Property Law notes
Unit 1

Immovable Property (sec 3)

1. Property refers to the bundle of rights which an individual can possess, use, transfer, and dispose of.
2. Classification of property:
    - Movable Property
    - Immovable Property
3. The Transfer of Property Act, 1882, primarily governs immovable property. Movable property is generally governed by other laws like the Sale of Goods Ac, etc.

Movable Property–

- General Clauses Act, 1897 (Section 3(36)):
  "Movable property shall mean property of every description, except immovable property."
- Registration Act, 1908 (Section 2(9)):
  "Movable property includes standing timber, growing crops, and grass, fruit upon and juice in trees and all other property not being immovable."
- Indian Penal Code, 1860 (Section 22):
  "The words 'movable property' are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth."

Examples–

- Standing Timber:
  Trees that are grown for timber and are meant to be cut (like teak, shisham). Considered movable once they are intended to be severed from land.
- Growing Crops:
  Includes vegetables, grains, fruits that grow from the soil. Considered movable because they are meant to be harvested.

- Grass:
  Used as fodder; intended to be cut and removed. Hence considered movable.

- Machinery and Equipment:
  If not permanently embedded or affixed to land, considered movable.

- Other Examples:
  Books, vehicles, furniture, money, shares, promissory notes, jewellery, etc.

Immovable Property–

- Transfer of Property Act, 1882 (Section 3):
  "Immovable property does not include standing timber, growing crops or grass."

- General Clauses Act, 1897 (Section 3(26)):
  "Immovable property includes land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth."

- Registration Act, 1908 (Section 2(6)):
  "Immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land."

Land:
Includes surface, subsoil (minerals), and things naturally attached to it.
Benefits arising from land:
Profits à prendre (e.g., right to extract minerals, fishery rights), right to collect rent or tolls.
Things attached to the earth:
Trees (not meant for timber), buildings, walls, wells.
Hereditary allowances:
Recurring payments granted by the State, linked to the land.
Rights of way, lights, ferries:
Easement-like rights considered part of immovable property.
Embedded Structures:
Things embedded in land (e.g., pipelines, heavy machinery fixed for permanent use).

Between Movable and Immovable Property

Aspect	Movable Property	Immovable Property

Governing Law	Sale of Goods Act, IPC, General Clauses Act	Transfer of Property Act, Registration Act
Transfer Formalities	Simple delivery or transfer of possession	Requires registration if value > ₹100 (Sec. 17, Reg. Act)
Attachment to Earth	Not attached / detachable	Permanently attached or embedded
Taxation	Goods & Services Tax (GST)	Stamp Duty, Registration Fees
Registration	Not mandatory	Often compulsory

Test of Annexation–

- If a thing is attached to land and cannot be removed without damaging it, it is immovable.
  Example: Cemented pillars supporting a shed are immovable due to permanent attachment.

Purpose of Annexation–

- If attached for enjoyment of land, it's immovable.
- If attached for better use of the object itself, it's movable.

Case Laws

Smt. Shantabai v. State of Bombay
Right to cut and remove wood from land for 12 years = benefit from land → Immovable Property

Judicially Recognized Immovable Properties–

29. Right to collect rent from land

30. Hereditary office linked to land

31. Right of fishery

32. Factory buildings

33. Right of redemption in mortgages

34. Walls, buildings, wells, etc.

Judicially Recognized Movable Properties–

35. Government securities, bonds, and promissory notes

36. Royalty

37. Right of worship

38. Standing timber (cut for commercial use)

39. Growing crops (meant for harvest)

40. Decree for sale of mortgaged property

Attestation–

* Attestation means signing a document to testify that it was executed in the presence of the witness.

* It serves as proof of the authenticity of the document and that it was executed with the free will of the executant.

Definition under Section 3 –

"Attested" means:

* By two or more witnesses
* Each of whom has:
  * Seen the executant sign or affix his mark, or
  * Seen someone else sign the document in the presence and direction of the executant, or

* Received personal acknowledgment from the executant of the signature or mark
* Each witness must sign the instrument in the presence of the executant
* Simultaneous presence of witnesses is not mandatory
* No particular form of attestation is necessary

Essentials/Requisites of Valid Attestation

1. Minimum two attesting witnesses
2. Each must see:

   * The executant signing or affixing his mark, or
   * Another person signing on the executant's behalf in their presence and by direction, or
   * The executant giving acknowledgment of the execution
3. Signature by witness must be in the presence of the executant
4. Witness must sign only after execution of the document is complete
5. Witnesses need not be present at the same time
6. No specific form of attestation is required
7. A person signing for any other purpose (e.g., scribe) is not an attesting witness
8. Acknowledgment must be by the executant personally and not through an agent
9. A party to the transfer cannot be a valid attesting witness
10. A person interested in the transaction but not a party can be a valid witness
11. Mere presence of a signature is not sufficient — there must be an intention to attest
12. Witnesses need not identify each other’s signatures
13. Invalid attestation renders the document unenforceable in court

NOTICE—

"Notice" means knowledge or information of a fact.

A person is said to have notice if:

* He actually knows the fact, or
* Under the circumstances, it can be proved he ought to have known the fact.

Definition under Section 3 of TPA–

A person is deemed to have notice of a fact in the following cases:

1. Actual Notice: Direct and conscious knowledge of a fact.
2. Constructive Notice: Knowledge imputed by law due to:

   * Willful abstention from inquiry or search, or
   * Gross negligence.

Types of Notice–

a) Actual or Express Notice

* The person has direct knowledge of the fact.

* The fact must be definite and come from a reliable source.

* Rumours or hearsay do not amount to actual notice.

b) Constructive or Implied Notice

* Imposed by law when a person should have known the fact but didn't due to:

  * Willful abstention from inquiry, or

  * Gross negligence.

* Treated as if the person actually knew the fact.

Illustration:

If C fails to inspect the property register before purchasing from A (who had already sold to B), C is deemed to have constructive notice of B's rights.

Circumstances Leading to Constructive Notice

a) Willful Abstention from Inquiry

* Refusal to investigate facts that a reasonable person would have checked.

* Must show lack of bona fide.

b) Gross Negligence

* Extreme carelessness amounting to fraud.

* Mental indifference to obvious risks.

* Varies with context and access to information.

Illustration:

Buying property without checking for municipal tax arrears amounts to gross negligence.

Registration as Notice

* Registration of a document amounts to constructive notice only if:

1. The document is compulsorily registrable.
2. It is registered under the Registration Act, 1908.
3. The notice is to subsequent transferees, not prior ones.

Possession as Notice

* Actual possession of property acts as notice of the possessor's rights.

* The buyer is deemed to have notice if someone else is occupying the property.

ILLUSTRATION:

If B is in possession but C buys from A without checking, C is deemed to have notice of B's rights.

Notice to Agent

* Notice to an agent is notice to the principal if:

1. Agent has actual knowledge.
2. Knowledge is acquired during the agency.
3. The fact is relevant to the transaction.
4. Agent acts in good faith and as a reasonable person

ACTIONABLE CLAIM–

Definition – Section 3 of TPA

- An actionable claim refers to:
  - A claim to any debt, excluding debts secured by mortgage of immovable property or by hypothecation or pledge of movable property, or
  - A beneficial interest in movable property not in the possession (actual or constructive) of the claimant
  - Provided such claim or interest is recognized by civil courts as affording a right to relief
- It may be:
  - Existent
  - Accruing
  - Conditional
  - Contingent

Illustrations under Section 3

- Mortgage debt is not an actionable claim (secured)
- Unsecured debt is an actionable claim

Example:
A borrows ₹1,000 from B and mortgages his house – Not an actionable claim
C owes ₹1,000 to D without security – Is an actionable claim

Common Instances of Actionable Claims

- Unsecured debts
- Maintenance allowance payable in future
- Fixed deposits in banks
- Hire-purchase receivables

Key Characteristics of Actionable Claims

- Intangible movable property
- Enforceable by civil courts
- Must involve debt or beneficial interest not backed by security
- Transfer requires written instrument, not mere oral assignment

MEANING OF TRANSFER OF PROPERTY (SEC 5)

Section 5 defines “Transfer of Property” as an act by which a living person conveys property to one or more other living persons.

The transfer may take place in present or in future. The word "conveys" refers to legally transferring interest in the property.

Who is a Living Person?

The term “living person” includes:

Individual human beings

Companies

Associations or bodies of individuals (incorporated or not)

Essential Features of Transfer under Section 5

a) Act

It must be a deliberate act of transferring property, not an automatic event.

Voluntary transfers (like sale or gift) fall under this, whereas involuntary transfers (like inheritance or will) do not.

b) Living Person

Includes natural and artificial persons.

The transferor must be:

Competent to contract

Of sound mind

A major under Indian law

c) Conveys

Refers to transfer of interest or rights in the property from one person to another.

The transferee must receive some legal interest for it to be valid.

d) In Present or Future

Transfer can take place immediately or in the future.

Retrospective transfers (pertaining to past dates) are not recognized under this section.

e) Property

Property may be movable or immovable.

Includes tangible things (like land) and intangible rights (like right of fishing).

f) To Another Living Person

There must be at least one transferee who is a living person at the time of transfer.

Transfer to oneself is permitted in specific cases like creation of trust.

Example–

If A (an adult of sound mind) sells property to B (a company), it is a valid transfer under Section 5.

If A transfers property to his legal heirs through a will, it is not governed by this section.

CONDITION RESTRAINING ALIENATION (sec 10)

* Meaning of alienation: Refers to the transfer of property from one party to another.

* Ownership and right to transfer: The right of alienation is a fundamental aspect of ownership.

* Section 10 provision: Declares void any condition in a transfer that absolutely restrains the transferee from transferring his interest in the property.

Purpose and Principle Behind Section 10–

* Objective: To uphold free transferability of property and prevent the creation of inalienable estates.

*Based on the maxim "alienatio rei prae fertur juri accrescendi" – law favours transfer over accumulation.

* Ownership implication: Once property is transferred, any absolute condition preventing its transfer goes against the ownership's essence.

Nature of Condition in Section 10–

* Conditional transfers may involve:

  * Condition precedent: Transfer happens only if the condition is fulfilled.
  * Condition subsequent: Condition comes into effect after the transfer.

* Section 10 deals with condition subsequent.

Language of Section 10 (Essence)

Any condition or limitation "absolutely restraining" a transferee or anyone claiming under him from transferring the property is void.

Exceptions:

1. Lease property with restriction for the benefit of the lessor.
2. Married women (not Hindu, Muslim or Buddhist) can be subject to such restraint.

Absolute Restraint – Invalid

* Definition: A condition that completely prohibits the transferee from transferring the property to anyone.

* Effect: The condition is void, but the transfer remains valid.

Forms of absolute restraint–

* In terms of time (e.g., forever)
* In terms of person (e.g., only to a specific individual)
* In terms of method (e.g., no sale, gift, mortgage etc.)

Illustrations of Absolute Restraint–

* A sells house to B, on condition that B can only sell to C – Void.
* Property given to wives with condition not to sell without husband's consent – Void.

Partial Restraint – Valid

* Definition: Condition that limits but does not entirely prohibit transfer.
* Nature: Valid and enforceable.
* Tests for validity:
  * Does not substantially take away the transferee’s right to transfer.
  * Evaluated on the substance, not the form.
* Examples of valid partial restraint:
  * Restriction on transfer for 3 years.
  * Restriction on gift alone.
  * Condition not to transfer outside family.

Exceptions to Section 10

A. Leasehold Interests

* Lessor can validly restrict lessee from subleasing or transferring lease.
* Case law:

  * Raghuram Rao v. Eric Mathias: Even perpetual leases with restraint are valid.
  * Raja JagatRanvir v. Bagriden: Subletting prohibition = Valid.
  * Breach does not give right of ejectment unless expressly provided.

B. Married Women (Non-Hindu, Muslim, Buddhist)

* Valid to restrict alienation during marriage.
* Based on English doctrine of coverture.
* Purpose: Protect women from pressure by husbands.
* Also provided in Married Women's Property Act, 1874.

REPUNGENT CONDITIONS (SEC 11) –

Section 11 of the Transfer of Property Act(TPA) addresses restrictions on the enjoyment of property that are repugnant to the interest created by a transfer.

It establishes that when property is transferred to someone with an absolute interest, any conditions dictating how that interest should be applied or enjoyed are deemed void.

The core principle underlying Section 11 is the preservation of the right to free enjoyment of property, which is inherent in ownership. Therefore, any condition that t this enjoyment is considered invalid.

This principle ensures that the transferee receives the property with all its legal incidents, without any restrictions that detract from the completeness of the interest conveyed.

TRANSFER FOR BENEFIT OF UNBORN PERSON (SEC 13)

When property is transferred for the benefit of a person not in existence at the time of transfer. The transfer must be preceded by a life interest in favour of a person who is alive at the date of transfer.

The unborn person must be given the whole of the remaining interest of the transferor.

Basic Definitions–

Transfer of Property (Section 5):

Transfer must be between two living persons (inter vivos).

Unborn Person:

Not a legal entity until birth.

Cannot hold property directly at the time of transfer.

Life Interest:

A limited interest granted for the lifetime of the holder.

Cannot be sold or transferred after the death of the holder.

Key Ingredients of Section 13

A. Existence of a Prior Life Interest

There must be a living person who takes a prior life interest under the same transfer.

Purpose: To bridge the time gap between the transfer and the unborn person's birth.

Example: A transfers property to B for life, then to A's unborn son. This is valid, assuming the unborn son is born before B's death.

B. The Ultimate Beneficiary Must Be an Unborn Person

The person in whose favour the remainder is transferred must be:

Not in existence at the time of transfer, and

Capable of coming into existence (i.e., not a void being, such as a corporation yet to be formed).

C. Must Get the Whole of the Remaining Interest

The unborn must receive absolute interest (entire ownership).

Any restriction, such as only life interest or conditional ownership, renders the transfer vo deid.

Example: A gives property to B for life, and then to B's unborn son for life, then to C. Invalid – life interest to unborn is not allowed.

Purpose of the Provision

Prevent perpetuity and promote free alienation of property.

Ensure unborn person takes full ownership, not tied up for successive generations.

Based on the principle: "A man shall not control property from beyond the grave."

Illustrative Case Study

Valid Example

A transfers property to B for life and then to A's unborn son absolutely.

Valid: B is a living person. The unborn gets absolute interest.

Invalid Example

A transfers property to B for life, then to A's unborn son for life, then to C.

Invalid: The unborn son only got life interest, violating Section 13.

Consequences of Invalidity

If the transfer violates any condition under Section 13:

Transfer to unborn = Void ab initio (invalid from the start).

Property reverts to the transferor or legal heirs.

The life interest holder does not become full owner.

Vesting of Interest

The unborn person must:

Be born before the life interest ends.

Survive to take interest after life interest ends.

If the unborn is not born or dies before vesting – transfer fails.

Exceptions and Limitations

Section 13 does not apply to Muslims:

Under Section 2, TPA is not applicable where the Muslim Personal Law applies.

Muslims can make direct gifts (hiba) to unborn under certain interpretations.

Does not apply to wills:

Section 13 governs only inter vivos transfers, not testamentary ones.

Relationship with Section 14 (Rule Against Perpetuity)

Section 13 is complemented by Section 14:

Section 14 prevents creating successive limited interests beyond a certain period (lifetime + minority).

Section 13: Prohibits limited interest to an unborn.

Section 14: Prohibits tying up property for too long even after giving absolute interest.

VESTED AND CONTINGENT INTERESTS

VESTED INTEREST

Definition–

Vested interest refers to an interest in property that is created in favor of a person immediately, even though the possession or enjoyment of the property is deferred to a future date.

Relevant Law–

Section 19, Transfer of Property Act, 1882.

Legal Characteristics–

* The interest is not dependent on the happening of any event, except the natural course of time.

* Right is absolute, though enjoyment may be postponed.

Essential Ingredients–

* Present Right: The right comes into existence as soon as the transfer is made.

* Postponement of Enjoyment: Enjoyment or possession of the property may occur later.

* Definite Beneficiary: The person in whose favor the interest is created is known and certain.

* Not Subject to Condition Precedent: No condition needs to be fulfilled to create the right.

* Transferable and Heritable: The beneficiary can transfer the interest, and it passes on death to legal heirs.

Examples–

* A transfers property to B for life and then to C. C has a vested interest even if C will get possession only after B’s death.

* A bequeaths a house to B, to be possessed after B turns 21. B has a vested interest, though possession is deferred.

Legal Effect–

* The beneficiary gets a legal claim to the property from the moment the interest vests.

* The interest is protected under law and enforceable through courts.

CONTINGENT INTEREST

Definition–

Contingent interest refers to an interest which depends on the happening or non-happening of a specific uncertain event in the future.

Relevant Law–

Section 21, Transfer of Property Act, 1882.

Legal Characteristics–

* The interest does not exist until the condition precedent is fulfilled.

* The beneficiary has no legal right unless and until the condition is satisfied.

Essential Ingredients

* Uncertain Beneficiary: The beneficiary is not fixed or certain until the event occurs.

* Conditional Vesting: The interest arises only if the stated condition is met.

* Condition Precedent: Interest depends on an uncertain future event (e.g., passing an exam, marriage, survival, etc.).

* Non-transferable: Generally cannot be transferred because it is uncertain and unvested.

* Fails on Death Before Fulfillment: If the beneficiary dies before fulfilling the condition, the interest fails completely.

Examples–

* A grants property to B if B passes the civil services exam. B has a contingent interest.

* A transfers property to C, to take effect only if C marries before turning 25. If C doesn't marry by 25, the interest fails.

Legal Effect–

* Until the condition is fulfilled, no legal claim or remedy exists.

* If the condition fails, the interest is extinguished.

RULE OF ELECTION–

Meaning of Election-

* Election in legal terms means choosing between two inconsistent rights.

* A person cannot both:

  * Enjoy a benefit under an instrument; and

  * Reject the burden or obligation imposed by the same instrument.

* This doctrine prevents dual benefit under the same transaction.

Legal Basis

* Section 35 of the Transfer of Property Act, 1882 codifies the doctrine.

* Based on principle of equity, justice, and good conscience.

Essentials of Doctrine (Section 35)

1. Transferor professes to transfer a property not belonging to him.

2. In the same transaction, transferor confers a benefit on the real owner of the property.

3. The real owner has to choose (i.e., elect):

   * Either to confirm the transfer, or

   * Dissent and forgo the benefit.

4. If he dissents, he must relinquish the benefit conferred.

5. The benefit goes back to the transferor or his representative in the following cases:

   * If the transfer was gratuitous, and the transferor dies or becomes incapable before election.

   * If the transfer was for consideration, the disappointed transferee must be compensated from the value of the benefit.

Definitions

* Transfer (Sec. 5, TPA): Act by which a living person conveys property to another living person.

* Transferor: One who makes the transfer.

* Transferee: One who receives the transfer.

Illustration

* A, by gift deed, transfers C’s property (Sultanpur Farm) to B and gives ₹1000 to C in the same deed.

  * C chooses to retain the farm (his property).
  * Therefore, C must forfeit the ₹1000.
  * If A dies before C makes an election, the ₹800 (value of the farm) must be paid to B from A’s estate.

Disappointed Transferee

* A transferee who:

  * Fails to receive the property due to owner’s dissent, and
  * Is thus disappointed by the election.

* In case of transfer for consideration, he must be compensated for the loss.
* In gratuitous transfers, the benefit reverts to the transferor (if possible).

Who Needs to Elect?

* Only the person who receives direct benefit under the same instrument and is also the owner of the property that is attempted to be transferred.
* If the benefit is indirect, no need to elect.

Mode of Election

A person elects when:

1. He accepts the benefit, and

2. Is aware:

* That he must choose between rights,
* Of all relevant facts, or
* Waives the inquiry into relevant facts.

Presumption of Election:

* If the person enjoys the benefit for two years without dissent.
* If the person does an act inconsistent with dissent (e.g., sells or exhausts the benefit).

Limitation Period

* The person must elect within 1 year of the transfer.
* If no election is made, transferor or his representative can require election.
* If the person fails to respond within a reasonable time, he is deemed to have elected to confirm.

Applicability in Personal Laws

* Doctrine is applicable under both:
  * Hindu Law, and
  * Muslim Law

UNIT II

TRANSFER BY OSTENSIBLE OWNER (sec 41)

1. Meaning of Ostensible Owner

An ostensible owner is someone who is not the real owner of a property but has been allowed by the real owner to appear as the owner.

This appearance is due to the express or implied consent of the real owner, who may not interfere in the ostensible owner's management of the property.

The third party (transferee) is misled into believing the ostensible owner is the true owner.

If a person appears as the owner with the consent (express or implied) of the real owner, and he transfers property for consideration, the transfer will not be voidable only because the transferor had no actual authority, provided the transferee acted in good faith and took reasonable care.

3. Essential Conditions of a Valid Transfer under Section 41

(a) The Transferor must be the Ostensible Owner

The person transferring must have the apparent authority or possession of the property.

Ostensible ownership must be with the knowledge and consent of the real owner.

(b) Consent of Real Owner

The real owner must have permitted, explicitly or implicitly, the ostensible owner to represent himself as the owner.

Consent may arise by conduct, neglect, or intentional silence.

(c) Transfer must be for Consideration

The transfer must involve valuable consideration.

A gratuitous or gift transfer is not protected.

(d) Transferee acted in Good Faith

The transferee must believe that the ostensible owner is legally capable of transferring the property.

Absence of fraud or dishonest intention is crucial.

(e) Reasonable Care by the Transferee

The buyer must make proper inquiries or due diligence.

Reasonable care is judged by what a prudent man would do under similar circumstances.

4. Legal Nature and Objective

Exception to the rule: "Nemo dat quod non habet" (No one can give what they don’t have).

The law protects innocent third-party purchasers who rely on the appearance created by the real owner.

Ensures that equity and fairness are preserved in property transactions.

5. Burden of Proof

Lies on the transferee (buyer) to prove:

The transferor was the ostensible owner.

The real owner gave consent (express or implied).

He acted in good faith.

He took reasonable care and made inquiries before purchase.

6. Relevant Case Laws

Ramcoomar Koondoo v. John and Maria McQueen (1872)

Laid the foundation for the doctrine of ostensible ownership.

Held: If a person allows another to appear as owner, he cannot deny that person's authority later.

Md. Shafiqullah Khan v. Md. Samiullah Khan (1929)

The real owner's failure to intervene and stop the transfer gave validity to the transaction under Section 41.

Benami Transactions Case (Pre-Benami Act)

If A buys property in the name of B (benami) and allows B to act as owner, A cannot later claim title over it against a bona fide buyer from B, under Section 41.

7. Application in Benami Transactions

Earlier: Section 41 applied where the benamidar (name lender) was the ostensible owner and the real owner remained passive.

Now: The Benami Transactions (Prohibition) Act, 1988 (amended in 2016) prohibits benami transactions and limits the applicability of Section 41.

8. Scope and Limitation of Section 41

Applies When:

Real owner gives consent (express or implied).

Transfer is for consideration.

Buyer acts in good faith.

Buyer conducts due diligence.

Does Not Apply When:

No consent by real owner.

Transfer is gratuitous.

Buyer knows of lack of authority.

No reasonable steps taken by the buyer to inquire into title.

9. Doctrine of Estoppel Embedded in Section 41

If a person by their conduct leads another to believe something (e.g., ownership), they are estopped (legally barred) from going back on their representation.

Section 41 applies the equitable principle of estoppel to real property transactions.

10. Illustration

A owns property but allows his brother B to manage and represent it as his own. B sells the property to C, a buyer who pays fair price and believes B is the owner. A cannot reclaim property from C under Section 41.

11. Impact on Real Estate Transactions

Encourages transparency and vigilance in land dealings.

Protects bona fide purchasers who are otherwise vulnerable to fraudulent or deceptive appearances.

Warns real owners to avoid negligence in supervising property representation.

RULE OF FEEDING GRANT BY ESTOPPEL

* Feeding the Grant by Estoppel is a legal doctrine codified in Section 43 of the Transfer of Property Act, 1882.

* It applies when a person fraudulently or erroneously represents that they have the authority to transfer certain immovable property and professes to transfer such property for consideration.

* If the transferor subsequently acquires the interest in the property, the transfer operates on that interest at the option of the transferee.

* This doctrine is rooted in the principles of equity and estoppel, ensuring that a person cannot deny the validity of a transaction they have endorsed through their actions.

Essential Conditions for Application

For the doctrine to apply, the following conditions must be satisfied:

1. Representation by the Transferor

   * The transferor must have made a fraudulent or erroneous representation that they are authorized to transfer the property.

2. Transfer for Consideration

   * The transfer must be made for valuable consideration, not as a gift.

3. Subsequent Acquisition of Interest

   * The transferor must later acquire the interest in the property they initially professed to transfer.

4. Subsisting Contract

   * The contract of transfer must be still subsisting at the time the transferor acquires the interest.

5. Option of the Transferee

   * The transferee has the option to accept the transfer once the transferor acquires the interest.

Legal Basis and Principles

* The doctrine is based on the common law principle of estoppel by deed and the equitable maxim that "equity regards as done that which ought to be done."

* It serves as an exception to the general rule under Section 7 of the Transfer of Property Act, which states that only a person competent to contract and entitled to transfer property can do so.

* Under Section 43, even if the transferor was not competent at the time of transfer, the transfer can become valid if they later acquire the interest.

Limitations and Exceptions

The doctrine does not apply in the following scenarios:

* Transfer by a Minor

  * If the transferor is a minor, the transfer is void ab initio, and the doctrine cannot apply.

* Transfer Against Public Policy

  * Transfers that are against public policy are excluded from the doctrine's purview.

* Knowledge of the Transferee

* If the transferee is aware that the transferor does not have the authority to transfer the property, the doctrine cannot be invoked.

* Non-Transferable Interests

  * The doctrine does not apply to interests that are inherently non-transferable, such as spes successionis (a mere expectation of succession).

Spes Successionis and Its Relation

* Spes Successionis refers to the expectation of inheriting property in the future, which is not a transferable interest under Section 6(a) of the Transfer of Property Act.

* The doctrine of feeding the grant by estoppel does not apply to transfers of spes successionis, as such transfers are void and cannot be validated by subsequent acquisition.

Application Scope

* The doctrine applies to various forms of property transactions, including sale, mortgage, lease, charge, and exchange.

* However, it does not apply to:

  * Compulsory sales made through court orders.

  * Transfers forbidden by law or those that are contrary to public policy.

  * Transfers made by individuals lacking legal capacity, such as minors or lunatics.

RULE OF LIS PENDENS (Section 52)

1. Meaning of 'Lis Pendens'

Lis Pendens is a Latin term meaning "a pending suit or litigation".

It is based on the legal maxim: “Pendente lite nihil innovetur” – “Nothing new should be introduced during the pendency of litigation”.

The doctrine ensures that the subject matter of the dispute is preserved intact until the litigation is finally decided.

2. Text of Section 52, Transfer of Property Act

Section 52 prohibits the transfer or dealing of immovable property which is the subject matter of a pending suit or proceeding.

Such transfer should not affect the rights of any party to the suit under any decree or order which may be passed in that suit.

Exception: The transfer is not barred if made with permission of the court.

3. Purpose and Policy Behind the Doctrine

To prevent multiplicity of litigation and conflicting decisions.

To stop parties from defeating the outcome of legal proceedings by alienating the disputed property.

To protect the interests of the other party in the litigation.

Ensures that court orders are meaningful and enforceable.

4. Essential Conditions for Applicability of Section 52

(a) There Must Be a Suit or Proceeding

A suit must be pending in a court of competent jurisdiction.

The suit must relate to rights in immovable property.

(b) The Suit Must Be Bonafide

The litigation must be genuine and not collusive or fraudulent.

(c) The Property Must Be Immovable

Section 52 applies only to immovable property.

(d) Transfer by a Party to the Suit

The transferor must be a party to the suit or proceeding.

(e) The Transfer Must Be Without Leave of the Court

Any transfer without court permission is invalid as against the opposing party.

(f) The Litigation Should Be Pending

The doctrine applies from the date the suit is filed until it is finally disposed of, including appeals.

5. Scope and Applicability

Applies to all transfers like sale, lease, mortgage, gift, exchange, etc., of disputed immovable property.

Applies even if the transferee had no knowledge of the pending litigation.

The transferee steps into the shoes of the transferor and is bound by the final decree.

6. Judicial Interpretations

(i) Bellamy v. Sabine (1857)

The doctrine is not based on notice but on public policy.

It prevents alienation that would render justice ineffective.

(ii) Krishna Prasad v. Adyanath Ghatak (1919)

The doctrine applies to all bonafide and genuine suits and ensures that the rights of parties are preserved.

(iii) Jayaram Mudaliar v. Ayyaswami (1972)

The Supreme Court held that the doctrine is not a bar to transfer, but the transferee takes the property subject to the outcome of the suit.

7. Legal Effect of Lis Pendens

The transfer made during pendency is not void but subordinate to the rights of the parties as decided by the court.

The transferee cannot claim any independent right overriding the final decree.

The court decree is binding even on the transferee, although he or she was not a party to the suit.

8. Exception to Section 52

The property may be transferred during litigation if prior permission of the court is obtained.

Such permission allows a valid transfer not subject to the final outcome of the suit.

Collusive or fabricated suits will not attract Section 52.

9. Distinction Between Section 52 and Other Doctrines

Aspect

Section 52 (Lis Pendens)

Section 53 (Fraudulent Transfer)

Section 53A (Part Performance)

Basis

Pending litigation

Intent to defraud creditors

Equity to enforce part performance

Applies To

Immovable property

Movable and immovable

Immovable only

Requires Notice?

No

Yes

Yes

Outcome

Transfer valid but subordinate

Transfer voidable

Transfer enforceable in equity

The Doctrine of Lis Pendens ensures that property involved in a legal dispute remains protected from alienation.

Prevents unscrupulous litigants from frustrating court judgments by transferring property.

It maintains the status quo during litigation and promotes fairness and judicial efficiency.

A transferee during pendency of litigation inherits both the risks and responsibilities of the original party.

FRAUDULENT TRANSFER

Section 53 TPA, 1882

1. Definition and Scope

Section 53 addresses transfers of immovable property made with the intent to defeat or delay creditors.

Such transfers are voidable at the option of any creditor who is defrauded or delayed.

The section provides a mechanism for creditors to challenge and nullify such transfers.

2. Key Provisions of Section 53

Subsection (1): Transfers made with intent to defeat or delay creditors are voidable at the option of any such creditor.

Subsection (2): Transfers made without consideration with intent to defraud a subsequent transferee are voidable at the option of such transferee.

However, transfers to a transferee in good faith and for consideration are protected.

3. Essentials of a Fraudulent Transfer

The transferor must intend to defeat or delay creditors.

The transfer involves immovable property.

The transfer is made without consideration (in cases involving subsequent transferees).

4. Exceptions

Good Faith: If the transferee acquires the property in good faith and for consideration, the transfer is not voidable. Good faith implies an honest belief and lack of knowledge about any fraudulent intent on the part of the transferor.

Insolvency Laws: The section does not affect any law relating to insolvency.

5. Legal Proceedings

A suit to avoid a transfer under this section must be instituted by a creditor and is to be for the benefit of all creditors.

The burden of proof initially lies on the creditor to establish the fraudulent intent.

Once established, the burden shifts to the transferee to prove good faith and consideration.

6. Case Law

Karim Dad v. Assistant Commissioner (1999): Held that a transaction based on fraud and misrepresentation cannot pass a valid title.

Musahar Sahu v. Lala Hakim Lal (1951): Held that it is not fraud if a debtor chooses to pay one creditor and leave others unpaid, provided there is no intent to defraud.

DOCTRINE OF PART PERFORMANCE

Section 53A TPA, 1882

1. Introduction

* The Doctrine of Part Performance is a significant aspect of property law under the Transfer of Property Act, 1882 (TPA), which allows for the recognition of partially performed agreements even if they do not meet the formal requirements stipulated by the Act.

2. Concept of the Doctrine

* The Doctrine of Part Performance is embodied in Section 53A of TPA.

* This section protects transferees who have taken possession of the property or made improvements based on an oral agreement or an agreement not registered as required by law.

3. Elements of the Doctrine

Existence of an Agreement:

* There must be a valid agreement between the parties for the transfer of property, even if it is not in writing or registered.

Payment of Consideration:

* The transferee must have paid or agreed to pay the consideration, either fully or in part, as per the terms of the agreement.

Taking Possession or Making Improvements:

* The transferee must have taken possession of the property or performed substantial acts of improvement on it based on the agreement.

4. Legal Effect

* Section 53A provides a shield to the transferee against the transferor, preventing the latter from enforcing any rights in respect of the property, except as provided by the contract.

* It does not confer ownership rights to the transferee but protects their possession.

5. Limitations

* The doctrine cannot be used as a sword; it only serves as a defense.

* It does not apply to oral agreements made after the 2001 amendment, which mandates registration.

* The transferee must be willing to perform their part of the contract.

6. Landmark Case

* In the landmark case, the Supreme Court reaffirmed the principles of the Doctrine of Part Performance as enshrined in Section 53A of the TPA, 1882.

* The case involved an oral agreement for the sale of immovable property between the parties.

* The SC held that the transferee was entitled to the protection afforded by Section 53A of the TPA, 1882 despite the informality of the agreement and its non-registration.

* The Court emphasized the importance of equity and fairness in property transactions and upheld the transferee's rights based on the principles of part performance.

VESTED AND CONTINGENT INTERESTS

VESTED INTEREST

Definition–

Vested interest refers to an interest in property that is created in favor of a person immediately, even though the possession or enjoyment of the property is deferred to a future date.

Relevant Law–

Section 19, Transfer of Property Act, 1882.

Legal Characteristics–

* The interest is not dependent on the happening of any event, except the natural course of time.

* Right is absolute, though enjoyment may be postponed.

Essential Ingredients–

* Present Right: The right comes into existence as soon as the transfer is made.

* Postponement of Enjoyment: Enjoyment or possession of the property may occur later.

* Definite Beneficiary: The person in whose favor the interest is created is known and certain.

* Not Subject to Condition Precedent: No condition needs to be fulfilled to create the right.

* Transferable and Heritable: The beneficiary can transfer the interest, and it passes on death to legal heirs.

Examples–

* A transfers property to B for life and then to C. C has a vested interest even if C will get possession only after B’s death.

* A bequeaths a house to B, to be possessed after B turns 21. B has a vested interest, though possession is deferred.

Legal Effect–

* The beneficiary gets a legal claim to the property from the moment the interest vests.

* The interest is protected under law and enforceable through courts.

CONTINGENT INTEREST

Definition–

Contingent interest refers to an interest which depends on the happening or non-happening of a specific uncertain event in the future.

Relevant Law–

Section 21, Transfer of Property Act, 1882.

Legal Characteristics–

* The interest does not exist until the condition precedent is fulfilled.
* The beneficiary has no legal right unless and until the condition is satisfied.

Essential Ingredients

* Uncertain Beneficiary: The beneficiary is not fixed or certain until the event occurs.
* Conditional Vesting: The interest arises only if the stated condition is met.
* Condition Precedent: Interest depends on an uncertain future event (e.g., passing an exam, marriage, survival, etc.).
* Non-transferable: Generally cannot be transferred because it is uncertain and unvested.
* Fails on Death Before Fulfillment: If the beneficiary dies before fulfilling the condition, the interest fails completely.

Examples–

* A grants property to B if B passes the civil services exam. B has a contingent interest.

* A transfers property to C, to take effect only if C marries before turning 25. If C doesn't marry by 25, the interest fails.

Legal Effect–

* Until the condition is fulfilled, no legal claim or remedy exists.

* If the condition fails, the interest is extinguished.

Aspect	Vested Interest	Contingent Interest
Governing Provision	Section 19, TPA	Section 21, TPA
Nature of Right	Present and absolute right	Future and conditional right
Condition Requirement	No condition except time	Based on a specific future uncertain event
Possession	Enjoyment may be postponed, but right exists	No right until condition is fulfilled
Beneficiary	Certain and identifiable	Uncertain; depends on event
Transferability	Transferable and heritable	Generally non-transferable
Failure on Death	Passes to legal heirs if person dies	Ceases if beneficiary dies before fulfillment of condition
Legal Remedy	Enforceable in court	No remedy unless condition is fulfilled
Example	Property to B after life estate to A	Property to C if he becomes a lawyer

,

UNIT III

SALE

Definition of Sale (Section 54 of Transfer of Property Act, 1882)

* Sale means the transfer of ownership in immovable property for a price paid or promised or part-paid and part-promised.
* Ownership passes from the seller to the buyer once the sale is complete.
* Price consideration must be in money, not in goods or services.

Nature of Sale

* It is a transfer of ownership (title) of property.
* Different from a contract of sale, which is an agreement to sell and does not transfer ownership immediately.
* Sale completes the transfer, whereas a contract of sale creates a right to get ownership transferred later.

Mode of Transfer (Sale how made)

* For immovable property valued ₹100 or more, the transfer must be by a registered instrument (registered sale deed).
* Immovable property includes land, buildings, and things permanently attached to the earth.
* For immovable property below ₹100 value, transfer can be by registered deed or delivery of possession.

Essential Elements of a Valid Sale

* Competent Parties: Both buyer and seller must be legally competent to contract (i.e., major, sound mind, not disqualified by law).
* Lawful Object: The property must be lawful and transferable.
* Consideration: There must be a monetary price agreed upon.
* Transfer of Ownership: Ownership must pass immediately unless otherwise agreed.
* Free Consent: Consent of parties should be free from coercion, undue influence, fraud, misrepresentation, or mistake.
* Registered Instrument: When required, sale must be in writing and registered as per the Registration Act.

Subject Matter of Sale

* Must be immovable property as defined by law.
* The property must be capable of being transferred legally.
* Property may include land, buildings, rights attached to land (e.g., leasehold interest).

Contract of Sale vs. Sale

* Contract of Sale: An agreement to sell, giving right to buyer to demand transfer in the future.
* Sale: The actual transfer of ownership in the property.

Rights and Duties of the Seller (Section 55)

* Duties:

  * Disclose any material defects in the property or title.
  * Produce title deeds and relevant documents when requested.
  * Provide truthful answers about the property.
  * Convey clear and marketable title to the buyer.
  * Take care of the property and the documents until the sale is complete.
  * Pay any rent or public charges (taxes, municipal dues) accrued before the sale.
  * Deliver possession of the property after receiving payment.

* Rights:

  * Right to receive the purchase price as agreed.
  * Right to retain possession until payment is made unless agreed otherwise.
  * Right to enforce the contract through courts in case of breach.

Rights and Duties of the Buyer (Section 55)

* Duties:

  * Pay the agreed purchase money on time.
  * Inform the seller of any facts increasing the property's value which the seller is unaware of.
  * Bear loss if property is damaged or deteriorates after sale, not due to seller’s fault.
  * Pay any rent or public charges accrued after the sale.

* Rights:

  * To receive possession and enjoyment of the property.
  * To get clear title and documents after full payment.
  * To sue for specific performance if seller refuses to transfer ownership after payment.

Importance of Registration

* Registration of sale deed provides legal recognition and proof of ownership transfer.
* Prevents disputes regarding title.
* Unregistered sale deeds are not valid for immovable properties worth ₹100 or more.
* Registration acts as public notice of the transaction, protecting buyer’s interest.

Additional Importants

* Sale deed must clearly specify the parties, property details, sale consideration, and terms.
* Sale of immovable property may also include sale of rights in property like lease rights.
* Transfer of possession is essential and often accompanies sale to establish buyer's control.
* In case of sale by a person without title or right, the buyer may lose the property unless protected by law (like the doctrine of estoppel).

GIFT

1. Definition of Gift (Section 122)

- A gift is the voluntary transfer of existing movable or immovable property without consideration, from one person (donor) to another (donee), accepted by or on behalf of the donee during the donor's lifetime and while capable of giving.

2. Parties Involved

- **Donor**: Must be competent to contract (i.e., of sound mind and not a minor).
- **Donee**: Can be any person; however, acceptance must be made during the donor's lifetime. If the donee is a minor or incapable, acceptance can be made on their behalf by a competent person.

3. Essential Elements of a Valid Gift

- **Transfer of Ownership**: Complete and absolute transfer of all rights in the property from donor to donee.
- **Existing Property**: The property must exist at the time of the gift. Gifts of future property are void.
- **Without Consideration**: The transfer must be gratuitous; any form of consideration invalidates the gift.
- **Voluntary Transfer with Free Consent**: The donor's consent must be free from coercion, undue influence, fraud, or misrepresentation.
- **Acceptance by Donee**: The donee must accept the gift during the donor's lifetime and while the donor is capable of giving.

4. Modes of Making a Gift (Section 123)

- **Immovable Property**: Must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.
- **Movable Property**: Can be transferred either by a registered instrument or by delivery of possession.

5. Gift of Future Property

- Gifts of future property are void. A gift must pertain to property that exists at the time of the gift.

6. Gift to Multiple Donees

- If a gift is made to multiple donees and one of them does not accept it, the gift is void concerning the share of the non-accepting donee.

7. Onerous Gifts (Section 127)

- A gift with obligations attached is called an onerous gift. The donee must accept both the benefits and the burdens. If the donee is a minor, upon attaining majority, they can choose to accept or reject the gift.

8. Universal Donee (Section 128)

- A universal donee is one who receives the donor's entire property. Such a donee is liable for all debts and liabilities of the donor existing at the time of the gift, to the extent of the property received.

9. Suspension or Revocation of Gifts (Section 126)

- A gift can be revoked:
    - **By Mutual Agreement**: If the donor and donee agree that the gift shall be suspended or revoked upon the occurrence of a specified event not dependent on the donor's will.
    - **By Rescission as in Contracts**: If the gift was obtained through coercion, fraud, or undue influence, it can be revoked similarly to contracts under the Indian Contract Act.

10. Exceptions

- **Donatio Mortis Causa**: Gifts made in contemplation of death are not governed by the Transfer of Property Act.
- **Muslim Law (Hiba)**: Gifts under Muslim law are governed by personal law and not by the Transfer of Property Act.

📌 Summary Table

Element	Requirement
Donor	Competent to contract
Donee	Any person; must accept the gift
Property	Existing, movable/immovable
Consideration	None (gratuitous transfer)
Mode of Transfer	Registered deed (immovable), delivery (movable)
Acceptance	Must be during donor's lifetime
Revocation	Only as per Section 126
Future Property	Cannot be gifted
Onerous Gift	Obligations must be accepted with the gift

MORTGAGE

Meaning of Mortgage

Mortgage is a method of securing a loan or debt by transferring an interest in specific immovable property.

The borrower (mortgagor) transfers an interest in the property to the lender (mortgagee) as security for repayment.

The mortgagee's interest is conditional on repayment of the debt; if the debt is repaid, the mortgage interest ceases.

Unlike sale, mortgage does not transfer ownership outright but creates a security interest.

Legal Definition

Defined under Section 58(a) of the Transfer of Property Act, 1882:

"Mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability."

Key points:

The property must be immovable and specifically identified.

There must be a debt or liability, existing or future.

Transfer is made to secure payment or performance of the obligation.

Essential Elements of a Mortgage

Existence of Debt or Obligation: There must be a monetary debt or an engagement with pecuniary liability.

Transfer of Interest: Transfer of an interest in immovable property (not necessarily ownership).

Specific Property: The property mortgaged must be definite and identifiable.

Purpose of Security: The transfer must be for securing repayment or performance of the debt or obligation.

Mutual Consent: Both parties must agree to the mortgage terms.

Classification / Types of Mortgages (Sections 58 & 59)

1. Simple Mortgage (Section 58(b))

Mortgagor binds himself personally to repay the debt.

Mortgagee has no right to sell the property if the debt is not paid.

Mortgagor remains in possession.

Mortgagee’s remedy is to sue for repayment.

2. Mortgage by Conditional Sale (Section 58(c))

Property is transferred on condition that if debt is repaid, transfer is void.

If debt is not repaid, transfer becomes absolute.

Mortgagor loses ownership if they fail to pay.

3. Usufructuary Mortgage (Section 58(f))

Mortgagor delivers possession to mortgagee.

Mortgagee is entitled to receive income (usufruct) from property in lieu of interest or principal.

Ownership does not transfer to mortgagee.

4. English Mortgage (Section 58(g))

Mortgagor transfers property absolutely.

There is a proviso that on payment of debt, transferor gets title back.

If debt not paid, mortgagee keeps property.

5. Mortgage by Deposit of Title Deeds (Section 58(e))

Mortgagor deposits title deeds with mortgagee as security.

No transfer of possession.

Mortgagee holds deeds until debt repaid.

6. Mortgage by Sale (Section 58(d))

Property is transferred absolutely.

There is a contract to retransfer upon payment.

If debt not paid, mortgagee becomes absolute owner.

7. Anomalous Mortgage (Section 58(h))

Mortgages that do not fall under above categories.

Terms agreed mutually by parties.

Rights and Liabilities of the Mortgagor

Right to Redeem: Mortgagor can reclaim ownership on repayment of debt.

Right to Possession: Except in usufructuary mortgage, mortgagor usually retains possession.

Duty to Pay Debt: Mortgagor must repay the secured debt.

Duty to Maintain Property: Mortgagor must take care of property and prevent damage.

Right to Sue: Mortgagor can sue for possession or wrongful foreclosure.

Rights and Liabilities of the Mortgagee

Right to Receive Debt: Mortgagee can sue for recovery.

Right to Possession: In some mortgages (usufructuary, deposit of deeds with possession), mortgagee can take possession.

Right to Sale: Mortgagee may sell property after default, subject to contract terms and legal procedures.

Duty to Account: Mortgagee must account for income derived from property if in possession.

Duty Not to Oppress: Mortgagee must not misuse possession or oppress mortgagor.

Redemption of Mortgage

Meaning: The right of the mortgagor to reclaim property by paying debt.

Time of Redemption: Can be exercised any time before sale or foreclosure.

Partial Redemption: Mortgagor can redeem part of property if contract permits.

Equity of Redemption: Mortgagor’s right to redeem is called “equity of redemption.”

Legal Protection: Courts protect mortgagor’s equity of redemption from harsh foreclosure.

Foreclosure of Mortgage

Definition: Legal process by which mortgagee extinguishes mortgagor’s right to redeem.

Grounds: Usually for failure to repay after due notice.

Effect: Mortgagor loses right to redeem; mortgagee becomes absolute owner.

Court Discretion: Courts may refuse foreclosure if mortgagor shows sufficient cause or offers to pay.

Suit for Sale

Purpose: Mortgagee may file suit to sell mortgaged property to recover debt.

Procedure: Court orders sale; proceeds go first to mortgagee.

Excess Amount: Surplus money after payment of debt returned to mortgagor.

Effect on Redemption: After sale, mortgagor’s right to redeem is extinguished.

Doctrine of Lis Pendens

If a mortgage suit is pending, any subsequent transfer of the property is subject to the result of the suit.

The buyer takes property subject to mortgage rights.

Difference Between Mortgage and Pledge

Mortgage	Pledge
Applies to immovable property	Applies to movable property
Possession may or may not transfer	Possession always transfers to pledgee
Transfer is of interest/security in property	Transfer is of possession as security

| Mortgagor retains ownership rights | Pledgor retains ownership rights |

CHARGE

Definition: Section 100 of the Transfer of Property Act, 1882, defines a charge as a claim against an immovable property, created either by the act of parties or by operation of law, to secure the payment of money to another, without transferring any interest in the property.

Example: If X gives his property to P with the condition that P must pay Rs 10,000 monthly to Q, this amount constitutes a charge in favor of Q. If P sells the property to Z, Q can enforce her right against Z, provided Z has notice of the charge.

Essentials of a Charge

1. **Immovable Property as Security**: The property must be immovable and specified as security for the payment of money.

2. **Creation by Act of Parties or Operation of Law**:

   * **Act of Parties**: An agreement between the parties creates a charge. No specific form of words is necessary; a clear intention to use the property as security is sufficient.

* **Operation of Law**: A charge can also be created by operation of law, such as a court order or statutory provision.

3. **Not Constituting a Mortgage**: The transaction must not amount to a mortgage. A charge does not transfer any interest in the property but creates a right to payment out of the specified property.

Rights of the Charge Holder

* **Preservation of Property**: The charge holder has the right to ensure the property is not destroyed, forfeited, or sold.

* **Enforcement**: The charge holder can enforce the charge by filing a suit.

* **Personal Decree**: If the charge carries personal liability, the charge holder is entitled to a personal decree.

Termination or Extinguishment of Charge

A charge can be extinguished by:

1. **Release by the Chargee**: The charge holder releases the debt or security.

2. **Novation**: The original agreement is replaced with a new one.

3. **Merger**: The charge merges with a higher interest in the property.

Difference Between Charge and Mortgage

Aspect	Charge	Mortgage
Definition	Defined in Section 100 of the Act	Defined in Section 58 of the Act
Transfer of Interest	No transfer of interest in property	Transfer of interest in property
Debt Requirement	May or may not involve a debt	Always involves a debt
Creation	Can be created by act of parties or operation of law	Created by act of parties only
Registration	Compulsory only when created by act of parties	Compulsory
Enforceability	Right in personam (enforceable against a person)	Right in rem (enforceable against the world)

LEASE AND LICENCE

📘 Definition of Lease (Section 105)

- A lease is the transfer of a right to enjoy immovable property for a certain time, express or implied, or in perpetuity.

- It is made in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee.

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

🧾 Essential Elements of a Lease

1. Transfer of Right to Enjoy Property – The lease involves transferring the right to enjoy the property, not ownership.

2. Duration – The lease can be for a certain time, express or implied, or in perpetuity.

3. Consideration – The lease is made in consideration of a price paid or promised, or of money, a share of crops, service, or any other thing of value.

4. Acceptance – The transferee must accept the transfer on the terms specified.

🏛️ Parties Involved

- Lessor – The person who transfers the right to enjoy the property.

- Lessee – The person who receives the right to enjoy the property.

📜 Types of Leases

1. Lease for a Certain Time – The duration is fixed and specified in the lease agreement.

2. Periodic Lease – The lease continues indefinitely until terminated by notice, e.g., month-to-month or year-to-year leases.

3. Lease in Perpetuity – The lease is for an indefinite period, often requiring registration to be legally binding.

📝 Creation and Execution of Lease (Section 107)

- A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can only be made by a registered instrument.
- All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

📅 Duration and Termination of Lease (Section 106 & 111)

Section 106

- In the absence of a contract or local law, a lease for agricultural or manufacturing purposes is deemed to be a year-to-year lease, terminable by six months' notice.
- For other purposes, it is deemed to be a month-to-month lease, terminable by 15 days' notice.

Section 111 – Specifies various modes of determination of lease, including:

- By efflux of time
- By happening of a specified event
- By termination of lessor's interest
- By merger of interests
- By express surrender
- By implied surrender
- By forfeiture
- By notice to quit

🔁 Holding Over (Section 116)

- If a lessee remains in possession after the lease term has expired and the lessor accepts rent or otherwise assents to the lessee's continued possession, the lease is considered renewed from year to year or month to month, depending on the purpose of the lease.

⚖️ Distinction Between Lease and License

Lease

- Transfers an interest in the property
- Creates rights in rem (against the world)
- Lessee has exclusive possession

License

- Does not transfer any interest in the property
- Creates rights in personam (against specific individuals)
- Licensee does not have exclusive possession

📚 Relevant Case Laws

- **Jaswant Singh Mathura Singh v. Ahmedabad Municipal Corporation** – Held that a lease creates rights and interests in enjoying the property, and the tenant is entitled to remain in possession until the lease is fully terminated.
- **Makali Engineering Works Pvt. Ltd. v. Dalhousie Properties Ltd.** – Emphasized that for a lease agreement to be legally binding, a definite period is critical, unless it is a lease in perpetuity.
- **B Arvind v. Government of India** – Outlined essential ingredients for a valid lease, including transfer of the right to enjoy immovable property, specified term or

perpetuity, consideration of premium or rent, and bilateral acceptance.

🔍 Distinction Between Lease and License

Aspect	Lease	License
Nature of Right	Transfer of a right to enjoy the premises	Permission to do something on the premises
Interest in Property	Transfer of interest	No transfer of interest
Accretions	Accretions during lease are included	No rights over accretions
Transferability	Transferable and heritable	Non-transferable and non-heritable
Termination	Can be terminated by forfeiture or as per Section 111 of TPA	Revocable at the pleasure of the grantor
Effect of Subsequent Transfer	Lessee's interest not affected by subsequent transfer	License terminates immediately upon subsequent transfer
Effect of Death	Not affected by death of either party	Usually terminates upon death of either party
Possession Rights	Right to protect possession exists	No right to defend possession