TOPIC 4 - CHARITABLE TRUSTS

VALID CHARITABLE PURPOSE		PUBLIC BENEFIT		TRUSTS WITH MULTIPLE PURPOSES
4 *Pemsel* Head of Charities	+	1. Beneficial 2. Public (or a section thereof)	→	Can the non-chartiable purpose be severed?

OTF, [D] may attempt to argue that the [trust] in question constitutes a valid charitable trust, making it exempt from the requirement that trusts must be created for identifiable persons (*Dingle v Turner*). Thus, given [D] can establish the 2 elements of a charitable trust, the [trust] may be recognized as charitable and thereby be applied for the intended purpose. As there are no objects, standing to see the trust performed will be given to the Attorney General.	
✿ VALID CHARITABLE PURPOSE	
In order to establish that [trust] is a charitable trust, the first issue is whether it was created for a valid charitable purpose. Per *Pemsel*, the purpose must fall within one of the four established heads of charity recognised by the case. This requirement is assessed objectively. Accordingly, whether the trust has a valid charitable purpose depends on the legal effect of the language used in the trust instrument, rather than the settlor's subjective intention.	
Trust for the <u>aged, impotent, and poor</u>	OTF, the [alleged trust] was created to [purpose]. Relief of poverty: [D] may contend that such objective constitutes relief of poverty as it [supplies resources to object], thereby constituting a valid charitable purpose as per *Pemsel*. However, [P] may argue that the such purpose of [facts] cannot not constitute relief of poverty, as: + [resources] are not necessities that are crucial to [object]'s health and well-being or lifestyle in which they cannot live without + [object] is not objectively "poor" in the sense of being financially destituted + such purpose does not supply [the objects/financially disadvantaged people] with necessities like food or housing Here, [D] may counter that trusts for the relief of poverty are not limited to providing mere necessities to the financially destitute, but extend to assisting those who are in need 'relative to the rest of the community' (*Trustees of the Indigenous Barristers Trust*). [D] may argue that similarly to *Trustees of the Indigenous Barristers Trust,* where supporting Indigenous persons pursuing legal careers was held charitable despite legal practice not constituting a life necessity, [purpose] should likewise be regarded as charitable, as it provides [objects] with means of support that they may not otherwise receive. In this case, the mere fact that ['the person has shown academic ability and some perseverance above the norm'/facts] does not mean that [he/she] does not preclude a finding that assistance is still needed. Accordingly, by providing [objects] with [resources] to achieve [facts] through the funds of the [trust], the trust may be characterised as alleviating disadvantage in a charitable sense. As [purpose] still provides [objects] with [resources] in which otherwise they may have been short of, [D]'s argument is likely to prevail, and the [alleged trust] may be recognised as being for a valid charitable purpose, satisfying the first element. ● Wide enough to include the advancement of social and community welfare Eg: support of the disadvantaged disabled, refugees, prisoners., etc. ● Charities for the relief of poverty are assumed to be for public benefit → The normal tests of public purpose, specifically the "no personal nexus" rule from *Oppenheim* does not apply to trusts for the relief of poverty

	Relief of the impotent: [D] may contend that such objective constitutes relief of the impotent as it [supplies resources to object], thereby constituting a valid charitable purpose as per *Pemsel*. As impotence includes persons with some sort of lack of strength, whether through ill-health, disability, mental impairment, or injury, the [trust fund] being for [objects/purpose] suggests that its purpose falls within this scope. [P] may attempt to argue that such purpose is not charitable as it only supports the [impotent/disabled/ill/mentally impaired/injured], rather than being for the full category of the "aged, impotent, and poor" as recognized in *Pemsel*. However, this argument is unlikely made out, as trusts for impotence are considered charitable without being dependent on age and poverty. + [D] may argue that similarly to how hospitals and treatments of the sick are charitable although the wealthy may use their services, [facts]. Therefore, the trust will likely be considered charitable. Relief of age: [D] may contend that such objective constitutes relief of age as it [supplies resources to object], thereby constituting a valid charitable purpose as per *Pemsel*. [P] may attempt to argue that such purpose is not charitable as it only supports the [aged/elderly], rather than being for the full category of the "aged, impotent, and poor" as recognized in *Pemsel*. However, this argument is unlikely made out, as trusts for the aged are considered charitable without being dependent on impotence and poverty. + [D] may argue that similarly to how retirement homes are charitable although the healthy and wealthy may use their services, [facts]. On balance, the trust will likely be considered for a charitable purpose, satisfying the first element.
Trust for the <u>advancement of education</u>	OTF, the [trust] was created to [purpose]. [D] may contend that such purpose constitutes a trust for the advancement of education, thereby satisfying a valid charitable purpose as per *Pemsel*. Provision of scholarships/prizes/educational facilities/equipment: However, [P] may argue that a trust for the advancement of education must have an element of dissemination of knowledge or teaching in order to be considered charitable (*Re Pinion, Re Hopkins*). Here, as the [trust] only provides the [finances/resources] for the [pursuit of education], it does not involve spreading knowledge or teaching. [D] may counter that [scholarships/prizes/educational facilities/equipment] provides [objects] with the resources and means to pursue [field of knowledge/academic/research/activity], giving [objects] an opportunity to learn, therefore it advances learning and constitutes a charitable trust. OTF, it is likely that [D]'s argument will be made out. However, it must be noted that it is ultimately at the court's discretion to determine whether there is any educational value to the trust, often with the assistance of expert evidence (*Re Pinion*). Support of research: However, [P] may argue that a trust for the advancement of education must have an element of dissemination of knowledge or teaching in order to be considered charitable (*Re Pinion, Re Hopkins*). Here, as the [alleged trust] only provides the [finances/resources] for the [research], it does not involve spreading knowledge or teaching. [D] may counter this argument by arguing that per *Re Hopkins*, research does not require the researcher to engage in conventional teaching. Further, similarly to *Re Hopkins* where the trust's purpose to provide resources to find the Bacon-Shakespear manuscripts was held to

	be charitable, the support of research in this case also provides resources to [academic purpose]. Here, the results of the research supported by the trust would also: + [likely/inevitably] be published, thereby [how it advances/contributes to education] + likely lead to something which would pass into the store of educational material + likely improve the sum of communicable knowledge in an area which education may cover OTF, it is likely that [D]'s argument will be made out. However, it must be noted that it is ultimately at the court's discretion to determine whether there is any educational value to the trust, often with the assistance of expert evidence (*Re Pinion*). Merely informative: However, [P] may argue that a trust for the advancement of education must have an element of dissemination of knowledge or teaching in order to be considered charitable (*Re Pinion, Re Hopkins*). Here, as the [trust] only provides the [finances/resources] for the [facts], no facts suggest that it aims to advance any educational material in any way. Rather, it merely informs and attempts to persuade people of the [knowledge], which [aligns more with propaganda and] is not an educational purpose . + Existing political purpose: Further, [P] may contend that similarly to *Re Shaw*, [purpose/advocating for change] has somewhat political undertones, in which case should act as a barrier to charitable status like found in the case. OTF, it is likely that this argument will be made out. However, it must be noted that it is ultimately at the court's discretion to determine whether there is any educational value to the trust, often with the assistance of expert evidence (*Re Pinion*). Despite [P]'s argument likely succeeding and therefore no valid charitable purpose being found, for the purposes of this exam, I will continue to analyse the rest of the required elements of a valid charitable trust. Encouragement of all manner of formal/informal education (whether academic, social, or cultural): However, [P] may argue that a trust for the advancement of education must have an element of dissemination of knowledge or teaching in order to be considered charitable. Here, as the [trust] only provides the [finances/resources] for the [facts], it merely encourages and attempts to persuade people of formal/informal education, rather than practical teaching or advancing educational material in any way. OTF, it is likely that this argument will be made out. However, it must be noted that it is ultimately at the court's discretion to determine whether there is any educational value to the trust, often with the assistance of expert evidence (*Re Pinion*). Despite [P]'s argument likely succeeding and therefore no valid charitable purpose being found, for the purposes of this exam, I will continue to analyse the rest of the required elements of a valid charitable trust.
Trust for <u>other purposes beneficial to the community</u>	As an alternative, [D] may also attempt to argue that the [trust] falls under the 4th *Pemsel* head of charity, being trusts for other purposes beneficial to the community. Per *Pemsel*, these purposes must be within the spirit and intendment of the Statute of Elizabeth as interpreted in today's conditions (*Pemsel*). OTF, [trust] was created for the purpose of [facts]. + Per [*case law*/the Preamble], [purpose] is a recognised purpose that falls under the fourth head of charity, thereby satisfying the first requirement for a valid charitable purpose. + While [such purpose] is not a recognised purpose that has been established to fall under the 4th head of charity, the Preamble categories are not closed and [D] may

nevertheless establish a charitable purpose by analogy with charities listed in the Preamble, and by reason of the nature of the activity itself.

Recognised purposes:

<table>
<tr><th>Recognised purposes in the Preamble</th><th>Analogy</th></tr>
<tr><td>Relief of the aged, impotent, and poor</td><td rowspan="2">Similarly to how trusts for the relief of poverty, aged, impotent; and trusts for the education of orphans have been recognised as charitable as they provide assistance and opportunities to disadvantaged members of the community, [purpose] likewise seeks to alleviate disadvantage by providing [objects] with [resources] and forms of support that they may not otherwise have access to.
This positively establishes that the purpose is beneficial to the community as the trust seeks to improve the conditions prevailing within the community by providing support and assistance to [objects], who form part of the wider community.

Therefore, as the purpose suggests evidence of [public benefit/good intentions/community settlement], the purpose of [purpose] likely constitutes a valid charitable purpose that is beneficial to the community under the 4th head of charity (Kellie Mary Morgan as Executor)</td></tr>
<tr><td>Education and preferment of orphans</td></tr>
<tr><td>Maintenance of sick and maimed soldiers and mariners</td><td>Similarly to how trusts for the maintenance of sick and maimed soldiers and mariners have been recognised as charitable in the Preamble, [purpose] likewise provides care, assistance, and support to persons suffering physical disadvantage or incapacity arising from their service. Specifically, [purpose] seeks to alleviate hardship by providing [objects] with [care/assistance/support] from disadvantage arising from their [profession].
This also positively establishes that the purpose is beneficial to the community, as the trust provides support and assistance to [objects], who form part of the wider community.

Therefore, as the purpose suggests evidence of [public benefit/good intentions/community settlement], the purpose of [purpose] likely constitutes a valid charitable purpose that is beneficial to the community under the 4th head of charity (Kellie Mary Morgan as Executor)</td></tr>
<tr><td>Maintenance of schools</td><td rowspan="3">Similarly to how trusts for the maintenance of schools and the repair of bridges, ports, havens, causeways, churches, seabanks, and highways have been recognised as charitable in the Preamble, [purpose] likewise promotes the welfare and functioning of the wider community through the provision and upkeep of infrastructure and institutions. Specifically, [purpose] seeks to confer a broader public benefit by providing [objects/community] with [resources/services/support/facts], therefore contributing to the community’s welfare and accessibility.
This also positively establishes that the purpose is beneficial to the community as the trust seeks to improve the conditions prevailing within the community by providing support to public infrastructure, which is largely for public and community usage.

Therefore, as the purpose suggests evidence of [public benefit/good intentions/community settlement], the purpose of [purpose] likely constitutes a valid charitable purpose that is beneficial to the community under the 4th head of charity (Kellie Mary Morgan as Executor)</td></tr>
<tr><td>Repair of bridges, ports, havens, causeways, churches, seabanks, highways</td></tr>
<tr><td>Trusts for hospitals, ecological conservation, libraries, museums, parks, animal welfare, and disaster relief</td></tr>
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Marriage of poor maids Relief of redemption of prisoners or captives	Similarly to how trusts for the marriage of poor maids and trusts for the relief or redemption of prisoners or captives have been recognised as charitable in the Preamble, [purpose] likewise provides assistance and opportunities to vulnerable or disadvantaged persons who may otherwise lack the means to improve their circumstances. Specifically, [purpose] seeks to alleviate hardship by providing [objects] with [resources/support/opportunities] that they may not otherwise have access to. This also positively establishes that the purpose is beneficial to the community as the trust seeks to improve the conditions prevailing within the community by providing support and assistance to [objects], who form part of the wider community. Therefore, as the purpose suggests evidence of [public benefit/good intentions/community settlement], the purpose of [purpose] likely constitutes a valid charitable purpose that is beneficial to the community under the 4th head of charity (*Kellie Mary Morgan as Executor*)
Ease of taxes	
Not-for-profit law reporting (*Incorporated Council*)	Law reporting was found to be a valid purpose under the 4th head, as it is important to the administration of justice, as well as the substance of the law being a benefit to the whole community.

Political purposes:
[P] may argue that, by [purpose/method of achieving purpose], the trust pursues an underlying political purpose, and that trusts for political purposes cannot be charitable. In response, [D] may counter that, per Aid/Watch, there is no general doctrine in Australia that excludes political objects from charitable purposes.

+ Generates public debate:
  OTF, rather than just merely espousing a particular political position, the trust's [encouragement/purpose/method of achieving purpose] promotes public debate concerning [government policy/legislative reform], thereby contributing to informed public discourse and the effective functioning of a healthy democracy. Accordingly, [D] may argue that the trust confers a public benefit sufficient to satisfy the fourth head of charity (*Kellie Mary Morgan*).
+ Political aim is additional to the charitable power:
  Further, [D] may contend that the [political aspect] of the trust is merely ancillary to the charitable power of [charitable purpose]. Thus, per *Victorian Women Lawyers*, the trust may still be upheld where the political element is additional to the charitable objective, and charitable funds are ultimately directed toward advancing the charitable rather than political purpose. Accordingly, the trust's overall purpose is likely to remain validly charitable.

Sporting and recreational purposes:
[P] may argue that the trust's purpose being [purpose] constitutes a sports and recreational purposes, which have not been traditionally regarded as charitable and not referrable to the spirit and intendment of the Preamble.
However, [D] may counter that the sporting or recreational activity is merely [ancillary to/a means of advancing] the trust's broader charitable purpose of [advancing education/relief of poverty/etc].

+ Similarly to how the trust to support a rugby union club at the University of Sydney was recognised as a valid trust for the advancement of education per *Kearins*, the trust in question also [advances the educational experience/ …] by [facts].
+ By funding and improving [sporting grounds/community facilities], [D] may contend

<table>
<tr><td></td><td>that the trust promotes community welfare and social development beyond the mere provision of recreation. This provides the concrete public benefit required under the fourth head of charity, rather than merely reflecting good intentions or community sentiment (Kellie)
Thus, as the purpose of [advancing education/relief of poverty/age/impotent] is recognised under the [1st/2nd] head of charity, the [sporting or recreational activity] is linked to such purpose and the trust still holds a valid charitable purpose.

Youth welfare and child care:
OTF, [P] may argue that the trust's purpose being [purpose] constitutes [youth welfare/child care], which is not recognised as a charitable purpose in the Preamble.
However, [D] may counter that under Charitable Purpose Act 2004 (Cth), the definition of charity has been extended to include not-for-profit child care organisations. Further, by [purpose/facts], the trust provides a benefit to the community through [purpose/the support, protection, and development of children and young persons] Accordingly, [D] may argue that the trust confers the requisite public benefit and therefore constitutes a valid charitable purpose.

Illegal activities:
OTF, [P] may argue that the trust's purpose being [purpose] constitutes an illegal activity. Per Thrupp v Collett, a trust to commit a legal wrong is void for illegality. Similarly to how the trust to pay fines of convicted poachers in prison failed as it was contrary to public policy, [P] may argue that the trust [purpose] also is prejudicial to the administration of justice, as it [facts/offends public policy/offends statutory provisions/how the purpose is contrary to public benefit].
Thus, it is likely that the courts will not validate the [trust] as it is likely found to support illegal activities.</td></tr>
<tr><td colspan="2">✿ PUBLIC BENEFIT</td></tr>
<tr><td colspan="2">The next issue is to determine whether the trust is for the public benefit. In addition to the requirement that the purpose of the trust must be a valid charitable purpose, the trust must also be for the public benefit in order to qualify as a charitable trust.
Thus, [D] must be able to satisfy both limbs of the required test: The trust must be 'beneficial' to the public, and the benefit must be for the public or a section thereof.</td></tr>
<tr><td>Benefit</td><td>The first limb of the public benefit test involves proving that the trust's purpose is beneficial to the public.

Trusts for purposes under the 1st/2nd Head of Charity:
As established above, the [trust] likely constitutes a trust for the [relief of poverty/advancement of education]. Thus, there is a strong prima facie presumption that the trust is beneficial, and there will be no onus of [D] to prove the benefit.

However, per Re Pinion, this presumption can nevertheless be rebutted, and the benefit must be capable of proof (Gilmour v Coats). [D] may argue that the benefit of [benefit] is recognisable and capable of proof, as [facts supporting that the purpose has practically been beneficial]. Thus, the benefit is not a mere belief that the purpose is beneficial, but has actually [proven/been recognised] to be beneficial.

Trusts for other purposes beneficial to the community (4th Head of Charity):
As established above, the trust likely falls under the 4th Head of Charity from Pemsel. Accordingly, no presumption of benefit arises, and the onus rests on [D] to establish that the trust's purpose positively confers a benefit on the community that is capable of proof (Gilmour v Coats).

OTF, [D] may argue that, by [facts], the trust directly [provides resources/improves conditions/alleviates disadvantage] for [objects/community], providing a practical benefit capable of objective proof. Specifically, the trust's provision of</td></tr>
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	[funding/services/resources/support] enables [objects] to [access opportunities/overcome hardship/improve their welfare or living conditions], which they may otherwise have lacked access to. This benefit is not merely speculative or ideological, but actually produces identifiable improvements to the welfare and conditions of members of the community. Accordingly, the trust will likely be found to satisfy the public benefit requirement under the first limb of the test.
Public (or a section of the public)	The second requirement is that the trust is beneficial to the public, or a section thereof. Trusts for charitable purposes will be rendered invalid unless they benefit the public as a whole, or a significant section of the public, as opposed to the benefit of specific individuals (*Compton, Oppenheim*). Section of the public/Common calling: OTF, [trust] aims to [purpose]. Thus, the objects that will likely benefit from the trust are [demographic]. [D] may argue that such a demographic constitutes a section of the public. Per *Re Income Tax*, a section of the public means large groups defined by a common calling, faith, or geographical location. Here, as [demographic] are all [faith/geographical location/common calling/aspect they have in common], they may constitute the section of the public, as the [common aspect] quality that distinguishes them from other members of the community does not depend on their relationship with a specific individual, but rather [demographic] themselves form a section of the wider community. Groups with bars to membership (clubs, literary societies, trade unions, etc.): OTF, [trust] aims to [purpose]. Thus, the objects that will likely benefit from the trust are [demographic]. [P] may argue that such a demographic does not constitute a section of the public, as the group imposes a bar to membership, requiring persons to [be a member of the club/literary society/trade union] in order to actually receive the benefit of [purpose of the trust] (Lowe J per *Re Income Tax*). This likely fails the "no personal nexus" test as set out in Oppenheim, as beneficiaries are dependent on [their relationship] with the [specific individual/entity/club] in order to receive the benefit, establishing a personal nexus. Thus, the potential beneficiaries are private rather than public, failing the second limb for the element of public benefit. Only benefits specific individuals (e.g. trusts for employees, former employees, relatives, blood relationships, etc.): OTF, [trust] aims to [purpose]. Thus, the objects that will likely benefit from the trust are [demographic]. [P] may argue that such a demographic does not constitute a section of the public, as the group is defined by a personal nexus, being specific individuals who are [(former) employees of the company/relatives/blood relationships]. Similarly to how the trust for the children of specific individuals was held not to be a 'section of the public' in *Re Compton* and *Oppenheim*, the trust in question being for [demographic] is unlikely charitable because the nexus between them is the personal relationship to [a single propositor], making their benefit depend on the relationship with [a demographic]. Thus, the personal nexus being [common employment/blood relationships] is considered a "fluctuating body of private individuals" rather than a section of the public for charitable purposes (*Oppenheim*). While [D] may attempt to argue that the significant number of individuals included in the group makes it reasonable to constitute a section of the public, this argument will unlikely succeed, as as demonstrated in *Oppenheim*, the sheer number of potential beneficiaries does not transform a private class into a public one. Thus, the unacceptable nexus of the beneficiaries likely invalidates the 'public' requirement of the alleged charitable trust. Trusts for the relief of poverty: As established above, the trust's purpose is for the relief of poverty. Per *Oppenheim*, the personal nexus test does not apply to trusts for the relief of poverty, as the relief of poverty itself is considered so beneficial to the community such that the public element is inherent.

	Thus, the trust likely satisfies the second limb of the public benefit requirement. While [P] may argue that even such relief of poverty is not sufficient as it only applies to relatives or employees of the [settlor] rather than the wider community as a whole, [D] may counter per *Dingle v Turner* that trusts for the relief of poverty may only benefit a small number of people, wherein their common link is a single individual. Thus, the trust aiming to benefit [“poor employee”/”poor relations”/the relief of poverty for specific individuals] can be seen as a trust for a particular description of poor people, which still validates the public beneficial purpose.

✿ TRUSTS WITH MULTIPLE PURPOSES

OTF, [P] may also attempt to argue that the trust is invalid as a charitable trust as it also includes a non-charitable purpose, being [facts]. However, per s 7M of the *Charities Act 1978* (Vic), the non-charitable element of the trust may be severed from the charitable one.

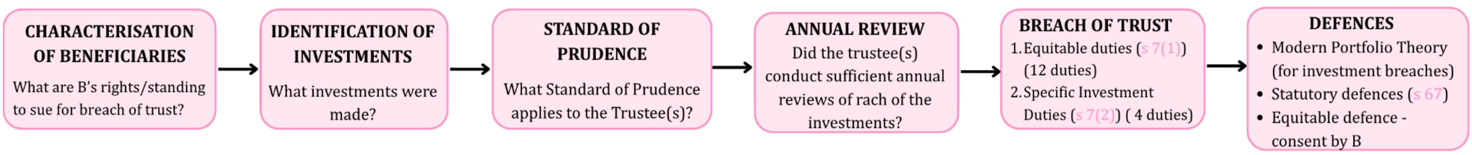
Trusts for both charitable and non-charitable purposes:
Thus, the court may cut out the non-charitable element of [non-charitable aspect] and construe the trust as if the purpose for [non-charitable purpose] was never included, thereby still leaving the element of [valid charitable purpose] as a valid charitable trust (s 7M CA; *Anglican Trusts*).

Trust broadly expressed so that it is potentially for charitable and non-charitable purposes:
Here, the language of the trust is rather broad, merely stating that its purposes were [“for such other purposes”/broad language]. Thus, as demonstrated in *Anglican Trusts*, the court may read down such [term/language] to only include general charitable purposes. Hence, per s 7M of the CA, the trust will not be invalid, and the [charitable aspect] is still applicable.

Gifts on trusts for organisations that have both charitable and non-charitable purposes:
Here, the trust is for [an organisation] that has both charitable and non-charitable aims. Thus, as demonstrated in *Victorian Women Lawyers Association*, the court may be able to read down the [trust] so that it is only to be used for the organisation’s charitable purposes. Hence, per s 7M of the CA, the trust will not be invalid, and the [charitable aspect] is still applicable.

TOPIC 6 + 7 - TRUSTEE’S DUTIES AND POWERS

BREACH OF TRUST:



OTF, it is first necessary to identify the beneficiaries of the trust and the nature of their interests.

+ Fixed Beneficiary:
  OTF, [beneficiary] is entitled to a specified share of the trust [income/capital], namely [facts]. Thus, [beneficiary] is a fixed beneficiary and possesses a fixed equitable interest in the trust property.
+ Discretionary Beneficiary:
  OTF, the trustee possesses a discretion whether, when, or in what amount to distribute trust property to [beneficiary]. Thus, [beneficiary] is likely a discretionary beneficiary. While [he/she] does not have a proprietary interest in any specific trust asset, [he/she] has e an equitable chose in action, meaning a right to be considered by trustee.
+ Life Tenant:
  OTF, [beneficiary] is entitled to receive the income generated from the trust property during [his/her] lifetime. Thus, [beneficiary] is a life tenant and holds a present income interest in the trust fund.
+ Remainder Beneficiary:
  OTF, [beneficiary] becomes entitled to the trust capital upon the occurrence of a future event, namely [death of