

Trust Act, 1882 (Law of Trust)

Definition: 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 of another or of another and the owner.

Creation of Trust:

Essentials of Trust:

- 1) **Declaration of Intention:** The author of the trust must indicate reasonable certainty (by words or act) and intention on his part to create a trust.
 - i) **Express Trust:** A trust which directly and clearly created in words (either spoken or written) by the settler is called an Express Trust.
 - ii) **Implied Trust:** A trust which indirectly gathered from unexpressed but presumable intention of the settler is called an Implied Trust.

Who may create a trust? A trust may be created, by every competent person, a minor with the permission of court.

- 2) **Purpose of Trust:** A trust may be created for any lawful purpose. The purpose of a trust is unlawful in the following cases:
 - i) When it is forbidden by law.
 - ii) When it is of such a nature that (if permitted) it would defeat provision of any law.
 - iii) When it causes injury to the person or property of another.
 - iv) When it is fraudulent.
 - v) When it is regarded by the court as immoral or opposed to the public policy.
 - v) When it is partly lawful and partly unlawful, but lawful part is inseparable by the unlawful part.

Void Trust:

- i) Every trust of which the purpose is unlawful is void.
 - ii) Where a trust is created for two purposes, of which one is lawful and another is unlawful, and the two purposes cannot be separated, the whole trust is void.
- 3) **Beneficiary:** The beneficiary/ beneficiaries are to be nominated specifically by the Author of the Trust.
 - i) **Public or Charitable Trust:** In a public trust, the beneficial interest is vested in an uncertain and fluctuating body of persons.
 - ii) **Private Trust:** One established for the benefit of a certain designated individual(s), clearly identified or, capable of identification, by the terms of the instrument creating a trust,

Who may be a 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
- by setting up (with notice of the trust) a claim in consistent with the trust.

4) **Trust – Property:** The trust property must be indicated with reasonable certainty by the author of the trust.

Subject of Trust: The subject matter of a trust must be property transferable to the beneficiary. It must not be merely beneficial interest under an existing trust.

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 and registered
- 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 mentioned above
- unless the ownership of the property is transferred to the trustee.

Transfer of Trust Property: The trust property must be transferred to the trustee, except,

- when the author of the trust is himself is to be the trustee
- when the trust is declared by a will

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 is bound to accept trust.

Acceptance of Trust: A trust is accepted by any words or acts if 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.

Duties of Trustee:

- 1) **Duty to execute:** It is the duty of the trustee to execute the trust i.e. he must fulfill the purpose of the trust.
- 2) **Duty to Obey Instructions:** It is the duty of the trustee to obey the directions of the author of the trust given at the time of its creation.

Exceptions:

- as modified by the consent of all the beneficiaries being competent to contract
- when obeying any direction when to do so would be impracticable, illegal or manifestly injurious to be beneficiaries

- 3) **Duty to acquaint:** It is the duty of the trustee 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
- 4) **Duty to protect title:** It is the duty of the trustee to protect the title to the trust property, for this he may bring and defend all necessary suits and take all possible steps to preserve the trust property. For e.g., he must get a document registered if necessary.
- 5) **Duty not to setup adverse title:** The trustee must not for himself or another setup or aid any title to the trust property adverse to the interest of the beneficiary.
- 6) **Duty to care:** 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. In the absence of any special contract a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust property.
- 7) **Duty to Convert:** Where the trust is created for the benefit of several persons in succession and the trust property is of a wasting nature, a trustee is bound to convert the property into property of a permanent and immediately profitable character.
- 8) **Duty to 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.
- 9) **Duty to prevent waste:** Where the trust is created for the benefits of several persons in succession and one of them is in possession of the trust property, it is the duty of the trustee to take measures to prevent any act of such beneficiaries which is destructive and permanently injurious to it.
- 10) **Duty to maintain accounts:** A trustee is bound to maintain clear and accurate accounts of the trust property.
- 11) **Duty of Disclosure:** A trustee is bound to furnish full and accurate information as to the amount and state of the trust property, if requested by the beneficiary.
- 12) **Duty to invest:** Where the trust property consists of money, the trustee is bound to invest the money on the securities prescribed by the trust act.

Liabilities of Trustee:

- 1) **Liability for breach of Trust:** Where the trustee commits a breach of trust, he is liable to compensate 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.
 - the beneficiary (being competent to contract) has himself (without coercion or undue influence) having concerned in the breach.

- 2) **Liability to pay interest incase of Breach:** A trustee committing a breach of trust is liable to pay interest in the following cases:
- Where he has actually received interest.
 - Where the breach consists in unreasonable delay in paying trust money to the beneficiary.
 - Where the trustee ought to have received interest, but has not done so.
 - Where he may be fairly presumed to have received interest.
 - Where the breach consists in failure to invest trust money and to accumulate the interest or dividends on it.
 - Where the breach consists in the employment of trust property or the proceeds of it in trade or business.
- 3) **Several Liabilities of Co-Trustees:**
- Where co-trustees jointly commit a breach of trust
 - 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 caused by such breach.
- 4) **Liability where beneficiary's interest is forfeited:** When the beneficiary's interest is forfeited 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 Government may direct in this behalf.

Non-Liabilities of Trustee:

- 1) **Predecessor's default:** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.
- 2) **Co-Trustee's Default:** One trustee is not, as such, liable for a breach of trust committed by his co-trustee except in the following cases:
- Where he has delivered trust property to his co-trustee without seeing to its proper application.
 - Where he:
 - allows his co-trustee to receive trust property and fails to make due enquiry as to the co-trustee's dealings with it
 - allows him to retain it longer then the circumstances of the case reasonably required
 - 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.
- 3) **Transfer of Interest without Notice:** When any beneficiary's interest becomes vested in another persons and the trustee (not having notice of the vesting) pays or delivers trust-property to the legal representatives of the beneficiary the trustee is not liable for the property so paid or delivered.
- 4) **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 signature only, for loss or misapplication of the property by his co-trustee.

Rights of Trustee:

- 1) **Right to Title Deed:** A trustee is entitled to have in his possession:
 - the instrument of trust
 - all the documents of title (if any) relating solely to the trust property.
- 2) **Right to Reimbursement:** Every trustee may reimburse himself out of the trust property, all expenses properly incurred for
 - the execution of the trust
 - the realization, preservation or benefit of the trust property
 - the protection or support of the beneficiary
- 3) **Right to be recouped:** 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 fails, the trustee is entitled to recover from the beneficiary personally the amount of such overpayment.
- 4) **Right to apply to the court:** Any trustee may apply to the court for its opinion, advice or direction or any present questions respecting the management or administrations of the trust property.
- 5) **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
 - (Where nothing is due to the beneficiary under the trust) to an acknowledgement in writing in this respect.
- 6) **Right to Indemnify:** It is the right of the trustee to be indemnified by a person whosoever gained an advantage from a breach of trust to the extent of the amount actually received by such gainer under the breach. Where such person is a beneficiary, the trustee has charge on his interest for such amount.
- 7) **Rights to acknowledgement:** Where nothing is due to the beneficiary under the trust on the completion of duties of the trustee.

Powers of Trustee:

- 1) **General Authority:** 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 which is not competent to contract.
- 2) **Power to sell:** Where the trustee is empowered to sell any trust property, he may sell the same:
 - either together or in lots
 - by public auction or private auction
 - either at one time or several timeunless the instrument of trust otherwise directs.

- 3) **Power to vary investments:** A trustee may, at his directions, invest the trust money on any of the security mentioned in the Trust Act, from time to time vary any such investments.
- 4) **Power to apply property of minors:** Where any property is held by a trustee in trust for a minor, such trustee may apply it for his maintenance or education or advancement in life or the reasonable expenses of his religious worship, marriage or funeral etc.
- 5) **Power to give receipts:** Any trustee may give a receipt in writing for any money, securities or other movable property payable, transferable or deliverable to him in the absence of fraud, such receipt shall discharge such person.
- 6) **Power to compound:** Two or more trustees acting together may:
 - 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, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust.
- 7) **Power to several trustees:** 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 executed by a number in excess of the number of remaining trustees.

Disabilities of Trustees:

- 1) **No renunciation after acceptance:** A trustee who has accepted the trust cannot afterwards renounce it.

Exceptions:

- with the permission of the court.
- If the beneficiary is competent to contract, with his consent.
- By virtue of a special power in the instrument of trust.

- 2) **No delegation:** A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger.

Exceptions:

- The instrument of trust so provides
- The delegation is in the regular course of business
- The delegation is necessary
- The beneficiary (being competent to contract) consents to the delegations.

- 3) **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.
- 4) **Discretionary Powers:** Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by the court.

- 5) **No remuneration:** A trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Exceptions:

- If there is any express directions to the contrary contained in the instrument of trust.
 - if there is a contract to contrary entered into with beneficiary or the court at the time of accepting trust.
- 6) **Application of trust property:** A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.
- 7) **Trustee for sale:** No trustee whose duty is to sell property may directly or indirectly, but the same on his own account or as agent for a third person.
- 8) **Purchase of Beneficiary Interest:** No trustee (and no person who has recently ceased to be a trustee) may without the permission of the court buy or become mortgager or lessee of the trust property.
- 9) **Trustee for purchase:** No trustee whose duty it is to buy or to obtain a mortgage or lease of particular for the beneficiary may buy it, or obtain a mortgage or lease of it for himself.

Rights of Beneficiary:

- 1) **Right to rents and profits:** The beneficiary has (subject to the instrument of trust) a right to the rents and profits of the trust property.