Oppenheim v tobacco securities trust law trusts essay

Law

The subject matter of this case study is that of a charitable trust. The purpose of which is the advancement of education. As defined in the preamble of the Charities Uses Act 1601, traditional requirements are that the trust must be of a charitable nature, and in relation to education, its establishment being for the "[m]aintenance of... Schools of Learning, Free Schools, and Scholars at Universities".[1]Its purpose, however, now falls under the Charities Act 2012. The act establishes that the trust must be exclusively charitable and for the public benefit.[2]The question whether a trust is of a public or a private nature must also be considered as in the case of trusts created by reference to occupation. A trust for educating the children of one's own domestic servants would be private and so all circumstances would need to be considered, the nature of the undertaking, the number of employees, the magnitude of the sum settled between the employer and the employees, in order to determine the trust. Two requirements were laid out by Lord Simonds in the case of Oppenheim v Tobacco Trust [1951] creating authority for later cases: that the possible beneficiaries must not be numerically negligible, andthat the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual.[3]This case highlights the second requirement, that even though the ‘ group of persons may be numerous, if the nexus between them is their personal relationship to a single propositus or to several propositi; they are neither the community nor a section of the community for charitable purposes’.[4]Where the beneficiaries are defined by reference to a personal nexus, the trust, as a matter of law, cannot be

charitable. This was to avoid the problem of individuals or companies such as the Tobacco Securities Trust Company Limited, attempting to disguise a trust as a charitable trust to gain fiscal privileges, in order to favour individuals, or in this case, employees. Cases before Oppenheim insist that the purpose of the trust was of great importance in determining whether the trust was charitable. But the judgements in cases such as Oppenheim that follow and set precedent today insist that not only must a purpose be within the spirit of the preamble but also that some element of public benefit must always be present, although they recognise that the measure of public benefit varies with the purpose of the trust.[5]The Charities Act 2011 provides a list of specific purposes which are charitable. s2 (2), raises the advancement of education[6]as a relevant purpose, as was the situation in this case, however it would only be charitable if that class could be regarded as a " section of the community".[7]Though the group of persons indicated in Oppenheim was numerous, the nexus between them was employment by particular employers, and so this class could not be considered as a " section of the community".[8]The appellant must satisfy the court that the class of employees defined, are in fact not to be considered as a private class but as a section of the public. The gift is unlimited in point of time and therefore offends the rule against perpetuities and as a result is not enforceable unless there is a valid charitable trust. The appellant relied on the impersonal relationship between the employees and the persons running this company; but at any time, by a shift of works policy, the company might create a personal relationship. On the appellant's argument that would make a trust charitable one year; which was not charitable the year before. But one

cannot have a shifting charity. In Re Leverhulme (1943),[9]a trust for education generally with an expressed preference for the education of children of employees of a particular company was found to be a good charitable trust. It is not sought to define public and private trusts in this connexion but it cannot be a definition of a public trust to select this one attribute of employment by a particular individual. In the case of Oppenheim there was no expressed preference and as a result it was not a public trust and therefore not a valid charitable trust, for the class indicated is only a group of private individuals. Had the trust been so expressed as to provide for the education of persons engaged in the tobacco industry in a named town or county, it would have been a good charitable disposition. The right test was laid down in In Re Compton [1945],[10]and In re Hobourn Aero Components Ld.'s Air Raid Distress Fund [1946].[11]The case of Oppenheim, before the House of Lords, involved a husband and wife who executed a settlement where the respondents, the Tobacco Securities Trust Co. Ltd, were the trustees, who were held upon certain trusts during the lives of the grantors and the survivors of them and thereafter upon trust to " provid[e] for or assist in providing for the education of children of employees or former employees of British-American Tobacco Co. Ltd... or any of its subsidiary or allied companies in such manner and according to such schemes or rules or regulations as the acting trustees shall in their absolute discretion from time to time think fit and also at the discretion from time to time of the acting trustees to apply all or any part of the corpus of the said trust for the like purposes".[12]The wife died, leaving her husband her universal legatee and devisee. He then died and his will was duly proved by the respondent

Barclays Bank. In these circumstances the question arose whether the trust was a valid trust. It was clear that it created a time without end; it was therefore invalid unless it could be supported as a charitable trust. The appellant, as one of the directors of the company and accordingly an " acting trustee", contended in favour of its validity: the contrary was contended by the respondent bank, since in the event of invalidity there was a resulting trust of the trust premises to the estates of the grantors. No evidence was given of any connexion of the grantors with the company except that the husband was a large stockholder. The number of employees of the company and their subsidiary and allied companies exceeded 110, 000. It was held that the trust was not charitable and that the nexus of being employed by particular employers did not satisfy the test of public benefit to establish the trust as a charitable trust. Lord Simonds said: ‘[T]he question is whether that class of persons can be regarded as such a ‘ section of the community’ as to satisfy the test of public benefit’.[13]Before analysing the significance of the Oppenheim case, it is important to consider the preceding case of Re Compton. This case enforced the requirement to determine whether or not the common characteristics that is shared by a number of persons is, or is not, such as to make them a section of the public. A " Personal Nexus" test, which is often referred to as the ‘ Compton test’[14], held that there was a requirement that the applicant demonstrate that there is no personal nexus between the settlor and the class of beneficiaries, but rather that there is a sufficient public benefit (essentially impersonal and not personal). In reference to companies such as the Tobacco Securities Trust Co. Ltd, this was to prevent them from giving fringe benefits with the claim it is charitable

and gaining fiscal privileges. Re Compton itself was a case for the advancement of education, but rather that of three named persons. This in turn was held not to be for a section of the public and thus not charitable. As stated by Lord Simonds " In both cases the common quality is found in employment by particular employers. The latter of the two cases to which I first referred, the Re Hobourn Aero Components Ltd.'s Air Raid Distress Fund, is a direct authority for saying that such a common quality does not constitute its possessors a section of the public for charitable purposes." The Compton test having been a deciding factor for the Lords in the Oppenheim case, it can be considered that the Compton test is still very significant today. However there has been some support for the view that if there is a preference made by the donor for specified individuals, in setting up the trust for the public or a large section of the public, the gift is sufficient in satisfying the element test. As was held in Re Koettgen [1954],[15]that the charitable character of the primary trust for the advancement of education being of a sufficiently public nature, regardless of the testator’s expressing their imperative wish that, in selecting beneficiaries, the trustee should give preference to the employees of a particular company and members of their families. It was held that it was at the stage when the primary class of eligible persons was ascertained that the question of the public nature of the trust arose to be decided. Doubts have been raised, however, as to whether this decision is consistent with the principles set out in Oppenheim. Lord MacDermott, the only dissenting judge in the Oppenheim case, pointed out that it is accepted that the poor and the blind are sections of the public, nonetheless what is more personal than poverty or blindness?[16]This issue

was then, yet again, raised by Lord Cross in Dingle v Turner [1972][17], that the division between personal and impersonal relationships, as was raised in the ‘ Compton test’, is ‘ very arbitrary and artificial rule’[18]. This case was concerned with the relief of poverty and therefore was held that the test is not applied to poverty cases with the same severity but rather that a payment to poor employees is satisfactory. Nonetheless, this case can be regarded as carrying the most important judgement since 1891, by Lord Macnaghten in the House of Lord in regards to charities and the classifications of charitable purposes. It offers new and more rational support for the Compton Rule of no personal nexus therefore a more generous view of a " section of the public".[19]Lord Simonds addressed the issue in the case being the personal nexus of the donors and the possible beneficiaries. He states that, although the beneficiaries are numerous ‘ the difficulty arises in regard to their common and distinguishing quality. That quality is being children of employees of one or other of a group of companies.’[20]Lord Normand agreed with Lord Simonds on the case, that the trust must be beneficial to the community or to a section of the community otherwise was not a charitable trust. This was decided with the other Lords coming to the same conclusion. Lord Macdermott, however, agreed the issue was whether the trust was of a public nature, or whether it was a trust to benefit private individuals. He believed that if the class of potential beneficiaries in an educational trust is substantial, and not ‘ obviously private in nature’, until the contrary appears, that the trust is for the benefit of the community and therefore this trust should be found charitable.[21]He argued that he does not believe that the Compton test can be ‘ generally applicable and

conclusive'.[22]Nonetheless majority of the court found the trust to be non-charitable due to the fact that it was not of a public nature, though the section of the public was numerous, the relationship with the donor and beneficiaries was personal and following preceding cases, such trusts cannot be found charitable. It is criticised that the motives of the personal nexus test are not very much clear. It is unclear whether the test is to prevent a creator of a trust from establishing an educational trust for members of a class with a personal connection with the donor, or whether it is to prevent a donor from establishing an educational trust for any group of individuals who share a personal connection, even though the connection is not with the donor. If the test is to prevent the second type of trust, it seems that the ' personal nexus' test is rather rigid, unnecessary and simply replaces judgement with uncertainty. To argue for charity status due to the exclusion of members of the public and the tie that binds the class is ' personal' is not convincing. This is because any trust may exclude members of the public and refer to personal circumstances e. g. Men in Scotland excludes women. However, had it been for the prevention of the former, then it can be justified on the ground that it prevents a donor from misusing the charitable status of a trust to obtain private benefits for himself e. g. tax relief and employee fringe benefits, and for persons in whom he has a direct interest, as in the Oppenheim case.[23]In this case it was held by the majority that, though the group of persons indicated was numerous, the nexus between them was employment by particular employers, and accordingly the trust did not satisfy the test of public benefit requisite to establish it as charitable. Having regard to the decisions of the Courtof Appeal in Re Compton, the courts of

the Oppenheim case were bound to declare the trust for the education of children of employees or former employees invalid, and an order was made soon after accordingly. Upon appeal to the Court of Appeal, the same view was taken and the appeal was dismissed. In neither Court was more than a formal decision given. It is a clearly established principle of the law of charity that a trust is not charitable unless it is directed to the public benefit. More recently, the guidance used by the Charity Commission in its assessments has become the object of legal scrutiny. In R (Independent Schools Council) v Charity Commission for England and Wales [2012][24]the statement made by Lord Simonds in Oppenheim had an effect in the consideration of whether private schools have a public benefit in this case. The Upper tax tribunal ‘ was at pains to point out that, for a fee-charging body to be charitable, it must have purposes that do not exclude the poor’.[25]This is sometimes stated in the proposition that it must benefit the community or a section of the community and that the benefited group must be sufficiently large to constitute a section of the public and there must be a benefit to the community. It appears that Oppenheim will carry on being used in future cases, however it may be that a general public benefit test may be searched for to apply to all purposes of a charitable trust. This would in turn make it easier for the courts to apply the test with confidence to all charitable trusts that may come before them. Furthermore, as stated above, in this case it was held that ‘ had the present trust been framed so as to provide for the education of the children of those engaged in the tobacco industry in a named county or town, it would have been a good charitable disposition’[26].

BIBLIOGRAPHY