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**FACULTY OF JURIDICAL SCIENCES**

**E- CONTENT**

**COURSE: BBALLB-Vth Sem**

**SUBJECT: EQUITY AND TRUST**

**SUBJECT CODE: BBL 506**

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# Lecture-31





## **LECTURE-31**

### **INTRODUCTION TO TRUSTS**

Taken simply, a trust enables more than one person to have rights in the same property simultaneously. A trust permits a division in the ownership of the trust property between a trustee and beneficiary so that the trustee is compelled to act entirely in the best interests of the beneficiary in relation to the management of whatever property is held on trust.

A legal trust ownership is divided between two individuals that are called trustee and beneficiary.

The role of management is vested in a person called a

trustee. The trustees (hold legal titles) have agreed to hold and manage the legal title for the benefit of beneficiaries and their conscience binds them in equity.

The enjoyment of the thing subject to the trust is vested in persons called beneficiaries (equitable titles), thereby giving the beneficiaries an equitable interest in the property subject to the trust.

**Panesar defines a trust as:**

- “an equitable obligation, binding on a person ( who is called trustee) to deal with property over which he has control (which is called the trust property), for the benefit of person (who are called beneficiaries), of whom he may himself be one, and any one of who may enforce the obligation. Any act or neglect on the part of the trustee which is not authorized or excused by the terms of the trust instrument, or by law, is called a breach of trust”.

**Maitland suggested that the definition of a trust as:**

“When a person has rights which he is bound to exercise upon behalf of another or for the accomplishment of some particular purpose, he is said to have those rights in trust for that other or for that purpose and he is called a trustee.”

**Sir Arthur Underhill:**

“A trust is an equitable obligation binding upon a person (who is called a trustee) to deal with property over which he has control (which is called the trust property) for the benefit of persons (who are called beneficiaries) of whom he may himself be one, and any one of whom may enforce the obligation.”

**Lord Justice Millett stated:**

“A trust exists whenever the legal title is in one party and the equitable title in another. The legal owner is said to

hold the property in trust for the equitable owner.”

**Tomas and Hudson define a trust as:**

An “imposition of an equitable obligation on a person who is the legal owner of a property (a trustee) which requires that person to act in good conscience when dealing with that property in favour of any person (the beneficiary) who has a beneficial interest recognised by equity in the property.”

Essentially the trustee is said to “hold the property on trust” for the beneficiary.

**A** trust permits a division in the ownership of the trust property between a trustee and a beneficiary so that a trustee is obliged to act in the best interests of the beneficiary in relation to the management of whatever property is held on trust.

Essentially a trust is concerned with the utilisation and

preservation of wealth It can be deduced from the various definitions offered above, that there are in fact two fundamental features of the trust:

1) A person holds property rights for a person or purpose – the property component; and

2) That person is obliged in equity to exercise those rights for that person or purpose – the obligation component

## **Development of the concept**

Nowadays the doctrine of trusts is different from its initial inception and is used commonly in commerce and is a tool in holding and managing property.

- Trust originated from medieval practice called “the use”; effect of a transfer was that third parties became owners of the property in law but for the benefit or use of somebody else. This idea of “split ownership” emerged whereby the person who went away on crusades was regarded as the owner of land in equity whilst the person looking after the land was treated as being the owner of the land by the

common law courts

- If the person going away (settlor) transfers land to another party (trustee) but does so for the use and benefit of somebody else (beneficiary). The trustee receives the property knowing that they cannot do what they want for it; issue of conscionability comes into play. This device arose so as to bypass the feudal laws that would have otherwise taken property away from the settler.

- Much of the development has been in the tying up of family wealth

- They can even allow a settler to allow secretly for an illegitimate child to be provided for Revolves around notion of settling property on trustees:

- Assets can be held by trustees to protect and for the benefit of minors; settlor or trustee can look after the property for the beneficiary in cases where the beneficiary isn't capable of doing so for themselves; diverse ways in which it can be used Trust is a creature of equity as opposed to the common law; before the judicature acts, the



chancellor's decision was unclear but nevertheless he would step in where it would be unconscionable to otherwise allow a person to rely on his legal rights. Trustee may have legal title but the beneficiaries have the equitable interest in the property • Issues arise whereby the trustee attempts to utilise the property in a manner to his own liking, at this point equity will step in where it would be unconscionable to allow the trustee to use the fact he has legal title to the disadvantage of the beneficiary

- Equity will not allow the trustee to go back on their word where it affects their conscience

- Even though the rights of enforcement would be given in personum by the chancellor, he would enforce it against any other person who moves to take the land away from the beneficiary whose right is in the property.

- Beneficiary has a right in rem; meaning the right is in the property as opposed to merely against an individual. If you are a beneficiary under a trust, your right is immense in terms of the property in that it persists against anyone who seeks

to take the property, except “equity’s darling” who is a person who takes trust property without any notice that there were any beneficiaries involved. As a beneficiary your right will not persist against the darling but will against anybody else.

The case of **Re Bowden** made it clear that the trust is a triangular relationship between the settler (absolute owner of the LEGAL AND EQUITABLE TITLE), the trustee (legal title only) and the beneficiary (who has equitable title only).

## **The trust in comparison with other legal concepts**

- Debt cannot be subject to a trust.
- Main distinction is between who can enforce a contract of trust; old rules of privity (now set aside) are in contrast to a trust as a beneficiary has always been able to enforce the trust obligations.
- Key difference is the right to enforcement. Under a contract you only have a right to sue a person whereas as a beneficiary as long as the property is there you are able to

follow through and obtain it

- In terms of a debt, the trust is of particular objects as opposed to the subject matter per se. if the trust is validly created the objective is to give

- As a beneficiary you are in a much better position than any other type of creditor, such as in Re Kayford money was held not to form part of the company's general assets as it was paid by people into a trust account How does a trust come into existence?

- Either by virtue of having been established expressly by a person (the settlor) who was the absolute owner of property before a trust was created. Or by an action of the settlor which the court interprets to have been sufficient to create a trust but which the settlor himself did not know was a trust.

**Lord Browne-Wilkinson in Westdeutsche Landesbank v Islington LBC** stated how the relevant principles of trust law are:

- 1) It operates on the conscience of the legal owner,

whose conscience requires them to carry out the purpose for which the property was vested in them in the first place, or which the law imposes on him due to their unconscionable conduct

2) A person cannot be a trustee of the property if they are ignorant of the facts alleged to affect his conscience.

3) There must be identifiable trust property in order for a trust to be established.

4) From the date of the establishment of a trust the beneficiary has a proprietary interest in the trust property which will equitably be enforceable against any subsequent holder of the property.

### MCQs

**1. There must be identifiable trust property in order for a trust to be established.**

- i.** True
- ii.** False
- iii.** Cannot say

iv. None of these

**2. There must be identifiable trust property in order for a trust to be established.**

i. True

ii. False

iii. Cannot say

iv. None of these

**3. Debt cannot be subject to a trust.**

i. True

ii. False

iii. Cannot say

iv. None of these

**4. Main distinction is between who can enforce a contract of trust; old rules of privity (now set aside) are in contrast to a trust as a beneficiary has always been able to enforce the trust obligations.**

i. True

ii. False

iii. Cannot say

iv. None of these

**5. A legal trust ownership is divided between two individuals that are called trustee and beneficiary.**

i. True

ii. False

iii. Cannot say

iv. None of these

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