

Trusts – Law 463
Fall Term 2026

LECTURE NOTES NO. 6

VII. CHARITABLE TRUSTS

Please note the following statutes:

[Charities Accounting Act, RSO 1990, c.C.10:](#)

Reporting requirements of trustees to the Public Guardian and Trustee

[Charitable Gifts Act, RSO 1990, c.C.8:](#)

Restrictions on ownership in profit-making ventures by charitable organizations

[Charitable Institutions Act, RSO 1990, c.C.9:](#)

Regulation of charitable residential institutions

[Public Guardian and Trustee Act, RSO 1990, c.P.51](#)

Public Guardian and Trustee may be a trustee of a charitable trust

[Trustee Act, RSO 1990, c.T.23:](#)

Jurisdiction of court to vest property in trustees

‘Charity’, ‘Charitable’ as Terms of Art

Preamble to ‘The Statute of Elizabeth’

Charitable Uses Act 1601, 43 Elizabeth I, c.4

This Act was the first British charities legislation, and was passed to reform abuses in the application of property for charitable purposes. Its Preamble in particular is of relevance and has been looked to (perhaps more as a matter of form than substance at times) to guide courts in recognizing a trust as operating towards a charitable purpose. The Preamble identifies the objects of charity:

... the relief or aged, impotent and poor people, the maintenance of sick and maimed soldiers and mariners, schools of learning, free schools and scholars of universities; the repair of bridges, havens, causeways, churches, sea banks and highways; the education and preferment of orphans; the relief, stock or maintenance of houses of correction; marriages of poorer maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; and the aid or ease of any poor

inhabitants concerning payment of fifteens, setting out of soldiers and other taxes.

The term 'charity' is not used in the conventional sense of the word but is generally considered to be a term of art; *National Anti-Vivisection Society v IRC* [1948] AC 31, 41 per Lord Wright. Thus, as held in another English case, 'no comprehensive definition of legal charity has been given either by the legislature or by judicial utterance;' *IRC v Baddeley* [1955] AC 572 per Viscount Simonds. Why? Social policy does not remain in concrete but develops continuously.

Across the Commonwealth countries, there is fairly wide acceptance of four traditional 'headings' of allowable charitable trusts as set out by Lord MacNaughten in *Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531:

- (a) relief of poverty;
- (b) advancement of education;
- (c) advancement of religion;
- (d) other purposes beneficial to the community.

Note that the Charities Accounting Act, RSO 1990, c.C.10, s.7 states (for the purpose of the Act):

- "charitable purpose" means,
- (a) the relief of poverty,
 - (b) education,
 - (c) the advancement of religion, and
 - (d) any purpose beneficial to the community, not falling under clause (a), (b) or (c);

The fourth residual class will be dealt with below. Courts in many jurisdictions still look to the *Preamble to the Statute of Elizabeth* to decide whether the purpose of a specific trust is within 'the spirit and intendment' of the 1601 Act. Thus, the general equity of the Statute has developed to allow new purposes to be considered as charitable. Other jurisdictions take a much more mature approach and use some form of permanent quasi-legislative quasi-judicial 'charities commission' to determine these substantive points; you can see how the UK Charities Commission operates at its web-site:

<https://www.gov.uk/government/organisations/charity-commission>

Charitable Trusts Are Treated Deferentially

Amongst the advantages of charitable trusts are the following:

- objects rules: **such trusts are exempted from the beneficiary principle**, and can be properly settled for purposes and not people. However, the purpose must be 'charitable' and the funds used exclusively for that purpose;
- perpetuity rules: **the trust is exempt from the normal rules respecting alienability and remoteness of vesting**;
- consequences of failure: **cy-près operates to vary a charitable trust where such is desirable, and, to rescue a trust having failed** "initially" (i.e. before the property vests, but there must be a "general charitable intent") or "subsequently" (after the property vests) where an express trust in the same situation would be a resulting trust to S.

'Public Benefit'

The Basic Rule

The basic rule is that trusts (with the exception of trusts for the relief of poverty) must provide a 'public benefit'. That is, the trust has an approved purpose and confers a benefit on the community and not just a private benefit. See ***Oppenheim v Tobacco Securities* [1951] AC 297, 305; cb, p.399** per Lord Simonds:

- (a) Thus, there are two separate requirements: that there be a benefit and that it be a public benefit; for example, supporting contemplative nuns was found to have no public benefit in *Gilmour v Coates* [1949] AC 426.
- (b) Thus, there is no public benefit where there is an educational trust for named person(s) (**Re Compton [1945] Ch 123; cb, p.399**) nor for children of employees of a particular employer (*Oppenheim v Tobacco Securities* [1951] AC 297). Similarly, a convalescent home for members of a trade union is not charitable; *Re Mead's Trust Deed* [1961] 2 All ER 836. Similarly, it is not permissible to establish a charity in the residual category if the beneficiaries are not only chosen from within a single area, but also by reference to a specific creed; *IRC v Baddeley* [1955] AC 572 (the situation would be different if the charity was for the purposes of the relief of poverty).
- (c) The public aspect is not satisfied where there is a fund, essentially for the subscribers themselves, which is not means-tested such that one might say it is generally for the relief of poverty rather than some form of private insurance; *Re Hobourn Aero Components Ltd's Air Raid Distress Fund* [1946] Ch 194. Thus a mutual benefit or a friendly society is not a charity, neither are professional societies that raise money from members or

others for regulation of the profession or to promote the interests of members.

The Section Of The Community that Benefits Must Be Significant

Lord Wrenbury held in *Verge v Somerville* [1924] AC 496, 499 that the class of beneficiaries must be “an appreciably important class of the community.”

In *Oppenheim v Tobacco Securities* [1951] AC 297, 306 it was held that “section of the community” denoted a class of persons that (i) as a class of possible Bs were not numerically insignificant and (ii) what was in common between the members of the class was not the relationship to a particular person(s).

In *Re Compton* [1945] Ch 123, it was said the potential beneficiaries cannot be a class by virtue of their common nexus with a single propisitus or multiple proposti - if so they are not a ‘section of the community’ to determine a charity (‘the Compton test’). In *Dingle v Turner* [1972] AC 601, 624, Lord Cross said that the Compton test was problematic and that the question is ultimately “one of degree and cannot itself be decisive of the question whether the trust is a charity. Much must depend on the nature of the trust.” It would seem that on balance, and bearing in mind all the speeches in *Dingle*, that trusts for employees of a single employer are still invalid. The nature of the test will vary somewhat according to the type of charity.