

### Summative Assessment Exercises - Outline Answer

Your answer should commence with a brief introduction to the way in which charity is defined at law. You should explain the relationship between the preamble to the Statute of Elizabeth I 1601, and the four heads of charity suggested by Lord Macnaghten in *Commissioners for Special Purpose of the Income Tax v Pemsel* [1891] AC 531. You should then take each part of the question in turn and attempt to identify whether or not the provision falls within the legal definition of charity and yields the necessary public benefit in order to be charitable.

(a) This provision might be charitable under the first head of charity: the relief of poverty (Charities Act 2006 s. 2(2)(a) as consolidated in Charities Act 2011 s. 3(1)(a)). It is somewhat reminiscent of the gift in *Re Niyazi's Will Trusts* [1978] 1 WLR 910. There a testator provided that his residuary estate should be held by his trustees upon trust to pay the capital and income to a local authority in a needy part of Cyprus 'on condition that the same shall be used for the purposes only of the construction of or as a contribution towards the cost of the construction of a working men's hostel'. Megarry V-C held that this was a valid charitable trust for the relief of poverty. The word 'hostel' suggested a poor inhabitant. The judge also took into account the fact that the relatively modest size of the fund made it unlikely that a 'grandiose building' would be erected.

The word 'shelter' as used in the present legacy also suggests a poor inhabitant. The fact that the beneficiaries are Old Etonians will not disqualify them from benefiting from a charitable trust. In *Re Gardom* [1914] 1 Ch 662 a trust for 'ladies of limited means' was held to be charitable, as was a trust for 'distressed gentlefolk' in *Re Young* [1951] Ch 344. The courts have never been slow to allow the charitable relief of the impoverished upper classes. The inclusion of a preference does not invalidate educational trusts (*Re Koettgen* [1954] 1 All ER 581), and is even less likely to invalidate a trust for the relief of poverty. As long as the potential benefiting class is sufficiently large there should be no problem (*Re Segelman* [1995] 2 All ER 676). However, there may be a problem if too narrow a class of beneficiaries is actually

preferred, if that class, as here, is defined by some personal connection to the testator or to each other, thereby excluding benefits to society at large. Thus, in *IRC v Educational Grants Association Ltd* [1967] 2 All ER 893, evidence showed that 76 per cent to 85 per cent of the association's income had been applied to educate the children of persons connected with an associated commercial company. Despite this, the association had claimed a tax refund from the Inland Revenue. The Inland Revenue refused the refund, claiming that the association had failed to apply its funds to exclusively charitable ends. The court held for the IRC.

- (b) Trusts for research may be charitable if they are for the advancement of education (Charities Act 2006 s. 2(2)(b) as consolidated in Charities Act 2011 s. 3(1)(b)).

In *Re Shaw* [1957] 1 WLR 729 George Bernard Shaw left his residuary estate on trust to research into a new English alphabet. This failed as a charitable trust for the advancement of education. The judge held that 'if the object be merely the increase of knowledge, that is not in itself a charitable object unless it be combined with teaching or education'. Accordingly, the clause in Reginald's will is more likely to be recognised to be a valid charitable trust for education were it to include express provision for dissemination of the research outcomes. There has, however, been limited recognition that the educational benefits of research might still be charitable if confined to the researchers themselves, provided that the subject matter of the research is a worthy object of study (*Re Hopkins* [1965] Ch 669).

The political aspect of the research is a bit of a red-herring. Although a trust established for political purposes will not be recognised to be charitable, research into political matters can be charitable (*McGovern v Attorney-General* [1981] 3 All ER 493), provided it is not undertaken to support a political campaign.

- (c) The playing of card games, as an alternative to television, might be thought to be educational. However, the educational value of television might be expected to be higher than that afforded by most card games. Without more detail as to the nature of the card games and the professions of the trustees, the court is unlikely to approve this gift as charitable. However, subject to proof of a sufficient public benefit, this trust

could be a charitable trust for the advancement of education, or even a charitable trust within the Recreational Charities Act 1958 (which, having been reformed by the Charities Act 2006 s. 2(4)(a), has now been repealed and replaced by the Charities Act 2011 s.5). It will not qualify as a trust for sport, because although the advancement of amateur sport is a recognized head of charity under the Charities Act 2006 (now Charities Act 2011 s3(1)(g)), the sport in question must “promote health by involving physical or mental skill or exertion”.

- (d) It is acknowledged that trusts for private hospitals can be charitable within the fourth head of charity: other purposes beneficial to the community (*Re Resch's Will Trusts* [1969] 1 AC 514). The legacy of £5,000 to the psychotherapist might be analogous to the case of a private hospital.

However, the fact that the psychotherapist benefits personally from the gift militates against the recognition of charity in this case. In fact, in *Re Incorporated Council of Law Reporting for England and Wales* [1972] 1 Ch 73 the members of the Court of Appeal expressly doubted that the provision of ‘tools of a trade’ would be charitable.