

## CHAPTER 96

## TRUSTS

*Ordinances* AN ORDINANCE TO DEFINE AND AMEND THE LAW RELATING TO TRUSTS.

Nos. 9 of 1917,  
4 of 1918,  
1 of 1934,

*Acts*  
Nos. 7 of 1968,  
30 of 1971.

[16th April. 1918.]

## CHAPTER 1

## PRELIMINARY

Short title. 1. This Ordinance may be cited as the Trusts Ordinance.

Application of English law. 2. All matters with reference to any trust, or with reference to any obligation in the nature of a trust arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other enactment, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England.

Interpretation. 3. In this Ordinance, unless the context or the subject-matter otherwise implies—

- (a) " trust " is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another person, or of another person and the owner, of such a character that, while the ownership is nominally vested in the owner, the right to the beneficial enjoyment of the property is vested or to be vested in such other person, or in such other person concurrently with the owner ;
- (b) the person who reposes or declares the confidence is called the " author of the trust " ;
- (c) the person who accepts the confidence is called the " trustee " ;
- (d) the person for whose benefit the confidence is accepted is called the " beneficiary " ;
- (e) the subject-matter of the trust is called " trust property " or " trust money " ;

(f) the beneficial interest " or " interest " of the beneficiary is his right against the trustee as owner of the trust property ;

(g) the instrument, if any, by which the trust is declared is called the " instrument of trust " ;

(h) the expression " instrument of trust " includes a scheme settled under Chapter X of this Ordinance ;

(i) a breach of any duty imposed on a trustee, as such, by any law for the time being in force is called a " breach of trust " ;

(j) a person is said to have " notice " of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by any person whom the court may determine to have been his agent for the purpose of receiving or obtaining such information ;

(k) every person is " competent to contract " who is of the age of majority, or has otherwise acquired the status of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified by law from contracting ;

(l) a " married woman " is competent to contract :

Provided that in any case in which the consent, concurrence, acquiescence, or ratification of a beneficiary is referred to, the power of consent, concurrence, acquiescence, or ratification of a married woman who is a beneficiary

shall be subject to the same conditions and limitations as her power to contract with reference to the matter in question ;

(m) " court " means the District Court having jurisdiction in the matter in question, or a District Court upon which the Court of Appeal, on the application of any party interested, may confer jurisdiction for the purposes either of the trust generally or of the matter in question ;

(n) " notarially executed " means executed in the manner prescribed by section 2 of the Prevention of Frauds Ordinance, and any reference to a notarial execution " shall be deemed to include a reference to execution in accordance with the Deeds and Documents (Execution before Public Officers) Ordinance.

## CHAPTER II

### OF THE CREATION OF TRUSTS

lawful purpose.

4. (1) A trust may be created for any lawful purpose. The purpose of a trust is lawful, unless—

- (a) it is forbidden by law, or
- (b) it is of such a nature that, if permitted, it would defeat the provisions of any law, or
- (c) it is fraudulent, or
- (d) it involves or implies injury to the person or property of another, or
- (e) the court regards it as immoral: or opposed to public policy.

(2) Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

*Explanation.*—In this section the expression " law " includes where the trust property is immovable and situate in a foreign country, the law of such country.

#### Illustrations

- (a) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

{h} A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death to B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. (1) Subject to the provisions of section 107, no trust in relation to immovable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, and notarially executed.

Trust of immovable property.

(2) No trust in relation to movable property is valid unless declared by the last will of the author of the trust or of the trustee, or by a non-testamentary instrument in writing signed by the author of the trust or the trustee, or unless the ownership of the property is transferred to the trustee by delivery.

(3) These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of sections 5 and 107, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts—

- (a) an intention on his part to create thereby a trust,
- (b) the purpose of the trust,
- (c) the beneficiary,
- (d) the trust property, and

(unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust property to the trustee.

#### Illustrations

- (a) A bequeaths certain property to B, \* having the fullest confidence that he will dispose of it for the benefit of " C. This creates a trust so far as regards A and C.
- (b) A bequeaths certain property to B, " hoping he will continue it in the family ". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.
- (c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(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.