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Law relating to Transfer of Property

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UNIT-I

Section 1 gives the title of the act. It is helpful in some instances as an internal aid for the interpretation of any provision in the Act. The title gives the idea about the object of the Act, policy & purpose of the Act. Application of the Act: the T.P Act applies to transfers by acts of parties. & not by the operation of law The act deals with transfer of property between two living persons. The majority of the act deals with transfers relating to immovable property. This act does not apply to transfer of property governed by personal law, for ex, Mohammedan Law.

Definition Clause

1. Write short notes on Immovable Property

Section 3 defines Immovable Property

We know that property is the total wealth of a person. It may include land, buildings, mortgage rights, debts owed to him, insurance money due, cheque received, cash, etc. The Transfer of Property Act, 1882, defines immovable property as that which does not include standing timber, growing crops and grass.

This is a very vast definition though, so we must look at the definition furnished by the General Clauses Act, 1897, wherein it is mentioned that immovable property includes – a) land, b) benefits arising out of land, c) things attached to the earth, or d) permanently fastened to anything attached to the earth. Also,

the Registration Act defines immovable property as land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefits arising out of land and things attached to the earth, but not standing timber, growing crops or grass.

Attestation:

Section 3 of the T.P. Act defines attestation. Attesting of an instrument means that the documents must be attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the document. Further each of them must have signed the instrument in the presence of the executant. The attester's must have intention of attesting. It is not necessary that more than one should be present at the same time. Law also does not prescribe any particular form of attestation. The usual procedure is that the attester's must sign with address and date.

Constructive Notice

Section 3 defines notice. A notice may be actual or constructive. There is actual notice, when knowledge of a fact is brought directly to the person concerned. It is constructive when there is a presumption of the knowledge of the fact. The following are its different kinds

- i) Knowledge is presumed when the party wilfully abstains from making enquiry.
- ii) Gross negligence of the party.
- iii) Registration: Registration of a transfer amounts to notice, from the date of registration.

2. Define the term “transfer of Property”

Section 5:

Defines the phrase Transfer of Property It is an act by which a living person conveys property in present or future or to himself & one or more living persons. The word property used in the definition means- Tangible material things e.g. land and houses. Rights which are exercised over any material things, e.g right to enjoy a property. Rights regarding repayment of debt, etc. The word transfer means a transfer of all the rights & interest in the property or transfer of one or more rights relating to the property.

Therefore the phrase transfer of property means

- 1) Transfer of things
- 2) Transfer of one or more rights regarding a thing
- 3) Transfer of the debt. The effect of the transfer may take place in present or in future. The property to be transferred must be in existence at the time of a transfer. The transfer of property must be from one living person to another living person. However there are exceptions to this general rule as given under section 13 & 14. The transfer of property recognizes such transfers which create a new right or title or interest in favour of the transferee.

3.The general is that property of any kind may be transferred, State some exceptions.

What may be transferred:

Section 6 of the provides for the exceptions to the rule that property of any kind may be transferred. The exceptions are:

- a) Spes Successionis
- b) Transfer of Right of Re-entry and Easement.
- c) Religious Office.
- d) Serving of Inams.
- e) Maintenance Right.
- f) Mere right to sue.
- g) Public Office, stipends and pensions,
- h) Illegal transfers.

3. Explain the competency to transfer the property?

Competency under the T.P Act:

Both the parties to the transfer must be competent to enter into a contract. They must have the competency as required under S.10 of the Indian Contract Act. They must be major, of sound mind and must not be disqualified by any law in force. Apart from the above the person who intends to transfer must have the title to the property or the authority to transfer it. Such property must be in existence at the time of transfer, irrespective whether the transfer creates a right immediately or in future.

Rule against Inalienability.

S. 10. : Absolute restraint The main principle of the Transfer of Property Act is that the right to transfer property is incidental to and inseparable from its beneficial ownership. Any condition absolutely restraining alienation is void according to the Act. S. 10 states that when a property is transferred subject to a condition absolutely restraining the transferee (or any claimant through him) from parting with or disposing of his interest in the property, the condition or limitation is void. This applies to sale, gift, exchange etc. The rule is based on Justice, equity and good conscience, and includes other transfers not covered by the Transfer of Property Act e.g. will, partition, settlement etc.

4. Explain the transfer of property in favor of unborn Person with the help of sec 13 under TP ACT.

Section 13 Transfer for benefit of unborn person:

This section is an exception to the general rule regarding transfer between two living persons. In this section a transfer can be made in favor of an unborn person. Such a benefit to an unborn person is valid subject to certain rules under the section.

The transfer made for the benefit of the unborn person shall be valid if the following rules are complied with

1) No direct transfer

2) Making a prior interest

3) Making an absolute transfer of interest

1) No direct transfer: Under this section a transfer to an unborn person cannot be made directly. As such a direct transfer suspends the ownership in the property till the unborn person comes into existence. This is contrary to the fact that 'the property cannot be without an owner' at any given point of time.

2) Making a prior interest A transfer to an unborn person can be made in an indirect manner. It means that a prior interest in favor of a living person must be created; it is called as a life interest. Such living person shall hold the property till the unborn person comes into existence. There is no limit to the number of successive life interests created in favor of living persons. However the unborn person must come into existence before the death of the living person holding the life interest.

3) Making an absolute transfer of interest The transfer made in favor of an unborn person must be absolute. A life interest cannot be made in favor of an unborn person. Such limited interest is void e.g - A property is transferred to 'A' for life, then to his first son 'B' for life & then absolutely to the unborn son of 'B'. This is a valid transfer. A property is transferred to 'A' for life, then to his first son (unborn) for life & then to 'A's second son X absolutely. This transfer is invalid as there is a life interest created in favor of the first unborn son. The subsequent transfer also fails due to the failure of the prior transfer.

5. Explain "Rule against Perpetuity" under TP Act. With the help of rule stated under Whitby v/s Mitchell case.

Section 14- Rule against perpetuity

The rule against perpetuities was announced in Whitby v Mitchell. This has been suitably changed and the rule is laid down in Section 14 of the T.P.Act.

Property may be tied up or made inalienable in two ways

a) By imposing a condition by absolutely restraining the transferee from disposing his interest in the property.

b) By creating a succession of partial future interest in favor of unborn persons so as to postpone the time when the property will vest in person absolutely. The transfer of property is void if it

creates an interest which is to take effect after the life time of one or more persons living at the date of such transfer and the

minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created, is to belong.

Exception to rule against Perpetuity

The rule against perpetuity does not apply to transfer of property for the benefit of the public or for the advancement of religion or knowledge. \ Direction for accumulation Under section 17 of the T.P act a direction of accumulation for income is one of the ways of restraining the enjoyment of property. Such accumulation is void according to Section 11.

However the present section is an exception to the rule under Section 11. It allows accumulation of income by the following ways

. a) The life of the transferor: the accumulation of the income can be made till the life of transferor. If the life of the transferor exceeds 18 years, from the date of transfer then the accumulation is allowed, till such date but if the transferor dies before completion of 18 years, then the accumulation for such period shall be valid.

b) a period of 18 years from the date of transfer [whichever is longer]

6.What is the meaning of vested Interest? Distinguish it from contingent interest.

Vested and Contingent Interest:

Vested interest is defined under section 19 of the Transfer of Property Act. Interest becomes vested when the property is totally of the transferee and it can be validly transferred by him even before he had obtained possession. If the transferee dies, then his interest devolves on the legal heirs An interest created on transfer of property in favor of a person is said to be vested where

- i) No time is specified for it to take effect.
- ii) It is expressed to take effect forthwith
- iii) It is to take effect on the happening of an event which must happen.

Contingent Interest

Section 21 of the T.P Act defines Contingent interest. An interest is said to be contingent when it is expressed to take effect;

- 1) On the happening of a specified uncertain event
- 2) If a specified uncertain event shall not happen The contingent interest is an interest which is merely conditional dependent upon something which is uncertain .there is no present fixed right.

7. Discuss the Doctrine of Election under TP ACT. With help of Decided cases.

Doctrine of Election Section 35 of the Transfer of Property Act, 1882 incorporates the Doctrine of election alongside Section 180-190 of the Indian Succession Act 1925. Election simply means choosing between two alternative rights or inconsistent rights. Under any instrument if two rights are conferred on a person in such a manner that one right is in lieu of the other, he is bound to elect (choose) only one of them. One cannot take under and against the same instrument.

Analysis of the Section

Essential Conditions *Ms. Dhanpati v. Devi Prasad and others*:

Before there can be election there must be:

1. transfer of a property by a person who has no right to transfer;
2. as part of the same transaction, he must confer some benefit on the owner of the property; and
3. such owner must elect either to confirm the transfer or to dissent from it. Effect of election against the transfer Where the owner dissents from the transfer of his property –
 1. He must relinquish the benefit;
 2. The benefit intended for him would then revert to the transferor.

Exception: If a person elects against the instrument, he will not forfeit the whole benefit but only the benefit attached in lieu of the property. (Election limited to part of benefit) Mode of election a. Implied – by conduct b. Express – election when made in express words, it is final and conclusive.

8. Define the term ‘Ostensible Owner’ and state the principles governing the transfer by such ostensible owner

Transfer by Ostensible Owner

Section 41 Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: PROVIDED that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.” Ostensible owner is not the real owner but one who can represent himself as the real owner to the third parties for such dealings.

He has acquired that right by the willful neglect or acquiescence by the real owner of the property thereby conferring on him the status of ostensible owner. For instance, when the property is in wife’s name however the husband taking care of it and entering into transactions on her behalf is the ostensible owner and has the authority to dispose it off.

The provision for its application lays down certain requirements to avail the benefit of this section.

They are: • The primary condition is that the person who is transferring the property should be ostensible owner

- There should be either implied or express consent from the owner of the property.
- The transfer should be for some consideration in return.
- Reasonable care has to be taken by the transferee regarding the authority of the transferor to effectuate the transaction and also of the fact that he has acted in good faith.
- The doctrine of transfer by ostensible owner is based on the doctrine of estoppel that when real owner of property makes some one apparent to be the owner to third parties and they act upon it, he cannot go back his representation.
- These rules and the section are available only to immovable property and not on the movables.

9. Define the term ‘co-owner’ Explain the types of co-owners.

Transfer by co-owners

When a property is owned by more than one person, such owners are called as co-owners. When one or more parties have ownership rights in a property, they are termed as co-owners. Co-owners possess all the rights of ownership in a property in proportion to their share. The

co-owners have the right to use, right to dispose and right to possess the property. When a partition of a property takes place, the owners resulting from such partition are termed as co-owners. The term co-ownership includes joint tenancy, tenancy in common and tenancy by the entirety.

Types of co-owners

Joint Tenancy Joint tenancy is a type of co-ownership where there are two or more owners of a property having an equal share in the property. On the death of one of the joint owners his or her interest automatically passes on to the remaining joint tenants who are alive as on that day.

10. Explain the term “Apportionment”. Explain the classification of Apportionment.

Principle of Apportionment

Section 36 & 37 of the Transfer of Property Act lay down the rules regarding the principle of apportionment. Section 36 states- “In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and transferee, to accrue due from day to day and apportionable accordingly but to be payable on the days appointed for the payment thereof”.

Although this principle does not usually apply to transactions of transfer of property which take place through ‘operation of law’ but there are exceptions in cases where the rule has been applied on grounds of equity.

The expression ‘apportionment’ means division of a common fund between several claimants. It is classified into two types- ‘Apportionment by time’ and ‘Apportionment by estate’.

Doctrine of Priority /Priority of Rights

Section 48 The determination of the relative rights and priorities of successive assignees of the same or overlapping rights has been a serious problem for the Courts. When there are two or more competing equitable interests, the equitable maxim qui prior est tempore potior est jure (he who is earlier in time is stronger in law) applies. This means that the first in time prevails over the others. Section 48 of the Transfer of Property Act embodies this principle in legislation.

The Section is founded upon the important principle that no man can convey a title than what he has.

11. What remedies are available for the improvements made by bonafide holders under defective title?

Improvements made by bona fide title holders under defective titles

The transfer of Property Act, 1882 collaborates all the possible transactions between a transferor and a transferee. Similarly, Section 51 of the Transfer of Property Act, lays down, when the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof, irrespective of the value of such improvement.

12. Explain the Doctrine of Lis pendense under transfer of property Act.

Doctrine of Lis Pendens

The law incorporated in Section 52 of Transfer of Property Act, 1882 is based on the doctrine of lies pendent. Meaning of Doctrine of Lis Pendens

1. ‘Lis’ means ‘litigation’ and ‘pendent’ meaning ‘pending’.

2. So, lis pendent would mean 'pending litigation'.
3. The doctrine of lis pendent is expressed in the well-known maxim: pendent lite nihil innovator, which means 'during pendency of litigation, nothing new should be introduced'.
4. Under this doctrine, the principle is that during pendency of any suit regarding title of a property, any new interest in respect of that property should not be created.
5. Therefore, in essence, the doctrine of lis pendent prohibits the transfer of property pending litigation.
6. It is a very old doctrine and has been operating in the English Common Law.
7. Under this doctrine the judgments in the immovable properties were regarded as overriding any alienation made by the parties during pendency of litigation.

Write short notes on

Doctrine of Part Performance

Doctrine of Part Performance is an equitable doctrine and it is incorporated to prevent fraud and from taking illegal advantage on account of non-registration of the document. This Doctrine is based on the maxim, Equity look at as it is done which ought to have been done. Basically the doctrine says that the transferor or any person claiming under him shall be debarred from enforcing against the transferee and the person claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the term of the contract.

13. Define mortgage. State the different kinds of mortgage

MORTGAGE A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or debt, or the performance of an engagement which may give rise to pecuniary liability. The transfer is called mortgagor, the person to who advances the loan is called as the mortgagee. The property which the mortgagor gives as a security is called as the mortgage property.

Essentials for mortgage:

Section 58 For a transfer to be called as a mortgage the following essentials must be fulfilled:

- 1) There must be a transfer of an interest.
- 2) There must be specific immovable property intended to be mortgaged.
- 3) There transfer must be made to secure the payment of a loan or to secure the performance of a contract.

Mode of transfer in mortgage:

- 1) Registered instrument
- 2) Delivery of possession
- 3) Deposit of title deeds

Subrogation

Section 91 Subrogation means 'Substitution'. This enables a person to pay off a creditor and get into his shoes and exercise the rights of the creditor. Any person redeeming a mortgaged property has the same rights (of redemption, foreclosure or sale), as the mortgagee may have against the mortgagor or any other mortgagee. This right is subrogation.

There must be full redemption to apply this doctrine.

A mortgages his property to B. A makes second mortgage to C.A makes third mortgage to D. Here, D may redeem B in which case D becomes subrogated to B.

He has the same rights as B has. Persons who may claim subrogation.

- i) Any person having interest in or charge on the mortgaged property.
- ii) Any surety.
- iii) Any creditor of mortgagor.

14. Explain the Rights and Liabilities of mortgagee and mortgagor

Rights & liabilities of mortgagee & mortgagor:

Once a mortgage always a mortgage The mortgagor is having a right to redeem the mortgage. It is called as equity of redemption. It is given under section 60 of the under T.P act after the principal money has become due; the mortgagor has a right on the payment on the mortgage money to get the property reconvened by the mortgagee. Any condition against this right to redeem is called a 'clog on the equity of redemption'. The right of redemption of the mortgagor cannot be curtailed by a contract.

Rights and Liabilities of Mortgagee

Section 67 gives the mortgagee a right of foreclosure or sale in default of redemption by the mortgagor. This right can be curtailed by an agreement of the parties.

A simple mortgage, usufructuary mortgage cannot be foreclosed. In an English mortgage & mortgage by deposit of title deeds, the mortgagee can bring a suit for sale of the mortgaged property.

A) Rights of the mortgagee in possession:

i) The mortgagee may spend any necessary amount for

a) The preservation of the mortgaged property from destruction, forfeiture or sale. b) for supporting mortgagors title.

c) to make his title good against the mortgagor (defending suits against mortgagor). ii) Where the mortgaged property is sold under Revenue sales or acquired by Govt., the mortgagee is entitled to claim his money the surplus of proceeds of such sale or acquisition.

15. Define the term “ Sale”. State the differences between Sale and Agreement to sell.

SALE OF IMMOVABLE PROPERTY

Definition: sale is transfer of ownership in specific immovable property for price paid or promised or part-paid and part promised. Section 54 Transfer of Property Act, defines the sale. In sale there is absolute transfer of ownership in property.

The seller shall have no rights regarding the property after completion of sale.

The consideration for sale is called the price.

The transferor is called the seller or vendor & the person in who purchases the property is called as the buyer or vendee.

The essential elements of sale are:

- 1) The parties
- 2) The subject matter
- 3) The price of consideration
- 4) The transfer or conveyance

16. Explain the Rights and liabilities of Seller and Buyer

Liabilities & Rights of the Seller:

Section 55 of the T.P Act gives the rights & liabilities of the seller & buyer respectively.

Liabilities of the seller before completion of the sale:

The seller has having the following duties before the completion of the sale.

- a) To disclose material defects in the property or in the sellers title thereto [Section 55(1) (a)]
- b) To produce title deeds [section 55 (1) (b)]
- c) To answer questions as to title [section 55 (1) (b)]
- d) To execute conveyance [section 55 (1) (d)]
- e) To take care of the property [section 55 (1) (e)] and

Buyer's liabilities before completion of sale:

- a) To disclose facts materially increasing the value of the property [section 55 (a)]
- b) To pay the price [sec 55 (5) (b)].

Buyer's liabilities after completion:

- a) To bear loss to the property,
- b) To pay the outgoings [sec 55 (1) (g)]

17. Explain the meaning of the term 'lease'. Bring out its distinction from sale, exchange, mortgage and gift.

LEASE OF IMMOVABLE PROPERTY

Section 105 of the Transfer of Property Act defines a lease. A lease of immovable property is defined as the transfer of the right to enjoy such property made for a certain time, in consideration of a price paid or promised. The consideration may be a fixed amount or a share of crops or serving of any other thing to be rendered periodically or otherwise.

Lease may be oral or in writing. If the lease is for one year or above then it must be in writing and must be registered. Leases for lesser period may be oral or in writing. Registration is optional. Delivery of possession is necessary, in both the circumstances.

18. Explain the Rights and Duties of lessor and lessee under TP Act.

Rights and Duties of the Lessor and Lessee

The Transfer of Property Act under section 108 provides for the rights and liabilities of the lessor and lessee:

- i) The rights and liabilities of the lessor.
 - a) The lessor should disclose any material or latent defects in the property leased.
 - b) The lessor must put the lessee in possession of the property.
 - c) There is a covenant for quiet enjoyment of the property if the lessee is paying the rent during the period of the lease.
- ii) Rights and liabilities of the lessee.

Write short notes on

Termination of lease:

A lease is terminated

- a) by efflux of time: If the lease is for a fixed period e.g. for 2 years, the lease terminates on the expiry of 2 years.
- b) On the happening of an event, e.g. the lease is for 20 years or ends on the death of the lessee whichever happens first. Here the lease terminates on the expiry of 20 years or on the death of the Lessee.
- c) Merger: When the lessor and lessee become one. This happens when the lessee buys the lease property; of course he must buy the entire interest in the property.
- d) Surrender: A lease is terminated by surrender. It consists of yielding up of the term by the lessee to the lessor, and of delivery of possession to the lessor, and, acceptance by the lessor. Hence, mutual agreement is essential for surrender.
- e) Implied Surrender: This happens when the lessor accepts a new lease, with different terms and conditions, during the continuance of the existing lease. Here, there is the implied surrender of the original lease.

Exchange:

Section 111 When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things money only, the transaction is called an 'Exchange'. Any such transfer can be made in the same manner as is done in respect of sale. A partition of H.U.F. is not an Exchange. The parties to Exchange are subject to the same rights & liabilities of the Vendor

and the Vendee. Any defect in the title of the property exchanged, is to be set right by that party whose property had the defective title.

19. What are the important ingredients of a gift? When is a gift revocable

The Gift

Meaning According to Section 122 of Transfer of Property Act, 1882 'Gift' is defined as the transfer of certain existing moveable and immovable property made voluntarily and without consideration, by one person called the donor, to another, called the donee, and accepted by or on behalf of the donee. Gift, as defined in this section, is gratuitous transfer of ownership in some existing property made voluntarily. The definition includes gift of both movable as well as immovable property.

The transferor is called donor and the transferee is called donee. There are certain essentials of a gift like a must transfer of ownership, the ownership must relate to a property in existence, the transfer must be without consideration, it must have been made voluntarily, the donor must be a competent person and lastly the transferee must accept the gift.

A gift is a transfer of property without any monetary consideration by one person in favour of another and accepted by him or by a person on his behalf. Transfer without consideration is called a gratuitous transfer.

Indian Trust Act, 1882

History of Trust:

The modern trust is developed from the ancient one the term is derived from the Latin word OPUS which means "on his behalf". This was coined because of in the ancient period on person held large land holdings on behalf of other. This type of use became popular and came to be known as trust. Thus we may say that a Trust is Fiduciary relationship between as regards the person on whom it the property or power is entrusted for the benefit of another.

It may be said to be a relationship with the where one of them is duty bound to exercise his rights and powers in good faith for the benefit of another.

The Indian trust act 1882 covers private trust created in favour of a single person or a class of persons This act is not applicable to private of public religious or charitable endowment, Waqf under Mohammedan law the relation of member's Hindu undivided family as per their customs.

Definition of Trust : It is an obligation annexed to the Property ownership of property arising out of the confidence reposed in an owner accepted by the owner or declared and accepted by him, for the benefit of another, or another and the owner. The three things pointed out in the definition

1. the person who makes the trust
2. the person who accepts and
3. the person whose benefit the trust has been made

Write short notes on

KINDS OF TRUST:

- I. Based on the purpose of trust, it is classified into private trust, public or charitable trust
 - a) Private trust: The beneficiary under this trust is either one person or a class of definite persons`
 - b) Public Trust: The beneficiary is the whole society at large or the members of an uncertain and changing body. E.g. trust for the advancement of education irrespective of caste or creed.

Classification according to mode of creation of trust:

- a) Express Trust: An express trust is created by the settlor of the trust by words or will or by a Deed of trust.

- a) Executed Trust: A trust is executed when no further instrument is necessary and the trust is finally declared. This trust cannot be revoked
- b) Executory Trust: Here there is a requirement of a further instrument or additional instrument to carry into effect the general instruction of the first instrument of trust. This Trust can be revoked.
- c) Constructive trust: arise in case of persons under producing relationship that is Trustee and beneficiary Guardian and ward. it arises when the person becomes possessed of property through such can 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 trust .

2. Discuss the provisions of Indian Trust Act in relation to the creation and extinction of trusts.

CREATION OF TRUST

Section 4 to Section 10 of the Indian Trust Act, 1882

1. Creation of trust by an express way
2. Creation of trust arising by operation of law.
 - a) Implied trust.
 - b) Resulting trust.
 - c) Constructive trust
3. Competency or Eligibility of Parties intending to create a trust.
 - a) creator of trust i) Competency b) Trustee. i) Competency c) Beneficiary
4. Essentials of trust according to s.6 of the Indian Trust Act.
 - a) Certainty of Intention.
 - b) Certainty of object of trust
 - c) The beneficiaries.
 - d) Certainty of the trust property
 - e) Transfer of such property
 - f) Lawful purpose
5. Trust of Immovable property /Movable property

Appointment of Trustees Section 73 &74 of Indian Trust Act 1882

A Trust cannot fail for the want of a Trustee:

According to Section 10 Indian trust act, a person may be appointed as a Trustee If is capable of holding property. Thus the Trustee has an important responsibility of managing the property of the trust. The Trustee may be appointed by the settlor of the trust or the court. The Trustee must accept the position voluntary, once he has accepted; the Trustee cannot resign without the consent of all the beneficiaries or the court. If the settlor of the trust fails to appoint a trustee then , the trust shall not fail for the want of a trustee. Mere omission to appoint a trustee will not invalidate the trust. The Principle is that Equity never wants a trustee. In such cases it is upon the person holding the property to execute the trust. In instances where the Trustee who is named under the trust refuses to perform the duties, it shall not affect the trust.

If the Trustee is unable through death to perform the trust or is unfit to act then in such cases the trust will not be affected but the property shall revert to the settlor if alive or his legal representatives, who will hold the property upon trust till new trustees are appointed (S.73)

If a Trustee leaves India for the purpose of residing abroad or is absent from India for a continuous period of 6 months, a new Trustee may be appointed in his place. (S.73)

3. Explain the rights and duties of Trustees under Indian Trust Act.

Duties and Liabilities of Trustees

Section 11 to 22 of the Indian trust act 1882 gives the duties and liabilities of a trustee.

The duties of a trustee are

1. To execute the trust
2. To inform himself of state of Trust property
3. To protect title to trust property
4. Not to set up title adverse to beneficiary
5. To exercise reasonable care
6. To convert perishable property
7. To be impartial
8. To prevent waste
9. To keep accurate accounts
10. To invest trust funds

Liabilities of a Trustee:

The liabilities of trustee are dealt in s.23 to 30 of the Indian Trust Act.

1. Liability for Breach s.23
2. No set off allowed to trustee s.24
3. No Liability for the acts of his predecessor s.25
4. Liability for wrongful acts s.26
5. Several liability of co-trustees s.27
6. Non-liability of trustee paying without notice of transfer by beneficiary s.28
7. Liability where the beneficiary's interest is forfeited s.29
8. Indemnity of the trustees s.30

Rights and Powers of Trustee.

The Rights of the Trustee are contained in the section 31 to 45 of the Indian Trust Act, 1882.

They are

1. Right to Tittle deed
2. Right to reimbursement of expenses
3. Reimbursement of fees to counsel
4. Right to indemnity from gainer by breach of trust.
5. Right to apply to court for opinion in management of trust property.
6. Right to settlement of Accounts.

Powers of Trustees

The Trustee is divided into 2 classes

General power of a trustee and
Statutory power of a trustee.

4. Write a short notes on: Extinction of a Trust

A trust is extinguished

- a. When the purpose is fulfilled
- b. When its purpose becomes unlawful
- c. When the fulfillment of the trust becomes impossible by destruction of the trust property or otherwise.
- d. When the trust being revocable is expressly revoked`