

Indian Trusts Act, 1882

Chapter IX - Of Certain Obligations in the Nature of Trusts

An obligation in the nature of a trust is created in the following cases.

Section 81 - Where it does not appears that transferor intended to dispose of beneficial interest

[Rep. by the Benami Transactions (Prohibition) Act, 1988, sec.7 (w.e.f. 19.5.1988)].3

Section 82 - Transfer to one for consideration paid by another

[Rep. by the Benami Transactions (Prohibition) Act, 1988, sec.7 (w.e.f. 19.5.1988)].

Section 83 - Trust incapable of execution or executed without exhausting trust-property

Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations

(a) A conveys certain land to B --

"upon trust", and no trust is declared; or

"upon trust to be thereafter declared", and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trust become incapable of taking effect; or

"in trust for C", and C renounces his interest under the trust

In each of these cases B holds the land for the benefits of A.

(b) A transfers Rs.10,000 in the four per cents to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs. 10,000/- to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

Section 84 - Transfer for illegal purpose

Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Section 85 - Bequest for illegal purpose

Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.--Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Section 86 - Transfer pursuant to rescindable contract

Where property is transferred in pursuance of contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Section 87 - Debtor becoming creditor's representative

Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Section 88 - Advantage gained by fiduciary

Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations

- (a) A, an executor, buys a tan undervalue from B, a legatee, his claim under the will, B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.
- (b) A, a trustee, uses the trust- property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.
- (c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.
- (d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.
- (e) A, a partner, employed on behalf of himself and his co-partners is negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.
- (f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself.[^] holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an under value. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Section 89 - Advantage gained by exercise of undue influence

Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Section 90 - Advantage gained by qualified owner

Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrana to Government and thereby procures his name to be entered as the inamdar of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Section 91 - Property acquired with notice of existing contract

Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Section 92 - Purchase by person contracting to buy property to be held on trust

Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Section 93 - Advantage secretly gained by one of several compounding creditors

Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Section 94 - Constructive trust in cases not expressly provided for

(Rep. by the Benami Transactions (Prohibition) Act, 1988, sec. 7 (w.e.f. 19.5.1988)).

Illustrations

- (a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.
- (b) A by mistake assumes the character of s trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.
- (c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs.10,000. The gift is void as to Rs. 10,000, and A holds that sum for the benefit of B.

Section 95 - Obligor's duties, liabilities and disabilities

The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the court, buy or become lessee or mortgagee of the property or any part thereof.

Section 96 - Saving of rights of bona fide purchasers

Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.
