

Charitable Trusts:

Trusts for purposes are invalid unless it is for a valid charitable purpose (Morice; Re Shaw), in determining if a trust is for a CP the certainty tests do not apply, instead it must be asked if the words S used to manifest their intention are words allowing a charitable purpose.

- Charitable trusts (CT) are trusts for the promotion or advancement of social purposes.
- Only the Attorney General has sufficient interest and standing to enforce, because most charities relieve the public purse.
- AG can also vary its objects under the Doctrine of Cy-Pres.
- CT's are established under state law, and intention to create is derived from S's words asking are the uses which the words allow charitable or not.
- Can be set up via Intervivos trust or wills (testamentary trusts)
- Question not about S's motivations, it is about the words S used to manifest their intention, so we ask are the uses which the words allow charitable or not
- Doctrine of Cy-Pres AG can change/vary charitable purposes under the Cy-Pres (close by) this is because CT's are not subject to the rule of perpetuities

Differences Between Charitable and Private Trusts:

- Unless S has at the creation allowed the beneficiaries to be changed private trusts cannot change B's, cf, CT which allow AG to change/vary charitable purposes under the Doctrine of Cy-Pres (close by)
- CT could run for ever and are not subject to the doctrine of perpetuities
- Significant taxation differences, validity of CT is judged by reference to state law, this however has no effect on the question of if it is a CT for commonwealth taxation statutes.

Doctrine of Cy-Pres:

If the original CP fails the doctrine of Cy-Pres may be used to amend the CP making it workable:

1. Failure from the Outset: If it can be demonstrated that T had a general charitable intention you can use the Doctrine of Cy-Pres to amend and make the clause workable. If not the money is returned to the Testator. (*Re Lysaght*)

Re Lysaght: Money for scholarship, but with the writer that the money could not go to Roman Catholic or Jewish students, court held there was charitable so cy-pres operated to remove her exclusions and provide a scholarship for all students

2. Charitable Purpose No Longer Exists: Cy-pres operates to amend the charitable purpose to a like or close by one, no need to consider general charitable intention (*Re Anzac Cottages*)

Re Anzac Cottages: Raised money for ANZAs in 1919 to build cottages, overtime the cottages were rundown and all ANZACs had died, the money was then repurposed under Cy-Pres to go half to the RSL and half to legacy fund

Severing Charitable and Non-Charitable Purposes Charities Act s.7M:

Where one purpose may be charitable but another not (*Re Diplock; ATC*) courts will look to the dominant purpose and using s.7M of the *Charities Act* pencil out of the non-charitable purpose giving rise to the charitable purpose so as not to invalidate the whole gift.

- **Re Diplock**: 'Charitable and Benevolent purposes which the trustees choose', look for the dominant purpose as per s.7M Charities Act, this allows you to pencil out the non-charitable purpose so as not to invalidate the whole gift.
- **ATC**: Neither were charitable because one was recreation and the other could have been used for any purposes and it must be for the advancement of religion, s.7M operates to exclude the first and amend the second the valid *charitable* purposes, preserving the gift as intact.

Validity of a Charitable Trust:

For a charitable trust to be valid at law it must be:

1. For a Charitable Purposes, and
 - a. Advancement of Education
 - b. Advancement of Religion
 - c. Relief of Poverty
 - d. Other Purposes Beneficial to the Community
2. For the public benefit
 - a. Must be for the public *benefit*
 - b. Must also benefit the *public* or a section of the public

1. For a Charitable Purpose:

a. Relief of Poverty

- The words Poor/Poverty needn't be used, but some form of assisting those in need is required (*Downing – 'amelioration of conditions of returned service men'*)
- Poverty is a relative concept
- Absolute destitution is not necessary, we just have to find a sense of improving the condition of someone who is not as well off as someone else (*Indigenous Barristers*)
- Does not also have to be for the benefit of a section of the public, could be for your relatives (*Selgman*) of the people that work for a company (*Dingle*)
- **Examples:** soup kitchens, salvos/red cross type organizations, accommodation, providing clothing, sporting equipment or books for people who cannot afford them, but no longer hospitals (now under the 4th head)

b. Advancement of Education:

- Must advance learning, research for research sake alone is not enough (*Hopkins Will*)
- Information must be disseminated/spread to advance, doesn't have to spread far
- CT educating to change the law may not be valid (Unclear from *AidWatch* cf. England)
- Must be for the public or a section of the public (*Re Compton; Oppenheim*)
- It is open as to whether something is for the benefit (No benefit *Pinion, Re Shaw; Johannsson*)
- Court would be guided by experts as to educative value
- *Re Shaw* New Alphabet – Not a CP
- *Pinion* artist left art to a national trust, not one iota of education – Not a CP
- *Johannsson* left apartment for crypt/museum for magazines and education of his family, no educational value cause the magazines were rubbish, crypt is not valid, family is not a section of the public
- **Examples:** building of schools and libraries, paying salaries of university professors, prizes scholarships, books etc.

c. Advancement of Religion:

- Charitable trusts for the advancement of religion, must actually directly *advance* the religion (*Lawler's Case; Farley; ATC; McCracken;*)
- 'Advancement' a wide concept, but means to promote or spread it, to take steps to sustain belief
- The benefit of religion is the benefit of religion is the positive influence on human conduct, well behaved observant people in society act as a model for the rest of society.
- However, some cases suggest there has to be a connection with the public or it won't be for the benefit of the public (*Neville Estates; Gilmore cf. Crowther*)
- **Examples:** Printing bibles, sending Mormons on missions, supporting clergy, legal fees faced by the catholic church support of clergy, buildings, sermons, missionary work

New Faith v Commissioner for Payroll Tax Mason ACJ and Brennan J provides the definition of religion as:

- *A belief in a supernatural Being, Thing or Principle; and*
- *The acceptance of canons of conduct in order to give effect to that belief* (canons cannot offend against the ordinary laws i.e. murder cults will not receive immunity)

Wilson and Deane JJ:

- *Indicia of religion include a collection of ideas and or practices involving belief in the supernatural; the ideas relate to man's place in the universe; the ideas are accepted by adherents; the adherents constitute an identifiable group; and possibly that adherents see ideas as constituting a religion*

Murphy J

- We the court cannot get involved in defining what is a religion because faith is not susceptible to proof, anything that is claimed to be a religion must because if we asked a religion to prove themselves then all must fail – *Could use this as an argument in the alternative*

Advance Religion Cases:

- ***Lawler's Case***: Lady left money for printing of a daily catholic newspaper, Dixon J didn't advance religion, was only motivated or inspired by religion and a daily newspaper reporting on daily news would not advance religion, if it were a daily bulletin on religious message of the day then it may advance.
- ***Farley v Westminster Bank***: Money left for a parish, to be used for parish purposes, this did not advance religion as could be used for anything.
- ***Anglican Trusts Corp***: Lady left money for the establishment of camp for girls, doesn't advance religion either
- ***McCracken***: Which ever Christian organization the trust would chose, because the organisation might or might not use it for the advancement of religion

Public Benefit Cases:

- ***Neville Estates***: Money left to a church that only 12 people attended, is 12 people who attended a church enough to be for the public benefit, yes because the 12 attenders would go back out to the public and advance the religion
- ***Gilmore v Coates***: Convent in England, nuns lived in cloistered situations never left, just said prayers for others who wrote them to the nuns, didn't have a benefit of the public, knowing that someone has said a prayer on your behalf in private has no public benefit.
- ***Crowther***: There is a point to intercessory prayers it is a great comfort to you but in this case prayers were said in public

d. Other Purposes Beneficial to the Community

- Must demonstrate and be proved positively that the trust is for public benefit
- **Examples**: Libraries, hospitals, public works, animal welfare, disaster relief,
- Benefit under the 4th head = increasing the levels of civilization of society
- ***Council of Law Reporting***: Doctrine of precedent depends upon the law reports and in the interest of the justice system it is for the public benefit
- ***AidWatch***: Trying to change the law by encouraging healthily democratic debate = benefit for the public
- ***Kearins; IRC*** Sport is a Charitable purpose under 4th head
- ***Kearins***: Money left to uni rugby club, so for the advancement of education and 4th Head
- ***IRC***: Money was to encourage the playing of Soccer at schools, also educational and on health grounds 4th head

2. For the Public Benefit

a. For the public benefit: - in terms of benefit some purposes are automatically for the *benefit*:

- *Advancement of Education and Religion* (we assume that these are for the benefit but can negative this and prove the opposite i.e. that it is not for the benefit see *Re Shaw*)
- Benefit of religion is the positive influence on human conduct
- *Relief of poverty* (automatically beneficial because it relieves public purse strings)
- For other purposes these must be positively established or proven
- Benefit under the 4th head = increasing the levels of civilization of society

b. Benefit the public or a section of the public:

- Does not apply to the Relief of Poverty, relieving poverty could be just your family (*Turner*)
- Consider how many objects and the way the group is described
- You will be a section of the public if it is untrammelled by rules, i.e. a group by location, faith, being a victim or afflicted by something that you did not choose or apply for will before the public
- Restrictions or exclusions based upon memberships, entry or exist fees, trade unions will not be for the public
- If we have reached the point that the trust is only for a few individuals who should have standing to sue and wind up then it is not for a section of the public (*Segelman*- but S didn't know who would benefit at the time he was creating T so CT established)
- Trust for family's education, not a CT because only ones who could benefit were the families (*Re Compton*)
- Trust for education of Employees children not for the section of the public because a child could only get benefit by virtue of their parent's employment, the company was really setting up a fringe benefit for workers (*Oppenheim, cf. Turner* T for relief of employee's poverty)

Trusts for Political Purposes:

Trusts for political purposes were previously not a CP. However, following *AidWatch* (cf English Law) political purpose trusts may be valid so long as they are encouraging debate about changing laws relating to a charitable head or recognised purpose (i.e. hospitals, RSPCA) under the 4th head. The benefit to the public under the 4th head in this case is the encouragement of debate itself, further relieving the court of the obligation to judge the public benefit.

Previously Political Trusts were disallowed for 2 reasons:

1. Coherent System of Law: Argued how can a legal system admit that its wrong or the law has to be changed, this would undermine justice to recognise charities lobbying to change the law
2. Inability to Judge Public Benefit: How can a judge just the public benefit of a change in a law? it can't it is a job for the legislature

AidWatch:

- Majority held that political purposes were no longer invalid as the English and Australian legal systems are quite different, England has no constitution, we however have one and under the Australian Constitution our laws and constitution can be changed.
- If the law including the constitution may be changed it stands to reason that there should be debate about changing the law.
- So Majority said to encourage debate about whether the law should be change was of its self a benefit to the community, by encouraging debate about a recognised charitable head or purpose this was a benefit to the community
- This does away with the second concern as the mere debate itself is the benefit to the community.

Held

AidWatch's action are beneficial to the community under the 4th head concerning the relief of poverty

Ends and Means:

However, the Majority say it might be the case that something that appear to be a CP might not be, not because it is political, but because of the ends and means involved:

- Example: spread of sharia law by violent jihad, could not be for the public benefit because of the violent means to get to the ends
- Keiffle J: Also a possibility from Keiffle J that *AidWatch* wasn't really generating debate about relief of poverty
 - 4th head cases have to prove public benefit. Assertion of views, without more, can't be assumed to generate public debate. Freedom to express views does not equal being for the public benefit.

Propaganda:

Although *AidWatch* establishes that political agitation and generation of debate about existing charitable purposes or heads will be a CP. It did not clarify how cases of Propaganda fit into CT as the Majority said they didn't have to decide if the encouragement of public debate itself was a public benefit outside of the *Pemsel Heads*.

- This may warrant an ends and means analysis, to consider if there was any identifiable public benefit from the ends and means adapted.
 - Also consider Keiffle J's comments that 4th head cases must prove they are for the benefit of the public and the assertion of opinions does not necessarily automatically make it for the benefit of the public.
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