

INDIAN TRUSTS ACT 1882
VOL. VIII-B 19 THE INDIAN TRUSTS ACT, 1882 1*
ACT No. 2 OF 1882

[13th January, 1882.]

An Act to define and amend the law relating to Private Trusts and Trustees.

Preamble. Preamble.-WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:- CHAPTER I PRELIMINARY CHAPTER I PRELIMINARY

1. Short title. Commencement.-This Act may be called the Indian Trusts Act, 1882: and it shall come into force on the first day of March, 1882. Local extent. Savings. Local extent, Savings.-2*[It extends to 3*[the whole of India 4*[except the State of Jammu and Kashmir] and] the Andaman and Nicobar Islands 5***; but the Central Government may, from time to time, by notification in the Official Gazette, extend it to 6*[the Andaman and Nicobar Islands] or to any part thereof.] But nothing herein contained affects the rules of Muhammadan law as to waqf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the Second Chapter of this Act applies to trusts created before the said day.

2. Repeal of enactments.-The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

3. Interpretation-clause "trust":-A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the -----

----- 1 The Act has been extended to Berar by the Berar Laws Act, 1941 (4 of 1941). Extended to and brought into force in Dadra and Nagar Havoli (w.e.f. 1.7.1965) by Reg. 6 of 1963, s.2 and Sch.I Extended to Goa, Daman and Diu by Re. 11 of 1963, s. 3 and Sch. The Act comes into force in Pondicherry on 1.10.1963 vide Reg. 7 of 1963, s. 3 and Sch. I. The Act shall come into force in the State of Sikkim on 1.9.1984 vide Notifn. No.S.O.642(E), dt.24.8.1984 Gaz. of India, Exty, pt. II Sec.3 (ii). 2 Subs. by the A. O. 1948 for the original words as amended by the A. O.

1937. 3 Subs. by the A. O. 1950 for "all the Provinces of India, except". 4 Subs. by Act 3 of 1951, s.3 and Sch., for "except Part B States". 5 The words "and Panth Piploda" omitted by the A. O. 1950. 6 Subs. by the A. O. 1950 for "either or both of the said Provinces". 20 owner, or declared and accepted by him, for the benefit of another, or of another and the owner: "author of the trust": the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust": "trustee": "beneficiary": "trust-property": "beneficial interest": "instrument of trust": "breach of trust": 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": "registered": "notice": Expressions defined in Act 9 of 1872. Expressions defined in Act 9 of 1872.-and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: 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 his agent, under the circumstances mentioned in the Indian Contract Act, 1872 (9 of 1872), section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act. CHAPTER II OF THE CREATION OF TRUSTS CHAPTER II OF THE CREATION OF TRUSTS

4. Lawful purpose.-A trust may be created for any lawful purpose.- The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy. 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 immoveable and situate

in a foreign country, the law of such country. 21 Illustrations (a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void. (b) 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. (c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. Trust of immoveable property.-No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. Trust of moveable property. Trust of moveable property.-No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee. These rules do not apply where they would operate so as to effectuate a fraud.

6. Creation of trust.-Subject to the provisions of section 5, 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, and (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 among 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 legacy to C. This is a condition, not a trust for A's creditors and C. 22

7. Who may create trusts.-A trust may be created-- (a) by every person competent to contract, 1* and, (b) with the permission of a principal Civil Court of original jurisdiction, 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.

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

9. Who may be beneficiary. Disclaimer by beneficiary.-Every person capable of holding property may be a beneficiary. 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.

10. Who may be trustee.-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. marginal heading. No one is bound to accept a trust. Acceptance of trust. marginal heading. A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance. Disclaimer of trust. marginal heading. 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. 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. -----

----- 1 See s. 11 of the Indian Contract Act, 1872 (9 of 1872). 23 (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

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11. Trustee to execute trust.-The trustee is bound to fulfil the purpose of the trust, and to obey the 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. Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction. Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries. 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.

12. Trustee to inform himself of state of trust-property.-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 24 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 of 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.

13. Trustee to protect title to trust-property.-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 immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877 (3 of 1877), 1* the trustee's duty is to cause the instrument to be registered.

14. Trustee not to set up title adverse to beneficiary.-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.

15. Care required from trustee.-A trustee is bound 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 Calcutta, is a trustee for B, living in Bombay. 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 Bombay. 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. ----- 1 See now the Indian Registration Act, 1908 (16 of 1908), 25 (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 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 cotrustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

16. Conversion of perishable property.-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, to convert the property of a in to property permanent and immediately profitable character. Illustrations (a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sel
