CONTENTS

PREFAC	E				V
SOURC	E ACKN	OWLEDGEMENTS			XV
TABLE OF CASES					xvii
	OF STA				xxix
HOW TO	O USE T	HIS BOOK			xxxiii
. 1	Intro	oduction to equity and trusts			1
	1.1	Introduction			1
	1.2	The historical development of equity and trusts			2
	1.3	Equity and the common law			9
	1.4	The maxims of equity			19
		Assessment exercise			24
2	Und	erstanding trusts			25
	2.1	Introduction			25
	2.2	Trusts: to define or describe?			27
	2.3	Special categories of trusts and trustees			32
		Conclusions			43
		Assessment exercise			43
3	Cap	acity and formality requirements			45
	3.1	Introduction			45
	3.2	Capacity			45
	3.3	Formalities			46
		Conclusions			60
		Assessment exercise			61
4	Cert	ainty requirements			63
	4.1	Introduction		*	63
	4.2	A question of construction			64
	4.3	Certainty of intention			67
	4.4	Certainty of subject matter			74
	4.5	Certainty of object			78
		Conclusions			88
		Assessment exercise			89

x CONTENTS

5	The	constitution of trusts	9	
	5.1	Introduction	91	
	5.2	The distinction between requirements of formality and constitution in the creation of trusts	9	
	5.3	Modes of constitution of trusts	93	
	5.4	Constitution by transfer of legal title to trustees	94	
	5.5	Constitution by transfer where the subject of the gift or trust is an equitable interest	103	
	5.6	Assistance from the common law	104	
	5.7	Assistance from Roman law	112	
	5.8	Proprietary estoppel: a case of equitable assistance for volunteers?	115	
		Conclusions	116	
		Assessment exercise	117	
6	Perp	Perpetuities and public policy limitations on the formation of trusts		
	6.1	Introduction	119	
	6.2	The rules against perpetuities	120	
	6.3	The rule against remoteness of vesting	120	
	6.4	The rule against excessive accumulation of income	133	
	6.5	The rule against inalienability of capital	135	
	6.6	The rules against perpetuity and charities	135	
	6.7	Proposals for the reform of the rule against perpetuities	136	
	6.8	Other public policy restrictions	138	
		Conclusions	141	
		Assessment exercise	142	
7	Purp	oose trusts	143	
	7.1	Introduction	143	
	7.2	Trusts purely for private purposes	144	
	7.3	Trusts of imperfect obligation	146	
	7.4	Devices for avoiding the rule against trusts purely for private purposes	148	
	7.5	Purpose trusts with indirect human beneficiaries	149	
	7.6	Gifts to unincorporated non-profit associations	150	
	7.7	Distribution of surplus donations	156	
	7.8	When is an unincorporated association wound up?	159	
		Conclusions	160	
		Assessment exercise	160	
8	Cha	ritable trusts	161	
	8.1	Introduction	161	
	8.2	Charities law in context	161	

	8.3	The legal definition of charity	165
	8.4	The exclusivity requirement	188
	8.5	The reform of the law of charity	190
	8.6	Cy près	191
		Conclusions	196
		Assessment exercise	 196
9	Varia	tion of trusts	197
	9.1	Introduction	197
	9.2	Modes of varying trusts	198
	9.3	Variation of Trusts Act 1958	202
	9.4	Resettlement or variation?	214
	9.5	Exporting the trust	215
	9.6	The settlor's intentions	216
		Conclusions	217
		Assessment exercise	218
10	Trust	ee appointments	219
	10.1	Introduction	219
	10.2	Appointment of the trustee	219
	10.3	Disclaimer of the trust	224
	10.4	Retirement from the trust	225
	10.5	Removal of trustees	227
	10.6	What if nobody is willing to act as trustee?	228
		Assessment exercise	229
11	The	nature of trusteeship	231
	11.1	Introduction	231
	11.2	Fiduciary office	232
	11.3	Trustees' standard of care	235
	11.4	Trustee decision-making	240
		Conclusions	245
		Assessment exercise	246
12	Trus	tees' duties	247
	12.1	Introduction	247
	12.2	Trustee profits	247
	12.3	The duty of personal service	254
	12.4	Miscellaneous duties	260
		Conclusions	262

Assessment exercise

CONTENTS xi

263

xii CONTENTS

13	Mair	ntenance and advancement	265
	13.1	Introduction	265
	13.2	Maintenance	265
	13.3	Advancement	274
	13.4	Contrary intention	280
		Conclusions	281
		Assessment exercise	281
14	Inve	stment	283
	14.1	Introduction	283
	14.2	The meaning of 'investment'	284
	14.3	Investment policy	292
		Conclusions	301
		Assessment exercise	302
15	Brea	ch of trust: defences and relief	303
	15.1	Introduction	303
	15.2	Beneficiaries' remedies	304
	15.3	Defences	312
	15.4	Relief from liability	317
	15.5	Exemption from liability	320
		Conclusions	321
		Assessment exercise	322
16	Resu	Ilting and constructive trusts	323
	16.1	Introduction	323
	16.2	Resulting trusts	324
	16.3	Constructive trusts	334
	16.4	Types of constructive trusts	340
		Conclusions	347
		Assessment exercise	348
17	Info	rmal trusts of land	349
	17.1	Introduction	349
	17.2	Problems in defining the trust	351
	17.3	Quantification of the interest under the trust	363
	17.4	Proprietary estoppel	365
		Conclusions	372
		Further reading	374

			CONTENTS	xiii
18	Tracing			375
	18.1	Introduction		375
	18.2	Tracing at common law		377
	18.3	Equitable tracing		383
		Assessment exercise		398
19	The e	equitable liability of strangers to the trust		399
	19.1	Introduction		399
	19.2	'Strangers'		399
	19.3	Where tracing fails		400
	19.4	Trusteeship de son tort		401
	19.5	Knowing receipt		401
	19.6	Dishonest assistance in (or procurement of) a breach of trust		406
		Conclusions		414
		Assessment exercise		414
INDEX				415