

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Trust, Equity and Fiduciary Relationship
Semester-IV (Batch: 2015-20)

End Semester Examination: April-May 2017

Date: 8th May, 2017

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- Bare Act is not allowed.

Answer all the questions

Marks

- Q.1 "..... trustee cannot transfer their duties, function and power to some other body of men and create them trustees in their own place unless this is clearly permitted by the trust deed, or agreed to by the entire body of beneficiaries. A person who is appointed a trustee is not bound to accept the trust; but having once entered upon the trust he cannot renounce the duties and liabilities expect with the permission of the Court or with the consent of the beneficiaries or by the authority of the trust deed itself. Nor can a trustee delegate his officer or any of the function except in some specific cases. The principles of the rule against delegation with which we are concerned in the present case, is clear: a fiduciary relationship having been created, it is against by the interests of society in general that such relationship should be allowed to the terminated unilaterally. That is why the law does not permit delegation by trustee of the his functions, except in cases of necessity or with the consent of the beneficiary or the authority of the trust deed itself; apart from the delegation in the regular course of business, that is, all such function which a prudent man of business would ordinarily delegate in connection with his own affairs". Discuss this statement in detail. Substantiate your answer with the help of leading case laws, suitable examples and relevant provisions of The Indian Trust Act, 1882. (10)
- Q.2 Answer the following: (10)
- (a) Hanbury and Martin state that "there can be no resulting trust where a donor has parted with the property in pursuance of some contract except in rare cases exemplified by the 1970 case of Barclays Bank plc vs. Quistclose Investments". Discuss this statement in detail.
 - (b) "Where a transaction is once made out to be a mere benami, it is evident that the benamidar absolutely disappears from the title. His name is simply an alias for that of the person beneficially interested." The cardinal distinction between a trustee known to English law and a benamidar lies in the fact that a trustee is the legal owner of the property standing in his name and *cestui que trust* is only a beneficial owner, whereas in the case of a benami transaction the real owner has got the legal title though the property is in the name of the benamidar. It is well settled that the real owner can

deal with the property without reference to the latter.....the Judicial Committee referred to the judgment of Sir George Farwell in *Mst. Bilas Kunwar v. Dasraj Ranjit Singh*, where it was observed that a benami transaction had a curious resemblance to the doctrine of English law that the trust of the legal estate results to the man who pays the purchase-money, and went on to say. ".....the benamidar has no beneficial interest in the property or business that stands in his name; he represents, in fact, the real owner, and as far as their relative legal position is concerned he is a mere trustee for him.the judicial Committee observed that in case of a benami transaction, there is a resulting trust in favour of the person providing the purchase money." Do you agree with this statement? Discuss. Substantiate your answer with the help of suitable examples, relevant legislation and maxims of equity.

- Q.3 Mira and Dev were married five years ago. Dev has two children from a prior marriage who are now adults. Mira and Dev decided to set up a trust. They conveyed ₹ 41,00,000 as trust fund and some immovable properties to the trust. The trust deed provides that the income from the trust to be payable to Mira and Dev for ten years. At the earlier of either the end of ten years or Mira's and Dev's deaths, the trust income is payable to Dev's children for ten years. At the end of that ten-year period, the trust shall terminate, all trust property shall be sold, and the proceeds shall be distributed equally among Dev's children. Meera and Raj were designated as trustees of the trust. Instrument of trust provides that upon death or inability to serve as trustee, Mira's favorite brother, Gopal, is named as successor trustee. In the event of Gopal's death, Namit is named as successor trustee. Mira and Dev bought a small apartment building valued at ₹ 18,00,000. They title the property in the names of the trustees of the trust. Shortly thereafter, Mira and Dev died in a car crash. Raj made an investment in the shares of XYZ Ltd. without taking any opinion from co-trustee and the beneficiaries of the trust. Meera asks the court for permission to rent the empty apartment to his relatives. Further, the trustees also used to draw monthly salary of ₹ 8,000 from the trust fund however, trust deed was silent about remuneration or salary of trustees. Both the trustees jointly sold one of the trust immovable property to Raman who was a bonafide transferee and utilised the sale proceeds for their personal benefits. The beneficiaries were not happy with the management of the trust and they wanted to appoint Gopal and Namit as new trustees for the trust. (10)

Discuss fully all the pertinent issues and their likely outcomes regarding rights and liabilities of the trust, the beneficiaries, and the trustees. Would it make any difference if Raman would not have been a bonafide transferee and beneficiaries would have had knowledge of mis-utilization of the sale proceeds by the trustees? Substantiate your answer with the help of suitable case laws and relevant provisions of The Indian Trust Act, 1882.

OR

Disha died last year, leaving a valid Will appointing her husband Eshwar and her friend Fiza as her trustees and giving all her estate to them to be held on trust 'for Eshwar during his lifetime and then for her children Aalok, Brijesh and Chandra in equal shares'. The Will contained no other provisions. Aalok, Brijesh and Chandra are Disha's children by an earlier marriage. Aalok is now 23, Brijesh is 19 and Chandra is 16 years old. The trust fund was worth ₹ 10,00,000 when Disha died. Fiza consulted her writer friend Gautam who has made a substantial amount of money from his own investments. He recommends that the trustees should invest ₹ 1,00,000 of trust money in an investment portfolio which subsequently will increase in value to ₹ 2,00,000 and another ₹ 85,000 in shares in Sound Ltd. Trustees acted upon the advice of Gautam. The remainder of the

trust fund was deposited into a bank account. Sound Ltd. goes into liquidation a few months later and the shares therefore become worthless. Eshwar does not like Disha's children and has a poor relationship with them. Recently Aalok asked the trustees for ₹ 40,000 from the trust to enable him to set up a business. Brijesh is about to go to University in London on scholarship to study law and he has asked the trustees if he can have some money from the trust to help him with living expenses. Partly as a result of their poor relationship with Eshwar, Aalok and Brijesh are now considering whether it would be possible to end the trust and divide the trust fund between the beneficiaries.

You are asked to provide legal advice, specifically addressing the above mentioned facts and appropriately citing all relevant case laws and relevant provisions of The Indian Trust Act, 1882 in answering the following questions:

- (a) Whether the trustees have acted lawfully in making their investment decisions and what consequences may follow if not acted lawfully? Would it make any difference if Fiza would have not consulted Eshwar in taking decision for making an investment with trust money?
- (b) Whether Aalok and Brijesh can receive help from the trust, as requested? Whether, it would make any difference if they would have been minors?
- (c) Whether the trust can be ended and if so, how this could be achieved?

- Q.4 Define Charity and doctrine Cypruss with suitable examples. Explain in detail the procedure for formation, creation of public trusts in India and also highlight how public trusts are different from private trusts. (10)

OR

Discuss in detail the relevance and significance of maxims of equity under the Indian legal system. Substantiate your answer with the help of leading case laws and provisions of the relevant statutes.

- Q.5 "Of all the exploits of Equity and largest and the most important is the invention and development of the Trust. It is an 'institute' of great elasticity and generality; as elastic, as general as contract. This perhaps forms the most distinctive achievement of English lawyers". Critically discuss this statement in the light of The Indian Trust Act, 1881. Explain how the concept of trust in India is different from the English law? Also distinguish trust from a contract. (10)
