

Commercial Law Case Note

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Ensuring that you receive your gift: lessons from the Hirst Estate decision

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What does this case mean for institutions receiving a gift under a will?

The case highlights some of the problems that can arise when an institution that is the subject of a gift is misdescribed in a will. To avoid these pitfalls, your institution should take steps to ensure that any gift made to you is valid.

As a first step, you should consider providing information to the general public via brochures, your website, or other advertising means which describes how a gift left to your institution should be described in a will.

This information should:

- Describe the correct name to use to describe your institution in a will. This is particularly important where your institution has recently been amalgamated with another institution or has had a change of name.
- Provide the name of a contact person and telephone number or email address that the drafter of a will can contact to obtain more information or if they have any queries.
- Encourage drafters who wish to specify a purpose for which the gift is to be used to also specify an alternative use as a "back-up". This is important because if the purpose specified in the will is too detailed, inaccurate or becomes out-dated due to changes in circumstances since the making of the will (in Mrs Hirst's case, the gift to SHSEH was for the purposes of an accident and emergency centre or intensive care unit which did not exist), the gift may become impossible or impracticable and require a cy-pres scheme to be established.

If you already provide the above information, you should ensure that your information is up-to-date.

If you are an institution which is named as a beneficiary in a will, these steps may assist with avoiding the risk of a bequest intended for your institution being ruled invalid. These steps may also assist you avoid the costs to an estate of the executor having to applying to a court for a ruling because of uncertainty or for the establishment of a cy-pres scheme because the gift is impossible or impracticable.

For institutions such as hospitals, health service providers, aged care service providers, charities or other non-profit organisations that are named as a beneficiary in a will, the importance of ensuring that the institution's name is correctly described is highlighted in the recent decision of the Supreme Court of New South Wales in *Hirst Estate - Atkinson & Anor -v- Royal Alexandra Hospital for Children & Ors* [2010] NSWSC 613.

Background

In the case, Mrs Hirst's will included gifts to the following 3 beneficiaries in the following terms:

- "Royal Alexandria Hospital for Children (The Children's Hospital at Westmead) in aid of that institution and for its general purposes...";
- "Sydney Hospital in aid of that institution and for the purposes of an

Accident and Emergency Centre and Intensive care facility ..."; and

- "Royal Flying Doctor Service of Australia in aid of that institution and for its general purposes...".

The will specified that the gifts to "Royal Alexandria Hospital for Children" and "Sydney Hospital" were conditional upon those institutions being separately operating hospitals at the date of Mrs Hirst's death and that if this condition was not met in relation to either gift,

that gift would be paid to the Royal Flying Doctor Service and any other beneficiaries entitled under the will in equal shares.

Issues

There were 2 main issues in the case.

The first issue related to the validity of the gift to "Royal Alexandria Hospital for Children". This was because although at the date of the will there was a hospital called "The Royal Alexandra Hospital for Children" operating under the registered business name "The Children's Hospital at Westmead", there was no institution which existed which answered exactly to the name of the institution specified in the will. In the end, the court interpreted the word "Alexandria" in the will as a misspelling for "Alexandra" and ruled that the gift was valid.

The second issue in the case concerned whether "Sydney Hospital" was a separately operating hospital at the date of Mrs Hirst's death in September 2008. This was in contention because the hospital building which at one time was known as "Sydney Hospital" had been redeveloped. The redevelopment, which occurred several years before the date of Mrs Hirst's will, involved the relocation of Sydney Eye Hospital from another site to the same site as the hospital building known as Sydney Hospital and following the redevelopment, the medical facilities

at the site became known as "Sydney Hospital and Sydney Eye Hospital" ("SHSEH").

Submissions

In arguing that Sydney Hospital was a separately operating hospital at the date of Mrs Hirst's death, SHSEH submitted that the reference to "Sydney Hospital" in Mrs Hirst's will was a shorthand reference to the institution now known as "Sydney Hospital and Sydney Eye Hospital". This submission was based on the fact that Mrs Hirst was an experienced medical practitioner with a fond association of SHSEH through her husband, who practised there, and that she must therefore have known at the time of making her will that the institution formerly known as Sydney Hospital also included the facilities conducted by the institution formerly known as Sydney Eye Hospital.

The Royal Flying Doctor Service, on the other hand, argued that at the date of Mrs Hirst's death, SHSEH was in reality 2 separate hospitals: one called "Sydney Hospital" which administered to general patients and one called "Sydney Eye Hospital" which administered to eye injury and trauma patients. Further, the Royal Flying Doctor Service submitted that the terms of Mrs Hirst's will meant that she intended to benefit only the hospital called "Sydney Hospital" so long as it was operating separately from any

other hospital. The result then would be that as both Sydney Hospital and Sydney Eye Hospital were operating under the same administration, Mrs Hirst's gift to "Sydney Hospital" in her will failed.

Decision

The court agreed with the submissions made by SHSEH and held that the reference in Mrs Hirst's will to "Sydney Hospital" was a reference to the institution more fully described as "Sydney Hospital and Sydney Eye Hospital". This was because Mrs Hirst's familiarity with the institution stemmed from the time that it was known simply as "Sydney Hospital". In addition, there was no reason or evidence to suggest that she was unaware of the fact that Sydney Eye Hospital had been relocated to the same site as Sydney Hospital. As the single institution known as Sydney Hospital and Sydney Eye Hospital operated separately from any other hospital institution at the date of Mrs Hirst's death, the court declared the gift to "Sydney Hospital" to be valid.

However, as SHSEH did not have an accident and emergency centre or intensive care unit, the terms of the gift to SHSEH were impracticable and the court ordered that a cy-pres scheme be applied to give effect to the gift as near as possible to Mrs Hirst's original intention.

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