Transfer of Property Act, 1882

[Act IV of 1882]

[*17th February, 1882*]

An Act to amend the law relating to the Transfer of Property by act of Parties

Preamble.—Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:

CHAPTER I
PRELIMINARY

1. Short title.—This Act may be called the Transfer of Property Act, 1882.

Commencement.—It shall come into force on the first day of July, 1882.

Extent.—It extends, in the first, instance to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States, or in the States of Bombay, Punjab and Delhi.

But this Act or any part thereof may by notification in the Official *Gazette* be extended to the whole or any part of the said States by the State Government concerned.

And any State Government may, from time to time, by notification in the Official *Gazette* exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions namely:

Section 54, Paragraphs 2 and 3, 59, 107 and 123.

Notwithstanding anything in the foregoing part of this section, Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1908 (XVI of 1908), under the power conferred by the first section of that Act or otherwise.

STATE AMENDMENTS

Maharashtra.—In the Transfer of Property Act, 1882, in its application to the State of Bombay after Section 1, the following section shall be inserted, namely:—

"1-A. Subject to the provisions of any special or local law relating to agricultural land for the time being in force in any area, this Act shall, on the commencement of the Transfer of Property (Bombay Provision for Uniformity and Amendment) Act, 1959 (57 of 1959), apply also to transfer of agricultural land in the Saurashtra and Hyderabad areas of the State of Bombay." (Bombay Act 57 of 1959, Ss. 4 & 2).

2. Repeal of Acts, saving of certain enactments, incidents, rights, liabilities, etc.—In the territories to which this Act extends for the time being the enactments

specified in the schedule hereto annexed shall be repealed to the extent herein mentioned. But nothing herein contained shall be deemed to affect—

(*a*) the provisions of any enactment not hereby expressly repealed;

(*b*) any terms of incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability; or

(*d*) save as provided by Section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a court of competent jurisdiction;

and nothing in the second chapter of this Act shall be deemed to affect any rule of Muhammadan Law.

3. Interpretation clause.—In this Act, unless there is something repugnant in the subject or context,—

"immovable property" does not include standing timber, growing crops or grass;

"instrument" means a non-testamentary instrument;

"attested", in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary;

"registered" means registered in any part of the territories to which this Act extends under the law for the time being in force regulating the registration of documents;

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached;

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

"a person is said to have notice" of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of Section 30 of the Indian Registration Act, 1908 (XVI of 1908) from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (XVI of 1908) and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.

4. Enactments relating to contracts to be taken as part of Contract Act.—The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (IX of 1872).

[And Section 54, Paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (XVI of 1908)].

CHAPTER II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES

(A) *Transfer of Property, whether movable or immovable*

5. "Transfer of Property" defined.—In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, and one or more other living persons and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

6. What may be transferred.—Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman or any other mere possibility of a like nature, cannot be transferred.

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

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*dd*) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(*e*) A mere right to sue cannot be transferred.

(*f*) A public officer cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military, naval, air-force and civil pensioners of the Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) insofar as it is opposed to the nature of the interest affected thereby, or (2) [for an unlawful object, or consideration within the meaning of Section 23 of the Indian Contract Act, 1872 (IX of 1872)], or (3) to a person legally disqualified to be transferee.

(*i*) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

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

8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

9. Oral transfer.—A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

10. Condition restraining alienation.—Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same for her beneficial interest therein.

11. Restriction repugnant to interest created.—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.

Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.

12. Condition making interest determinable on insolvency or attempted alienation.—Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Transfer for benefit of unborn person.—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 extends to the whole of the remaining interest of the transferor in the property.

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

14. Rule against perpetuity.—No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

15. Transfer to a class some of whom come under Sections 13 and 14.—If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in Sections 13 and 14, such interest fails in regard to those persons only and not in regard to the whole class.

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

17. Direction for accumulation.—(1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

(*a*) the life of the transferor, or

(*b*) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any directions for accumulation for the purpose of—

(*i*) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(*ii*) the provision of portions for children or remoter issue of the transfer or of any other person taking any interest under the transfer, or

(*iii*) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

18. Transfer in perpetuity for benefit of public.—The restrictions in Sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

19. Vested interest.—Where, on a transfer of property, an interest therein created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. When unborn person acquires vested interest on transfer for his benefit.—Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appears from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

21. Contingent interest.—Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Transfer to members of a class who attain a particular age.—Where, on a transfer of property an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has attained that age.

23. Transfer contingent on happening of specified uncertain event.—Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time, as the intermediate or precedent interest ceases to exist.

24. Transfer to such of certain persons as survive at some period not specified.—Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to *B* for life and after his death to *C* and *D*, to be divided equally between them, or to the survivor of them. *C* dies during the life of *B*. *D* survives *B*. At *B*'s death the property passes to *D*.

25. Conditional transfer.—An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations

(*a*) *A* lets a farm to *B* on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*) *A* gives Rs. 500 to *B* on condition that he shall marry *A*'s daughter to *C*. At the date of the transfer *C* was dead. The transfer is void.

(*c*) *A* transfers Rs. 500 to *B* on condition that she shall murder *C*. The transfer is void.

(*d*) *A* transfers Rs. 500 to his niece *C*, if she will desert her husband. The transfer is void.

26. Fulfilment of condition precedent.—Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations

(*a*) *A* transfers Rs. 5,000 to *B* on condition that he shall marry with the consent of *C*, *D* and *E*. *E* dies. *B* marries with the consent of *C* and *D*. *B* is deemed to have fulfilled the condition.

(*b*) *A* transfers Rs. 5,000 to *B* on condition that he shall marry with the consent of *C*, *D* and *E*. *B* marries without the consent of *C*, *D* and *E*, but obtains their consent after the marriage. *B* has not fulfilled the condition.

27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.—Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations

(*a*) *A* transfers Rs. 500 to *B* on condition that he shall execute a certain lease within three months after *A*'s death, and, if he should neglect to do so, to *C*. *B* dies in *A*'s lifetime. The disposition in favour of *C* takes effect.

(*b*) *A* transfers property to his wife; but, in case she should die in his lifetime, transfers to *B* that which he had transferred to her. *A* and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of *B* does not take effect.

28. Ulterior transfer conditional on happening or not happening of specified event.—On a transfer of property an interest therein may be created to accrue

(*d*) the nature and title of the suit or proceeding; and

(*e*) the date on which the suit or proceeding was instituted." (Bombay Act 14 of 1939, S. 3).

Extension of certain provisions of Bombay XIV of 1939 to rest of State.—The provisions of the Transfer of Property and the Indian Registration (Bombay Amendment) Act, 1939 which amend the Transfer of Property Act, 1882 in its application to the pre-Organisation State of Bombay, are hereby extended to, and shall be in force in, that part of the State of Bombay, to which they did not extend immediately before the commencement of this Act; and the Transfer of Property Act, 1882 shall, from the commencement of this Act, be deemed to be amended accordingly also in that part of the State. (Bombay Act, 57 of 1959, S. 5).

53. Fraudulent transfer.—(1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor shall be instituted on behalf of, or for the benefit of, all the creditors.

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

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.

53-A. Part performance.—Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty:

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Illustration

A lets a field to *B* at a rent of Rs. 50 and then transfers the field to *C*. *B* having no notice of the transfer, in good faith pays the rent to *A*. *B* is not chargeable with the rent so paid.

51. Improvements made by bona fide holders under defective titles.—When the transferee of immovable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. Transfer of property pending suit relating thereto.—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under the decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

STATE AMENDMENTS

Whole of Gujarat and Maharashtra

Amendment of Section 52 of Act IV of 1882.—Section 52 of the Transfer of Property Act, 1882, shall be renumbered as sub-section (1) of Section 52 of the said Act, and

(*i*) in sub-section (1) so renumbered after the word "question" the words and figures "if a notice of the pendency of such suit or proceedings is registered under Section 18 of the Indian Registration Act, 1908", and after the word "property" where it occurs for the second time, the words "after the notice is so registered", shall be inserted; and

(*ii*) after the said sub-section (1) so renumbered the following shall be inserted, namely:

"(2) Every notice of pendency of a suit or proceeding referred to in sub-section (1) shall contain the following particulars, namely:

(*a*) the name and address of the owner of immovable property or other person whose right to the immovable property is in question;

(*b*) the description of the immovable property, the right to which is in question;

(*c*) the court in which the suit or proceeding is pending;

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

46. Transfer for consideration by persons having distinct interests.—Where immovable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally where their interests in the property were of equal value, and where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations

(*a*) *A*, owning a moiety, and *B* and *C* each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, *A* is entitled to an eighth share in Lalpura and *B* and *C* each to a sixteenth share in that mauza.

(*b*) *A*, being entitled to a life-interest in mauza Atrali and *B* and *C* to the reversion sell the mauza for Rs. 1,000. *A*'s life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. *A* is entitled to receive Rs. 600 out of the purchase-money, *B* and *C* to receive Rs. 400.

47. Transfer by co-owners of share in common property.—Where several co-owners of immovable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration

A, the owner of an eight-anna share, and *B* and *C* each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to *D* without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of *A*, and half an anna share from each of the shares of *B* and *C*.

48. Priority of rights created by transfer.—Where a person purports to create by transfer at different times rights in or over the same immovable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

49. Transferee's right under policy.—Where immovable property is transferred for consideration, and such property or any part thereof is at the date of transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

50. Rent bona fide paid to holder under defective title.—No person shall be chargeable with any rents or profits of any immovable property which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

42. Transfer by person having authority to revoke former transfer.—Where a person transfers any immovable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration

A lets a house by *B*, and reserves power to revoke the lease if, in the opinion of a specified surveyor, *B* should make a use of it detrimental to its value. Afterwards, *A*, thinking that such a use has been made, lets the house to *C*. This operates as a revocation of *B*'s lease subject to the opinion of the surveyor as to *B*'s use of the house having been detrimental to its value.

43. Transfer by unauthorized person who subsequently acquires interest in property transferred.—Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

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

Illustration

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

44. Transfer by one co-owner.—Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him of joint possession or other common or part enjoyment of the house.

45. Joint transfer for consideration.—Where immovable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them is common they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

house of each. *E* is not bound to do more than ten days' work in all, according to each direction as *B*, *C* and *D* may join in giving.

(B) Transfer of Immovable Property

38. Transfer by person authorised only under certain circumstances to transfer.—Where any person, authorised only under circumstances in their nature variable to dispose of immovable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any), affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to *B*. *B* satisfies himself by reasonable enquiry that the income of the property is insufficient for *A*'s maintenance, and that the sale of field is necessary, and, acting in good faith, buys the field from *A*. As between *B* on the one part and *A* and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

39. Transfer where third person is entitled to maintenance.—Where a third person has a right to receive maintenance, or a provision for advancement or marriage from the profits of immovable property, and such property is transferred * * * the right may be enforced against the transferee, if he has notice thereof or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership but not amounting to interest or easement.—Where, for the more beneficial enjoyment of his own immovable property, a third person has, independently of any interest in the immovable property, of another or of any easement thereon, a right to restrain the enjoyment in a particular manner of the latter property, or

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon, such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration

A contracts to sell Sultanpur to *B*. While the contract is still in force he sells Sultanpur to *C*, who has notice of the contract. *B* may enforce the contract against *C* to the same extent as against *A*.

41. Transfer by ostensible owner.—Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it:

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

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the person interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration

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

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

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment

36. Apportionment of periodical payments on determination of interest of person entitled.—In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day-to-day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

37. Apportionment of benefits of obligation on severance.—When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property provided that the duty can be served and that the severance does not substantially increase the burden of the abolition; but if the duty cannot be served, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the State Government by notification in the Official *Gazette* so directs.

Illustrations

(*a*) *A* sells to *B*, *C* and *D* a house situate in a village and leased to *E* at an annual rent of Rs. 30 and delivery of one fat sheep. *B* having provided half the purchase-money and *C* and *D* one-quarter each. *E* having notice of this, must pay Rs. 15 to *B*, Rs. 7.50 to *C* and Rs. 7.50 to *D* and must deliver the sheep according to the joint direction of *B*, C, and *D*.

(*b*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation. *E* had agreed as a term of his lease to perform this work for *A*, *B*, *C* and *D* severally require *E* to perform the ten days' work due on account of the

to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in Sections 10, 12, 21, 22, 23, 24, 25 and 27.

29. Fulfilment of condition subsequent.—An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration

A transfers Rs. 500 to *B*, to be paid to him on his attaining his majority or marrying, with a proviso that, if *B* dies a minor or marries without *C*'s consent, the Rs. 500 shall go to *D*. *B* marries when only 17 years of age, without *C*'s consent. The transfer to *D* takes effect.

30. Prior disposition not affected by invalidity of ulterior disposition.—If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration

A transfers a farm to *B* for her life, and if she does not desert her husband, to *C*. *B* is entitled to the farm during her life, as if no condition had been inserted.

31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.—Subject to the provisions of Section 12, on a transfer of property and interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations

(*a*) *A* transfers a farm to *B* for his life, with a proviso that, in case *B* cuts down a certain wood, the transfer shall cease to have any effect. *B* cuts down the wood. He loses his life-interest in the farm.

(*b*) *A* transfers a farm to *B*, provided that, if *B* shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. *B* does not go to England within the term prescribed. His interest in the farm ceases.

32. Such condition must not be invalid.—In order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

33. Transfer conditional on performance of act, no time being specified for performances.—Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

34. Transfer conditional on performance of act, time being specified.—Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly

benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Election

35. Election when necessary.—Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of.

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations

(*a*) The farm of Sultanpur is the property of *C* and worth Rs. 800. *A* by an instrument of gift professes to transfer it to *B*, giving by the same instrument Rs. 1,000 to *C*. *C* elects to retain the farm. He forfeits the gift of Rs. 1,000.

(*b*) In the same case, *A* dies before the election. His representative must out of Rs. 1,000 pay Rs. 800 to *B*.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claims the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

CHAPTER III

OF SALES OF IMMOVABLE PROPERTY

54. "Sale" defined.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract of sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

STATE AMENDMENTS

Uttar Pradesh

Amendment of Section 54 of Act 4 of 1882.—In Section 54 of the Transfer of Property Act, 1882, hereinafter in this Chapter referred to as the principal Act,

(*a*) in the second paragraph the words 'of the value of one hundred rupees and upwards' shall be omitted;

(*b*) the third and fourth paragraphs shall be omitted;

(*c*) after the last paragraph, the following paragraph shall be inserted, namely:

"Such contract can be made only by a registered instrument." (U.P. Act 57 of 1976, S. 30 w.e.f. 1-1-1977)

55. Rights and liabilities of buyer and seller.—In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(*g*) to pay all public charges and rent accrued due in respect of property up to the date of the sale, the interest to all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (*a*) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (*b*) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (*a*) the seller, and in case (*b*) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, any transferee without consideration or any transferee with notice of the non-payment, for the amount of the purchase-money, or any part thereof remaining unpaid, and interest on such amount or part from the date on which possession has been delivered.

(5) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(*b*) unless he has improperly declined to accept delivery of the property to a charge on the property, as against the seller and all persons claiming under him, * * * to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (*a*), and paragraph (5), clause (*a*), is fraudulent.

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

Discharge of Incumbrances on Sale

57. Provision by Court for incumbrances, and sale freed therefrom.—(*a*) Where immovable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court

may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(1) In case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the Central Government, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a large additional amount.

(*b*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(*c*) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(*e*) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the State Government may, from time to time, by notification in the Official *Gazette*, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV
OF MORTGAGES OF IMMOVABLE PROPERTY AND CHARGES

58. 'Mortgage', 'mortgagor', 'mortgagee', 'mortgage-money' and 'mortgage-deed' defined.—(*a*) A 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 by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

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

(*b*) *Simple mortgage.*—Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

(*c*) *Mortgage by conditional sale.*—Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

(*d*) *Usufructuary mortgage.*—Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

(*e*) *English mortgage.*—Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will retransfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

(*f*) *Mortgage by deposit of title-deeds.*—Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay and in any other town which the State Government concerned may, by notification in the Official *Gazette*, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(*g*) *Anomalous mortgage.*—A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.

59. Mortgage when to be by assurance.—When the principal money secured is one hundred rupees or upwards, a mortgage, other than a mortgage by deposit of title-deeds, can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by a registered instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

59-A. References to mortgagors and mortgagees to include persons deriving title from them.—Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.

Rights and Liabilities of Mortgagor

60. Right of mortgagor to redeem.—At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (*a*) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.—Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

60-A. Obligation to transfer to third party instead of retransference to mortgagor.—(1) Where a mortgagor is entitled to redemption then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage debt and transfer the mortgaged property to such third person

as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(2) The rights conferred by the section belong to and may be enforced by the mortgagor or by encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60-B. Right to inspection and production of documents.—A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.

61. Right to redeem separately or simultaneously.—A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.

62. Right of usufructuary mortgagor to recover possession.—In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property together with the mortgage-deed and all documents, relating to the mortgaged property which are in the possession or power of the mortgagee—

(*a*) where the mortgagee is authorised to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorised to pay himself from such rents and profits or any part thereof a part only of the mortgage-money, when the term, if any, prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the mortgage-money or the balance thereof or deposits it in Court as hereinafter provided.

63. Accession to mortgaged property: Accession acquired in virtue of transferred ownership.—Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Where such accession has been acquired at the expense of the mortgagee and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property; the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof.

as an addition to the principal money, with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum.

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

63-A. Improvements to mortgaged property.—(1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

64. Renewal of mortgaged lease.—Where the mortgaged property is a lease, and the mortgagee obtains a renewal of the lease, the mortgagor upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

65. Implied contracts by mortgagor.—In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved, by the lease, or, if the lease be renewed,

the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(*e*) and where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

The benefit of the contracts mentioned in this section shall be annexed to and all go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

65-A. Mortgagor's power to lease.—(1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (*a*) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(*b*) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(*c*) No such lease shall contain a covenant for renewal.

(*d*) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(*e*) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.

66. Waste by mortgagor in possession.—A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee

67. Right to foreclosure or sale.—In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become due to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court a decree that the mortgagor shall be absolutely debarred of his right to redeem the property, or a decree that the property be sold.

A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem to the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(*a*) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or a usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(*c*) to authorize the mortgagee of a railway, canal, or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

67-A. Mortgagee when bound to bring one suit on several mortgages.—A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each or which he has a right to obtain the same kind of decree under Section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.

68. Right to sue for mortgage-money.—(1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely—

(*a*) where the mortgagor binds himself to repay the same;

(*b*) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of Section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

(*c*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(*d*) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (*a*), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (*a*) or clause (*b*) of sub-section (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.

69. Power of sale when valid.—(1) A mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of the payment of mortgage-money, without the intervention of the Court, in the following cases and in no others, namely—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist or a member of any other race, sect, tribe or class from time to time specified in this behalf by the State Government, in the Official *Gazette*;

(*b*) where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and the mortgagee is the Government;

(*c*) where a power of sale without the intervention of the Court is expressly conferred on the mortgagee by mortgage-deed, and the mortgaged property or any part thereof was, on the date of the execution of the mortgage-deed, situate within the towns of Calcutta, Madras, Bombay, or in any other town or area which the State Government may, by notification in the Official *Gazette*, specify in this behalf.

(2) No such power shall be exercised unless and until—

(*a*) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(*b*) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

(3) When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

(4) The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under Section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

(5) Nothing in this section or in Section 69-A applies to powers conferred before the first day of July, 1882.

69-A. Appointment of receiver.—(1) A mortgagee having the right to exercise a power of the sale under Section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee, in accordance with the provisions of this section.

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent on the gross amount of all money received as is specified in his appointment, and, if no

rate is so specified, then at the rate of five per cent on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provision of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely—

(*i*) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;

(*ii*) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(*iii*) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(*iv*) in payment of the interest falling due under the mortgage;

(*v*) in or towards discharge of the principal money, if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(10) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit.

The cost of every application under this sub-section shall be in the discretion of the Court.

(11) In this section, "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage.

STATE AMENDMENTS

Uttar Pradesh

Insertion of new Section 69-B in Act IV of 1882.—After Section 69-A of the Transfer of Property Act, 1882, the following section shall be inserted, namely:

"69-B. *Delivery of possession.*—(1) Where in exercise of a power of sale under Section 69 the mortgaged property or any part thereof has been sold, the Collector shall on an application being made to him in that behalf put the purchaser into possession of the property, and may for the purpose of removing any person who refuses to vacate the same, use or cause to be used such force as he may deem necessary.

(2) The provisions of Rules 95 to 103 of Order XXI contained in the First Schedule to the Code of Civil Procedure 1908, as amended from time to time in its application to Uttar Pradesh, shall *mutatis mutandis* apply to proceedings under this section with the substitution of references to the Court and the judgment-debtor by references respectively to the Collector and the defaulting mortgagor.

(3) In this section, 'Collector' means the Collector of the district in which the property is situate, and includes any Assistant Collector empowered in that behalf by any general or special order by the Collector." (U.P. Act, 14 of 1970, S. 7).

70. Accession to mortgaged property.—If, after the date of mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations

(*a*) *A* mortgages to *B* a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, *B* is entitled to the increase.

(*b*) *A* mortgages a certain plot of building land to *B* and afterwards erects a house on the plot. For the purposes of his security, *B* is entitled to the house as well as the plot.

71. Renewal of mortgaged lease.—When the mortgaged property is a lease and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. Rights of mortgagee in possession.—A mortgagee may spend such money as is necessary—

(*a*) for the preservation of the mortgaged property from destruction, forfeiture or sale;

(*b*) for supporting the mortgagor's title to the property;

(*c*) for making his own title thereto good against the mortgagor; and

(*d*) when the mortgaged property is a renewable lease-hold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent per annum:

Provided that the expenditure of money by the mortgagee under clause (*b*) or clause (*c*) shall not be deemed to be necessary unless the mortgagor has been called and has failed to take proper and timely step to preserve the property or to support the title.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent per annum. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if, no such amount is therein specified), two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

73. Right to proceeds of revenue sale or compensation on acquisition.—(1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894 (I of 1894), or any other enactment for the time being in force providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior incumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due.

74. Right of subsequent mortgagee to pay off prior mortgagee.—[*Repealed by Section 39 of Act 20 of 1929.*]

75. Rights of mesne mortgagee against prior and subsequent mortgagees.—[*Repealed by Section 39 of Act 20 of 1929.*]

76. Liabilities of mortgagee in possession.—When, during the continuance of the mortgagee the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(*b*) he must use his best endeavours to collect the rents and profits thereof;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature and all rent accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of rents and profits thereof

after deducting from such rents and profits, the payments mentioned in clause (*c*) and the interest on the principal money;

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses properly incurred for the management of the property and the collection of rents and profits and the other expenses mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any), from time to time due to him on account of interest. . . . . and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be, and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date of or time in connection with the mortgaged property.

Loss occasioned by his default.—If the mortgagee fails to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

77. Receipts in lieu of interest.—Nothing in Section 76, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority

78. Postponement of prior mortgagee.—Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

79. Mortgage to secure uncertain amount when maximum is expressed.—If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration

A mortgages Sultanpur to his bankers, *B* & Co., to secure the balance of his account with them to the extent of Rs. 10,000. *A* then mortgages Sultanpur to *C*, to secure Rs. 10,1000. *C* having notice of the mortgage to *B* & Co., and *C* gives notice to *B* & Co., of the second mortgage. At the date of the second mortgage, the balance due to *B* & Co., does not exceed Rs. 5,000. *B* & Co. subsequently advance to *A* sums making the balance of the account against him exceed the sum of Rs. 10,000. *B* & Co. are entitled, to the extent of Rs. 10,000, to priority over *C*.

80. Tacking abolished.—[*Repealed by Section 41 of Act 20 of 1929.*]

Marshalling and Contribution

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

82. Contribution to mortgage debt.—Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under Section 81 to the claim of the subsequent mortgagee.

Deposit in Court

83. Power to deposit in Court money due on mortgage.—At any time after the principal money payable in respect of any mortgage has become due and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he

might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.—The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court mortgage-deed and all documents in his possession or power relating to the mortgaged property, apply for and receive the money, and the mortgage-deed, and all such other documents, so deposited shall be delivered to the mortgagor or such person as aforesaid.

Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.

84. Cessation of interest.—When mortgagor or such other person as aforesaid has tendered or deposited in Court under Section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or in the case of a deposit, where no previous tender of such amount has been made as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of Court, and the notice required by Section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal.

Nothing in this section or in Section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money and such notice has not been given before making the tender or deposit, as the case may be.

Suits for Foreclosure, Sale or Redemption

85. Parties to suits for foreclosure, sale and redemption.—[*Repealed by the Code of Civil Procedure, 1908 (Act V of 1908), Section 156 and Schedule V.*]

Foreclosure and Sale

86 to 90. [*Repealed by the Code of Civil Procedure, 1908 (Act V of 1908), Section 156 and Schedule V.*]

Redemption

91. Persons who may sue for redemption.—Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely—

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(*b*) any surety for the payment of the mortgage-debt or any part thereof; or

(*c*) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.

92. Subrogation.—Any of the persons referred to in Section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. Prohibition of tacking.—No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by Section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

94. Rights of mesne mortgagee.—Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor.

95. Right of redeeming co-mortgagor to expenses.—Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under Section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

96. Mortgage by deposit of title-deeds.—The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds.

97. Application of proceeds.—[*Repealed by the Code of Civil Procedure, 1908 (Act V of 1908), Section 156 and Schedule V.*]

Anomalous Mortgages

98. Rights and liabilities of parties to anomalous mortgages.—In the case of an anomalous mortgage the rights and liabilities of the parties shall be determined by their contract as evidence in the mortgage-deed, and, so far as such contract does not extend, by local usage.

99. Attachment of mortgaged property.—[*Repealed by the Code of Civil Procedure, 1908 (Act V of 1908), Section 156 and Schedule V.*]

Charges

100. Charges.—Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have charge on the property, and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.

Nothing in this section applies to the charge of a trustee on the trust property for expenses properly incurred in the execution of his trust, and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge.

101. No merger in case of subsequent incumbrance.—Any mortgagee of or person having a charge upon, immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgager or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.

Notice and Tender

102. Service or tender on or to agent.—Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where no person or agent on whom such notice should be served can be found or is known to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient:

Provided that, in the case of a notice required by Section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.

Where no person or agent to whom such tender should be made can be found or is known to the person desiring to make the tender, the latter person may deposit, in any Court in which a suit might be brought for redemption of the mortgaged property the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Notice, etc., to or by person incompetent to contract.—Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by any person incompetent to contract, such notice may be served on or by, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provision of Order XXXII in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

104. Power to make rules.—The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Court of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

CHAPTER V

OF LEASES OF IMMOVABLE PROPERTY

105. Lease defined.—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, 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, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.—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.

106. Duration of certain leases in absence of written contract or local usage.—In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of tenancy; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessee, by fifteen days' notice expiring with the end of a month of tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his

family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

STATE AMENDMENTS

Uttar Pradesh

(1) The words 'expiring with the end of a year of the tenancy' and 'expiring with the end of a month of the tenancy', shall be omitted.

(2) For the words 'fifteen days notice' the words 'thirty days notice' shall be substituted. (U.P. Act 24 of 1954, S. 2)

107. Leases how made.—A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only 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.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:

Provided that the State Government may, from time to time, by notification in the Official *Gazette*, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

STATE AMENDMENTS

Uttar Pradesh

Amendment of Section 107. In Section 107 of the principal Act:

(*a*) for the second paragraph, the following paragraph shall be substituted, namely:

"All other leases of immovable property may be made either by a registered instrument or, by an agreement oral or accompanied by delivery of possession.";

(*b*) the third paragraph and the proviso shall be omitted. (U.P. Act 57 of 1976, S. 31 w.e.f. 1-1-1977).

108. Rights and liabilities of lessor and lessee.—In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, of such of them as are applicable to the property leased:

(A) Rights and Liabilities of the Lessor

(*a*) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;

(*b*) the lessor is bound on the lessee's request to put him in possession of the property;

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contract binding on

the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee

(*a*) If during the continuance of the lease any accession is made to the property such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;

(*e*) if by fire, tempest or flood, or violence of any army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void: Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;

(*f*) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself; and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;

(*h*) the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased, but not afterwards, all things which he has attached to the earth; provided he leaves the property in the state in which he received it;

(*i*) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;

(*j*) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

Nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, assign his interest as such tenant, farmer or lessee;

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the

lessee is, and the lessor is not, aware, and which materially increases the value of such interest;

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf;

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted or commit any other act which is destructive or permanently injurious thereto;

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. Rights of lessor's transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased.

110. Exclusion of day on which term commences.—Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.—Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.—Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. Determination of lease.—A lease of immovable property, determines—

(*a*) by efflux of the time limited thereby;

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event;

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event;

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right;

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them;

(*f*) by implied surrender;

(*g*) by forfeiture, that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease;

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease and such lease determines thereupon.

112. Waiver of forfeiture.—A forfeiture under Section 111, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. Waiver of notice to quit.—A notice given under Section 111, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(*a*) *A*, the lessor, gives *B*, the lessee, notice to quit the property leased. The notice expires. *B* tenders and *A* accepts rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*) *A*, the lessor gives *B*, the lessee, notice to quit the property leased. The notice expires, and *B* remains in possession. *A* gives to *B* as lessee a second notice to quit. The first notice is waived.

114. Relief against forfeiture for non-payment of rent.—Where a lease of immovable property has been determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

114-A. Relief against forfeiture in certain other cases.—Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(*a*) specifying the particular breach complained of; and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

115. Effect of surrender and forfeiture on under-leases.—The surrender, express or implied, of a lease of immovable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under Section 114.

116. Effect of holding over.—If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and

the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

Illustrations

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

(*b*) *A* lets a farm to *B* for the life of *C*. *C* dies, but *B* continues in possession with *A's* assent. *B's* lease is renewed from year to year.

117. Exemption of leases for agricultural purposes.—None of the provisions of this chapter apply to leases for agricultural purposes except in so far as the State Government may, by notification published in the Official *Gazette* declare all or any of such provisions, to be so applicable in the case of all or any of such leases, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI
OF EXCHANGES

118. "Exchange" defined.—Where two persons mutually transfer the ownership of one thing for ownership of another, neither thing or both things being money only, the transaction is called an "exchange".

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

119. Right of party deprived of thing received in exchange.—If any party to an exchange or any person claiming through or under such party is by reason of any defect in title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.

120. Rights and liabilities of parties.—Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes.

121. Exchange of money.—On an exchange of money, each party thereby warrants the genuineness of the money given by him.

CHAPTER VII
OF GIFTS

122. "Gift" defined.—"Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person,

called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Acceptance when to be made.—Such acceptance must be made during the lifetime of the donor and while he is still capable of giving.

If the donee dies before acceptance, the gift is void.

123. Transfer how effected.—For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. Gift of existing and future property.—A gift comprising both existing and future property is void as to the latter.

125. Gift to several of whom one does not accept.—A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. When gift may be suspended or revoked.—The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations

(*a*) *A* gives a field to *B*, reserving to himself, with *B*'s assent, the right to take back the field in case *B*, and his descendants die before *A*. *B* dies without descendants in *A*'s lifetime. *A* may take back the field.

(*b*) *A* gives a lakh of rupees to *B*, reserving to himself, with *B*'s assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000 but is void as to Rs. 10,000 which continue to belong to *A*.

127. Onerous gift .—Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

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

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

Illustrations

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

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

128. Universal donee.—Subject to the provisions of Section 127 where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

129. Saving of donations mortis causa and Muhammadan law.—Nothing in this chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan Law.

CHAPTER VIII

OF TRANSFERS OF ACTIONABLE CLAIMS

130. Transfer of actionable claim.—(1) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance or affects the provisions of Section 38 of the Insurance Act, 1938 (IV of 1938).

Illustrations

(*i*) *A* owes money to *B*, who transfers the debt to *C*. *B* then demands the debt from *A*, who, not having received notice of the transfer as prescribed in Section 131, pays *B*. The payment is valid, and *C* cannot sue *A* for the debt.

(*iii*) *A* effects a policy on his own life with an insurance company and assigns it to a bank for securing the payment of an existing or future debt. If *A* dies the bank is entitled to receive the amount of the policy and to sue on it without the concurrence of *A*'s executor, subject to the proviso on sub-section (1) of Section 130 and to the provisions of Section 132.

130-A. Transfer of policy of marine insurance.—[*Repealed by Act 11 of 1963, S. 92 (w.e.f. 1-8-1963).*]

131. Notice to be in writing, signed.—Every notice of transfer of actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

132. Liability of transferee of actionable claim.—The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject to in respect thereof at the date of the transfer.

Illustrations

(*i*) *A* transfers to *C*, debt due to him by *B*, *A* being then indebted to *B*, *C* sues *B* for the debt due by *B* to *A*. In such suit *B* is entitled to set off the debt due by *A* to him; although *C* was unaware of it at the date of such transfer.

(*ii*) *A* executed a bond in favour of *B* under circumstances entitling the former, to have it delivered up and cancelled. *B* assigns the bond to *C* for value and without notice of such circumstances. *B* cannot enforce the bond against *A*.

133. Warranty of solvency of debtor.—Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Mortgaged debt.—Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

135. Assignment of rights under policy of insurance against fire.—Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

135-A. Assignment of rights under policy of marine insurance.—[*Repealed by Act 11 of 1963, S. 92 (w.e.f. 1-8-1963).*]

136. Incapacity of officers connected with Court of Justice.—No Judge, legal practitioner, or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims so dealt with by him as aforesaid.

137. Saving of negotiable instruments, etc.—Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom negotiable, or to any mercantile document of title to goods.

Explanation.—The expression "mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper's certificate, railway receipt, warrant or order of the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

THE SCHEDULE

(*a*) STATUTES

Year and Chapter	Subject	Extent of Repeal
27 Hen. VIII, c. 10	Uses	The whole.
13 Eliz., c. 5	Fraudulent conveyances	The whole.
27 Eliz., c. 4	Fraudulent conveyances	The whole.
4 Wm. and Mary, c. 16	Clandestine mortgages	The whole.

(*b*) ACTS OF THE GOVERNOR-GENERAL IN COUNCIL

Number and Year	Subject	Extent of Repeal
IX of 1842	Lease and release	The whole.
XXXI of 1854	Modes of conveying land	Section 17.
XI of 1855	Mesne profits and Improvements	Section 1; in the title the words "to mesne profits and" in the preamble "to limit the liability for mesne profits and"
XXVII of 1866	Indian Trustee Act	Section 31.
IV of 1872	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief Act	In Sections 35 and 36, the words "in writing".

(*c*) REGULATIONS

Number and Year	Subject	Extent of Repeal
Bengal Regulation I of 1798	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806	Redemption	The whole Regulation.
Bombay Regulation V of 1827	Acknowledgment of debts; Interest; Mortgages in possession.	Section 15.

Introduction

Historical Perspective of the Transfer of Property Act: Hindu Law

The development of the right of alienation by act of parties and the development of the idea of property from its communal to its individual form grew side by side. The power of alienation in India had been recognised even in the days of Manu (*c* 200 BC), but certain limitations were imposed on the right of the individual in order to protect the interests of the other members of his family. Such restrictions were imposed in the case of family properties and ancestral property in which a son was deemed to have acquired a right by birth. In early times, even a person's separate property, was subject to such a restriction on the assumption that a son acquired in it also a right by birth, but in course of time such right of the son in the self-acquired property of his father was not recognised and a person had thus full freedom of alienation with respect to his self-acquired properties.

As regards wills, the view of jurists is that the idea of a will in its modern form was unknown to ancient Hindu Law, though we find terms like *Marana Sasanam* or *Marana Patra* in use. The reason for the absence of testamentary disposition in ancient Hindu Law is explained by the fact that the objects of testamentary disposition are achieved by the law itself. The main objects of testamentary power are: (1) in the absence of children to constitute someone who would take the property of the deceased; (2) to make a more equitable distribution of one's wealth among one's children or heirs; and (3) to enable a person to make provision for religious and charitable objects. In Hindu Law, the first object was achieved by the institution of adoption. As regards the second, though female heirs suffered certain disabilities, there was some attempt to remove the disabilities by means of *Stridhanam* gifts, some of which took the form of posthumous dispositions. Since Hindu Law always regarded disposition for religious and charitable objects favourably, the third object was also achieved. The posthumous dispositions were in the nature of a *donatio mortis causa* or gifts in the expectation of death, to be effective only in the event of death of the donor; or *post obit* gifts, that is, gifts *in praesenti* (at present) to take effect after death. Since such gifts were regarded as obligations enforceable against the heirs of the grantor, they were as good as testamentary dispositions. In *Nagalutchmee Ummal*

v. *Gopoo Nadaraja Chetty*[1], the question arose as to whether the appellant's husband, a Hindu governed by the Hindu Law in Madras, could make a will disposing of ancestral property when he had no male issue, kinsmen or coparceners. The Judicial Committee of the Privy Council held, on the facts of the case, that he could, and observed:

It must be allowed that in the ancient Hindu Law, as it was understood through the whole of India, testamentary instruments in the sense affixed by English lawyers to that expression, were unknown, and it is stated by a writer of authority (Sir Thomas Strange) that the Hindu language has no terms to express what we mean by a will. But it does not necessarily follow, that what in effect, though not in form, are testamentary instruments, which are only to come into operation and effect properly after the death of the maker of the instrument, were equally unknown. However this may be, strictness of the ancient law has long since been relaxed, and throughout Bengal, a man who is the absolute owner of property may now dispose of it by will as he pleases whether it be ancestral or not. This point was resolved several years ago by the concurrence of all the judicial authorities in Calcutta, as well of the Supreme as of the Sudder Court. No doubt the law of Madras differs in some respects and, amongst others, with respect to wills from that of Bengal. But even in Madras it is settled that a will of property, not ancestral, may be good; a decision to this effect has been recognised and acted upon by the Judicial Committee, and, indeed, the rule of law to that extent is not disputed in this case.

Muhammedan Law

The system of law which has governed the Muhammedans in India has recognised the ideas of free alienation and testamentary succession from the earliest period of their settlement in this country.[2] While a Muhammedan could dispose of his entire properties by a gift *inter vivos*, that is, between living persons, he could make a testamentary disposition or a death-bed gift only to the extent of a third of his net assets. Since the rule was intended for the benefit of the heirs, their consent, if properly obtained, will validate dispositions beyond a third of the estate. According to Sunni Law, the consent must be obtained after the death of

1. 6 MIA 309.
2. Hamilton's *Hedaya*, pp. 482, 671, 684 and 685.

the donor, because, an heir becomes entitled to an interest only after the death of the deceased. According to Shia Law, however, the consent could be given even during the lifetime of the testator. A Muhammedan, without an heir, can dispose of the whole of his property in any manner he chooses.

After the British came to India, they introduced the English law into India, but, there was no uniformity. The English law was administered in the Presidency towns of Bombay, Calcutta and Madras. In places outside the Presidency towns questions relating to property were decided according to justice, equity and good conscience. To produce uniformity, the law relating to transfer of property *inter vivos* and the law relating to devolution of property on the death of a person were codified. As far as the law relating to devolution of property by succession, the law was first codified in 1865, and today the law is governed by the Indian Succession Act, 1925, but, the Act does not apply to Hindus and Muhammedans in several matters. As regards transfers *inter vivos* the relevant enactments today are:

(*i*) The Indian Contract Act, 1872; but the doctrine of frustration does not apply to leases[3]

(*ii*) The Transfer of Property Act, 1882;

(*iii*) The Easements Act, 1882;

(*iv*) The Trusts Act, 1882; and

(*v*) The Sale of Goods Act, 1930.

The law relating to transfer of immovable property, certain allied matters, and of what are known as actionable claims, (their nature and the reason for their inclusion will be explained later) is dealt with, in the Transfer of Property Act (4 of 1882). It came into force on July 1, 1882. As regards its extent it is provided in Section 1 of the Act as follows:

> It extends in the first instance to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States or in the States of Bombay, Punjab and Delhi.
>
> But this Act or any Part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.
>
> And any State Government may, from time to time, by notification in the Official

3. *Thomas v. Moran*, AIR 1979 Ker 156.

Gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such State Government from all or any of the following provisions, namely:

Section 54, paragraphs 2 and 3, 59, 107 and 123.

Notwithstanding anything in the foregoing part of this section, Section 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, 1908, under the power conferred by the first section of that Act or otherwise.

The Act has been extended to Bombay and Delhi, and some of its sections to Punjab.

The Scope and Object of the Transfer of Property Act

The objects of the Transfer of Property Act are set out by Whitely Stokes in his *Anglo-Indian Codes* thus:

> 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 of 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. In aiming at these objects, the Legislature has striven to avoid refinements and technicalities, to discard all rules whereby the parties to a transaction were made liable to unexpected consequences, all rules which seemed unfair or inexpedient in themselves, all provisions in deeds which were found in practice to lend to embarrassments and litigation. Like the Contract Act, it is not, and does not purport to be, an exhaustive measure.

The Preamble to Act is accordingly in these terms:

Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:

Section 2 of the Act provides that:

In the territories to which this Act extends for the time being the enactments specified in the Schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

(*a*) the provisions of any enactment not hereby expressly repealed;

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force;

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability ; or

(*d*) save as provided by Section 57 and Chapter IV of this Act, any transfer by operation of law, or by, or in execution of, a decree or order of a Court of competent jurisdiction;

And nothing in the second chapter to this Act shall be deemed to affect any rule of Muhammedan Law.

The object of clause (*c*) is to preserve existing rights, and to preserve any remedies which were available to the parties before the Act came into force, and does not prevent the parties, if they want to, to take advantage of a new remedy provided by this Act. However, if a suit to enforce the remedy is filed after the Act came into force, it will be governed by the procedure prescribed under this Act. If the suit was instituted before the Act came into force, the decree passed therein would not be affected by the provisions of this Act. Reference is made in clause (*d*) to Section 57 and Chapter IV, because, Section 57 provides for the discharge of encumbrances on sale by orders of a court and Chapter IV provides for certain orders by court regarding the interest of a mortgagee in property. Transfers by operation of law occur in the case of wills, intestate succession to property or by orders of court. In these cases the provisions of the Act such as the requirement of a registered instrument do not apply.

Originally, the last clause contained the words 'Hindu' and 'Buddhist' also, along with 'Muhammedan'.

Chapter 2 contains general rules regarding transfers. According to *Tagore* v. *Tagore*[4], transfers or bequests in favour of unborn persons are wholly void. But this principle was statutorily modified by the Hindu Disposition of Property Act (15 of 1916); and Sections 13 and 20 of the Transfer of Property Act, relate to transfers in favour of unborn persons; and Section 14 contains a modification of the rule against perpetuity.

There is thus no provision now in Chapter 2 of the Transfer of Property Act, inconsistent with any rule of Hindu or Buddhist law, and so those words have been deleted.

But some of the rules contained in this part of the Act are not in conformity with the Muslim personal law. Therefore, the word 'Muhammedan' is retained. The Muhammedan law of gifts is also not affected by the provisions of the Transfer of Property Act.[5] Therefore, if

4. (1874) LR 1 IA 389.
5. *See* Section 129.

there is a rule of Muhammedan law inconsistent with a rule in the Act, the former will prevail; but if there is no such rule, the rules of the Act apply to Muslims equally.

The provisions of this Act do not also apply to grants or transfers made by the Crown. This is provided by Section 2 of the Crown Grants Act (15 of 1895).

The Act was amended extensively in 1929 by the Transfer of Property (Amendment) Act 20 of 1929, Section 63 of the Amendment Act lays down that the amendments made in the following sections of the Act of 1882 namely, Sections 2, 3, 15, 16, 17, 18, 53, 56, 58, 63-A, 65-A, 67(*a*), 67-A, 68, 69, 69-A, 91, 102, 107, 111, 114-A, 119, 129 and 130, shall not be deemed to affect : (*a*) the terms or incidents of any transfer of property made or effected before the first day of April, 1930, (*b*) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date, (*c*) any right, title, obligation or liability already acquired, accrued or incurred before such date, or (*d*) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of the Amending Act shall render invalid or in any way affect anything done before the first day of April, 1930, in any proceeding pending in a court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if the Amending Act had not been passed.

As regards the amendments made in the sections of the 1882 Act set out above, Section 63 of the Amending Act clearly says they are not retrospective. But as regards the amendments in other sections the High Courts in India have taken opposite views. One view is that when Section 63 prevents certain sections from being retrospective, it is implied that the other sections as amended would be retrospective except when there are pending suits, in relation to matters governed by those sections. The other view is that they are not at all retrospective.

Exercises

1. Give a short historical background of the Transfer of Property Act. (pp. 1-4)
2. What is the scope and object of the Transfer of Property Act? (pp. 4-6)

1
Immovable Property

Immovable Property

Since the Act deals primarily with transfer of immovable property, our first step is to find out what is 'immovable property', and that involves the primary question namely, What is 'property'? Property is the total wealth of a person. It may consist of land and buildings, a mortgage right which the person may have over another's land, the debts which may be owing to him from others, any insurance money due to him, cheques received by him etc. This is so because, suppose *A* owns a plot of land. *B* may have a mortgage over it and *C* may be the tenant in actual occupation and cultivating it. Ordinarily we speak of *A* as the owner, *B* as the mortagagee and *C* as the lessee. But in fact *B* is the owner of his mortgage right which is therefore his 'property' and *C* is the owner of the leasehold right and the lease is therefore his 'property'.

This leads us to: What is immovable property. The Act, in Section 3, provides:

> In this Act, unless there is something repugnant in the subject or context—
>
> "immovable property" does not include standing timber, growing crops, or grass;

The expression is not really defined in the Act. According to the General Clauses Act, 1897 'immovable property' includes lands, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. In section 2(6) of the Registration Act the expression includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefits to arise out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops or grass. Section 2(7), Sale of Goods Act provides: 'Goods' mean any kind of movable property other than *actionable claims* and money, includes stocks and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under a contract of sale. This incidentally shows why transfer of 'actionable claims' is included in the Transfer of Property Act.

These definitions show that land, interests in land, things attached to land (*See*: the definition of things 'attached to the earth') and things

permanently fastened to anything attached to land would be immovable property. The question that would arise is when is a thing said to be 'attached to earth' or 'permanently fastened to anything attached to earth', or, as it is sometimes put, when is a chattel deemed to have become a 'fixture'? The test is, has the chattel been fixed, however slightly, to land, and where it has been affixed to anything attached to land, has it been affixed for the permanent beneficial enjoyment of the thing to which it is affixed.

(*See* pp. 42-44)

An example of interest in land being immovable property is provided by the case *Ananda Behera* v. *State of Orissa*[1]. In this case the petitioner had licence from the proprietor of an estate for catching and appropriating all fish in a lake and they had paid the proprietor large sums of money. The lake vested in the respondent-State under the Orissa Estates Abolition Act. The State refused to recognise the licence and the petitioners claimed that the transactions were really sales of future goods as fish was movable property, and hence, the Abolition Act, was not applicable. It was held:

> *As a profit a prendre* is regarded as *a benefit arising out of land it follows that it is immovable property within the meaning of the Transfer of Property Act.* Now a 'sale' is defined as a transfer of ownership in exchange for a price paid or promised. As a *profit a prendre* is immovable property and as in this case it was purchased for a price that was paid it requires writing and registration because of Section 54 of the Transfer of Property Act. If a *profit a prendre* is regarded as tangible immovable property, then the property in this case was over Rs 100 in value. If it is intangible, then a registered instrument would be necessary whatever the value. The 'sales' in this case were oral. There was neither writing nor registration. That being the case, the transactions passsed no title or interest.

In *Bihar Eastern Gangetic Fishermen Coop. Society Ltd.* v. *Sipahi Singh*[2], the State Government ordered the settlement of the Jalkar should

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1. (1955) 2 SCR 919; *D.S. D'Souza* v. *MR Wagle Trust*, AIR 1979 Goa 19; *Haji Sukhan* v. *Board of Revenue*, AIR 1979 All 310; *Chief Controlling Revenue Authority* v. *A.B. Project*, AIR 1979 All 355 (Drawing of water is not 'benefit arising out' of land and hence not immovable property; *Saravanan* v. *Sri Vedarangaswami*, AIR 1982 Mad 396.
2. (1977) 4 SCC 145; *Bibi Sayeeda* v. *Bihar*, AIR 1996 SC 1936 (Right to hold a bazaar).

continue with the first respondent for the years 1976-77 and 1977-78 but before final orders are passed and the patta of settlement of the Jalkar was issued, on the representations made by the appellant, the State Government directed that the settlement of the Jalkar should be with the Society for the relevant years on certain conditions. The first respondent thereupon filed a writ petition and the High Court allowed the writ petition relying on the doctrine of promissory estoppel. Allowing the appeal the Supreme Court held:

> Besides, the right to catch and carry away the fish is a "*profit a prendre*". If a *profit a prendre* is a tangible immovable property, its sale has to be by means of a registered instrument in case its value exceeds Rs 100. If it is intangible, the sale is required by Section 54 of the Transfer of Property Act to be effected by a registered instrument whatever its value. Therefore, in either situation the grant of the *profit a prendre* has to be by means of a registered instrument. Even if the settlement of Jalkar to the first respondent is regarded as a lease and not as a grant, it would not make any difference because a lease of fishery which is immovable property as defined in Section 2(6) of the Registration Act if it is for any term exceeding one year or reserves a yearly rent has also to be registered under Section 17(1)(*d*) of that Act. In the instant case, the transfer of the *profit a prendre* in favour of the first respondent was admittedly for two years reserving an yearly rent and was not evidenced by a registered instrument and, therefore, he had no right, title or interest which could be enforced by him.[3]

The following rights are recognized as immovable property:

(I) right of way;

(II) right of ferry;

(III) right of fishery;

(IV) right to collect dues from fairs held on one's land;

(V) right to collect lac from trees ;

(IV) right to collect rent from property;

(VII) a mortgagor's right to redeem the mortgage;

(VIII) Hindu widow's life-interest in the income from the husband's immovable property;

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3. *Ananda Behera* v. *The State of Orisa,* (1955) 2 SCR 919.

(IX) office of a hereditary priest of a temple.

The following are not immovable property:

(I) A decree for the sale of immovable property on a mortgage;

(II) A machinery which is not permanently attached to earth and so can be shifted from place to place;

(III) right of worship;

(IV) right to recover maintenance even though charged on immovable property;

(V) Government promissory notes;

(VI) grass;

(VII) growing crops;

(VIII) right of a purchaser to have lands registered in his name;

(IX) royalty and;

(X) standing timber.

Standing Timber

The scope of the expression 'Standing Timber' and how it is different from a tree is explained in *Shantabai* v. *Bombay*[4]. In that case, the petitioner's husband, a zamindar, executed an unregistered document in favour of the petitioner giving her the right to enter upon certain areas in the zamindari in order to cut and take out bamboos, fuel, wood and teak. After the passing of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950, a question arose as to the exact nature of the petitioner's right. It was held that the petitioner had no enforceable right against the State. Mr Justice Bose in his judgment examined the scope of Section 3(26) of the General Clauses Act under which *'standing timber'* is not immovable property. The learned Judge observed:

> A tree will continue to draw sustenance from the soil as long as it continues to stand and live. *Before a tree can be regarded as 'standing timber' it must be in such a state that, if cut, it could be used as timber, that is, as wood suitable for building houses,*

4. (1959) SCR 265; *Joseph* v. *Joseph*, (Rubber trees not 'standing timbers') AIR 1979 Ker 219; *Fatima Bibi* v. *Irfana*, AIR 1980 All 394; *State* v. *Motilal*, AIR 1981 HP 8; *State of Orissa* v. *Titagarh Paper Mills*, 1985 Supp SCC 280: AIR 1985 SC 1293 (Bamboos—immovable property).

bridges, ships, etc., whether on the tree or cut and seasoned; and when in that state it must be cut reasonably early. The rule is probably grounded on generations of experience in forestry and commerce and this part of the law may have grown out of that. It is easy to see that the tree might otherwise deteriorate and that its continuance in a forest after it has passed its prime might hamper the growth of younger wood and spoil the forest and eventually the timber market.

Therefore, as regards things which are capable of being removed from the land, the test for deciding whether they are to be regarded as movable or immovable property would be: If there is an intention to sever them from the immovable property, land or building, for the purpose of selling them as separate items, then such separate items would be movable property.

Mortgage and equity of redemption

A debt secured by mortgage of immovable property, would itself be immovable property and the corresponding equity of redemption in the mortgagor, would also be immovable property. (*See*: Section 58 and notes thereunder.)

Scope of the Act

The Act is not exhaustive. It does not apply to:

(I) transfers by operation of law;

(II) transfers under orders of court;

(III) testamentary transfers;

(IV) some rules of transfer under Muhammedan Law. Notwithstanding the reservation in clause (IV), the Act is a territorial law or *lex loci.*

Since the Act of 1882 is not a complete Code, *where the statutory law in India is silent,* an Indian Court may look for guidance to principles of justice, equity and good conscience which are nothing more than decisions of English Courts on the assumption that, that system is a repository of all justice. Therefore, the English law with respect to transfers becomes important and the salient features of that system of law are given here in order to enable the student to understand a decision of an English Court.

How property is classified in English Law

Indian law divides property into *movables* and *immovables*. But in English law the division is into *realty* and *personalty*. Realty was that kind of property which could be recovered by a person who lost possession of it. The action was known as a *real action*. When lands were regarded as superior to goods or chattels, a real action lay only with respect to lands. In the case of goods, if a person lost possession, he could not recover them *in specie*, but had only a right to recover damages. Such an action was known as a *personal action*. Broadly therefore, immovable property was realty and goods were personalty. But a leasehold interest was known as Chattel real. It was *real* because it was connected with land. It was a chattel or *personalty*, because, a lessee originally (in English law), could not get back possession of the land when he lost possession of it. He could only recover damages. We may therefore say that interests in land known to the feudal system are really property, and interests outside that system, such as leases, (See p. 15) were treated as personalty. In modern English law, however, it is treated as real property. In fact after the Real Property Amendment Act, 1925, even in England, the distinction is only between movable and immovable property.

What were the broad features of land law before Norman conquest

In England, in Anglo-Saxon times, absolute ownership in land, known as alloidal ownership was recognised, so that the holder could dispose it of either by deed or will. But the will was in the nature of a *post obit* gift. That is, it is a gift to take effect after death. It was not ambulatory, that is mutable, nor was it revocable.

There were, however, certain limitations on this right of disposal, so as to safeguard the interests of one's heirs. Among the heirs, equal distribution was the rule, though primogeniture was not unknown.

What were the effects of the Norman conquest

(*i*) The idea of absolute ownership gave place to feudalism;

(*ii*) There was no freedom of alienation, but a process known as sub-infeudation came into being;

(*iii*) The right of testamentary disposition was practically taken away.

What is feudalism

Under the feudal doctrine, the king was paramount owner of land and the subjects holding land were deemed to be his tenants. Thus the king alone was the owner. Others held only 'estates'. The tenant who held immediately from the king was known as *Tenant in Capite* or a *chief tenant.* The person in actual possession of the land was known as the *tenant in possession* or *terre tenant.* If *A* was the chief tenant and if *A* granted the land to *B*, and *B* to *C* and *C* to *D* and *D* was the tenant in possession, *B* and *C* were known as *mesne* lords. *A* held the land from the king by *infeudation* and the others by *sub-infeudation.* In the chain, *D* was bound to render feudal services to *C*, *C* to *B*, *B* to *A* and *A* to the king.

In English law the right devolved on the tenant from the superior lord, whereas in India, the tenant was on the land and the grantees of land were imposed on the tenants. The right of the grantee was merely a right to collect and appropriate the rent payable by the tenant to the grantor.

But, as the feudal chain lengthened out, *A* found it difficult to enforce the services due to him and so, *sub-infeudation* was abolished. This was done in 1290, by a statute known as the Statute *Quia Emptores.* Therefore, after 1290, a tenant could substitute another in his place, but could not *sub-infeudate.*

In the case of wills, since there could be no 'livery of seisin', that is, delivery of possession of real property in the case of a dead person, the device of trust was adopted, by which, a person, before his death, conveyed the property to a trusted friend who handed it over to the intended person, after the death of the grantor. The Statute of Uses, 1535, put an end to this device, but testamentary powers were recognised by the Statute of Wills, 1540. There were certain reservations, namely, (1) lands on military tenure could be disposed of only to the extent of two-thirds. This became innocuous when the tenure itself was abolished in 1660 by the Statute of Tenures; and (2) the will covered only the properties in existence at the date of the will. This reservation was abolished by the Wills Act of 1837.

What were various kinds of feudal services

Land was held under free tenures or unfree tenures. Where a lord held both types of tenures he was known as the lord of the manor. The

manor consists of (*a*) lands held by freehold tenants, (*b*) demesne lands cultivated by copy-hold tenants, and (*c*) the manor house. Broadly, the services were divided into unfree and free. The unfree services were rendered by those *terre tenants* known as *villeins*. The expression was derived from 'villa', since the tenant lived chiefly in villages doing rustic work. Originally, the inferiority attached to the tenant, but later, to the nature of services. If they were precarious, servile and were capable of being exacted arbitrarily by the lord, they were considered unfree. But it was on his agricultural services that the feudal lord relied for cultivation of land retained by him, known as *demesne* land since there was no other class of hired labourers, and this circumstance accounted for the lord's arbitrary power and security of the tenant. He could not leave without his lord's consent, which, when asked was granted by his court known as the manorial court. But the tenant had to pay a fine on his surrender of the land to the lord and the admittance of the next tenant. These amounts were entered in the court roll which became conclusive evidence of the nature of the tenure and the villein's title to it. An intending purchaser could satisfy himself about the title prior to surrender and admittance, but as actual inspection became inconvenient copies of court roll were given to him and that was how he came to be known as copy-holder. By the end of the 19th century the tenure was enfranchised either voluntarily or under the Copy-hold Act, 1894. By the Law of Property Act, 1925, the copy-hold tenure ceased to exist, and today, all lands in England are held as free-hold socage tenure (*See* below). In the case of freehold tenure, originally, the services which the tenant had to render were free, that is, they were honourable, certain and could not be exacted arbitrarily by the lord.

What were the various kinds of free or freehold tenure

The main classes were: (1) Military tenure or tenure in chivalry or tenure *per militiam*; (2) Lay or socage tenure; (3) Tenure in free alms or frankalmoign; (4) Tenure in sergeantry; and (5) Burgage tenure.

What were the incidents of the various kinds of tenure

(*i*) *Military tenure.*—The feudal services or incidents of this tenure were; (*a*) military service; (*b*) homage; (*c*) fealty; (*d*) relief; (*e*) aids; (*f*) wardship; (*g*) marriage; (*h*) escheat; and (*i*) forfeiture. The military service was always to the King whatever might be the rank of the tenant

in the feudal chain. *Homage* consisted in the tenant kneeling before the lord, and *fealty*, in the tenant taking an oath of allegiance to the lord. The right of the lord to recover a certain amount from the tenant's heir, when he was admitted to tenancy was known as *relief*. *Aids* or *Auxilia* were payments which a tenant had to make; (*i*) for ransoming the lord if he was taken captive; (*ii*) for knighting the lord's eldest son; and (*iii*) for marrying the lord's eldest daughter. *Wardship* was the lord's right of guardianship over the person and property of a minor tenant without any liability to account. *Marriage* was the lord's right to consent or not, to the marriage of the son or daughter of his tenant. When a tenant died without heirs and without having disposed of his property by will the property reverted to the lord by *escheat*. If a tenant was convicted of a felony, the lord could *forfeit* the tenant's property.

Gradually, homage, fealty, relief and aids had fallen into disuse. Military service came to be commuted into a fixed money payment known as scutage and gradually even that ceased to be recovered. The tenure itself was abolished in 1660.

(*ii*) *Socage tenure*.—In this, instead of military service, the tenant had to render agricultural service, which was commuted into the payment of an annual amount, known as *quit* rent. The tenant was not subject to the incidents of wardship and marriage though subject to the other incidents.

(*iii*) *Frankalmoign*.—This arose when lands were granted to churches and monasteries for rendering spiritual service to the grantor. They are rare in modern English law.

(*iv*) *Tenant in sergeantry*.—This was of two kinds: (*a*) Grand sergeantry or *magnum servitum* and (*b*) Petty Sergeantry. The service was to the King direct. In the former, it was honourable, as for example, carrying the King's banner. In the latter, the service rendered was small, as for example, presenting the King once a year with a bow or a sword. In modern law, the tenure exists in name only.

(*v*) *Burgage tenure*.—This is a kind of socage tenure obtaining in urban parts. One variety of it is known as Borrough English in which the property of the tenant went to his youngest son. Another variety was *gavelkind* in which the property of a tenant devolved on all his male issues. In modern law all these peculiar incidents have been completely abolished.

By the end of middle ages, (*c* 500 AD to 1500 AD) practically all land in England was in the occupation of tenants directly under the King. With the abolition of knight service and conversion of the tenure into socage tenure, the position in 1925,—when the Law of Property Acts were passed—was that all land was held in socage tenure and most of it was held directly under the King. Thus, the person who is referred to as an owner in English law is really a feudal tenant derived from the obsolete social organisation known as feudalism. The fee simple, which corresponds to absolute ownership in India was the interest which the feudal tenant held. Other types of free-hold estates such as life estates and entailed estates were usually the result of internal family arrangements.

The result in modern English law, after the coming into force of the Law of Property Act, 1925, is that there is only one tenure, namely the socage tenure, which is lay and free. The incident of escheat had lost all practical significance, because the tenants were freely using their testamentary powers which they gradually acquired. Forfeiture was abolished in 1870 and the Law of Property Act, 1925, abolished other manorial incidents.

What are 'words of limitation' and 'words of purchase'

The former are used in an instrument to define the nature and extent of the interest transferred or devised.

The latter indicates the person or persons who are to take.

For example, property is transferred to 'to *A*, his sons and grandsons for ever'. This would mean an absolute transfer in favour of *A* only, and his sons and grandsons do not get any direct benefit, because, they are treated as words of limitation.

This distinction is not important in Indian law, because, in Indian law, it is the substance, the real intention of the transferor that matters and not the form.

Difference between free-hold and lease-hold

The word 'free-hold' is different from 'free-hold tenure' which is also known as 'free tenure'. (*See* page 14) An estate is said to be 'freehold' when it is for a definite period but of uncertain duration; for

example to *A* for life. It is used in contrast to the phrase 'estate for a term of years' which is for a definite period of certain duration. The lessee was called the *termor*. The lease-hold tenure developed outside the feudal system. In this tenure the free-holder alone had the *seisin* or ownership and the lessee had possession or occupation. 'Estate in fee' corresponds to absolute ownership in India and 'estate in tail' means to the descendants or heirs of the body of grantee.

A conveyance was made in the following terms:

To the use of Edward Shelley for life, remainder to the use of *X, Y* and *Z* for a term of 24 years, and remainder to the use of the 'heirs male of the body'of Edward Shelley. (Where property is given to a person for life and thereafter to another, it is said that the 'remainder' is given to the second person).

The last words in the transfer namely, "remainder to the use of the 'heirs male of the body' of Edward Shelley", were held to be *words of limitation of the estate taken by Shelley* and did not operate to convey any estate to the heirs. The rule laid down in the case was: When an ancestor takes an estate of freehold, and in the same gift or conveyance, an estate is limited by way of remainder, whether mediately or immediately, to his heirs either *in fee* or *in tail*, the words 'his heirs' are to be taken as *words of limitation* and not *of purchase*. The result was that Shelley took a fee simple estate which he could alienate to defeat his heirs. If he alienated the vendee would get the full estate after 24 years.

The rule set out above was an artificial rule known as the Rule in *Shelley case* and was abolished by the Law of Property Act, 1925 (*See:* Preface). In the book entitled 'Pie Powder' by 'A Circuit Tramp', an amusing anecdote is related about this Rule. When an examinee was asked 'What was the Rule in *Shelley case*?' he was said to have replied: 'It is the same as in anybody else's case, because, the law does not discriminate between persons'.

How are estates classified

The word 'estate' in Indian law means the total wealth or property of a person whether movable or immovable. The term has also received a special meaning under local statutes such as the Madras *Estates* Land Act.

In English law, it is used according to context in two different senses: (1) the sense in which it is used in Indian law, namely, the total

wealth of a person; and (2) the interest in land which a person holds. In the latter sense,

They are: (1) an estate in fee simple; (2) an estate in fee tail; (3) an estate for life; and (4) an estate for a term of years.

(1) An estate in fee simple corresponds to absolute ownership in India. When a fee simple tenant dies his estate passes to his nearest heir or heirs.

(2) An estate tail is created when on the grantee's death the estate goes only to his lineal descendants or heirs of the body. If there is a failure of such heirs, it will revert to the grantor or to the grantor's representatives. It could also be *special* when it is restricted to a particular class (for example, male) of lineal descendants. After the passing of the Law of Property Act, 1925, they are known as entailed interests. We have seen that by *c* 1500 tenants holding directly from the King had become practically full owners (holders of fee simple). Some of them wanted to retain the property in their own family. So the estate tail came into existence.

In India, in the case of Hindus, such an interest cannot be created, because, it is unknown to Hindu law. The same rule applies to Mohammedans also, except in relation to *Wakfs*, which could be in favour of one's descendants in perpetuity.

(3) An estate for life or life estate, arises when an estate is granted for the life of the grantee or of any other person or persons. For example, an estate may be granted to *A* for his life, or it may be granted to *A* to be enjoyed by him for the life *B*. In the second case, it is known as an estate *per autre vie*. Where an owner in fee simple wanted to lease out his land he originally created a life estate, because, a lease for a fixed term did not protect the lessee originally, in case he was dispossessed.

In Indian law, under the Hindu Customary Law, a widow's estate resembles a life estate and if she makes an unauthorised alienation, it gave rise to an estate *per autre vie*, because, the alienee gets a title only for the life of the widow. On her death, her husband's heirs (known as reversioners) could take the property from the alienee.

(4) An estate for a term of years arose when property was transferred for a term certain, as in the case of leasehold interests, that is, for a definite period.

Words of limitation for creating the various kinds of estates

Fee simple.—Originally an estate in fee simple could be created under an instrument executed *inter vivos*, only by the use of the words 'and his heirs'. For example to *A* and his heirs; and any other words were deemed insufficient. This position continued till 1881 when the Conveyancing and the Law of Property Act was passed providing that it would be sufficient to use the words 'fee simple', that is: To *A* in fee simple. By the Law of Property Act, 1925, no words of limitation are necessary, so that, a conveyance 'to *A*' would pass to *A* the full fee simple or *other whole interest* which the grantor was capable of conveying.

In the case of wills, originally, words like 'for ever', 'absolutely' or 'in perpetuity' were considered sufficient to create an estate in fee simple in the grantee. The Wills Act of 1837 completely did away with the necessity for any words of limitation.

In Indian law all that was required was that there should be words in an instrument making the intention of the grantor or testator clear. *See*: Section 8 of the Transfer of Property Act, 1882, and Section 95 of the Indian Succession Act, 1925. The words in common use are: *'Putra Poutradi Krame', 'Parampariyamai'* and *'Achandrarkam'*.

Estate tail.—The words of limitation were 'heirs of his (or her) body' and other words, however clear, were deemed insuffi
1881 Act (of England) (*supra*) provided that the words 'in tail' were sufficient. Under the 1925 Act either the words 'in tail', or the 'heirs of the body' could be used.

In testamentary instruments any words would be sufficient if they indicated an intention on the part of the testator to grant an estate in tail. For example 'to *A* and his issue'.

In India, where such an estate could be created, both in testamentary and non-testamentary instruments, any words which render the meaning of the grantor clear, are sufficient.

Life estates: Under the common law, words, which were ineffective for creating an estate in fee simple or in tail, operated to create an estate for life. In modern law, the expression used is 'for life'; for example 'to *A* for life'.

Exercises

1. What is meant by immovable property? Explain with illustrations. (pp. 7-11)

2
What Property is Transferable ?

Some General Rules

The Transfer of Property Act deals with transfers *inter vivos*. Section 5 provides:

> In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons, and "to transfer property" is to perform such act.
>
> In this section "living persons" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

For the meaning of " transfer" See *Pandey* v. *Ram*[1].

Since the Act deals with transfers by a living person, that is, transfers *inter vivos*, it is not concerned with transfers by judicial process like execution sales. [*See* Section 2(*d*)]. It also does not apply to wills, because, a will or testament operates only after the death of the testator. A dedication of property to a temple is not covered by the Act, because, a temple or the deity is not a living person. By Sections 13, 14 and 20 however, transfers in favour of unborn persons are recognised, subject to certain restrictions.

A relinquishment in favour of a coparcener[2], or a Hindu widow, having a limited interest in property, surrendering it to the next reversioner in order to accelerate his succession, are not transfers, because, they are really *extinction* of rights in property and not transfers of property.

A family arrangement or a *bona fide* settlement of a disputed claim is also not a transfer of property, because, it is a recognition of pre-existing rights and does not convey any new or distinct title to the parties to the settlement.[3] For the same reason, a partition is also not a transfer.[4] There

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1. AIR 1992 SC 195; *Md. Noor* v. *Md. Ibrahim*, (1994) 5 SCC 562; *Mahesh* v. *Rajkumari*, AIR 1996 SC 869.
2. *Hari Satya* v. *Mahade*, AIR 1983 Cal 76.
3. *Kalyani* v. *Narayanan*, 1980 Supp SCC 298: AIR 1980 SC 1173 (Case of Will); *Sushilabehn* v. *Anandilal*, AIR 1983 Guj 126; *Sreenivasa Pai, A.* v. *Saraswathi Ammal*, (1985) 4 SCC 85: AIR 1985 SC 1359; *Md. Shaffi* v. *Tallai*, AIR 1985 P&H 121.

is only a change in the mode of enjoyment, one co-owner getting one or more specific items of property instead of exercising a right in all the joint properties.

The creating of an easement or a charge on property are also not transfers.

Property

The word 'property' means the right and interest which a man has in lands and chattels to the exclusion of others. Before the Law of Property Act, 1925, was passed in England, the four kinds of estates described, namely, (1) an estate in fee simple, (2) an estate tail, (3) a life estate and (4) an estate for a term of years, could be created at law. Equity recognised only trusts, and obligations in the nature of trust arising by reason of fraud or mistakes where it was inequitable to allow a legal owner of property to be its beneficial owner. After the Act was passed the only estates which could be conveyed or created at law are: (1) an estate in fee simple; and (2) an estate for a term of years. The reason for the change was to simplify conveyancing, so that, a purchaser will get a clear title to the property, the rule being that a purchaser of a legal estate will take the property conveyed free from equitable claims in or over the property, even though he had notice of them, unless they were registered. Under the present law in England an estate tail and a life estate would be equitable interests.

In India, there is no distinction between legal and equitable estates and all estates, or interests, that is, every kind of property in land, could be conveyed or created under the Transfer of Property Act. Therefore, an absolute estate which corresponds to an estate in fee simple, an estate tail wherever it could be created, a life estate and an estate for a term of years could be conveyed or created; and if such right is infringed the court will give relief.

The words 'in present or in future' refer to 'conveys' and not 'property', and so the section could not be interpreted to authorise transfer of 'future' property. In fact, a person cannot transfer what is not in existence. But if he agrees to transfer what is to come into existence in

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4. *Khusmanben* v. *Babubhai*, AIR 1979 Guj 25; *Sitaram* v. *Mahadeo*, AIR 1980 Pat 254; *V.P.R. Prabhu* v. *Prabhu*, AIR 1985 Ker 265; *Sk. Sattar Sk. Mohd. Choudhari* v. *Gundappa Amabadas Bukate*, (1996) 6 SCC 373.

future, that is, if there is a transfer of 'future' property it is treated as a *contract* to transfer such property. If the property does come into existence the transferee can sue for specific performance of the contract, provided that the 'future' property is not of the kind whose transfer is prohibited by Section 6. Under English law, however, equity, treating as done what ought to be done, fastens upon the property and the contract to transfer becomes a completed transfer. Since a contract requires consideration a gift of future property is not an enforceable contract.

Before the words 'or to himself' were introduced in the section a person could create a trust in his favour, that is, he could create a trust of which he is the *beneficiary*. After the amendment a transfer can be made by a person to *himself*, as for instance by a person making a settlement or trust in which he constitutes himself as a *trustee*.[5]

Section 6 provides what kinds of property may be transferred and what may not be transferred. It says:

Property of any kind[6] may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

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

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*dd*) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.

(*e*) A mere right to sue cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military, naval, air force and civil pensioners of the Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) insofar as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872 or (3) to a person legally disqualified to be transferee.

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5. *Suleman* v. *Narambhai*, AIR 1980 Guj 165.
6. *Pannalal* v. *Ramnarayan*, AIR 1971 Raj 294 (Case of sale of benefit of reconveyance of property sold); *VB Rangaraj* v. *Gopalakrishnan*, AIR 1992 SC 453.

(*i*) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate, under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

Under this section, the general rule is, every kind of property can be transferred. There may be exemptions in the personal laws, or recognised by local customs.

The kinds of things mentioned in clause (*a*) are known as *spes successionis*. It means a mere chance of succession or a bare or naked possibility. In English law it, is different from future interests such as contingent remainders and executory interests, because there can be possibilities coupled with interest (*See* Sections 21 and 28). Lord Bacon laid down the rule:

> The law doth not allow of grants except there be a foundation of an interest in the grantor; for the law will not accept grants of titles or of things in action which are imperfect interests, much less will it allow a man to grant or encumber that which is no interest at all, but merely future.

But since *Licet dispositio de interesee futuro sit inutilis tamen fieri potest declaratio praecedens quae sortiatur effectum interveniente novo actu*, which means, that although the grant of a future interest is invalid, yet a declaration precedent may be made which will take effect on the intervention of some new act, though a transfer of a *spes successionis* will not confer upon the transferee any interest in property, yet courts of equity, *in England*, have construed the assignment of a *spes*, if for valuable consideration, as a contract for assignment when the *spes* itself matures into a full right, because, equity treats as done what ought to be done.

But the Indian law is different. In Indian law the transfer of an expectancy and an agreement to transfer it are both void. Under Indian law, an agreement to assign a *spes* is null and void. This was laid down in *Annada Mohan Roy* v. *Gour Mohan Mullick*[7]. In that case the appellant purchased from the respondents their rights expectant upon the termination of the surviving widow's rights. Later, there was a

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7. ILR 50 Cal 929 (PC); *Badri Nath* v. *Punna*, (1979) 3 SCC 71 (Right of a *Baridar* of a deity to share in the offerings at a Hindu shrine not a *spes successionis*); *Adinarayana* v. *Ramahari*, AIR 1980 Ori 95.

compromise between the widow and the respondents as a result of which the respondents got certain properties. In a suit by the appellant to recover the properties received by the respondents, it was held:

> The transfer was of a *spes successionis* and since *Section 6(a) of the Transfer of Property Act forbids such transfers of expectancies, the transfer* was void.

In *Karpagathachi* v. *Nagarathinathachi*[8], two co-widows divided their husband's properties into two shares and entered into separate possession. Under the partition deed each widow gave up her life interest. When one of the widows died, her daughter (respondent) took possession of her mother's share. The surviving widow filed a suit for possession against the respondent for recovery of possession alleging that the arrangement by which her right of survivorship was relinquished was repugnant to Section 6(a) of Transfer of Property Act. It was held:

> The interest of each widow in the properties inherited by her was property and this property together with the incidental right of survivorship could be lawfully transferred. *Section 6(a) of the Transfer of Property Act prohibits the transfer of the bare chance of the surviving widow taking the entire estate as the next heir of her husband on the death of the co-widow, but it does not prohibit the transfer by the widow of her present interest in the properties inherited by her together with the incidental right of survivorship.*

The principle of the decision is that each widow relinquished her right of survivorship. There was an extinction of a right but no transfer of a bare chance of succession.

In *Amrit Narayan* v. *Goya Singh*[9], the guardian of a minor reversioner entered into a compromise with the female holder, by which, the properties were relinquished in favour of other relatives. In a suit by the reversioner for possession of the properties after the death of the female holder, it was held:

> A Hindu reversioner has no right or interest *in praesenti* in the property which the female owner holds for her life. Until it vests in him on her death, should he survive her, he has nothing to assign or

8. (1965) 3 SCR 335.
9. (1918) LR 45 IA 35.

to relinquish or even to transmit to his heirs. His right becomes concrete only on her demise; *until then it is mere spes successionis.*

This is not a case of *extinction by surrender*, because, surrender can only be in favour of the *nearest* reversioner.

The right of a priest to share in the offerings that may be made to the deity is a mere possibility. It can, however, be argued that there are bound to be some offerings, and so, the right can be transferred.

If *B* and *C* are the wife and daughter of *A*, and *C* releases her right of inheritance in *A's* property in favour of *B* for consideration, and thereafter *A* dies, *B* cannot resist *C's* claim to her share of the inheritance, because, it is a transfer of a *Spes.*

This clause may be compared with Section 43. That section provides,

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

Nothing in this section shall impair the rights of transferees in good faith for consideration without notice of the existence of the said option.

The illustration to the section is in the following terms:

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

This section deals with what is known in English law as the Doctrine of *feeding a grant by estoppel.* It is also referred to as title feeding estoppel or the forwarding of title by estoppel. Since the doctrine is based on estoppel the conditions of Section 115 of the Evidence Act must be satisfied before the doctrine applies, that is, the fraudulent or erroneous representation by the transferor must have induced the transferee to enter into the contract, and the transferee should not have known the defect in the transferor's title. Since there cannot be an estoppel against statute, the doctrine cannot be invoked when a statute specifically prohibits a transfer, as in the case of an alienation of inalienable service inams. For example, under Section 6 of the Transfer of Property Act, a spes successionis is inalienable; so also are service *inams*. In such cases, the acquisition later by the transferor of a transferable interest in those properties will not attract the doctrine so as to confer a title on the

transferee. If, however, the transferee did not know the nature of the property and *bona fide* believed the representation of the transferor that he had a right to transfer it, then the transferee can rely on the doctrine. Therefore, if what is purported to be sold is *admittedly* a *spes* then Section 6(a) would apply and the doctrine in this section cannot be invoked by the transferee. But, if the transferor, though really entitled only to a *spes* represents that he had a right to sell and the transferee *bona fide* believes him, then the doctrine of this section is applicable.

In *Jumma Masjid Mercara* v. *Kodimaniandra Deviah*[10], two brothers were owners of a certain property, and on the death of one and his widow, his reversioners, *representing that they had a present interest in the property*, sold it to the respondent. The widow of the other brother, later made a gift of the property to the appellant. In a suit by the respondent for possession of the property, the appellant contended that the respondent's vendors had only a *spes successionis* during the lifetime of the widow who made the gift to the appellant and that therefore, the transfer in favour of the respondent was void. The widow, who made the gift in the appellant's favour being dead, it was held:

> Considering the scope of the section in its terms, it clearly applies whenever a person transfers property to which he has no title on a representation that he has a present and transferable interest therein, and acting on that representation, the transferee takes a transfer for consideration. When these conditions are satisfied, the section enacts that if the transferor subsequently acquires the property, the transferee becomes entitled to it, if the transfer has not meantime been thrown up or cancelled and is subsisting. There is an exception in favour of transferees for consideration in good faith and without notice of the rights under the prior transfer. But apart from that, the section is absolute and unqualified in its operation .... It makes no difference in its application, whether the defect of title in the transferor arises by reason of his having no interest whatsoever in the property, or of his interest therein being that of an expectant

10. 1962 Supp (2) SCR 554; *Jhulan Prasad* v. *Ram Raj*, AIR 1979 Pat 54; *Anand Padhan* v. *Dhuba*, AIR 1979 Ori 5; *Bhagwan Das* v. *Chandra*, AIR 1979 All 350 (Section applied to agreements to sell); *Adinarayana* v. *Ramahari*, AIR 1980 Ori 95; *Ram Pyare* v. *Ram Narain*, (1985) 2 SCC 162: AIR 1985 SC 694; *Brahmvart Sanathan Dharam Mahamandal* v. *Prem Kumar*, (1985) 3 SCC 350: AIR 1985 SC 1102; *Rojasara Ramjibhai Dahyabhai* v. *Jain Narothamdas Lallubhai*, (1986) 3 SCC 300: AIR 1986 SC 1912; *Kartar Singh* v. *Harbans Kaur*, (1994) 4 SCC 730.

heir....Section 6(*a*) and Section 43 relate to two different subjects, and there is no necessary conflict between them; Section 6(*a*) deals with certain kinds of interests in property mentioned therein, and prohibits a transfer *simpliciter* of those interests. Section 43 deals with representations as to title made by a transferor who had no title at the time of transfer, and provides that the transfer shall fasten itself on the title which the transferor subsequently acquires. Section 6(*a*) enacts a rule of substantive law, while Section 43 enacts a rule of estoppel which is one of evidence. The two provisions operate in different fields, and under different conditions, and we see no ground for reading a conflict between them or for cutting down the ambit of the one by reference to the other. In our opinion, both of them can be given full effect on their own terms, in their respective spheres. To hold that transfers by persons who have only a *spes successionis* at the date of transfer are not within the protection afforded by Section 43 would destroy its utility to a large extent....

The appellant also sought to rely on the decisions wherein it has been held that a plea of estoppel could not be raised against a minor who had transferred property on a representation that he was of age, and that Section 43 was inapplicable to such transfers, vide: *Sadiq Ali Khan* v. *Jai Kishori*[11], *Gadigeppa* v. *Balanagauda*[12], and *Ajodhia Prasad* v. *Chandanlal*[13]. But the short answer to this contention is that Section 43 deals with transfers which fail for want of title in the transferor and not want of capacity in him at the time of transfer....

Reference may, in this connection, be made to the following observations of the Judicial Committee in *Mohd. Syedol Ariffin* v. *Yeoh Ooi Gark*[14], as to the value to be given to illustrations appended to a section, in ascertaining its true scope: "It is the duty of a Court of law to accept, if that can be done, the illustrations given as being both of relevance and value in the construction of the text. The illustrations should in no case be rejected because they do not square with ideas possibly derived from another system of jurisprudence as to the law with which the sections deal. And it would require a very special case to warrant their rejection on the ground of their assumed

11. AIR 1928 PC 152.
12. ILR (1931) 55 Bom 741.
13. ILR (1937) All 860.
14. (1916) LR 43 IA 256.

repugnancy to the sections themselves. It would be the very last resort of construction to make any such assumption. The great usefulness of the illustrations which are although no part of the section, having been expressly furnished by the legislature as helpful in the working and application of the statute, should not be impaired....".

Alamanaya Kunigari Nabi Sab v. *Murukuti Papiah*[15] arose out of a suit to enforce a mortgage executed by the son over properties belonging to the father while he was alive. The court observed: 'The argument that Section 43 should not be so construed as to nullify Section 6(*a*) of the Transfer of Property Act, by validating a transfer initially void under Section 6(*a*), however neglects the distinction between purporting to transfer "the chance of an heir-apparent" and "erroneously representing that the transferor is authorised to transfer certain immovable property". It is the latter course that was followed in the present case. It was represented to the transferee that the transferor was *in praesenti* entitled to and thus authorised to transfer the property. On this reasoning, if a transferor has statedly an interest of the character mentioned in Section 6(*a*), it would be void; whereas, if it purports to be of an interest *in praesenti*, it is within the protection afforded by Section 43'.[16]

In *Official Assignee* v. *Sampath Naidu*[17], the facts were that the transferor had executed two mortgages over properties in respect of which he had only *spes successionis*. Then he succeeded to the properties and sold them. On the question whether the mortgages were void as offending Section 6(*a*) of the Transfer of Property Act, the court held that as the mortgages, when executed, contravened Section 6(*a*), they could not become valid under Section 43. Referring to the *Alamanaya Kunigari Nabi Sab case*, the Court observed that no distinction could be drawn between a transfer of what is on the face of it *spes successionis*, and what purports to be an interest *in praesenti* and that if such a distinction were allowed the effect would be that by a clever description of the property dealt with in a deed of transfer one would be allowed to conceal the real nature of the transaction and evade a clear statutory prohibition.

15. (1915) 29 MLJ 733.
16. *Gulam Abbas* v. *Haji Kayyam*, (1973) 1 SCC 1: AIR 1973 SC 554.
17. (1933) 65 MLJ 588.

This reasoning is open to the criticism that it ignores the principle underlying Section 43.... It is to be noted that when that decision was given the relevant words of Section 43 were, 'when a person erroneously represents', and now, as amended by Act 20 of 1929, they are, 'where a person fraudulently or erroneously represents', and that emphasises that for the purpose of the section it matters not whether the transferor acted fraudulently or innocently in making the representation, and that what is material is that he did make the representation and the transferee has acted on it. When the transferee knew as a fact that the transferor did not possess the title which he represents he has, then he cannot be said to have acted on it when taking a transfer. Section 43 would then have no application, and the transfer would fail under Section 6(*a*). But where the transferee does act on the representation there is no reason why he should not have the benefit of the equitable doctrine embodied in Section 43, however fraudulent the act of the transferor might have been.

The court was further of opinion (in *Sampat Naidu case*), that in view of the decision of the Privy Council in *Annada Mohan Roy* v. *Gour Mohan Mullick* (supra) and in *Sri Jagannadha Raju* v. *Sri Raju Prasad Rao*[18], which was approved therein, the illustration must be rejected. In *Sri Jagannadha Raju case*, the question was whether a contract entered into by certain presumptive reversioners to sell the estate which was then held by a widow as heir could be specifically enforced, after the succession had opened. It was held that as Section 6(*a*), forbade transfers of *spes successionis* contracts to make such transfers would be void under Section 23 of the Contract Act, and could not be enforced. This decision was approved by the Privy Council in *Annada Mohan Roy case*. These decisions have no bearing on the question now under consideration as to the right of a person who for consideration takes a transfer of what is represented to be an interest *in praesenti*. The decision in *Sampath Naidu case* is erroneous....

The preponderance of judicial opinion is in favour of the view taken in *Alamanaya Kunigari Nabi Sab case*....In our judgment the interpretation placed on Section 43 in those decisions is correct and the contrary opinion is erroneous. We accordingly hold that when a

18. ILR (1916) 39 Mad 554.

person transfers property representing that he has a present interest therein, whereas he has in fact only a *spes successionis*, the transferee is entitled to the benefit of Section 43, if he has taken the transfer on the faith of that representation and for consideration.

The test really is, does the transferee know that he is buying only a *spes* or did he believe the transferor's representation. This rule applies only when the formal requirements of the law for the transfer are satisfied. If they are not, then can be no title by estoppel.

There is another rule which seems to have some resemblance to the doctrine of feeding the estoppel.[19] It is known as the rule in *Holroyd* v. *Marshall*[20]. It is based on the maxim that equity takes as done what ought to be done. Suppose a transfer is made of property not in existence. But if it comes into existence in future then according to this rule the contract to transfer becomes a complete transfer. But this rule has no application in India, because, a contract by itself does not create any interest in the property.

Under this section the subsequent estate passes to the transferee without the transferor doing anything except *deliver* the property to the transferee when he calls upon the transferor to do so. If, however, before he calls upon the transferor to deliver, the latter transfers the property to another for value and without notice of the first transfer, the first transferee's right is defeated by the title of the subsequent transferee.

The section operates even where the subsequent acquisition is less than what was transferred if the transferee is willing to exercise the option in his favour and be satisfied.

If the legal right and the enjoyment of such right became vested in a person at once, he was said to have an *estate in praesenti*. If the enjoyment was postponed to a future date, they were known as *estates in futuro* or estates in future, the main categories of which are known in English Law as Remainders, Reversions and Executory interests. Under feudal law, a transfer or feoffment was a transfer of feudal possession and a *present* transfer, because of the services involved. A *remainder* was possible because there was no gap in the rendering of feudal services.

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19. *Banwari Lal* v. *Sukhdarshan Dayal*, (1973) 1 SCC 294: AIR 1973 SC 814.
20. 11 ER 999.

Vested and Contingent Remainders, Reversions and Executory Interests

If *A*, the tenant in fee simple, grants his land to *B* for life, *B* becomes entitled to the *seisin* of the land for his life and on his death it would revert to *A*. *A's* interest was called a *reversion* and *A* has valuable interest in the land even during the lifetime of *B*, an interest which he could dispose of *inter vivos* or by will. Supposing *A* in the above example grants a life estate to *B* and thereafter the fee simple, which would have reverted to him to *C*. In such a case *C's* estate is known as a *remainder*. Remainders are either vested or contingent. In the example *C's* interest is vested in him and would vest in possession when *B's* life-estate is terminated. It is for this reason, namely that the interests are already vested, that *reversions* and *vested remainders* were not strictly classed as future estates; but are classed as present estates. If the grant was in the form to *A* for life with remainder to *B* in fee simple if he passes the LL.B Examination, *B* acquired no estate until the happening of the contingency, namely, the passing of the LL.B examination which might never happen. Such a remainder is known as a contingent remainder which was a future estate. Under the English Common Law before *B* passes the LL.B examination he has nothing which he can transfer to anyone. After he passes, *B* has a right capable of transfer. Under the equitable rule laid down in *Holroyd* v. *Marshall* such an interest can be transferred, that is in equity *B* can transfer his right even before he passes the examination, provided he passes before *A* dies. At Common Law *B* cannot alienate unless the condition is fulfilled. But, in Equity it is sufficient if the condition is fulfilled before *A* dies. The modern law is, contingent remainders are legally transferable as they were in Equity. In Indian law contingent remainders are not transferable and their transfer is, prohibited by Section 6.

The scope of clause (*b*) is as follows

Suppose, in a lease deed, there is a clause for re-entry by the lessor on the breach of certain covenants by the lessee. [*See Section* 111(*g*)]. The benefit of the clause for re-entry alone cannot be transferred in favour of a third party without transferring the property itself. But if property is given by *C* to *A* and it is provided that if *A* marries *B*, the property would revert to *C*, *C's* interest will accrue only when *A* marries *B*. But *C* can assign such interest to any one, because, *C's* right

is an interest accruing on the happening of a condition subsequent and not a bare right of entry. Similarly a reversion of the property following upon or based on a forfeiture could be transferred. Suppose there is a lease of lands and that on default of payment of rent the lessor has a right to forfeit the lease and re-enter. If the lessor gives notice of forfeiture and then leases the land to another, that other can sue for possession from the first lessee, because, "what was transferred was not the right of re-entry by itself, but the reversion based on the clause for forfeiture".

Since the transfer of the reversion carries with it the right to enter on forfeiture, a question arises as to whether the transfer should take place before the forfeiture is incurred. It is submitted that a covenant for re-entry can be taken advantage of by the transferee even though he became entitled to the reversion *after* the condition of re-entry has become enforceable, on the analogy of the law in England. [*See* Section 41(3) of Law of Property Act, 1925)].

The scope of clause (*c*) is as follows

An easement is a right which the owner or occupier of certain immovable property (dominant heritage) possesses for the proper enjoyment of the property, like a right of way over the adjoining property (servient heritage). Since the right cannot subsist apart from the dominant heritage, the right of easement alone cannot be transferred.

As regards clause (*d*), a Hindu widow's right to residence and maintenance comes under this clause, because, the right is personal to her and she is entitled to it as the widow of a deceased member of the joint Hindu family. Similarly, religious offices to which emoluments are attached are personal, the offices having been given to them on grounds of personal qualification. These offices though inalienable are often heritable.

In *Rajah Vurmah* v. *Ravi Vurmah*[21], the founders of a temple provided that its trustees shall be the chiefs of four distinct families. The office was hereditary and no question of personal fitness arose. On the question whether the trustees could alienate the trust property, holding that the office was inalienable, it was observed:

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21. ILR 1 Mad 235 (PC).

(1) The general principle is that the trustees had no power under the Common Law of India to transfer the office.

(2) There could be a custom which prevails against the general law by which such a transfer could be made.

(3) The important principle to be observed by the courts is to consider the evidence of usage as to the particular temple or religious institution.

(4) If the custom set up was one to sanction not merely the *transfer* of a trusteeship, but as in this case the *sale* of a trusteeship for the *pecuniary advantage of the trustee*, that circumstance alone would justify a decision that the custom was bad in law.

Again, personal *inams*, whose enjoyment is restricted to the grantee and his family for doing some service, cannot be alienated outside the family. The alienation is however not void but only gives the Government a right to determine the *inam* and enter upon the property.

The maintenance granted to a wife on divorce or the alimony ordered to be paid to her on judicial separation, are inalienable, both in Indian and English laws. A right of pre-emption also comes under this clause.

This principle does not apply in the case of a decree obtained for eviction on the ground of the personal use of the landlord, because, a decree is property under the general law and can be transferred.[22]

The scope and purpose of clause (*dd*) is as follows

If a widow sues her husband's coparceners for past and future maintenance, she may get either a simple money decree fixing the amount of future maintenance or charging the family properties. Or, the widow may enter into an agreement with her husband's coparceners or reversioners, fixing the future maintenance. Under this clause, a right to *future* maintenance in whatever manner arising cannot be transferred. But a decree for *past* arrears does not come under the prohibition.

This clause was introduced by the Amending Act of 1929 and applies to transfers effected after 1st April,1930, even though the right to maintenance arose before that date. Under clause (*d*) a right to receive

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22. *Ramgopal* v. *Satyanarayana*, AIR 1978 Bom 14.

maintenance was not transferable, but some courts held that if the amount of maintenance was fixed by agreement or decree it could be assigned. This clause was therefore introduced. Although an agreement or a decree would make such right definite, it is nevertheless a right created for the personal benefit of the qualified owner.

Scope of clause (*e*)

As regards clause (*e*) suppose *A* and *B* enter into a contract for purchase of goods by *A* from *B*. As long as the contract subsists *A* or *B* can assign his interest to a third party *C* who can enforce the contract against the other party *B* or *A*. The assignment to *C* is of an actionable claim and hence is valid. But if the contract is broken, say by *B*, *A* is only entitled to damages and he has only a mere *right to sue* for the damages. Such a right cannot be transferred. But if a decree for damages has been passed, that decree can be transferred as it is no longer a mere right to sue. A right to recover *mesne profits is a mere right* to sue and is not transferable. It would be otherwise if the property itself is sold together with *mesne profits*. The distinction between an actionable claim and a mere right to sue is brought out in the decision of the Privy Council in *Manmath Nath Mullick* v. *Hedait Ali*[23]. In that case, one Banerji mortgaged his properties to the appellant and thereafter leased the properties to the respondent who undertook to pay the Government revenue, cesses, and other public demands. Early in 1924, the mortgagee, that is, the appellant, purchased the properties in execution of a mortgage decree obtained by him. The respondent, as lessee continued to be in possession till September, 1924. He defaulted in payment of the Government revenue for 1923 and 1924. The appellant paid the amounts and sued the respondent for their recovery. The High Court granted a decree for the 1924 instalment, but with respect to the 1923 instalment, it held that Banerji transferred to the appellant only a mere right to sue for damages and hence the appellant was not entitled to recover it under Section 6(*e*) of Transfer of Property Act. It was held by the Judicial Committee:

> What was assigned to the appellant was not a mere right to sue but *a claim for a definite sum of money* which the lessee was bound by his contract with Banerji to repay to him. This would be an

23. 1932 LR 59 IA 41; *Thermofriz* v. *Vijaya*, AIR 1981 Delhi 315; *Amritham* v. *Sarnam*, AIR 1991 SC 1256.

actionable claim to which Section 130 of the Act would apply. The failure of the lessee to fulfil this obligation does not give rise to a claim of damages within the meaning of the clause in the lease on which the High Court found, but to a claim for reimbursement of the *precise sum* which the landlord had disbursed to meet the obligation.

This is the general principle in the Law of Torts also. If a consignor recovers from the insurance company, the value of goods delivered by him to the railway and lost in transit, and thereafter transfers to the insurance company the right to sue the railway for damages, the assignment is a mere right to sue and so is invalid. But, if a co-sharer transfers his right to sue for accounts and for recovery of the sum found due, it is not the transfer of a mere right to sue, but to recover a liquidated sum, though it is to be determined after taking accounts.

Scope of clauses (*f*), (*g*) and (*h*)

The prohibition under clauses (*f*), (*g*) and (*h*) is based on public policy. An office is granted to a person on grounds personal to the incumbent and he alone should discharge the duties of the office. As regards the salary, though part of it is attachable to discharge a decree against him, the salary is not saleable, for once a public officer loses the remuneration attached to his office, he will be under no inducement to perform his duties and may be tempted to take bribes.

Sections 11 and 12 of the Indian Pensions Act, 1871, read with Section 6 of the Transfer of Property Act prohibit the voluntary and involuntary alienation of pensions. This is an example of clause (*g*). As regards clause (*h*) service *inams* fall under this category. The emoluments of the *inams* are attached to the office and if the alienation is permitted, the *inamdar* would be left with the burden of service without enjoying the revenue which was provided to keep him in comfort to be able to perform the services. Examples of Section 6 (*h*) and (*i*), are *res nullius, res communes* and *res extra commercium.*

In *Nagaratanba* v. *Ramayya*[24], the *karta* of a joint Hindu family transferred coparcenary property to the appellant who was his concubine. The transfers were made in view of past illicit cohabitation and though ostensibly sale deeds, were in reality gift deeds. On the question whether

24. (1968) 1 SCR 43.

the transfers were void under Section 6(*h*) of the Transfer of Property Act, it was held:

> The transfers were without consideration and were by way of gifts. The gifts were not hit by Section 6(*h*) of the Transfer of Property Act, by reason of the fact that they were motivated by a desire to compensate the concubine for her past service.

This is so because even if there was a contract to make a gift in consideration of the past cohabitation, the contract would not be hit by Section 23 of the Contract Act.

The Supreme Court, however, held that since the properties gifted were coparcenary property, the *karta* had no power to make such a gift.

An example of Section 6(*h*)(*3*) is found in Section 136 of this Act.

An unlawful maintenance of a suit in consideration of an agreement to have a part of the thing in dispute is known as "champerty" and the transfer in pursuance of the agreement would be a champertous transfer. Such a transfer is invalid in English law, but not in Indian law.

In *Union of India* v. *Iqbal Singh*[25], the respondent, a displaced person from Pakistan, had a verified claim assessed over Rs 32 lakhs for compensation under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. His uncle had also a verified claim assessed at about Rs 26 lakhs. The uncle executed a will under which he gave various legatees including the respondent shares in the compensation which was due to be paid to him. After his death, the authorities held that the respondent would be a beneficiary under his uncle's will to the extent of 19% of the amount due to be paid to the uncle. The Assistant Settlement Commissioner, however, clubbed together the individual claim of the respondent and his share as a legatee and then awarded the maximum compensation of Rs 2 lakhs under the Rules. The respondent's case was that he was entitled to Rs 2 lakhs on his claim and in addition his share of 19 per cent also as a legatee under his uncle's will. When the matter reached the High Court, his claim was allowed. Dismissing the appeal to it, the Supreme Court held:

> The statutory rights of claimants to compensation which crystallise on assessment and verification of claims are separate rights to property of each claimant covered by the wide definition of

25. (1976) 1 SCC 570: AIR 1976 SC 211.

property in Section 6 of the Transfer of Property Act. They cannot evaporate or vanish suddenly with the death of the claimant.

Who can transfer

The next section, Section 7 deals with persons who can transfer.

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

Person competent to contract

In *Mohari Bibi* v. *Dharmodas*[26], it was held that a minor's contract in India is *void*, that is, a minor is not competent to contract, and hence, a conveyance of land by a minor is not merely voidable, but void. Where a minor, however, fraudulently represents himself to be a major and induces an innocent third party to purchase property from him, and later sues for its recovery on the ground that the sale was void the court will, on equitable principles, restore the property to him, only if he returns the purchase money. The age of majority in English law is 21, while in Indian law it is 18, except when the minor is under the protection of the Court of Wards or a guardian has been appointed under the Guardian and Wards Act, 1890, in which case, the age of majority is 21.

Minority, however, is no disqualification for being a transferee in the following cases:

(1) A gift or device in favour of a minor, when it is not onerous;

(2) a conveyance for consideration, where the consideration has proceeded or proceeds from a third party and no obligation is imposed on the minor;

(3) even if the consideration proceeded from the minor, if the transaction was complete and there is no outstanding obligation to be performed by the minor.

Where the conveyance is for consideration which has yet to proceed from the minor or where there is an outstanding obligation to be performed by the minor, the conveyance in favour of the minor transferee cannot be upheld. For example, a lease in favour of a minor

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26. ILR 30 Cal 539 (PC).

when rent has to be paid in future. In the cases of a lease under Section 107, since a lease has to be executed both by the lessor and the lessee, a minor can neither be a lessor nor a lessee.

Lunatics

A transfer by a lunatic is wholly void. If the conveyance was made during a lucid interval, it would be valid provided no committee or manager has been appointed in respect of his property. The law is the same in England and under the Mental Health Act, 1987.

Where a conveyance is made *in favour* of a lunatic the property will vest in him, but it will be managed by a committee or receiver in England, and by a manager in India.[27]

Other persons with limited powers of alienation

The powers of statutory corporations, in India and in England, are those authorised by the statute either expressly or by necessary implication. Managers of joint Hindu families with respect to the family properties,[28] trustees and managers of temples and heads of maths are other persons coming under this class.

Persons disqualified from being transferees

Aliens and corporations were at one time so disqualified in England. The law there is now governed by the Naturalisation Act of 1870 and the Mortmain and Charitable Uses Act, 1888. These principles were never imported into India, but there is a class known as *ascetics* or *sanyasis*, who have renounced the world and are deemed to be civilly dead, and hence they cannot be transferees of property. If the renunciation or retirement from worldly life is only partial, he will not be so disqualified.[29]

The Effects of Transfer

The next section, Section 8, says:

> Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

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27. *Tharakeswar* v. *Mahesh*, AIR 1981 Pat 384.
28. *Balai Chandra Mondal* v. *Indurekha Devi*, (1973) 1 SCC 284.
29. See Mayne's *Hindu Law*, Article 561. *See* Section 136.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer and all things attached to the earth;

and, where the property is machinery attached to the earth the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities thereof, (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Unless a different intention is necessarily implied

When a transfer is made to a Hindu or Muslim, can their personal law be necessarily implied into the document?

In *Har Prasad* v. *Fazal Ahmad*[30], a Sunni Mohammedan, governed by Hanafi law, executed a document purporting to be a sale of certain properties in favour of his mother. Shortly thereafter the transferor died and in a litigation that ensued, the sale was held to be void. The effect of the decision was that the mother took nothing by the sale deed. The mother had, however, before the decision, executed a *wakfnama* of the properties transferred by the sale deed. Since the sale was void and she became entitled to one-third of the properties under her personal law, the question arose whether the *wakf* attached to that one-third share. It was held:

> Their Lordships think it at least *doubtful whether Section 8 of the Transfer of Property Act has any application to the present case*, but in any event, they are of the opinion that in order to ascertain the intention of the lady in executing the *wakfnama*, the whole transaction must be looked at, and upon this they think that her intention to settle only what she thought had been entrusted to her by her son is clear. The sale and the execution of the *wakfnama*, must be regarded as integral parts of one transaction and the sale being held to be void, the *wakfnama* falls with it.

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30. 1933 LR 60 IA 116.

In *Ram Gopal* v. *Nandlal*[31], a Hindu died leaving two widows, a widowed daughter-in law and a daughter's son. The widows took their husband's property and after the death of one of them, the other surrendered it to the daughter's son who was the nearest reversioner. After his death, the guardian of his minor son transferred to the widowed daughter-in-law two items of property and she relinquished all her claims to her father-in-law's property. There was nothing in the transfer deed to indicate that the daughter-in-law was to enjoy the property only during her lifetime. On the question whether, by implication, she took only a life estate, it was held:

> *The general principle of law recognised and embodied in Section 8 of the Transfer of Property Act is that unless it is shown that under Hindu law a gift to a female means a limited gift or carries with it the restrictions or disabilities similar to those that exist in a widow's estate, there is no justification for departing from the principle.* There is certainly no such provision in Hindu law and no text could be supplied in support of the same. The position therefore is that: to convey an absolute estate to a Hindu female, no express power of alienation need be given; it is enough if words are used of such amplitude as would convey full rights of ownership.

Similarly in *Nathoolal* v. *Durga Prasad*[32], a Hindu's property after his death was gifted to one of his daughters. On the donee's death, the son of another daughter—the daughter being dead—claimed the property on the ground that his aunt had only a limited estate in it. The Supreme Court followed *Ram Gopal case* (supra) and observed:

> It is true that the principle that unless there are express terms in the deed of gift to indicate that the donor who had an absolute interest, intended to convey absolute ownership, a gift in favour of a heir who inherits a limited interest cannot be construed as conferring an absolute interest, was once deduced from the Privy Council decision in *Mahmud Shamsool* v. *Shewakran*[33], where it was held that a bequest to a daughter-in-law passed a limited estate....This

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31. 1950 SCR 797.
32. (1955) 1 SCR 51; *Krishnabai* v. *Dyandeo*, AIR 1982 Bom 107; *Nanak Chand* v. *Chand Kishore*, AIR 1982 Del 526 (Meaning of *Malik Meri Matuka*); *Narain* v. *State*, AIR 1983 Pat 244; *Ramkali* v. *Sumitra*, AIR 1983 All 420; *CIT* v. *Maharaj Bahadur*, (1986) 4 SCC 512.
33. 2 IA 7.

matter is now set at rest by *Ram Gopal case* (supra) and according to the law as understood at present there is no presumption one way or the other and there is no difference between the case of a male and the case of a female and the fact that the donee was a woman does not make the gift any the less absolute when the words would be sufficient to convey an absolute estate to a male.

All the interest of the transferor

Where a vacant site was mortgaged by deposit of title deeds, and subsequently a cinema hall was built on it by the owner of the site, the cinema hall is also comprised in the security (*B.N. Murthy* v. *Sugum*, AIR 1978 AP 257).

All things attached to the earth

This expression is defined in Section 3 as:

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) embedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

In Indian law, a fixture can be removed before sale of the land to which it was affixed. But under the English Common Law it could not be removed, because, *Quicquid plantatur solo, solo cedit*, that is, whatever is affixed to the soil belongs thereto. But the modern law[34] in England is the same as the Indian law as is shown by the statement of Baron Martin:

> The old rule laid down in the old books is, that if the tenant or the occupier of a house or land annex anything to the freehold, neither he nor his representatives can afterwards take it away, the maxim being *Quicquid plantatur solo, solo cedit*. But as society progressed and tenants for lives or for terms of years of houses, for the more convenient or luxurious occupation of them, or for the purposes of trade, affixed valuable and expensive articles to the freehold, the injustice of denying the tenant the right to remove them at his pleasure, and deeming such thing practically forfeited to the owner of the fee simple by the mere act of annexation became

34. *Elliot* v. *Bishop*, 10 Exch. 496.

apparent to all; and there long ago sprung up a right sanctioned and supported by the Court of Law and Equity, in the temporary owner or occupier of real property or his representatives, to disannex and remove certain articles, though annexed by him to the freehold, and these articles have been denominated fixtures.

In *Narayanandas* v. *Jatindranath*[35], land upon which a house was built was sold for arrears of revenue and from the purchaser Government acquired it under the Land Acquisition Act, 1894. On the question as to who was entitled to the compensation in respect of the structures—the original owner or the purchaser in the revenue sale—it was held:

> It was conceded that the maxim, which is found in English law, namely, *Quicquid plantatur solo, solo cedit* has at the most only a limited application in India.
>
> The case of *Thakur Chandra Paramanik* v. *Ram Dhone Bhattacharya*[36], to which reference was made in the High Court's judgment, differs materially from the present case in its facts, and the decision itself is not applicable. The following statement, however, is to be found in the judgment of the Full Bench which was delivered in 1866: "We have not been able to find in the laws or customs of this country any traces of the existence of an absolute rule of law that whatever if affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself."
>
> Their Lordships, therefore, are of opinion that in construing the provisions of the above-mentioned Acts it is necessary to bear in mind the statement made by Sir Barnes Peacock in the above-mentioned case, which seems to have been accepted for many years as a correct pronouncement....
>
> Having special regard to the view held in India respecting the separation of the ownership of buildings from the ownership of the land, and to the recognition by the Courts in India that there is no rule of law that whatever is affixed or built on the soil becomes a part of it, and is subjected to the same rights of property as the soil itself, their Lordships are of opinion that in order to make a house

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35. 1927 LR 54 IA 218; *State Bank of Patiala* v. *M. S. Chohan*, AIR 1982 HP 27; *Harihar Prasad* v. *Jitendar*, AIR 1982 Pat 165 (Land and House); *Ideal Bank* v. *Pride of India*, AIR 1983 Del 546.
36. (1866) 6 WR 228.

erected upon the land as well as the land itself, subject to the Government power of sale for arrears of revenue, special words indicating the intention of the Legislature to make the building subject to sale would be necessary.

No such special words are to be found, and their Lordships are of opinion that the conclusion at which the learned Judges of the High Court arrived, namely, that ownership of the building did not pass to the plaintiff by reason of the revenue sale, was correct.

In *Paramanick case* an alienee from a Hindu widow erected certain buildings on the land. He was evicted by the reversioner because the widow's alienation was without necessity. The alienee, however, was allowed to remove the building constructed by him and the observations of Sir Barnes Peacock were, as seen above, approved by the Privy Council in *Narayandas case.*

The maxim *Cujus est Solum ejus est usque ed Coelum* means, he who possesses land possesses also that which is above it. Not only has land thus an indefinite extent upwards, in law, it extends downwards also. Therefore, the owner of the soil owns all that lies beneath its surface. Although the presumption thus is that the owner of land has the right to the mines and minerals underneath, it frequently happens that a person being entitled to land and the mines beneath, grants away the land reserving the right to mines. Therefore, whether sub-soil rights go to the grantee would depend upon the nature of the rights of the transferor in the land transferred and the terms of the transfer.[37]

For a chattel to become a fixture it must be attached to the immovable property for its more beneficial enjoyment. Such a purpose is presumed when the person attaching it is the owner; and no such inference is drawn in the case of a tenant of the property.

Where machinery was installed, by the owner on a cement platform and kept in position by being attached to pillars which were deeply fixed in the ground, the machinery would be immovable property. But if a pump was fixed to the land to be used only as a pump and not for the more beneficial enjoyment of the land, it continues to be a chattel and does not become a fixture.

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37. *See also* Sections 55(2), (3), 65 and 108(*c*).

When a usufructuary mortgagee of land puts up a tent and installs cinema equipment therein, the inference would be that the cinema machinery is only a chattel and not a fixture, because, the installation was not made by the owner.

Section 8 is only a recognition by the legislature of the rule that accessory follows the principal.

Debts and securities

In *Jugal Kishore Saraf* v. *Raw Cotton Co. Ltd.*[38], two partners carrying on business as *pucca adatias* filed a suit against the appellant for recovery of money, and, while the suit was pending transferred the debt to the respondents. The respondents, however, did not take any steps to get themselves substituted as plaintiffs and therefore, the decree was passed in the name of the original plaintiffs. On the question whether the respondent could apply for execution of the decree as a transferee, under the Transfer of Property Act, it was held:

> The transfer of the debt passed all the interest which the transferors were *then* capable of passing in the debt and in the legal incidents thereof. There was then no decree in existence and therefore, the transferors could not then pass any interest in the non-existing decree. Therefore, Section 8 does not assist the respondent ....Section 8 of the Transfer of Property Act, does not operate to pass any future property, for that section passes all interest *which the transferor can then, that is at the date of transfer, pass.*

Since the words used are 'debt or other actionable claim' the question whether a debt secured by mortgage of immovable property could be transferred without registering the instrument of transfer arises. It is no doubt not an actionable claim, but since under Section 8 the securities are also transferred, that is the immovable property is transferred, such a transfer of the debt without registration does not seem to be possible. But there could be a transfer of the debt apart from the security. Thus, in *Imperial Bank of India* v. *Bengal National Bank*[39], the respondent bank had borrowed large sums from the appellant-bank and executed debentures creating a floating charge on

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38. (1955) 1 SCR 1369.
39. 1931 LR 58 IA 323; *H. Anraj* v. *Government of T.N.*, (1986) 1 SCC 414: AIR 1986 SC 63.

the whole undertaking, properties, assets and interest present and future as security for the loans. The debentures were not registered under the Registration Act. The respondent-bank in the ordinary course of its business lent money to customers on overdraft account on the security of title deeds deposited by the customers in respect of such loans. A petition for winding up was filed against the respondent-bank and liquidators were appointed. In the debenture holders' action commenced by the appellant, the liquidators contended that the consequence of non-registration of the debentures under Sections 17 and 49, was that they could not be received in evidence with the result that not only was the appellant-bank deprived of all rights to the property comprised in the title-deeds but also of any rights over the sums so secured. It was held:

> *There appears to be no difficulty in a transfer of a debt without the security:* the original debtor can always redeem: the relations between him and his original creditor are not altered: indeed, in the present case it would appear that the appellant-bank can only enforce the debt in the name of the respondent-bank which, no doubt, the latter bank must permit.

The important point to be noted about this case is that there are two debts involved; (*i*) by the respondent-bank to the appellant-bank, and (*ii*) by the customer of the respondent-bank to the respondent-bank and for securing which he deposited his title-deeds. As regards the first debt, the appellant-bank could always sue the respondent-bank for it. If the appellant-bank, however, wanted to proceed to enforce the second debt which was transferred to the appellant-bank, then and then only should the procedure indicated in the decision be followed.

Actionable Claim

This is defined in Section 3 thus—

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:

This expression may be contrasted with the expression used in English law, namely, a *chose in action*. In *Colonial Bank* v. *Whinney*[40], it was observed:

> It is difficult to find out the exact meaning of the expression 'chose in action'....It is impossible to look into the authorities upon this subject without seeing, that the meaning attributed to the expression has been expanded from time to time.

Originally the expression meant a present right to take proceedings for the recovery of a debt in a court of law. Since debt was considered as a purely personal obligation an assignment of a debt was regarded as a mere assignment of a right to sue and was regarded as incapable of assignment. Later, the Common Law recognised the right of one interested in the property to sue in the name of the creditor. Courts of equity, however, recognised the title of an assignee of a debt. This distinction between the transfer of a chose in action and the transfer of a right to sue for the same has ceased to exist since the passing of the Judicature Act of 1873. Therefore, an absolute assignment by writing, under the hand of the assignor of *any debt*, or other legal chose in action of which express notice in writing has been given to the debtor or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action shall be deemed in law to pass and transfer the legal right to such debt or chose in action. The term now includes *all* debts and *all* claims for damages for breach of contract or torts connected with such breaches. The expression thus is much wider than the phrase 'actionable claim' as defined in the Act.

The word 'debt' in the definition indicates that the claim is for *a definite sum of money which is due.*

The following have been held to be actionable claims:

(*i*) benefit of an executory contract for the purchase of goods:

(*ii*) claim for a definite sum of money, which a lessee is bound to pay under the contract with the lessor:

(*iii*) claim for arrears of rent;

(*iv*) claim for future rent;

(*v*) decree that *may be passed* in a suit for a definite sum of money, already filed, because, it is a claim to a debt;

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40. 1885 30 Ch D 261.

(*vi*) life policies;

(*vii*) right to receive money from a licensee for a licence given to him to remove bark from the tree of the licensor;

(*viii*) right to recover arrears of annuity;

(*ix*) share in dissolved partnership;

(*x*) Unsufructuary mortgagor's liability to pay to the mortgagee the balance remaining.

The following are not actionable claims, though they would be choses in action in English law:

(*i*) A claim to mesne profits;

(*ii*) A copyright, because it is capable of possession;

(*iii*) a decree *already* passed, because it is no longer a debt;

(*iv*) right of a person to recover damages by way of interest for the breach of contract.

(*v*) right to recover profits from a co-sharer ; and

Section 9 provides:

A transfer of property may be made without writing in every case in which a writing is not expressly required by law.[41]

Before the passing of the Transfer of Property Act, no writing at all was necessary for a conveyance. But under the Act, writing is necessary in the case of following transfers:

(1) Sale of immovable property of the value of Rs. 100 or more—Section 54.

(2) Sale of a reversion or other intangible thing—Section 54.

(3) Simple mortgage irrespective of the amount secured —Section 59.

(4) All other mortgages for Rs. 100 or more—Section 59.

(5) Leases of immovable property from year to year or for a term exceeding one year or where yearly rent is reserved—Section 107 (*see also* the proviso to the section and Section 117)

(6) Exchange (same rules as for sale)—Section 118.

(7) Gift of immovable property—Section 123.

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41. *Pattabhirama* v. *Sri Ramanuja*, AIR 1984 AP 176.

(8) Transfer of an actionable claim—Section 130.

(9) Notice of transfer of actionable claim—Section 131.

Therefore, the following transfers can be effected by a parol contract:

(1) Sale or exchange of immovable property of value less than Rs 100.

(2) A mortgage by deposit of title deeds.

(3) Mortgages, other than a simple mortgage when the principal amount secured is less than Rs 100.

(4) Leases other than those mentioned in item (5) above.

Further, a transfer could be made to the deity by an oral gift, because, the deity is not a living person and the transfer is not in favour of a living person. [*See* Section 5].

Exercises

1. What is meant by transfer of property? (pp. 21-23)
2. Can a person transfer property to himself? (p. 23)
3. Is the Act exhaustive of all kinds of transfer? (p. 21)
4. What is meant by actionable claim? (pp. 46-48)
5. Does Indian law distinguish between legal and equitable estates? (p. 22)
6. What are the exceptions to the rule that all kinds of property can be transferred? (p. 23).
7. *A* leases his land to *B* on condition that in case *B* sub-lets, he would re-enter. *A* transfers his right of re-entry to *C*. Is this transfer valid? (p. 32)
8. A pujari of a temple transfers his turn to worship and his right to receive the offerings. Is the transfer valid? (p. 33)
9. The decree-holder of a decree for pre-emption transfers it to another. Is the transfer valid? (p. 35)
10. A Hindu widow transfers her right to maintenance. Is the transfer valid? (p. 34)
11. Is a transfer of the right to sue for defamation valid? (p. 23, S. 6(*e*))
12. What is meant by 'Feeding the grant by estoppel'? (pp. 26-31)