

MLL405 – Equity and Trusts

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Topic 10 – Charitable Trusts

Charitable Trust

Definition: Charitable trusts are express trusts which exist for a purpose rather than for the benefit of identifiable beneficiaries.

Attorney-General (NSW) v Perpetual Trustee Co Ltd (1940): Defined a charity to be a trust for a purpose, not for a person (like an express trust).

Charitable Purpose

Charitable purposes: Initially defined by Statute of Charitable Uses 1601, and defined a charitable purpose to include;

- Provided relief of poverty
- Care of aged people, and sick people
- Care of soldiers
- Advancement of education etc.

Four categories of the preamble set out by the House of Lords in Pemsel [1891] decision:

1. Trust for the relief of poverty
2. Trusts for the advancement of education
3. Trust for the advancement of religion
4. Trust for other purposes beneficial to the community, not falling under the above categories

Charitable Purpose Per Charities Act 2013

The Charities Act 2013: Came into effect 2014.

Section 5 Charities Act 2013: Defines what a charity is now:

- A charity is an entity that is not-for-profit and which has purposes including:
 - (a) charitable purposes that are for the public benefit or;
 - (b) incidental or ancillary to and in the furtherance or in aid of, the entity's charitable purposes are for the public benefit
 - (this part means some profit okay).
 - i.e. a not for profit organisation, but uses some of its profits for a charitable benefit
- An individual, political party or government entity CANNOT be a charity

Section 12 Charities Act 2013

"Charitable Purpose" means any of the following:

- a. the purpose of advancing health;
- b. the purpose of advancing education;
- c. the purpose of advancing social or public welfare;
- d. the purpose of advancing religion;
- e. the purpose of advancing culture;
- f. the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;
- g. the purpose of promoting or protecting human rights;

- h. the purpose of advancing the security or safety of Australia or the Australian public;
- i. the purpose of preventing or relieving the suffering of animals;
- j. the purpose of advancing the natural environment;
- k. any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);

'Public Interest' Requirement

Section 6 Charities Act: Apart from the category of relieving poverty (which automatically is considered a public benefit), all other categories in s 12 MUST prove that they are a public benefit.

What is a public benefit generally?

- Something which is a benefit of a large proportion of the public, and needs to be open enough that many can obtain the benefit: Ford & Lee at [19070]
- Example:
 - a group is set up to assist employees of google who have been sexually assaulted → unlikely to be considered for public benefit as not open to entire public
 - a group set up to assist anyone effected by sexual assault → likely to be considered as providing a 'public benefit'

If some commerciality involved in charity

- **Word Investments:** if the commerciality is a separate arm, which purpose is to support the charitable arm that is okay, and still have charitable objectives, still considered a charitable trust
 - There was a Christian organisation which engaged in various religious activities
- Issue: Should an organisation which majority has a commercial motive but the money goes into a charitable organisation, be classified as a charity?
- **Held:**
 - Word was found to be charitable, on the basis that the orgs objects were connected to with the charitable purposes of its connected body
 - Thus, if a charitable org has an arm which is set up with a commercial purpose, provided that the objects of the commercial arm also replicate that of the charitable arm then this does not prevent the additional arm from being considered charitable, so long as profits go back is not the charitable arm.

Public Interest Being Proved For Different Charitable Trust

Note: Prove that the particular category of charitable trust is for the benefit of the community.

Trusts For Relief Of Poverty

- Automatically considered for the public benefit: **Re Scarisbrick**

Trusts Relating To Religion

Need to contrast cult and religion

- Can do so by applying the 2 tests below
- Cult = not religion → NOT CHARITABLE TRUST
- Religion → CHARITABLE TRUST

Church of New Faith v Commission of Payroll Tax:

Mason CJ and Brennan J identified two criteria/tests:

1. The belief in a supernatural being, thing or principle (which does not have a physical presence; and
 2. Acceptance of the beliefs which influence behaviour
- Belief in religion is not enough, need to also act in accord to the religion
 - This is where religion is differentiated from a cult
 - The court in United Grand Lodge of Ancient Free and Accepted Masons of England held that an organisation must advance the religion to be considered charitable – they must seek to spread the religion and share its message.

Gilmour v Coats [1946]: Public benefit requirement for a religious charity, was not seen as “public benefit” because nuns praying occurring in a remote place

- setting up a trust for a religious purpose, but a for a group of nuns who pray for society, however the nuns pray in private
- This is not considered for the public benefit due praying taking place in a remote place
- The court can only rely on proof of public benefit, and praying provides no evidence based benefit.

Trusts For Political Purposes NOT Charitable

- If the purpose of a trust is to support an organisation whose main objective is to achieve legal reform, then the trust will not be charitable it will have a political motive and cannot hold that it will be the benefit of the public
- If a trust is motivated by wanting to change the law, fundamental, it will NOT be considered charitable, as it will fall under a political purpose.

Bowman v Secular Society [1917]: A trust will be deemed to be political when it has primary purpose of changing the law.

- Thus, when this is the primary purpose, it cannot be considered a charitable trust

Aid/Watch Incorporated v Commissioner of Taxation (2010) HCA: Yes considered charitable trust.

Facts: Aid watch campaigns for change and to ensure aid is provided to those in poverty

Issue: Did the object of Aid Watch fall under political purposes?

High Court Held:

- The Australian Constitutional framework does not prevent communication about political circumstances
 - The Constitutional framework in Aus is different to that in that UK, thus Bowman v Secular Society [1917] was not followed
- There is no general doctrine which excludes the charitable purposes “political objects”
- Court acknowledged the connection to the charitable purpose and connection to relieving poverty