

CHARITY LAW

TO LAPSE OR NOT TO LAPSE: GIFT CLAUSES IN WILLS INVOLVING DISSOLVED OR ALTERED CHARITIES

*What happens when a testator leaves a gift to a charity that thereafter ceases to exist? Such issues were addressed by the Singapore High Court recently in **DFS v NUHS Fund Ltd [2023] SGHC 336 (“DFS”)**.*



Background

On 20 March 2018, the Testator passed away, leaving behind a last will and testament (the “Will”) dated 2 November 2006. The Will provides that after his wife’s death, his property will be gifted to the National University Hospital Endowment Fund (NUHEF). After his wife’s death in 2020, the testator’s former daughter-in-law (the “Executrix”) realised that NUHEF no longer existed as of 2 November 2006. Instead, it was renamed to the NUH Patientcare Charity Fund (NUHPCF), and thereafter succeeded by the NUHS Fund Limited (NUHSF). While NUHSF claimed that the Testator would have intended to bequeath the property to NUHSF as NUHPCF’s successor, the Executrix argued that the Gift has lapsed and should be distributed according to the residuary clause of the Will.

The High Court ruled that the gift should vest in NUHSF as provided for in the gift clause in the Will. The key contentions surrounding the case are:

- 1) Is the gift bequeathed to a specific charitable institution, or broader charitable purposes?
- 2) Do the charitable purposes of the charity survive after the dissolution of its institutional form?

Charitable purposes or charitable institutions?

If the gift is specific to a particular building or locality, it would lapse after the dissolution of its physical form. This was seen in *In Re Spence's Will Trusts (Ogden v Shackleton and others)* where the English Courts ruled that the gift to an elderly home would lapse after its dissolution. This is in line with the principle that courts cannot overly strain a will, as emphasised by the Court of Appeal in *Low Ah Cheow and Others v Ng Hock Guan*.

However, in other cases, a “benignant” construction, i.e. the court will lean in favour of charity when construing charitable gifts, may be adopted. In *In re Vernon's Will Trusts (Lloyds Bank Ltd v Group 20 Hospital Management Committee (Coventry) and others)*, it was emphasised that gifts to an unincorporated charity without more should be deemed a gift for its charitable purposes, since an unincorporated charity does not have a distinct legal personality to receive the gift.

In DFS, the High Court ruled that NUHEF/NUHPCF is not an institution, but an unincorporated charity and a charitable fund – in other words, “a pool of money applied for charitable purposes”. Following *Re Vernon's Will*, the gift can be construed for the charitable purposes of NUHEF, rather than the specific entity of NUHEF. The question now lies in whether these charitable purposes are continued by its successor.

Do Charitable Purposes Outlive Charitable Institutions?

The debate over whether the charitable purposes of NUHEF are continued through NUHSF is one about substance and form. The Australian Courts in *Australian Executor Trustees Ltd v Ceduna District Health Services* held that such gifts to charities do not lapse when “at the testator's death, there is another institution which has taken over the work previously carried on by the named institution and which can properly be regarded as its successor, and where the dominant charitable intention of the testator was wide enough to allow the gift to take effect in favour of that successor.” In other words, even after the institutional form of a charity is dissolved, its charitable purposes may be served via other means.

In DFS, the High Court accepted evidence that the charitable trust of NUHEF/NUHPCF was never fully dissolved, and that its purposes survived through its successor. The 2005 Rules of Operation proved that the NUHEF Board of Trustees did not have the powers to dissolve the trust in the first place. Furthermore, trust funds transferred from NUHEF/NUHPCF to NUHSF were ring-fenced to serve the charitable purposes of NUHEF/NUHPCF. Therefore, NUHSF continued NUHEF/NUHPCF's mission of serving patients, the very purpose that the Testator – according to the Court – bequeathed his assets to.

In light of the above, the High Court ruled that the Testator's gift should vest in NUHSF.

Key lessons from DFS

If you intend to make a bequest to a specific charity only, that intention must be made explicit. However, if a broader charitable purpose is intended, that too should be made clear to ensure that the charitable gift would not lapse but will remain valid even after the charity has undergone a name-change or has merged with other charities.

At **Infinity Legal LLC**, we help clients navigate through the variety of legal issues involving charities, wills and trusts.

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