

BOOK REVIEWS

THE LAW OF CHARITIES — CASES AND MATERIALS (SINGAPORE AND MALAYSIA), By K.L. TER. [Singapore: Butterworths, 1985. xxvii+353 pp. S\$85.00]

THIS is a useful comprehensive collection of cases and statutes relating to charities in Singapore and Malaysia. All relevant local cases seem to be included except that reference is made only to *Re Valibhoy Charitable Trust* in the High Court and not in the Singapore Court of Appeal. A worthwhile American Supreme Court decision is extracted on the concept of a “Supreme Being” in the context of Hinduism and Buddhism. Where local precedent is lacking a small selection of English cases is included to provide guidance. No articles are extracted but reference is made to many articles or case-notes for further detailed study, though no mention is made of the following significant articles: G. Cross (1956) 72 L.Q.R. 187, M.C. Cullity (1967) 16 I.C.L.Q. 464, J.B.E. Hutton (1969) 32 M.L.R. 23, D. Wilson [1983] Conv. 40.

Local cases are most significant in the area of religious trusts whether charitable or non-charitable purpose trusts. In other areas one feels that extracts from English cases should supplement or replace extracts from local cases or should feature (as in Chapter 7 on Public Benefit) in the absence of local cases *e.g.* whether the trust is for political propaganda masquerading as education, whether gifts to office-holders with superadded words may be charitable, the significance of a “class within a class” in some instances only preventing a gift being charitable within the fourth head of charity, whether gifts apparently beneficial to the community should be rebuttably presumed charitable (see Russell L.J. in *Incorporated Council of Law Reporting v. Att.-Gen.*) or should be presumed not charitable unless an analogy can be drawn with existing cases establishing charities within the fourth head (see *Re South Place Ethical Society*), the extent to which the public benefit test in *Oppenheim* may have been altered by *Dingle v. Turner* and whether fiscal considerations should be less important under the different tax regime in Singapore where charitable status does not confer fiscal privileges to the same extent as in England, the extent to which a private class within a public class may have priority in benefitting under the trust (see *Re Koettgen* as criticised by Pennycuick J. in *I.R.C. v. Educational Grants Association*).

Interestingly, mention is made of purpose trusts that are not charitable but are valid anomalous trusts if restricted to the perpetuity period *e.g.* gifts for Sin Chew ceremonies or for a father’s Chin Shong. It would have been most useful to have a chapter covering the extent to which quasi-charitable trusts may be saved as within this small anomalous category of valid purpose trusts restricted to the perpetuity period or within the *Re Denley* category of purposes directly or indirectly benefitting individuals (*e.g.* land to be used as a recreation

ground for employees for a restricted period or funds to be used for scholarships for employees' children for a restricted period) or as being a gift to augment the funds of a quasi-charitable unincorporated association on *Re Lipinski* and *Universe Tankship of Monrovia* principles. Section 9 of the Government Proceedings Act is cited but no investigation is made of dubious possibilities raised by its inclusion of public, religious or social trusts as well as charitable trusts.

The chapters are well subdivided with headings for the cases extracted. Useful comments follow most of the cases but cross-referencing to the pages where mentioned cases are to be found would have been still more helpful. On p. 50 in dealing with *McPhail v. Doulton* and certainty and administrative workability there should be mention of *Re Baden (No. 2)* and *Re Hay's S.T.* and on p. 141 *Re Hooper* should be mentioned for its holding that a testator's restriction of a trust for so long as the law allows restricts the trust to the perpetuity period. At p. 225 in dealing with Charities Act 1982, s. 12(5), it should be mentioned that since s. 12 only covers property available to be returned to the donor entitled thereto on resulting trust principles the section has little scope. Since 1960, when the English Act on which this section is based was enacted, it has become clear that if D puts money in a collection box he has abandoned it, so that no question of resulting trust arises, and if D pays money to participate in a money-raising activity no question of a resulting trust arises once D has received his contractual benefit. On p. 174 it would be worth noting the extension of *Re Lysaght* principles in *Re Woodhams*.

There is useful commentary on the Trustees Act s. 67, which provides that a trust for some non-charitable and invalid purpose as well as some charitable purpose "shall be construed and given effect to in the same manner in all respects as if no application of the trust funds to or for any such non-charitable and invalid purpose had been or could be deemed to have been so directed or allowed." A trust for mixed charitable and invalid non-charitable purposes is thus treated as established for the charitable purposes only and so it can be registered as a charity and its income will be exempt under Income Tax Act s. 13(1)(g). Surprisingly, the author states (pp. 194 and 246) "such a trust, although validated by s. 67 is not exclusively charitable and cannot be registered" and not being established for charitable purposes only cannot obtain tax exemption under s. 13(1)(g). The author cites as authority *McGovern v. Att.-Gen.* where a body with charitable and non-charitable trusts was refused registration by the English Charity Commissioners since it was not exclusively charitable — but England has no legislation to the effect of s. 67. She also cites *X v. Comptroller of Income Tax* a Singapore case (decided before s. 67 became law) where property had been settled on trust for the income thereof to be used for certain non-charitable purposes and for distributing \$3,200 p.a. for the poor in Arabia. Since the trustees received the income from property settled for non-charitable and charitable purposes it could not be said that \$3,200 of that income was income of a trust established for charitable purposes only. This case can have no application where property is left on trust for purpose X (non-charitable) and purpose Y (charitable) but by s. 67 is treated as established for charitable purpose Y only since the income will then be income of a trust established only for charitable purposes.

One must congratulate the author on her organisation of the cases she has unearthed in her researches and for her clear exposition in her introduction to the several chapters. Those who are, or are contemplating becoming, charity trustees will find much to enlighten them in Chapters 10 and 12. The book is a well-indexed handy volume and it has stimulated me. Perhaps, some of my comment should be discounted as amounting to criticism that the author did not produce the larger volume that she no doubt wanted to produce but which was forbidden on commercial and economic grounds.

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