

## TOPIC 3. LIABILITY OF BENEFICIARY

## Section

- 274. Liability of beneficiary in general
- 275. Liability of beneficiary upon contract
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- 278. Where the trustee is entitled to exoneration from the beneficiary personally
- 279. Where the beneficiary has received the trust property

## TOPIC 1. LIABILITY OF TRUSTEE

## § 261. Liability of Trustee in General

The trustee is subject to personal liability to third persons on obligations incurred in the administration of the trust to the same extent that he would be liable if he held the property free of trust.

## Comment:

a. *Meaning of personal liability and of liability in a representative capacity.* A person is subject to personal liability if an action can be maintained against him as an individual and his individual property can be subjected by judicial proceedings to the satisfaction of a judgment entered therein.

If a person is subject to liability only in a representative capacity, an action cannot be maintained against him as an individual and his individual property cannot be reached by judicial process, but only such property as he holds in his representative capacity can be reached. As to the circumstances in which a proceeding against the trustee in his representative capacity can be maintained, see §§ 267-271 A.

b. *Indemnity of the trustee.* Although the trustee is personally liable to third persons on obligations incurred by him in the administration of the trust, he is entitled to indemnity out of the trust estate if the liability was properly incurred by him. As to the indemnity of the trustee, see §§ 244-249. The rule stated in this Section, however, is ordinarily applicable whether or not the trustee is entitled to indemnity.

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See Appendix for Reporter's Notes, Court Citations, and Cross References

*c. Application of the rule.* The rule stated in this Section is applicable to liabilities upon contracts made by the trustee in the administration of the trust (see § 262), to liabilities for torts committed in the administration of the trust (see § 264), to liabilities which are imposed upon the holder of the title to the trust property (see § 265). It is also applicable to other liabilities incurred in the administration of the trust.

*d. Cross references.* As to the circumstances under which the trustee is entitled to indemnity out of the trust estate, see §§ 244, 245.

As to the circumstances under which the trustee is entitled to indemnity from the beneficiary personally, see § 249.

### § 262. Liability of Trustee upon Contract

**Except as stated in § 263, the trustee is subject to personal liability upon contracts made by him in the course of the administration of the trust.**

See Reporter's Note.

#### Comment:

*α.* The trustee is personally liable upon a contract made by him in the course of the administration of the trust, whether or not in making the contract he is properly performing his duties as trustee.

The trustee is personally liable whether or not the existence of the trust and the names of the beneficiaries are known to the other party to the contract, and whether or not it appears in the contract that the trustee is making it in the course of the administration of the trust, unless it is agreed that he shall not be personally liable. See § 263.

#### Illustrations:

1. A is trustee of Blackacre. By the terms of the trust A has a power of sale. He employs B, a real estate broker, to sell Blackacre. A is personally liable to B for his commission on effecting the sale.

2. A is trustee of an apartment house. He employs B as janitor. A is personally liable to B for his wages as janitor.