How Courts Commonly Approach Modifying Charitable Gifts
By Krista Smith,
University of Maryland School of Law, Class of 2006

I. Charitable Trusts Generally


A. Construction and Operation:

a. Charities as Favorites of the Law: Trusts for charitable purposes are favorites of the law and the courts. It is the policy of the law to uphold charitable gifts and trusts whenever possible. That is, charitable trusts are regarded with special favor and will not be declared void if they can, by any possibility consistent with law, be upheld. Courts of equity will go to the length of their judicial power to sustain such gifts. Provisions for such trusts are construed so as to give them effect, if possible, and to carry out the general intention of the donor when clearly manifested, even if the particular form and manner pointed out by her cannot be followed. Where they cannot be followed literally, the courts usually apply the cy pres or a similar doctrine. Charitable trusts are upheld under some circumstances where a private trust might fail.

b. General Principles of Construction: In line with the principle that charities are favorites of the law and the courts is the principle of liberal construction of trusts for charitable purposes. The charitable intention of the donor will be effectuated by the most liberal rules of construction that the law will permit. Charitable trusts are construed liberally and upheld if reasonably susceptible of a construction which gives them validity.

B. Administration and Enforcement:

a. Generally: Courts of equity exercise jurisdiction over charitable trusts, and trusts created for charitable purposes are subject to liberal principles of equity jurisprudence. If the purposes of a trust are charitable, they become no less charitable because of the means authorized to effectuate them, when such means are legal and not against public policy.

b. Deviation from the Terms: In the exercise of its equitable jurisdiction a court may control the administration of a charitable trust so as to effectuate its avowed purposes, particularly when changing circumstances would otherwise defeat them. Courts will ordinarily permit deviation from the terms of a charitable trust where compliance is illegal, impracticable, or impossible, or where, owing to circumstances not known to the donor, literal compliance will defeat or substantially impair the accomplishment of the purposes of the trust. Depending
upon the circumstances and the reason for deviation, the court may do this under the doctrine of cy pres, which is applicable only to charitable trusts and charitable organizations, or under the doctrine of equitable deviation, which is applicable to all trusts, private or charitable.

i. **Cy Pres Doctrine:** The “cy pres” doctrine permits a gift for a charitable purpose which cannot be carried out as directed by the donor, to be applied “as nearly as may be” to the fulfillment of the underlying charitable intent. Thus, cy pres is applicable in situations where (1) property is given in trust for a particular charitable purpose; (2) it is, or becomes, impossible, impracticable, or illegal to carry out such purpose; and (3) the donor manifested a more general intention to devote the property to charitable purposes. The doctrine of cy pres is a simple rule of judicial construction, designed to aid the court to ascertain and carry out the intention of the donor when that intent cannot be effectuated to the letter of the donor's directions. There can be no invocation of cy pres until it is clearly established that the directions of the donor cannot, or cannot beneficially, be carried into effect.

ii. **Equitable Deviation:** Courts of equity possess the power to permit or direct some departures from the specific terms of a charitable trust. Under the doctrine of equitable deviation, the court will permit the trustees of a charitable trust to deviate from the mechanical means of administration of the trust where circumstances not known or foreseen by the donor have come about and where such change in circumstances in combination with the administrative means provided in the trust would defeat or substantially impair the accomplishment of the intended trust purpose. In applying the doctrine of deviation, the court cannot change the original charitable objective of the donor or divert the bequest to an entity with a charitable purpose different from the purpose set forth in the trust instrument. The court must determine the donor's basic purpose in establishing the trust, and what the donor would now direct in view of the changed conditions resulting from the passage of time. When deviation from the administrative provisions of a charitable trust is appropriate, a court may direct or permit the trustee to accomplish acts that are unauthorized or even forbidden by the terms of the trust.

iii. **Key Difference:** There is a difference in the underlying intent which is required for the application of the doctrine of equitable deviation, as distinguished from the cy pres doctrine. In order for the doctrine of cy pres to be applied, a general charitable intent on the part of the donor is required, whereas the principle of equitable deviation may be applicable even though the donor possessed a narrow and specific charitable intent. In order for the doctrine of equitable deviation to apply, the testator must have intended to create a trust.
c. **Manner of Effectuating Charitable Intent:**

i. **Permissible Variations:** Since the cy pres doctrine is fundamentally a principle of approximation, if the gift cannot be applied or carried out precisely as directed, it is to be applied or carried out as nearly in accordance with the donor's directions as circumstances permit, and within the range of the donor's discernible charitable intention, or as is best suited to accomplish the general charitable purpose of the donor. The basic purpose or objective of the gift should be modified no more than is clearly necessary to effectuate it at all. Application of the cy pres doctrine or the doctrine of deviation in such manner as to change to any considerable extent the class of persons who will be benefited by the charitable project contemplated by the donor is an alteration of purpose not within the scope of that doctrine.

ii. **Elimination or Modification of Restrictions:** If the charitable intention of a donor cannot be effectuated as directed because of conditions or restrictions which the donor has imposed on the gift, a court of equity may eliminate or modify such conditions or restrictions pursuant to the cy pres doctrine or the doctrine of deviation in order to save the gift for charity. A court of equity may allow a charitable trust to be administered without the observance of conditions imposed by the donor which would render the trust invalid or unenforceable.

II. **Pennsylvania Law**


A. **Construction:**

a. **General Considerations:** A charitable trust may be created by will or deed; special technical words are not ordinarily required in order to establish it. In construing and applying the terms of an instrument creating a charitable trust, the intention of the donor or testator must be carried out as nearly as possible. In view of the rule that charities are to be favored, the language in an instrument which creates a charitable trust should receive as broad and as liberal a construction as can reasonably be permitted so that it will be possible to carry out that which seems reasonably to be the true intention of the creator of the trust. In construing an instrument creating a charitable trust, the court may vary the specific instructions given by the donor in order to accomplish the ultimate end which the donor had in view, provided that such a departure does not impair the interest of any beneficiary or violate the primary purpose of the donor.

b. **Conditions:** A charitable gift may be conditional. Conditions in a charitable gift or bequest will be given a reasonable construction. In interpreting the language that states a condition, the circumstances under which the donor used the words imposing the condition must be considered and given appropriate effect, since it
must be assumed that she had such circumstances in mind at the time. When the conditions are accepted, there is a binding obligation which may be enforced through a court proceeding, provided that the conditions are not unreasonable, impossible of performance, or opposed to public policy.

c. **Modification:** Under proper circumstances, a trust instrument created for charitable purposes may be modified. However, there can be no reformation of an existing trust instrument where to do so would impair the purposes of the trust.

B. **Administration and Enforcement:**

a. **General Considerations:** In general, the property or funds forming the subject matter of a charity should be applied to the purposes, and for the benefit of the persons or institutions, and in the mode and manner, indicated by the founder. As a rule, a deviation from the express terms of a charitable trust will be permitted only if there is a change of circumstances, and then only to carry out the purpose of the trust. Trustees of a charitable trust have been permitted to deviate from the terms of the trust upon a showing that a literal compliance with such terms would decrease the income of the trust and hinder the trust purposes.

b. **Judicial Administration or Supervision in General:** A charitable trust is initially and continuously subject to the parens patriae power of the Commonwealth and the supervisory jurisdiction of its courts. The responsibility for public supervision of charitable trusts traditionally has been delegated to the Attorney General to be performed as an exercise of his *parens patriae* powers. The orphans' court division of the court of common pleas exercises the broad supervisory powers of the Commonwealth. The trustees of a charitable trust are fiduciaries, and are subject to supervision and control by the court. However, since charities are favorites of the law in the Commonwealth, if the use created is a charitable one, the courts will not permit the trustee to be interfered with so long as the trust estate is being managed in accordance with the donor's intention. The court has power to insure the competency and performance of the trustees of a charitable trust. Under its supervisory powers, the court has jurisdiction to control, remove, or discharge trustees of charitable trusts.

c. **Cy Pres Doctrine:** In order for the cy pres doctrine to be applicable under the statute, the conveyance in trust must have been made for a charitable purpose, the primary charitable purpose of the donor must have failed because the purpose was or has become indefinite, impossible, or impracticable of fulfillment, or because of a want of a trustee or failure of a trustee to designate such purpose, the donor must not have otherwise provided, and an interested person must have made an application to the court and have notified the Attorney General. While the court has the equitable power to apply the doctrine, such power should be exercised only where there is no other means of approximating the testator's own plan. In applying the cy pres doctrine, the court is to order an administration or distribution of the estate for a charitable purpose in a manner which will, as nearly
as possible, fulfill the donor's intention, regardless of whether her charitable intent was general or specific. The donor's charitable intent is to be approximated as nearly as possible. Thus, the court will carry into effect the intention of the donor as far as possible.

d. **Enforcement:** Consistent with the cy pres statute, an action for the enforcement of a charitable trust can be maintained by the Attorney General, by a co-trustee, or by a person who has a special interest in the enforcement of the charitable trust, but not by persons who have no special interest or by the donor, her heirs, her personal representatives, or her next of kin. Generally, one whose only interest in compelling a charitable organization to perform a duty owed by the organization to the public is that interest which is held in common with other members of the public is not qualified to bring an action to compel such performance. The purpose of rule barring members of general public from enforcing duty owed by charitable organization under trust is to protect trustees from frequent suits perhaps based on cursory investigation and brought by irresponsible parties. Where charitable foundation possessing an extremely valuable art collection and enjoying tax exemption denied access of public to gallery housing works of art, Attorney General was entitled to file a petition calling upon foundation to show cause why they should not open gallery in accordance with terms of agreement entered into between the donor and foundation.