Part A

(i) The issue in this question was whether there was a charitable trust, probably within the fourth category of *Pemsel's case*. If so, an important point to note was that the benefit to the public had to be positively established, rather than presumed as is the case in the first three categories of *Pemsel's case*.

(ii) The issue in this question was whether there was a valid disposition of a subsisting equitable interest in personal property by way of an agreement to assign. To be valid, valuable consideration had to be provided. Writing pursuant to s 23C(1)(c) of the Conveyancing Act is not required pursuant to s 23C(2): *Neville v Wilson*.

(iii) The issue in this question was whether George could trace his beneficial interest in the painting to Carmen. Carmen would be entitled to keep the painting if she was a bona fide purchaser for value without notice of the breach of trust by Jerry, which she was not because she received the painting as a gift.

Part B

This question raised the principle relating to confidential information, the elements of which are set out in *Coco v A N Clark (Engineers)*. In all probability Alfred would have a claim. In addressing the question of whether the confidential information was communicated, better students raised the case of *Franklin v Giddins* which deal with the situation of stolen confidential information.

Question 2

This question raised the issue of the rights of Alan, Brice, and Clause.

As to the PGC shares, entitlement depended upon whether one applied the *parri passu* or rolling charge method of tracing. This is so because it is generally accepted that the rule in *Clayton's case* should not be applied.

On the *parri passu* method, the $90,000 purchase price would have come from Alan, Bruce, and Claude in proportion to their respective contributions to Tom's account.
Given that the shares have increased in value they would be entitled to take the shares in the same proportions.

On the rolling charge method, the $90,000 purchase price would have come from Alan and Bruce only in proportion to their respective contributions to Tom's account (ie 3:2). Given that the shares have increased in value, they would take the shares in the same proportions. Claude's money was not used for the purchase of shares so would have no claim in relation to the shares.

In relation to the funds used for the purchase of the painting, on the parri passu method the $60,000 purchase price would have come from Alan, Bruce, and Claude in proportion (ie 108:72:45). On the rolling charge method, just prior to the deposit of Clause's money into the ABC account the balance there was a balance of $15,000 of which $9,000 would be Alan's and $6,000 would be Bruce's (on the proportion of 3:2). To this was Claude's $45,000. Thus, their respective contributions to the painting would be based in the proportion of 3:2:9. The painting would be held for the three of them in that proportion.

Many students did not address the possibility of using the rolling charge method.

**Question 3**

The first of the two issues raised by this question was whether there was a breach of fiduciary obligations by Alf. As a solicitor, his relationship with Sid and Colleen, was, by definition, a fiduciary relationship, and there was no informed consent from both Sid and Colleen to the purchase of shares in SBL by Alf. *Phipps v Boardman* was an analogous case.

The second issue related to any liability by Irene. It is unlikely that Irene owed fiduciary obligations to Sid and Colleen, but she would likely be liable to them pursuant to the knowing receipt principles in *Barnes v Addy*.

Although most students raised the first issue many failed to raise the second issue.

**Question 4 (20 marks)**

**PART A**

This question raised the issue of whether Charlie could bring an action to effectively enforce Amos's promise. This raised the issue of whether Barry was a trustee of Amos's promise: *Fletcher v Fletcher*. On this basis, Charlie could bring an action as a beneficiary of the trust of the promise by joining Amos and Barry as defendants to the action. The action would be for damages for breach of the deed, and the damages recovered would be held by Barry on trust for Charlie. Because it was a voluntary deed, there could be no action for specific performance of it.

**PART B**
This question was based upon the facts of Industrial Properties (Barton Hill) Ltd v Associated Electrical Industries Ltd. In that case the Court of Appeal in England held that, even though the ‘lease’ was defective at law, it was nevertheless an agreement for a lease and applied Walsh v Lonsdale. Thus, Claude will be liable to Barry. In so deciding, the court refused to limit Walsh v Lonsdale to cases involving only one agreement and furthermore held that the doctrine was not limited in application to where there was a contractual relationship between the legal estate holder and lessee. In this case there was no legal relationship between Amos and Claude. This decision is an illustration of the application of the maxim that equity regards done that which ought to be done.

Overall, Question 4 was very poorly done by students who attempted it.

**Question 5**

**PART A**

This question raised the issue of the availability of specific performance and was based on the facts of Giles v Morris. Most students raised the discretionary ground of refusing specific performance of a contract of personal services. However, the claim here was not to enforce a contract of personal services, but rather an obligation to enter into such a contract, and many students failed to recognise this distinction. In Giles v Morris, the obligations to enter into a contract of personal services was specifically enforced.

**PART B**

This question concerned the powers of the court, pursuant to s 85 of the Trustee Act, to excuse a trustee’s breach of trust if: (i) the trustee has acted honestly; and (ii) the trustee has acted reasonably; and (iii) the trustee ought fairly to be excused.

Overall, Question 5 was not very well done by students who attempted it.