Chapter 16: Variation of trusts

1) ‘The very essence of a trust is that the trustee must carry out the settlor’s wishes in respect of property which is subject to a trust. Thus, the very notion of ‘variation of trusts’ is at odds with this basic tenet, and any departure from the settlor’s original instructions should be allowed only in very exceptional cases and for equally exceptional reasons’.

Discuss the views which are being expressed in the statement, and assess whether there is any reflection of these views in the law relating to the variation of trusts.

Brief guidance notes:

This question is at one level a very basic ‘wrap up’ of the materials contained in this chapter, and following an introduction to the idea of variation, the structure of a response can easily take its lead from that of the book. In doing this, care must be taken to introduce at an early stage explanations of variation the issues of contention, and how they relate to the question. Thereafter as the discussion progresses to the key legal provisions, the response must keep focused on the view which is being expressed in the question, and the position in relation to it that the response is seeking to adopt, ensuring that this is fully explained.