

LAWS2015/5015 EQUITY SCAFFOLD

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SAMPLE

TOPIC 10 – Charity

Charitable purpose trusts are an exception to the beneficiary principle. A charitable trust is valid if it is legally charitable and for a public benefit. The rule against perpetuities doesn't apply to charitable trusts.

1. Has the trust been created for a charitable purpose?

- *Pemsel* found 4 heads of legal charity (endorsed by HCA in *Chester*):

- Relief of poverty
- Advancement of education
- Advancement of religion
- Other purposes beneficial to the community – within “spirit and intendment of the statute of Elizabeth” [e.g. *Scottish Burial Reform*]

(A) POVERTY

- Relief of aged, impotent and poor
- *Re Resch's* [gifts to St Vincent's hospital]: No profit-making venture, so even though room rates were higher it was still for the advancement of poverty (NB policy let locals/poor people in)
- *Downing v FCT* [trust for soldiers, airmen etc. + families for the amelioration of their condition]:
 - Poverty does not mean abject poverty, but rather just some degree of financial necessity.

(B) EDUCATION

- *Re Shaw* [left money for research into the virtues of a new alphabet]: needed an element of teaching or education to be considered under this head. Arguably just fails on public benefit because, although it was stupid, this research did appear to be an educative purpose.

(C) RELIGION [NB no question of how meritorious the religious claims are]

- *Lawlor* (trust to establish a catholic daily newspaper): 3:3 decision
 - Dixon J: although newspaper conducive to religion, not sufficient for advancement of it.
- *Church of the New Faith* (trust for benefit of scientology held valid unanimously): Religion =
 - Mason/Brennan: belief in supernatural being AND canons of conduct to give effect to it
 - Murphy (broad): claims to be religious and offers way to find meaning in life
 - Deane: ought to be assessed on a case by case basis (no one factor necessary/sufficient)
- *Gilmour v Coats* (land given to Catholic priory, with cloistered nuns and no exterior works):
 - Not for the public benefit, because nuns engaged in no exterior works [cf. arguments of praying for others, and edification by example, which failed in that case].
- NB *Bishop of Durham*: can be valid for charitable activities of that office holder [ousted by further words in that case].

(D) OTHER: ask – is the trust within the spirit or intendment of the statute of Elizabeth?

- *Williams v IRC*: effectively a Welsh social club
 - Not allowed – appears also to preclude a trust for amateur sporting team, unless educative (e.g. young person's team) or one associated with staving off poverty
- *IRC v Baddeley*: “who has ever heard of a bride to be crossed only by impecunious Methodists?”
 - Just too many conditions to be considered for a public purpose.
- *Incorporated Council of Law Reporting v FCT*: Trust for subsidising the Queensland Reports
 - His honour (tenuously) tied it to “bridges, causes, etc.” in the statute, arguing that it was similarly indispensable. Broad interpretation [cf. cases above, e.g. pigeons per *Chester*]

(E) MIXED:

- *Leahy*: non-charitable trust could not be severed
- *Trustees Act*, s.23: Inclusion of a non-charitable purpose not to invalidate trust.
 - Would have saved the *Re Diplock* trust [perhaps *Leahy/Bishop of Durham* too – NB these trusts were discretionary??]

Problem Question 3

Discuss the validity of this trust.

N has attempted to create an express trust. For such a trust to be valid it must meet the three certainties of intention, subject and object (*Knight*). There is a clear intention to create a legal, not moral, obligation, but use of the word 'on trust', as interpreted in *Brynes v Kendle* overruling *Joliffe*. The subject is \$1million. The central issue then is certainty of object.

N has attempted to create a discretionary trust, as opposed to a power of appointment as there is something that must be done (use of 'are to'). However, it doesn't really matter as the tests for certainty are the same now, a criterion certainty test following *McPhail v Doulton*, whereby one must be able to say whether an individual 'is or is not' a member of the class of objects. Certainly this is discernible in the case of employees and ex-employees. There may be an issue as to identifying whether has any time lived with the settlor. Clearly a husband or wife is obvious but what about a person in the same boarding house at school. This would pose difficulties with Stamp LJ's interpretation but not with Megaw J and Stach LJ's interpretation in *Re Baden No 2*. However, it may be okay as it is similar to 'resided' in *Re Gulbenkian* despite the fact that case was about a power to appoint.

Problem Question 4

Advise Ken's executors as to the effect of the dispositions in the deed

- Conveying land "in full confidence that B will use it to provide accommodation for such of my homeless friends as Barbie may in her absolute discretion determine"
 - o Is this a trust or more similar to other relationship such as an equitable personal obligation to give a license (*Gill v Gill*)?
 - o Seems to be a discretionary trust. The question would be whether the "homeless friends" satisfies the is/is not test
- With the proceeds to be distributed "among such of my next of kin then living as shall be selected by my friend, Ginger, with preference given to my children, if there are any".
 - o "next of kin" should probably satisfy the "any given postulant test" as relatives was fine in *Re Baden 2*
 - o "to be selected by my friend, Ginger"
 - The point to make here is Ginger is not the trustee but has the power of appointment, so that's fine
 - The discretionary bit of the discretionary trust is held by Ginger
- Ginger not willing to exercise the choice given to her
 - o Not breach of trust, as she is not trustee. She is someone who holds the power of appointment
 - o If she doesn't exercise it, ideally there would be a gift over. If there is no gift over, approach the court for directions. Ct can appoint a new trustee easily but cant appoint a new power of appointment as easily

Problem Question 5 (Allow 35 minutes)

Advise Tessa

- Can beneficiaries collapse the trust?
 - o Adult beneficiaries who are *suri juris* absolutely and indefeasibly entitled can terminate the trust under *Saunders v Votier*.
 - o The question is whether these beneficiaries are absolutely and indefeasibly entitled. They may not be because of the existence of a “trustees’ lien”.
 - o Is this a legitimate trust expense?
 - This liability is incurred within a power of sale but Tessa employed an agent. Delegation is permitted so long as Tessa discharged duty of care in selecting the agent and the terms on which they engaged the agent (ordinary prudent person of business test).
 - Would an ordinary prudent person of business agree to the exclusion clause?
 - If yes, then everything is within power and is a legitimate trust expense and there would be a lien and beneficiaries couldn’t collapse the trust
 - If no, then breach of trust therefore only personal liability against Tessa only and therefore beneficiaries can terminate the trust.
- They could still be a lien, until Tessa actually pays the compensation out, purchaser still has a claim against Tessa. This depends on whether you assumed Tessa has already paid or not
- Jamie said this question was meant to be read as Tessa has paid it and cant obtain it because of the exclusion clause. If, however, Tessa paid it and reason she cant obtain it is because Susan is pecuniarious, then you could say it was a legitimate trust expense

Problem 6 (Allow 1 hour)

Tony seeks your advice as to whether his daughter is correct and, if she is, as to what remedies might be sought against him and by whom

Tony owes fiduciary obligations because he is a trustee, in a class fiduciary relationship as established by Mason J in dissent in *Hospital Products*.

Reversion interest of the Farm

The lease of the farm is part of the trust asset. Tony has brought the freehold reversion, which is similar to *Keech v Sanford* but the difference is Tony is not acquiring trust property as he has not acquired property which ought to be acquired for the trust but has put himself in a position of conflict because his interest as owner of the reversion clearly conflicts with his interests as the owner of the farm (as one of the trustees). There’s being no consent here, therefore Tony has breached his fiduciary obligations.

Rescission is the default remedy (*Maguire*) but is not available due to the interposition of third parties (can’t force land back onto other party). Like *Keech v Sanford*, a constructive trust over the reversion would be more appropriate,