

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**  
Course: Trust, Equity and Fiduciary Relationship  
Semester-IV (Batch: 2017-22)

**End Semester Examination: April-May 2019**

**Date: 8<sup>th</sup> May, 2019**

**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 anything 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 **any five** questions:

Marks

- Q.1 “Under particular circumstances, the trustee is held capable of exercising the discretionary powers of the bona fide proprietor; for the trust estate itself might otherwise be injuriously affected. The necessity of the moment may demand immediate action, while the sanction of the parties who are beneficially interested could not be procured without great inconvenience (as where the *cestuis que trust* are a numerous class), or perhaps could not be obtained at all (as where the *cestuis que trust* are under disability, or not yet in existence). It is, therefore, evidently in furtherance of the *cestuis que trust's* own interest that, where the circumstances of the case require it, the trustee should be at liberty to exercise a reasonable discretionary power.” (10)
- In the light of the exposition, explicate in detail the circumstances when the trustee can exercise discretionary powers. Substantiate your answer with the help of leading case laws, suitable examples and relevant provisions of the Indian Trust Act, 1882.
- Q.2 R, M and S have been appointed as trustees of a trust created by A for his two sons J (19 years old) and N (21 years old). The trust consists of a land, shares/bonds and cash of ₹ 5,00,000. R has accepted the trust, even though she is an amateur and rather ignorant of business affairs. R and S purchased a large quantity of office equipment and stationery to facilitate the smooth running of their tasks but still finds that the job is too complicated. After putting in several months of work in service of the trust they eventually enlist, the assistance of a friend who, having run his own business for many years, is more at ease with commercial matters. They transferred ₹ 2,00,000 out of the trust fund into the friend's bank account with the instruction that he should invest it wisely for the benefit of the trust. In fact the friend ‘invests’ the money on horse racing and other such activities, and the trust fund is lost. Trustees also purchased a land wrongfully and sold it to G for ₹ 1,00,000. G was fully aware of the fact that he is buying the property from the trustees of a trust. M was a dormant trustee and was not much interested in the affairs of the trust, and is now settled abroad. (10)

Advise the beneficiaries about their rights as beneficiaries of the trust and liabilities, if any, of the trustees. Substantiate your answer with the help of suitable examples, case laws and

relevant provisions of the Indian Trust Act, 1882. Would it make any difference, if G would have not known that he is buying a property from a trustees of a trust?

Q.3 Answer the following with the help of relevant provisions, case laws and suitable examples: (5+5=10)

- (a) "We can understand why the knowing recipient is traditionally called a constructive trustee. He is not an express trustee, of course, because he did not agree to hold the property on trust when he received it; rather, equity imposes upon him the duty of custodian trusteeship." Elucidate.
- (b) The essential elements of a trust are well settled. An express trust is required to be validly declared, which will be achieved if the settler satisfies the 'three certainties' test; namely certainty of intention, subject matter and objects. Discuss.

Q.4 Answer the following: (5+5=10)

- (a) "A trust which excludes the poor from benefit cannot be a charity. There is no case which decides that point, but we consider it is right as a matter of principle, given the underlying concept of charity from early times." In the light of the statement, discuss the concept of charity with the help of suitable examples.
- (b) Mareva injunction is a purely discretionary remedy and may be granted only when it is just and convenient to do so. Explain the position of Mareva injunction in India by amplifying its nature and principles.

Q.5 W, in his Will, left ₹ 3,00,000 to his trustees, X and Y, to hold on trust for his sister, A for life, with remainder to his three nephews, B, C and D, in equal shares, contingent on their reaching the age of 25 and having achieved a Master's degree by that age. The Will stipulated that if any of the three nephews failed to meet the contingency, then his share would result back to his residuary estate, which was left in his Will to his brother, S. (10)

A died recently without exhausting any amount from the trust fund.

W also left ₹ 2,50,000 to his trustees to hold on trust for his minor daughter, L, contingent on her reaching the age of 18, and shares worth ₹ 25,000 in TIP Co. Ltd to the trustees to hold on trust for his stepson, V, contingent on him reaching the age of 30 and having achieved a degree by that age.

B is 26 years old and lives with his wife N, in Delhi. He received a Master's degree in economics two years ago. N wants to pursue a career as a lawyer, and wishes to enroll herself for LLB course in Delhi University. The couple, however, as they are newly married, does not have any spare money or savings. B has asked the trustees to pay any income or capital to him so that he can support his wife in her studies.

C was given an advancement of ₹ 20,000 by the trustees. He used the money for travelling for a year. Unfortunately, C died last month, aged 24. W's residuary legatee, S is claiming that ₹ 20,000 should be paid back to him.

D is 27 years old. He has always been more practically than academically oriented, and the highest academic qualifications besides his intermediate education is that he has done two certificate courses in gardening, which he passed when he was 18. He is, however, a very keen gardener, and wants to set up a landscape gardening business. He has requested the trustees for his share to enable him to pursue his career.

V is 25 years old. The trustees have decided that he is spendthrift, and they refuse to give him any income or advancements, despite his repeated requests. He wants money from the trust to spend on some new designer clothes, and is angry that none has been forthcoming and is also requesting the trustees to furnish him with account details of a trust.

L, who is 11 years old, is showing great academic promise, and is studying in one of the reputed private schools in Delhi. Her mother, K, has approached the trustees, asking for the income from L's share of the trust fund so that it can be utilized towards her school fees. She also wants to use some of the income to pay off her personal debts that she has recently accrued.

Advise the trustees regarding the requests of the beneficiaries. Substantiate your answer with the help of case laws, suitable examples and relevant provisions of the Indian Trust Act, 1882. Also, whether trustees can claim remuneration for providing services as a trustee of a trust?

- Q.6 "The maxims of equity can be flexibly adapted to serve the ends of justice as perceived in our days. They are not rules that must be rigorously applied but malleable principles intended to serve the ends of fairness and justice." In the light of the statement, critically analyse various principles of equity as codified under the Transfer of Property Act, 1882. Substantiate your answer with the help of leading case laws, relevant provisions and suitable examples. (10)

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