CHAPTER 8

COMBINATION QUESTIONS

QUESTION 1

Answer both parts.

PART A

Paul and Mary have been living as a de facto couple for almost ten years.

In 2005 they decide to purchase a house together since Paul had recently received $20,000 from his aunt’s will as a beneficiary. Although neither of them was legally qualified, they wanted to hold the property as joint tenants, since this term, they thought, more accurately described the nature of their relationship.

The Really Big Bank did not look favourably on the loan application by Paul. He had a dubious credit history, having struggled in the past to pay his credit cards. Mary said she could help and her name was added to the loan agreement since Paul had trouble in obtaining finance.

A few years later, the couple separated after their relationship irretrievably broke down. Mary sought to assert her title in the property as one of two joint tenants when it was sold.

Paul seeks your advice regarding the proceeds of sale.

PART B

Susan decides to rewrite her will. She makes the following notations:
• $50,000 to the Royal Private Hospital, so that they can continue their precious work in advancing medical science and healing the sick.

• $25,000 on trust to my brother to be used in educating his daughters Claire and Ann, who are aspiring to become qualified school teachers.

• $100,000 to my trustees, for such acts of benevolence as they see fit.

• $25,000 to the Spirits of the Next World Association so that they can continue their important work. The association is concerned with aliens visiting the planet Earth.

When Susan died, Claire was twelve-years old and Ann had died many years earlier in a car accident. The Royal Private Hospital had been taken over by the government and was now part of the Greater Royal Public Hospital. The Spirits of the Next World Association had been disbanded.

The remainder of Susan’s estate is given to Penelope, and she seeks your advice about these purported dealings.

TIPS FOR QUESTION 1:

Part A

Consideration should be given to distinguishing between resulting and constructive trusts – see Figure 8.1 and Figure 9.1 for further information. Note that title to the property is in Mary’s name and the parties want to hold the property as joint tenants.

Part B

Each provision needs to be considered individually. It is important to identify whether anything has been achieved – material from the following chapters should be used: 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

Answer both parts.

PART A

The Quistclose trust is a new development. It has a separate existence from other resulting trusts. You are misguided if you believe that the Quistclose trust is just another example of a resulting trust.

Do you agree? Critically discuss this statement.
PART B

In *Nelson v Nelson* (1995) 184 CLR 538 the High Court of Australia placed emphasis on statutory interpretation when considering the role of illegality and the presumption of a resulting trust.

Discuss the decision and explain how statutory interpretation affects equitable principles.

TIPS FOR QUESTION 2:

Part A

This question involves a detailed discussion of *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567. Note this decision is controversial – the case can be used as another example of a resulting trust and also as a new type of resulting trust. See Figure 8.1 for further information.

Part B