

**SYLLABUS**

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2	Origin and growth of equity in England
3	Development of law: common law and equity
4	The Maxims of equity
5	Trusts: classification, (Including Religious, Constructive Trust, Charitable Trust and Public Trust)

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1	Sale
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UNIT 1

**Introduction**

**1. The concept of trust: distinction with agency and contract**

A trust is when one person assumes legal ownership of a property but only for the benefit of another. It is usually used to make someone a temporary owner of a property whilst the intended owner is not ready (eg, a father creates a trust effective until his child grows up). It is facilitated by equity:

The original owner of the property, the settlor, splits up the legal and equitable ownership in the transfer of property. In the case of a will, the person is called a 'testator'.

- The legal title is transferred to the trustee.
- The equitable title is transferred to the beneficiary/object.
- The trustee, the trust property and the beneficiary are the three essential elements of a trust.

The trustee assumes a fiduciary obligation towards the beneficiary (ie, he holds the property for the benefit and interests of the beneficiary). The trust comes to an end when all equitable and legal title are joined in one person (ie, when the legal title also transfers to the beneficiary). In legal terms, the trust ends when the trust 'vests' in the beneficiary.

This usually occurs on a specified future date or after a fulfillment of a condition.

A trust makes use of equity - in common law, the trustee would have been the complete owner of the property and there would have been nothing that the beneficiary could have done to receive it back.

The imposition of a fiduciary obligation ensures that the trustee acts for the benefit of the beneficiary whilst it is the owner of the property.

A trust is the creature of Equity and not of common law. Equity can be described as the body of rules which evolved from those rules applied and administered by the Court of Chancery before the Judicature Act 1873. Rules of Equity and common law had been concurrently applied and administered in all courts. Equity puts a gloss over common law based on moral principles. The aim is to provide justice and fairness to people affected by the common law system.

Equity has recognized certain rights and concepts which were not recognized by the common law. If we look at it from the common law view, when there is a contract between A and B, C cannot take advantage of the contract. There is no privity of the contract. For trusts, if the settlor dies, it's a bipartite relationship. If there is no privity, the beneficiaries cannot take advantage of the contract. Therefore, it is the most sophisticated concept created by Equity.

The trust is generally known to be the most new contribution to the English legal system. Today, in all common law systems, trusts play an important role, and their achievement has directed some civil law jurisdictions to integrate trusts into their civil codes, like France since 2007, and amended in 2009. Trusts are recognized internationally under the Hague Convention on the Law Applicable to Trusts and on their Recognition which also regulates conflict of trusts.

The origins of the fideicommissum can be traced back to early Roman law. The fideicommissum is often referred to as a civilian trust, however, this is not quite the case. This institution has changed into a number of subspecies in the modern context, that must be looked on a jurisdiction-by-jurisdiction basis, as there is a variation in its application in different civil law countries.

One of the earliest uses of fideicommissum has its source from the provision of Roman law that restricted inheritance from the head of the Roman family, to non-citizen heirs. Furthermore, there was no substantial means of effecting succession to female heirs irrespective of their citizenship. Through fideicommissum, the Roman testator/settler could provide for his ineligible heir to benefit from the estate by indirect means. By this arrangement the Roman citizen would appoint a "trusted" friend to take the property subject to a moral obligation to restore the true intended recipient.

This comes closely to the early English use, particularly in that the trusted friend as fiduciary, to manage the property until it was restored to the fideicommissary, that is, the beneficiary. As with the trust, the obligation to the beneficiary was not one for which he could seek legal remedy, for there was none.

### Trust and agency

#### Agency

Agency is also known as “mandate”. It is where a person appoints a second person called an “agent” for duties to be executed on his behalf. The agent will execute orders given to him by the owner of the property. Trust resembles agency in the sense that the persons who execute orders are not the absolute owners of the property. The deference deduced between them is that a trustee is the owner of the property he administers whereas an agent does not possess a legal title. On the other hand, the trustee, being the legal owner is personally liable on all contracts as an agent, the latter is not personally liable. The contract is with the principle. Moreover, the authority of the trustee is derived from the trust instrument. That of the agent is purely a matter of delegation from the person whose agent he is. Article 1985 and onwards of Mauritian civil code deal with this concept.

Whilst both must act in interests of another party and are often under a fiduciary obligation, the agent does not have title to the property as the trustee does.

An agent can be instructed on the day-to-day management of the agency, but a trustee cannot

### Trust and contract

#### Contract

The law of contract in Mauritius is dealt with by *article 1101* and onwards of the Code Napoleon. As per the provision of *article 1101*, a contract is an agreement where one or more persons have duties towards one or more persons to give, to do or not to do something. A contract is a device whereby it is possible to transfer ownership of something to another person or to give someone a duty.

The contract may give rise to rights and duties of any conceivable kind. Moreover, as per civil code, a third party can benefit from the contract. The same idea reflects in the case of trust where the beneficiary can benefit from the agreement made between the settlor and the trustee. Whereas, the English law of contract, is strictly an interprets matter. That law is alien to third parties getting benefits from a contract. This is probably another reason why the trust concept was a product of equity. Thus it can be seen, that despite the absence of the trust concept in the civil law system, there is the idea of a third party benefiting from a contractual relationship. A contract may be created under the French law, whereby a dying person, A, transfers his property to his minor son B, but where a clause is inserted in the contract that until the son attains the full age of capacity, a person, C, is to manage the property. It will be a contract resembling the English type of trust.

The contract is similar to the trust in the sense that both are written agreements and both can be used to manage property of others. The contract is so flexible that it can be used in nearly all branches of law. However, despite all these similarities, it should be noted that in a contract it is essential to have consent of the contracting parties, whereas in the trust concept, consent is not a determining condition. This is because trusts can be created by law. A trust can also be created by a perfectly unilateral act.

The trust is often used in family affairs where parents set apart part of their property for their minor children. Children below the age of eighteen are considered incapable of administering their property. That is why a trust can be created, where the parents appoint a trustee to manage the assets. In the Mauritian legal system, in article 389 and onwards, we have provisions regarding property of minors. We have laws for the “administration légale” in case where parents are alive and able to manage the property of their children. But in cases where both parents have died and unable to deal with the property, there is the “tutelle” which comes into play. The person to manage the property is the “tuteur”. He can be appointed either by a will made by the dying parents.

In the absence of the declaration by the parents, the law appoints a “tuteur”. The “tuteur” has however got two functions. One is to look after the person of the minor; and the other is to manage the property. This distinguishes the duty of the trustee who has only to manage the property. Trust resembles the “tutelle” in the sense that both the trustee and the “tuteur” can act alone. The act should however be in the interest of the property; as in both cases, there is the control of the court in case of breach of duty. Moreover, both the “tuteur” and the trustee are forbidden to buy the property. They only have the duty to manage.

The English legal system has also the device of guardianship where property of minors and of other persons who are considered as incompetent to manage their own property. When writing wills, many

people name trust companies or a particular person as executors of their estates. Thus, a trust is not created and instead a situation of guardianship arises.

The “tutelle” deals only with minors. Whereas the trust is a worldwide device where most transactions; be it in the commercial field, family affairs or financial sector, can fit in. it can be said that the “tutelle” may be considered as being a subset of trust settlor is not in a contractual relationship with a trustee. A trustee can seek damages for breaches of covenant.

It used to be that where A contracts with B to provide a benefit for C, C is not entitled to anything in law or equity, as s/he is not party to the contract. B could only recover nominal damages, as A had not made any promise to him/her, unless A’s promise to B was as B directs.

C could only claim from A through B on trust. The existence of the trust is determined by the intention of the parties, particularly that of B (the promisee).

Unless B will suffer actual loss from A’s failure to pay C, B can only recover damages where B holds the benefit of the promise on trust for C.

However, these confusing limitations were ameliorated in *Trident General Insurance v McNiece*. After that case, C would be entitled to recover under the contract as a member of the class of persons intended to benefit from the performance of the contract. Thus, the above problem can be solved in contractual terms, rather than resorting to the use of artificial trusts.

## **2. Origin and growth of Equity in England**

Equity was developed two or three hundred years after the birth of the common law system to resolve disputes where damages were an unsuitable remedy and to introduce fairness into the legal system. The distinction between “law” and “equity” is an accident of history. The law courts or “courts of law” were the courts in England that enforced the king’s laws in medieval times. There the King’s Judges, educated in law rather than theology, administered the universal law of the realm. This body of law evolved on the basis of previously set precedent into what is recognized as the Common law of England. However, if changes were not quick enough, or if decisions by the judges were regarded as unfair, then litigants could still appeal directly to the King, who, as the sovereign, was seen as the ‘fount of justice’ and responsible for the just treatment of his subjects. Such filings were usually phrased in terms of throwing oneself upon the king’s mercy or conscience. Eventually, the king began to regularly delegate the function of resolving such petitions to the Chancellor, an important member of the King’s Council. The early Chancellors were often clergymen, acting as the King’s confessor and thereby sacerdotal as keeper of the King’s conscience. As a result of their theological and clerical training, Chancellors were well versed in Latin and French, as well as in classical Roman civil and canon law, which heavily influenced the development of equity. Soon the Chancery, the Crown’s secretarial department, began to resemble a judicial body and became known as the “Court of Chancery”.

By the 15th century, the judicial power of Chancery was recognized. Equity, as a body of rules, varied from Chancellor to Chancellor, until the end of the 16th century. After the end of the 17th century, only lawyers were appointed to the office of Chancellor.

One area in which the Court of Chancery assumed a vital role was the enforcement of uses, a role that the rigid framework of land law could not accommodate. This role gave rise to the basic distinction between legal and equitable interests.

### **Development of equity in England**

It was early provided that, in seeking to remove one who wrongfully entered another’s land with force and arms, a person could allege disseisin (dispossession) and demand (and pay for) a writ of entry. That writ gave him the written right to re-enter his own land and established this right under the protection of the Crown if need be, whence its value. In 1253, to prevent judges from inventing new writs, Parliament provided that the power to issue writs would thereafter be transferred to judges only one writ at a time, in a “writ for right” package known as a form of action. However, because it was limited to enumerated writs for enumerated rights and wrongs, the writ system sometimes produced unjust results. Thus, even though the King’s Bench might have jurisdiction over a case and might have the power to issue the perfect writ, the plaintiff might still not have a case if there was not a single form



of action combining them. Therefore, lacking a legal remedy, the plaintiff's only option would be petitioning the King.

People started petitioning the King for relief against unfair judgments, and as the number of petitioners rapidly grew, so the King delegated the task of hearing petitions to the Lord Chancellor. As the early Chancellors lacked formal legal training and showed little regard for precedent, their decisions were often widely diverse. In 1529, a lawyer, Sir Thomas More, was appointed as Chancellor, marking the beginning of a new era. After this time, all future Chancellors were lawyers. Beginning around 1557, records of proceedings in the Courts of Chancery were kept and several equitable doctrines developed. Criticisms continued, the most famous being 17th century jurist John Selden's aphorism:

Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is Chancellor, and as that is larger or narrower, so is equity. 'Tis all one as if they should make the standard for the measure we call a foot, a Chancellor's foot; what an uncertain measure would this be? One Chancellor has a long foot, another a short foot, a third an indifferent foot: 'tis the same thing in a Chancellor's conscience.

As the law of equity developed, it began to rival and conflict with the common law. Litigants would go 'jurisdiction shopping' and often would seek an equitable injunction prohibiting the enforcement of a common law court order. The penalty for disobeying an equitable 'common injunction' and enforcing a common law judgment was imprisonment.

The Chief Justice of the King's Bench, Sir Edward Coke, began the practice of issuing writs of habeas corpus that required the release of people imprisoned for contempt of chancery orders.

This tension climaxed in the Earl of Oxford's case (1615) where a judgment of Chief Justice Coke was allegedly obtained by fraud. The Lord Chancellor, Lord Ellesmere, issued a common injunction from the Chancery prohibiting the enforcement of the common law order. The two courts became locked in a stalemate, and the matter was eventually referred to the Attorney-General, Sir Francis Bacon. Sir Francis, by authority of King James I, upheld the use of the common injunction and concluded that in the event of any conflict between the common law and equity, equity would prevail. Equity's primacy in England was later enshrined in the Judicature Acts of the 1870s, which also served to fuse the courts of equity and the common law (although emphatically not the systems themselves) into one unified court system.

### **Statute of Uses 1535**

In order to avoid paying land taxes and other feudal dues, lawyers developed a primitive form of trust called 'the use' that enabled one person (who was not required to pay tax) to hold the legal title of the land for the use of another person. The effect of this trust was that the first person owned the land under the common law, but the second person had a right to use the land under the law of equity.

Henry VIII enacted the Statute of Uses in 1535 (which became effective in 1536) in an attempt to outlaw this practice and recover lost revenue. The Act effectively made the beneficial owner of the land the legal owner and therefore liable for feudal dues.

The response of the lawyers to this Statute was to create the 'use upon a use'. The Statute recognized only the first use, and so land owners were again able to separate the legal and beneficial interests in their land.

### **India**

In India the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However in 1963 the "Specific Relief Act" was passed by the Parliament following the recommendation of the Law Commission of India and repealing the earlier "Specific Relief Act" of 1877. Under the 1963 Act, most equitable concepts were codified and made statutory rights, thereby ending the discretionary role of the courts to grant equitable reliefs. The rights codified under the 1963 Act were as under:

- Recovery of possession of immovable property (ss. 5–8)
- Specific performance of contracts (ss. 9–25)
- Rectification of Instruments (s. 26)
- Rescission of Contracts (ss. 27–30)

- Cancellation of Instruments (ss. 31–33)
- Declaratory Decrees (ss. 34–35)
- Injunctions (ss. 36–42)

With this codification, the nature and tenure of the equitable reliefs available earlier have been modified to make them statutory rights and are also required to be pleaded specifically to be enforced. Further to the extent that these equitable reliefs have been codified into rights, they are no longer discretionary upon the courts or as the English law has it, "Chancellor's foot" but instead are enforceable rights subject to the conditions under the 1963 Act being satisfied. Nonetheless, in the event of situations not covered under the 1963 Act, the courts in India continue to exercise their inherent powers in terms of Section 151 of the Code of Civil Procedure, 1908, which applies to all civil courts in India.

There is no such inherent powers with the criminal courts in India except with the High Courts in terms of Section 482 of the Code of Criminal Procedure, 1973. Further, such inherent powers are vested in the Supreme Court of India in terms of Article 142 of the Constitution of India which confers wide powers on the Supreme Court to pass orders "as is necessary for doing complete justice in any cause of matter pending before it".

### **3. Common Law and Equity**

Common law refers to the body of legal precedent that is compiled by a number of past court decisions and or similar tribunals as opposed to executive action or through legislative statutes. These legal precedents are the rules that common law judges use to decide on legal disputes.

In the common law legal system, laws are created by and/or refined by judges. This implies that a ruling in a case currently pending depends on the rulings made in previous cases and affects the law to be applied in future cases. Whenever an authoritative statement of the law does not exist, common law judges have a provision to make laws by creating precedent.

This body of precedent is what is called "common law" and it is binding to all future decisions the court has to make. However, the decisions of a court are binding only in a particular jurisdiction. Common law legal systems are in widespread use, particularly in those nations which trace their legal heritage to Britain, including the United Kingdom, most of the United States and Canada, and members of the Commonwealth of Nations.

Equity is a term denoting a system of justice, that is administered in particular court, whose nature and extent can only be understood and explained after studying both the history and principles upon which that court acts. It was developed and administered in England by the high court of chancery in the exercise of its extraordinary jurisdiction. Equity defines a set of legal principles, in all the jurisdictions that follow the English common law tradition, that supplements strict rules of law where their application would operate harshly, and this is done to achieve "natural justice".

#### **Difference between equity and common law.**

As earlier stated, common law is a body of law that is developed in many cases and over a long period. Throughout the many centuries of civilization, law courts have considered cases and defined what should be done in each one. Over this duration of time, it was indeed possible to discern principles of law or precedents from the mass of those cases. Therefore, common law evolved over time as judges made law (according to doctrine of precedent). Common law rules are very formal and rigid, whereas equitable principles/maxims are more amenable to changes. The rigidities of common law can only be addressed by making use of equitable maxims, provided by the equity system, in certain cases.

On the contrary, equity refers to a set of legal principles, in jurisdictions following the English common law tradition, which supplement strict rules of law where their application would operate harshly. Where the law is found to be essentially correct but proving to be too severe or unfair, the equity system serves to allow for a different course of events in the legal world. Equity essentially does not contradict the common law, but rather it aims at securing substantial justice when the rule of common law might see injustice.

The most significant distinction that exists between the two systems is based on the remedies that each offers. In the common law, decisions are made by reference to existing legal doctrines or statutes, whereas in the equity system, the emphasis is laid on fairness and flexibility, which are known as the maxims of equity. For instance, the most common remedy a court of law can award is money in lieu of damages caused. Equity, on the other hand, enters injunctions or decrees directing someone either to act or to forbear from acting, which are in practical terms more valuable to a complainant. These equitable remedies can be only be dispensed by a judge as it is a matter of law. Another important distinction between equity and common law lies in the source of the rules governing the decisions that are made in each of the systems

#### **Nature of the present relationship between common law and equity.**

Common law proves to be a self-sufficient legal system or source of law when compared to equity. This can be attested by the fact that equity presupposes the existence of common law and if we abolished the equity system, we would still have a coherent system of law, common law, but not vice versa.

The equity system of law was developed as a measure to address the rigidity of the common law system. Therefore, in its early years, the equity system was largely viewed as being against common law. The general feeling among a majority of people in legal circles was that the common law system would be equity abrogated by the inception of equity. On the contrary, it is evident that the modern development of equity is has in no way come to abrogate the common law but instead it serves to strengthen it.

Because of the nature of equity, a conflict between the two systems was in the offing and so between the years 1873-75, the court of chancery abolished the courts that propagated the equity system of law, by means of the Judicature Act (Holmes O. W., 1881). This was done through the transfer of their jurisdiction to the new supreme court of judicature, which in its administration led to the fusing of both the common law and equity. However, the substantive body of rules or laws found in the two systems was still maintained as separate entities. It is worth noting that the relationship between equity and common law is today is not one of contradiction but rather one of complementarity. The Judicature Acts (1873–75) succeeded in the merge of the administration of both equity and common law. This means that a majority of modern day law courts apply the two set of rules in their proceedings.

Whenever conflict still existed between the rules of the two systems, the rules of equity were to prevail in favor of those of common law. The overall effect of the Judicature Act that merged the two systems was the conversion of the exclusive and separate jurisdiction of equity into a concurrent jurisdiction. It also served to abolish the auxiliary jurisdiction, which meant that there was no longer need to go to a separate court if one wishes to obtain an equitable remedy. This change applied not only in the United Kingdom but also in the Commonwealth Nations.

#### **4. MAXIMS OF EQUITY**

##### **DEFINITION**

A set of general principles which are said to govern the way in which equity operates, illustrating the qualities of equity. In contrast to the common law, maxims are more flexible, responsive to the needs of the individual and more inclined to take account of the parties' conduct and worthiness. • None of the maxims is in the nature of a binding rule.

##### **The twelve equitable maxims are:**

- **EQUITY FOLLOWS THE LAW** Indicates the relationship between common law and equity, which implies that equity would intervene with the common law if justice required it. It however do not attempt to overrule common law judgments. Equity will, where possible, ensure that its own rule are in line with the common law principles.
- **EQUITY REGARDS AS DONE THAT WHICH OUGHT TO BE DONE** Where one party has incurred an obligation to do something for the other (but have yet to do so), equity looks on it as done and as producing the same result as if the obligation or undertaking had been actually performed. • Equity acts on the conscience of a person. What one has undertaken to do, binds his

conscience. Equity therefore look to the acts of the person bound by his conscience and interpret them in such a way that they amount to what ought to be done.

E.g. Purchase of a house Seller and buyer enter into a contract of sale, the buyer acquires an equitable interest in the house although he will not become the legal owner until the formal legal transfer of the house is completed. Thus, if either party fails to proceed with the contract, the injured party has the option to claim for damages or specific performance.

Walsh v Lonsdale (1882) Lord Jessel: “ There is only one court, and the equity rules prevail in it. The tenant holds under an agreement for a lease. He holds, therefore, under the same terms in equity as if a lease had been granted. That being so, he cannot complain of the exercise of distress by the landlord of the same rights as the landlord would have had if a lease had been granted.

- **EQUITY ACTS IN PERSONAM** It is the nature of equitable remedies that they generally operate against the person of the defendant. Judgment is made against individual. This maxim comes in handy with regard to properties held abroad.

“ This maxim embodies the principle distinguishing the process and decrees of the Court of Chancery. It was originally the pride of the chancellors and the terror of the law judges that chancery acted directly upon the person or, as the phrase went, upon his conscience. It dealt with property but indirectly, by compelling the parties to act with relation to it.”

Penn V Lord Baltimore An order of specific performance was granted to the plaintiff who brought a boundary dispute case to an English court, yet the land was in Maryland, in the USA. The parties to the dispute were English and both lived in England. Equity can make orders affecting property outside its jurisdiction by making orders against the person of the defendant in the jurisdiction.

- **EQUITY WILL NOT SUFFER A WRONG WITHOUT A REMEDY** This maxim is a restatement of the broad legal principle: Ubi jus, ibi remedium, "Where there is a right, there is a remedy. Equity will not allow the technical defects of the common law to prevent worthy plaintiffs from obtaining redress. E.g. Specific performance may be obtained to enforce contracts not enforceable at law; the use of injunctions to restrain threatened wrong

- **HE WHO COMES TO EQUITY MUST COME WITH CLEAN HANDS** A claimant seeking an equitable remedy must not himself be guilty of unconscionable conduct. The court may therefore consider the past conduct of the claimant. Cleaver v Mutual Reserve Fund Life Assoc.[1892] A woman who had murdered her husband was denied the right to claim the payout under a life insurance written in her favour, on the basis that she should not profit from her crime.

D & C Builders v Rees [1966] 2 WLR Claimant did construction works for Rees, amounting to £732 – Rees only paid £250 and when the claimant asked for the balance, the former claimed that the construction work was defective – Rees offered to pay at a discounted price – The claimant who was financially troubled, agreed and accepted the discounted payment “in completion of the account”. Lord Denning: Rees had taken unfair advantage of the claimant’s financial situation, Rees to pay balance.

- The bad conduct of the claimant that is condemned by the clean hands doctrine must be in connection with the rights he wishes to enforce. E.g. Equity will not relieve a claimant who was also trying to evade taxes or defraud creditors with a business deal, even if the claimant was himself cheated by the other party in the transaction.
- Argll v Argll [1965]1 All ER 611The Duchess sought to restrain her husband from publishing confidences of their marriage – Her immoral attitude did not prevent her from obtain ingan injunction.
- **HE WHO SEEKS EQUITY MUST DO EQUITY** A claimant who seeks equitable relief must be prepared to act fairly towards his opponent. The court will look at the claimant’s future conduct, he must be prepared to act equitably. If the claimant is unworthy, court will not grant relief even though the claimant had established equitable rights.

Chappell v Times Newspaper [1975] 2 All ER 233The employees of Times launched a strike against their employer – The employers therefore threatened to sack the employees unless they stop their strike –The dissatisfied employees went to court and applied for injunction;



preventing their employer from carrying out the threat. Held: In order for injunction to be awarded, strikers should undertake to withdraw from the strike. Refused.

- **EQUALITY IS EQUITY** Equity will not play favorites. If there is a dispute over property in which more than one party has a beneficial interest, that property will be divided equally. This maxim does not apply if there is evidence that the property should be divided amongst the parties in some other manner.

*Midland Bank v Cooke* [1995] 4 All ER 562 Husband and wife disputed over the ownership of their matrimonial home. Waite LJ “The court must discover from the conducts of the party whether they have a common understanding as to the amount of the share. In absence of which, the maxim applies. The beneficial interest belongs to the spouses in equal share.

- **EQUITY WILL NOT PERMIT A STATUTE TO BE USED AS AN INSTRUMENT OF FRAUD** Equity will not ignore statutory requirements but will do so only where it would be unconscionable to allow a party to rely on a statutory requirement to another’s detriment. A person is prevented from relying on the absence of statutory requirements if doing so would result in unfairness to the other.

*Bannister v Bannister* [1948] 2 All ER 133A conveyed house to B- B agreed orally to allow A to live in it rent free for as long as she wished – agreement was not in writing – B attempted to evict, claiming that A had not fulfilled the statutory requirements of furnishing a tenancy agreement. Appeal: The agreement was enforceable notwithstanding the absence of requirement of writing.

- **EQUITY LOOKS TO THE SUBSTANCE RATHER THAN THE FORM** Court of equity finds that by insisting on the form, the substance will be defeated. Expressed in *Parkin v Thorold* (1852) 16 Beav It should not be thought that this implies that formalities are never required. Equity is generally less concerned with precise forms than the common law.

*Street v Mountford* [1985] 1 AC 809 Concerning license to occupy land – The agreement between the parties was given the heading ‘license’ as the landlord wanted to avoid the tenant from remaining in the property in accordance with the statutory provisions of leases. Held: It was nonetheless a lease, regardless of what the parties term the agreement as, thus the tenant was entitled to full protection of the law.

- **EQUITY IMPUTES AN INTENTION TO FULFIL AN OBLIGATION** Where a claimant is under an obligation to do one thing but does another, his action may be treated as close enough approximation of the required act. A claimant who has undertaken an obligation, will, through his later conduct be interpreted as fulfillment of that obligation.

*Sowden v Sowden* [1785] A marriage settlement – a legally binding agreement made between the parties under which the husband and wife agree to put certain property into trust for the benefit of themselves and their children – Husband promised to pay £2000 to trustees with which they would buy property to provide income for his wife in the event of his death – In fact, husband had bought a property after their marriage for £2150 – died – Wife entitled to her claim of the said property; husband bought the property in the performance of his obligation under their marriage settlement.

### 5. Trust classification

Trusts can be confusing, if not downright intimidating. That's because there are so many different types of trusts, with so many different purposes, and with so many different names. If you didn't know better, you'd think there were a million different types of trusts, with each one having its own rules and regulations.

But, that's not the case at all! As intimidating as trusts appear to be, there is a relative simplicity that runs through them. That simplicity gives order and meaning to the various types of trusts that exist today, which, in turn, allows all of us to understand and appreciate the seemingly endless array of trusts before us.

As defined in Section 3 of the Indian Trusts Act, 1882, 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. Public Trust as per Section 2 (13) B.P.T. Act, 1950 means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860. For the creation of a valid Trust, it is necessary that the author of the Trust must indicate with reasonable certainty: a) intention to create the Trust, b) the purpose of the Trust, c) the beneficiary and d) the trust property.

- **Constructive trusts**

A constructive trust arises by operation of law and may be independent of the intention of the parties. It is imposed by a court of equity in circumstances when it would be unconscionable or inequitable for a person holding property to keep it for himself because he has been 'unjustly enriched'. The constructive trust is therefore used by the courts as a remedy.

For example, assume that X steals property belonging to Y. If Y institutes proceedings against X, the court may impose a constructive trust over the property as a remedy, by stating that

X holds the property as trustee on behalf of Y. Alternatively, assume the thief, X, sells the stolen property and buys other property with the proceeds. A constructive trust can be imposed over the new property. A constructive trust is a particularly useful remedy in the event that X becomes insolvent and is declared bankrupt, as Y takes the property which is subject to the constructive trust ahead of all of X's other creditors. A constructive trust arises by operation of law and may be independent of the intention of the parties. It is imposed by a court of equity in circumstances when it would be unconscionable or inequitable for a person holding property to keep it for himself because he has been 'unjustly enriched'. The constructive trust is therefore used by the courts as a remedy.

A "Constructive Trust" is a trust created by a court when no formal trust actually exists. For example, if a person has title to certain property and/or takes possession of certain property when the property rightfully belongs to another person, then the court may rule that the holder of the title is actually holding it as a constructive trustee for the benefit of the rightful owner. This can occur whenever a person acquires title to property through fraud, breach of faith, ignorance or inadvertence.

- **Charitable Trusts** : A "Charitable Trust" is a type of trust that has one or more charitable beneficiaries. If properly established under federal tax laws, a charitable trust will entitle a grantor to deduct a portion of the amount contributed to the charitable trust as a current charitable income tax deduction. There are other tax benefits as well, depending upon the type of charitable trust established. For example, the amount passing to charity under a charitable remainder trust qualifies for a charitable estate tax deduction upon the death of the grantor. There are four types of charitable trusts; i.e., the charitable lead annuity trust (CLAT), the charitable lead unitrust (CLUT), the charitable remainder annuity trust (CRAT), and the charitable remainder unitrust (CRUT). In charitable lead trusts, one or more charities are paid a certain amount each year for a fixed number of years, with the remainder passing to non-charitable beneficiaries. In charitable remainder trusts, one or more non-charitable beneficiaries are paid a certain amount each year for a fixed number of years or for life, with the remainder passing to one or more charities.

A Charitable Trust can be created under a living trust or a testamentary trust; however, if any distributions are to be made during the grantor's lifetime, then the Charitable Trust must be an irrevocable living trust. See "split-interest trusts" below. See also "charitable lead trusts" and "charitable remainder trusts"

### **1. Living Trusts vs. Testamentary Trusts**

One of the most basic classifications of trusts is whether they become effective during the grantor's lifetime or whether they become effective only after the grantor's death.

A trust that becomes effective during the grantor's lifetime is called a "living trust" or an "inter-vivos trust." The term "inter-vivos" is a Latin term meaning "during life." Most living trusts, except informal

trusts such as our babysitting trust discussed above, are generally created by a written instrument, which can be either a trust agreement or a declaration of trust. If the trust has a trustee other than the grantor, then the trust instrument is called a "trust agreement" because both the grantor and the trustee must agree to the terms of the trust. However, if the grantor is the sole trustee, then the trust instrument is simply called a "declaration of trust," since the grantor is the only party to the trust.

On the other hand, a trust that is created under a Last Will and Testament is called a "testamentary trust." A testamentary trust, by definition, can only become effective after the testator's death because the Last Will and Testament does not become effective until that event occurs. Even then, the Last Will and Testament must be admitted to probate before it - and the testamentary trust created therein - becomes effective.

So, what's the significance of a living trust versus a testamentary trust? Other than the fact that a living trust becomes effective during the creator's lifetime and a testamentary trust becomes effective only after the creator's death, they both have the four basic components discussed above. Of course, there are differences that may be significant in certain circumstances, depending upon the specific objectives that one is trying to achieve. For example, testamentary trusts do not avoid probate because they become effective only after the grantor's death. Living trusts do avoid probate if properly funded during the grantor's lifetime. Because testamentary trusts are created under a Last Will and Testament, there are more formalities to creating - and changing - a testamentary trust than a living trust. Testamentary trusts are also more public than a living trust because a testamentary trust is part of a Last Will and Testament, which is a public document. Costs can also be a factor because a living trust requires a separate document, whereas a testamentary trust is part of a Last Will and Testament.

## **2. Revocable Trusts vs. Irrevocable Trusts**

Another very basic classification of trusts is whether they are revocable or irrevocable. If the grantor reserves the right to revoke the trust after it becomes effective, including the right to change any of the terms or provisions of the trust, then the trust is said to be a "revocable trust." If the grantor gives up the right to revoke the trust after it becomes effective, including the right to change any of the terms or provisions of the trust, then the trust is said to be an "irrevocable trust."

Before we go any further, it is important to note that this classification only applies to living trusts. A testamentary trust is always revocable during a testator's lifetime because a Last Will and Testament cannot become effective until after the testator's death and after it has been admitted to probate. Once a testator has died and his or her Last Will and Testament has been admitted to probate, the underlying testamentary trust becomes irrevocable because the only person who could revoke it or terminate it is no longer living. So, when we talk about revocable trusts and irrevocable trusts, we're not talking about testamentary trusts - we're only talking about living trusts.

So, what's the difference between a revocable living trust and an irrevocable living trust? Well, to state the obvious once more, a revocable trust can be amended, revoked, terminated or changed at any time by the grantor. An irrevocable trust cannot be amended, revoked, terminated or changed by the grantor or anyone else once it becomes effective.

That seems rather obvious. But, just what is the significance of all that? Simply put, if you put some or all of your property into a revocable trust, you can get the property back any time you want. You can also change the terms and conditions upon which some or all of the beneficiaries will receive benefits under the trust. In short, when you create a revocable living trust and transfer some or all of your property to it, you still retain all the "incidents of ownership" to that property. You can sell it; you can give it away, you can change the beneficiaries of that property upon your death; and, you can determine how the property will be managed and invested while it's in the trust. In fact, if you really think about it, you don't give up any rights to your property when you transfer it to a revocable living trust. That's why you're still treated as the owner of the property for tax purposes.

Here's a descriptive analogy. Suppose you have an apple tree in your back yard. If you decide to dig it up and move it to another part of your back yard, have you changed your ownership of the tree? Of course not. You can still eat the apples or sell them if you wish. You can even cut down the tree and use it for firewood if you choose. That's the essence of transferring property to a revocable living trust.

An irrevocable living trust is a different story. If you transfer some or all of your property to an irrevocable living trust, you are giving up all your rights to that property. That's because an irrevocable trust is, by definition, one that you no longer have the right to amend, revoke, terminate or change. In other words, you give up all your rights to any property you transfer to an irrevocable living trust. It's the same as giving the property to another person with no strings attached.

Going back to our apple tree analogy above, let's suppose that, instead of moving the tree to another part of your back yard, you move it over to your neighbor's property. Whether you like it or not, the tree now belongs to your neighbor and you can't go over there and get it back - at least not without your neighbor's permission. And, guess who owns the apples growing on the tree?

Staying with this analogy for one more minute, who do you think the IRS will go after in each of these scenarios? If you simply move your apple tree to another part of your back yard (i.e., to a revocable trust), the IRS will come after you for its share of the apples. But, if you move the apple tree to your neighbor's yard, the IRS will be calling on your neighbors.

If you no longer own the property transferred to an irrevocable trust, why would anyone ever create one? Actually, there are many reasons for doing so. One common reason is to satisfy a property settlement as a result of a divorce or some other court decree. Many property settlements mandate that certain property be placed in trust, especially when minor children are the intended beneficiaries.

Many elderly persons, who are concerned about the high cost of nursing homes, also transfer their property to an irrevocable trust before they apply for Medicaid (Title XIX) benefits. In order to qualify, the property must be transferred to an irrevocable trust at least 5 years prior to filing the application, and certain other requirements must be met as well. But irrevocable trusts are frequently used by elderly persons in an effort to avoid paying the high cost of a nursing home stay.

Many high-net-worth individuals also use irrevocable trusts to protect their property from the claims of creditors. Entertainers, professional athletes, doctors, and other high income people are particularly vulnerable to law suits that result in high monetary judgments, and irrevocable trusts (particularly off-shore trusts or other types of asset protection trusts) are often used as a means of insulating property from these types of claims.

Perhaps one of the most common uses for an irrevocable living trust is the avoidance of federal estate taxes. In past years, individuals with large estates were subject to federal estate taxes as high as 55%. Even today, despite a personal exemption of \$2 million and tax rates reduced to 46%, the federal estate tax can be one of the largest expenses incurred by a decedent's estate.

One of the more common techniques to reduce the federal estate tax is to transfer property to an irrevocable trust. Transferring property to an irrevocable trust is the equivalent of making a complete gift of the property, since you don't have any right to get the property back or to alter or affect its use in any way once the transfer is made. Upon the grantor's death, the property is not subject to federal estate tax because the grantor no longer owns it.

We should mention, however, that the federal government treats a transfer of property to an irrevocable trust as a gift for federal gift tax purposes. Since the federal gift tax rates are substantially the same as the estate tax rates, it would seem that there is little to be gained by transferring property to an irrevocable trust. But, that is not necessarily the case. For example, property that is appreciating in value is often a good candidate for this type of transfer because the appreciation in value from the date of transfer to the date of death will be exempt from both the federal gift tax and the federal estate tax.

- **Express Trusts**

This is one intentionally declared by the creator of a trust who is known as the settler or if the trust is created by a will, the testator. It is one that has been created by the settler himself through the manifestation of an intention to create one.

The common ways of creation of an express trust are:

- By deed;
- By will; or;
- By word of mouth



Express trusts are sometimes subdivided into executed trusts and executor trusts. An executed trust is one in which the testator or Settler has marked out in appropriate technical expressions what interests are to be taken by all the beneficiaries. On the other hand, an executor trust is one where the settler has indicated to his trustees a scheme of settlement but the details are to be gathered from his general expressions. As such, the execution of some further instrument is required to set out the beneficial interest. Once the property is indicated by the settler, the property becomes subject to a valid trust but it remains executor until a further instrument is duly executed.

Where in the case of an executed trust the settler has made use of technical expressions for which the law has laid down rules of interpretation, equity will follow the law and give effect to such interpretations. Express trusts may also be completely constituted and incompletely constituted trusts.

- **Implied Trusts**

These are trusts which court deduces from the conduct of the parties and the circumstances of the transaction. For example, where a person in return for valuable consideration agrees to settle property for the benefit of another, that other person immediately becomes a trustee of the property. *Banister vs. Banister* [1948] 2 ALLER 133

- **Resulting Trusts**

Resulting trusts are trusts created where property is not properly disposed of. It comes from the Latin result are, meaning to spring back, and was defined by Megarry VC as "essentially a property concept; any property that a man does not effectually dispose of remains his own". These trusts come in two forms: automatic resulting trusts, and presumed resulting trusts. Automatic resulting trusts arise from a "gap" in the equitable title of property. It is against principle for a piece of property to have no owner. As such, the courts assign the property to somebody in a resulting trust to avoid this becoming an issue. They occur in one of four situations: where there is no declaration of trust, where an express trust fails, where there is surplus property, or upon the dissolution of an unincorporated association. Rules differ depending on the situation and the type of original trust under dispute; failed charitable trusts, for example, have the property reapplied in a different way from other forms of trust. A presumed resulting trust occurs where the transfer fails, and there is no reason to assume it was intended as an outright gift. Presumed resulting trusts do arise, however, in one of three situations: where it is a voluntary gift, where there is a contribution to purchase price, and where the presumption that it was an outright gift can be rebutted.

Resulting trusts work on a principle of "common intention". This is the idea that a resulting trust is a mix of the settler's intention, and the trustee's knowledge that he is not intended to be the beneficiary. In *Carreras Rothmans Ltd v Freeman Mathews Treasure Ltd*, [1985] Ch 207 Expressed the principle as: The principle in all these cases is that the equity fastens on the conscience of the person who receives from another property transferred for a specific purpose only and not, therefore, for the recipient's own purposes, so that such a person will not be permitted to treat the property as his own or to use it for other than the stated purpose...if the common intention is that property is transferred for a specific purpose and not so as to become the property of the transferee, the transferee cannot keep the property if for any reason that purpose cannot be fulfilled

- **Statutory Trusts**

This refers to trusts created by statute; for example under the succession Act cap 162, where a person dies intestate the personal representatives hold the estate on statutory trust for the children or certain classes of relatives.

- **Public and Private Trusts**

A private trust is one which benefits specific individuals irrespective of whether they are immediately ascertainable and the interest therein defined will fail if they do not vest during the perpetuity period.

A public trust is one which benefits the public at large or a considerable portion of the public; for example a charitable trust. Private trust means a trust created by an individual to maintain one's own property like a trust created in favor of a minor. When the minor attains 18 years of age, the trustee so

appointed loses the administrative power over the trust property and the property goes to the beneficiary. Its all about private settlements. but public trusts are these which we see in our daily life like a religious trust, educational trust etc. under a public trust a beneficiary can not be any individual only but the benefits arising out of the trust go to general public as a whole and the trust property also does not remain any private property but becomes a public property public & private trust is the acceptance of donations from public at large or from a defined group of people as per the trust deed. If during course of time the private trust accepts donations from public at large inspire of definition of group of people given in the trust deed than also the said trust partakes the character of public trust. To a lawyers prospective the problem arise in answering the Question when the trust incorporated as private initially but during course of time some body challenges it character as public citing the works done by trust, the trust can maintain it's private character even it do's charities to public at large provided the source of funds are sourced as per delimitation of body of people constitution it, moreover if trust just distribute the largesse's of other in urgent situations e.g. floods, natural calamity, war etc the trust does not loses it character of private.

The following are the basic ingredients of a valid trust :

- i) There must be an author or settlor of the trust. The author or the settlor refers to the person who sets aside certain property for the benefit of the beneficiaries.
- ii) There must be a trustee. The trustee are the persons who manage this property for the benefit of the beneficiaries as per the Trust Deed. The author himself may or may not become a trustee.
- iii) There must be a beneficiary or beneficiaries
- iv) There must be clearly delineated trust property.
- v) The objects of the trust must be specific.

The Three Certainties Required

Three Certainties of a Trust are :

- i) Certainty of intention to create Trust.
- ii) Certainty of the objects and the beneficiaries
- iii) Certainty of the subject matter of the Trust i.e. fund or properties must be specified and settled in the deed.

UNIT-II

**1. OBLIGATIONS IN THE NATURE OF TRUSTS**

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

**Sec 81. Where it does not appear that transferor intended to dispose of beneficial interest** - Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

**Illustration**

A, conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

A, conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

A, transfers certain stock belonging to him into the joint names of himself and B. It cannot consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

A, makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

**Sec 82. Transfer to one for consideration paid by another** - Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, Section 317, or Act No. XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), Section 36.

**Sec 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.

**Illustrations**

(a) 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; or upon trusts that are too vague to be executed; or upon trust that become incapable of taking effect; or "**in trust for C**", and C renounces his interest under the trust. In each of these cases B holds the land for the benefit of A.

**Sec 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 retain the 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.

**Sec 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.

**Sec 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.

**Sec 88. Advantage gained by fiduciary** - Where a trustee, executor, partner, agent, director of company, legal advisor, 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.

#### Illustrations

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.

**Sec 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.

**Sec 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 property incurred, and to an indemnity by the same persons against liabilities property contracted, in gaining such advantage.

#### Illustration

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.

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.

A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. subject to the repayment of the amount due on the mortgage and of his expenses property incurred as mortgagee, B holds the land for the benefit of A.

**Sec 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.

**Sec 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.



**Sec 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.

**Sec 94. Constructive trusts in cases not expressly provided for** - In any case not coming within the scope of any of the preceding section, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

### Illustrations

A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

**Sec 95. Obligor's duties, liabilities and disabilities** - The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

**Sec 96. Saving of rights of bona fide purchasers** - Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

## 2. CREATION OF TRUST

**Sec 3. Interpretation Clause "Trust"** - A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in an accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner;

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 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**";

A breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "**breach of trust**";

And in this Act, unless there be something repugnant in the subject or context, "**registered**" means registered under the law for the registration of documents for the time being in force; a person is said to have "notice of a fact either when he actually knows that fact, or when, but for willful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, Section 229; all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

**English and Indian Law** - A trust according to this Act must be an obligation annexed to the ownership of property. According to the English Law, a trust is also annexed in private to the estate, i.e., must stand or fall with the interest of the persons by whom the trust is created. (See Riddle on Trusts, 13th Ed., pp. 13-15).

**Sec 7. Who may create trusts** - A trust may be created - (a) By every person competent to contract, 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.

#### NOTES

Debt due from a co-trustee. - The usual indemnity clause does not exonerate one of two trustees from a loss occasioned by debt due from the other, having been suffered to remain outstanding-Batley v. Gould, 160 E.R. 987.

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

Disclaimer by 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 in consistent therewith.

**Sec 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 to trust** - A trust of accepting by any words or acts of the trustee indicating with reasonable certainty such acceptance.

**Disclaimer of trust** - 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.

#### Illustrations

A bequeaths certain property to B and C, his executors, as trustees for D.B. and C prove A's will. This is in itself an acceptance of the trust, B and C hold the property in trust for D.

**Sec 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.

#### Illustrations

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.

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.

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 indicated with reasonable certainty.

A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

**Sec 5. Trust of immovable property** - No trust in relation to immovable 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 movable property** - No trust in relation to movable 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.

**Sec 8. Subject of trust** - The Subject-matter of a trust must be property transferable to the beneficiary.

**Sec 60. Right to proper trustees** - The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be property protected and held and administered by proper persons and by a proper number of such persons.

**Explanation 1.** - The following are not proper persons within the meaning of this section:

A person domiciled abroad; and alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

**Explanation II.** - When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

#### **Illustrations**

A, one of several beneficiaries, proves that B, the trustee, has 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.

### **3. APPOINTMENT OF NEW TRUSTEES**

**Sec 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 (India), or leaves (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 -

(a) The person nominated for that purpose by the instrument or trust (if any), or

(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 trustee 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 trustee, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be in writing under the hand of the person making it.

On an appointment of 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 sole trustee.

The provisions of this section relative to a trustee who is a dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee included refusing or retiring trustee if willing to act in the execution of the power.

**NOTES Withdrawal of petition** - A trustee may at any time before final orders have been passed on his resignation withdraw the same.

**Public, charitable and religious trusts:**As regards the public trusts, there is no Central Act applicable in all the States. But various states such as Bihar, Madras, Madhya Pradesh, Orissa, etc, have enacted their own acts prescribing conditions and procedure for the administration of public trusts. These Acts are more or less similar in nature though there may be certain variations.

For instance, the Bombay Public Trusts Act, 1950 provides machinery of charity commissioners to regulate the administration of public religious and charitable trusts. It makes registration of all the public religious and charitable trusts including the religious trusts created under Hindu Muslim and Christian personal laws mandatory and prescribes certain norms for the maintenance and audit of budget, and accounts of such trusts and further empowers the charity commissioners to inspect and supervise the property belonging to a public trust and as well the proceedings of the trustees and books of accounts of such a trust.

That apart, the act also creates certain restrictions on the investment of public trust money and as well alienation of immovable property of such a trust.

### **4. EXTINCTION OF TRUSTS**

**Sec 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 fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(d) When the trust, being revocable, is expressly revoked.

**Sec 78. Revocation of trust** - A trust created by will any 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 consents

(b) Where the trust has been declared by 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.

#### **Illustration**

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.

**Sec 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. is incapable from

### **5. Fiduciary relationship**

Where one person places complete confidence in another in regard to a particular transaction or one's general affairs or business. The relationship is not necessarily formally or legally established as in a declaration of trust, but can be one of moral or personal responsibility, due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling. A fiduciary is a legal or ethical relationship of trust between two or more parties. Typically, a fiduciary prudently takes care of money for another person. One party, for example a corporate trust company or the trust department of a bank, acts in a fiduciary capacity to the other one, who for example has entrusted funds to the fiduciary for safekeeping or investment. Likewise, asset managers—including managers of pension plans, endowments and other tax-exempt assets—are considered fiduciaries under applicable statutes and laws. In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice or protection is sought in some matter. In such a relation good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who trusts.

A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.

—Lord Millett, *Bristol and West Building Society v Mothew*

A fiduciary duty is the highest standard of care at either equity or law. A fiduciary (abbreviation fid) is expected to be extremely loyal to the person to whom he owes the duty (the "principal"): such that there must be no conflict of duty between fiduciary and principal, and the fiduciary must not profit from his position as a fiduciary (unless the principal consents).

In English common law the fiduciary relation is arguably the most important concept within the portion of the legal system known as equity. In the United Kingdom, the Judicature Acts merged the courts of equity (historically based in England's Court of Chancery) with the courts of common law, and as a result the concept of fiduciary duty also became available in common law courts.

When a fiduciary duty is imposed, equity requires a different, arguably stricter, standard of behavior than the comparable tortious duty of care at common law. It is said the fiduciary has a duty not to be in a situation where personal interests and fiduciary duty conflict, a duty not to be in a situation where his fiduciary duty conflicts with another fiduciary duty, and a duty not to profit from his fiduciary position without knowledge and consent. A fiduciary ideally would not have a conflict of interest. It has been said that fiduciaries must conduct themselves "at a level higher than that trodden by the crowd" and that "the distinguishing or overriding duty of a fiduciary is the obligation of undivided loyalty."



- **Relationships**

The most common circumstance where a fiduciary duty will arise is between a trustee, whether real or juristic, and a beneficiary. The trustee to whom property is legally committed is the legal—i.e., common law—owner of all such property. The beneficiary, at law, has no legal title to the trust; however, the trustee is bound by equity to suppress his own interests and administer the property only for the benefit of the beneficiary. In this way, the beneficiary obtains the use of property without being its technical owner.

Others, such as corporate directors, may be held to a fiduciary duty similar in some respects to that of a trustee. This happens when, for example, the directors of a bank are trustees for the depositors, the directors of a corporation are trustees for the stockholders or a guardian is trustee of his ward's property. A person in a sensitive position sometimes protects himself from possible conflict of interest charges by setting up a blind trust, placing his financial affairs in the hands of a fiduciary and giving up all right to know about or intervene in their handling.

The fiduciary functions of trusts and agencies are commonly performed by a trust company, such as a commercial bank, organized for that purpose. In the United States, the Office of the Comptroller of the Currency (OCC), an agency of the United States Department of the Treasury, is the primary regulator of the fiduciary activities of federal savings associations.

When a court desires to hold the offending party to a transaction responsible so as to prevent unjust enrichment, the judge can declare that a fiduciary relation exists between the parties, as though the offender were in fact a trustee for the partner. acting as trustee. A may obtain a receive of the trust-property.

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UNIT-III

**Rights**

**Sec 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.

**Sec 32. Right to reimbursement** of expenses - Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses property 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.

**NOTES**

**Sec Right of indemnity** - When arises - It is well-settled that a trustee is not entitled to claim indemnity till he suffers an injury for which he has to be indemnified. [Mathalone v. Bombay Life Assurance Co. Ltd., 1953 S.C.386.]

**Sec 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 beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

**Sec 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 importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application. The cost of every application under this section shall be in the discretion of the Court to which it is made.

**Sec 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, where nothing is due to the beneficiary under the trust, to an acknowledgement in writing to that effect.

**DUTIES OF TRUSTEES**

**Sec 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.

Illustrations

A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

**Sec 12. Trustee to inform himself to state of trust-property** - A trustee is bound to acquaint himself, as soon as possible, with the 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 or insufficient or hazardous security.

Illustrations

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.

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.

**Sec 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 others steps as, regards being had to the nature and amount or value to 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 immovable 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, the trustee's duty is to cause the instrument to be registered.

**Sec 14. Trustee not to set up title adverse to beneficiary** - The trustee must not for himself of another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

**Sec 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.

Illustrations

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.

**Sec 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 into property of a permanent and immediately profitable character.

Illustrations

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 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.

**Sec 17. Trustee to be impartial** - Where there are more beneficiaries 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.

Illustrations

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.

**Sec 18. Trustee to prevent waste** - Where the trust is created for the benefit to 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.

**Sec 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.

**Sec 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 other: (a) In promissory notes, debentures, stock or other securities of any State Government or of the Central Government or of the United Kingdom of Great Britain and Ireland;

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 charged or secured by the Parliament of the United Kingdom before the fifteenth day of August, 1947 on the revenues of India or of the Governor - General in Council or of any Province:

(bb) In India three and a half per cent stock, India three per cent stock, India two and a half per cent stock or any other capital stock, before the 15th day of August, 1947, was issued by the Secretary of State for India in Council under the authority of an Act of Parliament of the United Kingdom and charged on the revenues of India or which was issued by the Secretary of State on behalf of the Governor - General in Council under the provisions of Part XIII of the Government of India Act, 1935:

(c) In stock or debentures of, or shares in Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council or by the Central Government or in debentures of the Bombay Provincial Co-operative Bank Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council or the State Government of Bombay:

(d) In debentures or other securities for money issued, under the authority of any Central Act or Provincial Act or State Act, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi; Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

(e) On a first mortgage of immovable property situate in any part of the territories to which this Act extends: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage money; or

(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

(f) On any other security expressly authorized by the instrument of trust, or by the Central Government by notification in the official gazette, or by any rule which the High Court may from time to time prescribe in this behalf;

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (d), (e) and (f) shall be made without his consent in writing.

**Sec 20-A. 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:

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of Section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.



Sec 21. Mortgage of land pledged to Government under Act 26 of 1871. Deposit in Government Savings Bank - Nothing in Section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immovable property already pledged as security for an advance under the Land improvement Act, 1871 or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

**Sec 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.

Sec 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 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 (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.

Sec 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 again which has accrued to another portion of the trust-property through another and distinct breach of trust.

Sec 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.

Sec 26. Non-liability for co-trustee's default - Subject to the provisions of Section 13, and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee;

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 inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require;

(c) Where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Joining in receipt for conformity - A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Sec 27. Several liabilities of co-trustee - Where co-trustee 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, and one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Sec 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.

Sec 29. Liability of trustees where beneficiary's interest is forfeited to the Government - When the beneficiary's interest is forfeited or awarded by legal adjudication 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 the State Government may direct in this behalf.

Sec 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.

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**Unit –IV**

**Powers and Liabilities including Disabilities of trustee.**

**POWER**

**Sec 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. Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

**Sec 37. Power to sell in lots, an 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.

**Sec 38. Power to sell under special conditions Power to by-in-and resell** - 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 resell 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. **Time allowed for selling trust-property** - Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

**Illustration A** bequeath property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

**Sec 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.

**Sec 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:

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, on such change of investment shall be made without his consent in writing.

**Sec 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 of 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. Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

**NOTES**

Past maintenance - Trustee can in a proper case make provision even in respect of the past maintenance of minor children. [Brown v. Smith, 10Ch.D.377].

**Sec 42. Power to give receipts** - Any trustee or trustee may give a receipt in writing for any money, securities or other movable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust of 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 and 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.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trustees and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

**Sec 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.

**Sec 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.

**Liabilities**

**Sec 23. Liability for breach to 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 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 (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.

Illustrations



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

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, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

Trust-property is invested in one of the securities mentioned in Section 20, clauses (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary to purchase other land of equal value or to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

**Sec 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 again which has accrued to another portion of the trust-property through another and distinct breach of trust.

**Sec 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.

**Sec 26. Non-liability for co-trustee's default** - Subject to the provisions of Section 13, and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee;

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 inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require; (c) Where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

**Joining in receipt for conformity** - A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

**Illustration**

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D.B. and C accordingly sell the property, and the purchase money is received by B and retained in his hands. C pays no attention to the matter for two years and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

**Sec 27. Several liabilities of co-trustee** - Where co-trustee 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, and one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

**Sec 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.

**Sec 29. Liability of trustees where beneficiary's interest is forfeited to the Government** - When the beneficiary's interest is forfeited or awarded by legal adjudication 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 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.

#### Disabilities

**Sec 46. Trustees 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) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

**Sec 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.

#### Illustrations

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.

#### NOTES

Agent - Where an agent is authorized by trustees to receive trust-money and receives it accordingly, the receipt of that money by the agent binds the trustees and discharges the person who paid it. [Robertson v. Armstrong, (1160) 28 Beav.123].

**Sec 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 provides.

**Sec 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.

**Sec 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.

**Sec 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.

**Sec 52. Trustee for sale or his agent may not buy** - No trust 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 the same or any interest therein, on his own account or as agent for a third person.

**Sec 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; any 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.

**Sec 54. Co-trustee 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.

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**Unit-V**  
**Rights and Liabilities of Beneficiaries**

**RIGHTS AND LIABILITIES OF THE BENEFICIARY**

**Sec 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.

**Sec 56. Right to specific execution** - The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property. Right to transfer of possession - 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.

Illustrations

A bequeaths Rs. 10,000/- to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000/-.

**Sec 57. Right to inspect and take copies of instrument of trust accounts, etc.** - The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

NOTES

Who may ask for account - All persons interested in the trust-property has a right to demand accounts and particulars as to trust-property and as to the mode of dealing with it. [Law v. Bunverie (189) 3Ch.(99)].

**Sec 58. Right to transfer beneficial interest** - The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in an to which he may dispose of such interest;

Provided that when property is 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 shall authorize her to transfer such interest during her marriage.

**Sec 59. Right to sue for execution of trust** - Where no trustees are appointed or all the trustees dies disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

**Sec 60. Right to proper trustees** - The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be property protected and held and administered by proper persons and by a proper number of such persons.

Explanation 1. - The following are not proper persons within the meaning of this section:

A person domiciled abroad; and alien enemy; a person having an interest inconsistent with that of the beneficiary; a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II. - When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations



A, one of several beneficiaries, proves that B, the trustee, has 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 incapable from acting as trustee. A may obtain a receive of the trust-property.

**Sec 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 of trust.

Illustrations

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 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.

**Sec 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 net 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 omission of the trustee or purchaser.

Noting 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.

**Sec 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 or 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.

Illustrations

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

**Sec 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 judgment-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 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, Section 108, or the liability of a person to whom a debt or charge is transferred.

**NOTES**

Applicability of section - A transferee from a religious endowment is not protected by S.64 of the Act as the Trust Act does not apply to public or private religious endowments and also because the manager is not a trustee. (Gulam Haider v. Manager Committee Samadh Baba Phula Singh, 73I.C.11).

**Sec 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.

**Sec 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.

**Sec 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, on 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**

A and B are partners. A dies, having bequeathed all this property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

**Sec 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 there from, 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 two claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

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.

**Sec 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.