

## R6.205 – THE ARNO HERPE MEMORIAL FOUNDATION

### Recitals-

- A. The late Arno Herpe BEng formerly of 92/193 Domain Rd, South Yarra in Victoria, chemical engineer ('the testator'), who died on 14 August 1998, by his will dated 9 January 1996 ('the will') provided-

'...As to fifteen (15) per cent of the residue for and to the use of the University of Melbourne ("the University") absolutely and beneficially for the purpose of endowing a fund to be known as "the Arno Herpe Memorial Foundation" the income from which must be applied by the University for the assistance and encouragement by financial payments or otherwise for post graduate studies by two civil engineering graduates of the University who are descendant (sic) from indigenous natives of the South Pacific area, including Australia and New Zealand, PROVIDED HOWEVER that if at any time, and for whatever reason, in the opinion of the Council of the University it has become impracticable or impossible to continue to carry out my intentions, then the Council may apply the income of the fund, and where necessary, the capital for such other purposes as are, in its opinion, most closely in accordance with my intention...'

- B. The testator altered the provisions of the will by three codicils dated 19 February 1998, 6 May 1998 and 18 July 1998. The first and third codicils did not affect the University's interest under the will, but the second codicil provided-

'I reduce the percentage referred to in clause 8.4 of my will from fifteen (15%) per cent to ten (10%) per cent'

- C. The testator was born on 6 August 1914, emigrated to Australia in 1939 and graduated from the University. He served the last two years of the second World War in Papua New Guinea where according to a letter from his widow dated 22 November 2000 '...he gained an immense respect for the indigenous population of the country who on occasion saved his life...'

- D. In December 1999, the University received the sum of \$632,657.90 in satisfaction of the bequest from the estate of the testator.

- E. The University experienced difficulty in awarding scholarships in 2000 and 2001. Pursuant to the authority given to it in the will to apply the fund for other purposes in the event of impracticability or impossibility, and following the consent of the testator's widow communicated in a letter dated 15 March 2001 from her solicitors, Council amended the regulation by legislative item 37/01 to delete the reference to two graduates; to add undergraduate students as an eligible class; to retain the reference to engineering students; and to indicate that civil engineering students were only required to receive preferential consideration-

'... undergraduate or postgraduate students who are descendant from indigenous natives in the South Pacific area, including Australia and New Zealand who wish to study at the University of Melbourne for an engineering qualification. Whenever possible, preference to be given to suitably qualified postgraduate students in civil engineering.'

- F. No payments from the income of the fund were made between 2001 and 2005 and according to the Explanatory Note to legislative item 05/05 'The Faculty of Engineering has no recollection of there ever having been a student falling within this limitation...' Council therefore amended the regulation by legislative item 05/05 to add students from other faculties as an eligible class-

'If in any year there are no such students enrolled in the faculty of Engineering or if it is not possible to expend all the income to assist such students who are enrolled in that faculty, the income may be applied to assisting such students enrolled in undergraduate or postgraduate courses in other faculties'

- G. By legislative item 107/05 Council amended the regulation to include all students of the

required descent in all faculties, but with a preference for engineering students-

‘The net annual income of the fund is to be applied... to undergraduate and postgraduate students who are descended from indigenous natives of the South Pacific area, including Australia and New Zealand, and who are enrolled in the course for an undergraduate or postgraduate qualification. Preference may be given to students enrolled in the faculty of Engineering.’

- H. On the recommendation of the Committee of Convocation and by legislative item 121/05, Council inserted ‘is to be’ in lieu of ‘may be’ so that it became mandatory for preference to be given to students enrolled in the faculty of Engineering.
- I. Pursuant to a decision of Council at meeting 11/06 held on 11 December 2006, the Indigenous Scholarships and Awards Committee will allocate payments from the fund.
- J. At 17 July 2008, the amount of the fund was \$1,147,245.00.

It is provided as follows-

1. The sum of \$1,147,245.00, and any accumulations and additions to the sum, forms a fund called ‘The Arno Herpe Memorial Foundation’ (‘the fund’) and the fund must be paid into an investment pool and remain there until Council directs otherwise.
2. The net annual income of the fund is to be allocated by the Indigenous Scholarships and Awards Committee (or such other committee as may be determined by Council from time to time) to provide assistance to undergraduate and postgraduate students who are descended from indigenous natives of the South Pacific area, including Australia and New Zealand. Preference is to be given to students enrolled in Melbourne School of Engineering.
3. If at any time, and for whatever reason, in the opinion of Council it has become impracticable or impossible to continue to carry out the intentions of the testator, then it may apply the income of the fund, and where necessary the capital, for such other purposes as are, in its opinion, most closely in accordance with his intention.

[Revoked and remade 1/9/08.]