Revision Box Questions: Guidance for approach

Revision Box chapter 6

1. Drawing on the materials in the chapter and using them as illustration, ensure that you can answer the following questions.

(a) Why has equity developed implied trusts alongside express ones declared by a settlor?

The origins of the express trust lie in supporting the ability of an owner of property to create enforceable rights and duties relating to property, with a strong emphasis on preventing injustices arising which can be related to common law recognising only the interests of those holding legal title to it. The same basic premise of preventing injustices arising from the ownership of property applies in the creation of implied trusts, but these responses to injustice arise in situations where an owner hasn’t expressly wished to create enforceable rights for another party, with these being capable of arising without an owner even knowing about them, or actually contrary to his expressed intentions.

(b) Why can the existence of implied trusts be seen as a particularly bold development in the context of the ownership of property?

The idea that property rights can be created and which interfere with a legal owner’s exclusive right to use his property as he wishes make even express trust creation contentious conceptually if we think about ownership of property as the king of property rights. That this interference with ownership can arise where an owner hasn’t expressly wished to create enforceable rights for another party, with these being capable of arising without an owner even knowing about them, or actually contrary to his expressed intentions, is even harder to reconcile with the supremacy of ownership of property in English law.

(c) Why has equity developed two quite different types of implied trust?

2. In relation to resulting trusts, explain the following.
   a) What key feature underpins all resulting trusts and how does this explain the way in which they operate?
   b) How can this be illustrated by reference to actual examples of where they can be found?

In all resulting trust scenarios the original owner of property is both the settlor and beneficiary under a resulting trust where this is presumed to arise. This can arise in situations where an original owner has sought to give his property away and finds himself the beneficiary under a resulting trust (in a Dyer v Dyer, Westdeutsche type A situation), or when he seeks to create an express trust which either doesn’t ever satisfy validity requirements (e.g. through not satisfying certainty rules), or because after creating a valid express trust it becomes impossible to carry out the arrangement (e.g. the beneficiary’s education is now completed and settled property remains unexhausted by this purpose), with the latter fitting Westdeutsche type B ‘failed trust’ scenarios. And all resulting trusts are premised on the presumed intention that in the circumstances the original owner...
would wish to retain an interest in the property or have it returned to him, and as with all presumptions, the presumption of a resulting trust will be rebutted where there is evidence to the contrary.

3. Using the materials above and also textbook accounts of ‘constructive trusts’, return to Re Rose, Rose v IRC [1952], and consider whether the trusts that arose from equity’s recognition of property transfers that were incomplete at law should be regarded as constructive trusts. Here, you should consider:
   - the basis of constructive trusts strongly apparent from ‘constructive trusts theory’; and

4. Using the materials explain the characteristics of constructive trusts said to be substantive institutional and remedial, and consider English law approaches to the latter type.

Both questions require you to have an understanding of how constructive trusts are different from resulting trusts in terms of how they arise and how they are theorised. There is said not to be an agreed universal theory of constructive trusts, but there is broad agreement that they arise from some kind of unconscionable conduct relating to the property, and which justifies its owner being compelled to use the property subject to entitlements to it which have arisen for another. As part of this there is contention about the nature of constructive trust which is recognised in English law, with the orthodox view being it is a substantive institutional response which vindicates an existing right, rather than a remedial one creating rights. Beyond this controversy the Re Rose type use of a constructive trust forces us to question whether we agree that constructive trusteeship is imposed to reflect some type of wrongdoing, or whether we need to find a different way of explaining it: the latter might be that it is unconscionable for an intended recipient not to receive property, but this requires engaging with debate on balancing the interests of an owner with those of a volunteer recipient.