

Liabilities of Trustee

Notes

The liabilities of a trustee are dealt with in Sections 23 to 29 of the Indian Trusts Act. They are as under:

Liabilities for breach of Trust (Section 23)

Where the trustee commits a breach of trust, he is liable to make good the loss, which the trust-property or the beneficiary has thereby sustained.

Breach of Trust - Section 3 provides that a "breach of trust means a breach of any duty imposed on a trustee by any law for the time being in force".

Example - A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

Extent of Liability of Trustee

The liability of the trustee is to make good the loss sustained by the beneficiary, but in certain conditions the trustee may be held liable not only to make good the loss sustained by the beneficiary but also to pay interest.

In following circumstances trustee committing a breach of trust is liable to pay interest:

- where he has actually received interest,
- where the breach consists in unreasonable delay in paying trust-money to the beneficiary,
- where the trustee ought to have received interest, but has not done so,
- where trustee may be fairly presumed to have received interest,
- failure or unreasonable delay in investing trust money.

Example - The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immovable property. The trustee does neither. He is liable for the principal money and interest.

Exception (When trustee committing breach of trust is not liable)

In following circumstances trustee committing breach of trust is not liable :

a) **Fraud by beneficiary**

When beneficiary by fraud induced the trustee to commit the breach of trust.

b) **Concurrence or acquiescence by beneficiary**

When beneficiary who are competent to contract concurred or acquiesced with full knowledge of the breach committed by the trustee. Lord Eldon, in *Walker v. Symonds*, observed that if "the *cestui que trust*" joins with the trustees in that which is a breach of trust knowing the circumstances, such *cestui que trust* can never complain of such a breach of trust.

No set off allowed to trustee (Section 24)

A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property, cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

For example, when there are two separate funds subject to trusts, and the trustees commit a breach of trust as to one, by which it is lost, it is impossible to permit the trustees to say that they have improved the other fund, and that fund is bound to make up the loss of the other. If the trustees have lost one part of the settled funds they must answer for it whatever may be the improvement of the other part.

No Liability of Trustee for predecessor's default (Section 25)

Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Liability of Trustee for Co-trustee's default (Section 26)

The general rule is that a trustee is not liable for breach of trust unless he is personally guilty of default.

Exception - But a trustee will be liable for breach of trust by his co-trustee, where he is himself guilty of some neglect of duty, for example :

- a) where he has delivered trust-property to his co-trustee without seeing to its proper application,
- b) where he allows his co-trustee to receive trust property and fails to make due enquiry as the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require,
Example - A bequeaths certain property to B and C and directs them to sell it and invest the proceeds for the benefit of D. B and C. accordingly sell the property and the purchase money is received by B and retained in his hands. C pays no attention to the matter for two years and then calls on B to make the investment. B is unable to do so, becomes insolvent and the purchase money is lost. C may be compelled to make good the loss to the trust.
- c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

Extent of Liabilities of co-trustee

- In respect to beneficiary (Several liability)
According to Section 27 of Indian Trusts Act, where co-trustees jointly commit a breach of trust, or where one of them by his neglect, enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach. Thus, where co-trustees are jointly implicated in a breach of trust, the beneficiary, though he obtains a decree against trustees jointly, may have the process of execution against any one of them separately.
- As between co trustees (principle of contribution shall apply)
If one of the Trustee has made good the loss to the beneficiary for breach of trust committed along with co-trustee, he may compel the other trustee to contribute to the extent of their liability.

The following are the cases where a contribution as between co-trustees will be effected:

- if one be less guilty than another and has had to refund the loss; the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss,



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- if all be equally guilty, one or more of the trustees who has had to refund the loss may compel the others to contribute.

(However, a trustee who has been guilty of fraud cannot institute a suit to compel contribution).

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