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**FACULTY OF JURIDICAL SCIENCES**

**E- CONTENT**

**COURSE: BALLB-Vth Sem**

**SUBJECT: EQUITY AND TRUST**

**SUBJECT CODE: BAL 506**

**NAME OF FACULTY: DR. ANKUR SRIVASTAVA**

# Lecture-35





## **LECTURE-35**

# **THE INDIAN TRUST ACT, 1882**

**Private, Public and Religious Trusts:**

**Private trust**

Private trusts are governed by the Indian Trusts Act, 1882. This Act is applicable to the whole of India except the **State of Jammu and Kashmir**<sup>1</sup> and the Andaman and Nicobar Islands. That apart this Act is not applicable to the following:

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<sup>1</sup> See recent Amendment

Waqf

Property of a Hindu Undivided Family's.

Public or private religious as charitable endowments.

Trusts to distribute prizes taken in war among the captors.

### **Creation of a private trust**

**A Private trust may be created for any lawful purpose.**

A private trust can be created by any person who is of the age of majority and is of sound mind, and is not disqualified by any law. Every person domiciled in India attains majority, when he or she completes age of 18years. But in case of a minor, for whom a guardian is appointed by the court or of whose property the superintendence has been assumed

by the court of wards the age of majority is twenty one years.

A trust can be as well created by or on behalf of a minor with the permission of a principal civil court of original jurisdiction.

Apart from a human being, a company, firm, society or association of persons is also capable of creating a trust.

### **Trustee / beneficiary of a private trust**

- Any person who is capable of holding property can be appointed a trustee.
- A person has capacity to hold property if such a person is capable of administering the property effectively and efficiently with ordinary prudence. Depending upon the nature of the trust, if trustee is required to play a passive and role without any

scope of discretion a minor may as well be appointed as trustee

- However, where the trust involves exercise of discretion such as trustee requiring sale of property or its investment, the trustee should be of the age of majority, of sound mind and should not be disqualified by any law.
- A Corporation, a company or association of persons may as well be appointed as trustee.

### **Beneficiary of a private trust**

- Every person capable of holding property such as a human being, corporation, Company and even a state can be made beneficiary of a trust.
- An unborn person can also be made beneficiary.
- However, a proposed beneficiary is not bound by the desires of the person creating the trust. Such a

proposed beneficiary can renounce his interest under the trust by either making a disclaimer addressed to the trustee or by setting up a claim inconsistent with the trust.

### **Rights of a beneficiary**

- Unless the trust instrument expresses a different intention, a beneficiary has a right to the rents and profits of the trust property.
- Again, the beneficiary has the right to ensure that the intention of the author of the trust is specifically executed to the extent of the beneficiary's interest therein.
- Accordingly, a beneficiary can compel the trustee to perform any particular act of his duty or can as well restrain the trustee from committing any contemplated or probable breach of trust.

- If 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 becomes impracticable, the beneficiary can file a suit for the execution of the trust. In such a circumstance, the court executes the trust until a trustee is appointed for the same.

### **Modes of creating a private trust**

- A trust is created when the person creating the trust, termed the author of the trust indicates with reasonable certainty by any words or acts the following.
  - a. An intention on his part to create trust.
  - b. The purpose of the trust.
  - c. The beneficiary .



#### d. The trust property

- Again, unless the trust is declared by will, or the author of the trust is himself to be trustee, the author has to transfer the trust property to the trustee
- A trust in relation to immovable property has to be declared in writing signed by the author of the trust or the trustee and has to be as well registered such a trust may as well be declared by a will of the author of the trust or of the trustee. The will is not required to be registered.
- A trust in relation to movable property can be either declared as in the case of immovable property or by transferring ownership of the property to the trustee.

## Trust property

- The subject matter of the trust is called trust property. Any property, which can be transferred to the beneficiary, can be subject matter of the trust. But a mere beneficial interest under a subsisting trust cannot be the subject matter of a trust.
- Certain other properties also cannot form subject matter of a trust. Some of these are as follows:
  - a. Chance of receiving property such as chance of a relation to obtain legacy on death of a kinsman or chance of an heir apparent to succeed to an estate.
  - b. Mere right to sue.
  - c. Public office or the salary of a public officer whether after or before it has become payable.

d. An interest in property restricted in its enjoyment to the owner personally.

e. Stipends allowed to military, naval, air force and civil pensioners of state or political pensions.

### **Trustee of a private trust - rights and powers**

No one is bound to accept a trust as trustee. Instead of accepting a trust, the intended trustee can within a reasonable period disclaim it. Such a disclaimer prevents vesting of the trust property in the trustee. 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.

However, a trustee who has accepted the trust cannot afterwards renounce it except as under.

- a. With the permission of a principal civil court of original jurisdiction.
- b. Consent of the beneficiary if he is of the age of majority, and of sound mind and not disqualified by any law.
- c. By special power in the instrument of the trust.

Equally a trustee cannot generally delegate his duties either to a co-trustee or a stranger. A delegation of duties can be made only, if:

- a. instrument of trust provides for it
- b. delegation is in the regular course of business
- c. the delegation is necessary
- d. the beneficiary,

being a major of sound mind consents to the delegation.

## What is Cy Pres Doctrine?

Cy pres doctrine is a legal concept that gives courts the power to interpret the terms of a will, gift, or charitable trust. This doctrine will become active if the intended wishes or conditions of the original document cannot be carried out, be legitimately interpreted literally, or legally performed. Cy pres gives the court the flexibility to understand the perceived intent of the donor or testator and implement their wishes.

The term has its origin is an old French phrase, *cy pres comme possible* which, in translation, means "as near as possible." Cy pres allows the wishes of the creator of a charitable trust, gift, or will to be carried out in many cases. If it were not for this power, there would be instances in which the phrasing in the

document would make it null and void, legally, and thus impossible to implement.

### MCQs

1. Private trusts are governed by the Indian Trusts Act, 1882.
  - i. True
  - ii. False
  - iii. Cannot say
  - iv. None of these
2. The term has its origin is an old French phrase, *cy pres comme possible* which, in translation, means "as near as possible".
  - i. True
  - ii. False
  - iii. Cannot say
  - iv. None of these
3. **Cypres doctrine is a legal concept that gives courts the power to interpret the terms of**

**a will, gift, or charitable trust.**

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

**4. No one is bound to accept a trust as trustee. Instead of accepting a trust, the intended trustee can within a reasonable period disclaim it.**

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

**5. Every person capable of holding property such as a human being, corporation, Company and even a state can be made beneficiary of a trust .**

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

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