ECONOMIC AND COMMERCIAL= LAWS

PART – B **LESSON - ONE**

LAW RELATING TO TRUSTS

INDIAN TRUSTS ACT – 1882

DEFINITION AND MEANING OF TRUST = **A trust is an obligation annexed to the ownership of property and arising out of a confidence reposed in and accepted by the owner (trustee),or declared and accepted by him, for the benefit of another, oranother and the actual owner.[SECTION 3]**

ELEMENTS OF TRUST

1.The person who reposes or declares the confidence is called the author of trust or settler.

2.The person who accepts the confidence is called the trustee.

3.The person for whose benefit the confidence is accepted is called the beneficiary.

4.The subject-matter of trust is called the trust-property or the trust-money.

5.The object of trust should be legal.

6.There may be a instument of trust (i.e. trust deed)

7.There may be terms and condition written in trust deed

NOTE

1.Tax exemption made available to trust 80G deduction of income tax act

2.It is a separate legal entity

3.Not for profit organization

4.Value of property should exceed Rs 100.

5.Author of trust or trustee should be competent to contract**.**

PURPOSE OR OBJECT OF TRUST [SECTION 4]

Section 4 provides that a trust can be created only for lawful purpose.the purpose of trust is lawful unless:

A) It is forbidden by law;
B) It is of such nature that ,if permitted ,it would defect the provision of any law;
C) It is fraudulent ;
D) It involves or implies injury to the person or property of another;
E) The court regards it is immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. Where a trust has been created for two purposes ,of which one is lawful and another unlawful and the two purpose are such that they can`t be separated, the whole trust is void. [Chogal Bhandari Vs Deputy Commercial Tax Officer]

CLASSIFICATION OF TRUST

SIMPLE TRUST – A trustee to hold estate without having any active duties to perform.

SPECIAL TRUST- The trust has been created for a particular object/purpose is a special trust.

ORAL TRUST- A trust may be declared orally.

WRITTEN TRUST- A trust may be declare on written basis or through an instrument in writing.

EXPRESS TRUST- Either orally or written ,the trust is created.

IMPLIED TRUST- The parties are not give any intention , it means intention shall not be express.

REVOCABLE TRUST- The power goes to settler or author to revoke the trust anytime.

IREVOCABLE TRUST- It is one of that which will not come to end until the terms and conditions of trust have been fulfilled.

CONSTRUCTIVE TRUST- Imposed by law and as on equitable remedy it occurs due to some wrong doing ,where the wrong doers have achieved legal title to some properties and can not in good consent they allow to benefit from it.

CERTAINTIES OF A TRUST [SECTION 6]

SECTION 6 provides that for a trust to be validly created ,following four things are necessary;

1.CERTAINTY AS TO INTENTION= law looks at the internal rather than at the form. Therefore ,no special form of words is necessary for the creation of valid trust. The intention to create a trust must be indicated by words or acts with reasonable certainty.

2.CERTAINTY AS TO PURPOSE= Indefiniteness or uncertainty in relation to the purpose or object of a trust may render the entire trust void. The object of the trust must be expressly defined.

3.CERTAINTY AS TO TRUST PROPERTY- there must be reasonable certainty about the subject matter i.e. ,trust property ,of the trust.

4.CERTAINTY AS TO BENEFICIARY- For constitution of trust ,beneficiaries must be indicated with reasonable certainty ,otherwise the trust would be void for uncertainty.

DUTIES OF TRUSEE

1) Trustee is not bound to accept the trust. However once accepted ,he can't renounce it except with the prior permission of civil court or beneficiary if he is a major or by virtue of special power in the instrument of trust.
2) Once the trustee accepts the trust, he is bound to fulfil the purpose of trust and to obey the directions given at the time of creation of trust.
3) To protect title to trust property.
4) Not to setup title adverse to beneficiary.
5) To take such care of the trust property as a man of ordinary prudence would take of his own property.
6) To convert perishable property to permanent and immediately profitable character.
7) To be impartial.
8) To prevent wastage of the trust property.
9) To keep proper accounts and information of the trust property.

RIGHTS AND POWERS OF TRUSTEE

1) Right to title deed.
2) Right to re-imbursement of expenses.
3) Right to apply to court for opinion on management of trust property.
4) Right to settlement of accounts.

5) Right to do all acts which are necessary ,reasonable and proper for trust property or protection of beneficiary.
6) Power to convey a property, when he is authorized to sell.
7) Power to vary investment from one security to another.
8) Power to give receipts.
9) Power to compound or compromise.
   Power to apply trust property for the maintenance of beneficiary ,if the beneficiary is a minor.

RIGHTS OF BENEFICIARY

1. Right to rents and profit of the trust property.
2. Right to specific execution of the trust.
3. Right to inspect and take copies of the trust account.
4. Right to transfer the beneficial interest, if he is competent to contract.
5. Right to sue for execution of trust.
6. Right to proper trustees.
7. Right to follow the trust property which has gone into the hands of a third person.

LIABILITIES OF BENEFICIARY

IF A beneficiary commits a breach of trust or obtains any advantage there from or becomes aware of a breach of trust committed or deceived the trustee ,the other beneficiary are entitled to have his beneficial interest impounded against him ,until the loss ,caused by the breach has been compensated.

EXTINCTION OF TRUST [SECTION 77]

A trust is extinguished when;

1) The purpose is completely fulfilled;
2) The trust ,being revocable, is expressly revoked;
3) Its purpose becomes unlawful or the fulfilment of its purpose becomes impossible because of destruction of the trust property.

REVOCATION OF TRUST

A trust created by will can be revoked at the pleasure of trustee.

A trust created otherwise can be revoked only:

a) By the consent of all the beneficiaries ,if they are competent to contract.
b) In exercise of a power of revocation expressly reserved by the author of the trust, if the trust has been created either by a non-testamentary instrument or by words of mouth.
c) At the pleasure of the author of the trust ,if the trust is for the payment of the debts of the author of the trust and has not been communicated to the creditors.

It may be noted that sub clause (c) applies only to a trust solely for the payments of debts and not to a trust –deed created for the payment of debts and other purposes.

DOCTRINE OF CY PRES

Cy pres means near to it. The doctrine of cypres applies only to charitable trust.

Doctrine of cy pres provides the following-

" where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified ,can't be executed but the law will substitute another mode cy pres ,i.e. ,as near as possible to the mode specified by the donor".

''The doctrine of cy pres applies where a charitable trust is initially possible but later becomes impossible. In such cases, the court may apply the property cy pres i.e. ,to some other charities as near as possible ,resembling the original trust.''

TRUSTS NOT ALLOWED TO SET OFF THE PROFIT AND LOSSES

SECTION 24 provides that a trustee who is liable for a loss caused by his negligence in respect of one portion of the trust property ,can`t set off against his liability a gain or profit which has occurred in respect of another portion of trust property. However ,where loss and gain arise out of a same transaction ,the trustee may be allowed to set off.

TRUSTS	***BAILMENT***
1.TRUSTEE is the full owner of property. **2**.Trustee is equitable. **3**.Both movable or immovable property can be created.	**1**.BAILY acquire specific property. **2**.Obligation is legal. **3**.Bailment may be created only for movable property.

TRUSTS	**AGENCY**
1.TRUSTEE is full owner of trust. **2**.A trustee acts on his own rights. **3**.A trustee is personally liable.	**1**.An agent has no title to property. **2**.An agent acts on behalf of principal. **3**.An agent is not personally liable.

PUBLIC TRUSTS	**PRIVATE TRUST**
ANY TRUST CREATED NOT FOR ANY PERTICULAR OR INDIVIDUAL IS KNOWN AS PUBLIC TRUST	IF TRUST IS CREATED FOR ANY PERTICULAR,INDIVIDUAL OR GROUP OF INVESTOR IS KNOWN AS PRIVATE TRUST

TESTAMENTRY INSTUMENT /TRUST	**NON-TESTAMENTORY INSTRUMENT /TRUST**
NO NEED TO BE REGISTERED i.e. WILL	IT MUST BE REGISTERED