1. Is it possible to come up with an overall definition of charity?

Suggested Answer
See 9.3 in particular, although the whole chapter shows that there is no overall definition. Charities cover a diverse range of objects and an overall definition has never proved possible. The Preamble to the Statute of Charitable Uses 1601 is a list of what was considered charitable at that time. The law has been developed case by case over the centuries, as explained in *Scottish Burial Reform and Cremation Society v Glasgow Corporation* [1968] AC 138. To bring some order to this process the courts decided that there were four main types, or 'heads' of charity: *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531. To bring in an overall definition now would be difficult because some long-established charities might lose their charitable status. Therefore the Charities Act 2006 (re-enacted in the Charities Act 2011) came up with another 'list' of what is considered charitable. This is not as radical as it seems, because many of the charitable purposes listed there have already been accepted in the case law or the list merely clears up tricky points, where the older case law is now doubted. The 2011 Act allows for further development of the law in section 3(1) (m); new types of charity can still be recognised. The Charity Commission's website is a good source of information on new types of charity.

FURTHER READING: https://www.gov.uk/government/organisatiobs/charity-commission

2. Does the Charities Act 2011 help to define 'charitable purposes' and public benefit?

Suggested Answer
See 9.3. This has already been partially dealt with in Question 1 above.
The new 'list' in the section 3(1) (m) of the Charities Act 2011 does clear up some controversies about newer developments in charity law. The Charity Commission has always developed the law and has accepted charities that do not strictly fit within the case law definitions, e.g. under the advancement of religion. Section 3(2) of the Act recognises these developments that a religious charity no longer has to be monotheistic..
Section 4 requires that all charities must prove that they are for the public benefit. When the Act was originally passed in 2006, this was thought by many, including the Charity Commission, to change the law. Two court cases held that the law was unchanged by the Act. In *Attorney-General v Charity Commission* [2012] WTLR 977, Warren J. stated that the law had always required public benefit to be proved. There were two aspects of public benefit: was the charity of use to the public and was it available to the public? How public benefit worked differed, depending upon the type of charity. Charities to relieve poverty were unique, in that they did not have to satisfy the second type of public benefit and be available to the general public.
Some charities, such as 'Public Schools', charge quite high fees for their services. The Charity Commission had said that such schools had to provide a certain percentage of scholarships to satisfy the public benefit requirement. The Tribunal said that this was

not so in *R (Independent Schools) v Charity Commission* [2012] 1 All ER 127. Such schools had to do something to help the poor, who could not afford their fees, but what that was would be left to the discretion of the individual charity. The Tribunal's judgment confirmed the view on fee-charging and public benefit of the earlier, private hospital case, *Re Resch* [1969] 1 AC 514 (See 9.7.2).

FURTHER READING: M. Synge 'Independent Schools Commission v Charity Commission' (2012) 75 MLR 6243. Should the public benefit requirement differ for different types of charity?

3. Should the public benefit requirement differ for different types of charity?

Suggested Answer

See 9.3.4 and 9.3.5. *Attorney-General v Charity Commission* [2012] WTLR 977 confirms that the public benefit requirement differs for different types of charity, with poverty being particularly different. The law is unchanged by section 4 of the Charities act 2011.

See 9.4.2. The relief of poverty is a fundamental purpose of charity, so little public benefit is required here. Charities can be restricted to relatives and employees: *Dingle v Turner* [1972] AC 601, *Attorney-General v Charity Commission* [2012] WTLR 977. *Cawdron v Merchant Taylors' School* [2009] EWHC 1722 (Ch) distinguishes the public benefit test for poverty from that for education. A scholarship for poor old boys of the school was a poverty charity and therefore valid, not an educational charity.

See 9.5.5. This would not be acceptable under the advancement of education, where the rule of personal nexus holds sway: *Oppenheim v Tobacco Securities* [1951] AC 297. An educational charity cannot just provide for relatives of the settlor or employees of the company.

See 9.6.3. Under the advancement of religion, public benefit is different again. Religious belief is thought to be socially beneficial, but a religion might have few followers. So the religion must also reach out to the wider society in some way: *Gilmour v Coats* [1949] AC 426.

See 9.7, 9.7.2, 9.10.3 and 9.9.3 The Fourth Head has the most restrictive approach. It is not enough for a purported charity to be of use to the public, it must fall within the types of public benefit historically accepted as charitable: *Helena Partnerships v Revenue and Customs* Commissioners [2012] 4 All ER 111. Charities for the old and sick are not just for the poor, but must relieve need in some way: *Joseph Rowntree v Attorney-General* [1983] Ch 159. Although the charity does not have to be aimed at the poor, it must help them in some way, even if only indirectly: *Re Resch* [1969] 1 AC 514.The charity has to be open to the whole society and the court is often sceptical about whether the proposed charity is actually socially beneficial. This has proved a particular problem with sporting and recreational charities. They fall foul of the public benefit requirement, if access is restricted to a particular social group: *Williams Trustees v IRC* [1947] AC 447, *IRC v Baddeley [*1955] AC572. Animal charities are very popular, but they have to indirectly benefit humankind, either because the animals helped are useful to humans or animal suffering was reduced, which "elevates the human race": *Re Wedgewood* [1914] 1 Ch 113.

FURTHER READING: R. Nobles 'Politics, Public Benefit and Charity'. (1982) 45 MLR 704.

4. Is the definition of religion outdated?

Suggested Answer

See 9.6. Cases such as *Bowman v The Secular Society* [1917] AC 406 said that religion was "monotheistic theism", and it can be seen that the law is very influenced by the requirements of Christianity, which would have been the dominant religion in the country at that time. Church services and worship were also required, as practised in traditional Christianity. The Charity Commission has long accepted the major world religions as charitable, even though they might not strictly fit the case law definition. This is now recognised in the Charities Act 2011, where section 3 (2)) recognises religions with more than one god and religions with no god. Despite this, the Charity Commission still requires a "religion" to have a Supreme Being, however defined, at the heart of it. This was doubted by the Supreme Court in the non-charitable case involving Scientology, R *(Hodkin) v Registrar General* [2013] UKSC 77. The court defined religion as a "spiritual or non-secular belief system".

The public benefit requirement of allowing outsiders to attend religious services or reaching out to the general public in some way, might still cause some problems for religions seeking charitable status: *Gilmour v Coats* [1949] AC 426. Although *Neville Estates v Madden* [1962] Ch. 832.felt that congregation members going out into the community and setting a good example might be enough.

FURTHER READING The website of the Charity Commission http://www.charity-commission.gov.uk/library for rulings on the charitable status of religious groups.

5. Why should 'political trusts' be denied charitable status?

Suggested Answer

See 9.5.4. The courts have always been cautious about granting charitable status to trusts that seem political. There are a number of reasons for this. First the courts feel that they are incapable of judging whether a change in the law would be good or bad: *Bowman v The Secular Society* [1917] AC 406. Secondly, the courts fear coming into conflict with the legislature or government: *McGovern v Attorney-General* [1981] Ch 231. Thirdly, the courts may wish to disallow charitable status to fanciful projects to change society: *Re Shaw's Will Trusts* [1957] 1 WLR 729 (See 9.5.3.). Neutral discussion of politics is allowed, however: *Re Koeppler* [1986] Ch. 423.

These approaches may be over cautious. Surely there is no harm in granting charitable status to respected organisations like Amnesty International, which did not gain charitable status for all its purposes in *McGovern v Attorney-General* [1981] Ch 321? Recent rulings by the Charity Commission uphold the view that charitable status will be lost if a "charity" is party political or just puts forward one point of view on a politically controversial issue.

The Charities Act 2011, however, recognises uncontroversial political purposes, such as human rights and conflict resolution, as charitable in section 3(1) (h). This has been taken up in *The Human Dignity Trust v Charity Commission* [2015] WTLR 789. Promoting international human rights is now charitable, because all countries are legally obliged to respect human rights.

FURTHER READING (1982) 45 MLR 704 R. Nobles “Politics, public benefit and charity.”