

## INDEX

- accessory liability:  
inducing breach of contract 8.02
- account of profits:  
bribery 10.59–10.65  
constructive trusts 6.123–6.128
- acres rebus* 24.67–24.68
- affidavit:  
evidence, cross-examination on 20.124–20.133  
search orders 19.56–19.60
- agency:  
deceit 2.53–2.55
- agent and principal:  
fiduciary relationship 6.92
- agents:  
knowing or unconscionable receipt 5.96–5.101
- ancillary disclosure 20.111–20.120, 21.45–21.48
- Anston Piller order *see* search orders
- application notice in form N16A 19.55
- arbitration:  
freezing injunction in aid of foreign proceedings 20.86
- assets:  
abroad 22.32–22.46  
constructive trusts:  
original 6.164–6.169  
substituted 6.170–6.180  
held under trust or fiduciary relationship 5.38–5.62  
knowing or unconscionable receipt 5.60–6.61,  
5.85–5.117  
substituted 6.170–6.180  
swollen 16.143–16.146  
tracing 16.30–16.34  
used to discharge liabilities cease to exist 16.141–16.142  
worldwide freezing injunction in aid of English proceedings 20.138–20.139  
*see also under* freezing injunction in aid of English proceedings
- Attorney-General's Reference (No 1 of 1985)* 6.148–6.151
- Babamajt proviso* 20.140–20.147
- Baden Delvaux scale* 5.142–5.145
- bad faith:  
unjust enrichment 3.134, 3.144, 3.156–3.157
- bag of stolen coins example 6.251–6.255
- balance of convenience:  
proprietary injunction 21.34–21.36
- Baltic proviso* 20.148–20.152
- bank accounts:  
current 16.121–16.130  
deposit 16.120  
joint accounts 20.199–20.200  
overdrawn 16.141–16.142  
third party 20.201–20.203  
tracing 16.69–16.101
- Bankers Trust* jurisdiction 15.156–15.184
- banks:  
freezing injunction 20.195–20.205  
knowing or unconscionable receipt 5.106–5.117  
and the order 20.195–20.205  
*see also* bank accounts; *and under* conversion
- Barlow Clowes* 9.103–9.131
- Bayer v Winter* order 20.06–20.07, 20.246–20.252
- bench warrants 20.08, 20.253–20.254
- beneficiaries:  
constructive trusts 6.53  
fiduciary relationship 6.90
- bills of exchange:  
Rome II Regulation 26.64
- Birks, Professor 3.12
- Boardman v Phipps* re-interpretation 6.139–6.141
- bona fide purchaser for value without notice 3.167–3.172
- breach of confidence:  
pre-action disclosure 15.115–15.120
- breach of contract *or* inducing breach of contract
- breach of copyright:  
pre-action disclosure 15.115–15.120
- breach of court order claim 20.228–20.232
- breach of fiduciary duty 26.227–26.233  
dishonest assistance 9.36–9.47, 9.48–9.56  
*see also under* constructive trusts
- breach of trust:  
dishonest assistance 9.36–9.47, 9.48–9.56
- bribery:  
claims against bribed agent:  
constructive trust 10.80–10.81  
damages for fraud 10.67–10.68  
recovery of bribe 10.69–10.79  
restitution for wrongdoing 10.76–10.79  
unjust enrichment, claim in 10.71–10.79
- claims against briber:  
damages 10.41–10.44  
dishonest assistance 10.56–10.65  
liability to account 10.56–10.65  
money had and received 10.45–10.55  
rescission 10.36–10.40  
transactions void *ab initio* 10.31–10.35  
unjust enrichment 10.45–10.55
- constructive trusts 6.206–6.210  
deceit and 10.21–10.23  
election 10.82–10.83  
fiduciary relationships and 10.24–10.27  
overview of claims 10.01–10.07  
unjust enrichment 10.28–10.29, 10.45–10.55,  
10.71–10.79
- Browne-Wilkinson, Lord 6.251–6.255
- Brussels I Regulation 25.15–25.18, 25.23–25.176  
civil or commercial subject matter 25.24–25.25  
exclusive jurisdiction to other member state 25.27–25.33  
hierarchy of jurisdiction provisions 25.23

- Brussels I Regulation (cont.):**
- specific types of contract provisions 25.43
  - submission 25.34–25.42
  - valid jurisdiction agreement for member state:
    - anchor defendant 25.146, 25.150
    - any discretion to stay 25.83
    - any party domiciled in member state 25.46–25.47
    - chosen forum must be member state 25.48–25.53
    - chosen forum need have no factual connection with dispute 25.54
    - contract, autonomous meaning of 25.92–25.95
    - contract concluded, dispute 25.107–25.109
    - contract, dispute as to validity of 25.96–25.99
    - contract is void 25.104–25.106
    - contract overview 25.100–25.120
    - court jurisdiction over co-defendants 25.142–25.174
    - date of issue of proceedings 25.148–25.149
    - declining jurisdiction 25.175
    - defendant domiciles in member state 25.71–25.72
    - discretion to stay proceedings 25.176
    - dispute involving attempt to set aside contract 25.110–25.117
    - domicile 25.146–25.149
    - domicile, no uniform definition of 25.75–25.82
    - equity/dishonest assistance 25.120, 25.139–25.141
    - exclusive jurisdiction 25.55
    - formalities 25.56–25.60
    - good arguable case test 25.147
    - hearing claims together to avoid irreconcilable judgments 25.152
    - intention to oust domicile jurisdiction of co-defendant 25.153–25.154
    - irreconcilable judgments test 25.155–25.174
    - jurisdiction over defendant and not individual claims 25.73
    - lifting the corporate veil 25.63–25.70
    - mistake or misrepresentation, claims based on 25.118–25.119
    - national courts, role of 25.151
    - reliance on jurisdiction clause: no real risk of affirmation 25.61–25.62
    - serious issue to be tried test 25.150
    - time of domicile 25.74
    - tort overview 25.121–25.141
  - business, loss of 23.77
- Canada:**
- constructive trusts 6.38, 6.160
- Carl-Zeiss Stiftung v Herbert Smith (No 2):***
- constructive trusts 6.13
- case law:**
- use 1.17
- cash:**
- tracing 16.70–16.72
- causation:**
- and claiming 16.42–16.44
  - damages 23.71–23.73
- cause of action:**
- freezing injunction in aid of English proceedings: accrual 20.35–20.46
  - justiciable in England and Wales 20.47–20.58
- certainty:**
- constructive trusts:
    - beneficiaries 6.53
    - intention 6.44–6.49
    - objects 6.53
    - subject matter 6.50–6.52
- change of position:**
- unjust enrichment:
    - anticipatory change 3.149–3.154
    - defence post-*Foskett* 3.164–3.166
    - extent of change 3.147
    - fault, relevance of 3.155–3.159
    - generally 3.133–3.140
    - payments which were made earlier than would otherwise have been the case 3.142–3.144
    - payments which would never otherwise have been made 3.141
  - receipt of funds and change of position, link between 3.148–3.149
  - standard of living increase 3.145–3.147
  - wrongdoing, relevance of 3.160–3.163
- charges:**
- floating 14.18–14.23
  - unregistered but registrable 14.12–14.17
- cheques:**
- conversion:
    - immediate right to possession required 4.46–4.56
    - statutory protection for banks 4.52–4.56
    - validity of cheque 4.43–4.45
    - value 4.43–4.45
- choice of law:**
- constructive trusts:
    - equitable proprietary interest, based upon assertion of 26.209–26.210
    - express trust, based on breach of 26.203
    - fiduciary duty, based on breach of 26.204–26.208
    - pre-Rome II authorities 26.195–26.202
    - unjust enrichment, based on 26.211
    - wrongdoing, based on 26.212–26.213
  - dishonest assistance 26.221–26.226
  - fiduciary duty, breach of 26.227–26.233
  - generally 26.01–26.04
  - Hague Convention on Trusts and Recognition of Trusts Act 1987:
    - 'any other trusts of property arising under law of any part of UK' 26.113–26.116
    - applicable law, determination of 26.119–26.122
    - applicable law, scope of 26.123–26.124
    - 'by virtue of judicial decision whether in UK or elsewhere' 26.117–26.118
    - 'created voluntarily' 26.104–26.105
    - 'evidenced in writing' 26.106–26.111
    - exclusion of preliminary issues 26.96–26.98
    - extension of Convention 26.112
    - Rome II Regulation on non-contractual obligations 26.129–26.132
    - tracing and third party recipient liability 26.125–26.128
    - types of trusts falling within Convention 26.99–26.132
    - knowing receipt 26.214–26.220

- non-contractual obligations 26.40–26.42  
**Private International Law (Miscellaneous Provisions)**  
 Act 1995:  
 exception 26.54–26.55  
 general rule 26.47–26.53  
 introduction 26.44–26.46  
 pre-1995 26.43  
**Rome Convention:**  
 absence of choice 26.28–26.36  
 characteristic performance 26.30–26.31  
 consent 26.24–26.27  
 'escape clause' 26.32–26.34  
 formal validity 26.24–26.27  
 freedom of choice 26.17–26.27  
 generally 26.05–26.08  
 interpretation 26.09–26.12  
 law of the country must be closely connected 26.35–26.36  
 mandatory provisions 26.38–26.39  
 material scope 26.16  
 material validity 26.24–26.27  
 qualifying contracts 26.13–26.15  
 scope of applicable law 26.37  
 unconscionable receipt 26.214–26.220  
*see also Rome II Regulation*
- chooses in action:**  
 tracing 16.70–16.72
- Civil Procedure Rules:**  
*see under post-action disclosure; pre-action disclosure*
- claim:**  
 form:  
 search orders 19.53–19.54  
 pleading 3.13–3.16
- claiming:**  
 and tracing distinction 16.35–16.41
- Clayton's Case*, rule in 16.121–16.130
- clearing systems:**  
 tracing 16.86–16.101
- co-defendants:**  
 jurisdiction 25.142–25.174, 25.187–25.190
- common habitual residence** 26.144–26.148, 26.174–26.176
- common law:**  
*in personam* claims 16.51–16.53  
*see also under tracing*
- company:**  
 fiduciary relationship 6.93–6.97  
 law 1.05, 5.78, 5.80  
 unlawful means conspiracy 7.32–7.47
- concealment principle** 18.52–18.57
- conflict of laws:**  
 commercial fraud 1.02, 1.05, 1.12
- conspiracy** 25.214–25.215  
 civil and criminal conspiracy  
 distinguished 7.13–7.16
- damages:**  
 at large 7.94–7.103  
 and dishonest assistance 7.20, 9.22–9.30
- lawful means**  
 elements of simple conspiracy 7.85–7.91  
 generally 7.80–7.84
- pleading:**  
 advantages 7.06  
 disadvantages 7.07  
 lawful means precedent 7.110  
 practice 7.104–7.110  
 unlawful means precedent 7.109
- summary of requirements** 7.01–7.05
- unlawful means** 7.02, 7.08–7.12, 7.21–7.79  
 combination or understanding 7.48–7.52  
 concerted action 7.56–7.61  
 definition 7.71–7.79  
 director and company 7.32–7.47  
 employer and employee 7.30–7.31  
 husband and wife 7.24–7.29  
 intention 7.62–7.70  
 intentional causing loss 7.19  
 knowledge of conspirators 7.53–7.55  
 not a form of secondary liability 7.17–7.18  
 parties 7.23–7.47
- constructive trusts**  
 beneficiaries, identifiable 6.53  
 bribery 6.206–6.210, 10.80–10.81  
 duties arising under 6.54–6.57  
 fiduciary duty, breach of:  
 account of profits 6.123–6.128  
*Attorney-General Reference (No 1 of 1985)/6.148–6.151*  
*Boardman v Phipps* re-interpretation 6.139–6.141  
 belief 6.206–6.210  
 categories of claim 6.162–6.163  
 corporate opportunity 6.181–6.205  
*Keech v Sandford* re-interpretation 6.138  
*Lister & Co v Stubbs* 6.144–6.147  
*Metropolitan Bank v Heiron* 6.143  
 original asset 6.164–6.169  
 personal remedy 6.121–6.122  
 proprietary remedies 6.129–6.141  
 secret commission 6.206–6.210  
*Sinclair v Versailles* 6.129–6.141, 6.159, 6.160–6.161  
 substituted asset 6.170–6.180  
*Sugden v Crossland* 6.155–6.158  
*Tjrell v Bank of London* 6.152–6.154
- fiduciary relationship:**  
 agent and principal 6.92  
 company directors and company 6.93–6.97  
 definition of fiduciary 6.86–6.106  
 employee and employer 6.105–6.106  
 equity's response to breach 6.110–6.119  
 equity's response to default 6.119  
 fiduciary 6.80–6.106  
 generally 6.83–6.85  
 joint ventures 6.100–6.104  
 nature of fiduciary duties 6.107–6.119  
 partnership 6.98–6.99  
 solicitor and client 6.91  
 trustee and beneficiary 6.90
- formalities and limitation** 6.43–6.79
- generally** 6.01–6.04
- intention, certainty of** 6.44–6.49
- interests of unsecured creditor** 6.07–6.09
- jurisdiction** 25.231–25.232
- knowing or unconscionable receipt** 5.55–5.58

- constructive trusts (cont.):**
- land 6.70
  - non-fiduciary relationship:**
    - bag of stolen coins example 6.251–6.255
    - Browne-Wilkinson, Lord 6.251–6.255
    - commercial joint ventures 6.262–6.271
    - contractual and non-contractual transfers (rescission) 6.231–6.234
    - contractual obligation, specifically enforceable 6.272–6.274
    - fraudulent misrepresentations 6.229–6.246
    - mistaken payments 6.212–6.228
    - murder, benefits acquired by 6.275
    - Pallant v Morgan* trust 6.262–6.271
    - rescission 6.229–6.246
    - stolen property 6.247–6.261
    - unconscionable conduct 6.262–6.271
  - objects, certainty of** 6.53
  - proprietary claim as:**
    - definition of constructive trust 6.10–6.16
    - express trustee wrongly described 6.30
    - institutional trusts 6.34–6.42
    - language, misuse of 6.24–6.33
    - liability to account 6.25–6.29
    - limitation periods and language of constructive trust 6.33
    - Quicclose* trust 6.17–6.23
    - remedial trusts 6.34–6.42
    - resulting trust 6.17–6.23
    - tracing equitable proprietary interest 6.31
    - trust arising after rescission 6.32
  - proprietary and personal rights compared** 6.05–6.06
  - requirements of a trust and** 6.43–6.57
  - statutory regimes** 6.58–6.79
  - subject matter, certainty of** 6.50–6.52
  - see also under choice of law*
  - contemnor:**
    - applications by 24.118–24.134
  - contempt of court:**
    - by respondent 24.01–24.02
    - by third parties 24.02
    - civil and criminal contempt, distinction between 24.07–24.10
    - committal application: practice and procedure: evidence in reply—privilege against self-incrimination 24.107
    - hearing in absence of respondent 24.110–24.112
    - overview of procedure 24.97–24.112
  - contemnor, applications by** 24.118–24.134
  - criminal contempt: third party interference:**
    - actus reus* 24.67–24.68
    - establishment of interference: purpose of order 24.71–24.77
    - injunctions *contra mundum* 24.78–24.81
    - mens rea* 24.69–24.70
  - generally** 24.03–24.06
  - and injunctive relief:**
    - respondent 24.13–24.16
    - third parties 24.17–24.23
  - non-compliance with order by respondent:**
    - corporate entity, liability of 24.50–24.51
  - director's personal liability for breach of order**
    - against company 24.52–24.58
    - mental state/relevant intention 24.45–24.46
    - only relevant intention—to do the act 24.47–24.49
    - standard of proof 24.42–24.44
  - order:**
    - clarity and unambiguity 24.25–24.30
    - drafting 24.25–25.37
    - penal notice 24.31–24.37
    - service or notification 24.38–24.40
  - penalties:**
    - fixed term for two years or less 24.116–24.117
    - mitigation 24.115
  - sequestration, writ of** 24.135–24.137
  - summary of requirements** 24.01–24.02
  - validity of order: no defence to**
    - non-compliance 24.82–24.90
  - contract:**
    - autonomous meaning 25.92–25.95
    - breach of 8.43–8.44
    - Brussels I Regulation 25.43
    - choice of law 26.13–26.15
    - concluded, dispute 25.107–25.109
    - dispute involving attempt to set aside 25.110–25.117
    - dispute as to validity 25.96–25.99
    - jurisdiction 25.193–25.205
    - overview 25.100–25.120
    - and unjust enrichment 3.17–3.30
    - void 25.104–25.106
  - see also under Brussels I Regulation; inducing breach of contract*
  - contractual obligation:**
    - specifically enforceable 6.272–6.274
  - contractual transfers (rescission)** 6.231–6.234
  - contra mundum injunction** 24.78–24.81
  - contributory negligence:**
    - conversion 4.66–4.67
    - deceit 2.79
  - conversion:**
    - banks and cheques:
      - immediate right to possession (claimant) 4.46–4.51
      - statutory protection for banks 4.52–4.56
      - validity of cheque 4.43–4.45
      - value of cheque 4.43–4.45
    - conduct amounting to:
      - exceptions 4.19–4.20
      - general principle 4.16–4.18
      - strict liability claim 4.16–4.20
    - contributory negligence 4.66–4.67
    - generally 4.03–4.15
    - limitation 4.68–4.70
    - overview 4.01–4.02
    - property subject to claim 4.22–4.30
    - remedies:
      - assessment of damages 4.58–4.64
      - specific restitution 4.65
      - title to sue 4.31–4.40
  - corporate entity:**
    - knowing receipt 5.102–5.105
    - liability 24.50–24.51

- corporate opportunity:**  
constructive trusts 6.181–6.205
- corporate personality:**  
lifting the corporate veil 18.48–18.65
- costs:**  
pre-action disclosure 15.55–15.60, 15.152
- creditor:**  
constructive trusts 6.07–6.09  
preferences 13.09–13.16
- Credit Suisse** 20.166–20.171
- crimes** 15.115–15.120
- cross-examination on affidavit evidence:**  
freezing orders 20.124–20.133
- cross-undertakings:**  
damages 19.47–19.49, 23.23–23.38
- current account** 16.121–16.130
- damages:**  
application to enforce cross-undertakings in:  
aggravated damages 23.81  
business, loss of 23.77  
causation 23.71–23.73  
distress and shock 23.77  
exemplary damages 23.79–23.80  
foreseeability and remoteness 23.74–23.81  
inquiry, court order of 23.60–23.65  
irrecoverable legal costs not recoverable as  
damages 23.76  
losses, compensation for 23.66–23.70  
management time, loss of 23.78
- assessment:**  
conversion 4.58–4.64  
bribery 10.41–10.44, 10.67–10.68  
conspiracy 7.92–7.103
- cross-undertakings in** 19.47–19.49, 23.23–23.32  
23.57–23.81
- for fraud** 10.67–10.68
- inducing breach of contract** 8.43–8.44
- proprietary injunction** 21.25–21.30, 21.31–21.33
- search orders** 19.47–19.49
- debt:**  
inability to pay at time or as  
consequence 11.08–11.09
- deceit:**  
agency 2.53–2.55  
analysis of requirements 2.09–2.78  
better state of knowledge than representee,  
representor in 2.20–2.25
- bribery and 10.21–10.23
- Civil Liability (Contribution) Act 1978** 2.80
- contributory negligence** 2.79
- employee representation** 2.51–2.52
- exception in writing if concerned with credit of third  
party** 2.40–2.41
- expression, clarity of** 2.30–2.39
- fact, representation of** 2.10–2.28
- false representation** 2.42–2.55  
generally 2.02–2.06
- intention, representations of** 2.16–2.18
- jurisdiction** 25.209–25.213
- law, representations of** 2.26–2.28
- limitation periods** 2.81–2.82
- loss and damage in reliance on false  
statement** 2.67–2.77
- misrepresentation as to third person's credit** 2.78
- misstatements versus** 2.07
- opinion, representations of** 2.19
- representor, representation made by** 2.47–2.50
- Rome II Regulation** 26.135–26.151
- sham trusts** 17.10–17.19
- statements, ambiguous** 2.30–2.39
- state of mind of representor** 2.47–2.50, 2.51–2.52,  
2.53–2.55
- summary of requirements** 2.01
- words or conduct, representation by** 2.29
- defences** *see under unjust enrichment*
- Denning MR, Lord:**  
constructive trusts 6.11, 6.35
- deposit account** 16.120
- desire:**  
preferences 13.21–13.28
- Dicey, Morris & Collins rule** 230 26.122, 26.165,  
26.168, 26.179, 26.181, 26.198, 26.215
- diminished responsibility:**  
constructive trusts 6.275
- directors:**  
conspiracy 7.32–7.47  
de facto 6.95  
fiduciary relationship 6.93–6.97  
personal liability for breach of order against  
company 24.52–24.58  
shadow 6.95–6.96  
unlawful means conspiracy 7.32–7.47
- discharge:**  
potential grounds for 23.43–23.48
- disclosure:**  
ancillary 20.111–20.120, 21.45–21.48  
full and frank 19.44–19.46, 23.14–23.22  
*see also post-action disclosure; pre-action disclosure*
- discretion:**  
freezing injunction 20.110  
jurisdiction 25.83, 25.176  
pre-action disclosure 15.217
- dishonest assistance:**  
bribery 10.56–10.65  
conspiracy 7.20, 9.22–9.30  
contribution 9.148
- elements of claim:**  
authorized but imprudent investment 9.84  
*Barlow Clowes* 9.103–9.131  
breach of trust or fiduciary duty 9.36–9.47  
breach of trust or fiduciary duty need not be  
dishonest 9.48–9.56
- investment where no doubt as to**  
authorization 9.86–9.88
- present law** 9.132–9.136
- Royal Brunei v Tan* 9.74–9.90, 9.91–9.102
- summary** 9.01
- third party must have acted dishonestly in**  
providing assistance 9.63–9.136
- third party procurement, inducement or assistance**  
in breach 9.57–9.62
- trustee exemption clause** 9.47
- trust or fiduciary relationship** 9.32–9.35

- dishonest assistance: (*cont.*):  
 elements of claim: (*cont.*):  
*Twinsectra v Yardley* 9.91–9.102  
 unauthorized investment 9.85  
 generally 9.02–9.05  
 juridical basis for liability:  
     conspiracy comparison 9.22–9.30  
     unconscionable receipt claims comparison 9.14–9.21  
 jurisdiction 25.139–25.141, 25.233  
 knowing or unconscionable receipt 5.10–5.17  
 language problems 9.06–9.11  
 limitation period 9.149–9.150  
 remedies 9.137–9.143  
 vicarious liability 9.144–9.147
- dishonesty:  
 knowing or unconscionable receipt 5.123–5.132
- distress 23.77
- domestic freezing injunction *see* freezing injunction in aid of English proceedings
- domicile 25.71–25.83, 25.46, 25.47  
*see also under* Brussels I Regulation
- draft order 19.61–19.64
- duress:  
 unjust enrichment 3.07
- duty:  
 knowing or unconscionable receipt 5.68–5.83
- economic harm:  
 conspiracy 7.08, 7.12, 7.70
- economic loss:  
 Rome II Regulation 26.135–26.151
- election:  
 bribery 10.82–10.83
- embargo 16.92, 16.94–16.98
- employee and employer:  
 deceit 2.51–2.52  
 fiduciary relationship 6.105–6.106  
 unlawful means conspiracy 7.30–7.31
- equitable proprietary claims:  
 jurisdiction 25.234–25.235
- equitable proprietary interest:  
 constructive trusts and 26.209–26.210
- equitable rules:  
*see under* tracing
- equity:  
 claims 25.120  
 fiduciary relationship 6.110–6.119  
*in personam* claims 16.47–16.50  
 jurisdiction 25.120, 25.139–25.141, 25.221–25.236  
 pre-action disclosure 15.115–15.120
- evasion principle 18.58–18.65
- evidence:  
 pre-action disclosure 15.146, 15.199–15.203  
 privilege against self-incrimination 24.107
- exceptional order 20.124
- expenses 20.176–20.190, 21.49–21.50  
 freezing injunction 20.176–20.190  
 proprietary injunction 21.49–21.50
- express trustee wrongly described 6.30
- express trusts:  
 constructive trusts and 26.203
- extortionate credit transactions 14.24–14.32
- fault 3.155–3.159
- fiduciary duty:  
 constructive trusts and 26.204–26.208  
 knowing or unconscionable receipt 5.68–5.83  
*see also* breach of fiduciary duty
- fiduciary relationship:  
 bribery and 10.24–10.27  
 dishonest assistance 9.32–9.35  
 knowing or unconscionable receipt: 5.46–5.54, 5.63–5.83  
*see also under* constructive trusts
- floating charges 14.18–14.23
- following:  
 generally 16.12–16.28
- foreseeability:  
 damages 23.74–23.81
- Foskett v McKeown:*  
 constructive trusts 3.103–3.114
- fraud:  
 damages 10.67–10.68  
*see also* transactions defrauding creditors
- fraudulent misrepresentation 6.229–6.246
- freezing injunction:  
 bank owes no duty or care to applicant 20.205  
 bank set-off provision 20.204  
 banks and the order 20.195–20.205  
*Bayer v Water* order 20.06–20–07  
 bench warrants 20.08  
 consequences of granting 20.27–20.31  
 development outline 20.14–20.20  
 effect of 20.175–20.205  
 generally 20.14–20.31  
 interim receiver 20.04  
 joint accounts 20.199–20.200  
 legal expenses 20.185–20.190  
*ne exeat regno* writ 20.05  
 ordinary business expenses 20.178–20.184  
 ordinary living expenses 20.176–20.177  
 overview 20.09–20.13  
 rationale 20.21–20.26  
 respondent 20.191  
 third party:  
     accounts 20.201–20.203  
     indemnity for reasonable costs 20.198
- freezing injunction in aid of English proceedings: domestic:  
 accrual of cause of action 20.35–20.46  
 ancillary disclosure 20.111–20.120  
 assets beneficially owned by respondent but held by third party 20.70–20.73  
 assets held by respondent 2.59–20.93  
 assets held by third party 20.79–20.93  
 assets held on trust for third parties 20.76–20.78  
 assets wholly owned and in possession of respondent 20.69  
 cause of action justiciable in England and Wales 20.47–20.50  
 cross-examination on affidavit evidence 20.124–20.133  
 delay, effect of in making application 20.105–20.109  
 discretion 20.110

- dissipation, real risk of 20.94–20.109  
 exceptional order 20.124  
 good arguable case on merits 20.51–20.58  
 grounds 20.125–20.131  
 judgment may go unsatisfied 20.94–20.109  
 location of assets 20.66–20.67  
 nature of assets 20.59–20.65  
 nature of respondent's interest in  
     assets 20.68–20.93  
 off-shore structures, assets held in 20.74–20.75  
 privilege against  
     self-incrimination 20.121–20.122  
 standard order 20.134  
 third parties 20.70–20.73, 20.76–20.78,  
     20.79–20.93  
 tipping off, problems of 20.123  
 worldwide:  
     *Bananafr* proviso 20.140–20.147  
     *Baltic* proviso 20.148–20.152  
     location of assets 20.138–20.139  
     undertakings not to enforce 20.153–20.155  
 freezing injunction in aid of foreign proceedings 20.03  
     *Credit Suisse* 20.166–20.171  
 frozen funds:  
     use of to meet living and other expenses 21.49–21.50  
 full and frank disclosure 19.44–19.46, 23.14–23.22  
 gifts 10.13, 11.15, 11.17  
 good arguable case test 20.51–20.58, 25.147  
 good faith:  
     transactions at an undervalue 11.37  
 habitual residence 26.144–26.148, 26.174–26.176  
 Hague Convention on Trusts and Recognition of  
     Trusts Act 1987 *see under* choice of law  
*Hallett's Case, Re* 16.131–16.133  
 husband and wife:  
     unlawful means conspiracy 7.24–7.29  
 ignorance:  
     unjust enrichment 3.87–3.93  
 incapacity:  
     unjust enrichment 3.71  
 incitement to murder:  
     constructive trusts 6.275  
 indemnity:  
     for reasonable costs 20.198  
 inducing breach of contract:  
     damages 8.43–8.44  
     elements of claim:  
         act of inducement or procurement 8.28–8.35  
         actual breach 8.36–8.37  
         intention to induce or procure 8.22–8.27  
         justification, no lawful 8.38–8.42  
         knowledge of contract 8.14–8.21  
     generally 8.05–8.08  
     loss by unlawful means 8.09–8.13  
     overview 8.01–8.04  
 injunction:  
     *contra mundum* 24.78–24.81  
     *see also* freezing injunction; proprietary injunction  
 injunctive relief 24.11–24.23  
 innocent parties:  
     tracing 16.131–16.140  
*in personam* claims:  
     common law 16.51–16.53  
     in equity 16.47–16.50  
 institutional trusts 6.34–6.42  
 intellectual property rights 15.106, 19.87, 26.58  
 intention:  
     certainty of 6.44–6.49  
     common or unilateral 17.21–17.30  
     constructive trusts 6.44–6.49  
     contempt of court 24.45–24.46, 24.47–24.49  
     deceit 2.16–2.18  
     evidence of 17.35–17.37  
     timing of 17.31–17.34  
     to induce or procure 8.22–8.27  
     unlawful means conspiracy 7.62–7.70  
 interests of unsecured creditor 6.07–6.09  
 interim receiver 20.04  
 interim relief:  
     application preparation 23.03–23.07  
     damages, cross-undertakings in 23.23–23.38  
     discharge, potential grounds for 23.43–23.48  
     failure to satisfy criteria for relief obtained 23.47  
     full and frank disclosure, duty of 23.14–23.22  
     generally 23.01–23.02  
     jurisdiction 23.44–23.45  
     material non-disclosure 23.48, 23.49–23.56  
     notice, with or without 23.08–23.09  
     parties' lodgment of 23.10–23.13  
     preparatory steps 23.39–23.42  
     underlying claim, merits of: no good arguable  
         case 23.46  
 irreconcilable judgments test 25.152, 25.155–25.174  
 joint ventures:  
     commercial 6.262–6.271  
     fiduciary relationship 6.100–6.104  
 Judgments Regulation 25.15, 25.81, 25.137, 25.221  
 jurisdiction:  
     claim-based 25.07–25.10  
     common law:  
         agreements, jurisdiction 25.185  
         challenging jurisdiction taken as of right 25.183  
         co-defendants 25.187–25.190  
         presence within jurisdiction 25.179–25.182  
         service out of jurisdiction with permission of  
             court 25.186  
         submission to jurisdiction by entering an  
             appearance 25.184  
     deceit 25.209–25.213  
     extra-territorial 12.23–12.34  
     interim relief 23.44–23.45  
 nature of claim:  
     constructive trusts 25.231–25.232  
     contract 25.193–25.205  
     dishonest assistance 25.233  
     equitable proprietary claims 25.234–25.236  
     equity 25.221–25.236  
     knowing receipt claims 25.224–25.230  
     tort 25.206–25.215  
     unjust enrichment 25.216–25.220

- jurisdiction:** (*cont.*):  
 overview 25.14–25.22  
 pre-action disclosure 15.26–15.42  
 pre-emptive remedies, in respect of 25.11–25.13  
*receivers see under receivers*  
 substantive 25.03–25.06  
*see also under Brussels I Regulation*  
**justification** 8.38–8.42, 16.28, 16.92
- Keech v Sandford re-interpretation* 6.138  
**knowing receipt** 26.214–26.220  
 claims 25.224–25.230  
**knowing or unconscionable receipt:**  
 dishonest assistance 5.10–5.17  
 elements of claim:  
   agents, receipt by 5.96–5.101  
   assets 5.60–5.61  
   assets held under trust or fiduciary  
     relationship 5.38–5.62  
*Baden Delvassie scale* 5.142–5.145  
 banks 5.106–5.117  
 beneficial receipt: definition 5.85–5.95  
 beneficial receipt of assets by  
   defendant 5.84–5.117  
 breach of duty and breach of fiduciary duty  
   distinction 5.68–5.83  
 constructive trust 5.55–5.58  
 corporate entities 5.102–5.105  
 dishonesty 5.123–5.132  
 express written trust instrument 5.44  
 fiduciary relationships 5.46–5.54  
 knowledge of defendant 5.118–5.158  
 liens 5.59  
 resulting trusts 5.45  
 strict liability 5.133–5.141  
 transfer in breach of trust or fiduciary  
   relationship 5.63–5.83  
 type of trust or fiduciary relationship 5.42–5.59  
 unconscionability 5.146–5.158  
 generally 5.02–5.08  
 liability, nature of  
   dishonest assistance 5.10–5.17  
 overview 5.01  
 remedies 5.159–5.162  
 unjust enrichment 5.18–5.34
- knowledge:**  
 conspiracy 7.53–7.55  
 contract 8.14–8.21  
 knowing receipt 5.118–5.158
- land:**  
 constructive trusts 6.70
- language problems:**  
 constructive trusts 6.24–6.33  
 dishonest assistance 9.06–9.11
- law:**  
 representations of 2.26–2.28
- lawful means** *see under conspiracy*
- legal expenses** 20.185–20.190
- letters of credit** 16.78
- letters rogatory:**  
 pre-action disclosure 15.146
- lex causae** 25.127, 26.65, 26.78, 26.198, 26.199
- lex fori** 25.35, 26.16, 26.65, 26.78, 26.127
- liability:**  
 for account of profits 10.59–10.65  
 bribery 10.56–10.65  
 constructive trusts 6.25–6.29  
 contempt of court 24.52–24.58  
 conversion 4.16–4.19  
 corporate entity 24.50–24.51  
 dishonest assistance 9.12–9.30  
 juridical basis 9.12–9.30  
 knowing or unconscionable receipt 5.09–5.34  
 multiple 26.87  
 personal 24.52–24.58  
 secondary 8.11, 8.29  
 strict 4.16–4.20, 5.133–5.141  
 third party recipient 26.125–26.128  
 to account 6.25–6.29, 10.56–10.65  
 vicarious 9.144–9.147
- liens:**  
 knowing or unconscionable receipt 5.59
- lifting the corporate veil:**  
 concealment principle 18.52–18.57  
 corporate personality, abuse of for purpose of relevant  
   wrongdoing 18.48–18.65  
 definition 18.06–18.23, 18.28–18.38  
 evasion principle 18.58–18.65  
 existence of principle 18.24–18.27  
 jurisdiction 25.63–25.70  
 'peeping behind the veil' 18.30–18.31  
 piercing or lifting the veil 18.32–18.38  
*Prest v Petrodel* 18.41–18.47  
*Salomon v Salomon* principle 18.06–18.23  
 summary of requirements 18.01  
*VTB v Nutritek* 18.40
- limitation:**  
 of actions 3.178–3.182  
 constructive trusts 6.43–6.79  
 conversion 4.68–4.70
- limitation periods:**  
 constructive trusts 6.33  
 deceit 2.81–2.82  
 dishonest assistance 9.149–9.150  
 transactions defrauding creditors 12.25
- Lister & Co v Stubbs* 6.144–6.147
- living expenses** 21.49–21.50
- loss:**  
 by unlawful means 8.09–8.13  
 compensation for 23.66–23.70  
 and damage 2.67–2.77  
 economic 26.135–26.151
- lowest intermediate balance rule** 16.136–16.140
- Lugano Convention** 20.17, 20.160, 25.14, 25.16, 25.80
- management time, loss of** 23.78
- manslaughter:**  
 constructive trusts 6.275
- Mareva injunctions** 20.15–20.17  
*see also freezing injunction in aid of English  
   proceedings*
- material non-disclosure:**  
 interim relief 23.48, 23.49–23.56

- mens rea* 24.69–24.70  
 mental state/relevant intention 24.45–24.46  
 mere witness rule 15.73–15.100  
*Metropolitan Bank v Heiron* 6.143  
 ministerial receipt 3.172–3.177  
 misrepresentation:  
     claims based on 25.118–25.119  
     deceit 2.78  
     fraudulent 6.229–6.246  
     jurisdiction 25.118–25.119  
 misstatements:  
     deceit 2.07  
     negligent 25.209–25.213  
 mistake:  
     claims based on 25.118–25.119  
     jurisdiction 25.118–25.119  
     unjust enrichment 3.84–3.86  
 mistaken payments 6.212–6.228  
 mixed funds:  
     tracing 16.59–16.68, 16.86–16.101, 16.116, 16.117–16.130, 16.131–16.140  
 money:  
     bribery 10.45–10.55  
     laundering 16.01–16.02, 16.45, 16.81, 16.158  
     receipt of 3.38–3.40  
 movement, restriction of *see* orders restricting movement  
 murder:  
     constructive trusts 6.275  
 nature of claim *see under* jurisdiction  
 necessity:  
     unjust enrichment 3.07  
*ne exeat regno* writ 20.05, 20.239–20.245  
 negligence contributory 2.79, 4.66–4.67  
 negligent misstatement:  
     jurisdiction 25.209–25.213  
 negotiable instruments:  
     conversion 4.10  
     Rome II Regulation 26.64  
 new proprietary right:  
     tracing 16.28–16.29  
 non-contractual obligations:  
     choice of law 26.40–26.42  
     *see also* Rome II Regulation  
 non-contractual transfers (rescission) 6.231–6.234  
 non-disclosure, material:  
     interim relief 23.48, 23.49–23.56  
 non-fiduciary relationship *see under* constructive trusts  
*Norwich Pharmacal* jurisdiction *see under* pre-action disclosure  
  
*Outway, Re* 16.134–16.135  
*OBG Ltd v Allam*:  
     inducing breach of contract 8.04, 8.06–8.07  
 objects:  
     certainty of 6.53  
 orders restricting movement:  
     *Bayer AG v Winter* order 20.246–20.252  
     bench warrants 20.253–20.254  
     *ne exeat regno* writ 20.239–20.245  
 overdrawn accounts:  
     tracing 16.141–16.142  
  
*Pallant v Morgan* trust 6.262–6.271  
*Paragon Finance*:  
     constructive trusts 6.64–6.68, 6.71, 6.76–6.79  
*pari passu* principle:  
     preferences 13.05, 13.10, 13.24  
 partnership:  
     fiduciary relationship 6.98–6.99  
 payment:  
     change of position 3.141, 3.142–3.144  
     of a debt 16.147–16.154  
     mistaken 6.212–6.228  
     tracing 16.73–16.85  
 penal notice 24.31–24.37  
 penalties:  
     contempt of court 24.113–24.117  
 personal remedy:  
     constructive trusts 6.121–6.122  
     unjust enrichment 3.97–3.102  
 personal rights:  
     and proprietary rights compared 6.05–6.06  
 pleading:  
     advantages 7.06  
     disadvantages 7.07  
     lawful means conspiracy 7.110  
     practice 7.104–7.110  
     unjust enrichment 3.13–3.16  
     unlawful means conspiracy 7.109  
 post-action disclosure:  
     against a non-party 15.08–15.10  
     Civil Procedure Rules 15.08–15–12  
     documents, class or category of 15.209–15.213  
     evidence required 15.199–15.203  
     necessary to dispose fairly of claim or save costs 15.216  
     non-party, against 15.185–15.218  
     overall conclusion 15.218  
     residual discretion 15.217  
     standard disclosure, limiting to 15.214–15.215  
     threshold condition test  
         requirement 15.204–15.208  
     witness summons 15.11–15.12, 15.219–15.240  
 pre-action disclosure:  
     *Bankers Trust* jurisdiction 15.156–15.184  
     Civil Procedure Rules 15.23–15.60  
     costs 15.55–15.60  
     desirability of disclosure 15.41–15.42  
     discretion 15.43–15.54  
     jurisdictional requirements 15.26–15.42  
     likely to be parties to future proceedings 15.27–15.32  
     practice and procedure 15.154  
     standard disclosure 15.33–15.40  
 future parties to litigation 15.02  
*Norwich Pharmacal* jurisdiction 15.61–15.155  
     abroad, assistance for procedures taken 15.130–15.146  
     breach of confidence 15.115–15.120  
     breach of copyright 15.115–15.120  
     costs 15.152

- pre-action disclosure:** (*cont.*):  
*Norwich Pharmacal* jurisdiction (*cont.*):  
    crimes 15.115–15.120  
    decision 15.63–15.68  
    equity, claims in 15.115–15.120  
    evidence and disclosure 15.146  
    full information required 15.126–15.129  
    grant of relief, factors relevant to 15.69–15.130  
    head of jurisdiction 15.147–15.151  
    identity of wrongdoer 15.121–15.125  
    information/documentation 15.109–15.114  
    letters rogatory procedure 15.146  
    mere witness rule 15.73–15.100  
    necessary and proportionate  
        response 15.101–15.106  
    practice and procedure 15.153–15.155  
    standard of proof and argument 15.107–15.108  
    trade mark infringement 15.115–15.120  
    wrongdoing 15.73–15.100, 15.109–15.114,  
        15.115–15.120, 15.121–15.125  
putative claimant and facilitator 15.03–15.04  
putative claimant and third party 15.05–15.06
- preferences:**  
    court orders available 13.30  
    creditor:  
        conduct amounting to preference 13.10–13.16  
        definition of 13.09  
    desire 13.21–13.28  
    generally 13.04–13.08  
    overview of claim 13.01–13.03  
    relevant time for making 13.29  
    surety/guarantor 13.17–13.20
- Prest v Petrel* 18.41–18.47
- prima facie case:**  
    search orders 19.18–19.20
- Private International Law (Miscellaneous Provisions) Act 1995** *see under choice of law*
- privilege:**  
    against self-incrimination 16.121–20.122  
    search orders 19.85–19.94
- privity:**  
    unjust enrichment 3.55–3.59
- proprietary claim:**  
    equitable 25.234–25.236  
    solicitors and use of 'tainted funds' 20.212–20.227  
    tracing 16.46  
    *see also under constructive trusts*
- proprietary injunction:**  
    ancillary disclosure order 21.45–21.48  
    balance of convenience 21.34–21.36  
    cases, relative strength of 21.41–21.43  
    damages 21.25–21.30, 21.31–21.33  
    generally 21.07–21.12  
    general principles 21.13–21.17  
    nature of 21.03–21.06  
    overview of requirements 21.01–21.02  
    requirements 21.07–21.12  
    serious issue to be tried 21.18–21.24  
    special factors 21.44  
    status quo 21.37–21.40  
    proprietary interest, equitable 26.209–26.210
- proprietary remedies:**  
    constructive trusts 6.129–6.141  
    *see also under unjust enrichment*
- proprietary rights:**  
    and personal rights compared 6.05–6.06
- Quistclose trust** 6.17–6.23
- receipt of proceeds** 5.17, 5.26–5.27, 5.129
- receipt of funds** 3.148–3.149
- receipt of proceeds:**  
    *see also conversion; unjust enrichment*
- receivers:**  
    administrative 22.07  
    appointment, consequences of 22.47–22.49  
    contractually-appointed 22.06  
    court-appointed 22.08–22.11  
    generally 22.02–22.11  
    jurisdiction 22.12–22.19, 22.20–22.46  
        appointment pre-judgment 22.23–22.31  
        assets abroad 22.32–22.46  
        equitable execution 22.37–22.46  
        post-judgment 22.37–22.46
- LPA 22.05**
- overview** 22.01
- practice** 22.59–22.56
- procedure** 22.50–22.56
- relief:**  
    injunctive 24.11–24.23
- remedial trusts** 6.34–6.42
- remedies:**  
    conversion:  
        assessment of damages 4.58–4.64  
        specific restitution 4.65  
        dishonest assistance 9.137–9.143  
        knowing or unconscionable receipt 5.159–5.162  
        personal 3.97–3.102, 6.121–6.122  
    *see also proprietary remedies*
- remoteness:**  
    damages 2.74–23.81
- reprehensible seeking-out test** 3.37
- rescission:**  
    bribery 10.36–10.40  
    constructive trusts 6.32, 6.229–6.246
- restitution:**  
    specific 4.65  
    unjust enrichment, versus 3.10–3.12  
    for wrongs 10.76–10.79
- resulting trust** 5.45, 6.17–6.23
- rights** *see personal rights; proprietary rights*
- Rome II Regulation:**  
    commencement date 26.60  
    common law rules 26.61–26.87  
    deceit 26.135–26.151  
    direct action against insurer of person liable 26.85  
    freedom of choice 26.69–26.87  
    generally 26.56–26.59  
    multiple liability 26.87  
    non-contractual obligations 26.66–26.67  
    public policy of forum 26.76–26.79  
    relationship with existing international  
        conventions 26.83

- relationship with other provisions of Community law 26.82  
 safety and conduct, rules of 26.80–26.81  
 scope 26.61–26.65  
 scope of applicable law 26.84  
 subrogation 26.86  
 torts:  
   alternative based on manifestly more closely connected country 26.149–26.151  
   deceit and economic loss 26.135–26.151  
   habitual residence 26.144–26.148  
 universal application 26.68  
 unjust enrichment:  
   another law manifestly more closely connected 26.185–26.190  
   common habitual residence 26.174–26.176  
   definition 26.158–26.160  
   excluded claims 26.161–26.162  
   existing relationship 26.165–26.166  
   generally 26.152–26.157  
   law of place of 26.177–26.184  
   overview 26.163–26.173  
   relationship closely connected to 26.172–26.173  
   relationship, existence of 26.167–26.171  
*Roscoe v Winter* 16.136–16.140  
*Royal Brunei v Tan*:  
   dishonest assistance 9.74–9.90, 9.91–9.102  
  
*Salomon v Salomon* principle 18.06–18.23  
 search orders:  
   affidavit 19.56–19.60  
   applicable principles:  
     application on notice 19.35–19.39  
     clear evidence of possession of incriminating documents/materials 19.23–19.34  
     destruction, real possibility of 19.35–19.39  
     documents assisting enforcement of a judgment 19.33–19.34  
   documents assisting making of a claim 19.26–19.32  
   harm caused by execution must not be excessive/out of proportion 19.40–19.43  
   prima facie case 19.18–19.20  
   relevant documents 19.24–19.25  
   serious potential or actual harm to claimant's interests 19.21–19.22  
   standard of evidence 19.23  
 applicant 19.73–19.84  
 application notice in form N16A 19.55  
 claim form 19.53–19.54  
 conduct of execution 19.72–19.84  
 cross-undertakings in damages 19.47–19.49  
 draft order 19.61–19.64  
 full and frank disclosure, duty of 19.44–19.46  
 generally 19.07–19.13  
 hearing 19.67–19.71  
 overview 19.01–19.06  
 practice 19.50–19.84  
 privilege 19.85–19.94  
 procedure 19.50–19.84  
 search and custody of materials 19.81–19.84  
 service 19.73–19.80  
 skeleton argument 19.65–19.66  
 supervising solicitor 19.73–19.84  
 secret commission 6.206–6.210  
 security 20.95–20.99  
 self-incrimination, privilege against 20.121–20.122, 24.107  
 sequestration, writ of 24.135–24.137  
 serious issue to be tried test 25.150  
 service:  
   search orders 19.73–19.80  
 sham trusts:  
   assertion of sham nature 17.20  
   consequences of finding 17.38–17.39  
   deception 17.10–17.19  
   definition 17.13–17.16  
   document, objective interpretation of 17.17–17.19  
   generally 17.03–17.05  
   intention, common or unilateral 17.21–17.30  
   intention, evidence of 17.35–17.37  
   intention, timing of 17.31–17.34  
   means no trust 17.07–17.09  
   requirements 17.06–17.39  
 shock 23.77  
*Sinclair v Versailles* 6.129–6.141, 6.159, 6.160–6.161  
 skeleton arguments:  
   search orders 19.65–19.66  
 solicitor and client:  
   fiduciary relationship 6.91  
 solicitors see use of 'tainted funds':  
   breach of court order claim 20.228–20.232  
   proprietary claim 20.212–20.227  
   public policy 20.233–20.237  
 standard of proof:  
   contempt of court 24.42–24.44  
 statutory regimes 6.58–6.79  
 stolen property 6.247–6.261  
 strict liability:  
   conversion 4.16–4.20  
   knowing or unconscionable receipt 5.133–5.141  
 subject matter:  
   certainty of 6.50–6.52  
 subrogation 26.86  
*Sugden v Crossland* 6.155–6.158  
 suicide pacts:  
   constructive trusts 6.275  
 surety/guarantor:  
   preferences 13.17–13.20  
 swollen assets theory 16.143–16.146  
  
 'tainted funds' see solicitors and use of 'tainted funds'  
 third parties:  
   accounts 20.201–20.203  
   contempt of court 24.02, 24.59–24.81  
   deceit 2.40–2.41, 2.78  
   dishonest assistance 9.57–9.62, 9.63–9.136  
   freezing injunction 20.70–20.73, 20.76–20.78, 20.79–20.93, 20.192–20.194  
   indemnity for reasonable costs 20.198  
   injunctive relief 24.17–24.23  
   interests:  
     transactions at an undervalue 11.38–11.40  
     transactions defrauding creditors 12.19–12.22

- third parties: (*cont.*):  
 liability 26.125–26.128  
 must have acted dishonestly in providing assistance 9.63–9.136  
 procurement, inducement or assistance in breach 9.57–9.62
- threshold condition test requirement 15.204–15.208
- tipping off 20.123
- title to sue 4.31–4.40
- tort:  
 jurisdiction 25.121–25.141, 25.206–25.215  
*Rome II Regulation* 26.133–26.151
- tracing:  
 assets or value 16.30–16.34  
 backwards 16.147–16.154  
 and causation 16.42–16.44  
 choice of law 26.125–26.128  
 and claiming distinction 16.35–16.41  
 common law:  
   bank accounts 16.69–16.101  
   cash 16.70–16.72  
   chooses in action 16.70–16.72  
   clearing systems 16.86–16.101  
   embargo 16.92, 16.94–16.98  
   mixed funds 16.59–16.68, 16.86–16.101  
   payment method 16.73–16.85  
   unauthorized payments by bank 16.99–16.101  
   value not assets 16.93  
 equitable proprietary interest 6.31  
 equitable rules:  
   assets used to discharge liabilities cease to exist 16.141–16.142  
   backwards tracing 16.147–16.154  
*Clayton's Case*, rule in 16.121–16.130  
 current account 16.121–16.130  
 deposit account 16.120  
*Hallett Case, Re* 16.131–16.133  
 innocent parties 16.117–16.130, 16.131–16.140  
 invoking rules 16.106–16.108  
 lowest intermediate balance rule 16.136–16.140  
 mixed funds 16.131–16.140  
 mixed funds, transfers out of 16.117–16.130  
 mixed funds, treatment of monies in 16.116  
*Oenway, Re* 16.134–16.135  
 payment of a debt 16.147–16.154  
 presumptions 16.115  
*Roscoe v Winder* 16.136–16.140  
 summary 16.105–16.115  
 swollen assets theory 16.143–16.146  
 wrongdoing trustee 16.131–16.140  
 following 16.12–16.29  
 future for 16.155–16.157  
 generally 16.01–16.04  
 motives:  
   common law *in personam* claims 16.51–16.53  
   *in personam* claims in equity 16.47–16.50  
   proprietary claims 16.46  
 nature:  
   modern view 16.11–16.44  
   traditional view 16.05–16.10  
 new proprietary right 16.28–16.29
- transactions at an undervalue:  
 good faith 11.37  
 hindsight, role of 11.26–11.32  
 inability to pay debts 11.08–11.09  
 orders of court 11.41–11.42  
 overview of claim 11.07–11.07  
 precise valuation 11.33–11.36  
 reasonable actions 11.37  
 relevant time for transaction 11.10–11.11  
 relevant transaction 11.12–11.25  
 third party interests 11.38–11.40  
 valuation 11.26–11.32
- transactions defrauding creditors:  
 application for order 12.17  
 extra-territorial jurisdiction 12.23–12.34  
 limitation period 12.25  
 orders:  
   available 12.18  
   overview of claim 12.01–12.02  
 purpose of putting assets beyond reach:  
   no dishonest intention or purpose necessary 12.08  
   purpose not consequence 12.07–12.16  
   relevant purpose (substantial or dominant) 12.08–12.16  
 requirements 12.03  
 third party interests 12.19–12.22  
 transactions at undervalue 12.03, 12.04–12.05
- transactions void *ab initio* 10.31–10.35
- winders:  
 commencement of winding up, after 14.02–14.11
- trust *see* breach of trust
- trustee:  
 exemption clause 9.47  
 fiduciary relationship 6.90
- trusts:  
 arising after rescission 6.32  
 dishonest assistance 9.32–9.35  
 express 5.44, 26.203  
 institutional 6.34–6.42  
 knowing or unconscionable receipt 5.38–5.62, 5.63–5.83  
 remedial 6.34–6.42  
 resulting 5.45, 6.17–6.23  
*see also* constructive trusts; sham trusts
- Twinsectra v Yardley* 9.91–9.102
- Tyrell v Bank of London* 6.152–6.154
- ultra vires:  
 unjust enrichment 3.71
- unconscionable conduct:  
 constructive trusts 6.262–6.271
- unconscionable receipt 26.214–26.220  
 and dishonest assistance compared 9.14–9.21
- undue influence:  
 unjust enrichment 3.07, 3.71, 3.81, 3.127
- unjust enrichment:  
 adducing evidence 3.45–3.47  
 bribery and 10.28–10.29, 10.45–10.55, 10.71–10.79  
 constructive trusts and 26.211  
 contract and 3.17–3.30

- defences:  
 bona fide purchaser for value without notice 3.167–3.172  
 change of position 3.133–3.166  
 limitation of actions 3.178–3.182  
 ministerial receipt 3.172–3.177  
*see also* change of position  
 free acceptance 3.51–3.52  
 generally 3.03–3.09  
 geometric multiplication of title 3.60–3.67  
 incontrovertible benefit 3.48–3.52  
 jurisdiction 25.216–25.220  
 knowing or unconscionable receipt 5.18–5.34  
 liability, elements of 3.31–3.82  
 non-money receipt 3.41–3.54  
 objective assessment of market value 3.44  
 overview of claim 3.01–3.02  
 personal remedy 3.97–3.102  
 pleading a claim 3.13–3.16  
*prima facie* (general) test for valuation of market value 3.43  
 privity 3.56–3.59  
 proprietary remedies:  
   advocates of claims 3.120–3.127  
   change of position defence 3.117–3.119  
*Foskett v McKeown* 3.103–3.114  
   overview of present position 3.128–3.131  
   post-*Foskett* explanation 3.115–3.116, 3.117–3.119  
 receipt of money 3.38–3.40  
 restitution, versus 3.10–3.12  
 subjective devaluation 3.48–3.52  
 subjective revaluation 3.53–3.55  
 terminology 3.10–3.12  
 unjust factors:  
   absence of legal basis 3.73–3.82  
   analysis of 3.83–3.96  
 failure of consideration 3.94–3.96  
 ignorance 3.87–3.93  
 mistake 3.84–3.86  
 range of 3.70–3.72  
*see also under* Rome II Regulation  
 unlawful means *see under* conspiracy  
 unsecured creditor 6.07–6.09
- valuation:  
 transactions at an undervalue 11.26–11.32, 11.33–11.36
- value:  
 tracing 16.30–16.34
- vicarious liability:  
 dishonest assistance 9.144–9.147
- VTB v Nutritek* 18.40
- warrants:  
 bench 20.08
- Waters, D W M 6.14
- Westdeutsche case* 6.19–6.20, 6.35–6.38, 6.251
- winding up:  
 transfers after commencement 14.02–14.11
- witness summons:  
 pre-action disclosure 15.11–15.12, 15.219–15.240
- worldwide freezing injunction *see under* freezing injunction in aid of English proceedings
- wrongdoing:  
 change of position 3.160–3.163  
 constructive trusts and 26.212–26.213  
 lifting the corporate veil 18.48–18.65  
 pre-action disclosure 15.73–15.100, 15.109–15.114, 15.115–15.120, 15.121–15.125
- trustee:  
 tracing 16.131–16.140
- unjust enrichment 3.160–3.163