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 Leath 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.


2. Why does a trust need beneficiaries?

Suggested Answer
See 8.4.4. 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?