

Life Bible-Presbyterian Church v Khoo Eng Teck Jeffrey and others and another suit
[2010] SGHC 187

Case Number : Suit No 648 of 2008 and Suit No 278 of 2009
Decision Date : 30 June 2010
Tribunal/Court : High Court
Coram : Judith Prakash J
Counsel Name(s) : Quek Mong Hua and Yee Swee Yoong Esther (Lee & Lee) for the plaintiff; Ang Cheng Hock SC, Tham Wei Chern and Ramesh Kumar s/o Ramasamy (Allen & Gledhill LLP) for the defendants.
Parties : Life Bible-Presbyterian Church — Khoo Eng Teck Jeffrey and others

Trusts

[LawNet Editorial Note: A supplementary judgment was delivered by the Court of Appeal on 25 July 2012. See [\[2012\] SGCA 37.](#)]

30 June 2010

Judgment reserved.

Judith Prakash J:

Introduction

1 In 1962, a bible school called Far Eastern Bible College was started. In January 2004, an organisation called Far Eastern Bible College was registered under the Charities Act (Cap 37, 1995 Rev Ed) (“the Act”). The fundamental question to be determined in this consolidated action is as to the identity and nature of the Far Eastern Bible College and whether the 1962 organisation is the same organisation as the one registered in 2004. For convenience, I shall use the term “the College” to refer to the 1962 organisation and the term “2004 College” to refer to the registered organisation.

2 I have two suits before me namely Suit 648 of 2008 (“Suit 648”) and Suit 278 of 2009 (“Suit 278”). The plaintiff in Suit 648 is Life Bible-Presbyterian Church (“the Church”) and the defendants are nine individuals who, at the commencement of the action, were the members of the board of directors of the 2004 College. The fifth defendant, Timothy Tow Siang Hui (“Rev Timothy Tow”), died after the suit was commenced and the action against him has been discontinued. The first, second and sixth defendants are respectively, Khoo Eng Teck Jeffrey (“Dr Khoo”), Quek Suan Yew and Boon Yean Leong (aka Boaz Boon). These individuals are the plaintiffs in Suit 278 in which the Church and six individuals (including Rev Timothy Tow) are the defendants and they sued in their capacity as directors of the board of the 2004 College. The six individuals in Suit 278 were sued in their capacity as registered proprietors of certain pieces of land which they hold as trustees for the Church and, it is contended by the defendants, also for the 2004 College.

3 The two actions were consolidated in March 2009. For convenience, where necessary in this judgment, I shall use the term “the defendants” to refer both to the defendants in Suit 648 and to the plaintiffs in Suit 278. The Church and the College both operate out of premises located on 9 and 9A Gilstead Road as well at No 10 which is on the opposite side of Gilstead Road. Where convenient, I will refer to all the buildings and the two pieces of land compendiously as “the Premises”.

4 Suit 648 was started in September 2008. In it, the Church asks for the following main reliefs:

- (a) an injunction to restrain the defendants, by themselves or by others, purporting to carry on the College at their behest, from remaining on or continuing in occupation of the designated part of the Church property at 9 and 9A Gilstead Road, Singapore and to vacate and deliver up vacant possession of the same;
- (b) a declaration that the 2004 College is a different entity from the College; and
- (c) an account of the money held in the accounts of the College as at the date of the registration of the 2004 College.

5 Suit 278 started life in January 2009 as Originating Summons 6 of 2009. When it was converted into a writ action, it was ordered that the two affidavits filed in support of the summons stand as pleadings and no further pleadings were required. By the originating summons, the following reliefs were sought:

- (a) a declaration that the funds donated for the construction of the buildings located at 9 and 9A Gilstead Road were impressed with a charitable purpose trust for the construction of buildings for the use of the Church and the registered charity known as the Far Eastern Bible College, and that consequently, the registered proprietors of the properties located at 9 and 9A Gilstead Road hold such properties on a charitable purpose trust for the joint benefit and use of the Church and the registered charity known as the Far Eastern Bible College;
- (b) a declaration that the funds donated for the purchase of the property located at 10 Gilstead Road were impressed with a charitable purpose trust for the use of a church operated by the Church and a bible college operated by the registered charity known as the Far Eastern Bible College, and that consequently, the registered proprietors of the property located at 10 Gilstead Road hold such property on a charitable purpose trust for the joint benefit and use of the Church and the registered charity known as the Far Eastern Bible College;
- (c) a declaration that the funds donated for the redevelopment of the property located at 10 Gilstead Road were impressed with a charitable purpose trust for use of a church operated by the Church and a bible college operate by the registered charity known as the Far Eastern Bible College; and
- (d) (to paraphrase prayers 4 and 5 of the summons) that schemes be settled in respect of the charitable purpose trusts over the moneys donated for the construction of the buildings located at 9 and 9A Gilstead Road and for the purchase and construction of the property at 10 Gilstead Road, and over the said properties and that such schemes provide for trust deeds to be executed by the registered proprietors of the said properties to set up the trust over the said properties for the joint benefit and use of the Church and the 2004 College.

6 To put the matter simply, the Church and the 2004 College share the Premises and now whilst the Church wants the 2004 College to vacate the Premises, the defendants want recognition that there is a trust in place which requires the Church to recognise that the 2004 College is, equally with the Church, a beneficiary of the trust and entitled to continue to share the Premises.

The background

7 The Church started as the English service of Say Mia Tng, a primarily Teochew speaking

church. In 1955, it was formally constituted as a member of the Bible-Presbyterian Church of Singapore, which was registered under the Societies Ordinance in force at that time. The Church only obtained independent registration as a society under the Societies Act (Cap 311, 1985 Rev Ed) in 1986 as part of an exercise undertaken collectively by the Bible-Presbyterian churches. It was registered as a charity in 1987.

8 From the beginning, the pastor and moving spirit of the Church was Rev Timothy Tow. Under his leadership, the congregation expanded and started a building fund so that the Church could have its own premises. On 1 August 1957, a lease over 9 and 9A Gilstead Road was acquired. It was a condition of the lease that the land be used for a "church and associated purposes". The Church was not a legal entity and the properties were therefore put in trust for its benefit.

9 From the mid 1950s, Rev Timothy Tow had wanted to start a bible college to train young Christians to serve as "evangelists, pastors and teachers". On 19 September 1960, at a meeting of the Presbytery of the Bible-Presbyterian Churches of Singapore, a formal decision was taken to establish such a college, to be called "Far Eastern Bible College". A three-man committee consisting of Rev Timothy Tow, Rev Quek Kiok Chiang and Dr Tow Siang Hwa ("SH Tow"), was elected for the purpose of drafting a constitution and prospectus for the college. According to a statement issued around that time by the committee:

With regard to the management of the Bible College, it was proposed that the College should be constituted an independent institution within the fellowship of our Bible-Presbyterian Churches. A Board of Directors should be elected from men of faith and wisdom within our churches and from our co-operating missionaries. This would become the administrative body to execute the business of the college, such as the promotion and control of its finance and the appointment of the teaching faculty. It was also suggested that a Board of Referees consisting of Church leaders both local and abroad be invited to sponsor the work of the College.

10 In the same year, 1960, the building fund was renamed the Life Church and Bible College Fund. At the time the decision to start the bible college was announced, the building fund totalled a sum of about \$60,000 and was increasing at a rate of \$150 a week. By the end of 1960, the fund had roughly doubled to \$100,000. It is alleged that this increase is proof that the bible college had an impact on the funds raised. Whatever the reason for the increase, however, it is undisputed that the fund was used to construct a church building and a college annex on 9 and 9A Gilstead Road.

11 In November 1961, the board of directors ("the board") of the College was constituted with Rev Timothy Tow at its helm. The board unanimously adopted the constitution ("the original constitution") drafted by the three-man committee. I will set out the material provisions of the original constitution later but at this stage I only want to draw attention to Art V of the original constitution which provides:

Article V

1. Notwithstanding the fact that the College is founded with the sponsorship of such bodies as the Bible-Presbyterian Church of Malaya, the Malaysia Council of Christian Churches which is a member of the International Council of Christian Churches, and the Independent Board for Presbyterian Foreign Missions, it is to be an independent body not subject to ecclesiastical control. The relationship between the college and the various sponsoring bodies is one of the whole-hearted co-operation and desire to see consecrated men and women well trained to strengthen the church of Jesus Christ and to reap the fast ripening Harvest in the Lord's vineyard in the Far East.

2. Particular Relations with the Life Bible-Presbyterian Church

The Church is very closely connected with the Life Bible-Presbyterian Church not only for the reasons stated at section 3(2) of article IV of the Constitution but because the Church is the principal mover in the founding of the College. The relationship between college and Church in such matters as the sharing of the use of buildings, and maintenance of the property, the payment of annual premium for the land and other municipal charges, shall be regulated by an agreement made in the spirit of exemplary brotherly love, co-operation and unity.

12 Some time after the College started operation, the original constitution was lost. SH Tow, a member of the three-man committee and a member of the Church from 1950, testified that the 2004 College could not locate a copy of the original constitution. However, it had managed to get hold of a copy of a later version of the original constitution which had been submitted to one of the banks with which the College had an account. Having considered the copy of the original constitution retrieved from the bank's records, SH Tow was able to confirm that this version of the original constitution was, in substance, the same as that drafted by the three-man committee, save for some clauses which would have been inserted at a later date. Those clauses are immaterial for present purposes.

13 From its inception, the College maintained a close relationship with the Church. Rev Timothy Tow was concurrently pastor of the Church and principal of the College until he resigned from the Church's board of elders on 20 August 2003. He, however, retained his position as principal of the College thereafter.

14 The College was the first to move into 9 and 9A Gilstead Road when it formally occupied the college annex on 17 September 1962. The Church moved into the church building the next year, after its dedication service on 16 February 1963.

15 Originally, it was agreed that in exchange for a contribution of \$75,000, the College would own half of the college annex. The College had initially paid \$20,000 towards this sum using a loan from two churches. However, when the two churches asked for the moneys back, a new agreement had to be reached. It was agreed that the Church would return the money on behalf of the College and the premises at 9 and 9A Gilstead Road would be legally held by the Church who would also pay for all physical expenses, while the College would be responsible for the maintenance of the same.

16 In 1965, a second fund named the "Church and College Extension Fund" was started for the purpose of building an extension on 9 and 9A Gilstead Road. This extension ended up housing additional classrooms, a women's dormitory, a second parsonage and a library. Like the Life Church and Bible College Fund, the moneys collected also mostly came from tithes and offerings of the Church members, with a smaller amount originating from other Christians who were mostly in the Bible-Presbyterian community. Part of the Church and College Fund also comprised loans given by individuals and other churches, which were later returned using money from the Church's general offering fund, which contained moneys collected through offerings during worship services. Most of the donors gave anonymously, and cannot be traced now.

17 Up till 1970, the relationship between the College and the Church vis-à-vis their joint usage of the same premises had not been documented. In that year, a committee comprising representatives from both parties was set up to draft an agreement regarding the College's occupation and use of the premises. On 4 March 1970, two representatives of each of the Church and the College executed an agreement entitled "Agreement between the [Church] and the [College] on the sharing of the use of the Church and College Property at 9 and 9A Gilstead Road, Singapore 11" ("the 1970 Agreement"). For present purposes, the material parts of the 1970 Agreement read as follows:

PREAMBLE

...

WHEREAS the College is very closely connected with [the Church] not only because the original College Annex and the new Church-and-College Extension dedicated in April, 1969 were built partly for the purpose of the College and substantial sums were given by friends of the College with this understanding, but because the Church is the principal mover in the founding of the College;

WHEREAS on 14th July, 1967 the Board of Directors of the College decided that for administrative expediency, the Church which had to bear a major part of the capital needs of the College premises should become the sole steward for the College property;

WHEREAS it is laid down in the Constitution of the College, Article V on particular relations with the Church, that the relationship between Church and College in such matters as sharing the use of buildings and maintenance of property etc., shall be regulated by an agreement made in the spirit of exemplary brotherly love, co-operation and unity;

AGREEMENT is therefore made this 4th day of March 1970 between [the Church] and [the College] on the sharing of the use of the Church and College property on the following principles

...

18 Insofar as the usage of the premises built on 9 and 9A Gilstead Road was concerned, the College and the Church thereafter abided by the allotment of the premises as set out in the 1970 Agreement.

19 By 1989, the enrolment of the College had expanded considerably. The Church's congregation had also seen a steady increase in numbers over the years. In that year, a third fund – the Extension Building Fund – was started for the purpose of acquiring 10 Gilstead Road. Moneys for this fund were raised much in the same way as they had been for the Church and College Fund. Other Bible-Presbyterian churches like Bethel and Calvary contributed to the fund as well. The defendants asserted that the acquisition of 10 Gilstead Road was viewed primarily as being for the College's purposes and that on many occasions the donations were expressly made for the extension of the College. When the acquisition of 10 Gilstead Road was completed on 30 April 1990, however, the conveyance stated that the property was held on trust for the benefit of the Church. On 9 July 1996, when by deed of appointment, new trustees were appointed in place of the retiring trustee of 9 and 9A Gilstead Road, it was recited that they held those premises on trust for the Church.

20 Something odd happened in 1989, the significance of which will be considered later. At the Church's Session Meeting on 20 December 1989, Rev Timothy Tow reported that "the College's Board of Directors had been dissolved after Dr Tow S.H. resigned as President". The Church's Session ("Session") was a body formed pursuant to Art 12 of the constitution of the Church and which was imbued with certain administrative powers. The minutes of the 23 April 1989 meeting of the board showed that at that time, before SH Tow's resignation, there were 13 members of the board. The next board meeting for which minutes were produced was held on 1 August 1990. Those minutes showed that seven out of the 13 persons who had been directors in April 1989 were no longer directors in August 1990. There are no recorded minutes or other documents which show when and how the board was reconstituted after the purported dissolution. It should be noted that there is no provision in the original constitution which provides for dissolution of the board on the resignation of

any specified number of directors.

21 The next fundraising exercise undertaken took place some ten years later, in 2000, in the form of the Beulah House Fund. The funds, raised in the same way as before, were used between 2005 and 2009 for redeveloping 10 Gilstead Road into a bible college with hostel facilities ("the Beulah Tower"). Again, the defendants allege that this was seen as a project primarily for the College's purpose, and not the Church. As proof of this, they point to the fact that in meetings with the Urban Redevelopment Authority ("URA"), the latter was informed that 10 Gilstead Road was to be redeveloped for use as a bible college with hostel facilities. An application was also made to the URA to zone 10 Gilstead Road for educational use. In truth, however, even to Rev Timothy Tow, the position of the Beulah Tower was far less clear:

(a) Minutes of the Church's Session Meeting on 19 July 2000: To a question on whether the Beulah Tower was a Church or College project, Rev Timothy Tow replied that "Beulah Tower belongs to the [Church] and the [College] is a great help to the Church;

(b) Minutes of the Church's Session Meeting on 17 January 2001: Rev Timothy Tow remarked that "the needs of the various departments would be naturally be worked out even though New Beulah House would be planned as an extension of our [College]";

(c) Minutes of the Church's Session Meeting on 21 February 2001: Rev Timothy Tow said "the new Beulah House would be for the extension of our [College]";

(d) Minutes of the Church's Session Meeting on 21 February 2001: Rev Timothy Tow said "we can be sure that the New Beulah House will not be for the exclusive use of the [College], although the project is for the extension of the [College]. The lecturers do not need all the rooms. Their rooms will be available to all groups in the church. Some of the rooms in the dormitories will also be opened for use by church members. The auditorium will be used by our Chinese Service".

22 In 2002, the previously harmonious relationship between the College and the Church began to develop strains due to the endorsement by the College of a doctrine known as "Verbal Plenary Preservation" ("VPP") over the more orthodox "Verbal Plenary Inspiration" ("VPI") doctrine accepted by the Church. The College's board generally subscribed to the VPP doctrine. Within the Church, there was mounting tension between those who believed in VPP and those who believed in VPI. In order to avert conflict, a Statement of Reconciliation was issued on 1 January 2003, in which it was agreed between the Church and the College that the differences between VPP and VPI were to be viewed as a matter of personal conviction rather than dogma. Despite this, VPP continued to be taught at the College.

23 Matters came to a head in August 2003. At the Session meeting on 20 August 2003, certain members of the Session expressed strong views against Rev Timothy Tow's endorsement of the VPP doctrine and he therefore resigned as pastor of the Church. He and a number of other members of the congregation split from the Church to found the True Life Bible-Presbyterian Church ("True Life Church"). On 19 November 2003, the board of the College informed the Church of its intention to register the College as a charity. Allegedly, the Church supported the move.

24 The registration of a charity called "Far Eastern Bible College" took place on 26 January 2004. Prior to registration, the original constitution could not be found. An entirely new constitution was presented to the Commissioner of Charities as being the constitution of the College. Dr Khoo and another witness for the defendants stated in evidence that the new constitution was drafted for the

purpose of registration. It should be noted that the position of the Church is that it did not find out until after the defendants had filed their defence in Suit 648 in October 2008 in which they averred that the bible college operated by the defendants "was registered under a new constitution" that the defendants had registered a totally different college with the same name as that given to the College.

25 On 17 July 2004, the Church wrote to the 2004 College stating that it would no longer allow the 2004 College to use its properties as it had been registered as a separate and independent entity with a result that it was no longer a ministry of the Church. Further letters were sent on 28 January and 1 March 2008 stating that the 2004 College could only continue to occupy the Premises if it gave an undertaking not to teach the VPP doctrine even as a personal conviction. When efforts at reconciliation between the 2004 College and the Church failed, Suit 648 was started to be followed shortly by Suit 278.

The opposing contentions

26 Before I go on to discuss the issues, I think it might be helpful to set out the summaries the parties have given of their respective positions.

27 The Church's key contentions are as follows:

(a) The defendants in registering their bible college in January 2004 as a charity with a completely different constitution had created the 2004 College which does not have the right to use and occupy the Premises.

(b) Whilst the defendants are clearly members of the 2004 College's board of directors, they are not and they have failed to prove that they are the College's properly-constituted board of directors.

(c) The College is the Church's ministry and has to be and was aligned with the Church in its doctrines and practices even though its services as a bible college were available to "all and sundry" who profess their faith in Jesus Christ.

(d) Even if the College was not a ministry of the Church but was a separate charitable purpose, the members of the Church and the Bible-Presbyterian community had donated money for the joint use of the Church and the College on the basis that the College's free usage and occupation of the Church's premises was "in the spirit of exemplary brotherly love, co-operation and unity" and that it was and would remain a bible college aligned with the Church in doctrine and practice.

(e) Further, even if the College was a separate charitable purpose, the defendants in introducing the VPP hypothesis as a foundational doctrine in the constitution of the 2004 College, amongst other material changes to the original constitution, had caused the 2004 College to be a totally different bible college from the College and one which is no longer aligned with the Church. Not only has it become a different college from the one which the Church members and the Bible-Presbyterian community donated money towards, it is also a different bible college from the one which the Church had agreed to and or undertaken to permit to operate on the Premises from its inception and for about 40 years thereafter.

(f) If there existed a separate and independent charitable purpose trust in favour of the College for its joint use and occupation of the Church's premises, the same had been breached or frustrated by the defendants.

(g) The Church remains ready, able and willing to continue with the ministry of the College or a bible college with the original constitution of the College and will effect the same with the appropriate leave of the court if necessary.

28 The defendants in their submissions state that the same constitute the case of Far Eastern Bible College "in support of its entitlement to occupy and use [the Premises]". They do not draw a distinction between the College and the 2004 College but at all times refer to the organisation they run as FEBC. Their position is that the College and the 2004 College are one and the same and are both encompassed by the term "FEBC". In summarising their submissions, I will use FEBC in the way they have done but such usage is not to be taken as an agreement on my part with the defendants' position.

29 The summary which the defendants give of "FEBC's case" is as follows:

(a) At all material times, the Church and FEBC were distinct, separate and independent charitable institutions.

(b) The appeals for donations in respect of the moneys which were used to develop (a) 9 and 9A Gilstead Road, (b) acquire 10 Gilstead Road and (c) redevelop the premises on 10 Gilstead Road were solicited in the names of and specified to be for the use and benefit of both the Church and FEBC.

(c) Thus, the moneys which were donated and thereafter applied towards these projects were subject to charitable purpose trusts for the use and benefit of both the Church and FEBC.

(d) Accordingly, the Premises are also subject to the said charitable purpose trusts for the use and benefit of both the Church and FEBC.

(e) By seeking to deny FEBC's board the right to operate FEBC on the Premises, the Church is acting in contravention of these charitable purpose trusts.

30 The defendants denied the Church's allegation that the defendants had constituted a new college following the registration of FEBC as a charity in January 2004. They submitted that the evidence clearly showed that there was no intention on the part of FEBC's board to constitute any new college but that their intention was merely to procure the registration of FEBC, which had been in continuous existence since its inception in 1962, as a charity under the Act. At the time of registration, a copy of the original constitution could not be found. As a result, FEBC's directors used a new constitution which was drafted based on the founding principles of FEBC, and the practices and procedures adopted by FEBC for the previous 40 years. The evidence established that the intention of FEBC's directors at that time was not to form a new college, but merely to "formalise" the independence of FEBC.

31 From the foregoing summaries, it can be seen that the main dispute involves the nature of the College. The Church's position is that the College is its ministry and subject to its control. Even if the College is not a ministry of the Church, the defendants are not running the College at the Premises but are running the 2004 College and therefore have no right to occupy the Premises. The defendants on the other hand assert the independence of the College and say that nothing that has occurred since 2004 has changed the nature of the College and they are entitled to continue to occupy the Premises together with the Church because the moneys which were used to acquire and develop the Premises were subject to charitable purpose trusts in favour of both the Church and the College.

Analysis

Analysis

Is the College a ministry of the Church?

32 Whether or not the College was a ministry of the Church from its inception and continues in such a position is partly a question of fact which has to be decided by the evidence and partly a question of law. The Church's case is that at all material times prior to the dispute over doctrine, the College was one of its ministries because:

- (a) the Church's session exercised *de facto* and effective control over the College through its representatives in particular its pastor who was also the principal of the College;
- (b) legally, the College was always part of the Church and that was why it was never separately registered;
- (c) the Church rendered legal, administrative and substantial financial support to the College; and
- (d) the College was described as the Church's ministry in historical literature and had always been regarded as being inseparable from the Church.

33 The first, third and final points are matters of fact and evidence. The second, however, has a legal aspect as well and I would like to deal with it first. The interesting feature of this case lies in the slightly amorphous character of the Church and the College. The Church started life as simply a service of worship and later, even though it may have been regarded by its members as a separate church, it did not have independent registration but was an affiliate of the Bible-Presbyterian Church of Singapore and Malaysia which was a registered society. At some stage, the Church adopted its own constitution but there was no evidence before me as to when exactly this happened. The copy of the constitution furnished to me is not dated and with its references to the Registrar of Societies is probably a version that was prepared for the Church's separate registration under the Societies Act in 1986. It is entirely possible that the original constitution of the College predates the Church's constitution. The lack of an independent registration and an absence of legal personality do not, however, mean that the Church did not have a separate and distinct identity: none of the witnesses, including the defendants, challenged the notion that the Church was a distinct and individual member of the Bible-Presbyterian group of congregations from at least the time of the lease of 9 and 9A Gilstead Road in 1957.

34 The above paragraph was written to indicate that even without registration the Church could be accepted as having an identity that was distinct from the society registered as the Bible-Presbyterian Church of Singapore and Malaysia. It follows that it was conceptually possible for the College to have an identity that was distinct from that of the Church even though it shared premises and some personnel with the Church. Further, unless the Church had a legal identity of a sort, how could the College have been "legally" part of the Church as the Church contends?

35 The legal theory behind the conceptual possibility of distinct identities for organisations that have not been incorporated or registered under laws governing societies is found in the law relating to unincorporated associations.

36 According to Slade LJ in *Re Koepler's Will Trusts* [1985] 2 All ER 874, an unincorporated association is "an association of persons bound together by identifiable rules and having an identifiable membership". *Tudor on Charities* (9th Ed, London Sweet & Maxwell 2003) states at para 3-

037 that such an association is basically a contract between its members and that a charity formed as an unincorporated association has no legal existence separate from its members. A helpful summary of the characteristics by which an unincorporated association can be identified is set out in the headnotes of *Conservative and Unionist Central Office v Burrell (Inspector of Taxes)* [1982] WLR 522 which state that the court held that:

... [A]n unincorporated association was an association between two or more persons bound together for one or more common purpose, not being business purposes, by mutual undertakings, each having mutual duties and obligations, and was an organisation which had rules identifying where its control rested and the terms on which it could be joined or left; that the bond of union between the members of such an association had to be contractual and the agreement which brought the contract about should have been made on some identifiable occasion or in some identifiable circumstances; ...

37 Therefore, an unincorporated association will exist when the following conditions are present:

- (a) a group of persons form an organisation for a common purpose;
- (b) the members of the organisation have given each other undertakings relating to that purpose and each have mutual duties and obligations in relation to the purpose;
- (c) the control of the organisation and its membership are governed by rules;
- (d) the bond between the members of the organisation is contractual; and
- (e) the agreement which brought the contract about must have been made on an identifiable occasion or in some identifiable circumstances.

38 The evidence before the court plainly supports the conclusion that the College was, from the beginning, an unincorporated association. It satisfies all the criteria set out above.

39 On 19 September 1960, the decision was taken at the Presbytery meeting to set up the College. The intended purpose of the College was plain and it was incorporated in Art II of the original constitution which reads:

OBJECT

The object of the College is to train consecrated men and women and thoroughly furnish them to meet the need of the Church of Jesus Christ, particularly in Singapore, Malaysia and other Far Eastern countries, for church pastors, missionaries and other Christian workers.

In addition, Art III set out the doctrinal basis on which such men and women would be trained at the College:

DOCTRINAL BASIS AND EMPHASIS OF TEACHING

The system of doctrine contained in the Scriptures and expounded in the historic Westminster Confession of Faith and Catechisms shall form the basis of instruction in the College. The great fundamentals, including the pre-millennial return of Christ, shall be faithfully taught. ...

40 SH Tow, who was present at the Presbytery meeting, testified that there were extensive discussions on the status of the College and the role it was to play. The Presbytery decided that the College would be constituted as an institution independent and distinct from the Bible-Presbyterian Churches of Singapore and that it would occupy premises at 9 and 9A Gilstead Road. It was Rev Timothy Tow who suggested that the College be housed in these premises alongside the Church.

41 The decision taken by the Presbytery (not by the Church) that the College was to be independent was embodied in the original constitution. Article V para 1 of the original constitution (as quoted in [11] above) specifically provided for the College "to be an independent body not subject to ecclesiastical control" and that the relationship between the College and the various bodies sponsoring it was only "one of wholehearted co-operation and desire to see consecrated men and women well trained". While the original constitution recognises in para 2 of the same article that the College is "closely connected" to the Church, the words "closely connected" alone cannot suffice to negate the constitutional intention so clearly set out in the first paragraph.

42 The original constitution is critical evidence of the relationship between the College and the Church (see *Commissioners of Customs and Excise v University of Leicester Students' Union* [2001] EWCA Civ 1972 at [31]).

43 The original constitution is important in more ways than one. It also evidences the following:

- (a) the common purpose of the persons who associated to found the College and that that purpose was not a business purpose;
- (b) the rules which govern the way in which the College is to be run and the terms on which it can be joined or left;
- (c) the mutual undertakings and mutual duties and obligations of the persons who carry out the common purpose of the organisation; and
- (d) that there was an identifiable occasion on which it was adopted and on which the members agreed to enter into the contract evidenced by the constitution.

In this connection, SH Tow stated that some time in November 1961, the College's board was formed. Rev Timothy Tow was appointed president of the board and principal of the College. The board consisted of members from the Church as well as members from other churches within the Presbytery and others not connected to the Presbytery. Shortly thereafter, the board unanimously adopted the original constitution drafted by the three-man committee. SH Tow testified that the original constitution was formulated principally on the basis of the matters discussed at the Presbytery meeting of 19 September 1960 as well as feedback from the Sessions of other churches and the Independent Board for Presbyterian Foreign Missions. This evidence was not challenged.

44 It may be helpful to set out a few more provisions from the original constitution. As can be seen from the extracts cited below, there were detailed rules for the governance of the College: the overall supervision was by the board and the day-to-day operations were run by an executive committee whilst there were also provisions relating to the faculty who were to conduct the courses run by the College and the trustees who were to hold the property of the College on its behalf. It is also important to pay attention to Art IV para 2 which set out the pledge to be made by each director upon assuming office as the same clearly indicates that the original constitution was the overarching governing document which had to be upheld by all directors.

Article IV

GOVERNMENT

Section One – The Board of Directors

1. A Board of Directors consisting of a maximum of 25 members invited from the various sponsoring bodies and other interests shall manage the affairs of the College. The composition of the Board of Directors may be varied by the decision of the Board.

2. Each member of the Board of Directors shall, before assuming office, make the following pledge: "I hereby solemnly and sincerely declare in the presence of God and of this Board (1) that I believe the Scriptures of the Old and the New Testaments to be the Word of God, the only infallible rule of faith and practice; (2) that, approving the Constitution of the Far Eastern Bible College, I will faithfully endeavour to carry into effect the articles and provisions of the said Constitution, and to promote the interest of the College.

3. The Board shall elect from among its members a President, a Vice-President, a Secretary, a Treasurer, and three other members to form the Executive Committee which shall exercise all powers of the Board between meetings of the said Board except the (1) to make, alter or amend the Constitution and by-laws, and (2) to fill vacancies in their membership or in the Board membership, which vacancies shall be filled by the Board.

...

5. ... The quorum of the Board meetings shall be one half of the number of members and decisions shall be made by a simple majority except when voting on amendments to the Constitution in which case a two-thirds majority vote shall be necessary ...

Section Two – The Executive Committee

The Executive Committee and its officers shall be elected annually at the Annual General Meeting of the Board, and their duties shall be as follows:- ...

Section Three – The Board of Trustees

1. A Board of Trustees consisting of 2 to 4 members shall be elected by the Board of Directors to hold the immovable property or properties of the College in trust ...

2. The College shall enter into agreement with the Life Bible-Presbyterian Church to regularize the use by the College those premises of the two-storey Annex and three-storey Church-and-College Extension which are deemed essential and conducive to the running of the College according to the principles of equity, inasmuch as the said Annex and Extension were built with the express purpose of the establishment and extension of the College.

...

Section Four – The Faculty

1. The internal government of the College, subject to the supervision of the Board of Directors and the Executive committee, shall be in the hands of the Principal and the regular members of

the teaching staff. All members of the teaching staff who are in charge of at least three hours per week of instruction shall be deemed to be regular members and shall declare their agreement with the object and emphasis of teaching expressed in this Constitution and their personal acceptance of the belief as in the pledge taken by the members of the Board.

...

3. The Faculty shall nominate to the Board of Directors candidates for position in the Faculty and in the rest of the teaching staff or administrative and clerical staff, including the Registrar and Librarian.

...

5. The Faculty shall have the care of the Library of the College. It shall administer the funds allotted to the Library of the College, making full report of the same.

6. The Faculty shall administer the funds allotted by the Board to scholarships and student aid, making a full report of the same to the Board.

7. The Faculty shall make a full written report to the Board at the Annual General Meeting of the Board or at other meetings as requested by the Board at reasonable notice.

...

Article VII

AMENDMENT AND INTERPRETATION

1. No amendment to this Constitution shall be made except at the Annual General Meeting of the Board of Directors, and proposals for amendments shall not be adopted without at least a two-thirds vote.

2. In the event of any question or matter arising out of any point which is not expressly provided for in this Constitution, the Board of Directors shall have the power to exercise its own discretion in determining it.

45 It can readily be appreciated therefore that the adoption of the original constitution by the men appointed as members of the initial board of the College had the effect of constituting an unincorporated association. The members of the association were the board, the executive committee and the regular members who were the members of the faculty who were in charge of at least three hours of instruction per week and who had declared their agreement with the objects and emphasis of teaching expressed in the original constitution and the pledge taken by the members of the board. The original constitution also provided for the way in which the funds and property of the College were to be administered. It set out too the terms of membership of the association, whether as a member of the board or as a regular member.

46 That the conclusion that the College is an unincorporated association is inevitable in the light of the original constitution and the system it established can be seen from a comparison with the facts of *Re Koeppler's Will Trust* where no such association was found to exist. In that case, the entity, Wilton Park, which consisted of a warden, an academic council and various staff, was held not to be an unincorporated association. Wilton Park referred to a series of yearly conferences organized by the

warden who chose the themes and selected speakers and participants. Gibson J held at 983:

All that there was... was an activity and a consistently repeated expression of what Wilton Park existed to do. The activity, that of organising and holding conferences of a particular type and in a particular manner, had been carried on by certain Crown servants with the material assistance of the Crown, which had provided the premises and the staff and had met the balance of expenditure not recouped by way of conference fees. The statements as to what Wilton Park existed to do had appeared in every conference preview. But those carrying on that activity were not bound by any constitution or rules which committed them or the Crown to continue that activity in that form or at all, and, as I read the condition attached by Sir Heinz to the gifts in favour of Wilton Park and Magdalen, he was well aware of the fact that there was nothing immutable about Wilton Park.

While like Wilton Park, the College is a scholastic enterprise that receives substantial external financial assistance and carries out activities that are of a repeated nature, the College is distinguishable from Wilton Park because it has an identifiable membership that is bound by a constitution. Furthermore, the College existed for decades in a structured and disciplined form. While I hesitate to say that the College was immutable, change had to be brought about in a structured way by the agreement of a certain number of members as set out in the specific article dealing with amendment. This is a telling contrast with Wilton Park where the whim of the warden could effect changes in the programmes presented.

47 The unincorporated association constituted by the original constitution was distinct from the Church which had its own purposes and its own methods of government and of recruiting and rejecting members. The fact that the president of the board and principal of the College were both posts held by Rev Timothy Tow who at the same time was the founding and controlling pastor of the Church could not result in a conflation of the two organisations. It should also be noted that whilst the Church was interested in Christian education, this was in a general way and was not its sole purpose. When the Church came to adopt its own constitution, Art III thereof set out the objects for which the Church was established as being:

- (a) the salvation of souls;
- (b) the edification of Christians through the teaching of God's Word;
- (c) the promotion of godly worship;
- (d) the defence of "the faith which was once delivered unto the saints";
- (e) the establishment and extension of Christian missions and institutions for the furtherance of God's Kingdom on earth;
- (f) the promotion of Christian relief for the poor and needy; and
- (g) the strengthening of mutual fellowship, encouragement and unity among bible-believing churches.

The purpose of the College on the other hand was entirely to do with the education and training of Christians in the doctrines espoused by the original constitution so that they could support and spread the faith.

48 That the College was a separate and independent organisation was also recognised in various publications that were issued in ensuing years. On 10 March 1962, the *Malaysia Christian*, a weekly publication of the Bible-Presbyterian Church of Singapore and Malaya stated:

[The College] is not a denominational institution under the control of the Bible-Presbyterian Church of Malaya. It is an independent school whose Board of Directors includes non-Bible-Presbyterians ...

The College, being an independent agency, must look to God and his children for support. ... Contributions for [the College] should be sent to the Treasurer ...

In a 1987 publication entitled "*The Life Bible-Presbyterian Church - VISION*" issued by the Church, it was stated that the College had been constituted as "an autonomous institution independent of ecclesiastical control". This statement was repeated in another Church publication, the 1993 book entitled "*Forty Years on the Road to Church Growth*". This is somewhat equivocal evidence, however, because there were five other publications which described the College as being a ministry of the Church and these were relied on by the Church to evidence this status. Three of these publications were issued by the Church itself whilst one was an anniversary magazine issued by the Bible-Presbyterian Church of Singapore and Malaysia and the fourth was a book written by Rev Timothy Tow himself. From my point of view, what is important is that the publications cited by the defendants repeated the language of the original constitution and this must, in the ultimate analysis, be what is given most weight to.

49 In February 1990, before any dispute had arisen as to the occupation of the Premises, the Session considered in a meeting whether they should think of the College as "belonging" to the Church. One of the elders at the meeting stated that whilst it appeared that the College was independent, in actual fact it belonged to the Church. Rev Timothy Tow who was then still running the Church and who was chairing the meeting disagreed with this observation. He noted that the College had made a loan to the Church of about \$100,000 under the name of "[the College] Extension Fund" and that the Church had accepted this loan in its name. The elder who brought up the topic stated that to ensure that the pastor of the Church was also the principal of the College, it was best that the Church should completely take over the College. Rev Timothy Tow disagreed and stated that it was not in his mind that the Church should completely take over the College whereupon the elder retracted from his position and said that he did not want the College to belong to the Church and it did not matter to him personally whether the College was independent or whether it belonged to the Church. It can be seen from this exchange that there was no general view on the part of members of the Session that the College belonged to the Church or that it should be taken over and that they were happy to accede to Rev Timothy Tow's position that the College was a different entity.

50 Quite apart from the way in which the College differentiated itself from the Church and other organisations named in its constitution, the facts do not substantiate the Church's contention that the College was its ministry. First, the College was governed by its own board to which non-members of the Church were also elected. There was no evidence that the election of non-Church members to the board needed the approval of the Session. Nothing in the minutes of the Session's meetings suggests that the Session had ever decided on any appointment to the board. In court, the Church's current pastor, Rev Charles Seet, admitted that the College's board was never appointed by the Church. On the other hand, in relation to the Far Eastern Kindergarten, an undisputed ministry of the Church, it was Rev Seet's evidence that the kindergarten's board of directors was appointed by the Church.

51 Next, the power to appoint the College's academic staff was at all times vested in the College's

board under Art IV of the original constitution (quoted above at [44]). Rev Seet who had himself been on the staff of the College confirmed that the College appointed its own academic staff and paid their honorarium. He also confirmed that the College's prospectus, course curriculum and time tables were all determined by the College's academic faculty and that the Church had no involvement in the same.

52 When it came to finances, the College also operated independently of the Church. It kept its own accounts and was not required to present these accounts to the Session. The evidence of SH Tow was that during his 12-year tenor as president of the College between 1977 and 1989, he ran the College as an autonomous institution and was never required or requested to consult with the Session or board of elders of the Church. There is no reason to doubt the veracity of that evidence.

53 While the Church did render support to the College in the form of donations, scholarships and payment of utility charges and rent, such financial support is insufficient to show that the College was a ministry of the Church. Other churches also made donations to and funded scholarships at the College. Furthermore, financial transactions which took place between the Church and the College were described as "gifts" or "loans" rather than internal transfers which would not be the case if the Church and the College regarded themselves as part of the same entity. Also, when a list was drawn up for the authorities detailing all of the Church's bank accounts, no mention was made of the College even though at that point of time the College was operating a bank account. In this connection, the significance of the 1970 Agreement should not be overlooked. When it came to formalising the sharing of the Premises by the Church and the College, the arrangements arrived at were contained in a formally titled agreement signed by representatives of both parties. They were not prescribed by the Church in a unilateral memorandum or letter of instruction sent to the College.

54 The Church argued that the Session exercised *de facto* and effective control over the College because:

- (a) Rev Timothy Tow accounted to the Session regarding the College's admission requirements;
- (b) Rev Timothy Tow reported to the Session regarding the dissolution of the College's board;
- (c) Rev Timothy Tow sought the Session's decision on how to deal with two of the College's errant students;
- (d) the Session had to discuss disavowing its legal responsibility for the College following Rev Timothy Tow's resignation; and
- (e) when the College's bank account was set up the Church's constitution was provided as the governing document.

To my mind, these were minor matters which are insufficient to show that the Session of the Church exercised *de facto* or effective control over the College.

55 The first two items do not evidence control. The Session's approval of the admission requirements and the purported dissolution was neither sought nor given. These incidents can be understood as mere information being provided in the context of the College's undeniably close relationship with the Church. The Church also was particularly interested in the affairs of the College because the College was run by its pastor and one of the purposes in setting up the College had been to propagate the Church's doctrine. As far as the purported dissolution is concerned, the only evidence that the board was dissolved is found in the statement of Rev Timothy recorded in the

minutes of the Session Meeting on 20 December 1989. No direct evidence of what had prompted that statement was given. Further, Mr Khoo Peng Kiat, who testified on behalf of the Church, stated that he was a member of the board of the College at the material time and that the board continued even after SH Tow's resignation as president of the board in 1999. He said that when SH Tow resigned, a few other board members also stepped down and new board members were elected to replace them. He confirmed that he had served continuously as a director on the board from 1979 to 2003 without interruption to his appointment. In the light of such evidence, it is difficult to give much weight to the statement recorded in the minutes that the board had been dissolved especially since there is no specific provision in the original constitution for such an occurrence. In any case, there is nothing in the minutes to show that after receiving this information, the Session took steps to reconstitute the board or put in any other system to govern the College while the board was defunct.

56 Item (c) might at first glance evidence control as it appears to be an instance where Rev Timothy Tow had sought the approval of the Session regarding how to dispose of the College's students. However, that incident must be understood in the context of paras 6.5 – 6.6 of the minutes of the relevant meeting. Those two paragraphs suggest that Rev Timothy Tow might have consulted with the Session on the basis of a belief that the students had been given funds by the Missionary Fellowship of the Church rather than because he believed the College was part of the Church. If the students had been ministered to by the Missionary Fellowship or had been given funds by that body, then as a matter of courtesy, it would not have been surprising if the principal of the College had consulted with the Session before making a final decision as to how to deal with the students. In any case, one incident in decades cannot indicate that the Church and the College are one. In my opinion, in view of the close relationship between the College and the Church over many years, even evidence of a few more instances where Rev Timothy Tow had consulted the Session on matters relating to the College, would not have shown that the College was a ministry of the Church.

57 As for the remaining items, item (d) is irrelevant because it is premised on the assumption that in the first place, the Session had a legal responsibility which it could disavow. It is also significant, to my mind, that at that time the Session did not attempt to remove Rev Timothy Tow as principal of the College and replace him and other members of the board with members of the Church who adhered to the Church's views on the VPP doctrine. Item (e) does not evidence control. As testimony for the defendants explained, the document was submitted because the original constitution could not be found and the bank required a governing document to be submitted. So the College just used the Church's constitution as a convenient document. In any case, the constitution of the Church, however it may have been presented to a third party, was clearly to the knowledge of both the College and the Session not the document that governed how the College was run.

58 I am satisfied on the evidence that the College was not a ministry of the Church but was an independent organization which the law recognizes as an unincorporated association. The members of the Church who thought that the Church had *de facto* control over the College were misled by the dual roles of Rev Timothy Tow as pastor and principal and did not distinguish between these roles or realize that when Rev Tow made decisions as principal he was not exercising powers given to him by the Church but powers given to him by the original constitution.

Is the 2004 College the same entity as the College?

59 The circumstances in which the constitution of the 2004 College came to be drafted have already been recited. This document, which I will refer to as the 2004 constitution, was submitted to the Commissioner of Charities when registration under the Act was applied for.

60 The 2004 constitution is different from the original constitution. Some of the more important

differences are as follows:

- (a) Article 4 is entitled "Statement of Faith". Whilst Art 4.1 refers to the same Westminster Confession of Faith and Catechisms which is the doctrine adopted in Art III of the original constitution, Art 4.2 has 13 sub-paragraphs setting out the chief tenets of the 2004 College in some detail. Among these is a proclamation of belief in VPI and VPP and a requirement that the board and faculty annually affirm "their allegiance to the Word of God by taking the Dean Burgon Oath at every annual convocation".
- (b) The maximum number of directors under the original constitution is 25 and these are drawn from the various sponsoring bodies and other interests. There is no limit on the number of directors in the 2004 constitution and such directors have to be Christian men who satisfy the requirements set out in certain specified scriptures.
- (c) Under the 2004 constitution, the principal and academic dean of the College are *ex-officio* members of the board with voting rights.
- (d) There are different provisions for quorum and the way in which decisions are to be taken.
- (e) The original constitution provides for annual retirement of one third of the board members but under the 2004 constitution, a board member holds office until he voluntarily resigns or is found incapable of performing his duties or is unable to abide by the statement of faith of the College or take the Dean Burgon Oath.
- (f) The provisions relating to the faculty are quite different in each document.
- (g) Article V of the original constitution which deals with the relationship between the College and other bodies is not found in the 2004 constitution.
- (h) The provisions relating to amendments of the respective constitutions are different.

61 If the analysis that I applied to the original constitution is applied to the 2004 constitution, the conclusion would seem to be obvious, *ie*, that the adoption of the 2004 constitution for the purpose of furnishing the same to the Commissioner of Charities and obtaining the status of a charitable institution under the Act led to the constitution of a new unincorporated association, the 2004 College, that was distinct from the College.

62 The defendants have submitted that the 2004 College registered as a charity is not a different entity from the College. They submit that the existence of the 2004 constitution is not sufficient to make the registered entity different from the pre-registration entity because:

- (a) there was no intention on the part of the defendants to form a new college;
- (b) the 2004 constitution was only written because the original constitution was missing;
- (c) the 2004 constitution's terms were merely a reflection of existing practice at that time;
- (d) the 2004 constitution had been validly adopted as amendments to the original constitution by the board; and
- (e) in any event, as the original constitution has now been found, it is the governing document of the charity.

63 As the basis of an unincorporated association is contractual in nature, the relevant issue is whether the defendants have created a new contract in the form of the 2004 constitution or if they are still associating on the basis of the original constitution.

64 As a starting point, the original constitution would not have ceased to have legal effect just because it was lost. Its contents could still be proven through adducing secondary evidence (s 67, Evidence Act, 1997 Rev Ed). The evidence, however, shows that the defendants had intended to adopt the 2004 constitution. It might not have been their intention to create a new entity but by intentionally adopting a constitution that was different and distinct in material features from the original constitution, they created a new unincorporated association. There was no mistake as to the identity of the contracting parties, nor as to the contents of the contractual document, *ie*, the 2004 constitution. If there was any mistake, it was as to the effect of the 2004 constitution. As a matter of general contractual principle such a mistake does not in itself suffice to render the agreement void. In any event, even though the defendants had cited "Sep 17, 1962" to the Commissioner of Charities as the founding date of the 2004 College, they made no effort to revert to being governed by the original constitution even after it was found. There is no evidence that they had approached the Commissioner of Charities to replace the 2004 constitution with the original one. This evinces, on an objective interpretation, their intention to be bound by the 2004 constitution, despite their belated legal submission that it is the original constitution that ought to be the governing document of the registered entity.

65 I think too that the intention of the framers and adopters of the 2004 constitution is very clearly shown by Art 4 thereof. The drafters took great care to draft a detailed statement of their faith and the religious tenets that would be espoused by the 2004 College and its faculty and taught to the student body. The statement of faith is such a fundamental part of the College that a member of the board who would otherwise hold his appointment for life will automatically lose it if he becomes unable to abide by that statement. The statement emphasizes that the members of the 2004 College believe in VPI and VPP. The VPP doctrine is therefore one of the cornerstones of the 2004 College. The 2004 constitution was adopted after the split between the Church and the True Life Church which split was caused by the disagreement over the VPP doctrine. The original constitution makes no mention of the VPP doctrine. At the time it was drafted, this doctrine had not been established. It was clearly of great importance to the drafters of the 2004 constitution that they made plain in the document the doctrinal position that they intended to adhere to and to pass on. In such circumstances, I can only conclude that the drafters and adopters of the 2004 constitution wanted an unincorporated association that would reflect their ideals and beliefs in full. There was no mistake in what they intended to achieve. The only mistake was perhaps in their failure to realize that their actions would result in a new institution rather than in effecting a change to the old institution.

66 Furthermore, the original constitution has its own rules regarding quorum and amendments. Article VII provides:

No amendment to this Constitution shall be made except at the Annual General Meeting of the Board of Directors, and proposals for amendments shall not be adopted without at least a two-thirds vote.

Thus the original constitution can only be amended by a two-third majority vote at the annual meeting of the board of directors. Generally, there is no implied power to alter the rules of an unincorporated association in contravention of its constitution (see *Harrington v Sendell* [1903] 1 Ch 921; *Re Tobacco Trade Benevolent Association Charitable Trusts* [1958] WLR 1113). While the defendants claim that the original constitution had been unanimously adopted, they have not adduced

any evidence to show the 2004 constitution was adopted by a two-thirds majority vote of the directors of the College at an annual general meeting convened with the requisite quorum and agenda. The burden of proof of showing that the 2004 constitution was a duly adopted amendment of the original constitution lies on the defendants and they have failed to discharge that burden.

67 *Abbatt v Treasury Solicitor* [1969] 1 WLR 1575 ("*Abbatt*") provides a useful contrast to the facts of the present case. In *Abbatt*, a special meeting of a club was called to discuss the change in the character of the club from being the central organisation of the British Legion to a working men's club. The meeting was attended by only 28 of its 180 members. Of the attendees, 20 voted for a change, five against it and three abstained. At the first instance, Pennycuik J held that the difference between the old club and the new club was so fundamental that the old club must be taken to have ceased to exist. That decision was overturned on appeal. At 1583, Lord Denning opined:

...the association of persons who formed the club was the same immediately after the change as it was before. It was the same unincorporated, indeterminate, loose association of people who enjoyed the benefits of the club in the selfsame way. It took to itself a different name and dressed itself up in different clothes. But, flesh and bones, it was the same body. Soon afterwards it put on weight. It expanded its membership. But all of them, new members and old, continued it as before, living the same life. The property was held for the benefit of the new members just as much as the old. There was no fundamental change. It is true that the old rules contained no express power to amend or alter them. But I should have thought it was implied that the members could, on notice, by a simple majority in general meeting, amend or alter the rules. In any event however, if at such a meeting a majority purport to amend or alter the rules, and the others take no objection to it, but instead by their conduct acquiesce in the change, then those rules become binding on all. It is like partners who by conduct acquiesce in a change of their partnership deed: see *Const v. Harris* (1824) Turn. & R. 496, 523; or shareholders who by their conduct assent to an act done by the directors beyond their powers: see *Phosphate of Lime Co. Ltd. v. Green* (1871) L.R. 7 C.P. 43. It may be impossible to show that every member of the club knew of the change of rules, but that does not matter.

While the board might have been able to validly adopt the 2004 constitution as a change to the original constitution without calling for an annual meeting had the constitution been silent on the issue of amendment, it ought not to be able to effect valid amendments in violation of the articles of the original constitution even if all the members of the board agree. The 2004 College constituted under the new document, is, in my judgment, a separate entity from the College.

68 In their closing submissions the defendants raised what they called a "preliminary objection" to the allegation by the Church that the 2004 College was a new college constituted by the 2004 constitution and was not the College in some new clothes. The defendants said that this allegation was in effect an assertion that the directors of the 2004 College were acting in breach of the charitable purpose trusts affecting the premises because they were not using and occupying the premises for the purpose of the College but for a different bible college instead. Under s 9(1) of the Government Proceedings Act (Cap 121, 1985 Rev Ed) the written consent of the Attorney General is required before any action may be commenced for breach of a charitable trust. Since the Church had not obtained any such written consent, its case that a new college was constituted by the board of the 2004 College had to fail *in limine*.

69 I cannot accept that submission. As submitted by the Church, its pleaded case is founded in the law of trespass and is an exercise of its proprietary right to evict persons who it alleges to be trespassers from the Premises. The Church is not trying to enforce a charitable trust. It is the

defendants who are trying to enforce a charitable trust by contending that the existence of such a trust in their favour gives them the right to continue to occupy the Premises. It was therefore the defendants who required the Attorney General's consent (which they duly obtained) and not the Church.

Is there a charitable purpose trust which the 2004 College can benefit from?

70 The buildings occupied on the Premises and the land at 10 Gilstead Road itself were acquired by moneys raised through the four fund raising events that I have described above. These fund raising events were undertaken in the names of both the Church and the College.

71 As mentioned above at [\[10\]](#), at the time the decision to found the College was taken, there was already a building fund in existence to raise moneys for the construction of the Church. This building fund was renamed "Life Church and Building College Fund" and it was clear from the evidence that moneys were being raised for the stated purpose of erecting buildings on 9 and 9A Gilstead Road for both the Church and the College and not just for the Church. In fact, it appeared that donations were spurred on by the decision to start the College and by the end of 1960, the collections for the Life Church and Bible College Fund had reached almost \$100,000 whilst before the announcement of the College was made, it had taken about three years to achieve collections of \$60,000. The further fund raising events undertaken in 1967, 1989 and 2000 were also for the purposes of both organisations.

72 The moneys comprising the four funds came largely from the following sources:

- (a) interest-free loans;
- (b) donations from Church members;
- (c) donations from College students and their supporters; and
- (d) donations from the Bible-Presbyterian community.

73 The interest free loans given were repaid using moneys from the Church's general collection of offerings. Although money received for the four funds was recorded as being separate from "General Offerings", the money was not kept or banked into a separate bank account. A separate bank account for the Beulah House Fund was only started in November 2006 when the Church appointed a committee with a designated financial controller to start work on the Beulah House Project.

74 The submission made by the defendants was that the Premises are subject to charitable purpose trusts for the use and benefit of the Church and the College because the funds which were used to acquire and develop these properties were raised for the stated purposes of both the Church and the College. They cited the Australian case of *Attorney General of Queensland v Cathedral Church of Brisbane* (1977) 136 CLR 353 for the following propositions:

- (a) Where the purpose of a fund-raising effort is itself charitable, the funds raised will be impressed with a charitable purpose trust for that purpose.

(b) When funds which are subject to a charitable purpose trust are used to acquire property, the property so acquired will also be impressed with a trust for the purpose or object of the charitable purpose trust.

Those propositions are not in dispute. They are also supported by the English cases of *Re Ulverston & District New Hospital Building Fund* [1956] Ch 622 and *Neville Estates v Madden and Ors* [1962] Ch 832.

75 The main position taken by the Church is that there was a charitable purpose trust imposed on the Premises for the use of the Church and its ministries which included the College. In the alternative, if the court were to hold that the College was not a ministry of the Church but was a separate charitable purpose, the Church argues that the Church members and the Bible-Presbyterian community had donated money for the joint use of the Church and the College on the basis that the College's free usage and occupation of the Premises was "in the spirit of exemplary brotherly love, co-operation and unity" and that it was and would remain a bible college aligned with the Church's doctrine and practices. The 2004 College was a different bible college from the one which the Church had agreed to and/or undertaken to permit to operate on the Premises. In any event, if there existed a separate and independent charitable trust in favour of the College for its joint use and occupation of the Premises, the same had been breached or frustrated by the defendants who were running the 2004 College and not the College.

76 There is thus no real dispute that the moneys collected over the years through the four funds were impressed with purpose trusts. Rather, now that I have found that the 2004 College is a separate organization from the College, the dispute turns on whether the 2004 College can benefit from the purpose trusts which had as their general purpose the charitable object of buying land and constructing buildings for the advancement of religion and religious education.

77 Did the donors intend for the moneys collected through the fundraising efforts to be applied to the College only or could the funds be applied towards the 2004 College? This is an issue of fact. On the evidence, I find that the purpose trusts were not meant to be applied towards the 2004 College. The various appeals for funds were made in the names of the Church and the College. At the time the second, third and fourth appeals were made the College, as governed by the original constitution, already existed. In those cases, the donors would have been supporting an identifiable and identified organisation. Whilst the College did not exist at the time of the first appeal, the Bible-Presbyterian community were already working on setting it up and, with the three-man committee comprising *inter alia* Rev Timothy Tow and his younger brother, SH Tow, drafting the original constitution, it would have been apparent that the College was being set up to further the doctrines and religious purposes of the Church. The statement issued at the time by the three-man committee told the congregants that the College was to be run by men "of faith and wisdom within our churches" meaning from the Bible-Presbyterian Church of which the Church was a member.

78 Further, three of the fund raising events took place prior to the registration of the 2004 College and in circumstances where there was no inkling of the intended constitution of any new college. Even funds raised after January 2004 would not have been intended for the 2004 College as the distinction between the College and the 2004 College was not clear. The 2004 College bore the same name and as far as the donors knew, it was still the College founded in 1962. It is also interesting that Dr Khoo who was the principal of the 2004 College believed that funds raised after April 2003 were not for the benefit of the College. Dr Khoo testified that he asked for redirection of his donation for the redevelopment of 10 Gilstead Road because certain statements were made at the Annual Congregational Meeting in April 2003 that caused him to believe that the College was being excluded

from the plans to redevelop 10 Gilstead Road. Subsequently an aggregate sum of \$226,884 contributed by people with similar views as those held by Dr Khoo was also withdrawn or redirected.

79 In all the circumstances, I find that the donors would have been making their donations not on the understanding that their moneys would further the purpose of the Church and any bible college, but rather, on the understanding that their moneys would further the purposes of the Church and the College specifically, *ie*, the training of consecrated men and women in accordance with the original constitution produced or to be produced by the three-man committee. If there were any surplus funds after the land was bought and the buildings were constructed, those funds would have to be applied cy-pres for an alternative charitable purpose (see s 21, Charities Act, 2007 Rev Ed). The 2004 College cannot assert a right to benefit from the funds just because it happens to occupy the same property that the College does, or because it adopts the same name and, very generally, the same purposes. The defendants have not established that the application of the moneys raised towards a college other than the College was within the contemplation of the donors.

80 It is also pertinent that the courts have recognised that doctrine is fundamental to the nature and character of a religious charitable purpose (see *Bishop of Natal v Gladstone* (1866) LR 3 Eq 1). This is a point that SH Tow agreed on. When asked whether the doctrines of a church were very important to its character and identity, SH Tow replied "absolutely". The evidence is that the VPI doctrine is what was followed by both the Church and the College at and after the time of the founding of the College. The religious charitable purpose trust that was created by the various funds was a trust to, *inter alia*, promote the VPI doctrine. This purpose would not be achieved by the propagation of the VPP doctrine which has led to the setting up of new churches in the Bible-Presbyterian community. As I have pointed out, the VPP doctrine is a fundamental part of the statement of faith to be adhered to by members of the 2004 College. Thus, it is clear that the religious charitable purpose trust that supports the College is not available for the support of the 2004 College. The 2004 College has no claim to the benefit of the moneys in the four funds.

81 The defendants are the directors of the 2004 College. They have not shown that they are the directors of the College. The 2004 College being an entirely different association from the College, the defendants have no *locus standi* to bring an application for a declaration of trust on behalf of the College. The 2004 College has no basis on which to occupy, possess or use the Premises.

Conclusion

82 For the reasons given above, I dismiss Suit 278 with costs.

83 As for Suit 648, the Church is entitled to the reliefs that it has claimed. There is, however, a deficiency in the statement of claim. The Church has asked for an injunction to restrain the defendants from remaining on or continuing in occupation of 9 and 9A Gilstead Road and to vacate and deliver up vacant possession of the part that they occupy to the Church. There is no mention in this prayer of 10 Gilstead Road. The action, however, was fought on the basis that the defendants were not entitled to occupy either 10 Gilstead Road or 9 and 9A Gilstead Road and the submissions of both parties dealt with 10 Gilstead Road as well as with 9 and 9A Gilstead Road. Unless the statement of claim is amended, I cannot make any injunction or other order in respect of 10 Gilstead Road. I am prepared to make such orders once the necessary amendments have been effected. I will therefore see the parties in chambers in relation to an amendment application and in relation to the form of the judgment that should be given to the plaintiff in respect of Suit 648.