Neutral Citation Number: [2024] EWHC 1095 (Ch)

Case No: PT-2023-NCL-000005

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN NEWCASTLE
PROPERTY TRUSTS AND PROBATE LIST (ChD)

The Moot Hall, Castle Garth
Newcastle upon Tyne, NE1 1RQ

Date: 10/05/2024

Before :

HH JUDGE DAVIS-WHITE KC
(SITTING AS A JUDGE OF THE HIGH COURT)

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Between :

WILLIAM JOHN DRYDEN **(As administrator of the Estate of Marjorie Robinson Thompson Deceased)**	**Claimant**
- and -	
(1) LORNA YOUNG **(2) THE ATTORNEY GENERAL FOR ENGLAND AND WALES** **(3) THE ANIMAL DEFENCE TRUST** **(4) THE DONKEY SANCTUARY** **(5) BRITISH DIABETIC ASSOCIATION**	**Defendants**

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Ms Sarah Harrison (instructed by **PGS Law LLP**) for the **Claimant**
Mr William Moffett (instructed by **Foot Anstey LLP**) for the **4th Defendant**
The remaining Defendants did not appear and were not represented

Hearing dates: **16 April 2024**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 10 May 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives (see eg https://www.bailii.org/ew/cases/EWCA/Civ/2022/1169.html).

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HH JUDGE DAVIS-WHITE KC (SITTING AS A JUDGE OF THE HIGH COURT)

HH Judge Davis-White KC :

Introduction

1. In these Part 8 proceedings I am asked to determine the true construction of certain gifts of residue in a will. The will is dated 26 May 2016 (the "Will"). It is the last will and testament of Marjorie Robinson Thompson (the "Deceased"). She died on 9 April 2020. Her address for many years was at an address in Cleadon Village, Sunderland, Tyne & Wear. The Will, and a codicil dated 20 October 2017, have been admitted to probate. Letters of administration dated 5 February 2021 have been granted to the claimant, Mr Dryden, as the attorney of Mr Terence Carney. Mr Carney is appointed executor and trustee under clause 2 of the Will. He is now retired but was a practising solicitor. It was he who drafted the will and codicil.

2. Under clause 10 of the Will the residue of the estate is given to fifteen organisations, each of whom receive one equal fifteenth part of residue. As regards seven of those organisations, I am asked to determine the validity of the gift and the identity of the organisation intended to be benefitted, with issues as to whether any gift lapses, and passes on intestacy, or is to be applied cy-près.

3. The seven gifts in question are as follows:

Clause in Will	Description of organisation in Will
10(ii)	Animal Defence Society 52-53 Dean Street London W1V 5HJ
10(iv)	Animal Health Trust 24 Portland Place London W1N 4HN
10(vii)	Society for Promotion of Nature Reserves The Manor House Alford Lincolnshire
10(viii)	The Donkey Sanctuary Springfield Fosters Lane Woodleigh Berkshire
10(ix)	The Home Rest for Horses Sheep Lane Whitchurch Shropshire
10(x)	The Heavy Horses Preservation Society Old Rectory Whitchurch Shropshire
10(xi)	The Society for the Preservation of English Countryside

The Parties

4. As I have said, the Claimant is the person who has been granted letters of administration as attorney of the named executor, Mr Terence Carney. He is a solicitor. Before me, he was represented by Ms Harrison of Counsel.

5. The First Defendant, Ms Lorna Young is one of the next of kin of the Deceased. Her father and the Deceased were first cousins. Her father's mother and the Deceased's father were siblings. Under the Will, she was bequeathed certain items of jewellery, linen and the like.

6. At an early stage when questions arose about the identity of beneficiaries under the Will, Ms Young was represented by Weightmans LLP, a firm of solicitors. They continued to represent her in these proceedings until recently.

7. By order dated 13 June 2023, Ms Young was appointed under CPR r19.8(1)(b) to represent the interest of those who would inherit from the Deceased's estate on intestacy. She has filed a witness statement dated 3 April 2023. That witness statement deals with the family of the Deceased but throws no direct light on the issues that I have to resolve. It does however helpfully set out Ms Young's case (and, through her, those claiming on an intestacy).

8. By Notice of Change of Legal Representative dated 21 February 2024, Ms Young gave notice that Weightmans LLP had ceased to act for her and that she would now be acting in person. In correspondence she explained that this was in order "to reduce the costs burden on the Estate".

9. By letter dated 13 March 2024, Ms Young informed the Claimant's solicitors that she had decided not to attend the hearing before me. She cited the considerable distance she would have to travel (from Stirlingshire) and that she has just started a new job and that it would be difficult to get away. Accordingly, she did not appear and was not represented before me, though of course I have taken into account her witness statement.

10. The Second Defendant, the Attorney General for England and Wales filed an acknowledgment of service in which it was confirmed that she did not intend to contest the claim. She did not appear and was not represented before me.

11. The Third Defendant, the Animal Defence Trust, is interested as a possible beneficiary of one of the seven gifts in question. It filed an acknowledgment of service that it did not intend to contest the proceedings. It did not appear and was not represented before me.

12. The Fourth Defendant, The Donkey Sanctuary, is also interested as a possible beneficiary of one of the seven gifts in question. It was represented before me by Mr Moffett of Counsel.

13. By order dated 13 June 2013, DJ Phillips made the representation order that I have mentioned as regards the First Defendant and joined the Third and Fourth Defendants.

He also required notice of the claim to be given to 13 other charities pursuant to CPR r19.13. Of these the British Diabetic Association filed an acknowledgement of service on 17 July 2023. In my view, it being assumed to have filed within the relevant time limits, that association was thereafter joined as Defendant pursuant to CPR r19.13(5). This acknowledgment also indicated an intention not to contest the case.

14. As a result of CPR r19.13(6), on the face of it (and assuming the formality requirements to have been met) the other persons/bodies given notice pursuant to CPR r19.13 will be bound by my decision.

15. I am grateful to Counsel in the case for their helpful submissions and to the Claimant's solicitors for their work on the bundle and on obtaining further evidence after the trial as I explain below. As regards Mr Moffett he was, obviously, dealing with the case that was relevant to his client. However, his client had a more general interest in the case because in the event that any of the other six gifts failed in certain circumstances, there was a possibility that Mr Moffett's client would benefit by reason of clause 13 of the will directing the distribution of that gift amongst the remaining 14 bodies entitled under clause 10.

The Will

16. The clauses of the Will dealing with gifts are as follows.

17. Clause 4 makes various gifts to Lorna Young, the First Defendant.

18. Clause 5 gives £500 to "Diabetes UK" (no address is given). In fact, Diabetes UK is the name under which The British Diabetic Association operates.

19. Clause 6 gives certain personal possessions and the sum of £8,000 to Rosemary Pritchard.

20. Clause 7 gives certain personal possessions to Geoffrey Pritchard.

21. Clause 8 gives some personal possessions together with the sum of £5,000 to Christopher Treece.

22. Clause 9 gives £2,000 to Ann Small.

23. Clause 10 is the clause dealing with the disposal of the residuary estate and (after payment of debts, funeral and testamentary expenses) divides it into 15 equal parts and then gives a fifteenth part to each of 15 named entities. I shall return to the seven upon which I have to rule but set out in tabular form later in this judgment certain points arising in relation to the other eight gifts. As will become clear, one of the identifiers of the recipient of a gift in the case of the seven gifts that I have to consider is the address of the person receiving the gift. I therefore deal with the addresses of the other eight recipients and also comment on any other matters that appear to me to be relevant.

24. Clause 10(i) states the gift as being to The Royal Society for the Prevention of Cruelty to Birds. The address given is that of the Royal Society for the Protection of Birds (RSPB) and this is clearly the charity intended.

25. Clause 10(iii) the gift is stated as being to the League Against Cruel Sports. The address given is at Dean Street London.

26. Clause 10(v) is a gift to the World Wildlife Trust. The address given is at Plumtree Court London.

27. Clause 10(vi) is a gift to the Dogs Trust. The address given is Wakely Street London.

28. Clause 10(vii) is a gift to the National Trust. The address given is at Queen Ann Gate, London.

29. Clause 10(xiii) is a gift to "The Scottish Society for the Prevention of Vivisection". The address given is at Queen's Ferry Street, Edinburgh.

30. Clause 10(xiv) is a gift to the International League for the Protection of Horses, no address is given.

31. Clause 10(xv) is a gift to the British Diabetic Association (using its name rather than, as in clause 5, the name that it operates under). The address given is at Parkway, London.

32. Clause 11 is a receipt clause regarding the entities in clause 10 which are referred to as "the before mentioned Charities and Beneficiaries".

33. Clause 12 provides a direction that "any of the aforementioned Charities which shall involve animals shall use the bequest exclusively for the benefit of animal care only" (there being a potential tension with a direction regarding the gift to the Dogs Trust which provides that part of the monies are to be used to name kennels after three named dogs of the Deceased).

34. Clause 13 contains obvious typing errors in referring first to clause 12, rather than to clause 10, and then in referring to the "said" clause 13 rather than clause 10. It provides:

> "*I DECLARE that if before my death (or after my death but before my Trustees have given effect to the gift in question) any charitable or other body to which the gift is made under clause 12 hereof has changed its name or amalgamated with or transferred its assets to any other body then my trustees shall distribute such part or parts equally amongst the remaining Organisations mentioned in the said clause 13 of this my Will*" .

35. The codicil is dated 20 October 2017. It makes a gift of a described diamond and tanzanite ring to Angela Charlton and in all other respects confirms the Will. I need consider it no further.

The evidence

36. I had the benefit of a witness statement of the Claimant, Mr Dryden, dated 3 February 2023; a witness statement of the First Defendant, Lorna Young, dated 3 April 2023; a witness statement of Mr Roy Stokes, Trust and Grants Secretary for the Animal Defence Trust dated 17 July 2024 and a witness statement from Sophia Honey, Solicitor

and legacy manager of The Donkey Sanctuary 18 July 2023. The evidence was not given orally and there was no cross-examination.

37. In the course of the hearing, a number of points of evidence emerged which were not formally in evidence by way of being exhibited to a witness statement, or not set out in a witness statement or which arose from lines of enquiry raised at the hearing. I directed that the Claimant should have liberty to supplement his evidence after the hearing which was done by two further witness statements from him dated respectively 18 April 2024 and 30 April 2024.

38. The evidence of Lorna Young took matters no further as regards the specific gifts but helpfully set out that she did not oppose the suggested solutions that the Claimant had put forward to the issues arising other than with regard to the gifts said, in the Will, to be made to the Animal Defence Society and The Donkey Sanctuary. I will deal with the points she raises when considering those specific gifts.

39. She also explained her relationship with the Deceased and dealt with some of the individuals who were to receive gifts as follows:

    (1) Mrs Pritchard was the niece of the Decesaed's husband, John. Both the Deceased's husband and Mrs Pritchard pre-deceased the Deceased. Mr Pritchard seems to be or to have been Mrs Pritchard's husband.

    (2) Christopher Treece and Ann Small are believed by her to have been local friends and neighbours of the Deceased.

40. The witness evidence from Roy Stokes contained no useful evidence merely confirming his belief in the truth of Mr Dryden's first witness statement, confirming that the Animal Defence Trust would be neutral and abide by the decision of the court and seeking costs as an expense of the estate. In my judgment, this could have been imparted at a fraction of the cost by way of a letter to the parties and the court.

41. I will deal with Ms Honey's evidence in the context of the gift in the Will to The Donkey Sanctuary.

42. I turn now to the circumstances of Mr Dryden's involvement. They have helpfully been much clarified by his second and third witness statements.

43. Mr Carney practised as a solicitor in Hebburn, South Tyneside for many years under the name "Terence Carney Solicitors" based at 35, Station Road, Hebburn, Tyne and Wear. He stopped practising as a solicitor some years ago. However, he remains the Senior Coroner for Gateshead and South Tyneside.

44. Mr Dryden is a solicitor and partner in the firm of PGS Law LLP of Law Court Chambers, 22 Denmark Centre, Fowler Street, South Shields. There is not and has never been any professional relationship between Mr Carney and Mr Dryden or their two solicitor firms. PGS Law LLP is not a successor firm to Terence Carney Solicitors.

45. Mr Carney rang Mr Dryden after the death of the Deceased to ask him to act in the administration of the Deceased's estate. He did not want to do this because he was no

longer a practising solicitor; the Deceased had no close or family members and it was appropriate for a local firm of solicitors to act in the administration.

46. Mr Carney, as well as being the named executor and trustee of the Will, was the solicitor who was involved in its drafting and execution and as regards a number of earlier wills of the deceased (but other than a will dated 18 April 2011 (the "2011 Will") no earlier wills have been located). The residuary gifts under the 2011 Will are in the same terms as the gifts in the Will.

47. There has been some confusion as to whether there were earlier will files that were available. It appears that there are none. Mr Carney no longer practises as a solicitor. He retains no relevant files from that practice. The only surviving files or documents from his practice were passed to a firm called O'Neill Law. O'Neill Law has confirmed that it holds only certain deeds and documents and no files as such. It located the 2011 Will.

48. The only assistance that Mr Carney could give was from recollection. He was unable to throw any light on why the residuary gifts were drafted as they were or whom the residuary beneficiaries were intended to be. He confirmed that the Deceased had made a series of wills in similar terms over the years and that the names of the charitable beneficiaries and their addresses were simply carried forward from previous Wills. Otherwise, in Mr Dryden's words, Mr Carney has been "unable to shed any light on the issues".

49. The Deceased's bank accounts were checked to see if they assisted in identifying the beneficiaries of the gifts of residue. Unfortunately they do not. As Mr Dryden says in his first witness statement:

> " *All I could find were donations of £4.00 a year to the International League for Horses and £7.50 per year to the National Canine Defence (now the Dogs Trust). I cannot find evidence of any other charitable donations being made by the Deceased."*

50. As regards the value of the residue of the Deceased's estate the position is as follows. On the grant of the letters of administration the estate was sworn as being worth £1.48 million. The latest available estate accounts indicate that the value of a one fifteenth share of residue would be about £105,000 but subject to the effect of the costs of these proceedings.

The construction of wills and of gifts in wills

51. The general principles of construction were not disputed.

52. Essentially, the process of construction of a will involves the determination of the testator's intention in using the words that are set out in the will. As it is put in *Theobald on Wills* (19th edn) at 28-001

> "*In construing a will the object of the court is to ascertain the intention of the testator as expressed in their will when it is read as a whole in the light of any extrinsic evidence available for the purposes of construction*".

53. Just as in the case of contractual and other documents, the question of what is admissible evidence and how the court is to go about its job is slightly more complicated than the above statement would suggest.

54. The starting point is that the general principles of construction which apply to the construction of commercial contracts and other documents apply in the area of wills, as they do to other documents. That was said, obiter, by Lord Neuberger in *Marley v Rawlings* [2014] UKSC 2. Although obiter the principles that he spoke to have been applied in many cases since and across a wide range of types of documents. This is subject to one caveat that I mention below.

55. In the *Marley* case, wills had been drafted for adopted parents under which each parent left their property to the other but in the event that other failed to survive, the whole was left to the claimant. By mistake each signed the other's will. The Supreme Court ultimately rejected an argument that the will of the husband (who died after his wife) could be severed to remove parts of it that were not known to him or approved by him (being parts of his wife's will that made no sense in the light of the obvious intentions and which would have defeated the gift over to the claimant on the death of the last of the two parents). Although interpretation/construction was a third ground raised on appeal, Lord Neuberger proceeded on the basis that the case failed on construction/interpretation on the bases (a) that it was unnecessary to decide the difficult point that arose regarding the boundaries in law between construction and rectification;(b) construction was not a basis on which the courts below had decided the case and it was not a ground on which the claimant/appellant had primarily relied (d) there had been limited argument on the point (see paragraph [41]). However, the court did order rectification of the will.

56. A short-hand summary of the principles applicable to commercial contracts as revisited in recent years by a number of House of Lords and Supreme Court cases has helpfully been set out by Carr LJ (as she then was) in *Network Rail Infrastructure Ltd v ABC Electrification Ltd* [2020] EWCA Civ 1645 ("Network Rail") at [18] and [19], which I gratefully adopt:

> "*[18] A simple distillation, so far as material for present purposes, can be set out uncontroversially as follows:*
>
> *(1) When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions;*

(2) The reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision;

(3) When it comes to considering the centrally relevant words to be interpreted, the clearer the natural meaning, the more difficult it is to justify departing from it. The less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning;

(4) Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made;

(5) While commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party;

(6) When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time the contract was made, and which were known or reasonably available to both parties.

[19] Thus the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the

> *language in the contract to mean. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise; the court must consider the contract as a whole and, depending on the nature, formality, and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. The interpretative exercise is a unitary one involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences investigated*."

57. The above principles of course have to be adapted to reflect the fact that in the case of a Will (or most wills, mutual wills may be different) one is not looking at a transaction effected by two or more parties but at a transaction or document effected by one person. Further, the general consequences of a Will or a particular construction and commonsense have to be taken into account, rather than there being, as there is in a contractual context, emphasis or focus upon the "commercial" consequences of the same or "commercial" commonsense.

58. In *Marley*, Lord Neuberger summarised the principles and process of construction as follows, being a passage replicated in paragraph [18(1)] in the *Network Rail* case:

> *"[19] …identifying the meaning of the relevant words, (a) in the light of (i) the natural and ordinary meaning of those words, (ii) the overall purpose of the document, (iii) any other provisions of the document, (iv) the facts known or assumed by the parties at the time that the document was executed, and (v) common sense, but (b) ignoring subjective evidence of any party's intentions"*

59. The summary of Carr LJ is obviously a fuller description and summary. I would note that the background referred to by Lord Neuberger at sub-paragraph 19(iv) is stated slightly more widely by Carr LJ who refers not just to what the parties knew or assumed but also refers to information "reasonably available" to the parties.

60. I mentioned that the general principles of construction are subject to a caveat. That arises from the change effected by s21 of the Administration of Justice Act 1982, which was dealt with by Lord Neuberger in the *Marley* case as follows:

> *"[24] However, there is now a highly relevant statutory provision relating to the interpretation of wills, namely section 21 of the [Administration of Justice Act] 1982 …. (section 21). Section 21 is headed "Interpretation of wills-general rules as to evidence", and is in the following terms:*
>
> > *"(1) This section applies to a will*
> >
> > *(a) in so far as any part of it is meaningless;*
> >
> > *(b) in so far as the language used in any part of it is ambiguous on the face of it;*

> *(c) in so far as evidence, other than evidence of the testator's intention, shows that the language used in any part of it is ambiguous in the light of surrounding circumstances.*
>
> *(2) In so far as this section applies to a will extrinsic evidence, including evidence of the testator's intention, may be admitted to assist in its interpretation*."
>
> *[25] In my view, section 21(1) confirms that a will should be interpreted in the same way as a contract, a notice or a patent, namely as summarised in para 19 above. In particular, section 21(1)(c) shows that "evidence" is admissible when construing a will, and that that includes the "surrounding circumstances". However, section 21(2) goes rather further. It indicates that, if one or more of the three requirements set out in section 21(1) is satisfied, then direct evidence of the testator's intention is admissible, in order to interpret the will in question.*
>
> *[26] Accordingly, as I see it, save where section 21(1) applies, a will is to be interpreted in the same way as any other document, but, in addition, in relation to a will, or a provision in a will, to which section 21(1) applies, it is possible to assist its interpretation by reference to evidence of the testator's actual intention (e g by reference to what he told the drafter of the will, or another person, or by what was in any notes he made or earlier drafts of the will which he may have approved or caused to be prepared)."*

61. In this case I have little doubt that in the case of one or more of the relevant gifts of residue that I have to construe, one or more of the conditions of s21(1) of the 1982 Act are satisfied. However, whilst that may let in evidence of earlier wills, and the fact that wording was lifted from one to another it does not take matters much further. I have no evidence as to the basis upon which former wording was carried across and there is certainly no suggestion that it was carried across to the 2016 Will in the knowledge and with the deliberate intention not to gift the relevant shares of residue to the charities that I identify below as being, on a true construction of the Will, the entity to which the relevant gift was made by the Will. In the circumstances, s21 of the 1982 Act cannot be deployed in this case, in the sense that there is no relevant evidence which could be brought in under that section.

Gifts to charitable trusts and corporate entities

62. Perhaps somewhat illogically I start by setting out my conclusions and then return to the authorities that I cite to make good (or at least explain) my conclusions.

63. The principles that I gain from the authorities shown to me are as follows:

(1) It is first necessary to construe the words of the gift to identify the donee. In the case of gifts to apparent charities it is necessary to identify if the gift is conferred upon an entity which existed at the date of the will and what that entity is. If there is no such entity or it is unclear which entity is meant then the question will be whether the gift evinces a gift to charity which will be applied cy-près by way of scheme (see e.g.; *Doe D Gains v Rouse* (1848) 5 C B 422; *Coldwell v Holme* (1854) 2 Sm & G 31*; Re Donald* [1909] 2 Ch 410; *Re Magrath* [1913] 2 Ch 331; *The National Society for the Prevention of Cruelty to Children and the Scottish National*

Society for the Prevention of Cruelty to Children [1915] AC 207; In *Re Songfest Deceased, Mager v The Forces Help Society and Lord Roberts' Workshops* [1956] 1 WLR 897; In *Re Satterthwaite's Will Trusts* [1966] 1 WLR 277; *In re Finger's Will Trusts* [1972] 1 Ch 286);

(2) Where a specific entity can be identified as the recipient of the intended gift, the starting point is that:

(a) in the case of a gift to a charitable trust or charitable unincorporated association, the gift will be construed as a gift for the charitable purposes for which the charity holds its property (which, in the case of a charitable unincorporated association, may be determined by its constitution) rather than as gift to the specific charity or a gift which is dependent upon the continued existence of the charitable entity in its then form (see *In Re Vernon's Will Trusts* [Note] [1972] Ch 300; *In Re Finger's Will Trusts* [1972] 1 Ch 286 at 295F- 298F). This is subject to any contrary intention which is identified as a matter of construction (see (3) below);

(b) in the case of a gift to a corporate charity, the gift will be treated as a gift to the corporate entity itself and not a gift on trust for charitable purposes, the limit on the power of the corporate entity regarding any charitable property that it holds will be determined by its constitution (*In re Vernon's Will Trusts [Note]* [1972] Ch 300 at 303E-G). This is subject to any contrary intention which is identified as a matter of construction (see (4) below

(3) The particular circumstances may show that on a true construction of the will the conclusion in (2)(a) does not apply and instead the gift is

"*dependent on the named charitable organisation being available at the time when the gift takes effect to serve as the instrument for applying the subject matter of the gift to the charitable purpose for which it is by inference given. If so and the named charity ceases to exist in the life-time of the testator the gift fails*", per Buckley J in *In re Venon's WT [Note]* [1972] Ch 300 at 303D-E and see *In Re Ovey* (1885) 29 ChD 560*; Re Davis* [1902] 1 Ch 876*; In Re Lucas* [1948] Ch 175; *In re Fingers Will Trusts* [1972] 1 Ch 286 at 294F-295);

(4) The particular circumstances may show that on a true construction of the will the conclusion in (2)(b) does not apply and that the gift is one for the purposes of the work carried on by the relevant incorporated entity (see *In re Meyers* [1951] Ch 534, as discussed in *In re Vernon's Will Trusts* [Note] [1972] 1 Ch 300 at 302H-303C; 303E-304A and see also *Re Finger's Will Trusts* [1972] 1 Ch 286 at 298F-299A and *In re Arms Ltd* at 883G-884B)).

(5) In circumstances where a charitable gift is construed as being within (2)(a) but where the specific charitable entity in question (i) has ceased to exist in the lifetime of the donor and there is now no entity carrying on those purposes or (ii) it has changed its charitable purposes or has ceased to exist in its previous form but the charitable purposes (as lawfully modified) are carried on by it or a new entity which can be regarded as a continuation of the original charity, the gift will be valid. In the case of (i) will be applied cy-près by way of scheme (if that is possible) (*In re*

Finger's). In the case of (ii) will be treated as a gift for the purposes now carried on by the entity which now carries on the (possibly changed) charitable purposes, it being inherent in a gift for charitable purposes that those purposes may be amended (*In re Faraker* [1912] 2 Ch 488; In *re Lucas* [1938] Ch 424).

(6) In circumstances where the gift is construed as falling within (2)(b), but where the corporate entity (i) continues to exist at death albeit being subject to an altered status, such as liquidation (*Re Slevin* [1891] 2 Ch 236; *In re Arms (Multiple Sclerosis Research) Ltd* [1997] 1 WLR 877) or (ii) has altered its objects or (iii) ceased to exist at the date of death by reason of dissolution, then in situations (i) and (ii) the gift will remain valid but in situation (iii) it seems the gift will fail (subject to (8) below), although there is a tension in the first instance decisions (contrast *In re Vernon's Will Trusts [Note]* [1972] Ch 300 at 304B-E where Buckley J drew a distinction between the corporate entity, being the mechanical aspect by which charitable funds are held and the charity, which he considered survived, unless its assets were exhausted and it ceased any activity and *Re Stemson's Will Trusts* [1970] Ch 16 and *In re Fingers Will Trusts* [1972] 1 Ch 286 at 295D).

(7) In the case of a gift to an entity which never existed, the gift will be administered cy-près (*In re Davis, Hannen v Hillyer* [1902] 1 Ch 876), provided a general charitable intent can be made out (see *in re Wilson* [1913] 1 Ch 314). If there is no such intention, the gift will pass as on an intestacy.

(8) In any case where a gift fails, (for example, where a gift for charitable purposes but dependent on a particular entity carrying out those purposes or a gift to a corporate charity (but not on trust) which has been dissolved), the issue will then be whether or not a general charitable intention is made out in which case the gift will be applied cy-près by way of a scheme and if such intention is not made out, then the gift will apply on an intestacy. It may be more difficult to identify a general charitable intention where the gift is to an incorporated charity which has ceased to exist (see *Re Harwood* [1936] Ch 286; *Re Finger's Will Trusts* [1972] 1 Ch 286 at 299B-300).

(9) Statute has intervened to regulate the application cy-près of property, dedicated to charity, by way of scheme, but I do not need to enlarge upon that on this judgment for reasons that will become clear.

The cases

64. As well as a number of cases cited to me I also deal briefly with cases referred to in some of those cases so that the explanation given in the former cases makes more sense.

(a) Construction and paragraph 63(1) above

65. As has been said in a number of cases, it is not usually helpful to look at conclusions as to construction which have been reached in other cases. However I was referred to a number of cases and should deal with them.

66. In *Doe D Gains v Rouse* 5 C B 422 the testator had married a woman called Mary in 1834. In 1840, he purported to marry a woman called Caroline. By will he devised certain property to "my dear wife Caroline, her heirs & C absolutely. Although the full description in the will was not applicable to her (because she was not his wife) the gift

was construed as one to Caroline. Maule J referred to the then "more modern rule" that the construction of the will was to be governed by the evidence intention of the testator.

> "*Interpreting the language he has used, in its proper and legitimate manner, and regard being had to the circumstances existing at the time of the execution of the will, there can be no doubt that the intention of the testator is best effectuated by holding that the lessor of the plaintiff is the person designated, and that apt words have been used to convey the property in question to her*."

67. In *Coldwell v Holme* (1854) 2 Sm & G 31 the deceased, by will dated the 12 March 1846, bequeathed "the sum of £200 to the treasurer of the Benevolent Institution for the delivery of poor married women at their own habitations." Shortly afterwards she died. Between 1817 to 1836, when it ceased to act, there had existed a society called the Benevolent Institution, for the sole purpose of delivering poor married women at their own habitations, of which, for several years previously to its dissolution, the testatrix was a life member. There was however, another society founded in 1757, which had been called the Lying-in Charity, for delivering poor married women at their own habitations but, in 1824, it adopted the name the Royal Maternity Society, for delivering poor married women at their own habitations. It continued to exist under that name up to and after the death of the deceased. The doubt was identified as being that:

> *" if both societies were now in existence, and both claimants, the non-existent society, as more accurately described, would be entitled. The dissolution of that society being before the date of the will, leaves but one claimant.*
> *It would be proceeding on a very unsound principle, in a case in which there is, and was at the date of the will, but one society at all answering the description, if, in the absence of any evidence to justify such a conclusion, I were to assume that the testatrix was ignorant that the society of which she had been a member had been dissolved, and ignorant also that there was a society in existence similar in name and identical in purpose. I do not think there is the least evidence to warrant such an assumption. I think, therefore, that the present claimants, being sufficiently described, are entitled to the legacy."* (per Maule J, other judges concurring).

68. In *Re Donald* [1909] 2 Ch 410, by an 1893 will the deceased made various gifts to various volunteer, yeomanry and militia outfits. He died in 1902 and in 1909 a period of accumulation under the will passed and the gifts became distributable. Meanwhile legislation in 1907 and 1908 transferred the yeomanry and volunteer units to the Territorial Force and the militia units to the Army Reserve. The legislation was held not to have destroyed the relevant units but to reorganise them such that they continued to exist. As regards a gift to a unit of militia that was held to be charitable and to be payable to the officer now carrying on the work of the charity in question.

69. In *Re Magrath* [1913] 2 Ch 331 the testatrix, by her will dated 16 February 1910, bequeathed 3000l. to "Queen's College, Belfast," to found a scholarship. Prior to the making of the will, in October 31 1909, "Queen's College, Belfast," had been dissolved under the provisions of the Irish Universities Act, 1908 , and by virtue of a charter under the same Act the "Queen's University of Belfast" had been incorporated, and at the date of the will and the death was carrying on substantially the same work in the same place as the former body. There was no evidence whether the testatrix was or was not aware

of the dissolution of "Queen's College, Belfast," or of the incorporation of the "Queen's University of Belfast". It was held that for all practical purposes connected with the legacy the two institutions were identical; that under the circumstances (the case being treated as one of misdescription of the legatee) the "Queen's University of Belfast" was sufficiently referred to by the words of the will; and that the legacy took effect in its favour. (*Coldwell v. Holme* (1854) 2 Sm. & Giff. 31 was followed).

70. *The National Society for the Prevention of Cruelty to Children v The Scottish National Society for the Prevention of Cruelty to Children* [1915] AC 207 concerned a gift by Scottish testamentary document to "The National Society for the Prevenetion of Cruelty to Children", that was the precise name of an English based charity. It was argued by the Scottish equivalent charity (with the words "The Scottish" in front of the words used to name the English charity), that the gift should be construed as a gift to the Scottish charity. The court found insufficient evidence to create any ambiguity and held that the gift passed to the English charity whose name mirrored that of the words of gift.

71. In *Re Songest Deceased, Mager v The Forces Help Society and Lord Roberts' Workshops* [1956] 1 WLR 897 A testatrix gave the residue of her estate " upon trust for the" Disabled Soldiers', Sailors' and Airmen's Association absolutely." There was no association of that name either when the will was made or when she died, but there was an unincorporated body known as " The Star and Garter Home for Disabled Sailors, Soldiers and Airmen" and an incorporated body, which at all material times was known as " The Incorporated Soldiers', Sailors' and Airmen's Help Society". It was unclear which the testatrix had in mind but that a general charitable intention was manifest and the gift would be applied cy-près by way of scheme.

72. In *Re Satterthwaite's Will Trusts* [1966] 1 WLR 277 a will, executed on 19 December 1953 directed the division of the net residuary estate amongst nine named organisations connected with the care and cure of animals. It appeared that some of the names had been found by bank official, at her request, having found some names. He had done this by looking through the London classified phone directory. Other names had been produced by the deceased but it was not known where she had got the details from. The fourth bequest was to the "London Animal Hospital". That had been the name of a private business carried on by the defendant R from 1943 to 1952. 2 others had joined with him as proprietors between 1948 to1953. Six months before the will was executed the business name was withdrawn and R continued the business under his own name as sole proprietor up to and including the date of the proceedings. The testatrix died in 1962. R and the Blue Cross laid claim to the share of residue. The Blue Cross ran an animal hospital in the same area of London at all material times. The court held that the whole residuary gift, taken as a whole, showed an intention to benefit a purpose (the welfare of animals) and not to benefit a private individual who was not bound to devote the gift to that purpose and that as at the date of the making of the will the business carried on by R did not bear the name referred to in the will, he could not take. As regards the Blue Cross, that charity also could not take because the evidence that it was known by a similar but not precisely corresponding name (the London Animals' Hospital) was insufficient to identify it with the name in the will (though in part the decision was that the evidence of such common naming was also unsatisfactory and very weak).

73. *In re Finger's Will Trusts* [1972] Ch 286, there were two gifts by will dated 25 June 1930 that had to be construed, one to the "National Radium Commission" and the other to the "National Council for Maternity and Child Welfare" (in the case of the latter the description in the will had the word "for" in place of the word "and" but this was said to be an obvious mistake for "and").

74. The first question was whether the gift was to the National Radium Trust (a trust incorporated by charter) or the (unincorporated) Radium Commission. The two were connected. Both were created in 1929. The Trust was to be the purchaser and owner of radium but the Commission was to see to its distribution and use. The gift was construed as being to the Commission: the words "commission" in the gift was thought to be more significant than "national" (also, both operated nationally) and it was also significant that the Commission was "in substance the operative body which organised the supplies".

75. The Commission ceased to exist on surrender of the relevant charter that had established it, which occurred because there was no need or Commission nor Trust after the National Health Service Act came into operation. It was conceded that the Ministry of Health could make no direct claim to the relevant share of residue.

76. As regards the second gift in question, that to the National Council for Maternity and Child Welfare ("NCMCW"), the question was whether as a matter of construction and in the events which had occurred the second defendant was the body named in the will or alternatively its successor. In brief, the NCMCW had been an incorporated body incorporated in 1919 at the address mentioned in the will. It had changed its name to NCMCW in 1927. Also at the same address were two constituent members of the NCMCW. In 1930 one changed its name to Association of Maternity and Child Welfare Centres. 1930 was the date of the will. In 1937 the two members amalgamated to form an unincorporated association under a long name which in 1948 was abridged to "The National Association for Maternity and Child Welfare" (the "Association"), a name similar to that in the will but not identical. The NCMCW was wound up pursuant to a special resolution passed in May 1948. Apart from a fixed asset all its assets were passed to the Association and since the winding up, the Association had carried on the work of the NCMCW. The deceased died in 1965.

77. The court held as a matter of construction there was nothing to fasten a purpose trust onto the gift in question. Although the work of the NCMCW was being carried on by the Association, the gift could not be construed as a gift to the Association. However the court determined that the relevant gift was to be applied cy-près by way of a scheme.

78. The court held that the NCMCW had ceased to exist (the Crown was represented and claimed as bona vacantia so the inference is that the NCMCW had been dissolved at the end of the liquidation process).

79. It held that the gift could not be construed as on to the Association:

(1) *Re Donald* was distinguished on the basis that in that case the relevant units were found not to have ceased to exist but to be identifiable in the territorial forces.

(2) *Coldwell v Holme* and *Re Magrath* were distinguished on the ground that in those cases the named society had ceased to exist before, and not after, the date of the will

and the court was in those cases able to treat the matter as a simple case of misdescription of the new body. In the *Finger's* case, the entity ceased to exist after the date of the will. There was no doubt what the will itself was referring to and the relevant body existed at that time. The claim as successor also failed because the Association was not the successor to the NCMCW quoad the share which the council would have taken had it survived but never in fact became the property of the NCMCW.

(b) Gifts to unincorporated charities: paragraph 63(2)(a), (3) & (5)

80. A gift to an unincorporated charity will be treated as a gift for charitable purposes and normally the existence of a particular entity (unincorporated association or trustee) to receive the gift will not be read into the gift unless, as a matter of construction, it is right to do so.

81. This principle is a long standing one. It is set out more recently in the *Vernon's WT* and *Re Finger's* cases.

82. *In re Vernon's WT* the principle was stated succinctly by Buckley J (as he then was) at page 303C-D:

> "*Every bequest to an unincorporated charity by name without more must take effect as a gift for a charitable purpose. No individual or aggregate of individuals could claim to take such a bequest beneficially. If the gift is to be permitted to take effect at all, it must be as a bequest for a purpose, viz., that charitable purpose which the named charity exists to serve. A bequest which is in terms made for a charitable purpose will not fail for lack of a trustee but will be carried into effect either under the Sign Manual or by means of a scheme."*

83. In *Re Finger's*, Goff J (as he then was) though pointing out that the dicta in Vernon regarding unincorporated charities was obiter, followed that principle. That principle was well established by earlier cases.

84. As regard the caveat, that is that on a true construction of a such a gift to an unincorporated charity the gift may be dependent upon the continued existence of the specific unincorporated charity, the matter was put by Buckley J as follows:

> "*A bequest to a named unincorporated charity, however, may on its true interpretation show that the testator's intention to make the gift at all was dependent upon the named charitable organisation being available at the time when the gift takes effect to serve as the instrument for applying the subject matter of the gift to the charitable purpose for which it is by inference given. If so and the named charity ceases to exist in the life-time of the testator, the gift fails: In re Ovey (1885) 29 Ch D 560*."

85. *In re Ovey* (supra), a gift by will dated 1 June 1881 had been made to the "Ophthalmic Hospital (near Hanover Square, London)". There were five ophthalmic hospitals in London, the nearest to Hanover Square being a mile off. There was also evidence from

the secretary of the London Ophthalmic Hospital, Moorfields that an institution called the "Royal Infirmary for Diseases of the Eye" had existed at Cork Street, nr Hanover Square until about 1872 when its affairs had been wound up and the balance of its funds transferred to the hospital at Moorfields. The court concluded, looking at various provisions in the will, that (a) the gift could not be construed as a gift to the Moorfields hospital and that (b) the intention had not been simply to benefit hospitals for the blind but to benefit "a particular hospital if that particular hospital was in existence and capable of receiving his bounty". The gift lapsed as that hospital had ceased to exist prior to the will being made.

86. *In re Fingers*, the facts of which I have already referred to, the gift to the extinct unincorporated Radium Commission, was held to be a purpose trust for the work of the commission which did not fail but was applicable under a scheme. There was nothing in the context of the will to make the Commission "of the essence of the gift".

87. In argument, Goff J had been much pressed with the case of *Re Roberts, decd*. [1963] 1 WLR 406 in which Wilberforce J (as he then was) had said that the mere fact that there is a gift to an unincorporated charity did not seem to him to be enough to enable him to come to the conclusion that the gift was one for charitable purposes. That might be taken as indicating that some positive indication that the purposes were general might have to be found. However, as Goff J pointed out, in fact Wilberforce J reached the conclusion that the gift was for general purposes rather than being tied to the particular body or institution "*without any real context affirmatively to show that*."

88. In *Re Vernon's WT*, Buckley J had also referred to two cases in the context of charitable trusts (rather than incorporated charities): *Re Faraker* [1912] 2 Ch. 488 and *In Re Lucas* [1948] Ch 424.

89. *In re Faraker*, the deceased died in 1911. She left a gift of £200 to "Mrs Bailey's charity, Rotherhithe". At Rotherhithe there was a charity known as Hannah Bayly's Charity" founded in 1756 by a Mrs Bayly for the benefit of poor widows resident in and parishioners of St Mary Rotherhithe. In 1905 the Charity Commissioners sealed a scheme in the matter of that charity and 13 other charities in Rotherhithe whereby the endowments of those charities were consolidated, trustees appointed and trusts declared for the benefit of the poor of Rotherhithe (though widows were not expressly mentioned). The Court of Appeal was exercised by the fact that, under the scheme, widows were not mentioned specifically but came to the conclusion that the gift was given simply to a charity identified by name and that with that kind of gift is carried with it the concept of the application of it according to the lawful objects of the charity funds for the time being. The charity still existed and was being carried on but now under the terms of the relevant scheme. The gift was to be paid to the trustees of the charity under the scheme. There was no question of an application cy-près.

90. *In Re Lucas* [1948] Ch. 176, the gifts (a legacy and a share of residue) by will dated 12 October 1942 of the testatrix, who had lived in Huddersfield for many years, was "to the Crippled Children's Home Lindley Moor Huddersfield". In 1916, a home called "The Huddersfield Home for Crippled Children" was built on Lindley Moor. It was closed in October 1941 and a scheme for the future administration of its assets made by the charity commissioners. Under the scheme, a new charity was created to be known

as "The Huddersfield Charity for Crippled Children". The testatrix died in December 1943.

91. As a matter of construction, the court decided that the gift was not made to the charity for its charitable purposes as an augmentation to its funds but as a gift for the upkeep of the particular home which had closed, in other words a gift in favour of a particular institution for a particular purpose. Accordingly, the gift failed. The question of a general charitable intention was not pressed by Counsel for the Attorney General, Mr Danckwerts (as he then was). However, the Judge accepted that, had he construed the gift as being a gift to augment the funds of the charity, or in other words for the charitable purposes carried on by the charity, he would have applied the reasoning in *Re Faraker* as regards those purposes surviving in their shape as altered by the scheme.

92. As regards the issue of construction, as to whether a gift was intended to be a gift dependent upon the named charitable organisation being available at the time when the gift took effect (to serve as the instrument for applying the subject matter of the gift to the charitable purposes for which it was by inference given) or, put another way, whether the gift is limited to specific purposes of the existing charity rather than an augmentation to its general funds, held for those purpose and which purposes can be changed, the reference to *In Re Rymer* [1895] 1 Ch 19 raises the same issue that arose in relation to the case of *Re Roberts,* considered and dealt with in *Re Fingers* as I have mentioned.

93. In short, I consider the starting point to be that it is necessary to look in the will for reasons to construe the will as being a gift dependent upon the existence of a named charitable organisation at the time the gift takes effect rather than reasons why the gift is construed as being one for charitable purposes without such limitation. In *Re Rymer* the gift was to a rector of a specific seminary "for the education of priests in the [Roman Catholic] diocese of Westminster for the purposes of such seminary". It was construed as a gift dependent upon the continued existence of the seminary in question. However, in my judgment that flowed from the words of the gift, which were not words of gift simply to the seminary.

94. In *Re Finger's WT* the gift to the Radium Commission was found to survive the extinction of that body. The Judge held that the gift was a purpose trust for the unincorporated Radium Commission which, being charitable, did not fail but which was applicable under a new cy-près scheme provided (1) nothing in the context of the will showed that the gift was dependent upon the named charitable organisation existing at the date when the gift took effect and (2) **that** charitable purpose still survived. As I read it the second condition was relevant to the question of the gift being capable of being applied cy-près.

95. One distinction between *Re Faraker* and *Re Finger's WT* is, in my judgment, that in the former case the relevant charity continued to exist whereas in the latter case the relevant charity had come to an end. Accordingly, in the former case the gift was treated as a gift to the amalgamated charities without more, whereas in *Re Finger's WT* a cy-près scheme had to be directed.

Gifts to incorporated charities, paragraph 63(2)(b), (4) and (6) above

96. The starting point regarding gifts to an incorporated corporation is that the gift is to the incorporated body:

> " *A bequest to a corporate body, on the other hand, 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. There is no need in such a case to infer a trust for any particular purpose. The objects to which the corporate body can properly apply its funds may be restricted by its constitution, but this does not necessitate inferring as a matter of construction of the testator's will a direction that the bequest is to be held in trust to be applied for those purposes: the natural construction is that the bequest is made to the corporate body as part of its general funds, that is to say, beneficially and without the imposition of any trust. That the testator's motive in making the bequest may have undoubtedly been to assist the work of the incorporated body would be insufficient to create a trust."*(per Buckley J in *Re Vernon* [1972] Ch 300 at 303E-G) (see also the passages from other judgments that I have referred to in paragraph 63(2)(b) above)."

97. Examples where, unusually, the construction of the gift has shown that a separate trust was imposed and the gift was not an absolute gift to the incorporated charity include *Re Meyers* [1951] Ch 534 where Harman J (as he then was) has reached such a conclusion. The matter is explained by Buckley J in *Re Vernon's WT* at 303A-C:

> *" In In re Meyers a testator by a will made in 1942 had bequeathed a large number of pecuniary legacies to hospitals some of which were unincorporated and others incorporated. All these hospitals were affected by the Act of 1946 in the lifetime of the testator who died in January 1949. Harman J., first considered the effect of the legacies to unincorporated hospitals and, following In re Morgan's Will Trusts [1950] Ch. 637, held that on their true construction these were gifts for the purposes of the work of the various hospitals. Having so held, he went on B to consider the effect of the gifts to incorporated hospitals and reached the conclusion that it would be contrary to common sense not to give a like construction to these as to the gifts to unincorporated hospitals with which they were intermixed. He accordingly held that in every case when the testator gave money to a hospital he paid no regard to whether it was corporate or not but gave to the work which that hospital was carrying on. Harman J. was very explicit in founding his decision on the context afforded by the £ gifts to unincorporated hospitals."*

98. It is noticeable that in *Re Vernon's WT* itself, Buckley J was unable to construe the gift to the corporate body in a similar manner (i.e. as being a gift to the corporate entity as trustee rather than beneficially):

> "*I cannot find in the testatrix' will any context indicating that the bequest of one third of her residue to the incorporated guild ought to be construed as a trust legacy. The pecuniary legacies to two named hospitals do not in my judgment afford such a context; nor does the fact that the other two shares of residue are given to charitable institutions, one of which at any rate, the National Life Boat Institution, is of quite another kind; nor does the reference to the receipt of the*

> *treasurer of any such institution; nor do all these circumstances taken together. The bequest was, in my judgment, a simple bequest to the incorporated guild which that body, had it survived the testatrix, would have been entitled to receive as part of its general funds unfettered by any trust imposed by the testatrix as to the purposes for which it should be used*".

99. If there is a gift to an incorporated entity (charitable or not) beneficially, and if at the time that the gift should take effect the corporation still exists, then the gift will take effect notwithstanding the objects of the incorporated entity have changed or it has changed its status, by for example entering into liquidation. This of course is subject to any question of the will, on its true construction, changing that result.

100. In *Re Slevin* [1891] 2 Ch 236 there was a gift by will to an institution which ceased to exist after the date of the death of the testator. The gift was held to be valid. The property in question fell to be administered by the crown as bona vacantia (suggesting that the institution was incorporated).

101. *In re Arms (Multiple Sclerosis Research) Ltd* [1997] 1 WLR 877, various wills had left properties to an incorporated charity which, after the date of the making of the wills but before the dates of death of the testators, went into insolvent liquidation. It had not been dissolved as at the dates of the testators' deaths. The gifts were declared valid.

102. Where an incorporated charity does cease to exist prior to the date of death of a testator, the predominant view appears to be that the gift lapses unless a general charitable intent can be made out and the gift can be applied cy-près. This view was challenged by Buckley J in the *In re Vernon's WT* , at least as regards charitable companies that contained objects preventing distributions of residual assets and the application of surplus assets in a winding up to charitable purposes. The reasoning is, as might be expected, powerful:

> "*Had the incorporated guild been other than a charitable body, that would be the end of the matter, for the bequest would lapse on account of the dissolution of the incorporated guild in the lifetime of the testatrix. The guild was, however, incorporated for exclusively charitable purposes, and its memorandum of association was so framed that its funds could never be distributed among its members and that in a winding up any surplus assets would continue to be applied for objects similar to those of the incorporated guild. Whether and how far it would be right to regard the funds of the incorporated guild as subject to a charitable trust, I do not pause to consider beyond pointing out that any assets which it took over from the unincorporated guild would appear to have been subject to such a trust. Trust or no trust, however, it is true to say that the assets of the incorporated guild were all effectually dedicated to charity. In no circumstances—at least without the intervention of Parliament—could any of those funds have been used otherwise than for charitable purposes of the kind for which the guild existed so long as those purposes remained practicable. Even if those purposes ceased to be practicable, the charity would not cease to exist, although its funds would be applied cy-pres. Such a charity, considered as a charity and apart from the mechanism provided for the time being and from time to time for holding its property and managing its affairs, could never cease to exist except by exhaustion of all its assets and cessation of its activities. A change*

> *merely in its mechanical aspect could not involve the charity ceasing to exist. The principle of the decisions in In re Faraker [1912] 2 Ch. 488 and In re Lucas [1948] Ch. 424 is, in my judgment, equally applicable to an incorporated charity of this kind as to a charity constituted by means of a trust. In such cases the law regards the charity, an abstract conception distinct from the institutional mechanism provided for holding and administering the fund of the charity, as the legatee, and so long as the charity as so conceived continues in existence the bequest will not lapse. This result is not a consequence of construing the gift as one made for a charitable purpose to be ascertained by seating oneself in the testator's armchair, for the charity may be entitled notwithstanding that its objects may have been modified or changed in accordance with the law between the date of the will and the testator's death or any later date at which the gift takes effect. It is a consequence of regarding the charity as the legatee in the manner I have stated."(In re Vernon's WT at 304A-E).*

103. However, in *Re Stemson's Will Trusts* [1970] Ch 16, Plowman J focussed on the particular manner in which the incorporated charity in *re Vernon's WT* had had its existence in its then form terminated by reason of the structure of the National Health legislation. He considered that that situation was different to the norm where a charitable company's existence comes to an end before a gift in its favour become effective and that ending of its life is brought about under its own constitution (or, I would add, normal Insolvency/Companies Act legislation). In that situation, he considered that authority was clear that *Re Faraker* could have no application, whether by analogy or otherwise. That approach was followed by Goff J in *Re Finger's WT* at 295D-E. It seems that the point can only be considered by a higher court. In any event, I heard no argument on this area. .

Clause 13 of the Will

104. A point that arises in relation to many of the gifts of a share of residue under the Will is the application, or potential application, of clause 13 of the Will. It is therefore necessary to construe that clause.

105. First, it seems to me that the clause should be applied narrowly to the categories of change there mentioned. Rather oddly the clause does not bite upon (for example) entering a relevant insolvency regime as is more the norm. Although the point does not arise it seems to me also that there may be some room for manoeuvre as to what is encompassed by a "change of name". Thus, a change in case of the letter "t" at the start of a definite article would technically be a change of name but query whether it would fall within clause 13 of the Will. A similar issue might arise, for example, in the case of the insertion or removal of a definite article at the start of the charity's name.

106. The main issue, however, is whether the clause only bites on relevant identified changes that take place after the date of execution of the Will or whether it encompasses such changes which occur prior to execution of the Will.

107. In my judgment it is clear that the clause only bites on relevant identified changes that occur after the date of execution of the Will.

108. First, that is consistent with the principle that, for construction purposes, the Will is to be treated as speaking from the date of execution. Secondly, it fits with the natural language and construction of the clause. The phrase "has" "changed its name" (etc) would naturally be read as "since now" (i.e since execution). Thirdly, it is in line with commonsense. If, as at 2016, a will specified, say, a charity as a beneficiary under that will, why would matters that occurred prior to that date in relation to the charity impact upon the intention to make the gift taking effect on death? The natural inference is that the testator was content to make a gift under his will to that charity in its then state but wanted to guard against the possibility of future relevant changes to the charity. As at, say, 2016, the testator would know any entity in its then state and the fact that its current name may (for example) have been a result of a change of name some years earlier does not bear upon the testator's intention. Furthermore there may be real problems in investigating backwards whether a charity has e.g changed its name, especially if the charity is a trust and has been in existence for many years.

109. My construction is one that the First and Fourth Defendants and the Claimant all concurred in.

(1) Animal Defence Society 52-53 Dean Street London W1V 5HJ

110. There is no extant registered charity with the name "Animal Defence Society" and searches have not revealed any such charity.

111. The Third Defendant is The Animal Defence Trust ("ADT"). Its registered charity number is 263095. It was registered on 26 October 1971. Its activities as described on the charities register are:

> "*The charity is a grant giving charity making grants annually to other animal welfare charities throughout Great Britain and also abroad. The charity also makes representations to the European Union regarding the treatment of farm animals transported from the United Kingdom to Europe, and across European countries over often very hot long distances without adequate rest and watering."*

112. As put more fully in unaudited accounts filed with the Charity Commission e.g. for the year ended 30 November 2018, the objects of the charity are described as being:"

> *"The objects of the charity are:*
>
> *1. To protect animals from cruelty and suffering and to promote humane behaviour to animals so as to reduce the sum total of pain and fear inflicted upon animals by mankind.*
>
> *2. To promote and publish the results of research undertaken with a view to discovering means, whereby as far as possible, medical biological pharmaceutical and other research may be carried out without the use of animals and whereby as far as possible any pain and fear suffered by animals used in connection therewith may be eliminated or reduced.*
>
> *3. To assist in the establishment and maintenance of a body of inspectors to ensure that animals transported to docks, airports, markets, auction sales,*

> *exhibitions, circus shows and other places, events and meetings, are transported in proper and humane conditions and that animals are accommodated properly and humanely wherever they may be.*
>
> *The charity operates throughout England and Wales. In addition, the charity, may from time to time, operate in other countries such as Egypt, France, India, Israel, Portugal, Scotland, Greece, Gambia and Nepal.*
>
> *In setting objectives and planning for activities, the Trustees have given due regard to general guidance published by the Charity Commission relating to public benefit and in particular to its supplementary public benefit guidance on the advancement of animal welfare*."

113. ADT is a charitable trust and was founded by a Deed of Declaration of Trust dated 25 September 1971 (the "Deed of Trust").

114. The Deed of Trust was made between (1) The Animal Defence Society Limited whose registered office was at 52/53 Dean Street London W1 (defined as the "Society") and (2) seven named individuals (defined as "the Trustees"). The recitals to the Deed of Trust reveal that:

(1) The Animal Defence and Anti-Vivisection Society Limited changed its name, on a certificate of incorporation on change of name being issued on 11 May 1971, to The Animal Defence Society Limited.

(2) In proceedings in the High Court of Justice, Chancery Division concerning the trusts affecting the proceeds of sale of 15 St James Place London SW1, the estate of E A L Lind-AP-Hageby deceased and the estate and will of Nina Mary Benita Duchess of Hamilton and Brandon deceased, an order dated 13 February 1970 had provided that 29/60s of a "Fund"(as therein defined) should be transferred to the Society and that 24/29s of such sum should be held by the Society on such trust for the welfare of animals as should be exclusively charitable and such trusts should be declared by a deed, this deed being that deed.

115. The operative part of the Deed of Trust provide for the payment of the relevant 24/29ths to the trustees and the holding of the same upon the trust therein set out the trust henceforth to be known as The Animal Defence Trust.

116. The background to the Deed of Trust is explained in the Animal Defence Trust's website as follows:

> "***History***
>
> *In 1903 the Swedish Countess, Emily Augusta Louise Lind-af-Hageby founded the Animal Defence and Anti Vivisection Society which she ran until her death on 12 December 1963 from Animal Defence House, 15 St James's Place, London, SW1.*
>
> *Following her death it became necessary to separate her assets from those of the Society and in February 1970 the Vice Chancellor in the Chancery Division of the High Court gave judgment that 29/60ths of her assets,*

> *including Animal Defence House, belonged to the Society, subject to 24 of such 29ths being settled on Charitable Trusts to carry on the charitable purposes of the Society. In September 1971, with the approval of the Court and of the Attorney General, the Animal Defence Trust was registered with the Charity Commission as a registered charity."*

117. According to the Gazette, The Animal Defence Society Limited was wound up in 1989:

> "*Name of Company—THE ANIMAL DEFENCE SOCIETY LIMITED. Company Registration No.—839378. Address of Registered Office—Field Study Centre, Laughter Hole Farm, Postbridge, Yelverton, Devon. Court—HIGH COURT OF JUSTICE. No. of Matter—002729 of 1989. Date of Winding-up Order—21st June 1989. Date of Presentation of Petition—9th May 1989*."

118. The notice of the winding up petition as it appeared in the Gazette is as follows:

> *"In the High Court of Justice (Chancery Division) Companies Court. No. 002729 of 1989 In the Matter of THE ANIMAL DEFENCE SOCIETY LIMITED and in the Matter of the Insolvency Act 1986 A Petition to wind up the above-named Company of Wildlife Sanctuary, Ferne, near Shaftesbury, Dorset, presented on 9th May 1989 by Diana Hamilton Andrews of Flat 3, S3 St. George's Drive, London S.W.I., claiming to be a Creditor of the Company, will be heard at the Royal Courts of Justice, Strand, London WC2A 2LL, on 14th June 1989, at 1030 hours (or as soon thereafter as the Petition can be heard). Any person intending to appear on the hearing of the Petition (whether to support or oppose it) must give notice of intention to do so to the Petitioner or her Solicitor in accordance with Rule 4.16 by 1600 hours on 13th June 1989. The Petitioner's Solicitor is Halsey Lightly, 10 Carteret Street, Queen Anne's Gate, London SW1H 9DR. (Ref. JDT/LJ.)*

119. The situation following this is explained as follows on the ADT's website (though the reference to Commercial Court should be a reference to the Chancery Division, Companies Court and to 1993 rather than 1991):

> *"Later, following the liquidation of the Society, which had become a company limited by guarantee, the Commercial Court ruled in a judgement in 1991 that the surplus assets in the liquidation of the incorporated society should be transferred to the Animal Defence Trust including the proceeds of sale of the Society's 237 acres Ferne Estate, near Shaftesbury, Dorset.*
>
> *...*
>
> *As a result, the Animal Defence Trust has been able, with largely the old Society's assets, to carry out the old Society's longstanding solely animal welfare charitable purpose."*

120. A copy of the 1993 Order is in evidence. It is dated 26 April 1993. It contains a declaration and makes other provision as follows:

> " ***THE COURT DECLARES*** *that upon the true construction of Clause 7 of the Memorandum of Association of the Company and in the events which have happened any surplus assets of the Company after payment of all liabilities of the Company and all expenses of the Liquidation ("the Surplus") is to be applied to some charitable object;*
>
> ***IT IS BY CONSENT ORDERED***
>
> *1) that the surplus be directed by way of Scheme to be paid to the Trustees of the Animal Defence Trust ("the Trust") being registered charity number 263095*
> *2) that settlement of a list of contributories be dispensed with*
> *3) that-the Liquidator be at liberty to make interim distributions to the Trust*
> *4) that the costs of this Application be paid out of the Surplus such costs to be taxed on the indemnity basis if not agreed".*

·/

121. In my judgment, the gift to "The Animal Defence Society" should be construed as at the date of the Will and taking into account what had happened at that stage. In effect, the original guarantee company had by then been dissolved (which is the inference I draw) and its assets transferred to and its relevant charitable work was then being carried on by the Animal Defence Trust. In my judgment, this is the entity to which the gift is to be construed as being in favour of as at the date the Will was executed. Unlike the situation in *Re Fingers*, the relevant changes occurred prior to the date of the relevant will and it is possible to treat the description in the Will as a misdescription. In effect, the situation is analogous to that in *Re Magrath*.

122. The only other issue is whether clause 13 of the Will changes this conclusion. As I have explained, it seems to me that Clause 13 is only prospective, that is that it applies to any of the specified events that take place after the date of the Will. No such events occurred in that timespan in this case and therefore clause 13 does not, in my judgment, apply. On the point of construction of clause 13 that I have decided, the First Defendant agreed with that construction.

123. The contrary argument put by the First Defendant in her witness statement was that the gift had no effect because (a) the gift was to an entity which had ceased to exist before the Will was made and (b) clause 13 does not apply to a gift to a body to which any of the relevant events took place before the Will was made and therefore the gift fell to be dealt with as on an intestacy rather than pursuant to clause 13. As I have said I disagree with the first part of this case but agree with the construction of clause 13.

124. I should add that if I was wrong on the construction point, I would in any event have been satisfied that there was a general charitable intention of the gift in question derived from clauses 10, 12 and 13 of the Will and would have directed the gift to be applied cy-près. If the court was to settle a scheme I would have provided for payment to the ADT.

(2) Animal Health Trust 24 Portland Place London W1N 4HN

125. This entity is a company with registration number RC000011 and is a Royal Charter company. The Royal Charter was, the relevant website of the Privy Council shows, granted in July 1963. Its charity registration number is 209642.

126. It was placed into liquidation, apparently in proceedings in the High Court, and on 24 September 2020 the Secretary of State appointed two insolvency practitioners from Grant Thornton LLP as the liquidators. It is unclear whether the company was placed into liquidation before or after the death of the Deceased in April 2020. It is likely that it was after that death (on the basis that Secretary of State appointments are usually made not long after the original compulsory winding up order) but I do not have evidence on the point and, as I explain, the precise sequence of events does not matter. The crucial fact is whether the body corporate existed at the date of the deceased's death, not whether it was in liquidation before or after that date.

127. I have no evidence linking the Animal Health Trust to the address in Great Portland Street given in the Will but equally no evidence linking that address to any other relevant entity. I would ignore the (possibly) incorrect address under the principle: *falso demonstratio non nocet*.

128. The evidence before me is that the company was still in liquidation in November 2021. That evidence is somewhat stale. Otherwise, the case proceeded before me on the basis that the company had not been dissolved because there is no record to that effect at the Charity Commission or Companies House (or, I would add, the Gazette). I do note however that notice to creditors to prove for the purposes of payment of a first dividend was given for October 2023.

129. First, the usual rule, as I have said, is that a gift to a charitable incorporated body is treated as a gift to the corporation itself, not a gift to it on trust. In my judgment there is nothing in the Will to treat the gift as a gift to the corporation on trust for particular charitable purposes.

130. The second question is whether or not the fact of liquidation makes any difference. Assuming that the company is still in existence as at the date of death, then the usual rule is that the gift survives. If the company ceases to exist because it is dissolved after the death of the testator then the property falls to be administered by the Crown (I assume on the basis of bona vacantia) and the Crown will then apply it for an analogous purpose of charity.

131. Subject to any contrary provision in the Will therefore, in this case the usual rule would be that the gift is one to the Animal Health Trust and, assuming the company is still in liquidation, the relevant sum should be paid to its liquidators. If the company has been dissolved prior to such payment, then the sum is payable to the crown on the basis that the property goes bona vacantia.

132. The only question is whether in this case the Will contains any other provision which might impact on the usual rule. Clause 13 applies only to changes of name, amalgamations or transfers of all of its assets to any other body. I do not consider that a payment of dividends to creditors in a winding up would fall within this clause but even if I am wrong this has not yet occurred.

133. Accordingly, the gift to Animal Health Trust (royal charter registered number at companies RC000011 and charity registration number 209642) is valid.

(3) Society for Promotion of Nature Reserves The Manor House Alford Lincolnshire

134. On 19 January 1976, the petition of the former Society for the Promotion of Nature Reserves for the grant of a new charter under the name of The Society for the Promotion of Nature Conservation was granted by the Queen's Most Excellent Majesty in Council.

135. On 18 February 1981, a change of name to The Royal Society for Nature Conservation was granted by the Queen's Most Excellent Majesty in Council.

136. On 10 December 2003, a change of name to The Royal Society for Wildlife Trusts was granted by the Queen's Most Excellent Majesty in Council.

137. The charity is registered on the Charity Register with number 207238. It is registered at companies house as a Royal Charter company with number RC000558.

138. The charity confirmed by email dated 27 July 2022 that the Alford address given in the Will was that Charity's address from 1965 until the end of the mid '70s.

139. It is clear that "the Society for the Promotion of Nature Reserves" as identified in the Will is now called "The Royal Society for Wildlife Trusts" and is the same corporate charity.

140. There is nothing in the Will of itself to suggest that the gift is other than an absolute gift to the corporate charity identified. The only issue is whether clause 13 of the Will has any impact. As I have already set out, in my judgment clause 13 only bites on relevant changes after the date of the Will. The name changes all took place before that date.

141. Accordingly, I consider that the relevant gift is a valid gift to what is now known as The Royal Society for Wildlife Trusts (registered charity number 207238; Royal Charter registered number at Companies House: RC000558).

(4) The Donkey Sanctuary Springfield Fosters Lane Woodleigh Berkshire

142. There was a charity which operated at the address given. This is subject to the point that the address contains a spelling mistake. "Woodleigh" should be spelled "Woodley".

143. However, the operation of that charity was later taken over by another charity which is now known as "The Donkey Sanctuary" and which is based at Slade House Farm, Sidmouth, Devon. That charity is registered with charity registration number 264818. It is a trust and the sole trustee is a company called The Donkey Sanctuary Trustee Limited (company registration number 072328588) (in this section of the judgment, the "DS company"). The trust is named as fourth defendant but more accurately it should probably be the DS company.

144. It is necessary to go into the history of both the operation at Woodley and that of what is now The Donkey Sanctuary (which in this section of the judgment I shall refer to as

the "DS trust"). In this respect there has been the very helpful witness statement from Ms Honey, solicitor and legacy manager of the DS trust. The following is almost entirely taken from her witness statement and the documents that she exhibits.

145. First, the DS company. It was incorporated on 28 July 2010 as a company limited by guarantee. It has filed dormant company accounts throughout its existence and appears to act solely as trustee of the DS trust.

146. Secondly, the DS trust. In 1969, Dr Elisabeth Svendsen ("Dr Svendsen") founded a donkey sanctuary known as the South Western Donkey Sanctuary. It was first registered as a charity in March 1973 and was then subject to a declaration of trust dated 1 March 1973.

147. Meanwhile, in Woodley, a Ms Violet Philpin had founded and operated a donkey sanctuary at Woodley, Berkshire. This sanctuary was known (formally) as The Helping Hand Animal Welfare League Donkey Sanctuary ("HH"). A screenshot of the result of a search of a relevant government site of probate documents shows that Ms Philpin died on 19 June 1974 and that her address at death was Springfield, Fosters Lane, Woodley, Reading.

148. It appears from an autobiographical work by Dr Svendsen called "Down among the Donkeys" (published by Pan) that in June 1974 and shortly after the death of Ms Philpin, following a message having been left for her to telephone a number, she rang that number to be told that she had a legacy of 204 donkeys. It was someone at Barclays Bank Trust Company Limited which had been appointed executor and trustee under Ms Philpin's will. Ms Philpin had died and Dr Svendsen had been named as residuary legatee. She was told that the will contained a clause that Dr Svendsen should take those donkeys that she could and that the rest should be shot.

149. Dr Svendsen also recounts how she was told that Ms Philpin's house was a "very derelict cottage", that Ms Philpin's own bank account was overdrawn as was the HHs's account and the latter owed over £8,000. There were outstanding wages and backpay and someone was asking for payment for donkeys.

150. Dr Svendsen then went to Reading for the funeral and to size up the position. She found about 80 or 90 donkeys. The rest had apparently been farmed out. The sanctuary itself was about 16 acres and rent was due in respect of grazing rights. Dr Svendesen involved the Charity Commissioners and an assistant commissioner came down and gave her very valuable advice. It was decided to merge the two charities through a scheme.

151. As regards the will of Ms Philpin a copy is in evidence. It is dated 2 April 1974. Interestingly, it contains a direction, at clause 3, to "wind up the operation of the Donkey Sanctuary at Burghfield" with a view to closure as soon as possible and thereafter refers to the Donkey Sanctuary and the Donkey Sanctuary at Burghfield. She also refers to "Mrs Svenson" and "her own Donkey Sanctuary".

152. A copy of the scheme that was made is in evidence. It was sealed on 10 September 1974. It is a scheme for the regulation of the two charities, the South Western Donkey Sanctuary ("SWDS") and HH. The assets of HH set out in the Schedule were to be transferred to SWDS and SWDS was to be administered and managed under the title The Donkey Sanctuary. The objects of the charity were then set out followed by what

was effectively a constitution providing for trustees and their appointment, meeting and regulation. The property transferred by HH included 54 donkeys now in the care of SWDS and "a number of other donkeys grazing elsewhere"; 14 sectional buildings and various sums in bank accounts. Dr Svendsen mentions in her book how donations and gifts had continued to arrive for HH after Ms Philpin's death.

153. The first question is the construction to be given to "The Donkey Sanctuary" in the Will. I do not accept Mr Moffett's submission that, taken on its own, the gift in the Will is clearly a gift to the DS trust and that the address is simply to be ignored as not being part of the description of the gift being made (or as being a false description) (that is, I do not consider that the approach in the *National Vivisection* case applies). It seems to me that the use of a capital "T" in the definite article is not enough to show that the DS trust was meant and that the address is simply to be ignored. Donkey Sanctuary is well capable of referring to a number of donkey sanctuaries, just as in Ms Philpin's own will which demonstrates both that a reference to "the Donkey Sanctuary" does not necessarily mean the DS trust and that an address can be a key part of the description or identifying characteristic of the person to whom the gift is made. In this case, on its natural construction and given no more, as a matter of textual construction I consider that, standing alone, and looking at the matter as one of textual construction the Will makes a gift to HH (or that that is at least a possibility).

154. However, the question is whether as a matter of construction, looking more widely than simple textual construction and considering the wider context, the position is altered by reason of the facts that HH ended sometime in 1974 as a separate charity and it was merged with what is now The Donkey Sanctuary. It seems to me that this is part of the surrounding circumstances which I am entitled to assume would have been known to persons interested in the HH sanctuary and I would have been prepared to hold, if necessary, that based on application of more than a textual approach to construction, the gift can be construed as a gift to the DS trust.

155. I do not however have to rely upon that process of construction. Assuming that the gift was to HH as I have said there is, it seems to me, nothing in the Will which requires me to decide that the continued existence of HH was key. I do not consider that there is anything in the Will which takes the gift outside the usual position, where a gift to an unincorporated charity will be construed as a gift for the charitable purposes carried on by that charity and that the gift is not dependent upon the continued existence of the charitable entity in its then form. In particular, the charity is not described by its specific name but by its function. That function was not geographically limited: it seems donkeys were received from all over the country and that some were then looked after at places other than the sanctuary itself. Finally, there is no evidence of any connection between the charity and Woodley such as the testatrix living nearby or helping out at the particular sanctuary.

156. In those circumstances, even if I am wrong that as a matter of construction the relevant gift of part of the residue is to be construed as a gift to The Donkey Sanctuary for the reasons that I have already given, the gift, being one for purposes and one where those purposes are now being carried out by The Donkey Sanctuary as provided for by the relevant scheme, the gift takes effect as one to The Donkey Sanctuary. In this respect it seems to me that the matter falls within the *Re Faraker* line of authority. The specific charity has not ceased to exist, it continues to exist in its post scheme form. If I am

wrong about that I would have been prepared to adopt the approach in *re Finger's WT* and would have directed a scheme in favour of The Donkey Sanctuary.

(5) The Home Rest for Horses Sheep Lane Whitchurch Shropshire

157. There does not appear to be an entity with the name of The Home Rest for Horses.

158. However, there is a charity called Horseworld Trust which is a private company limited by guarantee with company registration number 06353944. It was incorporated on 26 August 2007. That charity was first registered with the Charity Commission on 11 December 2007 under number 1121920.

159. Its abbreviated filed accounts for the year ended 31 December 2007 show the company to have been dormant throughout the year and the balance sheet shows nil assets and nil liabilities. The audited accounts for the year ending 30 December 2008 show net assets of £6,274,447. This followed the transfer into the company of assets with a value of just under £6.2 million from The Friends of Bristol Horses Society (registered charity 206749) including Friends of Bristol Horses (Trading) Limited.

160. According to the charity register, among other working names of the charity are the following:

(1) Home Of Rest For Horses
(2) Rest Home For Horses

161. As regards the address, the company has confirmed by email that it has or has had operations at (among other places) Sleep Lane (not Sheep Lane), Whitchurch, Bristol (not Whitchurch, Shropshire). Its main premises are now the nearby Keynes Farm, Staunton Lane. It appears from the charity's website that it operated from Staunton Manor Farm, Sleep Land from about the 1960s through to 2014 when that property was sold.

162. It seems to me that there is no doubt that the gift in this case is a valid gift to Horseworld Trust (company no. 06353944 and charity no. 1121920) (despite the misdescriptions in the Will) and I so hold.

(6) **The Heavy Horses Preservation Society Old Rectory Whitchurch**

163. There is no registered charity with the name "The Heavy Horses Preservation Society".

164. The only charity which is apparently dedicated specifically to the welfare of shire horses is The Shire Horse Society (the "Society"). That anyway is the stated belief of Angela Whiteway of the Society as set out in an email dated 29 October 2020.

165. The Society is a company. It was incorporated as a company on 11 July 1878 under the name "The English Cart Horse Society of the United Kingdon of Great Britain and Ireland". It is a private company limited by guarantee. Its company registered number is 00012383. It was registered as a charity on 14 May 1964 with number 210619.

166. The Society currently operates from and its registered office is situated at Rockingham Castle and Park, Rockingham, Market Harborough. For many years prior to 5 May 2013 (when a form notifying a change of registered office was lodged at Companies House) the registered office appears to have been at the Peterborough or East of England Showground. Thereafter it changed briefly to an address at the High Street Ramsey Huntingdonshire and then, in a series of changes, to various addresses at Rockingham Castle and Park.

167. The on-line records at Companies House are not complete but by March 1940, as shown by a copy of a Notice of an Extraordinary Meeting, amended to act as a copy Special Resolution altering the articles of association, the Society had already been renamed The Shire Horse Society.

168. There is no evidence of any link of the charity to the address given in Whitchurch (and there are some 11 or so "Whitchurch" hamlets, villages, towns or areas in England stretching from Devon in the south to Warwickshire and Shropshire in the North and Harrow in the West). Equally, there is no evidence of a link to such address and any other relevant entity.

169. There are a number of other charities which are either branches of the Shire Horse Society or which support, foster or encourage the display or use or care and management of heavy horses but which do not really involve the sort of activities amounting to "preservation" of such horses.

170. The current objects of the Society are:

> *"3.1 The objects of the Charity are, for the public benefit,:-*
> *3.1.1 to improve the breed and promote the breeding and use of English Cart Horses, more particularly the Shire Horse, and to this end to maintain a Stud Book and Grading Register in which are entered the names of all registered Shire Horses complying with conditions for the time being applied to the Charity; and*
> *3.1.2 to educate the public about the Shire Horse and the importance of preserving the breed and its heritage."*

171. It is also true that the Society is only concerned with one particular breed of heavy horse. Nevertheless, there is no evidence of any other body which fulfils a similar function today and no evidence that there was one in 2016 or earlier. To take one example, the Suffolk Punch Horse Society is a charity but as described on the Charity Register is more local than the Society

> " *The Trust owns and operates the Hollesley Bay Colony Stud, the oldest and largest stud of Suffolk Horses in the country. The stud is open to the public and the Trust operates an education and heritage centre to raise awareness of the historical importance of the Suffolk horse in the region. The Trust works with volunteers and offers training and resettlement opportunities for Prisoners."*

172. I am satisfied that when the Deceased referred in her Will to the Heavy Horses Preservation Society she was referring to the Shire Horse Society.

173. Clause 13 does not raise any issues which might change this conclusion. All changes were well before the date of the Will.

174. Accordingly, I am satisfied that the relevant gift is a valid gift to the Shire Horse Society (company registered no. 00012383 and charity no. 210619).

(7) The Society for the Preservation of English Countryside

175. There is no registered charity with the name "The Society for the Preservation of English Countryside". The Will does not give any address for the intended beneficiary.

176. The Potential entity that might have been intended is the entity which has in its title the wording "Protect Rural England". This is a national charity which, on its face, is directed at preserving the English countryside. One of its working names is "CPRE".

177. Although there are a number of "local" charities with a geographic "branch" description adopting the CPRE name (e.g. The Campaign to Protect Rural England Berkshire Branch, charity registered number 210734) there is nothing to suggest that the Deceased intended to make a gift to any local charity as opposed to the national charity and the name of the entity that she referred to on its face is a national entity rather than a more local one.

178. As regards the national charity, there are two connected charities: a corporate entity which now carries on the operational charity work and a trust which is wholly owned by the corporate entity.

179. The detail of the difference between the two charities was not originally dealt with in detail in the first witness statement of Mr Dryden and has been supplemented by his second witness statement dated 18 April 2024 which, in this respect, confirmed various points raised at the hearing, and exhibited relevant documents.

180. First of all the company. On 11 October 2001, The Council for the Protection of Rural England was incorporated with company registration number 4302973 as a company limited by guarantee. The company was registered as a charity under number 1089685 on 7 December 2001. A certificate of incorporation on change of name to Campaign To Protect Rural England was issued on 21 May 2003.

181. In its filed audited accounts for the year ended 31 December 2002, its stated object was stated to be to:

> "*to promote and encourage for the benefit of the nation the improvement an protection of the English countryside and its towns and villages and the better development of the rural environment."*

182. From the object as so described, and the description of the activities of the charity on the Charity register (to campaign to promote the improvement and protection of the English countryside), I am satisfied that at the least either the company or the trust was the beneficiary of the relevant gift in the Will.

183. The charitable trust is registered as a charity with registration number 233179. Its name is "Council for the Protection of Rural England". It was first registered as a charity on 11 May 1964. The charity register contains the text: "*The charity is not active. The activities of this charity are now carried out through charity number 1089685 the Campaign to Protect Rural England*." The charity website suggests that more accurately the trust is in fact an unincorporated association as it sets out some of the terms of its constitution.

184. In an email from that part of the company dealing with legacies dated 18 November 2020 it was, surprisingly, and confusingly said that:

> "*Our Charity had a name change from Council to Protect Rural England to Campaign to Protect Rural England and our current and old charity numbers are listed below. I hope this helps.*
> *CAMPAIGN TO PROTECT RURAL ENGLAND* *1089685*
>
> *COUNCIL TO PROTECT RURAL ENGLAND* *233179*"

185. The email is confusing because the suggestion is that there is but one charitable entity which has changed both its name and its charity registration number whereas in fact there are two separate entities. It is surprising because the mail that it responds to explained the terms of the gift in the Will and asked in specific terms whether there had been any change of name or amalgamation. To be fair to the writer of the email, however, I note that the company's own audited accounts (e.g. for the year ending 31 December 2020) refer to the company as having been founded in 1926 which is somewhat legally inaccurate.

186. As I shall explain, after the hearing further correspondence was engaged in with CPRE and the position has been very helpfully clarified.

187. At the time of the hearing, and although speculation, it seemed likely that the trust, which formerly carried on the relevant charitable work, had been retained as an entity to receive donations under, in particular, wills. Not only is this, I was told, a fairly common mechanism to assist in preventing gifts by will lapsing but the charity website reveals that the trust received funds from another foundation in 2020. In fact by email dated 30 April 2024, it has been confirmed that the trust was kept in existence for the purpose that had been thought, at the hearing, to underly the decision.

188. The company became the trustee of the trust on 3 June 2013.

189. The relationship between the two charities is explained in more detail in the filed audited accounts of the company for the year ended 31 December 2002. Those accounts were the first audited accounts for the company. Under the heading "Status" the following is set out in those accounts:

> "*Status*
>
> *During the previous accounting year, CPRE was an unincorporated association established under a governing document last amended on 23 June 1999 and*

*registered under the Charities Act 1993. The property of CPRE was vested in the Trustees who were the members of the Executive Committee. On **1** January 2002, CPRE changed its legal status. The assets of CPRE (excluding a sum of £30,000) and the undertakings of the charity (registration number 233179) were transferred into a company limited by guarantee (company number 4302973, charity registration number 1089685) on that date. Management of CPRE is the responsibility of the Trustees, who are the directors of the new company and members of the Executive Committee and who are elected annually at the General Meeting.*

This charity, the incorporated CPRE, was formed on 11 October 2001 and became a registered charity on 7 December. These are the first financial statements of the new company and as a result of an uniting order issued by the Charity Commission they include the accounts of both the newly formed incorporated CPRE and the existing unincorporated CPRE. The 2001 figures relate to the unincorporated association. It is intended to change the name of the company to Campaign to Protect Rural England on 18 June 2002."

190. The change of name in fact seems to have followed a special resolution passed on 23 November 2002 rather than one in June.

191. More significantly, it is fairly clear from the relevant accounts that I have referred to that as from 1 January 2002 the "active" charity was the company.

192. The above analysis has largely been confirmed by a helpful email with enclosure from the CPRE dated 30 April 2024, received after the hearing before me and now placed into evidence by the third witness statement of Mr Dryden. The attached document is a copy of an agreement dated 19 December 2001 between two individuals on behalf of the executive committee of the trust and the company. It recites that the executive committee has determined that the charitable undertaking managed and operated by it can more conveniently and efficiently be managed and operated by an incorporated charity, that the company has been established for that purpose and that most of the undertaking and assets and liabilities of the trust should be transferred to the company. The agreement goes on to provide for such transfer with the consideration being the company agreeing to meet the liabilities and providing an indemnity to the trustees of the trust. The executive committee also agrees to use best endeavours to procure a transfer of subscriptions, grants or donations received after the transfer date to the company thereafter (clause 6).

193. Given my view that the Deceased intended, by her gift to The Society for the Preservation of English Countryside, to benefit the national charity "CPRE", the next question is, on the balance of probabilities, which is the charity that the Deceased intended to make the relevant gift to, the trust or the company? There is nothing in the wording of the gift that points way or the other on this. In my judgment, as at the date of the Will the deceased intended to make a gift to a charity which, at that date, was then "active" rather than a shell trust. For reasons already given, I do not consider that it is possible or the correct approach to look back and treat the Will as being made at an earlier date and being construed by reference to unknown intentions or to relevant factual situations as at that uncertain date. On this basis it follows that the Will is to be construed such that the relevant gift is made to the company.

194. The final question is whether clause 13 of the Will makes any difference to this conclusion. The relevant change of name took place long before the Will was executed in 2016. For reasons that I have already given, I have concluded that relevant events falling within clause 13 are only such events which took place after the date of the execution of the Will. Accordingly it does not bite with regard to this gift.

195. I conclude that the relevant gift is to be construed as a gift to the Campaign to Protect Rural England (registered company no.4302973 and charity registered number 1089685).

196. I invite the parties to agree a form of order to give effect to this judgment. If that cannot be agreed within 7 days of the hand down then the parties should apply by letter to the court for a further hearing and at the same time lodge a draft form of order setting out clearly what is agreed or not agreed and, in the latter case, the relevant proponent of the relevant language. I appreciate that there may need to be a short hearing about costs in any event, which should be capable of being dealt with remotely.