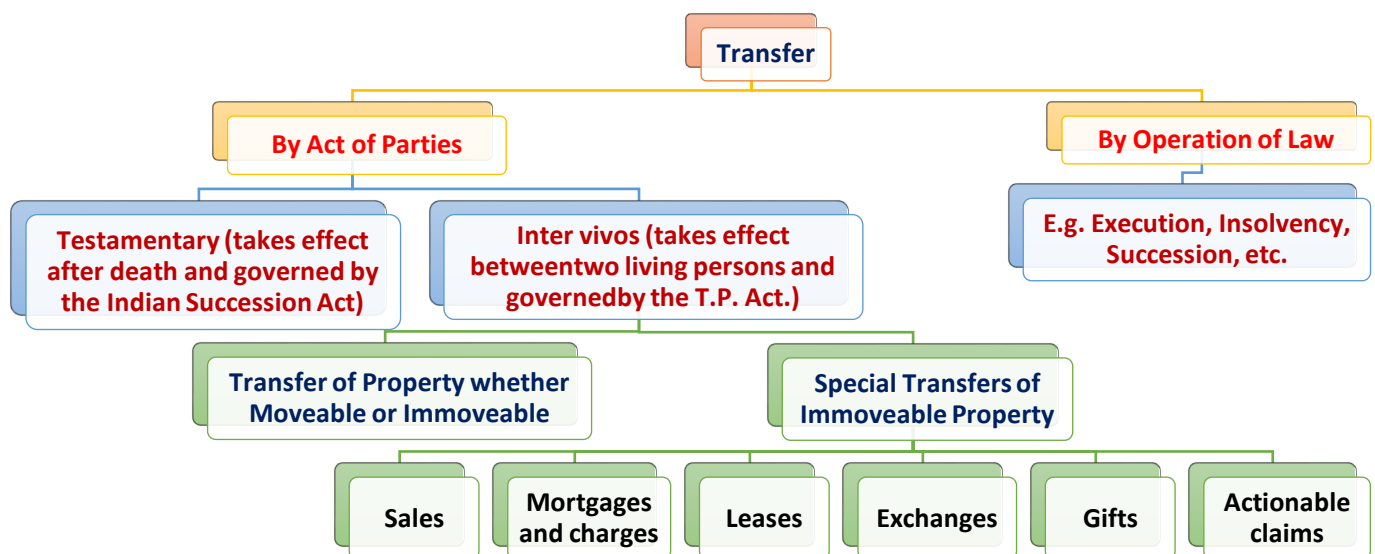
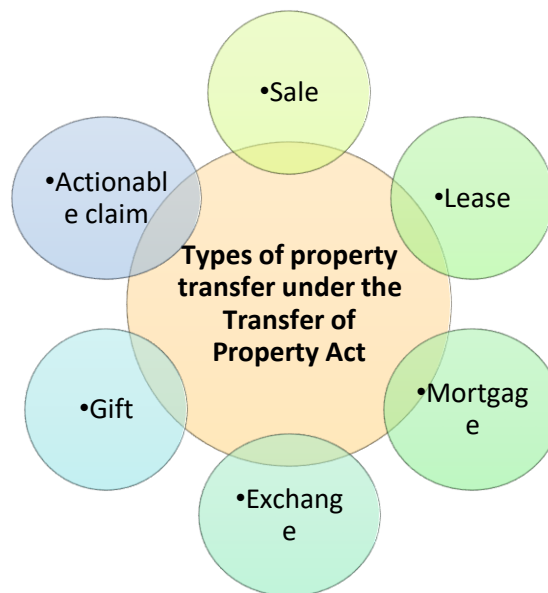


# Transfer of Property Act, 1882



## Applicability of the Act –

- The Act is applicable primarily on **transfer of immovable property from one living being (inter vivos) to another.**
- “living person” includes a company or association or body of individuals whether incorporated or not.
- The Act excludes from its purview (scope) the transfers by operation of law. **For e.g. sale in execution, forfeiture, insolvency or inheritance.**
- Also, the Act is applicable on property transfer by individuals, as well as by companies



## Important Definitions –

### Absolute Interest –

When a person owns property, he has an “absolute interest” in the property.

Ownership consists of –

- a bundle of rights,
- the right to possession,
- right to enjoyment and
- right to do anything such as selling, mortgaging or making gift of the property.

### Reversion and Remainder –

#### 1) Reversion –

A “reversion” is the residue of an original interest which is left after the grantor has granted the lessee a small estate.

For example, Raju, the owner of a land may lease it to Shyam for a period of five years. Here, after the period of 5 years the lease will come to an end and the property reverts back to the lessor. The property which reverts back to him is called the reversion or the reversionary interest.

#### 2) 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, Arnab the owner of a land transfers property to Kangana for life and then to Rangoli absolutely. Here the interest in favour of Kangana is a limited interest, i.e., it is only for life. So long as Kangana is alive Kangana enjoys the property. Kangana has a limited right since he cannot sell away the property. Kangana’s right is only to enjoy the property. If he sells this interest it will be valid so long as he is alive. So, after Kangana’s death the property will go to Rangoli, interest is called a remainder.

### Vested and Contingent Interests –

#### 1) Vested Interest –

An interest is said to be vested **when it is not subject to any condition**, precedent, i.e., when it is to take effect on the happening of an event which is certain. A vested interest is transferable and heritable. The word “vested” is used in two different senses. It may mean “vested in possession” or “vested in interest”.

**For Example,** a gift to Raju on the death of Shyam creates a vested interest in Raju even during the life time of Shyam for there is nothing more certain than death

##### a) “vested in possession” –

A right is said to be “vested in possession” when it is a right to present possession of property

**For Example,** if a land is given to Raju for life with a remainder to Shyam, Raju’s right is vested in possession.

##### b) “vested in interest” –

A right is said to be “vested in interest” when it is not a right to present possession but a present right to future possession.

**For Example,** if a land is given to A for life with a remainder to B, A’s right is vested in possession, B’s right is vested in interest.

## 2) Contingent Interest –

An estate is contingent when the right to enjoyment depends upon the happening of an event which may or may not happen.

**For Example,** a gift to Salman on the marriage of Aishwarya creates a contingent interest.

Ground of Difference	Vested Interest	Contingent interest
<b>Section</b>	Section 19 of the Transfer of Property Act, 1882.	Section 21 of the Transfer of Property Act, 1882.
<b>Meaning</b>	An interest is said to be vested when it is not subject to any condition, precedent, i.e., when it is to take effect on the happening of an event which is certain	An estate is contingent when the right to enjoyment depends upon the happening of an event which may or may not happen.
<b>Condition</b>	The condition involves a specified <b>certain event</b> . A certain event means an event that will eventually happen.	The condition involves a specified <b>uncertain event</b> . There is a chance of the happening or non-happening of that particular event.
<b>Right of Ownership</b>	This right is created as soon as the interest is vested.	There is mere chance to be having the ownership rights.
<b>Death of transferee</b>	Death of the person who is having this interest will not have any effect over that interest as after the deceased, the interest will vest in his legal heirs.	Death of the transferee before getting the possession of the property will result in the failure of contingent interest and the property will remain with the transferor.
<b>Transferable and heritable?</b>	Vested interest is a Transferable and heritable right.	Contingent interest is a Transferable right, but whether it is heritable or not, it depends upon the nature of such any transfer and the condition.
<b>The present right of enjoyment.</b>	There is present, immediate right even when its enjoyment is postponed.	There is no present right of enjoyment, there is a mere expectancy of having such a right.
<b>Examples</b>	X professes to transfer the property ‘O’ to Y when he attains the age of 20. There is a vested interest with Y for the property ‘O’.	X professes to transfer the property ‘O’ to Y on the condition that he shall construct a well in his property. If he constructs, Y shall get contingent interest in the property until the condition is not fulfilled.

**Moveable property –**

- The Transfer of Property Act **does not defines** the term “moveable property”.
- **According to General Clauses Act, 1897**, movable property means “property of every description except immoveable property”.
- **According to The Registration Act, 1908**, movable property includes property of every description excluding immoveable property but including standing timber, growing crops and grass.

#### Immoveable property –

- The term “immoveable property” is also not defined under the Act
- **According to General Clauses Act, 1897**, “immoveable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to any thing attached to the earth”
- **According to The Registration Act, 1908**, immovable property includes under to immoveable property the benefits to arise out of land, hereditary allowances, rights of way, lights, ferries and fisheries.

“Attached to the earth” means –

- a) rooted in the earth, as in the case of trees and shrubs;
- b) embedded 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

#### The following have been recognised as immoveable property –

- ✓ Right to collect rents of immovable property
- ✓ A right to way
- ✓ A right to collect dues from fair on a piece of land
- ✓ The Equity of redemption
- ✓ The interest of mortgage
- ✓ Hereditary offices
- ✓ Right to collect lac from trees
- ✓ A right of ferry
- ✓ A right of fishery
- ✓ Right to receive future rents and profits of land
- ✓ Reversion in property leased
- ✓ A factory

#### The following have been held not to be immoveable property –

- ✓ Right of worship
- ✓ Government promissory notes
- ✓ Royalty
- ✓ A right to recover maintenance allowance
- ✓ Copyright
- ✓ A decree for sale on a mortgage deed
- ✓ A decree for arrears of rent

#### Who can transfer the property? – Section 7

- Every person competent to contract and having ownership can transfer property or persons who are authorised to transfer property can also transfer property validly.
- Although a minor is not competent to be a transferor yet a transfer to a minor is valid.

#### Subject Matter of Transfer – Section 6

- Property of any kind may be transferred.
- Property of any kind excludes from its purview the future property.

- A transfer of future property can only operate as a contract which may be specifically performed when the property comes into existence.

### Formalities involved in transfer –

#### 1) How property can be transferred?

- Property can be transferred either orally or by writing
- Moveable property can be transferred by delivery of possession or by registration.
- Immovable property having value of one hundred rupees and upwards can be made only by a registered instrument

#### 2) Attestation –

- 1) “Attest” means to testify a fact, to bear witness to a fact.
- 2) Attestation, in relation to a document, signifies the fact of authentication of the signature of the executant of that document by the attestator by putting down his own signature on the document in testimony of the fact of its execution.
- 3) All transfers do not require attestation.
- 4) Attestation is valid and complete when two witnesses sign the instrument.

Following essentials are required for a valid attestation –

- There must be at least two or more witnesses;
- Each witness must see –
  - a) the executant’s sign or affix his mark to the instrument, or
  - b) some other person sign the instrument in the presence and by the direction of the executant, or
  - c) receive from the executant a personal acknowledgement of his signature or mark or of the signature of such other person; and
- Each witness must sign the instrument, (i.e. document), in the presence of the executant.

Note –

It is not necessary that both attesting witnesses should be present at the same time.

#### 3) Registration –

Registration is an essential legal formality to effect a valid transfer in certain cases. The advantage of registering a document is that any person who deals with the property would be bound by the rights that are created in earlier registered document.

#### 4) Notice –

- a) Notice, may be actual or constructive.
- b) If a person knows about a fact, he has an actual notice.
- c) But, in certain circumstances law treats a man who ought to have known a fact even though he did not in fact know it. This is called constructive notice.
- d) Transferee should have due notice with respect to the property which is the subject matter of the transfer.

### Restraint on Transfers or Rule Against Inalienability – Section 10

- 1) Absolute restraint is invalid –

When property is transferred, the transferee **should not be restrained absolutely** from alienating the property.

For Example, Uday gives property to Majnoo and his heirs adding a condition that if the property is alienated it should revert to B. This is invalid condition.

#### When absolute restraint valid? –

**In following 2 cases, absolute restraint is valid –**

##### **Situation 1 –**

**In case of lease**, lessor can impose a condition that the lessee shall not sublet the property or sell his leasehold interest

##### **Situation 2 –**

The second exception is made **in respect of a woman** who is not a Hindu, Buddhist or Muslim. In such a case, a condition to the effect that she shall not have power during her marriage to transfer the property is valid.

#### 2) Partial restraint is valid –

If there are conditions which restrain the transferee not to alienate the property outside the family then it is considered as partial restraints.

For Example – Conditions in a family settlement whereby the members are not allowed to sell their shares to a stranger, such conditions are valid.

#### Restraint on enjoyment – Section 11

- **Restraint on the enjoyment of the property is invalid.**
- Where land is transferred by one to another, the transferor should not impose conditions as to how and in what manner the transferee should enjoy the property.  
For Example, Bheem sells his house to Chutki and adds a condition that Chutki only should reside in that house, the condition is invalid.
- **Exception to the above provisions –**  
If the condition which is imposed by transferor is for the benefit of another property which he retains then such a condition is valid.  
For Example, Circuit has 2 properties, property X and Property Y. Circuit sells property Y to Munna and puts a condition that Munna should not construct on property Y more than one storey so that Circuit's property X which he retains should have good light and free air.

#### **Note –**

- If a property is transferred to any person adding a condition that if such person becomes insolvent he ceases to hold that property. Such a condition is not recognised as valid in law.
- This is subject to the exception that if a landlord leases his property he can impose a condition on the lessee that if the lessee becomes insolvent the lease should come to an end.

#### Transfer for Benefit of Unborn Person – Section 13

Where on a transfer of property, an interest 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 transferor in the property. Thus if a property is given to an unborn person, two conditions should be satisfied:

- It should be preceded by a life estate in favour of a living person.
- It should comprise the whole of the remaining interest of the transferor so that there can be no further interest in favour of others.

**Example –**

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.

**Conditional Transfer –**

**1) Meaning of Conditional transfer –**

- a) 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.
- b) Such a transfer may be subject to a condition precedent or a condition subsequent.

**2) Essential of conditions –**

- a) the condition must not be impossible to fulfil.
- b) the condition must not be forbidden by law.
- c) it should not be of such a nature that if permitted it would defeat the provisions of any law.
- d) it should not be fraudulent.
- e) the condition should not be such as to cause injury to the person or property of another.
- f) the condition should not be immoral or opposed to public policy.

Condition Precedent	Condition Subsequent
A condition precedent is one the fulfillment of which completes an inchoate title.	A condition subsequent is one of the fulfillments of which extinguishes a title already completed.
A condition precedent always comes before the creation of an interest.	A condition subsequent always follows the vesting of an interest which is already complete.
In the case of Condition precedent, the vesting of the estate is postponed till the performance of the condition precedent.	In the case of subsequent, vesting is complete and not postponed.
In the case of condition precedent, an interest once vested can never be divested by reason of non-fulfillment of the condition.	In the case of condition subsequent, interest even though vested, is liable to be divested by reason of the non-fulfillment of the condition.
In the case of condition precedent, an estate is not in the grantee until the condition precedent is performed.	In the case of subsequent, the estate immediately vests in the grantee and remains in him till the condition is broken.
In the case of condition precedent, transfer will be void if the condition precedent is impossible to perform, or immoral or opposed to public policy.	In the case subsequent, the transfer becomes absolute and the condition will be ignored if that condition is impossible of performance or immoral or against public policy.
In the case of condition precedent, the condition precedent must be valid in law.	In the case of subsequent, it need not be so, and the invalidity of the conditions can be ignored.

### Doctrine of Election – Section 35

- 1) Election may be defined as “the choosing between two rights where there is a clear intention that both were not intended to be enjoyed.
- 2) The foundation of doctrine of election is that a person taking the benefit of an instrument must also bear the burden.
- 3) **The doctrine is based on the principle that “a donee shall not be allowed to approbate and reprobate and that if he approbates, he shall do all in his power to confirm the instrument which he approbates”**

Suppose, a property is given to you and in the same deed of gift you are asked to transfer something belonging to you to another person. If you want to take the property you should transfer your property to someone else, otherwise you cannot take the property which is transferred to you by someone.

- 4) If the transferor dies before the person upon whom the benefit is conferred and he rejects the transfer, then the representatives of the transferor will have to satisfy the disappointed person out of the property which was the subject of transfer.

Akshay transfers his property worth `1,000 and by the same instrument asks Binod to transfer his property worth `500 to Chinmay. Here, if Binod does not accept, he will not take Akshay's property and the property will revert to Akshay. If Akshay is alive, it is for him to give some property to Chinmay. But if Akshay dies before Binod has made his election then the heirs of Akshay have to compensate Chinmay from Akshay's property to the extent of `500.

- 5) 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 donee to part with his own property then there is no question of election.

Arjun transfers his land to Bilal by a document. Arjun by another document transfers Bilal's property to Neha. In this case Bilal can retain the property given to him and refuse to transfer his property to Neha as the two transfers do not form part of the same document.

- 6) The doctrine of election is applicable if the benefit is given directly. A person taking no benefit directly under a transaction but deriving a benefit under it indirectly need not elect.

A transfers his property to B's son and by the same instrument transfer B's property to C. In this case B need not to elect and can keep his property. His son can have his gift.

### 7) **Exception to doctrine of election –**

If the transferor gives two benefits to a person and one particular benefit is in lieu of an item of property belonging to that person which the transferor has asked to transfer to a third-party then if the person elects to retain his property, he can retain the other benefit.

- Under A's marriage settlement, his wife is entitled, if she survives him to the enjoyment of the estate of Sultanpur during her life.



- A by his will bequeaths to his wife an annuity of `200 p.m. during her life, in lieu of her interest in the estate of Sultanpur, which estates he bequeaths to his son.
- A also gives his wife a legacy of `1,000.
- After the death of A, his widow elects to take what she is entitled to take under the marriage settlement (i.e., the enjoyment of estate of Sultanpur).
- In this case, the wife has to forfeit the claim of `200 which her husband has given to her. But she can claim other benefit i.e., `1,000.

#### **Transfer by Ostensible Owner or Doctrine of Holding Out – Section 41**

Where a person is the ostensible owner of property and transfers the same for consideration with the consent of the persons interested in such immoveable property then the transfer shall not be voidable on the ground that the transferor was not authorised to make it, provided that the transferee has acted in good faith and has reason to believe that transferor had power to make the transfer

#### **Essential conditions for the application of Doctrine of Holding Out –**

- The transferor is the ostensible owner
- He is so by the consent express or implied, of the real owner
- The transfer is for consideration
- The transferee has acted in good faith taking reasonable care to ascertain that the transferor had power to transfer

#### **Doctrine of Feeding the Grant by Estoppel – Section 43**

- Where, a person fraudulently or erroneously represents that he is authorised to transfer certain immoveable 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.
- This Section shall not impair the right of transferees in good faith for consideration without notice of the existence of the said option.

#### **Essential conditions for the application of Doctrine of Feeding the Grant by Estoppel –**

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



A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorised to transfer the same. Of these fields, Z does not belong to A, it having been retained by B on the partition, but on B's dying, A as heir obtains Z. C, not having rescinded the contract of sale may require A to deliver Z to him.

#### Doctrine of Fraudulent Transfer –

- Where a person transfers his property so that his creditors shall not have anything out of the property, the transfer is called a fraudulent transfer.
- A debtor in order to defeat or delay the rights of a creditor, may transfer his property to some person, who may be his relative or a friend.
- Such transfer will be voidable at the option of the creditor.
- The transfer is valid so long as the creditor does not challenge it in a Court of law and gets a declaration that the transfer is invalid.
- Once the creditor sues the debtor and says that the debtor has the intention to deceive him, the transfer can be declared invalid by the Court
- Mere preference of one creditor over the others is not fraudulent under the Section, even if the whole property is so transferred and nothing is left for the other creditors.

#### Doctrine of Part-Performance –

##### ➤ Situation –

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 A, 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. The legislature grants some relief to such a transferee under Section 53A, which contains the provisions of doctrine of part-performance.

Essential conditions for the operation of the doctrine of part-performance according to Section 53A –

- There must be a contract to transfer immoveable property.
- It must be for consideration.
- The contract should be in writing and signed by the transferor himself or on his behalf.
- The terms necessary to constitute the transfer must be ascertainable with reasonable certainty from the contract itself.
- The transferee should have taken the possession of the property in part performance of the contract. In case he is already in possession, he must have continued in possession in part performance of the contract and must have done something in furtherance of the contract.
- The transferee must have fulfilled or be ready to fulfill his part of the obligation under the contract.

### Properties which cannot be transferred – Section 6

Following properties cannot be transferred –

- the chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature cannot be transferred.
- A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.
- An easement cannot be transferred apart from the dominant heritage.
- An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.
- A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.
- A mere right to sue cannot be transferred.
- A public office cannot be transferred nor can the salary of a public officer, whether before or after it has become payable.
- Stipends allowed to military, naval, air force and civil pensioners of the Government and political pensions cannot be transferred.

### Rule Against Perpetuity – Section 14

- **Perpetuity** simply means “indefinite Period”, so this **rule** is **against** a transfer which makes a property inalienable for an indefinite period.
- 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 of that period, and to whom, if he attains full age, the interest created is to belong.
- The rule against perpetuity is that the minority of the ultimate beneficiary is the latest period at which an estate can be made to vest.
- The rule against perpetuities applies to both moveable and immoveable property.
- Thus, the rule against perpetuity contains two propositions –
  - a) No transfer is valid after the life time of one or more persons living at the date of such transfer. Transfer can remain in effect only during the lifetime of an existing person.
  - b) Transfer can be extended to a person who is not in existence but if he is in existence at the time of termination of the period of last transfer. The moment the person is born, he shall have contingent interest and after minority i.e., after the age of 18 years, he shall have the vested interest.

**Except for the above two conditions, a restriction on alienation of property is void.**

where the transfer of property is for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind then in such case, rule of perpetuity will be valid.

### Effect of a transfer on failure of prior interest – Section 16

Where by reason of any rules or the rules contained in Sections 13 and 14, interest created for the benefit of a person or class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect or upon failure of such prior interests also fail

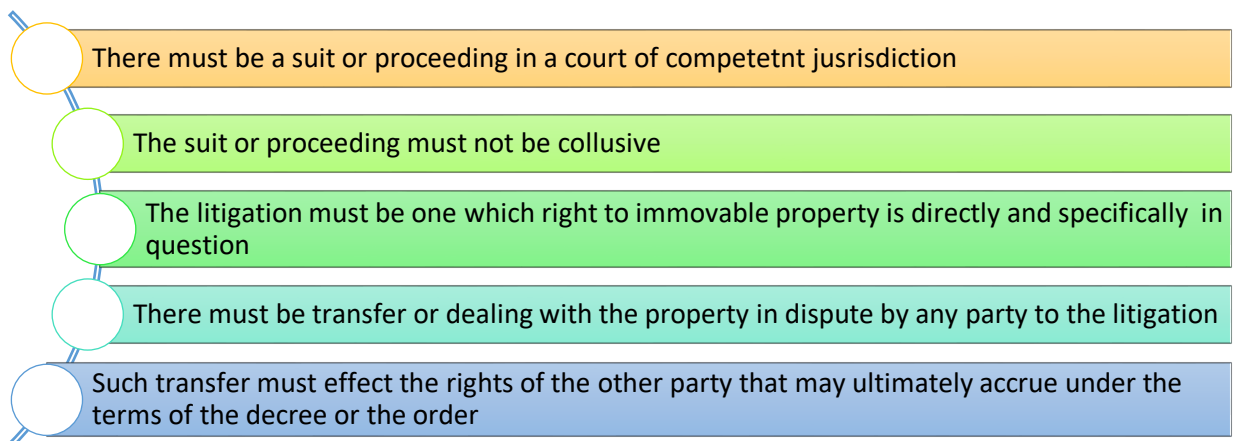
For example, property is transferred to A for life then to his unborn son B for life and then to C, who is living at the date of transfer, absolutely. Here B is given only a life interest. So the transfer to B is invalid under Section 13. The subsequent transfer to C absolutely is also invalid, because according to Section 16, if a prior transfer fails, the subsequent transfer will also fail.

### Accumulation of Income – Section 17

- 1) Section 17 does not allow accumulation of income from the land for an unlimited period without the income-being enjoyed by owner of the property. The law allows accumulation of income for a certain period only. The period for which such accumulation is valid is –
  - a) the life of the transferor, or
  - b) eighteen years from the date of transfer.
- 2) Any direction to accumulate the income beyond the period mentioned above is void except where it is for –
  - a) the payment of the debts of the transferor or any other person taking any interest under the transferor,
  - b) portions for children or any other person taking any interest in the property under the transfer, and
  - c) for the preservation and maintenance of the property transferred.

### Doctrine of Lis Pendens – Section 52

- 1) *Meaning –*
  - a) *Lis* means dispute, *Lis pendens* means a pending suit, action or petition.
  - b) During the pendency of a suit in a Court of Law, property which is subject to a litigation cannot be transferred
  - c) For example, A and B are litigating in a Court of law over property X and during the pendency of the suit A transfers the property X to C. The suit ends in B's favour. Here C who obtained the property during the time of litigation cannot claim the property. He is bound by the decree of the Court wherein B has been given the property.
- 2) **Essentials of Doctrine of Lis Pendens –**



- A suit in foreign Court cannot operate as *lis pendens*.

- The doctrine of *lis pendens* does not apply to moveables.
- The doctrine is not applicable in favour of a third-party.

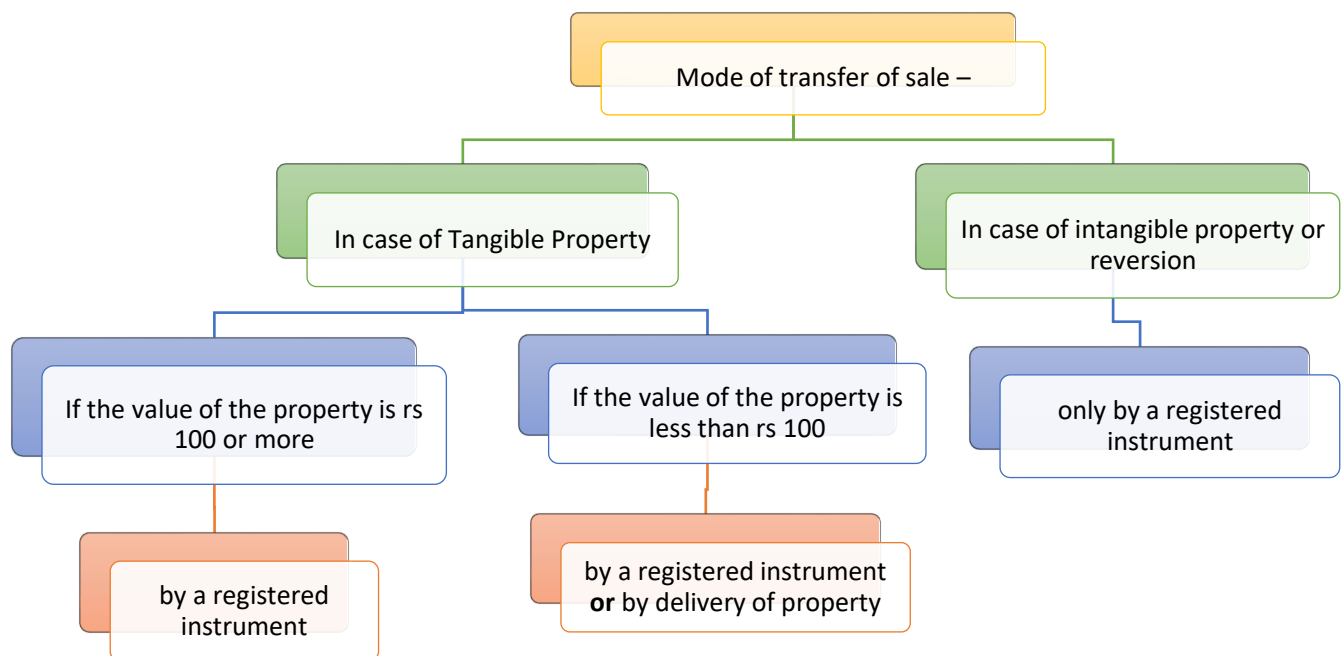
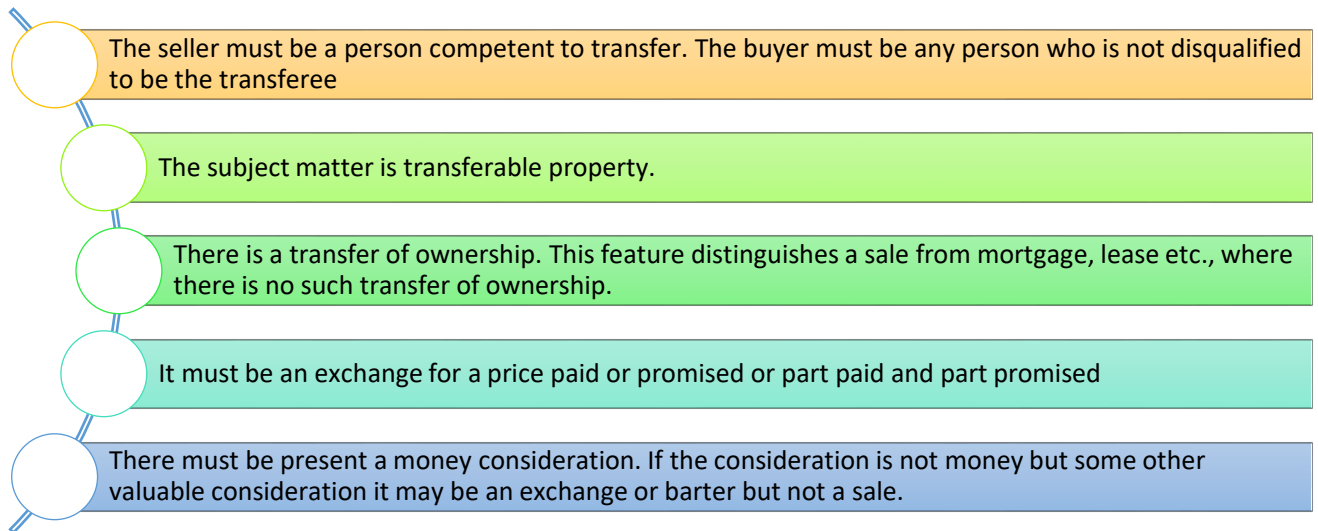
### Provisions Relating to Specific Transfers –

#### Sale – Section 54-57

##### Definition of Sale –

“Sale” has been defined as a transfer of ownership in exchange for a price paid or promised or part paid and part-promised.

##### Essentials of sale –



## Exchange – Section 118-121

### Definition of Exchange –

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

### Essentials of Exchange –

- 1. The person making the exchange must be competent to contract
- 2. There must be mutual consent.
- 3. There is a mutual transfer of ownership though things and interests may not be identical.
- 4. Neither party must have paid money only.

## Gift – Sections 122 - 128

### A. Definition of Gift –

“Gift” is the transfer of certain existing moveable 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.

#### Note –

**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.**

### B. Essentials of gift –

- 1. There must be a transfer of ownership.
- 2. The subject matter of gift must be a certain existing moveable or immovable 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.

### C. Capacity of parties –

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.

#### D. How gift is made?

- 1) A gift of immovable property must be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.
- 2) A gift of moveable property may be made by a registered instrument **or** by delivery of property.

- Where a gift in favour of someone is registered but it is not accepted by the donee, the gift is incomplete.
- 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. If the gift is accepted but not registered it is a valid gift.

#### E. Gift is irrevocable –

- a) A gift cannot be revoked at the will and pleasure of the grantor.
- b) Revocable gift is void.
- c) 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.

##### Example –

- 1) 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.
- 2) A gives a lakh of rupees to B, reserving to himself with B's assent the right to take back at leisure Rs. 10,000 out of one lakh. The gift holds goods as to Rs. 90,000 but is void as to Rs. 10,000 which continues to belong to A.

#### F. Conditional Gift –

- A gift which is subject to a condition precedent is also valid. But the condition attached to the gift should not be illegal or immoral.
- A gift for future property is void

#### G. Onerous gift –

**Onerous gift** is when one person **transfers** several **gifts**, i.e., more than one **gifts** to another in a single **transfer**, out of these **gifts** one is not burdened by obligation but other is burdened with obligation, so here donee has to accept in full, he cannot accept one which is beneficial and reject burdened with obligation.

Example, 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

#### Leases – Section 105 to 117

#### A. Definition of lease –

A "lease" of immovable 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 immovable property must be made for a certain period.

#### B. Essentials of Lease –

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

Lease	Licence
transfer of an interest	mere permission to do something without any transfer of interest
both transferable and heritable	neither transferable nor heritable
Comes to an end only in accordance with the terms and conditions stipulated in the contract	can be withdrawn at any time at the pleasure of the grantor
entitled to any improvement or accession made to the property	no such entitlement
unaffected by the transfer of the property by sale in favour of third party and continues	comes to an end immediately if the property is sold to a third party
lessee has the right to protect the possession in his own right	licensee cannot defend his possession in his own name as he does not have any propriety right in the property
does not come to an end either by death of the grantor or the grantee	comes to an end with the death of either grantor or the grantee

### C. Formalities involved –

lease from year to year or for any term exceeding one year can be made only by a registered document. If a lease is for a term below one year, it can be made by an oral agreement. If a lease is created by oral agreement, it must be accompanied by delivery of possession

### D. Types of tenancies –

#### 1) Tenancy from year to year –

- a) A tenancy from year to year may be made by a grant of land from year to year.
- b) If 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.
- c) If, in case of a tenancy for a period more than a year the landlord wants to terminate or end the lease, he has to give a six-month's notice to the lessee to quit.
- d) If, in case of a tenancy for a period more than a year the landlord wants to terminate or end the lease, he has to give a six-month's notice to the lessee to quit.
- e) In case of a tenancy from month to month, a fifteen days notice to quit is necessary.

#### 2) Tenancy-at-will –

- If the tenant stays with the consent of the landlord till such time as further period is fixed or a fresh contract is made, the tenant is called a tenant-at-will.



- The landlord will decide for what further period shall the tenancy be given.
- 'The tenancy-at-will does not mean that the landlord has to give a proper notice to quit.
- The death of the landlord or tenant determines the tenancy, i.e., the tenancy comes to an end.

### 3) **A tenancy by sufferance –**

- 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.
- This type of tenant is not regarded as a trespasser because the tenant had in his favour a valid lease to start with.
- No notice is necessary to such a tenant for eviction.
- This tenant is not responsible for rent. He is liable to pay compensation for use and occupation of the land.

## **E. When lease comes to an end?**

- 1) By lapse of time;
- 2) By the happening of a special event –

When a lease is granted subject to the happening of an event, it comes to an end when the event takes place. Thus, if B grants lease to A for life, it comes to an end on the death of A.

### 3) **Merger –**

A lease comes to an end when the lessee buys the property of the lessor or when the lessee takes the lessor's interest by succession.

### 4) **By surrender –**

A lease may come to an end by surrender

### 5) **By forfeiture –**

A forfeiture occurs when there is breach of a condition in a lease contract by the lessee.

## **F. Duties of the Lessor –**

- 1) To disclose all the material facts which is known to him to the lessee.
- 2) The next duty of the lessor is to put the lessee in possession of the property.
- 3) Duty to let the lessee enjoy undisturbed possession / quite possession.

## **G. Duties of the lessee –**

- 1) Duty to pay rent on time.
- 2) Use the property only for authorized purpose.
- 3) Not to cause any permanent injury to the property of lessor
- 4) To disclose all the material facts which is known to him to the lessor.
- 5) Not to make changes in the structure of the property without the consent of lessor.
- 6) The lessee should hand over the property at the end of the lease.

## **H. Rights of the lessee –**

- 1) Right to enjoy accretion in the property.
- 2) To deduct the cost of expenses incurred on the repairs which was done with the consent of lessor.
- 3) Lessee has the right to recover any amount from the lessor which is paid on behalf of lessor such as municipal taxes.

- 4) Right to remove the fixtures he has erected-during the term of the lease.
- 5) The lessee may avoid the lease, if property is wholly or partly destroyed by tempest, flood, or fire so as to make it impossible to continue the lease for the purpose for which it was let.

### Actionable Claims – Section 130-137

#### Definition of Actionable Claims –

- 1) A claim to any debt, other than a debt secured –
  - a) By mortgage of immoveable property or
  - b) By hypothecation of moveable property, or
  - c) By pledge of moveable property or
  - d) to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant,
 which the Civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.
- 2) Actionable claims are claims, to unsecured debts.

#### Examples of Actionable Claims –

- Arrears of rent accrual
- Provident Fund that is standing to the credit of a member of the Provident Fund
- Money due under the Insurance Policy
- A partner's right to sue for accounts of dissolved partnership is an actionable claim being a beneficial interest in moveable property not in possession

### Mortgages – Sections 58 to 104

#### 1) Definition and nature of mortgage –

A “mortgage” is the transfer of an interest in specific immoveable 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 pecuniary liability.

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

#### 2) Essentials of a mortgage –

- a) Transfer of interest.
- b) Immovable property should be specifically mentioned.
- c) To secure the payment of a loan

### Kinds of mortgages –

#### 1) Simple mortgage –

- a) Ownership and possession are with the mortgagor.
- b) Mortgagor have a personal liability to repay the debt.
- c) Mortgagee has the right to sell the property in case of default.
- d) Mortgagee can sell the property with the consent of the court.
- e) If after selling the property, entire debt is not recovered then mortgagee may file case against mortgagor for recovery of the remaining debt.

f) Right of foreclosure is not available with the mortgagee.

**2) Mortgage by conditional sale –**

- a) Ownership and possession will be with mortgagee.
- b) If the loan is repaid, the sale becomes void.
- c) If the loan is not repaid, the sale will become absolute and valid.
- d) On repayment of loan, the mortgagee shall re-transfer the property to the mortgagor.
- e) Mortgagee has the right of foreclosure if the loan is not repaid.

**3) Usufructuary mortgage –**

- Possession of property must be delivered to the mortgagee;
- Ownership of the property will be with the mortgagor
- Profits or rent earned is appropriated against debt;
- Mortgagee will get rents and profits in lieu of interest or principal or both
- There is no personal liability on the part of the mortgagor to pay;
- The mortgagee will not be entitled to foreclose the mortgage or to sue for sale.

**4) English mortgage –**

- a) It is a combination of simple mortgage and mortgage by conditional sale.
- b) Ownership and possession will be with mortgagee.
- c) Mortgagor has personal liability to repay the loan.
- d) If the loan is repaid, property will be retransferred to mortgagor
- e) In case of default, mortgage can sell the property with the permission of the court.

**5) Mortgage by deposit of title deeds –**

- a) It is a mortgage created by depositing the original title deeds.
- b) In this transaction, a person delivers to the creditor title of his immoveable property with an intention to create a security, and obtains a loan.
- c) It is also called as equitable mortgage in English law.
- d) Registration of mortgage agreement is not mandatory
- e) An oral agreement between the person and the creditor followed by the delivery of the documents of title to the property is enough.

**6) Anomalous mortgage –**

- a) A mortgage which is not a simple mortgage, a mortgage by conditional sale, usufructuary mortgage, an English mortgage, or a mortgage by deposit of title deeds is called an anomalous mortgage.
- b) An anomalous mortgage is a combination of various other mortgages, for example, a usufructuary mortgage may be created and the mortgagee shall have the right of sale.

**7) Sub-mortgage –**

Where the mortgagee transfers by mortgage his interest in the mortgaged property, or creates a mortgage of a mortgage the transaction is known as a sub-mortgage.

**For example, where Romit mortgages his house to Mehul for Rs. 10,000 and Mehul mortgage his mortgage right to Aman for Rs. 8,000. Mehul creates a sub-mortgage.**

**8) Puisne mortgage –**

Where the mortgagor, having mortgaged his property, mortgages it to another person to secure another loan, the second mortgage is called a puisne mortgage.

**For example, where Mr. D mortgages his house worth ` one lakh to Mr. M for `40,000 and mortgages the same house to Mr. KV for a further sum of `30,000, the mortgage to Mr. M is first mortgage and that to Mr. KV the second or puisne mortgage. Mr. KV is the puisne mortgagee, and can recover the debt subject to the right of Mr. M, the first mortgagee, to recover his debt of `40,000 plus interest.**

#### Rights of mortgagor –

- a) Right of redemption –  
On repayment of loan, mortgagor can take the property back
- b) Right against clog (obstruction) on equity of redemption –  
Any condition which stops the mortgagor from recovering property will be void and mortgagor and take back the property.
- c) Right of partial redemption

#### **Difference between charge and mortgage –**

Mortgage	Charge
A mortgage is transfer of an interest in the property made by the mortgagor as a security for the loan,	charge is not the transfer of any interest in the property though it is security for the payment of an amount.
mortgage can only be created by act of parties.	charge may be created by act of parties or by operation of law
A mortgage deed must be registered and attested by two witnesses	charge need not be made in writing, and if reduced to writing, it need not be attested or registered
in a mortgage, the transferee of mortgaged property from the mortgagor, can only acquire the remaining interest of the mortgagor, and is therefore, only bound by the mortgage.	charge as a general rule, cannot be enforced against a transferee for consideration without notice.
In a mortgage, there can be security as well as personal liability. In fact, the absence of a personal liability is the principal test that distinguishes a charge from a simple mortgage.	In a charge created by act of parties the specification of the particular fund or property negatives a personal liability and the remedy of the charge-holder is against the property only