

LL.B.(Three Years Course) (Third Year) VIth Semester

Paper- IV

Equity, Trust, Fiduciary Relationship and Specific Relief Act

Unit- II

The Indian Trusts Act, 1882

The Duties and Liabilities of Trustees (Section- 11to 30)

Trustee to execute trust- Section- 11

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.**

Illustration- (a) A, a trustee, is simply authorised to sell certain land by public auction. He cannot sell the land by private contract.

Trustee to inform himself of state of trust-property- Section- 12

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 on insufficient or hazardous security.

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

Trustee to protect title to trust-property- Section- 13

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

Illustration- 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 (3 of 1877), the trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary- Section- 14

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

Care required from trustee- Section- 15

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.

Illustration-

A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

Conversion of perishable property- Section- 16

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**.

Illustration-

A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

Trustee to be impartial- Section- 17

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 authorise the Court to control the exercise **reasonably and in good faith** of such discretion.

Illustration

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.

Trustee to prevent waste- Section- 18

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

Accounts and information- Section- 19

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.

Case-

T.G. Viswanathan Chettiar vs T.A. Shanmugha Chettiar, AIR 1992 Mad 148

Investment of trust-money- Section- 20

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 shall, subject to any direction contained in the instrument of trust, make investments as expressly authorised by the instrument of trust or in any of the securities or class of securities as specified by the Central Government, by notification in the official Gazette.

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 shall be made without his consent in writing**.

For the purposes of this section, the expression ‘securities’ shall have the same meaning as assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

Power to purchase redeemable stock at a premium- Section- 20A

(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.

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

Mortgage of land pledged to Government under Act 26 of 1871- Deposit in Government Savings Bank- Section- 21

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.

Sale by trustee directed to sell within specified time- Section- 22

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 authorised by a principal Civil Court of original jurisdiction.

Illustration

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.

Liability for breach of trust- Section- 23

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

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

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

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

(e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for **compound interest** (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) A trustee improperly leaves trust-property outstanding, and it is consequently lost, he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

No set-off allowed to trustee- Section- 24

A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

Non-liability for predecessor's default- Section- 25

Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for co-trustee's default- Section- 26

Subject to the provisions of sections 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 enquiry 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.

Several liability of co-trustees- Section- 27

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

Contribution as between co-trustees

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

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

Non-liability of trustee paying without notice of transfer by beneficiary- Section- 28

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.

Liability of trustee where beneficiary's interest is forfeited to the Government- Section- 29

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.

Indemnity of trustees- Section- 30

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.

Rights and Powers of Trustees

Section- 31 to 45

Right to title-deed- Section- 31

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.

Right to reimbursement of expenses- Section- 32

Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realisation, 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 fails, 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.

Case-

1-Mathalone vs Bombay Life Assurance Co. Ltd. 1953 AIR 385 SC

Right to indemnity from gainer by breach of trust- Section- 33

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

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**.

Right to apply to Court for opinion in management of trust-property- Section- 34

Any trustee may, without instituting a suit, apply by petition to a **principal Civil Court of original jurisdiction** for its **opinion, advice or direction** on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

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 costs of every application under this section shall be in the discretion of the Court to which it is made.

Case-

1-Official Trustee, West Bengal vs Sachindra Nath Chatterjee & Anr 1969 AIR 823, 1969 SCR (3) 92

2-Muffakham Jah Bahadur And Ors. vs H.E.H. Nawab Mir Barkat Ali Khan AIR 1989 AP 68

3-Ashok Kumar Kapur & Ors vs Ashok Khanna & Ors, 2007 S.C.

Right to settlement of accounts- Section- 35

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 acknowledgment in writing to that effect.

General authority of trustee- Section- 36

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 realisation, 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.

Case-

Karnataka Trader, Hubli vs Hiren Shamji Karamsey And Anr. AIR 1987 Kant 204

Power to sell in lots, and either by public auction or private contract- Section- 37

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.

Case-

Ramabai Govind vs Raghunath Vasudeo AIR 1952 Bom 106

Power to sell under special conditions Power to buy-in and re-sell- Section- 38

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

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.

Illustrations

(a) A bequeaths 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.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorise B, as between him and C, to postpone the sale to an indefinite period.

Case-

Mahesh Chandra vs Regional Manager, U.P. Financial Corporation 1993 AIR 935

Power to convey- Section- 39

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.

Power to vary investments- Section- 40

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, no such change of investment shall be made without his consent in writing.

Power to apply property of minors, etc., for their maintenance, etc. - Section- 41

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

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is **insufficient** for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a **principal Civil Court** of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

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.

Power to give receipts- Section- 42

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

Power to compound, etc. - Section- 43

Two or more trustees acting together may, if and as they think fit-

- (a) accept any composition or any security for any debt or for any property claimed,
- (b) allow any time for payment of any debt,
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust, and
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

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 trusts 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.

Power to several trustees of whom one disclaims or dies- Section- 44

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.

Case-

Sm. Jarat Kumari Dassi And Ors. vs Shaligram Subhkaran Khemani AIR 1960 Cal 489

Suspension of trustee's powers by decree- Section- 45

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.