

CHAPTER COVERAGE

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- Reversion & Remainder
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The term transfer means a process or an act by which some property is handed over to another. Para 1 of Section 5 defines transfer or property as follows:

WHAT IS TRANSFER

Transfer of property means an act by which a living person conveys property, in present or in future to one or more other living persons or to himself and one or more other living persons: and to transfer property is to perform such act.

ESSENTIAL ELEMENTS OF TRANSFER OF PROPERTY

1. Transfer: The essence of the term transfer is to convey. It therefore implies conveyance of property by a person entitled to it to a person having no title to it.

2. Living person: A transfer usually involves two distinct living person. The term living person includes a company or association or body of individuals, whether incorporated or not.

3. Conveyance: Section 5 while defining the term transfer of property says that transfer of property means an act by which a living person conveys property.

The word conveys is used in Section 5 in a very wide sense. The following do not constitute a

transfer of property within the meaning of Section 5.

- a) Family arrangements
- b) Settlement of disputed claim
- c) Release relinquishment and surrender
- d) Partition.

4. Property: the term property is not defined in the act Section 9 of the Act however says that property of any kind may be transferred. This means the term property is used in the act in very wide sense and is left open for Judicial Interpretation.

5. In present or in future: Transfer of property may take place in present or in future but the property must be in existence.

IMMOVABLE AND MOVABLE PROPERTY

Movable property

- The Act does not define movable property but it may be said that any property which is not immovable property is movable property.

Section 2 (9) of the Registration Act 1908 defines movable property as including standing timber growing crops and grass , fruit upon and juices in trees and property of every description except immovable property.

IMMOVABLE PROPERTY

• The act does not define immovable property **Section 3 only** states that immovable property does not include standing timber, growing crops or grass etc.

• According to **Section 3 (26)** of the **General clauses Act 1897**, immovable property includes land, benefits arise out of land, thing attached to the earth or permanently fastened to anything attached to the earth:

• As per **Section 2 (6) of the registration Act 1908**, the expression immovable property is defined to include land, building, hereditary allowances, right to ways , right of ferries, fisheries or any other benefit arise out of land and thing attached to earth but **does not include** standing timber, growing crops or grass.

Immovable property includes not only physical objects like land and building but also every benefit arising out of it and every interest in it.

| Recognized as immovable Property | Does not recognized as immovable property |
|---|---|
| A right to way | A copyright |
| A right of ferry | Standing timber |
| A right of fishery | Growing crop |
| Right to receive future rents and profit of | Grass |

ESSENTIALS OF A VALID TRANSFER

1. Property must be transferable (Sec-6)

The general rule is that subject to exceptions mentioned in Section 6, every kind of property can be transferred.

2. Transferor must competent (Section 7)

Every person competent to contract and entitled to transferable property or authorized to dispose of transferable property not his own is competent to transfer such property either wholly or in part and either absolutely or conditionally in the circumstances to the extent and in the manner allowed and prescribed by any law for the time being in force.



Persons who cannot assign their interest [Section 6 (i)]

- A tenant having an un-transferable right of occupancy cannot assign his interest as such tenant.
- The farmer of an estate in respect of which default has been made in paying revenue cannot assign his interest as such farmer.

3. Transferee must be competent [Section 6 (h) (3)]

As a general rule every living person, even a minor **can be transferee or property**. But, **person legally disqualified cannot be a transferee**.

4. Consideration and object must be lawful [Section 6 (h) (2)]

5. Transfer must not be opposed to nature of interest [Section 6 (h) (1)]

The following cannot be transferred:

i. Res communes: i.e., thing of which no one in particular is the owner such as light, air, water of rivers or the Sea.

ii. Res extra commercium: i.e., thing thrown out of commerce such as things dedicated to public or religious uses..... **ex.- pooja's Prasad.**

6. Transfer must be in the prescribed manner [Section 9]

The transfer of property must be made in the manner and form prescribed by the Act.



The following transfers, in which writing is must

- Sale of immovable property of the value of Rs. 100 or more.
- Simple mortgage irrespective of the amount secured.
- All other mortgages for Rs. 100 or more

a) Chance of an heir apparent or “SPES SUCCESSIONIS” [Section 6 (a)]

Explanation:- The technical expression for the chance of an heir apparent succeeding to an estate is called “**spes successsionis**” which means a means chance of succession

(l) Chance of relation obtaining a legacy on the death of a kinsman.

b) Right of re-entry [Section 6 (b)]

Explanation:- This is right which the lessor has against the lessee for breach of an express condition of the lease which provides that on its breach the lessor may re-enter.

c) Transfer of easement [Section 6 (c)]

Explanation:-Easement means an interest in land owned by another that entitles its holder to a specific limited use or enjoyment.

d) Restricted interest or personal interest [Section 6 (d)]

Explanation:-The case which fall under this head include the following:

- The right of pujari in a temple to receive offerings
- The office of a mohunt of mutt.

e) Right of future maintenance [Section- 6](d)]

A right to future maintenance is solely for the personal benefit of the person to whom it is granted, and it cannot be transferred.

Example-The right of Hindu widow to maintenance, is personal right hence cannot be transfer.

f) Mere Right to sue [Section 6 (e)]

A mere right to sue cannot be transferred. This prohibition is based on the ground of public policy.

The object of this prohibition is to prevent trafficking in litigation.

g) A public office cannot be transferred nor the salary of a public officer.

h) Stipends allowed to military, naval , air force and civil pensioners of the government and political pensions.

REVERSION AND REMAINDER(USED IN ENGLISH LAW)**REVERSION**

It is the residue of an original interest which is left after the grantor has granted the lessee a small estate.

For example:- Rampat has given a property on lease for 5 years to Dheeraj Tyagi Classes. Now after end of 5 years property will revert back to Rampat. This is called reversion.

REMAINDER

When the owner of the property grants a limited interest in favour of a person or persons and gives the remaining to others, it is called a “remainder”.

For example:-A the owner transfer the property to B for life and then to C. Here the interest of B is limited for life and after B death property is transferred to C. In this case the granter has transferred some interest to Mr.B. and remaining interest to C. this remaining interest is known as Remainder.

DOCTRINE OF ACCUMULATION OF INCOME (SEC 17)

Section 17 does not allow accumulation of income from the land for an unlimited period without the income-being enjoyed by the owner of the property. The laws allow accumulation of income for certain period only. The period for which such accumulation is valid is:-

The life of the transferor; or period of eighteen years from the date of transfer,

Any direction to accumulate the income beyond the period mentioned above is VOID.

EXCEPTION

I. The payment of the debts of the transferor or any other person taking any interest under the transfer, or

II. The provisions of portions for children or any other person taking interest in the property under the same transfer, and

III. The preservation or maintenance of the property transferred.

Example : A settles the sum of Rs. 5, 000 for the benefit of B on 1st January, 1979 and directs the trustee to invest the money in units of the Unit trust of India and to deliver the total accumulated income and the units to B on the turn of the century.

B would be entitled to the accumulated income and the units before the stipulated period, i.e. on 1st January, 1997 i.e. 18 years after 1st January, 1979. The accumulation of incomes is valid up to 31st December, 1996 and would be void beyond the period.

TRANSFER FOR THE BENEFIT OF UNBORN PERSON

Section 13 may be analyzed as under:-

- (a) No transfer can be directly made to an unborn person.
- (b) The interest in favour of the unborn person must be preceded by a prior interest. It is not permissible to confer only a life estate on such person.
- (c) The prior interest must be also created by the same transfer.

(d) The unborn person must be given the whole of the remaining interest of the transferor in the property.

Examples: A transfers property, of which he is the owner, to B in trust for A, and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's Second Son.

The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

VESTED AND CONTINGENT INTEREST

VESTED (Section 19)

Vested Interest: The term 'Vested' is thus used in two senses, i.e.

- (a) Vested in possession, or
- (b) Vested in interest only

An interest is said to be '**Vested in possession**' when it is a right to present possession of property. An interest is said to be '**Vested in Interest only**' when it gives a present right to the future possession or enjoyment of property.

Example: A transfers his land to B for life and then to C, B in this case, has vested interest in possession. He has the immediate right to the possession of land. C has also vested interest in the land even during the lifetime of B with a present fixed right to enjoyment of land on the death of B, the interest of C is not subject to any uncertain conditions, as B is bound to die sooner or later. If C dies before B, C's heirs will inherit the land.

Vested interest is not defeated by the death of the transferee:

CONTINGENT INTEREST (SECTION 21)

"Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, also known as "condition precedent" or if a Specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property.

Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible."

Contingent interest is not heritable although it is transferable.

Examples: property is given to A for life and then to B, if he marries C. B should marry C before A dies. If he does so, his interest is converted into vested interest. Before B marries C his interest is contingent.

DIFFERENCE BETWEEN VESTED INTEREST AND CONTINGENT INTEREST:

| Basis | Vested Interest | Contingent Interest |
|----------------------------------|--|---|
| Fulfillments of Conditions: | Vested Interest does not depend upon the fulfillment of any condition, | Contingent Interest' depends upon the fulfillment of some condition precedent which may or may not happen. |
| Right of Enjoyment | There is a present immediate right though its enjoyment may be postponed to some future date | Contingent Interest' right of enjoyment is to accrue on the happening of an event which is uncertain. |
| Effect of transferee's death | Vested Interest is not defeated by the death of the transferee before he obtains possession. | Contingent Interest' does not take effect in the event of the transferee's death before the fulfillment of the condition. |
| Transferability and heritability | Vested Interest is both transferable as well as heritable. | Contingent Interest' is not transferable, but whether it is heritable or not depends on the nature of the contingency. |

DOCTRINE OF ELECTION (sec 35)

A man cannot blow hot and cold at same moment of time.

This principle is underlying the doctrine of election is that a man is not to be heard who says two things contradictory to each other.

In other words a man cannot approbate and reprobate or blow hot and cold.

In simple words, it means that a man taking a benefit under an instrument must also bear the burden.

Example: A transfers his house to B, by a gift and in the same gift deed asks B to transfer his shop to C. If B wants to have the house, he must transfer his shop to C. B is now put to election. He may elect to have the house in which case he will have to transfer his shop to C, or he may reject the transfer in which case neither he gets the house nor the burden of transferring the shop to C.



The person, who is at point of election rejects the property than property will revert back to transferor and he will compensate the disappointed person. AND if transferor dies

before election than his representative will satisfies the disappointed person.

Example: The farm of Meerut is the property of C and worth Rs. 800,000. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 10,00,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000,000.00. If A dies before the election, his representative must, out of Rs. 1,000,000.00 pay Rs. 800,000.00 to B.

WHEN ELECTION IS POSSIBLE

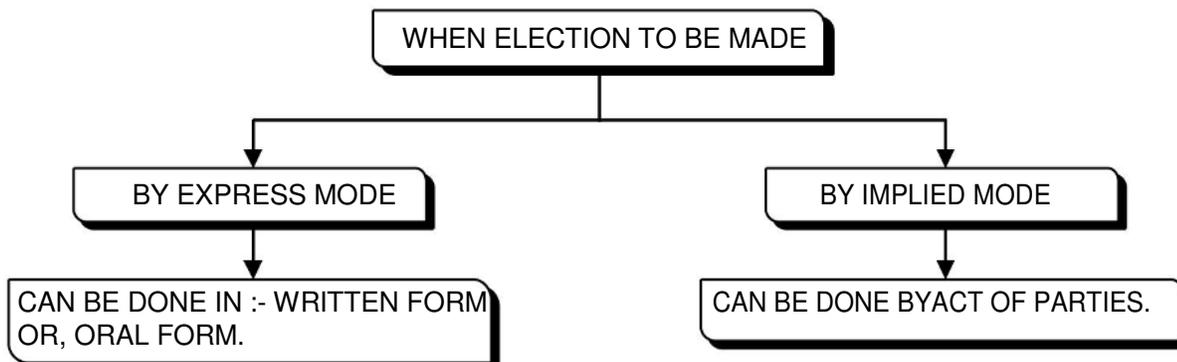
The question of election arises only when a transfer is made by the same document. if the transferor makes a gift of property by one deed and by another asks the done to part with his own property then – “NO QUESTION OF ELECTION”

WHEN ELECTION IS SAID TO BE MADE

Election can be made express or implied by conduct.

Example: A transfers to B an estate C is entitled and as part of the same transaction gives C a coal mine. C takes possession of the mine and exhausts it . He has thereby confirmed the transfer of the estate to B.

Period of election:- If the owner does not within one year after the date of transfer signify to the transferor or his representative his intention to confirm or to dissent from the transfer, the transferor or his representatives may upon the expiration of period, require him to make election. If the owner does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.





- election generally to be made within 'reasonable period' of time ie. within 1 year.
- If within one year no decision is taken by the person who is put on election then, it is to be treated as, deemed rejection.
- The time of one year is only applicable in case of 'express mode'.

CONDITIONAL TRANSFER

When an interest is created on the transfer of property but is made to depend on the fulfillment of a condition by the transferee, the transfer is known as a conditional transfer.

Such a transfer may be subject to a **condition precedent or a condition subsequent.**

If the interest is made to accrue on the fulfillment of a condition, the condition is said to be **condition precedent.**

For instance, A agrees to sell his land to B if B marries C. This is a condition precedent. Condition subsequent is one which destroys or

divests the right upon the happening or non-happening of an event.

For example:- A transfers a certain property to B provided that B will not run a CS institute like Dheeraj Tyagi classes for 5 years. Mr. B has not run a CS institute for further 5 years from the date of transfer. This is **condition subsequent.**

Difference between condition precedent and condition subsequent

In condition precedent, the condition comes before the interest; whereas in condition subsequent, the interest is created before the condition.

DOCTRINE OF LIS PENDENS (Sec.52)

Nothing new can be added during the pendency of a suit

LIS means dispute, LIS PENDENS means a pending suit, action, petition.

The doctrine of LIS PENDENS is expressed by the maxim "ut lite pendente nihil innovetur" which means nothing new should be introduced during the pendency of a suit.

Example : There is a dispute between A and B with regard to ownership of property X. A files a suit against B in a law court. A may either win or lose the suit. If he wins he gets the property. If he loses B gets the property. Now assume during the pendency of the suit A professing to be the owner of the property sells it to C. If the suit ends in A's favour, no difficulty arises. If it ends in B's favour, C cannot retain the property. C is bound by the decree of the court and must return the property to B. He cannot even take the plea that he had no notice of the pending litigation. This is the doctrine of LIS PENDENS.

Condition necessary for the doctrine:

- There must be pendency of a suit or proceeding.
- The suit or proceeding must be a right to immovable property is directly and specified in question.
- The suit or proceeding must be pending in competent Court.

Example:- A court returned a plaint on the ground that it had no pecuniary jurisdiction. A fresh plaint was filed in a proper court two years later. In the mean time, the defendant gifted the property to his wife and son. Held the gift was not affected by lis pendens as there was no suit pending in a competent Court at the time of alienation.

- There must be transfer of property in dispute by any party to the litigation.
- The alienations must affect the rights of the other party to the suit or proceeding.

A suit in foreign court cannot operate as LIS PENDENS and also this doctrine not applicable on moveable property.

DOCTRINE OF FRAUDULENT TRANSFER (Sec.53)

A debtor may sometimes, with intent to defer or delay his creditors, transfer his property to one of his friends or relative's .He may also do so in fraud of a subsequent purchaser. If there is any such transfer, it can be avoided under Sec. 53 which consist of two sub section dealing with the two situations just refers to:

(i) Transfer with intent to defeat delay the creditors – Every transfer of immovable property made with intent to defeat or delay the creditors of transferor shall be void able at the option of any creditor so defeated or delayed.

(ii) Transfer with intent to defraud subsequent transferee: - Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

Further no transfer made without consideration shall be deemed to have been made with intent to differed by reason only that a subsequent transfer for consideration was made .

DOCTRINE OF HOLDING OUT

TRANSFER BY OSTENSIBLE OWNER OR DOCTRINE OF HOLDING OUT (SEC-41)

Where with the consent express or implied of the person interested in immoveable property a person is the ostensible owner of such property and transfer the same for consideration, the transfer shall not be **voidable** on the ground that the transfer was not authorized to make it ,

provided that the transfer after taking reasonable care to ascertain that the transferor had power to make the transfer has acted in good faith.

ESSENTIALS OF TRANSFER BY OSTENSIBLE OWNER OR DOCTRINE HOLDING OUT

1. The transferor is the ostensible owner.
2. He is so by the consent express or implied of the real owner.
- 3.The transfer is for consideration and
4. The transferor has acted in good faith taking reasonable care to ascertain that the transfer has power to transfer.
5. If any one of these elements is absent the transferee is not entitled to the protection of this section. The section makes an exception to the rule that a person cannot confer a better title than he has.

DOCTRINE OF FEEDING THE GRANT BY ESTOPPEL (SEC-43)

Applicability:- Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Non Applicability:- Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Example:- A Hindu, who has separated from his father B, sells to C three fields X, Y and Z representing that A is authorized to father the same. Of these fields, Z does not belong to A, it having been retained. The contract of sale may require A to deliver Z to him. Thus where a grantor has purported to grant an interest in land which he did not at that time possess, but subsequently acquires, the benefit of his subsequent acquisition goes automatically to the earlier grantee or as it usually expressed feeds the estoppels.

ESSENTIALS:- IN ORDER TO INVOKE THE SECTION THE “TRANSFEEE” MUST PROVE THAT

- (i) There was a representation the fraudulent or erroneous.
- (ii) It was to the effect that the transferor is entitled to transfer the immovable property.
- (iii) The transferor is found to have subsequently acquired the interest which he professed to transfer.
- (iv) The transfer of property was for consideration.
- (v) The transferee has not rescinded the contract.
- (vi) The transferee acted in good faith for consideration and without notice of the rights under the prior transfer.

DOCTRINE OF PART PERFORMANCE

Applicability :- A contract for the sale of land has been entered into between A and B the transferee has paid the price entering into possession and is willing to carry out his contractual obligations.

As registration has not been effected. The transferor seeks to evict B from the land. Can he do so. No, B will not be allowed to suffer simply because the formality of registration has not been through.

Essentials

1. There must be a contract to transfer immovable property.

2. It must be consideration.
3. The contract should be in writing and signed by the transferor himself or on his behalf.
4. The terms necessary to constitute transfer must be ascertainable with reasonable certainty from the contract itself.
5. The transferee should have taken the possession of the property in part performance of the contract.
6. The transferee must have fulfilled or ready to fulfill his part of the obligations under the contract.

RULE AGAINST PERPETUITY (SEC. 14)

The rule against perpetuity prohibits the vesting of interest beyond a certain reasonable period.

It prescribes the maximum period within which a future interest must vest, and if the vesting is postponed beyond such period, the vesting is void for remoteness. Such maximum period is called the perpetuity period.

As per Sec. 14 the perpetuity period consists of the life time of one or more persons say A, B and C, all living at the date of transfer of property and the further period of minority of a person, say the eldest son of C, (who shall be in existence at the expiration of that period) to whom the interest is to belong.

In the simple words, "perpetuity period" is the life or lives in being and the further period of minority of a person.

There can be any number of transfers between living major persons, but if the ultimate transferee is a minor, the ultimate transfer to him should transfer all of the interest in the property to him. This is to ensure that the property is not inalienable for any indefinite period after the death of the original transferor.

Following are the exceptions to the rule against perpetuity:

- a) Gift or Charity.
- b) Personal agreement i.e.; agreement which do not create any interest in the property.
- c) Contracts for perpetual renewal of leases.

TRANSFER TO TAKE EFFECT OR NOT ON FAILURE OF PRIOR INTEREST (SEC. 16)

Sometimes an interest is intended to take effect after or upon the failure of a prior interest by reason of rules contained in sections 13 & 14. In such a case when the prior interest fails, the subsequent interest also fails.

For e.g. A transfers his property to B and his intended wife successively for their lives and then to their eldest son for his life and then to C. The prior interest in favor of the son of B fails u/s 13 & therefore the subsequent interest in favor of C also fails.

SALE OF IMMOVABLE PROPERTY

" Sale " according to Sec. 54 is a transfer of ownership in exchange for a price paid or promised , or part –paid and part promised.

ESSENTIAL OF SALE

- Transfer of **ownership**.
- The SUBJECT MATTER of sale is **immoveable property**.
- The consideration must be in **money**
- Price.

Mode of sale

1. By registered instrument: - Sale in the case of tangible immovable property of the value of Rs.100 or more or in the case of a reason or other intangible thing, can be made only by a registered instrument.

2. By delivery of possession:- If value of property is less than Rs.100 in value.

MORTGAGE

Meaning:- It relates to transfer of interest in immovable property from one person to another as a security for money.

Types of mortgage

Sec. 58 classified the mortgage into the following six types.

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

1. Simple mortgage:- In case of simple mortgage, the mortgagor without delivering the possession of the mortgaged property, gives a person undertaking to the mortgagee to repay the amount due under the mortgage.

2. Mortgage by conditional Sale:- Here, mortgagor, first sell the property, in favour of mortgagee, with a condition to revert it back to him, if he is repay his loan with interest, otherwise mortgagee will become absolute owner.

3. Usufructuary mortgage:- The word 'usufruct' means the right of enjoying the use and advantages of another person's property. In case of usufructuary mortgage, the mortgagor delivers possession of the mortgaged property. He further authorizes the mortgagee to receive the rents and profits accruing from the property and to appropriate the same in lieu of interest and the principal sum.

4. English mortgage:- Here, property first sell in favour of mortgagee, if mortgagor repay amount, then sale will become void, otherwise will become absolute. In that case, if mortgagee now sell property to recover his loan so for any shortage in repayment mortgagor is personally liable.

5. Mortgage by deposit of title deeds :- Where a debtor declares to a creditor or his agent documents of title to property, with intent to create a security.

6. Anomalous mortgage: - A mortgage which does not belong to any of the above categories is called an anomalous mortgage.

SUB MORTGAGE AND PUISNE MORTGAGE

(i) Sub-mortgage:- When a mortgagee further mortgages the property mortgaged with him by way of security the mortgage is called a sub-mortgage.

Example :- Mr.A mortgages his house to Mr.B for a sum of Rs. 20,000. If Mr.B further Mortgage that property then he creates sub-mortgage.

(ii) Puisne mortgage: Puisne (pronounced as pyunii) mortgage is the second mortgage by the mortgagor himself on a property which is already subject to mortgage. The word puisne means 'junior in rank or next in order.

Example- Mr. A Mortgages his house worth Rs. 50,000 to Mr. B for Rs. 20,000. He is need of more money creates another mortgage in favor of Mr C PME on the same house for a further sum of Rs. 15,000. The second mortgage is a puisne mortgage.

SOME OF OTHER PROVISION RELATED TO MORTGAGE

Priority of debt on mortgage:-

The general rule of priority of different mortgages on the same property is that the successive mortgage is paid after the prior mortgage has been satisfied. But where the prior mortgage suffers from fraud, misrepresentation, the subsequent mortgage shall have priority over prior mortgagee.

Marshaling by subsequent mortgagor

(Section.81) :- If the owner of two or more properties mortgages them to one person and then mortgage one or more of the properties to another person, the subsequent mortgagee is in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties and sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgage of person claiming under him or of any other person who has for consideration acquired an interest in any of the properties.

Example of Marshaling :- O the owner of three properties P1, P2, P3 mortgages them to M subsequently O mortgage the property P1 to B here B has right of marshaling i.e. he can compel M to satisfy his mortgage debt out of properties P2 and P3 so far as it will extend.



Subrogation:- Under Section 91 of the T.P. Act, enumerates the persons who may sue for redemption. The primary right to redemption is given to the mortgagor under Section 60, but in addition to the mortgagor certain other persons are also entitled to redeem.

- a) Any person who has any interest in
- b) Any surety for the payment of the mortgage-debt.
- c) Any creditor of the mortgagor.

RIGHTS AND LIABILITIES OF MORTGAGOR

RIGHTS OF MORTGAGOR

a) Right of redemption (Sec.60):- The first and the most important right of the mortgagor is the right to redeem i.e., take back the mortgaged property by paying the mortgage money at any time after the stipulated date for repayment.

But the mortgagor is not entitled to redeem before the mortgage money becomes due on the date fixed for repayment of the loan.

Example:- A borrows money on a mortgage and agrees to pay it back after 5 years. A has won a lottery and wants to pay the loan at the end of 3 years and redeem his property. He cannot do, because the right to redeem arises only when the money has become due at the end of 5 years.

b) Right against clog or equity of redemption:- Clog means prevent mortgagor from redeeming the property and it is void. 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. Any condition which prevents the mortgagor from redemption the property is called "clog" on the equity or right of redemption and is void.

c) Right of partial redemption:- A mortgage, as a rule, being one and indivisible for the debt and every part of it, the mortgage cannot be redeemed piecemeal; he must redeem the whole property.

But Section 61 of the act gives a right of partial redemption stating that "a mortgagor who has executed two or more mortgages in favour 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."

Example:- A mortgages property X to B and obtains a loan of Rs.2,000. A again mortgages the same property to B and obtains a further loan of

Rs.1,000. A redeems the first mortgage of Rs.2,000 or he can redeem both together.

LIABILITIES OF MORTGAGOR

1. Covenant for title.
2. Covenant for payment of public charges.

RIGHTS AND LIABILITIES OF MORTGAGEE

RIGHT OF MORTGAGEE

1. Right to foreclosure or sale.
2. Right to sue for mortgage –money.
3. Right of sale without intervention of the court.
4. Right of appoint receiver.

LIABILITIES OF MORTGAGEE

1. Only one suit for several mortgage
2. Liabilities of mortgagee in possession
 - a) Management
 - b) Collection of rents and profits
 - c) Payment of revenue etc.
 - d) Repairs
 - e) Insurance

DIFFERENCES IN MORTGAGE AND PLEDGE

| Mortgage | Pledge |
|--|---|
| <ol style="list-style-type: none"> 1. It relates to immovable property. 2. There is a transfer of an interest in some specific immovable property. 3. The property on which mortgage is created may or may not be transferred to the mortgagee. 4. There is no bar on creating a number of mortgage on one property. | <ol style="list-style-type: none"> 1. It relates to movable property. 2. There is only obligation to repay money. 3. The possession of property which is pledged is handed over to the creditor pledge. 4. This is just not possible in case of pledge. |

CHARGE

Sec. 100 of Act defines a charge as follows “When immovable property of one person is by act of parties of operation of law made security for the payment money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property and all the provisions which herein before contained which apply to a simple mortgage shall so far as may be, apply to such charge”

The essentials of a charge:-

(i) It must be in receipt of immovable property which must serve as a security. The property on which charge is created must be specific and

specified and it must be absolutely clear as to what property is exactly charged. If the description of the property is vague and indefinite, the charge will be void for uncertainty.

- (ii) The immovable property must serve as security for the payment of money.
- (iii) The charge may be the act of parties or it may come into existence by operation of law.
- (iv) The provisions of the Act which apply to a simple mortgage, so far as may be apply also to a charge.

DISTINCTION BETWEEN MORTGAGE AND CHARGE

| Mortgage | Charge |
|--|---|
| <ol style="list-style-type: none"> 1. It is transfer of an interest in specific immovable property made by a mortgagor as a security for the loan. 2. It is created by act of parties. 3. It can be enforced against any transferee whether he takes it with or without notice or mortgage. 4. In a mortgage the mortgage can foreclose the mortgaged property. 5. In a mortgage ,there can be security as well as personal liability | <ol style="list-style-type: none"> 1. It does not involve transfer of any interest in the property although it serves as a security for the payment of the loan . 2. It may be created by act of parties or by operation of law. 3. It cannot be enforced against bone fide transferee for consideration having no notice of charge. 4. A charge –holder cannot foreclose the property on which he has a charge . He can however get the property sold as in a simple mortgage. 5. In a charge created by act of the parties when a particular property is specified the remedy of the charge-holder is against the property only. |

DISTINCTION BETWEEN CHARGE AND LIEN

| Charge | Lien |
|---|--|
| <ol style="list-style-type: none"> 1. It may created by act of the parties or by operation of law 2. It is confirmed only to immovable property | <ol style="list-style-type: none"> 1. It can arise only be operation of law 2. It may confirmed both to movable and immovable property |

Extinguishment of charge

- A charge can be extinguished by –
1. A decree of the court obtained by the charge –holder
 2. Act of parties this includes
 - (a) Release of the debt or security or
 - (b) Novation or
 - (c) Merger.



LEASE

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.

(3) It is made for consideration which is either premium or rent or both.

(4) The transfer must be accepted by the transferee.

Essential

(1) It is a transfer of a right to enjoy immoveable property.

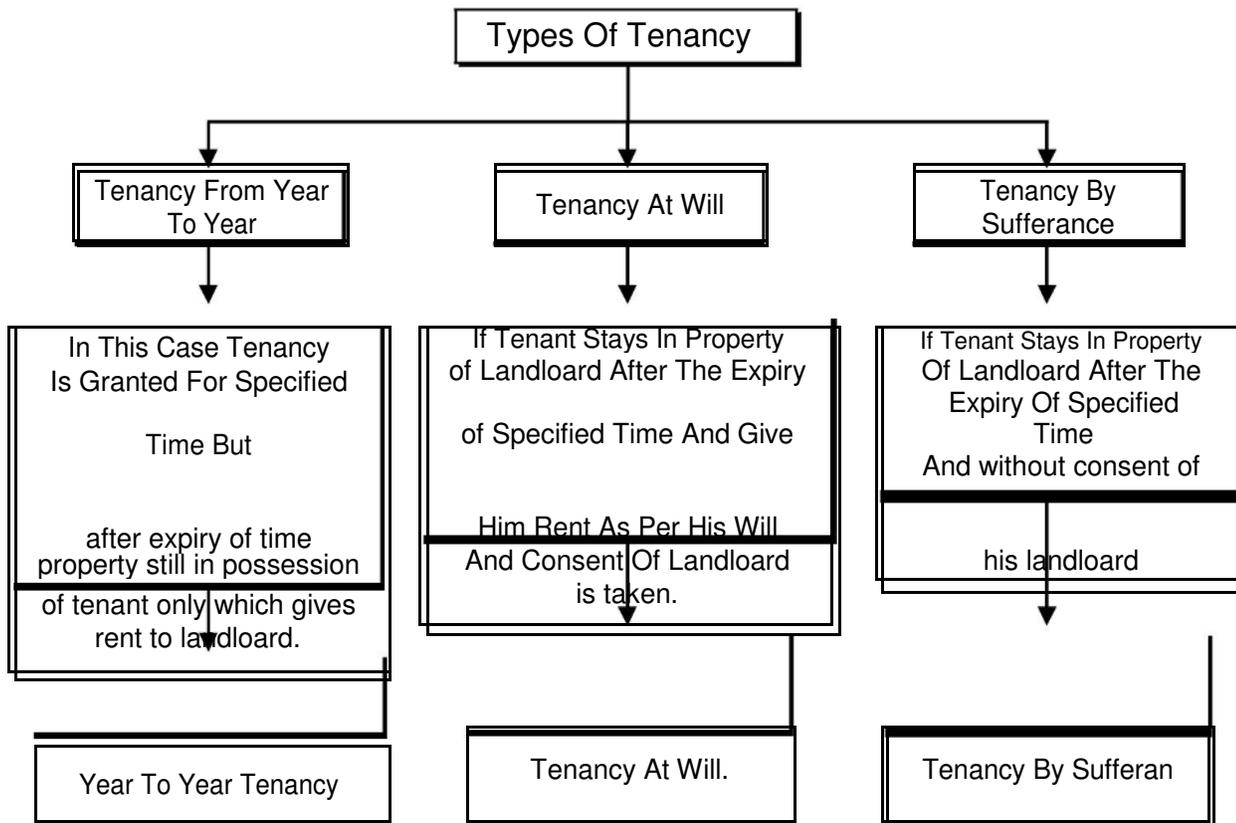
(2) Such transfer is for a certain time or perpetuity.

Formalities for lease:- For years to year lease, registered instrument is required, while in case of lease of less than 1 year, oral agreement is required.

TENANCY

Definition

In case of tenancy the right to enjoyment of a particular property is basically transfer from one person to another person for a price/consideration/premium and for the limited period of time. the relationship originated among two person in this case is known as tenancy.



TYPE OF TENANCY

Following are the various types of tenancies

a) Tenancy from year to year:- A tenancy from year to year may be made by a grant of land from year to year. The tenancy is for a year to start with but after the expiration of one year the lessee continues to be in possession and pays the rent to the landlord, the tenancy is regarded as a year to year tenancy.

b) Tenancy-at-will:- During a period when the tenant is in possession after the expiry of the period, if the tenant stays with the consent of the landlord till such time as further periods is fixed or a fresh contract is made, the tenant is called a tenant-at-will.

In this example, A lets the house on tenancy from year to year to B while in case when after expiry of certain period C continue to holds the house with the consent of A will be considered as a tenancy at will.

c) A tenancy by sufferance:- This is a tenancy which is created by fiction of law. If a tenant continues to be in possession after the determination of the period of the lease without the consent of the landlord, he becomes a tenant by sufferance.

Notice for termination of tenancy:- In case year to year, 6 months notice is required and if it is less than 1 year than only 15 days notice is required. No notice in case of tenancy by sufferance.

COMMON EXAMPLE

A lets a house to B for 5 years, B sublets the house to C at a monthly rent of Rs.100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month

Determination of lease or when lease comes to an end

- By lapse of time
- By the happening of a special event like:-
- Mergers
- By surrender
- By forfeiture

DIFFERENCE BETWEEN 'LEASE' AND 'LICENCE'

| | Lease | Licence |
|-----------|--|--|
| 1. | A lease is a transfer of interest in land | A licence is merely a personal right and does not amount to any interest in immoveable property. |
| 2. | A lessee has to be served with notice to quit before eviction. | A licensee is not entitled to any such notice. |
| 3. | A lease is generally transferable | A licence is not transferable. |
| 4. | A lease is generally not revocable | A licence is always revocable |

EXCHANGE (Sec-118)

“When two persons mutually transfer the ownership of thing for the ownership of another ,neither thing or both things money only the transaction is called an exchange “

GIFT (Sec-122)

“ Gift” is transfer of certain existing movable or immovable ,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 lifetime of the donor and while he is still capable of giving.

Essentials of a gift

1. Transfer of ownership
2. Property must be in existence
3. Voluntary transfer
4. Without consideration
5. Acceptance by the donee

GIFT HOW EFFECTED

1. Gift of immovable property:- For the purpose of making a gift of immovable property the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses .

2. Gift of movable property :- For the purpose of making a gift of movable property, transfer may be effected either by a registered instrument of profession or by deliver.

SUSPENSION OF REVOCATION OF GIFT (SEC. 126)

Grounds for suspension of revocation

1. By agreement
2. By rescission

CONDITIONAL GIFT

Like any other transfer under the Act a conditional gift can also be made .A gift which comes into existence on the fulfillment of a condition precedent is a conditional gift and is valid.

UNIVERSAL DONEE (SEC. 128)

Where a gift consists of all the properties of the donor, the donee is called a universal donee .

The liability on the universal donee is limited to the extent of the property received by him.

ONEROUS GIFT (SEC.127)

If a gift of a thing which is burdened by an obligation, the gift is called on onerous gift The donee may not accept such a gift . It a gift made of several things any one or more of the things gifted may be burdened by some obligation .In such a case the position of the donee is as follows

1. When there is a single transfer:- When a gift is in the form of a single transfer to the same person of several things , of which one is , and the others are not , burdened by an obligation , the donee can take nothing by the gift unless he accepts it fully.

Example – A has shares in X a prosperous joint stock company and also shares in Y , a joint stock company in difficulties .Heavy calls are expected in respect of the shares in Y . A gives B all his shares in joint stock company X and Y refuses to accept the shares in Y .He cannot take the shares in X.

2. Where there are two or more separate transfer– Where a gift is in the form of two or more separate and independent transfers to the same person of several things , the donee is at liberty to accept one of them and refuse the others , although the former may be beneficial and the latter onerous.

Example:- A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term , and which is more than the house can be let for gives to B the lease and also as a separate and independent transaction , a sum of money B refuses to accept the lease .he does not , by his refusal forfeit the money .

3.Onerous gift to disqualified person :- A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance ,But if , after becoming competent to contract , and being aware of the obligation , he retains the property given , he becomes so bound.

ACTIONABLE CLAIM

'Actionable claim' means a claim to any debt , other than debt secured by mortgage of immovable property or by hypothecation or pledge or movable property whether such debt is existent accruing conditional or contingent “

Simple stated an 'actionable claim' means a claim to

- Any unsecured debt or
- Any beneficial interest in movable property not in the possession of the claimant
- The debt or beneficial interest may be existent accruing conditional or contingent .

WHAT IS A DEBT ?

The following it would be noted are not actionable claim:

(i) A right to recover damages for the breach of contract .

(ii) A right of recover the amount which may be found to be due on taking an account.

THE FOLLOWING ACTIONABLE CLAIMS

a) A claim to recover arrears of rent due.

c) A claim under life insurance policy that has matured.

b) A claim to the provident fund that is standing to the credit of a member of the provident fund and that has become due .

QUESTION FROM ICSI BOOK

Q1. Discuss the object of the Transfer of property Act. Distinguished between immovable and moveable property.

Q2. What is the subject matter of transfer under the T.P. Act. Discuss property which cannot be transferred.

Q3. Define a mortgage. Discuss various types of mortgages.

Q4. What is the rule against perpetuity.

Q5. Write a short note on

- i) Vested and contingent interest.
- ii) Actionable claims.