Without assuming prior legal knowledge, books in the Directions series introduce and guide readers through key points of law and legal debate. Questions, diagrams and exercises help readers to engage fully with each subject and check their understanding as they progress. The formality requirements of a trust aim to prevent secret fraudulent dealings and to achieve certainty through the recording of transactions. In contrast, no trust exists if the requirements of valid constitution are not complied with. These requirements are designed as a precaution against the casual creation of trusts, a sensible approach given the dramatic consequences of the typical express trust of property. This chapter deals with the constitution of trusts and discusses the distinction between requirements of constitution and formality in relation to the creation of trusts. It also looks at a validly constituted trust, the maxim that equity will not assist a volunteer, how the common law can assist in the constitution of trusts and a valid donatio mortis causa. In addition, the chapter considers constitution by transfer of legal title to trustees as well as assistance from Roman law with respect to constitution of trusts.
5. The constitution of trusts