

THE APPLICATION OF CY-PRES DOCTRINE
IN THE MALAYSIAN LAW OF CHARITY

by

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A Project Paper Submitted in Partial
Fulfilment of the requirements for
the Diploma of Law .

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Mara Institute of Technology
Shah Alam
1984/1985

A B S T R A C T

Since time immemorial Charities have played a positive role in society. Charities encourage private philanthropy and the public receive various forms of return from the voluntary contribution. Besides that, charities harness talent, time and kindness of the people with different skills and sensitivity then would be possible. But unfortunately, the law being what it is has not been able to respond adequately.

The writer is of the opinion that only by legislation can an effective and orderly development of law of charity and doctrine of cy-prés be achieved.

The aim of this paper therefore is manifold, viz:

- (i) to study the existing corpus juris directly relating to the law of charity particularly, cy-prés,
- (ii) to evaluate the court's decisions in the context of local setting,
- (iii) to make several case-studies of cy-prés doctrine in trust deed incorporation, and
- (iv) to make statutory recommendation.

ACKNOWLEDGEMENT

It is in order that I take this opportune moment to record my deepest appreciation first to my supervisor, Puan Ramy Bulan, for a number of reasons. She was the person responsible for introducing the law of trust to me. Though the subject is 'technical' she was able to make it simple yet interesting in her own unique ways. This has, in a way, encouraged me to make a bold attempt to do this project paper. At all stages of the preparation Puan Ramy has patiently rendered invaluable advice thus reducing the awesome task to a pleasant assignment. She is also appreciative of the constraints involve and this has make it more bearable. The paper would not have been what it is if not for her help.

I am also most indebted to YB Dato' Nik Yahya bin Nik Hussein, the Public Trustee for the valuable session I had with him. Dato' was kind enough despite his heavy schedule to provide useful materials particularly pertaining to cy-prés doctrine incorporated into trust deeds.

I also wish to thank all the staff of the Legal Adviser Chamber, Malacca, particularly Encik Rahim Uda (Learned Deputy Public Prosecutor) for the useful information given on the Cheng Hoon Teng Temple. The same courtesy is also extended to the staff of the National Welfare Foundation pertaining to the information given about its creation and function as an umbrella to other charitable organisations. My thanks also go to Encik Ali bin Ahmad of the Income Tax Department pertaining to Schedule 6 of the Income Tax Act 1967 relating to charitable organisation exempted from tax.

I also acknowledge the valuable service of Miss Sharon Lim for typing and correcting the manuscript.

I accept full responsibility for the errors and weaknesses in the paper.

C O N T E N T S

	Page
PREFACE	(i)
ACKNOWLEDGEMENT	(iii)
CONTENTS	(iv)
TABLE OF STATUTE	(vi)
TABLE OF CASES	(vii)
LIST OF ABBREVIATION	(x)
CHAPTER I	
INTRODUCTION	1
A Justification for Study	1
B Scope of Study	2
C Methods of Research	4
D Constraints	4
CHAPTER II	
BACKGROUND TO CY-PRES DOCTRINE	6
A Definition	6
B Common-law Application of Cy-prés	8
1 Initial failure	10
2 Defunct or Non-Existent Charity	11
3 A Group of Donees; Mostly Charitable	11
4 Continuation in Another Form	12
5 Unincorporated Associations and Charitable Corporations	14
6 Institutions and Purposes	15
7 Subsequent Failure	16
8 Termination in Favour of non-charity	18

CHAPTER 1

INTRODUCTION

A Justification for Study

In Malaysia charity may literally begin at home but legally it is England¹. In the case of CHOA CHOON NEO V SPOTT-ISWOODS², which involved the question as to whether ancestral worship was charitable, Maxwell CJ held that:

"In this colony so much of the law of England as was in existence when it was imported here and as is of general (not merely local) policy, and adapted to the condition and wants of the inhabitants is the law of the land; and further, that law is subject in its application to various alien races established here, to such modifications as are necessary to prevent it from operating unjustly and oppressively on them"

The English did not apply their law in toto but as pointed out by the Lord President, Tan Sri Salleh Abbas³, viz:

"The Colonial powers introduced their secular legal system in such a way to suit local conditions which adopted them on gaining independence as otherwise there would be chaos and disorder and independence would not be of benefit to anyone"

Professor Ahmad Ibrahim⁴ added "more important still the judges and the executives are too enamoured of the European inspired law to wish to rush changes, which are unclear and little understood".

¹Lim Kien Thye, "Clearing the Charity muddle - A statutory proposal" The Charities Act (1982), 26 Mal. L.R.133

²W.J.M. Ricquier, "Charity Begins At Home?", 24 Mal. L.R.323

³(1896) 1. Ky. 216

⁴Opening an Islamic Seminar Organised by Bar Council, New Sunday Times