

City Academy Law College

LL.B. HONS. 5TH SEMESTER

Property Law

UNIT I

Syllabus	i. Concept of Property: Types: Moveable & Immoveable Property ii. Definition clause: Immoveable Property, Attestation, Notice, Actionable claim iii. Definition of Transfer of Property (Sec.5), iv. Restrictions on Transfer (Sec.10-12) v. Transfer to an Unborn person and rule against perpetuity (Sec.13, 14) vi. Vested and Contingent interest (Sec.19 & 21) vii. Conditional Transfer viii. Rule of Election (Sec.35)
-----------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

UNIT I

Lecture 1	Concept of Property, Types, & Immoveable Property
Lecture 2	Definition of Transfer of Property
Lecture 3	Restrictions on Transfer
Lecture 4	Transfer to an Unborn person and rule against perpetuity
Lecture 5	Vested and Contingent interest
Lecture 6	Rule of Election

LL.B. HONS. 5TH SEMESTER

Property Law

UNIT I

Lecture 1

Concept of Property, Types, & Immoveable Property

Previous Questions

Short Questions

Q1. Immoveable Property (2015)

Q2. Define 'Immoveable Property'. (2017)

Notes

Definition of property

Since transfer of property act 1882 has not defined the term property. But it is defined in some other act as follows:

- Section 2(c) of the Benami Transactions (Prohibition) Act, 1988 defines property as: "Property" means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

Theories behind concept of property:-

There are many theories which have been evolved for the purpose of understanding the concept of property properly.

Those theories are as follows:

1. Historical Theory of Property:
2. Labour Theory (Spencer):
3. Psychological Theory (Bentham):
4. Functional Theory (Jenks, Laski):
5. Natural law theory

Kinds of Property

Broadly Property is divided into two kinds as per Transfer of Property Act, those are as follow:

- i) Movable Property
- ii) Immovable Property

Meaning of Movable Property- A movable property can be easily moved from one place to another, without changing its size, shape, quantity or quality. Movable property is one, which can be transferred from one place to another place with the human efforts. Example :- Books, utensils, vehicles, etc.

Meaning of Immovable Property

According to the **Section 3(26) of General Clauses Act, 1897**

“Immovable property includes land, benefits arising out of land and things attached to the earth or permanently fastened or anything attached to the earth.”

However according to the Transfer of Property Act, 1882- Immovable property does not include standing Timber, growing crops or grass. It is not an exhaustive definition.

So we have to read the definition by combining the definitions of General Clauses Act and Transfer of Property Act which is; Immovable property includes land, benefits arise out of land and things attached to earth except for standing timber, growing crops or grass.

Explanation :-

1. Land

2. Benefits Arising Out of the land:-

It means profits derived from the land without having any adequate land. For example, rent, right to way, right to collect profit, rights of fisheries, rights of light, etc. The benefits arising out of land are also known as ‘profit a prendre’.

3. Things Attached to the Earth :-

Section 3 of the Transfer of Property Act defines the expression ‘attached to earth’ as it includes: –

a) Things rooted in the earth - This includes trees and shrubs, except for standing timber, growing crops and grasses for example, sheesham, babool, neem, etc.

b) Things embedded in the earth- This includes things like houses, buildings, etc.

c) Things attached to what is so embedded - For the permanent beneficial enjoyment of that to which it is attached thus the doors and windows of a house are attached to the house for the permanent beneficial enjoyment of the house but if the attachment is not intended to be permanent the things attached are not immovable. For example, Doors and windows of the house are immovable property, but electric fans and window blinds, they are movable property.

Assignment

Q1. Which section of Benami Transactions (Prohibition) Act, 1988 defines property?

Q2. Section 3(26) of General Clauses Act, 1897 defines

Q3. What do you understand by the 'things Attached to the Earth'?

Q4. Name any three things thought they are rooted in the earth but they are considered as immovable property?

Q5. What do you understand by 'profit a prendre'?

LL.B. HONS. 5TH SEMESTER**Property Law****UNIT I****LECTURE 2****DEFINITION OF TRANSFER OF PROPERTY****Previous Questions****Short Questions****Q1. Transfer of Property (2017)****Notes****Definition of Transfer of Property (Section 5)**

Section 5 provides that the 'transfer of property' is an act by which a living person conveys property in present or in future.

- a) To one or more other living persons, or
- b) To himself, or
- c) To himself and one or more other living persons;

'To transfer of property' is to perform such act.

Under Section 5 'living person' includes-

- A company
- An association
- Body of individuals, whether incorporated or not.

Essential ingredients of 'transfer of property'

There are following essential ingredients of a "Transfer of Property"-

1. Transfer of property must be made by a 'living person'.
2. Such living person must convey the property.
3. Transfer of property may be made effective in present or in future.
4. Property (whether movable or immovable) must be existent on the date of the transfer.
5. The property may be transferred to-
 - a) One or more other persons; or
 - b) himself; or
 - c) himself and one or more other persons.

What may be transferred (Section-6)

Property must be transferable for a valid transfer. As a general rule, property of every kind is transferable. Still, there are certain kinds of properties which are not transferable.

- **Transferability of property is a general rule and non-transferability is an exception.**

Section 6 provides that property of any kind may be transferred, except as otherwise provided;

1. by this Act; or
2. by any other law for the time being in force.

Section 6 lays down certain kinds of properties which cannot be transferred. Following kinds of properties cannot be transferred:-

(a) Spec-successionis i.e.

- I. the chance of an heir-apparent succeeding to an estate; or
- II. the chance of a relation obtaining a legacy on the death of a Kinsman; or
- III. any other mere possibility of a like nature.

(b) A mere right of re entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.

(c) An easement apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owners personally.

(dd) A right of future maintenance in whatsoever manner arising, secured or determined.

(e) A mere right to sue.

(f) Public office or salary of a public office (whether before or after it has become payable)

(g) Stipends (allowed to military, naval, air-force and civil pensioners of the government) or political pensions

(h) Transfer opposed to nature of interest created thereby or transfer where its object or consideration is unlawful within the meaning of Section 23 of the Indian contract Act, 1872 or transfer made to a disqualified transferee.

Assignment

Q1. Which section of TPA defines transfer of Property?

Q2. Who is included within the term 'living person'?

Q3. Transferability of property is an exception and non-transferability is a rule. This statement is?

A) True or b) false

Q4. What do you understand by the term "Spec-successionis"?

Q5. Which section of TPA provides about "What may be transferred"?

LL.B. HONS. 5TH SEMESTER
PROPERTY LAW
UNIT I
LECTURE 3
RESTRICTIONS ON TRANSFER

Previous Questions

Short Questions

Q1. Restriction on enjoyment of absolute interest (2016)

Notes

Condition restraining alienation (Section 10)

Section 10 provides that where property is any person claiming under him from parting with or disposing of his interest in the property, the condition or limited is void.

Exceptions Section 10 itself provides two exceptions:-

- a) This section is not applicable in the case of a lease where the case of a lease where the condition is for the benefit of the lessor or those claiming under him.
- b) Where the property may be transferred to or for the benefit of a women (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest.

Restriction repugnant to interest, created [Section 11]

Section 11 provides that where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner; he shall be entitled to receive and dispose of such interest as if there were no such direction.

Section 11 applicable only where an absolute interest (i.e. ownership) has been transferred. It is not applicable where the transfer is merely of partial interest in the property.

It deals with the situation where upon transfer a restriction on enjoyment of property is created.

Illustration

‘A’ sells a house to ‘B’ that he cannot reside in it but use it only as a godown or shop. Such condition is void. ‘B’ is entitled to use the house as his residence.

Exception:

The second paragraph of Section 11 creates an exception to the rule.

The exception is based on the rule laid down in Tulk u. Moxhay.

Condition making interest determinable on insolvency or attempted alienation

Section 12 provides that when the transferee becomes insolvent, and if he has some interest in the property that was transferred to him by the transferor, the transferee still would not lose his interest in the property. Hence, any condition stating that transferee shall lose the interest in the transferred property on insolvency and this interest shall be reverted back to the transferor shall be void.

Exception-

However, this section does not apply to a condition on a lease for the benefit of the lessor or those claiming benefit under him.

Assignment

Q1. Which section of TPA provides about “Condition restraining alienation”?

Q2. Write two exceptions of section 10 of TPA?

Q3. Section 11 applicable only where an..... has been transferred.

Q4. The exception of sections 11 is based on the rule which was laid down in a famous case, write the name of that case?

Q5. Which section of TPA provides about “Condition making interest determinable on insolvency or attempted alienation”

LL.B. HONS. 5TH SEMESTER

PROPERTY LAW

UNIT I

Lecture 4

TRANSFER TO AN UNBORN PERSON AND RULE AGAINST PERPETUITY

Previous Questions

Q1. Though the Transfer of Property Act deals with transfer inter vivos yet an interest may be created in favour of an unborn person. Discuss. (2013, 2018)

Q2. “There cannot be any direct transfer to an unborn person but property may be transferred for the benefit of an unborn person.” Discuss.” (2015)

Q3. Explain the ‘doctrine of election’? What are the conditions in which a person is put to election? (2016, 2017, 2021)

Notes

Transfer for the benefit of an Unborn Person [Section 13]

Property cannot be directly transferred to an unborn person. According to Section 5 of the transfer of Property Act, transfer of property takes place only between two living persons. Therefore, transferee must also be in existence at the date of the transfer.

Section 13 of this Act provides that where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the 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 extend to the whole of the remaining interest of the transferor in the property.

The property cannot be directly transferred to an unborn person but it can be transferred for the benefit of the unborn person in the following conditions:-

- (a) Transfer for the benefit of unborn must be preceded by a prior life –interest in favour of a person in existence at the date of transfer; and
- (b) Only absolute interest can be transferred to an unborn person.

Illustration

‘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.

Rule against Perpetuity [Section 14]

Section 14 incorporates the rule against perpetuity. The rule against perpetuity is aimed against the transfer making the property inalienable for an indefinite period. The term 'perpetuity' means indefinite period.

This rule ensures free and active circulation of property both for purposes of trade and commerce as well as for the betterment of the property itself.

Section 14 provides that in a transfer of property, vesting of interest cannot be postponed beyond the life of last preceding interest in the living person and the minority of the ultimate beneficiary.

Essential elements of the Section 14:- Following are essential elements of Section 14.

- (1) There must be a transfer of property.
- (2) The transfer must be for the benefit of an unborn person who must be given absolute interest.
- (3) The vesting of interest in favour of ultimate beneficiary must be preceded by life or limited interests of living person.
- (4) The ultimate beneficiary must come in to existence before the death of the last preceding living person.
- (5) Vesting of interest in favour of ultimate beneficiary may be postponed only up to the life or lives of living persons and minority of ultimate beneficiary, but not beyond that.

Exceptions to rule against perpetuity:- The rule against perpetuity is not applicable in the following cases-

- (1) Transfer for the benefit of public.
- (2) Personal agreements.
- (3) Covenants running with land.
- (4) Charge.
- (5) Mortgage.

Assignment

Q1. Which section of TPA provides about "Transfer for the benefit of an Unborn Person"?

Q2. Section 13 of TPA is exception of which section?

Q3. The property can be directly transferred to an unborn person as per section 13. This statement is?

a) True or b) False

Q4. Which section of TPA provides about “Rule against Perpetuity”?

Q5. Write any three exceptions to rule against perpetuity?

Q6. For how long vesting of interest can be postponed according to section 14 of TPA?

LL.B. HONS. 5TH SEMESTER**Property Law****UNIT I****Lecture 5****Vested and Contingent interest****Previous Questions****Short Questions****Q1. Vested interest (2017)****Q2. Difference between Vested and Contingent interest (2015)****Q3. Contingent interest (2014)****Notes**

In a transfer of property, the transferor can provide that title or interest created in favour of transferee could take place immediately or on the happening of an uncertain future event. In the former case interest created in favour of transferee is vested, while in latter it is contingent.

Vested interest (Sec. 19):

Sec. 19 enumerates the circumstances when in a transfer of property, the interest created in favour of transferee is vested:

- No time has been specified when it shall take effect, or
- When it is specified that it shall take effect immediately, or
- It is to take effect upon the happening of an event which must happen. For example: any future date or year, any particular age of the transferee, death of any person etc.

Explanation appended to Sec. 19:

State mere fact that the enjoyment of interest transferred has been postponed does not affect the vesting of character of the interest. In the following situations, nevertheless, the interest remains the vested interest:-

- I. Postponement of enjoyment of property: For example: 'A' transfers his properties to 'B', to be given to 'B' on attaining the age of majority.
- II. Where a prior interest is created in the same transfer. For example, 'A' transfers his properties to B for life and then to 'C'.
- III. Direction in a transfer for accumulation of income of the property for a specified period.
- IV. Conditional limitation: A condition specifying that happening of a particular even the interest vested in a person shall pass on to another person is called conditional limitation (**Sec. 28 T.P.A.**) A conditional limitation does not prevent the vesting of the interest.

Nature:

- In a vested interest the title of transferee is complete as soon as property is transferred, and the transferee gets a personal fixed right in the property.
- Vested interest is transferable and heritable. It is transferable and heritable even if transferee has no possession or right of enjoyment.

Contingent interest (Sec. 21):-

Where an interest created in favor of a person is to take effect upon:-

- The happening of an specified uncertain event, or
- Non happening of specified uncertain event,

Such interest is contingent.

Note: Contingency may be of two kind:-

1. That depend upon the will of parties and
2. That depend upon natural events.

Exception: Where a transferee is to get an interest at a particular age, but the transfer directs that:

- a) Transferee is to get absolutely the income arising from that interest before he attains that age, or
- b) Income or part thereof shall be applied to his benefit.

Such interest is vested.

Nature of contingent interest:

- Transferee gets only future possible interest in the property, which does not give any title.
- Contingent interest is non-heritable.
- It is transferable, but the transferee gets only an imperfect title

Difference between Vested And Contingent Interest

Vested Interest is mentioned in Section 19 of the Transfer of Property Act, 1888	Contingent Interest is mentioned in Section 21 of the Transfer of Property Act, 1888.
Vested interest is not defeated by the death of the transferee.	Death of the transferee will result in the failure of contingent interest.
Vested Interest is a transferable as well as a heritable right.	Contingent interest is transferable but it may or may not be hereditary.

Assignment

Q1. Which section of TPA defines vested interest?

Q2. What do you mean by contingent interest?

Q3. If the transferor has provided that title or interest created in favour of transferee could take place immediately, in the former case interest created in favour of transferee is.....?

Q4. Write three natures of contingent interest.

Q5. How many kinds of Contingency may be?

Q6. Write down two differences between Vested and Contingent Interest.

LL.B. HONS. 5TH SEMESTER

Property Law

UNIT I

Lecture 6

Rule of Election

Previous Questions

Q1. “The foundation of doctrine of election is that one may not approbate and reprobate at the same time.” Comment. (2015, 2017)

Notes

Doctrine of Election: Election means choosing between two inconsistent or alternative rights. Where under an instruments two right are conferred on a person in such a manner that one right is in lieu of another (inconsistent or alternative), Then he is bound to choose only one of them. He cannot take under and against the same instrument.

Section 35 of T.P.A. incorporate the doctrine of election and made following rules with regard to it:-

1. A person profess to transfer a property,
2. The person professing (transferor) is not the owner of that property.
3. Transferor confers certain benefit upon the owner of the property.
4. Such benefit is in lieu of the professed transfer.
5. Transfer of property and conferring of benefit form part of same instrument.

In such a situation owner of the property is bound to elect:

- Either to take the benefit and transfer his property, or,
- To reject the benefit and retain the property.

Note I- Knowledge of the fact that transferor has no authority to transfer the property is immaterial for the applicability of the doctrine (Para 2, Sec. 35).

Note II- It is necessary for the applicability of the doctrine that benefit is conferred directly upon the owner and not indirectly.

Note III- The duty to elect arises only when the person acts in one and the same capacity.

Thus where a person has to act in two different capacities eg. One as individual (owner) and theother vicariously eg. as guardian or trustee, he may accept the benefit in one capacity and reject the instrument in another capacity.

Mode of Election-

Owner can exercise his duty of election either expressly or impliedly. When election is express, it is final and conclusive. In case of implied election, the intention of owner is inferred from his acts or conduct.

- 1) Condition to be satisfied when owner elect impliedly in favour of transaction:
- 2) Owner of the property,
- 3) Being aware of his duty to elect, and
- 4) Having full knowledge of the circumstance.
- 5) Accept the benefits

Presumption of acceptance of benefit:

In the following circumstances, court presumes that the owner has knowingly accepted the benefit:

- Owner has enjoyed the benefit for two years without doing any act of refusal or dissent of the transaction, or
- Owner has done some act which renders it impossible to place the parties in the same condition as before. For example: he exhausts or consumes the benefit.

Requisition to elect: After the expiry of one year from the date of transfer, if the owner does not elect, the transferee requires him to make such election. And if he does not elect within a reasonable time, he is deemed to have elected in favor of the transaction.

Suspension of election: Where at the time of election, the elector is legally disabled, the election is postponed such disability cases or election is made by some competent authority, eg. Guardian.

Election against transfer: Where the owner elects against the transaction, he forfeits his claim to benefit conferred under it. The benefit so conferred reverts back to the transferor.

Exception: Owner can claim any other benefit which is conferred under the instrument but independently of transfer.

Rights of a disappointed transferee:

- 1) Where the transfer is gratuitous i.e., without consideration (like gift), and the transferor dies or become incapable of making fresh transfer.
- 2) Where transfer is with consideration. The disappointed transferee is entitled to get reasonable compensation from the transferor or his representative.

Note: A disappointed transferee is one who cannot get the property as the owner of the property decides against the transaction.

Assignment

Q1. Doctrine of Election is embodied in which section of TPA?

Q2. Who is liable to elect under doctrine of Election?

Q3. When the suspension of election takes place?

Q4. What do you understand by disappointed transferee?

Q5. What are the rights of a disappointed transferee?

Q6. The duty to elect arises only when the person acts incapacity?