CHAPTER 7

ESSAY / DISCUSSION QUESTIONS

QUESTION 1

‘Lord Simonds in Oppenheim v Tobacco Securities Trust Co. Ltd [1951] AC 287 noted that a charitable trust must benefit a section of the community.’

Critically discuss this statement with reference to relevant cases and legislation.

TIPS FOR QUESTION 1:

This question involves material from Chapter 2 Concept of Property in Equity – Figure 2.1, Chapter 3 Dealings with Property in Equity – Figure 3.1, Chapter 6 The Nature of Trusts – Figure 6.1 and Chapter 7 Charitable Trusts – Figure 7.1.

QUESTION 2

‘Legislation continues to intervene and disrupt the equitable development of charitable activities. This is only appropriate since parliament is supreme and is able to respond in a more timely fashion to changes in society’s values.’

Do you agree? Critically discuss this statement with reference to relevant legislation and the experience in the courts.

TIPS FOR QUESTION 2:

A good answer to this question would need to carefully consider legislation and common law. It also involves a detailed discussion of the role of statute in embracing and expanding...
PROBLEM QUESTION

QUESTION 1

Fred is a wealthy businessman. Just before the world financial crisis occurred he sold all of his shares on the stock market and made an enormous profit. Since he has no immediate family, he rewrites his will and makes the following provisions:

(a) $100,000 to the Royal College of Plastic Surgeons to provide scholarships for students. Applicants must be of the Roman Catholic or Jewish faiths.

(b) $2,000,000 to the Inner City Private Hospital to assist in treating patients.

(c) $200,000 to encourage Australia to become a republic. Fred has always been very interested in education. He directs that these funds be used to publish his notes on the political change. He is confident that after people read this material they will be able to make an informed choice about Australia becoming a republic.

(d) $250,000 to help his brother John who has just commenced legal practice as a barrister.

(e) $20,000 to the local branch of the ‘Cosmic Beings are Visiting Earth Association’. The group believes that society must be prepared for when aliens make contact. According to the association it is important to follow a strict diet and engage in prayer sessions. The association is incorporated.

(f) $50,000 to ameliorate the conditions of those workers of a particular company who have been retrenched or made redundant because of the world financial crisis.

Fred seeks your advice about whether any of the above statements are charitable trusts. Refer to relevant cases and statutes.

TIPS FOR QUESTION 1:

Each purported dealing in creating a trust should be considered individually.

a. Cy-pres scheme
b. Charitable trust or a simple gift
c. Purported political trust – ineffective at common law, successful under statute
d. Simple gift
e. Purported charitable trust – advancement of religion
f. Purported charitable trust – under the common law (relief of poverty) but issue of personal relationship. It also needs to be considered whether it is effective under statute.