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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

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NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-34





LECTURE-34

THE INDIAN TRUST ACT, 1882

CHAPTER III

OF THE DUTIES AND LIABILITIES OF TRUSTEES:

11. Trustee to execute trust.-The trustee is bound to fulfill 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.

Illustration

(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 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.

(b) 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.

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

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

deterioration of the trust-property.

16. Conversion of perishable property.-Where the trust is created for the benefit of several persons in succession, and the trustproperty 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 of a in to property permanent and immediately profitable character.

17. Trustee to be impartial.-Where there are more beneficiariesthan 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.

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.

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 trustproperty or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein,

with full knowledge of the facts of the case and of his rights as against the trustee.

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

(a) where he has actually received interest:

(b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(c) where the trustee ought to have received interest, but has not done so:

(d) where he may be fairly presumed to have received interest.

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

(e) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends

thereon, he is liable to account for compound interest (with halfyearly rests) at the same rate:

- (f) where the breach consists in the employment of trustproperty 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.

26. Non-liability for predecessor'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.

30. Indemnity of trustees.- Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks,

funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

MCQs

1. A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
2. **The trustee is bound to fulfill 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.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

3. 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.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

4. 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.

- i. True
- ii. False
- iii. Cannot say
- iv. None of these

5. 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.

- i. True
- ii. False
- iii. Cannot say
- iv. None of these
