

Charitable trusts, what gives them charitable status essay



For this assignment I will focus on charitable trusts, what gives them charitable status? It will be noted that the jurisdiction dates back to Tudor England and still provides the definition for charity.

I will address both the tax and trusts law which fall within this spectrum and certain Acts by law that need to be adhered to. My critical analysis and evaluations of this topic will lead to my conclusions dealing with present and past reform to change this 400 year plus Act. The legal definition of Charity has developed over several centuries. The Statute of Charitable Uses 1601 also referred to as Statute of Elizabeth was used as a guideline to establish which purposes were charitable. The preamble, has listed, purposes that at the time was regarded as charitable. These purposes fell within the 'spirit and intendment' of the preamble and were accepted by the courts as being charitable.

Charitable trusts are sometimes referred to as purpose trusts, which are designed to benefit society as a whole, or a particular section of it. A charitable trust has many advantages, one of which is that it may exist perpetually. The fundamental purpose of the trust is that it must be wholly and exclusively charitable. One of the Charity Commissions main prerogative is to increase the powers of the Commission to protect charities and the obligations of charities to account to the public. The functions of the Charity Commission is set out in the Charities Act 1993, which consolidates the Charities Act 1960 and 1992.

2 Under section 3(1) of the Charities Act 1993, the Charities Commission has an obligation to keep a Register of institutions that are charitable. The

Charity Commissioners exercise supervisory control over charities and one area is the permissible limits to political involvement by charities. The present law is, for an organisation to be charitable it must be subject to the jurisdiction of the High Court, the Charities Act 1993 s. 96 (1). The leading case of *Commissioners for Special Purposes of the Income Tax v Pemsel*³, has given us the present day definition of heads of charity, it became clear for the first time that relief from taxation might be tied in the definition of charity.

4 Lord Macnaghten laid down four heads of charity; 1. Relief of poverty, 2. Advancement of education, 3. Advancement of Religion, and 4. Other purposes which are beneficial to the community. The judgement in *Williams Trustees v IRC*⁵ indicates that in determining whether a trust is charitable, the trust must be regarded as within the 'spirit and intendment' of the Preamble.

Secondly that the purpose is beneficial to the community in a charitable way.

61. Relief of poverty Trusts for the relief of poverty are exempt from the public benefit requirement. Poverty in this sense does not mean that of destitute or being penniless. Courts under this head have been willing to allow trusts in order to assist categories known as 'distressed gentlefolk.'⁷ Only the poor can benefit.

Poverty can also be implied in the case of gifts to elderly or disabled recipient. 8It was held in *IRC v Oldham Training and Enterprise Council*⁹ that the object of Oldham TEC was to enable the set up of trade or business for

the unemployed and allow them to stand on their own feet. This is classed as a charitable trust which will relieve poverty in the local community. 102.

Advancement of educationThe preamble to the Act 1601 refers to, 'schools of learning, free schools, scholars in universities', but in more recent times this scope of education activities has become considerably wide. It now includes nurseries, adult education centres, societies dedicated to promoting training. Museums, zoos and public libraries may be educational to the public at large. Even cultural activities like music, drama and literature can come under this heading. 11The fiscal exemptions which charities enjoy, the dramatic increase in the rates of taxation from 1939 and the emphasis upon equality in education rather than selectivity prompt the asking of a different question. 12 The law of charity must not be allowed to develop into a tax-planning device for the tax-free education of the children of the wealthy, nor must employers, by setting up educational trusts for the children of their employees, be able to use it for commercial advantage.

13The charitable trusts enjoy two sorts of privilege. They enjoy the immunity from the rules against perpetuity and uncertainty and though individual potential beneficiaries cannot sue to enforce them the public interest arising under them is protected by the Attorney General. 14The initial intention for concept of charities was to in some way benefit the public. It can be in one way that a child educated to a high standard would be great for our economy but what if that child decides to move to another country. It does seem on another point that because a person is apart of a large company then they get the added benefit of the children being given an unfair advantage on the tax payers behalf. The general principle was laid down in *Re Compton*¹⁵ ' a <https://assignbuster.com/charitable-trusts-what-gives-them-charitable-status-essay/>

gift under which the beneficiaries are defined by reference to a purely personal relationship to a named propositus cannot be on principle be a valid gift.

'16 It was clear that there was a personal nexus between the beneficiary and the propositus by way of blood. The House of Lords decided to follow the test in Compton and adopt it in Oppenheim v Tobacco Securities Trust Co Ltd¹⁷ due to the fact that there was a personal relationship between the employees and the company. Examples can be drawn up to demonstrate the injustice which many feel occurred as a result of the present good law decisions in Compton and Oppenheim. In a trust for the benefit of the descendants of old boys, the relationship is once removed.

The beneficiaries are " would-be pupils" and not " actual pupils". In other words the class of beneficiaries is defined not by its relationships to the school, but by a relationship to the attendance at the named school. The first link, decendant-ancestor, is clearly personal; the second, ancestor-school, is not. Therefore, there is neither a direct contractual nexus nor a personal nexus between the potential pupil and either the named school or the grantor.

18From the example illustrated above we can clearly establish that this type of scenario is allowing institutions to obtain charitable status which currently follows present law, but is unfortunate that institutions who truly deserve the charitable immunity are not been given it. It does seem unfair that cases like this where it is held children of employees had a relationship of employment which was sufficiently personal. The Lords futhermore do not explain why a

contract of employment is personal. In *Dingle v Turner*¹⁹ it was pointed out that, 'poor members' and 'poor employees' decisions were a natural development of the 'poor relations' decisions and to draw a distinction between different sorts of 'poverty' trusts..

. the 'poor relations' and 'poor employees' trusts have been in existence for many years; there are now a large number of such trusts in existence and if correctly administered can only be give to poor persons. 20Lord Cross stated in his dissenting speech," If ever I should be called to pronounce on this question..

. I would as at present advised be inclined to draw a distinction between the practical matters of the Compton rule and the reasoning by which Lord Greene MR sought to justify it. That reasoning based on the distinction between personal and impersonal relationships - has never seemed to me very satisfactory and I have always - if I may say so - felt the force of the criticism to which my noble and learned friend Lord MacDermott subjected it in his dissenting speech in *Oppenheim*. For my part I would prefer to approach the problem on far broader lines." 21Lord Cross's obiter dicta statement in *Dingle* suggest that it would be it is not sensible to give tax benefits to all purposes and that the case should be looked upon on its individual merits. It suggests it should be separately justified from the exemption to perpetuity.

3. Advancement in religionThe only reference made with regard to religion in the Preamble is, the 'repair of churches.' It is necessary to show under this heading there is a benefit to the public and with acceptable evidence that

can be proved in court. Dillon J, remarked in *Re South Place Ethical Society*²² that religion is concerned with man's relations with God. ²³ The Buddhist faith however raises a problem here, in that it cannot be said that they believe in a supernatural or supreme being.

There religion is treated as an exception here and therefore a trust to advance Buddhism is treated as charitable. ²⁴⁴. Other purposes beneficial to the community A crematorium was held to be charitable in *Scottish Burial Reform & Cremation Society Ltd v Glasgow Corporation*²⁵ it is acceptable for monuments of commemoration. On the other hand it is not charitable to erect a monument to oneself. Lord Reid stated,'

.. The courts appear to be seeking an analogy between an object mentioned in the preamble and the object in order...

to reach a decision. Then they appear to have gone farther, and to have been satisfied if they could find an analogy between the object already held to be charitable and the new object claimed to be charitable...' ²⁶ The point made above has further extended the position, where judges appear to be allowing trust or institutions to gain charitable status even though they have little ingredient to the 'spirit and intendment' of the Preamble. Lord Wilberforce commented,"

.. the purpose in question, to be charitable, must be shown to be for the benefit of the public..

. within the intendment of the preamble... The latter requirement does not mean quite what it says; for it is now accepted that what must be regarded

is not the wording of the preamble itself, but the effect of decisions, which have endeavoured to keep the law as to charities moving according as new social needs arise or old one become obsolete or satisfied.” 27As stated above, ‘ it is not the wording of the preamble, but the effect of the decision’ the onus is upon the judges’ to make decisions that fall within the preamble.

To further this stance the courts and the Commissioners may be involved in subjective value judgements to see where a particular purpose falls within, this is more commonly in the place of educational purposes. 28Other types of purposes for the benefit to the community can fall under categories of; Trusts for the promotion of urban and rural revival; Trusts relating to the preservation of national heritage and to conservation of the environment; Trusts for the promotion of business ethics and responsibility; Trust for the promotion of fair trade. Trusts for recreational purposes (5th Head)Section 1 of the Recreational Charities Act 1958 states that it shall be deemed always to have been charitable to provide, assist in the provision of, facilities for recreation or other leisure-time occupation, if the facilities are provided in the interests of social welfare. 29 Where this act applies, the spirit of the Preamble seems no longer to be relevant and it must therefore be taken that the statute has added a fresh head of charity. 30Lord Hailsham, stated in *IRC v McMullen*³¹ that the law must change as ideas about social values change, two implications of this are 1. purposes not held charitable may be held to be charitable in the present society 2.

is that previously considered charities may not be held charitable. 32At first instance it was held that the requirement of social welfare in s. 1(1) implied that for a charity to succeed under the Act, the recipients must be limited to

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those who are in some way be 'deprived persons'...³³The lordships expressly refused to decide which approach to take.

This matter has been resolved in *Guild v IRC* 34 where the House of Lords favoured Bridge LJ's view. In *Guild*, it was held to be charitable under section 1 (1) and (2) of the 1958 Act and therefore was exempt from capital transfer tax. It was further accepted that the facilities of the sports centre were available to the public at large so that the conditions of subsection (2)(b)(ii) was satisfied. ³⁵The only time that Parliament intervened was by means of the Recreational Act 1958, this was as a result of the category becoming too close as in seen in *Guild*.

ReformThe ten charitable purposes that are listed below would make decision making simpler in establishing whether trusts or institutions are of charitable. 1. The prevention and relief of poverty. 2. The advancement of education. 3.

The advancement of religion. 4. The advancement of health. 5.

Social and community advancement. 6. The advancement of culture, arts and heritage. 7.

The advancement of amateur sport. 8. The promotion of human rights, conflict resolutions and reconciliation. 9. The advancement of environmental and protection and improvement. 10.

Other purposes beneficial to the community. ³⁶In conclusion to the topics discussed above, I conclude that many trusts are obtained for charitable status on the basis they would receive the benefits which are particularly <https://assignbuster.com/charitable-trusts-what-gives-them-charitable-status-essay/>

beneficial to large companies. It seems people who are required the relief from these charities are not obtaining them while alternatively those societies who do not necessary require the charities are obtaining the status. This is demonstrated in the cases reflecting Dingle. If the above ten charitable intentions were implemented into the law, then the courts and the Commissioners jobs would be made simpler in determining what trust falls within a charitable benefit.

However we still have the previous cases which would need to be looked at and that the societies who are receiving undeserved charitable immunity should be stripped of this.