

## **Kinds of Trust**

### **Notes**

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Trusts can be classified into different kinds from different point of views. They have been discussed in detail in this chapter.

**Classification of Trust on the basis of nature and duties of trustee :**

- 1. Simple Trust**
- 2. Special Trust**

### **Simple Trust**

A simple trust is a trust wherein property is vested in one person upon trust for another and the nature of the trust is not prescribed by the author of the trust.

Under a simple trust the beneficiary has a right to possession, control and disposal of trust property.

#### **Beneficiary's rights in simple trust**

- beneficiary in such a trust has a right to be put in possession of the trust property,
- beneficiary has a right to give direction to trustee as to the way in which trust is to be executed,
- beneficiary has right to put an end to the trust by demanding a conveyance of such property.

#### **Position of trustee in simple trust**

- Trustee is merely a passive depository of the trust property.

- Trustee has no active duties to perform.
- Trustee has a duty to carry out beneficiary's order with regard to the trust property.

**Example** - X transfers property to A in trust for B. Here nature of trust is not prescribed, hence A is a mere passive depository of the trust property with no active duties to perform. Here, A is simply the servant of B and it is his duty in most cases (i.e., except in cases of minors, lunatics, etc.) to carry out B's order with regard to the trust property and B may at any time put an end to the trust by demanding a conveyance of such property.

### **Special Trust**

A special trust is a trust, wherein the author of the trust points out the purpose of the trust clearly. In such a trust, the trustee is not a mere passive depository of the trust property as in the case of a simple trust. He has to carry out the author's intention actively.

In other words, we can say, the duties of the trustees are not left to be determined by the pleasure of the beneficiary but are specifically laid down by the settlor.

#### **Special Trust may be further classified into:**

- **Ministerial Trust** - In a ministerial trust the duties are such that any person of normal competence could satisfactorily discharge it.
- **Discretionary Trust** - In a discretionary trust the trustee is called upon to exercise his own prudence and for that purpose is given a great freedom in the control of the property. An example of discretionary trust is that where the trustee has to determine, how much of the income of trust property is to be paid to each beneficiary.

### **Classification of trust on the basis of their object:**

1. **Private Trust**
2. **Public/Charitable Trust**

### **Private Trust**

A private trust is a trust for the personal benefit of some specified and certain individual or individuals or a class of individuals. For example, a trust for the benefit of A or for the benefit of the sons or descendants of X and Y.

In private trust, the class of persons for whose benefit trust is created must be certain and definite. Such persons must be identified and knowledgeable.

### **Public or Charitable Trust**

It is a trust for the benefit of the public at large or some considerable portion of the public answering a particular description, for example, if the object is to promote the public welfare or a trust for the advancement of a particular religion or a certain sect, are public trusts.

Trusts for public purposes are either charitable in which case they are governed by the law relating to charitable trusts or for public objects which are not of a charitable character.

### **Differences between Private Trust and Public Trust :**

In *Deoki Nandan v Murlidhar*, SC observed the following distinctions

- the essential difference between a private and a public trust is that in the former, beneficiaries are definite and ascertained individuals or the persons who within a definite time can be definitely ascertained, but in the latter, the beneficial interest must be vested

in an unascertained and fluctuating body of persons who are either the public at large or some considerable portion of it answering a particular description,

- the distinction between private and public trust is based not on the number but on the character or class of the beneficiaries. There may be, say, fifty beneficiaries (e. g., as descendants of X) entitled to the immediate benefit under trust and yet it may be a private trust, while there may be only one beneficiary entitled to the immediate benefit under the trust and yet it may be a public or charitable trust (e. g., trust which is created to award gold medal every year to the student who tops in LL.B. final class of the XYZ University. Even though this trust benefits only one student of LL. B. every year, the purpose of this trust will be charitable in nature.)
- Another distinction is that private trust fails if it cannot be executed in the manner directed by the settlor but public trust does not fail for indefiniteness nor does it fail because it cannot be executed in the mode and form prescribed by the donor. Doctrine of cypres applies in relation to the public trust.

#### **Classification of trust on the basis of their mode of creation :**

- 1. Express or declared trust**
- 2. Implied Trust**
- 3. Constructive Trust**
- 4. Resulting Trust**
- 5. Precatory Trust**
- 6. Secret Trust**

#### **Express or declared trust**

An express or a declared trust is one which is clearly and directly created in express words by the settlor, either verbally or in writing. "An express trust is one which is created, not by facts and circumstances, but by express words."

An express or declared trust may further be classified as :

- **Executed trust** - A trust is said to be 'executed' when there is nothing left to be done in order to constitute it. In other words, we can say, an executed trust is one which is fully and finally declared by the instrument creating it.

Example - Where A transfers land for sale to T in trust for B, C and D equally, the trust has been fully and finally declared, the property has been transferred, the interest of the beneficiaries has been defined and there does not remain anything more to be done in order to make the trust operative.

- **Executory Trust** - A trust is executory when something remains to be done in order to complete it. Executory trust arises when there is a stipulation or direction to make a settlement upon trust, but do not appear to be finally declared by, the instrument containing such stipulation or direction.

**Example 1** - Where A promises in writing to settle certain property upon trust for the benefit of B.

**Example 2** - Where it is declared that on the marriage of A and B, certain rights shall be settled on trust for them and their children.

## **Implied Trust**

An implied or presumed trust is one which is not so clearly expressed as an "Express trust" but is indirectly gathered from the settlor's "presumable intention". The intention of the settler is inferred.

In implied trust the Courts presume from the unexpressed but presumable intention of the settlor, which is gathered from the circumstances of the transaction.

**Example** - Amit gives ₹10 lakh to her close friend, Anil, to purchase land in Anil's name. However, there is no written agreement or any indication that Amit intended to gift the money to Anil. Later, a dispute arises when Amit asks Anil to transfer the land back to her, but Anil claims full ownership.

In the absence of any proof that Amit intended the money as a gift, the court presumes that Anil holds the land on trust for Amit.

### **Constructive Trust**

A constructive trust is an species of implied trust. A constructive trust is imposed by the court as a remedy to prevent unjust enrichment or fraud. It is imposed by Courts of Equity in order to prevent the inequitable acquisition of another's property. It arises in case of an unconscionable advantage gained by a fiduciary or by any other person.

According to **Hanbury**, "a constructive trust arises by operation of law".

According to **Strahan**, "a constructive trust arises where a person becomes possessed of property through such an abuse of confidence reposed in himself as will induce the Court to hold that in conscience he is bound to hold it for the benefit of the person injured by the breach of confidence".

### **Constructive Trust under Indian Law**

Though the term 'constructive trust' is not used in the Indian Trusts Act, 'certain obligations in the nature of trusts' are dealt with in Chapter IX, particularly Sections 86 to 90, which illustrate the creation of constructive trusts. They are as follows :

#### **A) Transfer pursuant to rescindable contract (Section 86)**

Where property is transferred in pursuance of a contract which is liable to Rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor.

**B) Debtor becoming creditor's representative (Section 87)**

Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

**C) Advantage gained by fiduciary (Section 88)**

Where a trustee, executor, partner, agent, director of a company, legal advisor or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where a person so bound enters into any dealings under circumstances in which his own interests are, or may be adverse to those of such other person, and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

**D) Advantage gained by exercise of undue influence (Section 89)**

Where by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

**E) Advantage gained by qualified owner (Section 90)**

Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold for the benefit of all persons so interested, the advantage so gained.

## **Resulting Trust**

A 'resulting trust' may be defined as the another species of implied trust, which arises or results, in favour of either of the person who creates it, or his representatives. It is so called, because in it the beneficial interest in the property 'results' or comes back to the person who voluntarily transferred the property to the trustee.

### **Resulting Trust under Indian Law**

Though the term, 'Resulting trusts' are not used in the Indian Trusts Act, but 'certain obligations in the nature of trusts' are dealt with in Chapter IX, particularly Sections 83-85 which are illustrations of Resulting Trust . They are as follows :

#### **A) Transfer incapable of execution (Section 83)**

Where trust is incapable of being executed, the trustee, in the absence of a direction to the contrary, must hold the trust property, for the benefit of the author of the trust or his legal representative.

Example - A transfer Rs. 50 Lacs to B for the benefit of C. C dies. Here B will hold the property for the benefit of A or in case where A also dies, for the benefit of A's legal representative.

#### **B) Trust executed without exhausting trust property (Section 83)**

Where the trust is completely executed without exhausting the property, the trustee, in the absence of a direction to the contrary, must hold so much thereof as is unexhausted for the benefit of the author of the trust or his legal representative.

**Example** - A transfers Rs. 30 lakhs to B for financing C's higher education. Only 15 lakhs of the total fund is exhausted in C's higher education. Here C will hold unexhausted fund of Rs. 15 lakh for the benefit of A or his legal representative.

**C) Transfer for illegal purpose (Section 84)**

Where the owner of property transfers it to another for an illegal purpose and such purpose is not carved into execution, the transferee must hold the property for the benefit of the transferor.

**D) Bequest for illegal purpose (Section 85)**

Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful or during the testator's lifetime, the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

## **Precatory Trust**

A precatory trust arises when a person expresses a wish, hope, or moral obligation that property should be used in a certain way, rather than giving a clear legal directive. Historically, courts sometimes interpreted such expressions as creating a trust, but modern law generally requires clear intent to impose a trust obligation.

**Example** - Amit writes a will stating:

"I leave my entire estate to my brother, Raj, trusting that he will take care of my wife and children."

## **Secret Trust**

Secret trust arises only in cases of transfer by Will, when at the time of writing the Will, the testator does not declare his intention to create trust, but he discloses his intention after writing the Will.



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In secret trust a person leaves property to someone in their will but, outside of the will, has given that person instructions to hold it for the benefit of another. This trust allows the testator (the person making the will) to make confidential arrangements that are not publicly disclosed in the will.

**Example** - Mr. Verma, in his will, leaves ₹50 lakh to his friend, Arjun, without mentioning any conditions. However, before his death, Mr. Verma privately tells Arjun that he must use this money to support Verma's disabled niece, Shivi.

Since this arrangement is not mentioned in the will, it is a fully secret trust. If Arjun refuses to follow the instructions after Mr. Verma's death, Shivi may ask the court to enforce the trust, provided there is proof of the agreement.