QUESTION 1

Cardozo CJ noted in *Beatty v Guggenheim Exploration Co.* 255 NY 380 at 386 (1919) (SC USA):

'A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.'

Do you agree? Critically discuss this statement.

TIPS FOR QUESTION 1:

A review of all the principles of constructive trusts is required. This should be supported with material from most of the preceding chapters.

QUESTION 2

In *Barnes v Addy* (1874) 9 Ch App 244 at 251–2 Lord Selbourne LC noted:

'That responsibility may no doubt be extended in equity to others who are not properly trustees, if they are found either making themselves trustees de son tort, or actually participating in any fraudulent conduct of the trustee to the injury of the cestui que trust. But, on the other hand, strangers are not to be made constructive trustees merely because they act as the agents of trustees in transactions within their legal powers, transactions, perhaps of which a court of
equity may disapprove, unless those agents receive and become chargeable with some part of the trust property, or unless they assist with knowledge in a dishonest and fraudulent design on the part of the trustees.’

Discuss this statement.

TIPS FOR QUESTION 2:

A good answer to this question would follow all of the decisions after *Barnes v Addy* (1874) LR 9 Ch App 244. A distinction should be made between English and Australian decisions.

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**PROBLEM QUESTION**

**QUESTION 1**

*ABC Constructions Ltd heard about the state government’s policy of urban consolidation and purchased a narrow strip of land alongside a suburban railway station. Since the site looks ideal, ABC Constructions Ltd has recently submitted plans to the local council regarding 350 apartments to be built on the site.*

*Raising the necessary finance has not been an easy process for ABC Constructions Ltd. In the past, ABC Constructions Ltd has partnered with XYZ Ltd on similar projects. After informing XYZ Ltd of the enormous potential for the site, they agree to enter into negotiations about the development. XYZ Ltd will supply the necessary finance but other significant matters regarding the project are yet to be finalised.*

*The local council has recently rejected the first development application on the basis that the land is too narrow for such a large number of apartments. There has also been increasing community protest over similar projects in the area.*

*Mr Boulder is the principal of XYZ Ltd, and through his private company Sneaky Pty Ltd acquires the adjoining properties. Sneaky Pty Ltd then approaches ABC Ltd to purchase the narrow land. ABC Ltd decides to sell the property to Sneaky Pty Ltd. A revised development application is submitted and the project is approved by the state government.*

*ABC Ltd seeks your advice about this lost commercial opportunity.*

**TIPS FOR QUESTION 1:**

This question is based upon the facts involved in *Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373. Other principles identified in Chapter 9 Constructive Trusts should also be discussed.