

= Cy @-@ près doctrine in English law =

The cy @-@ près doctrine in English law is an element of trusts law dealing with charitable trusts . The doctrine provides that when such a trust has failed because its purposes are either impossible or cannot be fulfilled , the High Court of Justice or Charity Commission can make an order redirecting the trust 's funds to the nearest possible purpose . For charities with a worth under £ 5 @, @ 000 and no land , the trustees ( by a two @-@ thirds majority ) may make the decision to redirect the trust 's funds . The doctrine was initially an element of ecclesiastical law , coming from the Norman French cy près comme possible ( as close as possible ) , but similar and possibly ancestral provisions have been found in Roman law , both in the Corpus Juris Civilis and later Byzantine law .

Trusts where the doctrine is applicable are divided into two groups ; those with subsequent failure , where the trust 's purpose has failed after it came into operation , and initial failure , where the trust 's purposes are immediately invalid . Subsequent failure cases simply require the redirection of the funds to the nearest possible purpose , since there is no question of allowing the settlor 's next of kin to inherit the money . Initial failure cases , however , require not just a decision on whether the purpose has failed , but also on whether the funds should be subject to cy @-@ près or returned to the estate in a resulting trust . This is decided based on the charitable intention of the settlor , something determined on the facts of each individual case .

= = Definition and origin = =

The cy @-@ près doctrine is the idea that , where a charitable trust 's purposes are impossible or cannot be fulfilled for whatever reason , the funds should be reapplied to purposes as close as possible to the trust 's original goals . This is done through a formal application by the trustees , either to the High Court of Justice or the Charity Commission . This doctrine originated in ecclesiastical law , the name coming as a contraction of the Norman French cy près comme possible ( as close as possible ) , It was originally justified in an ecclesiastical way ; charitable gifts were provided to secure entry into heaven , and if the charitable gift failed , this would not be guaranteed . If it was re @-@ purposed , however , entry would be granted . The local bishop , therefore , would usually simply apply the gift to the nearest possible purpose to the testator 's original goals .

Some evidence suggests that the doctrine descends from Roman law . The Corpus Juris Civilis mentions a process that redirected money collected to celebrate a person 's life in some way that violated law to a purpose within the law . It also gives a similar justification : " [ I ] t would be unjust that the amount which [ the testator ] has destined to that end should revert to the heirs . Therefore , let ... an investigation be made to ascertain how the trust may be employed so that the memory of the deceased may be preserved in some other and lawful manner . " The Byzantine Empire used a system similar to cy @-@ près when dealing with piae causae , charitable corporations , whereby if the corporation fell its possessions were to be transferred to the Papal treasury and spent on a purpose as close as possible to that of the original corporation .

= = Requirements = =

Prior to the Charities Act 1960 , situations where the cy @-@ près doctrine applied were limited to cases where the trust 's purpose was either impossible or impracticable . The 1960 Act , however , provides in Section 13 ( 1 ) ( now part of the Charities Act 1993 ) that cy @-@ près can apply where the original purposes have :

- ( a ) been as far as may be fulfilled ; or cannot be carried out , or not according to the directions given and to the spirit of the gift ;
- ( b ) or where the original purposes provide a use for part only of the property available by virtue of the gift ;
- ( c ) where the property available by virtue of the gift and other property applicable for similar

purposes can be more effectively used in conjunction , and to that end can suitably , regard being had to the spirit of the gift , be made applicable to common purposes ;

( d ) or where the original purposes were laid down by reference to an area which then was but has ceased to be a unit for some other purpose , or by reference to a class of persons or to an area which has for any reason since ceased to be suitable , regard being had to the spirit of the gift , or to be practical in administering the gift ;

( e ) or where the original purposes , in whole or in part , have since they were laid down been adequately provided for by other means ; or ceased , as being useless or harmful to the community or for other reasons , to be in law charitable ; or ceased in any other way to provide a suitable and effective method of using the property available by virtue of the gift , regarding being had to the spirit of the gift .

This definition was amended by the Charities Act 2006 to replace " the spirit of the gift " with " the appropriate considerations , " which are defined as " ( on the one hand ) the spirit of the gift concerned , and ( on the other ) the social and economic circumstances prevailing at the time of the proposed alteration of the original purposes " . In the case of extremely small charitable trusts ( where the charity has an income of less than £ 5 @, @ 000 and holds no land ) the trustees may agree by a two @-@ thirds majority to transfer the property to another charity , without involving the High Court or Commission . This is contained in Sections 74 @-@ 5 of the 1993 Act . Once the decision is reached , public notice must be given , and the Commission informed . Cy @-@ près powers are now enacted in the Charities Act 2011 .

= = = Subsequent failure = = =

The cy @-@ près doctrine applies to two types of situations : subsequent failures and initial failures . Subsequent failures are where money has already been applied to a charitable purpose , and that purpose has failed . It does not allow the next of kin of the original donor to recover any money , as said in *Re Wright* : " Once money has been effectually dedicated to charity , whether in pursuance of a general or a particular charitable intent , the testator 's next of kin or residuary legatees are forever excluded " . The courts instead simply determine whether or not the reason for failure falls within Section 13 , based on the basic intention underlying the original gift .

= = = Initial failure = = =

Cases of initial failure are where , rather than an established charitable trust failing , a gift has failed at the moment of its creation by having an invalid purpose . This raises different questions , as it is a matter of deciding " has the original charitable gift failed , and , if it has , can the money be applied cy @-@ près or must it go on resulting trust to the settlor 's estate " ?

When deciding if a gift has failed , attention is first turned to the wording of the trust instrument . The terms of such documents are taken literally ; if a particular organisation or purpose is given , the settlor 's intention is considered to be no wider or narrower than this . A different approach is used when dealing with cases like *Re Faraker* , which dealt with a situation where the charity named in the gift had been amalgamated with others . The Court of Appeal held that the amalgamated charities were entitled to the gift , since the charity named effectively continued as part of the amalgamated one . Farwell LJ wrote that , " In all these cases one has to consider not so much the means to the end as the charitable end which is in view , and so long as the charitable end is well established the means are only machinery , and no alteration of the machinery can destroy the charitable trust for the benefit of which the machinery is provided . "

In *Re Finger* , Goff J made a distinction between gifts to incorporated bodies and gifts to unincorporated bodies . When a gift is to an unincorporated body , it must be treated , whatever the wording , as a gift to that body 's purpose . This is because unincorporated bodies cannot possess things . If the body has ceased to exist but the purpose continues , the gift has not failed . Incorporated bodies on the other hand can possess property , and as such , as said by Buckley J in *Re Vernon 's Will Trust* , " A bequest to a corporate body ... takes effect simply as a gift to that body

beneficially , unless there are circumstances which show that the recipient is to take the gift as a trustee . "

Once it has been decided that the gift has failed , the courts consider whether the gift may be applied cy @-@ près . The gift must show charitable intention ; that the settlor intended not just a gift to a particular ( failed ) purpose or organisation , but a more general charitable intention . This is something decided on the facts of each individual case , but some general principles are in place ; external evidence is admissible to override any prima facie interpretation that a gift is for non @-@ charitable purposes , as in *Re Satterthwaite 's Will Trusts* , and charitable intention can be found in cases where a non @-@ existent charity is the recipient of the settlor 's gift , as in *Re Harwood* .