

For validation of a **Trust**, three conditions must be fulfilled which are known as "**THE THREE CERTAINTIES**". If any of these conditions are not appears then the trust will be **void ab initio**.The proposition of the three certainties is taken from the dictum of **Lord Langdale in the leading case Knight vs Knight**.

Overview of judgment at a glance.

A general rule, it has been laid down, that when property is given absolutely to any person, and the same person is, by the giver who has power to command, recommend, or entreated or wished, to dispose of that property in favour of another, the recommendation, entreaty or wish shall be held to create a trust.

First if the **WORDS** were so used, that upon the whole, they ought to be construed as an **IMPERATIVE**;

secondly, if the **SUBJECT** of the recommendation or wish is **CERTAIN**;

and thirdly, if the **OBJECTS** or persons intended to have benefit of the recommendation or wish also be **CERTAIN**."

With due respect, to paraphrase **Lord Langdale**, for a trust to be valid there must be:

No 1- a certainty of word (Intaintion)

No 2-a certainty of subject

No3-a certainty of objects.

Sec. 6 of the Indian Trust Act lays down that trust is created when the author of the trust indicate with reasonable certainty by any words or act .

- intention to create trust
- the purpose of the trust
- the beneficiary
- the trust property

unless a trust is declared by will are the author of trust is himself a trustee, transfer the trust property to the trustee.

As it is clear that three certainty are required for the creation of a trust, but after this as is the case that trust is always formed for the purpose of law and after that it is also necessary to know who can create a trust? Who can be a trustee and who may be beneficiary? Therefore, it will be necessary to study the provisions related to this.(sec.4 to 10)

The trust can be created for the lawful purpose only.Section**(4) negatively** states that the purpose of the trust is lawful unless it is :

- 1- Forbidden by law
- 2- such a nature that if permitted it would defeated the provision of any law
- 3- is fraudulent .
- 4- or implies injury to the person or property of another
- 5- the court regards it as immoral opposed to public policy

Any trust whose purpose is against the law will be void. The important question arises where the trust has been created for more than one purpose and whether one of them is against the purpose or some purpose of the law, whether the entire trust will be terminated or not?

The well settled principle of jurisprudence is whether it can be separated or not? It depends on your answer that Yes or No?

If Yes then the trust will remain valid .

If No entire trust will be void or invalid.

(this principle known as DOCTRINE OF SEVERABILITY)

As is evident from the case of Knigh vs Knigh, there should be **CERTAINTY** concerning the **SUBJECT MATTER** given under sec 8 and sec.5 should be read together where section 8 makes it clear that the property should be such that it can be transferred to the beneficiary this means except for properties which cannot be transferred under Section 6 of the Transfer of Property Act and it is also necessary that the subject matter of trust must not be merely only a beneficial interest under a subsisting trust. While section 5 clarifies that creation of a trust relating to immovable property whether it is testamentary or non-testamentary how will it be created and if it is related to movable property then how?

Sec.5 Trust of immoveable property.

No trust in relation to immoveable 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 or of the trustee.

Trust of moveable property.-- No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

WHO CAN CREATE A TRUST?

Sec. 7 of the Indian Trust Act mentions who can create the trust? According to the arrangement provided in this section.

A trust may be created by every person who is competent to contracts.

Can a trust be created by a minor?

If a trust is to be created by on or behalf of a minor, then the **permission of a Principal Civil Court of original jurisdiction is required.**

Further, it also depends on the law in force that is prevailing at that particular point of time and the extent to which the settlor of the trust may intend to dispose of his property.

Sect. 10-WHO MAY BE TRUSTEE ?

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**.

It is also worth mentioning here no one is bound to accept a trust. A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

If the trust proposes to make a person a trustee, such trustee may reject the trust within a reasonable time period instead of accepting the trust and such rejection shall have the effect that the trustee property is not vested in such trustee will be.

The important question arises that where there is more than one trustee and not all of them have rejected the trust, then the property will vest in the trustee who has not rejected the trust. The rejection of a trust here refers to the relinquishing of its position by the trustee.

Sec.9- **WHO MAY BE BENEFICIARY.**?

Every person capable of holding property may be a beneficiary

As is clear that every person who has the capable to hold property may be beneficiary but attention should be given here. The term person does include the Artificial or any Legal Person such as a temple or an idol in eye of law is a **Legal Person** but even then he **cannot be a Beneficiary** because it shall not be considered a person in terms of sec.10.

Disclaimer by beneficiary.--A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Now with the help of some examples or an attempt will be made to clarify whether the following matters are trusts or not?

Problem no 1

The purchase of silver cup for rupees 10,000 to be presented each year to a student of the Lucknow University who tops the list of successful candidates at the LL.B HON. examination.

Solution to the presented problem.

It is a valid trust. The intention of creating a trust is clear and the person receiving the benefit and the subject matter of the trust have been indicated with reasonable determination.

It is worth mentioning that **Lord Langdale** had mentioned three requirements for the creation of trust in the decision of **Knight vs Knight**. In this problem, the fulfillment of those three requirements is clearly satisfied and in addition to this, the objective of the trust is also valid in terms of Section 4.

Problem no 2

Mr X by his will leaves ,all his money to his wife absolutely, but he also says in his will that he has full confidence that she will do what is right as to the disposal there of between their children.

Solution to the presented problem.

Trust has not been created due to uncertainty.

This problem seems to be based on the facts of **BANK OF MANSOORI VS CHARLES RAINAR** wherein it was determined that the widow received unrestricted interest in the property and did not create any trust for the interest of the children.

Arguments

It is uncertain whether children have been given something or not, only the testator has expressed the confidence in his wife that she will exercise justice in sharing the property among their children. Whereas the express intention of the testator was that his wife should exercise it as she

wishes. Therefore clear that it is the matter of an unrestricted gift and not a trust and the wife had received the property unrestrictedly and her right is not obstructed by any trust.

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