

- (a) a transferee in good faith for consideration without having notice of the trust, either when the purchase money was paid, or when the conveyance was executed ; or

- (b) ii transferee for consideration from such a transferee.

(2) A judgment-creditor of the trustee attaching and purchasing trust property is not a transferee for consideration within the meaning of this section.

(3) Nothing in section 65 applies to money or currency notes in the hands of a bona fide holder to whom they have passed in circulation, or to negotiable instruments in the hands of a bona fide holder for value, or shall be deemed to affect sections 22 and 23 of the Sale of Goods Ordinance, or the rights of any holder in good faith for consideration of any document of title which by law passes the ownership of goods to which it relates by endorsement or delivery, or the liability of a person to whom a debt or charge is transferred, or the right of a person who holds property under a title declared indefeasible by statute or of his successor in title.

Acquisition by trustee of trust property wrongfully converted-

67. Where a trustee wrongfully sells or otherwise transfers trust property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

68. Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner trustee of trust property for partnership purposes.

69. If a partner, being a trustee, wrongfully employs trust property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries unless he had notice of the breach of trust. The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations

- (a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership,

retains all the assets in the business. 1 may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

- (A) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

70. Where one of several beneficiaries being competent to contract—

Liability of beneficiary joining on breach of trust.

- (a) joins in committing a breach of trust ; or
- (b) knowingly obtains any advantage therefrom without the consent of the other beneficiaries ; or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries ; or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

71. Every person to whom a beneficiary transfers his interests has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities of beneficiary's transferee.

CHAPTER VII

OF VACATING THE OFFICE OF TRUSTEE

72. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

73. A trustee may be discharged from his office only as follows :—

Discharge of trustee.

- (a) by the extinction of the trust ;
- (b) by the completion of his duties under the trust ;
- (c) by such means as may be prescribed by the instrument of trust or by any scheme under this Ordinance ;
- (d) by appointment under this Ordinance of a new trustee in his place ;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, by the consent of all the beneficiaries being competent to contract ; or
- (f) by the court.

consent of the court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

(2) Every such appointment shall be by writing under the hand of the person making it, and shall be notarially executed.

(3) Every instrument by which any such appointment is made, in so far as it affects immovable property, shall contain the particulars required by section 13 of the Registration of Documents Ordinance and shall be deemed to be an instrument affecting land for the purposes of the said Ordinance :

Provided that no deed of appointment of a trustee of any charitable trust shall be deemed to be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

(4) On an appointment of a new trustee, the number of trustees may be increased.

(5) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

76. (1) Whenever any such vacancy or disqualification occurs, and it is found not reasonably practicable to appoint a new trustee under section 75, or where for any other reason the due execution of the trust is or becomes impracticable, the beneficiary may, without instituting a suit, apply by petition to the court for the appointment of a trustee or a new trustee, and the court may appoint a trustee or a new trustee accordingly.

(2) In appointing new trustees, the court shall have regard—

- (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust;
- (b) to the wishes of the person, if any, empowered to appoint new trustees ;

Appointment by court.

Rules for selecting new trustees.

Petition to be discharged from trust-

74. Notwithstanding the provisions of section 11, every trustee may apply by petition to the court to be discharged from his office ; and, if the court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust property. But where there is no such reason, the court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death. &c,

75. (1) Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is absent from Sri Lanka for such a continuous period and under such circumstances that, in the opinion of the court, it is desirable, in the interests of the trust, that his office should be declared vacant, or is declared an insolvent, or desires to be discharged from the trust, or refuses or is or becomes, in the opinion of the court, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any) ; or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the

- (c) to the question whether the appointment will promote or impede the execution of the trust; and

- (d) where there are more beneficiaries than one, to the interests of all such beneficiaries.

(3) Every order of appointment made under this section shall, in so far as it affects immovable property, contain the particulars required by section 13 of the Registration of Documents Ordinance and section 29 of the said Ordinance shall apply to every such order in the same manner as if it were an instrument which affects land ;

Provided that no order of appointment of a trustee of any charitable trust under this section shall be deemed to be invalidated by reason of the fact that it does not contain the said particulars, or shall be liable to be defeated by the registration of any subsequent deed, order, or other instrument under section 7 of the said Ordinance.

Vesting of trust property in new trustees-

77. (1) Whenever any new trustee is appointed under section 75 or section 76, or under or in pursuance of any other provision of this Ordinance, all the trust property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representatives of any trustee, and all the rights of suit in relation thereto of the trustee in whose place the appointment is made, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require.

Powers of new trustees.

(2) Every new trustee so appointed, and every trustee appointed by a court either before or after the passing of this Ordinance, shall have the same powers, authorities, and discretions, and shall in all respect act as if he had been originally nominated a trustee by the author of the trust.

(3) Where any trust property comprises any stocks or any shares or securities transferable in any book kept by any company or society, or any shares in any ship registered under the law relating to merchant shipping, an instrument or order of appointment shall not take effect so far as it relates thereto, unless and until notice in writing of the appointment under such

instrument or order shall have been given by or on behalf of the new trustee so appointed to the person or authority in charge of the register or book in which such stocks, shares, or securities, as the case may be, are entered, and upon such notice in writing being given, and on reasonable proof being furnished that such stocks, shares, or securities form part of the said trust property, the new trustee shall be entitled to a transfer into his name of any such stocks, shares, or securities, and to the receipt of all dividends, interest, or other sums due, or to become due, in respect of any such stocks, shares, or securities.

78- On the death or discharge of one of several co-trustees the trust survives, and the trust property passes to the others, unless the instrument of trust expressly declares otherwise.

Survival of trust-

CHAPTER VIII

OF THE EXTINCTION OF TRUSTS

79. A trust is extinguished—

Trust how extinguished.

- (a) when its purpose is completely fulfilled ; or
- (b) when its purpose becomes unlawful; or
- (c) subject to the powers of the court under Chapter X and to section 110 (4), when the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise ; or
- (d) when the trust, being revocable, is expressly revoked.

80. (1) A trust created by will may be revoked at the pleasure of the testator.

Revocation of trust'

(2) A trust created otherwise than by will can be revoked only—

- (a) where all the beneficiaries are « competent to contract, by their consent ,
- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth, in exercise of a power of revocation expressly reserved to the author of the trust; or

- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors, at the pleasure of the author of the trust.

Illustration

A conveys properly to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. if no communication has been made to the creditors. A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

- 81.** No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX

CONSTRUCTIVE TRUSTS

Where obligation in nature of trust is created.

- 82.** An obligation in the nature of a trust (hereinafter referred to as a "constructive trust") is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

- 83.** Where the owner of property transfers or bequeaths it, and it cannot reasonably be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations

- (a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, reasonably be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.
- (b) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, reasonably be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.
- (c) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may reasonably be inferred from the circumstances that the gift was for B's benefit.

- 84.** Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Transfer to one for consideration paid by another.

- 85.** 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.

Trust incapable of execution or executed without exhausting trust property.

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 trusts that 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 benefit 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 representatives.

- (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 a particular form of worship. 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.

- 86.** Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried out 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.

Transfer for illegal purpose.

Bequest for illegal purpose.

87. (1) 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, the legatee must hold the property for the benefit of the testator's legal representative. '

Bequest of which revocation is prevented by duress.

(2) Where property is bequeathed and the revocation of the bequest is prevented by duress, the legatee must hold the property for the benefit of the testator's legal representative.

Transfer pursuant to rescindable contract-

88. Where property is transferred in pursuance of a 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, and subject to any compensation or other relief to which the transferee may be by law entitled.'

Debtor becoming creditor's representative.

89. 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.

Advantage gained by fiduciary.

90. Where a trustee, executor, partner, agent, director of a company, legal adviser, 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.

(c) 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.

(d) A, a partner, employed on behalf of himself and his co-partners in 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.

(e) 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.

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

(g) 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.

91. 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.

Advantage gained by exercise of undue influence.

92. Where a co-owner, mortgagee, or other person with a qualified interest in 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 person, 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.

Advantage gained by qualified

Illustrations

(a) A, an executor, buys at an under-value 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, 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.

Illustration

A mortgages land to B, who enters into possession. B - allows taxes due on the land 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.