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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-39





LECTURE-39

THE INDIAN TRUST ACT, 1882

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 [India], or leaves [India] for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new

trustee may be appointed in his place by--

(a) the person nominated for that purpose by the instrument 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.

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.

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1. 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.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

2. 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.
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these

3. The office of a trustee is vacated by his death or by his discharge from his office.
 - i. True

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

4. The trustee may be discharged from his offices by the completion of his duties under the trust.

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

5. The trustee may be discharged from his offices by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract.

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