

Index

ABSENCE OF JURISTIC REASON. *See* JURISTIC REASON

ACCESSIO

degree and purpose of annexation, test of, 6:200.10
destruction of utility, test of, 6:200.10
doctrine of, 6:200.10
injurious removal, test of, 6:200.10
innocent improver, claim by, 6:200.10
separate existence, test of, 6:200.10

ACCOUNT

writ of, 1:100, 4:200.10, 5:400

ACCOUNTING. *See* EQUITABLE ACCOUNTING

ACQUIESCENCE

defence of, 3:500.30
estoppel by, 30:300
laches compared, 3:500.30
mistaken improver and, 12:400.10

AGENCY BY ESTOPPEL, 33:300

AGENCY OF NECESSITY, 31:200, 31:300.30, 31:300.50

AGENT

apparent or ostensible authority, 16:100
bribes to, 27:400.10, 27:500
change of position defence, available to, 10:400.20
estoppel, by, 33:300
fiduciary duty owed by, 27:200, 27:400.10
necessity, of, 31:200, 31:300.30, 31:300.50
unauthorized acts of, subrogation and, 8:300, 8:400
warranty of authority as, breach of, 16:100

ALTRUISTIC INTERMEDDLER, 31:100

AMBIGUITY

agreements which fail for, 17:300.40

ANTICIPATED CONTRACTS

benefit, expenditures that would otherwise be made, 21:200.30, 21:200.40
benefit, realized or realizable value, 21:200.10
benefits conferred under, 3:200.10
gifts distinguished, 21:300
gratuitous intent, 21:300
implied contract theory, 21:200
implied-in-fact agreements, 21:200
improper inducement, 21:200
improvements to land, 21:200.10, 21:200.30
offer and acceptance, 21:200
officiousness, 21:200, 21:200.30
withdrawal from negotiations, relevance of, 21:200.40

ANTICIPATED GIFTS

enforceable agreements distinguished, 21:300
expectation of reward, 21:300
gifts distinguished, 21:300
implied contract theory, 21:300
improper inducement, 21:300

ASSUMPSIT

(*See also* INDEBITATUS ASSUMPSIT)

general, 1:200
history of, 1:200
limitation periods and, 3:500.30
special, 1:200
use and occupation, for, 4:200.40, 24:200
waiver of tort and, 4:200.10, 24:100, 24:200

BANKS

confidential duty owed by, 28:200
fiduciary duty owed by, 27:200
interest rate swap contracts and, 11:500, 14:200.10
negligence in payments by, 10:300, 10:700.30
payment by, under mistake, 10:700
presumed to know signature of customer, 10:700.30, 10:700.50
right to recover mistaken payments, 10:700
risk of loss by forgery and, 10:700.30, 10:700.50
stop payment order and, 10:700.10
subrogation to payee or customer, 10:700.10
tracing money into, 6:300

BENEFIT

conduct of litigation as, 33:500
definition of, where object of agreement abandoned, 19:200, 19:300
element of general principle, 3:200.10
fulfilment of another's duty as, 12:200, 31:300.50, 32:100, 33:400
goods and services, 12:500

BENEFIT — *Continued*

incontrovertible, 3:200.10, 3:500.30, 12:400.20, 12:700, 32:200.20, 33:200.20
inevitable expenditure as a, 3:200.10, 12:300, 16:300, 17:300.40, 21:200.10
monetary and non-monetary compared, 12:100
money, 3:200.10
nature of, 3:200.10
near liquid, 33:400
negative, 3:200.10
plaintiff's expense, at the, 3:200.20, 3:400.30, 5:200.50, 11:700.20, 23:400, 24:400,
27:500, 32:100
presumption of, 17:400
profits from wrongdoing, 3:200.10
realized or realizable value, 3:200.10, 16:300, 21:200.10
requested, 3:200.10
subjective devaluation, 3:200.10, 12:700
through performance of a contract, 33:300
unjust enrichment principle and, 3:200
unrequested, 3:200.10, 16:300
value destroyed by frustration, 18:200, 18:300.20, 18:400

BENEFITS WRONGFULLY ACQUIRED BY THIRD PARTY

breach of contract, 36:200
common law: theft, tort, breach of contract, 36:200
equity: knowing receipt, 36:300
generally, 36:100
knowing receipt, 36:300
theft, 36:200
tort, 36:200

BETTERMENT STATUTES

compensation under, 12:400.30
forced sale under, 12:400.30
lasting improvements under, 12:400.30
lien under, 12:400.30
mistake of ownership under, 12:400.30
mistake of title or identity under, 12:400.30
mistaken improvements and, 12:400.30
reasonable mistake under, 12:400.30

BILLS OF EXCHANGE. *See* NEGOTIABLE INSTRUMENTS

BILLS OF LADING

frustration and, 18:300.20, 18:400

BILLS OF SALE LEGISLATION

informality and, 13:300

BONA FIDE PURCHASE

constructive trust and, 5:200
criminal, from, 23:200

BONA FIDE PURCHASE — *Continued*

currency, doctrine of, compared, 6:300
defence of, 3:500.20, 17:100, 17:500
equitable accounting and, 5:400
proprietary estoppel and, 30:300
rescission and, 5:500
tracing in equity and, 7:100, 7:400.20
undue influence and, 26:400.30

BRACTON, H. de, 1:100

BREACH OF CONTRACT, PROFITING FROM

(*See also* CONTRACTS DISCHARGED FOR BREACH, BENEFITS
WRONGFULLY ACQUIRED BY THIRD PARTY)

accounting remedy for, 25:400
apportionment and, 25:400
Atlantic Lottery Corp. Inc. v. Babstock, 25:600
availability of remedy in Canada, 25:400
beyond compensation, 25:300
breach of fiduciary duty compared, 25:400
Canadian position, 25:600
compensatory damages for compared, 25:100
constructive trust and, 25:400
discretionary aspects of award for, 25:400
disgorgement measure of relief for, 25:100, 25:200
efficient breach, doctrine of, 25:200
hypothetical release fee, 25:500
negotiating damages, 25:500
open-textured approach to, 25:400
pre-Blake doctrine, 25:300
proprietary interests protected, 25:300
Wrotham Park Damages, 25:500

BRIBES AND SECRET COMMISSIONS, 3:500.30, 5:200.40, 5:400, 27:400.10,
27:500

BUSINESS PRACTICES LEGISLATION

misrepresentations, statutory definition of, 20:500
remedies, 20:500
rescission, 20:500
statutory bars to rescission, 20:500
unconscionable transactions under, 29:400

CHANCERY, COURT OF

breach of confidence and, 28:100
constructive trust and, 5:200
equitable compensation and, 5:600
equitable remedies and, 5:100
equitable wrongdoing recognized by, 30:100, 34:100
fiduciary obligations and, 7:200, 27:200

CHANCERY, COURT OF — *Continued*

source of restitutionary principles, 1:300
undue influence and, 26:400

CHANGE OF POSITION

agent, by, 10:400.20
American law, in, 2:200, 3:500.10, 10:400.20, 10:500.10
anticipatory reliance and, 10:500.10
availability to wrongdoer, 10:500.10
bills of exchange and, 10:400.20
bona fide purchase compared, 3:500.20
breach of contract and, 19:300
Canadian law, in, 10:500.10
Commonwealth courts, acceptance by, 10:500.10
defence of, 2:200, 3:500.10, 6:300, 7:400.20, 11:700.10, 12:600, 22:400
detrimental reliance and, 10:400.20, 10:500.10

(The next page is IN-5)

CHANGE OF POSITION — *Continued*

elements of, 10:400.20, 10:500.10
English law, in, 10:400.20, 10:500.10
estoppel, co-existing with, 10:500.30
estoppel compared, 3:500.10, 10:400.10, 10:400.20
fault, assessment of, and, 10:400.20
mistake of fact and, 10:400.20
mistake of law and, 11:500, 11:700.10
modern restatement of, 10:500.10
negligence and, 10:500.10
negotiable instruments and, 10:700.10, 10:700.30
ordinary expenses and, 10:500.10
pro tanto aspect of, 10:400.10, 10:400.20, 10:500.10
tracing and, 6:300, 7:400.20
traditional doctrine, availability under, 10:400.20
unauthorized payments by a public authority, in cases of, 11:400.110
want of authority, contracts void for, and, 16:200

CHARTERPARTIES

frustration and, 18:300.20, 18:400

CHEQUES. *See* NEGOTIABLE INSTRUMENTS

CHOSE IN ACTION

tracing at law through, 6:300

CLAYTON'S CASE

competing beneficiaries, application to, 7:400.10
rule in, 7:300.10

CO-INSURERS

contribution between, 9:200
determination of rateable proportion, 9:200
double insurance, 9:200
limit on contribution claim, 9:200
prerequisites for contribution claim, 9:200

COLORE OFFICII

compulsory discharge of another's liability and, 32:300
doctrine of, 11:400.130, 22:200, 22:300, 22:300.30, 26:300.10
public authorities and, 11:400.130, 22:200, 22:300.10
Woolwich principle compared, 22:300.20

COMMON COUNTS

description of, 4:200
history of, 1:200
modern restitutionary claim and, 4:300

CO-MORTGAGORS

contribution between, 9:200

COMPULSION

constructive trust, in cases of, 5:200.60.20, 26:300.10
discharge of another's liability, 32:100, 32:200, 32:300
duress, 26:200
economic duress, 26:300.20
mistake of fact and, 26:300.10
mistake of law and, 11:400.130, 26:300.10
officiousness and, 8:400, 32:100, 32:400.10
practical, 26:300.10
undue influence, 26:400
unjust enrichment principle and, 3:400.30, 26:100
“urgent and pressing necessity” test, 22:300.30, 26:300.10

COMPULSORY DISCHARGE OF ANOTHER'S LIABILITY

assignment of leases, 32:200.10
common law, at, 32:200.10
distrain of chattels, 32:300
elements of claim, 32:100
encumbrances, removal of, 32:300
general rule, 32:100
gifts and, 32:400.20
indemnity and, 9:300
Moule v. Garrett, rule in, 9:300, 32:100
negotiable instruments, 32:200.10
officiousness and, 32:400.10
practical compulsion, by, 32:300
statute, by, 32:200.20
surety, claim by, 32:200.10, 32:400.10
unjust enrichment principle and, 32:100, 32:200.20, 32:400.20
voluntary payment and, 32:400.10

CONFIDENCE, BREACH OF

apportionment and, 5:400, 28:300
constructive trust, in cases of, 5:400, 28:300
doctrine of, 28:100
elements of, 28:200
equitable accounting, in cases of, 28:300
equitable compensation, in cases of, 28:300
injunctive relief, in cases of, 28:300
just cause or excuse defence, 28:400
mixed public and private knowledge, 28:200
privacy, right to, compared, 28:250
public interest in disclosure, 28:400
quantum meruit, in cases of, 28:300
remedies available for, 28:300
sui generis nature of, 28:100, 28:300
tort of, 28:100
unjust enrichment principle and, 3:400.30, 28:100

CONFIDENTIAL INFORMATION, 27:200, 28:100, 28:200, 28:300, 28:400

CONFUSIO AND COMMIXTIO

doctrine of, 6:200.20

CONSCIOUS WRONGDOING

accessio, under doctrine of, 6:200.10

breach of confidence, in cases of, 28:300

breach of fiduciary duty, in cases of, 27:500

confusio and *commixtio*, under doctrine of, 6:200.20

specificatio, under doctrine of, 6:200.30

waiver of tort, in cases of, 24:400

CONSTRUCTIVE FRAUD, 2:200, 3:400.30, 5:200.30, 12:400.10, 26:400, 27:200, 28:100, 29:100, 30:100

CONSTRUCTIVE TRUST

acquisition, maintenance or improvement of property, 5:200.60.40

advantages of, 5:200

arising out of express trusts, 5:200.10

arising out of fraud, 5:200.30

arising out of other fiduciary relationships, 5:200.20

benefits conferred under informal agreements and, 13:500

breach of confidence, in cases of, 5:400, 28:300

breach of contract and, 25:400

breach of fiduciary duty, in cases of, 5:200.20, 27:100, 27:400.20, 27:500

bribes and secret commissions and, 5:200.60, 27:400.10, 27:500

compulsion, in cases of, 5:200.60.20

contractual mistake and, 17:500

contractual misunderstanding and, 17:500

creditor *in invitum* and, 5:200.60.20

definition, 5:200

fiduciary relationship, need for, 5:200, 7:200

general remedial device, 1:300, 5:200, 5:200.40

good conscience and, 5:200.50

history of, 1:300

implied trust theory, 1:300, 5:200

inadequacy of relief at common law and, 5:200.60.10

limitation periods and, 3:500.30, 5:200

mistaken payments, in cases of, 5:200.60.20, 10:600

murder by joint tenant, in cases of, 5:200.40, 23:200

murder by remainderman, in cases of, 23:200

need for *res*, 5:200.60.40

passage of legal title and, 7:200

profits of wrongdoing and, 5:200.40, 5:200.60.30

property disputes between cohabitants, in cases of, 5:200, 34:500

proprietary estoppel, in cases of, 30:300

reach of the modern doctrine, 5:200.60

time of arising, 5:200.70

CONSTRUCTIVE TRUST — *Continued*

tracing in equity and, 7:400
waiver of tort, in cases of, 5:200.60.30

CONSUMER PROTECTION LEGISLATION

(*See also* UNCONSCIONABLE TRANSACTION LEGISLATION)

informality and, 13:300
unconscionability and, 29:400

CONTRACTS DISCHARGED FOR BREACH

advantages of restitutionary claim, 19:200
benefit, definition where object of agreement abandoned, 19:200, 19:300
change of position, 19:300
constructive trust, claim by innocent party, 5:200.60.30, 19:200
deposits, 19:200, 19:300
entire contracts, 19:300
expenses, set-off or counterclaim for, 19:300
forfeiture of instalments, 19:300
implied contract theory, 19:300
measure of relief, relationship of contract price, 19:200, 19:300
measure of relief, relationship of contractual measure, 19:200
money had and received, 19:200, 19:300
proprietary claims, 19:200
recovery by innocent party, 19:200
recovery by party in default, 19:300
substantial performance, doctrine of, 19:300
total failure of consideration, 19:200, 19:300

CONTRIBUTION

adjacent owners, claim between, 9:200
basis of claim, 9:100
co-insurers, claim between, 9:200
co-mortgagors, claim between, 9:200
co-sureties, claim between, 9:200
co-trustees, claim between, 9:200
directors, claim between, 9:200
gaps in general law, 9:200
general applicability of doctrine, 9:200
hotchpot, doctrine of, 9:200
indemnity, right to, compared, 9:100
joint contractors, claim between, 9:200
joint tenants, claim between, 9:200, 33:200.20
limit on amount claimed by co-insurer, 9:200
limit on amount claimed by co-surety, 9:200
modification by contract, 9:200
origins of doctrine, 9:100
partners, claim between, 9:200
prerequisites for claim by co-insurer, 9:200
prerequisites for claim by co-surety, 9:200

CONTRIBUTION — *Continued*

right to, 9:200
sharing the burden of the loan compared, 7:400.10, 9:200
sub-surety, claim by, 9:200
tortfeasors, claim between, 9:200
when right arises for co-surety, 9:200
when right is lost for co-surety, 9:200

CONVERSION

action for, 6:200.10
illegal contracts and, 15:400
waiver of tort of, 24:300

CORPORATIONS

claims against, 14:200.10
claims by, 14:200.20
“corporate opportunities”, breach of fiduciary duty and, 27:400.20
ultra vires loans to, subrogation and, 8:300

CORRESPONDING DEPRIVATION

disgorgement and, 3:200.20
element of tri-partite principle, 3:200.20
plaintiff’s expense, at the, compared, 3:200.20

CO-SURETIES

contribution between, 9:200
death, effect of, 9:200
extension of time, 9:200
insolvency of principal debtor, 9:200
limit on contribution claim, 9:200
prerequisites for contribution claim, 9:200
rateable sharing, 9:200
release of, 9:200
release of principal debtor, 9:200
unjust enrichment principle and, 9:100
when contribution right arises, 9:200
when contribution right is lost, 9:200

CO-TRUSTEES

contribution between, 9:200

COVENANT

writ of, 1:200

CREDITOR IN INVITUM

constructive trust and, 5:200.60.20
tracing in equity and, 7:200

CRIME, BENEFITS FROM

“accident”, meaning of, 23:300
arson, 23:300

CRIME, BENEFITS FROM — *Continued*

attainder and forfeiture, 23:200
bona vacantia, 23:200
common law rule, 23:200
constructive trust, in cases of, 23:200
“dependent” and “independent” rights, 23:200
disgorgement of profits, 24:400
indemnity insurance, claims under, 23:200, 23:300
independent statutory claim, 23:300
Insurance Acts, 23:300
“intentional” and “unintentional” crimes, 23:200, 23:300
joint tenant, by, 23:200
manslaughter, 23:200
“motor manslaughter” cases, 23:300
murder, 23:200
public policy in indemnity cases, 23:300
remainderman, by, 23:200
scope of doctrine of denial, 23:200
“Son-of-Sam” laws, 23:400
succession to property, 23:200
unjust enrichment principle and, 23:100

CRIMINAL CODE, 11:700.30, 23:200, 23:400, 26:200, 26:200.30, 31:300.50

CURRENCY

doctrine of, 6:300

DEBT

sur contract, 1:100
sur obligation, 1:100
writ of, 1:200

DECEIT

fraud threshold for, 5:600, 20:100
waiver of tort of, 24:300

DEFENCES

acquiescence, 3:500.30
bona fide purchase, 3:500.20, 17:100, 17:500
change of position, 3:500.10, 10:400.20, 10:500.10, 11:700.10, 12:600, 22:400
equitable, 3:500
estoppel, 3:500.10, 10:400.10, 10:500.30, 11:700.10, 12:600
general, 3:500
good consideration, 10:500.20
laches, 3:500
limitation periods, 3:500.30
passing on, 11:700.20, 22:400

DETINUE

action for, 6:100, 24:300

DETINUE — *Continued*

waiver of tort of, 24:300

DIRECTORS

contribution between, 9:200

fiduciary duty owed by, 27:200, 27:400.10

serving with competing firms, 27:400.10

DISCHARGE OF ANOTHER'S LIABILITY

compulsory, 32:100, 32:200, 32:300, 32:400

indemnity for, 9:300

mistake, in, 12:200, 32:400.10, 32:400.20

DISGORGEMENT

corresponding deprivation and, 3:200.20

measure of, 3:200.20

monetary disgorgement, 5:400

pure forms of, 3:200.20

remedy for wrongdoing, 3:200, 3:200.20

DRUNKARDS' CONTRACTS. *See* INTOXICATION

DURESS

(*See also* COMPULSION)

abuse of legal process, 22:200, 26:200.30

actions at common law, in cases of, 26:200

civil litigation, threat of, 26:200.30

constructive trust, in cases of, 5:200.60.20

contract voidable for, 26:200

crime of, 26:200

criminal prosecution, stifling of, 26:200.30

deeds, of, 26:200.20

economic, 26:100, 26:300.20

false imprisonment, 26:200.10

fungibles, of, 26:200.20

goods, of, 22:200, 26:200.20

goods, of another's, 26:200.20

illegitimate pressure, 26:200, 26:300.20

insurance policies, of, 26:200.20

lowering the threshold, of, 11:400.130, 22:300.30

per minas, 26:200.10

protest, necessity for, 26:200

public authorities, by, 22:200

realty, of, 26:200.20

Skeate v. Beale, rule in, 26:200, 26:200.20

threat to life or limb, 26:200.10

tort of, 26:200

traditional categories, 26:200.10, 26:200.20, 26:200.30

unjust enrichment principle and, 3:400.30

“urgent and pressing necessity” test, 26:300.10

DURESS — *Continued*

vessels, of, 26:300.10
violence, actual or threatened, 26:200.10
voluntary payment and, 26:200
wrongful arrest and, 26:200.30

DUTY OF LOYALTY

(*See also* FIDUCIARY DUTY, BREACH OF; FIDUCIARY RELATIONSHIP)

breach of, 27:400
“conflict” rule, 27:400.10
“profit” rule, 27:400.20
prophylactic nature of, 27:400, 27:500
remedies available for breach of, 27:500
scope of, 27:300
statement of, 27:400
strict accountability for breach of, 27:100, 27:300
undertakings and, 27:400

ECONOMIC DURESS

(*See also* PRACTICAL COMPULSION)

American terminology, 26:100
Canadian recognition of, 26:300.20
“coercion of will” theory, 26:200, 26:300.20
compulsory discharge of another’s liability and, 32:300
English origins of, 26:300.20
illegitimate pressure, 26:300.20
no “realistic alternative”, 26:300.20
practical compulsion compared, 26:300
unconscionable transaction compared, 29:300

ENGLISH BILL OF RIGHTS, 22:300

ENTIRE CONTRACTS

breach of contract and, 19:300
doctrine of frustration and, 18:200, 18:400

EQUITABLE ACCOUNTING

apportionment, 5:400
breach of confidence, in cases of, 5:400, 28:300
breach of contract, in cases of, 25:400
breach of fiduciary duty, in cases of, 5:400, 27:400.20, 27:500
monetary disgorgement and, 5:400
partition, in cases of, 33:200.20
restitutio in integrum and, 5:400
property disputes between cohabitants, in cases of, 5:400, 34:500
time period for, 5:400, 27:500
waiver of tort, in cases of, 24:400

EQUITABLE ALLOWANCE

breach of confidence, in cases of, 28:300
breach of fiduciary duty, in cases of, 27:500
want of authority, in cases of, 16:400

EQUITABLE COMPENSATION

breach by express trustee, in cases of, 5:600
breach by non-trustee fiduciary, in cases of, 5:600
breach of confidence, in cases of, 28:300
breach of fiduciary duty, in cases of, 27:500
common law damages compared, 5:600
history of, 5:600
knowing assistance and knowing receipt, in cases of, 5:200.10
Lord Cairns' Act, and, 5:600
remedy of, 5:600
restitutionary relief compared, 5:600

EQUITABLE DAMAGES. *See* EQUITABLE COMPENSATION

EQUITABLE FRAUD. *See* CONSTRUCTIVE FRAUD

EQUITABLE LICENCE. *See* PROPRIETARY ESTOPPEL

EQUITABLE LIEN

breach of fiduciary duty, in cases of, 27:400.20, 27:500
compared to constructive trust, 5:300
contractual mistake and, 17:500
contractual misunderstanding and, 17:300.40, 17:500
imposition of terms, possibility of, 5:300
indemnity insurance, in cases of, 5:300, 8:200
mistaken improvements to property, in cases of, 5:300, 12:700
mistaken payments, in cases of, 10:600
mixed property, claim on, 5:300, 7:400
profits from wrongdoing, in cases of, 5:300
proprietary estoppel, in cases of, 30:300
subrogation and, 8:200
tracing in equity and, 7:400

EQUITABLE WRONGDOING

breach of confidence and, 28:100
dishonoured undertakings and, 30:300
examples of, 30:100
nature of, 30:100
property disputes between cohabitants and, 34:100
proprietary estoppel and, 30:300
Statute of Frauds and, 30:200
unjust enrichment principle and, 30:100

EQUITY: KNOWING RECEIPT. *See* KNOWING RECEIPT**ERROR IN SUBSTANTIALIBUS**

contracts unenforceable for, 17:200
rescission not precluded by execution in cases of, 20:300.50

ESTOPPEL

absolute nature of, 10:400.10, 10:500.30
accuracy, duty of, and, 10:400.10
agency created by, 33:300
change of position, co-existing with, 10:400.20
change of position compared, 3:500.10, 10:400.10, 10:400.20
defence of, 3:500.10, 10:400.10, 10:500.30, 12:600
deficiencies of, 10:400.10, 10:500.10
detrimental reliance and, 10:400.10
elements of, 10:400.10
forged instruments and, 10:700.30
implicit representations and, 10:400.10
mistake of fact and, 10:400.10, 10:500.30
“paymaster cases”, 10:400.10
proprietary, 30:300
representation, payment as, 10:400.10
rule of evidence, as a, 10:400.10
ultra vires contracts and, 14:200.20

EXEMPLARY DAMAGES. *See* PUNITIVE DAMAGES**EXISTING CATEGORIES**

cases falling outside of, 2:300, 3:200.30, 32:400.20, 34:100
meaning of, 3:200.45
traditional categories compared, 3:200.45
“unjust factors” compared, 3:200.45

EXPENSE, ENRICHMENT AT PLAINTIFF’S, 3:200.20, 3:400.30, 5:200.50,
11:700.20, 22:300.10, 23:400, 24:400, 27:500, 32:100

FIDUCIARY DUTY, BREACH OF

accounting of profits and, 5:300, 27:400.20, 27:500
apportionment and, 5:200.60.30, 5:400, 27:500
bribes, in cases of, 27:400.10, 27:500
competition with principal, in cases of, 27:400.10, 27:500
confidential information, in cases of, 27:200, 27:400.20, 27:500, 28:100
“conflict” rule, 27:400.10
constructive trust and, 5:200.20, 27:400.10, 27:400.20, 27:500
“corporate opportunities” and, 27:400.20
equitable compensation for, 5:600, 27:500
equitable lien and, 27:400.20, 27:500
failure to disclose interest, in cases of, 27:400.10
injunctive relief and, 27:400.20
innocent and conscious wrongdoer distinction, 27:500

FIDUCIARY DUTY, BREACH OF — *Continued*

loyalty, duty of, breach of, 27:400
“profit” rule, 27:400.20
remedies available for, 27:100, 27:500
rescission and, 5:400
secret commissions, in cases of, 27:400.10, 27:500
self-dealing, in cases of, 27:400.10
third party transactions, in cases of, 27:400.10
tracing and, 7:200
trust property, purchase of, in cases of, 27:400.10
trust property, sale of, in cases of, 27:400.10
trust property, speculation with, in cases of, 27:400.20
unjust enrichment principle and, 3:400.30, 27:500

FIDUCIARY RELATIONSHIP

ad hoc relationships, 27:200
administrator and beneficiary, 27:200
bank and customer, 27:200
confidence, breach of, and, 27:200, 28:100
constructive trust and, 5:200.20
Crown and Aboriginal peoples, 22:100, 27:200
Crown and its servants, 27:200, 27:400.10
definition of, 27:200
director and corporation, 27:200, 27:400.10, 27:400.20
doctor and patient, 27:200
employer and employee, 27:200
essential features of, 27:200
establishment of, 27:200
executor and beneficiary, 27:200, 27:400.10
financial advisor and client, 27:200
guardian and ward, 27:200
joint venturers, 27:200
officer and corporation, 27:200, 27:400.20
parent and child, 27:200
partners, 27:200, 27:400.10
per se relationships, 27:200
principal and agent, 27:200, 27:400.10
promoter and investor, 27:200, 27:400.20
public office holders, 27:200
solicitor and client, 27:200, 27:400.20
spiritual leader and devotee, 27:200
tracing in equity, prerequisite for, 7:200
traditional categories of, 27:200
trustee and *cestui que trust*, 5:200.10, 27:200, 27:400.10
undertaking, centrality of, 27:200
undue influence and, 26:400

FINDERS' CASES, LOST ASSETS, 35:600**FRAUD**

(See also CONSTRUCTIVE FRAUD; DECEIT)

constructive trust arising out of, 5:200.30
illegal contracts and, 15:300.30, 15:400
inducement of gifts and, 21:300

FRUSTRATED CONTRACTS

analogous situation, 5:200.60.40, 34:300
application of old Uniform Act, 18:300.20
apportionment of losses, 18:200, 18:300.20, 18:400
benefit, where value destroyed by frustration, 18:200, 18:300.20, 18:400
bills of lading and, 18:300.20, 18:400
Chandler v. Webster, rule in, 18:100, 18:200, 18:300.20
charterparties and, 18:300.20, 18:400
doctrine of, 3:200.10
entire contracts, 18:200, 18:400
implied contract theory and, 18:200
indemnification for expenses under new Uniform Act, 18:400
indemnification for expenses under old Uniform Act, 18:300
insurance contracts and, 18:300.20, 18:400
legislation on, generally, 18:100
measure of relief, old Uniform Act and, 18:300
money had and received, 18:300
new Uniform Act, recovery under, 18:400
old Uniform Act, recovery under, 18:300
recovery at common law, 18:200
recovery of money paid under old Uniform Act, 18:300.10
recovery of non-monetary benefits under old Uniform Act, 18:300.20
risk allocation, relevance of, 18:200, 18:400
sale of goods, partial delivery, 18:200
sale of specific goods and, 18:300.20, 18:400
total failure of consideration and, 18:200
unjust enrichment principle, relevance of, 18:200

FRUSTRATION. See FRUSTRATED CONTRACTS

GERMANY, LAW OF, 10:500.10

GIFTS

benefits conferred in anticipation of, 21:300
compulsory discharge of another's liability and, 32:400.20
donatio mortis causa, 26:400
improvements to property and, 5:200.60.40
inter vivos, 26:400
limiting principle of, 3:200.30, 32:400.20
mistake of fact, made under, 3:200.30, 10:300.30, 10:300.40
proprietary estoppel, in cases of, 30:300
rescission, in cases of, 5:500

GIFTS — *Continued*

security of transactions, policy of, and, 3:200.30
undue influence and, 26:400
wrongful conduct, induced by, 3:200.30

GOOD FAITH

(*See also* BONA FIDE PURCHASE)

duty in bargaining, 17:400
duty in performance, 25:100
payments made in, 10:700.40

HOTCHPOT

doctrine of, 9:200

ILLEGAL CONTRACTS

collateral agreements, 15:400
collateral claims, 15:400
conversion, 15:400
critique of traditional doctrine, 15:700
enforceability of agreement, 15:100
exceptions to general rule, 15:300
execution of agreement, relevance of, 15:300
fraud and, 15:300.30
fraudulent misrepresentation, 15:400
general rule denying restitution, 15:200
Holman v. Johnson principle, the, 11:400.120, 15:100, 15:200, 15:700
in pari delicto, 15:300.20, 15:700
locus poenitentiae, 15:300.40
Lodge's case, rule in, 15:500
membership in a protected class and, 15:300.20
mistake of fact and, 15:300.10
mistake of law and, 11:700, 15:700
modes of payment, relevance of, 15:700
Moneylenders Acts, 15:500
oppression and, 15:300.30
other forms of wrongdoing and, 15:300.30
passage of property, 15:600
passive relief, 15:500
public policy and, 15:300.50, 15:700
repentance, requirement of, 15:300.40
restatement of the liability rule, 15:700
undue influence and, 15:300.30

IMPLIED CONTRACT THEORY

anticipated contracts and, 21:200
anticipated gifts or legacies and, 21:300
benefits conferred under agreement discharged for breach, 19:300
benefits conferred under mistaken assumption, 33:300
compulsory discharge of another's liability and, 32:300, 32:400

IMPLIED CONTRACT THEORY — *Continued*

contracts unenforceable for incapacity and, 14:100
defences and, 3:500
description, 1:200
illegal contracts and, 15:100
minors' contracts and, 14:300
mistaken payments and, 10:500.10
necessitous intervention and, 31:100, 31:300.20
rejection of in Canada, 1:400, 2:200
rejection of in United Kingdom, 1:400
self-serving intervention and, 33:200.10
ultra vires contracts and, 14:200
volunteer rule and, 33:400
waiver of tort and, 24:200, 24:300, 24:400, 24:500
want of authority, contract void for, and, 16:300

IMPROVEMENTS TO CHATTELS

active redress for, in cases of mistake, 12:500
“coal trespass” cases, 12:500
measure of damages, 12:500
necessitous intervention and, 31:300.30
passive redress for, in cases of mistake, 12:500
unjust enrichment principle and, 12:500

IMPROVEMENTS TO LAND

active redress for, in cases of mistake, 12:400.10
agency analysis of improver's claim, 33:300
agreements void for uncertainty and, 17:400
anticipated contracts and, 21:200.10, 21:200.30
“betterment” statutes, relief under, 12:400.30
common law and equitable claims compared, 12:400.10
contractual mistake and, 17:200
co-owners, by, 33:200.20
life-tenants, by, 33:200.20
mistake, by, 12:400
mistake as to ownership by supplier, 33:300
modern mistake doctrine, 12:400.20
necessitous intervention and, 31:300.30
passive redress for, in cases of mistake, 12:400.10
set-off, in cases of, 12:400.10
sole owners, by, 33:200.10
subcontractors, by, 33:300
traditional mistake doctrine, 12:400.10
unjust enrichment principle and, 12:400.20

INDEX

IN PARI DELICTO, 11:400.120, 11:400.130, 15:300.20, 15:700, 22:300.30, 22:400, 26:200.30

INCAPACITY

contracts affected by intoxication, 14:400
contracts affected by mental incapacity, 14:400
contracts unenforceable for, 14:100
minors' contracts, 14:300
pre-incorporation contracts, 14:200.20
subrogation and, 14:400
ultra vires contracts, 14:200

INCOMPETENCY, MENTAL. *See* MENTAL INCAPACITY, CONTRACTS AFFECTED BY

INDEBITATUS ASSUMPSIT

history of, 1:200
waiver of tort and, 24:100

INDEMNITY

basis of claim, 9:100, 9:300
compulsory discharge of another's liability and, 9:300, 32:400.10
contribution, doctrine of, compared, 9:100
money paid, action for, and, 9:300
right to, 9:300
surety, claim by, 9:300, 32:200.10, 32:400.10
unjust enrichment principle and, 9:300

INEFFECTIVE TRANSACTIONS

ambiguity, contracts that fail for, 17:300.40
anticipated contracts, 21:200
anticipated gifts and legacies, 21:300
breach, contracts discharged by, 19:200, 19:300
common mistake, contracts unenforceable for, 17:200
frustrated contracts, 18:200, 18:300, 18:400
illegal contracts, 15:100, 15:200, 15:700
incapacity, contracts unenforceable for, 14:100, 14:200, 14:300, 14:400
informality, contracts unenforceable for, 13:100, 13:200, 13:300
misrepresentation, contracts voidable for, 20:100, 20:200
mistake in assumptions, contracts unenforceable for, 17:200
mistake in identity, contracts void or voidable for, 17:300.30
mistake of law, recovery under doctrine of, 11:700.50
misunderstanding, contracts unenforceable for, 17:300
non est factum, contracts void for, 17:300.20
offer and acceptance, failed attempts at, 17:300.10
uncertainty, contracts that fail for, 17:400
unjust enrichment arising from, 3:400.20

INFANTS' CONTRACTS. *See* MINORS' CONTRACTS

INFORMALITY

agreements enforceable under modern legislation, 13:300
bills of sale legislation and, 13:300
consumer protection legislation and, 13:300
contracts unenforceable for, 13:200, 13:300
forfeiture of part payments and, 13:400
measure of recovery, relevance of contract price, 13:200
measure of recovery for value of unrequested improvements, 13:200
Moneylenders Acts and, 13:300
proprietary relief, 13:500
real estate brokers legislation and, 13:300
recovery by non-performing plaintiff, 13:400
recovery of benefits conferred under informal agreements, 13:100, 13:200
recovery where agreement performed by defendant, 13:400
Statute of Frauds and, 13:200, 13:500

INNOCENT VOLUNTEER, 3:300, 5:200.10, 6:300, 7:200, 7:400.20, 8:400,
31:300.30, 32:400.10, 33:400

INNOCENT WRONGDOING

accessio, under doctrine of, 6:200.10
breach of confidence, in cases of, 28:300
breach of fiduciary duty, in cases of, 27:500
confusio and *commixtio*, under doctrine of, 6:200.20
specificatio, under doctrine of, 6:200.30
waiver of tort, in cases of, 24:400

INSURANCE CONTRACTS

frustration of, 18:300.20, 18:400

INTERFERENCE WITH CONTRACTUAL RELATIONS

waiver of tort of, 24:300

INTERMEDDLER. *See* INTERMEDDLING; OFFICIOUSNESS

INTERMEDDLING

altruistic, 31:100, 31:200, 31:300
self-serving, 3:300, 33:100, 33:200, 33:300, 33:400, 33:500

INTOXICATION

contracts affected by, 14:400

ISRAEL, LAW OF, 23:400, 25:300

JOINT CONTRACTORS

contribution between, 9:200
co-sureties compared, 9:200

JOINT TENANTS

benefits from crime, 23:200

JOINT TENANTS — *Continued*

contribution between, 9:200
murder of one by another, 23:200

JUDICATURE ACTS, 1:400, 4:100, 5:600, 7:200, 34:100

JURISTIC REASON

absence of, as a requirement, 3:200.30, 3:200.40
approval of regulatory authority, as, 3:200.40, 11:700.30
contract, as, 3:200.30, 3:200.40
discharge of debt, as, 10:700.20
element of tri-partite principle, 3:200.20
gift, as, 3:200.30, 3:200.40
presumptive case for the absence of, 2:300, 3:200.05
public policy considerations and, 2:300, 3:200.40
reasonable expectations and, 2:300, 3:200.40
rebutting the presumptive case, 2:300, 3:200.40
reformulation of analysis of absence of, 2:300, 3:200.40
statute as, 3:200.30, 3:200.40, 12:300
two-stage approach to, 2:300, 3:200.40
unjust enrichment compared, 3:200.30
valid common law, equitable or statutory obligations as, 2:300, 3:200.40

JUS ACCRESCENDI, 3:400.30, 5:200.40, 23:200

JUST CAUSE OR EXCUSE

defence of, 28:400

KNOWING ASSISTANCE

equitable doctrine of, 5:200.10, 7:400

KNOWING RECEIPT

elements, 36:300.20
equitable doctrine of, 5:200.10, 7:400
knowing assistance, vs., 36:300.10
proprietary link, need for, 36:300.40
strict liability, a possible reform, 36:300.30

LACHES, 3:500.30, 5:500, 10:400, 20:300.40, 26:400.30

LAW MERCHANT, 6:300

LEGACIES, BENEFITS CONFERRED IN ANTICIPATION OF. *See*
ANTICIPATED GIFTS

LIBEL

waiver of tort of, 24:300, 24:500

LIEN. *See* EQUITABLE LIEN

LIMITATION PERIODS

constructive trust and, 3:500.30, 5:200
legislation, 3:500.30

LIMITATION PERIODS — *Continued*

waiver of tort and, 24:100

LOANS

mentally incompetent borrower and, 14:400

ultra vires the borrower corporation, 8:300, 14:200.10

ultra vires the lender corporation, 14:200.20

LOCUS POENITENTIAE. *See* ILLEGAL CONTRACTS

LOST ASSETS (FINDERS' CASES), 35:600

MANIFEST DISADVANTAGE

doctrine of, 26:400.30

MARITIME LAW

agency of necessity, origins of, in, 31:200

general average contribution, 8:200

load line conventions, 15:100

maritime lien, 31:300.30

salvage, under, 31:300.30

“shipmasters” cases, 31:200

MARRIED WOMEN

matrimonial property disputes and, 34:100, 34:800

subrogation for necessities supplied to, 8:300

MATRIMONIAL PROPERTY DISPUTES

(*See also* PROPERTY DISPUTES BETWEEN COHABITANTS)

constructive trust, in cases of, 2:200, 5:200.40

legislation and, 5:200.40, 34:800

MENTAL INCAPACITY, CONTRACTS AFFECTED BY

fairness, requirement of, 14:400

intoxication, contracts affected by, 14:400

necessaries supplied, claim for value of, 14:400

restoration of *status quo ante*, 14:400

subrogation to claim of supplier of necessities, 8:300, 14:400

voidability, 14:400

voidness, 14:400

MENTAL INCOMPETENCY. *See* MENTAL INCAPACITY, CONTRACTS
AFFECTED BY

MINORS' CONTRACTS

claims against minor, 14:300

claims by minor, 14:300

subrogation for necessities supplied under, 8:300

subrogation to vendor's lien and, 8:300

supply of necessities under, 14:300

MISREPRESENTATION

(See also BUSINESS PRACTICES LEGISLATION)

affirmation, 20:300.30
bars to relief, 20:300
continuing duty to disclose, 20:200.50
elements giving rise to rescission, 20:200
error in substantialibus, 20:300.50
execution of agreement, 20:300.50
fact, of, 20:200.10
inability to make *restitutio*, 20:300.10
laches, 20:300.40
law, of, 20:200.30
legislation dealing with, 20:400
limitations on relief, 20:300
materiality, 20:200.40

(The next page is IN-23)

MISREPRESENTATION — *Continued*

non-disclosure as, 20:200.50
opinion, of, 20:200.20
partial and misleading disclosure, 20:200.50
reliance, requirement of, 20:200.40
third party rights, intervention of, 20:300.30
uberrima fides agreements, 20:200.50

MISTAKE

constructive trust, in cases of, 5:200.60.20, 10:600, 12:300
contractual and restitutionary claims distinguished, 10:200, 10:500
discharge of another's obligation by, 12:200
discharge of debt by creditor, 12:300
improvements to chattels under, 12:500
improvements to land under, 12:400, 33:300
monetary and non-monetary benefits compared, 12:100
negotiable instruments and, 10:700
non-monetary benefits, restatement of doctrine relating to, 12:700
unjust enrichment arising from, 3:400.10, 12:100, 12:400.20, 12:700

MISTAKE IN ASSUMPTIONS, CONTRACTS UNENFORCEABLE FOR

common mistake, requirement of, 17:200
compromise, application to agreement of, 17:200
contracts void for, 17:200
contracts voidable for, 17:200
equitable mistake doctrine, 17:200
error in substantialibus, 17:200
fundamental mistake, 17:200
mistake of law and, 17:200
money had and received, 17:200
non-existence of subject-matter, 17:200
private rights, mistake as to, 17:200
proprietary relief, 17:500
res extincta, 17:200
res sua, 17:200
rescission for, 17:200
restitutio in integrum, 17:200
setting aside a transaction on terms, 17:200
unilateral mistake, 17:200

MISTAKE OF FACT

bank's right to recover payments made under, 10:700
between payor and payee, 10:300.20, 10:500
"but for" test and, 10:300.30, 10:500
change of position and, 10:400.20, 10:500.10
defences to claim based on, 10:400, 10:500.10, 10:500.20, 10:500.30
deficiencies of traditional rules governing, 10:300, 10:500.10
estoppel and, 10:400.10, 10:500.30
finality in dispute resolution, policy of, and, 10:300.10

MISTAKE OF FACT — *Continued*

fundamental, 10:200, 10:300.40
gifts made under, 3:200.30, 10:300.30, 10:300.40
“good consideration” defence, 10:500.20
honest misunderstanding and, 10:300.10
illegal contracts under, 15:300.10
law, mistake of, distinguished, 10:100, 11:200, 11:300
liability to pay, as to, 10:300.30, 10:500
Lord Goff’s restatement of law of payments made under, 10:500
modern approach to, 10:500
money paid under, recovery of, 10:300
moral obligation and, 10:300.30
negligence of payor and, 10:300.10, 10:500.10
negotiable instruments, special rules for, 10:700
practical compulsion and, 26:300.10
“privity” requirement and, 10:300.20
proprietary relief for, 10:600
restitutionary and contractual claims distinguished, 10:200, 10:500
unjust enrichment principle and, 10:100
voluntary submission to honest claim, 10:300.10

MISTAKE OF IDENTITY, CONTRACTS UNENFORCEABLE FOR,
17:300.30**MISTAKE OF LAW**

abolition of traditional doctrine, 10:100, 11:500, 22:300.10
agreements to repay and, 11:400.90
change of position and, 11:700.10
compulsion and, 11:400.130
construction of wills and, 11:300.30
contractual mistake and, 17:200
exceptions to traditional rule of, 11:400
executors, payments by, 11:400.70
existence of law, as to, 11:400.30
fact, mistake of, distinguished, 11:100, 11:400, 11:500
failure to predict overruling of doctrine, 11:600.20
finality in dispute resolution, policy of, and, 11:100, 11:200, 11:600
foreign law, as to, 11:400.10
ignorance of the law, 11:600.10
illegal contracts and, 11:400.120
ineffective transactions doctrine and, 11:700.50
limitations on right to recover under, 11:700
misinterpretation of case law, 11:300.20
misinterpretation of documents, 11:300.30
misinterpretation of legislation, 11:300.10
officer of court, payments by, 11:400.60
officer of court, payments to, 11:400.50
operative mistake, the nature of, 11:600

MISTAKE OF LAW — *Continued*

origins of doctrine, 11:200
 party not *in pari delicto*, payments by, 11:400.120, 11:400.130
 “passing on” defence and, 11:700.20
 personal representative, payments by, 11:400.70
 personal status, as to, 11:400.20
 practical compulsion and, 11:400.130, 26:300.10
 price-setting in regulated industries, 11:700.30
 private rights, as to, 11:400.40, 17:200
 public authorities, acting beyond powers, and, 11:600.40
 public authorities, payments by, 11:400.110
 public authorities, payments to, 11:600.40
 restatement of doctrine, 11:500
 retroactive legislation and, 11:500, 11:600.30
 statutory ouster of common law right to recover, 11:400.100, 11:700.40
 statutory reform of, 11:500
 statutory rights of recovery and, 11:400.100, 11:700.40
 traditional rule, 11:100, 11:300
 trustees, payments by, 11:400.70
ultra vires legislation and, 11:300.10, 11:600.40
Woolwich principle and, 11:500
 wrongful conduct and, 11:400.80

MISTAKEN PAYMENTS. *See* MISTAKE OF FACT; MISTAKE OF LAW

MISUNDERSTANDING, CONTRACTS UNENFORCEABLE FOR

ambiguity, agreements which fail for, 17:300.40
 benefit, expenditure that would otherwise be made, 17:300.40
 carelessness in signing and *non est factum*, 17:300.20
 constructive trust, in cases of, 17:500
 contracts void for, 17:300
 contracts voidable for, 17:300
 equitable lien, in cases of, 17:300.40, 17:500
 good faith in bargaining, duty of, 17:400
 improvements to land, 17:300.40
 mistake of identity, 17:300.30
non est factum, 17:300.20
 offer and acceptance, failed attempts at, 17:300.10
 officiousness, 17:300.10
 passage of property, 17:300.30
 proprietary relief, 17:300.40, 17:500
 rectification, 17:300
 rescission, 17:300
 subrogation, 17:300.10

MONETARY DISGORGEMENT

equitable award, 5:400
 property disputes between cohabitants, in cases of, 5:400

MONEY

benefit, as, 3:200.10
currency, doctrine of, and, 6:300
paid under mistake of fact, 10:300
tracing of, 6:300

MONEY HAD AND RECEIVED

action for, 4:200.10
breach of contract and, 19:200, 19:300
compulsion, in cases of, 4:200.10, 26:200
contractual mistake and, 17:200
frustrated contracts and, 18:200
history of, 1:200
mistake, in cases of, 4:200.10
mistaken payments, in cases of, 10:300.20
moneys paid under informal agreement and, 13:200
total failure of consideration and, 4:200.10
total failure of consideration requirement, 13:200, 14:300, 18:200, 19:200, 19:300,
20:300.50, 32:100
waiver of tort, in cases of, 4:200.10, 24:300

MONEY PAID

action for, 4:200.20
compulsory discharge of another's obligation, in cases of, 4:300
history of, 1:200
indemnity and, 9:300

MONEYLENDERS

illegal contracts by, 15:500
subrogation and, 8:300

MONEYLENDERS ACTS, 8:300, 13:300, 14:300, 15:500

MURDER

benefits from, denial of, 23:200

NECESSITOUS INTERVENTION

agency of necessity, 31:200, 31:300.30, 31:300.50
burial expenses, 31:300.50
discharge of another's debt, 31:300.40
expectation of reimbursement, presumption of, 31:300.20
fulfilment of another's contractual duty, 31:300.50
fulfilment of another's duty, 31:300.50
implied contract theory, 31:100, 31:300.20
necessaries supplied to mental incompetents, minors and drunkards, 31:300.20
negotiorum gestio, 31:100, 31:200
officiousness and, 3:400.40, 31:100
preservation of credit, 31:300.40
preservation of life or health, 31:300.10
preservation of property, 31:300.30

NECESSITOUS INTERVENTION — *Continued*

public health and safety, 31:300.50
public interest, interventions in the, 31:300.50
rationale for recovery, 31:100
support for spouses and children, 31:300.50
unjust enrichment principle and, 3:400.40, 31:100

NEGOTIABLE INSTRUMENTS

acceptance for honour, 31:300.40
certification and acceptance compared, 10:700.10
certified cheque, 10:700.10
change of position and, 10:700.10, 10:700.30
Cocks v. Masterman, rule in, 10:500, 10:700.30
compulsory discharge of another's liability under, 32:200.10
countermanded cheque, 10:700.10
currency, doctrine of, and, 6:300
forged endorsement, 10:700.40
forged signature of drawer, 10:700.30
material alteration, 10:700.50
mistaken payment on, 10:700
negligent payment on, 10:700.30
NFS cheque, 10:700.20
Price v. Neal, rule in, 10:700.30
subrogation of bank and, 10:700.10

NEGOTIORUM GESTIO, 31:100, 31:200

NON EST FACTUM

carelessness in signing, relevance of, 17:300.20
contract void for, 17:300.20

NOVEL DISSEISIN

assize of, 1:100

OFFICIOUSNESS

(*See also* INTERMEDDLING)

anticipated contracts and, 21:200.30
compulsion and, 8:400, 32:100, 32:400.10
compulsory discharge of another's liability and, 32:100, 32:400.10
contribution, right to, and, 9:100
cost indemnification and, 33:500.50
general principle against, 3:300
indemnity, right to, and, 9:100
meeting allegation of, 8:400, 32:100
mistake and, 8:400, 12:300, 32:400.20
mistaken improver of chattels and, 12:500
mistaken improver of land and, 12:400.20
misunderstanding in contract formation and, 17:300.10
necessitous intervention and, 3:400.40, 31:100
public policy and, 8:400

OFFICIOUSNESS — *Continued*

pursuit of self-interest, 2:300, 3:300
self-serving intervention and, 33:100, 33:400, 33:500.50
subrogation and, 8:400
volunteers and, 3:300, 33:400
want of authority, contracts void for, and, 16:300

PALM TREE JUSTICE, 2:300, 3:200.30, 5:200.40, 34:200

PART PERFORMANCE

doctrine of, 30:200

PARTNERS

compulsory discharge of another's liability, 32:200.10
contribution between, 9:200
fiduciary duty owed by, 27:400.10

PASSAGE OF PROPERTY

illegal contracts and, 15:600
mistake in identity, contracts void for, and, 17:300.30, 17:500
non est factum, contracts void for, and, 17:500
ultra vires contracts and, 14:200.10, 14:200.20

PASSING ON

defence of, 10:500.30, 11:700.20, 22:300.10, 22:400
limitations on, 11:700.20
evidentiary burden of, 11:700.20
presumptions applicable to, 11:700.20
unavailability in Canada, 11:700.20, 22:400

PERSONAL CLAIMS

equitable accounting, 5:400
equitable compensation, 5:600
equity, in, 5:200.10, 5:400
knowing assistance, in cases of, 5:200.10, 7:400
knowing receipt, in cases of, 5:200.10, 7:400
law, at, 4:200
money had and received, 4:200.10, 6:300
money paid, 4:200.20
property disputes between cohabitants, in cases of, 5:400, 34:200, 34:300, 34:500
quantum meruit, 4:200.30
quantum valebat, 4:200.30
rescission at law, 4:200.50
rescission in equity, 5:500

PLAINTIFF'S EXPENSE, AT THE

corresponding deprivation and, 3:200.20
element of general principle, 3:200.20

PRACTICAL COMPULSION

(*See also* ECONOMIC DURESS)

PRACTICAL COMPULSION — *Continued*

carriers, involving, 26:300.10
colore officii, benefits obtained by, 22:200, 26:300.10
discharge of another's liability and, 32:300
impecuniosity and, 26:300.10
mistake of fact and, 26:300.10
mistake of law and, 22:300.30, 26:300.10
municipalities, involving, 22:300.30, 26:300.10
origin of term, 26:300.10
public authorities, in cases involving, 22:300.30
traditional categories distinguished, 26:300.10
“urgent and pressing necessity” test, 22:300.30, 26:300.10
“wrongfulness” of pressure, 26:300.10

PRIVACY

breach of confidence compared, 28:250
independent tort, 24:300, 28:250
right of, 28:250

PROFIT FROM WRONGDOING

arson, in cases of, 23:300
breach of confidence, in cases of, 28:100
breach of contract, in cases of, 25:200, 25:300, 25:400
breach of fiduciary duty, in cases of, 27:500
constructive trust, in cases of, 5:200.30, 5:200.60.30
conversion, in cases of, 24:300
criminal misconduct, in cases of, 23:200, 23:300, 23:400
deceit, in cases of, 24:300
dishonoured undertakings, in cases of, 30:300
duress, in cases of, 26:200
economic duress, in cases of, 26:300.20
equitable wrongdoing, in cases of, 30:100
general principle, 3:400.30, 23:100, 30:100
indemnity insurance and, 23:300
interference with contractual relations, in cases of, 24:300
libel, in cases of, 24:500
manslaughter, in cases of, 23:200
murder, in cases of, 23:200
practical compulsion, in cases of, 26:300.10
property disputes between cohabitants, in cases of, 34:100
seduction, in cases of, 24:300
Statute of Frauds and, 30:200
tortious misconduct, in cases of, 24:300
trespass to chattels, in cases of, 24:300
trespass to land, in cases of, 24:300
unconscionable transactions, in cases of, 29:300
undue influence, in cases of, 26:400
unjust enrichment arising from, 3:400.30

PROFIT FROM WRONGDOING — *Continued*

unjust enrichment principle and, 3:200

PROPERTY DISPUTES BETWEEN COHABITANTS

absence of legislation and, 5:200.40, 34:300, 34:800

cause of action in, 34:100, 34:200, 34:300

constructive trust, in cases of, 2:200, 5:200.40, 34:200, 34:300, 34:500

equitable wrongdoing, form of, 34:100

establishing a causal connection, 34:200, 34:300

“housekeeping” cases compared, 34:300, 34:700

joint effort and teamwork, 34:300

“joint family venture” defined, 34:400

limitation periods, 3:500.30

monetary disgorgement and, 5:400

mutual conferral of benefits, 34:700

nature of contribution from plaintiff in, 34:200, 34:300, 34:700

nature of contribution from defendant in, 34:700

personal or proprietary relief, 34:500

quantum meruit, in cases of, 34:200, 34:300, 34:500, 34:700

“reasonable expectations” and, 34:600

resulting trust, in cases of, 5:200.40, 34:300

surplus of wealth requirement, 34:300

“value received” and “value surviving” measures in, 34:200

PROPRIETARY CLAIMS

advantages of *in rem* claims, 5:200, 7:100

benefits conferred under informal agreements and, 13:500

bona fide purchase defence, 3:500.20

breach of confidence and, 28:300

breach of contract and, 19:200, 25:400

breach of fiduciary duty, in cases of, 27:500

constructive trust, 5:200

contractual mistake and, 17:500

contractual misunderstanding and, 17:300.40, 17:500

equitable lien, 5:300

innocent improver and, 6:200.10

law, at, 6:100

mistaken payments, in cases of, 10:600, 12:400.20

money had and received, 4:200.10, 6:300

property disputes between cohabitants, in cases of, 34:200, 34:500

subrogation and, 8:200, 8:300

ultra vires contracts and, 14:200.10, 14:200.20

PROPRIETARY ESTOPPEL

doctrine of, 30:300

“five probanda”, rejected, 12:400.10, 30:300

imperfect gifts, in cases of, 30:300

incomplete unilateral contracts, in cases of, 30:300

remedies available in cases of, 30:300

PROPRIETARY ESTOPPEL — *Continued*

substantive rights created by, 30:300
unjust enrichment principle and, 30:300

PUBLIC AUTHORITIES

abolition of mistake of law doctrine and, 22:300.10
Canadian position on restitutionary liability of, 22:400
change of position defence, in cases involving, 22:400
coerced payments made to, 11:400.130, 22:200, 22:300, 26:200
colore officii doctrine and, 22:200, 22:300, 26:300.10
“fiscal chaos” defence and, 11:500, 11:600.40, 22:200, 22:300.10, 22:400
immunization of, 22:400
lowering the duress threshold, in cases involving, 22:300.30
mistaken payments to, 11:100, 11:400.130, 22:300
necessitous intervention and, 31:300.50
“not *in pari delicto*” rule, and, 11:400.120, 11:400.130
“passing-on” defence, in cases involving, 11:700, 22:300.10, 22:400
payments made under duress to, 11:400.130, 22:300.30, 26:300.10
practical compulsion and, 11:400.130, 22:300.30, 26:300.10
recovery of benefits made under *ultra vires* contracts, 22:300.40
traditional position at common law, 22:200
ultra vires legislation and, 22:100, 22:300.30, 22:400
unauthorized payments by, 11:400.110
wages and salaries of employees of, 32:100
Woolwich principle and, 22:300.20, 22:400, 26:300.10

PUNITIVE DAMAGES

breach of contract, in cases of, 25:100, 25:300
waiver of tort, relief in, compared, 24:500

QUANTUM MERUIT

action for, 4:200.30, 4:200.50
breach of confidence, in cases of, 4:200.30, 28:300
compulsion, in cases of, 4:200.30, 26:200
history of, 1:200
“housekeeping” cases, 21:300, 34:300
ineffective transactions, in cases of, 4:200.30
measure of, 4:200.30
mistake, in cases of, 4:200.30
necessitous intervention, in cases of, 4:200.30
property disputes between cohabitants, in cases of, 34:200, 34:300, 34:500, 34:700
waiver of tort, in cases of, 4:200.30, 24:300

QUANTUM VALEBAT

action for, 4:200.30, 4:200.50
compulsion, in cases of, 4:200.30, 26:200
history of, 1:200
measure of, 4:200.30
waiver of tort, in cases of, 24:300

QUASI-CONTRACT

history of, 1:200
implied contract theory, 1:200
mistake of fact and, 10:500
waiver of tort and, 24:200

QUEBEC CIVIL LAW, 2:400, 23:200, 29:400

REAL ESTATE BROKERS LEGISLATION

informality and, 13:300

RECTIFICATION

offer and acceptance, failed attempts at, and, 17:300.10

REMAINDERMAN

murder of life tenant by, 23:200

REPENTANCE. *See* ILLEGAL CONTRACTS

REPLEVIN

action for, 6:100, 26:200

REPRESENTATION

(*See also* MISREPRESENTATION)

estoppel by, 10:400.10, 10:500.30

RES EXTINGUA, 17:200

RES SUA, 17:200

RESCISSION

bona fide purchase defence, 5:500
business practices legislation and, 20:500
discharge by breach and, 4:200.50
equity, in, 5:500, 17:100
illegal contracts and, 15:500
imposition of terms, 5:500, 17:200
law, at, 4:200.50
limitations on availability, 5:500
mental incapacity and, 14:400
minors' contracts and, 14:300
misrepresentation and, 20:300, 20:400
mistake in assumptions and, 17:200
misunderstanding and, 17:300
repudiation compared, 5:500
restitutio in integrum and, 4:200.50, 5:500
setting aside transaction on terms, 5:500, 17:200
unconscionable transaction, in cases of, 29:100, 29:400
undue influence, in cases of, 26:400.30

RESTATEMENT OF THE LAW SECOND, AGENCY

agency of necessity, 31:200

RESTATEMENT OF THE LAW SECOND, AGENCY — *Continued*

unauthorized provision of goods or services, 16:300

RESTATEMENT OF THE LAW, THIRD, AGENCY

agency of necessity, 31:200

RESTATEMENT OF THE LAW SECOND, CONTRACTS

common misapprehension test, 17:200

contracts implied-in-fact, 21:200

deposits, recovery of, 13:400

duress, forms of, 26:200

“half-measure” relief, frustrated contracts, 18:200

instalment payments, recovery of, 13:400

real estate agents, services of, 13:300

risk allocation analysis, 17:200

total failure of consideration, requirement for, 19:200

undue influence, definition of, 26:400

unilateral mistake in assumptions, 17:200

voidable contracts, 17:200

writing requirement for certain contracts, 13:100

RESTATEMENT OF THE LAW OF RESTITUTION

authorship of, 1:400

benefit, definition of, 3:200.10

change of position defence, 2:200, 3:500.10, 10:400.20, 10:500.10

compulsory discharge of another’s liability, 32:100

confidential information as property, 27:500

constructive trust, 5:200

contribution, right to, 9:200

discharge of another’s debt, 33:400

general, 1:400, 2:100, 2:200

impact on Canadian jurisprudence, 2:100, 2:200, 2:300, 3:200.05

implied contract theory, rejected, 1:400, 14:100

indemnity, right to, 9:300

innocent and conscious wrongdoer distinction, 24:400

nature of benefit, 3:200.10

necessitous intervention, 31:300

officiousness, 3:300, 8:400, 21:200, 31:100

self-serving intermeddler, 33:100

succession to property of wrongdoer, 23:200

tri-partite principle compared, 3:200.05

unjust enrichment principle, 1:400, 2:100, 2:200, 2:300, 3:200.05

unjust retention, 3:200.30

waiver of tort, 24:300

RESTATEMENT OF THE LAW SECOND, RESTITUTION

project abandoned, 1:400

RESTATEMENT OF THE LAW THIRD, RESTITUTION AND UNJUST ENRICHMENT

adoption of, 1:400
bona fide purchaser defence, 3:500.20
breach of confidence, 28:100
constructive trust, 5:200, 5:200.40, 5:200.60
contribution, right to, 9:200
equitable lien, 12:700
equitable subrogation, 8:100
fiduciary duty of loyalty, 27:400
indemnity, right to, 9:300, 32:100
mistaken discharge of obligation or lien, 12:300
mistaken improvements, 12:400.20
mistaken performance of another's obligation, 12:200
necessitous intervention to preserve property, 31:300.30
non-monetary benefits, 12:700
primary and secondary obligations, 9:100, 9:300
property disputes between cohabitants, 34:300
self-serving intermeddler, 33:100
subrogation, 8:100
third party conferred benefits, 35:100
waiver of tort, 24:100, 24:300

RESTATEMENT OF THE LAW SECOND, TORTS

chattels, interference with another's, 31:300.30
invasion of privacy, 28:250

RESTITUTIO IN INTEGRUM

contractual mistake and, 17:200
equitable accounting and, 5:400
illegal contracts and, 15:500
mental incompetency and, 14:400
minors' contracts and, 14:300
misrepresentation and, 20:300.10
requirement for, 3:500
rescission and, 4:200.50, 5:500, 26:400.30

RESULTING TRUST, 2:200, 5:200, 5:200.40, 34:300

ROMAN LAW, 1:100, 1:200, 6:200.10, 6:200.30, 31:100

SALE OF GOODS

acceptance of offer under, 21:100
damages under, 25:100
frustration and, 18:200
incapacity and, 14:400
informality and, 13:300
perished goods under, 10:200

SCOTLAND, LAW OF, 1:400, 6:200.10

SEDUCTION

waiver of tort of, 24:300

SELF-SERVING INTERMEDDLER. *See* INTERMEDDLING; SELF-SERVING INTERVENTION

SELF-SERVING INTERVENTION

administration of estates litigation, 33:500.30, 33:500.50
agency analysis of improver's claim, 33:300
benefit, conduct of litigation as, 33:500
claims against a fund, 33:500
class actions, 33:500.30
collective bargaining services, 33:500.60
co-owners, improvements by, 33:200.20
co-owners, payment of secured debt, 33:400
cost indemnification, general rule, 33:500.10
creditors' suits, 33:500.20
debt, discharge of another's, 33:400
discharge of debt, requirements to effect, 33:400
estoppel, agency by, 33:300
improvements to land, 33:200
improver's claim against owner, 33:200.10
life tenants, improvements by, 33:200.20
life tenants, payment of secured debt, 33:400
mechanics' liens, 33:300
mistakenly supplied improvements, 33:300
non-representative claims, 33:500.40
officiousness, 33:100, 33:400, 33:500.50
performance of agreements beneficial to third parties, 33:300
representational or advocacy services, 33:500
shareholders' derivative actions, 33:500.30
sole owners, improvements by, 33:200.10
subcontractors, claims against owners of land by, 33:300
subrogation and, 33:400
volunteer, payment of debt by, 33:400

SHARING THE BURDEN OF THE LOAN

contribution compared, 7:400.10, 9:200
doctrine of, 7:400.10

SPECIFICATIO

doctrine of, 6:200.30

STATUTE OF FRAUDS, 1:300, 2:200, 4:200.30, 5:200.30, 11:700.50, 13:100, 13:200, 13:500, 15:700, 30:100, 30:200, 34:700

SUBROGATION

acceptor for honour and, 31:300.40

SUBROGATION — *Continued*

categories of, 8:100
compulsory discharge of another's obligation and, 32:100, 32:300
contract claim compared, 8:300
creditors of an estate and, 8:200
doctrine of, 8:100
equitable, 8:100
general applicability of doctrine, 8:200, 8:300
indemnity policies and, 8:200
insurers and, 8:100, 8:200
mental incapacity, loans affected by, and, 14:400
moneylenders and, 8:300
necessaries, supply of, and, 8:300
negotiable instruments and, 10:700.10
offer and acceptance, failed attempts at, and, 17:300.10
officiousness and, 8:400
origins of doctrine, 8:100
payment of another's debt and, 33:400
preservation of encumbered property and, 8:200
proprietary remedies and, 8:200, 8:300
relief against forfeiture and, 8:200
reviving, 8:100
rights of a third party against the payee, to, 8:300
rights of the payee against a third party, to, 8:200
self-serving intervention and, 33:400
simple, 8:100
sureties and, 8:100, 8:200
tracing and, 7:100, 7:300, 8:300
ultra vires borrowings by corporation and, 8:300, 14:200.10
unauthorized acts of agent and, 8:300, 8:400
unjust enrichment principle and, 8:100
vendor's lien, to, 8:300

SURETIES

(*See also* CO-SURETIES)
indemnity and, 9:300, 32:200.10, 32:400.10
subrogation and, 8:100, 8:200

THEFT, TORT, BREACH OF CONTRACT (COMMON LAW)

defences, 36:200.10
elements of claim, 36:200.10
proprietary link, need for, 36:200.30
recovery at common law, 36:200.20

THIRD PARTY CONFERRED BENEFITS

categories of claims, 35:100
estates administration, 35:300, 35:500
general principles, 35:600
indemnification, 35:200

THIRD PARTY CONFERRED BENEFITS — *Continued*

interception of benefits, 35:500
mistaken payments, 35:100, 35:300
reimbursement, recovery of, 35:200
tax rebate, 35:200
transfers of assets, 35:500
waiver of survivor benefits, 35:400

TORT, BENEFITS WRONGFULLY ACQUIRED BY THIRD PARTY, 36:200

TORTFEASORS

contribution between, 9:200
gaps in general law of contribution, 9:200
legislation, 9:200

TOTAL FAILURE OF CONSIDERATION, 3:500, 4:200.10, 4:200.50, 4:300,
13:200, 14:300, 18:200, 19:200, 19:300

TRACING AT LAW

accessio, doctrine of, 6:200.10
bank accounts, tracing money into, 6:300
confusio and *commixtio*, doctrine of, 6:200.20
fungible property and, 6:200
identification of fungible property other than money, 6:200
identification of money, 6:300
money and, 6:300
specificatio, doctrine of, 6:200.30
substituted property, tracing money into, 6:300

TRACING IN EQUITY

available remedies, 7:400
blended funds, 7:400.10
bona fide purchaser and, 7:100, 7:400.20
breach of contract and, 25:400
Clayton's Case, rule in, 7:300.10, 7:400.10
co-mingled funds, 7:300, 7:400
competing beneficial owners, 7:400.10
fiduciary relationship, need for, 7:200
fraud, in cases of, 7:200
Hallett's Case, rule in, 7:300.20
identification of property, presumptive rules for, 7:300
in personam claims, 7:400
innocent volunteer and, 7:200, 7:400.10, 7:400.20
lowest intermediate balance rule, 7:300.40, 7:400.10
misrepresentation, in cases of, 7:200
mistake, in cases of, 7:200
Oatway, Re, rule in, 7:300.30
passage of legal title and, 7:200
preference over general creditors, criticism of, 7:200
proprietary remedies, 7:400

TRACING IN EQUITY — *Continued*

reservation of title clauses, 7:200
 sharing the burden of the loan, doctrine of, 7:400.10
 stolen property, in cases of, 7:200
 subrogation and, 7:100, 7:300, 8:300
 “swelling of assets” theory, 5:200.60.40, 7:400
 when right arises, 7:200
 when right is lost, 7:300

TRADE PRACTICES LEGISLATION. *See* BUSINESS PRACTICES
 LEGISLATION

TRADITIONAL CATEGORIES. *See* EXISTING CATEGORIES

TRANSACTIONS, INEFFECTIVE. *See* INEFFECTIVE TRANSACTIONS

TRI-PARTITE PRINCIPLE

absence of juristic reason and, 3:200.30, 3:200.40
 application in novel situations, 3:200.40
 benefit to defendant and, 3:200.10
 Canadian origins of, 2:300, 3:200.05, 34:100
 compulsory discharge and, 32:200.20
 corresponding deprivation and, 3:200.20
 property disputes between cohabitants and, 34:100
 reformulation of, 3:200.20, 3:200.30, 3:200.40
 unjust enrichment principle compared, 2:300, 3:200.05

ULTRA VIRES CONTRACTS

claims against *ultra vires* actor, 14:200.10
 claims by *ultra vires* actor, 14:200.20
 “indirect enforcement” theory and, 14:200.10
 interest rate swap transactions, 11:500, 11:700.50, 14:200.10
 measure of relief, claim against *ultra vires* actor, 14:200.20
 mistake of law, doctrine distinguished, 14:200.10
 mistake of law, recovery under doctrine of, 11:700.50
 passage of property under, 14:200, 14:200.10, 14:200.20
 policy considerations, 14:200, 14:200.20
 proprietary relief, availability against *ultra vires* actor, 14:200.10
 proprietary relief, availability to *ultra vires* actor, 14:200.20
 public authorities and, 22:100, 22:300.40
 recovery of benefits conferred under, 14:200, 22:300.40
 subrogation, availability against *ultra vires* actor, 8:300, 14:200.10, 14:200.20

ULTRA VIRES LEGISLATION

compulsion and, 22:300.30
 denial of recovery under *ultra vires* taxing statutes, 22:300.10, 22:400
 federal and unitary states, under, contrasted, 22:100, 22:300.20
 “fiscal chaos” defence, in cases of, 22:300.10, 22:400
Kingsstreet principle and, 22:300.50, 22:400
 legislation exceeding legislative competence, 22:100

ULTRA VIRES LEGISLATION — *Continued*

legislation exceeding legislative mandate, 22:100, 22:300.20, 22:400
misinterpretation of valid legislative power, 22:300.20
passing on defence, in cases of, 22:300.10, 22:400
recovery of benefits made under, 22:200, 22:300, 22:400
retrospective legislative change, 11:500, 11:600.30, 22:400
ultra vires delegated legislation, 22:100, 22:300.20, 22:400
Woolwich principle and, 22:300.20, 22:400

UNCERTAINTY

agreements unenforceable for, 17:400
benefit, presumption of, 17:400
improvements to land, 17:400
proprietary relief, 17:500

UNCONSCIONABLE TRANSACTION LEGISLATION

(*See also* CONSUMER PROTECTION LEGISLATION)

administrative remedies under, 29:400
criminal sanctions under, 29:400
damages under, 29:400
declaratory relief under, 29:400
elements of unconscionability under, 29:400
injunctive relief under, 29:400
limited scope of, 29:400
recent consumer legislation, 29:400
redress under, 29:400
rescission under, 5:500, 29:400

UNCONSCIONABLE TRANSACTIONS

“community standards” test, 29:300
constructive knowledge of inequality of bargaining power, 29:350
drunkenness giving rise to, 29:200.10
economic duress compared, 29:300
elements of, 29:100
ignorance of rights giving rise to, 29:400
illiteracy giving rise to, 29:400
improvidency of transaction, 29:300
inability to understand language giving rise to, 29:400
inequality of bargaining power, 29:200.20
intention, 29:350
legislation dealing with, 29:400
old age, infirmities of, giving rise to, 29:400
physical defect giving rise to, 29:400
situational inequality, 29:200.30
“song writer” cases, 29:200.20
tests
 modern test, 29:200.20
 severe inequality, 29:200.10
 traditional test, 29:200.10

UNCONSCIONABLE TRANSACTIONS — *Continued*tests — *Continued*

Uber Technologies Inc. v. Heller, 29:200.20
traditional categories of, 29:200.10
undue influence compared, 26:400.10, 29:300
unjust enrichment principle and, 3:400.30
weakness or dullness of mind giving rise to, 29:200.10, 29:400

UNDUE INFLUENCE

common law compulsion compared, 26:400
defences, 26:400.30
defined, 26:400
doctor over patient, 26:400.10
equitable origins, 26:400
evidential presumptions and, 26:400.30
fiduciary relationships compared, 26:400
gifts and, 26:400
guardian over ward, 26:400.10
illegal contracts and, 15:300.30
independent advice and, 26:400.10
“manifest disadvantage”, requirement of, and, 26:400.30
parent over child, 26:400.10
presumption of, 26:400.10
proof of actual, 26:400.20
proof of dominant relationship, 26:400.10
rebutting presumption of, 26:400.10
rescission for, 26:400.30
solicitor over client, 26:400.10
spiritual advisor over devotee, 26:400.10
traditional categories, 26:400.10
trustee over *cestui que trust*, 26:400.10
unconscionable transaction compared, 26:400.10, 29:300

UNFAIR TRADE PRACTICES LEGISLATION. *See* BUSINESS PRACTICES LEGISLATION**UNIFORM COMMERCIAL CODE**

protection for holder in due course, 10:700.30
subrogation of bank to payee or customer, 10:700.10
unconscionable transactions under, 29:400

UNIFORM FRUSTRATED CONTRACTS ACT, NEW, 18:400**UNIFORM FRUSTRATED CONTRACTS ACT, OLD,** 18:300**UNITED STATES OF AMERICA, LAW OF**

adequacy of remedy at law, 5:200.60.10
breach of confidence, tort of, 28:100
breach of contract, proprietary relief for, 5:200.60.30, 25:400
change of position defence, 2:200, 3:500.10, 10:400.20, 10:500.10

UNITED STATES OF AMERICA, LAW OF — *Continued*

choice of proprietary remedies, 5:300, 7:400
 “coercion of will” theory of duress, 26:300.20
 competing beneficiaries, 7:400.10
 constructive trust, 2:200, 5:200, 23:200, 34:200, 34:500
 criminal wrongdoing, proprietary relief for, 5:200.60.30, 23:200
 duress, contract voidable for, 26:200
 “fiscal chaos” defence, 11:600.40, 22:300.10
 fulfilment of another’s contractual duty, 31:300.50
 fund, preservation of a, 33:500.40
 general, 1:400
 innocent and conscious wrongdoer distinction, 24:400
 mistake of fact, payments under, and, 10:400, 10:500, 10:600
 preservation of property, 31:300.30
 presumption of rightful replenishment, 7:300.40
 protection of holder in due course, 10:700.30
 real estate brokers legislation, 13:300
 representational or advocacy services, 33:500
 restitution and contracts discharged by breach, 19:200
 sharing the burden of the loan, doctrine of, 7:400.10
 subrogation of bank to payee or customer, 10:700.10
 tracing in absence of fiduciary relationship, 5:200.60, 7:200
ultra vires contracts, 14:200.10, 14:200.20
 unilateral mistake in contractual assumptions, 17:200
 use and occupation of land, 24:300

UNJUST ENRICHMENT, PRINCIPLE OF

applications of, 3:400
 basis for modern law of restitution, 1:400, 3:100
 benefit under, 3:200
 breach of confidence and, 3:400.30, 28:100
 breach of fiduciary duty and, 3:400.30, 27:500
 Canadian reception of, 2:200
 compulsion and, 3:400.30, 26:100
 compulsory discharge of another’s liability and, 32:100, 32:200.10, 32:200.20,
 32:400.20
 constructive trust and, 5:200, 5:200.40, 5:200.50, 5:200.60.10, 5:200.60.40,
 5:200.70, 23:200
 contribution, right to, and, 9:100
 criminal wrongdoing and, 23:100, 23:200
 English reception of, 1:400
 equitable wrongdoing and, 30:100, 30:200
 foundation of restitutionary claims at law, 2:200
 foundation of restitutionary claims in equity, 2:200
 general principle or cause of action, 2:300
in personam claims and, 10:500.10
in rem claims and, 5:200
 indemnity, right to, and, 9:300

UNJUST ENRICHMENT, PRINCIPLE OF — *Continued*

independent cause of action, based on, 2:300
 innocent improver and, 6:200.10
 limitations on relief from, 3:500
 mistaken improver of chattels and, 12:500
 mistaken improver of land and, 12:400.20
 modern restitutionary claim and, 4:300
 necessitous intervention and, 31:100
 principles of tort and contract contrasted, 3:200
 profit from wrongdoing and, 3:400.30, 5:200.60.30, 23:100
 property disputes between cohabitants and, 34:100, 34:200, 34:300
 proprietary estoppel and, 30:300
 public authorities, payments to, and, 22:300.20
 relationship between general principle and particularized causes of actions, 2:300,
 3:200.05, 32:200.20
 rescission and, 5:500
 Restatement of the Law of Restitution and, 1:400, 2:200, 2:300, 3:200.05
 subrogation and, 8:100
 three elements of the principle, 2:300, 3:200, 3:200.10, 3:200.20, 3:200.30
 traditional “category” approach and, 2:300
 tri-partite principle and, 2:300, 3:200.05
 two fundamental rationales, 3:200
 unconscionable transactions and, 3:400.30, 29:100
 waiver of tort and, 3:400.30, 24:100, 24:400

UNJUST FACTORS. *See* EXISTING CATEGORIES

UNJUST RETENTION, 3:200.30

USE AND OCCUPATION OF LAND

action for, 4:200.40, 24:300

USURPATION OF OFFICE

waiver of tort and, 24:300, 27:500

VOLUNTEER

(*See also* INNOCENT VOLUNTEER)

charity as, 7:200, 7:400.20
 innocent, 7:200, 7:400.10, 7:400.20
 mistress as, 6:300
 payment of debt by, 33:400
 recovery denied to, 3:500, 11:300.10, 26:400.30, 33:400

WAGER OF LAW, 1:200

WAIVER OF TORT

accounting of profits, 24:400
 administrator *de son tort*, 24:200
 advantages of, 24:100
 assignment and, 24:100

WAIVER OF TORT — *Continued*

assumpsit and, 4:200.10, 24:100
breach of confidence and, 28:100
class actions and, 24:300
conflicts of law and, 24:100
conspiracy, 24:300
conversion, 24:300
deceit, 24:300
definition, 24:100
dependent or independent cause of action, 24:100, 24:300
detinue, 24:300
election of remedy, 24:200
implied contract theory, 24:200, 24:300, 24:500
“independent” cause of action, 24:300
innocent and conscious wrongdoer distinction, 24:400
interference with contractual relations, 24:300
libel, 24:300, 24:500
limitations period and, 24:100
measure of recovery, 24:400
money had and received and, 4:200.10, 24:300
need of proof of loss, 24:300
negligence, 24:300
“parasitic” theory, 24:300
passing-off, 24:400
privacy, 24:300, 28:100, 28:250
proprietary relief, in cases of, 5:200.60.30, 24:100
punitive damages and, 24:500
quantum meruit and, 4:200.30, 24:300
quantum valebat and, 4:200.30, 24:300
scope of doctrine, 24:300
seduction, 24:300
trespass to chattels, 24:300
trespass to land, 24:300
unjust enrichment principle and, 3:400.30, 24:100, 24:400
usurpation of office, 24:300

WANT OF AUTHORITY, CONTRACTS VOID FOR

change of position and, 16:200
goods and services supplied, recovery of the value of, 16:300
inevitable expenditure, 16:300
money paid under, recovery of, 16:200
officiousness and, 16:300
policy considerations, 16:400
realized or realizable value, 16:300
services rendered by a director, 16:400

WANT OF CERTAINTY, AGREEMENTS VOID FOR. *See* UNCERTAINTY

WARRANTY OF AUTHORITY

liability for breach of, 16:100, 16:300

WOOLWICH PRINCIPLE

application in Canada, 22:400

colore officii doctrine compared, 22:300.20

English origins of, 11:500, 22:300.20

mistake of law doctrine and, 11:500

public authorities, application of, to, 22:300.10, 26:300.20

ultra vires delegated legislation and, 22:300.20, 22:400