Chapter 15: Powers, discretions and duties of trustees

1) ‘Notwithstanding the modernisation agenda which is evident in reforms introduced in the Trustee Act 2000, English Law’s approach to trusteeship remains archaic and restrictive, which cannot be in the interests of either trustees or beneficiaries’.

Discuss this statement, providing an assessment of the views it is expressing.

2) ‘On account of the changing nature of trustees’ responsibilities and their occupational backgrounds in the 21st century, the law relating to trusteeship is progressively less a consideration of trusts law, and is increasingly becoming absorbed into the spheres of professional practise and professional negligence’.

Discuss.

Brief guidance notes:

Both these questions require an assessment of the materials in chapter 16 which examined the ‘personal nature’ of trusteeship in English Law and the powers which are available to trustees in order to fulfil the numerous duties which arise from their office. An outline of the nature and scope of duties and powers will provide a guiding framework for approaching the views being expressed in each of these questions. Question 1 requires a consideration of whether the duties upon trustees and the powers available to them point to an office which works well for all parties concerned despite the transformations which have occurred over time, and that the law must reflect this because currently it is unnecessarily and inappropriately constrained by statutory provisions and rules of equity. If this is the case then attention must be paid to the contexts in which this is particularly apparent, and where most pointed illustration of this can be found. In question 2, the premise is that as the office of trustee becomes more professionalized that activities traditionally governed by ‘the law relating to trusteeship’ are increasingly becoming absorbed into the general ‘law relating to professional liability’, with an erosion of scope for applying traditional trusts principles. Here thoughtful consideration is required of how ‘trusteeship law’ has become modified by statute to reflect this shift, and also to the spheres where equity’s rules appear to remain constant notwithstanding this – such as expectations flowing from the principle of fiduciary integrity.