

Course Name- LL.B 4th sem
Subject- TPA
Teacher- Mrs. Aaknksha
Concept- Vested and Contingent Interest

Vested interest

The Transfer of Property Act deals with two kinds of interest vested interest and contingent interest. Vested interest is to be distinguished from contingent interest. When an interest is vested, the transfer is complete but when the interest is contingent, the transfer depends upon a condition precedent. When the condition is fulfilled the transfer takes effect and that the interest becomes vested.

Definition of Vested Interest

Section 19 of Transfer of Property Act defines vested interest as follows...

"Where, on a transfer of property, an interest therein is 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.

Illustration

A Hindu widow adopted son but there is an agreement which postpones the sons estate during the lifetime of widow. Here an interest created in favour of adopted

son is vested right, which does not depend upon condition precedent, for example. performance of any act, it is not to take effect on happening of the event which is certain i.e. the death of widow.

The adopted son has Present proprietary right in the estate. The right of possession and enjoyment being deferred and therefore he can transfer the property even during the widow's lifetime. Similarly, a Transfer of Property in favour of a person simply creates vested interest with an immediate right to the possession and enjoyment of the property. Such vested interest is not defeated by the death of the transferee even before getting possession of the property.

Illustration

A transfers property to B in trust for C and directs B to give possession of the property to C when C attains age of 25 years. In this problem the enjoyment in the property is postponed but this does not prevent the interest vesting immediately, but such transfer is itself void when C attains majority. Therefore C has vested interest and is entitled to a possession of property at the age of 18.

When unborn person acquires vested interest on transfer for his benefit - Section 20

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.

Characteristics of vested interest

- 1) Vested interest does not depend upon the fulfillment of a condition. It creates present and immediate right though the enjoyment may be postponed to future date.
- 2) A vested interest is not defeated by the death of transferee before obtaining possession, it will pass on to his heirs.
- 3) Vested interest is Transferable and heritable.

Case Law

Sundar Bibi vs Rajendra Narayan AIR1925 All.389.

In this case the Allahabad High Court held that in a vested interest the title passes absolutely from the transferor to the transferee at the date of the transfer, though the enjoyment may be postponed.

Rajesh Kanta Roy vs Shrimati Sunita Debi AIR1957, S.C.255 -

Fact -

One Ramani Kanta Roy executed a registered trust deed in respect of his properties. The eldest son Rajesh was appointed the sole Trustee to hold the properties under the trust subject to certain power and obligation. After his death his two son Rajesh And Ramendra got interest in the property. There was a clause in the trust deed that both of them was to get interest in the properties allotted to each other happening of the two events -

1) Discharge of all the debts specified in the schedule and death of the settler himself.

2) The trust was to come to an end on the death of settler and the son were to get properties allotted to them there after.

Issue before the court was whether the interest created by the trust were vested or contingent?

A Supreme Court held that the interest taken by the two brothers under the trust deed was vested and not contingent because it was certain event

Vested interest does depend upon fulfillment of a condition and takes effect from the date of the transfer. In vested interest there is present, immediate right even if the enjoyment is postponed. A vested interest is heritable and transferable. A contingent interest depend solely upon the fulfillment of the condition. In contingent interest there is no present right, there is a promise to give right upon the fulfillment of a condition. A contingent Interest is inalienable and not transferable

Contingent Interest -

The Transfer of Property Act deals with two kinds of interest vested interest and contingent interest. Vested interest is to be distinguished from contingent interest. When an interest is vested, the transfer is complete but when the interest is contingent, the transfer depends upon a condition precedent. When the condition is fulfilled the transfer takes effect and that the interest becomes vested.

Definition of Contingent Interest -

Section. 21 defines Contingent interest as follows -

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.

Illustration

'X' bequeathed his property i.e. estate to 'Y' until he shall marry to 'Z'. 'Y's interest in the bequeath is contingent because it depends upon a condition precedent i.e. a marriage of 'Y' with 'Z'. An event has no proprietary interest in the estate and cannot alienate it.

But as soon as 'Y' marries with 'Z' his contingent interest becomes vested interest.

Transfer to members of a class who attain a particular age (Check it out...
Transfer to class)

Section.22 provides

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 not attained that age.

Section.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.

Section.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, equally to be divided between them, or to the survivor of them. C dies during the lifetime of B. D survives B. At B's death the property passes to D.

Characteristics of contingent interest

- A) A contingent interest is solely depending upon the fulfillment of a condition.
- B) If the transferee dies before obtaining possession the contingent interest fails and property revert to transferor .
- C) Contingent interest is Transferable, whether it is heritable or not depend upon the nature of such contingency.

CASE LAW -

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A contingent interest depend solely upon the fulfillment of the condition. In contingent interest there is no present right, there is a promise to give right upon the fulfillment of a condition. A contingent Interest is inalienable and not transferable.

Vested interest	Contingent interest.
Definition	
<p>Section 19 defines vested interest Where, on a transfer of property, an interest therein is 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.</p>	<p>Section 21 defines 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.</p>
Fulfillment of conditions	
<p>Vested interest does not depend upon fulfillment of any condition. It creates an immediate right though the enjoyment is postponed to a future date.</p>	<p>Contingent interest is solely depend upon the fulfillment of any condition. If the condition is not fulfilled the interest fails</p>
Effects of transferee's death	
<p>Vested interest is not defeated by the death of transferee before he obtains possession.</p>	<p>Contingent interest is defeated by the death of transferee before he obtains possession.</p>
Whether transferable and heritable ?	
<p>It is both Transferable and heritable. If the transferee of the vested interest dies before actual possession or enjoyment it passes to his heirs.</p>	<p>It is Transferable but whether it is heritable , depends upon nature of condition. It passes not on heir on the death of the transferee received to transfer.</p>
Present right of enjoyment.	
<p>There is present, immediate right even when its enjoyment is postponed.</p>	<p>There is no present right of enjoyment, there is mere a promise for giving such a right.</p>