

Trusts Act, 1977

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Trusts Act, 1977

An Act to define and amend the law relating to private Trusts and Trustees. Whereas it is expedient to define and amend the law relating to private trusts and trustees; it is hereby enacted as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Trusts Act, 1977.

(2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh, 1978.

Saving. - Nothing herein contained affects the rules of Mohammedan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to State Dharmarth Trust, public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the date on which this Act comes into force.

2. Omitted :-

3. Interpreting Clause :-

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

"author of the trust".- the person who reposes or declares the confidence is called "the author of the trust";

"trustee".- the person who accepts the confidence is called the "trustee";

"beneficiary".- the person for whose benefit the confidence is accepted is called the "beneficiary";

"trust-property".- the subject-matter of the trust is called "trust-property" or "trust-money";

"beneficial interest".- the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and

"instrument of trust".- and the instrument, if any, by which the trust is declared is called the "instrument of trust";

"breach 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

"Registered."- 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;

"Notice".- 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 Contract Act, 1977, section 229; and

Expressions defined in the Contract Act.- all expressions used herein and defined in the Contract Act shall be deemed to have the meanings respectively attributed to them by that Act.

CHAPTER 2 OF THE CREATION OF TRUST

4. Lawful Purpose :-

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

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation. - In this section the expression "law" includes, where the trust-property is immovable and situate in a foreign country, the law of such country.

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.

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 word

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.

7. Who May Create Trust :-

A trust may be created -

(a) by every person competent to contract, and with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

(b) but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

8. Subject Of Trust :-

The subject-matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

9. Who May Be Beneficiary :-

Every person capable of holding property may be a beneficiary.

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

10. Who May Be Trustee :-

Every person capable of holding property may be a trustee, but, where the trust involves the exercising of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept a trust. - No one is bound to accept a trust.

Acceptance of trust. -A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

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 or 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 creating of the trust.

CHAPTER 3 OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. Trustee To Execute Trust :-

The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of his 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.

12. Trustee To Inform Himself Of 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 to trust) to get in trust-moneys invested on insufficient or hazardous security.

13. Trustee To Protect Title To Trust-Property :-

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

14. Trustee Not To Set Up Title Adverse To Beneficiary :-

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

15. Care Required From Trustee :-

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

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.

17. Trustee To Be Impartial :-

Where there are more beneficiaries than one, the trustee is bound to be impartial, 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.

18. Trustee To Prevent Waste :-

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

19. Accounts And Information :-

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

20. Investment Of Trust-Money :-

Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the

trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others: -

(a) in promissory notes, debentures, stock or other securities of the Government of India, or of the State, or of the United Kingdom of Great Britain and Ireland;

(b) in bonds, debentures and annuities charged by the 1[Parliament of the United Kingdom] on the revenues of India:

Provided that no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established in connection with such annuity;

(bb) in India three and a half percent stock, India three percent, stock, India two and half percent, stock or any other capital stock 2[which before the 15th August 1947 was] issued by the Secretary of State for India in Council under the authority of an act of Parliament 3[of United Kingdom] and charged on the revenues of India.

(c) in stock or debentures of, or shares in, Railways or other companies the interest wherein shall have been guaranteed by the Secretary of State for India in Council, or by the Government of India or in debentures of the Bombay Central Co-operative Bank Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council;

(d) Omitted.

(e) on a first mortgage of immovable property situate in the State: Provided that the property is not 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

(f) on any other security expressly authorised by the instrument of trust, 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 clause (e) and (f) shall be made without his consent in writing.

1. Substituted by A.L.O. 2008 for "Imperial Parliament".

2. Substituted by A.L.O. 2008 for "which may at any time hereafter be".

3. Inserted by A.L.O. 2008.

20A. Power To Purchase Re-Deemable 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 clause (c) 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 clause 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.

21. Investments Made Before Commencement Of This Act :-

Nothing in section 20 shall apply to investments made before this Act comes into force, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a government savings Bank.

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 authorised by a principal Civil Court of original jurisdiction.

23. Liability For Breach Of Trust :-

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

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

- (a) where he has actually received interest;
 - (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary;
 - (c) where the trustee ought to have received interest, but has not done so;
 - (d) where he may be fairly presumed to have received interest.
- He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six percent 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.

24. No Set-Off Allowed To Trustee :-

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

25. Non-Liability For Predecessors Default :-

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

26. Non-Liability For Co-Trustees 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 enquiry as to the co-trustees dealing 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 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.

27. Several Liability Of Co-Trustee :-

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.

But as between the trustees themselves, if one be less guilty than another and 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 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.

28. Non-Liability Of Trustee Paying Without Notice Of Transfer By Beneficiary :-

When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust property to the person who would have been entitled thereto in the absence of such vesting the trustee is not liable for the property so paid or delivered.

29. Liability Of Trustee Where Beneficiary's Interest Is Forfeited To Government :-

When the beneficiary's interest is forfeited or awarded by legal adjudication to 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.

30. Indemnity Of Trustee :-

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 (sic) one for the other of them, nor for any banker, broker or other person, in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER 4 OF THE RIGHTS AND POWERS OF TRUSTEES

31. Right To Title Deed :-

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

32. Right To Reimbursement Of Expenses :-

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

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

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

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

33. Right To Indemnity From Gainer By Breach Of Trust :-

A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is 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.

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 an 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 person 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.

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 acknowledgment in writing to that effect.

36. General Authority Of Trustee :-

In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the

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.

37. Power To Sell In Lots, And. Either By Public Auction Or Private Contract :-

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

38. Power To Sell Under Special Condition :-

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.

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 affecting the sale or purchase.

39. Power To Convey :-

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

40. Power To Vary Investments :-

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

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.

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 minors 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.

42. Power To Give Receipts :-

Any trustees 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 or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same there from, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

43. Power To Compound Etc :-

Two or more trustees acting together may, if and as they think fit -
(a) accept any composition or any security for any debt or for any property claimed;

(b) allow any time for payment of any debt;

(c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and

(d) for any of those purposes, enter, into give, execute and to 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 authorised 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.

44. Power To Several Trustees Of Whom One Disclaims Or Dies :-

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

45. Suspension Of Trustees Powers By Decree :-

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

CHAPTER 5 OF THE DISABILITIES OF TRUSTEES

46. Trustee Cannot Renounce After Acceptance :-

A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

47. Trustee Cannot Delegate :-

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

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

48. Co-Trustee Cannot Act Singly :-

When there are more trustee than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

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 principal Civil Court of original jurisdiction.

50. Trustee May Not Charge For Services :-

In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

51. Trustee May Not Use Trust-Property For His Own Profit :-

A trustee may not use or deal with the trust-property for his own

profit or for any other purpose unconnected with the trust.

52. Trustee For Sale Or His Agent May Not Buy :-

No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

53. Trustee May Not Buy Beneficiary's Interest Without Permission :-

No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

54. Co-Trustees May Not Lend To One Of Themselves :-

A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

CHAPTER 6 OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

55. Rights To Rents And Profits :-

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

56. Rights To Specific Execution :-

The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest. And, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all are 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.

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 opinion taken by the trustee for his guidance in the discharge of his duty.

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 and 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 authorise her to transfer such interest during her marriage.

59. Right To Sue For Execution Of Trust :-

Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust 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.

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 properly protected and held and administered by proper persons and by a proper number of such persons.

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

A person domiciled abroad; an 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.

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.

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 re-transferred 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 omissions of the trustee or purchaser.

Nothing in this section -

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or re-transferred, 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 re-transferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

63. Following Trust-Property Into The Hands Of Third Persons :-

Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

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

64. Saving Of Rights Of Certain Transferees :-

Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of-

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

(b) a transferee for consideration from such a transferee.

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

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a bona fide holder to whom they have passed circulation, or shall be deemed to affect the Contract Act, section 108, or the liability of a person to whom a debt or charge is transferred.

65. Acquisition By Trustee Of Trust-Property Wrongfully Converted :-

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

66. Right In Case Of Blended Property :-

Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for

the amount due to him.

67. Wrongful Employment By Partner-Trustee Of Trust-Property For Partnership Purposes :-

If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of partnership, no other partner is liable there for in his personal capacity to the beneficiary, unless he had notice of the breach of trust.

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

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 who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

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

69. Rights And Liabilities Of Beneficiarys Transferee :-

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

CHAPTER 7 OF VACATING THE OFFICE OF TRUSTEE

70. Office How Vacated :-

The office of a trustee is vacated by his death or by his discharge

from his office.

71. Discharge Of Trustee :-

The trustee may be discharged from his office only as follows :-

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

72. Petition To Be Discharged From Trust :-

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

73. Appointment Of New Trustees On Death, Etc :-

Whenever any person appointed a trustee disclaims or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from the State, or leaves the State 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 of 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 by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

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

74. Appointment By Court :-

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

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

75. Vesting Of Trust-Property In New Trustees :-

Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with surviving or continuing trustees or trustee, as the case may require.

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

76. Survival Of Trust :-

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

CHAPTER 8 OF THE EXTINCTION OF TRUSTS

77. Trust How Extinguished :-

A trust is extinguished -

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

78. Revocation Of Trust :-

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

A trust otherwise created can be revoked only -

- (a) where all the beneficiaries are competent to contract-by their consent;
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth-in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors- at the pleasure of the author of the trust.

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.

CHAPTER9 OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

80. Where Obligation In Nature Of Trust Is Created :-

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

81. Where It Does Not Appear That Transferrer 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.

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 66.

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.

84. Transfer For Illegal Purposes :-

Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferrer 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 transferer.

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 testators 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 testators legal representative.

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

86. Transfer Pursuant To Rescindable Contract :-

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

87. Debtor Becoming Creditors Representative :-

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

88. Advantage Gained By Fiduciary :-

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

89. Advantage Gained By Exercise Of Undue Influence :-

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

90. Advantage Gained By Qualified Owner :-

Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as

representing all persons interested in such property, gains any advantage, he must hold for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

91. Property Acquired With Notice Of Existing Contract :-

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

92. Purchase By Person Contracting To Buy Property To Be Held On Trust :-

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

93. Advantage Secretly Gained By One Of Several Compounding Creditors :-

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

94. Constructive Trusts In Cases Not Expressly Provided For :-

In any case not coming within the scope of any of the preceding sections, where there is not 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 person, having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

95. Obligors 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 of 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 the 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.

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.