Revision Box Questions: Guidance for approach

Revision Box Chapter 10

1. Ensure that you can identify the key stages in the development of English charity law from 1601 to the present, and from this answer the following questions.

(a) What does each stage in this ‘history’ reveal about the relationship between property and its ownership, and the support of worthy causes?

The origins of charity are strongly connected with the church state in place which dominated English social and legal culture until Tudor times when a nation state gradually came into being. In the 19th century we see the modern state starting to come into being, and even ideas of ‘state welfare’ ahead of the blossoming of the welfare state in the early part of the 20th century. Charity’s origins are closely connected with the medieval church, when the church dominated social and economic life and as part of this was central to responding to the needs of vulnerable community members and local causes. The dismantling of the church state in Tudor times and a substantial population increase required the state to take an interest in worthy causes, which is where our first modern charity law hails from. The explosion of Victorian philanthropy would provide charity law with its next crucial phase, and in between charity law had to be very active in managing the tensions embodied in the need for wide support of worthy causes and how this often left a private donor’s relatives and dependants aggrieved.

(b) Why did equity become involved in charitable giving?

Those (primarily religious) organisations which assisted those in need in medieval times would benefit the wider community on the basis that it would otherwise be for the community to provide support for these purposes. So where persons wished to make gifts to worthy causes, either inter vivos or under their Will, there became a strong interest in enforcing such gifts. Here equity, given its own roots in church doctrine, started to enforce charitable giving by imposing on the conscience of donors to carry out their giving as they had promised to do so.

(c) What are the two key sources of litigation in the sphere of charitable giving and what are the reasons behind each?

Historically, charitable giving has always been a source of opposition from kin of donors who see themselves as rightfully entitled to family property. And as the state evolved into a nation and then modern state with the capacity to raise taxation and the need to do so, the body responsible for collecting taxes – today this is the HMRC – also became very prominent in litigation.

(d) What is the ‘twist’ in the operation of the Mortmain legislation?

The Mortmain statutes were part of a very pro-kin era of charity law, whereby there was a strong disposition to strike out charitable giving. This had the effect of actually increasing what was recognised at law as charitable.
(e) Explain the long-standing significance of the Statute of Elizabeth 1601.

This was the first modern charitable statute, and its pre-amble for provided the basis for the seminal modern classification of charitable purposes for defining charity at law under Special Purposes of the Income Tax v Pemsel (1891), and it continued to be very important in the recognition of new purposes up until 2006 when the first statutory definition of charity was introduced, with the main 1601 statute being repealed long before this.


Prior to enactment of the Charities Act 2006, these two cases provided important statement on the evolving nature of charity and law which needed to accommodate this through recognition of new purposes as appropriate.

(g) What are the key advantages flowing from charitable status?

Charitable purposes are purposes which are publicly enforceable, historically by the Attorney-General exercising his parens patrae jurisdiction, and increasingly the Charity Commissioners and now Charity Commission; charitable purposes can exist indefinitely; once property has been given to charity, this is regarded as a permanent gift to charity, even if an original purpose cannot be carried out. Charitable organisations and gifts made to them attract favourable tax treatment.

2. Ensure that you can explain the background to the reform of charity law by the Charities Act 2006, and the similarities and key differences between this and the enactment of the Charities Act 2011.

The Charities Act 2006 represented an important new direction in charity law in placing the legal definition of charity on a statutory footing. This involved retaining some traditional approaches and introducing some radical new ones. At the heart of this was a reform movement seeking to bolster public confidence in charity and charitable giving by tightening up requirements associated with being charitable and retaining charitable status, but also increasing the size of the charitable sector by liberalising the legal regime, and especially so for smaller organisations. The Charities Act 2011 did not alter the law from the 2006 Act, but it consolidated it and tidied it to make it simpler and more accessible.