

INDIAN TRUSTS ACT

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Class-room live lectures edited, enlarged
and updated**

THE TRUSTS ACT

Act of 1882 with 2009 amendment

SYLLABUS

1. Definition: Trust, "Author of the Trust" "trustee", "beneficiary" "Trust property", "Breach of trust".
2. Creation of Trust: Lawful purpose, Essentials of a trust. Sns. 4 to 10,
3. Duties & Liabilities of the Trustees Sns .11 Liability of Trustee Sn. 23.
4. Rights & Powers of the trustee.
5. Disabilities of the trustees.
6. Rights & liabilities of the beneficiary-Doctrine of Tracing.
7. Discharge of a Trustee-
Appointment of a trustee by the court-
8. Extinction of Trust
Revocation of Trust.
9. Obligations in the nature of the trust.

Textual & Reference Books:

- N. Suryanarayana Iyer : *The Indian Trust Act.*
Bare Text : *The Trusts Act.*

QUESTIONS-BANK

1. Define a "trust"
What are the essentials of a valid trust.
2. What are the various duties and liabilities of a trustee.
Write a note on "breach of trust".
3. What are the powers of the trustee according to the Trusts Act.
Write a note on the disabilities of a trustee.
4. What are the liabilities of the beneficiary.
5. Discuss obligations which are in the nature of Trusts
(Constructive trusts)
6. Explain the different modes of discharge of a trustee.
7. When does a trust become extinct?
8. Write Short Notes on:
 - a. Cestui que Trus.t. (Beneficiary)
 - b. Resolution Trust.
 - c. Public & Private Trust.
 - d. Doctrine of Tracing.
 - e. Breach of Trust.
 - f. Beneficial interest.
 - g. Cypres doctrine.

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CHAPTER 1

TRUST & ITS ESSENTIALS

Ch. 1-1 **Trust:** Sn : 3

The Trusts Act in Sn.3 defines a trust: "Trust" is an *obligation* annexed to the ownership of property, and, arising out of confidence reposed in and accepted by the owner, or declared and accepted by him, *for the benefit of another*, or of another and the owner.

There are three features:

- i) The obligation arises out of the ownership of property which becomes vested in a person called the "trustee"
- ii) The obligation arises out of confidence reposed in & accepted by the owner.
- iii) The obligation is to use the property (called the trust property)- for the benefit of the "beneficiary"- (called *cestui que trust*).

Hence, the trustee, the trust property and the beneficiary are the three essentials that constitute a trust.

eg. A, (the author of the trust) transfers his property to T, the trustee, in trust to apply the income or the profits to provide medical facilities to blind persons. This is a valid trust.

Ch.1-2 Essentials:

The essentials of a valid trust are: i)

The purpose must be lawful Sn.4

- ii) Formalities to transfer the property must be followed Sn.5.
- iii) The trust must be created with reasonable certainty. Sn.6
- iv) The author of the trust must be competent to contract Sn.7
- v) The beneficiary must have the capacity to hold the property
- vi) Trust property must be transferable.

vii) The trustee must accept the trust.

Essentials explained, i) **Lawful purpose:**

A trust may be created for any lawful purpose: otherwise the trust is void. Where the objects are mixed up and one is legal and the other unlawful and the objects are inseparable, the entire trust is void.

The purpose of a trust is not lawful if: i)

it is forbidden by law.

ii) is of such a nature that, if permitted, it would defeat the provision of any law.

iii) it is fraudulent.

iv) it involves or implies injury to the person or property of another or

v) if the court considers it as immoral or opposed to public policy.

eg. 1. A conveys his property to B to apply the profits to carry on smuggling business. The trust is void.

2. A conveys his property in trust to B, for a period beyond the perpetuity rule. The trust is void.

ii) **Formalities:**

If the trust property consists of immovable property, then it must be in writing, signed by the author of the trust and duly registered. It may be created by will in which case registration is optional.

If the trust consists of movable property, there must be a declaration to vest the property in the trustee and ownership must be transferred to the trustee with the direction to hold the trust.

iii) **Reasonable Certainty:**

The author of the trust must indicate with reasonable certainty by word or act.

a) his intention to create a trust.

b) the purpose of the trust

c) the beneficiary

and d) the trust property, -and- the property must be transferred to the trust.

eg. (i) A bequeaths his property to B, hoping he will continue in his family and pays A's debts. This is not a trust, but, only a condition.

iv) **Competency of the author :**

The author of the trust. must be legally competent. However, by or on behalf of a minor, a trust may be created with the permission of the court.

v) **Trust Property :**

It may be any property transferable to the beneficiary. This is subject to transfer of Property Act Sn.6.

vi) **Beneficiary :**

The Beneficiary must have the legal capacity to hold the property. The trust is not a "must" to the beneficiary. He may renounce his interest by giving notice to the trustee.

vii) **Acceptance of trust:**

Every person who is legally competent may be a trustee. He is

not bound to accept the trust. He may accept expressly or by implication.

Ch. 1-3 Kinds of Trusts:

Trusts are either private or public.

The Supreme court has distinguished a private from a public trust in Devakinandan V Muralidhar (1957) and

Ram Swarup Dasji V Sahi 1959.

Well-known jurist Lewis in his book "Trusts" has drawn lines to distinguish a private from a public trust.

Public

1. The beneficial interest is vested in an uncertain & changing body of persons either the public or some portion thereof answering a description.

e.g. Trusts for deaf & dumb; for sports, Cancer Hospital, establishment of institutions for general public utility etc. All trusts for charitable trusts are public. 2 It is of permanent character once opened, it cannot be terminated; funds cannot be deviated for any other purpose than the defined objective of it. Period is indefinite.

3.1 In public trust, there is no question of condoning the trustee, they become liable as per Sn 23 of the Trust Act.

Private

1. The beneficiaries are definite and ascertained individuals & can be ascertained definitely.

e.g, family trusts for education of children; there is no such thing as private charitable trust. All such trusts are public.

2. Private trust may be for limited period for a limited purpose. It may be modified, or determined as per the trust deed.

3. In private trust, the beneficiary may condone the breach or maladministration by the Trustees

CHAPTER 2

DUTIES & LIABILITIES OF TRUSTEES

Ch. 2-1 Duties

The Trusts Act has enumerated the duties of the Trustees,

i) **To execute the trust: Sn.11**

The primary duty of the trustee is to fulfil the 'purpose' of the trust and to obey the directions of the Author of the trust, given at the time of its creation.

Exceptions:

a. Modification is allowed with the consent of all the beneficiaries (if all of them are legally competent). If beneficiary is not competent, the consent may be given by the concerned court.

b. Trustee need not obey a direction which is illegal, impracticable or injurious to the beneficiaries.

eg. A, a trustee is authorised to sell by public auction. He cannot sell under a private contract.

ii) **to act with diligence: (Sn.12)**

A trustee must acquaint himself with the nature and circumstances of the trust property; he must obtain a transfer to his name of trust property. He must get back moneys invested in insufficient or hazardous security.

eg. A, B & C are trustees. Certain moneys are in the hands of B & C longer than required. A must not allow these moneys to be with B & C any longer.

iii) **To secure title (Sn.13)**

The trustee should maintain and defend all suits and take other reasonable steps to preserve and to protect the title of the property. should not set up a title adverse to the interest of the beneficiary (Sn. 14)

iv) **Standard of care: (Sn.15)**

The trustee should use as much care and diligence in the management of the trust property as a man of ordinary prudence could deal in respect of his own property. This is the standard of care fixed by law. If he so acts, he will not be responsible for any loss, destruction or deterioration of the trust property.

eg. i) A, a trustee is to sell a trust property by auction after duly advertising. He fails to advertise, but sells without due diligence and care. A is liable for losses, if any.

ii) A the trustee of B, fails to pay the premiums though he had funds on hand. The policy is forfeited. A is liable for the losses.

v) **Conversion:**

When the trust is for the benefit of several persons in succession, under the doctrine of conversion, the trustee should convert any wasting or perishable property into a property of a permanent and profitable character.

vi) **Impartiality:**

When there are two or more beneficiaries, the trustee should be impartial. He should not execute the trust for benefit of one at the expense of the other.

vii) **To prevent waste:**

When a trust is created for the benefit of several persons in succession, then the trustee should take all measures to prevent any act of the beneficiary-in possession, which is destructive or permanently injurious to the property.

viii) **Accounts:**

The trustee should maintain clear and accurate accounts of the trust property and should furnish full and accurate information thereof.

ix) **Investment:**

When the trust consists of money and cannot be immediately applied for the purposes of trust, then the money must be invested in the State or Central Government securities as per Sn.20, and in no other. This is subject to the direction of the trust deed.

Ch. 2-2 Liabilities:

Liability for breach of trust (Sn.23)

Breach of trust means a breach of any duty imposed on a trustee, by any law for the time being in force. It includes the violation of any direction given in the trust-deed. The trustee is liable to make good the loss sustained by the beneficiary or the trust property, due to breach committed by the trustee.

This is subject to certain exceptions:

1. Fraud by beneficiary or notification by him of a breach with full knowledge thereof.

2. Trustee is liable to pay *interest*, in the following:

a) When he has actually received interest, but has not accounted for.

b) where he ought to have received, but has failed to collect,

c) where he causes unreasonable delay in paying to the beneficiary.

d) the rates of interest must be as per the trusts Act. He must pay actual interest received in (a) and pay simple interest in (b) & (c) above. But, he must pay compound interest if a breach committed by

him in not investing in the moneys as per the Trust Act or in not using in trade or business as required under the trust deed.

1. A trustee allows trust property in the hands of X, improperly for a long time and is lost. A is liable to make good the loss, but he is not liable to pay interest.

2. A, a trustee keeps trust money for one year without making investment in securities. He is liable to pay interest.

3. A, a trustee is directed to invest in mortgage of immovable property. A fails. He is liable for trust money and interest.

ii) No set off:

A trustee is not allowed to make a set-off of a loss against a gain he may have made with the use of trust property.

iii) Not liable to predecessor's default:

A trustee is not liable for the defaults committed by his predecessor. He is liable only for his default or breach of trust.

iv) Not liable for Co-trustee's defaults:

The general rule is that a co-trustee is not liable for the acts of the other trustees. This is subject to exceptions:

1. failing to observe the proper application of trust property, by other trustees,

2. failure to make enquires duly or

3. concealing the breach of failure to take steps to protect the beneficiary's interest.

Hence, the trustee is liable, in these cases for the acts of the co-trustees.

v) Several Liabilities & Contribution:

The trustees are jointly and severally liable for the breaches committed by them. They must make good the loss. Each trustee has a right contribution from others. However, a trustee who commits a fraud is barred from instituting a suit for contribution.

CHAPTER 3
RIGHTS & POWERS OF TRUSTEES
(Sns 31 to 45)

Ch. 3. Rights:

i) Rights to title deeds:

A trustee has a right to the possession of the trust deed and all title-deed relating to the trust property.

ii) Right to reimbursement:

A trustee is not entitled to any remuneration unless the trust deed has provided for it. However, he has a right to reimbursement of all expenses incurred by him in the execution of the trust, in its management and administration. If he has paid from his pocket, he has a first charge on the trust property.

iii) Right to indemnity from a gainer:

Where a person reaps a benefit, as a result of a breach of trust, the trustee has a right to indemnity from such a gainer.

iv) Right to Court's opinion:

A trustee may apply by petition to the principle Civil Court, for its opinion, advice or direction on any matter relating to the administration or management of the trust property, and, he is deemed to have discharged his duties if he follows the orders of the Court.

v) Right to settlement of accounts:

On completion of his duties, the trustee is entitled to have the trust accounts duly examined and settled. If nothing is due to the beneficiary, the trustee has a right to an endorsement to that effect.

vi) General Authority of the trustee:

The trustee is empowered to do all acts which are reasonable and proper, in the interest of the trust. His power or authority generally springs from the trust deed and the Trusts Act.

Powers of the Trustee:

i) Power to sell trust property:

Where the trust-deed empowers the trustee to sell the trust property, he may sell either in lots or together by public auction or private contract. This is of course subject to any direction given in the trust deed.

ii) Power to sell under special conditions:

A trustee who is selling the property may impose special conditions of sale as may be reasonable as to title etc. He may buy or re-sell

property at his discretion, which must be reasonable eg. A bequeaths property to B with a direction to sell it with all speed. The trustee may use his discretion in the interest of the trust.

iii) Power of convey:

The trustee who effects the sale, has the power to convey the property sold, as may be necessary.

iv) Power to vary investments:

The trustee may vary the investments of the trust; He may invest in Government securities as required in Sn.20, or he may vary. This power is subject to any direction contained in the trust deed.

v) Power to apply minor's Property:

As regards the minor's property held by a trustee, the rule is that the proceeds are to be spent for the maintenance of such a minor, or for his education or for worship, marriage, funeral etc.

vi) Power to issue receipts:

A trustee has powers to issue receipts in writing for afly money, security or other movable property.

vii) Power to compound:

The sole trustee or trustees may allow more time or accept a compromise in respect of debts due. Of course, the trustee must act in good faith.

CHAPTER 4

DISABILITIES OF TRUSTEES

Ch. 4 Disabilities:

i) **No renunciation:** A trustee, after accepting the trust cannot renounce. He may, however, renounce with the permission of the Court, with the consent of the beneficiary (*sui generis*), or as per the trust-deed.

ii) **No delegation:** The rule is that the trustee should not delegate his office or his duties to any other person. He may delegate under 1. Provisions of the trust deed. 2. where there is necessity or 3. where the beneficiaries give their consent (beneficiaries must be *sui generis*, i.e., attained majority)

A, a trustee is empowered under the trust deed to sell the trust property. A may appoint an auctioneer for selling.

iii) **Co-trustees:** Where there are two or more trustees, all must join in the execution of the trust. This is subject to the directions given in the trust deed.

iv) **Discretion:** The exercise of good faith or reasonable exercise of power, by the trustee is subject to and controlled by the courts.

v) **No remuneration:** The general rule is that the trustee is not entitled to remuneration. However, if the trust deed has provided for it, or the court fixes the same, or if the beneficiaries agree, then he is entitled to remuneration. This does not apply to an official trustee, administrator general etc.

vi) **Not for personal use:** A trustee should not use or deal with the trust property for his own benefit or for any purpose other than what is provided in the trust-deed.

vii) **Not to buy:** No trustee directly or indirectly, should buy the trust property. He is also prohibited from buying the interests of a beneficiary except with the permission of the court.

CHAPTER 5
RIGHT & LIABILITIES OF THE BENEFICIARY
(CES QUI TRUST)

Ch. 5-1 Introduction:

A trust is an obligation, annexed to the ownership of property arising out of confidence reposed in or accepted by owner for the benefit of another ; or another or owner. Person who gets benefit is called Ces qui trust or beneficiary. **The beneficiary should have legal capacity to hold property.**

Rights of the Beneficiary:

The general rule is that the beneficiary has no estate or interest in the trust property. He has only the right to sue the trustee.

i) Rights to the rents & Profits:

The beneficiary has a right to the rents and profits, where the deed directs the rents and profits are to be paid to the beneficiary.

ii) Right to specific execution:

The beneficiary has a right to have the intention of the author of the trust "specifically executed" as per the trust deed. If the deed so directs, the beneficiary or beneficiaries (who are legally competent) may require to get the trust property transferred to him or them (Exception a married woman cannot claim such a transfer)

eg. 500 security bonds are entrusted to the trustee, A, to accumulate the interest and to pay the gross amount to B, the beneficiary on his attaining 21 years. B, at 21, may require the transfer of the entire property to him.

iii) Rights to inspect:

The beneficiary has a right to inspect and to take out copies of trust deed, title deed, the accounts and vouchers etc after giving due notice to the trustee.

iv) Right to transfer beneficial interest:

The beneficiary, if legally competent, may transfer his interest inter vivos or by will He may mortgage or deal with as his own property; This is subject to the trust deed.

A married woman has no such right.

v) Right to sue:

The rule is that a trust should not fail for want of a trustee. Hence, where no trustees are appointed, or where all die, or disclaim

or discharged under law, or where for any other reason a trust cannot be executed or becomes impossible, the beneficiary may institute a suit in the court. The Court shall execute the trust, until the trustees are appointed.

vi) Right to have proper trustees:

A beneficiary has a right to proper trustees or for a proper number of trustees, subject to the trust deed.

This right is essential as the cestui que trust depends on the faith and integrity of the trustee. It is natural that it must be in the hands of proper custodians of the confidence reposed in them.

Persons disqualified: Alien enemy, insolvent persons, persons domiciled abroad, a married woman and a minor.

Administration: Where the trust involves the receipt and custody of money, there must be at least two trustees.

eg. B, a beneficiary proves that A, the trustee is in insolvent circumstances or that he has improperly sold a part of trust property. B may obtain a receiver of the trust property from the court.

vii) Right to compel to act:

The beneficiary has a right to compel the trustee to perform his duty and to refrain him from doing any act which may result in a breach of contract.

A, a trustee is about to sell trust property, in violation of the trust deed, at a low price. B, the beneficiary may sue for an injunction to restrain A from selling.

viii) Right to remedy against wrongful purchase by trustee:

Where a trustee has made a wrongful purchase of the trust property, the beneficiary has a right to sue for a declaration that the property is a trust property or to get retransferred to the trust.

ix) Doctrine of Tracing:

This means the beneficiary has a right to follow the trust property which has gone to third persons, against the intentions of the trust. In such a case, he may sue for a declaration that such a property is part of the trust property.

If such property has been disposed of and the money or other property can be traced in the hands of the transferee or his legal representatives, or legatees etc., the beneficiary, has his rights as in the trust deed, and, hence, may get back the property to the trust, if the property can be identified.

A, trustee without authority invests Rs.20,000/- in purchasing a piece of land. B, the beneficiary is entitled to it.

Conversion: If the property is converted into another form, evidence may be led in to prove the same & to claim.

Exception:

A transferee, who without notice of trust buys or takes in good faith, for full consideration is protected.

Ch. 5-2 Liabilities of Beneficiaries:

The Trusts Act deals with the circumstances, wherein the beneficiary, as a privy to the breach of trust, becomes liable. He is liable: when he actually joins in the breach of trust,

ii) when he obtains advantage from a breach (without the consent of other beneficiaries).

iii) when he becomes aware of a breach, but conceals it without taking any steps.

iv) when he deceives the trustee and induces him to commit a breach.

Impounding:

In such a case, the interest of such a beneficiary may be impounded till the loss to the trust estate is made good. Even if the interest is assigned, it may be impounded. However, the transferee without notice, who takes for full consideration in good faith is protected.

CHAPTER 6

VACATION & APPOINTMENT

Ch. 6-1 Vacation:

The office of the trustee is vacated

i) by his death or ii) by his discharge from the office.

i) Death:

a. where there is a sole trustee the office becomes vacant, when he dies. The office does not devolve on any person. The Trust Act is silent in such a case.

b. where there are more than two trustees, on the death of one trustee, the authority devolves on the other or others.

ii) Discharge:

A trustee is discharged from his office:

a. by the extinction of the trust, b.) by the completion of the duties under the trust, c.) by any means as prescribed by the trust deed. d.) by appointment of a new trustee.

e. by consent of himself and all the beneficiaries (Legally competent). f. by the court under a petition to discharge. The court may discharge if it finds sufficient reasons for the discharge.

Ch.6-2 Appointment of New trustees:

This is of two types : i. out of court, ii. by the court. :

1) Out of court:

Circumstances when an appointment may be made: when a trustee dies, or for over 6 months he is absent from India, or, is insolvent or refuses to accept or becomes unfit etc.,

By whom 1) The appointment may be made by any person, nominated in the trust for that purpose.

2) If there is no such person, then the author of trust, (if alive), or the continuing trustees, or the retiring trustees, may take such an appointment. It must be in writing duly signed,

ii) Appointment by court:

When out of court appointment is found to be impracticable, to the court for the appointment of a new trustee.

The court appoints taking into consideration the wishes of author trust or author's nominee, the interests of the beneficiaries and promotion of the trust.

On such appointment the trust property becomes vested in the new trustees jointly with the continuing or surviving trustees.

CHAPTER 7
EXTINCTION OF A TRUST

Ch.7. Extinction

The trust is extinguished:

- i) when the purpose is completely fulfilled.
- ii) when its purpose becomes unlawful.
- iii) when the fulfilment becomes impossible by destruction of property.
- iv) when the trust, being revocable, is expressly revoked by the author.

Revocation of Trust:

- i) A trust created by the testator under a will may be revoked at the pleasure of the testator.
- ii) Any other trust, not created under a will, may be revoked.
 - a. By beneficiaries consent (if all are legally competent)
 - b. If revocation is expressly reserved by the author, under the trust deed.
 - c. if trust is oral, with right to revoke the trust can be revoked.
 - d. when a trust is created for the payment of the debts of the author of the trust and not yet communicated to the creditors, then the author may revoke at his pleasure.

A, is a trustee to sell the property and to pay the creditors from the proceeds. If creditors are not informed, author may revoke. But, if they are parties to the agreement, the trust cannot be revoked.

CHAPTER 8 CONSTRUCTIVE TRUSTS

Ch. 8. Constructive Trusts:

There are various relationships in the nature of a trust, recognised by law. Here, the relationships are similar to those between the trustee & the beneficiary but in reality they are not "trusts" according to the definition of trust (Sn.3). These are called constructive trusts i.e, obligations in the nature of a trust.

Constructive trusts are of two kinds:

(1) Resulting Trusts. These are stated in Sns.81 to 87 of the Trusts Act.

(2) Non-resulting trusts: They arise by operation of law. There is no prior transfer of interest by one person to another. The acquirer of such a property must hold in 'trust' by operation of law and these are dealt with in Sns.88 to 94 of the Trusts Act.

Resulting Trusts:

i) Not disposing of beneficial interest: (Sn.81)

Where the owner of property transfers his property, but the attendant circumstances show that he did not intend to transfer the beneficial interest therein, the transferee must hold such property for the benefit of the owner or his legal representatives.

e.g., A conveys land to B without consideration. No trust is created. The circumstances do not show that he intends to transfer the beneficial interest. B must hold for the benefit of A.

ii) Benami transaction (sn.82)

When property is transferred by one to another for a consideration paid by another, without any intention to benefit that person,

such a transferee must hold the property for the benefit of the person who pays consideration. This is the case of benami transaction.

iii) Inexhaustible Property: (Sn. 83)

When a trust is created by the author, it is possible, that it may be incapable of being executed, or, it may be possible to execute without exhausting the trust property. In such a case the trustee must hold such property for the benefit of the author or his legal representative.

e.g., A created a trust with B as the trustee. B renounces his interest. B must hold for the benefit of A.

iv) Illegal Purpose.

Where there is a transfer of property for an illegal purpose and such purpose is not put into execution, the transferee must hold the property for the benefit of the transferor.

Bequests : The above rule applies in case of bequests by a testator for an unlawful purpose.

v) Property held under fraud etc.

Where property is transferred according to a rescindable contract or under a contract induced by fraud or mistake, the transferee must hold the property for the benefit of the transferor. Of course, if money has been paid, that must be repaid by the transferee to the transferor.

vi) **Debtor becoming Creditor's representative:**

When a debtor becomes an executor or other legal representative of the creditor, he must hold the property, for the benefit of the persons interested therein.

Non Resulting Trusts : Sns. 88 to 94

i) **Advantages gained by fiduciary:**

Where a fiduciary using his position, gains for himself any pecuniary (money) advantage, he must hold that property for the benefit of such person.

Fiduciary includes a trustee, executor, partner, agent, director of a Company, a legal adviser or other persons who are bound to protect the interests of others.

• e.g. A, a trustee uses the trust money for his own purposes. A must account for the profits arising from such a user.

2)A, a partner buys for himself a site using the money's of the firm. He must hold such land for the benefit of the firm.

ii) **Advantage gained by undue influence:**

Where by using undue influence any advantage is gained by a person, without paying consideration, he must hold such property in trust for the benefit of the person so prejudiced. Parent & child, Doctor & patient, Advocate & client, Guardian and ward, trustee & beneficiary etc are instances where such an undue influence may be exercised. Onus is on the person who was in a dominating position to show that he has not used undue influence.

iii) **Advantages gained by qualified owner:**

If a tenant for life, a co-owner, a mortgagee or such qualified owner, uses his position as such, to gain advantage, to the detriment of others he must hold such gain for the benefit of persons who were interested in such a property.

iv) **Acquiring property with notice of prior contract:**

When a person acquires property with notice of a prior contract (e.g. contract for sale, mortgage etc) which contract can be

specifically enforced under the specific relief Act, such a person must hold the property in trust for the benefit of the transferor to the extent of the contract.

v) **Purchase to hold in trust:**

Where a person contracts to buy a property to hold in trust for certain beneficiary, & buys as per the contract, he must hold that property in trust.

THE END

REFERENCE SECTION

Selected Sections THE INDIAN TRUSTS ACT, 1882

Sn. 3. Interpretation-clause "trust":- A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner: "author of the trust": the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

CHAPTER II

OF THE CREATION OF TRUSTS

4. Lawful purpose.-A trust may be created for any lawful purpose.-The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void. Explanation.--In this section the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

5. **Trust of immoveable property.**-No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of moveable property.-No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee. These rules do not apply where they would operate so as to effectuate a fraud.

6. **Creation of trust.**-Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

(a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not collected by the All India Christian Council, www.christiancouncil.in Page 4 of 32 indicated with reasonable certainty.

7. **Who may create trusts.**-A trust may be created-- (a) by every person competent to contract, 1* and, (b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor; but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. **Subject of trust.**-The subject-matter of a trust must be property transferable to the beneficiary. It must not be merely beneficial interest under a subsisting trust.

9. **Who may be beneficiary.** -Every person capable of holding property may be a beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

10. **Who may be trustee.**-Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract. No one bound to accept trust. . No one is bound to accept a trust.

Acceptance of trust. . A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance. Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him. A disclaimer by one of two or more co-trustees vests the trust- property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

(a) A bequeaths certain property to B and C, his executors, as Collected by the All India Christian Council, www.christiancouncil.in Page 5 of 32 trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

CHAPTER III

OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. **Trustee to execute trust.**-The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract. Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction. Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries. Explanation.--Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

(a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract. (b) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

12. **Trustee to inform himself of state of trust-property.**-A trustee is bound to acquaint himself, as soon as possible, with the Collected by the All India Christian Council, ww.christiancouncil.in Page 6 of 32 nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co- trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. **Trustee to protect title to trust-property.**-A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust- property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877 (3 of 1877), 1* the trustee's duty is to cause the instrument to be registered. 14. **Trustee not to set up title adverse to beneficiary.**-The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

15. **Care required from trustee.**-A trustee is bound to deal with the trust-property as carefully as a

man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker. B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

16. Conversion of perishable property.-Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property of a in to property permanent and immediately profitable character.) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

17. Trustee to be impartial.-Where there are more beneficiaries Collected by the All India Christian Council, www.christiancouncil.in Page 8 of 32 than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another. Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

18. Trustee to prevent waste.-Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

19. Accounts and information.-A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

20. Investment of trust-money.-Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:-
(a) in promissory notes, debentures, stock or other securities ^{1*}[of any State Government or] of the Central Government or of the United Kingdom of Great Britain and Ireland:

^{2*}[Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purposes of this clause, to be securities of such Government;]

(b) in bonds, debentures and annuities ³

(e) on a first mortgage of immovable

^{4*}(ee) in units issued by the Unit Trust of India under any unit scheme made under section 21 of the Unit Trust of India Act, 1963; or;

^{2*}[20A. Power to purchase redeemable stock at a premium.-(1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

22. Sale by trustee directed to sell within specified time.-Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it,

and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Liability for breach of trust.-Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:-

(a) where he has actually received interest: (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary: (c) where the trustee ought to have received interest, but has not done so: (d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest collected by the All India Christian Council, www.christiancouncil.in Page 12 of 32 (with half-yearly rests) at the same rate:

(f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss. (c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) **The duty of the trustee** is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary.

(h) **The trust-property consists of land.** The trustee sells the land to a purchaser for a consideration without notice of the trust. Collected by the All India Christian Council, www.christiancouncil.in Page 13 of 32 The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. No set-off allowed to trustee.-A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

25. Non-liability for predecessor's default.-Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable-- (a) where he has delivered trust-property to his co-trustee without

seeing to its proper application: (b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

27. Several liability of co-trustees.-Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees. But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

28. Non-liability of trustee paying without notice of transfer by beneficiary.-When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

29. Liability of trustee where beneficiary's interest is forfeited to the Government.-When the beneficiary's interest is forfeited or awarded by legal adjudication 1*[to the Government], the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as 2*[the State Government] may direct in this behalf.

30. Indemnity of trustees.-Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV

OF THE RIGHTS AND POWERS OF TRUSTEES

31. Right to title-deed.-A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

32. Right to reimbursement of expenses.-Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation, or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous over-payment. Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

33. Right to indemnity from gainer by breach of trust.-A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

34. Right to apply to Court for opinion in management of trust-property.-Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal. The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. Right to settlement of accounts.-When the duties of a trustee, as such, are completed, he

is entitled to have the accounts of his administration of the trust-property examined and settled; and, Collected by the All India Christian Council, www.christiancouncil.in Page 16 of 32 where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

36. General authority of trustee.-In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

37. Power to sell in lots, and either by public auction or private contract.-Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs

38. Power to sell under special conditions. Power to buy-in and re-sell.-The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

39. Power to convey.-For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

40. Power to vary investments.-A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature :

41. Power to apply property of minors, etc., for their maintenance, etc.-Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property ; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen :

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year. Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

42. Power to give receipts.-Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power ; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

43. Power to compound, etc.-Two or more trustees acting together may, if and as they think fit,--
(a) accept any composition or any security for any debt or for any property claimed ;
(b) allow any time for payment of any debt ; (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust ; and,
(d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to

them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

44. Power to several trustees of whom one disclaims or dies.-When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

45. Suspension of trustee's powers by decree.-Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V OF THE DISABILITIES OF TRUSTEES

46. Trustee cannot renounce after acceptance.-A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) Collected by the All India Christian Council, www.christiancouncil.in Page 19 of 32 if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. Trustee cannot delegate.-A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.-The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

48. Co-trustees cannot act singly.-When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provide.

49. Control of discretionary power.-Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

50. Trustee may not charge for services.-In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator, or person holding a certificate of administration.

51. Trustee may not use trust-property for his own profit.-A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

52. Trustee for sale or his agent may not buy.-No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy

53. Trustee may not buy beneficiary's interest without permission.-No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary. **Trustee for purchase.**-And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

54. Co-trustees may not lend to one of themselves.-A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the

personal security of, himself or one of his co-trustees.

CHAPTER VI

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

55. Rights to rents and profits.-The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

56. Right to specific execution.-The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest ;

Right to transfer of possession.-and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require Collected by the All India Christian Council, www.christiancouncilhas improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

61. Right to compel to any act of duty.-The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Wrongful purchase by trustee.-Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section--

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the

facts of the case and of his rights as against the trustee.

63. Following trust property--into the hands of third persons; into that into which it has been converted.-Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

(a) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs.10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

64. Saving of rights of certain transferees.-Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of--

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or (b) a transferee for consideration from such a transferee.

A judgement-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a bona fide holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872 (9 of 1872), section 108, or the liability of a person to whom a debt or charge is transferred. Collected by the All India Christian Council, www.christiancouncil.in Page 24 of 32

65. Acquisition by trustee of trust-property wrongfully converted.-Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

66. Right in case of blended property.-Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

67. Wrongful employment by partner-trustee of trust-property for partnership purposes.-If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations

68. Liability of beneficiary joining in breach of trust.-Where one of several beneficiaries--

(a) joins in committing breach of trust, or (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or (d) has deceived the trustee and thereby induced him to commit a breach of trust, the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated. Collected by the All India Christian Council, www.christiancouncil.in Page 25 of 32

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Rights and liabilities of beneficiary's transferee.-Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII

OF VACATING THE OFFICE OF TRUSTEE

70. Office how vacated.-The office of a trustee is vacated by his death or by his discharge from his office.

71. Discharge of trustee.-The trustee may be discharged from his office only as follows:-

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or (f) by the Court to which a petition for his discharge is presented under this Act.

72. Petition to be discharged from trust.-Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

73. Appointment of new trustees on death, etc.-Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from 1*[India], or leaves 1*[India] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by--

(b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it. On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

74. Appointment by Court.-Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rule for selecting new trustees.

Rule for selecting new trustees.-In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

75. Vesting of trust-property in new trustees.-Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee Collected by the All India

Christian Council, www.christiancouncil.in Page 27 of 32 as the case may require.

Powers of new trustees. -Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

76. Survival of trust.-On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII

OF THE EXTINCTION OF TRUSTS

77. Trust how extinguished.-A trust is extinguished-- (a) when its purpose is completely fulfilled; or (b) when its purpose becomes unlawful; or (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or (d) when the trust, being revocable, is expressly revoked.

78. Revocation of trust.-A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only-- (a) where all the beneficiaries are competent to contract-- by their consent; (b) where the trust has been declared by a non-testamentary instrument or by word of mouth--in exercise of a power of revocation expressly reserved to the author of the trust; or

(c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors--at the pleasure of the author of the trust.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. Revocation not to defeat what trustees have duly done.-No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust. Collected by the All India Christian Council, www.christiancouncil.in Page 28 of 32

CHAPTER IX

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. Where obligation in nature of trust is created.-An obligation in the nature of a trust is created in the following cases.

83. Trust incapable of execution or executed without exhausting trust-property.-Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

A conveys certain land to B-- "upon trust," and no trust is declared; or "upon trust to be thereafter declared," and no such declaration is ever made upon trusts that are too vague to be executed; or upon trusts that become incapable of taking effect; or "in trust for C," and C .

84. Transfer for illegal purpose.-Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Bequest for illegal purpose.-Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the

property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

86. Transfer pursuant to rescindable contract.-Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

87. Debtor becoming creditor's representative.-Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

88. Advantage gained by fiduciary.-Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

89. Advantage gained by exercise of undue influence.-Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

90. Advantage gained by qualified owner.-Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

91. Property acquired with notice of existing contract.-Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

92. Purchase by person contracting to buy property to be held on trust.-Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

93. Advantage secretly gained by one of several compounding creditors.-Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

THE END