, 669 common law and civil jurisdictions, trust freezing orders, 677-83 operations crossing, 957 interim (interlocutory), 671-6 defining trusts for purposes of, 969-70 introduction to, 669 definition of trusts for purposes of, 977 permanent and temporary, 670 France, la fiducie in, 33, 974-5 prohibitory, 669 Hague Trusts Convention, 959, 968-77, 978 quia timet, 670 introduction to, 957-60 search orders, 677, 683-6 Italian trusts interni, 33, 972-3 super-injunctions, 676 offshore financial centres, 960-1 typology of, 669-71 tax havens, 960-1



992 Index

investment assets, emergence of trusts of, 44-50 economic factors, 557 investments, managing, 391-444, 852 interpretation and application of law in advice requirement, 419-21, 427-9 context, 565-8 no express declaration of beneficial interests, apportionment pending conversion, 439-40 balance between income and capital, 443-4 560-8 capital and income, legal concepts of, 434-6 Jones, Gareth, 833 Judicature Acts 1873 and 1875, 65 charities, 443 conversion and apportionment, 437 judicial trustees, 354-5 duty to apportion, 439-40 judicious breaches of trust, 526 duty to convert, 437 general duty of impartiality, 437-9 Kayford trusts, 699-703, 734 duties of trustees and, 417-18 Keeton, G W, 238, 347, 445 express investment clauses, 402-5 Knightley, Phillip, The Rise and Fall of the guidelines, historical development of, 47 House of Vestey, 963 impartiality requirement, 402-3 knowing assistance, 662-3, 666 interpretation of investment clauses, 402-3 'knowing receipt,' 626, 642-4 introduction to, 391-3 knowledge liability for risks and loss, 422-7 dishonesty and, 658-60, 664 non-financial criteria (social investing), recipient liability in commercial context, 644-8 409-15 Kramer, Ralph, 952 portfolio theory, 405-6 powers of investment under TA 2000, laches, 542-3 land, medieval 'uses' of, 35-40 'prudent man of business' standard, 391, land, trusts of, 78, 456 405-6, 425 delegation and, 456 receipts, trustee control over, 440-3 written evidence required for, 78 returns on investment, 398-9 Langbein, John H, 405, 407, 979 safeguarding and social investments, 421 lapsed charitable trusts, and cy-près doctrine scope of statutory power, 415-16 and, 852-61 shareholders, trustees as, 425-7 Law Commission small trust funds, 427-9 reallocation scheme for termination of speculation versus security, balancing, cohabiting relationship, 602-5 399-402 Sharing Homes, 601-2 standard investment criteria, 418-19 Lawson, F H, 173, 577 statutory list of authorised investments, lay trustees, 362 399-402 Leach, Barton, 288-90 legal transplant of English trust, 33 total return approach, 443 Trustee Act 2000 and, 415-22, 427-32 legitimate expectations, 31 trustees as investors, 422-5 letters of wishes, 487, 499, 980 Lewin on Trusts, 3, 509, 522 two-step process, 436 liability of fiduciaries, standards for, 783-5 typology of investments, 393-8 unitrusts or percentage trusts, 440-2 liability of non-trustees. See also constructive variation of investment clauses, 416-17 trusts and trusteeships; equitable Islamic law, form of trust ('waqf'), 36 remedies; recipient liability IT. See income tax accessory liability and dishonest assistance, Italian trusts interni, 33, 972-3 656-69 equitable remedies and, 608, 638-69 James I, King, 63 vicarious liability, 668 joint legal ownership of family home, 557-68 wrongful transactions, liability as

beneficial interest not automatically shared

due to, 557

constructive trustee arising from,

537-42



993 Index

liability of trustees. See also breaches of trust; variation of trusts for, 299 relief of trustee liability Maitland, F W, 1, 2, 5, 16, 27, 32, 60, 73, alternative analysis of, 511-17 957, 962 application of principles, 517-18 management of trusts. See also delegation; causation of loss by breach, 506-8 investments, managing collective liability, 523-5 care, duty and standard of, 385-90 court, seeking directions from or introduction to, 384-5 'prudent man of business' standard, 385-6, surrendering to, 525-6 391, 405, 425, 427-32, 445 delegated agents, 446 effects of delegation on, 453-5 statutory duty of care (Trustee Act 2000, s 1), introduction to, 500-2 387-90 investment risks and loss, 422-7 managing trustees, 353-4 laches, 542-3 Manitoba Law Reform Commission, on limitation of actions, 537-42 accommodations and perpetuities, 285, personal liability, 501, 523-5 290, 325 principles of, 505-17 Mansfield, William Murray, 1st Earl of, 68 realignment of equity rules on money Mareva orders. See search orders remedies with common law rules on marriage. See also implied trusts and the family damages, 518-23 remoteness of loss from breach, 508-11 limitation of actions on dispositions to unauthorised profits, trustees held liable to defeat spousal claims, 277-8 account for, 502 offshore trusts and divorce litigation, 966 life, saving of, 910-11 social contexts, importance of considering, limitation of actions 565-8, 587-92 dispositions to defeat spousal claims, 277-8 trust conditions intended to prevent or to freedom of testation, 276-7 encourage divorce, 273 on liability of trustees for breaches, 537-42 trusts for property holding by married limited liability companies, compared to trusts, women, 50-4, 551 trusts for separate income for wives, 53-4 linguistic or semantic (conceptual) certainty, marriage settlements, 143 Marsh, David Reginald, 400 'list certainty' requirement/test, 177-8, 182-5, Mason, Sir Anthony, 67 195, 201-2 Maudsley, R H, 109, 289 medical care. See health care loan security medieval 'uses' of land, 35-40 enforceability issues, 709-12 protection of lender's interest, 705-6 Megarry, RE, 181 Ouistclose trusts, 706-9, 734 mere powers, 179-82, 184-7 remedial constructive trusts, Quistclose military forces, promotion of efficiency as trusts as, 719-20 charitable purpose, 918 Millett, Peter Millett, Baron, 67, 502, 608, resulting trusts, Quistclose trusts viewed as 631, 712 type of, 715 local government authorities, charities Milsom, F S C, 34, 171 contracting with, 923-4 minor children. See children lowest intermediate balance rule, 622-3 misappropriated assets, tracing of, 543-4 Lupoi, Maurizio, 978 Mitchell, Charles, 539, 542 mixing maintenance trusts mixed persons-purposes trusts, 226 application of income for, 339 reservation of title and tracing of mixed appointment and removal of trustees, goods, 722-4 335-42 trust property with trustee's own property,

619-24

availability of income for, 338



994 Index

mixing (cont.) ownership. See also implied trusts and the two trust funds or trust fund and money of family home beneficial interest, under discretionary trust, innocent volunteer, 624-6 modernisation of charities. See under 214-15, 217-19 regulation of charities equitable ownership, 214-15 modified deterrence, 783-5 equitable ownership to equitable right, money laundering, 606, 641, 665 217-19 Morris, J H C, 288-90 trust 'tricks' for manipulating, 5-12 motivations of settlors. See intentions of settlors payment of trustees. See remuneration of Mulgan, Geoffrey, 883 trustees mutual wills, 114-16, 119 Pearce, I, 557, 559 pensions Nairne, Patrick, Sir, 952 delegation by pension scheme trustees, 456 National Health Service (NHS), 62, 923-4 discretion of trustees, court control over, negligence and accessory liability, 658 New Zealand. See also specific statutes, private pension funds, defined/described, 10 statutory instruments, and cases in percentage trusts or unitrusts, 441-2 separate tables perpetuities insolvency law in, 254 charitable exemption from, 850-2 rationales for remedial constructive trusts creation of trust and non-infringement of rules of, 79 reallocation scheme for termination of public policy and, 284-90 cohabiting relationship, 602 reform and abolition proposals for rules on, reasonable expectations doctrine, 599-601 288-90 Nolan, RC, 217 rule against, 286-7 nominees rule against accumulations, 287-8 bare trusts, 355 rule against inalienability, 287 delegation of, 453 rule against perpetuities, 288-90 non-profit sector uses of trusts, 33 variation of trusts and, 325 not-for-profit sector, charities and, 848 personal liability, 501, 523-5 Nottingham, Lord, 43 personal nexus text. See presumption of public benefit (charities) objects, certainty of. See certainty of objects personal representation, compared to trusts, offshore, 962-8 18-19 offshore financial centres, 960-1 Pettit, D.M. 217, 313 offshore trusts, 962-8 Philips, W A, 183 conflict of laws and, 968 Pickard, M, 72 creditors of settlor, efforts to police, promotion of efficiency as charitable evade, 271-2 purpose, 918 divorce litigation and, 966 political activities and charity forced heirship rules, circumventing, 967 assessment of principle of division, 949-53 future of trusts, 980 campaigning and lobbying activities, 946-9 legislative responses to, 965-6 division of charitable and political purposes purpose trusts, 966 (principle of), 943-6 tax planning via, 961 practical application of division, 946-9 Vestey case, 962-8 Pollock, Sir Frederick, 51 ongoing business relationships, fiduciaries and portfolio theory, 405-9, 427-32 Posner, R A, 325, 407 conflicts of interest, 767-9 Ontario Law Reform Commission Report on poverty, prevention and relief of, 894-7, 930-1 trusts, 249, 257



995 Index

administrative, 172 certainty of objects, 849-50 advancement, 326-35 discrimination provisions, exemptions appointment, 172-7 from, 864-5 bare, 175 investments, total return approach to, 852 bare or mere, 202-7 lapsed trusts and cy-près doctrine for compared to trusts, 21 charities, 852-61 confusion over terminology, 178 perpetuities, 850-2 defined, 172 tax reliefs and exemptions (fiscal privileges), delegation. See delegation 861-4 discretionary trusts and, 175-7 evolution of, 861-4, 953-6 discretions distinguished, 471-3 public policy regarding, 862 severance of link between charitable equitable damages power versus discretion status and, 953-6 of jurisdiction regarding, 690 fraud on a power doctrine and exercise of under trusts law, 849 professional trustees. See under trustees and discretion, 476 investment powers under Trustee Act 2000, trusteeship proprietary estoppel, 153, 584-6 mere, 175, 179-82, 184-7 protective trusts power and discretion test, 744-7 application of income after forfeiture, 245-6 trust powers, 177-8 discretionary trusts and, 179, 245-6 trusts and, 172-9 exempt property and assets, 246-51 trusts compared to, 175-7 family homes and other co-owned property, trusts distinguished from, 172-5 251-5 Pozen, R, 406 forfeitures, 243-5 precatory words, 122-4 historical development of, 49, 240-1 premature termination of trusts, 293-7 public policy and, 240-58 development of, 48 Trustee Act 1925, s 33, 241-3 limits to rule, 295-7 US spendthrift trust compared, 255-8 rationale for rule, 295-7 protectors, powers and duties of, 218, 230-1, rule for, 293-5 461, 473, 966, 980 'prudent man of business' standard, 385-6, tax planning purposes, 302 prepayment by consumers. See consumer 391, 405, 427-32, 445 public benefit, presumption of. See prepayment presumed resulting trusts, 22, 155-60, 278-84 presumption of public benefit presumption of advancement, 278-84 public policy. See also charities and charitable presumption of public benefit (charities) trusts; creditors, insolvency, altruism, diverting attention from issue and bankruptcy; perpetuities of, 942 applicable law animal welfare, 917 limitations of, 970 educational purposes, 900, 928-30 settlor's autonomy to decide, 970 fee-charging organisations, 938 children, interests of, 273 historical evolution of concept, 886, 887-91 conditions precedent and subsequent, 233-5 international aspect, 927 covenants, intention and legal policy, introduction to, 927 149 - 52'personal nexus test,' 930, 932, 935, 937, creation of trusts, 79 determinable interest and, 235-6, 273 poor relatives and poor employees, 930-1 dispositions to defeat spousal claims, 277-8 religion (advancement of), 901 fiduciary relationships and, 783-90 religion, advancement of, 906-9 freedom of disposition and restriction of private pension funds, 10 donee disposition, 233 privileges of charitable trusts freedom of testation, 276-7



996 Index

public policy (cont.)	'knowing receipt,' 626, 642-4
illegal purposes, 278-84	restitution and commerce, 651-6
insolvency and, 236-40	unconscionability and commerce,
marriage, conditions tending to	648–51, 664
undermine, 273	wrongful transactions, liability as
presumed resulting trusts and presumption	constructive trustee arising from,
of advancement, 278-84	537–42
racial and religious discrimination, 273-6	reconciliation (advancement of), 914-15
repugnancy doctrine and, 235, 240	records and accounts, duty of trustee to
secret and half-secret trusts, 119–20	keep, 487
taxation, charitable exemptions, and	recreational purposes, charities for, 924–7
reliefs, 862	redistribution of wealth. See under taxation
trusts and, 232-3	Reeves, John, 57
Public Trustee, 351-2, 364, 424	registration as a charity, 891-4
purchases of trust property by trustee, 376-80	regulation of charities
purpose trusts	charitable purposes matched to social needs,
beneficiary principle and, 219, 222, 225–6,	872–3
229, 709	commencement of cy-près proceedings,
charities and, 830, 850, 932	879–80
enforcers/protectors and, 461	coordination of activities of local charities,
inalienability rule and, 287	873-4
offshore trusts, 966	cy-près doctrine and, 872–82
Quistclose trusts and, 709, 719-20	failure of charitable purposes, redefinition
unincorporated associations and, 809, 812,	of, 874–7
814, 821	fund-raising, 866
	modernisation
quia timet injunctions, 670	charitable purposes matched to social
Quistclose trusts	needs, 872–3
accessory liability and dishonest	cy-près doctrine and, 872-82
assistance, 660	definition, 866
beneficiary principle and, 219	reform agenda, 866
fiduciary relationship and remedial	regulatory reform, 865-6
constructive trusts, 754	small charities, assistance for, 880-1
loan security and, 706-9, 734	transparency and accountability. See also
reservation of title and, 727, 734	Charity Commission
	definition, 866
racial issues	reform agenda, 866
charitable exemptions from discrimination	Reid, James Reid, Baron, 161
provisions, 864-5	relief of trustee liability
public policy and racial discrimination,	beneficiary involvement and, 526-8
273-6	court's discretion, 533-7
racial harmony as charitable purpose,	exemption clauses, 528-33
914–15	repugnancy doctrine, 529
reasonable expectations, 599-601	seeking directions from or surrendering to
receipts on investments, trustee control over,	court, 525-6
440-3	religion (advancement of)
recipient liability. See also constructive trusts	definition of religion, 902-6
and trusteeships; equitable remedies	liberal approach to charitable status, 901-2
commerce and 'knowledge' requirement,	means of advancement, 909-10
644–8	presumption of public benefit (charities),
equitable remedies and, 608, 638-69	901, 906-9



997 Index

religious discrimination and public policy, 273-6 religious or racial harmony (advancement of), 914 - 15remedial constructive trusts, 24-6, 31, 719-20, remedies, 500-2, See also equitable remedies breaches of fiduciary duty, 790-7 common law, 606 compensation claims against trustees, 502-5 equitable compensation for fiduciary breaches, 796-7 consumer prepayment problems, 698-704 fiduciary status as, 748-51 proprietary remedies, 543-4 realignment of equity rules on money remedies with common law rules on damages, 518-23 specific performance, 543-4, 686-9 tracing of misappropriated assets, 543-4 removal of trustees. See appointment and removal of trustees remuneration of trustees. See also direct remuneration of trustees calculation of charges, 364 commissions and analogous profits, 375 contract with beneficiaries, 367 direct remuneration of trustees, 361-71 directors' fees, 371-5 indirect, 371-5 inherent jurisdiction of court to authorise, 368-71 lay trustees, trust corporations and professional trustees defined for purposes of, 362 litigation work by solicitor-trustees, 367 non-remuneration rule, 361 statutory authorisation, 366-7 statutory default charging clause, introduction of, 362 trust instrument authorising, 363-6 repugnancy doctrine, 235, 240, 295, 529 rescue services, promotion of efficiency as charitable purpose, 918 reservation of title (Romalpa clauses) and equitable tracing, 720-36 claims made by means of, 720 commercial framework for, 722-4 defined, 720

fiduciary relationship and remedial constructive trusts, 754 freedom of contract, based on principle of. 721 limitations of, 729-34 meeting requirements for equitable tracing claim, 724-9 mixed goods, 729-34 protection for unsecured commercial creditors and unpaid suppliers, 720 right to trace in equity, 721 unmixed goods, 724-9 residuary estates, certainty of, for subjectmatter purposes, 141 Resler, Henrietta, 308 restitution, law of, 27-32, 631-3, 640, 651-6 resulting trusts, 28 automatic resulting trusts, 22, 155-60 creation of, 155-60 family home and, 549-50, 583-4, See also implied trusts and the family home presumed resulting trusts, 22, 155-60, Quistclose trusts viewed as type of, 715 sole legal ownership of family home, 583-4 unincorporated association assets and, 814 Vandervell litigation, 162-4 retirement of trustees, 468-9 retrospective assessment, 783-5 Revell, Jack, 323, 526 Romalpa clauses. See reservation of title and equitable tracing Roman law. See also civil law DMCs based in 117 fideicommissum, 36 Royal College of Surgeons (RCS) and Vandervell saga. See Vandervell, Guy Anthony, and Vandervell saga Rudden, Bernard, 173 rural regeneration as charitable purpose, 911 'salman' (Germanic form of executor), 36 same-sex couples registering as civil partners, 602, See also implied trusts and the family home science (advancement of), 912-13 Scientology and charitable status, 903 Scotland remedies for cohabitants in, 602 separate trust law of, 957 Scott, Austin Wakeman, 57-60, 360, 973



998 Index

Scott, Richard, Sir, 69 search orders, 677, 683-6 secrecy of offshore financial centres, 960-1 secret and half-secret trusts, 24, 105-6 certainty of intention in, 129-34 DMCs compared, 117-19 express or constructive, 113-14 fraud and, 109, 119 mutual wills compared, 114-16, 117, 119 public policy justification for, 119-20 requirements for fully secret trusts, 106-9 requirements for half-secret trusts, 109 theoretical basis, 109-13 secret profits, fiduciary rule against, 769-83 security for loans. See loan security seisin, 37, 40 'self-dealing' rule for trustees, 375-82 Selznick, Philip, 811 semantic or linguistic (conceptual) certainty, separate spousal property, concept of, 551 separation of couples, trust conditions intended to encourage, 273 separation of trust property from insolvent trustee's assets, 696 settlors. See also intentions of settlors applicable law limitations of, 970 settlor's autonomy to decide, 970 appointment and removal of trustees, role in, 462-3 creditors of. See under creditors, insolvency, and bankruptcy letters of wishes from, 487, 499, 980 relief of trustee liability through exemption clauses, 528-33 sham trusts, 15-16 shareholders, trustees as, 425-7 Sheridan, LA, 119 Simonds, Gavin Simonds, 1st Viscount, 306 Simpson, AWB, 286 small charities, 880-1 small trust funds, managing investments of, Snell's Equity, 74-6, 117, 361, 446 social contexts in which trusts are used, 32-3, 565-8, 587-92 social investing, 409-15 social needs, charitable purposes matched to, sole legal ownership of family home, 568-86

conduct, intention inferred from, 578-82 constructive trusts, 569-83 detrimental reliance on agreement regarding, 575-82 informal agreements, arrangements, or understandings, 570-5 proprietary estoppel, 584-6 quantifying shares, 582-3 resulting trusts, 582-3 solicitors and conflicts of interest, 764-7 South Sea Bubble (1720), 48, 399 special powers of appointment, 173 specific performance, 543-4, 686-9 spendthrift trusts (US), 255-8 sport (advancement of), 913-14 spouses. See entries at marriage standard investment criteria, 418-19 standards for trustees, 47, 48 good faith, 48 skill and care, 47-8 STAR Trusts, in Cayman Islands, 980 statutory interventions in evolution of statutory limitations. See limitation of actions stranger liability. See liability of non-trustees strict deterrence, 783-5 strict settlements, 50-4 subject-matter, certainty of, 77, 134-41 subordination trusts, 10 subrogation, 635-8 subscriptions to unincorporated associations, 813 sub-trusts (equitable owner's self-declaration as trustee), 88-9 Sudbury, Andrew Phillips, Baron Phillips of. 942 Sumner, John Hamilton, 1st Viscount, 110 super-injunctions, 676 surrendering discretion to court, 525-6 swap agreements, 28 Switzerland, bank secrecy laws in, 961 TACT (Association of Corporate Trustees), 348 tax avoidance and tax evasion offshore financial centres, 960-1 offshore trusts, legislative responses to, 965-6 variation of trusts and, 318-21 tax havens, 960-1, See also offshore financial centres; offshore trusts



999 Index

tax planning and trusts, 302, 962-5 process versus remedy or claim, 613 taxation. See also capital gains tax; income tax; restitution, as part of law of, 631-3 inheritance tax right to trace in equity, 611 charitable reliefs and exemptions. See under unjust enrichment and, 631-3 privileges of charitable trusts tracing of misappropriated assets, 543-4 VAT tracker funds, 397 charities and, 862 transparency and accountability of charities. on trustee charges, 364 See under regulation of charities termination of trusts, premature. See transplant of English trust to other jurisdictions, 33 premature termination of trusts 'testament' of personal chattels, 36 Tribunal (Charity Commission), 868-9 testamentary trusts. See also secret and trust corporations, 352-3 half-secret trusts trust founders. See settlors defined, 80 trust powers, 177-8 DMCs, 117-19 trustees and trusteeship. See also appointment exceptions to 'equity will not assist and removal of trustees; breaches of a volunteer' maxim, 153 trust; control of trustees; discretion of formalities, 104-20 trustees; management of trusts; remuinvestment assets, historical emergence of neration of trustees trusts of, 46 capacity to be a trustee, 351 mutual wills, 114-16, 119 conflicts of interest, 358-60 residuary estates, certainty of, for subjectcourt, seeking directions from or surrendering to, 525-6 matter purposes, 141 Wills Act requirements for, 78 creation of trust and transfer of property to Thelluson, Peter, 287 trustees, 78 third parties custodian trustees, 353-4 direct assignment of equitable interests dealings with trust fund or beneficiaries, direction to trustees to hold property on demography of current trustees, 348-50 trust for, 86-9 duties of trustees, 355-6 third sector, charities and, 848 accounts and records, 487 Thompson, EP, 335 care, duty and standard of, 385-90, tracing 446, 502 ascertainability limits, 626-8 conflict of interest and, 358-60, 382-3 backward tracing, 623-4 impartiality requirement, 432-44 common law, 614-18 investment management, 417 creditors, insolvency, and bankruptcy of powers and, 357-8 commercial trusts, 696-8, See also prudent man of business standard, reservation of title and equitable 427-32 tracing 'prudent man of business' standard, equity claims, 618-33 385-6, 391, 405, 425, 445 'following' distinguished, 610 statutory duty of care (Trustee Act 2000, inequitability defence, 628-31 s 1), 387-90 introduction to, 610-14 'fair-dealing' rule, 375-82 limits in equity, 626-33 fiduciary relationship, 344 lowest intermediate balance rule, 622-3 gratuitous trusteeship, decline of, 347-8 mixing of trust property with trustee's own impartiality requirement, 432-44 property, 619-24 introduction to, 343-4 mixing two trust funds or trust fund and judicial trustees, 354-5 money of innocent volunteer, 624-6 lay trustees, 362 personal claims in equity and, 633-5 managing trustees, 353-4



1000 Index

trustees and trusteeship (cont.) equity, 13-15, See also equity moral obligation versus profit motive, evolution of, 34-71, See also evolution of tension between, 344-51 nominees, 355 exportation into other jurisdictions, 33 number of trustees, 351 fixed trusts and certainty of powers of trustees, 356-8 objects, 195 professional and corporate trustees formalities, 79-120, See also formalities calculation of charges, 364 future of 979 gifts versus, 72-4 direct remuneration of, 362 historical development of, 47, 348 implied. See entries at implied non-remuneration rule and, 362 imputed, 21-7, See also imputed trusts intentions of settlors and, 72-4, See also trust corporations, 352-3, 362 intentions of settlors Public Trustee, 351-2, 364, 424 purchase of beneficial interest by, 380-2 purchases of trust property, 376-80 delegation and, 456 retirement of trustees, 468-9 written evidence required for, 78 'self-dealing' rule, 375-82 law of restitution and, 27-32 shareholders, trustees as, 425-7 management of. See also management of traditional model of, 346 Trustee Act 2000, 350-1 not trusts, instruments that are, 15-16 trustees as investors, 422-5 offshore, 962-8, See also offshore trusts trusts. See also express trusts; inter vivos trusts; percentage trusts or unitrusts, 441-2 powers and, 172-9, See also powers interest in possession trusts and IHT; purpose trusts; testamentary trusts premature termination of, 293-7. beneficial entitlement. See also beneficial See also premature termination of entitlement by transfer of property, 80 protective, 240-58, See also capacity to create, 77 protective trusts certainty requirements, 77, See also certainty protectors, powers and duties of, of objects 218, 230-1, 461, 473, 966, 980 charitable. See charities and charitable trusts public policy and, 232-3, See also public commercial policy creditors, insolvency and bankruptcy, requirements for creating, 77-9, 169-72. 696-8, See also consumer prepayment; See also specific requirements, e.g. loan security; reservation of title and formalities equitable tracing resulting trusts, 22, 28, See also resulting equitable remedies for. See equitable trusts secret and half-secret, 24, 105-6, 981, See remedies; tracing also secret and half-secret trusts fiduciary relationships. See fiduciary relationships sham trusts, 15-16 compared to similar legal institutions, 16-21 social contexts of, 32-3, 565-8, 587-92 constructive, 22-7, 31, See also constructive spendthrift trusts (US), 255-8 trusts and trusteeships subordination trusts, 10 contracts compared, 17-18, 141-3 sub-trusts, 88-9 critique of capitalism, 1 taxation and. See also entries at tax declaration of, 78, See also declaration of 'tricks' for manipulating ownership through, 5-12 defined/described, 1-3, 969-70, 977 typology of, 21-7 enforcers, powers and duties of, 218, 461, unincorporated associations and. See also 966, 980 unincorporated associations English law, 3-4 unit trusts, 10



1001 Index

variation of, 297-326, See also variation of unsecured commercial creditors. See reservation of title and equitable tracing versatility and flexibility of, 1, 5, 547 urban regeneration as charitable purpose, 911 Turner, R W, 212 'uses' medieval 'uses' of land, 35-40 unconscionability, 31, 98-102, 549, 596-9, Statute of Uses, 1535, 40-4 648-51, 664 undertaking test for fiduciary relationships, valuable consideration. See consideration Value Added Tax (VAT) 743-4 undervalued transactions, 267-70 charities and, 862 undue influence, 31, 759-62 trustee charges, 364 Vandervell litigation, 160-8 Ungoed-Thomas, L, Sir, 306 Uniform Trust Code (EU), 976 background to, 160-1 unincorporated associations creation of resulting trust, 155-60 bequests to, 801-14 death of Guy Vandervell (1967), 164 communis error facit jus (a common error declaration of trust argument, 166 becomes the law), 812 formalities argument, 162-4, 167 contract-holding approach hard cases, avoidance of, 167 bequests, 806-12 outcomes, 167-8 dissolution, 814 resulting trusts argument, 162-4 distribution of assets at dissolution, 814-26 stage 1 (1958-61), 161-4 features of, 799 stage 2 (from 1961), 164-7 gift to individual members at date of gift, variation of trusts, 297-326 bequests regarded as, 803-12 before 1958, 298-303 inter vivos gifts, 813 benefit defined for purposes of, 314-21 not a legal entity separate from its compromise, 299-303 members, 799 exporting trusts and, 321-3 purpose trusts and, 809, 812, 814, 821 intention of settlor and, 315-18 purposes, 800 investment clauses, 416-17 resulting trust basis, entitlement of members Law Reform Committee Report, 303-5 to assets centred on, 814 maintenance, 299 subscriptions, 813 perpetuities and, 325 trusts within the rules of association. power of courts to sanction, 303-5 799-801 tax avoidance and, 318-21 types, 800 tax planning purposes, 302 unit trusts, trusts, 10 Variation of Trusts Act 1958, 309-26 Variation of Trusts Bill, 306-9 United States. See also specific statutes, VAT. See Value Added Tax statutory instruments, and cases in Vestev case, 962-8 separate tables insolvency law in, 255-8 vicarious liability, 668 perpetuities, abolition of rule against, 290 Vincent, Howard, Sir, 347 remuneration of trustees in, 362 Virgo, Graham, 631 spendthrift trusts in, 255-8 voluntary sector, charities and, 848 unitrusts or percentage trusts, 441-2 voluntary sector uses of trusts, 33 unjust enrichment volunteers, equity not assisting, 75, 98, 153-4 Canada, 592-6 Commonwealth jurisdictions, 26 Walker, Robert, Sir, 479 law of restitution and, 28-32 'waqf' (Islamic form of trust), 36 tracing and, 631-3 Waters, Donovan, 344, 359, 373, 980 Watt, Peter, 649 unmixed goods, reservation of title and tracing,

724-9

wealth redistribution. See under taxation



1002

Index

Wednesbury test, 497
welfare state, charity in, 843–8
Westergaard, John, 308
WFOs (worldwide freezing orders), 681–2
Whitaker, Ben, 953
Wilberforce, Lord, 84
Williams, Glanville, 235
wives. See marriage
Wolfenden Report, 845

women's property rights, 50–4 Woodward, H, 557, 559 words, certainty of, 77 worldwide freezing orders (WFOs), 681–2 written requirements. *See* formalities

young persons, relief as charitable purpose, 916–17