Contents

Abbreviations		XV
	Table of legislation	
Table	e of cases	xix
4	The binkerical arising of the tours	
1	The historical origins of the trust	1
	The Court of Chancery and the origin of equity	1
	The relationship between equity and the common law	4
	FURTHER READING	13
	SELF-TEST QUESTIONS	13
2	The nature of the express trust	14
	Express trusts and trusts arising by operation of law (TABOLs)	15
	How beneficiaries receive their entitlements under a trust	17
	Bare trusts, special trusts, and nomineeships	19
	Beneficial, equitable, and legal interests	21
	Trustees and fiduciaries	22
	The features of the express trust	24
	The express trust in legal context	46
	A note on the English trust for civil lawyers	51
	Trusts in civil law jurisdictions: Quebec and Scotland	53
	The nature of the beneficiary's right	57
	Trusts and the fusion of law and equity	63
	FURTHER READING	64
	SELF-TEST QUESTIONS	64
3	Express trusts: trusts and powers	66
	Fixed trusts, discretionary trusts, and powers of appointment	66
	Duties and powers <i>virtute officii</i> (powers given to office holders), personal powers (powers <i>nominatum</i>), powers 'in the nature of a trust', fiduciary powers, bare and	
	mere powers	72

	Interests under fixed trusts	77
	The principle in Saunders v Vautier	80
	The rule against perpetuities	83
	The enforcement and judicial control of discretionary trusts and powers of	
	appointment	85
	The validity of dispositive discretions: certainty of objects	88
	Excessive and fraudulent exercises of powers	93
	Interests under discretionary trusts and powers of appointment	95
	Protective trusts	97
	FURTHER READING	103
	SELF-TEST QUESTIONS	104
4	Constructive trusts	105
	Effectively declared trusts and trusts that arise by operation of law (TABOLs)	105
	Varieties of constructive trust	106
	'Anticipatory' constructive trusts	106
	Third party recipients of property transferred in breach of trust	109
	Trusts of the family home	112
	Fraud and theft	121
	The nature of the constructive trust	124
	FURTHER READING	126
	SELF-TEST QUESTIONS	126
5	Resulting trusts	127
	Resulting uses	127
	Automatic resulting trusts and presumed resulting trusts	128
	Presumed resulting trusts (PRTs)	130
	The presumption of resulting trust	133
	The presumption of advancement	138
	Illegality	142
	Automatic resulting trusts (ARTs)	145
	Resulting trusteeship	151
	FURTHER READING	151
	SELF-TEST QUESTIONS	152

6	Formalities and secret trusts	153	
	The character and purpose of formalities	153	
	Declarations of trusts in land: Law of Property Act 1925, s 53(1)(b)	155	
	The doctrine of Rochefoucauld v Boustead	156	
	Disposition of subsisting equitable interests: Law of Property Act 1925, s 53(1)(c)	157	
	Testamentary trusts: Wills Act 1837, s 9	171	
	Informal testamentary trusts: secret and half-secret trusts	172	
	FURTHER READING	184	
	SELF-TEST QUESTIONS	184	
7	Certainty	186	
	The three certainties	186	
	Certainty of intention: the family gift context	187	
	Certainty of intention: the commercial context	191	
	Certainty of subject matter and objects: common issues	199	
	Certainty of subject matter: particular issues	204	
	Certainty of objects: particular issues	208	
	Powers and McPhail trusts	208	
	Conditions precedent defining a class	211	
	Administrative unworkability and capriciousness	211	
	Effects of uncertainty	216	
	FURTHER READING	217	
	SELF-TEST QUESTIONS	217	
8	The constitution of trusts	218	
	'Equity will not assist a volunteer'	219	
	Perfecting an imperfect gift	221	
	Covenants to settle	227	
	The enforcement of covenants to settle by equity	230	
	The enforcement of covenants to settle at common law	231	
	The trust of the benefit of a promise to settle	234	
	Fortuitous vesting of the trust property	239	
	Concluding considerations	242	

	FURTHER READING	243
	SELF-TEST QUESTIONS	243
9	Trusts and purposes	245
	The beneficiary principle and the invalidity of private purpose trusts	245
	Anomalous valid purpose trusts	250
	Powers for purposes	251
	An enforcer principle?	253
	Valid trusts for persons 'limited by a purpose': Re Sanderson's Trust	255
	The bare trust with mandate and Quistclose trusts	261
	Gifts to unincorporated associations	268
	The dissolution of unincorporated associations	274
	Less than unincorporated associations: the case of political parties	278
	The rule against perpetuities	280
	FURTHER READING	281
	SELF-TEST QUESTIONS	281
		202
10	The trust up and running	283
10	The trust up and running The duty of investment	283
10		
10	The duty of investment	283
10	The duty of investment The Trustee Act 2000	283 284
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments	283 284 286
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing	283 284 286 290
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions	283 284 286 290 294
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance	283 284 286 290 294 295
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement	283 284 286 290 294 295 297
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement Appointment, retirement, and removal of trustees	283 284 286 290 294 295 297 299
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement Appointment, retirement, and removal of trustees Custodian, nominee, managing, and judicial trustees	283 284 286 290 294 295 297 299 302
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement Appointment, retirement, and removal of trustees Custodian, nominee, managing, and judicial trustees Beneficiaries' rights to information	283 284 286 290 294 295 297 299 302 302
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement Appointment, retirement, and removal of trustees Custodian, nominee, managing, and judicial trustees Beneficiaries' rights to information Variation of trusts	283 284 286 290 294 295 297 299 302 302 304
	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement Appointment, retirement, and removal of trustees Custodian, nominee, managing, and judicial trustees Beneficiaries' rights to information Variation of trusts FURTHER READING SELF-TEST QUESTIONS	283 284 286 290 294 295 297 299 302 302 304 308
10	The duty of investment The Trustee Act 2000 The standard of prudence in making trust investments 'Social' or 'ethical' investing The delegation of trustee functions The power of maintenance The power of advancement Appointment, retirement, and removal of trustees Custodian, nominee, managing, and judicial trustees Beneficiaries' rights to information Variation of trusts FURTHER READING	283 284 286 290 294 295 297 299 302 302 304 308 308

	The difference between breach of trust and breach of fiduciary obligation	316
	The trustee's liability to account: personal claims against the trustee	317
	Liability of trustees inter se	334
	Beneficiaries' consent to a breach of trust	335
	Trustees' relief from liability under Trustee Act 1925, s 61, trustee exemption clauses, and ouster of trustee duties	336
	De facto trusteeship, or trusteeship de son tort	344
	Liability for procuring or assisting in a breach of trust	345
	Proprietary remedies for the misapplication of trust property	349
	Tracing	352
	Proprietary claims to traceable proceeds: charges and equitable ownership	359
	Subrogation claims reliant upon tracing	367
	Tracing at common law and the quest for a fiduciary relationship	371
	Personal claims against recipients of trust property or its traceable proceeds: knowing receipt and knowing dealing	376
	The restitutionary analysis of recipient liability	382
	Limitation of actions	394
	FURTHER READING	396
	SELF-TEST QUESTIONS	396
12	The law governing fiduciaries	398
	The 'no conflict' rule	399
	Authorised profits	411
	Unauthorised profits and the liability to account for them	415
	The self-dealing and fair dealing rules	421
	The proprietary and personal nature of the liability to account	424
	Equitable compensation for breach of fiduciary obligation	434
	Secondary liability for breach of fiduciary obligation	435
	FURTHER READING	441
	SELF-TEST QUESTIONS	442
13	Charitable trusts	444
	Introduction	444
	Fiscal benefits	445

The conditions for charitable status	447
The charitable character of public purpose trusts	447
Trusts for the relief of poverty	452
Trusts for the advancement of education	452
Trusts for the advancement of religion	453
Trusts for other purposes beneficial to the community	455
The public benefit requirement	458
A charity must be for exclusively charitable purposes	462
Preservation from failure: the cy-près doctrine	465
FURTHER READING	469
SELF-TEST QUESTIONS	469
Select bibliography	471
Index	481