



# TRANSFER OF PROPERTY ACT 1882

**Course Name – LL.B 4<sup>th</sup> sem**

**Subject - Transfer of Property**

**Teacher – Mrs. Aakanksha**

**Concept – section 5- 53 A basic  
concepts**



## section 5 to 53-A

These provisions deals with basic principles and concepts involved in any transfer.

# (A) Transfer of property, whether movable or immovable



- sec. 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.



- **Transfer:** means a process or an act by which something is made over to another. It defined with reference to the word 'convey'.
- It is transfer by 'act' of parties.
- It is transfer inter vivos i.e. between two living persons.
- Definition applicable to movable and immovable property.

# contents of definition



1. an act by which
2. a living person
3. conveys property
4. in present or in future
5. to one or more other living persons, or
6. to himself and one or more other living persons;
7. to transfer property

an act by which



- Transfer of property is an act or process.
- Something is done by the person who wants to transfer property.
- Effect of such act is transfer of property.

# a l i v i n g p e r s o n



- Parties transferring property must be living. It is inter vivos transfer.
- Transferor may natural or juristic person.
- Transferor must be of age of majority, sound mind and not otherwise disqualified.

# conveys property



- Conveying is doing of the act which is called as transfer.
- Conveyance means any act the transferor by which certain new titles or interests are created in favour of the transferee.
- Conveyance necessarily implies that the transferor has the title or interest to be transferred.



# i n p r e s e n t   o r   i n f u t u r e



- Transfer of property may take effect in present/immediate or at a future date.
- Eg:
- A makes a gift of his property to B without mentioning date as to when B shall get the property and also does not lay down any condition. This transfer is present with immediate effect.
- A makes gift of his watch to B provided B gets first division in the next examination. Here, although the gift has been declared today but it shall take effect only if B gets first division. Such transfers are called conditional transfer.

t o o n e o r m o r e o t h e r  
l i v i n g p e r s o n s



- A transferor may transfer his property to any one / single person or it may be transferred to more than one person.
- If there are more than one transferee they will get joint rights.

to himself and one or more living persons;



- Generally a person cannot transfer property to himself. But if he acting under different capacity it is possible.
- Eg: a person working as chairman, agent, director, trustee may transfer property to himself.

# t o t r a n s f e r   p r o p e r t y



- Transfer of property must be transfer of property under the provisions of this Act.
- Examples of transfer which are not transfer under this Act are
  1. Family settlement
  2. Compromise (of doubtful claims)
  3. Partition
  4. Surrender
  5. Release
  6. Relinquishment
  7. Charge

# Transferable and Non transferable property



- Object of Law of Transfer of Property is to provide for free transfer.
- Law provide for free alienation and circulation of the property in society.
- It is based on the maxim “**alienatio rei prafertur juri acerescendi**”.
- It means that, 'the alienation is favoured by the law rather than accumulation.'
- Hence transferability is general rule and non-transferability is an exception.

# What may be transferable



- sec. 6 - 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 anyone 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 (9 of 1872), or (3) to a person legally disqualified to be transferee.

# a) Spes-Successionis



- It is the chance of an heir apparent to succeed to an estate transferable.
- Spes-Successionis means expectation of succession.
- Spes = hope;
- Following things are not transferable
  - a) chance of an heir-apparent succeeding to an estate,
  - b) chance of a relation obtaining a legacy on the death of a kinsman or
  - c) any other mere possibility of like nature





- **Chance of an heir-apparent:** It means apparently an heir but not legal heir. Heir-apparent is a person who would be heir in future if he survives the propositus.
- Eg: Father and Son. Son is apparently heir of father.
- Father and son are heir of each other. If father dies first, son will be heir. If son dies first father will be his heir. Who would die first is not known because it is uncertain future event. Here son is only heir apparent and cannot transfer property of father while father is alive.
- A, a Hindu owning separate property, dies leaving a widow B and a brother C. C has only a bare chance of succession and this chance of succession of property cannot be transferred.
- A, expecting that C, his aunt who has no issue, would bequeath her properties worth Rs 10 Lac, transfers it to Z. The transfer is invalid



- **Chance of a legacy:** It means expectancy of getting certain property under a will. Such transfer by legacy is not valid transfer.
- A will operate only after death of the testator and not on date of its writing.
- Where a person executes any will, before the death of that testator, the legatee has simply a chance of getting property because (a) the legatee may not survive the testator and (2) the will in his favour might not be the last will.
- **Any other possibility of like nature:** it means, any other possible interest of property which is as uncertain as the chances of an heir-apparent or chance of a relation of getting property under a will.
- The **Object** is any merely future uncertain property should not be made transferable.

## b) Mere right of re-entry



- Right of re-entry means right to resume possession.
- Where a person is entitled for right of re-entry (like a lessee or land lord in case of breach of any condition) and can resume his possession.
- The right of re-entry is connected or accompanied with interest in a land. Mere right of re-entry not accompanied with any other interest is not transferable.
- In case of breach of any condition of lease or tenancy, lessor or landlord can terminate agreement and transfer property to another. But without cancelling agreement he cannot assign right to enter to another

## c) Easement apart from dominant heritage



- Easement is a right which exists for the beneficial enjoyment of a land and is exercised upon the land of another person.
- The land for whose beneficial enjoyment right exists is called as dominant heritage. And land upon which the rights is exercised is called as servient heritage.
- Easement right is not personal right but attached to dominant heritage. It cannot be separated and transferred.

## d) Restricted

## interest



- Certain interests in a property are to be enjoyed by the owner alone and cannot be transferred.
- Beneficial interests or ban interest by virtue of which a person derives certain benefits is the property of that person. Such property i.e. interest cannot be transferred.
- Example : a teacher right to teach. emoluments attached to some office, maintenance granted to wife.
- If A gave his land to B for performing marriage of B's daughter for some days. B after performing marriage gave land to C. Such transfer is invalid.
- It is based upon the maxim **res extra commercium** i.e. things beyond any trade or transaction.

## dd) Right to future maintenance



- The right to maintenance is purely a personal right and can neither be transferred nor be attached in execution of decree. Maintenance can be granted through personal contract or by court order.
- Right to receive maintenance is personal right and for his/her own benefits. Such right is non transferable.

## e) Mere right to sue



- Right to sue is actionable claim. Actionable claim is a claim for a certain amount of money and can be transferred.
- But right to sue for uncertain or indefinite sum of money is not transferable.
- Eg: A publishes defamatory statement against B. Under the law of tort B has a right to claim damages from A. B think that he must sue A claiming Rs 1 Lac. But instead of filing suit he assign this right to C. This assignment of right to sue from B to C is invalid.

## f) Public office and Salary of public office



- There is prohibition on transfer of Public office and Salary of public office.
- This is to ensure the dignity to the office held by a person appointed for qualities personal to him and getting salary for due discharge of his public duties.



## g) Pension and stipends



- Stipends allowed to military, naval, air force and civil pensioners of the Government and the political pensions cannot be transferred.
- Pension is granted for past personal service and for family and dependants.

## h) Transfer opposed to nature of interest etc.



- This clause does not deal with any 'kind' of non transferable interest. Under this clause there is prohibition in the transfer of property under certain situation.
- There is prohibition under the following situations
- **i: Where transfer is opposed to the nature of interest created thereby.**
- There are certain properties which by their very nature can neither be owned nor transferred. Like air, light, space, sea. or for religious purposes.
- Such property is known as res-communis i.e. property of the whole community of the world.



- **ii- Transfer where its object or consideration is unlawful-**
- Any transfer is unlawful where its object or consideration is unlawful as per section 23 of the Indian Contract Act 1872.
- A transfer is unlawful if---
- a. it is forbidden by law,
- b. it is of such nature that if permitted it would defeat the provision of any law or,
- c. it is fraudulent or,
- d. it involves injury to a person or property of others or,
- e. it is immoral or opposed to public policy.



- **iii- Transfer made to a disqualified transferee-**
- For a valid transfer the transferee must be legally qualified.
- A legally disqualified transferee make transfer invalid.
- Eg. insolvent, trustee, transfer to presiding officer or court officer, advocate during litigation, etc.

# i) transferable right of occupancy



- Certain rights of occupancy are made inalienable.
- for example occupancy of a tenant.

