

# Decoding the Codes: Indian Trusts Act, 1882

## STATUS – IN FORCE

### PURPOSE OF THE ACT:

Indian trust Act enacted to **define** and **amend** the law relating to private Trusts and Trustees.

### COMPOSITION OF THE ACT:

Official Name	The Indian Trusts Act, 1882
Act No.	Act no. 2 of 1882
Passed on	13th January, 1882
Commencement Date	first day of March, 1882
Chapters	IX
Repealed Provisions	Section 81 82 94 repealed by Benami Transactions (Prohibition) Act, 1988
Schedule	1
Sections	96

## CHAPTER WISE DECODING OF THE ACT

### CHAPTER I PRELIMINARY

#### (SEC 1-3)

#### Sec 1. Savings

Act exempts following from the provisions of the Acts

- rules of Muhammadan law as to waqf,
- mutual relations of the members of an undivided family determined by any customary or personal law
- public or private religious or charitable endowments
- trusts to distribute prizes taken in war among the captors

#### Sec 2. Repeal of Enactment

Sec 2 repealed following provisions of statutes, mentioned in the only schedule of this act

- Sections 7, 8, 9, 10 and 11 of The Statute of Frauds
- Sections 2,3,4,5,32,33,34,35,36 and 37 of The Trustees 'and Mortgages 'Powers Act, 1866
- Section 12 First illustration of The Specific Relief Act, 1877

#### Sec 3. Interpretation Clause

Important interpretations are here,

**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.

**Instrument of trust-** the instrument, if any, by which the trust is declared is called the “instrument of trust”.

## CHAPTER II OF THE CREATION OF TRUSTS

### (Sec 4-10)

#### Sec 4. 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 unlawful purpose 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” [clause (a)] includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

#### Illustration

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A’s children. The trust is void.

#### Sec 5. Trust of Immoveable Property

No trust in relation to immoveable 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 moveable property

No trust in relation to moveable property is valid unless

- declared as aforesaid, or unless
- the ownership of the property is transferred to the trustee.

## Sect 6. Creation of trust

A trust is created when the author of the trust indicates with **reasonable certainty** by any *words or acts*

- An **intention** on his part to create a trust,
- The **purpose** of the trust,
- The **beneficiary**,
- The **trust-property**,
- And (unless the trust is declared by will or the author of the trust is himself to be the trustee) **transfers** the trust-property to the trustee.

## Illustrations

- A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of C. This creates a trust so far as regards A and C. (*reasonable certainty*)
- A bequeaths certain property to B, “hoping he will continue it in the family”. This does not create a trust, as the beneficiary is not indicated with reasonable certainty. (*just hoping*)
- A bequeaths certain property to B, requesting him to distribute it amongst such members of C’s family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty. (*just requesting*)
- A bequeaths certain property to B, desiring him to divide the bulk of it among C’s children. This does not create a trust, for the trust-property is not indicated with sufficient certainty. (*desiring*)

### Sec 7. Who may create trusts

A trust may be created

- (a) by every person competent to contracts under section 11 of the Indian Contract Act, 1872 and
- (b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor.

### Sec 8. Subject of trust

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

### Sec 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.

### Sec 10. Who may be trustee

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

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

No one is bound to accept a trust. Intended trustee may, within a reasonable period, disclaim it.

### Illustrations

- (b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

## CHAPTER III OF THE DUTIES AND LIABILITIES OF TRUSTEES

### (Sec 11-30)

#### Sec 11. Trustee to execute trust

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

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

#### Illustration

- (b) A, a trustee of certain land for X, Y and Z, is authorised to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

#### Sec 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 of trust) to get in trust-moneys invested

#### Illustrations

- (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 on insufficient or hazardous security.

### Sec 13. Trustee to protect title to trust-property

A trustee is bound to

- maintain and
- defend all such suits,
- and (subject to the provisions of the instrument of trust) to take such 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.

### Sec 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.

### Sec 15. Care required from trustee

A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and,

**in the absence of a contract to the contrary**, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

#### Illustrations

(d) 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.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

### Sec 16. Conversion of perishable property

Where the trust is created for the benefit of several persons in succession, (*see illustration*) and the trust-property is of a wasting nature or a **future** or **reversionary** interest, the trustee is bound, unless an **intention to the contrary** may be inferred from the instrument of trust, to convert the property into property of a **permanent** and **immediately profitable** character.

#### Illustrations

- (a) A bequeaths to B, all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

### Sec 17. Trustee to be impartial

Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion. (*see illustration*)

#### 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.

### Sec 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.

## Sec 19. Accounts and information

A trustee is bound

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

## Sec 20. Investment of trust-money

Where the trust-property **consists of money** and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others,

- (a) in promissory notes, debentures, stock or other securities of any State Government or of the Central Government, or of the United Kingdom of Great Britain and Ireland,
- (d) in debentures or other securities for money issued, under the authority of any Central Act or State Act,
- (e) on a first mortgage of immoveable property situate in any part of the territories to which this Act extends,

Provided that the property is not a leasehold for **a term of years** and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money;

(ee) in units issued by the Unit Trust of India under any unit scheme made under section 21 of the Unit Trust of India Act, 1963,

- (f) on any other security expressly authorised by the **instrument of trust**, or by the **Central Government** by notification in the Official Gazette or by any rule which the **High Court** may from time to time prescribe in this behalf.

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

## Sec 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.

## Sec 23. Liability for breach of trust

Where the trustee commits a **breach of trust**, he is liable to make good the loss which **the trust-property** or **the beneficiary** has thereby **sustained**,

unless **the beneficiary** has by fraud **induced the trustee** to commit the breach,

or the **beneficiary, being competent to contract**, has himself, **without coercion or undue influence** having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of 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**;
- (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

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

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends

### Sec 24. No set-off allowed to trustee

A trustee who is liable for a loss occasioned by a breach of trust **in respect of one portion** of the trust-property **cannot set-off** against his liability

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

### Sec 25. Non-liability for predecessor's default

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

### Sec 26. Non-liability for co-trustee's default

One trustee is not, as such, liable for a breach of trust committed by his co-trustee under section 13 and 15.

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.

## Sec 27. Several liability of co-trustees

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

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.

this section does not authorise a trustee who has been guilty of fraud to institute a suit to compel contribution.

## Sec 28. Non-liability of trustee paying without notice of transfer by beneficiary

When any beneficiary's interest becomes vested in another person, and the trustee,

- not having notice of the vesting,
- pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting,
- the trustee is not liable for the property so paid or delivered.

## Sec 29. Liability of trustee where beneficiary's interest is forfeited to the Government

When the beneficiary's interest is

- forfeited or awarded
- by legal adjudication to the Government,
- the trustee is bound to hold the trust-property to the extent of such interest
- for the benefit of such person in such manner
- as the State Government may direct in this behalf.

### Sec 30. Indemnity of trustees

Trustees shall be respectively chargeable for the provisions of instrument of trust, for breach of trust (*see section 23*) and for co-trustees default (*see section 26*) 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.

## CHAPTER IV OF THE RIGHTS AND POWERS OF TRUSTEES

(Sec 31- 45)

### RIGHTS OF TRUSTEE

#### Sec 31. Right to title-deed

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

#### Sec 32. Right to reimbursement of expenses

Every trustee may reimburse himself, or pay or discharge out of the trust-property,

- all expenses **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**

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 and disposition of the trust-property without previous payment of such expenses and interest of the beneficiary.

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

### Right to be recouped for erroneous over-payment

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest.

If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

### Sec 33. Right to indemnity from gainer by breach of trust

A person other than a trustee

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

### Sec 34. Right to apply to Court for opinion in management of trust-property

Any trustee may,

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

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, his own responsibility, to have **discharged** his duty as such trustee **in the subject-matter** of the application.

### Sec 35. Right to settlement of accounts

When the duties of a trustee 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**.

### Sec 36. General authority of trustee

In addition to **the powers** expressly

- conferred by this **Act** and
- by the **instrument of trust**, and

subject to the **restrictions**, if any,

- contained in such **instrument**, and
- to the provisions of **section 17**, (trustee to be impartial)

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.

## POWERS OF TRUSTEE

### Sec 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.

### Sec 38. Power to sell under special conditions. Power to buy-in and re-sell

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 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.

### Sec 39. Power to convey

For the purpose of completing any such sale,

- the trustee shall have power to convey or
- otherwise dispose of the property
- sold in such manner as may be necessary.

### Sec 40. Power to vary investments

A trustee may, at his discretion,

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

where there is a person competent to contract no such change of investment shall be made without his consent in writing.

### Sec 41. Power to apply property of minors, etc., for their maintenance, etc.

Where any property is held by a trustee in trust for a minor,

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

### Sec 43. Power to compound, etc.

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

- accept any **composition** or any **security** for any debt or for any property claimed;
- allow any time for payment of any debt;
- compromise, compound, abandon, submit to arbitration** or otherwise **settle any debt, account, claim** or thing whatever **relating to the trust**; and
- 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 of this section 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 contrary intention** is not expressed in the instrument of trust, if any.

### Sec 44. Power to several trustees of whom one disclaims or dies

When an authority to deal with the trust-property is given to several trustees and one of them **disclaims** (see section 10) or **dies**, the authority may be exercised by the continuing trustees, unless from the **terms** of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

### Sec 45. Suspension of trustee's powers by decree.

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

## CHAPTER V OF THE DISABILITIES OF TRUSTEES

### (Sec 46-54)

#### Sec 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

#### Sec 47. Trustee cannot delegate.

A trustee cannot delegate his **office** or any of **his duties** either to a **co-trustee** or to a **stranger**, unless

- (a) the instrument of trust so provides, or
- (b) the delegation is in the regular course of business, or
- (c) the delegation is necessary, or
- (d) the beneficiary, being competent to contract, consents to the delegation.

#### Explanation

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

#### Illustrations

- (a) A bequeaths certain property to B and C on certain trusts to be executed by them or the **survivor** of them or the **assigns** of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

#### Sec 48. Co-trustees cannot act singly.

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

### Sec 49. Control of discretionary power.

Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

### Sec 50. Trustee may not charge for services.

In the absence of **express directions to the contrary** contained in the instrument of trust or of a **contract to the contrary** entered into with the beneficiary or the Court at the time of accepting the trust,

a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any **Official Trustee**, **Administrator General**, **Public Curator**, or person holding a certificate of administration.

### Sec 51. Trustee may not use trust-property for his own profit.

A trustee may not use or deal with the trust-property for his **own profit** or for any other **purpose unconnected** with the trust.

### Sec 52. Trustee for sale or his agent may not buy.

No 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**.

### Sec 53. Trustee may not buy beneficiary's interest without permission.

No trustee, and no person who has recently **ceased to be a trustee**, may,

- without the permission of a principal Civil Court of original jurisdiction,
- **buy** or **become mortgagee** or **lessee** of the trust-property or **any part** thereof; and
- such permission shall not be given unless the proposed **purchase**, **mortgage** or **lease** is manifestly for the advantage of the beneficiary.

### Trustee for purchase.

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

Sec 54. Co-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 VI OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY

(Sec 55-69)

### RIGHTS OF BENEFICIARY

Sec 55. Rights to rents and profits

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

Sec 56. Right to specific execution

The beneficiary is entitled to **have the intention of the author** of the trust specifically **executed** to **the extent** of the beneficiary's interest.

Right to transfer of possession.

- Where there is only **one beneficiary** and he is **competent to contract**, or
- where there are **several beneficiaries** and they are **competent to contract**
- and all of one mind,
- he or they may require the trustee to transfer the trust -property to **him** or **them**, or
- to such person as he or they may direct.

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

### Sec 57. Right to inspect and take copies of instrument of trust, accounts, etc.

The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust,

- to inspect and take copies of the instrument of trust,
- the documents of title relating solely to the trust-property,
- the accounts of the trust-property and
- the vouchers (if any) by which they are supported, and
- the cases submitted and
- opinions taken by the trustee for his guidance in the discharge of his duty.

### Sec 58. Right to transfer beneficial interest.

The beneficiary, if competent to contract, may transfer his interest,

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.

### Sec 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 by the trustee is or becomes impracticable,

the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

### Sec 60. Right to proper trustees

The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be

- 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**.

### Illustrations

(c) A conveys certain property to four trustees in trust for B. Three of the trustees **die**. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees **disclaim**. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, **refuses** to act, or goes to **reside** permanently out of India, or is declared an **insolvent**, or **compounds** with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

### Sec 61. Right to compel to any act of duty

The beneficiary has a right that

- his trustee shall be compelled to **perform** any particular act of his duty as such,
- and **restrained** from committing any **contemplated** or **probable breach of trust**.

### Illustrations

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

## Sec 62. Wrongful purchase by trustee

Where a trustee has

- wrongfully bought trust-property,
- the beneficiary has a right to have the property declared (subject to the trust or retransferred by the trustee, if it remains in his hands) **unsold**, or,
- if it has been **bought** from him
- by any person
- with notice of the trust, by such person. (unsold 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 retransferred), have contracted in good faith with the trustee or purchaser; or
- (b) entitles the beneficiary to have the property declared (subject to the trust or retransferred) where he, being competent to contract, has himself, **without coercion or undue influence** having been brought to bear on him, **ratified the sale** to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

## Sec 63. Following trust-property—

into the hands of third persons

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.

into that into which it has been converted

Where the trustee has disposed of trust-property and

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

### Illustrations

(b)A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

### Sec 64. Saving of rights of certain transferees

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

- a 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
- a transferee for consideration from such a transferee.

### Sec 65. Acquisition by-trustee of trust-property wrongfully converted

Where a trustee

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

### Sec 66. Right in case of blended property

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

### Sec 67. Wrongful employment by partner-trustee of trust-property for partnership purposes

If a partner, being a trustee,

- wrongfully employs trust-property in the business or
- on the account of the partnership,
- no other partner is liable therefor in his personal capacity to the beneficiaries,
- unless he had notice of the breach of trust. The partners having such notice are jointly and severally liable for the breach of trust.

#### Illustrations

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

### Sec 68. Liability of beneficiary joining in breach of trust

Where one of several beneficiaries—

- (a) joins in committing breach of trust, or
- (b) knowingly obtains any advantage therefrom, 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.

### Sec 69. Rights and liabilities of beneficiary's transferee

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

## CHAPTER VII OF VACATING THE OFFICE OF TRUSTEES

### (Sec 70-76)

#### Sec 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

A 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, (see Trustee to execute trust)

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.

#### Sec 73. Appointment of new trustees on death, etc.

Whenever any person appointed a trustee **disclaims**,

- or any trustee, either **original** or **substituted**, **dies**, or
- is for a **continuous** period of **six months** absent from India or
- **leaves** India for the purpose of residing abroad, or
- is declared an **insolvent**, or
- **desires** to **be discharged** from the trust, or

- refuses or
- becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or
- personally incapable to act in the trust, or
- accepts an inconsistent trust,

a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument 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 (not insolvent and unsound mind), or
  - the surviving or continuing trustees 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 trustees,
  - 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 Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

### Sec 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.

### Sec 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 the surviving or continuing trustees or trustee, as the case may require.

### Powers of new trustees.

Every new trustee so appointed (*See section 73*), and every trustee appointed by a Court (*See section 74*) 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.

### Sec 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 VIII OF THE EXTINCTION OF TRUSTS

### (Sec 77-79)

### Sec 77. Trust how extinguished

A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked. (*See Section 78*)

### Sec 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.

### Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

### Sec 79. Revocation not to defeat what trustees have duly done

No trust can be **revoked by the author** of the trust so as to **defeat** or **prejudice** what the **trustees** may have duly done in execution of the trust.

## CHAPTER IX OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS

### (Sec 80-96)

### Sec 80. Where obligation in nature of trust is created.

An obligation in the nature of a trust is created in the following cases. (*See sections except 81 and 82*)

*Section 81, 82 is repealed by 'Benami Transaction Prohibition Act 1988'.*

### Sec 83. Trust incapable of execution or executed without exhausting trust-property

Where a trust is

- **incapable** of being executed, or [*See Illustration (b)*]
- where the trust is **completely executed** **without exhausting** the trust-property, [*See Illustration (c)*]
- the trustee, in the absence of a **direction to the contrary**, must hold the trust-property, or so much thereof as is **unexhausted**,
- for the benefit of the **author of the trust** or his **legal representative**.

## Illustrations

- (a) A conveys certain land to B— “upon trust”, and no trust is declared; or “upon trust to be thereafter declared”, and no such declaration is ever made; or upon trusts that are too vague to be executed; or upon trusts that become incapable of taking effect; or “in trust for C”, and C renounces his interest under the trust. In each of these cases B holds the land for the benefit of A.
- (b) A transfers Rs. 10,000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A’s legal representative.
- (c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

### Sec 84. Transfer for illegal purpose

Where the owner of property transfers it to another

- for an **illegal purpose** and such **purpose is not carried** into execution, or
- the transferor is not **as guilty** as the transferee, or
- the **effect of permitting** the transferee to **retain the property might be to defeat** the provisions of any law,
- the transferee must hold the property for the benefit of the transferor.

### Sec 85. Bequest for illegal purpose

Where a **testator bequeaths** certain property upon trust and the **purpose** of the trust appears on the **face of the will** to be **unlawful**, or

during the **testator’s lifetime** the legatee **agrees** with him to apply the property **for an unlawful purpose**, the legatee must hold the property for the benefit of the **testator’s legal representative**.

**Bequest of which revocation is prevented by coercion.**

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

### 86. Transfer pursuant to rescindable contract.

Where property **is transferred**

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

### Sec 87. Debtor becoming creditor's representative.

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

### Sec 88. Advantage gained by fiduciary.

Where a **trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character** to protect the interests of another person,

- by **availing himself** of his **character**,
- **gains for himself** any pecuniary advantage, or
- where any person so bound (bound in fiduciary character)
- enters into **any dealings** under circumstances in which his **own interests** are, or may be,
- **adverse** to those of such other person and
- thereby **gains for himself** a pecuniary advantage,

he must hold for the benefit of such other person the advantage so gained.

### Illustrations

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

### Sec 89. Advantage gained by exercise of undue influence.

Where, by the exercise of

- **undue influence**, any advantage is gained in **derogation of the interests** of another,
- the person **gaining** such **advantage without consideration**, or
- **with notice** that such influence has been exercised,

- must hold the advantage for the benefit of the person whose interests have been so prejudiced.

### Sec 90. Advantage gained by qualified owner

Where a **tenant for life, co-owner, mortgagee** or other **qualified owner** of any property,

- by **availing** himself of **his position** as such,
- gains an advantage in **derogation** of the rights of the other persons interested in the property, or
- where any **such owner**, as **representing all persons** interested in such property,
- **gains** any advantage,
- he must **hold**, for the **benefit of all persons** so **interested**,
- the advantage so **gained**, but
- subject to **repayment by such persons** of their **due share** of the **expenses properly** incurred, and
- to an **indemnity** by the **same persons** against **liabilities properly contracted**,
- in gaining such advantage.

### Illustrations

- (a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.
- (c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

### Sec 91. Property acquired with notice of existing contract.

Where a person **acquires** property **with notice** that

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

### Sec 92. Purchase by person contracting to buy property to be held on trust

Where a person **contracts to buy** property

- **to be held** on trust
- **for certain** beneficiaries and
- **buys** the property accordingly, (trust)
- he must **hold** the property
- for **their benefit** to the **extent necessary** to give effect to the contract.

### Sec 93. Advantage secretly gained by one of several compounding creditors

Where creditors **compound the debts** due to them,

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

**Sec 94. [Constructive trusts in cases not expressly provided for].—Rep. by the Benami Transactions (Prohibition) Act, 1988**

### Sec 95. Obligor's duties, liabilities and disabilities

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

Provided that

- (a) where he rightfully **cultivates** the property or **employs it** in trade or business, he is entitled to **reasonable remuneration** for his trouble, **skill** and **loss** of time in such cultivation or employment; and
- (b) where he holds the property **by virtue of a contract** with 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.

### Sec 96. Saving of rights of bona fide purchasers

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

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Arshi hayat Gangohi