



## Indian Trust Act 1882 Unit 5

Property law (Karnataka State Law University)



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## TRUST & ITS ESSENTIALS

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 feature.

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.

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

## DUTIES & LIABILITIES OF TRUSTEES

### 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.

Liabilities:

Liability for breach of trust (Sn.23)

i). 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.

## RIGHTS & POWERS OF TRUSTEES

(Sns 31 to 45)

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 any 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.

## DISABILITIES OF TRUSTEES

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.

## RIGHT & LIABILITIES OF THE BENEFICIARY

### (CES QUI TRUST)

#### 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.

#### 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:

- i). 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.



## VACATION & APPOINTMENT

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.

Appointment of New trustees:

This is of two types :

- i. out of court, ii. by he 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.

## EXTINCTION OF A TRUST

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 first, 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.

## CONSTRUCTIVE TRUSTS

### 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.