

1. Does the theory of the contract between the members solve all the problems relating to the legal existence of an unincorporated association?

**Suggested Answer**

See 8.2.2, 8.2.3, 8.2.6, 8.3.2, 8.3.3 and 8.3.4. The idea that an unincorporated association can be best understood as a contractual agreement between the members has gained prominence in cases such as *In Re Recher's Will Trusts* [1972] Ch 526 and *In Re Bucks Constabulary (No 2)* [1979] 1 WLR 936. This can provide a solution to disputes between the members, particularly over property. The contract can be found in the rules of the society. This solves the problems raised in *Leahy v A-G* [1959] AC 457 of perpetuity and identifying beneficiaries, if the unincorporated association was classified as a trust. Problems remain, however. The rules of the association may not provide an answer to a dispute or there may be no rules and therefore no contract: *Conservative and Unionist Central Office v Burrell* [1982] 1 WLR 522. Even if there are rules and a contract between the members can be identified, is there still a trust somewhere in the association so that 'trustees' can hold the association's property? Who are they holding it for and what are the beneficiaries' rights? See *In re Denley's Trust Deed* [1969] 1. Ch 373. Yet the contract theory still holds sway, the members are beneficial joint tenants bound together by their multilateral contract: *Hanchett-Stamford v Attorney General* [2009] Ch 173.

FURTHER READING: [1995] Conv 302 P. Matthews "A Problem in the Construction of Gifts to Unincorporated Associations".

S Baughen [2010] Conv 216 'Performing Animals and the Dissolution of Unincorporated Associations: The Contract-holding Theory Vindicated'.

2. Why does a trust need beneficiaries?

**Suggested Answer**

See 8.44. Because Lord Eldon said so in *Morice v Bishop of Durham* (1805) 9 Ves Jun 401, it is an old and basic principle of trust law. Someone, a human or corporate beneficiary, must be able to go to court and enforce the trust against the trustees, if necessary: *In re Astor's Settlement Trusts* [1954] Ch. 534. Charities are enforced by the government, in the shape of the Attorney-General. Some historical exceptions are allowed to the beneficiary principle such as trusts to maintain an animal, maintain a grave, promote fox hunting and say masses for the soul of the deceased. The courts do not wish these exceptions to be extended, because of the strength of the beneficiary principle: *In Re Endacott, Deceased* [1960] Ch. 232. Perhaps there would be no harm in allowing more types of purpose trust, if they were considered socially desirable, or if a person was specified in the trust that could enforce it?

FURTHER READING: L.A. Sheridan "Trusts for Non-Charitable Purposes" [1953] Conv. 46.