

Trusts Act, 1882

Section 23 - LIABILITY FOR BREACH OF TRUST. Where the trustee commits a breach of trust, he is liable to make good the loss which

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 case (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 half-yearly rests) at the same rate; (f) Where the breach consists in the employment of trust-property 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. (c) A trustee is guilty of unreasonable delay in investing trust money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay. (d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c), or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon. (e) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest. (f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends. (g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c) or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon. (h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.