

## RELIGIOUS OBSERVANCES AND THE ELEMENT OF PUBLIC BENEFIT

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### Introduction

All human beings contemplate the prospect of death with solemnity. While Peter Pan may have looked on it as a great adventure men and women alike have often sought by their testamentary dispositions to give directions, sometimes elaborate, sometimes simple, about their funerals. Moreover, prayers for the repose of souls of the dead have a long tradition in the Christian church. Thus charity foundations with considerable endowments lent support to a large number of stipendiary priests. Within the Catholic faith, as Professor Jordan has pointed out, many smaller capital gifts were left to secure in perpetuity or for a prescribed number of years: obits, anniversary masses, and other carefully arranged masses for the soul of a deceased testator.<sup>2</sup> And a host of wills left by humble or more sceptical men left money for a single mass, an anniversary dirge or a trental of masses.<sup>3</sup>

The position of such commemorative observances has provided the English courts with a number of difficulties in relation to the charitable nature of gifts to support such observances. And these difficulties have centred on the question whether the gift in question is for the public benefit.

The purpose of this article is to examine some of these difficulties not merely in relation to religious observances familiar to the Christian church but in the context of gifts to support other religious observances traditional within other leading religions, as for example the Jewish faith, Islam, Hinduism and Buddhism, all of which have substantial support in a multi-racial and multi-cultural Britain.

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<sup>2</sup> W K Jordan, *Philanthropy in England 1480 - 1660* [1959] 51.

<sup>3</sup> Ibid.

### Masses for the Dead

The position of masses for the repose of souls was not decisively established in England until the relatively recent case of *Re Hetherington's Will Trusts* [1990] Ch1<sup>4</sup>. It had been held in *Bourne v Keane* [1919] AC 875 that gifts for the celebration of masses for the repose of souls were neither superstitious uses nor invalid. The case of *Bourne v Keane* was only concerned with the legal validity of bequests for masses: it did not consider whether they were charitable. However, fifteen years later Luxmoore J in *Re Caus* [1934] 1 Ch 162 held that they were. Gifts for the saying of masses were, he held, for the advancement of religion (i) because they enable a ritual act to be performed which is the central act of the religion of a large proportion of Christian people and (ii) because they assist in the endowment of priests whose duty it is to perform the act. In reaching this conclusion Luxmoore J was much influenced by the decision of Palles CB in the Irish case of *O'Hanlon v Logue* [1906] IR 247. However, the Court of Appeal in *Re Coats Trusts* [1948] Ch 340 doubted the correctness of Luxmoore J's reasoning and in the same case (*Gilmour v Coats*) the House of Lords expressly reserved its right to comment on the soundness of Luxmoore J's decision and of the Irish cases.

The attitude of the Irish courts has not always been entirely consistent, although the position today is settled enough. In *A-G v Delaney* which came before the Court of Exchequer in 1876 a gift for masses was held not to be charitable on the ground that there was no element of public benefit in the gift in question. Palles CB observed that if the will had expressly required the masses to be said in *public* then the gift would probably have been charitable, but despite the Chief Baron's dictum gifts for masses to be celebrated in public continued to be treated as non-charitable. Despite those earlier doubts the Irish Court of Appeal abandoned in *O'Hanlon v Logue* the distinction previously made between public and private masses, holding both to be charitable objects. Palles CB had an opportunity to reconsider the negative opinion which he had expressed in *A-G v Delaney* (1876) IR 10 Ch 104 and concluded that it could no longer stand. Gifts for the celebration of masses were, he said, charitable (1) because of their piety; (2) because they were devoted to the support and maintenance of the clergymen, the celebrants. The Chief Baron took the view that the court was entitled to accept the teaching of the Catholic Church regarding the mass as sufficient to establish the necessary element of public benefit and the other members of the court concurred in this view.

In *Re Hetherington's Will Trusts* the testatrix by her will made in holograph form left inter alia "£2000 to the Roman Catholic Church Bishop of Westminster for masses for the repose of the souls of my husband and my parents and my sisters and also myself when I die" and the residue of her estate to the Roman Catholic Church, St

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<sup>4</sup> For a detailed discussion of the previous position see Picarda *Law and Practice Relating to Charities* (1977) 65-66. See C F Rickett *An Anti Roman Catholic Bias in the Law of Charity* [1990] Conv. 34-44; Hopkins (1989) 48 CLJ 373; Sherrin, *Public Benefit in Trusts for the Advancement of Religion* (1990) 32 Malaya Law Review 114.

Edwards, Golders Green for masses for her soul. Sir Nicolas Browne-Wilkinson V-C upheld both these bequests as valid charitable trusts for the saying of masses in *public*, the evidence given in the case having established the public nature of the masses. He summarised the principles established by the cases thus<sup>5</sup>:

- (1) A trust for the advancement of education, the relief of poverty or the advancement of religion is *prima facie* charitable and assumed to be for the public benefit; *National Antivivisection Society v Inland Revenue Commissioners* [1948] AC 31, 42 and 65. This assumption of public benefit can be rebutted by showing that in fact the particular trust in question cannot operate so as to confer a legally recognised benefit on the public, as in *Gilmour v Coats* [1949] AC 426.
- (2) The celebration of a religious rite in public does confer a sufficient public benefit because of the edifying and improving effects of such celebration on the members of the public who attend. As Lord Reid said in *Gilmour v Coats* [1949] AC 426, 459:

"A religion can be regarded as beneficial without it being necessary to assume that all its beliefs are true, and a religious service can be regarded as beneficial to all those who attend it without it being necessary to determine the spiritual efficacy of that service or to accept any particular belief about it."

- (3) The celebration of a religious rite in private does not contain the necessary element of public benefit since any benefit of prayer or example is incapable of proof in the legal sense, and any element of edification is limited to a private, not public, class of those present at the celebration: see *Gilmour v Coats*; *Yeap Cheah Neo v Ong Cheng Neo* (1875) LR 6 PC 381 and *Hoare v Hoare* (1886) 56 LT 147.

Sir Nicolas Browne-Wilkinson then fixed on the fact that the trust before him did not specifically direct how the masses were to be said, in other words whether they had to be said in public or in private. This enabled what was in effect a benignant construction. For he added this observation <sup>6</sup>:

"Where there is a gift for a religious purpose which could be carried out in a way which is beneficial to the public (i.e., by public masses) but could also be carried out in a way which would not have sufficient element of public benefit (i.e., say private masses) the gift is to be construed as a gift to be carried out only by the methods that are charitable, all non-charitable methods being excluded."

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<sup>5</sup> [1990] Ch 1 at 12D-G

<sup>6</sup> [1990] Ch 1 at 124-13A

Accordingly, he held the gift to be one for saying masses in public<sup>7</sup> and therefore charitable.

## Jewish rituals

### Kaddish

In *Re Michel's Trust* (1860) 28 Beav 39, a Jewish testator had left £10 per annum to be paid to the parnosim or wardens of the congregation of Ostrovesy near Opoteir in Little Poland upon trust to pay the said sum "to three qualified persons, chosen by them from and out of my family, to learn in their Beth Hammadrass or college, two hours daily forever, and on every anniversary of my death, to say the prayer called in Hebrew Candish<sup>8</sup> and in case there should be no one of my family qualified thereto then or in such case the said parnosim or wardens [do] pay the same to three persons qualified".

It was stated to the court that the term to "learn in the Beth Hammadrass or college for two hours daily" signified to study either the Bible or the Talmud, and that the "Candish" was a short Hebrew prayer in praise of God and expressive of resignation to His will. Both practices were acts of piety and it was said the prayer was generally said by the sons of the deceased during the year of mourning and on the anniversary of the death, and if there were no sons it was said either by relatives or by some other person.

Sir John Romilly MR had no doubt about the validity of the bequest. Jewish charities were on the same footing as Roman Catholic charities and he found nothing superstitious in the gift. Although he had difficulty in seeing how if it was part of the forms of the Jewish or any religion that prayers should be said for the benefit of the souls of deceased persons it could be deemed superstitious, there was nothing said as to the praying for the soul of anyone in the gift before him. Candish on the evidence was but a short Hebrew prayer in praise of Almighty God and had no reference to praying for the souls of founders. It was no more superstitious than saying the Lord's Prayer on the anniversary of the death of the birthday of the founder. The decision has however been criticised on the ground that no element of public benefit appeared to be present. There was certainly no express requirement that the prayers should be said in public.<sup>9</sup> However the modern tendency is to construe such gifts benignantly,

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<sup>7</sup> The evidence showed that the masses would be said *in public*.

<sup>8</sup> Kaddish. For a description of the Kaddish, see Rabbi H Rabinowicz, *A Guide to Life: Jewish Laws and Customs of Mourning* (3rd ed 1982) Jewish Chronicle Publications, Chapter VII.

<sup>9</sup> Private prayer is not charitable: *Re Joy* (1888) 60 LT 175; *Hoare v Hoare* (1886) 56 LT 147.

as being gifts for public prayer, unless the contrary is expressly provided by the terms of the gift.<sup>10</sup>

### Yahrzeit<sup>11</sup>

In New York, where there is a very large Jewish community, a gift for Yahrzeit, which is an annual prayer for the repose of a soul in the Jewish religion, was held to be for a charitable religious purpose.<sup>12</sup> If such prayers are expressly required to be said in public, a gift to endow the saying of Yahrzeit prayers should be accounted charitable under English law. And a benignant construction would uphold such a gift so long as there was no requirement that the Yahrzeit prayers should be said in private.<sup>13</sup>

### Islamic observances and practices

Various Islamic observances and practices have been the subject matter of judicial decision in Singapore and Malaysia. The observances and practices which have there failed to qualify as objects of charity have either lacked the necessary element of public benefit or have not been confined to strictly charitable objects according to the notions of English law.

### Observances

Muslims have a religious duty to make a pilgrimage to Mecca once during their lives. In *Re Hadjee Esmail bin Kessim* (1911) 12 SSLR 74 (Singapore) a gift "for pilgrimages to Mecca" was held not to be charitable: there was no evidence or indeed any suggestion that such pilgrimages did anything more than merely solace the pilgrim and possibly his family.<sup>14</sup> There was indeed no evidence or suggestion of any public benefit in the particular gift. Organised pilgrimages might however stand on a different footing.

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<sup>10</sup> *Re Hetherington* [1990] Ch1 (gift for masses).

<sup>11</sup> For a description of the Yahrzeit, see Rabinowicz op cit, Chapter IX.

<sup>12</sup> *Re Breckwoldt's Estate* 27 NYS 2d 938 (1941); *Re Steiner's Estate* 16 NYS 2d 613 (1939).

<sup>13</sup> See *Re Hetherington* supra.

<sup>14</sup> Ibid at 80.

Sacrifices for a testator's soul are too private to be charitable<sup>15</sup> and reading the Koran at the testator's grave or in his name serves no identifiable public benefit.<sup>16</sup>

Again, Malay *kandoories* "which are feasts in honour of a deceased attended by his relations and are held on the anniversary of the testator's death"<sup>17</sup> are not normally held charitable because no public benefit accrues from such feasts.<sup>18</sup> But if participation in the *kandoories* is restricted to poor persons the *kandoories* may be charitable.<sup>19</sup> The distribution of alms and rice at the end of ceremonies of reciting prayers in the names of Saint Mohammed and other Muslim Saints and dead persons, the alms going to the poor and rice being distributed to all present, was held charitable in *Re Abdul Guny Abdullasa* (1936) 5 MLJ 174 (Penang). The ceremonies were not in perpetuation of the name of the deceased nor were his relatives enjoined to attend. So the particular gift was held to be for the advancement of religion.

### Hindu ceremonies and rituals

There are no cases in England dealing with Hindu ceremonies and rituals so it is necessary to turn to India and Sri Lanka (formerly Ceylon) for guidance. The English law of charities as developed on the lines of the preamble to the Statute of Elizabeth I and its former doctrine of superstitious uses<sup>20</sup> has no application in India. However, the Indian courts have consistently upheld trusts for the performance of 'Sradhs' of the donor or other members of his family.<sup>21</sup> On the analogy of the charitability of Zoroastrian *muktad* ceremonies (which were acts of worship imposed as a religious duty on Zoroastrians and believed by them to confer temporal and spiritual benefits on the whole community and indeed on all mankind and the universe) Indian courts would uphold trusts for the reading of Hindu sacred books and other trusts believed

<sup>15</sup> *Re Hadjee Esmail bin Kessi* (1911) 12 SSLR 74.

<sup>16</sup> *Re Alsagoff's Trusts* (1955) 22 MLJ 224 (Singapore).

<sup>17</sup> *Re Abdul Guny Abdullasa* (1936) 5 MLJ 174 at 176 per Gordon Smith J (Penang).

<sup>18</sup> *Fatimah v Logan* (1871) 1 Ky 255 (Penang); *Mustan Bee v Shina Tomby* (1882) 1 Ky 580 (Penang); *Ashabee v Mahomed Hashim* (1887) 4 Ky 212 (Penang).

<sup>19</sup> *Re Hadji Daeing Tahira binte Daeing Tedelleh's Estate* (1947) 14 MLJ 62 (Singapore).

<sup>20</sup> See *Fatimah Bibi v Adv Gen of Bombay* (1881) ILR 6 Bom 42; *Das Mercies v Cones* (1864) 2 Hyde 65; *Andrews v Joakim* (1859) 2 BLR OC 148 (gift for performing records in Calcutta valid); *Joseph Ezekiel Judah v Aaron Hye* (1870) 5 BLR OC 433 (alms for spiritual benefit of deceased Hebrew merchant void); *The Most Reverend Joseph Colgan v Administrator General of Madras* (1892) ILR 15 Mad 424 (gift for perpetual masses for the benefit of the soul of the testatrix and other souls in purgatory void as conferring no public benefit).

<sup>21</sup> *Dwarka Nath Bysack v Burroda Persaud Bysack* (1879) ILR 4 Cal 443 (periodical offering of obligations to deceased ancestors and relatives for propitiation of their souls).

by Hindus to advance religion. On the footing that once it is proved undoubtedly to be a belief of the religious community in question "a secular judge is bound to accept that belief - it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be in advancement of his religion and for the welfare of his community or of mankind".<sup>22</sup>

The point is made by one commentator<sup>23</sup> that while according to the Indian authorities the court can decide whether an object is charitable or not it cannot enter into the merits of a particular religious doctrine and must therefore remain neutral. The same commentator adds:<sup>24</sup>

"The divine service of a particular religion is defined by the doctrines of the religion itself and no court can appreciate their spiritual efficacy, unless it knows these doctrines and hypothetically admits them to be true. In controversial matters the court cannot possibly decide whether the doctrines are beneficial to the community or not. It has got to act upon the belief of the members of the community concerned, and unless these beliefs are per se immoral or opposed to public policy, it cannot exclude those who profess any lawful creed from the benefit of charitable gifts."

This approach does not match the present tendency of the English courts which would, it seems, apply the test whether the particular ceremonies were attended by the public or a sufficient section of it.

Hindu religious rituals have also been the subject of judicial decision in Sri Lanka (formerly Ceylon) where various trusts for assorted ritualistic purposes have been upheld as charitable without any, or any real, discussion of public benefit.<sup>25</sup> For example, trusts for performing ceremonies at a Hindu shrine have been upheld as charitable<sup>26</sup> with no reference to the principles declared in *Gilmour v Coats* [1948] AC 426. See also L J M Cooray, *The Reception in Ceylon of the English Trust* (1971)

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<sup>22</sup> *Jamshedji Cursetji v Soonabai* (1907) ILR 33 Bomb 122 (income of properties bequeathed by Parsi to be used in perpetuity for the purpose of performing *muktad baj*, *vyezashni* and other ceremonies: charitable) following *O'Hanlon v Logue* [1906] IR 247

<sup>23</sup> Mukherjea, *Hindu Law of Religious and Charitable Trusts* (3rd ed 1970) 51.

<sup>24</sup> *Ibid* at 51.

<sup>25</sup> *Mohamadu v Meera* (1923) 24 NLR 390; *Ambalavanar v Somasunderam* (1946) 48 NLR 61 (observances on Hindu festival days); *Fernando v Sivasubramaniam* (1959) 61 NLR 241 (bathing of idols and offering of food to a deity on festival days). Trusts to keep a lamp burning in a temple have also been upheld: *Mohamadu v Meyedem* (1916) 2 CWR 93; *Sequ v Sultan* (1916) 4 CAC 49; *Ratgama v Caldera* (1956) 58 NLR 331.

<sup>26</sup> *Supprananiam v Erampakural* (1922) 22 NLR 417; *Ambalavanar v Somasunderam* (1946) 48 NLR 61.



168. Such decisions must therefore be of limited value in jurisdictions where a public benefit element is insisted upon by the courts, unless by chance they lead to the conclusion that the public benefit requirement in religious trusts should be redefined.

### **Chinese religious observances**

Chinese religious observances and filial piety are often intermingled; and ancestral worship and ceremonies for commemorating the soul of a deceased person have presented the courts of, notably, Hong Kong, Singapore and Malaysia with the same questions of public benefit and, occasionally, with the same questions of superstitious uses as have arisen in England.<sup>27</sup>

### **Sin Chew (or Choo)**

Sin Chew is a ceremony performed by the relatives of a deceased person at certain periods before a monumental tablet erected to the dead in a house dedicated for this purpose.<sup>28</sup> Food is placed before the tablet to appease the spirits of the deceased and prayers are offered so that the spirits may not haunt the relatives of the deceased.<sup>29</sup> The purpose of such ceremonies is analysed by Maxwell CJ as follows:

"The primary object of the ceremony is to show respect and reverence to the deceased, to preserve his memory in this world, and to supply his wants in the other. Its performance is agreeable to God, the Supreme, all seeing, all knowing and invisible being who assists and prospers those who are regular in this duty, and its neglect entails disgrace on the neglected spirit which then leaves its abode (either the grave or the house where the tablet rests) and wanders about, an outcast, begging of the more fortunate spirits and haunting and tormenting his negligent descendants and mankind generally. To avert the latter evil the wealthier Chinese hold in the seventh month every year, a general public offering or sacrifice called Kee-Too or Poh-Toh for the benefit of all the poor spirits..... Its object is solely for the benefit of 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 being haunted, those advantages are obviously not the object of the testator, nor if they were, would they

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<sup>27</sup> See K L Ter *Charities - Cases and Materials* (1985); and see also Then Bee Lian *The Meaning of 'Charity' in Malaya* (1969) 11 *Malaya Law Rev* 120-149.

<sup>28</sup> *Re Wan Eng Kiat Will Trusts* [1931] SSLR 57 at 58-59 (Singapore).

<sup>29</sup> *Ibid* at 59. For a fuller and classic description, see the judgment of Sir P Benson Maxwell CJ of Singapore in *Choa Choon Neon v Spottiswoode* (1869) Ky 216.



be of such a character as to bring this devise within the designation of charitable, as used by our courts in reference to such objects."

The dedication of property to Sin Chew purposes has been said to bear a close analogy to gifts to priests for celebrating masses for the dead.<sup>30</sup> In *Choa Choon Neon v Spottiswoode* (1869) Ky 216 it was held that a direction by a testator that the rents and profits of his land should be expended on Sin Chew ceremonies for the commemoration of the memory of the testator and his wives (which was conceded not to be charitable) was, in the light of that concession, void as being perpetual.

In *Yeap Cheah Neo v Ong Cheng Neo* the Privy Council approved *Choa*. *Yeap* was an appeal from the Supreme Court in Penang in which it was held inter alia that a direction by a testatrix "that a house termed 'Sow Chong' for performing religious ceremonies to my late husband and myself be erected" by her executors, was void as being a devise which was perpetual and not charitable. The judgment of the Privy Council, delivered by Sir Montague Smith, dealing with this direction after describing Sin Chew ceremonies, commented:

"Although it certainly appears that the performance of these ceremonies is considered by the Chinese to be a pious duty, it is one which does not seem to fall within any definition of a charitable duty of use. The observance of it can lead to no public advantage, and can benefit or solace only the family itself."

### Ancestor worship within the family

Chin Shong (ancestral worship) too is generally accounted non-charitable for the same reason.<sup>31</sup> Thus in *Re Yap Kwan Seng* (1924) 4 FMSLR 313, a gift of a house on trust to be used as a family house for ancestral worship was in a case in Selangor, held not to be charitable and so was consequently void for perpetuity. In the course of a judgment which followed *Yeap Cheah Neo*, Sproule, Acting CJ, examined the exact nature of the testator's trusts. The testator had his own ancestors and did them reverence in his lifetime. But, continued Sproule Acting CJ:<sup>32</sup>

"when he set up his own family house, that meant a dethronement of his ancestors. He aspired to become the founder of a new family. His tablet was now to take precedence and the tablets of his own

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<sup>30</sup> [1931] SSLR 57 at 59.

<sup>31</sup> *Low Chang Soon v Low Chin Piow* (1932) 1 MLJ 15 (Singapore), *Re Tan Swee Hong's Settlement* (1933) 2 MLJ 5 (Singapore) (family religious ceremonies); *Phankin Thin v Phan Kuan Yong* (1939) 9 MLJ 44 (Perak) (gift of shares to Chin Shong of testator's father).

<sup>32</sup> Ibid at 316.

ancestors were to be merged in his and subordinated to it. Those ancestors were to be revered in future as part and parcel of the glory of Yap Kwan Seng. That was the [t]estator's intention, and it is by his intention that we are to construe his will."

Commenting generally on ancestor worship, the Acting Chief Justice referred to the *Choa Choon Neo* case and continued:

"The pious rights in reverence of an ancestor do not constitute a religion any more than the honouring of parents enjoined by Moses was the religion of the Jews. The reward hoped for in each case is perhaps the same, 'that thy days may be long in the land'. Ancestral worship is merely a pious duty, like many others endorsed and countenanced by religion. It is, however, in no sense a public duty."

Accordingly, the testator's gift could not be regarded as a trust for religious purposes or as a trust concerning or benefiting the community at large or any portion of it.<sup>33</sup>

#### **Ancestor worship by clan**

When the relevant ancestor worship is practised by all the members of a clan there are divergent authorities. The provision of a temple where all members of a *seh* (or clan) may carry out ancestral worship has in Malaysia been held to rank as charitable.<sup>34</sup> A *seh* is a clan consisting of persons having the same surname and represents an attempt by people removed from a kin-oriented environment to group themselves with others of the same surname irrespective in some cases of any blood relationship.

It is well established that a *seh* or clan of this type is a sufficient section of the community for the purpose of charity.<sup>35</sup>

On the other hand a tong or clan of the "village lineage" type appears to stand on a different footing. Thus in Hong Kong, a trust to supplement an ancestral worshipping fund constituted to support worship in the Great Ancestral Hall of the Ip lineage clan (a tong) in the village of Gut Tai was classified in *Ip Cheong Kwok v Ip Siu Bun* (1990) (unreported) as lacking the relevant element of public benefit. The ceremonies and rituals involved were essentially the same as those referred to in the Straits Settlement cases as *Sin Chew*. But it was argued that just as in the former

<sup>33</sup> Ibid at 317.

<sup>34</sup> *Lin Chooi Chuan v Lim Chew Chee* [1948-49] MJL Supp 66 (Penang), *Tan Geok Loo v Koh Beng Quee* [1966] 1 MJL 134 Singapore (temple and burial ground for Koh clan).

<sup>35</sup> *Yeoh Him v Yeoh Cheng Kang* (1889) 4 Ky. 500, Straits Settlement CA (Penang). For Singapore see *Cheang Cheow Lean Neo* [1930] SSLR 58; *Wee Chin Ann v A-G* (1940) 2 MC 183; *Lim Chooi Chuan v Lim Chew Chee* [1948-49] MJL Supp 66 (Penang), *Tan Geok Loo v Koh Beng Quee* [1966] 1 MJL 134 (Fed Ct. Mal).

Straits Settlements ancestor worship among *sehs* (or surname clans) was upheld as charitable, so too ancestor worship by the typical village lineage ancestor worshipping tong in China should be treated as charitable. Clough JA, delivering the judgment of the Hong Kong Court of Appeal, refrained from expressing any view on the correctness of the Straits Settlement cases but said that they were clearly distinguishable from the Ip Cheong Kwong Tong which was confined in membership to the male descendants of Ip Sze Shing in the village of Gut Tai. Relying in particular on *Re Hetherington* as well as on *Yeap and Gilmour v Coats*,

Clough JA said:

"It seems to me that in the present case the assumption of public benefit from the performance of the ritual of ancestral worship by clan members in the ancestral hall or halls is rebutted by the fact that the ceremonies are conducted in private by descendants of Ip Sze Shing, to the exclusion of other members of the public who are not permitted to attend and take part in the worship. The public cannot be proved in the legal sense to derive indirect edification from the ceremonies or the example set by the Ip clan of Gut Tai at private worship of their own ancestors. This court is, in my opinion, bound to arrive at this conclusion by *Yeap and Gilmour v Coats*."

There is equally no corporate devotional edification to be derived from ancestor worship carried on by a tong, even where the relevant rituals take place not in a clan temple but at, for example, a graveside. The officious bystander who witnessed such ceremonies would not be "attending" them in the sense of participating in them and indeed would not be permitted to participate in the worship of ancestors other than his own.

Two other considerations marked out the ancestral worshipping trust as one of a private rather than a public nature. A trust for the benefit of the male descendants of Ip Sze Shing who are the persons who conduct the relevant ancestral worship of Ip Sze Shing and their more immediate ancestors, falls squarely within the "single propositus" test which makes the requirement of common relationship to Sze Shing an attribute for selection of the class which renders the trusts private and non-charitable.<sup>36</sup> Secondly, if a trust for the descendants of Mr Gladstone is private<sup>37</sup>, a trust for an enlarged family or clan descended from Ip Sze Shing would seem to be equally private. Such a group is at any rate distinguishable from the many thousands of employees of a vast commercial conglomerate.

## Josses

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<sup>36</sup> See *Re Compton* [1945] Ch 123; *Oppenheim v Tobacco Securities Trust Com Ltd* [1951] AC 297, HL; *Davies v Perpetual Trustee Company Limited* [1959] AC 439, PC.

<sup>37</sup> *Dingle v Turner* [1972] AC 601 at 624A.

The word 'Joss' means 'Chinese household divinity' or 'Chinese idol'.<sup>38</sup> In *Re Tan Swee Hong's Settlement* (1934) 3 MLJ 5 there were two gifts to Josses described by names borne by (respectively) a great-great-great-grandfather of the applicant and by his great-grandfather. It was held that a trust for the benefit of a Chinese Joss was not charitable and was void as a perpetuity. In so far as the gifts were capable of being construed as for the performance of ancestral rites or religious ceremonies there was no public benefit in such pious practices, and the family of a settlor's great-great-grandfather is not a section of the public.

On the other hand 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.<sup>39</sup>

### Conclusion

As is evident from the foregoing discussion most of the overseas cases involving religious observances address the question of public benefit and where charitable status is denied to a particular gift to support a particular religious observance it is because the court finds no public benefit in the gift. The more tolerant criteria applied in India and Ceylon have no counterparts elsewhere. The quality of corporate devotional edification identified as a key feature by Professor Newark in his landmark article in the *Law Quarterly Review* in 1946 (see 62 LQR (1946) 234) is not discussed or mentioned in the cases although such edification is in fact absent in many of the gifts held to be merely private.

It is likely that the courts will continue to be called upon in the future to consider the quantum and nature of the benefit conferred by particular ritual observances; and the need to articulate some guide lines for identification of the necessary element of public benefit will become urgent.

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<sup>38</sup> See *Re Tan Swee Hong's Settlement* (1934) 3 MLJ 5 Singapore (Chinese household divinity). The word may be derived from the Latin 'deus' through the Portuguese 'deos'.

<sup>39</sup> *AG v Thirpooree Soonderee* (1874) 1 Ky 377; *Re Low Kim Pong's Trust Settlements* (1938) SSLR 144, (1938) 7 MJL 1191; *Tan Chin Ngoh v Tan Chin Teat* (1946) 12 MJL 159 Singapore.