

ENGLAND AND WALES / JUDGMENT

British Camelids Limited v Brooke Hospital for Animals & Ors

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[2025] EWHC 2255 (Ch) IN THE HIGH COURT OF JUSTICE CHANCERY DIVISION BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES Case No: PT-2025-000104 Royal Courts of Justice, Rolls Building Fetter Lane, London, EC4A 1NL Date: 5 September 2025 Before : MASTER MCQUAIL

- ----- Between : BRITISH CAMELIDS LIMITED (personal representative of Candia Midworth)

- and -

(1) BROOKE HOSPITAL FOR ANIMALS

(2) THE BORN FREE FOUNDATION

(3) WORLD ANIMAL PROTECTION

(4) BRITISH UNION FOR THE ABOLITION OF VIVISECTION

(5) HIS MAJESTY'S ATTORNEY GENERAL

- ----- Claimant Defendants Emilia Carslaw (instructed by EMW Law LLP) for the Claimant Owen Curry (instructed by Withers LLP) for the First, Second and Third Defendants The Fourth and Fifth Defendants were not represented and did not appear Hearing dates: 29 May 2025

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives. MASTER MCQUAIL MASTER MCQUAIL Approved Judgment : British Camelids v The Brooke

Background

1. The claimant issued a Part 8 Claim Form on 29 January 2025 seeking the court's determination of the meaning of the Will dated 29 September 1994 (the Will) of Candia Midworth (Mrs Midworth), who died on 8 April 2022. The Will and the Estate The Will was professionally prepared by Kirkwoods Solicitors of Epsom. 2. 3. The Will appoints

Kirkwoods or its successor as Mrs Midworth's executors and trustees. Kirkwoods' successor practice was wound-up and dissolved before Mrs Midworth's death. 4. llamas owned at the date of her death to friends. 5. 6. Clause 5 contains a gift of Mrs Midworth's remaining property to her executors. Clause 6 provides that the executors are to: The Will makes specific gifts of Mrs Midworth's prints and pictures of llamas and the as to eighty such shares for the said PETER ALEXANDER "stand possessed of the residue of the said monies and investments for the time being representing the same and of such part of my estate as shall for the time being remain unsold or unconverted upon trust PROVIDED that if PETER ALEXANDER GROSSMAN of Tudor House Oaken Lane Claygate Surrey shall survive me to divide the same into one hundred equal shares and to hold the shares upon the following trusts that is to say: (a) GROSSMAN (b) as to two such equal shares for the BRITISH CAMELIDS LIMITED care of the Royal Bank of Scotland 70 High Street Peebles Scotland Charity No. 802688 and I declare that the receipt of the Treasurer or other appropriate officer of this charity shall be a good discharge to my Executors (c) as to six such equal shares to the BROOKE HOSPITAL FOR ANIMALS Department CC14 Broadmead House 21 Pantton Street London SW1 Charity No. 207869 and I declare that the receipt of the Treasurer or other appropriate officer of this charity shall be good discharge to my Executors (d) as to six such equal shares to ZOO CHECK PROJECT of the Born Free Foundation, Coldharbour Lane, Dorking Surrey Charity No. 296024 and I declare that the receipt of the Treasurer or other appropriate officer of this charity shall be good discharge to my Executors as to six such equal shares to the LIBERTY CAMPAIGN World (e) Society for the Protection of Animals 2 Langley Lane London SW8 Charity No. 282908 and I declare that the receipt of the Treasurer or other appropriate officer of this charity shall be a good discharge to my Executors PROVIDED that if the said PETER ALEXANDER GROSSMAN shall not survive me upon trust for such of the following that exist at the date of my death and if more than one in equal shares absolutely:-

- (i) the said BRITISH CAMELIDS LIMITED (ii) (iii) (iv) (v) Lane Burstow Surrey Charity No. 801970 the said BROOKE HOSPITAL FOR ANIMALS the said ZOO CHECK PROJECT the said LIBERTY CAMPAIGN the BURSTOW WILD LIFE SANCTUARY Old Orchard Church MASTER MCQUAIL Approved Judgment British Camelids v The Brooke BRITISH UNION FOR THE ABOLITION OF VIVISECTION 16a (vi) Crane Grove London N7 8LB PROVIDED that in respect of all of the above the receipt of the Treasurer or other appropriate Officer of the organisation shall be a good discharge to my Executors." The claimant obtained a grant of letters of administration with the Will annexed on 27. October 2024. The grant states the net value of the estate for probate as £1,922,343. The Proceedings 8. incorporated charity: The active parties are the claimant and the first to third defendants each of which is an
- (i) the claimant, British Camelids Limited, was incorporated and registered as a charity before the date of the Will. It operates as the charitable arm of the British Llama and Alpaca Association; (ii) the first defendant, Brooke Hospital for Animals, the second defendant, the Born Free Foundation, and the third defendant, World Animal Protection, were each incorporated and registered as charities after the date of the Will. They claim respectively to

be entitled to a share of the residue left to charities named in the Will which ceased to exist during Mrs Midworth's lifetime on the basis that they are successors to those charities carrying on their charitable purposes; (iii) the fourth defendant, the British Union for the Abolition of Vivisection, is a company limited by guarantee incorporated in 1929. It is agreed that it is entitled to a share in residue. It is not itself a charity but has executed a Deed of Variation redirecting its share of residue to its charitable arm, Cruelty Free International Trust; and (iv) the fifth defendant, HM Attorney General, has been joined to represent the interests of the Burstow Wildlife Sanctuary, an unincorporated charity which has ceased to exist. HM Attorney General has filed an acknowledgment of service dated 21 February 2025 indicating that he does not intend to contest the claim. 9. The following witness statements have been filed:

- (i) that of Elizabeth Butler, trustee and director of the claimant, dated 22 January 2025; (ii) that of Nicola Piper, the second defendant's legacy manager dated 18 February 2025; (iii) that of Hayley Spencer, the third defendant's legacy manager, dated 18 February 2025; (iv) that of Anjna Bhamra, the first defendant's legacy administrator, dated 19 February 2025;
 - (v) that of Paul Hewitt, partner at Withers LLP who act for the first to third defendants, dated 20 February 2025; and (vi) that of Karen Young, partner at EMW who act for the claimant, dated 6 March 2025. Mrs Midworth
10. Mrs Midworth was born on 22 November 1943. She was married to Julian Midworth, who died in 1996. From at least the mid-1980s until her death, she lived at her farm, Banks Way House in Effingham, Surrey KT24 5JB, where she kept and bred several llamas.
11. Mrs Midworth was an active member of the British Llama and Alpaca Association, editor of the association's magazine, the Camelid Chronicle, and a director of the claimant from before 1992 to 2003. 12. Peter Alexander Grossman was a friend of Mrs Midworth's who, after her husband's death, moved into a converted garage at the farm to help look after the llamas. He died on 27 MASTER MCQUAIL Approved Judgment British Camelids v The Brooke March 2013 meaning that it is the proviso to clause 6 of the Will which is operative to dispose of residue. The Evidence about the Potential Beneficiaries
13. British Camelids Limited was incorporated on 20 May 1988 as a charitable company limited by guarantee. It was registered as a charity on 19 January 1990 with charity number 802688. At the date of Mrs Midworth's death, and now, it continues to exist in the same corporate form and with the same charity number as it did at the date of the Will. The register of charities records the charitable objects of the claimant as, in summary, to encourage and improve the breeding of and fibre production from camelids in the United Kingdom, to undertake research in the subject of camelid breeding, to maintain a register of members and a herd book, to promote the improvement of stocks of camelids and rearing camelids and to promote the import and export of camelids and their fibre.

14. The Brooke Hospital for Animals was an unincorporated entity, registered as a charity on 18 July 1962 with charity number 207869. The first defendant, a company limited by guarantee without share capital, was incorporated on 5 December 2000 and was registered as a charity on 23 March 2001 with charity number 1085760. The Brooke Hospital for Animals transferred all its activities, assets and liabilities to the first defendant and was removed from the register of charities on 14 November 2002 for the stated reason “Removed (Funds transferred) (incor)”. The transfer from the Brooke Hospital for Animals to the first defendant was registered on the register of relevant charity mergers on 9 April 2015. This records that the transfer took place on 4 April 2002. Ms Bhamra’s witness statement explains that the first defendant continues to carry out the charitable purposes of the Brooke Hospital for Animals as named in the Will although under a different charity number and at a different address and that it is an “internationally-recognised charity which supports working donkeys, horses and mules” established in Cairo in 1934. The register of charities records that the charitable objects of the first defendant are, in summary, to promote the welfare and relieve the suffering of working equines outside the United Kingdom by the provision of animal healthcare and education and the countries in which it operates are primarily in Africa and Asia.
15. Born Free Trust or Zoo Check Charitable Trust was a charitable trust established by a trust deed dated 19 January 1987. It was registered as a charity with number 296024 on 21 January 1987. The second defendant was incorporated as a charitable company limited by guarantee on 20 July 1998. It was registered with the charity commission on 7 August 1998 with charity number 1070906. On 1 April 1999, the assets of the Born Free Trust were transferred to the second defendant and the Born Free Trust was removed from the register of charities on 10 May 2001. Ms Piper’s witness statement explains that Born Free or Born Free Foundation was established as Zoo Check and the reason for the charity’s foundation was to challenge the zoo industry and that work continues to “be at the heart of what it does.” There was in evidence a summary of a report entitled “The Zoo Inquiry” dated September 1994 which reported on the role of zoos and conserving animals through captive breeding programmes; this document was the work of the World Society for the Protection of Animals and the Born Free Foundation. “Zoo Check” was mentioned in the second defendant’s Annual Reports as one of the principal projects through which the second defendant pursued its objectives until about 2017, later reports refer to similar work but not under the “Zoo Check” name. The register of charities shows that the second defendant’s charitable objects are to conserve animals in their natural habitat, to prevent cruelty to animals particularly in zoos, to educate the public and to relieve the suffering of animals and assist in the provision of improved facilities for animals in captivity. The countries in which it operates include European, Asian and African ones. Ms Piper’s witness statement explains that the second defendant continues to carry out work challenging the zoo industry, but by the date of Mrs MASTER MCQUAIL Approved Judgment *British Camelids v The Brooke* Midworth’s death, the use of the specific term Zoo Check Project had been discontinued and there is no longer a restricted fund with that name, as the second defendant holds no such restricted funds.

16. The World Society for the Protection of Animals was a charitable unincorporated association created on 4 June 1981 and registered with the Charity Commission on 20 August 1981 with number 282908. The third defendant, a charitable company limited by guarantee, was incorporated on 7 July 2000 and registered as a charity on 4 August 2000 with charity number 1081849. The World Society for the Protection of Animals' assets and liabilities were transferred to the third defendant, and it was removed from the register of charities on 3 January 2001. Ms Spencer's witness statement explains that the Libearty Campaign was a campaign of the World Society for the Protection of Animals concerned with ending cruelty to wild and captive bears launched in 1992. The parties agree that "Liberty" where it appears in the Will is a probable misspelling for "Libearty". There is no contemporaneous documentary evidence available about the Libearty Campaign as it operated at the date of the Will. The register of charities records that the objects of the third defendant are, in summary, to prevent cruelty and relieve the suffering of animals and that the sphere of its operation is worldwide. Ms Spencer's evidence is that since the 2001 restructure the third defendant continues to carry out work relating to the protection of bears internationally, but that at the date of Mrs Midworth's death the use of the term "Libearty" had been discontinued.
17. The objects of Cruelty Free Animal Trust, the charitable arm of the fourth defendant may be summarised from the extract of the governing document on the charity commission website as the promotion of education concerning animal experimentation and its alternatives and the prevention of unnecessary suffering of animals by promoting compliance with the law in the field of animal experimentation and carrying out research into alternatives. The sphere of its operation is not defined.
18. Burstow Wild Life Sanctuary was a charitable trust established by way of trust deed dated 23 May 1989 and registered as a charity on 11 August 1989. The overview on the charity commission website refers to it providing for the rescue, care and rehabilitation of wildlife and domestic animals, where possible returning wildlife to its natural habitat or finding homes for wild and domestic animals. Its sphere of operation was not defined. The Burstow Wildlife Sanctuary was removed from the register of charities on 7 April 2009 for the stated reason "ceased to exist". The Questions for Determination
19. The questions which arise are:
 - (i) as a matter of construction is the continued existence of the beneficiaries named in the Will in the same legal form a condition of the gifts to them and, if so, do the gifts fail and fall back into residue? (ii) if not, are the first to third defendants the beneficiaries and, if not, then who are? (iii) does the gift to Burstow Wildlife Sanctuary fail and return to residue or pass to some charity that continues the relevant charitable purposes? The Law Construction of Wills

20. There is no disagreement between the parties that the Court's aim in construing the gifts in clause 6 is to establish Mrs Midworth's objective intention as expressed in the Will. That process requires identifying the meaning of the words used in clause 6 and the Will as a whole in light of the natural and ordinary meaning of the words used, the overall purpose of the Will, the facts known or assumed by Mrs Midworth at the time that the Will was executed (the "armchair principle") and, finally, common sense.
21. There is no evidence of Mrs Midworth's subjective intention in existence and it would not be admissible in any event. MASTER MCQUAIL Approved Judgment *British Camelids v The Brooke Gifts to named charities*
22. The principles relevant to the construction of gifts to named charities have been considered in a number of authorities and were recently comprehensively reviewed by HHJ Davis-White KC (sitting as a judge of the High Court) in *Dryden v Young* [2024] WTLR 843. His summary of the relevant principles is set out at paragraph [63] of his judgment, in 9 sub-paragraphs. They may be summarised as follows:
 - (i) the starting point is to identify if the gift is to an entity in existence at the date of the will and what that entity is. If there is no such entity or it is unclear which entity is intended the question will be whether the gift evinces a gift to charity which will be applied cy-près by way of scheme; (ii) where a specific entity can be identified as the intended recipient of the gift, the starting points is:
 - (a) in the case of a gift to an unincorporated charity the gift will be construed as a gift for the charitable purpose for which the charity holds its property, by reference to its constitution, rather than as a gift to the specific charity or a gift dependent on the continued existence of the charity in its then form. This is subject to any contrary intention. This proposition was expressed by Buckley J *Re Vernon's Will Trust* [Note] [1972] Ch 300 at 303C – F: "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. 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 lifetime of the testator, the gift fails: *In re Ovey* (1885) 29 Ch. D. 560 and by Goff J in *Re Fingers Will Trust* [1972] 1 Ch 286: "In the case of an unincorporated body the gift is per se a purpose trust, and provided that the work is still being carried on will have effect given to it by way of scheme notwithstanding the disappearance of the donee in the lifetime of the testator, unless there is something positive to show that the continued existence of the donee was essential to the

gift”;

- (b) in the case of a corporate charity the gift will be treated as a gift to the corporate entity and not a gift on trust for charitable purposes, again this is subject to any contrary intention; (iii) as each of the passages quoted in (ii)(a) make apparent, particular circumstances may show that on a true construction the gift is dependent on the charitable institution named in the will continuing to exist; MASTER MCQUAIL Approved Judgment *British Camelids v The Brooke* (iv) particular circumstances may show that on a true construction (ii)(b) does not apply and instead the gift is for the purposes of the incorporated entity;
 - (v) where a charitable gift is construed as being within (ii)(a) but where the charitable entity in question:
 - (a) has ceased to exist and there is no entity carrying on its purposes; or (b) it has changed its purposes or has ceased to exist in its previous form but the purposes are carried on by it or a new entity which can be regarded as a continuation of the original the gift will be valid. In case (a) it will be applied cy-près. In case (b) it will be treated as a gift for the purposes carried on by the entity now carrying on the (possibly changed) charitable purposes; (vi) where the gift is construed as being within (ii)(b) but the corporate entity has been substantially altered by liquidation, alteration of objects or dissolution then in the first two cases the gift will be valid but in the third (subject to (viii)) the gift will fail; (vii) in the case of a gift to an entity which never existed the gift will be administered cy-près if a general charitable intent can be made out and otherwise the gift will pass on intestacy; (viii) in the case of failed gifts, where for example the charitable gift is dependent on a particular entity carrying out the charitable purposes or is to a corporate charity that has been dissolved. The issue will then be whether a general charitable intention is made out in which case the gift will be applied cy-près or if it is not the gift will pass on intestacy (or in accordance with a provision in the will dealing with that event). It may be more difficult to identify a general charitable intention where the gift is to an incorporated charity which has ceased to exist; (ix) statute has intervened to regulate the application cy-près of property dedicated to charity.
23. At [93] of *Dryden* the Judge said this: “In short, I consider the starting point to be that it is necessary to look in the will for a reason 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.” Statutory Provisions concerning Termination and merger of charities 24. Section 1(1) of the Charities Act 2011 defines a charity as an “institution which (a) is established for charitable purposes only, and (b) falls to be subject to the control of the High Court”. 25. Section 34(1) of the Charities Act 2011 provides: “the Commission must remove from the register: (a) (b) Any institution which it no longer considers is a charity, and Any charity which has ceased to exist or does not operate”.

26. An incorporated charitable company is treated as having ceased to exist when it is formally dissolved in accordance with the Companies Acts. A gift to an incorporated charitable company in insolvent liquidation will therefore not lapse.
27. An unincorporated charity terminates when it has disposed of all its funds in accordance with its governing document. This includes where the unincorporated charity has transferred all its assets and liabilities to a charitable company (even one carrying out the same purposes). MASTER MCQUAIL Approved Judgment British Camelids v The Brooke It has for many years been common practice for charities which have merged or 28. incorporated to maintain “shell charities” after merger for the purposes of receiving legacies in the names of the old charities which might otherwise have failed for want of an extant donee.
29. The “register of relevant mergers” was introduced by the Charities Act 2006. In circumstances where a charity had ceased to exist after having transferred their assets to an incorporated charity the transfer could be registered as a “relevant charity merger”. Under s. 75F of the Charities Act 1993, later s. 311 Charities Act 2011, where a gift to the transferor charity “takes effect” on or after the registration of the merger then section 311(2) Charities Act 2011 can operate so that the gift takes effect to the transferee charity after the merger. 30. Section 311 was considered in the case of Berry v IBS-STL (UK) Ltd [2012] EWHC
666. In that case the testatrix gave her residue to be divided in equal shares between a number of charity beneficiaries if they were in existence at her death. The executors were given a discretion, in the event any of the named beneficiaries had never existed, ceased to exist or amalgamated with another organisation, or changed its name, to determine to whom that beneficiary’s share should be paid. Having made an interim payment to the incorporated successor of an unincorporated beneficiary, the executors sought directions whether they must pay the balance to the successor after it had become insolvent. The Judge concluded that the named beneficiary, having ceased to exist, was not a beneficiary at all so that the executors were able to exercise their discretion as to whom the remaining part of the share should be paid. There is no discussion in the case about the gift having been one for charitable purposes, presumably because it was unnecessary for the executors’ purposes.
31. As a result section 311 of the Charities Act 2011 was amended to apply to gifts to transferor charities which would have taken effect if the transferor had been in existence. Section 311(2A) provides: “(2) Subsection (2A) applies to a gift, other than an excluded gift, if—
 - (a) the gift would have taken effect as a gift to the transferor if the transferor had been in existence, and
 - (b) the date on which the gift would have taken effect is a date on or after the date of the registration of the merger. (2A) The gift takes effect as a gift to the transferee.” The new provision applies only to gifts which take effect after 7 March 2024 and not to the gifts in the Will (which would have taken effect on the Testatrix’s death). Claimant’s Submissions

32. Ms Carslaw says the language of the Will is plain and the claimant and the fourth defendant are each entitled to 50% of the residuary estate. The residuary gifts are expressly subject to the condition that the named legatees be in existence at the date of Mrs Midworth's death in order to benefit. The gift is to: "such of the following as shall exist at the date of my death and if more than one in equal shares".
33. Ms Carslaw submits that "the following" refers to the particular donees which Mrs Midworth specified at clauses 6(i) to 6(vi) and even where the named donees are unincorporated associations, it is clear from the wording of the Will that the gift is conditional on the continued existence of the particular donee named in the Will not its purposes:
- (i) the "following" can only refer to donees in existence at the date of the Will. The first to third defendants were not in existence at the date of the Will and so logically cannot be the legatees intended by Mrs Midworth; MASTER MCQUAIL Approved Judgment *British Camelids v The Brooke* (ii) the condition "for such of the following as shall exist at the date of my death" refers both to incorporated entities (the claimant, the British Union for the Abolition of Vivisection) and unincorporated entities (the other named beneficiaries). The existence condition applies irrespective of the legal structure of the donee; (iii) Mrs Midworth specified by reference to name, charity number and some form of address, the particular donee which she wished to benefit. That level of detail indicates that the intended donees were the particular donees named in clauses 6(i) to 6(vi), rather than their purposes; (iv) there is a distinction between the institutional mechanism through which the funds of the charity are held and administered and the purposes of the charity. If the gifts were for the charitable purposes of the named charities, the inclusion of the condition "as shall exist at the date of my death" would be meaningless;
 - (v) as the Will refers to entities identifiable at the date of the Will, there is no possibility of claiming as "successors" because the legatees which do not comply with the condition are not entitled to the gift and, as made clear in *Re Fingers*, they are not successors of the relevant named legatees with respect to the share of residue that the named legatees otherwise would have taken.
34. Ms Carslaw says as to the Brooke Hospital for Animals the gift at clause 6(ii) is to the unincorporated Brooke Hospital for Animals. The first defendant is a different legal entity, with a different charity number, incorporated some years after the date of the Will. Even where the transfer was registered on the register of relevant mergers, this gift falls squarely within the "trap" identified by Berry – the gift does not take effect to the unincorporated named beneficiary because it did not exist.
35. As to "Zoo Check Project" and "Liberty Campaign", Ms Carslaw says:
- (i) these donees are identified by reference to charities in existence at the date of the Will, which were then carrying them out. They are explicable only by reference to that specific charity. Each of these charities have ceased to exist, having transferred all their funds to the second or third defendant respectively and were removed from the Charities Register. It

follows that the particular donees as referred to in the Will did not continue to exist at the date of the Will. (ii) the “Zoo Check Project” and “Libearty Campaign” should be construed as institutional arrangements, rather than their abstract purposes; (iii) even if these were construed as gifts for charitable purposes, the gifts should still fail because the specific charitable purposes identified by references to the Zoo Check Project and/or the Libearty Campaign as specified by the Testatrix in the Will no longer exist. The names were descriptive labels to identify particular charitable work, narrower than the general work of the respective charities, which donors would have understood they were supporting and for which their funds were being used. (iv) while the second defendant may carry out work targeted at zoos, and the third defendant carries out work for the protection of bears, both charities have abandoned the use of the labels used in the Will to identify the specific charitable work in their marketing literature, fundraising and operations, and funds are no longer held on special trust for the purposes those labels signified.

36. The Burstow Wildlife Sanctuary has ceased to exist.
37. The Will was professionally drafted and expressly provides for the present circumstances by giving the residue to “such of the following” that did exist. There was therefore no need for a “saving provision” as in the Berry case providing for circumstances in which the named entities are terminated and their assets transferred elsewhere.
38. This is not a case where the failure of the gifts leads to a partial intestacy. MASTER MCQUAIL Approved Judgment *British Camelids v The Brooke*
39. To save the gifts would flout Ms Midworth’s objective intention and render pointless the efforts of the Law Commission and the legislature to tackle the widely recognised issues which Berry highlighted. First to Third Defendant’s Submissions
40. Mr Curry says that the starting point is that a gift to an unincorporated charity is construed as a gift for the purposes of that charity because an unincorporated charity has no legal existence save as a trust for charitable purposes.
41. He says that exceptionally a gift will be construed as conditional on the continued existence of the entity named in the will and fail because, as a matter of construction, the purpose was confined to that specific entity. For example in *Re Ovey* (1885) 29 ChD 560 the benefit was construed as for a particular hospital in a particular place. To reach such a conclusion on construction there would need to be material indicating that an otherwise broad charitable purpose was constrained geographically or by manner of application.
42. Mr Curry’s first submission is that the will identifies the first, second and third defendants as beneficiaries. They have been named (save for changed charity numbers) and there is no doubt about the charities that Mrs Midworth intended to benefit. This is not a case where the words in the will might have referred to a number of similar charities. The references to charity numbers and addresses can, and should, be construed simply as aids to identification rather than of the essence of the gift. The court should therefore conclude that

the first, second and third defendants are the charities identified in the will (and in the case of the second and third defendants are charities who continue to carry on the purposes of the Zoo Check and Libearty campaigns).

43. Mr Curry submits that there is nothing in this will that shows that ‘the continued existence of the donee was essential to the gift’:
- (i) the testator’s decision to name particular charities rather than broad purposes should not tell against the first, second and third defendants. An unincorporated charity has to be identified somehow and the fact that it has been clearly identified cannot be evidence which justifies a departure from the starting point. It is simply a clear identification of the relevant charitable purpose; (ii) the words ‘for such of the following that exist’ must refer to the existence of the charitable purpose as that is the thing that has a legal existence. A testator will wish to ensure that a charitable gift is applied for her intended purposes but there is nothing in the words used which make it essential or a condition that the purpose be carried on by a particular unincorporated association as opposed to a successor charity of whatever legal form; and (iii) the inclusion of receipt clauses is a question of administrative convenience for the executors. It would be perverse to construe a receipt clause as positive evidence that the continued existence of the institution in the form named in the will was a condition of the gift.
44. There is nothing in the Will from which the Court can conclude that Mrs Midworth intended the existence of a particular legal form for the entity carrying out her intended charitable purposes was to be of the essence of her gift. The fact that a charity has been identified in clear terms cannot be enough. There must be something to show that the gift was conditional on that charity, if an unincorporated charity, continuing to exist in the form identified in the will.
45. Mr Curry says that Berry case is of no assistance in the construction of this will. The provisions of the will in Berry were materially different, most significantly in that the executors were given a discretion how to deal with the gifts to charitable beneficiaries who had amalgamated. The decision there was that where a gift was made to a named institution and that institution had ceased to exist at the date of death there was no gift in the will to that MASTER MCQUAIL Approved Judgment British Camelids v The Brooke institution for the purpose of s. 75F of the Charities Act 1993. No argument was raised about the gift being one for charitable purposes.
46. If the first, second and third defendants are correct regarding the construction of the will, the evidence shows that they are carrying on the same charitable purposes as identified in the will. The gifts to the second and third defendants can be made subject to appropriate restrictions as to their application to further the purposes of the Zoo Check and Libearty campaigns.
47. Regarding the gift to Burstow Wildlife Sanctuary, while that charity no longer operates in its original location or at all, its purposes are certainly being carried out, including by the defendants (although arguably not by the claimant).
- Discussion and Conclusion

48. The principles to be applied in construing the Will are those conveniently set out in Dryden. I do not consider that the decision in the Berry case assists in the construction of the 49. Will here. That decision was confined to determining that the relevant statutory provision deeming a gift to a transferor charity to take effect as a gift to a transferee does not apply where the trustees had a discretion how to apply a gift to a no-longer existent entity. The executors did not need to run any argument that the gift was one for charitable purposes and should be so applied.
50. There is no doubt that each of the claimant and the fourth defendant were identified as intended recipients of a share of residue in the Will. Each of them was incorporated at the date of the Will and continued in the same legal form at the date of Mrs Midworth's death and continues now. In each case the gift is to be construed as to the corporate entity identified in the will. That the fourth defendant is not a charity does not affect that

conclusion.

51. In the case of the other named beneficiaries Ms Carslaw's essential argument is that by use of the words of gift to "the following that exist at the date of my death" and by inclusion of detailed identifying features about the intended beneficiaries the Will should be construed as indicating that a change of legal form prevents the first to third defendants taking the gifts to the Brooke Hospital for Animals, the Zoo Check Project of the Born Free Foundation or the Libearty Campaign World Society for the Protection of Animals which therefore fail and the gift to the Burstow Wild Life Sanctuary also fails. So far as concerns the Brooke Hospital for Animals there is no question but that it is 52. identified by the name, address and charity number in existence at the date of the Will. As it was an unincorporated charity, the gift to it is prima facie construed as a gift for its charitable purposes.
53. Once it is recognised that a gift to an unincorporated charitable entity is to be construed as a gift for the charitable purposes of that entity, the words "the following that exist at the date of my death" must themselves be construed in light of that construction. The gift should therefore not necessarily fail on the original named entity ceasing to exist if the broad charitable purposes of the gift continue. The specificity of detail given to enable identification of the entity to be benefitted cannot displace the prima facie construction unless that detail is a reason to construe the gift as dependent on the named charitable entity being in existence to serve as the instrument for carrying out the relevant charitable purposes.
54. The work of the Brooke Hospital for Animals and now of the first defendant was and is international in scope and not confined to either its former or current London addresses or by the legal form of the named recipient charity. Reading the gift to the Brooke Hospital for Animals in the context of the Will as a whole I conclude that the reference to ceasing to exist must be construed as referring to the intended charitable purposes ceasing to exist; any other MASTER MCQUAIL Approved Judgment British Camelids v The Brooke conclusion would thwart Mrs Midworth's intentions, as they are to be construed, to make a gift for her

intended charitable purposes. Since the first defendant is carrying on the charitable purposes of the Brooke Hospital for Animals, I conclude that the Will is to be construed as making a gift of a share of residue to the first defendant. So far as concerns the Born Free Foundation and the World Society for the Protection 55. of Animals there is no question but that they are identified by address and charity number. In addition in each case a particular project of the entity is identified. I conclude that in these two cases it is clear that Mrs Midworth intended to benefit the particular charitable purposes of the respective projects. Accordingly I conclude that these gifts should be prima facie construed as for the charitable purposes of those projects.

56. Again these gifts should not necessarily fail on the original named entities ceasing to exist if the broad charitable purposes of the gifts continue.
57. The work of the Zoo Check Project and the Libearty Campaign and now of the second and third defendants in continuing those projects identified in the will were and are international and not confined to a particular address or location or a particular mode of operation. Reading these gifts in the context of the Will as a whole I conclude that the reference to ceasing to exist must be construed as referring to the intended charitable purposes ceasing to exist. Since the second and third defendants are carrying on the relevant charitable purposes I conclude that the Will is to be construed as making gifts of shares of residue to the second and third defendant for the purposes of the Zoo Check Project and the Libearty Campaign, even though those projects do not have a continuing separate identity within the second and third defendants' present organisational structure.
58. The Burstow Wildlife Sanctuary was clearly identified by the words of the Will. Again as a former unincorporated charity the gift to it should prima facie be construed as a gift for its charitable purposes and reading the Will as a whole I conclude that the gift would only fail if those charitable purposes had ceased exist or to be capable of implementation. Those charitable purposes have not ceased to exist or to be capable of implementation and it appears from the evidence that the charitable purposes are ones which are carried on by at least the first, second and third defendants. In those circumstances I consider that it would be appropriate to direct by way of scheme that the share of residue intended for the Burstow Wildlife Sanctuary's purposes be paid among some, at least, of the parties to the proceedings. 59. I will hear counsel further on consequential matters including (i) any restrictions that might be appropriate as to the application of second and third defendants' gifts and (ii) the identity of those appropriate to benefit from the application of the Burstow Wildlife Sanctuary's share of residue by way of scheme.

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