Revision Box Questions: Guidance for approach

Revision Box Chapter 7

1. Using the decisions in Hobourn Aero Components Ltd’s Air Raid Distress Fund [1946] Ch 86, aff’d [1946] Ch 194, West Sussex Constabulary’s Benevolent Fund Trusts [1971] Ch 1, and Re Bucks Constabulary Fund Friendly Society (No. 2) [1979] 1 WLR 93, identify and explain the following.
   a) What is meant by the term ‘unincorporated association’?
   b) What issues arise in the operation and ‘winding up’ of unincorporated associations?
   c) What is the competing ‘basis’ for responding to the needs of unincorporated associations to be found in the law of trusts and contract law?

The basic premise of an unincorporated association is that it is an organisation with no distinctive legal identity which is separate from the persons involved with it, and accordingly no distinctive capacity to hold property. This raises issues of how such bodies are able to hold property they need to utilise during their lifetimes for their operations, and what happens to that which remains unspent when they cease to exist. From this basic position comes the idea of two key rival theories of how property is held when an association exists and how what happens to it after cession is premised on this. The key cases point to the difficulties at the heart of finding that the association operates as a trust, given the difficulties associated with trusts which are ones for purposes, where these purposes are not charitable ones, and the attractions of a contractual analysis, pointing to entitlements relating to property as being those of the existing body of members. But the cases also point to difficulties arising where there are no contractual benefits to speak of and the text suggests that it cannot be assumed that the courts have finally resolved the issue in favour of a contractual basis for the holding of funds.

2. In relation to pensions, explain the reasons why trusts are considered such an appropriate mechanism for structuring pension arrangements and how this reinforces the understanding that you have gained about trust arrangements thus far.

This approach requires you to understand the key features of the trust arrangement, and centrally the separation of ownership of property into distinctive equitable and legal estates. From this you need to appreciate that in a trust arrangement equitable entitlement is associated with benefit, with legal title embodying the duties which are associated with trusteeship. This is key to understanding the attractions of the trust model for pensions provision, alongside how we have suggested settling property on trust allows safe-keeping through limiting free disposal of property for a very long period of time- a generation or more. This basic understanding allows us to think about how these benefits can be made available for large numbers of people and then allow pooling of assets and risk, with assets being managed by those subject to fiduciary duties. The key difference with a pension arrangement is that a beneficiary in this scenario is not a volunteer recipient of another’ generosity but actually a contributor to his asset pool. All these factors contribute to the way pensions are governed by a matrix of trusts law and special statutory provision.

3. From reading the decision in Air Jamaica v Charlton [1999] 1 WLR 1399 (PC), ensure that you understand why:
• the contributory pension fund was being wound up;
• the fund was deemed to be in surplus;
• there were three competing viewpoints on what should happen to the surplus; and
• the Privy Council ultimately ruled as it did.

This case arose following the closure of an occupational contributory pension scheme on account of the company’s privatization, where employees were made redundant, and although many were re-hired this involved new pension arrangements. It was the winding up of the original scheme which was the subject of the litigation, in the light of a surplus remaining: the large balance remaining in the original fund upon privatisation, where there been no further contributions nor deductions made, with the surplus sum (i.e. not subject to any liability under the scheme) being US$400 million. The key issues clustered around the basis of entitlement to this in determining actual entitlement to it, with this reflecting the distinctive features of pensions arrangements arising from how the contributor beneficiary is not in the same position of a typical beneficiary under a trust. With these issues at the interface of contract and trusts- was the basis of entitlement the contract of employment or the trust at the heart of the scheme- it was found that the surplus was held on resulting trust, being treated as provided as to one half by the employer and one half by the employees, with the company’s failure to dispose of the funds being a classic incomplete disposal resulting trust.