Revision Box Questions: Guidance for approach

Revision Box Chapter 12

1. Ensure that you are able to explain what is meant by ‘cy-près’ in the context of English charity law in terms of:
   - what the term actually means; and
   - what the facility for cy-près reveals about the significance of charitable activity within English society.

   This term’s literal translation is ‘as close as possible’. Here it refers to the position whereby property, once given to charity is permanently a gift to charity, even if the original purposes cannot be carried out, because it will be applied ‘as close as possible’ to what was originally intended. The idea is to avoid frustrating donors’ intentions any more than necessary, but this is also about the power of the charitable gift and the importance of the support which law confers to charity, which is itself underpinned by the manifest importance of the charitable sector in Britain.

2. Ensure that you can explain how cy-près operated at common law and what has changed about this as a result of charities legislation dating from 1960. In doing so, identify:
   - the continuing significance of the wishes of the donor; and
   - the emphasis given to other considerations in making use of property dedicated to charity.

Understanding that this doctrine is centrally concerned with fulfilling donors’ wishes helps us to appreciate the traditional approaches applied in applying cy-près, which also requires us to distinguish between cases of initial and subsequent failure of a charitable gift/purpose. That emphasis on donors’ presumed intention regarding his property was always couched in the core idea that giving to charity is a once and for all occurrence has over time given greater emphasis within the operation of cy-près to the efficient operation of charitable enterprises. As the equitable doctrine became formalised under statute commencing with the Charites Act 1960 it has become clear that notwithstanding continuing reference to ‘the spirit of the gift’, promoting the efficient use of property dedicated to charity has meant cy-près would sometimes operate at the expense of the donor’s intentions, with this latter consideration influencing the development of law in the light of purposes which fell short of becoming impossible or impracticable and were instead outmoded or outdated.