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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BBALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

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Lecture-33





LECTURE-33

THE INDIAN TRUST ACT, 1882

CHAPTER II OF THE CREATION OF TRUSTS:

1. **Lawful purpose.**-A trust may be created for any lawful purpose.- The purpose of a 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 foundlings 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.

5. Trust of immoveable property.-No trust in relation to immoveable 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 moveable property.-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.

These rules do not apply where they would operate so as to effectuate a fraud.

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 legacy to C. This is a condition, not a trust for A's creditors and C.

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

(a) by every person competent to contract, 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.

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. Disclaimer by beneficiary.-Every person capable of holding

property may be a 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.

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 trustproperty 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, and B and C hold the property in trust for D.

(b) 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.

(c) 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.

MCQs

1. **A trust may be created for any lawful purpose.-**
The purpose of a 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.
 - i. True

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

2. 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, and B and C hold the property in trust for D.

- 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 trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

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

5. Creation of trust given in section 6 of Trust Act.

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