## Contents

Preface			ix
Foreword			xiii
List of Contributors			XV
Table of Cases			xvii
Table of Statutes			xxxiii

1

\*

1. The New Trust: Obligations without Rights?		1
Paul Matthews		
Introduction		1
The Modern Rule		3
Exceptions to the Rule		4
Other Limitations		9
Public Policy		9
Delegation of Testamentary Power		9
Uncertainty and Unworkability		9
Inalienability/Perpetuity		10
Modern Developments in the Rule		13
Re Denley's Trust Deed		13
The Quistclose Trust		16
Class-closing Rules		17
Sidestepping the Rule		18
Functions of Purpose Trusts		18
Public Purposes		19
Orphans and Old Buffers		19
Private Trust Companies		19
Foreign Agencies	-14	20
<b>Off-balance-sheet</b> Transactions		21
Special Purpose Companies		21
Cross-border Debt Securitization		22
Statutory Non-Purpose Trust Jurisdictions		22
Restrictions on Purposes		24
Enforcement Mechanism		24
Restrictions on Trustees		24
<b>Restrictions on Trust Property</b>		25
Duration and Termination of Trust		25
Problems		25
Eureka		28

vi	Contents	
	Are You being Served?	30
	Cui Bono?	31
2.	Presumptions and Illegality	33
	J. D. Davies	
3.	The Irreducible Core Content of Trusteeship	47
	Professor David Hayton	
	Introduction	47
	Rights to Information	49
	Trust Documents and Letters of Wishes	52
	Use of Protector as Cut-off Device	54
	Express Ouster of Accountability as to Some Property	54
	Use of the Settlor or Protector to Release Trustees	
	from Liability	56
	Exclusion of Duties	57
	Exemption Clauses	58
	Settlor's Fully Informed Consent Required	61
	Conclusions	61
4.	The Protector: New Wine in Old Bottles?	63
	Professor Donovan Waters	
	Introduction—the Phenomenon of the Protector	63
	Two Schools of Thought	67
	The Concerns of the Accountability School	68
	The Concerns of the No-accountability School	70
	The Background to the Apprehension	70
	The Existing Law as to Protector-like Powers	72
	Control by the Courts	75
	The Manner of Exercise of the Power	81
	Breach of Fiduciary Obligation, and the Compliant Trustee Death or Loss of Capacity or Absence of	84
	the Donee of the Power	90
	Employee Benefit Plans	92
	Freeing the Compliant Trustee: Exculpation Clauses	99
	Judicial Control of the Trustees of a Discretionary Trust	101
	The Contemporary Power-holder: Court Control of	
	the New Protector	103
	The Specific Uses made Today of the Protector	104
	Onshore (or Domestic) Trusts	104
	Offshore (or Foreign) Trusts	105
	What Response should be Made to this State of the Law?	107
	Reworking our Present Conception of the Trust	107
	A Statutory Response	110

-

.

Contents	vii
Steele v. Paz Limited, and the Judicial Control of Protecto	rs 114
The Aftermath of the Steele Case	118
Conclusion	119
5. Some Trust Principles in the Pensions Context	123
Hon. Sir Robert Walker	
6. Self-dealing Trustees	135
Hon. Mr. Justice B. H. McPherson C. B. E.	
Contracting with Oneself	136
Effects of the Self-dealing Rule	138
Conveying to Oneself	141
Position after Conveyance	142
Conveyance to Nominee	143
Extinguishing the Trust	144
Leave to Purchase	146
Differences between the Two Rules	147
Historical Evolution	149
Conclusion	150
7. Moulding the Content of Fiduciary Duties	153
R. P. Austin	
Introduction	153
Traditional Understanding of Fiduciary Duties	156
The Content of Fiduciary Duties	158
The 'Positive' Duty of Loyalty	159
'Fiduciary' Discretions	161
The 'Business Opportunity' Doctrine	161
Conflict between Duties	162
Duty of Disclosure	163
'Strict Compliance' and Care	164
Trustees and Company Directors: The Duty of Strict	1.6.4
Compliance A Fiduciary Duty of Care?	164
Trustee	168
Company Director	169 170
Other Cases	170
Conclusions	172
8. Where are We Going with Equitable Compensation?	177
Professor Charles Rickett	
General Comments from a New Zealand Perspective	178

## Contents

viii

. .

	Equitable Compensation as Compensatory	183
	Equitable Compensation as a Remedy of Significance	189
	Some Australian Developments	194
	Some Canadian Developments	199
	Where are We Going?	204
	A New Zealand Epilogue	206
9.	A Comment	211
	Hon. Justice P. D. Finn	
	Protecting the Vulnerable	211
10.	The Liberalising Nature of Remedies for Breach of Trust	217

A. 1	. Oakley	
	J	

	The Recovery of Losses caused by Breaches of Trust The Classification of Commercial Relationships as Fiduciary The Liability of Fiduciaries for Breach of a Duty of Loyalty 'Accessory Liability' Analogous Areas of the Law which Require Reconsideration Liability for 'Knowing Receipt' The Scope of Equitable Proprietary Claims Conclusion	219 230 234 239 247 247 251 255
11.	<b>Trust Law for the Twenty-first Century</b> Sir William Goodhart QC	257
12.	Equity's Reaction to Modern Domestic Relationships Anthony J. H. Morris QC Introduction Proprietary Rights Resulting Trusts Constructive Trusts and Proprietary Estoppels Unfair Dealings Undue Influence Unconscionability Conclusions	273 273 276 276 288 299 299 308 310
13.	Taxing the Constructive Trustee: Should a Revenue Statute address itself to Fictions?	315
	John Glover The Revenue Statute Illegality Beneficial Entitlement The 'Claim of Right'	317 318 319 322

Contents		ix
Treating the Constructive Trust as	a 'Trust'	
for Revenue Purposes		323
Constructive Trusts		324
'Title Analysis'		326
Selected Bibliography		333
Index	>	339