

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.

Property acquired with notice of existing contract.

93. 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:

Provided that in the case of a contract affecting immovable property, such contract shall have been duly registered before such acquisition.

Purchase by person contracting to buy property to be held on trust.

94. 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.

Advantage secretly gained by one of several compounding creditors.

95. 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.

Constructive trusts in cases not expressly provided for.

96. In any case not coming within the scope of any of the preceding sections where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

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 a 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 revoked by A as to Rs. 10,000 and B thereupon holds that sum for the benefit of A.

Obligor's duties, liabilities, and disabilities.

97. 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, save as in

this Ordinance otherwise provided, 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 a person for whose benefit he holds it, or with anyone 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.

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

Saving rights of bona fide purchasers.

CHAPTER X

CHARITABLE TRUSTS

99. (1) The expression "charitable Special trust" includes any trust for the benefit of the public or any section of the public within or without Sri Lanka of any of the following categories :—

- (a) for the relief of poverty ; or
- (b) for the advancement of education or knowledge ; or
- (c) for the advancement of religion or the maintenance of religious rites and practices ; or
- (d) for any other purposes beneficial or of interest to mankind not falling within the preceding categories.

(2) The expression "adaptation" with reference to a trust means adaptation of the trust in such a manner as to carry out the wishes of the author of the trust as nearly as practicable, according to the doctrine of *cypres*, where it is not possible to carry out those wishes in the exact manner prescribed by the instrument of trust.