



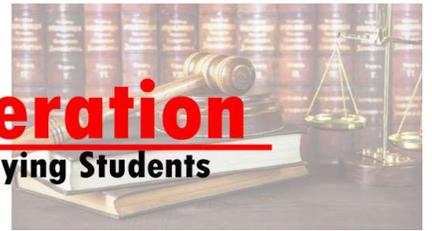
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Property Notes for law students

Semester for 3 YDC students

Law of Property



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Law of Property

Long Questions & Answers

1Q. Explain the term transfer of property and its essential requisites, what properties cannot be transferred ?

Ans. The term transfer of property have been explained u/s 5 of T.P act. It has been given broad meaning under T.P act. Transfer of property means creation of interest of other person or persons in immovable property. Transfer of property includes Sale, Mortgage, Lease, Gift , Exchange and actionable claim. Partition of joint family is also called s transfer of property.

Essential requisites of transfer of property :-

- 1. Transfer of immovable property should be in writing and not oral transaction and it is called as execution of the document.**
- 2. There should be minimum two parties and they are called as transferor and transferee. There can be more no of transferors and transferees. In same transfer of property.**
- 3. Both the party should be competent. A party should not be minor or unsound mind person. Transferee can be minor but transferor should not be minor.**
- 4. There should be description of the property specified in the document to avoid mistake in identity of the property**
- 5. All terms and conditions agreed by and between the parties have to be mentioned.**
- 6. Stamp duty have ti be paid according to stamp act.**

7. Any immovable property which is above 100rs have to be registered
8. There should be signature of transferor and transferee
9. It should be attended by two or more witnesses
10. There should be free consent of transferor and transferee
11. In transfer of property there is a principle 'Accessory follows principal' it means when main property transferred then all attached things in the property are automatically transferred even though if it is not mentioned in the document.

What properties cannot be transferred:-

There are 9 kinds of properties specified u/s 6 cannot be transferred. There are some rights which are covered under definition of immovable property.

1. Spec Succession (hope of succession) :- when there is death of head of the family then all heirs have no right to one heir to transfer whole property. He can only transfer the share which he may get in to property.
2. Right to Entry :- if there is one passage to make entry in the property then all heirs can use it. But such package cannot be transferred.
3. Easement Right: - When any property is used for 20yrs or more period without any disturbance then it becomes easement right. Nobody can transfer easement right.

Eg : there is passage between 2 houses used by the people for 20yrs or more period then that passage cannot be transferred.

4. Right of Maintenance:- is also immovable property and it cannot be transferred by one party to other party.
5. Right to Sue:- There is right to sue in the court which can be enjoyed by relevant party and it cannot be transferred relevant party can give power of attorney which is authority gives to other party to perceive a case.

6. **Inami Land**:- It is gifted land given during period of Britishers. Inami land can be used and enjoyed by the heirs but it cannot be transferred.
7. **Jagir Land**:- During period of kings gifted land was given as a jagir land and it cannot be transferred. It can be enjoyed by generation to generation and they are called as jagirdar.
8. **Religious Institutions**:- It includes temple, mosque, church. It can be used for religious purpose but cannot be transferred.
9. **Public Land or Office**:- There are public offices, Institutes or land which cannot be transferred such as railway station, bus stand, airport, police station. Government can take policy decisions about such land.

This detail about the term transfer of property and the property which cannot be transferred.

2Q. Explain the rule against perpetuity with relevant exceptions?

Ans. Perpetuity means future interest. Rule against perpetuity in restriction on transfer of property. any transfer against rule of perpetuity is invalid. This detail has been given from Sec 14-18 of T.P act which includes following points:-

1. **Transfer to Unborn Person** :- According to this provision no property can be transferred in favours of any person who is likely to take birth or unborn person. This rule can be called as 'Birth first and transfer later'. Separate property can be kept for such child but transfer is allowed only after birth. Any property is prohibited from transfer in name of non existence person.

It is specified because of 2 reason:-

It is not known whether child is male or female.

There is no name to the child and transfer cannot be done without name.



2. **Transfer of Dead Person:** ~~No property can be transferred~~ in name of dead person. There is no existence of dead person and transfer is prohibited . if transfer has been done after that there is death of transferee then also transfer is valid. A transfer cannot be valid if transferee is no more or dead on the date and time of transfer.

3. **Conditional Transfer:-** There is allowed on reasonable and lawful condition called as conditional transfer. Such condition should be effective only during life period of transferee. Any condition beyond life period of transferee is invalid according to rule against perpetuity.

Eg : Father transfer a house as a gift to daughter on condition that she should not make further transfer during her life period if he mentions that after her death property should go to 'X' and after that to 'Y' and after that to 'Z' then it is invalid.

4. **Transfer of Income:-** If property is transferred to one person and if part of income from property to other person then such period can be 18yrs. Transfer beyond 18yrs period is invalid according to rule against perpetuity. Document can be renewed after 18yrs.

Eg : Father transferred a house to 1st daughter as a gift and mentioned that she should pay 10,000rs per year from income to other daughter. This period of transfer should not be more than 18yrs at a time according to rule of perpetuity.

Exceptions to Rule against Perpetuity:-

1. When there is transfer in name of legal person such as company, corporation, institution then it is allowed. In such case transfer is 1st and company is later.
2. When there is mortgage of immovable property then this rule does not apply and redemption is allowed at any time.
3. This rule does not apply when there is transfer by lease because maximum 99yrs period lease is allowed.

4. Partition of joint family property can be done at any time and this rule does not apply.
5. This rule does not apply in case of 'Pre-emption' meaning of this term is property to be sold to person having blood relationship or to neighbors. And after that if they are not ready then to third party.

This is detail about rule against Perpetuity and relevant exceptions in Transfer of Property Act.

3Q. Define Mortgage and its kinds ? what are the rights of mortgage and mortgagee ?

Ans. When security of immovable property is given to borrow loan then it is called as mortgage and for movable property is called as Pawn or pledge. Transferor called as 'Mortgagee' and the loan borrowed is called as mortgage money and document enacted between then is called as 'Mortgage deed' and the property is called as 'Mortgaged property'.

Eg: 'A' gives security of his house in a bank and borrow 1 lakh rupees loan in this transfer 'A' is mortgage and bank is mortgagee detail of mortgage is form Sec 58-100 of Transfer of property act 1882.

Essential Requisites of Mortgage:

1. Mortgagor and mortgagee should be competent person and such person should not be minor or unsound min person.
2. There should be free consent of both the parties.
3. It should be in writing and not oral.
4. Security is given only for loan transaction.
5. Stamp duty have to be paid according to amount of loan.
6. It should be attested by two witnesses.



Kinds of Mortgage:

There are six kinds of mortgages:-

1. Simple Mortgage:- In this mortgage there is execution of mortgage deed in mortgage deed description of the property is given which is mortgaged after repayment of loan mortgagor can get back his mortgage deed which is documentary evidence in possession of mortgagee.
2. Mortgage by Condition Sale:- In this mortgage property is transferred as a sale in name of mortgagee after repayment of loan amount mortgagee have to retransfer property in name of mortgagor. Because such clause is mentioned in mortgage deed. If there is no retransfer then remedy is available from court to mortgagor. It is better security to mortgagee.
3. Usufructuary Mortgage:- In this mortgage in addition to execution of document mortgagor gives possession of property to mortgagee. After repayment of loan amount mortgagee vacate the possession and hand over to mortgagor. If there is no repayment of loan done completely there is right of mortgagee to continue possession of mortgaged property.
4. English Mortgage:- In this mortgage a date is fixed for repayment of loan amount and after expiry of the date mortgagee have the right to forfeit the property. Because such clause is mentioned in mortgage deed. In India this mortgage is not popular because there is no limitation period for redemption of mortgaged property.
5. Mortgage by Deposit of Title Deeds:- In this mortgage there is execution of mortgage deed and also original documents of the property are given in possession of mortgagee. After refund of loan amount mortgagee return the documents to mortgagor. It is convenient because mortgagor cannot transfer property because he has no original documents.
6. Ana-molous Mortgage:- This mortgage is different from above mortgages.

Eg : A farmer has taken 1 lakh rupees loan and for adjustment of loan amount he gave possession of agricultural land for cultivation to mortgagee for 1 year period. Mortgagee can get income from the land and adjust his loan amount.

Rights of Mortgagor:-

1. It is important right of the mortgagor to make repayment of loan amount and take back his property. It is called as 'Right of Redemption'.
2. When there is death of mortgagor then right of redemption pass on to his heirs.
3. There is right of mortgagor to continue his possession except 'Usu Fructuary' mortgage.
4. There is right of mortgagor to pay the loan amount completely or partly according to terms of agreement.
5. There is right of mortgagor to claim excess money from mortgagee after adjustment of loan amount.

Rights of Mortgagee:-

1. There is right of mortgagee to give notice to mortgagor to settle his account . this is called as 'Right of Fore Clause'.
2. It is right of mortgagor to use the property if it is 'Usu Fructuary' Mortgage.
3. Mortgagor have right of lien over the documents till repayment of loan amount.
4. Mortgagee have right to claim back interest on mortgaged loan as specified in mortgaged deed.
5. There is right of mortgagee to file a recovery suit and obtain decree to sale mortgaged property to recover loan amount.



LL.B. (3-YDC) Second Year, III Semester, Regular. Paper – II Law of Property

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