Chapter 10: Equitable fraud and the constructive trust

1) ‘The relationship between fraud and the constructive trust needs to be clarified, and the reality is that a constructive trust will arise in this context only in a few rigidly defined and discrete categories of case. There is no generalised ‘equitable fraud’ jurisdiction’.

Discuss the views being expressed, and make an assessment of their validity.

Brief guidance notes:

This question should be fairly straightforward following a study of the chapter. A response to it will need to think hard about how best to make an introduction to the issues raised by the question, and one way of approaching this is certainly to think about what could be gleaned from the chapter materials, and whether the response will lie in broad agreement with the assessment posed in the question, or will take a different view. Whichever direction the analysis takes, any response requires an explanation of what might be meant by equitable fraud, before progressing into a discussion of the leading cases. Thereafter an assessment must be made of the cases, indicating whether the response is seeking to concur with the views expressed in the question or depart from them, and provide an explanation for the conclusion ultimately reached.

2) How and in what ways might the doctrine of mutual wills be regarded as an important extension of equitable fraud jurisdiction?

Brief guidance notes:

This question provides an opportunity to think about the way in which the materials were presented in this chapter and it is designed to draw out particular opinions which are formed as a result of reading, on account that an assessment of mutual wills and how important they might be must be made. Indeed, some consideration must be given to whether they are a part of a pattern of a discrete set of cases, or evidence of an emerging generalised fraud jurisdiction, is an important part of this assessment. Then some reflection must be given to what it is about mutual wills which might make them particularly interesting, and even an important extension of equitable fraud jurisdiction (if that is indeed what they amount to).