TESTAMENTARY DISPOSITIONS TO UNINCORPORATED ASSOCIATIONS

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In this article, Dr Hogg considers the effect of the decision of the High Court in Bacon v. Pianta *on the law relating to testamentary dispositions to unincorporated associations. He criticizes the logic of the High Court's interpretation of the 'salvage doctrine' and reveals inconsistencies in their reasoning. In conclusion, he argues that there is no policy ground against enforcing such a disposition.*

THE DECISION IN *BACON v. PIANTA*

The decision of the High Court of Australia in *Bacon v. Pianta*[1] has made it difficult for a testator to make a valid disposition in his will in favour of an unincorporated association. The purpose of this article is to argue that *Bacon v. Pianta* was wrongly decided as a matter of law, and that the rule which it purports to establish is unsatisfactory as a matter of policy. The article is concerned solely with unincorporated, non-profit-making, non-charitable associations, and the word 'association' will usually be used hereafter as a shorthand for that kind of association. Different considerations apply to incorporated bodies, to business partnerships, and to charities, and they are all outside the scope of the article.

In *Bacon v. Pianta* a testator bequeathed the whole of his estate 'to The Communist Party of Australia for its sole use and benefit'.[2] The testator died in 1963, leaving property of which the net value was about $16,000. The High Court of Australia, comprising McTiernan, Taylor and Owen JJ., held that the bequest was invalid. Accordingly, the whole of the estate passed to the persons entitled upon intestacy.

The reasoning of the court may be summarized as follows. The Communist Party of Australia is an unincorporated, non-profit-making, non-charitable association. The *prima facie* construction of a bequest to such an association is that it is a gift to the persons who are members of the association at the time when the bequest becomes operative. But the *prima facie* construction may be rebutted by indications that the testator intended to create a trust, either for future as well as present members, or for the purposes of the association. In the former of these

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1 (1966) 114 C.L.R. 634; noted (1966) 40 *Australian Law Journal* 283.

2 The full clause read:

> 3. I give, devise and bequeath the whole of my estate both real and personal of whatsoever nature and wheresoever situate (after payment of my just debts, funeral and testamentary expenses) to The Communist Party of Australia for its sole use and benefit.

two cases the gift will fail because the interests of future members may not vest within the time allowed by the rule against perpetuities; and in the latter case the gift will fail because the purposes of the association are not charitable.[3]

On the facts of this case, the court decided, there were three indications which rebutted the *prima facie* construction of the testator's bequest as a gift to the existing members of the association. The first indication was the form of the gift: '[i]n form, the gift [was] to The Communist Party of Australia for *its* sole use and benefit. . . .'[4] The second indication was 'the fact that The Communist Party had an extensive membership throughout Australia and that its membership seems to have been subject to very substantial fluctuation from time to time. . . .'[5] The third indication was the fact that the constitution of the party was 'entirely silent concerning property of the Party or its transmission', and, the court said, it was 'impossible to say that . . . the members of the Party had any, or any practical, capacity to put an end to their association and to distribute its assets'.[6]

These three indications led the court to conclude that 'it would be quite artificial to hold that the bequest operated as a bequest beneficially to the existing members of The Communist Party of Australia and we are satisfied that the correct conclusion is that it was a bequest to the members, both present and future, in trust for the purposes of the Party'.[7] The bequest was therefore held to be invalid.

PRESUMPTION OF GIFT TO MEMBERS

The court was of course correct in its assertion that there is a *prima facie* presumption that a bequest to an association is a gift to the persons who are members of the association at the time when the bequest becomes operative.[8] But the court seems to have misconceived the effect of the presumption. This is revealed by the indications which the court regarded as tending to rebut the presumption. The first of these, it will be recalled, was the form of the bequest: in form, the bequest was to the association itself, and not to its members. But it is this form of gift which is the very feature which makes the presumption applicable. If the

[3] (1966) 114 C.L.R. 634, 638.
[4] *Ibid.* 640.
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.* 640-1.
[8] There are many cases in which a bequest to an association has been interpreted as a gift to the existing members simply because there was nothing to rebut the presumption: *e.g. Cocks v. Manners* (1871) L.R. 12 Eq. 574; *Walker v. Murray* (1884) 5 O.R. 638; *Graham v. Canandaigua Lodge* (1893) 24 O.R. 255; *Re Smith* [1914] 1 Ch. 937; *Bourne v. Keane* [1919] A.C. 815; *Re McAuliffe* [1944] St. R. Qd 167; *Re Goode* [1960] V.R. 117; *Neville Estates v. Madden* [1962] Ch. 832; and see Lloyd, *The Law of Unincorporated Associations* (1938) 170; Ford, *Unincorporated Non-profit Associations* (1959) 13; Oleck, *Non-profit Corporations, Organizations, and Associations* (2nd ed. 1965) 37.

bequest had been 'to the members' of the association, there would have been no need to apply any presumption in order to interpret the bequest as one to the members. It is only when the form of the gift is to the association in its own name that the presumption has any work to do. To regard the form of the gift as a circumstance rebutting the presumption is simply to deny the existence of the presumption.[9]

The second indication which was relied upon by the court as tending to rebut the presumption was the association's extensive and fluctuating membership. No doubt, as the court said,[10] it would be 'quite artificial' to attribute to the testator an intention to benefit each of the individual members. But surely this must always be so when a testator makes a disposition to an association in its own name: he intends to benefit 'the continuing group enterprise', not the individual members.[11] It is disingenuous to pretend that in each of the cases in which a court has interpreted a disposition to an association as a gift to the members the court was giving effect to the testator's real intention. In truth, the courts are disabled from giving effect to the testator's real intention because they will not recognize the continuing group enterprise as a legal person to which a disposition of property can be made. What the courts have done when they have applied the presumption is to translate the testator's words into legally meaningful terms to which effect can be given. It misses the point to say that the presumption produces a result which is 'quite artificial'. The law's refusal to recognize the legal personality of the intended donee compels an artificial result. The true purpose and effect of the presumption is to salvage dispositions which would otherwise be legally meaningless and hence invalid.[12]

Furthermore, when this salvage operation has been performed, another body of doctrine ensures that the testator's bounty is not in fact liable to be pocketed by the individuals who happen to be members of the association at the time when the testator dies. The members do not receive the property as joint tenants with the right to sever and claim their separate shares. They receive the property subject to their contractual rights and liabilities towards one another as members of the association. They have no right to sever and claim their separate shares except on the dissolution of the association. When a member leaves the association, whether by death, retirement or expulsion, he loses his interest in the association's property; and when a new member joins the association, he acquires an interest in the association's property. Professor Ford summarizes the position in these words:

[9] Keeler, 'Devises and Bequests to Unincorporated Bodies' (1966) 2 *Adelaide Law Review* 336, 344; Note (1966) 40 *Australian Law Journal* 283, 284.
[10] (1966) 114 C.L.R. 634, 640.
[11] See Ford, *op. cit.* 1.
[12] Accord: *ibid.* 15; Keeler, *op. cit.* 344-5.

> The practical effect of the two currents of authority, one upholding dispositions to associations as class dispositions and the other limiting the interest which the recipients of the title obtain, is to enable what could be a perpetual succession.[13]

The result is that the benefactor whose gift to an association is interpreted as a gift to the existing members does in fact, albeit deviously, have his real intention—to benefit the continuing group enterprise—carried out. It follows, surely, that the size of, and the fluctuations in, the membership of The Communist Party of Australia should have been regarded by the High Court in *Bacon v. Pianta* as irrelevant. These facts shed no new light on the intention of the testator (even assuming that he was aware of them). They do not even create difficulties in the administration of the testator's estate, as his executors can pay the bequest to, and receive a discharge from, the officer of the party who under its constitution or rules has the authority of the members to receive the party's money.[14]

The third indication which was relied upon by the court as tending to rebut the presumption was that the party's constitution did not give to the members 'any, or any practical, capacity to put an end to their association and to distribute its assets'.[15] Now the terms of the party's constitution, and the capacity of the members to put an end to their association, could only be relevant on the assumption that the members would take the testator's bequest bound by the party's constitution. But this assumption contradicts the assumption upon which the court's second indication depended. The second indication was the size and fluctuations of the membership of the party. The reasoning behind the second indication was, as we have seen, that the testator could not have intended a gift to a large and fluctuating number of individual members because each member would be entitled to obtain his own separate share. The reasoning behind the third indication is that the testator could not have intended a gift to the individual members because each member would be unable to obtain his own separate share. Not even the High Court of Australia can have it both ways. Either the members take the gift bound by the terms of their association, or they do not. The true position, I have argued, is that they do; and that the second indication is thereby robbed of its force. This does not involve, however, accepting the third indication as persuasive. Presumably, the third indication—the supposed incapacity of the members to put an end to their association—is designed to show that the testator intended his bequest to be held on a perpetual trust for the purposes of the party. But the words which the testator actually used were 'to The Communist Party of Australia for its sole use and

[13] Ford *op. cit.* 21-2; see also Keeler, *op. cit.* 353-5; Lloyd, *op. cit.* 174-8. The courts have not worked out all the implications of ownership by associates. It is not clear whether it is joint tenancy modified by contractual obligations, or a special equitable form of co-ownership. As the passages referred to above demonstrate, there are difficulties about either view. *Cf.* n. 34 and accompanying text *infra.*

[14] *Leahy v. Attorney-General (N.S.W.)* [1959] A.C. 457, 477 (*dictum*).

[15] (1966) 114 C.L.R. 634, 640.

benefit'.[16] In the absence of qualifying words it must be assumed that the testator envisaged that the party should have the power to deal with the gift as it pleases. The gift will be bound by the terms of the party's constitution, certainly, but only because the constitution binds contractually. The members are free to amend the constitution and even to dissolve their association if they wish. They must do so in accordance with the provisions of the constitution; but, if the constitution provides for neither amendment nor dissolution, then amendment or dissolution can still be accomplished by agreement. With a large number of members agreement may not be a 'practical' possibility,[17] but this is no reason for turning their contract into an indestructible trust. So far as the law of trusts is concerned, the gift is at the disposition of the members. The fact that they are contractually inhibited from disposing of it as they please should not affect its validity.

TRUST FOR PURPOSES

It is, of course, logically possible to interpret a bequest to an association as creating a trust for the purposes of the association. On the present state of the law this interpretation is illegitimate unless the testator has indicated his intention to create a trust sufficiently clearly to rebut the presumption that he intends a gift to the existing members.[18] But even in cases where a trust for the purposes of the association is the correct interpretation of the bequest, the bequest will still be valid, unless the trust which it creates is in the nature of a perpetual endowment, or is invalid for some other reason, such as uncertainty. The fact that the trust is for the purposes of an association is not sufficient by itself to make the trust invalid. It is true that most trusts for non-charitable purposes are invalid, but the two objections to their validity have no force where the purposes are the purposes of an association. The first objection to the validity of a trust for a non-charitable purpose is that the absence of a beneficiary leaves no-one who can enforce the trust.[19] This objection does not apply to a trust for the purposes of an association, because any member of the association would be entitled to enforce the trust on the footing that he is entitled to enforce the proper application of the

[16] See n. 2 *supra.*

[17] It seems, however, that unanimity is not necessarily essential, so long as a majority of the members at a general meeting votes in favour of amendment or dissolution (of which due notice was given) and the remaining members take no steps to object to the majority decision: *Abbatt v. Treasury Solicitor* [1969] 1 W.L.R. 1575.

[18] Professor Ford argues persuasively that the law would be better if the presumption were the other way round, namely, that a gift to an association creates a trust for the purposes of the association. Ford, *op. cit.* ch. 3.

[19] It seems that this must now be regarded as settled: *Re Shaw* [1957] 1 W.L.R. 729; *Re Endacott* [1960] 1 Ch. 232; although there are many earlier cases in which trusts of limited duration for non-charitable purposes, such as the upkeep of horses, graves or monuments, have been upheld, notwithstanding the absence of beneficiaries who could enforce the trusts: *e.g. Re Dean* (1889) 41 Ch. D. 552. The conventional doctrine now is that the trusts which have been held valid are anomalous exceptions to the general requirement of a beneficiary: *e.g.* [1960] 1 Ch. 232, 250-1.

association's funds.[20] The second objection to the validity of many trusts for non-charitable purposes is the rule that a non-charitable purpose trust (if it is valid at all) may not be limited to last longer than the perpetuity period.[21] This rule is an elaboration of the principle that a trust may not be made indestructible. However, this principle does not apply to a trust for the purposes of an association because those purposes are controlled by the members. As Professor Ford points out, 'the members may dissolve the association at any time . . . and . . . withdraw the property from the purpose'.[22] Once again, the fact that dissolution is unlikely or difficult merely because of the terms upon which the members are contractually associated does not convert the trust into an indestructible one.[23] Accordingly, the courts have held in a number of cases that a disposition to an association which cannot be construed as a gift to the members is nevertheless valid so long as the members have the power to combine together to dispose of the gift or to dissolve the association and distribute its property.[24] It is only where the testator makes clear not only that his disposition creates a trust for the purposes of the association, but also that the property comprised in the gift is to be held as a perpetual endowment, so that it must be applied to those purposes even after the association changes *its* purposes or comes to an end, that a 'pure purpose trust'[25] has been created which will offend the indestructibility principle.[26]

[20] *Stevens* v. *Keogh* (1946) 72 C.L.R. 1; Ford, *op. cit.* 24 and authorities cited there. Keeler, *op. cit.* 351, considers that enforceability by the members would not save the trust, because the true rule is that 'a trust must have a human beneficiary or have a charitable object'. But, although there are *dicta* to support this version of the rule, it goes further than is required, either by the authorities, or by the reason for the rule—which is the requirement that the trust be enforceable; and this version of the rule is inconsistent with *Re Denley's Trust Deed* [1969] 1 Ch. 373 which was not of course available to Keeler at the time when he wrote.

[21] The majority of non-charitable purpose trusts will be invalid for want of a beneficiary. The application of this rule seems to be limited to the anomalous cases referred to in n. 19 *supra,* and the cases falling within the rule of *Re Denley's Trust Deed* [1969] 1 Ch. 373 (purpose trust is valid if it is 'directly or indirectly' for the purpose of individuals).

[22] Ford, *op. cit.* 31. Keeler, *op. cit.* 351.

[23] Trusts for individuals, with the possible exception of a trust to pay income in perpetuity, are not invalidated by the rule against indestructibility, because (1) by virtue of the rule against remoteness of vesting there must come a time when all the beneficiaries are *sui juris,* and (2) by virtue of the rule in *Saunders v. Vautier* (1841) 4 Beav. 115; 49 E.R. 282 if all the beneficiaries are *sui juris* they can combine to bring the trust to an end notwithstanding any contrary provision in the trust instrument. It has never been suggested that the impracticability of securing agreement among a large number of beneficiaries with differing interests, or the existence of a contract between the beneficiaries to keep the trust on foot, would render the rule against indestructibility applicable.

[24] *Re Clarke* [1901] 2 Ch. 110; *Re Drummond* [1914] 2 Ch. 90; *Van Kerkvoorde v. Moroney* (1917) 23 C.L.R. 426; *Re Price* [1943] Ch. 422; *Macaulay v. O'Donnell* [1943] Ch. 435; *Re Oldfield (No. 2)* [1949] 2 D.L.R. 175; *Re Cain* [1950] V.L.R. 382; *Re Barwick* [1958] O.R. 1; *Re Goode* [1960] V.R. 117; see also Hart, 'Some Reflections on the Case of *Re Chardon*' (1937) 53 *Law Quarterly Review* 24; Keeler, *op. cit.* 366; Ford, *op. cit.* 23-45.

[25] Ford, *op. cit.* 23.

[26] *Queensland Trustees Ltd v. Woodward* [1912] St. R. Qd 291; see also Keeler, *op. cit.* 337; Ford, *op. cit.* 43-5.

In *Bacon v. Pianta* the testator gave no indication that he intended his bequest to be a perpetual endowment, and the High Court did not interpret the bequest as creating a perpetual endowment. Therefore, even if the court was correct in interpreting the bequest as creating a trust for the purposes of the Communist Party (which is denied, for the reasons already given), the court was wrong in regarding this interpretation as resulting in invalidity.

The High Court's assumption that a trust for the purposes of an association must automatically be invalid was made without discussion and, in particular, without consideration of the cases which uphold such trusts so long as they are not in the nature of endowments. In these circumstances one can only guess at the basis of the court's view, but it seems to have been derived from the decision of the Privy Council in *Leahy v. Attorney-General (N.S.W.)*.[27] In that case a testator devised a grazing property known as 'Elmslea' in New South Wales, together with the furniture contained in the homestead, 'upon trust for such order of nuns of the Catholic Church or the Christian Brothers as my executors and trustees shall select'. The Privy Council held that the presumption that the gift was to the individual members of the selected order was rebutted, and that (apart from statute)[28] the gift was invalid. Unfortunately, Their Lordships did not make clear why the gift was invalid; on this crucial point the judgment is ambiguous. There are passages which suggest that Their Lordships thought that if the gift created a trust for the purposes of the association it would be invalid, regardless of whether or not it created an endowment.[29] But Their Lordships posed the question which they had to decide in the traditional language of endowment and perpetuity: the question, they said, was whether the gift was 'invalid because it is in the nature of an endowment and tends to a perpetuity or for any other reason'.[30] Their Lordships concluded in these words:

> The dominant and sufficiently expressed intention of the testator is in their opinion . . . that 'the gift is to be an endowment of the society to to be held as an endowment', and that 'as the society is according to its form perpetual' the gift must, if it is to a non-charitable body, fail.[31]

[27] [1959] A.C. 457. The case has been expertly analyzed and criticized by J. F. Keeler, to whose work frequent reference has already been made, and to which I am much indebted. See also Note (1966) 40 *Australian Law Journal* 283.

[28] Apart from statute, the disposition could not be upheld as a gift to charity because the width of the testator's language enabled the executors and trustees to select contemplative orders of nuns, which have been held to be non-charitable: *Gilmour* v. *Coats* [1949] A.C. 426. The disposition was validated by the Conveyancing Act 1919-1954 (N.S.W.), s. 37D, which enabled the testator's words to be 'read down' so as to exclude the non-charitable contemplative orders. The questions discussed in this article arose for decision because the trustees were anxious to preserve their power to select contemplative orders. They therefore sought a decision that the disposition was valid apart from the statute.

[29] [1959] A.C. 457, 483-5; and see Keeler, *op. cit.* 341-2.

[30] [1959] A.C. 457, 478.

[31] *Ibid.* 486-7, quoting from *Macaulay v. O'Donnell* [1943] Ch. 435. *Per* Lord Buckmaster.

Bearing in mind that one would expect clear words to accomplish a radical change in hitherto well-established doctrine, it is best to interpret the decision as not intended to disturb the rule that a trust for the purposes of an association is valid if it does not create an endowment.[32] If, as I have surmised, the High Court in *Bacon v. Pianta* thought that the Privy Council in *Leahy's* case had changed the law, then it is submitted, with respect, that the High Court was wrong.

GIFT TO FUTURE MEMBERS

The High Court in *Bacon v. Pianta* did not content itself with striking down the bequest as a purpose trust; the court's actual conclusion was that 'it was a bequest to the members, both present and future, in trust for the purposes of the Party'.[33] It cannot be doubted that a bequest to *future* members of an association would be invalid as infringing the rule against remoteness of vesting: obviously, the interests of future members might vest outside the perpetuity period. Nevertheless, what reason is there for interpreting the testator's bequest as being one to future as well as present members? The presumption is that such a bequest is to the persons who are members at the time when the bequest becomes operative, that is, to present members only. None of the indications which the court relied upon as rebutting the presumption could plausibly be regarded as pointing to future members, even if one could agree with the court that they pointed to a purpose trust. Furthermore, certainly the terms of the testator's bequest contain no reference, express or implied, to future members. No doubt it is reasonable to assume that the testator did not intend future members to be excluded from the enjoyment of his gift. But future members are not excluded by applying the presumption and interpreting the gift as one to present members. For, as we have noticed, the rules which govern the devolution of association property ensure that present members are unable to deal separately with their interests in the association property, that they will lose their interests when they leave the association and that future members will acquire interests in the association property when they join the association. Because the future members take their interests not by virtue of the original gift to the association, but by virtue of 'assignments' from the present members,[34] the rule against remoteness

[32] Accord: Morris and Leach, *The Rule Against Perpetuities* (2nd ed. 1962) 315-7 (but for indications of doubt see 316 n. 36 and 317 n. 45). *Contra*: Note (1959) 2 *M.U.L.R.* 245; Keeler, *op. cit.* 336; Pettit, *Equity and the Law of Trusts* (1966) 33 (tentative only). The view expressed in the text involves reading *Leahy* as a case in which the testator contemplated a perpetual endowment. Their Lordships did emphasize the nature of the property—'a grazing property of about 730 acres, with a furnished homestead containing twenty rooms and a number of outbuildings'—[1959] A.C. 457, 486; and the general tenor of their judgment suggests that they regarded the testator as intending the property to be retained by the selected order in that form.

[33] (1966) 114 C.L.R. 634, 641.

[34] There seems no doubt that this is the correct analysis, but it is not clear how the operation of statutes which impose formal requirements on the assignment of an equitable interest in property is avoided: Keeler, *op. cit.* 355; Ford, *op. cit.* 6, 37.

of vesting is not infringed. It is clear therefore that no bequest to an association should be interpreted as purporting to confer an interest on future as well as present members unless it specifically and unambiguously purports to do so. To give the bequest this interpretation is to give it the kiss of death. Future members are perfectly well provided for by applying the presumption and interpreting the bequests as one to the present members. There seems to be no case other than *Bacon v. Pianta* in which a bequest to an association has been held void as a gift to future as well as present members.[35] The absence of any discussion of the point in *Bacon v. Pianta* leads me to believe not only that this part of the decision is wrong, but also that it was given *sub silentio*.

DRAFTSMANSHIP

We have already noticed that the language used by the testator in *Bacon v. Pianta* made no reference either to the purposes of the Communist Party or to the future members of the party. The High Court was prepared to read these fatal references into the words 'I give, devise and bequeath the whole of my estate . . . to The Communist Party of Australia for its sole use and benefit'. If these words will not do, it is indeed difficult to make a testamentary disposition to an association. For only a specific reference to 'the persons who are members at my death' would presumably place the validity of the disposition beyond doubt, and such an expression runs the risk of being taken at its face value and interpreted as authorizing a division of the gift among the persons who are members at the date of death. It is of course likely that the members will be content to allow their gifts to be paid to and retained by the association, and that this result could be encouraged by making the receipt of the treasurer of the association a sufficient discharge to the executors of the will, and by precatory words indicating the testator's desire that the gift be applied either for the purposes of the association, or in accordance with the rules of the association. But if the bequest binds the members to apply the gift for the purposes of the association then, according to the High Court's reasoning, the gift will fail. If the bequest binds the members to apply the property in accordance with the rules of the association then, according to the High Court's reasoning, the rules of the association will be read into the gift and they may cause it to fail. In other words, the High Court has made it virtually impossible to make a safe gift to an unincorporated association. Even a professional draftsman cannot carry out a testator's wishes with the certainty that he will succeed.

POLICY

There must be many thousands of unincorporated associations throughout Australia. In fact nearly everyone belongs to at least one, whether it is a social club, sports club, cultural society, political party, ratepayers'

[35] Keeler, *op. cit.* 337; Ford, *op. cit.* 36 cites no such cases.

association or some other kind of group. None of these associations can function without cash and other assets, and since they are not in business for gain,[36] it is obvious that their members, or others interested in their work, will occasionally want to make gifts to them by will. Is there any good reason why the law should raise obstacles to the carrying out of this very natural desire?

A possible argument of policy in favour of the law as expounded in *Bacon v. Pianta* is that the difficulties in making gifts to unincorporated associations may encourage associations to become incorporated. It is certainly true that anyone contemplating making a large testamentary gift to an association should try and persuade the association to incorporate, and an association which wants to place beyond doubt its capacity to receive a testamentary gift should incorporate. But the trouble is that testators and associations are often not properly advised, or not advised at all. Furthermore, only the less populous Australian States have an Associations Incorporation Act which provides a simple and inexpensive method of incorporation.[37] In New South Wales, Victoria and Queensland the only available procedure is that provided by the Companies Acts: the association must become a company limited either by shares or guarantee.[38] The formalities of incorporation under the Companies Acts, and the recurring requirements of those Acts, involve expenses which would deter many associations from incorporation. It is fair to conclude that the community has not indicated support for a policy of encouraging associations to incorporate, and even if it is desirable to encourage associations to incorporate, surely the denial of the facilities of the legal system to unincorporated associations is too harsh a means to accomplish the desired end.[39]

There is no reason to suppose that the High Court when it decided *Bacon v. Pianta* was attempting to implement a policy of encouraging incorporation, and the decision cannot be justified by any such policy. Since the decision is also unjustified by the law, it is to be hoped that a future High Court will be bold enough to overrule it.

[36] If an association is in business for gain it will be a partnership, and if it also has more than the twenty members allowed by the Companies Acts to partnerships it will be illegal.

[37] Associations Incorporation Act 1956-1963 (S.A.); Associations Incorporation Act 1964 (Tas.); Associations Incorporation Act 1895-1962 (W.A.); Associations Incorporation Ordinance 1953 (A.C.T.); Associations Incorporation Ordinance 1963 (N.T.). New Zealand has a similar statute: the Incorporated Societies Act 1908 (N.Z.).

[38] All jurisdictions have legislation with respect to certain kinds of associations, such as trade unions and friendly societies. These special cases are outside the scope of this article.

[39] *Cf.* Ford, *op. cit.* xxi-xxii.