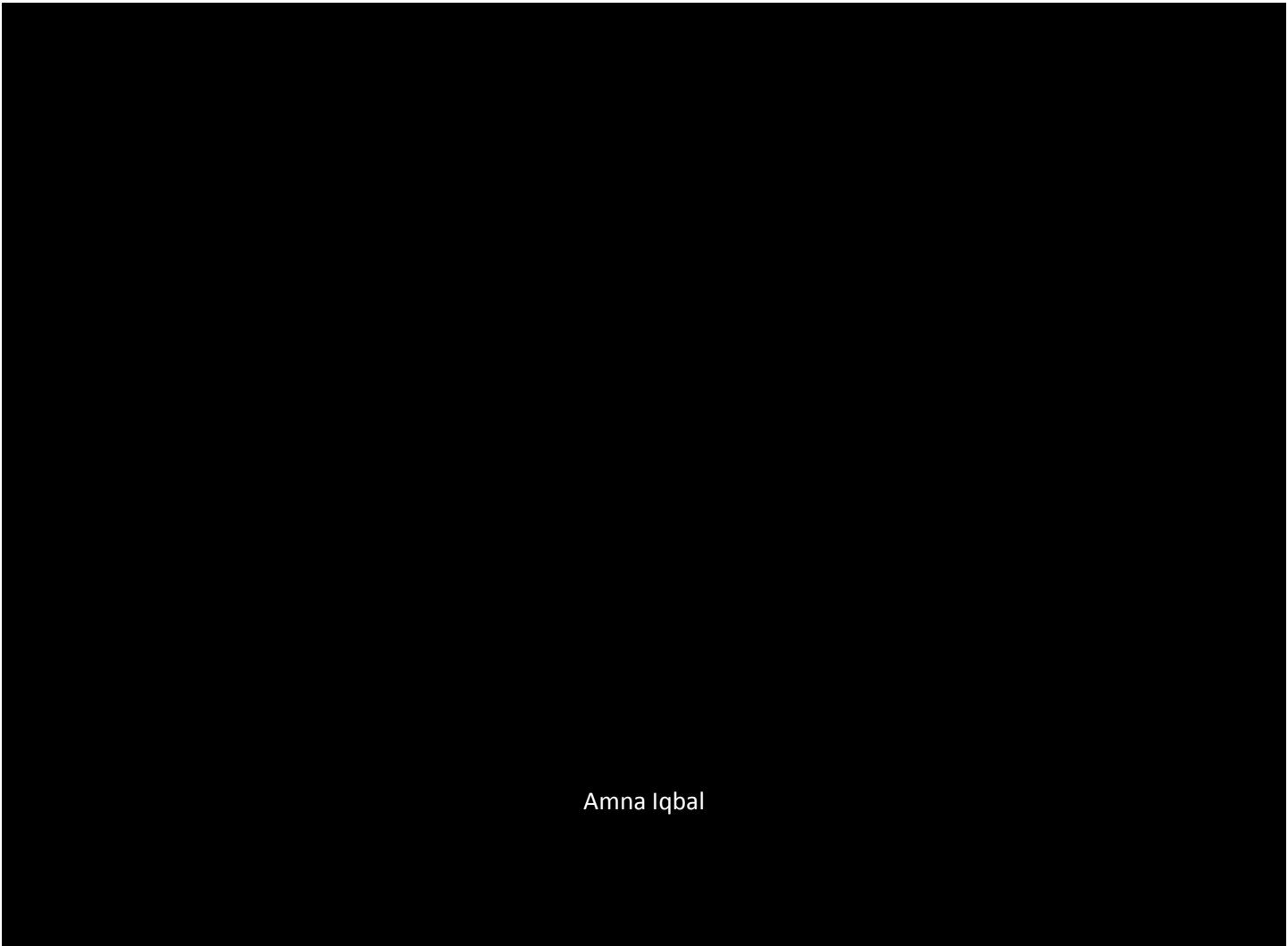




# VACATION OF THE OFFICE OF TRUST



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## **TOPIC: VACATION OF OFFICE OF TRUST**

### **INTRODUCTION:**

It is well known fact that trust is an obligation and once a trustee has accepted the trusteeship, he is bound to act, since it is obligatory. However, Trust Act, 1882 lays down the provision which deals with the discharge of trustee from his office.

### **RELEVANT PROVISIONS:**

**Chapter:7, sec:70-76**

### **DEFINITION OF TRUSTEE:**

**Black's Law Dictionary:**

“One in whom an estate, interest or power is vested, under an express or implied agreement to administer or exercise it for the benefit or the use of another”.

### **POSITION & ROLE OF TRUSTEE:**

In a trust agreement a trustee has a very pivotal role to play.

### **Who may be a trustee?**

Sec:10, specifically states about the qualifications for a trustee.

### **How a trustee may be appointed?**

A trustee may be appointed by a 1) testator 2) court

### **Acceptance of trust:**

**Sec:10**, clearly states that no person is bound to accept trust. It further states that all intended trustees also have the right to disclaim the trust within a reasonable period of time.

### **MEANING OF DISCHARGE:**

Discharge means to relieve from an obligation.

### **MODES OF DISCHARGING/VOCATING THE OFFICE OF TRUSTEE:**

A person may be discharged from the office or liabilities of trustees in the following modes:

- 1) Death of trustee
- 2) Discharge of trustee

### **DISCHARGE OF TRUSTEE:**

**SEC:71**, lays down following grounds on which a trustee may be discharged:

- 1)by extinction of trust u/Sec:71
- 2)On completeion of his duties
- 3)By prescription in Trust Instrument
- 4)By replacement of a new trustee
- 5)By consent of beneficiary
- 6)By petition to court U/S:72

### **DISCHARGE BY PETITION :**

Trustee may apply to Civil Court by petition for discharge. If courts satisfy with the grounds given by trustee then it will discharge him from office. If court is not satisfied then it will not discharge him unless another suitable person is found to replace him.

### **REMOVAL OF TRUSTEE U/S:73**

This sec enumerates the situation in which a trustee may be removed the main difference between sec:71 and sec:73 is that sec:71 grants the retirement to the trustee whereas sec:73, trustee will be removed and new appointments are made.

A trustee may be removed in following cases

- a) Disclaim
- b) Dies
- c) Is absent from pakistan for a continuous period of six months
- d) Leaves pakistan for the purpose of residing abroad
- e) Insolvent
- f) Desires to be discharged from the trust
- g) Refusal
- h) Becomes unfit or personally incapable to act in the opinion of civil court

### **APPOINTMENT OF TRUSTEE:**

**Sec:74**, states that whenever such a vacancy occurs and it is impracticable to appoint a new trustee, beneficiary may apply to court by petition for the appointment of new trustee.

Different matters have been given in the said section which the court will take into consideration at the time of appointment of new trustee.

### **VESTING OF TRUST PROPERTY IN NEW TRUSTEE SEC:75**

Section states that all trust property shall be vested or transferred to the new trustee.

New shall enjoy the same rights, discretions and powers which were vested in previous trustee.

### **SURVIVAL OF TRUSTS U/S:76**

The trust would not fail on the death or discharge of one of several trustees and the trust property keep on passes to the other trustee.

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The trust deed however can abrogate this rule.

**CONCLUSION:**