

INDEX

ABROAD

- meaning of, 909
- trustee, residence abroad, grounds for removal, 950

ACCELERATION, 1332-1333

ACCEPTANCE OF TRUST *see also* TRUSTEES, appointment of

- express, 934
- implied, 935
- presumption of, 918, 935
- refusal prevented, 935
- what constitutes, 918

ACCOUNTING

- court, role of, 1194, 1198
- persons entitled to request, 1189, 1195-1198
- right to, 536
- trustees, duty to, 1189-1190, 1191-1194

ACCOUNTS, passing of,

- generally, 1230-1231
- procedure for, 1198-1201

ACCUMULATION TRUSTS

- estate planning, 692, 693
- minors, for, 1062
- protective device, used as, in will, 609

ACCUMULATIONS RULE, 384-386, 487, 742-746, 1486-1487, 1529, 1536

ACQUIESCENCE *see also* LACHES

- doctrine of, 1398, 1408-1409
- equitable estoppel, 247-248
- nature of, 1391-1392

ADEMPMENT, *donatio mortis causa*, 242

ADMINISTRATION OF DECEASEDS' ESTATES

- executor and trustee, appointment of, 53-54
- personal representatives, powers of, 51-53
- trustees and personal representatives
 - compared,
 - present position and reform, 54-56
 - roles of, 48-50
 - both are fiduciaries, 50
 - historical reasons, 49
 - personal representative, 48
 - remaining differences, 50
 - statutes, and, 50
 - trustee, 48-49

ADMINISTRATIVE POWERS *see* **POWERS, administrative**

ADMINISTRATOR

estates, of, role of, 125, 134

ADVANCEMENT, presumption of *see* **RESULTING TRUST; PRESUMPTION OF ADVANCEMENT**

AFTER-ACQUIRED PROPERTY

gift of, 233-234

promise to settle, marriage settlements, 24, 185, 201, 1541

AGENCY, trusts and, 57-67

agents as express trustees, 60-62

characterizing relationships

agents for trustees, 67

settlor and trustee, 66-67

trustee and beneficiary, 63-65

express trusts, compared, 57-60

consent to, 59-60

contracts with third parties, 57

death of settlor, 59

freedom from constraint, 59

principal/beneficiary action, 58

terms of instrument, 57

variation of arrangement, 58-59

by operation of law, compared, 60

AGENTS, DELEGATION TO, 968-982

ALLOCATION POWER, discretionary, 1180-1181, 1187

ALTER EGO TRUSTS *see* **TAXATION OF TRUSTS**

ANNUITIES

created by will, 1167-1170

generally, 1100, 1104, 1112-1114, 1161-1162, 1187-1188

release of capital not required to secure, 1452-1453

Saunders v. Vautier, and, 1334, 1337, 1339-1340

APPOINTMENT, EXECUTOR AND TRUSTEE, AS

co-executor able to bind estate acting singly, 53-54

co-trustees only able to bind estate acting jointly, 53-54

APPOINTMENT, POWER OF

definition, 1279-1280

discretionary trust, 104, 958, 969, 1090-1091, 1252-1253

discretionary trust (Quebec), 1552

dispositive power, 1279-1280

express power of

exercised by, 910-914

mode of appointment, 914-915

- requirement for new or substitute trustees, 906-907
- retirement of trustees, 907
- statutory, 906-907
- mere power of, 99
 - discretionary trust, 1325
 - inter vivos* trust, 229
 - objects of, 1463
- review by the court, 1049-1056, 1245-1250

APPOINTMENT, trustees, of *see* TRUSTEES, appointment of

APPORTIONMENT

- authorized investments, 1123, 1126, 1139
- Chesterfield's Trusts, Re Earl of*, rule in, 1124-1125, 1127-1128, 1152, 1160, 1162-1163
- conversion, pending, 1109, 1114, 1117, 1119
- duty of
 - exclusion of, 1115-1119
 - generally, 1108-1115
 - property, 1119-1120
- eliminating, possibility of, 848
- future property of, 1120, 1121
- income and capital, between, 1114-1115, 1120, 1128
- institutions, among, 842
- life tenant and remainderman, 1160-1161, 1164
- manner, 1121-1124
- successive beneficiaries, 1163-1165, 1167, 1170, 1171

ASSET PROTECTION TRUSTS, 617-618 *see also* PERSONAL TRUSTS

ASSIGNMENT, equitable, 267, 269-272

BAD FAITH *see* GOOD FAITH

BAILMENT, trusts and, 87-91

BANK ACCOUNTS *see* RESULTING TRUST

BANKRUPTCY *see also* CREDITORS

- Bankruptcy and Insolvency Act*, 362-363, 374-376
- intention to defraud, 377-378
- right to restitution, 377-378
- void transfers
 - interpretation of, 373-376
 - statutory provisions on, 362-363

BARE TRUSTS, meaning of *see* TYPES OF TRUST

BARFORD v. STREET, rule in, 1334-1336

BENEFICIAL INTEREST

- meaning of *see* EQUITABLE INTEREST, beneficiary, meaning of
- renunciation of, 1333, 1503

BENEFICIARIES

- entitled, 912, 1061-1062
- first, 6-8, 1505
- incapacitated, 652, 678, 1067, 1249, 1450
- infant, 51, 652, 678, 952, 1023, 1249, 1258, 1414, 1528
- intended, class of, 775-776
- interest, nature of, 14, 58, 597, 657
- liability of *see* INDEMNIFICATION, trustees, of
protected, 1283, 1457-1458
- residuary, 711, 713, 849, 866, 1009
- rights, 4
- unascertained, 391, 653, 780, 1030, 1241, 1344, 1345, 1445, 1462
- unborn, 125, 135, 137, 923, 950, 1187, 1448, 1450, 1467

BENEVOLENT PURPOSES *see* CHARITABLE PURPOSE TRUSTS

BENJAMIN ORDER, 1248, 1467

BLIND TRUST, 616-617 *see also* PERSONAL TRUSTS

BONA FIDE PURCHASER FOR VALUE

- constructive trust, and, 514, 531, 533-534, 537, 543
- defrauding creditors, attempt, 373, 376
- protection of third parties, 1022-1023, 1224-1225, 1349, 1352, 1384
- resulting trust, and, 493
- tracing, and, 1424, 1437-1438
- unauthorized receipt of trust property, 547-550

BONDHOLDERS *see also* BUSINESS TRUSTS, security device, as a, debenture trusts

- trusts for, 31, 113, 129, 636, 920, 944, 1291, 1544

BREACH OF TRUST

- general principles
 - equitable remedies, discretionary, 1365
 - liability to account, 1359-1362
 - non-trustees, 1364-1365
 - operation of law, by, 1363-1364
 - personal liability, 1362-1363
 - technical breach, 1356-1359
- liability among trustees
 - to each other, 1386-1389
 - trust beneficiaries, to, 1384-1386
- measure of claim
 - compensation, principle of
 - generally, 1365-1366
 - limits of principle, 1280-1281
 - generally, 1366-1367, 1375-1376
 - non-application of special rules, 1370-1371
 - special rules, 1367-1370, 1371-1375

- interest and trustee gain, election between, 1382-1384
- interest payments, 1380-1382
- punitive damages, 1377
- unauthorized transactions, 1377-1379
- non-trustees, liability of, 1364-1365
- protection from liability
 - consent of beneficiary, 1390-1394
 - generally, 1389-1390
 - impounding beneficiary interest, 1394-1396
 - lashes, 1408-1410
 - limitations, 1396-1408
 - statutory power of court
 - fairly excused, 1415-1416
 - generally, 1410-1412
 - honestly and reasonably, 1413-1415
- trust property
 - common law claims
 - original assets, 1421-1422
 - traceable proceeds, to, 1423-1424
 - equitable claims
 - original trust property, 1424
 - traceable proceeds
 - liens, trust or equitable, 1424-1425
 - subrogation, 1425
 - motivation for proprietary claims, 1420-1421
 - proprietary claims, requirements for
 - credit risk
 - contract, avoidance of, 1427-1428
 - create a trust, failure to, 1428-1429
 - personal claim, unintended recipient, 1426-1427
 - security interest, 1429
 - fiduciary obligation not required for tracing, 1429-1430
 - proprietary remedies, 1418
 - recovery of, 1418-1420
 - tracing
 - following and claiming, and, 1418-1420
 - principles of
 - end of
 - bona fide* purchaser, 1437-1438
 - improvements, 1436-1437
 - payment of debt, 1438-1440
 - generally, 1430
 - values, mixtures of
 - innocent contributors, 1434-1436
 - subordination of wrongdoer's interest, 1431-1433
- trustee, liability of
 - damages, measure of, capital, interest, rate of, 1380-1382

operation of law, by, 1363-1364

BUSINESS TRUSTS

- commerce, in furtherance of
 - incorporation, alternative to
 - advantages, 627-628
 - uses
 - business income trusts, 633-635
 - mutual funds, 629-630
 - oil and gas royalty trusts, 632-633
 - real estate investment, 628-629
 - real estate investment trusts, 631-632
 - pre-incorporation financial holding, vehicle for, 635
 - security device, as a
 - construction lien trusts, 638-639
 - debenture trusts, 636-637
 - equipment trusts, 640
 - generally, 635-636
 - mortgage trusts, 637-638
 - Quistclose* trusts, 641
 - sale of goods, payment on, 640
 - securitization, special purpose vehicle, 641-642
 - stock escrow trusts, 639-640
- generally, 40, 618-619
- personal business or small business arrangements, in furtherance of
 - business sale trusts, 627
 - partnership buy-sell agreements, 625-626
 - share purchase agreement, 626
 - stock voting trust, 626-627
- personal purposes, in furtherance of
 - condominium insurance trusts, 625
 - employer as trustee
 - CPP and EI, 624
 - union dues, charitable donations or vacation pay, 624
 - health and welfare benefits, 625
 - pension trusts, 619-621
 - pooled investment trusts, 623-624
 - profit-sharing trusts, 622
 - registered retirement savings plan trusts, 622-623
- Quistclose* Trust, 96, 484, 641

CAPACITY OF PARTIES

- beneficiary, 134-135
- protectors, 136-140
 - origins, 136-137
 - role of, 137
 - who can act, 138-139
- settlor, 117-123

- generally, 117-118
- infants *see* CAPACITY, minors
- marriage settlements, 120
- married women, 122
- mental incapacity, 120-122
- minors, 118-120
 - inter vivos* trusts, 118-120
 - testamentary trusts, 118
- non-residents, 123
- trustee, 123-124
 - custodian trustee, 133-134
 - generally, 123-124
 - infants *see* CAPACITY, minors
 - mental incapacity, 124
 - minors, 123-124
 - non-residents, 124
 - judicial trustee, 132-133
 - public trustee, 125-127
 - trust company, 127-132

CEMETERY OR PERPETUAL CARE TRUST, 614

CERTAINTIES OF A TRUST

- generally, 142
- intention, 143-163
 - conduct and, 144
 - future intention, and, 145-146
 - generally, 143-146
 - illusory, 163
 - Lambe v. Eames*
 - post-judgment examples, 149-150
 - pre-judgement, 155-156
 - precatory trusts, 147-155
 - absolute gifts, 151-152
 - Canadian case law, 154-155
 - generally, 147
 - judicial attitude, shift in, 147-149
 - maintenance and support gifts, 153-154
 - revocation, power of, effect, 211-216
 - sham trust, 156-162
 - Canadian issues, 160-162
 - creditors, avoiding, 161-162
 - family law, 162
 - generally, 156-157, 159-160
 - intention, 157-159, 161
 - tax consequences, 160
 - statutes of frauds, and, 143
- objects, 135, 171-179

- persons
 - community or commercial settings, 175-177
 - examples, 173-175
 - generally, 171-172
 - practical implications, 177-178
 - reason for, 173
 - resulting trust, and, 485
- purposes, 178-179, 482-484
 - charitable, 178-179
 - non-charitable, 179
- subject-matter, 163-171
 - beneficial shares, 169-171
 - generally, 163-165
 - nature of trust property, change in, 171
 - quantum, determining, 168-169
 - relationship to certainty of intention, 165
 - residuary estates, and, 165-167

CHARGING CLAUSE, 1005, 1302-1303, 1305, 1306, 1311-1312

CHARITABLE CORPORATIONS, 707, 708, 751, 885, 888-889, 891, 895, 897, 1103, 1337

CHARITABLE PURPOSE TRUSTS

- administration, 886-895
- administrative schemes, 852-860
- benefit to community
 - determining what is, 820-825
 - generally, 808-810, 818-820
- certainty of objects
 - administrative scheme vs. *cy-près* scheme, 727-728
 - exclusive charitable intent, sufficiency of, 726
 - minimum degree of certainty, 729-730
 - specificity, inherent jurisdiction of courts, and, 726-727
- charity, legal meaning, 765-767, 825-833
- creditors of insolvent charitable purpose trust, satisfaction of, 895-897
- cy-près* schemes under inherent jurisdiction
 - cy-près* itself, 863-869
 - generally, 860
 - impracticability or impossibility
 - initial, 869-877
 - supervening, 877-884
 - remedy without need of *cy-près*, 861-863
- distress and suffering, relief of, 810-811
- education, advancement
 - nature of education, 780-787
 - public benefit, 787-790
- ex-service personnel, support and care of, 811-812
- generally, 705-709

- limits on charity
 - perpetuity legislation, reform jurisdictions, 851-852
 - political purpose trusts, 834-841
 - severance
 - gifts on trust for institutions, 845
 - gifts on trust for purposes, 844-845
 - mixed charitable and non-charitable purposes, 841-843
 - uncertainty in state of law of, 846-851
- non-charitable purpose trusts *see* NON-CHARITABLE PURPOSE TRUSTS
- perpetuity
 - remoteness of vesting
 - application, 735-742
 - generally, 730-731
 - rule against accumulations, 742-744
 - rule against inalienability, relationship, 744-746
 - rule against inalienability
 - exemption, 733-734
 - generally, 731-732
 - rule against accumulations, relationship, 744-746
- poverty, relief of
 - nature of poverty, 767-775
 - public benefit, 775-780
- religion, advancement of
 - nature of religious activity, 791-805
 - public benefit, 805-807
 - presumption of, 807-808
- severance where trust not restricted to legally charitable purposes
 - gifts on trust for institutions, 845
 - gifts on trust for purposes, 844-845
 - mixed charitable and non-charitable purposes, 841-843
 - uncertainty in state of law of, 846-851
- social and recreational purposes, 812-814
- sport, promotion of, 814-818
- statutory scheme-making power, 884-886
- taxation *see* TAXATION OF TRUSTS

CHARITABLE REMAINDER TRUSTS, 615-616 *see also* PERSONAL TRUSTS

CHILDREN *see also* PUBLIC POLICY

- born out of wedlock, 186, 325-334

CHOICE OF LAW, 1522, 1526, 1527, 1529-1535, 1540 *see also* CONFLICT OF LAWS

CHOSES IN ACTION

- assignment of, 188
- generally, 70-84
- transfer of, 195
- trusts of, 70-84

CHOSSES IN POSSESSION

- generally, 1134
- transfer of, 193

CIVIL LAW *see* QUEBEC TRUSTS

CLAYTON'S CASE, rule in, 1434-1436

CO-TRUSTEES

- delegation to, 982-984
- indemnification of, 1294, 1386-1389 *see also* INDEMNIFICATION
- liability as between trustees, 982-984, 1386-1389, 1394
- special hardship, excluded from liability, 984

COHABITATION, property disputes *see* RESULTING TRUST, matrimonial and cohabitation property disputes; and CONSTRUCTIVE TRUST, remedy, as, differentiation, proprietary remedy

COMMERCIAL TRUSTS *see* BUSINESS TRUSTS

COMPLETELY AND INCOMPLETELY CONSTITUTED TRUSTS *see* CONSTITUTING THE TRUST

CONDITIONAL GIFTS, trust and, 113-115

CONFIDENCE, breach of, 554-555

CONFLICT OF INTEREST AND DUTY *see* DUTIES OF TRUSTEE

CONFLICT OF LAWS

- choice of law rules
 - administration
 - common law rules
 - generally, 1549-1551
 - variation of trusts, 1551-1553
 - Hague Convention and statutes, 1553-1554
 - constructive trusts, 1554-1556
 - equitable wrongs, 1556
 - resulting trusts, 1554-1556
 - tracing, 1556-1559
 - validity
 - capacity, 1540-1541
 - essential
 - common law rules, 1542-1544
 - Hague Convention and statutes, 1544-1549
 - formal, 1541
- foreign elements
 - choice of law rules, 1529-1535
 - preliminary issues, 1539-1540
 - structure, 1525-1529
 - validity and administration, 1535-1539
- generally, 1559

Quebec trusts, 1522-1523

CONSENT

agency born of, 59-60
 court, on behalf of beneficiaries, 1445, 1448, 1458, 1460, 1462-1470
 equitable beneficiary, declaration of trust, 276-277
 investments subject to, 1079-1081
 trust beneficiary, of, 1390-1394

CONSIDERATION

marriage, 185-186
 quasi-contractual, 252
 valuable
 generally, 184-185
 volunteer, 187, 190, 218

CONSTITUTING THE TRUST

completely vs. incompletely constituted, 28, 184, 216-222, 230-240
 disposing of property in favour of another
 declaration of trust, 188-189
 equitable interest, 189-190
 mode of transfer, 188
 volunteers and complete transfer, 190
 distinction between transfer and declaration of trust, 190-191
donation mortis causa, 240-245
 generally, 240
 gifts *inter vivos* distinguished, 241
 importance of distinction, 241-243
 testamentary dispositions under *Wills Act*, and, 243-245
 generally, 182-184
 gifts by declaration of trust, 208-211
 evidence, 208-211
 gifts by transfer distinguished, 216-222
 principles, 208
 gifts by transfer
 choses in action, 195-208
 contract for benefit of third parties, 197-198
 donor done all possible, 196-197
 mode of transfer, 195
 promise by deed, transfer to trustees, 198-208
 choses in possession and land, 193-195
 donation mortis causa, 192-193
 generally, 191
 gifts by declaration of trust distinguished, 216-222
 inter vivos, 192
inter vivos trust, testamentary, 222-230
 immediate effect, 225-226
 modern trends, 228-230
 power of revocation, 224-225

- Re Pfrimmer*, 226-228
 - requirements for testamentary disposition, 222-223
- Milroy v. Lord*, 216-217
- promise to give, reliance, 245-255
 - Dillwyn v. Llewellyn*
 - Canadian courts and, 249-255
 - equity by acquiescence, 246-248
 - generally, 245-246
 - Purdham v. Murray*, 220
 - Richards v. Delbridge*, 217-219
 - settlement binding, 211-216
 - Canadian position on irrevocability, 212-215
 - construction, 215-216
 - generally, 211
 - irrevocability, requirement of, 211-212
 - Strong v. Bird*, rule in
 - generally, 239-240
 - historical basis, 230-231
 - what donee must show, 231-239
 - valuable consideration, 184-186
 - generally, 184-185
 - marriage, consideration of, 185-186
 - specific performance and, 186
 - volunteers
 - “equity will not assist the volunteer”, 200-201
 - generally, 187
 - importance of complete transfer, and, 190

CONSTRUCTION, rule of, illegitimacy of children

- application of rule, 327
- children born between will and testator’s death, 328
- generally, 326
- history, 326-327
- public policy, 327-334

CONSTRUCTIVE TRUST

- agreement to hold property for others, acquisition by
 - avoiding imposition of trust, 581-582
 - generally, 566
 - inter vivos* oral agreements, land, 566-567
 - joint and mutual wills, 568-581
 - secret trusts, 567-568
- background
 - historical, 510-514
 - modern, 514-519
- court orders, 588-589
- detrimental reliance and proprietary estoppel, 587-588
- discretion, role of, 540-546

- generally, 532-533, 601
- imposition of trusts, different tests
 - other situations, 531-532
 - synthesis of tests, 530-531
 - unjust enrichment, joint family venture, 524-526
 - wrongful gains, 526-529
- joint and mutual wills
 - generally, 568-570
 - property subject to trust, 579-581
 - type of trust arising, 573-575
 - when trust arising, 575-579
 - whether there is agreement, 570-573
- joint family venture, unjust enrichment, and, 524-526, 559-560, 563-565
- nature of trust, generally, 508-510
- other equitable remedies, compared to, 534-536
- proprietary estoppel, detrimental reliance and, 587-588
- reasons for seeking, 539-540
- resulting trust compared, 412-414
- secret trusts, 567-568 *see also* SECRET TRUSTS
- strangers intermeddling in trust
 - de facto* trustees, 590-591
 - generally, 589-590
 - personal liability
 - banks, position of, 599-601
 - generally, 591-592
 - knowing assistance in breach, 592-595
 - knowing receipt of property transferred in breach, 595-598
 - liability with express trust, 599
 - trustee *de son tort*, 590-591
- trusteeship imposed
 - agreement to hold for others
 - avoiding imposition of trust, 581-582
 - generally, 566
 - inter vivos* oral agreements, land, 566-567
 - joint and mutual wills, 568-581
 - secret trusts, 567-568
 - breach of confidence, gains from, 554-555
 - contractual and other transfers, 560-562
 - estate contracts, enforceability, 582-584
 - fiduciary, profiteering, 550-554
 - generally, 546
 - indemnity insurers, 587
 - joint family venture, 559-560, 563-565
 - mortgages, 586
 - other wrongs, gains from, 555-559
 - restrictions on use, 585
 - unauthorized receipt of trust property, 547-550

- unity and disunity in, 536-538
- unjust enrichment
 - developments, 519-524
 - generally, 559-560
 - joint family venture, 524-526, 563-565

CONTRACT, trust and

- assignee of property subject to contractual rights, 84-87
- choses in action, 70-84
 - promisee as trustee, 70
 - bonds, 78-81
 - constructive trustee, 77-78
 - evidence of intention, 71-75
 - policy and reform, 76-77
 - variation of terms of arrangement, 75-76
 - trustee as assignee of contractual rights, 84
 - trustee upon receipt of property, 81-84
- generally, 67-70

CONTRIBUTIONS

- CPP and EI, 624
- indemnify co-trustee, duty to, 1387
- indirect, 496-497, 500, 563, 668
- proof of, 470

CONTRIBUTORS, innocent, 1422, 1425, 1432, 1434-1436

CONTRIBUTORY NEGLIGENCE, 601, 1373, 1376, 1387

COOPER ORDER, 1235

CORPORATE DISTRIBUTIONS, income and capital, 1143-1157

CORPORATE TRUSTEE, 127-132 *see also* TRUST COMPANY

COSTS *see* INDEMNIFICATION, trustees, of

COVENANT

- after-acquired property, 24
- marriage settlements, 238, 613
- meaning of, 70, 82
- restrictive, doctrine of, 84
- trust, imposition of, 83
- trust of, 84, 201, 204, 207

CREDITORS *see also* BANKRUPTCY

- Bankruptcy and Insolvency Act*
 - interpretation of, 374-376
 - void transfers, statutory provisions, on, 362-363
- charitable purpose trust funds, exigibility of *see* CHARITABLE PURPOSE

TRUSTS

- Fraudulent Conveyances Acts*, interpretation, 363-373

- actions, who can commence, 370-373
- bona fide* purchasers, beneficiaries as, 373
- generally, 363-365
- intent to defeat, hinder, delay or defraud, 366-369
- Fraudulent Preferences Acts*
 - constitutional validity, 360, 374
 - interpretation, 373-374
 - statutory provisions, 361-362
- intention to defraud, defeat
 - presumption of advancement, and, 449-457
 - presumption of resulting trust, and, 458-463
 - right to restitution, and, 377-378
- statutory provisions
 - Canada
 - Fraudulent Conveyances Act*
 - conflict with fraudulent preference legislation, 359-360
 - constitutional validity, 360, 373-374
 - English legislation, reception of, 359
 - provincial legislation, 360
 - historically, 358-359
 - trusts and
 - Bankruptcy and Insolvency Act*, 362-363
 - Fraudulent Conveyances Acts*, 361
 - Fraudulent Preferences Acts*, 361-362
 - generally, 360-361

CRIME

- constructive trusts, prevention of benefitting from, 515, 521, 550, 555
- trustees, powers of the court to appoint, 920

CUSTODIAN TRUSTEE, 133-134, 619-620**CY-PRÈS SCHEMES**

- administrative scheme distinguished, 727-728
- inherent jurisdiction, under
 - cy-près* itself, 863-869
 - generally, 860
 - impracticability or impossibility
 - initial, 869-877
 - supervening, 877-884
 - remedy without need of *cy-près*, 861-863

DAMAGES *see* **BREACH OF TRUST, measure of damage****DE FACTO TRUSTEE, 590-591****DEADLOCK, TRUSTEES, 1235-1241****DEATH, RETIREMENT AND REMOVAL OF TRUSTEES** *see also* **TRUSTEES**

- death of trustee
 - power to appoint, trustee, 937-939

- sole or last surviving trustee, 939-940
- reinstatement, 953
- removal of trustee
 - justification for, 948-953
 - statutory powers, 946-947
- retirement of trustee
 - issues arising, 943-945
 - legislative provisions, 940-943

DEBT, trust and

- bank as debtor, 93
- Personal Property Security Act*, 97
- Quistclose* trust, 96
- real estate commission cases, 93-95
 - express or implied trust, 94-95
 - constructive trust or statutory trust, 95
- security device, trusts as
 - construction lien trusts, 638-639
 - debenture trusts, 636-637
 - equipment trusts, 640
 - mortgage trusts, 637-638
 - Quistclose* trusts, 641
 - sale of goods, payment for, 640
 - securitization, special purpose vehicle, 641-642
 - stock escrow trusts, 639-640
- trust as security for loan, and, 95-96
- trust assets, duty to keep separate, 92, 94
- trust property identifiable, 92

DECLARATION OF TRUST

- generally, 75-76, 188-189
- gifts by, 208-211
- gifts by transfer distinguished, 216-222
- irrevocability, 211-216
- sham trusts, and, 157, 159-160, 162
- transfer distinguished, 190-191

DELEGATION *see* DUTIES OF TRUSTEE

***DILLWYN v. LLEWELLYN*, 246-255**

DISABLED PERSON TRUSTS, 610-613 *see also* PERSONAL TRUSTS

DISCLAIMER

- interest by beneficiary, of, 481-482, 1331-1333
- trust office by trustee, of, 934-936

DISCLOSURE, information of *see* DUTIES OF TRUSTEE, disclosure

DISCRETION

- administrative, 1202, 1230

- agency, and, 63
- conferment of, 1049-1054
- exercise of
 - beneficiary, right to information, 1195-1198
 - even hand rule, 1090, 1107
 - Henson* trusts and, 610-613
- review by courts, 1050-1056
- uncontrolled
 - discretionary trusts, 1281-1285
 - duty to apportion and, 1117
 - duty to convert and, 1117
 - even hand rule and (U.S.), 1099
 - interference by courts and, 1050
 - policy decisions, 969-970
- uncontrolled and absolute, 1049

DISCRETIONARY ALLOCATION POWER *see* **ALLOCATION POWER, discretionary**

DISCRETIONARY DECISIONS, 103, 1049-1056, 1202-1206, 1234-1235

DISCRETIONARY TRUSTS

- certainty of objects, 107-108
- disposition of property, 1281-1285
- immediate, 83, 202, 203, 206, 609, 653, 1468
- meaning of, 36, 103-104, 609-610
- offshore trusts, 647, 668
- rule in *Saunders v. Vautier*, and, 1324-1327
- sprinkling trust, known as, 36, 610
- tax planning and, 668, 686, 691-692
- trust power, distinction, 958-959
- use of, 609-610
- widely discretionary, 1188-1189

DISGORGEMENT OF WRONGFUL GAINS, 522-524, 552, 555-556

DISPOSITION, modes of, restrictions, 379-387 *see also* **TRUST**

DISPOSITIVE (AND DISTRIBUTIVE) POWERS *see* **POWERS**

DONATIO MORTIS CAUSA

- intention to give, 231
- inter vivos* gifts, distinction, 192 *see also* **CONSTITUTING THE TRUST**
- perfecting gift, 240-245
- requirements of
 - deed as alternative to delivery, 193-195
 - delivery, 193, 240
 - generally, 192-193

DURESS, undue influence, mistake and, 393, 406, 415, 485-486

DUTIES OF TRUSTEE

- account, duty to, 1191-1201
- administrative, 957-958
- care
 - indemnity or exculpatory clauses, 1044-1049
 - professional trustees, 1041-1043
 - standard of care, 1037-1041
 - trustees controlling corporations, 1043-1044
- delegation
 - agents, to
 - generally, 968-975
 - legislative intervention, 975-979
 - liability for acts of agent, 979-982
 - all functions, of, 985
 - between trustees, 982-984
 - generally, 968, 987
 - investment powers, 985-987
 - liability for
 - generally, 979-982, 985
 - indemnification, 979-982
 - ministerial functions, 969, 973, 976, 978, 982
 - policy decisions, 969-970, 972
- disclose, duty to
 - corporate information, 1206-1207
 - duty to account, 1191-1201
 - existence and terms of trust, 1190-1191
 - generally, 1189-1190, 1207-1221
 - reasons for exercise of discretion, 1202-1206
- dispositive, 958-961
- generally, 966-967
- good faith, duty to act in *see* GOOD FAITH
- impartiality
 - Chesterfield's Trusts, Re Earl of*, rule in
 - exclusion of, 1127, 1128, 1153, 1163
 - generally, 1124-1125, 1152, 1160, 1162, 1171
 - manner of conversion, 1108
 - drafting considerations
 - discretionary allocation power, 1180-1182
 - generally, 1177-1179
 - percentage trust (unitrust), 1183-1188
 - power of encroachment, 1179-1180
 - widely discretionary trusts, 1188-1189
 - even hand, principle of, 1090-1093, 1128-1133
 - Howe v. Lord Dartmouth*, rule in
 - duty to apportion, 1108-1120
 - duty to convert, 1096-1108
 - generally, 1095

- manner of apportionment, 1121-1124
 - rule today, 1124-1128
- successive beneficial interests
 - corporate distributions, and
 - apportionment between income and capital, 1152-1155
 - income or capital, 1143-1152
 - form test, 1143-1146
 - trustees, majority shareholders or directors, 1155-1157
 - depreciation, income tax allowances for, 1141-1143
 - depreciation reserves, and, 1134-1141
 - even hand in choice of new investments, 1128-1133
 - financial burdens on trust property, responsibility for
 - annuities created by will, 1167-1170
 - bond purchases, premiums and discounts, 1171-1172
 - debts, administrative expenses, taxes and duties, 1158-1167
 - Allhusen v. Whittell*, 1159-1162
 - generally, 1157-1158
 - insurance, 1172-1175
 - losses on secured investments and in businesses, 1170-1171
 - property taxes, 1177
 - repairs and improvements, 1175-1177
 - generally, 1094-1095
 - original assets, *Howe v. Lord Dartmouth*
 - current application of, 1124-1128
 - duty to apportion
 - duty to convert, relation to, 1109-1111
 - generally, 1108-1120
 - manner of, 1121-1124
 - duty to convert, 1096-1108
- loyalty
 - fiduciary, who is, 996-1002
 - fiduciary remedies
 - conflict, 990-991
 - improper purpose, 990
 - non-disclosure, 991, 993
 - unauthorized profit, 992
 - generally, 988-989
 - purchase of trust property
 - generally, 1018-1020
 - protection of third parties, 1022-1023
 - transactional structures, 1020-1022
- rules
 - circumstances where invoked
 - acquisition of unauthorized benefits, 1007-1018
 - generally, 1004
 - purchase of trust property, 1018-1023
 - trustee acts gratuitously unless compensation authorized, 1005-1007

- trustee borrowing from trust, 1026-1028
- trustee purchasing from beneficiary, 1028-1031
- trustee selling or loaning own assets to trust, 1024-1026
- conflict, when arising, 1031-1032
- disapplication by settlor, beneficiary, law, 1003-1004
- nature and scope, 1031-1037
- strict and flexible approaches, 1034-1037
- strictness, issues arising, 993-996
- when fiduciary may profit from opportunity, 1032-1034
- powers distinguished, 955-956
- wilful default, 44, 979-982, 984, 1045

EDUCATION, ADVANCEMENT OF *see also* CHARITABLE PURPOSE TRUSTS

- nature of education, 780-787
- public benefit, 787-790

ENCROACHMENT, power of, 1061, 1082, 1090-1091, 1099, 1179-1180, 1185-1188

ENFORCER OF NON-CHARITABLE PURPOSE TRUST, 713, 719

ENVIRONMENTAL TRUSTS

- public trust doctrine, American, 642-644
- statutory environmental trust, 644
- trusteed environmental (or reclamation) fund, 644-645

EQUITABLE CHARGE, trust and

- differences, 111
- similarities, 111-112

EQUITABLE DOCTRINES

- laches, defence of, 1408-1410
- notice, of, 1225
- unjust enrichment, 523

EQUITABLE INTEREST *see also* RENUNCIATION, beneficial interest, of

- beneficiary, meaning of, 14
- disposal of property, 189-190
- formalities for assignment of *see* STATUTE OF FRAUDS
- grants and assignments of *see* STATUTE OF FRAUDS
- mortgagee, of, 110
- origin of, 10-11
- trust property, as, 416

EQUITABLE JURISDICTION

- clean hands, principle of, 378, 394, 458
- courts, of, 32

EQUITABLE LIEN *see* LIEN

EQUITABLE REMEDIES

- constructive trusts, 534-536

public policy and, 502
 restitution, 516

EQUITABLE WRONGS, 1556

EQUITY, trustee and beneficiary share ownership, 11

ESTATE CONTRACTS, 582-584

ESTATE PLANNING

estate freeze, 694-697
 generally, 683-685
 gift tax, and, 693-694
 minimizing tax, 654
 private law of trusts, application, 690-701
 succession duty, and, 693-694
 tools of, 685-687
 trusts, use of
 generally, 687
 irrevocable
 accumulation trusts, 692-693 *see also* ACCUMULATION TRUSTS
 alter ego, 690-691
 common-law partner trusts, 689-690, 690-691
 discretionary trusts, 650-651
 joint spousal trusts, 690-691
 spousal trusts, 689-690
 revocable, 687-688

ESTOPPEL

acquiescence by, 1409
 contract, basis in, 68, 247, 564
Dillwyn v. Llewellyn principle, 247, 252-253
 equitable, 247-248, 1410
 licence, form of a, 247
 promissory, 80, 248, 250, 254
 proprietary, 248, 253, 254, 534, 543, 587-588

EVEN HAND *see* DUTIES OF TRUSTEE, impartiality

EXCULPATION *see* INDEMNIFICATION, trustee of

EXCULPATION OF TRUSTEES, 1044-1049, 1309, 1389

EXECUTED TRUST

executory trust, difference, 27
 meaning of, 24, 26

EXECUTORS, appointed

inter vivos trustee, 237
 requirement, 235-239

EXECUTORY TRUSTS

executed, distinction, 24-25, 27

- execution required, 156
- meaning of, 24, 26
- modern-day significance, 27
- Shelley's* case, effect of, 25-28
- trust property, delivery of, 146

EXPRESS TRUST *see also* **SECRET TRUSTS; AGENCY; and RESULTING TRUST**

- constructive trust, compared to, 19-24
- implied trust, compared to, 19-24
- resulting trust, compared to, 19-24

FIDEICOMMISSUM, 16, 1490-1492

FIDUCIA, 16, 1491-1492, 1504, 1532

FIDUCIARY OBLIGATIONS

- company directors, 45, 1006-1007
- constructive trustee, of, 43, 528-529, 532-533, 536, 538, 550-554
- Crown as, 46
 - veterans' pensions, 33
- definition, 996-1002
- fiduciary relationship, compared to trust
 - generally, 45-47
 - government, and, 31-33
 - important differences, 47
 - origin of, 9
 - other fiduciary relationships, 44-45
 - trustees as fiduciaries, 42-44
- good faith of trustee *see* **GOOD FAITH**
- informed consent by beneficiary, 1003
- no-conflict rule, 989, 1003, 1018
- no-profit rule, 989, 1007-1018
- ownership, 15-17, 619, 1510
- parent and child, 997
- personal representative, 49
- powers, 100, 307, 958, 1054
- profiteering, imposition of constructive trust, 550-554
- purchase of beneficiary's interest, 1028-1031
- purchase of trust property, 1018-1024
- real estate agents, 45
- resulting trustee, of, 43, 417
- scope of rule against conflicts, 1018
- tracing and, 1429-1430
- trust company, 129
- trustees, 42-44, 49
- trustees in bankruptcy, 552

FOLLOWING AND TRACING TRUST PROPERTY *see* **TRACING TRUST PROPERTY**

FOUNDATIONS *see* **CHARITABLE PURPOSE TRUSTS, advantages of, taxation**

FRAUD *see also* **STATUTE OF FRAUDS**

power on a, 1485
trust voidable, 393-395

FRAUDULENT CONVEYANCES

bankruptcy, 362-363, 374-376 *see also* **BANKRUPTCY**
consideration, 365
creditors, 371 *see also* **CREDITORS**
intention to defraud
 presumption of advancement, and, 449-457
 presumption of resulting trust, and, 458-463
 right to restitution, and, 377-378
provincial jurisdiction, 352
restitution, right to, 377-378

FRAUDULENT CONVEYANCES ACTS *see also* **CREDITORS**

action to have settlement set aside, 370-373
application of, 361
bankruptcy, 362-363, 374-376
beneficiaries, 373
creditors, intent to defraud, 366-369, 377-378
fraudulent preferences legislation, 361-362 *see also* **FRAUDULENT PREFERENCES ACTS**
history, 357-358, 361
interpretation of, 363-365
sham trusts, 159
time limitation, 367
trusts to defeat creditors *see* **CREDITORS**

FRAUDULENT PREFERENCES ACTS *see also* **CREDITORS**

application of, 361-362
Bankruptcy and Insolvency Act, and, 363
fraudulent conveyances legislation, 361 *see also* **FRAUDULENT CONVEYANCES ACTS**
history of, 357-358
interpretation of, 373-374

FRAUDULENT TRUSTEES *see* **TRUSTEES**

FROZEN TRUST, 616-617 *see also* **PERSONAL TRUSTS**

FUND *see* **INVESTMENT OF TRUST FUNDS**

FUNERAL ARRANGEMENTS TRUSTS, PREPAID, 614 *see also* **PERSONAL TRUSTS**

FUTURE OF THE TRUST, 1561-1564

FUTURE PROPERTY, meaning of, 70, 82-84

GIFT

declaration of trust, by, 208-211
endowment, 879-880
imperfect, 183, 188, 217, 218-220, 237, 240, 247, 252
incomplete, 190-191, 194, 209, 230-231, 235, 240
intended, 192, 209, 221-222, 336, 820
inter vivos, 192-193, 212-213, 220, 234, 237, 240, 241-243
mortis causa, 192-193, 240-245
residuary, 104, 1115
tax, 378, 654-655, 681, 683, 693-694, 749, 830, 1444
transfer by, 191-208, 216-222

GIFT OF SURVIVORSHIP, 472-476

GOOD FAITH

purchase *see* **BONA FIDE PURCHASER FOR VALUE**
trustee, of, 47, 153, 157, 365, 956, 971, 977, 980, 991, 1013, 1024, 1034, 1035,
1044-1045, 1049-1052, 1179, 1202, 1210, 1218

**HAGUE TRUSTS CONVENTION, 1492, 1522, 1533-1535, 1537-1549, 1553-1554,
1559**

HANCOCK v. WATSON, rule in, 488-490

HARDOON v. BELILIOS PRINCIPLE, 1297-1301, 1307

HASTINGS-BASS, principle in, 396, 1055

HENSON TRUSTS, 610-613 *see also* PERSONAL TRUSTS

HOLDING COMPANY, estate freeze, use of, 695-696

HOWE v. LORD DARTMOUTH, rule in

duty to apportion, 1108-1120
duty to convert, 1096-1108
generally, 1095
manner of apportionment, 1121-1124
rule today, 1124-1128

ILLEGALITY

fraud, and
 presumption of advancement, 449-458
 presumption of resulting trust, 458-463
trusts, lawful and unlawful, 28
 to defraud creditors, 357-378

IMPARTIALITY *see* DUTIES OF TRUSTEE

IMPLIED TRUST, 19-24 *see also* RESULTING TRUST

INALIENABILITY, RULE AGAINST

charitable trusts, 731-732
 exemption, 733-734
generally, 379-381, 706

rule against accumulations *see* ACCUMULATIONS RULE

INCOME SPLITTING *see also* INCOME TAX AND CAPITAL GAINS TAX

inter vivos trust, 670
 minor children, 696
 personal trusts, and, 605
 testamentary trusts, 677

INCOME TAX AND CAPITAL GAINS TAX

alter ego trusts, 672-674
 beneficial interests
 flow-through, 665
 recognition of, 662-666
 transfer of, 669-670
 capital gains
 deferral, 606
 estate planning, and, 686
 generally, 655, 656, 658, 661-662
 charitable donations, 747-750
 discretionary trusts, 691-692
 generally, 650-651, 654
 gift tax, 654-655
 income splitting, 670 *see also* INCOME SPLITTING
 joint spousal or common-law spousal trust, 674-675
 legal persona, trust as, 659-662
 non-resident trusts, 666-668
 policy of Act, generally, 676-680
 self-benefit trusts
 generally, 675-676
 qualifying dispositions, 676
 stop-loss rules, 670-672

INCOME TRUST, liability of investors, 1563

INCOMPLETE CONSTITUTION OF TRUSTS *see* CONSTITUTING THE TRUST

INDEMNIFICATION, trustees, of

beneficiaries, by, 1297-1301
 co-trustees, 1386-1389
 legal costs, 1294-1296
 principle of, 1288-1294
 trust property, lien on, 1296-1297

INFANTS

gifts to, 349-350
inter vivos trusts, validity, 118
 land, ownership of, 119
 marriage settlements, 120 *see also* SETTLEMENT
 public trustees, guardianship, 125

1614 INDEX

trustees, as, 123-124
trusts, variation of, 1447, 1462
wills, ability to make, 118

INFORMATION

disclosure of *see* DUTIES OF TRUSTEE, account; and DUTIES OF TRUSTEE, information provision

INFORMED CONSENT *see also* CONSENT

requirement of, 60, 88, 991, 1004, 1005, 1008, 1014, 1025, 1029-1031

INSURANCE OF TRUST PROPERTY, “goods held in trust,” meaning of, 91

INSURANCE TRUST, 616-607 *see also* PERSONAL TRUSTS

INTER VIVOS TRUST *see* TYPES OF TRUST

INTERMEDDLING STRANGERS

de facto trustees, 590-591
generally, 589-590
personal liability,
 banks, position of, 599-601
 generally, 591-592
 knowing assistance in breach, 592-595
 knowing receipt of property transferred in breach, 595-598
 liability with express trust, 599
trustee *de son tort*, 590-591

INTERNATIONAL PRIVATE LAW *see* CONFLICT OF LAWS

INTERNATIONAL TRUSTS, 617-618, 646-647

INTERPRETATION

gifts by transfer, deed as alternative to delivery, 193-195
resulting trust, failure of trust objects, 478-484, 485
sham trusts, and, 158-159

INVESTMENT ACCOUNTS, 432-433, 465-468

INVESTMENT OF TRUST FUNDS

good investment practice, principles, 1085-1089
history
 Canada, 1069-1074
 England, 1063-1069
 generally, 1062-1063
 prudent investor standard, 1072-1074
 prudent person standard, 1072-1072
investment, what constitutes
 going concerns, 1076-1077
 land for occupancy, 1075
 loans, unsecured, 1075-1076
powers of, express
 consents, subject to, 1079-1081

- express investment clause, 1079
- generally, 1077-1078
- mandatory directions, 1078
- standard of care, prudent person, 1081-1085

INVESTMENT TRUSTS, 129, 133, 619-624, 628-632

JOINT AND SEVERAL LIABILITY *see* LIABILITY

JOINT ACCOUNTS

- evidence and presumptions
 - banking agreements, 470-471
 - other evidence, 472
 - proof of contributions, 470
- gift of survivorship, 472-476
- legal analysis, 465-467
- resulting trust of legal interest
 - presumptions, 467-468
 - time periods, 469-470

JOINT SPOUSAL/COMMON-LAW PARTNER, trust *see* TAXATION OF TRUSTS

JOINT TENANCY

- accounts *see* JOINT ACCOUNTS
- generally, 424, 426-428
- matrimonial property legislation, 442
- resulting trust, presumption of, 465
- secret trust obligations, 300-301
- severance of, 189
- survivorship
 - death of trustee, 938
 - gift of, 472-476
 - rule of, 928
- trustees, 938

JOINT WILLS *see* CONSTRUCTIVE TRUST

JUDICIAL TRUSTEES

- appointment of, 132-133, 1312-1313
- remuneration, 1302, 1313

***KEECH v. SANDFORD*, rule in**

- conflict of interest *see also* DUTIES OF TRUSTEES, loyalty
- profits, prohibited, 550-552
- property acquisition by trustee, 550
- purchase from beneficiaries, 1028-1031
- right of pre-emption, 1013, 1014, 1019

KNOWING ASSISTANCE, 592-595

KNOWING RECEIPT, 595-598

LACHES, DOCTRINE OF

- acquiescence, related to, 1398, 1408-1409
- limitation periods, 1397, 1408, 1409
- nature of defence, 1408

LANGUAGE *see also* CERTAINTIES OF A TRUST, intention

- construction of, 115 *see also* CONSTRUCTION, rule of
- intention, certainty of, 337, 711
- precatory, 147-149, 154-155

LEGAL ESTATE

- choses in action, 194
- equitable estate, difference from, 11
- incomplete gifts, 192, 194, 196
- resulting trusts and, 416, 419
- vesting in executor, 237

LIABILITY

- among the trustees
 - joint and several, 1384
- strict
 - giving way to fault liability, 1357
 - rejection of, 597
 - technical breach and, 1356-1358

LIEN

- construction, 81, 638-639
- equitable
 - generally, 110-113
 - insurer, 587
 - purchaser's, 583
 - tracing, consequent upon, 1424, 1431
 - trustee's lien over trust property, 1175, 1296-1297, 1306
 - vendor's, 422, 534, 583
- equitable charge, compared, 110-113
- mechanics', 30, 81
- Quebec's trust, trustee's claim similar to lien, 1518
- trust, compared to, 110-113

LIMITATION OF ACTIONS

- constructive trustees, 61
- constructive trustees application to, 1400
- creditors, actions by, 647
- express trusts, 1400
- fiduciary obligations, 998
- fraudulent conveyances, 377, 568
- generally, 1396-1397
- legislation, history of, 1397-1399
- six year period, actions against trustees, 1400
- trust beneficiaries, 285

trustees, protection of, 1398
 unreformed law, interpretation, 1400-1404

LIVING TRUST *see* **TYPES OF TRUST, *inter vivos***

LOCUS POENITENTIAE, 451

MAINTENANCE, POWER OF

express power of, 1260-1263
 generally, 1255
 inherent jurisdiction of court, 1255-1260
 statutory power
 Canada, in, 1267-1270
 England, in, 1263-1267

MARRIAGE

consideration of, 185-186, 395, 1429
 constructive trust on property rights, 510, 516, 564
 restraint of, public policy, 340-344

MARRIAGE SETTLEMENTS

capacity to enter, 1541 *see also* **CAPACITY**
 infants, 120 *see also* **SETTLEMENT**
 marriage contract, distinguished, 613
 property acquired after marriage, 185, 201
 taxation of, 651
 use in Canada, 613
 use of, 651, 1223
 variation of, 1455

MASSES, for the dead, 179, 799-801 *see also* **CHARITABLE PURPOSE TRUSTS**

MATRIMONIAL AND COHABITATION PROPERTY *see also* **RESULTING TRUST, matrimonial and cohabitation property disputes**

difficulties of adapting resulting trusts, 494-497
 generally, 491-492
 history
 Canada
 Becker v. Pettkus, 500-501
 before 1980, 499-500
 subsequent developments, 501-503
 England, 497-499
 joint accounts *see* **JOINT ACCOUNTS**
 legislation, scope of, 492-494
 presumption of advancement
 common law, 438-440
 retention, 441-443
 statutory abolition, 440-441

MERE POWER *see* **POWERS AND TRUSTS**

MINORS *see* **CAPACITY, minors, and INFANTS**

MIXING/MIXTURES OF TRUST ASSETS, 424-425 *see also* **JOINT ACCOUNTS**

MORTGAGES, constructive trust, 586

MOTIVE *see* **CERTAINTIES OF A TRUST, intention**

MUTUAL FUNDS

trust, as a vehicle for, 629-630

trustee investment

authorized by statute, 972, 1074

unlawful delegation, 1074, 1230

MUTUAL WILLS *see also* **CONSTRUCTIVE TRUST**

agreement, whether it exists, 570-573

conferring interest on survivor, 578

“floating obligation”, 581

joint wills, meaning of, 568-569

meaning of, 568-569

property subject to, 579-581

trust

type of, 573-575

when does it arise, 575-579

NAKED TRUST *see* **TYPES OF TRUST, bare, naked or simple**

NEGLIGENCE, contributory, breach of fiduciary duty, 600-601, 1373

NEW TRUSTEES (SUBSTITUTE and ADDITIONAL TRUSTEES) *see* **TRUSTEES, appointment of**

NON-CHARITABLE PURPOSE TRUSTS

enforcement, beneficiary, lack of, 710

invalidity, 709-710

exceptions to, 711

legislative treatment, powers, as, 712-713

status of, in Canada, 717-720

reform, 718-720

trust for person, construing as, 714-717

unincorporated associations, gifts to, 720-726

NON-DELEGATION, duty of *see* **DUTIES OF TRUSTEE**

NON-RESIDENT TRUSTS, 666-668

NON-RESIDENTS

capacity, 123, 124 *see also* **CAPACITY**

preferred beneficiary election, not allowed, 666

NUMBER OF TRUSTEES *see* **TRUSTEES, appointment of, number**

NUPTIAL SETTLEMENTS *see* **MARRIAGE SETTLEMENTS**

OBJECTS, uncertainty of, 21, 22, 135, 485, 706, 710 *see also* **CERTAINTIES OF A TRUST**

OFFICIAL GUARDIAN

- beneficiaries, unascertained, 1241
- remuneration, 1313
- role of, 125-126, 134

OFFICIAL TRUSTEE, 126, 134, 1313**ORAL TRUST** *see* **TRUST, oral****OUTGOINGS** *see* **APPORTIONMENT, income and capital****OWNERSHIP**

- absolute, 16
- common law meaning, 12
- Crown, by, 10
- dual, 11-12

PAROL EVIDENCE

- admissibility
 - generally 303, 304
 - nature of office, 307
 - trust objects, 305, 307, 308-314
- ambiguity in will, 307
- secret trusts, 318
- vary or contradict a will, 306, 307

PART PERFORMANCE

- doctrine of, 278
- doctrine of fraud, and, 281-82

PARTITION AND SALE, 428, 545**PARTNERSHIP**

- buy-sell agreement, 625-626
- trust distinguished, 628-629

PENSION TRUSTS *see* **BUSINESS TRUSTS****PERCENTAGE TRUST** *see* **UNITRUST****PERPETUAL CARE TRUSTS, 614** *see also* **PERSONAL TRUSTS****PERPETUITY RULE**

- abolition of, 385-386
- accumulations rule, 384-385
- charitable intent, degree of, 740-741
- charitable purpose trusts
 - applicability, 710, 730
 - exemption from, 779
 - remoteness of vesting, 730-731
- conflict of laws, characterization, 1539
- cy-près* doctrine, 737
- inalienability, rule against, 380-381

- legal future interests, and, 381
- legislative reform, 851-852
- meaning of, 379
- non-charitable purpose trusts, 717
- perpetual duration, 379-381, 386-387
- reformed rule, wait and see, 382-384
- unreformed rule, 381-382
- Whitby v. Mitchell*, rule in, 381

PERSONAL OBLIGATION, trust compared, 113-115

PERSONAL REPRESENTATIVES

- account, duty to, 1195, 1200
- acting severally and jointly, 53
- agents, employment of, 968
- fiduciaries, 49, 1012, 1019
- liability as, 50, 51-52
- powers of, 51-53
- role of, 48 *see also* ADMINISTRATION OF ESTATES
- rule in *Allhusen v. Whittell*, 1166
- trustee, similarity of roles, 48-49

PERSONAL TRUSTS

- asset protection trusts, 617-618
- blind or frozen trusts, 616-617
- cemetery or perpetual care trusts, 614
- charitable purpose, 614-615
- charitable remainder trusts, 615-616
- disabled person trusts, 610-613
- discretionary trusts, 609-610
- funeral arrangement trusts, prepaid, 614
- generally, 40, 605
- Henson* 610-613
- insurance trusts, 606-607
- marriage settlements, 613
- separation or divorce trusts, 613-614
- tax considerations
 - income splitting, 605
 - tax deferral, 606
- testamentary trusts, 607-609

PERSONS

- incapacitated, 120-122, 123, 124, 365, 509, 652, 678, 1315, 1320, 1343
- unascertained, 1344, 1345, 1445, 1462, 1463, 1504
- unborn and untraceable, 1467

PETTKUS v. BECKER, 492, 500-501, 509, 517-524, 546, 1402, 1530 *see also*
CONSTRUCTIVE TRUST, nature of

POUR-OVER TRUSTS, 39-40

POVERTY, relief of

- nature of, charitable object, 767-775
- public benefit, 775-780

POWER OF ADVANCEMENT

- death of trustee, and, 938, 939
- express power, 1273-1276
- generally, 1270-1272
- inherent power of court, 1272-1273
- meaning, 652
- statutory power
 - Canada, in, 1278-1279
 - England, in, 1277

POWER OF ATTORNEY

- co-trustee, to, 978
- nature of, 99
- trustee, delegation by, 1230

POWER OF ENCROACHMENT

- beneficiary, income, 608, 691, 949, 1116
- capital, over, 1125, 1179-1180, 1252, 1334
- conversion, 1099
- definition, 1252
- discretion, exercise of, 1049, 1188, 1275
- duty of impartiality, even hand, 1090, 1099, 1179
- maintenance, for, 1099
- power of sale, implied, 1223

POWER OF RESETTLEMENT *see* TRUST, variation of**POWER OF REVOCATION *see* REVOCATION****POWERS**

- administrative
 - courts, role of, 1245-1250
 - defined, 957-958
 - delegation of, 968
 - discretionary trust, 960
 - dispositive, 958-961
 - duty, becoming, 957
 - express, 1216-1218
 - impartial, duty to act, 1090, 1097, 1109
 - investment, 1061-1062
 - nature of, 98-99, 955-956
 - object of, 1213
 - release, 962
 - scheme of, 1213-1215
 - statutory
 - court advice

- payment into, 1231-1232
 - seek direction of, 1232-1245
 - dedicate land, 1228
 - delegate during absence, 1230
 - employ agents, 1229
 - generally, 1218-1221
 - grant options, 1227
 - history of, 1214-1215
 - insure 1228
 - lease land, 1227
 - liabilities, compounding of, 1229
 - pass accounts, 1230-1231
 - postpone sale, 1226-1227
 - receipts, discharging, issue of, 1229
 - repair (or improve), 1227
 - sell, 1221-1226
- capacities in which powers may be held, 962-963
- certainty of objects for, 107-109
- mere power, 108-109
 - trust power, 108-109
- defined, 955-956
- dispositive (and distributive) powers
- advancement
 - court, inherent jurisdiction, 1272-1273
 - defined, 1270-1272
 - express, 1273-1276
 - statutory
 - Canada, in, 1278-1279
 - England, in, 1277
 - appointment, 1279-1280
 - defined, 1251-1255
 - discretionary trusts, 1281-1285
 - maintenance
 - court, jurisdiction of, 1255-1260
 - express, 1260-1263
 - statutory
 - Canada, in, 1267-1270
 - England, in, 1263-1267
 - resettlement, 1280-1281
 - types of, 1252
 - underlying (“substratum”) duties, 956-959, 962, 966
- duties, distinction, 955-956, 1252-1255
- encroachment, 1049, 1252
- evidence of power, 104-107
- fiduciary power, 102-103
- investment *see* INVESTMENT OF TRUST FUNDS
- obligations relating to, 956, 958-961

settlor, of, limitations on, 322-323

POWERS AND TRUSTS

administrative, compared to legal powers, 99
 certainty of objects, trust, powers and mere powers, 107-109
 compared, 98-109, 955-961, 1251-1255
 discretionary trusts, 103-104, 1281-1285
 evidence of power, 104-107
 fiduciary power, 102-103
 followed by a trust, 104-107
 powers of appointment
 generally, 1279-1280
 mere (or pure) powers, 101-102, 104, 1251-1255
 mere trust, and, 100
 trust power, 101, 1251-1255
 types of
 administrative, 99 *see also* POWERS, administrative
 dispositive, 99 *see also* POWERS, dispositive powers
 distributive, powers of appointment, 99
 general, 99
 hybrid, 99
 special, 99
 legal, 99

POWERS OF PERSONAL REPRESENTATIVES

appointment of agents, 53

PRECATORY LANGUAGE

existence of, 20, 148, 900
 judicial attitude, 147-149
 secret trusts, 297-298
 trusts, construing, 149-150, 154-155
 uncertainty, creating, 147-149, 164

PRECATORY TRUSTS *see* CERTAINTIES OF A TRUST

PREPAID FUNERAL ARRANGEMENTS TRUSTS, 614 *see also* PERSONAL TRUSTS

PRESUMPTION OF ADVANCEMENT *see also* RESULTING TRUST

abolished, 196, 440-441, 441-443, 467-468
 generally, 437-438
 husband and wife, 438-440
 illegality and fraud, 449-458
 joint bank accounts, 465-470
 parent and child, 444-446
 rebutting
 evidence, 446-448
 generally, 378
 illegality, 448, 449-455

PRIVATE TRUST, public trust contrasted, 28-29

PROFITS *see* **DUTIES OF TRUSTEE, loyalty, conflicts of interest**

PROOF OF TRUST *see* **STATUTE OF FRAUDS; and SECRET TRUSTS**

PROPRIETARY ESTOPPEL

detrimental reliance, and, 587-588

generally, 248, 253-254, 543

PROTECTIVE TRUST *see* **TYPES OF TRUSTS**

PROTECTOR

fiduciary duty of loyalty, 139, 996

meaning and nature of the term, 136-137

offshore trusts, and, 136, 138, 646

removal of, 139

role of, 136-138

settlor, tax considerations, 900

successors to, 139

who may act, 138-139

PROVING THE TRUST *see* **STATUTE OF FRAUDS**

PUBLIC POLICY

alienation, rule against, 380-381

children born out of wedlock, trusts for, 325-334

born between date of will and death, 328

courts response to

change in, 328-331

legislative response, 331-334

public policy considerations, 327-328

rule of interpretation

application of rule, 327

child or children, 326

historical reason, 326

conditions, and

contrary to public policy, 335

determinable interest, versus, 337

effect of void condition precedent vs subsequent, 336-337

precedent and subsequent, 335-336

uncertainty, failure for, 337-340

courts and, 323-325

“illegitimate children” *see* **PUBLIC POLICY, children born out of wedlock**

marital relationship, conditions interfering with, 344

family law reform, 344-345

historically, 344

intention to interfere, 345-346

societal change, and, 346-347

marriage, restraint of, 340-344

intention, 340-341

- compelling celibacy, 341
- condition subsequent, 341
- determinable gift, 340
- unmarried, remaining life, 341
- partial, 342
- widow or widower, constraint on remarriage, 342-344
- parental duties, conditions interfering, 347-349
- perpetual duration, 379-381, 386-387
- perpetuity, rule, 379-381, 381-386
- racial discrimination
 - conditions, 353-356
 - generally, 356-357
- religious behaviour, conditions restraining, 349-352
 - generally, 349
 - marital relations, 350-352
 - minors, gifts to, 349-350

PUBLIC TRUST, private trust compared, 28-29

PUBLIC TRUSTEE

- advisory committees, and, 127
- appointment, 125
 - consent to, 921
- charitable trusts, and, 126, 176, 713
- corporation sole, 127
- judicial trustee, 132-133
- legislation, 125-127
- powers of, 126-127
- public guardian, 126
- remuneration of, 1313
- requirement for, 125
- supervision of trust, 126-127

PURCHASE IN THE NAME OF ANOTHER *see* **RESULTING TRUST, purchase in the name of another**

PURCHASE OF TRUST PROPERTY BY THE FIDUCIARY *see* **DUTIES OF TRUSTEES, loyalty, conflicts of interest**

PURCHASER'S LIEN, 583

PURPOSE TRUSTS

- charitable *see* **CHARITABLE PURPOSE TRUSTS**
- non-charitable *see* **NON-CHARITABLE PURPOSE TRUSTS**

QUEBEC TRUSTS

- administration of
 - beneficiaries, settlor and interested parties, rights of, 1518-1521
 - conflict of laws, 1522
 - trustees, powers and obligations, 1516-1518
 - variation and termination, 1521-1522

- background, 1489-1494
- conceptual structure, 1508-1511
- creation of
 - constitution, 1512-1514
 - form and publicity, requirements, 1514-1515
 - operation of law, 1515-1516
- devices other than trust
 - foundation, 1507
 - substitution, 1504-1507
 - usufruct, 1502-1504
- generally, 1507-1508, 1523-1524, 1562
- modern civil law tradition
 - civilian solutions, 1498-1502
 - theoretical difficulties, 1494-1497
- types of, 1511-1512

QUISTCLOSE TRUST, 96-98, 484, 641 *see also* BUSINESS TRUSTS

RECEIPT, power of trustee to issue, 1229

RECOVERY OF TRUST PROPERTY *see* BREACH OF TRUST, trust property

RECREATIONAL TRUSTS, 812-814

RECTIFICATION

- inter vivos* instruments, 402-405
- wills, 405-407

REGISTERED RETIREMENT INCOME FUND, 433, 606, 623

REGISTERED RETIREMENT SAVINGS PLANS

- description of, 622-623
- setting up the trust, 229
- trust companies, and, 129
- types of trusts, 40
- whether capital or income, 1114

RELIGION *see* CHARITABLE PURPOSE TRUSTS

REMEDIES OF BENEFICIARY *see also* BREACH OF TRUST

- generally, 1349-1350
- personal claims, 1350-1352
- proprietary claims, 1352-1353

REMOTENESS *see* PERPETUITY RULE

REMOVAL OF TRUSTEE

- circumstances justifying, 948-953
- generally, 945-946
- statutory powers of replacement, 946-947

REMUNERATION

- charging clauses, 1302, 1303, 1305, 1306, 1311-1312

- interim, 1306-1308
- judicial trustees, 1312-1313
- principle of, 1301-1302
- professional services, and, 1304
- public trustees, 1313
- solicitor-trustee, and, 1302, 1304, 1311
- statutory power, courts, of
 - amount, calculation of, 1308-1310
 - misconduct by trustee, effect of, 1306
 - reasonableness, 1305-1306
 - timing (pre-taking) of, 1307
- trust instrument, provision by, 1303-1304, 1311-1312

RENUNCIATION, beneficial interest, of, 1333, 1503

RESETTLEMENT *see* TRUST, variation of

RESTITUTION *see* CONSTRUCTIVE TRUST; and UNJUST ENRICHMENT

RESTRICTIVE COVENANTS, 84, 112, 585

RESULTING TRUST

- categories
 - exhaustion or failure of express trust, 415-416
 - gratuitous transfer, 414-415
- constructive trusts, compared, 412-414
- exhaustion or failure of express trust objects
 - failure of settlor to dispose of whole equitable interest
 - effect of failure to dispose, 484-485
 - interpretation, 478-484
 - generally, 477-478, 490-491
 - Hancock v. Watson*, rule in, 488-490
 - total or partial failure of trust to take effect
 - generally, 485-486
 - improvidence, 486-487
 - non-compliance with mandatory rules of law, 487
 - uncertainty leading to invalidity of interests, 487-488
 - vitiated intention to create trust, 486
- generally, 411-414, 416-417, 506
- gratuitous transfer resulting trusts
 - generally, 476-477
 - illegality and fraud, generally, 463-465
 - illegality and fraud, presumption of advancement
 - creditor cases, 455-457
 - Goodfriend v. Goodfriend*, 454-455
 - other illegality, 457-458
 - pleading illegal agreement, inability to rebut presumption, 449-451
 - presumption of resulting trust instead of, 458-463
 - Scheuerman v. Scheuerman*, 451-454
 - illegality and fraud, presumption of resulting trust, 458-463

- joint accounts
 - evidence and presumptions
 - banking agreements, 470-471
 - other evidence, 472
 - proof of contributions, 470
 - generally, 465
 - gift of survivorship, 472-476
 - legal analysis, 465-467
 - resulting trust of legal interest
 - presumptions, 467-468
 - time periods, 469-470
- presumption of advancement
 - generally, 437-438
 - illegality and fraud, 449-458
 - parent and child, 444-446
 - rebutting presumption, 446-448
 - spouses, 438-443
- presumption of resulting trust
 - illegality and fraud, 458-463
 - rebutting, 435-437
- presumptions, legal effect, 448-449
- purchase with transfer to another, 419-428
 - generally, 411, 414, 419-420
 - multiple contributors to purchase money, 424-425
 - multiple property holders, 425-428
 - other intentions excluding resulting trust, 423-424
 - purchase or loan, 421-423
 - trust benefits person who advanced money, 420-421
- voluntary transfer to another, 428-434
 - generally, 428-429
 - land, 429-432
 - personal property, 432-434
 - property transferred under void or voidable contracts, 434
- matrimonial and cohabitational property disputes
 - difficulties of adapting resulting trusts, 494-497
 - generally, 491-492
 - history
 - Canada
 - Becker v. Pettkus*, 500-501
 - before 1980, 499-500
 - subsequent developments, 501-503
 - England, 497-499
 - legislation, scope of, 492-494
- nature of, 21
- presumptions
 - legal effect, 448-449
 - rebutting presumption

- presumption of advancement, 446-448
- resulting trust, 435-437
- situations where occurring, 22-23, 417-419

RETIREMENT OF TRUSTEE

- issues arising, 943-945
- legislative provisions, 940-943

REVOCACTION

- reservation of power for, 389-390
 - public policy, not to contravene, 390
 - Saunders v. Vautier*, relation to rule in, 391
 - tax implications, 391
 - trust for creditors, 391-392
- setting aside trust
 - duress, fraud or undue influence on settlor, 393-394
 - fraud by settlor, 394-395
 - mistake by settlor, 393-394
 - mistaken assumptions, 395-401

SAUNDERS v. VAUTIER, RULE IN *see also* TERMINATION, TRUST OF

- accumulations, 876
- avoidance of
 - annuities, 1334
 - Barford v. Street* principle, 1334-1336
 - gift over, 1328
 - instalment gifts, 1333-1334
 - trustee's powers, 1324
- bare or simple trusts, 33-36
- charities, application to, 876, 879, 1337-1340
- discretionary trusts and powers, 1324-1327
- invoking, 1326
- legislation
 - abolished, Manitoba and Alberta, 1343-1347, 1458
 - effect of, 1332
- postponement to certain age, 1327-1329
- postponement to date, 1330
- prior interest, disclaimer or surrender, 1331-1333
- Quebec, 1521, 1528
- revocation, distinct from, 391
- termination, requirements for, 1325
- United States, application in, 1341-1343
- variation of trusts, relation to, 1442-1445

SECRET TRUSTS

- communication and acceptance, 294, 297-300, 302-308
- constructive trust imposed, 567-568
- fully-secret trusts
 - communication and acceptance

- after death, 299-300
- proof, 297-298
- trusteeship and objects, 298-299
- instructions given in sealed envelope during lifetime, 300
- intention to create, 295-297
- property left to two or more persons, 300-301
- generally, 295
- half-secret trust
 - communication and acceptance, 302-308
 - generally, 295, 302
 - parol evidence to determine objects of trust, 308-314
- nature of
 - express or constructive trust, 314-316
 - problematic issues, 318-319
 - testamentary or *inter vivos*, 316-318
- trustee, devisee, legatee or intestate successor, as, 293-294
- Wills Acts*, and, 292-293

SECURITY TRUST

- business trust, type of, 112
- debenture trusts, 636-637
- Quebec, in, 1515, 1523

SET-OFF

- abolition of common law rule in Canada, 1073
- capital cost allowances, 1141
- expenses, 1297
- generally, 1378
- trustee, breach of trust, gains against losses, 1073, 1378-1379

SETTING ASIDE TRUST *see* REVOCATION

SETTLED LAND, statutory powers, power to sell, distinction, 1221

SETTLEMENT

- beneficiaries, 238, 365
- binding, must be, 118, 211-216, 365
- meaning
 - Bankruptcy and Insolvency Act*, 374-376
 - Fraudulent Conveyances Acts*, 361
 - Fraudulent Preferences Acts*, 373-374
- meaning of, 7
- strict, 7, 1214-1215, 1504

SEVERANCE, CHARITABLE TRUSTS, AND *see* CHARITABLE PURPOSE TRUSTS

SEVERANCE OF JOINT TENANCY, 426-427, 442-443, 468

SHAM TRUSTS, 156-162 *see also* CERTAINTIES OF A TRUST, intention

SIMPLE TRUSTS *see* TYPES OF TRUST, bare, naked or simple

SPENDTHRIFT TRUSTS, 1341, 1477, 1486

SPORT, PROMOTION OF, 814-818

SPOUSAL OR COMMON-LAW PARTNER TRUST, 38-39, 672-673, 674-675, 688, 689-691 *see also* **TAXATION OF TRUSTS** and **ESTATE PLANNING**, trusts, use of

STATUTE OF FRAUDS *see also* **SECRET TRUSTS**

Canada in, generally, 259-261

contracts to create trust of land

agreements concerning proceeds of sale, 263-264

contract unenforceable not void, 261

evidence in writing, 264-265

generally, 261-263

declarations or creations of trust of land, s. 7

application of section, 266

generally, 265-266

interpretation of section, 266-267

no writing, effect, 267-269

fraud, instrument of

avoidance of contract and trust obligations, generally, 278

contract avoidance and doctrine of part performance, 278

doctrines of fraud and part performance compared, 281-282

fraud, meaning, 282-284

generally, 288-290

law reform, 290-292

trust obligation avoidance and doctrine of fraud, 279-281

type of trust

express or constructive, 284

express vs. trust by operation of law, 285-288

resulting, 284-285

generally, 258-259

grants and assignments of equitable interest

generally, 269

“grants and assignments”, meaning, 270

s. 9, interpretation, 270-278

STATUTORY TRUST 29-31 *see also* **TYPES OF TRUST**

STRANGERS TO THE TRUST, INTERMEDDLING

de facto trustees, 590-591

generally, 589-590

personal liability

banks, position of, 599-601

generally, 591-592

knowing assistance in breach, 592-595

knowing receipt of property transferred in breach, 595-598

liability with express trust, 599

trustee *de son tort*, 590-591

***STRONG v. BIRD*, rule in**

- generally, 239-240
- historical basis, 230-231
- what donee must show, 231-239

SUB-TRUST

- distinct from assignment, 272
- meaning of, 189-190, 278, 1280
- variation of trusts, 652

SUBJECT-MATTER *see also* CERTAINTIES OF A TRUST

- certainty of, 163-171
- formula to determine, 168-169
- intention, in relation to, 164
- property, changing nature of, 171

SUBROGATION

- basis of, 534
- creditors' right to be subrogated to rights of trustee, 1288
- lien or trust for indemnity insurer, 587
- real subrogation, as civil law analogy to claims based on tracing, 1519-1520
- tracing, consequent upon, 1425

SUCCESSION DUTIES

- abolition of, 607, 655, 749
- estate duty, distinction, 680-683
- gift tax, and, 693-694

SURVIVORSHIP

- constructive trust, 515, 581
- joint tenancy and, 426, 442-443
- mutual wills, 580-581
- resulting trusts, joint accounts, 466-468, 470
 - nature of gift, 472-476
- trustees, 928, 933

TAXATION OF CHARITABLE PURPOSE TRUSTS *see* CHARITABLE PURPOSE TRUSTS, advantages of, taxation

TAXATION OF TRUSTS

- alter ego trust, 661-662, 672-674
- approaches to, possible, 655-658
- artificial losses, 670-672
- beneficial interests
 - discretionary trusts, and, 664
 - flow through treatment, 665
 - minor, deferred income of, election, 663
 - preferred beneficiary election, 665
 - recognition of, 662-666
 - transfer by beneficiary, 669-670
- capital gains, 654, 655, 658

charitable trusts
 donations
 tax relief, 761-765
 treatment of, 747-750
 generally, 746-747, 747-750
 income tax, 750-758
 municipal real property tax, 758-761
 gift tax, 683
 history of
 Canadian trust taxation, 654-655
 emergence of trust taxation, 650-651
 estate planning, and, 654
 generally, 650-651
 modification of form of new trusts, 653
 modification or revocation of existing trusts, 652-653
 income splitting, 670 *see also* INCOME SPLITTING
 joint spousal or common-law partner trust, 38-39, 661-662, 672-673, 674-675
 legal persona, trust as, 659-662
 non-resident beneficiary, withholding tax, 667
 non-resident trusts, 666-668
 policy, 676-680
 qualifying disposition to a trust, 676
 self-benefit trust, 675-676
 spousal or common-law partner trust, 38-39, 661-662, 672-673, 674-675
 stop-loss rules, 670-672
 succession duty, 680-683
 trust law, and, 655-658

TENANCY IN COMMON, 424-428, 443, 470

TERMINATION OF TRUST

Alberta, in, 1343-1347
 generally, 1315-1316
 Manitoba, in, 1343-1347
 Quebec, 1521-1522
Saunders v. Vautier, rule in
 discretionary trusts and powers, 1324-1327
 exclusion of rule by statute or contract, 1321-1322
 generally, 1317-1321
 modification of trust, 1323-1324
 no trustee direction, 1323-1324
Saunders v. Vautier, where rule may apply
 Barford v. Street principle, 1334-1336
 charities, 1337-1340
 disclaimer or surrender of prior interest, 1331-1333
 instalment gifts, 1333-1334
 postponement to certain age, 1327-1329
 postponement to date, 1330

United States, in, 1341-1343

TESTAMENTARY TRUST *see* **TYPES OF TRUST**

THREE CERTAINTIES *see* **CERTAINTIES OF A TRUST**

TORRENS TITLE, 431-432

TRACING TRUST PROPERTY

bona fide purchaser, 1437-1438

choice of law rules, 1556-1559

Clayton's case, rejected, 1435

constructive trust, relationship to, 543-544

debts, payment of, 1438-1440

end of, 1436-1440

fiduciary relationship, 529, 553, 1429-1430

following and, 1418-1420

mixed funds, 1430-1436

proprietary claims, 1420-1421

recovery of property, 1418

transactional link, requirement, 525, 529, 559, 1439

trustee, unauthorized disposition, 1419

TRUST

accelerated, meaning, 38

administration of, intervention, right to

generally, 1349-1350

personal claims, 1350-1352

proprietary claims, 1352-1353

agency, compared *see* **AGENCY**

bailment and *see* **BAILMENT, TRUSTS AND**

breach of *see* **BREACH OF TRUST**

characteristics *see* **TRUST, essential features**

civil law, common law compared, 15-18

common law, characteristics of, 10-15

company *see* **TRUST COMPANY**

conditional gift, 113-115

constitution of *see* **CONSTITUTING THE TRUST**

contracts and *see* **CONTRACT, trust and**

corporate *see* **TRUST COMPANY**

debt and *see* **DEBT, trust and**

definition, 3-5

development of, 5-9

disposition, modes of, restrictions

inalienability, 379-381

perpetual duration, 386-387

perpetuity, 381-386

equitable charge, compared *see* **EQUITABLE CHARGE**

equitable lien *see* **LIEN**

essential features, 10-15

- executed *see* EXECUTED TRUST
- executory *see* EXECUTORY TRUST
- fideicommissum*, 16, 1490-1492
- fiducia*, 16, 1491-1492, 1504, 1532
- fiduciary relationship, compared *see* FIDUCIARY OBLIGATIONS
- governmental obligation, compared, 31-33
- history, 5-9
- inter vivos* *see* TYPES OF TRUST
- meaning of trust, 3-5
- mortgage, compared, 110-113
- oral
 - enforcement of, 278, 281
 - express trust, evidence, 285
 - land, 566-567
 - resulting trust, presumption, 285
 - Statute of Frauds*, 288-290
- origins, 5-9
- personal obligation *see* PERSONAL OBLIGATION
- Quebec, in *see* QUEBEC TRUSTS
- resettlement, of a, 1280-1281
- revocation *see* REVOCATION
- secret *see* SECRET TRUSTS
- testamentary *see* TYPES OF TRUST
- unlawful, 28 *see also* PUBLIC POLICY
- variation of
 - court
 - inherent jurisdiction
 - annuities, release of capital, 1452-1453
 - compromise, 1451-1452
 - generally, 1447-1448
 - maintenance, 1450-1451
 - marriage settlements, variation of, 1455
 - salvage and emergency, 1448-1450
 - Quebec trusts, 1521-1522
 - statutory powers
 - dependants' relief legislation, 1455-1456
 - enlarging management or administrative powers, 1453-1455
 - variation of spousal agreements, 1455
 - generally, 1485-1488
 - legislation
 - application, who may bring, 1460-1462
 - arrangements, (proposals) within court's jurisdiction
 - criteria, to be satisfied
 - benefit
 - generally, 1476-1477, 1479-1481
 - non-financial, 1478-1479
 - generally, 1471-1476

- satisfactory character
 - generally, 1481-1482
 - intention of settlor or testator, 1481-1484
 - power, exercise or release of, 1484-1485
- background, 1442-1446
- court approval of arrangement
 - fully capacitated beneficiaries, 1464-1467
 - infants and mentally incompetent persons, 1462
 - objects of discretion, 1468-1469
 - purpose trusts, 1470
 - unborn and untraceable persons, 1467
 - uncertain interest, persons with, 1462-1464
- generally, 1456-1460
- resettlement, 1280-1281, 1472

TRUST COMPANY

- capital, division of, 129-130
- development in Canada, 127-128
- legislation, object of, 128-129
- work of, 129-132

TRUST POWER *see* POWERS AND TRUSTS

TRUST PROPERTY *see* SUBJECT-MATTER

TRUST RES *see* SUBJECT-MATTER

TRUSTEE *DE SON TORT*, 67, 590-591, 935, 1002, 1364, 1370, 1556

TRUSTEES

- administrator, compared, 48-57
- agents, appointment, 67
- appointment
 - acceptance and refusal of office, 934-936
 - court, by
 - inherent jurisdiction, 918-919
 - statutory jurisdiction, 919-925
 - express power, under
 - construction, 902
 - Re Robertson*, 903-904
 - Saunders v. Bradley*, 902-903
 - personal or function of office, 905
 - statutory power, relationship to, 904-905
- property vesting in
 - common law and equity, rules of, 928
 - declaration, words to constitute, 930
 - generally, 933-934
 - statutory declaration
 - assets excepted, 930-932
 - form of declaration, 929-930

- generally, 928-929
- without statutory declaration, 932
- settlor, by, 900-902
- statutory power, under
 - additional, 915-917
 - generally, 905-906
 - new or substitute
 - generally, 906-907
 - mode of appointment, 914-915
 - when section may be exercised, 907-910
 - who can exercise power, 910-914
 - revocation of, 917-918
- custodian, 133-134, 619-620
- deadlock, 1235-1241
- death of
 - powers pass to surviving trustees, whether, 938-939
 - sole or last surviving, 939-940
- delegation by *see* DUTIES OF TRUSTEES, delegation
- duties *see* DUTIES OF TRUSTEE
- executor
 - appointment as executor and trustee, 53-54
 - compared to trustee, 48-57
- fiduciary obligation *see* FIDUCIARY OBLIGATIONS
- indemnification of *see* INDEMNIFICATION, trustees, of
- investment of trust funds, 1061-1089
- judicial *see* JUDICIAL TRUSTEE
- liability of
 - to account, 1359-1362
 - court's jurisdiction to excuse, 1250, 1410-1416
 - delegating trustee, 979-985
 - discretionary decisions, 1049-1056
 - exculpatory clauses, 1044-1049
 - general principles, 1356-1365
 - insurance for, 1172-1175
 - limitation periods, 1396-1408
 - non-trustees, 1364-1365
 - by operation of law, 1363-1364
 - personal, 1362-1363
 - protections, 1389-1390
- number of trustees, 925-927
- personal representative, compared, 48-57
- powers and duties
 - administrative, 957-958 *see also* POWERS, administrative
 - dispositive, 958-961
 - distinction between, 955-956
- reinstatement, 953
- removal of

- circumstances justifying, 948-953
- statutory powers of replacement, 946-947
- remuneration of, 1301-1313 *see also* REMUNERATION, trustees of
- replacement, statutory powers of, 946-947
- retirement
 - legislative provisions, 940-943
 - payment into court, and, 945
 - reasons for, 943-945
 - replacement of, 945
- standard of care required, 1037-1049

TYPES OF TRUST

- alter ego *see* TAXATION OF TRUSTS
- bare, naked or simple, 33-36
- business, 40 *see also* BUSINESS TRUSTS
- discretionary, 36 *see also* DISCRETIONARY TRUSTS
- environmental, 642-645 *see also* ENVIRONMENTAL TRUSTS
- executed and executory, 24-28
 - completely constituted, 28
 - incompletely constituted, 28
- express, implied, resulting and constructive, 19-24
- inter vivos*, 36
 - when testamentary, 224-225
- international trusts, 646-647 *see also* INTERNATIONAL TRUSTS
- living trusts *see* TYPES OF TRUSTS, *inter vivos*
- personal, 40, 605-618 *see also* PERSONAL TRUSTS
- private and public, 28-29
- protective trust, 36-37, 609, 675, 700, 1283, 1457-1458, 1468-1469, 1477
- special, trustee duties
 - administrative, 36
 - discretionary or dispositive, 36
- spendthrift, 37, 1341, 1477, 1486
- statutory, 29-31
- testamentary, 36
 - requirements for, 222-224
 - revocable *inter vivos* trust, 224-225

UNINCORPORATED ASSOCIATIONS, GIFTS TO, 720-726

UNIT TRUSTS, nature of, 621, 623, 629

UNITRUST (PERCENTAGE TRUST)

- alternative structures, 1187-1188
- disadvantages, 1186-1187
- generally, 1183-1186, 1189
- meaning, 855
- widely discretionary trusts, 1188-1189

UNJUST ENRICHMENT

- cohabitational property disputes, 563-565

- conflict of laws, 1555
- constructive trusts, and, 24, 492, 498, 500-503, 505, 517-531, 559-565
- development of, 519-524
- disgorgement for wrongdoing, contrast with, 522-524
- indemnification of trustee by beneficiary, 1292
- joint family venture, 524-526
- purchase of trust property by trustee, 1018
- Quebec, 1515
- restitution, 519-524, 559-561
- resulting trusts, and, 413, 491, 1554-1556
- secret trusts, and, 315, 531-532, 567-568
- tracing claims, 1420, 1556-1559

VARIATION OF TRUSTS *see* **TRUST**, *variation of*

VOLUNTEER

- constituting trust in favour of, 187
- equity will not assist, 83, 187, 200-201, 221, 233, 245-246
- generally, 187
- importance of complete transfer, and, 190
- voluntary deed of covenant to create a trust, effects of, 198-208
 - future property, 203-204, 206-207

WILFUL DEFAULT 979-982 *see also* **DUTIES OF TRUSTEE**

WILLS ACTS *see* **CONSTITUTING THE TRUST; SECRET TRUSTS; and CAPACITY**