

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

Who may create trusts.

### 7. A trust may be created-

(a) by every person competent to contract ; and

(b) with the permission of the court 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.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary. It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. (1) Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

(2) 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.

Who may be trustee.

10. (1) 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.

(2) No one is bound to accept a trust.

Acceptance of trust.

(3) A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

(4) 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.

(5) A disclaimer by one of two or more co-trustees vests the trust property 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.

## CHAPTER III

### OF THE DUTIES AND LIABILITIES OF TRUSTEES

11. (I) The trustee is bound to fulfil the Trustee to purpose of the trust, and to obey the execute trust. directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract,

(2) Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by the court.

*Explanation.*—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be—

(a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and

(b) in the case of debts not bearing interest, to make such payment without interest.

### Illustrations

(a) A, a trustee, is simply authorized to sell certain land by public auction- He cannot sell the land by private contract.

(b).A, a trustee of certain land for X, Y, and Z, is authorized to sell the land to B for a specified sum. X, Y, and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust property to B's husband C, on the security of his bond. C becomes insolvent, and B requests A to make the loan- A may refuse to make it.

Trustee to inform himself of state of trust property.

**12.** A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust property ; to obtain, where necessary, a transfer of the trust property to himself; and (subject to the provisions of the instrument of trust) to get in trust moneys invested on insufficient or hazardous security.

#### Illustrations

(a) The trust property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust property is money in the hands of one or two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust property.

**13.** A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust property, may be reasonably requisite for the preservation of the trust property and the assertion or protection of the title thereto.

#### Illustration

The trust property is immovable property, which has been given to the author of the trust by an unregistered instrument. The trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

**14.** The trustee must not for himself or another set up or aid any title to the trust property adverse to the interest of the beneficiary.

Care required from trustee.

**15.** A trustee is bound, subject to the provisions of the instrument of trust, to deal with the trust property as carefully as a man of ordinary prudence would deal with such property if it were his own ; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction, or deterioration of the trust property.

#### Illustrations

(a) A, living in Colombo, is a trustee for B, living in London. A remits trust funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such and payable at London. The bills are dishonoured. A is not bound to make good the loss,

(b) A, a trustee of leasehold property, directs the tenant to pay the rents, on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust property by auction, sells the same, but does not advertise the sale, and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust property, but from want of due diligence on his part fails to receive part of the purchase money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g\*) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue the trust moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee C, C misapplies the trust property. A is personally answerable for the loss resulting to B.

**16.** Where the trust is created for the benefit of several persons in succession, and the trust property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, or unless the court otherwise directs, to convert the property into property of a permanent and immediately profitable character.

**17.** (I) Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

(2) Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the court to control the exercise reasonably and in good faith of such discretion..

*Illustration*

A, a trustee for B, C, and D, is empowered to choose between several specified modes of investing the trust property. A in good faith chooses one of these modes. The court will not interfere, although the result of the choice may be to vary the relative rights of B, C, and D.

Trustees to prevent waste,

**18.** Where the trust is created for the benefit of several persons in succession, and one of them is in possession of the trust property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts and information.

**19.** A trustee is bound—

- (a) to keep clear and accurate accounts of the trust property, and
- (b) at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information *as to* the amount and state of the trust property.

Investment of trust money,

**20.** Where the trust property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

- (a) in promissory notes, debentures, stock, or other securities of the Government of Sri Lanka ;
- (b) on a first mortgage of immovable property situated in Sri Lanka ;

Provided that the property is not a leasehold for a term of years, and that the value of the property exceeds by one-third, or if consisting wholly or mainly of buildings, exceeds by one-half the mortgage moneys;

- (c) in promissory notes, debentures, stock or other securities issued by a, Government corporation, institution or agency and guaranteed by the Government of Sri Lanka ;

- (d) on any other security expressly authorized by the instrument of trust or by any rule which the Minister may from time to time prescribe in that behalf.

**21.** Nothing in section 20 shall apply to investments made before the commencement of this Ordinance, or shall be deemed to preclude a deposit of trust money in a Government Savings Bank or in the National Savings Bank.

Saving as to existing investments and investments in Government Savings Bank or National Savings Bank. [§2.7 of 1968.] [§89,30 of 1971.]

**22.** Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by the court.

Sale by trustee directed to sell within specified time.

*Illustration*

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

**23.** (1) Where the trustee commits a breach of trust, he is liable to make good the loss which the trust property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without duress or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for breach of trust-

(2) A trustee committing a breach of trust is not liable to pay interest except in the following cases :—

- (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;
- (e) where the breach consists in failure to invest trust money and to accumulate the interest or dividend 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.

(3) He is liable in case (a) to account for the interest actually received, and in cases (b), (c), and (d) to account for simple interest at the rate of six *per centum* per annum, unless the court otherwise directs.

#### 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. 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 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), (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.

**24.** A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust property cannot set off against his liability a gain which has accrued to another portion of the trust property through another and distinct breach of trust. No set-off allowed to trustee

**25.** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor. Non-liability for predecessor's default.

**26.** (1) Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee : Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

- (a) where he has delivered trust property to his co-trustee without seeing to its proper application ;
- (b) where he allows his co-trustee to receive trust property and fails to make due inquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require ;
- (c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it, or does not within a reasonable time take proper steps to protect the beneficiary's interest.