

Charitable Trusts

Overview

- Trust for a purpose not a person
 - *Attorney General (NSW) v Perpetual Trustee*
- Exception to the beneficiary principle
 - *Morice v Bishop of Durham*
- Requirement for certainty of object requires the purposes to be charitable
- Motives are irrelevant to the purpose
 - *Re Delius*
- Commonwealth Law: *Charities Act 2013* (Cth)

State Law

- a) Statute of Elizabeth
- b) Legally recognised category
- c) Precedents
- d) Argue by analogy (spirit and intendment of SOE)

Elements

1. Public Benefit

- Public benefit is measured objectively
 - *Re Hummeltenberg*
- Public: For the benefit of the community or of an appreciably important class of the community
 - *Verge v Somerville*
- Not about size but common and distinguishing quality
- Groups linked by blood, contract, family, association membership or employment does not constitute public
 - *Oppenheim v Tobacco Securities Trust Co Ltd*
- Where trusts are to relieve poverty public equipment is applied less rigorously
 - *Re Scarisbrick*

2. Actual Benefit

3. Legally recognised category: *Commissioners for Special Purposes of Income Tax v Pemsel*

3A. Advancement of Education

- Education is not confined to conventional methods; about the dissemination of knowledge
 - *Re Hopkins Wills Trusts*

3B. Advancement of Religion

- Belief in a supernatural thing, being or principle and acceptance of canons of conduct to give effect to that belief
 - *Church of the New Faith*

3C. Relief of Poverty

- Requires one to go short, according to modest standard of living and requires some necessity

3D. Other purpose beneficial to the community

- 3A-3C presumption of public benefit
 - *National Anti-Vivisection Society v Inland Revenue Commissioners*
- 3D requires proof of public benefit; must be within the spirit and intendment of the Statute of Elizabeth and the benefit must be affirmatively clear
 - *Perpetual Trustee Co Ltd v Groth; Re Blyth*

Political Purposes

- Generally trusts for political views or agitation have been viewed as invalid
 - *Bowman v Secular Society Ltd*
- No general doctrine which excludes from charitable purposes political objects
 - *Aid/Watch v Federal Commissioner of Taxation*

Cy Pres

- Where the original purpose of a charitable trust is impossible, impracticable or illegal to carry out the cy pres doctrine allows the court can apply the trust funds to a purpose as close as possible to the original intention of the settlor to prevent the trust from failing
- Only applies where trust instrument doesn't specify what to do when the purpose can't be achieved or there is a mere misdescription

General Law Cy Pres

- Requires a general charitable intention (cf. for the specific purpose outlined in trust)
 - *Attorney General (NSW) v Perpetual Trustee*

Statutory Cy Pres

- Applied where it is impractical, inexpedient, impossible or illegal to carry out the purpose
 - s 7 *Charitable Trusts Act 1962* (WA)
- No requirement for general charitable intention

- *Taylor v Princess Margaret Hospital for Children Foundation Inc*
 - Should be attempted to be applied with as close resemblance as the original intention of the settlor
 - *Penny v Cancer and Pathological Research Institute of WA*
 - Case of subsequent impossibility doesn't require proof of general charitable intention
-

Saving Legislation

- Trusts for mixed charitable & non-charitable purposes can have the non-charitable purpose severed/read out
 - s 102 *Trustees Act 1962* (WA)
-

Administrative Schemes

- Sets out how a charitable trust will be given effect when it hasn't been outlined by the settlor
- About the means of achieving the purpose rather than the actual purpose (cf. cy pres)