

LAWS2015 Equity

Study Notes — Equity and Trusts

Colour key



Giumelli v Giumelli

Case names — plum, italics



s 68 Supreme Court Act 1970 (NSW)

Legislation — navy



equity acts in personam on the conscience

Key principles — teal



equity will NOT perfect an imperfect gift

Critical points — deep red, soft rose tint

Structure follows the Semester 2, 2026 Unit of Study Outline (Topics 1–10).

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Topic 1: The History and Nature of Equity

1. What is Equity? History and Nature of Equity

1. **History:** Equity was originally established to supplement and alleviate the harshness of the common law, originating from the decree of James I in the decision of the *Earl of Oxford* case.
 - (a) **Equity Supremacy:** Rules of equity prevail insofar as the **rules of common law and equity conflict**.
2. **History of Separate Courts:** The common law and equitable jurisdictions were administered separately historically, where equity was administered principally by the Court of Chancery, and the common law by the court of King's Bench. Even now, although there is only one Supreme Court, there are distinct common law and equity jurisdictions.
3. **Never completely distinct:** However, this **division was never complete**, as the Lord Chancellor had some common law jurisdiction, and the King's Bench had until 1841 an important equitable jurisdiction. Chancery knew the rules of the common law and 'equity followed the law'. Chancery **looked at suits** which would have **ALSO** entitled a party to proceed in common law court, i.e. partition between tenants in common, testate and intestate succession
 - (a) **Preference:** Sometimes, Equity was **preferred** because the remedies provided prevented (injunction) actions at law, or prevented injury that would otherwise not properly be compensated by damages.
 - (b) **Equitable remedies include:** Specific performance; declaration; injunction; rescission; rectification
4. **Purpose:** This was done so that **judges could administer equitable remedies in a common law system**, without having **two inefficient and expensive systems**.
5. **Equity:** Equity will treat as done what ought to be done (*Walsh v Lonsdale (1882)*). It was created to **fix injustice within the common law system**.
 - (a) **Exclusive Jurisdiction:**
 - (i) **Doctrines** which are recognised only in equity, e.g. trust and fiduciary obligations, where the **ONLY** remedies were equitable remedies.
 - (b) **Auxiliary Jurisdiction:**
 - (i) **Equity** comes to the **aid of common law rights**, e.g. remedy of specific performance enforcing performance of K, injunctions.

2. The Effects of the Judicature Acts

1. *Supreme Court Act 1970 NSW s 57*: The Court shall administer **concurrently** all rules of law, including rules of equity.
2. **Equity Prevails: Law Reform (Law & Equity) Act 1972 NSW s 5**: In all matters in which there was immediately before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of **equity shall prevail**.
 - (a) Judicature system has 2 essential and distinct effects: 1) it **fuses procedures** of old common law and equity jurisdictions, and 2) equity is supreme over law in cases of conflict between rules.

3. The Fusion Fallacy

1. **Fusion Fallacy:** The term fusion fallacy is given to decisions where the courts, in considering the effects of the judicature system, have **made an error of judgment**. The judicature system fused the procedures of common law and equity. it **did not change the substantive law**. It is **wrong to conclude that the rules of common law and equity have been amalgamated**. It is **only their administration** which has been and should be unified (*Salt v Cooper (1880)*).

- (a) **Concurrency but NO mingling**: "The two streams of jurisdiction, though they run in the same channel, run side by side & do not mingle their water." (*Ashburner*)
- (b) **Law ≠ Equity**: It is **incorrect** to say that an equitable lease is as good as a lease.

2. Two ways the fallacy arises:

- (a) Fusion fallacies occur when **damages under the common law are awarded for purely equitable wrongs**.
 - (i) **Punitive damages NOT AVAILABLE for breaches of fiduciary duties** — *Harris v Digital Pulse Pty Ltd* [2003]:
 - **Facts**: Employee in defiance of express term in contract benefit his own business and competed with employer, which was breach of fiduciary duty. The trial judge found that there had been **breach of fiduciary** (equity) & contractual (common law) duties of loyalty, ordered to pay equitable compensation and **exemplary/punitive damages** (common law remedies). The defendant appealed.
 - **Held — Court of Appeal (Spigelman CJ, Mason P and Heydon JA)**: Allowed an appeal against the exemplary award, because **exemplary damages could not be administered as it is a CL (tortious) remedy** & that this was purely an equitable claim.
 - **Against Fusion**: **Rejected** argument that jurisdiction to award exemplary damages already existed in equity — **historically equity DOES NOT EXERCISE** any punitive jurisdiction.
 - (ii) **Contributory negligence damages NOT AVAILABLE for equitable wrongs in Australia**: The case of *Day v Mead* in New Zealand is an example of what would be **considered a fusion fallacy in Australia**. NZCA held that there is no reason why there shouldn't be further development of equitable notions to incorporate a common law notion of contributory negligence, and thus reduced an award for equitable compensation for the plaintiff.
- (b) Alternatively, fusion fallacies arise when **substantive principles** from both the common law and equity are applied interchangeably.
 - (i) **Example of Fusion Fallacy: *Walsh v Lonsdale* (1882)**: Until a formal lease is executed in compliance with a decree of specific performance there exists an equitable lease only, although the parties to the lease stand in the same position as if a lease had been granted.
 - **Facts**: Lonsdale agreed to lease a mill to Walsh for seven years, on a written agreement that rent was payable yearly in advance, varying on the number of looms operated. However, Walsh only paid rent quarterly and not in advance. Lonsdale levied distress and sought to enforce the lease, but it was not in the form of a deed and therefore void at law. Thus, Walsh could only be holding under a tenancy from year to year so could not levy distress.
 - **Held**: As Walsh was holding the property under a lease that equity would have ordered specific performance in favour of, he could not deny Lonsdale's rights.
 - **Principle**: As the lease did not fit the requirements for a legal lease, but was written, it was an equitable lease, and equity would thus enforce performance of it. Therefore, it is **automatically a legal lease**.
 - This eliminates a series of steps and assumed that equitable remedies are mandatory, not discretionary.
 - (ii) **NOT an example of the Fusion Fallacy: *Chan v Cresdon Pty Ltd* (1989)**: Only when the legal lease contemplated by the agreement came into existence would Chan be bound by the guarantee in it.
 - **Facts**: Cresdon agreed in writing to lease land to Sarcourt, with Chan as guarantor. The agreement contained the terms of the lease as an annexure. The lease was duly executed but never registered (as required under the Torrens system). Sarcourt defaulted under the lease and Cresdon took action against Chan.

Topic 2: Applications of the Conscience of Equity

1. Breach of Confidence

1. **X Person** may seek to establish a breach of confidence claim as **X Facts**. The law on this subject does not depend on any implied contract (*Saltman Engineering v Campbell*), but **depends on the broad principle of equity** that he who has received information in confidence shall not take unfair advantage, however **both can co-exist**. There are four elements (*Optus Networks Pty Ltd v Telstra Corp* (2010) per Finn, Sundberg and Jacobson JJ, expanding *Coco v AN Clark (Engineers) Ltd* [1969]).
 - (a) The information in question must be identified with **specificity**:
 - (i) **Form of the information**:
 - Words (spoken or written)
 - Pictures/photos/videos
 - Electronic information
 - (ii) **Content of the information**:
 - Personal information:
 - Medical and legal information (*Earl v Nationwide News*)
 - Relationship/sexual/family information (*Argyll v Argyll*)
 - Information about celebrities is less likely to be confidential due to their status in life
 - (iii) **Example of specificity**: In *O'Brien v Komesaroff*, the solicitor, Komesaroff, was not able to succeed on a breach of confidence claim against O'Brien, an accountant that used documents from Komesaroff to prepare unit trust deeds for his own client, as he **could not point to specific provisions** in the trust deed which said the information was specifically confidential.
 - (b) It must have **necessary quality of confidence**:
 - (i) **Test**: The test to determine what is private is whether that **disclosure or observation** of information **or conduct** would be **highly offensive to a reasonable person of ordinary sensibilities** (*ABC v Lenah Game Meats Pty Ltd* (2001) per Gleeson CJ).
 - **Kinds of Information**: Health, personal relationships, finance, **contemporary standards of moral and behaviour would understand** to be meant to be unobserved.
 - **Factors to consider**: *Wright v Gasweld Pty Ltd* (1991) per Kirby P
 - **Skill and effort** was expended to acquire the information
 - Information is **jealously guarded by the employer**, and not readily made available to employees and could not, without consideration effort and/or risk, be accrued by others
 - **Plainly made known to employee** that the material was regarded by the employer as **confidential**
 - **Usages and practices of the industry** support the assertion of confidentiality
 - Employee in question has been permitted to share the information **only** by reason of his or her **seniority or high responsibility** within the employer's organisation
 - (ii) **Public Domain**: **However, CANNOT be publicly and widely known confidential information, otherwise no relief**:
 - **Ascertainable**: However if the confidential information is **ascertainable by enquiry or experiment**, even substantial enquiry, **OR**
 - **Publication lost secrecy**: By publication (subject to the nature and medium of the publication) (*AFL v The Age*)

- **Know-how extends:** The know-how which the ex-employee is clearly entitled to use extends to knowledge of the question which the confidential information, **THEN**
 - **Employment:** In *University of Western Australia v Gray* (2009), Lindgren, Finn and Bennett JJ held that “important aspect of the duty of confidence in employment settings is that the duty subsists after the termination of the employment so as to preclude disclosure or use of subsisting confidential information held by the ex-employee which was derived from his or her previous employment.”
 - **Know how exception:** An employee is entitled to make full use of the general knowledge, skill and experience — the ‘know-how’ — which as a result of the previous employment has become his or her own
 - **However cannot:** Employee **cannot** do is to use or disclose confidential information that can fairly be regarded as a separate part of the employee’s stock of knowledge which a man of ordinary honesty and intelligence would recognise to be the property of his old employer.
 - i.e. Before a patent has been applied for
 - i.e. Ideas and concepts which for some reason cannot be patented
 - **Artificial:** It becomes artificial to treat the confidential information as severable and distinguishable from that know-how, and courts have tended to **not grant relief** (per Hodgson JA in *Del Casale v Artedomus (Aust) Pty Ltd* [2007])
 - i.e. In *Johns v Australian Securities Commission* (1993), although it was held that the director should have been given an opportunity to reply to the transcripts that were used in the public hearings of the Royal Commission, the confidential nature of the transcripts were lost and further dissemination of it by the media would not be restrained. As there was no loss by John, and no gain by the ASC, the only remedy the Johns obtained was a declaration.
- (iii) **Special Case: Fiduciary — Obligations of confidence can subsist: fanciful < risk < substantial:** The fiduciary relationship between two parties can end, but the duty to preserve confidentiality is unqualified. It is a duty to keep the information confidential, **NOT MERELY to take all reasonable steps** to do so... The court should intervene **UNLESS** it is satisfied that there is **no risk** of disclosure. The risk has to be a **real one**, and **NOT MERELY fanciful** or theoretical. **BUT IT NEED NOT be substantial** (*Bolkiah v KPMG* [1999] per Lord Millett).
- **Facts:** KPMG had previously advised Prince Jefri Bolkiah, and afterwards his brother the Sultan wanted KPMG on a matter related to the Prince. Although there was no conflict of interest due to the information barriers and different teams working on it, it does **NOT NEED** to be a substantial risk, just more than fanciful.
 - **Held:** Injunction was issued.
- (iv) **Special Case: Confidence and Government Information:**
- **Public Interest Test:** When equity protects government information it will look at the matter through different spectacles... Accordingly, the court will determine the government’s claim to confidentiality by reference to the public interest. Unless disclosure is likely to **injure the public interest**, it will not be protected (*Commonwealth v John Fairfax & Sons Ltd* (1980) 147 CLR 39 per Mason J). In *John Fairfax*, the Commonwealth could not stop JFS from publishing documents on sensitive issues regarding Australia’s involvement in international relations as there was insufficient evidence that it would be a harm to the public interest or that it would embarrass Australia's relations with other countries. Here, **X**.
- (c) **It must have been received... in circumstances: importing an obligation of confidence, AND**
- (i) The basis of this lies in the notion of an **obligation of conscience arising from circumstances** in or through which the information was communicated or obtained (*Moorgate Tobacco v Philip*

Topic 5: Operation of Express Trusts

1. Duties and Powers of Trustees

1. Duties and Powers generally:

- (a) **Duties:** Duties of a trustee relate to those acts the trustee must do or refrain from either under the general law or under the terms of the trust deed.
 - (i) **Courts supervision of duty is about fairness not accuracy:** The duty of supervision on the part of the court will thus be confined to the question of the honesty, integrity and fairness with which the delineation has been conducted, and will not be extended to the accuracy of the conclusion arrived at, except in particular cases (per Lord Truro LC in *Re Beloved Wilkes' Charity* (1851))
 - **Application:** In this case it was the trustees view to decide on suitability of funding a boy for their development into a church minister, not for the court to decide
- (b) **Powers:** Powers relates to acts that a trustee may exercise, but are under no duty to exercise.
 - (i) **A duty may be coupled with a power:** An example is a **duty** to make an appointment or selection **coupled with a discretion** as to who is to be appointed or selected (*Re Beloved Wilkes Charity* (1851))

2. Duties: Generally incorporate this if a trustee is appointed, and see whether they have acted reasonably

- (a) **To learn the terms of the trust:** The trustee has a duty to learn the terms of the trust and be **aware of the nature and circumstances** of the trust property and all documents affecting the trust property. **Apply the mind to it.** Hence, the making of appointments by trustees ignorant of the fact that they had a discretion whether to make them can be set aside and dispositions are void (*Turner v Turner*).
- (b) **To obey the terms of the trust:**
 - (i) **Strict Duty:** It is the function of the court to execute a trust, to see that the trustees do their duty and to protect them if they do it, to direct them if they are in doubt and, if they do wrong, to penalise them. **Court will not permit a deviation** even if it would improve the trust's performance (per Viscount Simonds LC in *Chapman v Chapman*)
 - **Exception:** Under **s 81 Trustees Act (NSW)**, if there are '**expedient**'/advantageous dealings, the terms of the trust can be altered. **s 81 Trustees Act** confers wide power on the courts to authorise departure from the terms of the trust where it is "**expedient**" or in the best interests of the majority of the beneficiaries to allow the trustee to engage in the conduct in question.
 - **Exception:** But discretion to allow sale of trust property where would **otherwise fall into disrepair**, cease to exist, or circumstantial, i.e. unable maintain (*Perpetual Trustee v Godsall*)
 - **Rath J:** the term 'management and administration' was construed widely, it included everything that a trustee may need to do in practical or legal terms in respect of trust property. The term "**expedient**" should be **read to mean expedient** for the beneficiaries. The test is expediency in relation to the situation of management or administration as it exists at the time the court hear the application; and expedient is to be determined having regard to the interests of the beneficiaries concerned in the particular trust
 - **Facts in *Perpetual Trustee v Godsall*:** The testator left his house to his widow for life. The costs of maintenance were too great for the widow. She and the trustee agreed that it would be desirable to sell the house and buy a smaller one with part of the proceeds of sale; certain advantages would follow for the trust as a whole.
 - (ii) **Court order to approve arrangement:**
 - **Can vary or enlarge powers of trustee:** If the property is held in trust under any instrument creating the trust, the Court may, if it thinks fit, by order approve any arrangement to **vary**

or revoke all or any of the trust, or enlarge the powers of the trustees for the purpose of managing or administering any of the property subject to the purpose of the trust (s 86A(1) Trustees Act (NSW))

- **Court order — may be made on behalf:** An order under this section may be made by the Court only on behalf of (s 86A(2) Trustees Act (NSW))
 - **Minor/other incapacity with interest incapable of assenting:** Any person under the trust having an interest directly or indirectly, or vested or contingent, who by reason of being a minor or other incapacity is incapable of assenting, **or**
 - **Future contingent interest:** Any person who may become entitled, directly or indirectly, to an interest under the trust, and the entitlement is contingent on a future date or event that has not occurred at the time of application for an order under this section, **or**
 - **Unborn:** Any unborn person, **or**
 - **Discretionary interest:** Any person in respect of any discretionary trust of the person under protective trusts where the interest of the principal beneficiary has not failed or determined.
- **Types of trusts that this applies to:** (s 86A(3) Trustees Act (NSW))
 - Extends to a trust created before the commencement of this section, **and**
 - Does not apply to trusts affecting property created by another Act, **and**
 - Does not limit the operation of section 81.
- **Court order to benefit person subject to application:**
 - **Has to benefit the person:** The Court **must not** approve an arrangement on behalf of any person under section 86A **unless** the carrying out of the order would be for the benefit of that person (s 86B(1) Trustees Act (NSW)).
- **Court may direct notice of application to certain persons:**
 - **Must be given to any persons the Court may direct:** Notice of an application to the Court for an order under section 86A must be given to any persons as the Court may direct.

(c) **To keep accounts and give information:**

- (i) **Must keep accounts:** A trustee must keep accounts and be ready to produce them for the beneficiaries (*Byrnes v Kendle* (2011) at [42]–[43])
- (ii) **Can see certain trust documents:** Prima facie the beneficiaries are entitled to see certain trust documents (*O'Rourke v Darbishire* [1920] per Lord Wrenbury)
- (iii) **However not reasoning:** **But** that gives way to a trustee's right **not** to give the beneficiaries reasons for decisions (*Re Londonderry's Settlement* [1965])
- (iv) **Beneficiary Right:**
 - **Not a proprietary right:** **No** beneficiary has a proprietary right (or any other form of absolute entitlement) to information concerning a trust (*Schmidt v Rosewood Trust* [2003])
 - **It is an inherent right of the court to supervise:** Right to seek disclosure of documents as one aspect of the court's inherent jurisdiction to supervise, and if necessary to intervene in, the administration of trusts. The right to seek the court's intervention does not depend on entitlement to a fixed and transmissible beneficial interest (*Schmidt v Rosewood Trust* [2003] per Lord Walker at [51]–[52])
 - **Beneficiary interest will no longer itself be sufficient but will support right:** The nature of a beneficiary's interest will no longer be sufficient of itself to determine his right (if any) to information. The nature of a beneficiary's interest will be just one factor for consideration in determining whether or not it is appropriate to provide information to a given individual.

Topic 9: Tracing

1. Following v Tracing

1. **If entitled — beneficiary no claim:** If a trustee changes the form of investment of trust property in accordance with his or her powers of investment, for example, by selling land and buying government bonds, the beneficiary can make no claim against the former trust property in the hands of the purchaser, and acquires no greater claim against the new trust property than he or she had against the old.
2. **If not entitled to change form — beneficiary claims:** In a way the trust property has gone, for the authorised fund is no longer held by the trustee. But the beneficiary has proprietary as well as personal rights, both designed to replace the trust property. The proprietary rights depend on the idea of 'following' or 'tracing' property.
 - (a) **Tracing v Following:** *Foskett v McKeown* [2001] per Lord Millett
 - (i) **Following:** Following is the **process of following the same asset** as it moves from hand to hand.
 - Adopting the mixture (*Tang v Tang*)
 - (ii) **Tracing:** Tracing is the process of **identifying a new asset as the substitute** for the old. Where one asset is exchanged for another, a claimant can elect whether to follow the original asset into the hands of the new owner or to trace its value into the new asset in the hands of the same owner.
 - (b) **Two remedies (one or other):** Rights entitle beneficiary to the more appropriate of two remedies
 - (i) **Claiming traced fund:** An order that the traced fund be conveyed to the beneficiary or to new trustees for the beneficiary (the latter being more apt when the plaintiff is not absolutely entitled), **or**
 - (ii) **Charge:** A declaration of charge over the fund.

We are only here because the trustee has breached a trust (establish it before). These are the remedies.

2. Mixtures (Money Going Into Mixtures)

1. **Example 1: Unauthorised mixing of trust money with trustee's personal money:**
 - (a) **Example:** Trustee wrongly pays \$10,000 of trust money belonging to Alpha Trust into Trustee's personal account, which has a credit balance of \$20,000. **Always a breach.**
 - (i) **Cash:** No difference if it is money just in bank account.
 - (ii) **Assets that change in value:**
 - **Property going up in value:** Difference between claiming a **proportion**, **or**
 - **Property going down in value:** Asserting a personal claim by **charge**.
2. **Example 2: Unauthorised mixing of trust money from two trusts:**
 - (a) **Example:** Trustee wrongly mixes \$10,000 of Beta Trust money with \$10,000 of Gamma Trust money by paying the Gamma Trust money into the Beta Test account. **Not always a breach but need to be told on facts.**
 - (i) **Proportionate:** Assets are ranked equally. All you can claim is a **proportionate** share.

3. Withdrawals from Mixtures (Money Going Through Mixtures)

1. **Example 3: Mixtures where the interests rank equally:**
 - (a) **Example:** Trustee wrongly mixes \$10,000 of Beta Trust money with \$10,000 of Gamma Trust money by paying the Gamma Trust money into the Beta Trust account. Trustee spends \$10,000 on shares in X. Trustee then spends \$10,000 on shares in Y. The X shares rise in value, the Y shares fall in value.
 - (b) Notice nature of withdrawal from mixtures and whether it ranks equally.

(c) **Rule:**

- (i) **Technical Starting Point — The rule in *Clayton's Case* (1816):** One method of calculating the parties interest is taking the first in first out approach (*Clayton's Case* (1816)). However, the rule in *Clayton's* case might have a limited utility in respect of appropriating payments into bank accounts as between trustee and beneficiary but it has been held in a number of jurisdictions in Australia to have no utility as between competing beneficiaries whose moneys have been deposited in a mixed fund.
- (ii) **Pari Passu: *Keefe v Law Society of NSW* (1999)**
 - The beneficiaries will share rateably in the money **remaining** in the account
 - **Why it is bad:** However, the simple pari passu approach may result in later investors whose funds were not, or were not significantly dissipated, cross-subsidising earlier investors whose funds had, at least to some extent, been lost prior to any involvement of later investors (*Caron v Jahani* (No 2) at [147] per Bell P)
- (iii) **Rolling charge / 'Lowest intermediate balance' Rule — If there are withdrawals: *Caron v Jahani* (No 2) [2020]**
 - On this approach, any given beneficiary's share is to be **rateably reduced whenever** there is a **withdrawal** from the fund. This is the approach which is favoured.
 - **Note:** You do pari passu for each individual withdrawal.
 - **When to not use it:** The objection to the application of the lowest intermediate balance rule rests only on practical concerns relating to the cost and complexity of its application. The practical concern arises when there are a large number of contributors to the funds, and that it would not be economically feasible to conduct such an exercise (at [120] per Bell P in *Caron v Jahani* (No 2) [2020])

2. **Example 4: Mixtures where the interests do not rank equally — Loses Value:** The trustee suffers the loss

- (a) **Example:** Trustee wrongly pays \$10,000 of trust money belonging to X into Trustee's personal account, which has a credit balance of \$20,000. Trustee withdraws \$10,000 and purchases shares in Y company. The Y shares become worthless.

- (i) ***Re Hallett's Estate* (1880):** Court decided that the money that had been spent and lost was the trustee's own money.

- **Facts:** A solicitor sold shares he held on trust and paid the proceeds into his own bank.
- **Held:** It was held, on the death of the solicitor, that the client was **entitled to recover** from the bank account — where a trustee has money in a personal bank account to which trust money is added, the trustee is **acting honestly** when paying money out of it.

3. **Example 5: Mixtures where the interests do not rank equally — Rises Value — Remaining Money**

Dissipates: The trustee suffers the loss

- (a) **Example:** Trustee wrongly pays \$10,000 of trust money belonging to Alpha Trust into Trustee's personal account, which has a credit balance of \$20,000. Trustee withdraws \$10,000 and purchase shares in NRG Ltd. The NRG Ltd shares rise in value. Trustee **dissipates** the remaining money in the account.

- (i) **Rule:** Beneficiaries **could claim** the proceeds of the shares. A trustee cannot say the purchased assets were not bought with trust money (*Re Oatway* [1903])

- **Facts:** Mr Oatway was a trustee of Charles Skipper's will. He took £3000 of trust money and mixed it with £4000 of his own. He used £2137 from the fund to buy shares in a company, and **dissipated** the rest. Then he died. The beneficiaries of the Skipper trust wished to trace their money into the £2475 that were the proceeds of the shares.

Topic 10: Charity

1. Legal Concept of Charity

1. **Whether it is a valid charitable purpose trust? It is a judge made law question:**
 - (a) **Say in EXAM that there are TWO DIFFERENT QUESTIONS**
2. **What are the type of charitable purposes? Is it within a charitable head?: (Section 2)**
 - (a) **Types of Charitable Purposes:** "Charity in its legal sense comprises four principal divisions; trust for the relief of poverty; trust for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads." (*Income Tax Special Purposes Commissioner Pemsel* [1891] per Lord Macnaghten)
 - (i) **Relief of Poverty:**
 - (ii) **Advancement of Education:**
 - (iii) **Advancement of Religion:**
 - (iv) **Other purposes beneficial to the community:** 4th head trust has to be publicly beneficial to the community **AND** linked to the *Charitable Uses Act 1601*. The preamble of the act is below.
 - 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, causeways, churches, sea banks and highways
 - Education of orphans
 - Relief stock or maintenance of houses of correction
 - Marriage of poor maidens
 - Support aid and help of young tradesman, handicraftsmen and persons decayed
 - Relief or redemption of prisoners or captives
 - Aid or ease of any poor inhabitant
 - (v) **Charities Act 2013 (Cth):** defines 'charity' and 'charitable purpose' for Commonwealth law (e.g. tax concessions and registration with the ACNC), listing 12 charitable purposes (s 12) — including promoting or opposing a change to law or policy in furtherance of another charitable purpose (consistent with *Aid/Watch*). **It does not itself determine whether a trust is valid under State law** — the general law test (Pemsel heads + public benefit) still governs validity.
3. **Is it for the public benefit?: (Section 3) State the Test Here**
 - (a) **Qualitative:** Do the purposes being considered confer a tangible benefit directly or indirectly upon the public?
 - (b) **Quantitative:** Is the class of persons eligible to derive a benefit from the purposes defined so as to constitute the public as a whole or a section thereof?

2. Charitable Purpose

1. **Poverty:**
 - (a) **Includes financial poverty and healthy poverty — Services NOT available in public hospitals:** Trust for the purposes of St Vincent's Private Hospital held to be charitable, it was no objection that it provided only for those who could pay the substantial fees. It was still beneficial to the community because it relieved beds and staff of the general hospital, the particular type of nursing and treatment supplemented that available at the public hospital and there were benefits in the standard of care for the public arising from the juxtaposition of the two institution (*Re Resch's Will Trust*)