CHAPTER FOUR

CHARITIES

There is no real definition of charitable trusts as such and the courts in Malaysia have not attempted one. The nearest that one can get to a definition in English law is but a classification of charitable trusts by Lord Macnaghten in Commissioners for Special Purposes of Income Tax v Pensel.[1] He classified the trusts which have been held to be charitable under four heads:-

(1) Trusts for the relief of poverty;

(2) Trusts for the Advancement of Education;

(3) Trusts for the Advancement of Religion; and

(4) Trusts for other purposes beneficial to the community not falling under any of the other three heads.

As the Malaysian courts have apparently accepted the basic principles of English trust law as our law, the above 'definition' will no doubt apply here.[2]

Before each of the above heads can be considered at length, it is pertiment to emphasise the requirement that a charitable trust, other than one for the relief of poverty, must have a public character.

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1. (1891) A.C. 531 at 583.

2. See section 3(1) of the Civil Law Act, 1956 (Revised - 1971 (Act 67)) and see also cases like Wan Naimah v Wan Mohd. Nawawai (1974) 1 MLJ 41 + Parameshiri Devi V Pure Life Society (1971)1MLJ 142

The Public Element in Charity

This requirement of a public element simply means that a trust is incapable of being charitable unless it is for the benefit of the public, or, at least, some section of the public.

There are numerous authorities for the above proposition. To mention but a few, there are the cases of Re Compton [3], where a trust for the education of the descendants of three named persons was held not to be a valid charitable trust because the trust had no public element, and Re Hobourne Air Raid Distress Fund.[4]

The "Compton" test, as it is commonly described, is used to determine if a particular class of potential beneficiaries constitute the public or a section of the public for purposes of the law of charities. The test focuses on the common and distinguishing quality which unites those within the class and asks whether that quality is essentially personal or essentially impersonal. In the former case, the class is a section of the public, in the latter, the class is not so.

It remains however whether the 'Compton' test should have any application to the law of charities in Malaysia.

It is humbly submitted that the Malaysian courts should not apply such a test in determining if a particular class of potential beneficiaries could be said to constitute a section of the public. The courts might apply the 'Compton' test to gifts for the advancement of education but no cases has yet considered the necessity of such a test.

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3. (1945) Ch 123

4. (1946) Ch 194

In Malaysia, no definition, or, for that matter, no discussion of what constitutes a sufficient section of the public for purposes of the law of charities has ever been made. The Malayan judges are apparently satisfied that public benefit is present so long as persons other than the testator and immedeate members of his family, derive some benefit, whether spiritual or temporal. Thus in Chang Tew Musy v Chang Chaow Lean Nee [5] and Lim Chooi Chuan v Lim Chew Chee [6], it was accepted that members of a "Seh" (or persons having the same surname) could constitute a section of the public, and the gifts for their benefit was therefore charitable. However, the argument that the descendants of an ancestor were so numerous that they could be said to constitute, not a family, but a class or tribe, and therefore a section of the public was rejected in the Singapore case of Re Tan Swee Hong [7]

Considering that the "Compton" test is not without its drawbacks, and the attitude of the Malayan judges, it may not be too impertinent to suggest that the Malaysian courts should formulate a test for public benefit. Mrs Then Bee Lian* in her article, "The Meaning of 'Charity' in Malaya" [8], submits that such a test should be based on two considerations, Firstly, the size of the class of potential beneficianes, and the need for such a purpose to be met and secondly, the public advantage of having that need met.

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5. 1950 SSLR 58

6. 1948 - 49 MLJ. Supp. 66

7. (1934) 3 MLJ. 5

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8. 1970 Malayan Law Review Vol 12 Page 1

Charitable Trusts for the Relief of Poverty

As already mentioned, trusts for the relief of poverty are considered charitable even though they are not for the benefit of the public or a section of it.

The English Charitable Uses Act 1601 included, among its objects set forth in the preamble, the relief of the "aged, impotent and poor". Although the word" and " is used, the English Courts have read the expression disjunctively.[9]

There is, however, still the question as to the meaning of "poor". It is well established in the English law of charities that "poor" does not mean destitution. An individual is considered to be poor if he is in genuinely sttaitened circumstances and is unable to maintain a very modest standard of living for himself and the persons (if any) dependent upon him.[10a] Furthermore, Lord Evershed M.R. said in Re Coulhurst,[10b]

"It may not unfairly be paraphrased for present purposes as meaning persons who have to"go 'short' in the ordinary acceptance of that term due regard being had to their status in life and so forth."

Thus, gifts for such objects as "ladies of limited means",[11] and "decayed actors" [12] and other similar purposes have been held to be charitable. Nevertheless it has to be mentioned that it is absolutely essential that all objects must fall within the purview of the word 'poor' if a trust for the relief of the poor is to be upheld. If someone who is not poor is to benefit, the gift will fail as a gift for the relief of the poor.[13]

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9. See Re Robinson (1951) Ch 198 where a gift for the old above 65 years was held to be valid charitable trust; and Re Lewis where a gift for blind children was similarly upheld.
10a. Mary Clark House Trustees v Anderson (1904)2KB 645. 10b (1951) Ch 661,665
11. Re Gardom (1914) 1 Ch. 662
12. Spiller v Maude (1881) 32 Ch.D. 158n.
13. See Re Gwyon (1930) 1 ch. 225

As regards the position in Malaysia, there has not been any known cases on the above point. But it is submitted that the Malaysian courts can be reasonably anticipated to follow the above cases.[14]

Be that as it may, the Malayan courts have upheld a few trusts for the relief of poverty. A number of such trusts were contained in provisions made by Muslim testators or settlors when they directed their executors to set up a Wakaf.

A Wakaf simply means the subjection of property to the fetters of a perpetual settlement in connection with religious or charitable objects of which the Almighty is assumed to approve. Some of the objects of Wakaf such as the relief of poverty are charitable since they conform to the law of charities. But others are too wide or uncertain to be considered likewise by the courts. While a provision by Muslim donors for the relief of poverty may seem to be motivated by religious sentiment and belief, the courts have not attached any significance to these gifts being embodied in cases where there were directions to set up a Wakaf. The nature of these gifts was determined solely according to the English law of charities.

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14. Since most of the relevent English cases are pre - 1956 cases and section 3 of the Civil Law Act 1956 should be applicable.

In Re Syed Shaik Alkaff,[15] a case decided by the Court of Appeal of the Straits Settlement, an Arab testator directed his executors to setpup a Wakaf and to distribute the rents and profit in "good works" for certain purposes, the first of which was for the purpose of benefitting blood relatives of the testator, his father and his brother, who might be in "indigent circumstances." He further directed that the balance of the income less the amount for this purpose was to go entirely to "good works."

Evidence was given that no indigent relatives were in existence. The issue therefore was whether in the "unusual circumstances" of the case, it could be said that the gift for indigent relatives was charitable. Whitley Ag.C.J. and Brown J. were of the opinion that the gift could not be charitable by reason of its association with the provision for "good works". They held that "good works" would include purposes which need not necessarily be charitable by the English law of charities. Barrett-Lennard J., however, was of the view that the gift would still be charitable under the circumstances.

Brown J. said[16] "The fact that, so far as is known no indigent relatives are yet in existence is not, I think, a ground for holding that the purpose has failed. Temporary failure is not total failure and no one can say that in this case there has been a total failure of the first object of the trust ...It is of course established

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15. (1923) 2 M.C. 38

16. (1923) 2 M.C. 66 - 67

that a continuing trust for poor relations is a good charity: White v White[17] but in all the cases .....there has been a definite or ascertainable sum set apart for the trust; and the judgement of Sir George Jessel M.R. in Attorney-General v Duke of Northumberland [18] shows clearly that the only ground upon which such a bequest is held to be charitable is that it is for the benefit of a class of the poor."

In the earlier case of Re Haji Esmail bin Kassim,[19] a Mohamedan testator directed his executors to set up a Wakaf for five purposes, one of which was for the maintenance of any of his children and their descendants and any other relatives who might be in "indigent circumstances."

Hyndman-Jones C.J., after explaining that the word "indigent" applied to the whole gift , held that the provision was "clearly charitable" and added; [20]

"Although an immediate gift to poor relations is a private gift, a perpetual trust to them is to be treated as a charitable gift for the poor with a preference for poor relations."

The above two cases bring out two points. Firstly, a testator's indigent relatives can be regarded as constituting a class of the poor. Secondly, a distinction existed between gifts for immediate distribution to poor relations and gifts of perpetual continuation to poor relations.

It may be pertinent to note too that in Re Haji Esmail bin Kassim [21] and Re Syed Shaikh Alkaff [22], alms for the poor, and a weekly

17. (1862) 7 Ves. 423
18. (1877) 7 Ch.D.745
19. (1911) 12 S.S.L.R. 74
20 Ibid. Page 81
21. Ibid Page 74
22. (1923) 2 M.C. 38.

distinction of meal or rice to the poor respectively were held to be valid charitable gifts. Similarly, a gift for surplus monies to be expended in purchasing clothes for the poor: Fatimah v Logan.[23]

Trusts for the advancement of Education.

In England the general rule has been conventionally stated that there must be an intention that learning should be imparted, not that it should be merely accumulated. This is a somewhat misleading yardstick because the tendency in most cases is to widen the scope and ambit of "education".

Nevertheless, the conventional meaning appears to have been adopted by Harman J. in Re Shaw.[24] In this case, Bernard Shaw, by his will, directed his trustees to use his residuary estate for a number of purposes, inter alia (i) inquiries into how much time per individual scribe would be saved by substituting for the established English alphabet one containing at least 40 letters (ii) to inquire how many persons were speaking and writing English in the usual form at any moment in the world (iii) to ascertain the time and labour wasted by at least 14 unequivocal syllables and (iv) to employ a phonetic expert to transliterate the testator's play " Androcles and the Lion" into the proposed English alphabet. It was held that the trust was not charitable for it merely tended to an increase of public knowledge in the advantages of the proposed alternative alphabet, there was no element of "teaching or education". In the words of Harman J: "If the object be the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching and education."

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23. (1871) 1 Ky. 255(Hackett J.,Penang)

24. (1957) 1 W.L.R. 729

The term 'education' was however given fresh consideration by Wilberforce J. in Re Hopkin's Will Trust.[25] The learned judge was unwilling to accept the words of Harman J. as meaning that the promotion of academic research was not a charitable purpose unless the reasearchers were engaged in teaching or education in the conventional sense. WilberforceJ. was of the view that the terms should be used in a wider sense, certainly as extending beyond teaching. Accordingly, he held that a gift to the 'Francis-Bacon Society' to be applied towards finding the 'Bacon-Shakespeare' manuscripts so as to " encourage the general study of the evidence of Francis Bacon's authorship of plays commonly ascribed to Shakespeare, "was within the ambit of a charitable purpose, viz., as that being for education.

The above decision can be considered to be part of a trend which has broadened the scope and ambit of 'education', from which Re Shaw[26] is an aberration. Thus in Re Delius[27] where the wife of the composer Delius, gave her residuary estate for the advancement of her husband's work, it was held that the purpose of the trust was to spread the knowledge and appreciation of Delius' work throughout the world and constituted an effective educational charity. Similarly, a gift for the erection and endowment of a Shakespeare Memorial National Theatre

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25. (1965) Ch. 669

26. Supra

27. (1957) Ch. 299

with the object of performing Shakespeare's plays, reviving English classical drama and stimulating the art of acting was held to be a good charitable trust for the advancement of education in the case of Re Shakespeare Memorial Trust [28].

In Royal Choral Society v I.R.C.[29] where the testator left money to form and maintain a choir in order to promote the practice of choral singing, it was held to be a valid charitable trust for the advancement of 'education.' Lord Greene,M.R. stated in the case: "In my opinion, a body of persons estqblished for the purpose of raising the artistic taste of the country, and established by an appropiate document which confines to that purpose, is established for educational purposes because the education of artistic taste is one of the most important things in the development of a civilised human being..... "

This case goes to show how widely the concept ofeducation has been extended so as to include, inter alia, the promotion of artistic and aesthetic tastes. But, although 'education' has been regarded as a concept of some width for the purposes of charity, there are limits beyond which the Courts will not go, such as was the case of Re Pinion [30]. A testator gave his studio and pictures, one of which was attributed to Lely, and some of which were painted by himself to the National Trust, to be kept intact in the studio, and maintained as a collection. It was found to be a fact that these collections were of poor quality and hence the trust failed as a charitable one.

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28. (1923) 2 Ch 398

29. (1943) 2. All. ER. 101

30. (1965) Ch. 85

As far as the Malaysian position is concerned, a relevant case is that of Tai Kian Luing v Tye Poh Sun [31]. In this case, the testator directed his trustees to establish a trust for named schools and hospitals in places specified in China. There was a further provision to the effect that "in the event of there being any new schools or hospitals in the aforesaid places in China being subsequently opened, the Head Trustee shall have full discretion and authority to include the same amongst the above".

It was held by Rigby J that the gift constituted a valid charitable trust. Considering the evidence, it could not be said that the trust was void for impossibility of performance. Be that as it may, Rigby J. went on to consider the consequences which might arise as a result of the trust being found to be subsequently incapable of performance. He was of the opinion that no general charitable intention could be inferred; therefore, there was a resulting trust in favour of the residuary legatees.

From the above case, one can perhaps conclude that the same considerations as regard trusts for the advancement of education apply in Malaysia as those in England.

Trusts for the advancement of Religion.

The English law has adopted a liberal attitude towards charitable trusts for the advancement of religion. In the words of Cross J. " As between different religions, the law stands neutral. But it assumes that any religion is, at least, likely to be better than none."

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31. 27 MLJ 78, a Penang case

Furthermore, Sir John Romilly, M.R. in Thorton v Howe[32] stated: "The general immoral tendency of (a) bequest would make it void..... But if this Court might consider the opinion sought to be propagated foolish or even devoid of foundation it would not, on that account, declare it void.....". Thus, so long as the religion exists, the English courts will not inquire into such questions as to whether the religion has intrinsic merits or whether it has a large following. Accordingly, in Thorton v Howe[33], Sir Romilly, M.R. recognised as charitable a trust for the publication of the work of one Joanna Southcott, even though he evidently thought her doctrines were ridiculous.

It also appears from the above case that any religion which is "not subversive of morality" was also applied by Ploughman J. in Re Watson[34] in upholding a turst for the publication and distribution of religious writings of no intrinsic value but which displayed a religious tendency.

Like other charitable trusts - with the exception of tursts for the relief of poverty - a religious trust must be for the benefit of the public, or a section. It is undoubtedly a difficult tast to assess public benefit in a religious trust. Nevertheless, the test has to be fulfilled.

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32. (1862) 31 Bear. 14

33. Ibid.

34. (1973) 1 W.L.R. 1472

This requirement was brought forth in the House of Lords decision in Gilmour v Coats[35]. In this controversial case, the trust fund was to be applied to the purposes of a Carmelite Convent which comprised of an association of nuns engaged only in intercessary prayers. The next-of-kin alleged that this was not a charitable trust because there was no public element. The House of Lords held that, in cases of tursts for the advancement of religion, the elements of public bene benefit must be capable of proof. The benefit must be tangible and objective. Hence, in the particular case, since there was no proof of the benefit of intercessory prayers, the trust failed as a charitable trust.

It has beeb suggested that far too stringent a test of public benefit was applied in Gilmour v Coats [36]. The Irish Court of Appeal decision of O'Hanlon v Logue [37] thus has cited as a better view. In this it was held that a gift for the celebration of ma sses, whether public or private, is for the advancement of religion. The Court took the broad view that masses can be a gift to God from which the law recognises that benefits, either spiritual or temporal, flow to the body of the worshipper. Palles C.B. thus said that the charitable nature of any divine service must depend not on the character of the act objectively but according to the doctrines of the religion. Therefore, so long as the 'divine service' did result in benefit, spiritual or temporal, to the public, the act must be deemed to be charitable, and this can only be seen by looking into the doctrines of the particular religion.

35. (1949) A.C 426

36. Ibid.

37. (1906) I.R. 247

However, it is humbly submitted that, quite apart from the reality that Gilmour v Coats[38] is a House of Lords decision, the above decision cannot be a better or more liberal view of the public element test.

The latter decision dealt with masses, to which rather different considerations have to be applied. Thus, the decision dealt with the particular rather than the general i.e. it dealt with a gift for the financing of a particular religious activity rather than a gift for the advancement of a particular religion or sect.

The above seem to be in accordance with the view of Professor Sheridan who is of the opinion that "it is difficult to say whether any given religion is for the public benefit or not ..... Perhaps the correct view of the law is that a gift for the advancement of a particular religion or faith or sect ..... are regarded as being for public benefit, while a gift for the financing of a particular activity or ritual of that faith .....is not ipso facto charitable... some advancement of religion amongst the public....or some material benefit to the public must be shown.....

A notable writer, Professor Newark, however, is of the view that the requirement of the public element is not really necessary. He states in his article 'Nature of Charity'[39] that this requirement has led to the Courts to search for and pretend to find a public benefit in the form of spiritual advantages which were not properly cognizable in courts of law. Thus the presence of some selfish interest should not necessarily be fatal.

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38. Supra

39. (1957) 23 MLJ LXXXIV

Charitable Religious Trusts Upheld in Malaysia.

It appears settled that trusts for the benefit of temples or mosques or some objects connected with the use of temples or mosques [40] constitute valid charitable trust at Malaysian law. In the words of Worley J. in Tan Chin Ngoh v Tan Chin Teat[41],

"It is well settled that a trust for the upkeep of a temple or joss house is a trust for the advancement of religion and therefore a good charitable trust."

As early as 1894, it was decided in the case of Attorney-General v Thirporee Soonderee [42] that a gift to a person for the benefit of a Hindu Temple was charitable. In the same case, a gift to an Hindu idol, "Shee Dhar", an object in the temple was held to be void as an absurdity. Professor Sheridan [43] has criticised this decision which evidently was decided in ignorance of the principle that a trust shall not fail for want of a trustee.

The above argument was put forward by counsel who pleaded that some allowance ought to be made for the ignorance of the natives who were unable to express themselves - that they meant to express a gift to a person on trust for the temple. Apparently, counsel did not state his case clearly for Ford J. said that a gift to an idol on trust for the temple is equally absurd as the idol could not possibly be a trustee.

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40. See Re Abdul Gumy Abdullasa(1936) 5 M.L.J. 194 where it was held that a trust for keeping a lamp burning in a mosque was held to be charitable; and see also Haji Salleh v Haji Abdullah(1935) 4 M.L.J. 26 where the court held that usage of a mosque constitutes a presumptive evidence of its dedication.
41. (1946) 12 M.L.J. 159,163
42. (1874) 1 Ky. 377.
43. In "Nature of Charity" (1957) 23 M.L.J. LXXXVI

In Re Low Kim Pong's Settlement[44], a donor conveyed land to a Buddhist priest on trust to erect or cause to be erected, a temple for the perpetual worship of certain divinities. The priest or his successors were empowered to use such portion of the land, as might not be used in connection with the temple, for growing fruit trees or for such other purposes as they thought fit.

McElwaine C.J. upheld the whole gift as being for the purposes of establishing a temple and for its endowment; that the provision for growing fruit trees was intended as an endowment for the temple. He was of the view that the particular case was a much stronger one than Re Garrand[45].

Where the gift specifies the carrying out of certain purposes, it may fail for uncertainty[46]. In Lim Chooi Chuan v Lim Chew Chee[47] Bastick-Hill J. found that he could not overcome the problem of uncertainty. A granter had directed a temple to be used for all or any of the following purposes:-

(a) for ancestral worship and religious rites and sacrificial offerings

(b) for all kinds of meeting connected with the temple

(c) for studying and preaching and teaching

(d) for any other purposes calculated or tending, in theopinion of the trustees, to improve or benefit the moral, social or intellectual condition of the adherents of the temple

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44. (1938) 7 M.L.J. 119

45. (1907) 1 Ch.382, where it was held that £400/- bequeathed to a vicar and church wardens "to be applied by them as theyshall in their sole discretion think fit," was a good charitable gift for ecclesiastical purposes of the parish.

46. See Farley v Westminister Bank(1939 A.C. 430

47. (1948-49) M.L.J. Supp.66

Bostock-Hill J. said that the gift to found a temple where all members of a "Seh" may carry out ancestral worship and sacrificial offerings was charitable because all the members of the Seh would form a section of the public, and they would all benefit from the gift. Nevertheless, he held that the gift failed on the ground that the grantor had specified "other purposes" for which the temple was to be used. He said: "It seems to be settled that in order to be charitable a trust must not only be declared in favour of objects of a charitable nature but it must also be expressed that in its application it is confined to such objects."

Since the objects of the gift were not so confined, he held the gift void for uncertainty.

Be that as it may, it seems difficult to follow and accept the above line of reasoning. If the non-charitable purpose of ancestral worship [48] or sacrificial offering can be converted into a charitable one by the provision of a temple, it would seem to follow that this should also apply to all the other purposes. The matter of uncertainty would then be orrelevent. Furthermore, all the other purposes specified were essentially a part of the proceedings in a temple of theis kind.

Chinese Ancestral Worship

Trusts for Chinese ancestral worship can be broken up into gifts for the purpose of Sin Chew ceremoniew, which are sacrificial offerings for the testator's soul in accordance with Chinese custom and gifts for Chin Shang ceremonies, which are ceremonies carried out

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48. See Yeap Cheah Neo v. Ong Cheng Neo (1875) L.R. 6 P.C. 381 and other cases in the following pages.

for the purposes of ancestral worship.

On the question whether such trusts are valid charitable trusts, it seems settled that the law is that they are not charitable, on the ground tht they lacked the element of public benefit.

The above point was well brought out in the Privy Council case Yeap Cheah Neo v Ong Cheng Neo [49], which held that a trust requiring ancestor worship was not charitable for the advancement of religion. In this case, the testatrix had made a dedication of a Sow-Chong House for carrying out Sin Chew ceremonies. These ceremonies were to last forever. Sir Montague E. Smith expressed the opinion of the Privy Council that the observance of Sin Chew ceremonies could lead to no public benefit as they tended to benefit only the testatrix and her family.

Although no actual reasons were given by the Privy Council for holding that a trust for Chinese ancestor worship was not a charitable trust, Professor Newark [50] is of the opinion that the gift for Sin Chew ceremonies was clearly one where the selfish benefit to the testatrix and her deceased husband was not one merely predominant but exclusive. He further even went on to the extent of describing the ceremony as a "pagan rite" because no worship was rendered nor supplication made to any superior being and consequestly no benefit was expected in return.

He came to the above two conclusions after applying two possible tests formulated by himself. His first test was to inquire which is

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49. (1875) L.R. 6 P.C 381

50. F.H. Newark 'Public benefit and Religious Trusts' (1946) 62 LQR 234

the predominant object of the trust by asking the question whether it is for advancement of religion carrying with it some selfish benefit to the individual, or whether it is a trust to secure a benefit to an individual which, because of the method by which it is directed to be carried out, incidentally tends towards the advancement of religion. His second test was " to inquire, no matter which object is predominant, whether the trust will substantially advance religion. Even though the primary object..... is a selfish benefit, yet if the advancement is not soight and speculative, then the trust will be charitable." Professor Newark defined religion as follows: "Religion we can define as a doctrine recognising the spiritual sovereignty of a superior being and which enjoins acts which honor or supplicate this being, and the advancement of religion comprises all those devices which tend to advance such doctrine as to increase the frequency or make more convenient or dignified the practice of such acts."

The Privy Council had drawn an analogy between Sin Chew ceremonies and the saying of masses. According to Professor Newark, the two ceremonies are clearly distinguishable because the purpose of Sin Chew was to benefit the testator and other deceased persons for whom the ceremonies were performed but the sacrament of the mass was for the benefit of all members, past and present, of the Catholic Church.

Furthermore, in Chao Choon Neo v Spottiswoode[51], Maxwell C.J. held that a trust for Chinese ancestor warship was not charitable because "its object is solely for the testator himself, and although the descendants are supposed incidentally, to derive from the performance of Sin Chew ceremonies, the advantage of pleasing God and escaping the danger of

51. (1869) 1 Ky. 216

being haunted, these advantages are obviously not the object of the testator nor if they were, would they be of such a character as to bring this devise within the design of charitable as used by our courts in reference to such objects."

However, it may be pertinent to enquire, at this juncture, whether a trust for Chinese ancestor worship is not a valid charitable trust for the advancement of religion, is a valid purpose trust, or what is sometimes refered to as a trust of imperfect obligation.

Cases in Malaysia and Singapore have held that such trusts are valid purpose trusts, provided they do not conflict with the rule of perpetuity. In the Malaysian case of Phan Kin Thin v Phan Kwan Ying[52] the testator having left certain shares of his father's estate to his father's "Chin-Shong", Murray-Aynsley J., after refering to Re Yap Kwan Seng [53] where Sproule,J., held that the English rule against perpetuities applied to to the F.M.S. and to the cases of Yeap Cheah Neo v Ong Cheng Neo[54] and Chao Choon Nee v Spottiswoode[55] , which held that such a bequest was not a charity, held that a bequest for Chin-Shong is a good gift provided it did not exceed the period of perpetuity.

The Singapore case of The British Malaya Trustee and Executor Co.Ltd V Khoo Seng Seng [56] support the above decision. In this case, Terrell, J. was of the opinion that Yeap Cheah Neo v Ong Cheng Neo[57] was not an authority for the proposition that a trust for Chinese ancestor worship

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52. (1940) 9 M.L.J. 44
53. (1924) 4 F.M.S. LR 313
54. (1869) 1 Ky. 216
55. (1875) LR 6 PC 381
56. (1933) 2 M.L.J. 119
57. Supra.

could not be a valid purpose trust. That case merely held that a gift for Sin Chew purposes which was to continue forever was bad as offending the rule against perpetuities and as not being a charity. Accordingly, the learned judge held that a devise for Sin Chew ceremonies was a valid non-charitable purpose trust, and even though the gift was not limited to less than 21 years but for the "lives of Queen Victoria and her descendants now in being and during the lives and life of the survivors and survivor of them, and during the period of 21 years after the death of such survivor," it was held that this was not against the rule of perpetuity.

It has to be noted that the above two decisions of the High Court of Malaysia and Singapore were decided before the English decsion of Re Endocott [58] which seem to lay down the proposition that all trusts must have human beneficiaries, except for purpose trusts for the benefit of animals and monuments. If this be the case, it is very doubtful whether our Federal Court will hold trusts for Chinese ancestor worship to be valid purpose trust, should a case go before it for decision. (In the light of 53 of the Civil Law Act(Revised) 1956, the case of Re Endocott [59] may not even be applicable).

Trusts for other Purposes beneficial to the Community.

It is really quite impossible to devise a satisfactory test to decide whether any particular purpose trust fall under this heading. But nevertheless, in the case of D'Aguiar v R.C. [60] , the Privy council attempted to provide a test to decide whether a trust could fall within this category or head. It involves 3 steps.

1. The Court must consider the judicial decisions on this head and then try to see whether they can be said to apply to the problem before it by extension or analogy.

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58. (1960) Ch. 232

59. Ibid.

60. (1970) 15 WLR.

2. Does the purported trust come within the analogy? If it does, then it would fall under this head.

3. Will the property of the purported trust be applied for purposes falling outside the scope of charity? If it does it cannot be charitable, for the rule is that the trust must exclusively charitable.

4. A trust for animals is a valid charitable trust under this head not on the ground that they benefit the animals but on the ground that they produce a benefit to mankind. Thus, in Re Hedgwood [61], a trust for the protection and benefit of animals was held to be charitable on the ground, according to Cozens-Hardy, M.R., that it [62] tends to promote punlic morality by checking the innate tendency to cruelty," and in the same case Eady L.J. observed [63] " a gift for the benefit and protection of animals tends to promote and encourage kindness towards them, to discourage cruelty, and to ameliorate the condition of the brute creation, and thus to stimulate human and generous sentiments in man towards the lower animals; and by these means promote feelings of humanity and morality generally, repress brutality and thus elevate the human race."

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61. (1915) 1 Ch 113

62. Ibid at pg. 117; 324

63. Ibid at pg. 122; 327

Accordingly a bequest "for the establishment of a hospital in which animals, which are useful to mankind, should be properly treated and cured and the nature of their diseases investigated with a view to public advantage," was held to be charitable in University of London v Harrow[64] and in Re Douglas[65], the Home for Lost Dogs was said to be a charitable institution.

To be charitable, however, the gift must be regarded as producing a benefit to mankind, and in this sense for the public benefit. The limits were passed, and the gift accordingly heldnot to be be charitable in Re Grove-Grady[66] where the purpose was to provide "a refuge or refuges for the preservation of all animals, birds or other creatures not human ..... so that (they) shall be safe from molestation or destruction by man". The purpose was held not to afford any advantage to animals that are useful to mankind in particular, or any protection from cruelty to animals generally and not to denote any elevating lesson to mankind.

B. Hospitals and Places for Relief of Distress.

A gift for the relief of the sick is charitable and it has always been assumed that gifts for the ordinary hospitals, which were supported by voluntary contributions, were charitable as opposed to private nursing homes run for profit.

C. Increasing the efficiency of the Police and Armed Forces and Similar Object:

To increase the efficiency of the armed forces or the police

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64. (1857) 1 De G and J 72 at pg.79

65. (1887) 35 Ch D 472. C. A.

66. (1923) 1 Ch. 557.

forces is a charitable purpose, and gifts calculated to have this effect are accordingly charitable, for instance gifts for the benefit of a volunteer corp [67], for teaching shooting [68] and to protect the defence of the United Kingdom from the attack of hostile aircraft [69].

D. Gift to town, village or country.

It must be for the whole town, village or country. In Re Smith [70], a gift of residue "unto my country England to and for ..... own use and benefit absolutely" was held to be charitable.

E. Recreation:

The gift must be solely for recreation only.

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67. Re Lord Stratheden and Campbell (1894) 3 Ch. 265

68. Re Stephens (1892) 8 T.L.R. 792

69. Re Driffill (1949) 2 All ER 933

70. (1932) 1 Ch. 153.