




CREATION & ESSENTIALS OF A VALID TRUST



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TOPIC: CREATION & ESSENTIALS OF A VALID TRUST

I. INTRODUCTION:

Trust is a very interesting concept in which the real owner of the property, reposes or deposits his property for its management or usage in other person for the benefit of a third person.

II. DEFINITION:

According to BACON:

“A trust is the binding of the conscience of one to the intention of another.”

III. MEANING:

Trust is an obligation annexed with the ownership of property.

IV. RELEVANT PROVISION:

Section: 3-10 of TRUST ACT, 1882

V. CROSS-REFERENCE:

Section:11 and 23 of Contract Act,1872.

VI. PARTIES OF A TRUST:

Section:3 of trust act enumerates the following parties:

- 1-The person who reposes or declares the confidence is called **author of the trust**.
- 2-The person who accepts the confidence is called a **trustee**.
- 3-The person whose benefit the confidence is created is known as a **beneficiary**.

VII. CREATION OF A TRUST:

SECTION:6 of trust act deals with the creation of a trust. Trust is created when the author of trust indicates with **reasonable certainty** by any words or acts:

- 1-An intention on his part to creat a trust (**Remora V. Moore**)”Trust is void for its uncertainty”.
- 2-The purpose of trust
- 3-Beneficiary
- 4-Trust property

5-Transfers the trust property to the trustee

RULE OF THREE CERTAINTIES:

In the case of **Knight V. Knight(1840) Lord Langdale** has introduced the rule of three certainties in which he said that a valid trust cannot be created unless these certainties are present:

- Certainty of **intention**
- Certainty of **subject-matter**
- Certainty of **object**

VIII.ESENTIALS/PRE-REQUISITES OF A VALID TRUST:

1-INTENTION TO CREAT TRUST:

The first essential of a valid trust is the intention to create a trust, with certainty so that no doubt as to the creator's intention remains.

2-PURPOSE AND OBJECT:

The second essential for a valid trust is that the purpose must be lawful and clear. U/S:4 it is clearly stated that a trust must be for a lawful purpose because a trust which is created with an unlawful object or purpose is void.

3-BENEFICIARY:

The trust is created primarily for the benefit of the beneficiaries. Hence, there should be no ambiguity as to the names of the beneficiaries.

WHO MAY BE BENEFICIARY?

Sec:9 says that every person who is capable of holding property may be a beneficiary.

4-SUBJECT MATTER:

Subject matter of trust is known as Trust property(**sec:3**).Property of any kind either movable or immovable. That is **legally transferable** can be a subject of trust.

According to **sec:8** the subject matter of a trust must be property which is transferable to beneficiary.

5-TRANSFER OF TRUST PROPERTY:

Transfer of trust property is essential to trustee. Although, it is not necessary where the author of trust is himself a trustee.

MODE OF TRANSFER:

In case of immovable property:

Through non-testamentary or a testamentary instrument it must be:

- a- Written
- b- Signed by author of the trust
- c- Registered e.g under **sec:17 of Registration Act,1908.**

In case of movable property:

Must comply with the conditions mentioned aforesaid or through the ownership of the property is transferred to trustee.

6-COMPETENCY OF TRUST AUTHOR:

U/S:7 a trust may be created by **every person competent to contract.**

In case by or on behalf of minor prior permission of a civil court is required.

7-COMPETENCY OF TRUSTEE:

SEC:10 states that every person who is 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 e.g in consonance with sec:11 of Contract Act,1872.

8-ACCEPTANCE OF TRUST:

Another very important essential which is necessary for the validity of trust, laid down in sec:10 is that the trust should be **accepted by the trustee.**

Such acceptance should be indicated with reasonable certainty either by

- 1-Acts
- 2-Words

No one is bound to accept trust and always has an option to disclaim it.

Rule of Disclaimation:

Within reasonable time as a result of which the trust property would not be vested in him.

IX.CONCLUSION:

TOPIC: KINDS OF TRUST

1- INTRODUCTION:

There is a divergence of opinion on the question of classification of trusts.

Maitland classified trusts according to the mode of their creation either **by the act of party** or by **operation of law**. Categories of trusts are not **exclusive**; some trusts could appear in more than one category.

2- DEFINITION OF TRUST:

3- PARTIES OF A TRUST:

4- KINDS OF TRUST:

There are different kinds of trusts but may overlap with each other:

A- ACCORDING TO MODE OF CREATION:

1-EXPRESS TRUST;

A direct trust is known as an express trust .A trust created or declared in express term and usually in writing.

In the words of **Lord Brougham in Fitzgerald V. Steward(1831)**,an express trust is one **“created, not by facts and circumstances, but by express words.”**

KINDS OF EXPRESS TRUST:

a- Executed Trust;

As the very word and its sense connote , is a trust wherein everything that was required to be done for bringing the trust into existence has been done and completed by author .He has fully declared a trust by the instrument.

b- Executory Trust;

As opposed to executed trusts, executor trusts are those which require the execution of **some further instrument** or **the doing of some further act**.

c- Precatory Trust;

The word precatory has been derived from the Latin word **PRECARIUS** which means entreaty or that would depend on the pleasure of another. Where words employed in a will or other instrument do not amount to a positive command or to a distinct testamentary disposition, but

are terms of request, recommendation or expectation. From such words the law will raise a trust called a precatory trust to carry out the wishes of testator.

d- Secret Trust;

A secret trust is where the testator gives property to a person, on verbal promise, to hold it in trust for another person.

C- Constructive Trust;

Constructive trust is one which is raised by construction of law, in order to satisfy the demands of justice without reference to any presumable intention of parties either express or implied. Such trust is enforced on the **principle of unjust enrichment**.

d- Resulting Trust;

A trust that arises by implication of law, which is established or presumed to be in consonance with intention of the party, as gathered from the nature of the transaction. Such a trust is the result of an incomplete disposition or a result of unclear intention as to the disposition (which is difficult to find).

2-IMPLIED TRUST;

A trust raised or created by implication of law is known as implied trust. It arises from the presumed intention of the owner of the property.

EXAMPLE;

Where A purchases land and conveys it to X, there is prima facie implied trust and X hold it as a trustee for A.

B- ACCORDING TO THE OBJECT:

1-PRIVATE TRUST;

A private trust primarily confers the benefit of the trust on **certain persons or a class** of them.

2- PUBLIC TRUST;

A public trust, as the very word suggests, confers benefit on the **public at large**. A public trust may be a charitable trust.

EXAMPLE:

Trust to promote public welfare or education are public trusts.

C- ACCORDING TO NATURE OF DUTIES OF TRUSTEE:

1-SIMPLE TRUST;

A simple trust arises where property is simply vested in one person, for the use of another, and the nature of trust, not being qualified by the settler. The trust is also termed as bare trust.

2-SPECIAL TRUST;

A special trust is one in which a trustee is interposed for the execution of some purpose, particularly pointed out.

D- ACCORDING TO CONSIDERATION:

1-TRUST FOR VALUE;

Where consideration has been paid by the beneficiaries to the settler in order to create a trust, the resultant trust is one for value.

EXAMPLE:

A creates a trust in favour of P if she marries A, marriage being a valuable consideration.

2-VOLUNTARY TRUST;

An obligation arising out of a personal confidence reposed voluntarily accepted by, one for the benefit of another.

3-ILLUSORY TRUST/TRUST OF IMPERFECT OBLIGATION;

A trust arrangement which takes the form of trust, but because of powers retained in the settler has no real substance and in reality is not a complete trust.

E- REST KINDS OF TRUST:

1-Trust of valid obligation

2-Accumulation Trust

3-Active & passive Trust

4-Perpetual & short term Trust

5-Irrevocable & revocable Trust

6-Liquidation Trust

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7-Testamentary Trust

8-Mixed Trust

5- **CONCLUSION:**