

NOSHIRVAN H. JHABVALA

THE TRANSFER OF PROPERTY ACT

2001



PLATINUM JUBILEE YEAR
C. JAMNADAS & CO.

THE TRANSFER OF PROPERTY ACT

(ACT IV OF 1882)

By

NOSHIRVAN H. JHABVALA, B.A., LL.B.

Advocate (O.S.), High Court, Bombay

Revised and brought up-to-date

By

YUSUF IQBAL YUSUF, B.L.S., LL.B.

Advocate, Supreme Court of India



C. JAMNADAS & CO.
EDUCATIONAL & LAW PUBLISHERS

146-C, SHAMALDAS GANDHI ROAD,

MUMBAI-400 002

Phone : 22019020 / 22067003

E-mail : cjamnadas@vsnl.net

Published by

Parimal J. Shah, M.A.
For C. Jamnadas & Co.,
146-C, Shamaldas Gandhi Road,
Mumbai-400 002

Thoroughly Revised Twenty-Fifth Edition

Reprint-2012

Reprint : 2013

Reprinted, 2014

Reprinted, 2015

(All rights including those of translations reserved by the Publishers)

Price : Rs. 200/-

Printed at

SHREE SWAMINARAYAN MUDRAN MANDIR
12, Shayona Estate, Nr. Vadilal Icecream Factory.
Dudheshwar Road, Shahibaug.
AHMEDABAD-380 004
Phone : 079-5626996

PREFACE TO THE TWENTY-FIFTH EDITION

We are happy to bring out the twenty-fifth edition of the Transfer of Property Act. In this edition, Case-law has been brought up-to-date, and several new cases have been added. The recent University Questions have also been duly incorporated. A summary of the Transfer of Property Act is appended at the end of the book, as an aid to revision of the subject. We are confident that this revised edition will fully meet the requirements of the law students. — Publishers

CONTENTS

	<i>Page</i>
Preamble	1
CHAPTER 1 Preliminary	
Definitions	3
CHAPTER 2 Transfer of property, whether movable or immovable	
A. General	13
B. Illegal restrictions on certain alienations	25
C. Transfer for benefit of unborn persons	32
D. Transfer to a class	38
E. Vested interest	40
F. Contingent interest	43
G. Conditional transfers	46
H. Election	55
I. Apportionment	59
CHAPTER 3 Transfer of immovable property	
A. Transfer by person other than full owner	62
B. Protection of third person's rights	71
C. Transfer by person having authority to revoke a former transfer	76
D. Transfer by co-owners	77
E. Joint transfers	78
F. Priority of rights created by transfer	79
G. Transferee's rights under policy	81
H. Bona fide holders under defective title	82
I. Transfer of property pending suit relating thereto (Lis Pendens)	84
J. Fraudulent transfer	91
K. Part-performance	95
CHAPTER 4 Sale of immovable property	
'Sale' defined - Sale how effected - 'Contract for sale' defined	101
Rights and liabilities of buyer and seller	104
Marshalling by subsequent purchaser	109

CHAPTER 5

Mortgages of immovable property and charges

A. Mortgages	112
<i>Six kinds of mortgages and their characteristics</i>	113
1. Simple mortgage	113
2. Mortgage by conditional sale	114
3. Usufructuary Mortgage	116
4. English Mortgage	119
5. Mortgage by deposit of title-deeds (Equitable mortgage)	120
6. Anomalous mortgage	123
Mortgagor's rights	125
Liabilities of the mortgagor	140
Rights of the mortgagee	142
Liabilities of the mortgagee	151
Law as to priority of securities	152
Tacking	153
Marshalling and contribution	156
B. Charges	
Definition	160
Doctrine of merger	164

CHAPTER 6

Leases of immovable property

Definition	166
Duration and Termination of leases	170
Rights and liabilities of the lessor	171
Rights of the lessee	172
Liabilities of the lessee	173
Rights and liabilities of lessor's transferee	174
Determination (i.e. termination) of a lease	175
Forfeiture of lease	177
Holding over	180

CHAPTER 7

Exchanges	184
------------------	-----

CHAPTER 8

Gifts	187
--------------	-----

CHAPTER 9

Transfer of actionable claims

'Actionable claim' defined	194
Transfer how effected	195
Rights of a transferee of an actionable claim	196
Rights of an assignee of marine and fire policies	199

CHAPTER 10

General observations on how to execute different kinds of Transfers under the Act 201	
--	--

SUMMARY OF THE TRANSFER OF PROPERTY ACT	202
--	-----

TABLE OF CASES

A		Dawar v. Dhama	189
Abdul Satar v. Satyabhusan	193	Devi Prasad v. Lewis	18
Abid Husain v. Ram Nidh	192	Durga Chunder v. Kailas Chunder	19
Adjudhia v. Rakhman	51	Durgozi v. Fakeer Sahib	84
Akbar Saheb v. Soran	160	E	
Akhoy v. Corporation of Calcutta	161	Ebrahim Bhai v. Fulbai	93, 94
Aldrish v. Cooper	154	Elokasee v. Darponarain	41
Alwar Chetty v. Jagannatha	9	Ex Parte v. Mercer	92
Ambika Pratap v. Dwarka Prasad	88	F	
Amiruddaula v. Nateri	27	Faiyaz Husain Khan v. Prag Narain	89
Amrit Narayan v. Gaya Singh	17	Farrence v. Elkington	177
Annamalai Chettiar v. Malayandi	86	Fateh Din v. Kishen Lal	144
Annoda Mohan v. Nilphamari	66	G	
Anurudh v. Lachmi	191	Gajapathi v. Alagia	109
Ardeshir v. Dadabhai	32	Galliara v. U. Thet	66
Ariff v. Jadunath	96	Geneshi Lal v. Jyoti Pershad	133
B		Ghansam Das v. Uma Pershad	94
Baba Miya Mohiddin Shakkar v.		Gobinda v. Dwarkanath	16
Jehangir Dinshaw Belgaumwala	145	Gokulapathi v. Venkatarama	
Bala Ramchandra v. Daula	90	Sharma	83
Banerji v. Kuchwar Lime & Stone Co.	97	Gopal v. Parsotam	111
Bapurao v. Bulakidas	191	Govindaswamy v. Ramaswamy	183
Barati Lal v. Salik Ram	16	Gowan v. Christie	167
Bellamy v. Sabine	86, 90	Gurudeo Singh v. Chandrika Singh	133
Bhagirathi v. Jokhu Ram	64	H	
Bhagwant v. Kedari	91	Hamida v. Humer	98
Bhagwat v. Gorakh	6	Hannooman Persad v.	
Bhimrao v. Sakharam	127	Babooi Munraj Koonwaree	64
C		Hatikudur v. Andar	69
Cavendish v. Dacre	57	Hind Trading & Mfg. Co. v.	
Central Bank of India v. Nusserwanji	122	Didi Modes Pvt. Ltd.	169
Chalamanna v. Subbamma	162	Holroyd v. Marshall	15
Chimna v. Venkat	150	Hussiaa Banu v. Shivnarayan	16
Christian v. Field	132	I	
Chunchun Jha v. Shaikh Ebadat Ali	116	Ibn Hasan v. Brijbhusan	159
C.T.I. v. Keshavlal	15	Inderdawan v. Govind	157
Coltness Iron Co. v. Black	167	In the Matter of the Indian	
Colonial Bank v. Whimney	194	Stamp Act	184
Cooper v. Cooper	56	Ishan Chander v. Bishu Sardar	91
Coote v. Mammon	12	Ismail v. Saleh Muhammed	184
Corporation of Liverpool v. Wright	20	Ismail Khatri v. Muljibhai	
D		Brahmabhatt	115
Dahyabhai v. State of Bombay	15	Istak Kamu v. Ranchhod Zipru	190
Dalton v. Figerald	57		
Dan Kuer v. Saria Devi	72		

J		M. N. Abdul Jabbar v. H. Venkata Sastri & Sons	6
Jafri Begum v. Sayed Ali	29	Mineral Development Ltd. v. Union of India	169
Jagannath v. Diboo	69	Mohammad Aleem v. Maqsood Alam	86
Jagannath Puri v. Godabai	15	Mohani v. Purna Shashi	162
Jeut Koeri v. Mathura	129	Mohammad Raza v. Abbas Bandi	26
Jhagru v. Ragunath	176	Mohori Bibi v. Dharmodas	68
J & K (Bombay) Pvt. Ltd. v. New Kaiser-i-Hind Spg. & Wvg. Ltd.	160	Moro v. Balaji	130
Jogendra v. Dwarkar	8	Muniappa Pillai v. Periasami	16
Jugalkishore v. Raw Cotton Co.	14	N	
Jumma Masjid v. Kadimaniandra Deviah	69	Nafar Chandra v. Kailash	36, 38
K		Nagayyar v. Govindayuyar	134
Kaderbhai Ismailji v. Fatmabai Golamhusein	6	Nageshar Prasad v. Raja Pateshri	67
Kanahiya Lal v. Chander	61	Narain Das v. Murli Dhar	162
Kariya v. Vishnu	183	Narain v. Narain	133
Keshavlal v. Maganlal	173	Natesa v. Tungarelu	169
Kesho Prashad v. Upper India Bank	72	Nathan v. Durga Das	162
K. J. J. v. New Patagonia Meat and Cold Storage Co. Ltd.	128	Nathulal v. Phoolchand	99
Krishnappa v. Mallaya	86	Natvarlal v. Dadubhai	16
Krishnappa v. Shavappa	86	Niras Purve v. Mst. Tetri Pasin	66
Kristoromani v. Narendra	53	Nityanand v. Rajpur Chhaya Bani Cinema Ltd.	122, 144
Kurri Veerareddi v. Kurri Bapireddi	96	Noakes v. Rice	128
L		Nur Mahommed v. Dinshaw	76
Lallu v. Jagmohan	42	O	
Leake v. Robinson	39	Official Assignee of Madras v. Sampat Naidu	69
Leward v. Hassels	50	P	
Lloyds Bank Ltd. v. P. E. Guzdar & Co.	9, 153	Palamalai v. South Indian Export Co.	94
M		Panchali v. Panniyodan Manni	15
M. Haque v. G. Mullick	167	Paul v. Gopal Nath	72
Ma Yait v. Official Assignee	44	Payne v. Cardiff Rural Council	145
Madam Pallai's Cases	102	Peary v. Narendra	161
Madam Pallai v. Badra Kali	103	Perumal v. Perumal	4
Mahadaji v. Gampatishet	130	Phramroze Dadabhai Madan v. Tehmina	32
Mahadeo v. Har Buksh	69	Pomal Govindji v. Vrajlal Purohit	128
Maharajadhiraj Sir Kameshwar Singh v. State of Bihar	118	Prabhu Narain v. Ramzan	74
Mahendra Nath v. Parmeshwar	88	Partap Chand v. Saiyiaa Bibi	67
Makhanlal v. Nagendranath	16	Prethi Singh v. Ganesh	14
Mangaldas v. Ranchhoddas	58	Prithiraj v. Rukmin	110
Maung Tung v. Maung Aung	125	Provident Investment Co. v. Income-tax Commissioner	16
Md. Musa v. Aghore Kumar Ganguli	96	Purna v. Brima	15
		Putlibai v. Sorabji Naoroji	32

(vii)

R			
R.R.O.O. Chettyar Firm v. Ma Sein Yim	95	Soniram v. Dwarkabai	15
Rabindranath v. Sarat Chandra	86	Sopher v. Administrator General of Bengal	32
Radhakrishnayya v. Sarasamma	15	Souder Rajan v. Natarajan	37
Radha Madhub v. Munshur	89	Stremann v. C.I.T.	15
Raghobir v. Jethu	175	Subama v. Yamanappa	190
Raja Gokul Das v. Eastern Mortgage Agency & Co.	11	Sulin Mohan v. Raj Krishna	69
Rakestraw v. Brewer	148	Sulleman v. Patel	100
Rama Nand v. Champa Lal	68	Sunder Bibi v. Rajendra	41
Ramaswami Chettiar v. Mallappa Reddiar	95	Sundrabai v. Shivnarayan	64
Ram Coomar v. McQueen	65	Sunil K. Sarkar v. Aghor K. Basu	115
Ramkinkar v. Satyacharan	119	Syed Mukhtar v. Rani Sunder Koer	172
Ramrao v. Pahumal	176	T	
Ram Raj v. Lal Chandra	192	Tagore v. Tagore	53
Ram Sarup v. Bela	48	Tayabali v. Messers Ashan & Co.	171
Ratanlal v. Ramanujadas	26	Topanmal v. Chanchalmal	83
Re Cackerill	26	Traders Miners Ltd. v. Dharendra	16
Rogers v. Hosegood	108	Tulk v. Moxhay	74, 75
Rosher v. Rosher	26	U	
Royzauddi v. Nath	161	Underwood v. Wing	52
Rye v. Rye	166	Unnamalai v. Gopal Swami	157
S		U. P. Government v. Manmohan Das	163
Sadhu Madho Das v. Pandit Mukand Ram	16	V	
Sadhu Meher v. Rajkumar Patel	98	Vaddiparthi v. Appalanarasimhalu	127
Sadhu Ram v. Pirthi Singh	15	Vani v. Bani	125
Sahadev v. Shekh Papa	10	Varadammal v. Ambalal J. Vyas	89
Sambhu Prasad v. Mahadeo Prasad	67	Venkatasammanna v. Brammanna	26
Samsuddin v. Abdul Husein	18	Venkatarama v. Aiyasami	54
Sannamma v. Radhabhai	68	Vine v. Raleigh	
Sarat Chandra v. Gopal Chandra	65	W	
Saroj Ammal v. Sri Venkateswara Finance Corp.	92	Walsh v. Lonsdale	99, 100, 103
Shahzad Singh v. Madan Gopal	189	Whitby v. Mitchell	33, 37
Shankar v. Yeshwant	127	Woods v. Townley	50
Sheo Shankar v. Parma Mahton	129	Y	
Sital Chandra v. Dellanney	16	Yamunabai v. Nanabhai	72
Sonepalli Mutyalay v. Veerayya	15	Z	
		Zamindar of Potavaram v. Maharajah of Pittupuram	102

**BOOKS RECOMMENDED
FOR
FURTHER READING**

MULLA	:	The Transfer of Property Act
SHAH	:	Principles of the Law of Transfer
MITRA	:	The Transfer of Property Act
CHITALEY & RAO	:	The Transfer of Property Act
SHUKLA	:	The Transfer of Property Act
ROW	:	The Transfer of Property Act
SENGUPTA	:	The Transfer of Property Act
RAY	:	The Transfer of Property Act
SHANGARI	:	Supreme Court Encyclopaedia on the Transfer of Property Act

THE TRANSFER OF PROPERTY ACT

(ACT No. IV OF 1882)

Preamble

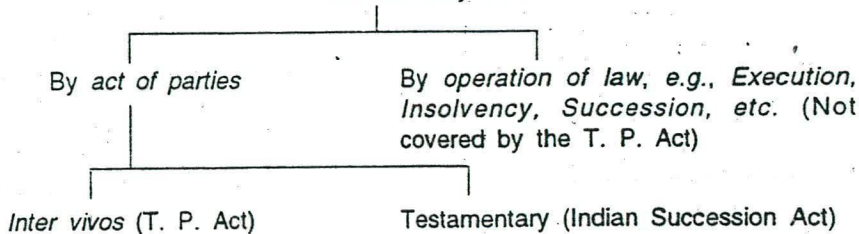
The *Preamble* to the Act lays down that it is an Act to *define* and *amend* the law relating to transfer of property *by act of parties* (i.e., not by operation of law). The Act came into force on 1st July, 1882.

OBJECTS OF THE TRANSFER OF PROPERTY ACT.—“The *chief objects* of the Transfer of Property Act are *two* : *first*, to bring the rules which regulate the transmission of property between *living* persons into harmony with the rules affecting its devolution upon death, and thus to furnish the *complement* to the work commenced in framing the law of intestate and testamentary succession; and *secondly*, to *complete* the code of *contract* law, so far as it relates to *immovable* property.”

ACT NOT EXHAUSTIVE.—The Act is *not*, and does *not* purport to be, an exhaustive enactment. In other words, it does *not* cover the entire dimension of transfer of property. [B.U. = Bombay University]

SCOPE OF THE ACT.—The Act is limited to the transfer of property *by act of parties*, as distinguished from a transfer *by operation of law*, e.g., in case of inheritance, insolvency, forfeiture or sale in execution of a decree. It relates to transfers of property *inter vivos*, i.e., voluntary transfers between *living* persons, and *has no application to the disposal of property by will*. Thus,— [P.U. = Pune University]

Transfer may be :



The Act applies only to transfers *inter vivos*, i.e., transfers by one living person to another. Transfer of property is either *by act of parties* or *by operation of law*. If X sells or mortgages or gifts away his house, it is a case of voluntary transfer *by act of parties*. But, if X becomes an insolvent, his property vests in the Official Assignee or Receiver, whether X likes it or not. So also, if X's property is sold in execution of a decree against him, it would be a case of a transfer much against the will or desire of X. This is, therefore, known as transfer *by operation of law*.

Now, transfer by act of parties is of *two kinds* :

- (i) Transfer *inter vivos*, and
- (ii) Transfer *by will*, i.e., testamentary disposition of property.

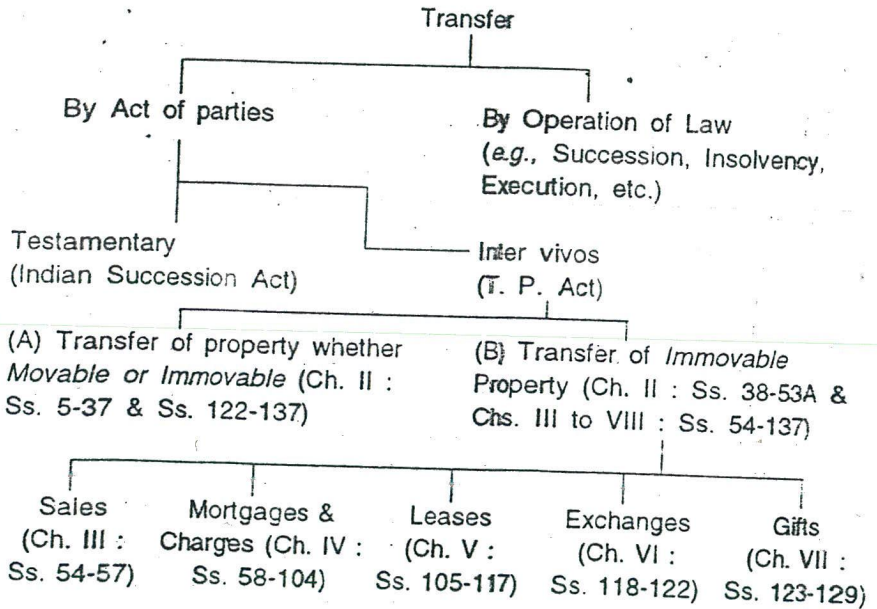
THE TRANSFER OF PROPERTY ACT

Thus, if X sells his property to Y, it is a case of transfer between living persons. If the property is *movable*, the Sale of Goods Act will apply, and if it is *immovable*, the Transfer of Property Act will govern the case. If, however, X bequeaths his property to Y under his will, Y will get nothing as long as X is alive, but as soon as X dies, Y will get the property. It is, therefore, sometimes said that this is really a gift from the dead to the living. This is known as *testamentary disposition* of property. Transfer *inter vivos* is governed by the Transfer of Property Act, if the property transferred is immovable. Transfer by will, known as *testamentary disposition* of property (whether movable or immovable), is governed by the Indian Succession Act.

Therefore, the Transfer of Property Act relates to the transfer of property *inter vivos*, and has no application to the disposal of property by *will*. It does not deal with cases of succession.

The following Table shows what part of the "law of transfer" is covered by this Act.

THE SCHEME OF THE TRANSFER OF PROPERTY ACT



State and explain
the different modes
of transfer of im-
movable property,
pointing out their
distinctive features.

B.U. Oct. 97
Apr. 98
Apr. 99