UNIT – V

Law of Trusts
with Fiduciary Relations

Definition • Kinds • Creation • Duties of Trustees • Rights of Beneficiaries • Extinction

Indian Trusts Act, 1882

OVERVIEW

Unit Structure

01 **Definition & Comparison**

Trust vs Debt, Ownership, Bailment, Agency, Contract

02 **Kinds & Creation of Trusts**

Public/Private, Express/Implied, Simple/Special

03 **Trustees – Appointment, Duties, Powers, Disabilities**

Fiduciary obligations under the Trusts Act

04 **Beneficiaries & Extinction**

Rights of beneficiaries, vacating office, extinction of trusts

Definition of Trust

Section 3 of the Indian Trusts Act, 1882:

A “trust” is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.

The person who reposes or declares the confidence is called the “author of the trust”; the person who accepts the confidence is called the “trustee”; the person for whose benefit the confidence is accepted is called the “beneficiary”; the subject-matter of the trust is called “trust-property” or “trust-money”; the “beneficial interest” or “interest” of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the “instrument of trust”.

Trust compared with other Relationships

Relationship	Key Distinction from Trust
Debt	Debtor owns the money; creditor has only a personal claim. Trustee holds property for beneficiary.
Ownership	Absolute owner has full beneficial interest. Trustee has only legal ownership; beneficial ownership is in the beneficiary.
Bailment	Bailee has possession but no ownership. Trustee has ownership (legal title).
Agency	Agent acts on behalf of principal and does not own the property. Trustee is the owner of the trust property.
Contract	Contract creates personal obligations. Trust creates a proprietary interest in the beneficiary.

CLASSIFICATION

Kinds of Trusts

Public / Private

Public trusts are for the benefit of the public or a section of it (charitable/religious). Private trusts are for specific individuals.

Express / Implied

Express trusts are created by clear words. Implied trusts arise from the presumed intention of the parties.

Simple / Special

In simple trusts the trustee has no active duties beyond conveying the property. In special trusts the trustee has active duties to perform.

Resulting / Constructive

Resulting trusts arise when beneficial interest returns to the settlor. Constructive trusts are imposed by law to prevent unjust enrichment.

Creation of Trusts

Section 5: No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust.

No trust in relation to movable property is valid unless declared as aforesaid or unless the ownership of the property is transferred to the trustee.

Section 6: Subject to the provisions of S. 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts:
(a) an intention to create a trust,
(b) the purpose of the trust,
(c) the beneficiary, and
(d) the trust-property,
and (unless the trust is declared by will or the author is himself to be the trustee) transfers the trust-property to the trustee.

Appointment of Trustees

Every person 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 (S. 10).

The number of trustees is usually determined by the instrument of trust. If no trustee is appointed or all die or disclaim, the property reverts to the author or his representatives until a trustee is appointed (S. 11–12).

A trustee may accept or disclaim. Disclaimer must be made within a reasonable period.

New trustees may be appointed under the instrument or under S. 73–75 of the Trusts Act (or by the court under S. 74).

Duties and Liabilities of Trustees

Core duties:

- To execute the trust and obey the directions of the author (S. 11)
- To acquaint himself with the trust property and protect title (S. 12–13)
- Not to set up title adverse to the interest of the beneficiary (S. 14)
- To take care of the trust property as a man of ordinary prudence would (S. 15)
- To convert perishable property where necessary (S. 16)
- To be impartial (S. 17)
- To prevent waste (S. 18)
- To keep accurate accounts and give information (S. 19)
- To invest trust money in authorised securities (S. 20–21)

Breach of any of these duties makes the trustee liable to make good the loss.

Rights and Powers of Trustees

- Right to title-deeds and reimbursement of expenses (S. 32–33)
- Right to indemnity from the trust property and from the beneficiary (S. 32–33)
- Right to settlement of accounts (S. 35)
- General authority to do acts necessary for the trust (S. 36)
- Power to sell, compound, vary investments, etc., in certain cases (Ss. 37–45)
- Power to apply to the court for opinion, advice or direction (S. 34)

These powers enable the trustee to administer the trust effectively while remaining accountable to the beneficiaries.

Disabilities of Trustees

A trustee is under the following disabilities (unless the instrument permits otherwise):

- Cannot renounce after acceptance (S. 46)
- Cannot delegate his office or any of his duties (S. 47) – subject to limited exceptions
- Cannot use trust property for his own benefit or for any purpose unconnected with the trust (S. 51)
- Cannot buy trust property or lend trust money to himself (S. 52–53)
- Cannot charge for his services (S. 50) – unless the instrument allows remuneration

These disabilities flow from the fiduciary nature of the office. The trustee must not place himself in a position where his interest conflicts with his duty.

Rights and Liabilities of the Beneficiary

- Right to the rents and profits of the trust property (S. 55)
- Right to specific execution of the trust's purpose (S. 56)
- Right to inspect and take copies of instrument of trust, accounts, etc. (S. 57)
- Right to transfer beneficial interest (S. 58)
- Right to sue for execution of trust (S. 59)
- Right to proper trustees and to compel them to perform (S. 60–61)
- Right to compel trustee to act and to restrain breach (S. 61–63)
- Right to follow trust property into the hands of third persons (S. 63–66) – the equitable doctrine of tracing

The beneficiary's interest is proprietary in nature and can be protected against the whole world except a bona fide purchaser for value without notice.

Vacating the Office of Trustee

The office of a trustee is vacated by his death or by his discharge from office (S. 70).

A trustee may be discharged:

- By the extinction of the trust
- By completion of his duties
- By such means as may be prescribed by the instrument of trust
- By appointment of a new trustee in his place
- By consent of the beneficiaries (if competent)
- By the court (S. 71–72)

On discharge or death, the property passes to the continuing or new trustees (S. 75–76).

Extinction of Trusts

A trust is extinguished (S. 77):
(a) When its purpose is completely fulfilled; or
(b) When its purpose becomes unlawful; or
(c) When the fulfilment of its purpose becomes impossible by destruction of the trust property or otherwise; or
(d) When the trust, being revocable, is expressly revoked.

A trust cannot be revoked by the author unless:
- All the beneficiaries are competent to contract and consent; or
- The trust is declared revocable; or
- The trust is for the payment of debts and there is no communication to the creditors (S. 78–79).

Revocation of a trust for the payment of debts requires notice to the creditors if the trust has been communicated to them.

Landmark Judgments on Trusts

Official Trustee of Madras v. Sachindra Nath Chatterjee

On the nature of a trustee's duties and the standard of care required.

Hindu Religious Endowments Board v. Veeraraghavachariar

Distinction between public and private trusts and the consequences for control and alienation.

S. Krishnan v. K. Narayanan

On the creation of trusts and the necessity of certainty of intention, subject-matter and objects.

Commissioner of Income Tax v. P. Krishna Warriar

On the distinction between trust and other fiduciary relationships for tax purposes.

Fiduciary Nature of Trusteeship

The office of trustee is fiduciary. The trustee must act solely in the interest of the beneficiaries and must not allow his personal interest to conflict with his duty.

Key consequences:
• No secret profits
• No self-dealing (cannot buy trust property)
• Strict accountability and duty to account
• Liability to make good losses caused by breach
• Beneficiaries can follow the property into the hands of third parties (except bona fide purchasers for value without notice)

This fiduciary character distinguishes a trust from ordinary contractual or debt relationships and gives the beneficiary a proprietary remedy.

Practical Importance

- Family settlements and estate planning frequently use private trusts.
- Charitable and religious institutions are often structured as public trusts.
- Courts exercise supervisory jurisdiction over trusts, especially public trusts.
- Breach of trust can lead to both civil liability (account of profits, compensation) and, in extreme cases, criminal liability.
- The doctrine of tracing allows beneficiaries to recover misappropriated trust property or its proceeds.

Understanding the Indian Trusts Act is essential for conveyancing, succession planning and litigation involving fiduciary relationships.

SUMMARY

Key Takeaways – Unit V

- A trust is an obligation annexed to ownership arising from confidence reposed for the benefit of another.
- Certainty of intention, subject-matter and objects is essential for a valid private trust.
- Trustees are under strict fiduciary duties and disabilities; they must not profit from the trust.
- Beneficiaries have proprietary rights and can follow the trust property.
- A trust of immovable property requires a registered non-testamentary instrument or a will.
- Trusts are extinguished when the purpose is fulfilled, becomes impossible or is lawfully revoked.

AT A GLANCE

Quick Reference – Important Sections (Indian Trusts Act)

Definition of Trust	S. 3
Creation of Trust	Ss. 5–6
Who may be Trustee / Beneficiary	Ss. 10, 9
Duties of Trustees	Ss. 11–22
Rights & Powers of Trustees	Ss. 31–45
Disabilities of Trustees	Ss. 46–54
Rights of Beneficiaries	Ss. 55–69
Vacating Office & Extinction	Ss. 70–79

Scheme of the Law of Trusts

1. Author of the trust reposes confidence and transfers property (or declares himself trustee).
2. Trustee accepts the confidence and becomes the legal owner of the trust property.
3. Beneficiary acquires the beneficial interest – a proprietary right against the trustee and the property.
4. Trustee administers the property according to the terms of the trust and the duties imposed by law.
5. On fulfilment of the purpose, or on other grounds of extinction, the trust ends and the property is distributed according to the instrument or the law.

This structure ensures that property can be managed for the benefit of persons who may not themselves be able to hold or manage it, while keeping the trustee strictly accountable.

End of Unit – V

Law of Trusts with Fiduciary Relations

All Five Units of Property Law Completed

Transfer of Property Act, 1882 + Indian Trusts Act, 1882