Critically overview on the trust act 1882.

TRUST ACT 1882

* Brief history of trust law:

Trust is the property which is irreversibly transferred to the benefit of ascertainable beneficiaries or public good.

In a trust there are three types of parties.one is trustee, trustor, and the beneficiary.the beneficiary is appointed for upheld the property for the third party. These parties work as a depository relationship.it is originated in England during 12th and 13th century.

In the case of a testamentary trust the founder is the person capable of being a testator who creates the trust unilaterally in his will.

According to section 92, purchase by person constructing to buy property to be held on trust.

if anyone takes the advantages the trust property for his own use then this doctrine will be applied.

Different types of trust:

Expressed trust: A testator will identify a third party to be a trustee, supervise the beneficiary and the asses to be sustain on trust.it can made by an agreement, will, or an execution. the elementary objectives for an express trust build up on three criteria. these are:

* The certainty of intention.
* The certainty of objects.
* The certainty of subject matter.

The bare trust: this is called an easiest trust. The trustee will have no duty but to sustain the possession on trust until the receiver decides they want a conveyance on the possession. Here the receiver is the de facto owner of the property. They can gain it without any delay as they wish.

Executed trust: where a testator has made a statement that the possession of lawful title to any of the receiver.

Illustration, if they fall on death their 50,000 RS property will be distributed between two different charities.

Discretionary trust: this gives a conception a trustee about how the receiver and distributed the trust property. the settlor may specify the beneficiaries how the trust property will be finally disseminated.

Secret trust: this kind of trust after the death of the beneficiary. It is classified into two categories:

* Fully secret: where there is no evidence the trust is created by the will of the settlor.
* Half secret: where the trust is built up on will but the beneficiary is unknown.

Implied trust: it is divided into two types:

1.Resulting trust

2.Constructive trust

It is held that some assets possessed by someone but the owner of the property is another individual.

The constructive trust may be declared by a court owing to the interference of the property.

Creation of trust: A trust by the court on an original jurisdiction on behalf of a minor.

According to section 4,5,6,7,8,9,10 respectively lawful purpose, trusts of immovable or moveable property, creation of trusts, who may create trusts subject of trust

According to section 5, an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary, the trust property.

Duties, liabilities, rights and powers of a trustee:

Liability for breach of trust (section 23)

No set off allowed to trustee (section 24)

Several liabilities of co-trustee (section 27)

Liability of trustee where beneficiarie’s interest is forfeited to the government (section 29).

Indemnity of trustees (section 30)

Protection of title of trust property, take care of trust property, duty to follow the terms of the trust be partial among the beneficiaries protect the trust property from adverse beneficiaries.

The trustees have the right to be reimbursed for the expense incurred by him for the purpose of the trust.

If a trustee has mistakenly made a payment over and above the required amount to a beneficiary, the trustee has the right to collect such excess amount from the beneficiary.

If a person has committed breach of trust and has gained from such breach, the trustee has the right to indemnify himself against such gain by the person who has committed such a breach.

Right to seek court’s opinion in managing trust property –

Right to sell trust property, along with power to convey.

Power to apply property of trust for maintenance of minor beneficiaries.

Removal of trustees:

The beneficiaries who are major, competent and sound minded entitled to entrust the property. According to trustee’s act 1996 section 36, if a trustee is fall on death or remains USA for more than 12 months or is incapable or desirous to take the responsibility he can change her possession by another trustees.

Section 37 1 (D) when a new trustee will be recruited the

responsibilities are entrusted to him. Jointly with the person who are the trustees will be executed .it can be eradicated by the conflict or antagonism of the parties.

Revocation of trusteeship:

A trust is a legal instrument that enables a third party called the trustee to possess the money investment or property.

Revocable and irrevocable trust: trusts may be formed into revocable or irrevocable trust. Even after it has been done the trust can be eradicated by the donor. It can be terminated by the death or insanity but there is an exception on joint tenancy act. Here the deceased donor may be become unchangeable. But the alive person can terminate or substitute or stipulate the trust.

Living trust and testamentary trust: when it has been made by the donor the trust begins to legalize. the donor must take over the possession of the assets trust document .it can be revocable or irrevocable.

the testamentary trust can be generated by the donor’s last will. This type of trust is irreversible since the donor is not existed into the world.

Right and liabilities of a beneficiary:

Right to information: beneficiaries have the right to receive information about trust assets, investment.

Rights to rent and profits: a beneficiary is entitled to rents and profits of the trust estates.

Right to transfer trust property: when the trust property is possessed by the trustee, the settlor may shift it if they are capable of contract. But a married woman cannot transfer the property.

Right of inspection:

Instrument of trust.

Documents of the trust property.

Vouchers if any account supports.

Right to sue for execution of trust:

Death of trustee.

Disclaimer by trustee.

Discharge by trustee.

Right to proceed against trustee: it can be held through the trustees unlawful obtained property.it remains unsold the beneficiary has a right to have the property declared to the trust or re transferred.

Liabilities of the beneficiary:

Duty to compensate trustee.

Liability in breach of trust.

Liability not to harm other interest.

Liability not obtain any advantage without the consent of beneficiaries.

Liability in case to deceive the trustee.

Liability to take reasonable steps.

Breach of trust and it’s legal remedy under the trust act:

when a trustee voluntarily turns over the trust assets unlawfully to anyone faithfully. A trustee is recruited to supervise the trust property. But meanwhile he absconded from his legal duties the executors they are connected to trust goods can sue against the trustee. And the trustee is liable to compensate the trust property.

Illustrations: UAP is a public trust. the students of this universities are beneficiaries or third party who take advantages from this institution. Meanwhile the authorities do not fulfill the obligation to the students and the university then the trust property can be null and void. Although the students invest huge amount of money, if the trustees will not perform their duties and take over it illegally, they have to go through the breach of trust term and the university will be remain closed until the property is re transferred. If they committed to any illicit way they have to undergone through minimum 2 years highest 05 years imprisonment. According to section 406.

Engaging to self-dealing by placing their own interest above those of the trust beneficiaries.

Favoring one beneficiary to the detriment of one or more than beneficiaries.

Accepting a bribe relating to the trust assists.

If they remain in ‘bad faith’ intention.

If the trustee fails to re transferred to the trust property or convert it to another, he must be undergone punishable offences. It can be imprisonment or fine or both.

Advantage and disadvantage of a trust:

Remaining a trust is good for different grounds. Common people take the facilities from this and their valuable goods, property etc. are secured. Their requirements are fulfilled through it. On the contrary, to play the trust is an intricate factor.

Advantage:

If a collective trustee is recruited limited liability is possible.

The arrangement is safer and more secured than an association.

It is easy to distribute among beneficiaries.

Trust profit is generated for every particular.

Disadvantages:

The management system is very intricated.

To preserve and supervise is costly.

While they turned into an insolvent the gigantic obstacle will remain.

The delegation system of trustees is confined by the trust execution.

Extinction of trust:

Extinction of a trust is the termination of the trust.

Finishing requirements for the purposes.

As an example, if a trust is created for the old home’s and slum dweller’s welfare if they can achieve from it can be finished.

Termination by agreement.

Objectives become illegal: the motives must have to be lawful and legal but when the trustee’s intention is unlawful as an example, to invest for a prostitution a trust can not be founded .it is illicit.

Unfeasible to attaining motives.

Expiration of the trust term: if a trust is created for temporally, it will ultimately terminate after the certain period.

Conclusion and recommendations:

Overall, a trust property may be public or private. it’s preservations and utility are founded for distinctive intention. Common people consume their required facilities from these. public or private trust is established for different motives. Moreover, it can be built up for the charity and the welfare for the people.

All trust property is based on according to, trust act 1882. this provision has clearly made a spontaneous statement about trust property and all statutory stipulations are mentioned in this act.

The end