

Index

- Abuse of Trust
 creditors, fraud upon, 296–297. *See also*
 Insolvency
 definition of, 12, 285, 306
 illegality, 12, 297–304. *See also* ILLEGAL
 TRUSTS
 illusory trusts, 12–13, 144–145, 294–296.
See also ILLUSORY TRUSTS
 powers, fraud upon, 12, 304–305
 sham trusts, 12, 17–20, 142–144, 287–294.
See also SHAM TRUSTS
- Asian Families
 Asian patriarchs/matriarchs
 deference to, 110, 112–113, 126
 Asian values, 110
 attitudes to ownership, 110, 117–119, 125–126.
See also FAMILY CONFLICTS
 cultural norms, 6, 111, 125–126
 disputes between heirs, 6, 112–125, 127.
See also DISPUTES
 real estate, importance of, 119–122. *See also*
 REAL PROPERTY OWNERSHIP
 relevance of Western legal principles, 125–126
- Capacity
 Lasting power of attorney
 creation of, 72, 85
 undue influence, 73, 86–87
 mental capacity
 expert evidence, 85
 presumption of, 73
 trusts
 purpose for creation, 127
 settlement of, 124
 wills
 creation of, 70–71, 75–76
 rationality of, 70, 72, 74–76, 78, 80–81,
 83–84
 reasonableness of, 77
- Charities
 charitable companies
 directors and members of, 192–196
 fiduciary duties of members, 191–196.
See also FIDUCIARIES
- Constructive Trusts
 common intention constructive trust
 Asian family dynamics, application to,
 125–127. *See also* ASIAN FAMILIES
 constructive trust on express trust, 264–284
 reasonable expectations constructive trust
 claims by third party, 276–278, 283
 elements of, 266–269
- Creation of Trusts
 capacity of settlor, 70–85. *See also* CAPACITY
 certainty of intention
 lack of intention, 162–165, 287–291,
 294–296. *See also* ILLUSORY TRUSTS and
 SHAM TRUSTS
 certainty of subject matter
 requirement for segregation, 165–166,
 177
- Crypto-assets
 Bitcoin, 8, 153–154, 161–162, 165–168, 172,
 175–176
 blockchain technology
 nature of, 153, 158, 166–167, 170–174
 transaction costs, 166
 ethical and environmental issues, 176.
See also INVESTMENTS
 insurance over, 173–175
 investments in, 154, 167–170
 nature of, 176
 risks of
 errors, 173
 fraud, 171–172
 hacking, 170–173
 volatility, 175–176
 stablecoins, 168–169, 177

- Crypto-assets (cont.)
 trusts over
 certainty of intention, 161–165.
See also CREATION OF TRUSTS
 certainty of subject matter, 165–167.
See also CREATION OF TRUSTS
 trustees' authority to invest, 167–170, 177
- Decision-Making
 charities
 members of, 192, 194–196. *See also*
 FIDUCIARIES
 decision-makers, duties of. *See also* TRUSTEES
 good faith, of, 202–203, 205–208
 public law analogies, 199–201, 208–211, 216,
 218–220
Wedensbury/Braganza reasonableness,
 199–201, 204–205, 208–210, 212–216, 218–220
 decisions, review of
 availability of, 201–207
 exclusion of, 211
 standard of, 200–205
 decisions
 challenges to, 201, 204
 delegation of, 235, 271–272
 discretions, 201–203
 judicial directions, 202–203. *See also*
 FIDUCIARIES
 types of, 204
 protectors
 discretion, 201
 review of, 200–203
 trustees
 superannuation, 224–241. *See also*
 SUPERANNUATION (AUSTRALIA)
- Discretionary Trusts
 claims by third parties against assets, 273–278.
See also CONSTRUCTIVE TRUSTS
 letters of wishes, 102, 188, 253, 260
 massively discretionary trusts, 180–181, 197
- Disputes
 beneficiaries
 derivative claims, 141
 'dog-leg' claims, 141, 225
 no-contest clauses, 139
 capacity, over, 123–125, 127. *See also* CREATION
 OF TRUSTS, LASTING POWERS OF ATTORNEY,
 and WILLS
 claims against trustees, 241. *See also* TRUSTEES
 claims by third parties, 11, 199, 265–266,
 273–274, 279, 292–293. *See also* THIRD
 PARTIES
 confidentiality, 246. *See also* PRIVACY IN COURT
 PROCEEDINGS
 family businesses
 disputes between heirs, 6, 113–125, 127
 minority oppression, 114–116
 rights and remedies
 constructive trust, 278–282.
See also CONSTRUCTIVE TRUSTS
 equitable compensation, 189
 estoppel, 12, 281–283, 292–293. *See also* REAL
 PROPERTY OWNERSHIP
 unjust enrichment, 12, 280–283, 301–302.
See also REAL PROPERTY OWNERSHIP
- Family Conflicts
 confidentiality, 1, 15–17. *See also* PRIVACY IN
 COURT PROCEEDINGS
 drivers of
 declining mental capacity of patriarch/
 matriarch, 6, 113–114, 123–125, 127.
See also ASIAN FAMILIES
 informal dealings, 6, 118, 121, 125, 128
 preferential treatment of sons, 112,
 115–116
 retention of control by patriarch/matriarch,
 108, 110, 125. *See also* ASIAN FAMILIES
- Family Offices
 challenges relating to, 129, 137–142
 definition of, 130
 governance of, 146–148
 ownership structure, 133–134
 use of, 129–131, 136
- Family Trusts
 creation of, 102
 distinction from 'commercial trusts', 10,
 209–210, 218
 'double-hatting' of roles. *See also* SETTLORS
 and TRUSTEES
 conflicts of interest, 129, 139–140, 148.
See also TRUSTEES
- Fiduciaries
 discretion of, 201–203
 duties of
 content of duties, 191–194
 when duties arise, 191–194
 judicial intervention
 supervision of members of charitable a
 company, 194–196
- High Net Worth Persons
 Asian families, 129–131. *See also* ASIAN
 FAMILIES
 Asian wealth
 attitudes towards, 14
 in Australasia, 49–57
 in North America, 27–45

- family-owned businesses
 - governance of, 109–110
 - performance of, 131
- family wealth management
 - Asian families, 100, 129
 - family offices, 129–131. *See also* FAMILY OFFICES
- succession planning, 127, 129. *See also* SUCCESSION

- Illegal Trusts
 - creditors, trusts defrauding, 296–297
 - extrinsic illegality, 298
 - taint of illegality
 - factors determining illegality, 298, 300–303
 - reliance principle, 299–300, 302–303
 - stultification, 303
- Illusory Trusts
 - characteristics of, 294–295
 - consequences of, 296
- Insolvency
 - creditors
 - fraud upon, 296–297
 - recourse to trust assets, 21–22
 - trustees
 - indemnity from trust assets, 21
 - limitation of liability, 2, 21–22
 - statutory limitations, 2, 21–22
 - unitary legal personality, 2, 21
 - trusts, no separate legal personality, 2, 21
- Investments
 - crypto-assets, 7–8, 153–177. *See also* CRYPTO-ASSETS
 - permitted considerations
 - environmental, 176
 - ethical, 176
- Lasting Powers of Attorney
 - capacity of donor, 69–75, 85–88. *See also* CAPACITY
 - requirements for, 85
- Money Laundering, 10, 132, 147, 149, 244–249, 252–253, 255, 259. *See also* UNEXPLAINED WEALTH ORDERS
- Privacy in Court Proceedings
 - beneficiaries, protection of, 1, 15–17
 - confidentiality, 105
 - minors, prejudice to, 16
 - open justice, 1, 17, 105
 - transparency, 1
- Private Trust Companies
 - definition of, 131–132
 - governance, 146–149. *See also* FAMILY OFFICES
 - ownership structure, 133–136
 - regulation and licensing, 131–132
 - use of, 132–133, 136–137
- Protectors
 - decision-making, 200–203. *See also* DECISION-MAKING
 - duties of, 102, 145, 198
 - powers, 18–20, 23, 102, 145. *See also* SETTLORS and ILLUSORY TRUSTS
- Real property ownership
 - Asian attitudes
 - family properties, 6, 119–121
 - restrictions on alienation, 119–123
 - foreign (Asian) buyers in the West
 - motivations for, 46, 48–49
 - restrictions on, 49–65
 - taxation of, 36–42, 53–56, 59–63, 65–66. *See also* TAXATION
 - non-owner interests
 - constructive trusts, 265–270, 276, 281–282. *See also* CONSTRUCTIVE TRUSTS
 - contribution to property, 265–270, 276, 279–281
 - estoppel, 282–283
 - restitutionary claims, 280–281
 - unjust enrichment, 281, 283
- Settlers
 - ‘Anti-Bartlett clauses,’ 102–103, 187–189. *See also* TRUSTEES
 - control over trustees, 11, 101–104, 137, 142, 241, 252–253, 263
 - reserved powers
 - excessive reservation, 12, 18, 144–145, 265, 294–296. *See also* ILLUSORY TRUSTS
 - settlor autonomy, 11, 180–182, 187, 191
 - settlor-trustees, 11–12, 270–272, 281–284. *See also* ILLUSORY TRUSTS
- Sham Trusts
 - characteristics of, 19–20, 142, 261–262, 287–292
 - consequences of, 145, 292–293
 - intention to create sham, 20, 145, 261–262, 294
- Succession
 - confidentiality, 100, 104–105
 - disinherited persons
 - relief from disinheritance, 93–99
 - forced heirship
 - ousting of, 5–6, 100–101, 139

Succession (cont.)

modes

- insurance policies, 28, 33–34
- joint tenancy, 28, 35–36
- retirement accounts, 28, 34–35
- trusts, 28, 31–33
- wills, 5–6, 28–31. *See also* WILLS

planning

- failed execution of, 31, 121–125
- importance of, 5–6, 89–91, 126–127
- mistakes in, 6, 30–31, 91–92, 105–107
- taxation, 3, 36–42. *See also* TAXATION

Superannuation (Australia)

- background to, 221–224
- decision-making
 - discretionary decisions, 227–234
 - judicial control of, 224–226, 231–232
 - ombudsman review of, 226
- duties of trustees
 - ‘best interests’, 225, 237
 - care and skill, 225, 227–228, 235–236
 - conflicts of interest, 225, 236–238
- enforcement against trustees
 - effectiveness of, 232–233, 235–242
- funds
 - failings of, 234–240, 242–243
 - governance, 222–224
 - performance, 224, 233–238
 - structure, 222–224
- statutory basis of, 221–222

Taxation

- avoidance of, 37, 41, 90, 103, 106–107
- evasion of, 247, 249
- income tax, 34, 36–38
- transfer taxes
 - estate duty, 38–44, 91, 103
 - gift tax, 38, 40–42
 - stamp duty, 4, 47, 54, 66
- trusts, taxation of, 14, 18, 28, 37, 43–44, 90, 101, 105–107, 132, 134, 136, 216, 245

Third Parties

- liabilities
 - ‘equity’s darling’, 157, 270, 276
 - knowledge or conscience affected, 275–278

Trustees

- beneficiaries
 - consultation with, 2, 22, 188
 - disclosure to, 105, 149
- decision-making, 9, 199–243. *See also* DECISION-MAKING

duties

- ‘Anti-Bartlett’ clauses, 102–103, 187–189
- care and skill, of, 225, 227–228, 235–236
- conflicts of interest, 225, 236–238
- decision-makers, of, 199–210, 212–216, 218–220. *See also* DECISION-MAKING
- fiduciary duties, 191–194. *See also* FIDUCIARIES
- ‘high-level supervisory duties’, 188–189, 196
- irreducible core, 2, 20, 144, 183, 189–191, 296
- letters of wishes, 102, 188, 253, 260. *See also* DISCRETIONARY TRUSTS
- liabilities
 - breach of trust, 2, 12, 140, 149, 176, 181, 188, 200, 257, 271–272, 274–278, 282, 285, 289–290, 292
 - equitable compensation, 189. *See also* DISPUTES
 - exemption clauses, 181–182, 187, 190–191
 - relief from, 140
 - third parties, to, 21–22, 283
- powers
 - discretion, 102–103, 227
 - frauds on, 290, 304–305. *See also* ABUSE OF TRUST
- trustee-beneficiaries, 165, 231

Unexplained Wealth Orders

- nature of, 245–250
- procedure, 247–250
- rationale for, 10–11, 245
- targets of
 - politically exposed persons, 10
 - serious crimes, 10–11, 247–249
- trust property
 - necessary degree of control over, 252–253, 258–263
 - necessary degree of interest in, 254–262

Variable Capital Companies

- use of, 6, 129, 135–136

Wills

- autonomy of testator, 69–70, 72–76, 80, 88–90, 97, 99, 107
- capacity of testator, 70–71, 75–76. *See also* CAPACITY
- disinherited persons, 80, 84, 93–95, 97, 107. *See also* SUCCESSION
- recognition of foreign wills, 30–31
- restrictions on, 93–99. *See also* SUCCESSION
- testamentary/donative freedom, 91–92, 94–96