

Who's Who

Mysterious, Missing and Mistaken Beneficiaries

TRUSTS, WILLS & ESTATES

DATE: Monday 26th January 2026

TIME: 11:00 – 12:00

LOCATION: Online via Zoom



Overview

- General Principles of Construction
- Individuals
- Associations and Corporate Bodies
- Procedural Options
- Charitable Bequests

- “I leave the residue of my estate to Spartacus care of 32 Windsor Gardens”

Who's Spartacus and / or Whose Spartacus

Description of beneficiaries

- “the court is concerned to find the intention of the party or parties, and it does this by 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”
(Marley v Rawlings)

Construction continued

- The will speaks from its date, not the date of death, unless the contrary intention is apparent (for example a gift to the holder of an office *Re Laffan and Downes' Contract* [1897] 1 IR 469).
- Evidence of subjective intention *may* be admissible under s.21 AJA 1982.
- Each will falls to be considered on its own terms, and previous decided cases are unlikely to assist on the meaning of specific words.

- If a particular person or society completely satisfies the description in the will a “very strong presumption” arises that the person or society was the intended beneficiary, but that could be overcome by evidence in exceptional circumstances (*National Society for the Prevention of Cruelty to Children v Scottish National Society for the Prevention of Cruelty to Children* [1915] AC 207).

Void for uncertainty

- Where no-one accurately answers the description and it applies to several persons with varying degrees of accuracy but there is nothing to enable the court to decide between them then the gift will be void for uncertainty (*Re Duke of Wellington* [1948] Ch 118).
- But the court will attempt to avoid uncertainty and try to ascertain who was meant.

What a testator knew may be very material in construing a will - individuals:

- a) Where the gift is to a particular name or description, the testator must be referring to someone known to them;
- b) An individual cannot be supposed to intend to benefit a person whom they know to be dead at the date of their will, even if accurately described. In such a case some other person not fully satisfying the description may take.

Conflicts between name and description

- Name will generally carry more weight than the description if the name matches but description does not.
- Name and description met, but by different people (*Pinnel v Anison* [2005] EWHC 1421 (Ch))

Non-Charitable Corporate Beneficiary

- Identification of the beneficiary is a question of construction.
- Where the company has been dissolved prior to the death of the testator then the gift passes to the Crown.
- But if the company is in liquidation then it is still in existence and takes the gift (*Dryden v Young* [2024] EWHC 1095 (Ch)).

Unincorporated Association Beneficiary

- Construing the gift is important: a gift to the members at the time or to the association.
- Where there is a gift to a non-charitable unincorporated association which is not for a charitable purpose then where that association has ceased to exist before the death of the testator the gift will fail (Re Recher [1972] Ch 526).

Testator's knowledge: associations and corporate bodies

- A testator cannot have intended to make a gift to a society which they knew had ceased to exist at the date of the will and some body to which the description applies less accurately may take (*re Magrath* [1913] 2 Ch 331).

Problems:

- There may be contesting claims to be the specified beneficiary.
- It may be wholly unclear who the beneficiary should be.
- The beneficiary may have been identified but not located (or located but not co-operating).

Procedural Options

- Part 64 Claim
- Construction Claim
- Re Benjamin Order
- Section 27 Trustee Act 1925
- Section 63 Trustee Act 1925

Part 64 – Estates, Trusts and Charities

- CPR 64.2:

(2) This Section of this Part applies to claims—

(a) for the court to determine any question arising in—

(i) the administration of the estate of a deceased person; or

(ii) the execution of a trust;

- Part 8 Claim

Construction Claim

- Do you have parties who are going to be able to make the arguments? If not, who will make them?
- Who should be parties? Do you need representative parties under CPR 19.8 and/ or 19.9?
- Costs? Re Buckton category 1) or 3) case?

Re Benjamin [1902] 1 Ch 723

- The court has a jurisdiction to authorise the distribution of an estate on a particular footing, such as that a beneficiary no longer exists.
- It does not vary beneficial interests but permits the trust property to be distributed according to practical probabilities. It protects the trustees from a claim of breach of trust but would not prevent a beneficiary following the trust asset to enforce their rights (*Re Green's Will Trusts* [1985] 3 All ER 455)

- A Re Benjamin order can be appropriate where there is doubt as to the existence or continued existence of a beneficiary.
- Also used in *Lowe v Daniells* [2025] EWHC 3297 (Ch) with an uncooperative beneficiary. The court was not prepared to find a disclaimer by conduct but was prepared to order distribution on the basis of disclaimer, as that would not extinguish the defendant's rights.

Section 27 Trustee Act 1925

- Does not help!
- Mechanism by which advertisement in accordance with Section 27(1) can relieve the trustees/ executors of liability towards those who have claims of which they do not have notice.
- Beneficiary in a will, even if untraced, is a claim of which they do have notice.

Section 63 Trustee Act 1925

- Permits payment into court of a fund.
- It can be used in respect of beneficiaries who cannot be traced (*Boyle v Collins* [2004] 2 BCLC 471 at [56]).
- But, this is discouraged and if it is not sufficiently justified then the trustees can be made to pay the additional costs.
- *Lewin* notes that it may sometimes be more convenient to apply to the court for a *Benjamin* order.

Charities

Charitable Purposes

- Is the beneficiary in fact a charity?
- Charities Act 2011 Section 3(1)

Charities

- A gift to an unincorporated association or a charitable trust, without more, would be a gift on trust for its purposes. The continued existence of the unincorporated charity is not necessary unless the will requires this and it can take effect as a charitable purpose trust with the result that the gift does not lapse (*Re Fingers Will Trust* [1972] Ch 286).

Charitable Corporate Bodies

- If the gift is to a charitable corporation that had existed to death but which had ceased to exist at death, then the gift will lapse unless the will discloses a general charitable intention (*re Stemsom's Will Trusts* [1970] Ch 16)

General Charitable Intention

- Is that part of the testator's wishes which is impracticable an essential part of the charitable intention?
- Whether a general charitable intention is to be found depends on the construction of the will (*Re Wilson* [1913] 1 Ch 314).

***Re Harwood* [1936] Ch 285**

- Where a testator had taken some care to identify a particular charity it was much more difficult to find a general charitable intention.

***Re Finger's Will Trust* [1972] Ch 286**

distinguished *Harwood* :

- a) that it was effectively disposing of the entire estate and the preliminary words had referred to charities,
- b) the nature of the recipient body had been that it was a co-ordinating body rather than carrying out the charitable work directly,
- c) the court was entitled to have regard to the fact that the Deceased had regarded herself as having no relatives.

Non-Existent Bodies

- A general charitable intent may be inferred where no such society has ever existed it is by no means invariably presumed (*Re Harwood*).
- If the society has never existed but the name conveys a charitable object, a general intent may be inferred (*Dryden v Young* [2024] EWHC 1095 (Ch)).
- There can be no general charitable intent if it is shown the testator intended to benefit the non-existent body and no other (*Re Tharp* [1942] 2 All ER 358).

Charities Act 2011 – Part 6

- Section 61 imposes a duty on charitable trustees “*where the case permits and requires the property or some part of it to be applied cy-près, to secure its effective use for charity by taking steps to enable it to be so applied.*”
- The original gift is unable to be carried out as the beneficiary has ceased to exist (Section 62(1)a)ii)).
- Section 62(3) preserves the requirement for a general charitable intention.

Court Application

- Charity Commission jurisdiction is restricted by Section 70(2) so an application is likely to be required.
- Part 64/ Part 8.
- Grant?

Parties to the Claim

- Relevant parties could include: those who would otherwise take on an intestacy/ gift falling into residue.
- Any parties/ bodies claiming to be entitled.
- Attorney General.

Relief Being Sought

- Will be case specific but may provide for the legacy to be paid to a similar charity to be used in the way the testator intended.
- If a one-sided application then PR will need to put the competing arguments before the court.
- Costs? Buckton (1) case.

A Drafting Solution

- *“4.16.2 If any trust, association, company or other entity which is charitable according to the laws of England and Wales ceases to exist, changes its name, or enters into insolvent liquidation, before the time that a gift to that charitable entity takes effect in possession, the gift shall instead be paid to such charitable entity as the Trustees decide having regard to the objects that were intended to benefit.” STEP Standard Provisions – Third Edition*

Questions

- For a copy of the slides please email:

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Thank you for joining

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