

Define trust and differentiate it from bailment and agency.

The basic concept of Trust was originally derived from Roman Law and it gradually developed in England by stream of Chancery (Equity).

The following eminent jurists have attempted to give definition of trust.

LORD COKE "A confidence reposed in some other, not issuing out of the land but as a thing collateral thereto, annexed in privity to the estate of the land, and to the person touching the land, for which cestui que trust has no remedy but by subpoena in the Chancery."

PROF. KEETON

A trust is the relationship which arises whenever a person called the trustee is compelled in equity to hold property for the benefit of some persons or for some object in such a way that the real benefit of the property accrues not to the trustee but to the beneficiaries or other objects of the trust".

STORY

"Trust is an equitable right, title or interest in property, real or personal, distinct from the legal ownership thereof".

Hence based on the above definitions, it can be said that a trust is an obligation associated with the ownership of property that give rise to fiduciary relations in another person for the benefit of a third person.

As per the sec. 3 of the Indian Trust Act, 1882.

"Trust" is an obligation annexed to the ownership of property, and, arising out of 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.

Components In a Trust

(1) trust is an **obligation** annexed to the **ownership of property** and arising out of a **confidence**

(2) **reposed** in and **accepted** by the **owner** or **declared** and **accepted** by him

(3) for the **benefit** of **another** or of **another** and the **owner**

(4) The person who reposes or declares the confidence is called **AUTHOR** of the trust or the **SETTLER**

The person who accepts the confidence is called **TRUSTEE**

The person for whom benefit the confidence is accepted is called the **BENEFICIARY**

The subject matter of the trust is called the **TRUST PROPERTY** or the trust money.

What is the actual meaning of trust? To understand it fully, it is necessary to know that other similar relations are briefly considered like as Bailment, Agency etc.

There is a similarity between the trust and bailment that both hold property at the behest of the other person for the benefit of the other person. The difference can be explained on the following grounds.

BAILMENT VERSUS TRUST

(1) On the basis of SECTION :

BAILMENT define under section 148 of the Indian Contract Act ,1872

TRUST define under section 3 of the Indian Trust Act, 1882

(2) On the basis of LIABILITY

Bailee's liability in bailment is **STATUTORY**

The trustee's liability is **EQUITABLE**.

(3) On the basis of OWNERSHIP

Bailor is **NOT DEPRIVED OF HIS OWNERSHIP** in the contract of bailment, and the natural consequence of this is that even **BAILEE CANNOT BECOME THE OWNER** of the said property.

The trustee in the trust becomes the **ABSOLUTE OWNER subject to a restriction** that he will hold the property for interest of the beneficiary in the trust. In other words the trustee is the limited owner of the trust property.

(4) On the basis of SUBJECT MATTER

Trust can be create against both **MOVABLE AND IMMOVABLE PROPERTIES**.

The contract of Bailment can be done only in respect of **MOVABLE PROPERTY**.

AGENCY VERSUS TRUST

(1) On the basis of OWNERSHIP

In eye of law the trustee is the **LIMITED OWNER** of the trust property.

Under **No CIRCUMSTANCES** does the agent become the owner of the property of his principal.

(2) On the basis of Control

The agent has to act under the **CONTROL OF HIS PRINCIPAL** but the trustee has **NO SUCH CONTROL**

(3) On the basis of CONTRACTUAL RELATION

Contracts of an agency have **contractual relations between the PRINCIPAL AND THE AGENT** but there is **NO NEED** for any type of contract between the **TRUSTEE AND THE BENEFICIARY**.

(4) On the basis of LIABILITY

When the agent makes a contract on behalf of his principal, only the **PRINCIPAL IS RESPONSIBLE**.

But the **TRUSTEE IS PERSONALLY RESPONSIBLE** for all contractual obligations that he makes in as a trustee.



Dr. Lalit Kishore Srivastava

Asst.Proff. Lucknow University

Guest Faculty (LAW)

