

Alfonso makes the following gifts:

- a) £100,000 to the vicar of my local church to build and maintain a suitable tomb for me, to decorate the same with flowers, in so far as my trustees may legally do so;
- b) £100,000 to the British Anti-Vivisection Society, an unincorporated association. The gift is expressed to be, 'for the benefit and use of the members in their pursuit of the abolition of vivisection.'
- c) £100,000 to Bernadette, a woman of 30, who has lived in his house since she was 20, and
- d) £100,000 to his friend Cedric to finance the university education of Cedric's three children, David, Edward and Fiona. None of Cedric's children wishes to go to university.

Consider whether Alfonso has made valid gifts, or whether his money is held for him on resulting trust.

Suggested Answer

Resulting trusts can have a relevance to seemingly unrelated situations.

a) Normally, a trust cannot exist unless there is at least one beneficiary to enforce it: *Morice v Bishop of Durham*. The law does not allow trusts to merely promote a purpose, unless that purpose is charitable: *Leahy v AG for NSW*. Nor does the law permit trusts that promote vague, uncertain purposes: *In re Astor's ST*. In *In re Endacott*, however, the Court of Appeal accepted that there were certain 'troublesome, anomalous and aberrant cases' that allowed exceptions and could not now be overruled. One of the four exceptions mentioned were trusts for the erection or maintenance of monuments or graves. The exceptions could not be extended to cover new situations, but Alfonso's gift seems to fall squarely under this exception, as accepted in *Pirbright v Salwey*. The phrase 'as far as my trustees may legally do so' was held in *In re Hooper* to imply the permitted perpetuity period of 21 years.

b) The Privy Council case of *Leahy v AG for NSW* would seem to suggest that an unincorporated association is incapable of receiving a gift. Antivivisection is not charitable and nor was a gift to contemplative nuns in *Leahy*. The court held, as in (a), that there cannot be a trust for a purpose. A private trust for the nuns, as beneficiaries, would infringe the perpetuity rule. The gift had to be interpreted as a gift to be shared between the nuns as individuals. The problem there was that each nun could demand her share and this would destroy the unincorporated association. The subsequent case, *Neville Estates v Madden* accepted this, but found a solution. The members of the association could be bound in contract by the rules of the association, not to remove their shares and dissolve the association.

The words of Alfonso's gift could possibly be interpreted to have this effect, provided that the rules of the Bristol Anti-Vivisection Association do not contradict them. 'Benefit and use', however, suggest that the members of the Association are intended as beneficiaries of a trust. Alfonso's gift could possibly be interpreted as a private trust in the manner of *Re Denley*, if the rules of the association contain a perpetuity period.

c) The gift to Bernadette would seem unproblematic, were it not for the presumption of resulting trust: *Dyer v Dyer*. As Bernadette has given no consideration in return, she would hold the £100,000 on resulting trust for Alfonso: *Re Vinogradoff*. The presumption of advancement, which would hold this as a gift, cannot apply, because Bernadette is not the child of Alfonso: *Bennet v Bennet*. Nor is Alfonso in loco parentis, as Bernadette was an adult when she came to live with him: *Bennet v Bennet*. Fortunately presumptions are just a starting point; the courts also look at the evidence. Perhaps Alfonso just wanted to give her a present? *Fowkes v Pascoe*.

d) This looks like a trust to provide for the education of the children of Cedric. A solution might be found by trying to interpret the intention of Alfonso, as *Westdeutsche Landesbank v Islington* states that resulting trusts depend upon the intention of the parties. Superficially this looks like *Re Osoba*, where a fund was established to pay for the university education of Osoba's daughter. Once her education was complete, the court decided that she could keep the money. Perhaps more appropriate is *Re Trusts of the Abbott Fund*, if the court decides that it was never the intention of Alfonso to make an absolute gift of the fund. Then it will be held by Cedric on resulting trust back for Alfonso. Possibly the purpose of the trust has failed (*Re Ames*), which would also indicate a resulting trust for Alfonso. On the other hand, the children could go to university at any age, even though they say that they do not want to go at the moment. There is no problem with perpetuity, as unlike *Leahy v AG for NSW*, there can be no new beneficiaries. If the children die without going to university, presumably there would be a resulting trust back to the estate of Alfonso: *Re Trusts of the Abbott*.

N.B. The material to answer parts a) and b) of this question can be found in chapter 9 'Unincorporated associations and the beneficiary principle'.

If an unincorporated association is found to be invalid there might be a resulting trust to return the trust property to the original owners. The same solution would be used if the trust was found not to have a beneficiary.