

Charitable Trusts

OS: An express trust must be in favour of identifiable beneficiaries. A trust for a purpose rather than a person will be invalid. Charitable trusts are for the promotion or advancement of social purposes rather than for individual benefits (*Latimer v Inland Revenue*). Individuals may benefit from the application of the trust, but they are not as individuals, beneficiaries of the trust and may not enforce its terms (*Latimer*). Charitable trusts may only be enforced by the A-G. For there to be a valid charitable trust, the trust must be for a charitable purpose and must be for the public benefit.

Re Shaw

FACTS:

- Playwright George Shaw's Will contained provision to promote a new English alphabet of 40 letters.

ISSUE: Was it a valid charitable trust?

HELD:

- Not a charitable purpose
- Provision invalid
- Reasoning:
 - (a) Proposed research tended to increase knowledge rather than education
 - (b) It was not beneficial to the community; and
 - (c) It amounted to propaganda concerning a controversial matter which was not charitable by analogy with trusts for political purposes

1.1 Is it for a section of the public?

- Not necessary that the whole public is benefited. Sufficient that it benefits a section of the public

1.2 What is a section of the public

Re Income Tax Act (No 1) - set out guidelines

- Except in cases concerning poverty, very small groups of persons are unlikely to qualify as a section of the public
- Members of groups such as clubs, societies and trade unions will not be a section of the public because their group is defined by membership rules which place a bar on membership
- Large groups of persons linked by common calling, faith or residence in a particular area can be a section of the public
- If the reason for attracting assistance from the charity is the person's relationship to an individual, those objects will not be a section of the public.

Re Compton

FACTS: a trust was set up for the education of the Compton, Powell and Montague children

ISSUE: was this a valid education trust for a section of the public?

HELD:

- Trust not for the public benefit
- Lord Greene: a gift under which the benefits are defined by reference to a purely personal relationship to a named propositus cannot on principle be a valid charitable gift. Whether the relationship be near or distant, or limited to certain generations if cannot be a charitable gift.

Oppenheim Case

FACTS:

- Attempt to establish trust for the education of children of employees and former employees of Tobacco company, its subsidiaries and allied companies
- Employees exceeded 110,000

ISSUE: valid trust for charitable purpose?

HELD:

- Invalid as it was not for a section of the community
- Lord Simonds: potential benefits must not be numerically negligible. The distinction between potential benefit and rest of community must not be their relationship to a particular individual. Even though the group of potential benefits is large, the groups will not be a section of the public if the nexus between them is a particular relationship.

Re Segelman

FACTS:

- Will established discretionary trust for 21 years of the 'poor and needy persons set out in the second schedule still living'
- Second schedule named 6 members of the testator's own family

ISSUE: valid trust for relief of poverty?

HELD:

- Chadwick J: valid trust for relief of poverty
- The basis for disqualification as a charitable gift must be that the restricted nature of the class leads to the conclusion that the gift is really a gift to the individual members of the class. In my view, the gift in cl 11 of the will is not of that character ... the class of those eligible to benefit was not closed upon the testator's death. It remained open for a further period of 21 years. During that period issue of the named individuals born after the death of the testator will become members of the class.

Dingle v Turner

HELD: poor employees of a company were analogous to poor relatives of a given settlor and the trust in favour of that class was valid. However, had the instrument listed individual employees, it would have been a private trust for individual benefs rather than charitable trust.

1. Is it for a charitable purpose?

OS: purposes which fall within the 'spirit and intendment' of the preamble of the Statute of Elizabeth 1601 and are of benefit to the community are regarded as charitable purposes. The preamble is interpreted liberally, according to current community standards (Bathurst v PWC). Additionally, the Cth enacted the Charities Act 2013 which defines charitable purposes for the purposes of Cth legislation but the 4th head is arguably wide enough to include most/all charitable purposes.

Statute of Elizabeth purposes:

- Relief of aged, impotent and poor people
- Maintenance of sick and maimed soldiers and mariners
- Schools of learning, free schools and scholars in universities
- Repair of bridges, ports, havens, causeways, churches, sea banks and highways
- Education and preferment of orphans
- Relief, stock and maintenance of houses of correction; and
- Marriages of poor maids.

2.1 Which head does it fall under?

Charitable heads

- Relief of poverty
- Advancement of education
- Advancement of religion
- Other purposes beneficial to the community per Pemsel

2.1.2 Poverty

OS: relief of poverty is not limited to the relief of destitution. Instead, trusts for the relief of relative deprivation as compared to the majority of the community are included. Trusts for the relief of poverty do not have to be for the benefit of a section of the public (Dingle v Turner; Re Segelman).

NOTE: do not have to explicitly say for the relief of poverty or the poor, but must demonstrate a sense of assistance for those in need (Downing v FCT).

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2.1.3 Advancement of education

OS: advancement of education is construed widely and is likely to be a valid charitable trust if the purpose advances learning and dissemination of knowledge.

NOTE:

- For the court (not settlor) to decide if it has educative value
- Must be for public benefit or a section of the public

Re Pinion

FACTS:

- A painter left his studio and its contents to the National Trust to be kept as a museum
- Expert evidence was led to show that the contents were virtually worthless

ISSUE: valid charitable trust?

HELD:

- The provision did not create a valid trust
- Harman LJ: there is a strong body of evidence here that as a means of education this collection is worthless... I can conceive of no useful object to be served in foisting upon the public this mask of junk. It has neither public utility nor educative value
- Russel LJ: no member of the public will ever extract one iota of education from this disposition.

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2.1.4 Advancement of Religion

OS: a trust for the advancement of religion will be valid when the religion satisfies the criteria in New Faith and it is said to be advancing religion in the sense of promoting religion.

Promoting religion = support of the clergy, religious buildings, services, sermons and missionary work.

2.1.4.1 Is it a religion?

OS: Religion is described as a 'belief in a supernatural being, thing or principle, and acceptance of canons of conduct to give effect to that belief (New Faith).

2.1.4.2 Advancement of religion

Lawlor's Case

FACTS:

- A testator purported to establish a trust to 'found a Catholic daily newspaper

ISSUE: valid charitable trust for advancement of education?

HELD:

- Dixon J: the trust was for a secular activity, not for the advancement of religion. The charitable purpose had to be directly and immediately religious, involving the spreading or strengthening of spiritual teaching. It was not sufficient that the secular activity arise out of, or have connection with a religion.

McCracken v A-G – applied Lawlor

FACTS:

- Testator left money 'for such Christian societies or organisations as my trustees shall think fit

HELD:

- Gift was not for the charitable purpose of advancement of religion. Instead, it was for the organisations themselves

2.1.4.3 Public benefit and religion

Neville Estate v Madden

HELD: gift for members of a synagogue was upheld on the grounds that the members lived in a world and mixed with other citizens

Gilmour v Coates

HELD: gift to a nunnery not for the public benefit. Carmelites are a contemplative order who do not work outside the nunnery. Their prayers are intended to be for the benefit of society. HOL held that this was not sufficient as the sisters' pious lives were not for the clear benefit of the public.

Crowther v Brothy

HELD: intercessory prayers could benefit the public by being of comfort to believers.

2.1.5 4th Head: Other purposes beneficial to the community

OS: 4th head charities can be for a wide variety of benefits to the community including bridges, libraries, disaster relief, promotion of agriculture, trade and commerce, and animal welfare.

Law reporting QLD v FCT

FACT:

- The sole purpose of the council was to produce law reports of decisions of superior courts in QLD
- The council was a not-for-profit organisation and such profits as were made were paid over to the QLD Supreme Court Library

ISSUE: valid charitable purpose?

HELD:

- Valid charitable purpose
- Windeyer J: purpose was for the advancement of education
- Barwick CJ and McTiernan J: law reports were not educational, even though students might read them. But the law could not be administered properly without the availability of reported decisions. The sound administration of justice was therefore a valid purpose under 4th head.

Aid/Watch – yes can be charitable purpose

FACTS:

- Aid/watch organisation engaged in researching, monitoring and campaigning on the delivery of foreign aid, and sought charitable status for the purpose of exemption from taxation
- Denied charitable status in lower courts on grounds that its activities attempts to change government policy, and thus amounted to political purpose.

ISSUE: valid charitable purpose

HELD:

- The operation of constitutional processes contributes to the public benefit
- In AUS no general doctrine which excludes from charitable purposes 'political objects'
- BUT some purposes that appeared to be charitable might not contribute to the public welfare due to the ends and means involved.
- Kiefel J (in dissent): Aid/Watch was not generating public debate but merely asserting its views.

2.1.5.2 Trusts for sport and recreation

OS: trusts that are only for the purpose of sport or recreation are traditionally held to not be for valid charitable purposes. However, such trusts will be valid if the purpose of the sport or recreation is attached to another charitable purpose (Kearins v Kearins).

Kearins v Kearins

FACTS:

- Testator bequeathed the sum of 2k to the Sydney university amateur rugby union football club for the purpose of the club and to foster the sport of rugby at Sydney Uni.

ISSUE: valid charitable trust?

HELD:

- The bequest was a valid charitable gift. Participation in sport was an important element in the development of well-balanced students at the Uni.

Royal National Agricultural and Industrial Assoc. v Chester

HELD: trust for improving the breeding and racing of homing pigeons was not within the spirit and intention of the Statute of Elizabeth.

1.2 Severing Charitable and non-charitable purposes

OS: Legislation allows for charitable and non-charitable purposes to be severed. In Victoria s 7M allows for the inclusion of non-charitable purposes not to invalidate the trust.

1.3 Doctrine of cy-près - used when charitable purpose has failed

OS: the doctrine of cy-près allows charitable trusts for purposes to take effect or continue when charitable trusts for purposes are impossible or hard to administer. The general principle is to replace the original charitable purpose with one that is broadly similar.

NOTE:

- This is unnecessary where the testator has made provisions for the failure of the purpose e.g. gift over in default
- Potentially unable to use doctrine where the charitable purpose is too specific
- About the general nature of the testator's charitable intention

Re Lysaght

FACTS:

- Testator left money for a scholarship for the RCS as trustees but specified that scholarships could not be awarded to Jewish or Catholic applicants. The RCS refused to take the gift, as the exclusion based on the applicants' religion was offensive, but indicated it would accept the gift without the religious bar.

ISSUE: was there a general intention that would allow the court to order a cy-près scheme in respect of the gift?

HELD:

- Unless a cy-près scheme was ordered, the testator's paramount intention would be frustrated and the trust would fail
- Her paramount intention was to provide a scholarship. Thus a general charitable intention was able to be found
- Therefore, a cy-près scheme was ordered, which allowed the college to carry a trust to the effect without any element of religious discrimination

Re Anzac Cottages

- Trust for the purpose of providing house for dependants of members of armed services killed in action
- Trust established in 1918 became impractical when the final remaining cottage built shortly after WW1 was listed by the National Trust as a historical building which prevented it being made habitable according to modern standards.

HELD:

- Cy-près applied
- Trust property distributed to Legacy clubs and the War Widows' Guild