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CASE COMMENTARY

UNINCORPORATED ASSOCIATIONS: PROPERTY HOLDING, CHARITABLE PURPOSES AND DISSOLUTION

Hanchett-Stamford v (1) HM Attorney-General and (2) Dr William Johnston Jordan [2008] EWHC 330 (Ch), 2008 WL 1968855

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INTRODUCTION

The decision of Mr Justice Lewison in *Hanchett-Stamford v HM Attorney General and Dr William Johnston Jordan*[1] provides us with a useful analysis of the legal principles relating to the thorny issues of: (i) how unincorporated associations hold property; (ii) the applicability of the law of charities to unincorporated associations and (iii) the property rights of a declining membership upon the dissolution of such associations.

In short, the *Hanchett-Stamford* case illustrates the relevance and applicability of the 'contract-holding theory' in relation to the ownership of property by unincorporated associations. At its most basic, the contract-holding theory dictates that the assets of unincorporated associations[2] (such as money in bank accounts, cash, land, personalty, shares etc) are held nominally by the club's officers (such as the chairman and/or treasurer) on trust for the membership of the club, who, in turn, hold the equitable title to such assets under 'a form of joint tenancy'. Further, the contract-holding theory dictates that, by their membership terms (as evidenced by the society's constitution/rules), members contract with each other inter se. Implied into this contract are terms to the effect that (a) an individual member undertakes not to sever and claim his individual equitable share to the property/assets of the association and (b) in the event of his death or resignation, his equitable interest in the club's assets remains unsevered and devolves to the remaining

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[1] Heard on February 20th 2008 at the Court of Chancery, Bristol District Registry with judgment being delivered on February 27th 2008.

[2] For example, Clubs and Societies.

members of the club or society. These implied contract terms keep the club intact, until such time as the membership decide (in accordance with the rules) to wind-up the club and distribute its assets. Additionally, the decision in *Hanchett-Stamford* also goes on to consider the ultimate destination of the ownership of the assets of an unincorporated association, where, over time, the club's membership is reduced to a single person.

FACTUAL BACKGROUND

The Performing and Captive Animals Defence League ('the League') was founded in 1914. Between 1914 and 1934, it had adopted a written constitution, but this came to be lost by the time of legal proceedings. During the said period its affairs were managed, initially by an executive committee. However at the 1934 Annual General Meeting, the members decided to dispense with the executive committee and appoint a Director of the League, viz a Captain Edmund MacMichael, who had conferred on him the power to appoint an advisory committee. It was by no means clear that the AGM also decided to dispense with the constitution.

OBJECTS OF THE LEAGUE

The only extant evidence produced as to the objects of the League was a booklet, published in 1962. This declared that the primary objects of the League were to seek the enactment of two Bills, relating to the following:

1. Performing Animals - The Performing Animals (Prevention of Cruelty) Bill - 'To make illegal performances by animals involving cruelty in the 'training' etc with just compensation to the trade'.[3]

2. Animal Films – The Protection of Animals (Cinematograph Bill), the aim of which was to make unprofitable the infliction of animal cruelty in the production of animal films shown on the British screen, whether for foreign manufacture or not.

Further, the 1962 booklet went on to state that the above Bills were intended only to further assist in enforcing the then existing law, namely the

[3] In this connection, the League had, during its history, offered £1,000 to any person who under its constant supervision, succeeded in training any untrained animal to perform any circus trick on demand and without cruelty, which at all times was unclaimed. The League maintained that the trade had, by failing to answer the aforesaid thirty-year old challenge, publicly acknowledged the impossibility of training any kind of performing animal without cruelty.

Protection of Animals Act 1911.[4] This Act rendered it illegal to cruelly beat, ill-treat, torture, infuriate, terrify or cause unnecessary suffering to any animal. Further still, the booklet declared that the League's objects also involved the prevention of the establishment of municipal zoos and the prevention of the introduction into the United Kingdom of bullfights and rodeos. The booklet also encouraged League members to protest about television programmes, which depicted cruelty to animals.[5]

According to the 1962 booklet there were two categories of member, namely, life members and annual members, totalling at that time some 250 people. Excess income was reinvested with gifts and legacies placed into an investment fund. Mr and Mrs Hanchett-Stamford joined the League in the mid-1960s as life members, both being relatively active in the League's business.[6] In this regard, the Hanchett-Stamfords' worked with Dr Bill Jordan, (the then chief vet of RSPCA) in educating people about how to care for animals. Towards the end of the 1970s the work of the League declined and during this time Mr. Hanchett-Stamford took de facto control over the League's assets, which continued to accumulate. In the 1990s the League purchased a property known as 'Sid Abbey', West Sid Road, Sidmouth, Devon, whereupon title to the same was registered in the names of Mr Hanchett-Stamford and a Mr Hervey[7] as 'trustees for the League'. This property was the principal wing of a nineteenth century Gothic House together with extensive grounds and a swimming pool. Mrs Hanchett-Stamford had lived at this house for many years until her relocation to a nursing home.[8] As at the date of the hearing, both registered proprietors were dead and Sid Abbey was valued at £675,000. Additionally, the League also owned a portfolio of stocks and shares in the sum of £1.77 million.

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[4] The League wished to make more effective the existing 1911 Act (in its attempt to prevent animal cruelty), in the context of the performing animals trade and as regards the use of animals in filmmaking.

[5] No attempt was ever made to register the League as a charity; however the issue as to whether the League had charitable status was considered by the Inland Revenue in 1949. At this time the Inland Revenue concluded, in the light of the decision of the House of Lords in *National Anti-Vivisection Society v IRC* [1948] AC 31 that the League could *not* have charitable status as its principal objects were to bring about a change in the law. The League did not appeal this decision.

[6] To this end, Mr Hanchett-Stamford managed to persuade several local authorities not to let out land to travelling circuses.

[7] Mr Hervey also being a member of the League.

[8] Despite her relocation to a nursing home in Sidmouth no suggestion seems to have been made that she was unfit to take part in legal proceedings. The court made arrangements to take evidence from her at this nursing home.

By the early 1990s the League's activities dwindled and it no longer maintained membership records. From 2003, a Mr Redwood prepared the League's annual accounts and tax returns and suggested that the League should take specialist advice with a view to winding itself up. Prior to his own death, Mr Hanchett-Stamford had suggested to Mr Redwood that the League's assets be transferred to an active charity, which promoted animal welfare. To this end, it was agreed that the most suitable recipient would be the Born Free Foundation.[9]

Mr Hanchett-Stamford died in January 2006 and the current proceedings came about as a result of Mr and Mrs Hanchett-Stamford's long-standing desire that the League's assets be transferred to the Born Free Foundation.

RELIEF SOUGHT

In the High court Mrs Hanchett-Stamford sought an order to the effect that the work and objects of the League were charitable, together with an order appointing herself, along with her solicitor Ms Bevan, trustees of the funds of the League, with discretion to select a charity with similar objects to the League so as to receive those funds.[10]

It is noteworthy that as a matter of fact, Mr Justice Lewison found that just prior to Mr Hanchett-Stamford's death in 2006, Mr and Mrs Hanchett-Stamford were the only two living members of the League, with Mrs Hanchett-Stamford, as at the date of the hearing, being the sole surviving member of the League.

LEGAL ISSUES

Mr Justice Lewison was, inter alia, confronted with deciding the following issues viz*:* (i) Was the League a charity and (ii) If not a charity, what should happen to its assets?

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[9] This was an active charity, which promoted animal welfare.

[10] The Attorney General was the only original named Defendant in the proceedings; however on 15th February 2008 Dr William Johnston-Jordan was made a party to the proceedings, claiming to be a life member of the League. He had come forward in response to a series of newspaper advertisements (placed in 2007), seeking to identify members of the League. Dr Jordan however failed to produce any cogent evidence of membership of the League, past or present. Further, Dr Jordan's solicitor, by a letter dated 19th February 2008 expressly disclaimed on the part of Dr Jordan, any entitlement to the League's assets.

In short, his lordship decided that the League was *not* a charity but rather an unincorporated association, with the property and assets thereof devolving to the last surviving member absolutely, namely Mrs Hanchett-Stamford.[11]

THE CHARITABLE STATUS CLAIM

It was contended for Mrs Hanchett-Stamford that the property and assets of the League were held on a charitable trust. In this connection it had to be shown that such a trust fulfilled certain requirements, *viz*: (i) it was charitable in nature, being 'within the spirit and intendment of the preamble to the Charitable Uses Act 1601' (as interpreted by the courts and extended by statute) (ii) it promoted a public benefit of a nature recognised by the courts and (iii) its purposes were exclusively charitable.

Mr Justice Lewison declared that the key element of any charitable trust was that it should exist for the benefit of the public, such a benefit being either direct or indirect. In this vein, his lordship declared that it was the element of indirect public benefit, which enabled many trusts, which had as their purpose the prevention of animal cruelty, to be accorded charitable status.[12] Accordingly, it was held that a trust that had as its sole object the prevention of cruelty to performing animals was recognised as being capable of being a charitable trust.[13] The problem encountered by the League however, centred on the fact that at the heart of its objects was a desire to change the law. In this regard his lordship held that for various reasons, it had long been established that where the purposes or one of the purposes of a trust had been to bring about a change in the law, the courts had refused to recognise the trust as charitable. The reasons typically given for this approach being (i) that in such instance the court has no means of judging whether a proposed change in the law will or will not be for the public benefit, see *Bowman v Secular Society Ltd*[14] per Lord Parker and (ii) the law cannot stultify itself by holding that it is for the public benefit that the law itself should be changed and each court must decide on the principle that the law is right as it stands, see

[11] This conclusion obviously rendered irrelevant any trusteeship issues relating to Mrs Hanchett-Stamford.

[12] See *Re Wedgwood* [1915] 1 Ch 113, where it was suggested that a gift for the benefit and protection of animals was one which tended to promote and encourage kindness towards them, discouraged cruelty and necessarily stimulated humane and generous sentiments in man towards animals. This, in turn, thus promoted feelings of humanity and morality generally, thus elevating the human race.

[13] In this regard his lordship recognised that this position had, in recent times, been expressly recognised by virtue of s 2(2)(k) Charities Act 2006.

[14] [1917] AC 406.

National Anti-Vivisection Society v IRC[15] per Lords Wright and Simonds, and (iii) if the courts sanction as charitable trusts those with the purpose of changing the law, the courts would be trespassing on the role of the legislature, which bears the sole responsibility for evaluating the need for such changes, see *Mc Govern v AG*[16] per Slade J and *Southwood v AG*[17] per Chadwick LJ. His lordship did recognise however that there was a distinction between the *purposes or objects* of a charity and the *means* by which it promoted those objects or purposes, it being the case that the Charity Commission can issue guidance to charities and trustees about the extent to which they can engage in campaigning, including campaigns to change the law.

In the final analysis however his lordship was of the view that the bedrock principle was that an organisation set up for the purpose of changing the law could *not* achieve charitable status. His lordship accepted that some of the Leagues objects relating to the prevention of animal cruelty were already enshrined in the then relevant existing law,[18] however *other* objects of the League sought to further change the law,[19] *viz* the introduction of a ban on performing animals, albeit with 'just compensation to the trade'. His lordship opined that such a change would be on a par with banning fox hunting or the farming of mink. Therefore his lordship was of the view that the objects of the League were not charitable.

It was further contended that even if the League, by virtue of its objects, was not charitable from the time of its inception, it had over the years become charitable in nature, either by virtue of changes in the law or as a result of the decision of Mr and Mrs Hanchett-Stamford to transfer the League's assets to the Born Free Foundation.

Cited in support of the first contention was the General Medical Council's application for charitable status. The GMC was established by the Medical Act 1858 and incorporated by the Medical Council in 1862. Its principal objects were to keep and publish a register of qualified medical practitioners, to exercise oversight over medical studies and examinations and to publish the British Pharmacopaeia. It also had power to strike-off practitioners in certain circumstances. Further, only medical practitioners registered with the GMC could sue for their fees. The Inland Revenue decided that the GMC had not been established for exclusively charitable purposes and the GMC's appeal against that decision was dismissed by the High Court and Court of Appeal.[20]

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[15] [1948] AC 31.
[16] [1982] Ch 321.
[17] *The Times* 18th July 2000.
[18] By virtue of the Cruelty to Animals Act 1911 (thus not involving any change).
[19] To reflect the League's own 'wider concept of cruelty'.
[20] See *General Medical Council v IRC* [1928] All ER 252.

At these hearings it was held that the GMC was principally established for benefit of the medical profession and that any benefit to the public was an incidental and secondary benefit, essentially because only a registered practitioner could sue for his fees.

In 2001 however the Charity Commission allowed the GMC to be registered as a charity on the basis that there had been sufficient changes in the relevant legal framework to the constitution and activities of the GMC and the social and economic context within which the GMC operated. It was further stated that the GMC was established for the charitable purpose of ensuring proper standards in the practice of medicine and that the introduction of the NHS had transformed the environment within which medical services were provided (reducing the need for medical practitioners to sue for their fees) and that the general regulation of the profession was in the public interest.

Building on this example, it was argued for the claimant that changes brought in concerning animal welfare by virtue of the Animal Welfare Act 2006 and the explicit recognition of the advancement of animal welfare as a charitable purpose by the Charities Act 2006, s 2 (2)(k) amounted to the necessary societal changes which now rendered the objects of the League charitable. His lordship however dismissed this argument on the basis that these changes were not major legal changes of substance and did not prohibit the performing or training of animals, which the League had as its principal object.

As to the second argument, his lordship dismissed the suggestion that the League’s assets had become charitable by virtue of Mr and Mrs Hanchett-Stamford’s decision to transfer the League’s assets to the Born Free Foundation, (an existing registered charity). As to the real property asset of the League, namely Sid Abbey, his lordship held that there was no written evidence of this decision and hence no express declaration of trust in favour of the Born Free Foundation, complicit with the formality requirements of Law of Property Act 1925, s 53 (1)(b).[21] As to the other assets of the League, no evidence existed suggesting any such express declaration of trust. Further, his lordship stated that there was no evidence suggesting a binding contract between the League’s remaining members as to the distribution of the League’s assets for charitable purposes, so as to change the objects of the League, in order to render them exclusively charitable. In conclusion therefore his lordship was of the view that the League was never a charity nor had it ever become one.

[21] Law of Property Act 1925, s 53(1)(b) declares that: “a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such a trust or by his will.”

THE LEAGUE AS AN UNINCORPORATED ASSOCIATION

In his judgment, Mr Justice Lewison considered the League an unincorporated association. To this end, as to the League's asset holding, he relied upon the famous dictum of Cross J in *Neville Estates Ltd v Madden*[22] who stated that a gift to an unincorporated association could have one of three effects:

1. It may be a gift to members of the association at the relevant date as joint tenants so that any member could sever his share and claim it, whether or not he continues to be a member;
2. It may be a gift to the existing members not as joint tenants but subject to their respective contractual rights and liabilities towards one another as members of the association - in such instance a member cannot sever his share and it will accrue to the other members on his death or resignation, even though such members include persons who became members after the gift took effect;
3. The terms or circumstances of the gift or the rules of the association may show that the property in question is not to be at the disposal of the members for the time being but it is to be held in trust for the purposes of the association as a quasi-corporate body – in such case the gift will fail unless the association is a charitable body.

His lordship declared that as the League already had assets, there was no gift or bequest to League as such, therefore the third approach to construing the asset holding was inapplicable. Further, his lordship held that analysing the League's asset holding in terms of the first method of construction would lead to absurdity, in that, if adopted, this axiom of construction it would allow for every member of any club to sever their entitlement and claim an individual share of the assets. If this occurred clubs would be under permanent threat of being broken up in this fashion and would cease to exist. Therefore his lordship held that it was the second 'contract-holding theory', which provided for the most appropriate analysis. In following the judgment of Brightman J in *Re Recher*,[23] the second approach to construing the asset holding of the League involved viewing those assets as "an accretion to the funds which are the subject-matter of the contract which such members have

[22] [1962] Ch 832. This threefold classification was adopted by Brightman J in *Re Recher's Will's Trusts* [1972] Ch 526 and by Lawrence Collins J in *Hunt v McLaren* [2006] EWHC 2386 (Ch).
[23] Ibid.

made inter se".[24] His lordship therefore concluded that the members for the time being of an unincorporated association were entitled to its assets, subject however to the contractual arrangements (albeit *implied* from the rules of the society) between them, the members holding 'a form' of beneficial ownership, in the sense that the property belonged to them.[25] His lordship then, in accepting the reasoning of Walton J in *Re Bucks Constabulary Widows and Orphans Fund Friendly Society (No 2)*[26] concluded that members of unincorporated associations had contractual rather than equitable rights and that on death or resignation, members ceased to have any interest in the assets of the unincorporated association, this being not so much a result of equitable ownership rights but rather as a result of being a facet of the contractual relations between members. His lordship also agreed with the judgment of Walton J in the *Bucks Constabulary* case to the effect that an unincorporated association would end when reduced to its last member, the logic being that if the members' rights are founded in contract, the contract must cease to bind once there is no other party to enforce it. However, unlike the decision of Walton J in the *Bucks Constabulary* case, Mr Justice Lewison took the view that where an unincorporated association was reduced to its last member, the assets should *not* go to the Crown by way of bona vacantia. Relying on the Court of Appeal ruling in *Cunnack v Edwards*[27] and the Irish Appeal Court ruling in *Tierny v Tough,*[28] his lordship held that the assets of an unincorporated association belonged to the individual members. In this regard his lordship cited Pennycuick J in *Abbatt v Treasury Solicitor*[29] who stated:

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[24] In *Re Rechers Will Trusts* (above n 22) Brightman J declared that "a legacy …[left to an unincorporated association]…is a gift to the members beneficially not as joint tenants or as tenants in common so as to entitle each member to an immediate distributive share, but as an accretion to the funds of which are the subject matter of the contract which the members have made inter se."

[25] In this connection his lordship drew support from the dicta of Brightman J in *Re Rechers Wills Trusts* (above n 22) and from the decision of Walton J in *Re Bucks Constabulary Widows and Orphans Fund Friendly Society (No 2)* [1979] 1 WLR 937. Further his lordship stated at para 31: "…Megarry and Wade on Real Property (6th ed para 9-095) accuse the courts of having developed "a new form of property holding by unincorporated associations in order to escape from the technical difficulties of the classic models of joint tenancies and tenancies in common. I do not think that the courts have purported to do so and in view of the proviso to the Law of Property Act 1925, s 4(1), it is difficult to see how they lawfully could at least in relation to land…So the ownership of assets by unincorporated associations must somehow fit into accepted structures of property ownership."

[26] Ibid.

[27] [1896] 2 Ch 679.

[28] [1914] 1 I R 142.

[29] [1969] 1 WLR 561.

> "…It is an implied term of the contract of membership of a members' club that an individual member is precluded from obtaining the realisation and distribution of the club property so long as the club functions. But once the club ceases to function the reason for this disappears and the right of the existing members must I think crystallise once and for all."

In his concluding comments his lordship then stated that the 'thread' which ran through so many of the cases on asset holding by unincorporated associations, was the fact that on dissolution, members were entitled to the assets free from any such contractual restriction. His lordship then suggested that whilst an unincorporated association was alive, the property rights of the members did not fit into any accepted property law model of joint tenancy or tenancy in common, but were rather "a sub-species of joint tenancy", which took effect subject to any contractual restrictions applicable as between members. Further, in his lordship's view the above authorities demonstrated, that upon agreement/permanent cessation,[30] (or where the membership fell below two), the members of a dissolved association had a beneficial interest in its assets. In applying this reasoning, his lordship then found that the League continued to operate until the death of Mr Hanchett-Stamford in January 2006, after which its membership fell below two. The result of this being that the sole surviving member of the League, namely Mrs Hanchett-Stamford, inherited the assets of the League. This, in turn, entitled her to be registered both as proprietor of Sid Abbey and as shareholder of the League's shares.[31]

COMMENT

Mr Justice Lewison's ruling in the *Hanchett-Stamford* case is interesting in several respects. First, the decision is very much in line with the recent authority of *Re Horley Town Football Club*[32] and indeed previous case law.[33]

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[30] In *Re GKN Bolts and Nuts Ltd Sports and Social Club* [1982] 2 All E R 855, noted at [1983] *Conveyancer* 315, Megarry VC intimated that a 'spontaneous dissolution' of an unincorporated association could occur through inactivity where the inactivity was so prolonged that 'dissolution' was only reasonable inference to draw.

[31] The assets had thus become hers absolutely. She had attained a monopoly of control over them. Accordingly, his lordship noted that she was then free to so as she wished with the assets, which included giving the same to the Born Free Foundation.

[32] [2006] EWHC 2386 (Ch), [2006] WTLR 1817. In *Re Horley Town Football Club; Hunt v McLaren* [2006] All ER (D) 34, High Court, the facts were as follows: In 1948, a Major Jennings, the then President of the Horley Town Football Club, ('the Club'), settled land by deed on trust 'to secure a permanent sports ground for the Club'. In May 2002 the land was sold to a developer for almost £4m. The trustees

Like these earlier decisions, it again confirms the applicability of the 'contract-holding theory'[34] as the appropriate approach to analysing the holding of assets and property by unincorporated associations.[35]

Secondly, the decision is significant in that like the *dictum* of Walton J in the *Re Bucks Constabulary case*,[36] Mr Justice Lewison endorses the view that in the event of an unincorporated association's membership falling below two, such an association ceases to exist. It then reinforces the point that upon the death of any member, that member ceases to have any share in the assets of

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used the proceeds to purchase another site for £850,000 and to construct a Clubhouse and ancillary facilities amounting to approximately £2.2m. This new sports complex was subject to certain restrictive covenants, which limited its use to sports and leisure. As a consequence, the land was worth less than the amount spent on it. The rules of the Club made provision for several varieties of membership ranging from current full members to temporary and associate members. The trustees applied to the Court for (i) directions concerning the basis on which they held the assets of the Club and (ii) a ruling as to the proper construction of the rules of the Club. After reviewing the authorities, the High Court held that the Deed should be construed as a gift to the Club, as a 'contract-holding gift to the Club and its members for the time being' under the ruling in *Neville Estates v Madden* (above n 22). Further, it was held that a gift to or in trust for an unincorporated association might take effect as a gift to the existing members, not as joint tenants but subject to their respective contractual rights and liabilities towards each other as members of the association. In this event, it then held that each member could not sever his share and it would accrue to the other members on his death or resignation. It was further held, as a matter of construction, that the beneficial ownership of the assets of the Club subsisted in the 'full members' but not the temporary and associate members. Accordingly, the trustees held the assets on bare trusts for the full members. It followed therefore that the members acquired the assets of the Club subject to the current rules and could unanimously or by a general meeting call for the assets to be transferred. See P Luxton "Gifts to Clubs: Contract Holding is Trumps" [2007] *Conveyancer* 274.

[33] See *Neville Estates Ltd v Madden* (above n 22) and *Re Recher* (above n 22).

[34] As originally promulgated in *Neville Estates Ltd v Madden* (ibid)

[35] The 'contract holding theory' (or 'the accretion to assets' model), in the last 40 or so years, has become the preferred and perhaps most convenient way in which to construe the holding of assets by unincorporated associations generally, as opposed to other approaches, such as those involving a purpose trust approach (see *Re Drummond* [1914] 2 Ch 90, Re Price [1943] 2 All ER 505), or outright gift to members as joint tenants whereupon any one member can sever his share (see *Leahy v AG for New South Wales* [1959] AC 457 (PC), *Cocks v Manners* (1871) LR 12 Eq 574 (HC)), or the mandate/agency theory (see *Conservative and Unionist Central Office v Burrell* [1982] 1 WLR 522 (HC)). See generally J Warburton "The Holding of Property by Unincorporated Associations" [1985] *Conveyancer* 318.

[36] Above n 25.

the association by virtue of the ius accrescendi applying in favour of the surviving members (as reinforced by the contract between members).[37]

Thirdly, by his judgment, it is significant that his lordship expressly overturns the suggestion made by Walton J in the *Re Bucks Constabulary case* to the effect that in the event of the death of the second-to-last member of an unincorporated association, the Crown picks up any assets remaining, by virtue of the doctrine of bona vacantia, albeit through the Attorney General. In this connection, Mr Justice Lewison relying on dicta in *Abbatt v Treasury Solicitor*[38] asserts that the remaining member inherits the assets. It is submitted that this is the better view and represents an approach, which is more likely to be in keeping with the spirit and substance of the European Convention on Human Rights.[39]

Finally, the reasoning underpinning the judgment in the *Hanchett-Stamford* case nicely illustrates the legal principles governing the asset holding and dissolution of unincorporated associations and, in the light of earlier case law, demonstrates a consistency of approach to what is a complicated area of property law.[40]

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[37] The same approach was also held to apply to instances of resignation of members, no doubt as a result of such members being 'a sub-species of joint tenant'. Upon resignation, it could be argued that a member effectively 'releases' his 'equitable interest to the remaining membership, see s 36(2), Law of Property Act 1925.

[38] [1969] 1 WLR 561.

[39] Article 1 of the First Protocol of the European Convention on Human Rights and Fundamental Freedoms guarantees the peaceful enjoyment of possessions; it states: "…No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law…" In this regard, in the *Hanchett-Stamford* case, Mr Justice Lewison stated: "…On the face of it for one of two members of an unincorporated association to be deprived of his share in the assets of the association by reason of the death of the other of them, without any compensation, appears to be a breach of this article. It is also difficult to see what public interest is served by the appropriation by the state of that member's share in the association's assets. This…provides another reason why the conclusion that a sole surviving member of the unincorporated association, while still alive cannot claim its assets, is unacceptable…"

[40] Some writers such as Todd have suggested that the best way to resolve some of the problems surrounding asset holding by unincorporated associations would be for UK law to allow trusts for the purposes of the association to be valid, along the lines of that upheld in the case of *Re Denley* [1969] 1 Ch 373. Such a reform it is argued would not give rise to any enforcement problems because of the locus standi of the membership in this regard. A possible difficulty with such a model may remain however within the current constraints of the law against perpetuities in relation to land holding /asset holding. In which case it has been suggested that the solution lies in a liberalisation of the rule against perpetuities, so as to allow for the 'private purpose trust' device to regulate the asset holding of unincorporated associations.