Constructive trusts differ from express trusts in many ways. Whereas an express trust gives effect to an owner's intention to transfer a beneficial interest in his property, a constructive trust may be imposed directly contrary to the owner's intentions. Another distinction between an express trust and a constructive trust is that the former is unenforceable unless it is evidenced in writing, whereas the latter is created and operates without formality. However, express and constructive trusts, by their very nature as trusts, have a number of similar features, the most fundamental being the presence of ascertainable property, in which a beneficiary has a proprietary interest for which the trustee is personally liable to account. This chapter examines the nature, operation, and variety of constructive trusts, and also considers one special category of constructive trusts: informal trusts of land. In addition, it discusses commonwealth jurisdictions and proprietary estoppel.
8. Constructive trusts and informal trusts of land