

1. Is it possible to come up with an overall definition of charity?

Suggested Answer

See 11.3 in particular, although the whole chapter shows that there is no overall definition. Charities cover a diverse range of objects and an overall definition has never proved possible. The Preamble to the Statute of Charitable Uses 1601 is a list of what was considered charitable at that time. The law has been developed case by case over the centuries, as explained in *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138. To bring some order to this process the courts decided that there were four main types, or 'heads' of charity: *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531. To bring in an overall definition now would be difficult because some long-established charities might lose their charitable status. So the Charities Act 2006 came up with another 'list' of what is considered charitable. This is not as radical as it seems, because many of the charitable purposes listed there have already been accepted in the case law or the list merely clears up tricky points, where the older case law is now doubted. The 2006 Act allows for further development of the law in section 2(2)(m); new types of charity can still be recognised.

FURTHER READING: (1999) 62 MLR 333 M Chesterman, 'Foundations of Charity Law in the New Welfare State'.

2. Does the Charities Act 2006 help to define 'charitable purposes' and public benefit?

Suggested Answer

See 11.2 and 11.3. This has already been partially dealt with in Question 1 above. The new 'list' in the 2006 Act does clear up some controversies about newer developments in charity law. The Charity Commission has always developed the law and has accepted charities that do not strictly fit within the case law definitions, e.g. under the advancement of religion. The Act makes clear, for example, that a religious charity no longer has to be monotheistic. The Charity Commission has consulted on public benefit, but the general principles it has stated are not so different from the existing case law, e.g. *Re Resch* [1969] 1 AC 514. Nowadays all charities must prove that they are for the public benefit, which was previously only a requirement under the Fourth Head. This might cause changes in the law with newly registering charities and existing charities which will not be able to neglect the public benefit requirement.

3. Should the public benefit requirement differ for different types of charity?

Suggested Answer

See 11.3.4 and 11.3.5. It does differ at the moment and it is unlikely that this will immediately change under the Charities Act 2006, although over a longer period of time it will develop, like the rest of charity law. See 11.4.2. The relief of poverty is a fundamental purpose of charity, so little public benefit is required here. Charities can be restricted to relatives and employees: *Dingle v Turner* [1972] AC 601. See 11.5.5. This would not be acceptable under the advancement of education, where the rule of personal nexus holds sway: *Oppenheim v Tobacco Securities* [1951] AC 297. See 11.6.3. The advancement of religion is different again. Religious belief is thought to be socially beneficial, but a religion might have few followers. So the religion must also reach out to the wider society in some way: *Gilmour v Coats* [1949] AC 426. See 11.10.3. The Fourth Head has always required public benefit to be proved and therefore, perhaps, has the most restrictive approach. The charity has to be open to the whole society and the court is often sceptical about whether the proposed charity is actually socially beneficial. Both these features can be seen in cases such as *Williams Trustees v IRC* [1947] AC 447.

FURTHER READING: (1977) 40 MLR 397 NP Gravells, 'Public Purpose Trusts'.

4. Is the definition of religion outdated?

Suggested Answer

See 11.6. Cases such as *Bowman v The Secular Society* [1917] AC 406 said that religion was 'monotheistic theism', and it can be seen that the law is very influenced by the requirements of Christianity, which would have been the only religion in the country at the time of the older cases. Church services and worship were also required as practised in traditional Christianity. The Charity Commission has long accepted the major world religions as charitable, even though they might not strictly fit the case law definition. This is now recognised in the Charities Act 2006, where section 2(2)(m) recognise religions with more than one god and religions with no god. The public benefit requirement of allowing outsiders to attend religious services or reaching out to the general public in some way, might still cause some problems for religions seeking charitable status: *Neville Estates v Madden* [1962] Ch 832.

5. Why should 'political trusts' be denied charitable status?

Suggested Answer

See 11.5.4. The courts have always been cautious about granting charitable status to trusts that seem political. There seem to be a number of reasons for this. First the courts feel that they are incapable of judging whether a change in the law would be good or bad: *Bowman v The Secular Society* [1917] AC 406. Secondly, the courts fear coming into conflict with the legislature or government: *McGovern v Attorney General* [1981] Ch 231. Thirdly, the courts may wish to disallow charitable status to fanciful projects to change society: *Re Shaw's Will Trusts* [1957] 1 WLR 729. Neutral discussion of politics is allowed, however: *Re Koeppler* [1986] Ch 423. These approaches may be over cautious. Surely there is no harm in granting charitable status to respected organisations such as Amnesty International? The Charities Act 2006, section 2(2)(h) recognises this.

FURTHER READING: (1982) 45 MLR 704 R Nobles, 'Politics, Public Benefit and Charity'.