

Introduction

Origin of Trusts

THOUGH the law of trusts has developed its own specialised vocabulary, there is no satisfactory definition of a trust. In essence, it is an arrangement by which property is transferred to one person for the benefit of another. The trust concept, which has been acclaimed as a valuable British contribution to jurisprudence, is not commercial in its origin like the company or partnership. It started as a device for getting round the restraints which the Crown placed on transfers of property to the Church and also as a method of effecting family settlements.

In the 16th century, the Church in England had acquired extensive properties, which it held in perpetuity, making it impossible for the feudal superior to get them back. The Statutes of Mortmain tried to curb further expansion by insisting that a licence in mortmain should be obtained whenever any land was proposed to be transferred to a religious body. There was a second problem. The law did not provide for a testamentary transfer of land. Only movable property could pass by will. When a vassal died, his lord was entitled to various benefits called "relief", "wardship", and so on, if the heir happened to be a minor. In the absence of an heir by blood, the property went to the lord by escheat. These difficulties were by-passed by transfer of land to a friend for the "use" or benefit of the Church or any one else in whom the donor was interested.

Since such "uses" were not enforceable under the common law, litigation arising from them was taken to the Court of

Chancery. It was in protecting the interest of the beneficiary (the *cestui que*) that the distinction between the equitable ownership and the legal ownership of property was drawn. The legal concept of trust evolved from this distinction.

An attempt was made to abolish "uses" through the Statute of Uses 1536, but it did not succeed because its operation was limited to the first "use" of a property. People got round the Act through the method of "use upon use", e.g., by conveying free-hold land to "A" to the use of "B" to the use of "C". The Property Act of 1925 repealed the Statute of Uses, enabling the conveyance of land to "A" in trust for "B".

Utility

Though the trust originated as a strategy for resisting autocratic attempts to prevent gift of land—for avoiding feudal dues and the restraints of the mortmain Statutes in settling land—it has served a variety of social and personal purposes. The following are among such uses of the trust in recent times :

- i. It has emerged as a very convenient instrument for running religious and charitable organisations.
- ii. Another welcome development is the evolution of trusts for the benefit of employees—provident funds, pension schemes, gratuity funds, benevolent funds, etc. The Unit Trust has also enlarged the sphere of trust services, by enabling a small investor to get the advantages of a varied portfolio.
- iii. A trust is the best possible arrangement for managing funds for those who are incapable of doing so themselves—e.g., minors, lunatics and the mentally retarded.
- iv. A trust provides the means to carve out separate benefits in the same property for different persons in whom one is interested. It ensures that the persons entitled to succeed to a property eventually do get the benefit, which may be difficult to secure through outright gifts, e.g., life-interest for the spouse with remainder to the children, facilitating comfort for the

spouse for her life-time, without detriment to the children's long-term interest.

- v. A trust can prevent dissipation of a profligate's inheritance.
- vi. The most attractive feature of a trust is that it helps to reduce the liability to the different direct taxes within the framework of the law.

The concept of dual ownership, i.e., equitable and legal ownership, was unknown to the Hindu and Muslim laws which had, however, recognised the practice of charging the ownership of property with specific obligations, e.g., provisions for the maintenance of a daughter or daughter-in-law or minor children.¹ The position of the *karta* or manager of a Hindu undivided family and also the *benami*² system illustrate the variety of forms in which fiduciary relations have exhibited themselves in India from ancient times. Similarly, while trusts as such have not had any special part to play in the sphere of religion in India, endowments of the nature of trusts for religious and charitable purposes have been noticed from the beginning of the country's recorded history. In recent years, however, charities have preferred the form of trusts to endowments.

The Indian Trusts Act, 1882, does not affect the mutual relations of the members of a Hindu undivided family or the rules of the Muslim law as to *waqfs* or private and public religious endowments or public charitable endowments. Apart from Parsis, Christians and also Hindus and Muslims, who had no legal compulsion to conform to their personal law in this regard, there was a large body of Englishmen and Anglo-Indians who were taking advantage of the English trust law in India. The English law of trusts was being applied by the Indian courts, depending upon the necessities and circumstances of the cases coming up before them. The need for codification of the scattered provisions in the Indian Trustee Act, XXVII of 1866, the Statute of Frauds, the Specific Relief Act and other statutes having a bearing on trusts, resulted in the Act of 1882. It is noteworthy that though trusts have become increasingly popular, wealthy and sophisticated, the Act has undergone little change. The subject, "trust and

trustees", is in the concurrent list (item 10 in List III) of the Seventh Schedule to the Constitution of India but it has not evoked much interest at the Centre while the States have so far left it alone.

Law Governing Private Trusts

The Indian Trusts Act, 1882, deals with private trusts alone and many of its provisions are based on the law of trusts administered in the equity courts in England. Section 1 of the Act specifically excludes public and private religious trusts and charitable endowments from the purview of the Act. Section 3 defines a trust as "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." A trustee holds trust property not on behalf but for the benefit of the beneficiary.³

A trust may be created for any "lawful purpose". That is to say, it cannot be utilised to defeat the law, e.g., frustrate creditors,⁴ or carry out any purpose which is repugnant to public policy, e.g., separating parents from children or restraining marriage.⁵ It is distinguishable from bailment, contract, agency, or a fiduciary power.⁶ A trust can be created *inter vivos* or through a will. When a trust is set up by a living person, the following are the requirements⁷ :

- i. The intention should be declared unambiguously. A mere expression of desire will not do⁸ ;
- ii. The trust property should be set apart and the settlor should divest himself of its ownership.⁹ Effective conveyance is essential.¹⁰ If the property is immovable, the trust instrument has to be in writing¹¹ and the registration of the property in the trustee's name is essential to complete the transfer of ownership.¹² If it is a movable, delivery of its possession to the trustee will suffice.¹³ If the author of the trust has appointed himself as the trustee, registration becomes unnecessary ;¹⁴
- iii. The objects of the trust should be clearly stated—the purposes to which the trust income and corpus should

be applied and the persons or classes of persons for whom the benefits are meant.¹⁵ There can be no trust without one or more beneficiaries who can enforce it through courts : where a trust is for a public purpose and not for specific individuals, it can be enforced by the Advocate General of a state.

Conditions (i) and (iii) are equally applicable to a testamentary trust. Death, which brings the trust into existence, automatically strips the testator of the ownership of his property and, therefore, dispenses also with the need for registration of the property in the trustee's name as a condition precedent to the completion of the trust. When an *inter vivos* or testamentary trust is to take effect will depend on the terms of the instrument. It will be a "contingent trust" if its operation is subject to a future event.¹⁶ A trust does not have to be couched in any technical words,¹⁷ but a mere resolution by a trading association to hold any property in trust will not become an instrument of trust.¹⁸ If the ownership of land or other immovable property is charged with any obligation, that should be made clear.¹⁹ What is important is that the identity of the beneficiaries and the subject matter of the trust should not be uncertain. The intention of the author of a trust will prevail, as long as it does not involve any fraud or contravention of any law. For instance, a direction for accumulation of income is valid as long as it does not offend the rule of perpetuity.²⁰ There can also be no objection to additions to the corpus of a trust through gifts by the trustees or third parties, unless it is expressly prohibited in the trust instrument.²¹ A trust may conduct a business either independently or in partnership with others through its trustees.²²

Author and Beneficiaries²³

A trust may be created by any person competent to contract. It may be brought into existence even by a minor, provided the permission of the court is obtained by his guardian for this purpose.²⁴ Two or more persons can also jointly set up a single trust. The subject matter of a trust must be transferable property : it precludes mere beneficial interest under a subsisting trust.²⁵ A single instrument can

create more than one trust.²⁶ Any person capable of holding property may be a beneficiary. There can be no trust without at least one existing beneficiary.²⁷ There can also be no trust only for the spouse of a person who is still unmarried, or unborn children, or persons who become ascertainable only on the happening of a contingency.²⁸ Any such trust would be *ab initio* void under Sections 3 and 6 of the Indian Trusts Act and Section 13 of the Transfer of Property Act. It would not, however, be void if an existing beneficiary is given an immediate limited interest, and an unborn person an absolute interest in the settled property at the end of the limited interest.²⁹ A beneficiary is not a party to a contract with the author of the trust and may, therefore, renounce his interest under the trust by a disclaimer addressed to the trustee, if he is so inclined. After a trust is set up its author cannot alter it or meddle with its working. It is possible, however, to augment the original trust funds ; and where two trusts are set up for the same beneficiaries on identical terms, with the same trustees, their coalescence is not barred.³⁰ Rescission of an *inter vivos* trust is feasible with a court's approval, only if there has been a genuine mistake in regard to its objects.³¹ As for a testamentary trust, the grip of the "dead hand" and court supervision are even more rigid. The court's jurisdiction over it is a continuous one, from the time a will is "proved".

Trustee³²

A trust will not fail if its author has not designated a trustee : it is an omission which can be made good by a court.³³ A person can be a trustee if he can hold property, is competent to contract and is not an insolvent : a bank or a company can also, therefore, be a trustee. The author of the trust may also be a beneficiary. A trustee may also be a beneficiary in the trust. No one is bound to accept a trust.³⁴ But, after having accepted it, he cannot relinquish it except with the prior permission of the court, or at the instance and with the unanimous concurrence of all the beneficiaries.³⁵ A trustee's responsibilities are onerous. He is bound to implement the purpose of the trust. He has to stick to the directions of its author given at the time of its creation,³⁶ except as modified

with the consent of all the beneficiaries. It is his duty to acquaint himself with the true state of the trust properties and take all the action necessary for the assertion or protection of the title of the properties and also their preservation.³⁷ He is required to deal with the trust properties as carefully as a man of ordinary prudence would deal with them if they were his own.³⁸ He must be impartial among the beneficiaries and refrain from exercising his discretion to the advantage of one of them at the expense of the others. He should keep clear and accurate accounts and invest the trust funds in the securities prescribed in section 20 of the Indian Trusts Act, subject to any direction contained in the instrument of trust. He cannot delegate his powers to anyone else or act singly when there are more trustees than one.³⁹ He is liable to compensate the loss which the trust property may suffer as a result of any negligence or breach of trust on his part.⁴⁰ He is not entitled to any remuneration for his services unless the trust deed provides for it or the court sanctions it.⁴¹ The remuneration, if any, that he gets will not be treated as salary, since there is no employer-employee relationship, nor as professional fee, for trusteeship cannot be a profession.⁴² Profits, if any, made by him by virtue of his trusteeship⁴³ and all improvements to the trust property effected by him, enure to the advantage of the beneficiaries. He cannot buy, lease or acquire any interest in the trust property : even a loan to him out of the trust funds may amount to a benefit.⁴⁴ He cannot put himself in a position where his interests may clash with his duties. He has a right to apply to the court for its opinion, advice or direction on questions of importance arising from the management of the trust property.⁴⁵ Any of the beneficiaries can prefer a compensation claim against him before a court for whatever is believed to have been done by him to the prejudice of the trust. Abuse of power or any other transgression by a trustee will not, however, render the trust invalid.⁴⁶ A trustee may be removed by a court under its inherent jurisdiction.⁴⁷

The Official Trustee, who is required to have the prescribed minimum experience as an advocate or attorney of a High Court or a member of the judicial service of the State, may

be appointed as the sole trustee under the Official Trustee Act, 1915 either by a court or by the author of a private trust, with his prior concurrence. He is prohibited from accepting a trust for the benefit of the author's creditors or for a religious purpose. He cannot also accept any trust which involves the management or carrying on of any business. He may be appointed as a trustee by a will provided his prior consent has been obtained and his appointment is recited in the instrument.

The Public Trustee who is appointed by the Central Government under Section 153A of the Companies Act (I of 1956), discharges his functions and exercises the rights and powers conferred on him under that Act. Where any shares or debentures of a company exceeding Rs. 1 lakh in value or 25 per cent of the company's paid up share capital, are held in a public or private trust, the trustees of the trust are required to make a declaration of their holdings to the Public Trustee under Section 153B of the Companies Act. In such cases the Public Trustee may exercise the rights and powers of the trustees who are shareholders, including the right to vote by proxy at any meeting of the company and of any class of members of the company. The object of this provision is to ensure that the trusts are not used by any group of persons for augmenting their own voting rights in the company, and strengthening their control over the company for furthering their own business interest, to the detriment of the interests of the trust.

Classification of Trusts

A trust can be classified with reference to the manner in which it is created, or the nature of the duties it casts on the trustees, or its objects. It may be constituted through the express declaration of the settlor,⁴⁸ in which case it is known as an "express trust". It may follow the unexpressed but presumed intention of the settlor as an "implied trust". It may also be imposed by the operation of law as a "constructive trust" to cover, for example, fraudulently acquired property, or the advantage gained by a stranger to a trust receiving trust property, or even part payments made in a

purchase transaction.⁴⁹ There may be court intervention wherever unconscionable conduct is noticed in any *inter vivos* transaction. A trust is “executed” when it is complete and “executory” when it needs to be supplemented by a further instrument setting out the terms in detail. It fastens itself on the conscience of the legatee when a testator has communicated a secret obligation to him that has not been recorded in the will : such a “secret trust” is discovered from the facts and circumstances of the case.⁵⁰

Considered from the point of view of the trustee’s functions, where he has a merely passive role, the trust is a “simple” one and the trustee is a “bare trustee.” If he is required to discharge any significant duties in accordance with the trust deed, he is an “active trustee” in a “special trust”. A trust is “specific” when the beneficiaries and their respective shares are known, and “discretionary” when the settlor has vested the trustee with the discretion to determine how much benefit should be conferred on whom, among a group of beneficiaries indicated by him, during any particular year.⁵¹ It is to the trust document that one must turn for finding out whether a settlor intended that a beneficiary should have an immediate vested interest or a contingent interest in the income or corpus of the trust or whether the extent of the interest had been left to the discretion of the trustees.⁵²

A trust is private when its benefits are limited to one or more identifiable persons. In a public trust, the rights to the benefits are not confined to any specific individuals but are available to a fluctuating body of persons—the public at large or a cross-section of the public—answering a particular description.⁵³ A public trust may be charitable or religious while a private trust may be religious but cannot be charitable.⁵⁴ A private trust, which provides for charitable purposes may turn public when the private beneficiaries renounce their rights.⁵⁵ Though the terms “charity” and “religion” have a much wider connotation in India than in the UK, the USA and several other countries, there is no comprehensive statutory definition of a public trust or institution as distinct from a private one. Tests have, however, been deduced from court decisions, which make the distinction reasonably clear.⁵⁶

The name borne by an institution cannot determine its character.⁵⁷ Easy accessibility to the public and equal treatment to all devotees are, for example, among the decisive criteria in the case of a temple or a mosque.⁵⁸ A trust for the family deity does not become "public" merely because arrangements have been made for feeding the poor or celebrating some festivals or maintaining a hospital.⁵⁹ An *akhara* (i.e., an establishment for training wrestlers) cannot claim to be a public religious trust only by reason of the installation of some idols.⁶⁰ Similarly, a trust for a pet dog or cat is not a trust for a charitable purpose but a *gaushala* or *pinjrapole* is.⁶¹ There are, however, a few grey areas where controversies arise : for example, gifts to enable poor persons to get married⁶² or financial assistance to give a person a good start in life.⁶³ The following are some of the purposes which have not been found charitable in the Indian courts :

- (i) provision of employment ;⁶⁴
- (ii) trusts for the benefit of employees, including provident funds, gratuity funds and pension funds ;⁶⁵
- (iii) political education ;⁶⁶
- (iv) worship at tombs ;⁶⁷
- (v) advancement of cricket or other sports or gymnastics,⁶⁸ and
- (vi) horse-racing.⁶⁹

Where the application of the income of a trust depends on the trustee's discretion and some of the purposes of the trust are not charitable, the trust is not considered charitable ;⁷⁰ but a specified part of the income or corpus of a trust may be held for non-charitable purposes, without the charitable part of the trust being vitiated for tax purposes.⁷¹

A *debuttar*⁷² estate or an endowment for the maintenance of worship of a family deity is of the nature of a private trust, though the Indian Trusts Act is not applicable to it. Dedication of property to a deity may be absolute or partial,⁷³ but it is not revocable.⁷⁴ It is only in a figurative sense that an idol is the owner of any property which it cannot enjoy, protect or dispose of. The purpose of an endowment to a deity is obviously not to confer any benefit on it. The beneficiaries are the members of the family privileged to offer worship at the

temple. The *shebait* of a *debuttar* estate is not a trustee because the trust property vests in the deity and not in him. He is not, however, a mere holder of an office because he may have a share in the usufruct, depending on the terms of the grant or custom or usage. His duties and his personal interests are blended.⁷⁵

The position in the case of a *waqf-alal-aulad*⁷⁶ is analogous. The property is dedicated to and permanently detained in God, but the income is applied to the benefit of the members of the settlor's family : the usufruct is available for enjoyment by the descendants of the settlor, while the corpus is tied up in perpetuity.⁷⁷ Under the Musalman Waqf Validating Act of 1913, such a *waqf*⁷⁸ is valid, if there is an ultimate gift to charity. The *Hanafi* law, which the *Sunnis* follow, prevents the creation of a *waqf* for the benefit of the settlor and for the payment of the settlor's debts. Under the *Shia* law, a *waqf* will not be valid, unless the settlor divests himself of the ownership of the *waqf* property : he must not "eat out of the *waqf*".⁷⁹ There is no bar, however, to the aggrandisement of the settlor's family, as long as there is a provision for making the property available for pious or charitable purposes in the long run. An *imambara* (i.e., a place where Muharam ceremonies are performed) is a private *waqf* unless proved otherwise⁸⁰, while a *takia* or a *khanqa* (monastery) and a *dargah* or an *astana* or *ziyarat* (shrine) are public *waqfs*. A mosque may be either.⁸¹ The *mutawalli*⁸² who manages the *waqf*'s property, is like the *shebait* of a *debuttar* estate, for all practical purposes. He is the *amin* (bailee) of God's property and is expected to conduct himself accordingly. The *waqf* may remunerate him and in the absence of a provision in the *waqf* deed the court may also allow him remuneration not exceeding one-tenth of the *waqf*'s income.⁸³ He cannot transfer his office to anyone else.⁸⁴

Failure of a trust—"Resulting Trust"

An imperfect or incomplete trust is not valid,⁸⁵ but a trust may be partly valid and partly void.⁸⁶ When an express public trust fails, it is saved in certain circumstances by the *cy pres*⁸⁸ doctrine. The courts permit the resources of the trust, which

has become impracticable, to be applied to some other charitable purpose which is allied to or which closely resembles the purpose of the frustrated trust. If an express private trust is invalidated either for failure of consideration, illegality, perpetuity,⁸⁸ uncertainty, lapse, disclaimer or any other reason, a trust in favour of the settlor ordinarily results.⁸⁹ If the trust has been created by a will, the trust property devolves upon the legal heirs and successors of the testator. It is a logical inference that the settled property should revert to the settlor or his legal heirs and successors if the settlement is vitiated or does not materialise for any reason. A private religious endowment governed by the Hindu law, may have a similar treatment, if voided on any ground. As for a *waqf-alal-aulad*, the property will revert to the *waqif* if the ultimate dedication for a religious, pious or charitable purpose is not *bona fide*. If, however, only one of the purposes of a *waqf* has been invalidated, the *waqf* will not be voided. There will only be acceleration of the application of the *waqf* income to other purposes.⁹⁰

Termination of a Trust

The beneficiary of a trust is entitled to have the mistakes, if any, in a trust instrument rectified by the court and the intention of its author specifically executed to the extent of his (i.e., beneficiary's) interest, though the powers of a trustee cannot be curtailed by him.⁹¹ Where there is only one beneficiary and he is competent to contract or where there are several beneficiaries and all of them are *sui juris*, absolutely entitled, and of one mind, he or they may bring the trust to an end, taking over the capital or dividing it among themselves, irrespective of the intention of the author of the trust. If any of the beneficiaries is not of full age or capacity and, therefore, not in a position to give a valid discharge, the court's concurrence may be required for ending the trust.⁹²

It is debatable whether a private *debuttar* estate can be given a secular turn or terminated through a family consensus.⁹³ A *waqf-alal-aulad* may become ineffectual through a ceaseless increase in the number of its beneficiaries from generation to generation but they have no authority to put an end to it.

Tax Implications of a Trust

Since a trust holds property and derives income for the benefit of either the public at large or individuals, it is inevitable that it should have tax ramifications.

Almost every country with a system of direct taxation encourages religious and charitable institutions by offering tax immunity, if they use their income entirely for the purposes for which they have been set up and if they do not venture into any competitive trade. They are also permitted to accumulate a part of their annual income in the ordinary course. If a religious or charitable trust wants to accumulate more of its income than is normally allowed, it will have to intimate the purpose of the accumulation to the Income-tax Officer and invest the money in the specified modes. If any part of the money is used for any purpose other than the one intimated or if it ceases to remain invested in the prescribed form, it will be deemed to be the income of the trust in the year in which such deviation occurs.⁹⁴ A trust may also conduct a business subject to the condition that the business subserves its primary object,⁹⁵ and the work is mainly done by the beneficiaries.

Provident fund and other employees' welfare trusts are basically private trusts but they are given tax exemption where they are specifically approved or "recognised" by the revenue authorities and also strictly conform to the requirements of the rules framed in this regard.⁹⁶ Tax liability results only when a trust does not observe the conditions laid down by the Government for its recognition.⁹⁷ The tax liability of the trustees, the employer or the employees for the profits of any business in which the employees are offered some kind of a participatory interest will depend on the precise nature of the interest, i.e., whether it is immediately vested or deferred or contingent⁹⁸.

As for family trusts, they are as complex as the tax laws, necessitating special provisions for their treatment. The problems posed by religious and charitable trusts and trusts for employees are proposed to be considered separately. The following chapters are confined to a study of the taxation of private trusts other than trusts for employees, debenture holders and unit holders.⁹⁹

NOTES

1. Smt. Krishna Ramani Dasi v Ananda Krishna Bose, 4 BLR 231 O.C. 278 ; Ganendra Mohan Tagore v Upendra Mohan Tagore, 4 BLR O.C. 134.
2. Literally, "without a name." In a *benami* transaction, a person acquires property with his own money, but in the name of another person. The transaction is also called *furzee*. Recourse to it may be due to various reasons, e.g., anxiety to hide one's personal affairs from the public eye. Effect is not given to a *benami* deal if it is opposed to public policy or designed to defraud the real owner's creditors : Mulla, *Principles of Hindu Law*, 12th Ed., N.M. Tripathi (Pvt.) Ltd., Bombay, articles 604-611.

Vide also, the observation of Sir George Farwell in the Judicial Committee's judgment in *Bilas Kunwar v Desraj Ranjit Singh* (1915) 42 IA 202 ; 37 All 557 ; 19 CWN 1207 : "It is quite unobjectionable and has 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 again follows the analogy of our common law, that where feoffment is made without consideration, the use results to the feoffer."

As for the practice among Muslims, see *Uzhar Ali v Ultaf Fatima* 13 MIA 346 ; *Abid Ali v Asgar Ali* 7 NLR 159. However, it has been held in *Gosia Begum v Mohmd. Ghaziuddin*, AIR 1956 Hyd 52 that the *benami* law is not a branch of Hindu or Muslim law but merely an application of the equitable general rule laid down in sections 81 and 82 of the Indian Trusts Act, 1882.

3. *Suhasini Karuri v WTO* (1962) 46 ITR 953 (Cal) ; *Chintamani Ghosh Trust v CWT* (1971) 80 ITR 331 (All) ; *CWT v Phirozsha Pestanji* (1974) 96 ITR 185 (Guj).
4. Illustration (c), section 4, Indian Trusts Act. Also, *Elliot, Official Receiver, Cuddappah v Subbiah*, 50 Mad 815. But a *waqf* to defraud the *waqif's* creditors cannot be revoked by the *waqif* or his heirs though the court may strike it down : *Zafrul Hussan v Farid-ud-din* AIR 1946 PC 177 ; *Har Prasad v Mohammed Usman* AIR 1943 All 2.
5. For trusts interfering with parental duties, *Re. Sandbrook* (1912) 2 Ch. 471 ; *Re. Boulter* (1922) 1 Ch. 75 ; *Re. Piper, Dodd v Piper* (1946) 2 All ER 503. For a trust voided on the ground of restraint of marriage, *Lloyd v Lloyd* (1852) 2 Sim. (N.S.) 255 ; *White and Tudor, Leading Cases in Equity*, 9th Ed, Vol. 1, p. 487. Curiously, requirement of consent to marriage will be

- valid : Re. Whiting's Settlement, *Whiting v De Rutzen* (1905) 1 Ch. 96. So also, a limitation of property until marriage, Re. *Lovell Sparks v Southall* (1920) 1 Ch. 122.
6. *McPhail v Doulton* (1971) AC 424, (1970) 2 All ER 228 ; Re *Gulbenkian's Settlement Trusts* (1968) 3 All ER 785.
 7. The three conditions commonly known as the "three certainties" required in a trust have been spelt out by Lord Langdale MR in *Knight v Knight* (1840) 3 Beav 148, 173. They are covered in section 6 of the Indian Trusts Act, 1882.
 8. *CIT v Manilal Dhanji* (1962) 44 ITR 876, 885-6 (SC) ; *CIT v Mrs. Jayalakshmi Duraiswamy* (1964) 53 ITR 525 (Mad) ; *CIT v Sardar Bahadur Sardar Inder Singh Trust* (1956) 29 ITR 781 (Cal) ; *Ram Ran Vijay Prasad Singh v Province of Bihar* AIR 1942 Pat 435 (FB), (1942) 10 ITR 446 (Pat) ; *Zafar Hussain v M. Ghiasuddin* AIR 1937 Lah 552 (regarding a *waqf*) ; *Chambers v Chambers* AIR 1944 PC 78 ; *Krishnamurthi v Anjappa* AIR 1936 Mad 635 ; *Chotabhai v Jnan Chandra*, AIR 1935 PC 97 ; *Re. Kayford Ltd.* (1975) 1 All ER 604, (1975) 1 WLR 279 ; *Re. Williams* (1897) 2 Ch. 12 ; *In re. Booth : Booth v Booth* (1894) 2 Ch. 282 ; *Jones v Lock* (1865) 1 Ch. App. 25 ; *Raikes v Ward* (1842) 66 ER 1106 ; *Woods v Woods* (1836) 40 ER 429, 43 RR 214.
 9. Retention of any powers over the trust property may be inconsistent with the divestiture that is required : *The Allahabad Bank Ltd. v CIT* (1953) 24 ITR 519 (SC). There is neither a trust nor a gift if the author of the trust merely executes an instrument, but does not transfer the purported trust property to the trustees : *CGT v Maharaja Pateshwari Prasad Singh* (1971) 82 ITR 654 (All).
 10. *Richards v Delbridge* (1874) LR 18 Eq. 11.
 11. *Jang Bahadur v Rana Umanath Baksh Singh* AIR 1937 Oudh 99 ; *Anant Ram v Ishri Prasad* AIR 1925 Oudh 201 ; *Kesheo v Laxminarayan* AIR 1926 Nag. 46 ; *Kumuruddeen v Noor Mohammed* 28 Mad LJ 251.
 12. *Smt. Pankumari Kochar v CED* (1969) 73 ITR 373 (AP). If the value of an immovable property that is transferred to a trust exceeds Rs. 100, the law of registration cannot be avoided. Religious endowments are, however, outside its purview.
 13. *Pachaiyappa Chetty v Shivakami Ammal* AIR 1926 Mad 109 ; *Chambers v Chambers* AIR 1940 PC 78. In order to render a settlement of shares valid and effective, the transfer of the shares will have to be executed in accordance with the articles of the company : *Milroy v Lord* (1862) 2 De GF & J. 264, (1861-73) All ER Rep 783 ; *Re Rose* (1952) 1 All ER 1217.

14. *Richard v Delbridge* LR 18 Eq. 11 ; *Gharib Das v Munshi A Hamid* AIR 1970 SC 1035 ; *Tulsidas Kilachand v CIT* (1961) 42 ITR 1,6 (SC) ; *Smt. Pankumari Kochar v CED* (1969) 73 ITR 373 (AP).
15. *Mcp hail v Doulton* (1971) AC 424, (1970) 2 All ER 228 ; *Gulbenkian's Settlements, Re* (1970) AC 508 ; *Baden's Deed Trusts (No. 2)* (1972) 2 All ER 1034 ; *Burrough v Philcox* (1840) MYL & Cr 72.
16. *Re. Turner's Will Trusts* (1937) Ch. 15 ; *Re. Watt's Will Trusts* (1936) 2 All ER 1555 ; *Re. Ransome* (1957) 1 All ER 690 ; *Re. Holford* (1894) 3 Ch. 30.
17. *CIT v Tollyganj Club Ltd.* (1977) 107 ITR 776 (SC) ; *CIT v Thakurdas Bhargava* (1960) 40 ITR 301 (SC) ; *CIT v Lad Parishad Karyalaya* (1974) 94 ITR 359, 360 (Bom) ; *CIT v Cutchi Lohana Panchtade Mahajan Trust* (1975) 98 ITR 448 (Bom) ; *CIT v Pramod Jain Trust* (1971) 81 ITR 604 (Del.) ; *A.J. Patel v CIT* (1974) 97 ITR 683 (Bom.) ; *S. Devaraj v CWT* (1973) 90 ITR 400 (Mad) ; *Keshava Panickar v Damodara Panicker* AIR 1970 Kerala 86, 88 (FB).
18. *Joint Committee of B. Group Merchants, Bombay v CIT* (1963) 48 ITR 427 (Bom.)
19. *Maharaja Bahadur Ram Ran Vijay Prasad Singh v Province of Bihar* (1942) 10 ITR 446, 451 (Pat).
20. *Thellusson v Woodford* (1798) 4 Ves Jun 227 ; on appeal, (1803-13) All ER Rep 30, which led to the *Thellusson Act* in 1800 ; *Re. Jefferies* (1936) 2 All ER 626 ; *Re Maber* (1928) Ch. 88. The following is section 114 of the *Indian Succession Act, 1925*, which lays down the rule against perpetuity :

“114 No bequest is valid whereby the vesting of the thing bequeathed may be delayed beyond the life-time of one or more persons living at the testator's death and the minority of some person who shall be in existence at the expiration of that period, and to whom if he attains full age, the thing bequeathed is to belong.

Illustrations

(i) A fund is bequeathed to A for his life and after his death to B for his life : and after B's death to such of the sons of B as shall first attain the age of 25. A and B survive the testator. Here the son of B who shall first attain the age of 25 may be a son born after the death of the testator ; such son may not attain 25 until more than 18 years have elapsed from the death of the longer liver of A and B ; and the vesting of the fund may thus be delayed beyond the life-time of A and B and the minority of the sons of B. The bequest after B's death is void.”

For the principle on which this provision is founded, see *Stanley v Leigh* (1732) All ER 917, 918 :

“For the law does abhor what is called perpetuity . . . the reason of which is the mischief that would arise to the public from estates remaining for ever inalienable or untransferable from one hand to another, being a damp to industry and a prejudice to trade, to which may be added the inconvenience and distress that would be brought on families whose estates are so fettered.”

21. *Sardar Bahadur Indra Singh Trust v CIT* (1971) 82 ITR 561 (SC).
22. *K.T. Doctor v CIT* (1980) 124 ITR 501 (Guj); *CIT v Juggilal Kamalpat* (1967) 63 ITR 292 (SC); *Addl. CIT v Ram Krishna Gupta* (1979) 117 ITR 218 (All).
23. Sections 7 and 9 of the Indian Trusts Act.
24. Sub-clause (b) of section 7 of the Indian Trusts Act. While a minor cannot create a testamentary trust, since he is incompetent to leave a will under section 59 of the Indian Succession Act, 1925, he can set up a trust *inter vivos*.
In the UK a minor cannot hold land but can have an equitable interest in land. If a trust is created by him, it is voidable by him shortly after he attains majority; *Edwards v Carter* (1893) AC 360, (1891-94) All ER Rep 1259. The guardian of a minor cannot create a *waqf* on his behalf: *Commissioner of Waqfs, West Bengal v Mohsin* in 48 WBN 252.
25. Section 8 of the Indian Trusts Act. Salary and pension are inalienable and cannot be the subjects of a trust. There can also be no transfer of the right of the beneficiary to proceed against a trustee.
26. *CIT v Manilal Dhanji* (1962) 44 ITR 876 (SC); *CIT v HEH the Nizam's Supplemental and Religious Endowment Trust* (1973) 89 ITR 80, 84, 85, (AP); *Dr. A.J. Kohiyar, v CIT* (1964) 51 ITR 221 (Bom).
27. Vide sections 5 and 13 of the Transfer of Property Act, 1882. *Sopher v Administrator-General of Bengal* 71 IA 93 : 46 Bom LR 86 (PC).
28. *T.C. Hornby v E.T. Farmer* AIR 1960 Cal 36; *Sopher v Administrator-General of Bengal* 71 IA 93 : 46 Bom LR 86 (PC).
29. That an unborn child can be one of the beneficiaries is assumed in several cases: *Addl. CIT v Ram Krishna Gupta* (1979) 117 ITR 218 (All); *CWT v Trustees of HEH the Nizam's Family (Remainder) Wealth Trust* (1977) 108 ITR 155 (SC); *Trustees of Putlibai R.F. Mulla Trust v CWT* (1967) 66 ITR 653. For a different view, vide *Nirmala Bala Sirkar v CIT* (1969) 74 ITR 268 (Cal). The ITAT, Calcutta (Special Bench) has expressed the view that where a trust provided for payment of 5 per cent of the income to a lady and for the accumulation of the balance for her unborn son for 21 years, the

trust was a valid one, not liable to tax at the maximum rate : ITO v C.L. Sadani Family Trust, ITA 2573 (Cal) of 1979, reported in *Selected Orders of ITAT* (Vol I), 1982, New Delhi : Taxman, pp. 484-93.

30. *Re. Rydon* (1955) Ch. 1 ; *Re. Curteis* (1872) LR 14. Eq. 217.
The settlor's intention has to be established. Merger may be open to question where the settlors or/and trustees are different, or there is any variation in the terms of the trusts : *Re. Campbell* (1922) 1 Ch. 551 ; *Re. Eykyn* (1877) 6 Ch. D 115 ; *Re. Marke Wood* (1913) 2 Ch. 574 ; *Re. Beaumont* (1913) 1 Ch. 325 ; *Hart (Inspector of Taxes) v Briscoe* (1978) 2 WLR 832, (1978) 1 All ER 791. Where there is a disposition of a limited interest in a settlement, two settlements may result : *Midland Bank Executor and Trustee Co. Ltd. v IR* (1959) Ch. 277. For the effects of variation of trust arrangements with the court's approval : *Re. Ball's Settlement Trusts* (1968) 1 WLR 899, (1968) 2 All ER 438 ; *Re. Holt's Settlement* (1969) 1 Ch. 100 ; (1968) 1 All ER 470.
31. For the grounds of rescission, vide Pettit, *Equity and the Law of Trusts*, Second Ed. (1970), Butterworths, pp. 445-50 ; G.W. Keeton and L.A. Sheridan, *The Law of Trusts*, 20th Ed. 1974, Professional Books Ltd., pp. 117-24. Also section 89 of the Indian Trusts Act.
32. Sections 11 to 30 of the Indian Trusts Act set out the duties and liabilities of trustees, sections 31 to 45 their rights and powers and sections 46 to 54 their disabilities.
33. *Re. Gibbon's Trusts* Ch. (1882) 30 WR 287 ; *Re. Tempest* (1886) 1 Ch. App 485 ; *A.G. v Lady Downing* (1767) Wilm. 1 ; *Re. Wrightson* (1908) 1 Ch. 789.
34. A disclaimer cannot be partial. The trustees must either accept the trust as a whole or decline the trusteeship : *Re. Lord and Fullerton's Contract* 1896 1 Ch. 228.
The disclaimer may be oral or made evident by conduct. It may also be intimated to the court through counsel : *Bingham v Clanmorris* 1828 2 Moll, 253 ; *Stacey v Elph* 1833 1 Myl & K 195, (1824-34) All ER Rep 97, *Re. Birchall* 1889 40 Ch. D 436 ; *Re. Clout and Frewer's Contract* 1924 2 Ch. 230, (1924) All ER Rep 798 ; *Landbroke v Bleaden* (1852) 16 Jur (O.S) 630 ; *Foster v Dawber* 1860 8 WR 646.
35. Section 46 of the Indian Trusts Act : *Raja of Kovilagon v Kottayath*, 7 MH CR 210 ; *Vrandavan v Parshottam* AIR 1927 Bom 75 ; 28 Bom LR 1481 ; *Mst. Krishan Bai v Dhondo Ramchandra* AIR 1924 Nag 129 ; *Krishandas v Ratanbai* AIR 1941 Bom 41.
36. For the consequence of failure to follow the directions of the settlor : *Kerner v George* 321 Ill. App. 150, 52 NE (2d) 3001 (1943). Brief details of the case are furnished by Eleanor K. Taylor, *Public Account-*

ability of Foundations and Charitable Trusts, 1953, New York : Russel Sage Foundation, p. 42.

37. *Harvey v Olliver* (1887) 57 LT 239 ; *Bennet v Burgis* (1846) 5 Hare 295 ; *Re. Strahan* (1856) 4 WR 536, 44 ER 402 ; *Hallows v Lloyd* (1888) 59 LT 603 ; 37 WR 12.
38. *Learoyd v Whitely* (1887) 12 App case 727, 733 ; *Lucking's Will Trusts v Lucking* (1967) 3 All ER 726.
39. Sections 47 and 48 of the Indian Trusts Act. On the question of delegation, *Atmaram Ranchhod v Ghulam Hussain Ghulam* (1972), 13 GLR 828 ; *Abdul Kayum v Alibhai* AIR 1963 SC 309 ; *Mahadev Jew v Balkrishna Vyas* AIR 1952 Cal 763 ; *Marimuthu Pillai v Narayanavadian Bhagavathy* 1949 TCLR 70 ; *Sir Dinshah v Sir Jamsheedji* 2 IC 701 ; *Sankaran Nambi v Devki Antherjenam* AIR 1922 Mad 269 ; *Parasurama Udayar v Vedaji Bhaskar Thirumal Rao Sahib* AIR 1921 Mad 623 ; *Gopal Sridhar Mahadev v Sahai Bhushan Sarkar* AIR 1933 Cal 109 ; *Sridhar v Dharamdas* 3 IC 549 ; *Gopala-swami v Subramania* AIR 1942 Mad 397.
On the requirement of joint action of trustees, vide *Shyam Rangini Ray Chaudhurani v Ajindranath Tagore* (1949) 1 ILR 165 ; *Jankirama Ayyar v Nilakanta Ayyar* (1954), Mad LJ 486 ; *Commissioner for Hindu Religious and Charitable Endowments, Madras v A.P.S. Sethurama Pillai* (1960) Mad LJ 157 ; *Manmohandas v Janki Prasad* AIR 1945 PC 23 ; *Narendra Kumar v Atul Chandra Bando-padhyaya* AIR 1918 Cal 810 ; *Vedakannu v Annadana Chetram* AIR 1938 Mad 982 ; *Vavuttu Naicken v Venkata Sesha Aiyar* AIR 1914 Mad 119 (1) ; *S.V. Daniels v G.W. Friendly Trust* AIR 1959 All 579 ; *Board of Trustees, Shri Hindu Kanya Pathasala v Nandoo Lal* 1958 Pat LR 383.
40. *Bartlett v Barclay's Bank* (1979) 1 All ER 139.
41. *Re. Duke of Norfolk's Settlement* (1978) 3 WLR 655 ; *Protheroe v Protheroe* (1968) 1 All ER 1111 ; *Bannister v Bannister* (1948) 2 All ER 133 ; *Re. Macadam* (1945) 2 All ER 664 ; *Dale v IR* (1953) 2 All ER 671.
42. *Baxendale v Murphy* 9 TC 76 ; *Dale v IR* 34 TC 468 (HL).
43. For a situation in which the profit assumes the form of a bribe, see suggestion in *Lister and Co. v Stubbs* (1886-90) All ER Rep 797.
44. Sections 51 and 54 of the Indian Trusts Act : *Nagappa v Official Assignee* AIR 1931 Mad 251 (2) ; *Krishnajee v Sadasiva* AIR 1927 Mad 249 ; *Krishnamurthy v Chetty Punyam Devanadhaswamy Devasthanam* (1957) 2 Mad LJ 411 ; *Manickavasagam Chettiar v CIT* (1964) 53 ITR 292 (Mad) ; *CIT v Jayantilal Amratlal* (1968) 67 ITR 1 (SC) ; *Re. Lacey Exp.* (1802) 6 Ves 625.
45. Section 34 of the Indian Trusts Act : *Avoch Thevar v Chammar* AIR 1956 Ker 381 ; *In re. Mohamed Hashim Gazdar* AIR 1945 Sind 81

(FB); *Amina Bee v Mariam Bee* AIR 1939 Rang 347; *In re. Madras Devotom Trust Fund* ILR 18 Mad 443; *Talbot v Talbot* (1967) 1 All ER 604.

46. Sections 23 and 59 of the Indian Trusts Act : *Thanthi Trust v ITO* (1973) 91 ITR 261, 285 (Mad); *CIT v Gopal Krishna Kone* (1965) 57 ITR 569 (Mad); *Attorney General v Lady Downing* (1767) Wilm 1, 97 ERI. See also *Krishnaswami Pillai Kothandarama Naicker* (1914) 27 MLJ 582; *Gokuldass Jamnadass and Co. v Lakshminarasimhulu Chetty* AIR 1940 Mad 920; *Sunder Singh Malla Singh Sanatan Dharam High School Trust Indaura v Managing Committee, Sunder Singh Malla Singh Rajput High School Indaura* AIR 1938 PC 73; *Managing Shebaitis of Bhukailash Debuttar Estate v WTO* (1977) 106 ITR 904 (Cal); *Rash Mohan Chatterjee and others v CED* (1964) 52 ITR EDI (Cal); *Lang v Webb* (1912) 13 CLR 503; *Clifford John Check v Commissioner of Stamp Duties of New South Wales* 37 ITR ED 89.
47. *Letterstedt v Broers* (1894) 9 App. Cas. 371; (1881-5) All ER Rep 822; *Millard v Eyre* (1793) 2 Ves 94.
48. While every trust is a settlement, the term "settlement" is wider in its scope. It includes any disposition, covenant, arrangement or transfer of assets which may or may not involve a trust.
49. *Cooke v Head* (1972) 2 All ER 38; *Hussey v Palmer* (1972) 2 All ER 744; *Heseltine v Heseltine* (1971) 1 All ER 952; *Bannister v Bannister* (1948) 2 All ER 133; *Boardman v Phipps* (1965) 3 All ER 721; *Industrial Development Consultants Ltd. v Cooley* (1972) 2 All ER 86; *Keech v Sandford* (1558-1774) All ER Rep 230; *Re. Diplock* (1948) Ch. 465, (1948) 2 All ER 318; (1950) 2 All ER 1137; *Nelson v Larholt* (1947) 2 All ER 751; *Williams-Ashman v Price and Williams* (1942) 1 All ER 310; *Belmont Finance Corporation Ltd. v Williams Furniture Ltd.* (1979) 1 All ER 118.
50. *Blackwell v Blackwell* (1929) All ER Rep 71; *Re. Keen's Estates* (1937) 1 All ER 452; *Re. Bateman's Will Trusts* (1970) 3 All ER 817; *Re. Stead* (1900) 1 Ch. 237; *Re. Tyler's Fund Trusts* (1967) 3 All ER 389; *Wallgrave v Tebbs* (1855) 4 WR 194; *Moss v Cooper* (1861) 4 LT 790.
51. *CIT v Manilal Dhanji* (1962) 44 ITR 876 (SC); *CIT v Puthiya Ponmanichintakam Waqf* (1962) 44 ITR 172 (SC); *CIT v Lady Ratanbai Mathuradas* (1968) 67 ITR 504 (Bom); *D.V. Arur v CIT* (1945) 13 ITR 465, 480 (Bom); *CIT v Arvind Narottam* (1972) 102 ITR 232 (Guj); *CIT v Arvind Narottam* (1969) 73 ITR 490 (Guj); *Lokmanya Tilak Jubilee National Trust Fund, In re.* (1942) 10 ITR 26 (Bom); *ITAT v Managing Trustee, Sree Radha Madho Trust* (1946) 14 ITR 470 (Nag); *Trustees of Sahebzadas of Sarf-e-khas Trust v CIT* (1962) 44 ITR 332 (AP); *V.E.A. Vairavan Chettiar v CIT* (1973) 92 ITR 474 (Mad); *Bankim Chandra Dutta v CIT* (1966) 62 ITR

- 239 (Cal); *Nirmala Bala Sarkar v CIT* (1969) 74 ITR 268 (Cal); *CIT v Trust Estate of Tarun Kumar Roy* (1974) 94 ITR 361 (Cal).
52. *CWT v Bhogilal Maganlal Shah* (1968) 68 ITR 288 (Guj); *CWT v Kum. Manna G. Sarabhai* (1972) 86 ITR 153 (Guj); *CWT v N.D. Petit* (1981) 128 ITR 650 (Bom); *CWT v Anarkali Sarabhai* (1971) 81 ITR 375 (Guj); *CWT v Ashok Kumar Ratanlal* (1967) 63 ITR 133 (Guj); *CWT v Master Jehangir H.C. Jehangir* (1982) 137 ITR 48 (Bom).
53. *Deokinandan v Murlidhar* AIR 1957 SC 133; *Ram Saroop Dasji v S.P. Sahi* AIR 1959 SC 951; *Chintamani Ghosh Trust v CWT* (1971) 80 ITR 331 (All); *Farman Ali Khan v Md. Raza Khan* AIR 1950 All 62, 66; *Trustees of Gordhandas Govindram Family Charity Trust v CWT* (1968) 70 ITR 600, affirmed in 88 ITR 47 (SC); *Trustees of KBMH Bhiwaniwala v CWT* 1977 106 ITR 709 (Bom); *CWT v J.P. Pardiwala Charity Trust* (1965) 56 ITR 46 (Bom); *S.K. David Sassoon v CIT* (1959) 36 ITR 512 (SC); *CWT v Trustees of HEH the Nizam's Supplemental and Religious Endowments Trusts* (1973) 89 ITR 80 (AP); *Bai Hirbai and Kesarbai Charitable and Religious Trust v CIT* (1968) 68 ITR 821 (Bom); *CIT v Dwarka Dheesh Temple* (1951) 19 ITR 440 (All); *CWT v Hyderabad Race Club* (1978) 115 ITR 453 (AP); *Kedia Jatiya Sahayak Sabha and Fund v CIT* (1963) 49 ITR 74 (Cal); *The Guru Estate v CIT* (1958) 34 ITR 656, 662, 663 (Orissa), affirmed in (1963) 48 ITR 53 (SC); *CIT v ASHM Sait Dharma Stapanam v Commr. of Agl. IT* (1973) 91 ITR 5 (SC); *In re. Smt. Charusila Dassi* (1946) 14 ITR 362 (Cal); *Official Trustee of West Bengal v CIT* (1968) 67 ITR 218 (Cal); *Sri Jyotishwari Kalimara v CIT* (1946) 14 ITR 703 (Pat); *Biswaranjan Bysack v CIT* (1967) 66 ITR 452 (SC); *Smt. Ganeshi Devi Rami Devi Charity Trust v CIT* (1969) 71 ITR 696 (Cal).
- A trust for religious purposes has been held to be exempt from the gift tax notwithstanding the fact that the wife of its author was given the right to reside for life in a portion of the settled property: *CGT v Sri Sahaji the Chatrapati Maharajasaheb of Kolhapur* (1965) 58 ITR 140 (Bom).
54. *CIT v Jamal Mohammad Sahib* (1941) 9 ITR 375 (Mad).
55. *CIT v Smt. Kasturbai Walchand Trust* (1967) 63 ITR 656 (SC); *CIT v Trustees of Sri Kikabai Premchari Trust* (1967) 65 ITR 213 (Bom).
56. See 53 supra.
57. *CWT v HEH The Nizam's Supplemental and Religious Endowment Trust* (1973) 89 ITR 80, 83 (AP). The name may, however, be a pointer: *Trustees of Gordhandas Govindram Family Charity Trust v CIT* (1973) 88 ITR 47, 52 (SC).
58. *Radhakanta Deb v Commissioner of Hindu Religious Endowments, Orissa* AIR 1981 SC 798; *T.D. Gopalan v Commissioner of Hindu*

- Religious Endowments, Madras AIR 1972 SC 1716 ; Goswami Shri Mahalaxmi Vahuji v Shah Ranchhoddas Kalidas AIR 1970 SC 2025 ; Amardas Mangaldas v Harmanbhai Jethabhai AIR 1942 Bom 291 ; Ramsarandas v Jairam AIR 1943 Pat 135 ; Parmanand v Nihalchand AIR 1938 PC 195 ; Laxmanrao Umajirao v Govind Rao Madho Rao AIR 1950 Nag 215 ; Prakash Chandra v Subodh Chandra AIR 1937 Cal 67 ; Bhagwandin v. Gir Harswaroop AIR 1940 PC 7 ; State of Bihar v Smt. Charusila Devi AIR 1959 SC 1002 ; Bihar Board of Religious Trust v Palat Lal AIR 1972 SC 57 ; Shri Govindlalji v State of Rajasthan AIR 1963 SC 1638 ; State of Bihar v Biseshwar Das AIR 1971 SC 2057 ; Bhagwan Sitaram Khasale v Namdeo Narayan Gore AIR 1957 Bom 168 ; Martand Pandharinath Harkare v Charity Commissioner, Bombay, 63 Bom IR 274 ; Rudrappa v Kandappa AIR 1967 Mysore 239 ; Gurcharan Prasad v Krishnanand AIR 1968 SC 1032 ; Smt. Ganeshi Devi Rami Devi Charity Trust v CIT (1969) 71 ITR 696, 706 (Cal) ; CIT v Shri Dwarka Dheesh Temple (1946) 14 ITR 440 (All) ; CIT v Shri Thakurji Lakshminathji (1947) 15 ITR 215 (All).
59. CIT v Administrator-General of Bengal (1952) 21 ITR 241 (Cal) ; Estate of Harendra Kumar Roy v CIT (1944) 12 ITR 68 (Cal) ; The Guru Estate v CIT (1958) 34 ITR 656 (Orissa), affirmed in (1963) 48 ITR 53 (SC) ; Smt. Charusila Dassi, in re. (1946) 14 ITR 362 (Cal)
60. Ramchandra Shukla v Shree Mahadeoji AIR 1970 SC 458.
61. Trust for the testator's mare : Pettingall v Pettingall (1842) 11 LJ Ch. 176.
Trust for the testator's hounds, ponies and horses : Re. Dean (1889) 41 Ch. 652 ; 60 LT 813.
Welfare of animals : Trustees of the Charity Fund v CIT (1959) 36 ITR 513 (SC) ; CIT v Sri Jagannath Jew (1977) 107 ITR 9 (SC) ; CIT v. Swastik Textile Trading Co. Pvt. Ltd. (1978) 113 ITR 852 (Guj) ; Satya Vijay Patel Hindu Dharmshala Trust v CIT (1972) 86 ITR 683 (Guj) ; Vallabhdas Karsondas Naha v CIT (1947) 15 ITR 32 (Bom) ; Pradhan v Bombay State Federation of Gaushalas and Pinjrapoles (1957) 59 Bom LR 890 ; Lalita Prasad v Brahmanand AIR 1953 All 449.
62. The object was held to be charitable in the following cases :
- Dwarka Nath Bysack v Burroda Prasad Bysack (1878) ILR 4 Cal 443 ; Advocate General of Bombay v Yusuf Ali Ebrahim AIR 1921, Bom 338 ; CIT v Trustees of Abdul Kadar Ebrahim (1975) 100 ITR 85 (Bom) ; Addl. CIT v A.A. Bibijiwala Trust (1975) 100 ITR 516 (Guj).
- The contrary view is expressed in the following :
- Trustees of Gordhandas Govindram Family Charity Trust v CIT (1952) 21 ITR 231 (Bom) ; Kedia Jatiya Sahayak Sabha and Fund v

- CIT (1963) 49 ITR 74 (Cal) ; CIT v Karim Bros. Charity Fund (1943) 11 ITR 603 (Bom).
63. D.V. Arur v CIT Bombay (1949) 13 ITR 465 ; Taw Chew v Taw Kock AIR 1939 Rang 203 ; Trustees of Gordhandas Govindram Family Charity Trust v CIT (1952) 21 ITR 231 (Bom). The contrary view is found in Ramaswami v Aiyasami AIR 1960 Mad 467.
 64. Yogiraj Charity Trust v CIT (1976) 103 ITR 777 (SC) ; CIT v Karim Bros. Charity Fund (1943) 11 ITR 603 (Bom).
 65. Special provisions are made for tax exemption for approved/ recognised gratuity, provident and superannuation funds in sub-section (25) of section 10 of the Income-tax Act while proviso (iv) to section 164 (1) of the Act indicates the tax treatment of unrecognised funds. For employee welfare trusts in general, vide Baker v National Trust Co. Ltd. 2 All ER 550.
 66. Re. Lokmanya Tilak Jubilee National Trust Fund (1942) 10 ITR 26 (Bom) ; Subhash Chandra Bose v Gordhandas J. Patel AIR 1940 Bom 76 ; Laxman Balwant Bhopatkar v Charity Commissioner, Bombay AIR 1962 SC 1589 ; Bonar Law Memorial Trust v IR (1933) 17 TC 508.
 67. Saraswathi Ammal v Rajagopal Ammal AIR 1953 SC 491. A trust for the performance of ceremonies for the peace of the departed soul is charitable : CWT v Trustees of J.P. Pardiwala Charity Trust (1965) 58 ITR 46 (Bom).
 68. Cricket Association of Bengal v CIT (1959) 37 ITR 277 (Cal). The Madras High Court has taken a different view : CIT v Ootacamund Gymkhana Club (1977) 110 ITR 392 (Mad) ; South Indian Athletic Association Ltd. v CIT (1977) 107 ITR 108 (Mad). The insertion of a specific provision for exemption of the income tax in section 10 (23) of the Income-tax Act has raised doubts on the question whether a sports association can claim to be a charitable trust under sections 11 to 13 and donations to it will qualify for deduction from the taxable income under section 80 G.
 69. Bangalore Race Club Ltd. v CIT (1970) 77 ITR 435 (Mys).
 70. Mohammed Ibrahim Riza v CIT AIR 1930 PC 226 ; East India Industries (Madras) Pvt. Ltd. v CIT (1967) 65 ITR 611 (SC) ; Sri Agastyar Trust v CIT (1963) 48 ITR 673 (Mad) ; In re. Probynabad Stud Farm (1936) 4 ITR 114 (Lah) ; G.K. Hosiery Factory v CIT (1971) 81 ITR 557 (All) ; CIT v Jaipur Charitable Trust (1971) 81 ITR 1 (Del) ; Dharmadeepti v CIT (1978) 114 ITR 454, 463, (SC), reversing CIT v Dharmadeepti (1975) 100 ITR 375 (FB) (Ker) ; Dharmaposhanam Co. v CIT (1978) 114 ITR 463, 471 (SC), affirming (1975) 100 ITR 351 (FB) (Ker) ; Moulana Malak v CIT, AIR 1930 PC 226, affirming AIR 1928 Nag 10 ; CIT v Ahmadabad Mill Owners' Association (1977) 106 ITR 725 (Guj). Also see CIT v Andhra Chamber of Commerce (1965) 53 ITR 722 (SC).

71. CIT v Jamal Mohammad (1941) 9 ITR 375 (FB) (Mad).
72. "Debuttar" means "belonging to the deity." A dedication of immovable property to a deity is an endowment which assumes the character of a private trust and not a "settlement": Bhupatinath v Basanta Kumar AIR 1936 Cal 556.
73. CIT v Sri Jagannath Jew (1977) 107 ITR 9 (SC); Sree Sree Ishwar Sridhar Jew v Mst. Sushila Bala Dasi AIR 1954 SC 69; Sri Sridhar Jiu v Manindra Kumar Mitra AIR 1941 Cal 272; CIT v P. Krishna Warriar (1964) 53 ITR 176 (SC); Sappani Mohamed Mohideen v R.V. Sethu Subramania Pillai AIR 1974 SC 740. Partial dedication is not *debuttar*: there is partial dedication when the entire beneficial interest is not conveyed to the deity.
74. Kunwar Doorganath Roy v Ramchandra Sen (1876-77) 4 IA 52 (PC). For scope of revocation of a charitable trust, see CED v Bhagwandas Velji Joshi (1981) 6 Taxman 202 (Bom); (1983) 131 ITR 326 (Bom).
75. Commissioner, Hindu Religious Endowment v Swamiyar AIR 954 SC 282; Moti Das v S.P. Sahi AIR (1959) SC 942; Smt. Angurbala Mullick v Debabrata Mullick AIR 1951 SC 293; CIT v Pulin Chandra Daw (1967) 63 ITR 179 (Cal); Sri Sri Sridhar Jiu v ITO (1967) 63 ITR 192, 223 (Cal); Nirmala Bala Ghosh v Balai Chand Ghosh AIR 1965 SC 1874; a *shebat* is entitled to minister to the idol (deity) owning the endowed estate. Power to remove *shebait*s has been held to make a *debuttar* settlement revocable: Panchanan Dey (dec'd.) v CIT (1983) 142 ITR 762 (Cal).
76. In essence, a private trust, as distinct from *waqf-fisabili'llah*, a public trust. A *waqf-alal-aulad* ordinarily turns into a public *waqf* when the family benefiting from it becomes extinct. Family *waqfs* have been abolished in Egypt and some other Muslim countries, vide Tahir Mahmood, *Progressive Codification of Muslim Personal Law*, p. 87, *Islamic Law in Modern India*, (1972) Delhi: The Indian Law Institute.
77. Bibi Siddique Fatima v Saiyed Mohammed Mahmood Hasan AIR 1978 SC 1362.
78. A family settlement. See S. Khalid Rashid, *Administration of Waqfs in India: Some suggestions*, pp. 237-38, *Islamic Law in Modern India* (1972), Delhi: The Indian Law Institute.
 The Mussalman Waqf Validating Act of 1913 was necessitated by the decision of the Privy Council in Abdul Fata Mahomed Ishak v Rassamay Dhur Chowdhury (1894) ILR 22 Cal 619 (PC). Family settlements in which the benefits to charity or religion were either illusory or postponed indefinitely while the property so dedicated could be enjoyed from generation to generation by the family of the *waqif* were regarded as opposed to the rule against perpetuity in the Indian Succession Act and the Transfer of Property Act: Fazlul Rabbi

- Pradhan v State of West Bengal AIR 1965 SC 1722 ; Mahant Sri Srinivas Ramanuj Das v Agl. ITO (1978) 115 ITR 153 (SC). Section 3 of the Mussalman Waqf Validating Act 1913, validates such private *waqfs* which, expressly or by implication, reserve the ultimate benefit for charitable or religious purposes. But *waqfs* in which the ultimate benefaction is uncertain will be void : Abdul Karim Adenwala v Rahimbai AIR 1946 Bom 342 ; Faqir Mohd. v Abda Khatoon AIR 1952 All 127.
79. Abadi Begum v Kaniz Zainab (1927) 54 IA 33 ; see also Mulla, *Principles of Mahomedan Law*, 18th Ed. p. 210, notes under sec. 192.
 80. Mundaria v Shyam AIR 1963 Pat 93 ; Mohammad Yusuf v Shafi AIR 1934 All 1013.
 81. Imdad Ali Khan v Sardar Khan AIR 1954 Orissa 15 ; Shri Ghasi v *Waqf-alal-aulad* (1969) All LJ 923.
 82. A *mutawalli* is not a trustee in the technical sense. He is a procurator, superintendent or manager : CWT v Puthiya Ponmani Chintakam Waqf (1967) 63 ITR 787 (Ker) ; Vidya Varuthi Thirtha v Balusami Ayyar AIR 1922 PC 123, 128 ; Alla Rakhi v Mohammad Abdul Rahim (1933) LR 61 IA 50 ; CIT v Puthiya Ponmani Chintakam Waqf (1962) 44 ITR 172 (SC) : CIT v Managing Trustees Nagore Durgah (1965) 57 ITR 321, 325 (SC), regarding *nattanmaigars* who manage the Durgah and *kasupangudars* who have beneficial interests ; vide Tahir Mahmood (1980) : *The Muslim Law of India*, Law Book Company, pp. 288-291 ; also, Hafiz Mohammed Zafar Ahmad v U.P. Sunni Central Board of Waqf AIR 1965 All 333 ; CED v K.A. Kader (1974) 96 ITR 289 (Mad) ; CED v Kamaluddin Fakri (1980) 124 ITR 98 (Mad).
 83. Mumtaz Qadar v A.G. AIR 1946 Oudh 244.
 84. Khalil Ahmed Khan v Siddiq Ahmed Khan AIR 1974 All 382.
 85. Milroy v Lord (1862) 4 De G.F. & J 264 ; Ida Chambers v K.H. Chambers (1940) 2 MLJ 963.
 86. CIT v Hamdard Dawakhana (1960) 39 ITR 144 (Pun) ; Amiya Krishna Khan v Debendra Lal Khan 46 CWN 865 ; Kayastha Pathasala v Mst Bhagwati AIR 1937 PC 4 ; Re. Porter 1925 All ER Rep. 179.
 87. The law of charities does not allow property gifted for charitable purposes to revert to the donor or his legal heirs and successors if there is difficulty in implementing the exact purpose he had in view. The *cy pres* doctrine enables the Court to direct the application of the gift to an object as close as possible to that indicated by the donor. Sec 92(3) of the Code of Civil Procedure, 1908 incorporates the doctrine with effect from February 1, 1977 : Thanthi Trust v CIT (1981) 23 CTR (Mad) 155 ; State of U.P. v Bansidhar AIR 1974 SC 1084, 1090-1 ; Ratilal Panachand Gandhi v State of Bombay, AIR

- 1954 SC 388 ; Commissioner, Lucknow Division v Dy Commissioner, Pratapgarh AIR 1937 PC 240 ; In re. Ulverston & District New Hospital Building Trust (1956) 3 All ER 164.
88. The principle is that the right of sale or alienation should not be suspended for an unreasonable period. The terms of a private trust must specify its life.
89. Section 83 of the Indian Trusts Act : Sir Fazalbhoy Currimbhoy v Official Trustee AIR 1979 SC 687, 691 ; Re Vandervel's Trusts (No. 2) (1974) 1 All ER 47 ; Vandervel v IR (1967) 1 All ER 1 ; Re. Vinogradoff (1935) W.N. 68 ; Essery v Cowland (1884) 26 Ch. D. 191 ; Shephard v Cartwright (1954) 3 All ER 649 ; Gissing v Gissing (1970) 2 All ER 780 ; Pettit v Pettit (1969) 2 All ER 385 ; Smith v Cooke (1891) 40 WR 67, (1891) A.C. 317.
90. Abdul Karim v Rahimbhai AIR 1948 Bom 342, (1946) 48 Bom LR 67 ; Sattar Ismael v Hamid Sait AIR 1944 Mad 504 ; Mt. Rujia Begum v Surajmal AIR 1936 All 404.
91. Dagdu v Bhara ILR 28 Bom 20 ; Thanthi Trust v CIT (1981) 23 CTR (Mad) 155 ; Jagadamba Charity Trust v CIT (1981) 128 ITR 377 (Del) ; Kamla Town Trust v CIT (1975) Tax LR 829 (All). *Halsbury's Laws of England*, Third ed. Vol. 26. para 1709, 920. The author cannot alter the objects of the trust : CIT v S. Ramaswami Iyer (1977) 110 ITR 364 (Mad). He cannot also change the trustees unless this power has been retained by him in the original instrument : CED v K.A. Kadar (1974) 96 ITR 289, 294 (Mad). Where a trust deed has been rectified, a decision on the revocability of the trust will depend on the rectified deed. Where, however, a tax assessment has been completed before rectification of the deed, there is no scope for amending the assessment : Smt. Durga Sundari Dey v CIT (1979) Tax LR 223 (Cal).
92. Sec. 56 of the Indian Trusts Act, 1882. Saunders v Vautier (1835-42) All ER 58. Also, Wharton v Masterman (1895-99) All ER Rep. 687 ; Dawson v Hern IR & M 606 ; Magrath v Morehead (1871) LR 125 Eq. 491 ; Josselyn v Josselyn (1837) 9 Sim 63 ; Gosling v Gosling (1859) 123 RR 107 ; Re. Lord Nunburholme (1911) 2 Ch. 510 ; Berry v Geen (1938) 2 All ER 362 ; Re. Marshal (1911-13) All ER Rep 671 ; Re. Sandeman's Will Trusts (1937) 1 All ER 368 ; Tomlinson v Glyns Executor and Trustee Co. (1970) 1 All ER 381 ; Re. Brockbank Ward (1948) 1 All ER 287 ; Stephenson v Barclays Bank Trust Co. Ltd. (1975) 1 All ER 625. For the Court's inherent powers to make good any want of capacity on the part of the beneficiary, vide IR v Holmden (1968) 1 All ER 148. In the UK, any variation of a trust can be effected only with the approval of the Court, under the Variation of Trusts Act, 1958, where the beneficiaries are unascertained or they include an infant or the unborn. One of the odd features of the trust law in India, as in the UK, is that the beneficiaries cannot

control the trustees, though they can end the trust or call for the conveyance of any of the trust assets to them.

93. An *obiter dictum* of Sir Montague Smith in a judgment of the Judicial committee in *Kunwar Doorga Nath v Ram Chandra* (1877) 2 Cal 341 ; (1876-77) 4 IA 52 that a family consensus may give a different direction to the estate of the family idol has been followed by the Calcutta High Court in *Gobinda Kumar v Debendra Kumar* (1907) 12 CWN 98, but this view has not been accepted by the same High Court in *Chandi Charan v Dulal* ILR 54 Cal 30, CWN 930 ; *Surendra Krishna v Sri Bhuwaneswari*, ILR 60 Cal 54 ; and *Sukumar Bose v Abani Kumar* AIR 1956 Cal 308. See paras 4.52, 4.53 and 4.54, pp. 196-198, B.K. Mukherjee on *The Hindu Law of Religious and Charitable Trusts*, Fourth ed., edited by P.B. Gajendragadkar and P.M. Bakshi, Eastern Law House, Calcutta, 1979.
94. Subsecs. (2) and (3) of sec. 11 of the Income-tax Act, 1961.
95. Subsec. (1) (bb) of sec 13, *Ibid.*
96. *Ibid.*, secs. 2 (38) and 10 (25) and Sch IV Part A for provident funds, and secs. 2 (5), 2 (6), 10 (25) (iv) and 10 (25) (iii) and Sch IV Parts C and B for gratuity and superannuation funds.
97. *Ibid.*, proviso (iv) to sec. 164 (1)
98. *Walker v Reith* 1906-8 F 381 ; 43 SC LR 245 ; *Edwards v Roberts* 19 TC 618 (CA) ; *Smyth v Stretton* 5 TC 36 ; *IR v Parsons* 13 TC 700 (CA).
99. Trust accounts under the Married Women's Property Act 1874 are also proposed to be considered separately along with employee welfare trusts, etc.