TOPIC 4 – CHARITABLE TRUSTS

4.1 CONCEPT OF CHARITY

- Charitable purpose trusts are an exception to the beneficiary principle (the principle that you need to have certainty about who the beneficiaries are in order for the trust to be valid)
- WHAT IS A CHARITABLE TRUST?
- A trust for a **purpose**, not for a person or people
- An exception to the beneficiary principle established in *Morice v Bishop of Durham*
- Enforceable by the Attorney-General on behalf of the public
- Different certainty requirements than private trusts
- WHY ARE CHARITABLE TRUSTS IMPORTANT?
- **Perpetuity:** Can exist indefinitely, unlike private trusts
- **Tax Advantages:** Significant exemptions from income tax and other duties
- **Social Impact:** Part of the not-for-profit sector in Australia
- **Flexibility:** The cy-près doctrine allows the court to alter the trust's purpose if the original purpose becomes impossible or impractical to carry out

4.2 THE HEAD OF CHARITY

- TWO KEY REQUIREMENTS FOR A VALID CHARITABLE TRUST
- **(1) A Valid Charitable Purpose:** The trust's purpose must fall under one of the four "heads" of charity
- **(2) Public Benefit:** The trust must be for the benefit of the public or a section of the public.
    - There is 2 aspects to public benefit – so you cannot just write pubic benefit – need to mention both section of the public and benefit to that section of the public
    - The public benefit test links to the charitable heads
- THE CHARITABLE PURPOSE REQUIREMENT
- ***The Statute of Charitable Uses* 1601** Also known as the *Statute of Elizabeth*
- Preamble to *Statute of Elizabeth* provided list of charitable purposes, which became foundation of modern charity law
- List not exhaustive, and courts recognise other purposes as charitable if are within *"spirit and intendment"* of Preamble
- Purposes included:
    - Relief of the aged, impotent, and mariners
    - Maintenance of schools of learning and scholars in unis
    - Repair of bridges, ports, havens, churches, seabanks & highways
    - Education of orphans
    - Relief, stock and maintenance of houses of correction
    - Marriage of poor maids
    - Support, aid & help of young tradesmen, handicraftsmen, and persons decayed
    - Relief, or redemption, of prisoners or captives

    - Aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers, and other taxes
- THE FOUR HEADS OF CHARITY – THE MODERN TRUST
- ***Commissioner for Special Purposes of Income Tax v Pemsel***
- This 1891 case is the modern statement of charity law and the Statute of Elizabeth (this original statement of charitable purpose was from 1601)
- The language, words and meaning have changed over time
- E.g. relief od the aged, important, and mariners – impotent meant sick
- Lord Macnaghten in *Pemsel's Case* classified charitable purposes into four main charitable heads:
- **(1) Relief of poverty.**
- **(2) Advancement of education.**
- **(3) Advancement of religion.**
- **(4) Other purposes beneficial to the community** not falling under the first three heads.
    - What the court has done is saying "does it fall with the spirit and intendment of the preamble to the statute of charitable uses"
    - Whilst you cant really take a literal interpretation of each of the subcategories of the statute of charitable uses (from above) because you would be researching what those categories mean
    - An example of a valid 4th charitable head is the Qld Law Reporting Case
- HEAD 1: RELIEF OF POVERTY
- *"Poverty"* is a relative term and does not mean destitution (and living on the streets). It can be paraphrased as meaning persons who have to *"go short"* (Downing)
- A trust can be for the relief of poverty even if the beneficiaries are not completely destitute
- The words *"aged, impotent and poor"* from the Preamble are read disjunctively; a trust for the aged or the sick can be a valid poverty trust without the beneficiaries also being poor
    - This modern restatement of the old statute into a head of relief of poverty covers the words from the preamble: aged, impotent and poor AND these words are read independently
    - So you could have a hospital for sick people (impotent) and they do not have to be poor – helping run a hospital for the sick would still be a valid charitable purpose
- So poverty is quite a broad category, however, there is a trick with poverty – it means going without relative to others
- Poverty trusts are probably the easiest to pick – you do not need to see the word poverty – you might be helping the sick alone, or the older members of society alone

TRUSTEES OF THE INDIGENOUS BARRISTERS' TRUST V COMMISSIONER OF TAXATION

Facts	Trust for *'the relief of poverty, suffering…of indigenous persons…[in the]*

	pursuit of a career at the NSW bar' Money was to be used for education, living expenses, books, apparel, chamber leases etc. for these indigenous people who wanted to pursue a career at the NSW bar
Issue	Is it a valid charitable trust for relief of poverty?
Decision	**Held (Federal Court):** Yes, it was valid and satisfied this charitable purpose category Gyles J found that even though the persons had aptitude, they may still need financial support i.e. they were in need *relative to the rest of the community* So this was a trust to relive poverty, rather than for individual people So, what we might find when we are looking through clauses is that we might first assess whether it is a valid clause for people and if it fails for people we might consider whether it can be saved as a charitable purpose trust (may need to look at both categories)

DINGLE V TURNER

Facts	In this case 10,000 pounds and the rest of a person's estate was left to pay pensions to poor employees of Jingle and Co A trust was created to pay pensions to *"poor employees"* of a specific company. The class of beneficiaries was defined by a personal nexus (common employment). This evidently fell under the first category of relief of poverty because it's relieving the financial harshness that is being experienced by poor employees – however, the question was:
Issue	Did the 2nd validity requirement (for public benefit) **apply to trusts for the relief of poverty in the same way as other charitable trusts?**
Decision	**Held (House of Lords):** The trust was a valid charitable trust. The normal tests of public purpose, specifically the "no personal nexus" rule from *Oppenheim*, do not apply to trusts for the relief of poverty. The distinction is whether the gift is for the relief of poverty among a class of people, or a gift to individuals with poverty as the motive. Usually, to satisfy the public element of public benefit you cannot have a link of employment or blood UNLESS it is a charitable trust for the relief of poverty (there are many exceptions in charitable trusts and most of them relate to relief of poverty). This is because benefit is always presumed for relief of poverty. So it does not matter if you are helping poor people of a particular company The trick is when its poor people in your family (see below case)

RE SEGELMAN

Facts	A testator created a trust for the *"poor and needy"* of a class of his relatives. The class was specifically defined (nephews, nieces, and their children) and was a very small class, comprising only about 26 individuals at the time.
Issue	Could a trust for the relief of poverty for such a small and narrowly defined group of relatives be a valid public charitable trust? Is this a valid trust for relief of poverty despite their being a link of blood?
Decisio	**Held:** Yes. The trust was a valid charitable trust.

n	**Principle:** This case affirmed the "poor relations" exception. The key distinction is between a gift to particular poor persons (which is a private gift) and a gift to a class of persons for the relief of poverty (which is a charitable trust). The small size of the class did not negate the public character of the trust, as its purpose was *to relieve poverty within that class*. Can think of this as expanding on the fact that in Dingle is was said that the no personal nexus rule from Oppenheim for employees doesn't apply – possible expansion from Dingle that the no personal nexus rule also doesn't apply to blood relations Re Segelman does not state this as clearly as in Dingle so this muddies the water (this can be difficult to argue if you do not have the exact words from this case)

- Overall, the Oppenheim unacceptable links of employment and blood do not apply to relief of poverty
- If you have anything that relieves the poor, aged or sick it will likely be valid because you have a presumption of benefit and the unacceptable link category from public does apply to ROP
- HEAD 2: ADVANCEMENT OF EDUCTION
- ***Re Pinion and Re Hopkins Will Trusts***
- A very broad concept, including formal education, research, scholarships, prizes, and the promotion of culture and the arts.
- The purpose must have some educative value, which is a question for the court to decide, often with the assistance of expert evidence: *Re Pinion*
    - E.g. sometimes when people pass away they leave their extensive art collection to the art gallery or if you are a famous architect might leave the home as a historic home to the Heritage Society
    - It will be up to the court to determine if there is any educational value in the gift
    - In Re Pinion this painter left his artworks in his house to be held on trust and the court said that they were pretty worthless and had no educational value at all
    - In this case the court used an expert to decide whether there was any educational value
    - The judge is not an expert about the value of art so they use an expert
- The trust must not be for the mere increase of knowledge; there must be an element of dissemination of knowledge or teaching.
    - Private increase of knowledge is not enough
    - BUT the person who does the research does not have to be the one who disseminates the information
- Research doesn't require the researcher to engage in conventional teaching: *Re Hopkins Will Trusts*
    - Property left to Francis Bacon Society *"earmarked and applied towards finding the Bacon-Shakespeare manuscripts"*

  - Held charitable because results would inevitably be published publicly and contribute to solving the authorship problem, leading to textual improvements and more accurate dating
  - Contributing to the education of people in this area
  - But note that just researching something will not be a valid charitable purpose – there needs to be some dissemination of that information as well

RE SHAW

Facts	George Bernard Shaw's will created a trust to research and promote a new 40-letter English alphabet
Issue	Was this a valid charitable trust for the advancement of education?
Decision	**Held:** No, the trust was not charitable (1) It was for the mere increase of knowledge, lacking the necessary element of teaching or education (2) The propaganda element was aimed at persuading the public, which is not an educational purpose (3) It was also deemed to have a political purpose (advocating for a change), which at that point in time was a barrier to charitable status in the UK (a political rather than educational aim – he was agitating for political change) – at this time any trust with a political purpose was considered invalid but the 2010 HC in Aid Watch said a trust can have a political purpose and be valid.

- Also see the Council of Law Reporting case below where the HC ruled out a not-for-profit law reporting organisation as being a recognised educational institute
  - However, note that you have to put this in the context of 1971 when there were les private educational organisations than there are today
- HEAD 3: ADVANCEMENT OF RELIGION
- ***Watkins v Commissioner for Corporate Affairs*** **and** ***United Grand Lodge of Ancient and Accepted Masons of England v Holborn Borough Council***
- The way the courts approached determining whether an organisation that has what it says is a charitable purpose of advancing religion has changed over time
  - In the past the court would assess whether it was a valid religion or not
  - But now the courts determined we just have two tests that we need to satisfy (established in The Church of the New Faith case below)
- The court does not judge the truth or falsity of the religion, but does not accept a parody of a religion as charitable: *Watkins*
  - So Pastafairianism and the Church of the Flying Spaghetti Monster lost its bid for legal recognition as an incorporated entity
  - Found to be satire and a parody of a religion rather than real and having the characteristics or indicia mentioned by Mason ACJ
- 'Advancement' of religion is a wide concept - includes purposes which promote the spread of religion, or maintain spiritual doctrine or observances of the religion