

# The Trusts Act, 1882<sup>1</sup>

[Act 2 of 1882]

[13th January, 1882]

*An Act to define and amend the law relating to Private Trusts and Trustees*

## PREAMBLE

Whereas it is expedient to define and amend the law relating to private trusts and trustees, it is hereby enacted as follows:

**Statement of Objects and Reasons.**—“Trusts, in the strict sense in which that term is used by English lawyers, that is to say, confidences to the existence of which a ‘legal’ and an ‘equitable’ estate are necessary, are unknown to Hindu and Muhammadan law. But trusts in the wider sense of the word, that is to say, obligations annexed to the ownership of property which arise out of a confidence reposed in and accepted by the owner for the benefit of another, are constantly created by the natives of India and are frequently enforced by our Courts. “There is, probably,” says Mr. Justice Phear (4 Ben. O. C. J. 134) “no country in the world where fiduciary relations exhibit themselves so extensively and in such varied forms as in India, and possession of dominion over property, coupled with the obligation to use it either wholly or partially, for the benefit of others than the possessor, is, I imagine, familiar to every Hindu.” So, too, in the case of Muhammadans, where a woman is entitled to a share of her deceased father’s estate in the hands of her brother (W. R. 1864, p. 377), or to exigible dower in the hands of her husband (6 W. R. 111). Trusts created by an old man for his own maintenance and ulterior purposes, for a widow, for a daughter, stepdaughter or daughter-in-law and her children are of pretty frequent occurrence amongst the natives, whether Hindu or Muhammadan, and it is desirable to keep them free from the complication of double estates in which, without the intervention of the legislature, they are certain to become entangled. But apart from the native property-holder, there is the large body of domiciled Europeans and Eurasians who have for nearly a century enjoyed and taken advantage of a trust law recognised by our Courts; the number and wealth of this class have increased, and in suits between members of this community every Court in the country may be called upon to administer a trust-law. Nevertheless, with the exception of certain provisions in the Penal Code, the Specific Relief Act, the Code of Civil Procedure and the Limitation Act, the Indian Statute book is silent on the subject so far as regards the bulk of the population; for the Statute of Frauds, Sections 7 to 11, is in force only in the Presidency-towns, and the rules contained in Acts XXVII and XXVIII of 1866 extend only to cases to which English law is applicable, and are, in themselves, incomplete.

The object of the present Bill is to codify the law relating to trusts in the wider sense above described : but it saves the rules of Muhammadan law as to *wakf*, and the mutual relations of the members of an undivided family. And it leaves untouched religious and charitable endowments established by Hindus and Buddhists, as being matters in which the Legislature cannot at present usefully interfere further or otherwise than has been done by Act XX of 1863.

With the few exceptions mentioned in this Statement, the rules contained in the Bill are substantially those now administered by English Courts of Equity and (under the name of ‘justice, equity and good conscience’) by the Courts of British India.

The Bill distributes the subject under the following heads: I, Preliminary : II, the creation of trusts : III, the duties and liabilities of trustees : IV, their rights and powers : V, their disabilities : VI, the rights and liabilities of the beneficiary : VII, vacating the office of trustee: VIII, the extinction of trusts; and IX, certain obligations of the nature of trusts.

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1. The Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941).

The preliminary chapter, in order to prevent the introduction of conceptions resembling the English legal estate and equitable ownership, defines the interest of the beneficiary as *his right against the trustee* as owner of the property. The beneficiary has, under the Bill, no estate or interest in the subject-matter of the trust. The Bill also defines 'breach of trust' as a breach of any duty imposed on a trustee, as such, by any law for the time being in force, and declares that a person has 'notice' of a fact when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information is given to, or obtained by, his agent under the circumstances mentioned in the Contract Act, Section 229.

The second chapter deals with the creation of trusts. It declares that a trust may be created for any 'lawful purpose,' and, as there is a general analogy between a trust and a contract, the Bill defines such purpose to be lawful in the cases in which the Indian Contract Act, Section 23, declares the object of an agreement to be lawful. An explanation shews that, where the trust-property is land situate in a foreign country, the trust, to be valid, must not create an estate not recognized by the law of that country.

The expediency of excluding oral declarations of trust has long been felt in the case of land, and the Bill (Section 5) lays down, in general accordance with the seventh section of the Statute of Frauds, that no trust in relation to *immoveable* property is valid, unless declared (a) by non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or (b) by the will of the author of the trust or of the trustee, and that 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. Theoretically, this will modify the Hindu law, which in no transaction absolutely requires a writing (2 Mad. H. C. Rep. 39); but trusts by merely verbal declarations are as rarely met with as mortgages by merely verbal agreements : the proposed change will therefore in practice make no alteration in that law. The rule will not apply where it would operate so as to effectuate a fraud, as, for example, where a father having power to bequeath certain land is induced not to make a will of that land by the promise of his heir presumptive that he will provide there out for his relatives.

Section 8 declares that the subject-matter of a trust must be property transferable to the beneficiary, and that it must not be a merely beneficial interest under a subsisting trust. The object of the latter provision is to preclude the complications that would arise from allowing a trust upon a trust.

Section 9 declares that every person capable of holding property may be a beneficiary. As, under Act I of 1868, 'person' includes a corporation, the Bill here varies from English Law. But the variation is intentional, as it has been more than once ruled that the Mortmain Statutes are not in force in India.

Chapter III deals with a trustee's duties and liabilities. None of the rules here contained call for remark except Sections 20 and 23. Section 20 gives a list of the securities on which alone a trustee may invest trust-funds. The necessity for some such provision has been indicated by the High Court of Bombay in *De Souza v. De Souza*, 12 Bom 184. Investments on mortgages of leaseholds for years are forbidden, unless, of course, such securities are expressly authorised by the instrument of trust. In England, no doubt, trustees authorized to lend on a mortgage of realty may invest on a long term of years at a peppercorn rent. But in this country such terms are practically unknown. Section 20 also allows a trustee to deposit a trust fund not exceeding Rs 1,000 in a Government Savings Bank, and to invest on mortgage of land already pledged as security for an advance under the Land Improvement Act, 1871. A power like the latter is conferred in England by 27 & 28 Vict., cap. 114, Section 161. Section 23 declares the measure of the trustee's liability in case of a breach of trust and embodies, as illustrations, the rules on which Courts of Equity act where trust-property improperly left outstanding is lost or where a trustee retains money which should be invested, or neglects a direction to invest, or to accumulate, or improperly sells trust-securities, or is guilty of unreasonable delay in investing trust-funds or in paying them to the beneficiary.

Chapter IV treats of the rights and powers of trustees. It embodies the substance of Act XXVIII of 1866, Sections 2, 3, 5, 32, 33, 36, 37, 39 and 43. Section 34 of the Bill empowers trustees to apply, not only to High Court Judges, but to District Judges, for advice on simple questions respecting the management and administration of the trust-property. Under Section 36, which deals with the general authority of a trustee, trustees will be able (unless restrained from doing so by the instrument of trust) to grant reasonable

agricultural leases, thin timber and otherwise act for the benefit of the trust. Except with the permission of the Court, no trustee will be able to lease trust property for a term exceeding 21 years.

Chapter V deals with disabilities of the trustees. The only section here calling for remark is 52, which declares that no trustee, and no person who has recently ceased to be a trustee, may, without the permission of the Court, buy the interest of the beneficiary in the trust-property, and that such permission shall not be given unless the purchase is manifestly for the benefit of the latter. The Bill here deviates from the present law according to which a trustee is allowed to buy trust-property from his beneficiary if the latter is *sui juris* and the former can shew that the relation of trustee and beneficiary was, at the time of the purchase, virtually dissolved, and that the fullest information and every advantage were given to the beneficiary. Such a rule seems too vague for insertion in a Code intended to be worked, for the most part, by unprofessional Judges; it has, moreover, been disapproved in *Morse v. Royal*, 12 Ves. 372.

In the next chapter—of the rights and liabilities of the beneficiary — the only sections requiring special notice are Sections 58 and 62. The former provides for the execution of trusts by the Court, and makes no distinction between the cases where the declaration of trust is complete and those where the trust is executory, i.e., where the declaration of trust is intended to be perfect at some future period.

The latter section declares that all persons taking immoveable trust property inconsistently with the trust hold it subject to the trust, except (a) purchasers in good faith for consideration without notice of the trust, and (b) purchasers for consideration from such purchasers. This agrees with the English rule which, to prevent stagnation of property, exempts from the trust a purchaser with notice from an innocent purchaser without notice, who has got the legal estate.

Chapter VII treats of vacating the office of trustee, and, incidentally, deals with the appointment of new trustees, and declares that, 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 treats of the extinction of trusts and, incidentally, of their revocation.

Where no trust is declared, but for the purposes of justice the law deems one to have been created, the trust is by English lawyers termed constructive. *Benami* transactions, where property is transferred to A for a consideration paid by B, and B makes the payment for his own benefit, have for centuries been familiar to the people of India : gains made by one person at the cost of another are an everyday source of litigation; and in no country, owing to the extreme sub-division of immovable property and the partition of inheritances, are constructive trusts more common. Chapter IX avoids the fiction implied in the term 'constructive trusts' by treating such confidences as obligations in the nature of trusts properly so called. It specifies the fourteen principal cases in which such an obligation arises, as follows :

1. Where it does not appear that the transferor of property intended to dispose of the beneficial interest (Section 80) :
2. Where property is transferred to one person for a consideration paid by another (Section 81) :
3. Where the trust is incapable of execution or is executed without exhausting the property (Section 82) :
4. Where a transfer of property is made for an illegal purpose (Section 83) :
5. Where a bequest is made for an illegal purpose, or where the revocation of a bequest is forcibly prevented (Section 84) :
6. Where a transfer is made in pursuance of a rescindible contract (Section 85) :
7. Where a transfer is made in fraud of the transferor's creditors (Section 86) :
8. Where a debtor becomes his creditor's legal representative (Section 87) :
9. Where a pecuniary advantage is gained by a person in a fiduciary character (Section 88) :
10. Where an advantage is gained by the exercise of undue influence (Section 89) :
11. Where an advantage is gained by a tenant for life or other qualified owner in derogation of the rights of other persons interested in the property (Section 90) :
12. Where property is acquired with notice of an existing contract affecting it (Section 91) :
13. Where a person contracts to buy property to be held on trust (Section 92) :

14. Where one of several compounding creditors, by a secret arrangement with the debtor, gains an advantage over his co-creditors (Section 93) :

The Bill also contains a general clause (Section 94) providing for cases not so specified. It is believed that this clause will cover that form of constructive trust which the Punjab Courts have held to arise when a co-sharer in a village community absents himself without expressly abandoning his rights.

The Bill declares that, in the case of all obligations in the nature of a trust, the obligor shall be subject to the liabilities and (with the two exceptions mentioned in Section 95) to the disabilities of an ordinary trustee. Three only of the obligations above specified seem to require further notice. The Bill, it will be seen, does not attempt to suppress the inveterate practice of entering into *benami* transactions, and it must be admitted that in many, perhaps most, of these transactions the parties are actuated by religious or prudential, rather than fraudulent motives. Section 81, accordingly, declares that, where property is transferred to one person for a consideration paid by another, and it appears that the latter did not intend to pay the consideration for the benefit of the former, the transferee must hold the property for the benefit of the person paying. Resulting trusts, i.e. those that arise where an interest is given for purposes to which the trust is not commensurate (as, for instance, to pay debts which are satisfied, or an annuity which expires), are treated (Section 82) as constructive, for here there is no declaration of trust as to the portion of the trust-property which is not required for the purpose declared. Section 86 corresponds with 13 Eliz., c. 5, as to settlements intended to defraud creditors. That Statute is in force in the Presidency-towns, and its principle has been held by the Madras High Court (4 Mad. 88) to apply to Natives in the mufassal.

Where a person gives property to charitable purposes, and either specifies no objects or such as do not exhaust the proceeds, the law as it stands, does not suffer the property or its surplus to result to the donor or his legal representatives; but the Court takes upon itself to execute the donor's intention by declaring the particular purposes to which the fund shall be applied. A similar exception is made when the purposes of the gift at the time exhaust the whole proceeds, but in consequence of an increase in the value of the property an excess of income subsequently arises. The Bill ignores these exceptions, which were introduced when the law of resulting trusts was imperfectly understood, and which unfairly disregarded the interest of the legal representative.

Lastly, it may be remarked that the Bill contains no provisions as to the presumption against trustees that advantages gained by them from their beneficiaries are gained by undue influence, or as to the escheat of a beneficiary's interest. The former matter is sufficiently provided for by the Evidence Act, I of 1872, Section 111, the latter, by the Succession Act, X of 1865, and the general law as to *bona vacantia*.

The Bill is now published as settled by the Indian Law Commission and in accordance with the Legislative despatch of the Secretary of State, No. 37, dated 7th October, 1880."

**Statement of Objects and Reasons of Amendment Act 34 of 2016.**—The Indian Trusts Act, 1882 (2 of 1882) provides the law relating to Private Trusts and Trustees. Section 20 of the Act states that where the trust-property consists of money and cannot be applied immediately or at an early date to the purpose of the trust, the trustee is bound, subject to any direction contained in the instrument of trust, to invest the money in securities enumerated in clauses (a) to (f) of the said section. Clause (a) of Section 20 provides for investing the trust-money in promissory notes, debentures, stock and other securities of the United Kingdom of Great Britain and Ireland and clause (b) for bonds, debentures, and annuities charged or secured by Parliament of the United Kingdom. The Law Commission of India, in its 17th Report has, inter alia, recommended for amendment of Section 20 and for deletion of the provisions for the securities which have become obsolete.

2. The Indian Trusts (Amendment) Bill, 2015 seeks to amend Sections 20 and 20-A of the said Act. The proposed amendments to Section 20 empowers the Central Government to notify a class of securities, for the purposes of investing trust-money and it does away with the requirement of case to case approval by the Government of "any security" and provides to the trustees greater autonomy and flexibility to take decisions on investment of trust money based on their assessment of the risk return trade off and the relevant provisions of the trust deed. It would be consistent with the current

economic environment and the present shift from a merit based regulatory regime to a disclosure based regulatory regime.

3. The Bill seeks to enable the Central Government to notify a class of securities for the purposes of investment of trust-money by the trustees in such securities and it deletes reference to the outdated and obsolete securities from the Act.

4. The Bill seeks to achieve the above objects.

## CHAPTER I PRELIMINARY

**1. Short title and commencement.**—This Act may be called the Indian Trusts Act, 1882, and it shall come into force on the first day of March, 1882.

**Local extent, savings.**—<sup>2</sup>[It extends to <sup>3</sup>[the whole of India <sup>4</sup>[\* \* \*] and] the Andaman and Nicobar Islands <sup>5</sup>[\* \* \*]; but the Central Government may, from] time to time, by notification in the Official Gazette, extend it to <sup>6</sup>[the Andaman and Nicobar Islands] or to any part thereof.] But 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 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 said day.

**CASE LAW ▶ Applicability.**—Trusts Act, 1882 is applicable only to private trusts and not to public trusts, *Thayarammal v. Kanakammal*, (2005) 1 SCC 457.

Government land dedicated to temples by way of grant by Government and respondents appointed as trustees-cum-poojaris with the obligation of spending the income from the properties for pooja and maintenance of the temples constituted public religious trust and not private trust, hence Act is not applicable, *Jt. Commr., HRCE, Admn. Deptt. v. Jayaraman*, (2006) 1 SCC 257.

**2. Repeal of enactments.**—The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed in the territories to which this Act for the time being extends.

**3. Interpretation-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;

the person who reposes or declares the confidence is called the “author of the trust”; the person who accepts the confidence is called the “trustee”; the person for whose benefit the confidence is accepted is called the “beneficiary”; the subject-matter of the trust is called “trust-property” or “trust money”; the “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner

2. *Subs.* by the A.O. 1948 for the original words as amended by the A.O. 1937.

3. *Subs.* by the A.O. 1950, for “all the Provinces of India, except”.

4. The words “except the State of Jammu and Kashmir” *omitted* by Act 34 of 2019, Ss. 95, 96 and Sch. V (w.e.f. 31-10-2019).

5. The words “and Panth Piploda” *omitted* by the A.O. 1950.

6. *Subs.* by the A.O. 1950, for “either or both of the said Provinces”.



of the trust-property; and the instrument, if any, by which the trust is declared is called the “instrument of trust”;

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

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

**CASE LAW ▶ “Trust”, Meaning.**—Trust must have lawful purpose for which it is established. A “trust” is an obligation annexed to the ownership of the 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 owner. Every trust must have a purpose for which it is established. Trust can be created by virtue of a conditional gift. *Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan*, (2017) 4 SCC 771.

▶ **Juristic nature of trust.**—A trust is not a person and therefore not a consumer. Consequently, it cannot be a complainant and cannot file a consumer dispute under the provisions of the Act. *Pratibha Pratisthan v. Canara Bank*, (2017) 3 SCC 712.

▶ **Interpretation/Construction.**—Interpretation of words “in the town of Kanpur and surrounding areas and extensions”, occurring in a clause of trust deed indicating the place, the workmen whereof could be the beneficiaries of the trust, held, not vague—Meaning stated, *CIT v. Kamla Town Trust*, (1996) 7 SCC 349.

▶ **Right of Beneficiary.**—Beneficiary has a right to obtain his beneficial interest or interest against the trustee as owner of the trust property. Trustee, therefore, would, become trust property’s owner for the purpose of effectively executing or administering the trust for the benefit of the beneficiaries and for due administration thereof but not for any other purpose, *State Bank of India v. Special Secy., Land*, 1995 Supp (4) SCC 30.

Where trust is created primarily for the benefit of the members of the settlor’s family it is a private trust, *Trustees of Gordhandas Govindram Family Trust v. CIT, Bombay*, (1973) 3 SCC 346.

▶ **Breach of Trust.**—Where permission of High Court was not taken by official trustee before demolishing existing structure and constructing new one and undertaking expenditure over and above, sanctioned by Court. Trustee would be guilty of breach of trust, *Official Trustee of Tamil Nadu v. Udavumkarankal*, 1993 Supp (3) SCC 509.

▶ **Religious endowments.**—A dedication by a Hindu for religious or charitable purposes is neither a “gift” nor a “trust” in the strict legal sense. Religious endowment does not create title in respect of the property dedicated in anybody’s favour, *Thayarammal v. Kanakammal*, (2005) 1 SCC 457.

▶ **Validity and enforceability of Constitution of 1934 of Malankara Orthodox Syrian Church.**—The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. The contention that the 1934 Constitution was breached by the Catholicos, was rejected

and it was held that the Patriarch faction for no good cause was ready to accept the ecclesiastical and spiritual powers of the Catholicos and others as provided in the Constitution and Kalpanas. The Patriarch faction was more to be blamed for disorder in the Churches than the Catholicos faction, *K.S. Varghese v. St. Peter's & St. Paul's Syrian Orthodox Church*, (2017) 15 SCC 333.

► **Church in the form of a trust.**—When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which its properties are vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of the 1934 Constitution without the approval of the Church hierarchy. Once a trust, is always a trust. No group or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the parish churches to even frame bye-laws in violation of the provisions of the 1934 Constitution, *K.S. Varghese v. St. Peter's & St. Paul's Syrian Orthodox Church*, (2017) 15 SCC 333.

## CHAPTER II OF THE CREATION OF TRUSTS

**4. Lawful purpose.**—A trust may be created for any lawful purpose. The purpose of 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.

### *Illustrations*

- (a) *A* conveys property to *B* in trust to apply the profits to the nurture of female fondlings to be trained up as prostitutes. The trust is void.
- (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.
- (c) *A*, while in insolvent circumstances, transfers property to *B* in trust for *A* during his life, and after his death for *B*. *A* is declared an insolvent. The trust for *A* is invalid as against his creditors.

**CASE LAW ► Trust deed, Nature of.**—Trust deed does not constitute an agreement inter se trustees or/and beneficiaries of trust. In absence of any requirement of a proposal followed by its acceptance for creation of a trust, a trust deed does not constitute an agreement inter se trustees or/and beneficiaries of trust with respect to different clauses thereof. By accepting creation of trust, trustees and beneficiaries merely undertake to carry out the terms of trust deed insofar as the same may be in accordance with law. Thus, the arbitration clause contained in trust deed in question did not constitute an arbitration agreement inter se

beneficiaries of trust within the meaning of Section 7 of Arbitration and Conciliation Act, 1996, *Vimal Kishor Shah v. Jayesh Dinesh Shah*, (2016) 8 SCC 788 : (2016) 4 SCC (Civ) 303.

Valid trust deed conveys an interest in the trust estate in favour of beneficiaries, *Vimal Kishor Shah v. Jayesh Dinesh Shah*, (2016) 8 SCC 788 : (2016) 4 SCC (Civ) 303.

► **Lawful Trust.**—Trust created for discharging debts is not unlawful, *Chogmal Bhandari v. CTO*, (1976) 3 SCC 749.

**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.

**CASE LAW ► Wakf property.**—Wakf properties are dedicated to God and title to the properties vests in God whereas trusts exist for whatever purpose they are created, including for charitable purposes, and title to the properties remains vested in the trustees, *Maharashtra State Board of Wakfs v. Yusuf Bhai Chawala*, (2012) 6 SCC 328 : (2012) 3 SCC (Civ) 497.

► **Effect of amendment of pleadings on the nature of representative suit.**—In the Mannathur Church matter suit no fresh leave under Order 1 Rule 8, was sought when the reliefs were amended and enlarged. Hence, it was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of representative suit under Order 1 Rule 8 CPC as the amended relief was traceable from the main relief, *K.S. Varghese v. St. Peter's & St. Paul's Syrian Orthodox Church*, (2017) 15 SCC 333.

**6. Creation of trust.**—Subject to the provisions of Section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

#### *Illustrations*

- (a) 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.
- (b) 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.
- (c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.
- (d) 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.
- (e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.



**CASE LAW ▶ Creation of Trust.**—While a trust is not complete until the trust property is vested in trustees for the benefit of the cestui que trust, this can be done by the settlor, where he is himself the trustee, by a declaration of trust, using language which, taken in connection with his acts shows a clear intention on his part to divest himself of all beneficial interest in it and to exercise dominion and control over it exclusively in the character of a trustee. Section 6 of the Indian Trusts Act, makes this clear beyond all doubt, *Moti Lal Chhadami Lal Jain v. C.I.T.*, 1991 Supp (1) SCC 229, 239.

A mere declaration can create a trust obligation, particularly when the settlor is the sole trustee under the trust, *Shiva Nath Prasad v. State of W.B.*, (2006) 2 SCC 757.

▶ **Trustee and beneficiary**—Relation between, is not that of debtor and creditor, *Nawab Mir Barkat Ali Khan Bahadur v. CEO*, (1996) 10 SCC 685.

▶ **Bar on creation of Trust.**—There is no bar to a Mohammedan creating a simple English trust. It is not always necessary that in order to make a settlement of his properties, a Mohammedan has always to create a wakf, *Mohd. Khasim v. Mohd. Dastagir*, (2006) 13 SCC 497.

▶ **Beneficial Trust.**—A beneficial interest in a trust is created in different situations. When a real or personal property is purchased in the name of another, a presumption of resulting trust arises in favour of the person who is proved to have paid the purchase money as a result whereof a beneficial interest in the property results to the true purchaser. The doctrine of resulting trust was applicable in India even before the Trusts Act came into force. Law relating to trusts has not recognized only a resulting trust but other kinds of trusts as well, *Canbank Financial Services Ltd. v. Custodian*, (2004) 8 SCC 355.

**7. Who may create trusts.**—A trust may be created—

- (a) by every person competent to contract,<sup>7</sup> and
- (b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

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

**CASE LAW ▶ Validity of Trust.**—Trust in question whether violative of Section 7 of Trusts Act for being created by or on behalf of minors, held, could be determined only in the light of the contents of the trust deed and not with reference to letters and documents not referred to therein, *T.A.V. Trust v. CIT*, (1999) 3 SCC 7, distinguishing *CIT v. Motilal Hirabhai Spg. and Wvg. Co. Ltd.*, (1978) 113 ITR 173 (Guj).

**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.

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

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7. See Section 11 of the Indian Contract Act, 1872 (9 to 1872).

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

**No one bound to accept trust.**—No one is bound to accept a trust.

**Acceptance 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 of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

#### *Illustrations*

- (a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, B and C hold the property in trust for D.
- (a) 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.
- (a) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

### CHAPTER III

#### 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 this section, be given by a principal Civil Court of original jurisdiction.

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

*Explanation.*—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

#### *Illustrations*

- (a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.
- (b) A, a trustee of certain land for X, Y and Z, is authorized 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.

- (c) *A*, a trustee for *B* and her children, is directed by the author of the trust to lend on *B*'s request, trust property to *B*'s husband, *C*, on the security of his bond. *C* becomes insolvent and *B* requests *A* to make the loan. *A* may refuse to make it.

**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 on insufficient or hazardous security.

*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.
- (a) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

**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, 1977,<sup>8</sup> the trustee's duty is to cause the instrument to be registered.

**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.

*Illustrations*

- (a) *A*, living in Calcutta, is a trustee for *B*, living in Bombay. *A* remits trust-funds to *B* by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. *A* is not bound to make good the loss.
- (b) *A*, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker *B*, then in credit. The rents are accordingly paid to *B*, and *A* leaves the money with *B*, only till wanted. Before the money is drawn out, *B* becomes insolvent. *A*, having had no reason to believe that *B* was in insolvent circumstances, is not bound to make good the loss.
- (c) *A*, a trustee of two debts for *B*, releases one and compounds the other, in good faith and reasonably believing that it is for *B*'s interest to do so. *A* is not bound to make good any loss caused thereby to *B*.

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8. See now the Indian Registration Act, 1908 (16 of 1908).

- (d) A, a trustee directed to sell the trust-property by auction, sells the same but does not advertise the sale and otherwise fail in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.
- (e) A, a trustee for B, in execution of his trust, sells the trust-property, but for want of the due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.
- (f) A, trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.
- (g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.
- (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.

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

*Illustrations*

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

**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.

*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.

**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.

<sup>9</sup>[**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 shall, subject to any direction contained in the instrument of trust, <sup>10</sup>[make investments as expressly authorised by the instrument of trust or in any of the securities or class of securities] as specified by the Central Government, by notification in the Official Gazette:

Provided that where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment <sup>11</sup>[\* \* \*] shall be made without his consent in writing.

9. *Subs.* by Act 34 of 2016, S. 2 (w.e.f. 17-4-2017). Prior to substitution it read as:

“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:

Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government shall be deemed, for the purposes of this clause, to be securities of such Government;

(b) in bonds, debentures and annuities charged or secured by the Parliament of the United Kingdom before the fifteenth day of August, 1947 on the revenues of India or of the Governor-General in Council or of any Province:

Provided that, after the fifteenth day of February, 1916, 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; but nothing in this proviso shall apply to investments made before the date aforesaid;

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

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

(d) in debentures or other securities for money issued, under the authority of any Central Act or Provincial Act or State Act, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi:

Provided that after the 31st day of March, 1948, no money shall be invested in any securities issued by or on behalf of a municipal body, port trust or city improvement trust in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;

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

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

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

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

10. *Subs.* for “invest the money in any of the securities or class of securities expressly authorised by the instrument of trust or” by Act 7 of 2017, S. 131(i) (w.e.f. 17-4-2017).

11. The words “in any of the securities or class of securities mentioned above” omitted by Act 7 of 2017, S. 131(ii) (w.e.f. 17-4-2017).

*Explanation.*—For the purposes of this section, the expression “securities” shall have the same meaning as assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

<sup>12</sup>[**20-A. Power to purchase redeemable stock at a premium.**—(1) A trustee may invest in any of the securities mentioned or referred to in Section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

<sup>13</sup>[\* \* \*]

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

**21. Mortgage of land pledged to Government under Act 26 of 1871. Deposit in Government Savings Bank.**—Nothing in Section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immovable property already pledged as security for an advance under the Land Improvement Act, 1871<sup>14</sup> 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 authorized by a principal Civil Court of original jurisdiction.

*Illustration*

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

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

12. *Ins.* by Act 1 of 1916, S. 3.

13. *Omitted* by Act 34 of 2016, S. 3 (w.e.f. 17-4-2017). Prior to omission it read as:

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

14. *See* now the Land Improvement Loans Act, 1883 (19 of 1883).

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

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

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

- (e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate;
- (f) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the net profits made by such employment.

#### *Illustrations*

- (a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.
- (b) A bequeaths a house to *B* in trust to sell it and pay the proceeds to *C*. *B* neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. *B* is answerable to *C* for the loss.
- (c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with Section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.
- (d) The duty of the trustee is to invest trust-money in any of the securities mentioned in Section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.
- (e) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.
- (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.
- (g) Trust-property is invested in one of the securities mentioned in Section 20, clauses (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

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

**CASE LAW ▶ Liability to pay interest.**—When a trustee in breach of his duty retains the trust money in his own hands uninvested or mixes it with his own money or property, he becomes liable to pay interest thereon, *Hukumchand Gulabchand Jain v. Fulchand Lakshmidhand Jain*, 67 Bom LR 807 : AIR 1965 SC 1692.

**24. No set-off allowed to trustee.**—A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set off against his liability again which has accrued to another portion of the trust-property through another and distinct breach of trust.

**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.

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

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

- (a) where he has delivered trust-property to his co-trustee without seeing to its proper application;
- (b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require;
- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

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

#### *Illustration*

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

**27. Several liabilities 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.**—But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets



he has received, to make good such loss; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize 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 the Government.**—When the beneficiary's interest is forfeited or awarded by legal adjudication <sup>15</sup>[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 <sup>16</sup>[the State Government] may direct in this behalf.

**30. Indemnity of trustees.**—Subject to the provisions of the instrument of trust and of Sections 23 and 26, trustee shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

#### CHAPTER IV

#### 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.

**CASE LAW ▶ Applicability.**—Principle of Section 32 applies to the cases arising under the Act, (1966) 7 Guj LR 825.

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.

15. The words "to Govt." successively amended by the A.O. 1937 and the A.O. 1950 to read as above.

16. Subs. by the A.O. 1937, for "the Govt."

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.

**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. 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 any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

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

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

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

**CASE LAW ► Applicability.**—Section 34 would not apply when the object of the trust itself has been fulfilled and the only question that remains is as to the disposal of balance funds. In such a case, a direction should be issued under Article 142 in view of Section 83 for balance funds to revert to the settlor, and also because the money can only go back to the settlor company. To direct company to file a suit for this purpose would only cause further delay and multiplicity of proceedings, *Ashok Kumar Kapur v. Ashok Khanna*, (2007) 5 SCC 189.

Application filed and decided under this section held, cannot be deemed to be one under Section 92 CPC, *Trustees of HEH The Nizam's Pilgrimage Money Trust v. CIT*, (2000) 4 SCC 179.

► **Jurisdiction.**—Jurisdiction and duty of court under this section is advisory in nature, *Jt. Commr., HRCE, Admn. Deptt. v. Jayaraman*, (2006) 1 SCC 257.

**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 realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

<sup>17</sup>[\* \* \*]

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

**CASE LAW ▶ Enforcement of rights.**—Claimant to trusteeship though no party to trust deed can sue to enforce rights under trust deed, *Rapani v. John*, 1964 Ker LJ 539 : AIR 1965 Ker 203.

**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.

**CASE LAW ▶ Sale of Trust property.**—Consideration of offer made by prospective buyer, as a fair offer, is entitled to be accepted, *Dattatraya Baburao Walawalkar v. Siddhivinayak Construction (P) Ltd.*, (2016) 12 SCC 163 : (2016) 4 SCC (Civ) 724.

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

**Time allowed for selling trust-property.**—Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

#### *Illustrations*

- (a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.
- (b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

**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.

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17. Second paragraph *rep.* by Act 12 of 1891, S. 2 and Sch. I.

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

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

**42. Power to give receipts.**—Any trustee or trustees 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 therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

**43. Power to compound, etc.**—Two or more trustees acting together may, if and as they think fit,—

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and

(d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

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

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

**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.
- (b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.



- (c) *A* bequeaths to *B* fifty houses let at monthly rents in trust to collect the rents and pay them to *C*. *B* may employ a proper person to collect these rents.

**CASE LAW ▶ Delegation of powers.**—Although as a rule, trustees must execute the duties of their office jointly, this general principle is subject to the following exceptions, when one trustee may act for all: (1) where the trust deed allows the trusts to be executed by one or more or by a majority of trustees; (2) where there is express sanction or approval of the act by the co-trustees; (3) where the delegation of power is necessary; (4) where the beneficiaries competent to contract consent to the delegation; (5) where the delegation to a co-trustee is in the regular course of the business; (6) where the co-trustee merely gives effect to a decision taken by the trustees jointly, *J.P. Srivastava & Sons (P) Ltd. v. Gwalior Sugar Co. Ltd.*, (2005) 1 SCC 172.

**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.

**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.

**CASE LAW ▶ Alienation by trustees.**—Trustee selling property to his son—Offer by third person for higher price not considered—Trustee held did not exercise his discretion reasonably and in good faith. *M.V. Ramasubbar v. Manicka Narasimachari*, (1979) 2 SCC 65.

▶ **Discretionary trust.**—A discretionary trust is one which gives a beneficiary no right to any part of the income of the trust property, but vests in the trustees a discretionary power to pay him, or apply for his benefit, such part of the income as they think fit. The trustees must exercise their discretion as and when the income becomes available, but if they fail to distribute in due time, the power is not extinguished so that they can distribute later. They have no power to bind themselves for the future. The beneficiary thus has no more than a hope that the discretion will be exercised in his favour, *CWT v. Estate of Late Vikramsinhji of Gondal*, (2015) 5 SCC 666.

**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.

**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.

**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.

**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

**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. 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 the second clause of this section applies to such property during her marriage.

#### *Illustrations*

- (a) Certain Government securities are given to trustees upon trust to accumulate the interest until *A* attains the age of 24, and then to transfer the gross amount to him. *A* on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.
- (b) *A* bequeaths Rs 10,000 to trustees upon trust to purchase an annuity for *B*, who has attained his majority and is otherwise competent to contract. *B* may claim the Rs 10,000.
- (c) *A* transfers certain property to *B* and directs him to sell or invest it for the benefit of *C*, who is competent to contract. *C* may elect to take the property in its original character.

**CASE LAW ▶ Execution of trust deed.**—Court's direction to trustee under this section would ordinarily be binding on trustee. Trustee therefore can have recourse to a remedy available with a superior court, *Nawab Shaqafath Ali Khan v. Nawab Imdad Jah Bahadur*, (2009) 5 SCC 162 : (2009) 2 SCC (Civ) 421.

**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.

**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 authorize her to transfer such interest during her marriage.

**CASE LAW ▶ Transfer of beneficial interest, legal requirement of.**—A beneficial interest indisputably can be transferred. For the said purpose the only legal requirement is the essence of trust. Further held, the right of a beneficiary to transfer his interest being absolute the transferee derives rights, title and interest therein, *Canbank Financial Services Ltd. v. Custodian*, (2004) 8 SCC 355.

**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.

**CASE LAW ▶ Form of action.**—When Act provides for filing of suit, then suit alone can be filed and filing of original petition would be barred. Likewise when Act provides for filing of original petition then original petition alone can be filed. Act has no provision for conversion of original petition into suit or vice versa, *Sinnamani v. G. Vettivel*, (2012) 5 SCC 759 : (2012) 3 SCC (Civ) 392.

**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*

- (a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent



circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

- (b) A bequeaths certain jewels to B in trust for C. B dies during A's life-time; then A dies. C is entitled to have the property conveyed to a trustee for him.
- (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 <sup>18</sup>[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.

**61. Right to compel to any act of duty.**—The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

*Illustrations*

- (a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.
- (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.

**62. Wrongful purchase by trustee.**—Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the net profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or 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.

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18. Subs. by the A.O. 1950, for "the Provinces".

**63. Following trust-property — into the hands of third persons; into that into which it has been converted.**—Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit 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.

*Illustrations*

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

**64. Saving of rights of certain transferees.**—Nothing in Section 63 entitles the beneficiary to any right in respect of property in the hands of—

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

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

Nothing in Section 63 applies to money currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, Section 108, or the liability of a person to whom a debt or charge is transferred.

**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 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 employments of *A*'s assets.
- (b) *A*, a trader, bequeaths his property to *B* in trust for *C*, appoints *B* his sole executor and dies. *B* enters into partnership with *X* and *Y* in the same trade and employs *A*'s assets in the partnership business. *B* gives an indemnity to *X* and *Y* against the claims of *C*. Here *X* and *Y* are jointly liable with *B* to *C* as having knowingly become parties to the breach of trust committed by *B*.

**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, as 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 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 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 <sup>19</sup>[India], or leaves <sup>20</sup>[India] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by:

- (a) the person nominated for that purpose by the instrument or trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing 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.

The provisions of this section relative to a trustee who is dead include the case of a person 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.

**CASE LAW ▶ Appointment of Trustee.**—In *State of Karnataka v. Ragini Narayan*, (2016) 10 SCC 424: AIR 2016 SC 4545, under trust deed “donor trustee” was given power to nominate any person as member in his place for lifetime. Amended trust deed provided that after donor trustee’s lifetime, his seniormost lineal descendant or a member of his family, “or his wife” was to succeed and in case of failure of this mode of

19. Subs. by the A.O. 1950, for “the Provinces”.

20. Subs. by the A.O. 1950, for “the Provinces”.

succession, powers of donor trustee were to be exercised by State Government. Deed of nomination executed by donor trustee nominated his wife as a member after his lifetime by amending relevant clause of trust deed. Although nomination deed was registered subsequently but it operated from date of its execution in view of Section 47 of Registration Act. When appellant State accepted that its approval was obtained to deeds of amendment and nomination in context of another person as one of the trustees, it cannot deny such approval to donor trustee's wife, as appellant cannot be allowed to approbate and reprobate. Government's approval in case of donor trustee's wife was proved. As donor trustee had authority to nominate his wife, as respondent was legally wedded wife of donor trustee who was alive at the time of his death and as words "or his wife" were validly inserted by amendment with approval of Government, it was held that delegation of powers of donor trustee in favour of respondent-plaintiff wife suffers from no illegality.

**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 the surviving or continuing trustees or trustee as the case may require.

**Powers of new trustees.**—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 VIII

### 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 fulfilment 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.

*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.

**CASE LAW ▶ Sections 77 and 78—Trust created by deed of partnership—Continuance, after dissolution of the firm**—By partnership deed, parties thereto agreeing to carry on business and to allot 80 per cent of net profits to a trust for certain charitable and religious objects, viz. spending the trust fund in connection with temple festivals, medical relief, giving of alms on occasion of Hindu festivals, on gift of money to poor deserving persons for celebration of marriage and generally on any object of choultries, workhouses, hospitals etc.—Such a trust, held, survived even after the dissolution of the partnership. *Sri Agasthyar Trust v. CIT*, (1998) 5 SCC 588.

**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

**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 transferor intended to dispose of beneficial interest.**—<sup>21</sup>[*Repealed*]

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21. *Repealed* by the Benami Transactions (Prohibition) Act, 1988 (45 of 1988), S. 7 (w.e.f. 19-5-1988). Prior to Repeal it read as:

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

*Illustrations*

(a) A conveys land to B without consideration and declares not trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

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

(c) A transfers certain stock belonging to him into the joint names of him-self and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to

**82. Transfer to one for consideration paid by another.**—<sup>22</sup>[*Repealed*]

**83. Trust incapable of execution or executed without exhausting trust-property.**—Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

*Illustrations*

- (a) A conveys certain land to B—  
 “upon trust”, and no trust is declared; or  
 “upon trust to be thereafter declared”, and no such declaration is ever made; or  
 upon trusts that are too vague to be executed; or  
 upon 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 cent to B, in trusts 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.
- (d) A bequeaths Rs. 10,000 to B, to be laid out, in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A’s legal representative the undisposed of interest in the money or land if purchased.



**CASE LAW ▶ Applicability.**—It is true that the provisions of the Act are not applicable to private or public, religious and charitable trusts, but nevertheless the general principles underlying Section 83 are attracted in analogous circumstances, *State of U.P. v. Banshi Dhar*, 1965 All LJ 893.

Section 34 would not apply when the object of the trust itself has been fulfilled and the only question that remains is as to the disposal of balance funds. In such a case, a direction should be issued under Article 142 in view of Section 83 for balance funds to revert to the settlor, and also because the money can only go back to the settlor company. To direct company to file a suit for this purpose would only cause further delay and multiplicity of proceedings, *Ashok Kumar Kapur v. Ashok Khanna*, (2007) 5 SCC 189.

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transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

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

22. *Repealed* by the Benami Transactions (Prohibition) Act, 1988 (45 of 1988), S. 7 (w.e.f. 19-5-1988). Prior to Repeal it read as:

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

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

**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.

**CASE LAW ▶ Resulting trust.**—Section 83 incorporates in codified form the concept of what is known as a resulting trust. On the terms of Section 83 a resulting trust can arise only “in the absence of a discretion to the contrary”. *Fazalbhoy Currimbhoy v. Official Trustee of Maharashtra*, (1979) 3 SCC 189.

**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.

**CASE LAW ▶ Applicability.**—In order to apply Section 88 to the transaction of sale of the company’s land to its Directors it is necessary to show that the Directors have gained for themselves any pecuniary advantage by selling the lands of the company to themselves and their relations at a lower price, *Commissioner of Agricultural Income Tax, Bihar v. Hanuman Sugar Mills Ltd.*, AIR 1965 Pat 58 : (1964) 54 ITR 113.

**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 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.

**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 enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

#### *Illustrations*

- (a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.
- (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.



- (c) *A*, a trustee, retires from his trust in consideration of his successor paying him a sum of money. *A* holds such money for the benefit of his beneficiary.
- (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.
- (e) *A*, a partner, employed on behalf of himself and his co-partners is negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. *A* holds the lakh for the benefit of the partnership.
- (f) *A* and *B* are partners. *A* dies. *B*, instead of winding up the affairs of the partnership, retains all the assets in the business. *B* must account to *A*'s legal representative for the profits arising from *A*'s share of the capital.
- (g) *A*, an agent employed to obtain a lease for *B*, obtains the lease for himself. *A* holds the lease for the benefit of *B*.
- (h) *A*, a guardian, buys up for himself encumbrances on his ward *B*'s estate at an undervalue. *A* holds for the benefit of *B* the encumbrances so bought, and can only charge him with what he has actually paid.

**CASE LAW ► Applicability.**—By reason of Section 88 of the Trusts Act, a person bound in fiduciary character is required to protect the interests of other persons but the heart and soul thereof is that as between two persons if one is bound to protect the interests of the other and if the former availing of that relationship makes a pecuniary gain for himself, Section 88 would be attracted. What is sought to be prevented by a person holding such fiduciary benefit is unjust enrichment or unjust benefit derived from another, which is against conscience that he should keep. When a person makes a pecuniary gain by reason of a transaction, the cestui qui trust created thereunder must be restored back, *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad*, (2005) 11 SCC 314.

► **Interpretation/Construction.**—The list of persons specified in Section 88 is not exhaustive. The said expression includes a large variety of relationships: wherever as between two persons one is bound to protect the interests of the other and the former availing of that relationship makes a pecuniary gain for himself, the provisions of Section 88 would be attracted irrespective of any designation, which is immaterial. The said principle would also apply to a banker holding a customer's money. However, a fiduciary would not be liable for any action if there is no concealment by him or no advantage taken by him, *Canbank Financial Services Ltd. v. Custodian*, (2004) 8 SCC 355.

► **Benami Transaction.**—Where the property was purchased by agent under Section 88 for his principal, the agent holds the property in cestui que trust for and on behalf of principal though he fraudulently got inserted his name in the sale certificate. *P.V. Sankara Kurup v. Leelavathy Nambiar*, (1994) 6 SCC 68.

Section 88 of the Trusts Act has not been repealed by Section 7 of the Benami Transactions Act. A transaction which falls within the purview of Section 88 of the Trusts Act does not fall within the category of benami transaction in terms of the provisions of the Benami Transactions Act, *Canbank Financial Services Ltd. v. Custodian*, (2004) 8 SCC 355.

► **Fiduciary capacity.**—In determining whether a relationship is based on trust or confidence, relevant to determining whether they stand in a fiduciary capacity, the court shall have to take into consideration the factual context in which the question arises for it is only in the factual backdrop that the existence or otherwise of a fiduciary relationship can be deduced in a given case, *Marcel Martins v. M. Printer*, (2012) 5 SCC 342 : (2012) 3 SCC (Civ) 98.

► **Advantage by fiduciary.**—Tips received by employer hotel/restaurant, etc. on behalf of employees, are held in fiduciary capacity by employer as trustee for and on behalf of employees, *ITC Ltd. v. CIT (TDS)*, (2016) 6 SCC 652.

**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.

#### *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.
- (b) A village belongs to a Hindu family. A, one of its members, pays Nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.
- (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.

**CASE LAW ► Applicability.**—Where the mortgagee under Section 90 gained an advantage by availing himself of his position as a possessory mortgagee and committed default in not paying the occupancy price within the time limited by law for and on behalf of the mortgagor and subsequently obtained the regrant by posing himself as a tenant, the advantage so gained by him in derogation of the right of the mortgagor would attract the penal consequence of Section 90 of the Act, *Namdev Shripati Nale v. Bapu Ganapati Jagtap*, (1997) 5 SCC 185, following *Mritunjay Pani v. Narmada Bala Sasmal*, (1962) 1 SCR 290 : AIR 1961 SC 1353 and approving *Nabia Yathu Ummal v. Mohd. Mytheen*, 1963 KJ 1177 : AIR 1964 Ker 225.

Section 90 casts an obligation on a mortgagee to hold the rights acquired by him in the mortgaged property for the benefit of the mortgagor in such circumstances as the mortgagee is virtually in a fiduciary position in respect of the rights so acquired and he cannot be allowed to make a profit out of the transaction, *Jayasingh Dnyanu Mhoplekar v. Krishna Babaji Patil*, (1985) 4 SCC 162.

► **Essential conditions for applicability of.**—The following three conditions must be satisfied before Section 90 of the Indian Trusts Act can be applied to a case: (1) the mortgagee shall avail himself of his position as mortgagee; (2) he shall gain an advantage; and (3) the gaining should be in derogation of the right

of the other persons interested in the property. The section read with illustration (c), clearly lays down that where an obligation is cast on the mortgagee and in breach of the said obligation he purchases the property for himself, he stands in a fiduciary relationship in respect of the property so purchased for the benefit of the owner of the property. This is only another illustration of the well settled principle that a trustee ought not to be permitted to make a profit out of the trust. The same principle is comprised in the latin maxim *commodum ex injuria sua nemo habere debet*, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act, *Mritunjay Pani v. Narmada Bala Sasmal*, (1962) 1 SCR 290.

► **Proof of plaintiff's right over property in constructive trust.**—In *Jatina Khatoon v. Sk. Najeeb*, (2018) 11 SCC 717, plaintiff was the son of second wife of deceased owner of property and defendants were grandsons of his first wife. High Court found that defendants were co-trustees of original plaintiff and as such they would become constructive trustees on behalf of plaintiff and plaintiff's right would be deemed to be protected by the trustees. Hence, possession of defendants over suit land, apart from being in nature of constructive trustees, would be in lawful possession of plaintiff. Therefore, there was unity of title between parties and plaintiffs were entitled to partition of their share. Hence, it was held that no interference was called for.

**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.

**CASE LAW ► Refund of sale consideration.**—In a contract for sale of immovable property for consideration, if a seller fails to transfer the title to the purchaser, for any reason, on receipt of consideration towards the sale price then a seller has no right to retain the sale consideration to himself and he has to refund the same to the purchaser. When the contract fails then parties to the contract must be restored to their respective original position which existed prior to execution of contract as far as possible provided there is no specific term in the contract to the contrary, *Rathnavathi v. Kavita Ganashamdas*, (2015) 5 SCC 223.

► **Limitation.**—Proper remedy of vendee under agreement to sell in case vendor transfers property subsequently, was to file civil suit for specific performance immediately after execution of agreement in 1980 or/and within 3 years from date of execution. Foundational facts are to be proved and limitation period is also applicable, *Suresh Kumar v. Anil Kakaria*, (2018) 1 SCC 86.

**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.**—<sup>23</sup>[*Repealed*]

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23. *Repealed* by the Benami Transactions (Prohibition) Act, 1988 (45 of 1988), S. 7 (w.e.f. 19-5-1988). Prior to Repeal it read as:

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

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

**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.

### THE SCHEDULE

(See Section 2)

#### STATUTE

Year and Chapter	Short title	Extent of repeal
29 Car. II, c. 3	The Statute of Frauds	Sections 7, 8, 9, 10 and 11

#### ACTS OF THE GOVERNOR-GENERAL IN COUNCIL

Number and year	Short title	Extent of repeal
XXVIII of 1866	The Trustees' and Mortgagees' Powers Act, 1866	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37.  In Section <sup>24</sup> [* * *] 43 the word "trustee" wherever it occurs; and in Section 43 the words "management or" and "the trust-property or".
I of 1877	The Specific Relief Act, 1877	In Section 12, the first illustration.

**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 no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

#### Illustrations

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

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

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs 10,000. The gift is void as to Rs 10,000 and B holds that sum for the benefit of A."

24. The figures "39", and by implication the word "and", rep. by Act 12 of 1891, S. 2 and Sch. I.