

Index

ABORIGINAL LAND CLAIMS

- Generally, **1:18**
- Settlement and other trusts, **1:19**

ACCOUNTING FOR PROFITS

- Generally, **17:6**

ACCUMULATIONS

- Generally, **7:14**

ADMINISTRATION OF DECEASED, PERSON'S ESTATE, TRUST AND

- Generally, **2:6**

AGENCY, TRUST AND

- Generally, **2:2 to 2:4**

APPOINTMENT

- Powers of
 - certainty of objects of, **3:8**
 - definition, **1:5**
 - discretionary trust vs., **3:7**
 - powers, generally, **3:5**
 - types of powers, **3:6**
- Trustees
 - additional trustees, **13:4**
 - generally, **13:1**
 - judicial appointment, **13:5**
 - non-judicial appointment, **13:3 to 13:4**
 - number of
 - maximum, **13:6**
 - minimum, **13:7**
 - substitute trustees, **13:3**

BAILMENT, TRUST AND

- Generally, **2:5**

BENEFICIARY (CESTUI QUE TRUST)

- Capacity, **4:2**
- Constructive trust, under, **10:6**
- Defined, **1:5**
- Estate beneficiary, **1:15**
- Nature of interest, **1:13 to 1:14**
- Remedies for breach of trust, see
LIABILITY OF TRUSTEES
- Termination by, **6:5 to 6:6**
 - see also TERMINATION BY BENEFICIARY

BREACH OF CONFIDENCE

- See also WRONGFUL GAINS
- Confidential circumstances, **11:3**
- Confidential information, **11:3**
- Detriment, **11:3**
- Elements of claim, **11:3**
- Nature of claim, **11:4**
- Remedies for, **11:5**

BREACH OF FIDUCIARY DUTY

- See also WRONGFUL GAINS
- Compensation, **11:7**
- Confidential information, use of, **11:10**
- Conflicting duties, **11:13**
- Constructive trust remedy, **11:6 to 11:7**
- Corporate and other opportunities
 - Canadian Aero Service Ltd. v.
O'Malley, **11:11**
 - Peso Silver Mines Ltd. v. Cropper,
11:11
 - Regal (Hastings) Ltd. v Gulliver, **11:11**
- Disgorgement, **11:1, 11:6 to 11:7**
- Generally, **11:6 to 11:7**
- Purchase of trust property
 - application and exceptions, **11:8**
 - codification of rule, **11:8**
 - confidential information, use of, **11:10**
 - conflicting duties, **11:13**
 - corporate and other opportunities,
11:11
 - miscellaneous examples, **11:15**
 - remedies, **11:8**
 - sale to trust, **11:9**
 - secret commissions and bribes, **11:12**
 - self-hiring, **11:14**
 - statement of rule, **11:8**

BREACH OF TRUST

- See KNOWING, ASSISTANCE AND
RECEIPT; LIABILITY, OF TRUST-
EES; TRACING AND, RECOVERY
OF TRUST ASSETS

CAPACITY

- See also EXPRESS, TRUSTS
- Generally, **4:2 to 4:6**

CERTAINTIES, THREE

See also **EXPRESS TRUSTS**

Generally, **4:3**

Intention

generally, **4:4 to 4:5**

sham trusts, **4:6**

Objects

class ascertainability, fixed trust, **4:18**

consequences of uncertainty, **4:17**

evidentiary and conceptual certainty, **4:14**

generally, **4:11**

individual ascertainability

discretionary trust, **4:19**

outstanding issues, **4:20**

persons and purposes, **4:12**

saving potentially uncertain objects, **4:15**

tests, **4:13**

timing, **4:16**

Subject-matter

generally, **4:7**

identification of property, **4:8**

uncertainty as to “anything left,” **4:9**

uncertainty in quantum, **4:10**

CHARGES

See **SECURITY INTEREST**

CHARITABLE TRUSTS

Accumulations, **7:14**

Advantages of charity

generally, **7:2**

tort claims, immunity from, **7:3**

Charity, meaning of

Charities Act 2011 (U.K.), **7:7**

generally, **7:4, 7:7**

historical background, **7:7**

public benefit element, necessity of, **7:6**

statutory definitions, **7:7**

Cy-près doctrine

administration vs. cy-près schemes, **7:15 to 7:16**

case law, **7:17**

discriminatory trusts, **7:20 to 7:21**

divisions in charitable organizations, **7:22**

initial impossibility/impracticability, **7:18**

prerogative cy-près, **7:17**

CHARITABLE TRUSTS—Cont’d

Cy-près doctrine—Cont’d

supervening impossibility/
impracticability, **7:19**

Generally, **7:1**

Governance, **7:29**

Heads of charity

advancement of education

education, meaning of, **7:9**

public benefit requirement, **7:11**

advancement of religion, **7:8**

other purposes beneficial to community

benefit of locality/country, **7:10**

care of young persons, **7:10**

health and medicine, **7:10**

preservation of public order and

administration of justice, **7:10**

promotion of economic activity, **7:10**

public works, **7:10**

relief of old and disabled, **7:10**

relief of prisoners, **7:10**

resettlement and rehabilitation, **7:10**

social and recreational purposes, **7:10**

sports, **7:10**

trusts for animals, **7:10**

relief of poverty, **7:7**

Imperfect charitable trusts

exclusivity rule, exceptions to, **7:12**

generally, **7:11**

Perpetuity rules, **7:13**

accumulations, **7:14**

Public benefit requirement

exclusivity, **7:6**

extra-territorial trusts, **7:6**

generally, **7:6**

political purposes, **7:6**

Regulation of charities

case law, **7:28**

fundraising, **7:26**

judicial activity, **7:28**

reform proposals, **7:27**

statutory scheme, **7:25**

CIVIL LAW, TRUST IN

Generally, **1:16**

Quebec practice, **1:17**

CLAYTON’S CASE, RULE IN

Tracing and, **19:8 to 19:9**

INDEX

COMMON INTENTION RESULTING TRUSTS

See also RESULTING TRUSTS

Generally, **9:10**

COMPENSATION

Action against trustee for compensation for loss, **17:5**

Trustees, of, **16:2**

CONDITIONAL GIFT, TRUST AND

Generally, **2:7**

CONSTITUTION OF TRUSTS

See also EXPRESS TRUSTS

Declaration of self as trustee, **4:28 to 4:30**

Equity and, **4:24 to 4:27**

Future property, **4:23**

Generally, **4:21**

Modes of, **4:22**

Transfer of property to trustees, **4:31 to 4:33**

CONSTRUCTIVE TRUSTS

See also KNOWING ASSISTANCE AND RECEIPT; PERFECTING INTENTIONS; WRONGFUL, GAINS

Beneficiary under, **10:7**

Constructive trustees, **10:2, 10:7**

Effect of, **10:8**

Fraud and, **10:2**

Generally, **1:8, 10:2**

Good conscience and, **10:4**

Historical developments, **10:3**

Perfecting intentions, **10:2**

Proprietary restitution, guidelines for academic proposals

Professor Burrows' vitiated intention approach, **10:12**

Professor Chambers' principled approach, **10:12**

adequacy of monetary relief, **10:12**

Canadian cases, **10:12**

clear and substantial connection, **10:12**

discretion, **10:12**

generally, **10:12**

identifiable property, **10:12**

reasonable expectations, **10:12**

Remedial constructive trusts, **10:4**

Restitutionary trusts and

generally, **10:9**

CONSTRUCTIVE TRUSTS—Cont'd

Restitutionary trusts and—Cont'd

guidelines for proprietary restitution

academic proposals, **10:12**

adequacy of monetary relief, **10:12**

Canadian cases, **10:12**

clear and substantial connection, **10:12**

discretion, **10:12**

generally, **10:12**

identifiable property, **10:12**

reasonable expectations, **10:12**

resulting vs. constructive trust, **10:11**

Tracing and, **10:6**

Trustee under, **10:7**

Unjust enrichment

action in, **10:4, 10:9 to 10:12**

generally, **10:4**

good conscience and, **10:4**

remedial constructive trusts and, **10:4**

restitution and, **10:4**

restitutionary trusts, **10:9**

wrongdoing, by, **10:4, 10:9 to 10:12**

Wrongs, **10:2**

CONTRACT, TRUST AND

Generally, **2:3**

COVENANTS IN FAVOUR OF VOLUNTEER

See also EXPRESS TRUSTS

Beneficiary as promise, **4:36**

Consideration and seals, **4:35**

Fletcher v. Fletcher, **4:38**

Future property, **4:38**

Generally, **4:35**

Marriage settlements, **4:35**

Monetary relief and specific performance, **4:35**

Privity of contract, **4:35**

Proof of intention, **4:38**

Recharacterization of subject matter, **4:38**

Self-declared trust, **4:82**

Trustee as promise, **4:37**

CREDITORS

Trusts defrauding, **5:10**

Trusts to secure, **1:12**

CUSTODIAL TRUSTS

Generally, **1:12**

CY-PRES DOCTRINE

See also CHARITABLE TRUSTS
Administration vs. cy-pres schemes, **7:15 to 7:16**
Case law, **7:17**
Discriminatory trusts, **7:20**
Divisions in charitable organizations, **7:22**
Initial impossibility/impracticability, **7:18**
Prerogative cy-pres, **7:17**
Supervening impossibility/impracticability, **7:19**

DEATH

Transfers upon death
mutual wills, **12:16 to 12:19**
secret trusts, **12:10 to 12:14**
Wrongful acquisition through
acquisition of property by murder, **11:17**
testamentary context, **11:18**

DEBT, TRUST AND

Generally, **2:4**

DEEMED TRUSTS

Deemed statutory trusts, **2:8**
DENLEY'S TRUST DEED, **8:7, 8:10 to 8:12**
Described, **1:10**

DISCRETION, TRUSTEE'S EXERCISE OF

See also DUTIES AND POWERS OF, TRUSTEES
Administrative powers, **14:7**
Advancement, power of, **1:5, 14:10**
Delegation, **14:5**
Distributive powers, **14:8**
Encroachment, power of, **1:5, 14:11**
Generally, **14:1, 14:6**
Judicial review of, **14:12**
Maintenance, powers of, **1:5, 14:9**
Mistakes, correction of
generally, **14:13**
rescission, **14:14**
Misuse of discretion, **14:15**
Powers and duties
initial duties, **14:2**
seeking court's advice, **14:4**
trustees must act jointly, **14:3**

DISCRETIONARY TRUSTS

Beneficiary's rights, **3:2**
Certainty of objects, **4:13**
individual ascertainability, **4:19**
Described, **1:5**
Distributive powers, and, **14:8**
Generally, **1:14, 5:7**
Power of appointment vs., **3:7**
Protective trust, as, **5:7**
Saunders v. Vautier, and, **6:5**

DISCRIMINATORY TRUSTS

Cy-près doctrine, **7:20**
Public policy, contrary to, **5:4**

DONATIO MORTIS CAUSA, DOCTRINE OF

Generally, **4:27**

DUTIES AND POWERS OF TRUSTEES

See also POWERS OF APPOINTMENT
Administrative powers, **14:7**
Advancement, power of, **1:5, 14:10**
Court advice, seeking, **14:4**
Delegation of, **14:5**
Discretion, see DISCRETION, TRUSTEE'S EXERCISE OF
Distributive powers, **14:15**
Duties vs. powers, **3:1**
Duty of care, **3:4**
Duty to account, **3:2**
Fiduciary duty, **3:3, 3:8**
Generally, **3:1**
Impartiality, duty of
allocation of outgoings, **15:7**
apportionments and allocations under statute, **15:8**
apportionments between capital and income
common law, at, **15:6**
corporate distributions, **15:6**
generally, **15:5**
Initial duties, **14:2**
Investment of trust funds
duty of care
common law, at, **15:3**
statutory, **15:4**
generally, **15:2**
Joint action, **14:3**
Judicial review
generally, **14:12**

DUTIES AND POWERS OF TRUSTEES

—Cont'd

- Judicial review—Cont'd
 - mistakes, correction of
 - generally, **14:13**
 - rescission, **14:14**
 - misuse of discretion, **14:15**
- Maintenance, powers of, **1:5, 14:9**
- Trust powers, **3:5**

EQUITY

- Described, **1:2**
- Law and, relationship today, **1:4**
- Legal procedure vs., **1:2**

ESTATES PRACTICE, TRUST AND

- Generally, **2:6**

EXPRESS TRUSTS

- Capacity
 - beneficiary, **4:2**
 - creator of trust, **4:2**
 - trustee, **4:2**
- Certainties, required
 - generally, **4:3**
 - intention to create trust, **4:4 to 4:6**
 - objects, **4:11**
 - see also objects, certainty of
 - subject-matter, **4:7**
 - see also subject-matter of trust, certainty of
- Constitution of trusts
 - declaration of self as trustee, **4:28 to 4:30**
 - see also declaration of self as trustee equity and, **4:24**
 - see also equity will not assist a volunteer
 - future property, **4:23**
 - generally, **4:21**
 - modes of, **4:22**
 - transfer of property to trustees, **4:31 to 4:33**
 - see also transfer of property to trustees
- Covenants in favour of volunteer
 - beneficiary as promise, **4:36**
 - consideration and seals, **4:35**
 - Fletcher v. Fletcher, **4:38**
 - future property, **4:38**
 - generally, **4:35**
 - marriage settlements, **4:35**

EXPRESS TRUSTS—Cont'd

- Covenants in favour of volunteer—Cont'd
 - monetary relief and specific performance, **4:35**
 - privity of contract, **4:35**
 - proof of intention, **4:38**
 - recharacterization of subject matter, **4:38**
 - self-declared trust, **4:37**
 - trustee as promise, **4:37**
- Declaration of self as trustee
 - intention to create trust, **4:30**
 - settlor as one of several trustees, **4:29**
- Described, **1:7, 4:1**
- Equity will not assist a volunteer
 - donatio mortis causa, doctrine of, **4:27**
 - equity will not enforce a gratuitous promise, **4:25**
 - equity will not perfect an imperfect gift, **4:26**
 - exceptions, **4:27**
 - generally, **4:24**
 - proprietary estoppel, doctrine of, **4:27**
 - Strong v. Bird, rule in, **4:27**
- Failure of express trusts, see also **RESULTING TRUSTS**
 - extension of, **9:16**
 - failure, **9:7**
 - generally, **9:6**
 - Hancock v. Watson, rule in, **9:7**
 - pension trusts, **9:7**
 - settlor's intention for gift of surplus, **9:8**
 - trust or gift, **9:7**
- Formal requirements
 - generally, **4:39**
 - inter vivos formalities
 - circumvention of statute, **4:44**
 - contracts to create trust, **4:41**
 - creation of inter vivos trusts, **4:42**
 - equitable interests, transfers of, **4:43**
 - statutory provisions, **4:40**
 - inter vivos trusts, creation of, **5:5**
- Statute of Frauds
 - circumvention of statute, **4:44**
 - generally, **4:39 to 4:43**
- testamentary formalities
 - circumvention of legislation, **4:46**
 - statutory provisions, **4:45**
- Intention to create trust, **4:4 to 4:6**

EXPRESS TRUSTS—Cont'd

- Objects, certainty of
 - consequences of uncertainty, **4:17**
 - discretionary trust, individual ascertainability, **4:19**
 - evidentiary and conceptual certainty, **4:14**
 - fixed trust, class ascertainability, **4:18**
 - generally, **4:11**
 - individual ascertainability
 - any given individual, **4:20**
 - certain and uncertain, **4:20**
 - discretionary trust, **4:19**
 - inclusion and exclusion, **4:20**
 - persons and purposes, **4:12**
 - saving potentially uncertain objects, **4:15**
 - tests of, **4:13**
 - timing issues, **4:16**
- Subject-matter of trust, certainty of
 - “anything left,” uncertainty re, **4:9**
 - identification, uncertainty in
 - ascertained/ascertainable, **4:8**
 - generally, **4:8**
 - portion of undifferentiated mass, **4:8**
 - timing issues, **4:8**
 - types of property, **4:8**
 - quantum, uncertainty re, **4:10**
- Testamentary formalities
 - circumvention of legislation, **4:46**
 - statutory provisions, **4:45**
- Transfer of property to trustees
 - by settlor, **4:32**
 - by third party, **4:33**
 - placing beneficial interest into trust, **4:34**
 - settlor’s gratuitous transfer to trustee of pre-existing trust, **4:32**

FIDUCIARY RELATIONSHIP

- Breach, **11:6 to 11:15**
- Categories, **3:3**
- Generally, **1:5, 1:8, 3:3**

FIXED TRUSTS

- Class ascertainability, **4:18**
- Generally, **1:5**

FLETCHER V. FLETCHER

- Generally, **4:38**

FORMAL REQUIREMENTS

- See EXPRESS, TRUSTS

GIFTS

- See PERFECTING INTENTIONS, RESULTING TRUSTS
- HALLET’S ESTATE, RULE IN, **19:8**
- HANCOCK v. WATSON, RULE IN, **9:7**

ILLEGAL PURPOSES, TRUSTS

- See also LIMITATIONS ON CREATION
- Consequences of illegality, **5:2**
- Generally, **5:2**

IMPARTIALITY, DUTY OF

- Allocation of outgoings, **15:7**
- Apportionments and allocations under statute, **15:8**
- Apportionments between capital and income
 - common law, at, **15:6**
 - corporate distributions, **15:6**
- Generally, **15:5**

IMPLIED TRUSTS

- Generally, **1:8**

INTENTION, CERTAINTY OF

- See also CERTAINTIES, THREE
- Generally, **4:4 to 4:10**
- Sham trusts, **4:6**

INTER VIVOS EXPRESS TRUSTS

- Inter vivos formalities
 - circumvention of statute, **4:44**
 - contracts to create trust, **4:41**
 - creation of inter vivos trusts, **4:42**
 - equitable interests, transfers of, **4:43**
 - statutory provisions, **4:40**
- Inter vivos trusts, creation of, **5:5**

INTER VIVOS TRANSFERS, PERFECTING, INTENTIONS

- Cohabitation property disputes, **12:8**
- Incomplete gifts, **12:6**
- Oral trusts of land
 - generally, **12:5**
 - nature and basis of trust, **12:5**
 - Statute of Frauds and, **12:5**
- Proprietary estoppel, **12:7**
- Specifically enforceable contracts for sale
 - generally, **12:4**
 - operation and consequences, **12:4**
 - scope of application, **12:4**

INDEX

INTER VIVOS TRANSFERS, PERFECTING, INTENTIONS —Cont'd

Specifically enforceable contracts for sale
—Cont'd
triggering event, **12:4**

INVALID CONDITIONS

See **LIMITATIONS, ON CREATION**

INVESTMENT OF TRUST FUNDS

Duty of care
common law, at, **15:3**
statutory, **15:4**
Generally, **15:2**

JUDICIAL REVIEW OF TRUSTEE, DECISIONS

Generally, **14:12**
Mistakes, correction of
generally, **14:13**
rescission, **14:14**
Misuse of discretion, **14:15**

KNOWING ASSISTANCE AND RECEIPT

See also **CONSTRUCTIVE TRUSTS**
Constructive trustee
categories of, **18:3**
nature of, **18:2**
Knowing assistance in breach of trust
action, **18:5**
relief, **18:7 to 18:13**
stranger's assistance, nature of, **18:5**
stranger's knowledge, nature of, **18:5**
underlying breach, **18:6**
underlying relationship, **18:5**
Knowing receipt
bona fide purchase for value without
notice, **18:9**
cause of action, isolating, **18:8**
elements of proof, **18:11**
nature of claim, **18:10**
nature of relief, **18:12**
Trustee de son tort, **18:14**

LIABILITY OF TRUSTEES

Beneficiaries' miscellaneous remedies
administration action, **17:20**
appointment of receiver, **17:20**
declaratory judgment, **17:20**
injunction, **17:20**
refusal of specific performance, **17:20**

LIABILITY OF TRUSTEES—Cont'd

Beneficiaries' miscellaneous remedies
—Cont'd
setting aside transactions, **17:20**
Compensation for loss, action re, **17:5**
Defences
acquiescence, **17:12**
consent, **17:10**
defendant not trustee, **17:9**
impounding beneficiary's interest,
17:11
laches, **17:15**
limitations, **17:14**
release, **17:13**
Generally, **17:1**
Personal liability
accounting for profits, **17:6**
choice of remedy, **17:3**
compensation for loss, action re, **17:5**
generally, **17:2**
interest, liability for, **17:7**
liability, principles of, **17:4**
Protection of trustee
court's power to excuse, **17:19**
exculpation by statute, **17:17**
exemption clauses, **17:18**
removal of duties, **17:18**

LIMITATIONS ON CREATION

Accumulation of income, **7:14**
Creditors, trusts defrauding, **5:10**
Illegal purposes, trusts for
consequences of illegality, **5:2**
generally, **5:2**
Invalid conditions, trusts imposing
generally, **5:3**
impossibility of performance, **5:5**
public policy, conditions contrary to,
5:4
uncertain conditions, **5:6**
voidable conditions, **5:3**
Perpetuities, trusts contravening, **5:9**
Protective trust, **5:7**
Restraint on alienation, **5:7**

MATRIMONIAL PROPERTY, LEGISLATION

See also **RESULTING TRUSTS**
Generally, **9:14**

MIXED TRUST ASSETS

Clayton's Case, rule in, **19:7**

MIXED TRUST ASSETS—Cont'd

Generally, **19:7**
 Oatway, principle in, **19:8**
 Presumptions against wrongdoers, **19:8**
 Pro rata sharing, **19:9**
 Tracing into payment of debt, **19:10, 19:11**

NON-CHARITABLE PURPOSE TRUSTS

Generally, **8:2**
 Invalidity
 effect of, **8:3**
 reasons for, **8:3**
 Persons, trusts for
 class of beneficiaries, finding, **8:10**
 generally, **8:9**
 rule against perpetuities, **8:12**
 unincorporated associations, **8:11**
 Powers
 anomalous cases, **8:5**
 generally, **8:4**
 Quistclose trusts, **8:7**
 statutory powers of appointment, **8:6 to 8:13**
 Public appeals, **8:9**

OATWAY, PRINCIPLE IN

Generally, **19:8**

OBJECTS, CERTAINTY OF

See also CERTAINTIES, THREE;
 EXPRESS, TRUSTS
 Class ascertainability, fixed trust, **4:18**
 Consequences of uncertainty, **4:17**
 Evidentiary and conceptual certainty, **4:14**
 Generally, **4:11**
 Individual ascertainability
 discretionary trust, **4:19**
 outstanding issues, **4:20**
 Persons and purposes, **4:12**
 Saving potentially uncertain objects, **4:15**
 Tests, **4:13**
 Timing, **4:16**

ORAL TRUSTS OF LAND

Generally, **10:2, 12:2, 12:5**
 Nature and basis of trust, **12:5**
 Statute of Frauds and, **10:3, 12:5**

PENSION TRUSTS

Generally, **1:12, 9:7**

PERFECTING INTENTIONS

Cohabitation property disputes, **12:8**
 Generally, **12:2**
 Incomplete gifts, **12:6**
 Inter vivos transfers
 cohabitation property disputes, **12:8**
 incomplete gifts, **12:6**
 oral trusts of land
 generally, **12:5**
 nature and basis of trust, **12:5**
 Statute of Frauds and, **12:5**
 proprietary estoppel, **12:7**
 specifically enforceable contracts for sale
 generally, **12:4**
 operation and consequences, **12:4**
 scope of application, **12:4**
 triggering event, **12:4**
 Mutual wills
 basis of doctrine, **12:18**
 explanation for trust, **12:19**
 reciprocal vs. mutual wills, **12:17**
 Oral trusts of land
 generally, **12:5**
 nature and basis of trust, **12:5**
 Statute of Frauds and, **12:5**
 Proprietary estoppel, **12:7**
 Secret trusts
 fully-secret trusts
 failure of, consequences, **12:13**
 generally, **12:13**
 proof of intention, **12:13**
 generally, **12:10**
 nature and basis of constructive trust, **12:12**
 semi-secret trusts
 failure of, consequences, **12:14**
 timing, **12:14**
 Specifically enforceable contracts for sale
 generally, **12:4**
 operation and consequences, **12:4**
 scope of application, **12:4**
 triggering event, **12:4**
 Transfers upon death
 mutual wills, **12:16**
 secret trusts, **12:10 to 12:14**

PERPETUITIES, RULE AGAINST

See also LIMITATIONS ON, CRE-
 ATION; NON-CHARITABLE,

INDEX

PERPETUITIES, RULE AGAINST

—Cont'd

PURPOSE TRUSTS

Generally, **5:9, 8:12**

PERSONAL REPRESENTATIVE, OFFICE OF

Generally, **1:15, 2:6**

POWERS OF APPOINTMENT

See also DUTIES AND POWERS OF
TRUSTEES; TRUSTS

Certainty of objects of, **3:8**

Definition, **1:5**

Discretionary trust vs., **3:7**

Powers, generally, **3:5**

Types of powers, **3:6**

POWERS OF TRUSTEES

See DUTIES AND POWERS OF
TRUSTEES

PRESUMPTION OF ADVANCEMENT

See also RESULTING TRUSTS

Husbands and wives, **9:14**

Parents and children, **9:13**

Rebutting, **9:15**

PRESUMPTIONS, REBUTTING

Advancement, **9:15**

Effect of rebuttal, **9:15**

Generally, **9:15**

Illegal purposes, **9:15**

Resulting trust, **9:15**

Standard of proof, **9:15**

PROPRIETARY RESTITUTION, GUIDELINES FOR

Academic proposals, **10:12**

Adequacy of monetary relief, **10:12**

Canadian cases, **10:12**

Clear and substantial connection, **10:12**

Discretion, **10:12**

Generally, **10:12**

Identifiable property, **10:12**

Reasonable expectations, **10:12**

PROTECTIVE TRUSTS

Generally, **5:7**

PUBLIC APPEALS

Generally, **8:9**

PURCHASE MONEY RESULTING TRUSTS

See also RESULTING TRUSTS

Generally, **9:11**

Gifts, debt payments and loans, **9:11**

QUISTCLOSE TRUSTS

Generally, **2:3, 2:4, 8:4, 8:7, 8:9, 8:11**

RESTITUTIONARY TRUSTS

See also CONSTRUCTIVE TRUSTS

Generally, **10:9**

Guidelines for proprietary restitution

academic proposals, **10:12**

adequacy of monetary relief, **10:12**

Canadian cases, **10:12**

clear and substantial connection, **10:12**

discretion, **10:12**

generally, **10:12**

identifiable property, **10:12**

reasonable expectations, **10:12**

Resulting vs. constructive trust, **10:12**

RESULTING TRUSTS

Arising of, circumstances re, **9:3, 9:5**

“Common intention” resulting trust, **9:10**

generally, **9:9**

matrimonial property legislation, **9:14**

presumption of advancement

husbands and wives, **9:14**

parents and children, **9:13**

rebutting, **9:15**

presumptions, rebutting

advancement, **9:15**

effect of rebuttal, **9:15**

generally, **9:15**

illegal purposes, **9:15**

resulting trust, **9:15**

standard of proof, **9:15**

purchase money resulting trust

generally, **9:11**

gifts, debt payments and loans, **9:11**

voluntary transfer resulting trusts

Canada, **9:12**

England and Wales, **9:12**

generally, **9:12**

U.S.A., **9:12**

Constructive vs. resulting trust, **9:16**

Development of, **9:2**

Distinguished, different trusts, **9:4**

RESULTING TRUSTS—Cont'd

- Failure of express trusts
 - extension of, **9:16**
 - failure, **9:7**
 - generally, **9:6**
 - Hancock v. Watson, rule in, **9:7**
 - pension trusts, **9:7**
 - settlor's intention for gift of surplus, **9:8**
 - trust or gift, **9:7**
- Generally, **1:8, 9:1**
- Intention to buy asset but not make gift, **9:16**
- Land, see voluntary transfer resulting trusts
- Matrimonial property legislation, **9:14**
- Presumption of advancement
 - husbands and wives, **9:14**
 - parents and children, **9:13**
 - rebutting, **9:15**
- Presumptions, rebutting
 - advancement, **9:15**
 - effect of rebuttal, **9:15**
 - generally, **9:15**
 - illegal purposes, **9:15**
 - resulting trust, **9:15**
 - standard of proof, **9:15**
- Property obtained by fraud or theft, **9:16**
- Purchase money resulting trust
 - generally, **9:11**
 - gifts, debt payments and loans, **9:11**
- Unjust enrichment, **9:16**
- Voluntary transfer resulting trusts
 - Canada, **9:12**
 - England and Wales, **9:12**
 - generally, **9:12**

REVOCATION BY SETTLOR

- Exceptions to rule against revocation, **6:3**
- Generally, **6:2**
- Power of revocation
 - intention problems, **6:3**
 - tax problems, **6:3**
 - testamentary implications, **6:3**
- Setting trust aside, **6:4**

RIGHTS OF TRUSTEES

- Compensation, **16:2**
- Contribution/indemnification from fellow trustees, **16:4**
- Indemnification, **16:3**

RIGHTS OF TRUSTEES—Cont'd

- Rights inter se, **16:4**

SAUNDERS V. VAUTIER, RULE IN

- Generally, **1:14, 4:11, 5:4, 5:7, 6:3, 6:5**

SECRET COMMISSIONS AND, BRIBES

- Generally, **11:12**

SECRET TRUSTS

- Fully-secret trusts
 - failure of, consequences, **12:13**
 - generally, **12:13**
 - proof of intention, **12:13**
- Generally, **12:10**
- Nature and basis of constructive trust, **12:12**
- Semi-secret trusts
 - failure of, consequences, **12:14**
 - timing, **12:14**

SECURITY INTEREST

- Charges attached to gifts, **2:8**
- Deemed statutory trusts, **2:8**
- Generally, **2:8**

SETTING ASIDE

- Generally, **6:4**

SETTLOR

- As one of several trustees, **4:29**
- Capacity, **4:2 to 4:4**
- Defined, **1:5**
- Revocation of trust by, **6:2 to 6:3**
 - see also REVOCATION BY SETTLOR
- Surplus, intention re, gift issue, **9:8**
- Transfer of property to trustees, **4:31 to 4:33**

SHAM TRUSTS

- Generally, **4:6**

STATUTE OF FRAUDS

- Application, **12:5**
- Constructive trusts
 - oral trust of land, **10:4, 12:5**
 - secret trusts, and, **12:12**
- Express trusts
 - circumvention of statute, **4:44**
 - contract to create a trust, **4:41**
 - evidence of, inadmissibility of, **9:3, 9:4**

INDEX

STATUTE OF FRAUDS—Cont'd

- Express trusts—Cont'd
 - failure of, and imposition of constructive trust, **10:4**
 - formal requirements, **4:34, 4:39, 4:40**
 - inter vivos trusts, creation, **4:42**
 - testamentary formalities, **4:45**
 - transfer of equitable interests, **4:43**
- Historical requirement for writing in creation of trusts of land, **1:8**
- Resulting trusts
 - inter vivos disposition of interest, **9:15**
 - oral contract to sell land, **9:11**

STATUTE OF WILLS

- Generally, **1:4, 12:13**

STATUTORY TRUSTS

- Deemed, **1:10, 2:8**
- Described, **1:8**
- Modern uses, **1:12**

STRONG V. BIRD, RULE IN

- Generally, **4:27, 4:33**

SUBJECT-MATTER, CERTAINTY OF

- See also CERTAINTIES, THREE
- Generally, **4:7**
- Identification of property, **4:8**
- Uncertainty as to “anything left,” **4:9**
- Uncertainty in quantum, **4:10**

TERMINATION BY BENEFICIARY

- Case law, **6:6**
- Saunders v. Vautier, rule in, **6:5**

TRACING AND RECOVERY OF, TRUST ASSETS

- Bona fide purchaser, transfer of trust property to, **19:12**
- Common law, at, **19:2, 19:3**
- Equity, in
 - fiduciary relationship, need for, **19:6**
 - generally, **19:4**
 - trust vs. lien, **19:5**
- Generally, **19:1**
- Mixed trust assets
 - Clayton’s Case, rule in, **19:7**
 - generally, **19:7**
 - Oatway, principle in, **19:8**
 - presumptions against wrongdoers, **19:8**
 - pro rata sharing, **19:9**

TRACING AND RECOVERY OF, TRUST ASSETS—Cont'd

- Mixed trust assets—Cont'd
 - tracing into payment of debt, **19:10 to 19:11**
- Property claim, generally, **19:1**

TRANSFERS UPON DEATH

- See also PERFECTING INTENTIONS
- Mutual wills, **12:16 to 12:19**
- Secret trusts, **12:10 to 12:14**

TRUST ASSETS, RECOVERY OF

- Generally. see TRACING AND RECOVERY OF TRUST ASSETS

TRUSTEES

- Appointment of
 - additional trustees, **13:4, 13:6**
 - generally, **13:1**
 - judicial appointment, **13:5**
 - non-judicial appointment, **13:3 to 13:4**
 - number of
 - maximum, **13:6**
 - minimum, **13:7**
 - substitute trustees, **13:3**
- Capacity, **4:2**
- Constructive trustee, see KNOWING, ASSISTANCE AND RECEIPT
- Deadlocked, **13:11**
- Defined, **1:5**
- Duties, see DUTIES AND POWERS OF TRUSTEES
- Liability, see LIABILITY OF TRUSTEES
- Powers, see DUTIES AND POWERS OF TRUSTEES
- Removal
 - deadlocked trustees, **13:11**
 - generally, **13:10**
- Retirement of, **13:8 to 13:9**
- Rights of
 - compensation, **16:2**
 - contribution/indemnification from fellow trustees, **16:4**
 - indemnification, **16:3**
 - rights inter se, **16:4**
- Variation of trust by, **6:8**

TRUSTS

- Aboriginal land claims and, **1:18**
- settlement trusts, **1:19**

TRUSTS—Cont'd

Agency and, **2:2 to 2:4**
 Alteration, see **VARIATION OF TRUST**
 Arising by operation of law, **1:8**
 Bailment and, **2:5**
 Bare trust, **1:5**
 Beneficiary, **1:5**
 see also **BENEFICIARY**
 Cestui que trust, **1:5**
 Charitable trusts, see **CHARITABLE TRUSTS**
 Classification of, **1:6 to 1:14**
 Conditional gift and, **2:7**
 Constructive trusts, **1:8**
 see also **CONSTRUCTIVE TRUSTS**
 Contract and, **2:3**
 Corpus, **1:5**
 Creditors, to secure, **1:12**
 Debt and, **2:4**
 Deemed trust, **1:10**
 Definitions, **1:5**
 Development of, **1:3**
 Discretionary, **1:5**
 Dry trust, **1:5**
 Express trust, **1:7**
 Fiduciary relationship and, **1:5, 1:8**
 Fixed trusts, **1:5**
 see also **FIXED TRUSTS**
 Historical background, **1:2**
 Implied trusts, **1:8**
 In the higher and lower senses, **1:11**
 Modern uses of
 business/"income" trusts, **1:12**
 custodial trusts, **1:12**
 estate planning, **1:12**
 insurance trusts, **1:12**
 investment trusts, **1:12**
 liquidation trusts, **1:12**
 naked trusts, **1:5**
 pension trusts, **1:12**
 public trusts, **1:12**
 settlor, **1:5**
 statutory trusts, **1:9, 1:12**
 tax planning, **1:12**
 trusts to secure creditors, **1:12**
 voting trusts, **1:12**
 Non-charitable purpose trusts, see **NON-CHARITABLE PURPOSES TRUSTS**

TRUSTS—Cont'd

Oral trusts of land
 generally, **10:2, 12:2, 12:3, 12:5**
 nature and basis of trust, **12:5**
 Statute of Frauds and, **10:3, 12:5**
 Pension trusts, **1:12, 9:7**
 Personality, of, **1:4**
 Personal representative and, **1:15, 2:6**
 Power of appointment, **1:5**
 Protective trusts, **5:7**
 see also **LIMITATIONS ON CREATION**
 Quistclose trusts, **8:7**
 Resulting trusts, **1:8**
 see also **RESULTING TRUSTS**
 Revocation, **6:2 to 6:3**
 see also **REVOCATION BY SETTLOR**
 Secret trusts, **12:10 to 12:14**
 Security interest and, **2:8**
 Self-declared trust, **4:37**
 Setting aside, **6:4**
 Settlement trusts, **1:19**
 Sham trusts, **4:6**
 Simple trust, **1:5**
 Statute of Wills, **1:4**
 Statutory trusts, **1:9**
 see also **STATUTORY TRUSTS**
 Termination, **6:5 to 6:6**
 see also **TERMINATION BY BENEFICIARY**
 Trust corpus, **1:5**
 Trust instrument, **1:5**
 Trust property, **1:5**
 Trust res, **1:5**
 Trust subject-matter, **1:5**
 Variation, **6:7 to 6:13**
 see also **VARIATION OF TRUST**

UNINCORPORATED ASSOCIATIONS

Charitable organization, as, **7:2, 7:22**
 Disentitlement to act as trustee/beneficiary, **4:2**
 Trusts for, **8:11**

UNJUST ENRICHMENT

See also **CONSTRUCTIVE TRUSTS**
 Constructive trusts, and
 action in, **10:4, 10:9**
 generally, **10:4**
 good conscience and, **10:4**

INDEX

UNJUST ENRICHMENT—Cont'd

- Constructive trusts, and—Cont'd
 - remedial constructive trusts and, **10:4**
 - restitution and, **10:4**
 - restitutionary trusts, **10:9, 10:10**
 - wrongdoing, by, **10:4, 10:9**
- Resulting trusts, and, **9:5, 9:16**

USES

- Generally, **1:2**

VARIATION OF TRUST

- Application of statute
 - approval, **6:11**
 - arrangement requirement, **6:12**
 - benefit requirement, **6:13**
 - generally, **6:10**
- Common law, at, **6:7**
- Resettlement by settlor, **6:9**
- Trustee, by, **6:8**

VOLUNTARY TRANSFER RESULTING TRUSTS

- See also RESULTING TRUSTS
- Canada, **9:12**
- England and Wales, **9:12**
- Generally, **9:12**
- U.S.A., **9:12**

VOLUNTEERS, EQUITY WILL NOT ASSIST

- See also EXPRESS TRUSTS
- Donatio mortis causa, doctrine of, **4:27**
- Equity will not enforce a gratuitous promise, **4:25**
- Equity will not perfect an imperfect gift, **4:26**
- Exceptions, **4:27**
- Generally, **4:24**
- Proprietary estoppel, doctrine of, **4:27**
- Strong v. Bird, rule in, **4:27**

WRONGFUL GAINS

- Breach of confidence
 - confidential circumstances, **11:3**
 - confidential information, **11:3**
 - detriment, **11:3**
 - elements of claim, **11:3**
 - nature of claim, **11:4**
 - remedies for, **11:5**
- Breach of fiduciary duty
 - compensation, **11:6 to 11:7**
 - confidential information, use of, **11:10**
 - conflicting duties, **11:13**
 - constructive trust remedy, **11:6 to 11:7**
 - corporate and other opportunities
 - Canadian Aero Service Ltd. v. O'Malley, **11:11**
 - Peso Silver Mines Ltd. v. Cropper, **11:11**
 - Regal (Hastings) Ltd. v. Gulliver, **11:11**
 - disgorgement, **11:1, 11:6 to 11:7**
 - generally, **11:6 to 11:7**
 - purchase of trust property
 - application and exceptions, **11:8**
 - codification of rule, **11:8**
 - confidential information, use of, **11:10**
 - conflicting duties, **11:13**
 - corporate and other opportunities, **11:11**
 - miscellaneous examples, **11:15**
 - remedies, **11:8**
 - sale to trust, **11:9**
 - secret commissions and bribes, **11:12**
 - self-hiring, **11:14**
 - statement of rule, **11:8**
- Constructive trusts and, **11:1**
- Death, wrongful acquisition through
 - acquisition of property by murder, **11:17**
 - testamentary context, **11:18**
- Generally, **11:2**

