The Charpol Family Quiz

(A game of skill and luck played on the boundaries of charity and politics)

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Introduction

Two truths are held to be self-evident: (1) that no purpose is charitable if it comprises the attainment of political objects; (2) that few charitable purposes can fail to comprise the attainment of political objects. Those who hold the truth of their choice to be self-evident do so because they cannot prove it. Propositions (1) and (2) cannot both be proved true because they are contradictory; and neither can be proved wholly true because they are both partly untrue. That does not affect the confidence with which they are held to be self-evident truths. Here are two published statements, both of which are erroneous: (a) "Trusts for the attainment of political objects have always been held not to be charitable trusts . . ." (Martin C.J.S., giving the judgment of the Court of Appeal in *Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 634); (b) "It is almost impossible nowadays . . . to pursue charitable objects without becoming politically involved" *(Tenth Report from the Expenditure Committee to the United Kingdom House of Commons, Session 1974-75,* "Charity Commissioners and their Accountability" para. 40). There are also moderates who hold beliefs in between, e.g., that an organization, corporation or trust whose objects are otherwise charitable will not be recognized as charitable if its stated objects or purposes include the advocacy of political action *(Canadian Department of National Revenue, Taxation: Information Circular* No. 73-11R, para 7(c)). That is not quite right either. The law as to what degree of involvement with politics is inconsistent with charity is not well understood; nor is what amounts to politics; nor are the reasons for the present state of the law; nor are the implications of suggestions for new law on the subject.

Try answering the quiz that follows. Any score above 0 is a pass and means you should become or remain a charity lawyer, charity administrator or civil servant concerned with charities. A score of less than 0 means you should enter or stay in politics, or keep right on with whatever you are doing in California. Exactly 0 is a score qualifying you for nothing except membership of a committee. Part I of the quiz is easy because it only involves remembering or refering back to the first paragraph. A score of 0 or less on that part indicates a visit to the optician. If you fail on that part, do not proceed to the rest of the quiz. Give it to your children next Christmas instead. In respect of each question, place a mark of any shape that takes your fancy in the box alongside what you consider to be the best answer. After answering all the questions, check your answers against the correct ones starting on page 16. Assess your score charitably, but without breach of trust.

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The Questions

Part I: Sweeping Generalisations

1. No purpose is charitable if it comprises the attainment of political objects.
   ☐ True ☐ False ☐ It all depends what you mean

2. All charitable purposes comprise the attainment of political objects.
   ☐ True ☐ False ☐ If the donor likes them

3. The Canadian Department of National Revenue, Taxation, will not recognize an organization, corporation or trust as charitable if its objects or purposes are stated to be the advocacy of political action.
   ☐ True ☐ False ☐ If there is no court decision to the contrary

Part II: Legislative Ambitions

4. No purpose is charitable if it comprises advocating a change in the law.
   ☐ True ☐ False ☐ Unless the change advocated is prohibition of consumption of alcoholic liquor

5. Advocating that the law should be kept unchanged is not charitable.
   ☐ True ☐ False ☐ There is no decision on the matter

6. An object is not charitable if it could be carried out by promoting legislation.
   ☐ True ☐ False ☐ If that method of carrying it out is expressly authorized

7. Preparing proposals for law reform is charitable.
   ☐ True ☐ False ☐ If everyone agrees with the proposals

Part III: Changing the human outlook

8. Advocating a course of governmental action in international affairs is not charitable.
   ☐ True ☐ False ☐ Unless the object is universal peace

9. Promoting good relations and diminishing discrimination between different classes of people are not charitable purposes.
   ☐ True ☐ False ☐ Except in the case of promoting civil rights

Part IV: The reason why

(The questions in this part relate to political purposes which are not charitable. They do not imply that all political purposes fall into that category.)

10. Political purposes are not charitable because political parties are not charities.
    ☐ True ☐ False ☐ That is a non sequitur

11. Political purposes are not charitable because they are selfish.
    ☐ True ☐ False ☐ Sometimes, and then it is a good reason

12. Political purposes are not charitable because achieving them thwarts a section of the community promoting contrary political purposes.
    ☐ True ☐ False ☐ Bad people should be thwarted

13. Political purposes are not charitable because they are promoted by campaigning and agitation, giving rise to controversy.
    ☐ True ☐ False ☐ It may be a reason, but it is not a good one because there are controversial charities and because there are other ways of promoting political purposes

14. Political purposes are not charitable because their achievement cannot be demonstrated to be for the public benefit.
    ☐ True ☐ False ☐ They cannot be demonstrated not to be either, and therefore they are charitable

15. Political purposes are not charitable because they are not mentioned in, or analogous to anything mentioned in, or within the equity of, the preamble to the Statute of Charitable Uses.
    ☐ True ☐ False ☐ That reason does not apply in Ontario

The Answers

1. *No purpose is charitable if it comprises the attainment of political objects:* False (5 marks). "It all depends what you mean" also scores 5 marks. "True" scores only 4 marks.

In *Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 634, the Chief Justice of Saskatchewan, echoing Lord Parker of Waddington in *Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442, said: "Trusts for the attainment of political objects have always been held not to be valid charitable trusts . . ." But Ontario courts have held charitable the promotion of prohibition legislation *(Farewell* v. *Farewell* (1892) 22 O.R. 573) and the promotion of civil rights *(Lewis* v. *Doerle (*1898) 25 O.A.R. 206). The view of the House of Lords in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31 was that a society was not charitable if political activity was one of its *main objects.* In that case, Lord Normand (p. 76) pointed out that a charity can, quite properly, engage in some political activity which, viewed alone would not be charitable, if ancillary to its charitable objects, as a means of furthering them. That was the basis of decisions in England *(Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society* [1928] 1 K.B. 611), the United States *(Dulles* v. *Johnson,* 273 F. 2d 362 (1959)) and Victoria *(Re Inman* [1965] V.R. 238).

The Supreme Court of California has expressed the opinion that any trust for the promotion of political purposes is charitable, provided they are not contra bonos mores and are to be brought about by peaceable means, and not by war, riot or revolution *(Re Murphey's Estate,* 62 P. 2d 374, 375 (1936)). That is not the law in any part of Canada. It is not the law of California either: in *Estate of Carlson,* 41 A.L.R. 3d 825 (1970), the Court of Appeals of that state held the Socialist Labor Party of America was not charitable.

2. *All charitable objects comprise the attainment of political objects:* False (5 marks). "True" and "If the donor likes them" both score minus 5.

The Expenditure Committee (referred to on page 14, *ante*) were exaggerating tendencies and desires which undoubtedly exist. People engaged in charitable

work sometimes do conclude that they should shift their attention from ameliorating the suffering that results from a social condition to compaigning for the eradiction of the condition (noted by the Charity Commissioners for England and Wales in their report for 1969, para. 8). It is not the law that trustees are allowed to spend money held on trust for one purpose on another purpose (see *Baldry* v. *Feintuck* [1972] 1 W.L.R. 552).

Many people do wish to give money for political purposes. Although a trust for (non-charitable) political purposes is not valid, an outright gift to and a power of appointment in favour of a political party or any political association, incorporated or unincorporated, is valid though not charitable. Such gifts and the income on them do not attract the tax concessions afforded to charitable donations. If there is a communal interest in extending tax concessions to gifts for the promotion of political controversy, that can be done by statute without regard to the question of whether the gifts are charitable or not. (At present, tax concessions are not confined to charity.) It does seem to be solely a tax question. Cy-près and politics would be too peculiar for words. If a trust to maintain the federation unimpaired were charitable, and that cause became impossible, should the funds be diverted to the Parti Québecois?

Some people believe that charities should be freer than they are to engage in political activity in support of their charitable purposes. (See, for example, Caplin and Timbie, "Legislative Activities of Public Charities" (1975) 39 *Law and Contemporary Problems* (part 4) 183.) Once again, the question is that of taxation. It is rarely, if ever, contended that trustees should be permitted to spend money on purposes which are not included in those of their trust. What is suggested is that charitable organizations which, without breach of trust or other ultra vires acts, seek to achieve their objects by political means should not thereby forfeit their tax advantages. Such organizations can safely submit bills, or comment on bills, but cannot campaign (e.g. by lobbying or advertisement or other means of propaganda) to influence the legislature or public opinion and still claim to be treated as charities for tax purposes; except, perhaps, in the case of a campaign for legislation prohibiting commerce in or consumption of alcoholic liquor under the law of Ontario (*Farewell* v. *Farewell* (1892) 22 O.R. 573) and that object and a few others in some of the United States.

But it is notorious that, whatever may be the desires of donors or trustees, it is easy to advance religion, relieve the aged, poor and succourless, advance education, heal the sick and do the thousand and one other types of good works that are charitable without becoming engaged in politics at all, let alone politics at the expense of charity funds.

3. *The Canadian Department of National Revenue, Taxation, will not recognize an organization, corporation or trust as charitable if its objects or purposes are stated to be the advocacy of political action:*

   If there is no court decision to the contrary (5 marks); True (4 marks); False (3 marks).

Proposition 3 is what the Department says (see p. 14, *ante*). But if a court decides that an organization, corporation or trust is a charity notwithstanding that it has a stated object advocating political action the Department will act

in accordance with the decision. The promotion of "the adoption by the Parliament of the Dominion of Canada of legislation prohibiting totally the manufacture or sale in the Dominion of Canada of intoxicating liquor to be used as a beverage" and giving "practical aid in the enforcement of such legislation when adopted, and whether by educating and developing a strong public sentiment in its favour, or by other and more direct means, or in such other way as my trustees shall think best" was held charitable by Boyd C. in *Farewell* v. *Farewell* (1892) 22 O.R. 573. A trust "To promote, aid, and protect citizens of the United States, of African descent, in the enjoyment of their civil rights, as provided by the first section of the fourteenth amendment to the constitution of the United States, and the civil rights acts of congress based thereupon, and so, also, of the fifteenth amendment thereof, and such as are publicly accorded all other classes of American citizens" was held valid in Pennsylvania *(Re Lewis's Estate,* 25 A. 878 (1893)) and charitable in Ontario *(Lewis* v. *Doerle* (1898) 25 O.A.R. 206). Organizations, corporations and trusts with a main purpose which is charitable and a stated political purpose which is ancillary or incidental to the main purpose are entitled to recognition as charitable.

4. *No purpose is charitable if it comprises advocating a change in the law:* False (5 marks); True (3 marks); Unless the change advocated is prohibition of consumption of alcoholic liquor (1 mark).

"Trusts for the attainment of political objects have always been held not to be valid charitable trusts . . . The word 'political' includes activities for the purpose of influencing Legislature or Parliament to change existing laws or to enact new laws in accordance with the view or the views of the interested parties. Such objects or activities are not charitable. The United Farmers of Canada . . . is an organization whose main purpose is to promote legislation and effect changes in the law which in its opinion will be of benefit to the farmers of the Province; such an organization is not charitable even if among its objects one can find a charitable object." (Martin C.J.S., giving the judgment of the Court of Appeal in *Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 634, quoted with approval and applied by Bayda J.A., giving another judgment of that court in *Re Co-operative College of Canada and Saskatchewan Human Rights Commission* (1975) 64 D.L.R. (3d) 531, 538.) A similar decision on United States federal revenue law is *Krohn* v. *United States*, 246 F. Supp. 341 (1965), where a bequest to the Denver Medical Society was held not charitable; another is *Christian Echoes National Ministry Inc.* v. *United States,* 470 F. 2d 849 (1973), where Christian Echoes, ostensibly founded to provide a religious magazine, broadcasts and schools, but actually engaged in widespread political campaigning, were held not charitable; and yet another is *Haswell* v. *United States,* 500 F. 2d 1133 (1974), holding the National Association of Railroad Passengers not charitable.

An organization having as a principal object the passing of an Act of Parliament prohibiting vivisection was held not charitable in England in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31, overruling *Re Foveaux* [1895] 2 Ch. 501 which, however was followed in 1938 in a United States federal revenue case, the New England Anti-Vivisection Society being held charitable in *Old Colony Trust Co.* v. *Welch,* 25 F. Supp. 45; but

the New England society's favouring of legislation was merely incidental or ancillary to its main object of causing the savagery present to some degree in us all to be recessive by promoting feelings of kindness towards animals.

In England, the object of securing a change in the voting system has been regarded as not charitable because legislation would be required to bring about the change *(Re The Trusts of the Arthur McDougall Fund* [1957] 1 W.L.R. 81). On the other hand, trusts to promote improvements in the structure and methods of government have been held charitable in Pennsylvania *(Taylor* v. *Hoag,* 21 A.L.R. 946 (1922)) and California *(Collier* v. *Lindley,* 266 P. 526 (1928)). *Improvement,* as opposed to mere *change,* of the law ought to be charitable, as technical law reform was held to be in the United States federal case of *Dulles* v. *Johnson,* 273 F. 2d 362 (1959).

Prohibition is a peculiar matter in the law of charities. In England, in *Re Hood* [1931] 1 Ch. 240 (cited in *National Anti-Vivisection* v. *Inland Revenue Commissioners* [1948] A.C. 31 without disapproval by Lord Wright (p. 51) and Lord Simonds (p. 63) and with approval by Lord Normand (pp. 77-78)), a testator stated in his will: "Whereas I believe in the universality of the Christian religion and that the remedy for all the unrest and disorders of the body politic will be found in the application of Christian principles to all human relationships And whereas I believe the drink traffic to be one of the most subtle and effective forces in preventing the successful application of these principles and I therefore hope and trust that active steps will be taken to minimize and ultimately extinguish this enemy of my country's welfare. Now therefore I declare it to be my wish that my general beneficiaries shall hold the whole of my residuary trust estate together with the income thereof in spreading the Christian principles before mentioned and in aiding all active steps to minimize and extinguish the drink traffic." All three judges in the Court of Appeal (dismissing an appeal) held that charitable either on the ground that there was only one main purpose (the advancement of Christian principles) to which the rest was ancillary, or on the ground that, if the reduction of intemperance were a separate object, it was a separate charitable object not of a political kind. They preferred *Re Scowcroft* [1898] 2 Ch. 638 (see p. 28, *post*) to the *Temperance Council* case (1926) 136 L.T. 27 (see below) as a guide to the decision of the case before them. Lord Hanworth M.R. said (p. 249): "I do not know that the word 'traffic' has any reference to the Legislature. It appears to be to the system of selling and buying drink. In that construction it does not appear to me that the testator has done more than indicate that he desires to have a spread of Christian principles."

On the other hand, in *Commissioners of Inland Revenue* v. *Temperance Council of the Christian Churches of England and Wales* (1926) 136 L.T. 27 (cited in the *Anti-Vivisection Society* case [1948] A.C. 31 with approval by Lord Wright (p. 51) and without disapproval by Lord Simonds (p. 63) and Lord Normand (p. 78)) Rowlatt J. held that a body whose main purpose was to secure legislation controlling drinking was not charitable. The constituting resolution of the Council contained these words: "The purpose of the Council shall be united action to secure legislative and other temperance reform." *Farewell* v. *Farewell* (1892) 22 O.R. 573 (see p. 18, *ante*) was apparently not cited to Rowlatt J.,

who said (p. 28): "'Legislative temperance reform' is not a very exact phrase, but what it means is legislation diminishing the consumption of alcohol. . . . It appears to me that the first purpose of the Council is legislative temperance reform; and the agenda which indicated the basis of future action adopted at the same meeting shows clearly that in point of fact legislation occupied the greater part of the field looked out upon by the people who constituted the Council. The work of the Council, it was provided, was to be of a strictly non-party character. That is a wholly irrelevant consideration. . . . Any purpose of influencing legislation is a political purpose in this connection." Kennedy J. came to a similar conclusion with regard to the New Zealand Alliance for the Abolition of the Liquor Traffic in *Knowles* v. *Commissioner of Stamp Duties* [1945] N.Z.L.R. 522. *Farewell* v. *Farewell* was cited to Kennedy J., who said of it (p. 529): "This decision was before *Bowman's* case [see p. 31, *post*] and the reasoning seems to negative Lord Parker's dictum. In any case *Inland Revenue Commissioners* v. *Temperance Council of Christian Churches of England and Wales* [above] is directly in point."

How stands *Farewell* v. *Farewell* now, ignored in England, brushed aside in New Zealand, never subsequently in point in a reported Canadian case? Has it gone, or is its influence confined to Canada, or to Ontario? (These *questions* are part of the *answers*. For the decision, see p. 18, *ante*; for the approach of the judge and its validity in Canada today, see pp. 30-32, *post*.) It has American brethren, at any rate. In New York a trust "for temperance and the annihilation and overthrow of the liquor traffic in the county of Ontario, to defray the expenses of the No License League, the Anti-Saloon League, the Prohibition Party, or any kindred organization in Ontario county most in need of financial support" was held charitable in *Buell* v. *Gardner,* 144 N.Y.S. 945 (1914). In California a trust to "assist in securing, maintaining, enforcing and strengthening prohibition and other legislation . . . affecting the manufacture, and use, and/or disposition of alcoholic beverages and/or intoxicating liquors and/or narcotic drugs by all lawful means" was held charitable in *Collier* v. *Lindley,* 266 P. 2d 526 (1928). In federal revenue law the following objects were held charitable in *Girard Trust Co.* v. *Commissioner of Internal Revenue,* 138 A.L.R. 448 (1941): "To promote the cause of temperance by every legitimate means; to prevent the improper use of drugs and narcotics;" although one of those means was influencing legislation. In the District of Columbia "the enactment and enforcement of laws prohibiting the alcoholic liquor traffic, the white slave traffic, harmful drugs and kindred evils" everywhere, and "the suppression of gambling and political corruption" were held charitable purposes in *International Reform Federation* v. *District Unemployment Compensation Board,* 131 F. 2d 337 (1942).

Other American decisions generally (but not uniformly) go against allowing a principal object of influencing legislation to be charitable where no question of drinking, drug taking, prostitution or gambling is in issue. Securing the passage of legislation granting women equal political rights with men was held not charitable twice in Massachusetts (*Jackson* v. *Phillips,* 96 Mass. 539 (1867) and *Bowditch* v. *Attorney General*, 28 A.L.R. 713 (1922)), but the attainment of votes for women was held a charitable purpose in Illinois in *Garrison* v.

Little, 75 Ill. App. 402 (1897), while in *Register of Wills for Baltimore County* v. *Cook,* 22 A.L.R. 3d 872 (1966), the Maryland Court of Appeals held all the following trusts charitable: (i) "to pay unto the Maryland Branch of the National Woman's Party, One Hundred ($100.) Dollars per year for a period of ten years"; (ii) "to help further the passage of and enactment into law of the Equal Rights Amendment to the Constitution of the United States;" (iii) "to further the cause of equality for women in civil and economic rights". In *Slee* v. *Commissioner of Internal Revenue,* 42 F. 2d 184 (1930), a federal court held the American Birth Control League not exclusively charitable because the League's political activities were in furtherance of the object of securing legislation dealing with the prevention of conception, not merely ancillary to the conduct of a charitable object. In *Marshall* v. *Commissioner of Internal Revenue,* 147 F. 2d 75 (1945), three trusts involving the promotion or opposing of legislation were held not charitable: (i) to replace capitalism by a new economic system; (ii) to safeguard and advance civil liberties; and (iii) to preserve wilderness in outdoor America.

The purpose of securing a legislative change in the constitution of a foreign country has more often than not been regarded as not charitable. In England, "the political restoration of the Jews to Jerusalem and to their own land" was held not charitable when Palestine was part of the Ottoman Empire *(Habershon* v. *Vardon* (1851) 4 De G. & Sm. 467), but "To further the development of the Jewish National Home in Palestine" was held charitable in California when Palestine was a British mandated territory *(Re Murphey's Estate,* 62 P. 2d 374 (1936)). Thompson J., giving the judgment of the Supreme Court, said (p. 375): ". . . the purposes of the respondent are political. . . . In fact, as we understand it, 'the development of the Jewish National Home in Palestine' contemplates the re-settlement of Palestine under British mandate by the Jewish people and is already the cause of friction with the Arabs. . . . However, we think the question is answered by . . . Collier v. Lindley, . . . in which this court held that a trust for the promotion of political purposes was eleemosynary and charitable . . . we cannot distinguish between political purposes, saying one is charitable and another is not, assuming, of course, that the changes sought are not contra bonos mores and are to be brought about by peaceful means, and not by war, riot, or revolution. . . . Since it cannot be said that the purposes of the legatee bring it within the exceptions, we must hold that it is a charitable organization . . ." In *Re Killen's Will,* 209 N.Y.S. 206 (1925), a New York court held not charitable a gift to "further the development of the Irish Republic" – both parts of Ireland then being monarchies. Slater S. said (p. 208): ". . . a bequest tending to encourage a change in the fundamental law of any nation of the world might very well and probably would be said to be against public policy. Tyssen's Charitable Bequests (2nd Ed.) 116."

The object of securing specific legislation, or legislation on a specific topic, is not charitable in Canadian law. That proposition is accepted throughout the Commonwealth (except in cases which have been overruled and in *Farewell* v. *Farewell,* p. 18, *ante*) and parts of the United States. Authorities to the contrary from the United States would not be followed in Canada in the foreseeable future. However, an organization, corporation or trust all of whose main objects

are charitable is an exclusively charitable body notwithstanding that it takes part in influencing legislation, if the activity connected with legislation is wholly incidental and ancillary to its charitable objects, and notwithstanding that the power to engage in that activity is expressly conferred by the constitution or trust instrument. There are dicta and decisions to that effect in English and Victorian cases.

In *Commissioners of Inland Revenue* v. *Yorkshire Agricultural Society* [1928] 1 K.B. 611 the society was held charitable although its objects (which were for the general promotion and improvement of agriculture) included "the watching and advising on legislation affecting the agricultural industry". Atkin L.J. said (p. 632): "It is said that if that stood by itself it plainly would not be a charitable purpose; and I can imagine that a society which was formed solely for the purpose of watching and advising on legislation affecting agriculture would not be a society formed for a charitable purpose. But that does not seem to me at all to affect the matter. It is perfectly consistent with the main object of the Society being one for the promotion of agriculture generally, that in order to carry out its object it should watch and advise on legislation affecting agriculture. Supposing a society formed for the admittedly charitable purpose of promoting education, or of promoting the relief of the sick and poor, it appears to me impossible to suggest that it might not be well within the charitable objects of such a society to watch and advise on legislation, in the one case affecting education and in the other case affecting the relief of the sick and poor. Therefore, in my opinion there is no reason for picking out that particular object so defined as being something so inconsistent with the main charitable purpose as to amount to something different, so that there are two purposes and not one." In *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31, where he was one of the majority who decided that the Society was not charitable because promoting legislation prohibiting vivisection was one of its main objects, Lord Normand said (pp. 76-77): "Societies for the amelioration of the condition of animals like other societies for the improvement of human morals do not as a rule limit their activities to one particular method of advancing their cause. Commonly they hope to make voluntary converts, and they also hope to educate public opinion and so to bring its influence to bear on those who offend against a humane code of conduct towards animals. But they seldom disclaim and frequently avow an intention of inducing Parliament to pass new legislation if a favourable opportunity should arise of furthering their purpose by that means. A society for the prevention of cruelty to animals, for example, may include among its professed purposes amendments of the law dealing with field sports or with the taking of eggs or the like. Yet it would not, in my view, necessarily lose its right to be considered a charity, and if that right were questioned, it would become the duty of the court to decide whether the general purpose of the society was the improvement of morals by various lawful means including new legislation, all such means being subsidiary to the general charitable purpose. If the court answered this question in favour of the society, it would retain its privileges as a charity. But if the decision was that the leading purpose of the society was to promote legislation in order to bring about a change of policy towards field sports or

the protection of wild birds it would follow that the society should be classified as an association with political objects and that it would lose its privileges as a charity. The problem is therefore to discover the general purposes of the society and whether they are in the main political or in the main charitable. It is a question of degree of a sort well known to the courts."

The Victorian decision is *Re Inman* [1965] V.R. 238. In that case Gowans J. considered bequests to a number of bodies, two of which were the Melbourne Branch of the British Union for Abolition of Vivisection and the Royal Society for the Prevention of Cruelty to Animals. The anti-vivisection society had as a leading object "demanding the total prohibition by law of the practice." The learned judge said (p. 244): "Whether called political or not, this does not fall within any head of charity." As to the R.S.P.C.A., "the objects of the Society are to prevent cruelty to animals, by enforcing where practicable the existing laws, by procuring such further legislation as may be thought expedient, by inciting and sustaining an intelligent public opinion regarding man's duty to the lower animals, by rendering relief to animals requiring the same and by doing all things incidental and conducive to the attainment of the foregoing objects" (extract from its by-laws). In the course of holding the R.S.P.C.A. to be a charity, Gowans J. said (p. 242): "The general object is, therefore, to prevent cruelty to animals. This dominates the statement of objects in the by-laws. None of the methods set out for the achievement of this object detracts from its character. It is true that one of those methods, viz. procuring such further legislation as may be thought expedient, if taken alone, would be a political object and nothing more. But it is only a method of achieving the main or fundamental object, the prevention of cruelty to animals. If an institution for the prevention of cruelty to animals is a charitable institution, it will not be the less a charitable institution because one of the means indicated for the achievement of its dominant purpose taken alone would not be charitable . . ."

5. *Advocating that the law should be kept unchanged is not charitable:*
   True (5 marks). "There is no decision on the matter" is almost correct but scores only 1 mark on the ground of cowardice in the face of general principles. "False" scores minus 5 even if you are answering where a Conservative government is in power.

On principle, if promoting legislation is not charitable because it is a political activity, opposing it must be non-charitable for the same reason. Vaisey J. said so, obiter, in *Re Hopkinson* [1949] 1 All E.R. 346, 350. *Re Co-operative College of Canada and Saskatchewan Human Rights Commission* (1975) 64 D.L.R. (3d) 531 can perhaps be regarded as a decision on the matter. The Saskatchewan Court of Appeal there considered object (g) of the College made it impossible to regard it as an exclusively charitable organization. Object (g) was: "To protect the interests of co-operatives and credit unions by appropriate action in making representations to legislative, administrative, judicial and other bodies". Bayda J. A., giving the judgment of the court, said (p. 538): "The aim of this object is plainly to influence the Legislature, or Parliament, as well as administrative and judicial bodies, to change existing laws, enact new laws, or to resist any such change or enactment of new laws . . ."

6. *An object is not charitable if it could be carried out by promoting legislation:* False (5 marks). "If that method of carrying it out is expressly authorized" has an element of justification and is worth 2 marks. "True" has very slight justification and is worth only 1.

Even if carrying out an otherwise charitable object by promoting legislation is expressly authorized by the constitution or trust instrument, the whole object will be charitable if the promotion of legislation is ancillary and incidental to the main object (see pp. 21-23, *ante*).

On the other hand, if the promotion of legislation is itself a main object, there is no charity even if that promotion be only authorized rather than enjoined. In *Marshall* v. *Commissioner of Internal Revenue,* 147 F. 2d 75 (1945) see p. 21, *ante*), A. N. Hand J. said (pp. 77-78): "It is argued that because the trustees were not directed but only authorized to draft bills and to use all lawful means to have legislation enacted in aid of the objects of the three trusts that their power to indulge in political activities was merely incidental and ancillary to charitable or educational objects that were primarily to be promoted. . . . But, a dominant object of the first trust was to eliminate the capitalistic system and a designated method, and perhaps the only practicable one for achieving this result, was by securing legislation. . . . Such political activity was plainly designed to effect the objects for which the trust was created." (The same was true of the other two trusts.) That is good law for Commonwealth countries (except to the extent that *Farewell* v. *Farewell* may be followed).

Implied authorization has the same effect as express authorization. That is to say, if the objects or the means of attaining them are stated with such generality that, although influencing the legislature is not mentioned, attempts to promote legislation would not be ultra vires or a breach of trust, it still has to be decided whether the objects are (a) non-political, (b) inclusive of political activity which is only incidental or ancillary to a main charitable purpose, or (c) primarily political. In *Animal Defence and Anti-Vivisection Society* v. *Inland Revenue Commissioners* (1950) 66 T.L.R. (pt. 2) 1091, the Society's objects were the prevention of cruelty to animals generally, but one of its rules provided: "The society shall oppose vivisection and all experiments on animals 'calculated to cause pain' (definition of Cruelty to Animals Act of 1876) by exposing the suffering inflicted and the failure to bring benefit to humanity. Further, the society shall give effective publicity to the constructive aspect of the opposition to vivisection, to methods of research and healing dissociated from experiments on animals, support medical freedom and the science of health, thereby demonstrating the fact that the welfare of humanity and that of animals are inter-related." That was a separate and important object which Danckwerts J. held not charitable, saying (pp. 1094-1095): "It was said that that rule did not involve the suppression of vivisection, but merely opposition to it, which was a different matter, and that the purpose of the rule was educational rather than for suppressing by repealing the Cruelty to Animals Act, 1876, or promoting any other legislation . . . Those arguments cannot succeed. It is not a correct reading of [the rule], and it also seems to me to be inconsistent with the conduct of the society's affairs as shown by their evidence. The matters which are to be done . . . must necessarily in the end involve an attack on the Cruelty to

Animals Act, 1876, and the promotion or the support of legislation for repealing that Act and for suppressing vivisection altogether." It may be thought that the rule could be construed so as to allow for propaganda seeking to persuade people to refrain from vivisection without necessarily, in the end, involving any activity in connection with legislation (compare *Re Hood*, p. 19, *ante*). But the nature of a society, i.e., whether it is a charity or not, can be determined by reference to how it has behaved. In fact, the conduct of the Society in actually promoting legislation would have determined its tax liability adversely in part, even if its rules prohibited the promotion of legislation, and even if reducing or eliminating vivisection can be a charitable purpose when carried out by non-political means. The issue was one of income tax on all the Society's income, so that the finding that the Society was not a charity meant all its income was taxable. But if the income *is* that of a charity, or is held on trust for charitable purposes *only*, the income is free of tax under English legislation (now the Income and Corporation Taxes Act 1970, section 360) only so far as the income is *applied to those purposes.* Therefore, the expenditure of income on non-charitable purposes, even though in breach of trust or otherwise ultra vires, causes that income to attract tax. A similar result seems to flow from the application of paragraph 149(1) (f) of the Canadian Income Tax Act.

The mere fact that a purpose could be achieved by legislation does not stop it being a charitable purpose of an organization or trust which does not envisage or employ that method.

7. *Preparing proposals for law reform is charitable:*
   True (5 marks). "False" has little to be said for it and scores only 1 for that little. "If everyone agrees with the proposals" has the germ of a germane idea (the less controversy the more charity), but scores only 1 because it is impossible to get everyone to agree with any proposal.

"Law reform" here means improving the law so as the better to make justice or certainty (or other legal virtue) available to those governed by it. On principle, the improvement of the legal system ought to be a charitable purpose for the same reason as that for which all three judges held the reporting of judicial decisions charitable in *Incorporated Council of Law Reporting for England and Wales* v. *Attorney-General* [1972] Ch. 73, and for which Barwick C. J. and McTiernan and Windeyer JJ. reached the like conclusion in *Incorporated Council of Law Reporting of the State of Queensland* v. *Commissioner of Taxation of the Commonwealth of Australia* (1971) 125 C.L.R. 659. The fact that legislation would be required to give any proposal effect does not make the preparation of proposals for law reform political. Since the passing of such legislation as the Ontario Law Reform Commission Act and the (United Kingdom) Law Commissions Act 1965, appeal may be made, in a jurisdiction where such a statute operates, to the argument put forward by counsel in *Re Bushnell* [1975] 1 W.L.R. 1596, and neither accepted nor rejected by Goulding J., summarised by the learned judge (p. 1606) as being that when Parliament brings a scheme into being it thereby demonstrates, in a manner which the court is bound to accept, an opinion that such an institution is for the public benefit. (It is difficult to believe either that the court is bound to accept that opinion or that the opinion of Parliament that something ought to be done is

necessarily an opinion that it is for the public benefit in the sense of the law governing what amounts to a charitable purpose, but it is relevant.)

The only direct authority comes from American federal revenue law. In *Dulles* v. *Johnson,* 273 F. 2d 362 (1959), bequests to Bar Associations were held charitable. Waterman J., giving the judgment of the Court of Appeals, said (p. 367) that, among the Associations' other functions, "Through their various committees the Associations study and report on proposed and existing legislation. . . . The major portion of this work is of a technical nature involving the adequacy of proposed and existing legislation in terms of its form, clarity of expression and its effect on and relation to other law. The Associations' work has been expressed in expert reports on matters uniquely within the fields of experts and has avoided questions which are outside those fields, i.e., questions which turn largely on economic or political decisions. . . . In our opinion these activities are . . . charitable. . . . The cases upon which the Government relies are inapposite. Those cases involved organizations whose principal purpose was to implement legislative programs embodying broad principles of social amelioration. . . . the legislative recommendations of the Associations . . . are designed to improve court procedure or to clarify some technical matter of substantive law. They are not intended for the economic aggrandizement of a particular group or to promote some larger principle of governmental policy."

8. *Advocating a course of governmental action in international affairs is not charitable:*

   True (5 marks). "Unless the object is universal peace" may be correct, but there is scanty authority so it only scores 3 marks. "False" scores minus 5 unless you had in mind advocating governmental action in a manner wholly ancillary and incidental to a main charitable object, in which case you can score anywhere between 1 and 5, depending on how sincere you were.

The main authorities for the truth of the proposition are *Re Wilkinson* [1941] N.Z.L.R. 1065 and *Re Strakosch* [1949] Ch. 529 (see p. 27, *post*). In *Re Wilkinson* Kennedy J. held not charitable a gift to the League of Nations Union of New Zealand. The learned judge said (p. 1076): "The object of the Union is . . . to secure and obtain such an opinion that the people of New Zealand shall accept the League of Nations . . . that is, that the central executive authority or the Government shall be influenced to act in a particular way." And (p. 1077): "Any purpose with the object of influencing the Legislature is a political purpose, and similarly . . . a purpose that the central executive authority be induced to act in a particular way in foreign relations or that the people be induced to accept a particular view or opinion as to how the central executive shall act in the foreign relations of this country is, in the broadest sense, a political purpose . . ."

The American Peace Society was held charitable in *Tappan* v. *Deblois*, 45 Maine 122 (1858); a gift to the World Peace Foundation was held charitable in *Parkhurst* v. *Burrill*, 117 N.E. 39 (1917), a Massachusetts case; and in England in *Re Harwood* [1936] Ch. 285 Farwell J. assumed that assorted non-existent peace societies would have been charitable if they had existed. In none of those cases was there any explicit consideration of attempts to influence governments,

though in the two American cases it was argued unsuccessfully that the organizations concerned were not charitable because they were political. In the Massachusetts case, Rugg C. J. said (p. 40): "The final establishment of universal peace among all the nations of the earth manifestly is an object of public charity."

9. *Promoting good relations and diminishing discrimination between different classes of people are not charitable purposes:*

   True (5 marks). "False" is wrong and scores minus 5, although it may become correct with regard to diminishing *illegal* discrimination, should the matter arise in court, as public policy moves in that direction by statute. "Except in the case of promoting civil rights" is worth 3 marks if you had in mind such promotion without seeking legislation, but otherwise it is worth only 1 mark because the only authorities are American and they conflict.

In *Re Strakosch* [1949] Ch. 529 trustees were directed to apply property "to a fund for any purpose which in their opinion is designed to strengthen the bonds of unity between the Union of South Africa and the Mother Country, and which incidentally will conduce to the appeasement of racial feeling between the Dutch and English speaking sections of the South African community." The Court of Appeal, although they did not think the support or promotion of legislation was intended, held that not charitable. Lord Greene M. R., giving the judgment of the court, said (p. 538): "The problem of appeasing racial feeling within the community is a political problem, perhaps primarily political. One method conducive to its solution might well be to support a political party or a newspaper which had such appeasement most at heart. This argument gains force in the present case from the other political object, namely, the strengthening of the bonds of unity between the Union and the Mother Country."

Promoting the enjoyment of civil rights (not securing new ones) was held charitable in *Lewis* v. *Doerle* (1898) 25 O.A.R. 206 (see p. 18, *ante*). Obtaining civil rights by legislation has been held a charitable object in several American cases (*Garrison* v. *Little*, 75 Ill. App. 402 (1897): votes for women; *Collier* v. *Lindley*, 266 P. 526 (1928): justice for the American Indians; *Re Murphey's Estate*, 62 P. 374 (1936): equality of opportunity for Jews everywhere; *Register of Wills for Baltimore County* v. *Cook*, 22 A.L.R. 3d 872 (1966): equal rights for women); but it has been held not charitable in other American cases (*Jackson* v. *Phillips*, 96 Mass. 539 (1867) and *Bowditch* v. *Attorney General*, 28 A.L.R. 713 (1922): both cases on equal rights for women; *Marshall* v. *Commissioner of Internal Revenue*, 147 F. 2d 75 (1945): civil liberties generally).

10. *Political purposes are not charitable because political parties are not Charities:*

    That is a non sequitur (5 marks). "True" scores 2 marks for knowing that political parties are not charities. False scores minus 10 marks if you thought political parties were charities (the penalty is high because they have been held not charitable even in California); or 2 marks if you knew they were not charitable but thought there was no good reason for categorising the proposition as a non sequitur.

Political parties have never been held charitable, nor has the furtherance of the principles for which they said they stood. There is little authority on direct trusts for parties or their objects, probably because it has occurred to very few people to argue their charitable nature. The following have been held not charitable in England: the Primrose League of the Conservative cause (*Re Jones* (1929) 45 T.L.R. 259); the promotion of Conservative principles (*Bonar Law Memorial Trust* v. *Inland Revenue Commissioners* (1933) 49 T.L.R. 220); and the advancement of the doctrines of the Labour Party (*Re Hopkinson* [1949] 1 All E.R. 346). The Prohibition Party, and other similar bodies, were regarded as not being charities in New York (*Buell* v. *Gardner,* 144 N.Y.S. 945 (1914)). The Socialist Labor Party has been held not charitable in Massachusetts (*Workmen's Circle Educational Center of Springfield* v. *Board of Assessors of City of Springfield*, 51 N.E. 2d 313 (1943)), New York (*Re Andrejevich's Estate*, 57 N.Y.S. 2d 86 (1945) and *Re Grossman's Estate*, 75 N.Y.S. 2d 335 (1947)), Pennsylvania (*Liapis' Estate*, 88 Pa.D. & C. 303 (1954)) and California (*Estate of Carlson*, 41 A.L.R. 3d 825 (1970)). In Pennsylvania, a gift on trust for the Democratic National Committee, to be used for presidential campaigns (*Re Boorse Trust*, 64 Pa. D. & C. 447 (1948)) and the state's Republican Women's Club (*Re Deichelmann's Estate*, 21 Pa.D. & C. 2d 659 (1955)) were both held not charitable.

Re Scowcroft [1898] 2 Ch. 638 may seem like an authority to the contrary, but is not. The gift there of premises "to be maintained for the furtherance of Conservative principles and religious and mental improvement" was held charitable by Stirling J. because he regarded it (p. 641) as "either a gift for the furtherance of Conservative principles in such a way as to advance religious and mental improvement at the same time, or a gift for the furtherance of religious and mental improvement in accordance with Conservative principles . . ." The learned judge may have been wrong about the donor's intention; he may have been wrong in thinking it possible to further Conservative principles in such a way as to advance religious and mental improvement at the same time, or to further religious and mental improvement in accordance with Conservative principles; but he did *not* make the error of deciding that the furtherance of Conservative principles was a charitable object in itself. He thought the gift was for a single charitable purpose (religious and mental improvement) by a stipulated mode that did not destroy the charitable nature of the sole purpose.

However, the fact that a gift to a political party or for the furtherance of its principles is not charitable does not itself explain why other gifts for political purposes are not charitable. It is still necessary to ask why political parties and their principles are not objects of charity and whether the reason holds good for other political objectives.

11. *Political purposes are not charitable because they are selfish:*
    Sometimes, and then it is a good reason (5 marks). "True" and "False" both score minus 5, as political purposes are sometimes selfish and sometimes altruistic.

Examples of political purposes held not charitable at least in part on the ground

that they were self-serving are the political objectives of the United Farmers of Canada, "to promote the interests of its members" [(*Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 630 (see p. 18, *ante*)], and those of the Co-operative College of Canada, "To protect the interests of co-operatives and credit unions" [(*Re Co-operative College of Canada and Saskatchewan Human Rights Commission* (1975) 64 D.L.R. (3d) 531 (see p. 23, *ante*)].

Support is to be found in American federal revenue law. In *Krohn* v. *United States*, 246 F. Supp. 341, 347 (1965), Doyle J. said: ". . . it may be possible to argue that an organization can with impunity seek to influence the course of governmental action provided it does not have a special interest at stake. We need not decide that since the Society here is not such an organization." Also, one of the points made in *Dulles* v. *Johnson*, 273 F. 2d 362, 367 (1959) (see p. 26, *ante*), was that the law reform work of the Bar Associations served no selfish purpose of the legal profession.

12. *Political purposes are not charitable because achieving them thwarts a section of the community promoting contrary political purposes:*

    True (5 marks). "False" also scores 5 marks. "Bad people should be thwarted" is a good sentiment, and scores 3 marks if selected for that reason, but is irrelevant because unsuccessful politicians are not always bad people. If selected for any other reason, such as hypocrisy or because you thought it was a proposition of the law of charitable trusts, it only scores 2. If you found the question baffling and did not answer it, or if you rejected all three possible answers, you score 5.

In *Trustees for the Roll of Voluntary Workers* v. *Commissioners of Inland Revenue*, 1942 S.C. 47, where a trust to assist the Government or the public in resisting or helping to resist a strike, lock-out or civil commotion which interfered with essential services or the supply of the necessaries of life was held not charitable because it was political, Lord Moncrieff (but not the other two judges) said (pp. 55-56): "If I am right in supposing that the law of England now includes among charitable purposes only such public purposes, being purposes beneficial to the community as enjoyed by *quivis de populo*, as find a place, express or implied in what has been styled 'the statute of Elizabeth,' I find again no difficulty in excluding from this larger list a purpose which proposes to benefit certain of the lieges by thwarting the activities of others." That seems to refer to thwarting people who do something or wish to do something which, whether good, bad or indifferent, is lawful; thwarting unlawful activities is different, for both the administration of justice and the relief, stock or maintenance for houses of correction are charitable. It would suggest that advocacy of the abolition of vivisection, or trade in aloholic liquor, is not charitable because abolition would thwart scientific experiment (good) or drinking (indifferent), both of which are lawful. A trust for the reduction of drunkenness or for the enactment of laws against discrimination in employment might, on that basis, equally not be charitable because drunkenness and discrimination, when not prohibited by statute in particular circumstances, are generally lawful. Lord Moncrieff's proposition is interesting but isolated.

13. *Political purposes are not charitable because they are promoted by campaigning and agitation, giving rise to controversy:*

    On the whole, political purposes are pursued in manners giving rise to controversy, which attracts some judicial disfavour, so "True" is worth 3 marks. But that is seldom, if ever, given as *the reason* for holding political purposes not charitable, and "False" (5 marks) is therefore preferred. The other permitted answer makes sensible points, but to some extent evades the question. It is worth 4 marks.

The campaign for free milk for pupils in primary schools was held not charitable in *Baldry* v. *Feintuck* [1972] 1 W.L.R. 552, 558, because it was political, not because it was a campaign.

In *Jackson* v. *Phillips,* 96 Mass. 539 (1867), where a trust to persuade people not to acquire slaves and to manumit those they had was held charitable, Gray J. said (p. 565) that "if this trust could not be executed . . . without tending to excite servile insurrections . . ., it would have been unlawful;" and that "a trust which looked solely to political agitation . . . could not be recognized by this court as charitable."

In *Slee* v. *Commissioner of Internal Revenue*, 42 F. 2d. 184, 185 (1930), where the Court of Appeals, Second Circuit, held that the purpose of enlisting the support of legislators to effect the lawful repeal of existing laws, being general and not ancillary to its charitable objects, prevented the American Birth Control League from being exclusively charitable, L. Hand J. said (in a passage reiterated for the same court by A. N. Hand J. in *Marshall* v. *Commissioner of Internal Revenue*, 147 F. 2d. 75, 11 (1945)): "Political agitation as such is outside the statute [allowing deduction of gifts to charity for purposes of income tax], however innocent the aim, though it adds nothing to dub it 'propaganda,' a polemical word used to decry the publicity of the other side. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them."

Agitation may always fail to qualify as charity, but that is not true of controversy, which is sometimes associated with the advancement of education and sometimes with the advancement of religion.

14. *Political purposes are not charitable because their achievement cannot be demonstrated to be for the public benefit:*

    True (5 marks because several respected people have said so). "False" is a good answer too, having regard to the answer to question 15, so also scores 5. The other permitted answer scores minus 5 unless you are answering with reference to certain American decisions or can show that Boyd C.'s approach in *Farewell* v. *Farewell* is good law, in either of which cases it scores 5 marks.

Tyssen (*Charitable Bequests*), 1898 ed., p. 176) wrote: "However desirable the changes may really be, the law could not stultify itself by holding that it was for the public benefit that the law itself should be changed." That piece of stultiloquence was quoted with approval by Lord Wright (p. 50) and Lord

Simonds (p. 62) in *National Anti-Vivisection Society* v. *Inland Revenue Commissioners* [1948] A.C. 31. It raises the difficult issue of whether the law is an ass or a mule.

Lord Parker of Waddington who, according to Lord Simonds ([1948] A.C. 62), meant the same thing as Tyssen, said obiter in *Bowman* v. *Secular Society Ltd.* [1917] A.C. 406, 442: ". . . the Court has no means of judging whether a proposed change in the law will or will not be for the public benefit, and therefore cannot say that a gift to secure the change is a charitable gift." Other judges who have used the same reasoning include Lord Fleming (1942 S.C. 55), Vaisey J. ([1949] 1 All E.R. 350), Bayda J. A. (64 D.L.R. 3d 537), Gray J. (96 Mass. 571) and Slater S. (209 N.Y.S. 208).

In *Farewell* v. *Farewell* (1892) 22 O.R. 573, 579-581, Boyd C. said: "Some doubt may however arise when the bequest is regarded in its political aspect – as seeking to promote the adoption of legislation by which total prohibition in the sale and manufacture of intoxicating liquors will be secured. [The learned Chancellor quoted Tyssen.] But the judges frequently say that the law is not right as it stands – they suggest amendments of the law . . . the question is not as I take it whether the law should stultify itself by declaring that it was for the public benefit that the law should be changed. The Court in affirming the validity of the charitable bequest does not so declare because satisfied that it is or that it will be a public benefit – the question is first: Is it for a public purpose? then: Is that purpose a lawful one? If both interrogatories can be answered 'yea' it is not for the Court to frustrate the intentions of the testator. He is the judge of the benefit or the wisdom of the scheme he seeks to foster, and if that does not offend against the Christian religion, public morality, or public policy, the Court should not interfere, even if dubious about the practical results."

To regard that reasoning as of general application, even in Ontario, would seem inconsistent with the opinion of Rose C. J. H. C. in *Re Knight* [1937] 2 D.L.R. 285 that promoting acceptance of Henry George's economic principles was not a charitable object.

Judges do – more frequently nowadays than in 1892 – suggest amendments of the law. They must often be able to tell whether a change would be for the public benefit. And the judge (not the testator) is the arbiter of that. The idea that a purpose is charitable if public, lawful and not opposed to religion, morality or public policy, was adopted in Ireland in *Re Cranston* [1898] 1 I.R. 431 and in the District of Columbia in *International Reform Federation* v. *District Unemployment Compensation Board,* 131 F. 2d 337, 339-340 (1942). It is found in Pennsylvania (*Taylor* v. *Hoag*, 21 A.L.R. 946, 950 (1922)) and California (*Collier* v. *Lindley*, 266 P. 526, 529-530 (1928) and *Re Murphey's Estate,* 62 P. 2d 374, 375 (1936)). It is not supported outside Ireland, except as to trusts for the publication of religious tracts, by any twentieth-century Commonwealth case. It was decisively rejected in many cases, of which examples are *Re Hummeltenberg* [1923] 1 Ch. 237, *Gilmour* v. *Coats* [1949] A.C. 426 and *Re Hamilton-Grey* (1938) 38 S.R. (N.S.W.) 262. If some object is not shown to the court to be for the public benefit, it is not charitable even if the

donor of property to further it is convinced of the benefit. But if an object *is* proved to be for the public benefit, it does not follow that it is charitable (*Re Macduff* [1896] 2 Ch. 451, *Attorney-General* v. *National Provincial and Union Bank of England* [1924] A.C. 262, 265, *per* Viscount Cave, *Williams' Trustees* v. *Inland Revenue Commissioners* [1947] A.C. 447, 455, *per* Lord Simonds, *Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 631, *per* Martin C.J.S.).

15. *Political purposes are not charitable because they are not mentioned in, or analogous to anything mentioned in, or within the equity of, the preamble to the Statute of Charitable Uses:*

    True (5 marks). Either of the other answers scores minus 5.

"Not every object which is beneficial to the community can be regarded as charitable; even if an object is in some sense beneficial to the community, it is still necessary to see that it falls within the spirit of the Statute of Elizabeth before it can be determined that it is charitable." (*Re Patriotic Acre Fund* [1951] 2 D.L.R. 624, 631, *per* Martin C.J.S.) There is nothing in the preamble about political purposes, nor is there anything there to which influencing legislative or governmental policy, or movements for social reform, could be regarded as analogous or related by an equitable construction.

Propaganda (here meaning advocacy of the adoption of a point of view, *pace* L. Hand J., p. 30, *ante*) may fall within the advancement of religion; but if it is not religious it is not usually charitable. Instructing people so that they are better able to make up their minds is the advancement of education; but trying to persuade them to adopt an opinion is not related to anything in the Act of 1601. "Political propaganda masquerading – I do not use the word in any sinister sense – as education is not education within the Statute of Elizabeth . . . In other words, it is not charitable." (*Re Hopkinson* [1949] 1 All E.R. 346, 350, *per* Vaisey J.) The Court of Appeal in *Re Strakosch* [1949] Ch. 529, 538, found "it impossible to construe" the trust for strengthening bonds of unity and incidentally appeasing racial feeling (see p. 27, *ante*) "as one confined to educational purposes." In *Re Bushnell* [1975] 1 W.L.R. 1596, 1605, Goulding J. concluded that the trust (see p. 25, *ante*) could not be supported as an educational trust, saying: "The testator never for a moment, as I read his language, desired to educate the public so that they could choose for themselves, starting with neutral information, to support or oppose what he called 'socialised medicine.' I think he was trying to promote his own theory by education, if you will by propaganda, but I do not attach any importance to that word."

The advocacy of temperance may be for the relief of the impotent (alcoholics and drunkards), but advocacy of legislation prohibiting everyone from consuming alcohol goes beyond that. Advocacy of kindness towards animals is said to be educative: elevating man's moral position. Perhaps that is because right-minded members of society generally disapprove of cruelty. That would tie in with Harman J.'s words in *Re Shaw* [1957] 1 W.L.R. 729, 740: "I feel unable to pronounce that the research to be done is a task of general utility. In order to be persuaded of that, I should have to hold it to be generally accepted

that benefits would be conferred on the public by the end proposed." Creating a public sentiment has been held charitable and educational in the United States (*Jackson* v. *Phillips*, 96 Mass. 539, 565 (1867), *Ross* v. *Freeman*, 180 A. 527 (1935)) but not elsewhere in cases not concerned with religion, temperance, the prevention of cruelty to animals or the securing of international peace. (It is not clear what in the preamble to the Act of 1601 such peace is related to.) In Ontario, all purposes beneficial to the community are charitable, even if they are not capable of being related in any way to the preamble to the Statute of Charitable Uses, for the limited purposes of the Mortmain and Charitable Uses Act (R.S.O. 1970, c. 280) (see section 1 (2) (*d*); but that extension of the meaning of charity does not apply beyond those purposes.

Appeals

If you are not satisfied with your mark, you may: (1) appeal to yourself; (2) in determining the appeal: (a) substitute for the answers given any other answers supported by authority; (b) adopt a different scale of marking. Any decision on appeal is final.

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