Chapter 6: Introduction to resulting and constructive trusts

1) ‘Resulting trusts, arising in situations where the equitable interest in property results back or returns to the settlor, whatever their type, can be explained as giving effect to the settlor’s intention’.

Discuss this statement, making an assessment of the key views expressed.

2) “All resulting trust cases are, and should be, founded on the liberal view that property should be retained by its owner except to the extent that she voluntarily and effectively alienates it.” (S. Gardner, [1992] Conv 41-52).

Discuss this view in the light of the proposition that all implied trusts arise on account of the tensions between certainty and justice which can subsist with the ownership of property.

3) ‘Constructive trusts are a very difficult area of law, and do not respond well to definition and easy ‘categorisation’. But this is to be embraced rather than reviled given that this flexibility is key to their ability to adapt to being effective in ever-changing situations, and even in combating increasingly complex frauds’.

Discuss this statement, commenting on its principal strengths and weaknesses.

4) ‘Implied trusts provide perhaps the most convincing illustration of the way in which trusts law has at its heart the rationale of managing tensions arising between neo-liberal notions of property and a wider “social justice” objective’.

Discuss this view in the light of your understanding of constructive trusts, and the nature and location of their occurrence.

5) ‘Far too much emphasis is given to preserving the conceptual differences between trusts which are resulting and ones which are constructive. After all, in the words of Lord Denning, the difference is a “matter of words than anything else” because “The two run together”’.

Discuss the views which are being expressed in this statement, providing an analysis of the key issues underlying, and an assessment of the statement’s validity.
6) ‘Maintaining conceptual distinctiveness between non-express trusts which are resulting trusts and ones which are constructive is both supportable and actually necessary. These instruments have many qualitatively distinctive attributes, and there are many testaments to the way in which they give rise to very different outcomes in application’.

Discuss this statement, making an assessment of its central arguments.

7) ‘Although much is sometimes made of the way in which constructive trusts and resulting trusts can be explained as equity’s recognition that different types of injustice can call for different types of response, the differences between them are often overplayed, and the conceptual differences between them are becoming blurred by their application in reality’.

Discuss this statement, indicating whether you agree, and providing support for your views.

Brief guidance notes:

All these questions are slightly different takes on a set of core considerations which run throughout the chapter introducing constructive and resulting trusts. Perhaps some introduction to the diversity of the trust instrument would be a good starting point for these questions, because this is itself a pointer to the essential introductory point which must be made about distinguishing express from non-express trusts. This is crucial because at the heart of all these questions are trusts which arise without the settlor’s express wish that they should. Here all questions are requiring some degree of reflection upon why equity should imply a trust without the settlor’s express wishes, and on occasions even notwithstanding express wishes to the contrary. Responses to these questions can take the lead from the way that the textbook materials provide a guided discussion of equity’s recognition that on occasions even accommodating express creation of trusts will not be sufficient to prevent injustices from arising. The first two questions are an exploration of the key characteristics of resulting trusts, whilst question 3 is focused on the characteristics and nature and also occurrence and function of constructive trusts. The remaining questions are more thematic in approach and have at their heart questions of how different these different types really are- both in ‘received’ conceptions and understandings of them, and in the way that they actually operate.