Chapter 3: The three certainties and the significance of the ‘beneficiary principle’

1) ‘The House of Lords’ decision in McPhail v Doulton [1971] was an important landmark in the tests for certainty of objects in discretionary trusts. One important consequence of this is that the test for discretionary trusts has now moved closer to the one used in the case of powers. In short, it can be said that this decision revolutionised the test for certainty of objects in the case of discretionary trusts’.

Discuss.

2) ‘The notions of linguistic/conceptual certainty and evidential certainty are often used in descriptions of the rules which have been developed for determining whether trust or power of appointment possesses sufficient certainty of objects. These two notions themselves, however, are far from clear and unproblematic’.

Using relevant case law to illustrate your response, and giving reasons for your evaluation, explain whether you agree with this statement.

Brief guidance notes:

Both these questions require a short introduction to certainty requirements, and the rationale for the development of certainty rules in determining the validity of express trusts, before quickly settling into discussion of the key question of certainty of objects. The background to McPhail itself requires consideration of trusts and powers, and their similarities and differences. Thereafter attention must also be paid to how McPhail itself discussed discretionary trusts alongside powers, and how discussions of this nature have remained manifested in subsequent case law. In question 1 this is more generally focused on the significance of McPhail itself in the light of traditional approaches to certainty of objects requirements for discretionary trusts (and particularly ones post IRC v Broadway Cottages [1955]). In contrast question 2 invites consideration of the way in which notwithstanding its landmark qualities, the decision in McPhail has not necessarily produced an entirely satisfactory state of affairs.

3) ‘The Court of Appeal in Re Endacott [1960] missed a valuable opportunity by not overruling the so called “anomalous exceptions” as classified by Roxburgh J in Re Astor’s Settlement Trusts [1952]’.
Discuss the views being expressed in this statement, commenting on whether you agree.

4) ‘Although case law has dismissed the existence of valid (private) purpose trusts as “concessions to human weakness and sentiment” and as ones which are troublesome, anomalous and aberrant, this is an unduly oppressive reading of trusts which can quite legitimately be described as ones of ‘imperfect obligation’- reflecting that they are valid but unenforceable’.

Using key case law, explain whether you agree with this statement, giving reasons why.

Brief guidance notes:

The discussion required in both these questions has as its central point of reference the beneficiary principle, and its role in the law of private trusts. An introduction must reflect this before progressing to the appearance of valid private trusts which appear to be at odds with this position, and an examination of the cases which attest to the existence of valid private trusts which violate the beneficiary principle. Considerable attention must be paid to the way in which the courts have sought to explain these ‘anomalous exceptions’ to the beneficiary principle, and particularly to the attempts to restrict and contain them which are evident in the case law itself. And given the focus of these questions, it is important to provide a response which either agrees with the premise of the question, or wishes to disagree with it, ensuring that support for the position being taken is provided.