

Table of Contents

<i>Summary of Contents</i>	v
<i>Table of Contents</i>	vii
<i>Preface to Eleventh Edition</i>	xxv
<i>Preface to First Edition</i>	xxvii
<i>Table of Cases</i>	xxix
<i>Table of Statutes</i>	lxxi
<i>Glossary</i>	lxxix
PART ONE: TRUSTS	
CHAPTER ONE: INTRODUCTION	
1.1 Definition of a trust	3
1.2 Distinction from other concepts	5
1.2.1 Trust and bailment	5
1.2.2 Trust and agency	6
1.2.3 Trust and debt	7
1.2.4 Trust and contract	8
1.2.5 Trusts and powers	8
1.2.6 Trusts and personal representatives	11
1.3 Classification of trusts	13
1.3.1 Public (or charitable) trusts and private trusts	13
1.3.2 Statutory, express, implied and constructive trusts	13
(a) Statutory trusts	14
(b) Express trusts	14
(c) Resulting trusts	15
(d) Implied trusts	16
(e) Constructive trusts	16
1.3.3 Fixed and discretionary trusts	16
1.3.4 Simple and special trusts	19
1.4 Trusts and the Property (Relationships) Act 1976	19
CHAPTER TWO: EXPRESS PRIVATE TRUSTS	
2.1 Capacity of settlors, trustees and beneficiaries	23
2.1.1 Settlers	23
(a) Minors	23
(b) Corporations	24
(c) Persons with disabilities	24
(d) Drunk persons	24

2.1.2	Trustees	24
	(a) Minors	25
	(b) Aliens	25
	(c) Corporations/trustee companies	25
	(d) The Sovereign	26
	(e) A life tenant	26
2.1.3	Beneficiaries	26
2.2	Evidential requirements	26
2.2.1	Trusts inter vivos	27
2.2.2	Testamentary trusts	27
2.3	The requirements of certainty: the "three certainties"	27
2.3.1	Certainty of intention	28
2.3.2	Certainty of subject-matter	30
2.3.3	Certainty of objects	31
2.3.4	Remaining difficulties	35
2.4	Completely and incompletely constituted trusts	37
2.4.1	Transfer of trust property	38
2.4.2	Declaration of trust	39
2.4.3	Volunteers	40
	(a) Covenants to create trusts, and volunteers	40
	(b) The rule in <i>Strong v Bird</i>	42
	(c) Donations mortis causa	43
	(d) Estoppel	44
2.5	Secret trusts	45
2.5.1	The basis of secret trusts	45
2.5.2	Fully secret trusts	46
2.5.3	Half-secret trusts	48
2.5.4	Performance of secret trusts	50

CHAPTER THREE:**PURPOSE TRUSTS AND UNINCORPORATED ASSOCIATIONS**

3.1	Purpose trusts or trusts of imperfect obligation	51
3.1.1	Animals	52
3.1.2	Tombs and monuments	53
3.1.3	Masses	55
3.1.4	The decision in <i>Re Denley's Trust Deed</i>	56
3.1.5	Miscellaneous points	57
3.2	Unincorporated associations	58
3.2.1	Unincorporated associations and gifts	59
3.2.2	Conclusion	62
3.2.3	Unincorporated associations and s 25 of the Wills Act 2007	63
3.3	Quistclose trusts	63

CHAPTER FOUR:**RESULTING AND CONSTRUCTIVE TRUSTS**

4.1	Resulting trusts	67
4.1.1	Type A or presumed resulting trusts	68
	(a) Purchase in the name of another	68
	(b) The family home and de facto relationships	70
	(c) Voluntary transfer into the name of another	71
4.1.2	Type B or automatic resulting trusts	71
4.1.3	The presumption of a resulting trust may be rebutted	77
4.2	Constructive trusts	79
4.2.1	Orthodox or institutional constructive trusts	80
	(a) Constructive trusts imposed where a fiduciary obtains a benefit from a breach of his or her duty	80
	(b) Renewal of a lease	83
	(c) Purchase of the reversion	84
	(d) Extensions of the rule in <i>Keach v Sandford</i>	85
	(e) If a fiduciary uses confidential information gained as a result of the fiduciary relationship	87
	(f) Competition with the trust	89
	(g) Purchase of trust property and beneficial interests	89
	(h) Illegal or secret commissions and bribes	90
4.2.2	Liability of strangers	91
	(a) Trustees de son tort	92
	(b) Dishonest assistance	93
	(c) Recipient liability	100
	(d) Agents	104
4.2.3	Constructive trusts imposed on vendors under contracts that are capable of specific performance	108
4.2.4	Constructive trusts imposed on mortgagees	109
4.2.5	Constructive trusts imposed on persons who acquire interests in property by fraud	109
4.2.6	Constructive trusts and property disputes	110
4.3	Remedial constructive trusts	115
4.4	Mutual wills	119

CHAPTER FIVE:**VOID AND VOIDABLE TRUSTS AND SHAM TRANSACTIONS**

5.1	The legality of trusts	123
5.1.1	The rule against remoteness of vesting	123
5.1.2	Trusts restricting the alienation of property	124
5.1.3	Trusts designed to defraud creditors	124
5.1.4	Trusts tending to restraint of marriage, or to infringe the sanctity of marriage or of the family	126

5.1.5	Trusts contrary to public policy	126
	(a) Religion	126
	(b) Trusts tending to deter the beneficiary from entering the service of the Crown, or from taking public office	126
	(c) Trusts for a criminal purpose	126
5.1.6	The consequence of illegality	127
5.2	Other situations when a trust may be avoided	127
5.2.1	Bars to relief	133
5.3	Sham transactions	133
5.3.1	A common intention	134
5.3.2	An intention to mislead	134
5.3.3	Subjective intention	135
5.3.4	Ignorance and/or poor administration	135
5.3.5	Motive	135
5.3.6	Effect of a sham	136
5.3.7	Emerging sham	136
5.4	Alter ego trusts	137
5.5	<i>Post-Official Assignee v Wilson</i>	140
CHAPTER SIX:		
CHARITABLE TRUSTS		
6.1	Introduction	145
6.2	The definition of charity	147
6.2.1	Public purpose	149
6.2.2	Public benefit	153
6.2.3	Control by the court	155
6.3	The relief of poverty	156
6.3.1	The poverty exception	159
6.4	The advancement of education	161
6.5	The advancement of religion	168
6.6	Other purposes beneficial to the community	175
6.6.1	Animals	176
6.6.2	Recreation	177
6.6.3	Political trusts	178
6.6.4	Miscellaneous	180
6.7	Mixed charitable and non-charitable, and invalid, gifts	182
6.7.1	Duties of trustees for charitable trusts	186
6.8	The administration of charities	186
6.8.1	The enforcement of charitable trusts	186
6.8.2	Schemes for the administration of charitable trusts	187
	(a) A donor has a clear intention to make a gift to a charitable purpose, but the directions are inadequate	187

	(b) Clear directions are given for a gift, but for some reason the gift cannot be made	188
6.8.3	Charitable Trusts Act 1957	191
	(a) Part 3	191
	(b) Part 4	196
	(c) Relationship between cy-près modification and s 32	197
6.8.4	Remaining aspects of the Charitable Trusts Act 1957	198
	(a) Part 1: vesting of property	198
	(b) Part 2: incorporation of trust boards	198
	(c) Part 5: supervision of charities	199
6.8.5	Charities Act 2005	200
CHAPTER SEVEN:		
THE APPOINTMENT, RETIREMENT AND REMOVAL OF TRUSTEES		
7.1	Introduction	201
7.2	Appointment of trustees	202
7.2.1	Original trustees	202
7.2.2	Advisory trustees	203
7.2.3	Custodian trustees	204
	(a) Appointment of new trustees if a custodian trustee is in existence	204
	(b) Termination of custodian trusteeship	205
7.2.4	New trustees	205
	(a) Express power of appointment in trust instrument	205
	(b) Appointment under statutory power	206
	(c) Appointment by the court	209
	(d) Who will be appointed by the court	212
	(e) Number of trustees	214
	(f) Separate sets of trustees	215
	(g) When additional trustees may be appointed	215
	(h) Powers of new trustees	216
	(i) Costs	216
7.3	Vesting of the trust property in new trustees	216
7.3.1	Transfer or assignment	217
7.3.2	Vesting declaration	217
7.3.3	Vesting orders	218
	(a) Land	218
	(b) Stock and choses in action	219
	(c) Shares in ships, patents, designs, trademarks and copyright	220
7.3.4	Death of a trustee	220
7.4	Retirement of trustees	220
7.5	Removal of trustees	222

**CHAPTER EIGHT:
DUTIES OF TRUSTEES**

8.1	Acquaintance with the terms of the trust	230
8.2	Adherence to the terms of the trust	230
8.3	Variation of Trusts	232
8.3.1	Section 64A of the Trustee Act 1956	234
8.3.1	Trustees must act unanimously	238
8.4	Impartiality as between the beneficiaries	238
8.4.1	Advances to beneficiaries	241
8.4.2	Bonus shares	241
8.5	Investment of the trust funds as the trust instrument or the law provides	241
8.6	Diligence and prudence in the execution of the trust	241
8.7	Non-delegation of duties	245
8.7.1	Mere agents	247
8.7.2	Full delegation	248
8.7.3	Other statutory provisions	249
8.7.4	Use of statutory powers	249
8.7.5	Liability of trustees for agent's actions	250
8.8	Joint action where more than one trustee	251
8.9	Gratuitous actions	252
8.9.1	Out-of-pocket expenses	255
8.9.2	Solicitor-trustees	257
8.9.3	Trafficking with trust property and making a profit — the self-dealing rule	258
	(a) A trustee must not make any sort of profit out of the trust, either direct or indirect	258
	(b) The general rule	258
	(c) Purchase with leave of the court	260
	(d) Purchase by solicitor to the trust	260
	(e) Purchase from beneficiaries	260
	(f) Remedies of beneficiaries	261
8.10	Payment of trust moneys to the right persons	261
8.10.1	Voidable assignments	262
8.10.2	Void assignments	263
8.11	Keeping and rendering proper accounts and supplying full information	263
8.11.1	Information to strangers	265
8.11.2	Investigation of trust accounts	265

**CHAPTER NINE:
INVESTMENT OF TRUST FUNDS**

9.1	The "prudent person" test	267
9.2	Limitation of liability	272

9.2.1	Bearer securities	272
9.2.2	Company securities	273
9.2.3	Diversification	274
9.2.4	Set-off	276
9.2.5	Investment and ethical issues	276

**CHAPTER TEN:
CAPITAL AND INCOME**

10.1	General	277
10.2	Conversion of assets: apportionment between capital and income	279
10.3	Costs and testamentary expenses chargeable to capital	281
10.4	Charges and encumbrances	281
10.5	Apportionment	283
10.5.1	Apportionment of dividends	284
	(a) Appropriation in specie of shares	284
	(b) Sale-cum-dividend	284
	(c) Accrual before change of ownership	284
	(d) Interim dividends	284
	(e) Preference dividends	285
	(f) Bonuses	285
	(g) Share premium account distributions and capital profits dividends	286
	(h) Profits on reconstruction of a company	286
10.5.2	Income payable in advance	287
10.5.3	Apportionment of losses	287
10.5.4	Purchase, sale or transfer of investments	287
10.5.5	Specific gift of an interest-bearing investment	289
10.5.6	Apportionment of profits of a business	289
10.5.7	Royalties	291
10.5.8	Outgoings	291
10.5.9	Repairs	291
10.5.10	Testamentary expenses, funeral expenses and debts	291
10.5.11	Calls on shares	292
10.5.12	Conditional or preferential subscription rights for company securities	292
10.5.13	Expenses attributable to getting in and investing trust property	292
10.5.14	Recurring outgoings	292
10.5.15	Costs	293
10.5.16	Loss on realisation of a mortgage investment	293

**CHAPTER ELEVEN:
POWERS OF TRUSTEES**

11.1	General	295
11.1.1	Discretions	295
11.1.2	Power coupled with a duty	296
11.1.3	Consent of beneficiaries	297
11.2	Power to apply to the court for directions	297
11.3	Power of sale	297
11.3.1	Statutory provisions	297
11.3.2	Manner of exercise of sale	299
11.3.3	Sale on terms	300
11.4	Power to lease	301
11.5	Power to purchase and to take property on lease	302
11.6	Power to mortgage	303
11.6.1	Variations of mortgage	303
11.7	Power to make repairs and improvements	303
11.7.1	Repairs	304
11.7.2	Improvement and development	305
11.8	Power to insure	306
11.8.1	Lien on insurance policy for premiums	306
11.9	Power to carry on a business	306
11.9.1	Power to turn business into a company	307
11.9.2	Special powers in respect of businesses	308
11.10	Powers in relation to company securities	309
11.11	Power to pay, or allow claims and to compound liabilities	309
11.12	Power to give receipts	310
11.13	Powers of maintenance and advancement	310
11.13.1	Maintenance	311
	(a) Under the general law	312
	(b) Under statute	312
11.13.2	Method of application of moneys under s 40	312
11.13.3	Conditional application	313
	(a) Accumulation of surplus income	313
	(b) Payment to person contingently entitled at 20	313
	(c) Effect of direction to accumulate	313
11.13.4	Vested annuities	313
11.13.5	Method of application of moneys under s 41	313
11.13.6	Conditional application of moneys whether income or capital	316
11.14	Power to appropriate property in satisfaction of shares	316
11.15	Power to set aside annuity fund	317
11.16	Power to sue himself or herself in a different capacity	317
11.16.1	Legal Services Act 2000	317
11.17	Other powers	318

**CHAPTER TWELVE:
RIGHTS OF TRUSTEES AND BENEFICIARIES**

12.1	Rights of trustees	319
12.1.1	Right of reimbursement and indemnity	319
	(a) Principal examples	321
	(b) Statute-barred debts	322
12.1.2	Right of set-off	322
12.1.3	Right of contribution and recoupment	323
	(a) Action against a co-trustee	324
12.1.4	Right to impound a beneficiary's interest	324
	(a) Overpayments	325
12.1.5	Right to a discharge	326
12.2	Rights of beneficiaries	326
12.2.1	Right to control trustees' actions	326
12.2.2	Right to compel due administration of the trust	327
12.2.3	Right to terminate the trust	327
12.2.4	Right to bring an action for accounts	328
12.2.5	Right to follow trust property	328

**CHAPTER THIRTEEN:
BREACH OF TRUST AND RELIEF OF TRUSTEES**

13.1	The liabilities of trustees	329
13.1.1	Measure of responsibility	330
	(a) Morally innocent breaches	331
	(b) When the trustee has not been morally innocent	332
13.1.2	Nature of liability	333
	(a) Civil liability	333
	(b) Criminal liability	334
	(c) Writ of attachment	334
	(d) Liability of personal representative of deceased trustee	334
	(e) Liability of beneficiary	334
	(f) Liability of persons as constructive trustees	335
	(g) Liability of trustees for income tax and GST	335
13.2	Relief of trustees	335
13.2.1	Provision for relief under s 73 of the Trustee Act 1956	335
	(a) Honest and reasonable conduct	336
	(b) Ought fairly to be excused	337
13.2.2	Section 21 of the Limitation Act 1950	338
	(a) Commencement of period	338
13.2.3	Concurrence, acquiescence or release by beneficiary	339
	(a) Onus of proof	339

	(b) Form of release	340
	(c) Acquiescence not always a bar	340
13.2.4	Other forms of relief provided by statute	341
	(a) Relief in respect of powers of attorney	341
	(b) Relief in respect of unknown bankruptcy	341
	(c) Relief in respect of leases	341
PART TWO: WILLS		
CHAPTER FOURTEEN:		
GENERAL PRINCIPLES RELATING TO WILLS		
14.1	Introduction	345
14.1.1	Terminology	345
14.1.2	The nature of a will	345
14.1.3	Who may make a will	348
14.2	The formal requirements of a valid will	348
14.2.1	The will must be in writing	349
14.2.2	Signature of will-maker	350
	(a) Meaning of "signature"	350
	(b) Signature on will-maker's behalf	351
	(c) Will on several sheets	351
	(d) Position of signature	352
14.2.3	Signature of will-maker and presence of witnesses	352
	(a) Making or acknowledging a signature in the presence of witnesses	353
14.2.4	Attestation clauses	354
14.2.5	Who can be witnesses	354
14.2.6	Attestation by witnesses	355
14.3	Validation of wills by the High Court (s 14)	358
14.3.1	Suicide notes validated	362
14.3.2	Documents validated despite lack of two witnesses	363
14.3.3	Draft wills validated where the will-maker died before signing the will	364
14.3.4	Other examples	365
14.3.5	Procedure for making an application under s 14	366
14.4	The mental requirements of a valid will	367
14.4.1	Age requirement	368
14.4.2	Testamentary capacity — intent	368
14.4.3	Testamentary capacity	371
14.4.4	Testamentary capacity — the legislation	374
14.4.5	Testamentary capacity — when must it be demonstrated?	374
14.4.6	Testamentary capacity — knowledge and approval	376
	(a) Execution of the wrong document	377
	(b) Clerical slip made by will-maker while drafting his or her own will	378

	(c) Clerical slip made by drafter to whom will-maker has delegated the task of drafting his or her will	378
	(d) Intentional inclusion of words by will-maker drafting own will, but mistake as to their legal effect	380
	(e) Failure by drafter to effect will-maker's intention	380
14.4.7	Undue influence	381
14.4.8	Fraud	384
14.4.9	Duress	384
14.5	Informal wills	385
14.6	Incorporation of documents	385
14.7	Wills made abroad	386
14.7.1	Immovables	386
14.7.2	Movables	386
	(a) Wills of persons making wills abroad	386
	(b) Wills of persons making wills in New Zealand	386
14.8	Revocation, alteration, republication and revival of wills	387
14.8.1	Revocation of wills	389
	(a) Revocation	389
	(b) The third method of revocation — marriage or civil union	392
	(c) Dependent relative revocation or conditional wills	397
14.8.2	Effect on will of will-maker's marriage or civil union ending	399
	(a) Civil unions	400
14.8.3	Revival of wills	400
14.8.4	Republication of wills	401
14.8.5	Duty of solicitors	402
CHAPTER FIFTEEN:		
GIFTS BY WILL		
15.1	Introduction	405
15.1.1	Land	405
15.1.2	Disposition of movable property	406
15.1.3	Disposition to child	407
15.1.4	Disposition to issue	408
15.1.5	Disposition to unincorporated association of persons	408
15.1.6	Disposition may encompass power of appointment	409
15.1.7	Disposition of property already partly disposed of	410
15.1.8	Disposition in fractional parts	410
15.2	Legacies and devises	410
15.2.1	Legacies	410
	(a) General legacies	411
	(b) Specific legacies	411
	(c) Demonstrative legacies	411

	(d) Pecuniary legacies	412
	(e) Residuary estate	412
15.2.2	Devises	413
	(a) A specific devise	413
	(b) A residuary devise	413
15.2.3	Annuities	414
	(a) A specific annuity	414
	(b) A general annuity	414
	(c) A demonstrative annuity	414
15.2.4	Per capita and per stirpes	414
15.3	Time for payment of gifts by will	415
15.4	Interest and income on gifts by will	417
15.4.1	Vested general and demonstrative legacies when no time has been fixed for payment	417
15.4.2	Vested general and demonstrative legacies when a time has been fixed for payment	418
15.4.3	Accretions to specific legacies	419
15.4.4	Contingent legacies	419
15.4.5	Ancillary points	420
	(a) Rate of interest	420
	(b) Contrary intention	420
15.5	Refunding of overpayments	420
15.6	The incidence of debts and legacies	420
15.6.1	Debts charged on specific property	421
15.6.2	The incidence of uncharged debts generally — abatement	422
15.6.3	Order of application of assets	422
	(a) Primary fund for payment of debts and legacies	422
	(b) Realty as the primary fund	423
	(c) Creation of a mixed fund	423
	(d) Realty undisposed of by will	423
	(e) Real estate devised but charged with payment of debts	424
	(f) Legacies and devises	424
	(g) Realty and personalty appointed by will under a general power of appointment	425
	(h) Donations mortis causa	426
15.6.4	The incidence of legacies	426
15.7	Failure of gifts	427
15.7.1	Disclaimer	427
15.7.2	Lapse	429
	(a) Gifts to joint tenants	429
	(b) Class gifts	430

	(c) Gifts in satisfaction of a moral obligation	430
	(d) Substitutionary gifts	430
	(e) Charitable gifts	431
	(f) A note on drafting	431
15.7.3	Commorientes	431
	(a) Donations mortis causa	432
	(b) Life and accident policies	432
	(c) Joint ownership	432
	(d) Joint family homes	432
15.7.4	Attesting witness and his or her spouse, civil union or de facto partner	433
15.7.5	Effect on wills of marriages and civil unions starting and ending, and the will-maker's death	433
15.7.6	Ademption	433
	(a) Specific gifts	433
	(b) Satisfaction	435
15.7.7	Non-fulfilment of a condition precedent	439
15.7.8	Killing the will-maker or intestate	443
15.7.9	Illegal purposes and other purposes contrary to public policy	443
15.7.10	Uncertainty of subject-matter or objects	444
15.7.11	Perpetual duration	444
15.7.12	Abatement	444
15.7.13	Effect of failure	444

CHAPTER SIXTEEN:**THE CONSTRUCTION OF WILLS**

16.1	Introduction	447
16.2	The principles or rules of construction	449
16.2.1	Will speaks from date of death	450
16.2.2	General rules of construction	450
	(a) Words to be given their ordinary meaning	450
	(b) Technical words to be given their technical meaning	452
	(c) The dictionary principle	453
	(d) Will to be read as a whole	453
	(e) The "rule of despair"	456
16.2.3	Specific rules of construction	457
	(a) The "golden rule"	457
	(b) Falsa demonstratio non nocet cum de corpore constat	458
	(c) The rule in <i>Lassence v Tierney</i>	458
	(d) The ejusdem generis rule	459
	(e) Gifts to persons	460

16.3	The chief exceptions to the general exclusionary rule	467
16.3.1	The armchair principle	467
16.3.2	Equivocal descriptions	471
16.3.3	To rebut equitable presumptions	471
16.4	Section 31 of the Wills Act 2007	471
16.5	Admissibility of extrinsic evidence and powers to correct	474
16.5.1	Procedure for correcting wills	475
16.5.2	External evidence	476

CHAPTER SEVENTEEN: SUCCESSION ON INTESTACY

17.1	Introduction	479
17.2	The scheme of succession on intestacy	479
17.3	The statutory trusts	484
17.4	Maintenance and advancement	484
17.5	Children	485
17.6	Partial intestacy	486
17.7	Other legislation	486
17.8	Right of disclaimer	487
17.8.1	Conditions	487
17.8.2	Effect of disclaimer	487

CHAPTER EIGHTEEN: RESTRICTIONS ON TESTAMENTARY FREEDOM OF ACTION

18.1	Family protection	489
18.1.1	Object of the Act	490
18.1.2	Method of application of the Act	491
18.1.3	A conservative approach	494
18.1.4	Relevant considerations under the Family Protection Act 1955	496
	(a) The provision (if any) made for the applicant in the will or the share taken under an intestacy	497
	(b) The opinions and wishes of the deceased	497
	(c) All circumstances and facts	499
	(d) Changes of circumstances after the death of the will-maker	501
	(e) The style of living to which the deceased has accustomed the applicant	501
	(f) The size of the will-maker's estate	502
	(g) The character and conduct of the applicant	502
	(h) Overarching considerations	503
	(i) Approach for financial need cases	505

18.1.5	Who may apply	505
	(a) The wife, husband or partner (civil union or de facto) of the deceased	506
	(b) The widower	508
	(c) The children of the deceased	508
	(d) The grandchildren of the deceased living at his or her death	511
	(e) Stepchildren	512
	(f) Parents	512
	(g) Others to whom the will-maker owes a moral duty	513
18.1.6	Quantum	514
18.1.7	Class funds	514
18.1.8	Incidence of payments ordered	515
18.1.9	Charging of benefits	515
18.1.10	Property outside the scope of the Act	515
18.1.11	Domicile	516
18.1.12	Limitations of time	516
18.1.13	Contracting out of the Act	518
18.1.14	Review of order	518
18.1.15	Maintenance	519
18.1.16	Distribution of estates	519
18.1.17	Powers of chief executive under the Social Security Act 1964	519
18.1.18	Security for costs	520
18.1.19	Jurisdiction	520
18.1.20	Priority of legislation	521
18.1.21	Appeals	521
18.1.22	Appellate approach to family protection appeals	521
18.2	Testamentary promises	521
18.2.1	Contracts not to revoke wills or to make wills in a certain form	521
18.2.2	Testamentary promises	523
	(a) Rendering services to or performance of work for the deceased	526
	(b) Statement or representation of fact or intention	528
	(c) Enforcement and quantum of claim	530
18.2.3	The extent of the testamentary promises jurisdiction	536
18.2.4	Evidential aspects	537
18.2.5	Limitations of time	538
18.2.6	Courts to have concurrent jurisdiction	540
18.2.7	Right of appeal	540
18.2.8	Distribution of estates	540
18.2.9	Miscellaneous	541

18.3	The Property (Relationships) Act 1976	541
18.3.1	Who may claim	542
18.3.2	The choice	543
18.3.3	Time limits	544
18.3.4	Notice and notification	546
18.3.5	Court intervention	547
18.3.6	Claims under other legislation	549
18.3.7	Priority of claims	549
18.3.8	Relationship property	550
18.3.9	Distribution of estate	550
18.3.10	Competing claims under the Property (Relationships) Act 1976, the Law Reform (Testamentary Promises) Act 1949 and the Family Protection Act 1955	551
18.3.11	Miscellaneous	551
CHAPTER NINETEEN: EXECUTORS AND ADMINISTRATORS		
19.1	Definitions	553
19.1.1	Executor	553
19.1.2	Administrator	554
19.2	Nature of office	554
19.2.1	More than one administrator	555
19.3	Appointment of executors	555
19.3.1	Generally	555
19.3.2	Executor according to the tenor	556
19.3.3	Executor for particular purposes	556
19.3.4	Substituted executors	556
19.3.5	Executor de son tort	557
19.4	Who may be executor	558
19.4.1	Alien enemies	558
19.4.2	Bankrupt or insolvent persons	558
19.4.3	Killers	558
19.4.4	Minors	558
19.4.5	Persons of unsound mind	559
19.4.6	A partnership	559
19.4.7	Public Trustee	559
19.4.8	Trustee companies	560
19.4.9	The Sovereign	560
19.4.10	Persons resident outside the jurisdiction	560
19.5	Power of the court to pass over the persons who would by law have been entitled to a grant of administration	560
19.6	Acceptance of office	563
19.6.1	Double probate	563
19.6.2	Neglect to apply for probate	563

19.7	Cessation of an executor's right to prove a will	564
19.8	Devolution of executorship	565
19.9	Probate in common form and in solemn form	566
19.10	Lost will	567
19.11	Letters of administration	567
19.11.1	Priorities among the possible applicants for a grant	568
	(a) Partners	568
	(b) Next of kin	568
	(c) Trustee companies	568
	(d) The Public Trustee	568
	(e) The Māori Trustee	569
	(f) A stranger	569
	(g) A creditor	569
19.11.2	Special grants of administration	570
19.11.3	Limited grants of administration	571
19.11.4	Security for grant of administration	572
19.11.5	Retirement and removal of administrators	573
19.11.6	How the administrator holds property	575
19.12	Executors' commission	575
19.13	Relief of executors and administrators	576
CHAPTER TWENTY: DUTIES OF EXECUTORS AND ADMINISTRATORS		
20.1	To bury the deceased	580
20.1.1	Funeral expenses	581
20.2	To make an inventory of the assets	581
20.3	To get in the assets	581
20.3.1	Loans on personal security	582
20.3.2	Power to compromise claims, allow time and the like	582
20.3.3	Power of postponement of conversion	583
20.4	To pay all testamentary expenses and debts	583
20.4.1	Testamentary expenses	583
20.4.2	Debts	583
	(a) Protection against unknown debts or claims	583
	(b) Right to pay debts or claims	585
	(c) Statute-barred debts	585
	(d) Unenforceable debts	585
	(e) Right of retainer	585
	(f) Administration under Part 6 of the Insolvency Act 2006	585
20.5	Further duties	586
20.5.1	To pay legacies	586
20.5.2	To distribute the residue to the persons entitled	586
20.5.3	To seek directions	586

20.5.4	To keep accounts	586
20.5.5	Duty of even-handedness	586
20.5.6	Duties of solicitor-executor	587
20.5.7	Duties in relation to the Family Protection Act 1955, the Law Reform (Testamentary Promises) Act 1949 and the Property (Relationships) Act 1976	588
CHAPTER TWENTY-ONE: THE POWERS, RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS		
21.1	Power of sale of personalty	589
21.2	Power of sale of realty	590
21.3	Power to appropriate assets	590
21.4	Power to obtain payment without probate	591
21.5	Rights of action	592
21.5.1	General	592
	(a) Damages	593
	(b) Personal obligations	593
21.5.2	Actions in tort	593
21.5.3	Death of potential tortfeasor	593
21.5.4	Death where contract purely personal	594
21.6	Liabilities	594
21.6.1	Liability to be sued in respect of his or her own acts	594
21.6.2	Liability on a devastavit and for breach of trust	595
21.6.3	Liability for acts of a co-executor or co-administrator	595
21.6.4	Liability to account	596
21.6.5	Liability on an admission of assets	596
21.6.6	Defences open to the personal representative	596
<i>Index</i>		597

Preface to Eleventh Edition

In the Preface to the eighth edition, Professor Maxton said that her aim was to provide a concise guide to the law of trusts, wills and administration in New Zealand for both student and practitioner. In so saying, she was echoing the words of the original author Philip Nevill. The aim has remained the same.

A new edition is called for because of amendments to the Wills Act 2007 in February 2012. The Wills Amendment Act came into effect on that date and its effect on the Wills Act 2007 is fully discussed in the text. The case law on trusts has also been updated. The difficulty has been in selecting materials to include without increasing the size and thus the cost of the book. Access to legal information via the computer has increased and today it is easy for readers to find materials for themselves. As with previous editions, not all the authorities are given on any particular topic because the book aims to provide a concise guide or summary of the law. There are also new editions of the major texts for other jurisdictions and so reference is made to them rather than repeating the materials in this text.

I would like to thank the team at LexisNexis, especially Daniel James and Alex Pishief. I would like to thank all the Law Librarians at the University of Canterbury and, most particularly, Sue Johnston for their help with this latest edition. Any defects in this edition are obviously mine and in no way attributable to anyone else.

The law is stated as at 6 November 2012.

Nicky Richardson
The School of Law
University of Canterbury
November 2012