

CHAPTER XI:

IMPORTANCE AND TERMINATION OF TRUST

6.1 SOCIAL AND ECONOMIC IMPORTANCE OF TRUST

6.1.1 Employment

Most of the law dealing with employment is governed by contract and statute and so at first sight, we may fail to see clearly where property and trust come. But it should be said already that employment is an asset, even though it is not an item of property. Employment has the characteristics of an asset in that employment cannot just be transferred from one employee to the other.

Trust performs a crucial employment-related function such as by way of pension schemes, Trade Unions and recreational facilities. Usually, the employee is under a sort of fiduciary ('trust-like') duty to make sure that his actions do not conflict with his employer's interests.

6.1.2 Pension

Pension schemes are instituted under the social security system. Basically in Cameroon, when a worker gets registered by his employer in the National Social Insurance Fund (in French CNPS), that employer at the end of each month will have to pay in some small percentage of the worker's salary to CNPS. This institution then holds the money on trust for the worker who, after paying this contributions each month for fifteen years, shall benefit from a monthly pension upon retirement. So one may compare the employer who contributes to the Fund on behalf of the trustee to a settlor, then the Fund to which the contribution is paid is compared to the trustee and the employee who gets the pension upon retirement is like the beneficiary.

6.1.3 Taxation

Trust can be used as a tool for proper planning of taxation. Basically, if a settlor puts property on trust in order to avoid tax (which is possible), the property may still fall under taxable reservation of benefit. Usually, courts have limited power to enforce taxes when it comes to 'offshore' trust or 'non-resident' trusts.

When we entrust money (in the form of taxes) in the hands of administrative authorities, it is in order for them to use that money for the purpose of development and our welfare. This is what Megarry VC referred to in the case of **Tito v. Waddell**

(No2) (1977) as ‘trust in the higher sense’ (or what other refer to as governmental trust). It should however be pointed out that this form of trust is not justiciable in court in same way as a private trust.

It should be indicated that trust serves the purpose of tax avoidance. When a settlor passes on property to a trustee, the tax rates will be reduced, but this is not tax evasion which is an operation through which one seeks to avoid tax which is already due. In effect, tax avoidance is not an offence but tax evasion is a criminal act as Lord Nolan pointed out in the case of **IRC v. Willoughby (1997)**.

6.1.4 Trust and Insolvency

When a person (human or corporate), becomes insolvent, any property to which he is beneficially entitled will be divided among his creditors according to a strict (statutory) order of priority. Considering that commercial transactions have the risk of insolvency, it is always possible for one party to guard against such risk. But how can this be done? Consider the following illustration.

If A sells property to B upon the latter’s promise to pay the money later, then it means that A has only obtained a personal right against B while B gains beneficial interest in the property. At law, such a right is only as good as B’s promise to pay, and nothing more. The problem with the personal right is that the right exists only against B and not against the property itself. So if B becomes insolvent and does not pay for the property, such property will be made available for B’s creditors and it will be shared among them by order of priority. Now if A secured his personal right of repayment, in case of B’s insolvency, A will have priority over the other unsecured creditors. It should however be recognised that there may also be some other secured creditors who may also take priority over A.

So in order for to come out unscathed in case of B’s insolvency, A has to make sure that B does not gains beneficial interest in the property sold on credit until A receives payment. How can this be done?

A can actually enter a ‘return of title clause’ (in case of non-payment of the price) which will permit A to maintain both ownership and beneficial title over the property until payment is done.

Another outlet is that A can, upon conclusion of the sale with B, instead transfer legal title over the property to B and then maintain the beneficial interest over the

property. At this point, A will then have to create an express trust with B in the contract of sale in which A will transfer legal title of the property to B (as a trustee) while A keeps the beneficial interest (as the beneficiary) so that in case of B's insolvency, A still has good and protected claim over the property. This is how trust and insolvency therefore intermingle in a contract of sale. So trust can be used by the seller to protect his interest in property in the event of the buyer's insolvency.

6.1.5 Segregation of Assets

Once property is settled out on trust, the property in question no longer falls within the properties owned by the settlor. So putting property on trust protects the property against the consequences of the settlor's insolvency. This is because if the settlor becomes insolvent, the trust property cannot be made available for his creditors since it is now the trustee who has legal title over them.

In the same way, if the trustee also runs insolvent, that will not affect the trust property even though he is the legal owner because in this case, the property will not actually belong to him, but to the beneficiaries in equity. A good example or demonstration of this situation can be seen with Banking Institutions that go insolvent. Two situations can be illustrated here:

On the one hand, a client may get a loan from a bank and put his property as a collateral. If the client fails to refund the loan, the bank may be entitled to ownership of the property put as collateral. At the moment the property is in the keeping of the bank, the institution is only holding it on trust for the client which may return back to the said client once he returns the loan. If the loan is never refunded, then the bank gets the property as a matter of contractual right, not necessarily in equity. Therefore, in order for the said transaction to mature into a trust relationship, the client (debtor), must refund the loan he obtained from the bank (creditor). We see clearly that the client or debtor can be a settlor of trust when he gives the property to the bank, and also becomes the beneficiary of the same property once he refunds the loan to the bank.

On the other hand, a Banking Institution itself may get loans from other persons or entities and put its assets as collateral. If the Bank unfortunately has to shut down and its assets liquidated to settle its creditors, those who had *frozen* some of the bank's assets (thus constituting what we call *floating charges* or *debenture rights* over such property) will be guaranteed that such property which is already on trust, cannot be

liquidated. In effect, the creditors who hold such rights over frozen assets are referred to as *secured creditors* because the property, though belonging to the Bank, gives the creditors some equitable interest there over and the bank only has legal title, and not absolute title (just like a trustee) over the frozen assets since they cannot dispose of it for instance, and once the Bank is unable to reimburse the creditors and shuts down, the latter gain both legal and absolute title over the assets in question. See also the role of BEAC (Banque des Etats de l'Afrique Centrale) that plays the role of a trustee for the member states of the sub-region whose moneys are deposited in the said institution.

6.1.6. Trust in the Case of Insurance and Accident Compensation in Cameroon

Trust is a very important mechanism by which to obtain compensation in case of motor accidents in Cameroon and this necessarily passes through an insurance scheme. Basically and by way of very simple demonstration, when one gets a car (automobile) in Cameroon, he becomes subjected to a Compulsory Automobile Insurance under the regime instituted by the CIMA (Conference Inter-Africaine des Marches d'Assurances) Code. Once one gets insured (depending on the type of insurance opted for), the *premium* (that is money paid to the insurer or insurance company) is a kind of trust property given to the insurer who in this case becomes the trustee. In the event of an accident, the insurer (trustee) has the obligation, where the conditions are satisfied, to cover the charges that were supposed to be borne by their client (the insured). In this case, the client becomes the beneficiary of the charges covered by the insurer. Thus the client takes the status of settlor at the time he pays the *premium*, but in the event of an accident, the latter also becomes the beneficiary.

Take note that the trust relationship only becomes a reality in the above case when an accident occurs; if no accident ever occurs, the *premium* paid to the insurer by the insured (that is the vehicle owner) never becomes refundable and so there is no way he can become a beneficiary. So the existence of the trust relationship here is a conditional one; it is contingent on the occurrence of an accident. But if no accident ever occurs, which is what is always desired, then it is for the better, because hardly will anyone wish to get involved in an accident just for the purpose of the trust relationship to come to fruition and for him to become a beneficiary.

6.2 TERMINATION OF TRUST

Any adult beneficiary of sound mind can order the trustee to transfer property to him or her. Basically, this is the rule that was laid down in the famous case of **Saunders v. Vautier (1841)**. When such transfer takes place between the trustee and the beneficiary, then it means the trust relationship has come to an end. This rule was further expanded in the 20th Century where two or more beneficiaries are involved. In effect, if the interests of one of the beneficiaries can be severed without prejudice to the rights of the other beneficiaries, then the rule can still apply as the cases of **Re Sandeman's Will Trusts (1937) 1 All ER 368** and **Lloyd's Ban Ble v. Diker (1987) 1 WLR 1324**. In the latter case, the beneficiary inherited through succession. In that succession, one of the beneficiaries was a life tenant and the other was a remainder. For the rule to apply in the case of several beneficiaries, all of them have to agree that the trustees transfer the trust fund to them; it is not the singular decision of one of the beneficiaries only (**Anson v. Potter (1879)** and **Re White (1901) 1 Ch. 570**).

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