

THE TRANSFER OF PROPERTY ACT, 1882

The Transfer of Property Act [TPA] or TOPA came into existence in 1882. Before that, the transfer of immovable property was governed by principles of English law and equity. The preamble of Act sets out the objectives of the legislation. Scope of this Act is limited. It applies only to transfer by the act of parties and not by operation of law. Also this Act deals with a transfer of property inter vivos, i.e., a transfer between living persons. It contains transfer of both movable and immovable property but a major portion of the enactment is applicable to the transfers of immovable properties only. The Act is not exhaustive.

PREAMBLE

It simply defines and amends certain parts of the law relating to transfer of property by act of parties.

Scope of the Act:

1. Only inter-vivos transfers are included i.e. transfer between living person only.
2. This Act is not applicable to transfers by operation of laws i.e. by sale in execution, forfeiture, insolvency, intestate succession (testamentary transfers/ transfer by will).
3. This is not an exhaustive Act applicable to transfer of property.
4. As the word “consolidated” is omitted in Preamble (i.e. it is not stated that “to define, amend and consolidate laws”) it means
 - i. If a particular transfer is covered by provisions of the Act, then TPA is applicable.
 - ii. If a particular transfer is not covered by Act, then rule of justice, equity and good conscience will apply.
(Which were applicable when the Act was not in existence).
5. The Act is not applicable to transfer by Muslims as it is governed by their personal laws.

Transfer of Property (Section 5)

Transfer of a property means an act by which a living person conveys property in present or future to one or more than one living person(s) or to himself and one or more than one living persons.

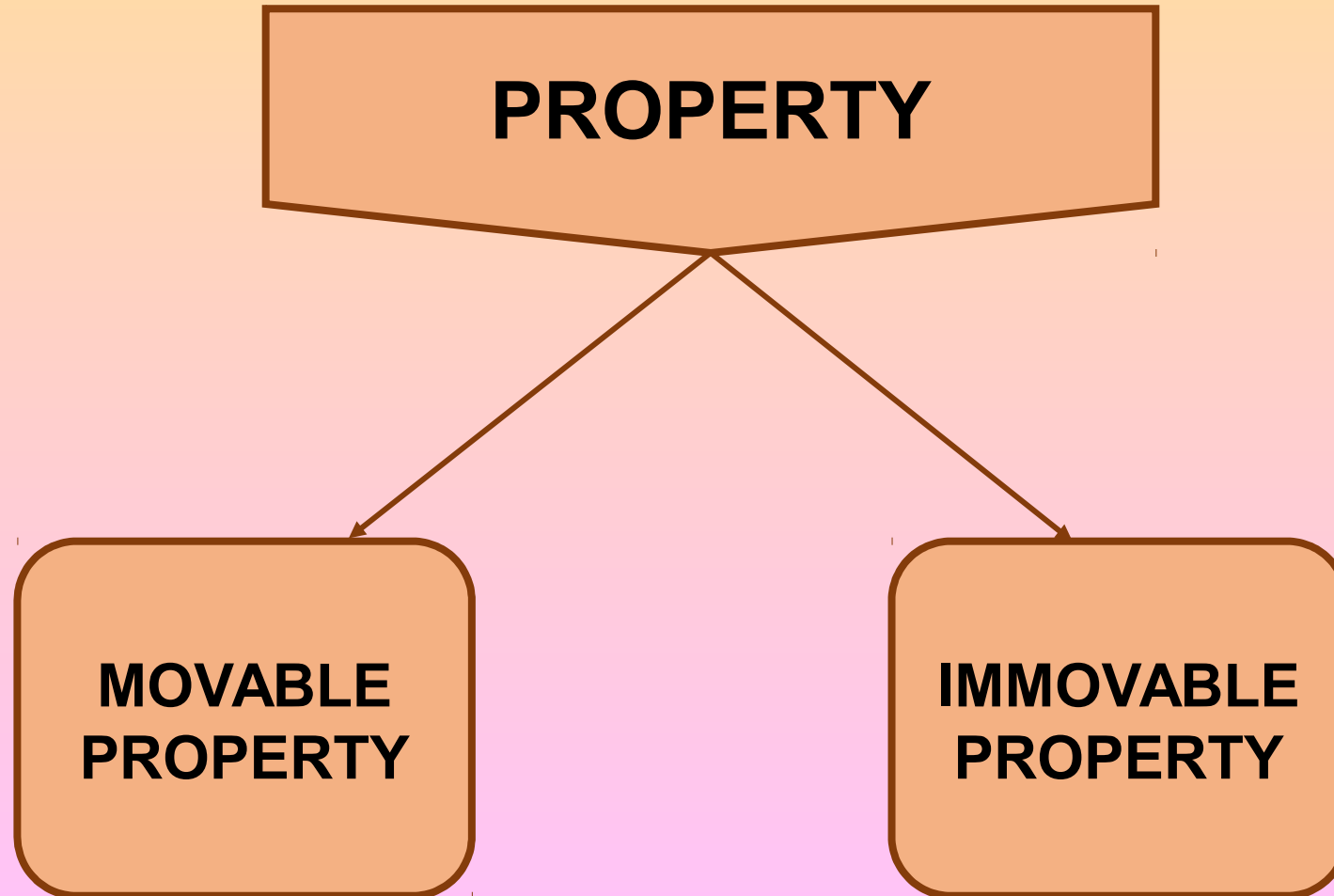
Important Definitions (Section 3):

1. **Instrument:** “Instrument” means a non-testamentary instrument. The Transfer of Property Act does not deal with testamentary transfers (will etc.), that is why instrument does not cover testamentary instrument under this Act.



To be Continued

Types of Property



Movable Property

- a. Transfer of Property Act, 1882: Not defines what is MP. Therefore, it is to be defined with the help of other statutes.
- b. General Clause Act, 1897 defines it as “property of every description except immoveable property”.
- c. The Registration Act defines “moveable property” to include property of every description excluding immoveable property but including standing timber, growing crops and grass.



To be Continued

Immovable Property

- a. Transfer of Property Act, 1882: Defines IMP in negative sense. IMP does not include:
- i. Standing timber (sagwan) are tree fit for use for building or repairing houses. This is an exception to the general rule that growing tree are immovable property.
 - ii. Growing crops or sugarcane: It includes all vegetables growths which have no existence apart from their produce such as pan leave, sugarcane etc
 - iii. Grass: Grass is a movable property, but if it is right to cut grass it would be an interest in land and hence forms immovable property.

Standing timber are trees fit for use for building or repairing houses.



To be Continued

Immovable Property

- b. General Clause Act, 1897 not defines exhaustively. It states “immoveable property shall include
 - i. land,
 - ii. benefits to arise out of land and
 - iii. things attached to the earth, or permanently fastened to anything attached to the earth”
- c. The Registration Act: Act expressly includes under IMP;
 - b. the benefits to arise out of land,
 - c. hereditary allowances,
 - d. rights of way,
 - e. lights,
 - f. ferries and
 - g. Fisheries.

Transfer of Property

Essentials of a valid transfer

According to the Transfer of Property Act, transfer of property means when a living person conveys the property, in present or in future, to one or more persons, or himself and one or more other persons and to transfer property is to perform such act.[section -5]

Legal rules for a valid transfer are:

1. Transfer must be between two or more living persons [section 5]

Living person includes a company or association or body of individuals whether incorporated or not. A juristic person was defined in the case Shiromani Gurudwara Prabandhak committee, Amritsar v. Sri Somnath Dass. In this case, the court said that a juristic person can be an individual, firm, corporate company, association, society, not including partnership firm. Any individual who can sue or be sued under law would satisfy this requirement.



To be Continued

Transfer of Property

Essentials of a valid transfer

2. The transfer must be inter vivos. Therefore there cannot be a transfer to a person not in existence at the time of transfer.
3. A transfer can be made by a person to himself, as for instance when a person vests property in trust and himself becomes the whole trustee.
4. The transfer must be through a conveyance.

Conveyance can be present or future. However conveyance can take place only if there is a creation of a new title. Therefore, there should have been nothing with the transferee before the title

Transfer of Property

Essentials of a valid transfer

5. Property itself must be transferred: The transfer of property may be made to take place with immediate effect or to take place on a future date; however the property must be in existence at the date of transfer. There can be no transfer of future property. The expression 'in present or in future' governs the word 'conveys' and not the word 'property', e.g., A transfers his property to B for life and then to C. The transfer in favour of B is present (although he gets only life interest) but the transfer in favour of C is future transfer. Property must be transferable.

[section 6]

Transfer of Property

Essentials of a valid transfer

6. Person competent to transfer [Section 7] Every person, competent to contract (competency defined in section 11 of Contract Act) and having ownership can transfer property [Krishna Kurhai Versus Grindlays bank]. A minor can be a transferee but a minor is not competent to be a transferor . In other words, transferee need not be a competent person like transferor. A transferee may be a minor, insane or child in mother's womb. However, under Section 6(h)(3) the person must not be a legally disqualified transferee. For example under Section 136 of TOPA judges, legal practitioners and officers connected to the court are disqualified from purchasing actionable claims:
- Consideration and object of transfer must be lawful.[no contract of transfer unlawful as per section 23 of the contract Act]
 - Transfer must take place as per method prescribed under the Act. [section 9]

Transfer of Property

When is movable property regarded as immovable property

For the purpose of law, moveable property is sometimes regarded as immoveable property in following cases:

1. When a thing of chattel is attached or embedded in earth. For instance, if a machinery or a plant is installed on the land, the question arises whether the machinery or the plant is moveable property or immoveable property. In order to find out whether such a thing or chattel is an immoveable property or not, it is to find out
 - a. the mode of annexation of the thing and
 - b. the object or purpose of such annexation.
2. If the machinery is fixed on the land permanently then it becomes immoveable property, whereas if the machinery or engine or any other thing is fixed on a temporary basis, then it will be regarded as moveable property.



To be Continued

Transfer of Property

When is movable property regarded as immovable property

3. Thus, where the owner of a piece of land installed a bone mill along with machinery being held by iron bars which have been dug to a considerable depth then it is a permanent fixture and this will become immoveable property.
4. Similarly, the machinery installed on a cement platform and held in position by being attached to iron pillars fixed in the ground was held to be immoveable property as the annexation was made by the person who owned the buildings as well as the machinery.

Attach to the earth means:

- a. rooted in the earth, as in the case of trees and shrubs;
- b. imbedded in the earth, as in the case of walls or buildings; or
- c. attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.
(e.g. fans, chattel attached to earth or building)



To be Continued

Transfer of Property

Things rooted in the earth: e.g. Trees and Shrubs except standing timber.

Things embedded in the earth: A house being embedded in the earth is immoveable property and this is so even if it is sold for enjoyment as a house with an option to pull it down. The mode of annexation and object of annexation are the two tests to determine whether it is immoveable property or not.

Attached to what is so: The attachment must be as the Section says for the permanent beneficial enjoyment of that to which it is attached e.g. the doors, windows of a house or moveable parts of fixed machinery. But the attachment must be intended to be permanent.



To be Continued

Transfer of Property

Special Transfers

1. Sale- Transfer of Property Act, 1882 applies to Immoveable property only. (Sec.54-56)
2. Gift- Transfer of Property Act, 1882 covers both moveable as well as immoveable property (Sec.121- 129)
3. Mortgage- Transfer of Property Act, 1882 covers immoveable property only (Sec.58-104)
4. Lease- Transfer of Property Act, 1882 covers immoveable property only (Sec.105-117)



To be Continued

Transfer of Property

Formalities for transfer

Sale (Sec 54): It is defined as a transfer of ownership in exchange for a price paid/promised/ part paid and part -promised.

Essentials:

1. There must be at least two parties i.e. transferor or seller and buyer or transferee. The seller and the buyer must be a competent person.
 - a. The seller must be a competent person;
 - b. It means he must be major, of sound mind and not declared by law as disqualified.
 - c. The seller must have a legal title on property which he wants to sell if he does not have the title he cannot sell it.



To be Continued

Transfer of Property

When is movable property regarded as immovable property

Example: a tenant cannot have the power to sell the tenanted property;

- a. The buyer must also be a competent person,
- b. He must not be disqualified by any law to buy a property

2. Subject matter of transfer:

- a. It must be IMP
- b. As Sale of MP is dealt in Sales of Goods Act, 1930.



To be Continued

Transfer of Property

When is movable property regarded as immovable property

3. Consideration:

- a. The consideration must be payable in money only.
- b. The price must be ascertained at the time the contract of sale of IMP is entered into.
- c. The point of time at which the whole consideration is paid makes no difference.

4. Transfer of ownership: It must be ownership of IMP which shall be transferred. The property must be the one which is transferable u/s 6.



To be Continued

Transfer of Property

Mode or transfer of property in case of immovable property

1. If IMP is tangible and of value <Rs.100 it is optional to transfer it
 - by delivery only or
 - by a registered instrument.
2. If IMP is intangible and of value equal to or more than Rs. 100 then transfer can be made only by a registered instrument.

Transfer of Property

Intangible registration compulsory

What does not constitute transfer?

As the transfer of property' means 'conveying of property', i.e., creation of new title or interest in the favour of the transferee, if new title or interest has not created in favour of transferee , the property cannot be said to be conveyed, thus no transfer of property.

Partition: As nothing new is obtained by a co-sharer on partition, it is not a transfer of property. His specific share, which vested in him earlier, is simply separated.

Charge: The only right created in a charge is a right to payment out of the property subjected to charge, thus it is not a transfer. [Gobind Chandra v. Dwarka Nath, (1908) 35 Cal 837]

Relinquishment:-It is an extinction of a right and therefore, there is nothing left to transfer.

Transfer of Property

Intangible registration compulsory

Thus a relinquishment by a reversioner of his reversionary interest does not amount to transfer (Barati Lal V. Salik Ram, 38 All 107). But if the person in whose favour the 'release' is executed, gets certain rights by virtue of such release, the transaction may amount to a transfer [Maniapp pillai v. Periasami, (1975) 1 MU 236].

Surrender.-It is not a transfer as it is the manager of a lesser estate with a greater one [Multhan Lal Saha v. Nagendra Nath Adhikari, (1933) 60 Cal 379].

Easement.-The creation of an easement does not amount to a transfer.

Transfer of Property

Intangible registration compulsory

Will: Because it operates from the death of the person making it, while the definition contemplates a transfer by a living person, does not fall within the definition of transfer. Compromise.-It may or may not amount to transfer. It depends on the facts and circumstances of each case. In *Hussiaa Banu v. Shivanarayan*, AIR 1968 MP 307, it was held that where one of the parties to a settlement gives up a claim to receive a certain sum of money from the other, in consideration of the latter's given up the right to certain property claimed by him, it would amount to a transfer.

Transfer of Property

Intangible registration compulsory

Family arrangement/settlement: A family settlement entered into by the parties for the purpose of putting an end to the disputes among family members does not amount to transfer, not being an alienation it does not amount to the creation of an interest.

Transfer of Property

The properties which cannot be transferred under the TPA

The general Rule is that : Every kind of property can be transferred. But there are certain exceptions-

Subject matter of transfer:

Section 6 Every kind of property can be transferred. But following properties cannot be transferred:

- Chance of an heir apparent
- Transfer of easement
- Restricted interest
- Right to future maintenance.
- Right to sue.
- Transfer of public office, salary and pension

Transfer of Property

The properties which cannot be transferred under the TPA

Following properties cannot be transferred:

Chance of heir apparent (Spes successionist)

Spes succession means exception to succession. Possibility of getting property in future through succession. It is in anticipation or hope of succeeding to an estate of a deceased person. Such a chance is not property and as such cannot be transferred, if it is transferred, the transfer is wholly void.

Example: A is the owner of the property and B is his son. B is the heir of A. This type of property which B hopes to get after the death of the father cannot be transferred, during the life time of A.

Transfer of Property

The properties which cannot be transferred under the TPA

Right of re- entry â€¢ It means right of lessor to re-claim the leased property from lessee on breach of contract or express condition. It is personal benefit which can't be transferred. â€¢ Example: If A leases his property to B with a condition that if he sublets the leased land, A will have the right to re- enter, i.e., the lease will terminate. This right to re- enter is personal benefit available to A, which can't be transferred.

Transfer of easement: An easement means an interest in land owned by another that entitled his holders to a specific limited use or enjoyment. An easement cannot be transferred. â€¢ Example: If A, the owner of a house X, has a right of way over an adjoining plot of land belonging to B, he cannot transfer this right of way to C. But if A transfers the house itself to C, the easement is also transferred to C.

Transfer of Property

The properties which cannot be transferred under the TPA

Restricted interest â€¢ Certain rights enjoyment of which is reserved for certain person. If it is so, it is known as restricted interest. Restricted interest can't be transferred to another person. It includes â€œreligious office'.

Example: The right of PUJARI in a temple to receive offering. The right of WIDOW under Hindu law to residence

Right to future maintenance: Right to future maintenance is personal benefit to whom it is granted. However arrears of past maintenance can be transferred.

Example: The right of a Hindu widow to maintenance is a personal right which cannot be transferred.

Transfer of Property

The properties which cannot be transferred under the TPA

Right to sue: A mere right to sue cannot be transferred. The right refers to a right to damages arising both out of contracts as well as torts. ∴ Example: A commits an assault on B. B can file a suit to obtain damages; but he cannot assign the right to C and allow him to obtain damages.

Transfer of public office: It is against public policy to transfer public offices, salary and pension. Pension and salary are given on personal basis, it can't be transferred. [In *Corporation of Liverpool v. Wright*: Where the law assigns fees to an office, it is for the purpose of upholding the dignity and performing properly the duties of that office and the policy of the law will not allow the officer to bargain away those fees to the appointer or anyone else.]

Transfer of Property

The properties which cannot be transferred under the TPA

Stipends and Pensions: stipends allowed to military, naval, air-force, and civil pensions of the Government and political pensions cannot be transferred.

Unlawful object or consideration- No transfer can be made in for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872; or to a person legally disqualified to be transferee.

Occupancy Rights: Transfer of occupancy rights of a tenant is prohibited.

Example: Tenant can't transfer his right of tenancy and farmer can't transfer his right to land if he himself is a lease.

Transfer of Property

Exception to the principle that property can only be transferred to living person, as on date of transfer

Generally property can only be transferred to living person, as on date of transfer, that is property cannot be directly transferred to unborn person. However there are certain exception to this rule.

Transfer for benefit of unborn person- Section 13: Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transfer in the property.

Section 13 gives effect to the general rule that a transfer can be effected only between living persons. There cannot be a direct transfer to a person who is not in existence or is unborn. This is the reason why section 13 uses the expression transfer 'for the benefit of' and not transfer to unborn person.



To be Continued

Transfer of Property

Exception to the principle that property can only be transferred to living person, as on date of transfer

A child in the mother's womb is considered to be competent transferee. Therefore, the property can be transferred to a child in the mother's womb because the child exists at that time but not to an unborn person who does not even exist in the mother's womb. Every transfer of property involves the transfer of interest. As soon as the property is transferred, the transferor is divested of that interest and the interest is vested in the transferee. For vesting of interest, therefore, it is necessary that the transferee, must be in existence. Otherwise the interest will remain in abeyance till the transferee comes into existence. This is against the very concept of an interest.

Section 13 provides that the property cannot transfer directly to an unborn person but it can be transferred for the benefit of an unborn person



To be Continued

Transfer of Property

Pre-Requisites for a valid transfer of property to an unborn person

Section 13 provides a mechanism for a specific mechanism for transferring property validly for the benefit of unborn persons.

The procedure as follows:

1. The person intending to transfer the property for the benefit of an unborn person should first create a life estate in favour of a living person and after it, an absolute estate in favour of the unborn person.
2. Till the person, in whose favour a life interest is created is alive, he would hold the possession of the property, enjoy its usufruct i.e. enjoyment the property.
3. During his lifetime if the person, (who on the day of creation of the life estate was unborn) is born, the title of the property would immediately vest in him, but he will get the possession of the property only on the death of the life holder.



To be Continued

Transfer of Property

Creation of a Prior Life Interest

As far as the creation of a prior interest is concerned, first, the property is given for life to a living person. It is not necessary that life interest should be created in favour of only one living person. The transfer is competent to create successive life interests in favour of several living persons at the same time.

For instance, A transfer property to B for life, and after him, to C, and then to D again for their lives and then absolutely to B's unborn child UB.

On B's death, the possession would be taken by C and on C's death, by D. On D's death, the possession would go to B's child, who should have come in existence by this time. If he not there, the property would revert back to A, if he is alive, else to his heirs.

No Life Interest for an Unborn Person but only absolute interest



To be Continued

Transfer of Property

Creation of a Prior Life Interest

As far as the unborn is concerned, no life interest can be created for the benefit of an unborn person. Section 13, specifically prohibits that, by the use of the expression, 'the interest created for the benefit of such person' shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

It means that the transfer must convey to the unborn person, whatever interest he had in the property, without retaining anything with him. Thus, no limited estate can be conferred for the benefit of the unborn person. If limited interest in the property is settled for him, the same would be void.

So, when property is transferred in favour of an unborn person, the transferor first gives a life interest to an existing person. After transferring it, he retains with him the remaining interest of the property. This remaining interest with the transferor must be given to the unborn so after the termination of prior life interest, the unborn gets the whole or absolute interest in the property.

Transfer of Property

Rule against perpetual

It is basic rule of Transfer of Property that one must enjoy the property absolutely during his lifetime. One cannot be deprived of his right of enjoyment in respect of the property as he like in his lifetime. The policy of the law has been to prevent property from being tied up forever. Perpetuity is an interest, which will not vest till a remote period. One cannot postpone the vesting of the property in the transferee beyond a certain limit. The period for which vesting may be lawfully postponed is called: perpetuity period.

Transfer of Property

Section 14 of TOPA

No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, 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 interest created is to belong.

The following conditions must be satisfied to attract Section 14:

- There must be a transfer of property.
- The transfer should be to create an interest in favour of an unborn person.
- The unborn person must be in existence at the expiration of the interest of the living persons.



To be Continued

Transfer of Property

Section 14 of TOPA

- Interest created must take effect after the lifetime of one or more persons living at the date of such a transfer and during the minority of the unborn person.
- The vesting of the interest in favour of the ultimate beneficiary may be postponed only up to the life or lives of living persons plus the minority of the ultimate beneficiary but not beyond that.

Section 14 Perpetuity means continuing forever. Rule provides that no transfer of property can operate to create an interest, which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration for that period, and to whom, if he attains full age, the interest created is to belong.

Transfer of Property

Elements of the rules against perpetuity

Property can be transferred to different living persons for their successive lives, before property is transferred to unborn person.

- Unborn person must come in to existence before expiry of existing life of transferor.
- Transfer must be absolute.

Example 1: A transfers a piece of land to his friend B for life, and afterwards to his friend C for life, then to his friend D for life, and then to the son that may be born to B, for his son's life, ~~then~~ then to the son that may be born to C for his life, and then ultimately to the son that may be born to D forever. In case of such disposition of the land, B cannot alienate the property, because he has only a life interest therein. For the same reason, neither C nor D, nor the sons of B and C can alienate the property. When the property finally vests in D's son, only he will be entitled to alienate the property.



To be Continued

Transfer of Property

Elements of the rules against perpetuity

This would be certainly a restraint on the free alienation of the piece of land for a considerable long period. Section 14 prevents this and lays down that one can tie up property and stop its free alienation only for one generation, because all friends of A, now living must die within that time, as they are all candles lighted together.

Extent of Perpetuity Period

Position in India “ Life or any number of lives in being + period of gestation + minority period of the unborn beneficiary.

English Law “ Life or lives in being +period of gestation +minority period.

Transfer of Property

Difference between Indian & English law

- The minority period in India is 18 years whereas it is 21 years under English law.
- The period of gestation should be an actual period under Indian Law but it is a gross period under English law.
- Under Indian law, the property should be given absolutely to the unborn person whereas in English law, need not be absolutely given.
- The unborn person must come into existence before the death of the last life estate holder as per Indian law whereas he must come into existence within 21 years of the death of the last life estate holder in case of English law.



To be Continued

Transfer of Property

Difference between Indian & English law

Further Section 20 of TOPA provides that unless a contrary intention appears from the terms and conditions of the transfer, the moment the person not in existence is born, he or she acquires an interest in the property in question, even though he or she may not be entitled to enjoy it until a certain age, as the property may be in the possession of the life estate holder.

Transfer of Property

Exceptions to the rule of perpetuity

1. Vested interest is not affected by the rule because once the interest are vested it cannot be bad for remoteness.
2. The rule is not applicable to land purchased or held by Corporation.
3. Gift to charities, the rule does not apply to transfer for the benefit of public for religious, pious, or charitable purposes.
4. Properties settled upon individuals for memorable Public Service.



To be Continued

Transfer of Property

Exceptions to the rule of perpetuity

5. The rule against perpetuity does not apply to Personal agreement. for example.. agreement which do not create any interest in the property.
6. A covenant of redemption in mortgage is not affected by the rule.
7. The does not apply to contacts for Perpetual renewal of lease.
8. The rule also does not apply where only charges is created which does not amount to a transfer of an interest.
9. Contract of pre-emption also not affected by rule against perpetuity.

Transfer of Property

Case Law

The rule against perpetuity provides that vesting cannot be postponed beyond the lifetime of anyone or more persons living at the Date of transfer. The basis of the rule against perpetuity is that Liberty of alienation shall not be exercised to its own destruction. The rule of perpetuity is not absolute but it has certain exceptions.

Following are the case laws:

1. Anand Rao Vinayak v/s Administrator general of Bombay, 1896

In this case Bombay High Court declared that the gift void as offering against perpetuity when a gift was made of movable property to a son with gift of shares in the property to son's sons son when they should attain the age of 21.



To be Continued

Transfer of Property

Case Law

2. Abdul fata Mahomed v/s Rasamaya ,1894.

The privy Council held that a gift to an Unborn generations is Forbidden by Mohammedan law except in the case of Wakf.

3. Rambaran v/s Ram Mohit AIR 1967 S.C. 744.

Supreme Court held that the rule against perpetuity does not apply to Personal agreements, for example, agreements which do not create an interest in the property.

Transfer of Title

Sale by person not the owner: —Subject to the provisions of this Act and of any other law for the time being in force, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell;

Provided that, where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.



To be Continued

Transfer of Title

Sale by one of joint owners: If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has not authority to sell.

Sale by person in possession under voidable contract: When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of the Indian Contract Act, 1872 (9 of 1872), but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.



To be Continued

Transfer of Title

Seller or buyer in possession after sale:

1. Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.
2. Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.

Rights & Liabilities of Buyer and Seller (Section:55)

The Section 55 will be applicable only when there is no express contract to the contrary.

Seller's Liabilities before completion of sale:

1. Sellers duty to disclose

- i. any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and
- ii. which the buyer could not with ordinary care discover.
- iii. To produce title deeds- The seller is bound to produce to the buyer on his request for examination all documents of title relating to the properties which are in the seller's possession or power.

2. To answer questions as to title: The seller is bound to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

3. **To execute a proper conveyance:** On payment or tender of the amount due in respect of the price by buyer, it is the duty of seller to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place.
4. **To take care of property and Title deeds:** Between the date of the contract of sale and the delivery of the property, the seller is bound to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and document.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

5. To pay statutory charges due on property- The seller is bound to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

‘Public charges’ means financial or other liabilities such as tax liabilities to the government. The obligation is absolute unless there is a contract to the contrary. These statutory charges cannot be enforced against a buyer who purchases the property without notice of the same.

Rights & Liabilities of Buyer and Seller (Section:55)

Seller's liability after completion of sale:

- a. To give possession:** The seller is bound to give to the buyer or to such person as he directs, such possession of the property as its nature admits. The seller is to give possession to the buyer or his authorized person whenever the buyer so requires.
- b. Implied covenant for title:** The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same, PROVIDED that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

- c. To deliver Title-deeds on receipt of price:** Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power, PROVIDED that,
- i. where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

Seller's liability after completion of sale:

- ii. Where the whole of such property is sold to different buyers, the buyers of the lot of greatest value is entitled to such documents.
- iii. But in case (i) the seller, and in case (ii) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other Inevitable accident.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

Seller's right before completion of sale:

Right to take the rents and profits of the property-The seller is entitled to take the rents and profits of the property till the ownership thereof passes to the buyer.

Charge upon property for unpaid price- Where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, seller will have a charge upon the property in the hands of the buyer for unpaid price.

He will have charge against any transferee without consideration or any transferee with notice of the non- payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part from the date on which possession has been delivered.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

The buyer's liability can be divided into two parts (Sec 5):

Buyer's Liabilities before completion of sale

- a. To disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;
- b. To pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs;

Provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase- money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

Buyer's Liabilities after completion of sale:

- a. Where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
- b. Where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

Buyer's Rights

1. Before completion of sale

- a. Where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
- b. Unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.



To be Continued

Rights & Liabilities of Buyer and Seller (Section:55)

Buyer's Rights

2. After completion of sale

Benefit of increment:

When the ownership of the property has passed to him, he is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.

Definition and nature of Mortgage

“A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.”

- i. The transferor is called a mortgagor,
- ii. the transferee a mortgagee;
- iii. the principal money and interest the payment of which is secured for the time being are called the mortgage money and
- iv. the instrument by which the transfer is effected is called the mortgage deed.



To be Continued

Essentials of a **Mortgage**

1. Transfer of interest:

- i. A mortgage is a transfer of interest in the specific IMP.
- ii. The mortgagor as an owner of the property possesses all the interests in it, and when he mortgages the property to secure a loan, he only parts with a part of the interest in that property in favor of the mortgagee.

2. Specific IMP:

- i. The property must be specifically mentioned in the mortgage deed.
- ii. Where, for instance, the mortgagor stated “all of my property” in the mortgage deed, it was held by the Court that this was not a mortgage.



To be Continued

Essentials of a **Mortgage**

3. To Secure the Payment of a Loan:

- i. The transaction is for the purpose of securing the payment of a loan or the performance of an obligation which may give rise to pecuniary liability.
- ii. It may be for the purpose of obtaining a loan, or if a loan has already been granted to secure the repayment of such loan.
- iii. There is thus a debt and the relationship between the mortgagor and the mortgagee is that of debtor and creditor.



To be Continued

Essentials of a **Mortgage**

There are three outstanding characteristics of a mortgage:

- i. The mortgagee's interest in the property mortgaged terminates upon the performance of the obligation secured by the Mortgage.
- ii. The mortgagor has a right of foreclosure upon the mortgagor's failure to perform.
- iii. The mortgagor has a right to redeem or regain the property on repayment of the debt or performance of the obligation.

Registration of a Mortgage Contract (Sec 59):

1. **Mandatory:** In case of mortgage, other than mortgage by deposit of title deeds, where the principal money secured is Rs. 100 or upwards.
2. **Optional:** In case of mortgage where principal money secured is Rs. 100 or less other than a mortgage by deposit of title-deeds, it can be effected only
 - a. by a registered instrument or
 - b. by delivery of property.

Types of Mortgages (Sec 58)

Type of mortgage depends upon remedies available to mortgagee in the given agreement

1. Simple mortgage.
2. Mortgage by conditional sale.
3. Usufructuary mortgage.
4. English mortgage.
5. Mortgage by deposit of title deeds.
6. Anomalous mortgage.



To be Continued

Types of Mortgages (Sec 58)

1. Simple Mortgage:

- i. The mortgager does not deliver the possession of the mortgaged property.
- ii. He binds himself personally to pay the mortgage money and agrees either expressly or impliedly, that in case of his failure to repay, the mortgagee shall have the right to cause the mortgaged property to be sold and apply the sale proceeds in payment of mortgage money.

The essential feature of the simple mortgage is that the mortgagee has no power to sell the property without the intervention of the court. The mortgagee can:

- iii. Apply to the court for permission to sell the mortgaged property, or
- iv. File a suit for recovery of the whole amount without selling the property.



To be Continued

Types of Mortgages (Sec 58)

Remedies available to Mortgagee

- i. Obtain decree from Civil Court for sale of specific IMP mortgaged.
- ii. If could not recover full amount, then bring a personal action against the mortgagor and obtain a decree for sale of other properties of mortgagor.

Remedies not available to Mortgagee

- i. Foreclosure: right to seize the property.
- ii. Right of possession.



To be Continued

Types of Mortgages (Sec 58)

2. Mortgage by Conditional Sale: in this form of mortgage, the mortgagor ostensibly sells the property to the mortgagee on the following conditions:

- i. The sale shall become void on payment of the mortgage money.
- ii. The mortgagee will retransfer the property on payment of the mortgage money.
- iii. The sale shall become absolute if the mortgager fails to repay the amount on a certain date.
- iv. The sale shall become absolute if the mortgager fails to repay the amount on a certain date.

The sale shall become absolute if the mortgager fails to repay the amount on a certain date.

Sale is subject to a condition that absolute interest will be transferred in specific IMP to mortgagee only in case Mortgagor defaults and if mortgagor fulfills mortgaged condition, sale will become void.

To “foreclose” means to debar the mortgagor from redeeming the property forever.



To be Continued

Types of Mortgages (Sec 58)

3. Usufructuary mortgage

The mortgagor delivers possession of the property or binds himself to deliver possession of the property to the mortgagee. It is called “mortgage with possession”.

- i. The mortgagee is authorized to retain the possession until the debt is repaid.
- ii. The mortgagor reserves the right to recover the property when the money is repaid. The essential feature of this form of mortgage is that the mortgagee is entitled to receive rents and profits relating to the mortgaged property till the loan is repaid and appropriate the same in lieu of interest or in repayment of the loan or both.



To be Continued

Types of Mortgages (Sec 58)

3. Usufructuary mortgage: The mortgager is not personally liable to repay the mortgage money. So the mortgagee cannot sue the mortgager for repayment. He can neither sue foreclosure nor sue for sale of the mortgaged property; the only remedy for the mortgagee is to remain in possession of the property and pay himself out of the rents or profits of the mortgaged property.

Since there is no time limit he has to wait for a very long time to recover his dues.

Importance of possession:

- i. In this type of mortgage, the mortgagor has to deliver possession of the property to the mortgagee.
- ii. In this type of mortgage, the mortgagor has to deliver possession of the property to the mortgagee.

A mortgage may be regarded as usufructuary even though the entire debt is not to be paid out of the profits of the property.



To be Continued

Types of Mortgages (Sec 58)

A Usufructuary mortgage may be either

- i. where the entire mortgage money is to be paid from the profit of the land; or
- ii. where only part of the mortgage money is principal or interest amount is to be paid from the profit of the land.

If in a usufructuary mortgage a time is mentioned during which the mortgagee should recover the debt etc.

- iii. Then after the time is over, the mortgagee should deliver back the property to the mortgagor.
- iv. He cannot refuse to give back the property, if he has not been able to recover the debt and the interest, etc..



To be Continued

Types of Mortgages (Sec 58)

Characteristics of Usufructuary mortgage:

- i. Possession of property must be delivered to the mortgagee.
- ii. There is no personal liability on the part of the mortgagor to pay
- iii. The mortgagee is entitled to rents and profits in lieu of interest or principal or both; and
- iv. The mortgagee however is not entitled to foreclose the mortgagee or to sue for sale.

English Mortgage: Combination of simple mortgage + mortgage by conditional sale. This is hybrid type of mortgage. Section 58(e) states that: “where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee but subject to a proviso that he will retransfer it to the mortgagor upon payment of the money as agreed, the transaction is called an English mortgage”.



To be Continued

Types of Mortgages (Sec 58)

The essential features of an English mortgage are as under:

1. The mortgagor binds himself to repay the mortgage money on a certain day. In other words, there should be a personal undertaking to pay.
2. The mortgaged property is absolutely transferred to the mortgagee.
3. Such absolute transfer is subject to a proviso that the mortgagee will reconvey the property to the mortgagor upon payment by him of the mortgage money on the fixed day.



To be Continued

Types of Mortgages (Sec 58)

Mortgage by deposit of Title deeds in English Law is known as equitable mortgage:

When a debtor delivers to a creditor or his agent, document of title to immovable property, with an intention to create a security there on, the transaction is called mortgage by deposit of title deeds.

Document of title deeds” means that such document as will prima facie/apparently show title to the property of borrower (tax receipt is not a document of title deeds).

Such a mortgage is restricted to the towns of Kolkata, Mumbai, Delhi, Jaipur, 27 places and Chennai and other towns notified by the State government for this purpose in the Official Gazette. This type of mortgage requires no registration. This form of mortgage is also known as equitable mortgage. Title deeds shall be deposited in these towns.



To be Continued

Types of Mortgages (Sec 58)

Equitable mortgage: An equitable mortgage is effected by mere delivery of documents of title to property to the mortgagee, the mortgagor through Memorandum of deposit undertakes to grant a legal mortgage if he fails to pay the mortgage money.

Essential Requirements of equitable mortgage

1. An equitable mortgage requires three essential features

- i. There must be a debt: existing or future,
- ii. There must be deposit of title deeds, and the title deeds should be deposited as security for the debt.
- iii. An intention that the deeds shall be security for the debt.



To be Continued

Types of Mortgages (Sec 58)

Essential Requirements of equitable mortgage:

2. Registration of documents is not necessary.
3. An equitable mortgage can be effected only in the towns of Kolkata, Mumbai and Chennai and in certain places notified by the State Government.
4. The documents are to be retransferred to the mortgagee on repayment of the debt.



To be Continued

Types of Mortgages (Sec 58)

Advantages:

1. No registration is required in equitable mortgage and so stamp duty is saved.
2. It involves minimum formalities.
3. The information regarding such mortgage is kept confidential between the lender and borrower. So the reputation of the borrower is not affected.

Disadvantages:

4. If the mortgagor fails to repay, the mortgagee must get the decree for the sale of the property. Getting a decree is expensive and time consuming.
5. The borrower may hold the title deeds not on his own account, but in the capacity of a trustee. If an equitable charge is created, the claim of the beneficiary under the trust will prevail over equitable mortgage.



To be Continued

Types of Mortgages (Sec 58)

Anomalous mortgage: In terms of this definition, an anomalous mortgage is one which does not fall under anyone of the above five terms of mortgages. Such a mortgage can be effected according to the terms and conditions of the mortgagor and the mortgagee. Usually it arises by a combination of two or more of the above said mortgages. It may take various forms depending upon custom, usage or contract.

Rights of Mortgagor

By mortgaging the property the mortgagor does not cease to be its owner, he only transfers an interest in

it. Rights of Redemption: The mortgagor has right to take back the mortgaged property;

- i. By paying the mortgage money at any time after the stipulated date for repayment
- ii. Provided that the right of redemption has not been terminated
 - a. By an act of the parties or by decree of a court.
 - b. Before it is barred by the Limitation Act. According to the Law of Limitation the, mortgagor can redeem the property within 60 years after the money has become due.

This right to redeem the property even after the time of payment has elapsed is called the Right or Equity or Redemption. But the mortgagor is not entitled to redeem before the mortgage money becomes due on the date fixed for repayment of the loan. His right to redeem arises only when mortgage money becomes due and not before.



To be Continued

Rights of Mortgagor

Right against clog on equity of redemption:

- i. Right of redemption or equity of redemption is the essence of a mortgage, and any provision inserted in the mortgage deed to prevent, evade or hamper redemption is void.
- ii. Any condition which prevents the mortgagor from redeeming the property is called a “clog” on the equity or right of redemption and is void.
- iii. The rule of equity that once a mortgage always a mortgage prohibits a clog on the right of redemption.

In other words, once a transaction is found to be a mortgage, the Court would not permit any condition in a mortgage deed which would prevent or impede redemption or repayment of the loan for which the security was given.



To be Continued

Rights of Mortgagor

Right of partial redemption:

- i. A mortgage, as a rule, being one and indivisible for the debt and every part of it, the mortgagor cannot redeem piecemeal; he must redeem the whole property.
- ii. But Section 61 of the Act gives a right of partial redemption stating that “a mortgagor who has executed two or more mortgages in favor of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately or any two or more of such mortgages together.”



To be Continued

Rights of Mortgagor

Implied contract by mortgagor: The parties are free to enter into any terms they like. Where, however, the contract does not contain all the terms, Section 65 provides for implied terms as follows:

In the absence of a contract to the contrary, the mortgagor shall be deemed to have contracted with the mortgagee that the;

- a. Mortgagor is entitled to transfer the interest (covenant for title);
- b. Mortgagor will assist the mortgagee to enjoy quiet possession;
- c. Mortgagor will pay public charges in respect of the mortgaged property;
- d. Mortgagor covenants as to payment of the rent due on lease where, the mortgaged property is leased;
- e. Mortgagor covenants as to payments of interest and principal on prior encumbrances, where the mortgage is a second or subsequent encumbrance on the property.

Rights of Mortgagee

1. **Right to sue for mortgage money:** The mortgagee has the right to file a suit in a court of law for the mortgage money in the following cases;
 - a. Where the mortgager binds himself to repay the mortgage money, as in the case of simple and English mortgage.
 - b. Where the mortgaged property is wholly or partly destroyed or the security is rendered insufficient and the mortgager has not provided further security.
 - c. Where the mortgagee is deprived of the whole or a part of his security by the wrongful act of the mortgager.
 - d. Where the mortgager fails to deliver the mortgaged property in case the mortgagee is entitled to it.



To be Continued

Rights of Mortgagee

2. **Right of sale:** The mortgagee in case of a simple, English and equitable mortgage has the right to sell the property after filing a suit and getting a decree from a court.
3. **Right of foreclosure:** The mortgagee has a right to obtain from the Court a decree for foreclosure against the mortgager, that is, the mortgager is absolutely debarred of his right to redeem the property. The right of fore closure is allowed in;
 - i. A mortgage by a conditional sale, and
 - ii. The anomalous mortgage.



To be Continued

Rights of Mortgagee

4. **Right of accession to property:** If any addition is made to the mortgaged property, the mortgagee is entitled to such addition for the purpose of security provided there is no contract to the contrary. For example, A mortgages a certain plot of land to B and afterwards constructs a building on it. B is entitled to the building and land as security for the loan.
5. **Right of possession:** The mortgagee is entitled to the possession of the mortgaged property as per the terms of mortgage deed. Such a right is available in usufructuary mortgage

LEASE

It applies to all kinds of leases relating to immovable property, except those, which are meant for agriculture.

- i. Meaning and nature of lease:** According to Section 105, a “lease” of immoveable property is a transfer of a right to enjoy property. Since it is a transfer to enjoy and use the property, possession is always given to the transferee. The lease of immoveable property must be made for a certain period. For example, you may give a lease of property for a definite number of years, or for life, or even permanently.

Essentials of Lease

The essentials of a lease are:

1. It is a transfer of a right to enjoy immoveable property;
2. Such transfer is for a certain time or perpetuity;
3. It is made for consideration which is either premium or rent or both;
4. The transfer must be accepted by the transferee.

The transferor is called the lessor, the transferee is called the lessee, the price is called premium and the money, share, service or any other thing of value to be so rendered is called the rent.

- i. The parties to the lease (i.e. lessor and lessee), must be competent to make and to take the lease respectively.
- ii. A lease can be inherited and transferred in case the document specifically provides for inheritance and transfer.

Execution of Lease (Sec 107)

3. **An oral agreement or an unregistered document cannot be used in evidence in Court:**

The rules relating to lease does not apply to

- i. Lease of Govt. Lands or Leases granted by the Govt.
- ii. Lease entered into with Govt.
- iii. Lease relating to agricultural property or any agriculture purpose.

If a lease is required to be registered and does not get registered, in those cases the lease is said to be void.



To be Continued

Execution of Lease (Sec 107)

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If a lease is required to be registered and does not get registered, in those cases the lease is said to be void.

Privileges and Liabilities of Lessor as well as Lessee (Sec 108)

In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased.

Rights & Liabilities of lessor as well as lessee (Sec 108)

Rights and Liabilities of Lessor: If there is no contract or local usage to the contrary

- a. The lessor is bound to disclose to the lessee any material defect in the property with reference to its intended use of which the lessor is and the lessee is not aware. This rule applies only to physical defects of the property such as the condition and the nature of the property leased.

The lessor is not bound to disclose whether or not he has title to the property.

- b. To put the lessee in possession of the property. A lease is a transfer of possession the consideration being rent and, therefore, it follows that the landlord cannot recover the rent unless he has delivered possession to the tenant. If a contract of lease has been executed and the lessor does not give possession of the property to the lessee, the lessee can sue the lessor for possession.



To be Continued

Rights & Liabilities of lessor as well as lessee (Sec 108)

- c. **Covenant for quiet enjoyment:** The covenant, that is the right to undisturbed possession, so long as the lessee pays the rent, presupposes possession
 - i. The covenant for possession gives the lessee the right to obtain possession;
 - ii. The covenant for quiet enjoyment gives the lessee a right to continue in such possession.
 - iii. If the lessee's possession is disturbed, he can sue for damages or, in case a part of the leased property is taken possession of either by the lessor or by any third-party; the lessee can hold a part of the leased property and pay a proportionate rent.

Rights Of Lessee

1. **Right to make addition:** If during the continuance of the lease any accession is made to the property, such accession shall be deemed to be comprised in the lease; the lessee has a right to enjoy the accretions of the leased property.
2. **Destruction of property due to natural or uncontrollable cause:** If by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void,

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision.



To be Continued

Rights Of Lessee

3. **Right to make any repairs:** If the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor.
4. **Right to statutory dues paid by lessee:** If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor



To be Continued

Rights Of Lessee

- 5. Right to take the things added to property:** The lessee may [even after the determination of the lease] remove, at any time [whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth; provided he leaves the property in the state in which he received it

Note: Lessee can exercise this right till he is in possession of the property and not afterwards.

- 6. Determination of lease for no fault of lessee:** When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them. If the lease is of a definite period, such a right cannot be claimed, particularly, when lessee has committed a fault, e.g., where he has committed a breach of a condition entailing forfeiture.



To be Continued

Rights Of Lessee

7. Right to further transfer/ sub-let/mortgage lessee's interest: The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

But this right cannot be exercised:

- i. When tenant is not authorized to transfer by contract of lease
- ii. The farmer of an estate in respect of which default has been made in paying revenue, or
- iii. The lessee of an estate under the management of a Court of Wards (where the person is given estate to take care of for benefit of minor who has no guardian).



To be Continued

Rights Of Lessee

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Duties Of Lessee

1. **Duty to disclose:** The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest.
2. **Duty to pay premium or rent in time:** The lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf; in case the lessee does not pay the rent, he may incur forfeiture of the tenancy. The liability to pay the rent commences from the date the tenant is put into possession.



To be Continued

Duties Of Lessee

- 3. Duty to keep and return the property in good condition as it was taken:** The lessee uses the property as a person of ordinary prudence would make use of. But he shall not permit another person to use the property for purposes other than that for which it was leased. The lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

He should not do any act which is destructive of or permanently injurious to the property.

- 4. Duty to inform encroachment:** If the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;
- 5. Restore the possession of the property:** On the determination of the lease, the lessee is bound to put the lessor into possession of the property



To be Continued

Duties Of Lessee

6. **Duty of not allowing other to use the property and its products:** The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [or sell] timber, pull down or damage buildings 3[belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;
7. **Duty not to erect any permanent structure on the property:** He must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes; if he wants to erect certain fixtures or chattel on the leased property, it must be done without causing any damage to the property. Before the termination of the lease, he can remove all the things attached to the earth. If permanent fixtures are to be made, the lessee must obtain the consent of the landlord.

Gift of Immovable Property

The provisions relating to “Gifts” have been stipulated under Sections 122 to 128 of the Act.

Section 122 of the Transfer of Property Act defines “gift” as follows:

“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration by one person called the donor, to another called the donee and accepted by or on behalf of the donee.

Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

Gift of Immovable Property: Essentials

1. There must be a transfer of ownership.
2. The subject matter of gift must be a certain existing moveable or immoveable property.
3. The transfer must be made voluntarily.
4. It must be done without consideration.
5. There must be acceptance by or on behalf of the donee, and such acceptance must be made during the lifetime of the donor and while he is capable of giving.

There are two parties to the gift: donor and donee. The donor must be a person competent to transfer; whereas the donee may be any person. The gift can be made to any one, to an incompetent person or even to a juridical person. The essence of a gift is that it is a gratuitous transfer

Formalities in case of Gift of Immovable Property:

According to Section 123, a gift of immoveable property must be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. A gift of moveable property may be made by a registered instrument or by delivery of property. Where the donee is already in possession of the moveable property, as no future delivery is possible, the donor may make a declaration of the gift in his favor. For example, where a piece of furniture or a television set belonging to the donor is lying with a friend of his, the donor may simply declare that he makes a gift of the furniture or the television set and the gift is complete. The declaration must be clear and the donee must accept the gift.



To be Continued

Formalities in case of Gift of Immovable Property:

A gift of immovable property, as said above, must be effected by registration. Where a gift in favor of someone is registered but it is not accepted by the donee, the gift is incomplete. Suppose, a document is executed by the donor who makes a gift of immovable property and the deeds are delivered to donee, and the donee accepts the gifts but the document is not registered. Will the gift be valid? It has been held by the Courts that the gift is valid. While registration is a necessary formality for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place. The donee in such a case can ask the donor to complete the gift by registration. Thus, the most essential thing for the validity of a gift is its acceptance.



To be Continued

Formalities in case of Gift of Immovable Property:

If the gift is accepted but not registered it is a valid gift. The Privy Council in *Kalyan Sundram v. Kumarappa*, A.I.R. 1925 P.C.42, decided that after acceptance of the deed of gift and before registration, the donor cannot revoke the gift. The gift which is accepted by the donee, will take effect from the date of the execution of the document by the donor, even though it is registered at a later date.

If the deed of gift is executed but never communicated to the intended donee and remains in the possession of the donor undelivered, it cannot be compulsory registered at the instance of the donee. The reason is that the donee did not accept the gift, the donor can at any time before such acceptance revoke the gift. But once a gift is accepted by the donee, the donor cannot revoke it. A gift may, however, be revoked if it is brought about by a fraud or misrepresentation or undue influence.



To be Continued

Formalities in case of Gift of Immovable Property:

The other essential characteristic of a gift is that it cannot be revoked at the will and pleasure of the grantor. A revocable gift is one which may be revoked by the donor at any time. Its revocation would depend upon the mere will or pleasure of the donor. Such a gift is void. But on the other hand, if the condition is one which does not depend on the will or pleasure of the donor, the gift can be revoked on the happening of such condition.

Illustration

A gives a field to B, reserving to himself, with B's assent, the rights to take back the field in case B and his descendants die before A, B dies without descendants during A's lifetime. A may take back the field.

A gift which comes into existence on the fulfilment of a condition, that is to say, a gift which is subject to a condition precedent is also valid. A condition precedent, as already explained in this study dealing with vested interest and contingent interest, is one which must be fulfilled before the transfer takes effect. But the condition attached to the gift should not be illegal or immoral. For instance, a gift to A on condition that he murders B is not valid.



To be Continued

Illustration

A gift comprising both of existing property and future property is void as to the latter. For example, A makes a gift of his house and also makes a gift of the additions that he is likely to make in future. Here the gift of the house is valid but the gift of the additions that are yet to be made is invalid.

Onerous gift: Lastly, reference may also be made to what is known as an onerous gift. It may be that several things are transferred as a gift by single transaction. Whereas some of them are really beneficial the others convey burdensome obligations. The result is that the benefit which it confers is more than counter balanced by the burden it places.



To be Continued

Illustration

For instance, A makes a gift of shares in the companies X and Y. X is prosperous but heavy calls are expected in respect of shares in Y company. The gift is onerous. The rule as laid down in Section 127 is that the donee takes nothing by the gift unless he accepts it fully. Where the gift is in the form of two or more independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the other.

The rules pertaining to gifts in the Transfer of Property Act do not apply to the gifts by Mohammedans. If a gift is made by a Mohammedan, its validity has to be judged according to Muslim law and not according to the Transfer of Property Act.

Summary

- ❑ Transfer of a property means an act by which a living person conveys property in present or future to one or more than one living person(s) or to himself and one or more than one living persons.
- ❑ The Registration Act defines “moveable property” to include property of every description excluding immoveable property but including standing timber, growing crops and grass.
- ❑ Benefit of increment: When the ownership of the property has passed to him, he is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof.
- ❑ “A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.”

To be Continued

Summary

- ❑ The mortgager is not personally liable to repay the mortgage money. So the mortgagee cannot sue the mortgager for repayment. He can neither sue foreclosure nor sue for sale of the mortgaged property; the only remedy for the mortgagee is to remain in possession of the property and pay himself out of the rents or profits of the mortgaged property.
- ❑ An equitable mortgage is effected by mere delivery of documents of title to property to the mortgagee, the mortgagor through Memorandum of deposit undertakes to grant a legal mortgage if he fails to pay the mortgage money.
- ❑ The transferor is called the lessor, the transferee is called the lessee, the price is called premium and the money, share, service or any other thing of value to be so rendered is called the rent.
- ❑ The lessor is not bound to disclose whether or not he has title to the property.