



Equity and Trusts Concentrate: Law Revision and Study Guide (8th edn)
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p. 100 7. Non-charitable purpose trusts

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<https://doi.org/10.1093/he/9780192865632.003.0007>

Published in print: 05 August 2022

Published online: September 2022

Abstract

Each Concentrate revision guide is packed with essential information, key cases, revision tips, exam Q&As, and more.

Concentrates show you what to expect in a law exam, what examiners are looking for, and how to achieve extra marks. This chapter discusses non-charitable purpose trusts. The beneficiary principle requires a valid trust to have human beneficiaries. Charitable trusts are the largest exception to the ‘beneficiary principle’. However, there are further ‘anomalous’ exceptions to this rule: 1) monuments: the erection and upkeep of monuments and graves; 2) animals: the upkeep of individual animals; and 3) masses: the saying of private masses. They are ‘gifts of imperfect obligation’ because the trustee does not have to carry out the obligations and there are no human beneficiaries to enforce it. Because they do not satisfy the beneficiary principle, and have no human beneficiary, the courts have taken a strict approach to the categories of purpose trusts.

Keywords: charitable trusts, beneficiary principle, human beneficiaries, purpose trusts, gifts of imperfect obligation

Key facts

- Trusts generally need a human beneficiary.
- There are limited exceptions to the beneficiary principle.
- Transfers to unincorporated associations appear to have extended the exceptions.
- Gifts with a particular purpose have been held valid in commercial situations.
- Valid purpose trusts must comply with the rules on **perpetuity**.

p. 101 **Introduction**

Trusts that do not have a human beneficiary are generally void: *Re Astors ST [1952]*. The beneficiary principle requires a valid trust to have human beneficiaries: *Morice v Bishop of Durham (1804)*. (See chapter 3 to review the requirement of certainty of objects which is not limited to the certainty of beneficiary.) Charitable trusts are the largest exception to the ‘beneficiary principle’. However, there are further ‘anomalous’ exceptions to this rule:

- monuments: the erection and upkeep of monuments and graves;
- animals: the upkeep of individual animals;
- masses: the saying of private masses (religious service in church).

Revision tip

There is a correlation between these categories and charitable trusts and some exams may ask you to consider why a particular trust may fail as a charitable trust but succeed as a non-charitable purpose trust. Although both do not need to satisfy the beneficiary principle their objects (objectives) must still be sufficiently certain, either as clearly charitable or within a recognized purpose.

They are ‘gifts of imperfect obligation’ because the trustee does not have to carry out the obligations and there are no human beneficiaries to enforce it. Because they do not satisfy the beneficiary principle, and have no human beneficiary, the courts have taken a strict approach to the categories of purpose trusts. These ‘troublesome, anomalous and aberrant’ exceptions have developed historically, and they should not be extended: *Re Endacott [1960]*. Despite this strict approach it will be seen later that the categories seem to have been extended.

Requirements of a non-charitable purpose trust

There are general barriers to the enforcement of purpose trusts which will limit their application. They must satisfy these hurdles in addition to falling clearly within the accepted ‘anomalous exceptions’.

Perpetuity rules

Any purpose trust which is held to be valid must comply with the rules of perpetuity:

1. *The rule on remoteness of vesting*: the property must come into the ownership of a person within the relevant period. This rule is not applicable to the recognized purpose trusts.
- 2.

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The rule against Inalienability: a settlor cannot rule from the grave, tying up his property once he has died. To prevent this, a non-charitable purpose trust cannot continue forever, unlike a charitable trust. The applicable rule is the common law period of a *human* life in being plus 21 years. The **Perpetuities and Accumulations Acts of 1964 and 2009** (s 18) do not apply to this rule.

The perpetuity period does not have to be legally defined, but it must be clear that it is within that period. In *Re Hooper [1932]* the period was limited by the words 'so long as the trustees can legally do so'. This was held to be a valid declaration of the perpetuity period.

Looking for extra marks?

Look at the Law Commission website for some background and articles by Charles Harpum, who was instrumental in devising reform in this area.

The anomalous exceptions

Monuments

A trust for the upkeep of an individual monument or grave which is not part of the fabric of a church is not charitable. This is because an individual monument or grave has no public benefit whereas improving the fabric, or body, of a church will benefit those who use the church (see chapter 6).

The bequest itself must be sufficiently certain in its purpose. In *Re Endacott [1960]* a residual gift to provide 'a useful memorial to myself' was invalid as it was too broad. It was unclear what was meant by 'useful memorial'.

The relevant perpetuity period of inalienability was an issue in *Musset v Bingle [1876]*, where a bequest to erect a monument to the testator's first husband was valid but a second bequest for its upkeep was void. It did not fail for perpetuity in relation to the erection of the monument as it was assumed that the monument would be erected within the period. However, as no period was stipulated for the upkeep of the monument this part of the trust failed.

Animals

A trust for the upkeep of *particular* animals can only be enforceable as a non-charitable purpose trust; it must be limited to the relevant perpetuity period (inalienability). In *Re Dean (1899)* a trust for the upkeep of horses and hounds was held to be valid.

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Looking for extra marks?

In *Re Dean* the period was for 50 years ‘if they live that long’ and was held to be valid. Presumably, this was because the animals were unlikely to live that long, but perpetuity was not addressed in the case.

↳ It is clear from *Re Kelly [1932]* that the ‘life in being’ required by the perpetuity period must be a human life. The anomaly between these two decisions may be worthy of note.

Masses

The saying of masses (church services) in public will be charitable, even if the object of the masses is dedicated to a private individual: *Re Hetherington [1990]*. The saying of masses in private or cloistered orders can be an anomalous exception, limited to the relevant perpetuity period, inalienability: *Gilmour v Coates [1949]*.

Miscellaneous

This category was limited to the promotion of fox-hunting: *Re Thompson [1934]*. With the ban on fox hunting this is unlikely to be upheld as valid today.

Unincorporated associations

The courts were reluctant to allow trusts to operate outside the accepted ‘gifts of imperfect obligation’: *Re Endacott*. However, the courts have been asked to consider how gifts to a group of people should be interpreted. The policy underlying the anomalous exceptions is to encourage community benevolence. If a gift to a small community club is not charitable it may fail, defeating the intention of the donor and the policy of community benevolence. These small groups often take the form of unincorporated associations.

An unincorporated association is formed when two or more people come together for a common purpose, such as a gardening club. They will be bound by rules: *Conservative and Unionist Central Office v Burrell [1982]*. These groups can be organized local political groups or informal book clubs.

Unincorporated associations have no legal personality, existing in their own right, and therefore cannot own property. There are four accepted ways that the gift of property to an unincorporated association can be interpreted according to *Re Recher's WT [1972]*:

- an outright gift to the members to hold as joint tenants or tenants in common;
- a trust for the association’s purpose;
- a trust for the members and future members of the association;
- an outright gift to the members as joint tenants subject to their contractual obligations.

An outright gift

This interpretation states that each member of the association takes the property as an outright gift. They can hold this either as **joint tenants** or as **tenants in common**. This interpretation is possible depending on the nature of the property, but in *Re Grant's WT [1980]* Vinelott J thought that this interpretation would be uncommon without clear evidence of the settlor's intention.

p.104 **Finding the settlor's intention**

The nature of the property and how the property is transferred to the members will be relevant in finding the relevant intention. If they are joint tenants, then each member of the joint tenancy holds the entire interest among themselves. Should one of the joint tenants sever his or her interest that joint tenant can take his or her share of the property as an absolute gift. So, the property must be capable of being severed.

If the gift is given as tenants in common, each member takes his or her share as an absolute gift immediately: *Cocks v Manners (1871)*. If there is an ambiguity in the gift the courts will look at the nature of the property to infer an intention.

EXAMPLE 1

A gift of £300 to a gardening club with 30 members. It is perfectly possible that each member could take £10 each. So, they can be tenants in common or joint tenants—the property is capable of severance.

EXAMPLE 2

A gift of an acre of land to a gardening club with 30 members. It is possible but unlikely that the donor/settlor intended that each member take 1/30 of the acre for his or her own use. It is unlikely that the property was intended as an outright gift and this interpretation would fail.

Revision tip

Note that this is not a trust at all but a gift to the members. Ensure that you understand the difference between a joint tenant and a tenant in common. All property can be held as either a joint tenant or a tenant in common; a common mistake is for students to think that these terms only apply to land, or worse that they only apply to leasehold interests.

A trust for the purpose of the association

This would fail as a purpose trust as it is neither charitable nor within the anomalous exceptions. The courts have tried to make the distinction between the interpretation of the bequest as a gift to the members and for a purpose. If the members can do what they want with the property and it can be held individually it is likely to be construed as a gift. If the members cannot do what they want with the property it is likely to be a trust for a purpose and void: *Leahy v Attorney-General for New South Wales [1959]*.

A trust for the members and future members

This is a possible interpretation in which the current members will hold the property on trust for themselves and for future members subject to the trust complying with the rules of perpetuity. The relevant rule on perpetuity here will be the remoteness of vesting which is subject to the relevant **Perpetuity and Accumulations Act**. This interpretation was recognized in *Leahy v Attorney-General for New South Wales [1959]*.

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Revision tip

This is not an anomalous exception as it is a trust for the members, who are human beneficiaries. It may be difficult to ascertain the beneficiaries as the membership will fluctuate to a great extent over this period, which suggests that this would be a discretionary trust. What would happen to members who left the club? Would s 53(1)(c) **Law of Property Act 1925** apply when members leave and others remain? How would the shares be allocated between members who have just joined and those who are members for the whole perpetuity period? In a problem question, do not dwell on these issues, but a brief explanation of how the difficulty usually prevents this interpretation may be useful. An essay may focus on the problems with this analysis.

A gift for the members subject to their contractual obligations

The contractual analysis is the most popular interpretation. It is seen as a gift to the current members who beneficially own the property; it is an ‘accretion to funds’: *Re Grant’s WT [1980]*. This means that it is merely a direct contribution to the club funds. How they distribute their interests in the property is regulated by their internal, contractual rules. This will solve the problem of what will happen when a member leaves as his or her contract will stipulate the distribution of assets on dissolution of the association or if a member leaves the organization.

Making the ‘contractual analysis’ work

The association must be in control of its own finances: *Re Grant’s WT*. The association must have within its contractual agreement, which regulates the running of the club, rules on how the finances of the association are held. It must not be subject to control from another organization or superior body.

Re Grant's WT [1980] 1 WLR 360

The gift was to a local Labour Party committee. The rules of the party meant that the local party was not in control of its own internal rules, or able to decide what happened to funds should it cease to exist. The court held that the gift could not be a gift to the members subject to their rules as they were not in control of their own finances.

Advantages of this analysis

The contractual analysis is the most popular interpretation for the courts as it raises no problems with perpetuities. This is because the property vests immediately in the members and as it is not a purpose trust the rule on inalienability does not apply.

However, this interpretation will not aid a settlor who wants to ensure that the 'purpose' of the settlement is carried out. As the members are in charge of their own financial arrangements, if they agree to use the gift for a different purpose or divide the property up and take absolutely, the settlor cannot prevent this. The 'purpose' is merely the motive for the settlement.

p. 106 An alternative approach

This last interpretation seems to satisfy the ownership issue, but it may defeat the intention of the settlor. As the members obtain the property as a gift then, subject to the rules of the association, they can deal with the property as they wish. It seems that the categories have been extended by the decision in *Re Denley's Trust Deed [1969]*. Although this case did not refer to an unincorporated association it could be applied to such a gift.

The problem with the gift was that the 'purpose' of use as a sports ground could not be achieved with any of the *Re Recher's WT [1972]* interpretations. If the contractual analysis was applied then the members of the club could defeat the purpose, and the members would need to be identified.

Having established that the purpose was sufficiently clear Goff J considered whether it failed the beneficiary principle. He found that there was no problem with the beneficiary principle requirement. He considered that the purpose of the beneficiary principle, requiring a human beneficiary, was to prevent possible fraud by the trustee. In the present case there were identifiable persons who would enforce the trust—the members of the sports club. This being the case there should, in principle, be no bar to enforcement of this type of trust. It was assumed that the members of the club would act as 'watchdogs' of the purpose.

Terminology tip

Do not refer to the identifiable persons in a *Denley* trust as identifiable beneficiaries as they do not have any beneficial interest. It seems that they merely have a right to enforce the obligation. This will help in explaining the interests.

Looking for extra marks?

How to identify the individuals for the *Denley* trust is a matter of debate. It has been suggested that the given postulant test, *McPhail v Doulton* [1971], used for discretionary trusts should be applied but this is not a settled principle. Another interesting debate is that the decisions in *Re Denley* and *McPhail v Doulton* have loosened the need for the trust property to be owned and that the beneficiary merely has the role of enforcer, requiring the *locus standi* to bring an action rather than the ability to be able to own the trust property, and arguably unable to utilize the rule in *Saunders v Vautier* (1841).

This type of trust must be limited to the perpetuity period in relation to inalienability. *Re Denley* was not concerned with an unincorporated association; indeed, in *Re Grant's WT* it was said that *Re Denley* was in fact a discretionary trust with an identifiable class of beneficiaries who could be identified by the *McPhail v Doulton* test for certainty. The principle from *Re Denley* was applied to unincorporated associations in *Re Lipinski's WT* [1976].

Re Lipinski's WT [1976] Ch 235

Property was left by the testator to construct and improve buildings for the use as a sports and social club for Jewish children, said to be in memory of his late wife. The court held the trust to be valid.

Oliver J said that the ‘purpose’ of celebrating his late wife was merely a motive for the settlement. He referred to this as being ‘an accretion’ to funds, referring to the contractual analysis of interpreting the gift. This was because Oliver J felt that the individuals could, if they wished, use the settlement for any purpose they chose, subject to the social club rules (see Table 7.1 for a comparison of the two approaches).

Table 7.1 Comparing the two approaches

<i>RE RECHER'S WT</i>	<i>RE DENLEY</i>
Gift to the individual members	Trust for a clear purpose

RE RECHER'S WT	RE DENLEY
Held by the club subject to its rules of allocation of rights	Benefits an identifiable class of persons which will satisfy the beneficiary principle issues
Association must be in control of its own funds and assets should they dissolve: <i>Re Grant's WT</i>	Must be limited to the perpetuity period (rule against inalienability—life in being plus 21 years)
Club can do as it wants with the gift	Assumed the association will carry out the purpose

Looking for extra marks?

The decision in *Re Lipinski* is a confusing mix of analyses. One view of the decision in *Re Denley* is that the purpose with ‘ascertainable individuals’ to act as watchdogs is the preferable interpretation where the settlor wants to ensure that the ‘purpose’ is carried out. Goff J seemed to assume that the ‘ascertainable individuals’ would carry out the purpose but without stating what would make them do this. However, *Re Lipinski*’s interpretation would suggest that Goff’s assumption of enforcement would not necessarily apply.

Additionally, *Re Lipinski* mixes ideas of gifts and trusts. *Denley* trusts must comply with the rule on perpetuities but a gift does not have to. It is better to keep these two views separate. The better interpretation is the contractual analysis: *Artistic Upholstery Ltd v Art Forma Ltd [1999]*. In an essay, be prepared to comment critically on *Re Lipinski*.

Dissolution of unincorporated associations

How the association holds funds will have important implications for the allocation of property when the association dissolves. If the contractual analysis is applied, the contract between current members will regulate the distribution of the property: *Re Bucks Constabulary Widows' and Orphans' Fund Friendly Society (No 2) [1979]*. It was considered in *Re Bucks* that if only one member were left, due to death or people leaving, the property would be *bona vacantia* and go to the Crown. This approach was rejected in *Hanchett-Stamford v Attorney-General [2008]*.

Looking for extra marks?

The decision in *Re West Sussex Constabulary's Widows, Children and Benevolent Fund (1930) Trusts [1971]* made the distinction in the way money was given to the association. Donations to collection tins, money paid for raffles, etc was held *bona vacantia*, but larger donations and legacies would return to the donors on resulting trusts (see chapter 9).

Conclusion

Purpose trusts fall into charitable and non-charitable categories and are closely linked in some courses. As a trust may be valid as a charity, explain why it may succeed or fail, and then consider whether it falls into one of the anomalous exceptions. A more complex issue arises with a 'gift' to an unincorporated association. The four interpretations should be explained with the extended *Denley* construction.

Key cases

CASE	FACTS	PRINCIPLE
<i>Leahy v Attorney-General for New South Wales [1959] AC 457</i>	Land and furniture was left for the benefit of nuns of the Catholic church.	The gift was to a group of people for a purpose that would fail.
<i>Re Denley's Trust Deed [1969] 1 Ch 373</i>	Land was left to be used as a sports ground for employees of a company and any other persons the trustees may have allowed to use the grounds.	The land was held for ascertainable individuals who would supervise the trust. It was not a purpose trust and was not contrary to the beneficiary principle as the individuals would ensure no fraud.
<i>Re Grant's WT [1980] 1 WLR 360</i>	Money was left for the use of a local political party.	The money left to the unincorporated association could not be held on the contractual analysis as the local club was not in control of its own finances but regulated by the national party.
<i>Re Recher's WT [1972] Ch 526</i>	The testatrix left property to the Anti-Vivisection Society.	The gift was not a purpose trust but an accretion to the funds of the association for the members, subject to their contract, to do with as they wished. There was no problem with inalienability as the members could, if they wished, wind up the association and take their property. Note: the gift failed on another point as it had ceased to exist by the time the testatrix died.

p. 109 **Key debates**

Topic	<i>Re Denley trust</i>
Academic/ author	Rickett
Viewpoint	In the Denley trust the beneficial interest is held in suspense, enforceable by the settlor and the beneficiary.
Source	Rickett (1991) 107 LQR 70. As a starting point for the discussion see Pearce and Barr, <i>Pearce & Stevens' Law of Trusts and Equitable Obligations</i> , 7th edn (2018), pp 288–94.

Exam questions

Problem question

Advise on the validity of a bequest, in Johan's will, to the Shannon Gardening Club of £10,000. Johan's will requires the money to be used to purchase a piece of land to be used as an allotment for local children.

See the Outline answers section in the end matter for help with this question.

Essay question

Explain how the courts have interpreted a gift to an unincorporated association and outline the problems associated with them.

Online resources

This chapter is accompanied by a selection of online resources to help you with this topic, including:

- An outline answer <https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-7-outline-answers-to-essay-questions?options=showName> to the essay question
- Bonus material <https://iws.oupsupport.com/ebook/access/content/mcdonald-concentrate8e-student-resources/mcdonald-concentrate8e-chapter-7-bonus-material?options=showName>
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