Chapter 7: Resulting trusts, gifts to non-charitable unincorporated associations and pensions funds

1) ‘The view of Simon Gardner that “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” ([1992] Conv 41-52) can be seen illustrated in approaches taken by the courts to anonymous subscriptions and donations to funds”.

Discuss.

Brief guidance notes:

This question has already been asked in relation to chapter 7’s introduction to implied trusts, and its appearance in this chapter reflects the way in which chapter 8 is actually badged as a case study in the workings of resulting trusts. In this manner it follows closely the analysis which is given to gifts to non-charitable unincorporated associations, and particularly the issues which are raised by subscriptions and donations which are anonymous when such an association is wound up. Discussion of the application of the resulting trust is pursued in the text materials through reference to key cases of Re Gillingham Bus Disaster Fund [1958]; Ulverston and District New Hospital Building Trusts [1956], and Re West Sussex Constabulary’s Widows, Children and Benevolent (1930) Fund Trusts [1971], and an assessment of these authorities is required here.

2) ‘Pension schemes are of quite a different nature to traditional trusts. The traditional trust is one under which the settler by way of bounty, transfers property to trustees to be administered for the beneficiaries as objects of his bounty…Pension benefits are part of the consideration which an employee receives in return for the rendering of his services’. (Lord Browne Wilkinson Imperial Group Pension Trust Ltd v Imperial Tobacco Ltd (1991)).

Discuss this statement in the light of your understanding of the significance of the trust and the importance of trusts law in the sphere of pensions in the 21st century.

3) In 2000 (Conv.) Charles Harpum remarked that Air Jamaica v Charlton [1999] raises “points of considerable current interest to both pension and trust lawyers”. Outline the issues which give credence to this statement, and evaluate the likely nature of developing interaction between trusts law and pensions law.
Brief guidance notes:

Both these questions are strongly focused on the theme running throughout the textbook which hails the trust as an extremely diverse and useful instrument, and some introduction to this will set the scene for the particular discussion of pension funds. The focus then narrows towards the resulting trust, which must be introduced by reference to a brief indication of types of implied trust. The discussion which follows should then progress through how and in what ways trusts are used in pensions, and why the trust might be a particularly useful instrument upon which to model personal asset management in the light of what non-state provided pensions are intended to achieve in the 21st century, but noting the import and significance of the emergence of distinct ‘pensions law’ alongside traditional trusts law.