Revision Box Questions: Guidance for approach

Revision Box Chapter 11

1. Ensure that you can identify the three key requirements for achieving charitable status at common law, and that you are able to relate these to the ‘special’ status of charity and the key advantages of charitable status.

These are that a purpose must be a purpose with ‘charitable character’; a purpose for public benefit, and not have factors disqualifying it from achieving charitable status by virtue of being political, being for the benefit of individuals, or geared towards profitmaking.

2. Ensure that you can comment on the envisioned relationship between the Charities Act 2006 and the common law relating to the legal definition of charity that it replaced. Would you agree that the 2006 Act was envisioned as a project of ‘continuity and change’?

The analysis of the Charities Act 2006 as a project of continuity and change originates in the way the reform movement leading to it pointed to traditional directions which had served charity law well, and which should be continued in a new regime which would both bolster public confidence in charity, and also enable the charitable sector to grow; and also traditional directions which needed to be replaced with different approaches to serve better these twin objectives underpinning reform of the law. Continuity can be seen in continuing requirements of a purpose being exclusively charitable, and also the basic requirement that a purpose is one for public benefit. Continuity can also be seen in the statutory list of charitable purposes in how a new ‘catchall’ heading designed to accommodate new purposes mirrored the Pemsel approach. Change can be seen in the expansion of the definition of religion, the removal of the presumption that a purpose is beneficial rather than detrimental to the public for the purposes of establishing public benefit, and that proving public benefit is an ongoing rather than once and for all requirement.

3. Ensure that you can comment on the purpose of the Charities Act 2011 and give examples of how this has changed the appearance of the legal definition of charity as under the 2006 Act.

Examples can be found throughout the parts of the legislation relating to the legal definition of charity, but the clearest example of this can be seen in the changed appearance of cy-près provisions.