BLE-002: INTRODUCTION TO LAW

PART A

Q.1. Define fair trial. Discuss the elements of a fair trial in criminal cases.

Ans. FAIR TRIAL:

A fair trial is a trial not only in accordance with the law, but in accordance with a law which is fair and not arbitrary, and which gives every opportunity to the accused before an independent adjudicating authority. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Some of the major elements of a fair trial are:

1. Right to an independent judiciary –

the investigation and trial processes are separate. Based on the police investigation, judiciary only evaluates the evidence produced by the prosecution to determine the innocence or guilt of the accused.

1. Right to bail –

Bail is release of the accused pending trial or appeal since s/ he is presumed to be innocent until proved guilty. when a person is unable to furnish the same within a week of the date of arrest, the police officer or Court shall presume that the person is indigent and release him/her on a personal recognizant bond (Section 436 of the Cr PC).

1. Right against illegal detention –

An arrested person cannot be detained in custody by the police officer beyond a period of 24 hours. Every person arrested without a warrant has to be produced before a Magistrate as soon as possible if not released on bail (Section 56).

d. Right to be informed of charge - Every police officer or other person arresting a person without a warrant shall disclose to the accused the full particulars of the offence for which s/he is arrested or other grounds for such arrest. The police officer making the arrest has to inform any relative, friend or person nominated by the accused, of the arrest and the whereabouts of the accused.

e. Criminal law to be prospective in application and not retrospective -

One can be punished for his action only if it was an offence on the date he committed the act. This is based on the principle that the offender should be aware or could have been aware of the fact that what s/he is doing is an offence and commits the said offence with full knowledge and intention to do so.

f. Rule against double jeopardy -

This is to give finality to a proceeding and give respect and finality to the orders of the court. A person cannot be repeatedly tried for the same offence, for that would amount to persecution and not prosecution. However, this right is subject to the right of appeal even against a judgment of acquittal.

g. Right against self-incrimination –

An accused has a right to silence since the burden of proof is on the prosecution to establish the guilt of the accused beyond reasonable doubt. If the case is neither proved nor disproved, then the benefit of doubt will go to the accused. It further held that the mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not ‘compulsion’.

h. Right to legal representation -

Not only does the accused have a right to legal representation, s/he also has a right to legal aid.

1. Free legal service-
2. a person suffering from economic or other disabilities should not be deprived of the opportunity of securing justice. The right to free legal service must be held implicit in the guarantee of Article 21 from the stage of remand itself.

j. Trial to be conducted in the presence of the accused –

The accused has a right to remain present throughout the trial and when evidence is being recorded, in the presence of her/his advocate.

k. Right to speedy trial –

The Right to speedy trial, flowing from Article 21, encompasses all stages, namely, the stages of investigation, inquiry, trial, appeal, revision and retrial. A person who has been in custody as an undertrial prisoner for the period exceeding the maximum sentence imposable by law should be released and the case against him quashed.

l. Right to judicial review –

The right to appeal is an inherent part of the right to fair trial. Appeals against convictions should not be dismissed in limine (without giving reasons) and, in cases where the appellant is in custody, it shall not be dismissed unless the appellant or her/his pleader is given an opportunity to be heard. In case of appeals against acquittals, the court can direct the accused to be arrested and brought before it or the subordinate court and the court before which the accused is brought may commit her/him to prison or release on bail (Section 390 Cr.PC). The High Court and the Sessions Court have the powers of revision.

Q.2. What is Company? Differentiate between a Public and a Private Company.

Ans. The word Company has no strictly technical or legal meaning . it may be described to imply an association of persons for some common object or objects . The word Company , in simple term , may be described to mean a voluntary association of person who have come together for carrying on some business and sharing the profits there from.

## Indian law provides two main types of organizations for such association:

## Which are- partnership and Company

## Although  the word 'Company' is colloquially applied to both , the statute regards companies and Company law as distinct from partnerships and partnership law. The Act does not define a Company in term of its features. Section 2(20) Of The Companies Act 2013 defines a Company to mean a Company incorporated under this Act or under any previous Company law. in order to understand  the meaning of Company, let us see the definitions given by some authorities:

## A) Lord Justice Lindley - A Company is an association of many person who contribute money or monies worth to a common stock and employed in some trade or business and who share the profit and loss arising the form. the common stock so contributed  is denoted in money and is capital of the Company. The person who contribute to it orÂ  to whom it partains are members. The shares are always transferable although the right to transfer is often more or less restricted. B) Prof. Haney - A Company is an artificial person created by law, having separate entity, with a perpetual succession and common seal.

## Characteristics Features of Company:

### Incorporated Association-

## A Company law must be incorporated or registered under the companies Act. minimum number of members required for this purpose is seven in the case of a 'public Company' and two in the case of a 'private Company'. However, section -3 of the companies Act, 2013 allows formation of one person Company also.

### Legal Entity Distinct From Its Members

## This feature is also known as Corporative Personality. And  the legal entity of Company is separate from the entity of its members. this is the reason that the rights and liability of  Company are separate from those person by whom the Company has been created.

## Limited Liability

## One of the principal advantages of trading through the medium of a limited Company is that the members of the Company are only liable to contribute towards payment of its debts to a limited extent. In the case of unlimited liability companies, members shall continue to be liable till each paisa has been paid off.

## Separate Property

## In India this principle of separate property was best led down by the supreme court in Bacha F. Guzdarv. Cit, Bombay (Supra). The supreme court held that a share holder is not the part owner of the Company or its property, he is only given certain rights by law, for example, to vote or attend the meetings, or to receive dividends.

### Transferability of Shares

### The Act in section 44 echoes this feature by declaring “The shares, debentures or other interest of any member in a Company shall be movable property, transferable in the manner provided by the article of Company.” A shareholder can transfer his shares to any person without the consent of other members.

### Perpetual Succession

### Company being an artificial person cannot be incapacitated by illness and it does not have an allotted span of life. Being distinct from the members, the death, insolvency or retirement of its members leaves the Company unaffected. Members may come and go but the Company can go for ever.

### Comman Seal

### Common seal of Company is also important feature of Company as the feature like legal entity of any Company.

Difference between Private Company and Public Company:

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| --- | --- | --- | --- |
| Sr.  No. | Basis of Difference | Private Company | Public Company |
| 1. | Definition | A private company is a company which by its articles restricts the right to transfer its shares, if any, limits the number of its members to 50. | A public company means a company which is not a private company. |
| 2. | Number of Directors | In a Private limited company a minimum number of 2 directors is essential. | In a Public limited company a minimum number of 3 directors is essential. |
| 3. | Transfer of Shares | Shares in private limited company are not transferable. | Public company can invite public for issuing its shares and debentures. |
| 4. | Number of Members | The minimum numbers of members are 2 and maximum 50. | The minimum numbers of members are 7 and there is no maximum limit of members. |
| 5. | Name | It is compulsory to add the word ‘Private Limited’ after the name if the Private Company. | It is compulsory to add the word ‘limited’ after the name of public company. |
| 6. | Issue of Prospectus | It is not compulsory to issue the prospectus and statement in lieu of prospectus. | It is compulsory to issue of prospectus and in the absence of prospectus to sent statement in lieu to the registrar. |
| 7. | Minimum Capital | Minimum paid-up capital is one lakh rupees. | Minimum paid up capital is five lakh rupees. |

PART B

Q.6. What is burden of proof? How is it different in civil and criminal trial?

* Ans. BURDEN OF PROOF:

Burden of proof can define the duty placed upon a party to prove or disprove a disputed fact before the court, or it can define which party bears this burden.

## Difference between Burden of Proof in Criminal & Civil Cases:

## Criminal Cases: Beyond a Reasonable Doubt:

The burden of proof in criminal cases is [beyond a reasonable doubt](https://www.law.cornell.edu/wex/reasonable_doubt). One cannot be convicted by a judge or jury if there is reasonable uncertainty that he/she is guilty of the crime.

Section 101 of the Indian Evidence Act provides that whoever asserts a certain fact must prove it. This means that the burden of proof in criminal cases is on the prosecution. The prosecution has to prove two things beyond reasonable doubt- that the accused committed the offence alleged and that the accused committed the same with the requisite mensrea. Thereafter the onus shifts on the accused to disprove the case of the prosecution and the extent of proof required for this is preponderance of probability.

Whether or not [reasonable doubt](http://www.juryinstructions.ca8.uscourts.gov/Criminal-Jury-Instructions-2017.pdf) exists will ultimately depend on how a judge or jury views a particular case. The decision should be based on “reason and common sense after careful and impartial consideration of all evidence” in a case.

There’s a lot at stake when one is accused of the crime. A conviction can result in jail time, substantial fines, and burdens one with a criminal record for (potentially) the rest of your life. The law is designed to make sure that one is convicted only if a judge or jury is almost certain that you are guilty. There’s very little room for error. This is intentional and intended to protect the innocent. The state has to put together a strong case to prove the accussed guilty.

## Civil Cases: Preponderance of the Evidence:

In civil cases the burden of proof in the sense of providing a case is discharged by more preponderance of probability. [Preponderance of the evidence](https://www.law.cornell.edu/wex/preponderance_of_the_evidence) means that it’s more likely that something is true than untrue. It’s the quality of the evidence, rather than the quantity, that will be important when determining if there is a preponderance of the evidence. The standard of proof applies in all the Civil cases. The court has to strike the balance of probability. Even in a case where fraud is to be proved the same standard is to be applied.

## Conclusion:

The burden of proof for criminal cases is much higher than that for civil cases because of the fact that criminal and civil cases are attempting to do very different things. A criminal case involves an alleged violation of the law, while civil cases involve disputes between two private parties. This isn’t to say that there isn’t a lot at stake in civil cases. However, the defendant’s future and freedom aren’t in jeopardy.

Q.7. Define Succession. Differentiate between intestate and testamentary succession.

Ans. Succession:

Laws of Succession relate to legal principles of distribution of assets of a deceased individual. These include the order in which one person in preference of any or one person after another or any one person in particular share with any other person succeeds to the property/estate of the deceased person.

Will is a written document showing the desire of a deceased person regarding distribution of his estate. If the Will is found to be valid and enforceable, the estate of the deceased would be distributed in accordance with the same.

* Wills and essential requirements of Valid Will:
* Will can be made by any person capable of entering into an Agreement.
* It should be written in a manner that the intention of the writer (called Testator) becomes clear. Since the object is to give effect to desire of the Testator.
* Small errors in name or details of property could be ignored and whole document read to understand the true intention.
* It should be signed by the Testator and two witnesses. Those who cannot sign (illiterate or due to illness) can put their thumb impression.
* No technical term or format has been prescribed in the Indian Succession Act, 1925 governing wills.
* Wills need not be made on stamp paper.
* Wills are not required to be registered
* One can make Wills any number of times. The last written Will shall prevail.

Types of succession:

A testate estate means that the decedent (deceased person) left a will, which disposes of his or her property.

An intestate estate means that the decedent did not leave a will and the probate court will determine the distribution of his or her property to heirs according to a priority statute.

|  |  |
| --- | --- |
| Testate | Intestate |
| Died with a valid Will | No valid Will |
| Will was signed by the Testator (person who made the Will) | — |
| “Testate” Decedent with a “Testate” Estate (with a Will) | “Intestate” Decedent, having an “Intestate” Estate (without a Will) |
| Petition for Probate of Will & Letters Testamentary | Petition for Letters of Administration |
| “Executor” of Will | “Administrator” of the Estate |
| Personal Representative was named in the Will | Personal Representative is appointed according to Priority List in State Statute |
| Distributees (a person entitled to take or share in the property of a decedent) are called “Beneficiaries” | Distributees are “Heirs” or “Heirs-at-Law” |
| Distributees are named in the Will | Distributees are determined by State statute |
| Beneficiaries receive whole items | Heirs receive shares of the Estate |
|  |  |

* **Conclusion-**

In order to avoid the complications and consequences of intestate succession, the people in India should adopt to estate planning. Estate planning has multifold benefits such as, it avoids any dispute within the family, guarantees smooth transition of assets from the deceased to the heirs.

Q.9. Discuss the rights of prisoners as recognized by the Indian Judiciary.

Ans. JUDICIALLY RECOGNISED PRISONERS’ RIGHTS:

Recommendations of the All India Committee on Jail Reforms, 1980-83 In respect of rights and duties of the prisoners, the All India Committee on Jail Reforms, 1980-83 has suggested the following rights, as stemming from various Supreme Court cases and decisions, as under:

1. Right to Human Dignity-

* Right to be treated as a human being and as a person; this right has been stressed and recommended by the Supreme Court of India, which has categorically declared that prisoners shall not be treated as non-persons;
* Right to integrity of the body; immunity from use of repression and personal abuse, whether by custodial staff or by prisoners;
* Right to integrity of the mind; immunity from aggression, whether by staff or by prisoners;
* Right to non-deprivation of Fundamental Rights guaranteed by the Constitution of India, except, in accordance with the law prescribing conditions of confinement.

b. Right to Basic Minimum Needs-

Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.

c. Right to Communication-

* Right to communication with the outside world;
* Right to periodic interviews; and
* Right to receive information about the outside world through communication media.

d. Right of Access to Law-

* Right to effective access to information and all legal provisions regulating conditions of detention;
* Right to consult or to be defended by a legal practitioner of prisoner’s choice;
* Right to access to agencies, such as State Legal Aid Boards or similar organisations providing legal services;
* Right to be informed on admission about legal rights to appeal, revision, review, either in respect of conviction or sentence;
* Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;
* Right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;
* Right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoners’ rights and for redressal of grievances.

e. Right against Arbitrary Prison Punishment-

Right to entitlement in case of disciplinary violation (i) to have precise information as to the nature of violation of Prisons Act and Rules, (ii) to be heard in defence, (iii) to communicate of the decision of disciplinary proceedings, and (iv) to appeal as provided in rules made under the Act.

f. Right to Meaningful and Gainful Employment-

* Right to meaningful and gainful employment
* Right to get wages for the work done in prison.

Q.10. Define Evidence. Distinguish between Oral and Documentary Evidence.

* Ans. Definition of evidence in the Indian Evidence Act:

According to [Section 3](https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2757&context=ylj) of the Evidence Act 1872, evidence means and includes:

* All such statements which the court allows or needs to be presented before it by the witnesses in connection to matters of fact under inquiry. These statements are termed as oral evidence.
* All such documents including any electronics record, presented before the court for inspection. These documents are termed as documentary evidence.

## Types of Evidence

According to the definition given in the Indian Evidence Act, evidence can be divided into two categories:

* Oral Evidence;
* Documentary Evidence.

It should be noted that evidence can be both oral and documentary and also, electronic records can be presented in the court as evidence, which means that even in criminal cases, evidence can be presented by way of electronic records. This shall include video-conferencing.

Oral and documentary evidence can be divided into two categories:

* Direct or primary;
* Indirect or hearsay or secondary.

There is also a category of real or material evidence, which is supplied by material objects for inspection of the Court such as a stolen good or the weapon of offense.

* DIFFERENCE BETWEEN ORAL EVIDENCE AND DOCUMENTARY EVIDENCE

|  |  |  |
| --- | --- | --- |
| BASIS | ORAL EVIDENCE | DOCUMENTARY EVIDENCE |
| MEANING | It is given by the witnesses in the court orally that is by mouth. | Documentary evidence that is written evidence is submitted in the court in form of hard papers, documents. |
| DEFINITION | It is given in section 3 of the act. | It is given in section 3 of the act. |
| SCOPE | Oral evidence is provided under Section 59 and 60 of Indian Evidence Act, 1872. | Documentary evidence is provided under Section 61 to 66 of the Indian Evidence Act. |
| FORM | [Section 59](https://indiankanoon.org/doc/1385485/) of the evidence says that it considers all facts as oral evidence except electronic evidence and documentary evidence. [Section 60](https://indiankanoon.org/doc/1681167/) says that oral evidence must be direct. | Primary evidence is considered as the evidence which is given in several parts like duplicate copies or as counterpart like those which is signed by the parties or photocopy of the document whereas,  Secondary evidence contains certified copies, that have been made by the same mechanical process and also contain counterparts of the document against the parties. |
| SUBMISSION | It is submitted orally, signs or by gestures. | This is submitted in writing also includes electronic form. |

* CONCLUSION

Both oral and documentary evidence are strong sources of evidence. But the power of each ranges from case to case and to various circumstances. Definitely, documentary evidence, which is a form of written evidence can be considered to be stronger and more reliable in comparison to oral evidence. But the courts take into account both of these as sometimes documentary evidence may not be available to prove a fact. Thus, both of these are equally important and the interpretation of these has paved a way for a better form of justice.

Q.11. Explain Plea Bargaining. How has it been incorporated in Indian Criminal Law?

Ans. Plea Bargaining:

Plea Bargaining can be described as a process whereby the accused may bargain with the prosecution for a lesser punishment. In simple words, Plea Bargaining is an agreement (contract) between the accused and the prosecution regarding disposition of the criminal charge leveled by the prosecution against the accused. In layman’s language, it is bargaining done by the accused of a serious and severe offence, with the authority for a lighter punishment in lieu of a full fledged trial.

## Plea Bargaining In India Context:

## To reduce the delay in disposing criminal cases, the 154thReport of the law commission first recommendation the introduction of Plea Bargaining as an alternative method to deal with huge arrears of criminal cases. he concept of Plea Bargaining attracted enormous public debate. Critics said it is not recognized and against public policy under our criminal justice system. The Supreme Court also time and again blasted the concept of Plea Bargaining saying that negotiable in criminal cases is not permissible.

## It is settled law that on the basis of Plea Bargaining court cannot dispose of the criminal case. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented. The court further held that, mere acceptance or admission of the guilt should not be a ground for reduction of sentence, the government found it acceptable and finally Section 265A – 265L11, have added in the Code of Criminal Procedure so as to provide for raising the Plea Bargaining in certain types of criminal cases.

## Salient features of Plea Bargaining; 1.It is applicable in respect of those offences for which punishment is up to a period of 7 years. 2.It does not apply to cases where offence is committed against a woman or a child below the age of 14 years 3.When court passes an order in the case of plea bargaining no appeal shall lie to any court against that order. 4.It reduces the charge. 5.It drops multiple counts and press only one charge. 6.It makes recommendation to the courts about punishment or sentence.

## **Types of Plea Bargaining:** **1) Charge Bargain** **2) Sentence Bargain** **3) Fact Bargain**

## **Object of Plea Bargaining**

**1) To reduce the pending litigation**  
**2) To decrees the number of under trial prisoners.**  
**3) To make provision of compensation to the victim of crimes by the accused.**  
**4) To cut delay the disposal of criminal cases.**

* Drawbacks of Plea Bargaining  
  1) Threat to right to fair trial.  
  2) Involving the Police in Plea Bargaining process would invite coercion.  
  3) By involving the court in Plea Bargaining process the court impartially is impugned.  
  4)Involving the victim in Plea Bargaining process would invite corruption.  
  5)If the plead guilty application of the accused in reject then the accused would face great hardship to prove himself innocent.
* **Requirements:**  
  **To ensure fair justice, Plea Bargaining must encompass the following minimum requirements namely,**  
  **1) The hearing must take place in court.**  
  **2) The court must satisfy itself that the accused is pleading guilty knowingly and voluntarily.**  
  **3) Any court order rejecting a Plea Bargaining application must be kept confidential to prevent prejudice to the accused.**  
    
  **Conclusion**  
  **To conclude, Plea Bargaining is undoubtedly, a disputed concept few people have welcomed it while others have abandoned it. It is true that Plea Bargaining speeds up caseload disposition, but it does that in an unconstitutional manner. But perhaps we have no other choice but to adopt this technique. The criminal court are too over burdened to allow each and every case to go on trial. Only time will tell if the introduction of this concept is justified or not.**

PART C

Q.13. Vicarious Liability.

Ans. Vicarious Liability

Usually, a person is himself liable for his tortious acts. But if he shares certain types of relationships with another person, that person might be liable for the wrongful act.

* Master-Servant Relationship: In a case where a servant does a wrongful act, the master too can be made liable for that act, if it was done in the course of employment. The plaintiff may choose to bring the action against the servant or the master or both. Therefore, if there exists a master-servant relationship, and the servant commits a tortious act, then they both are jointly and severally liable.
* Principal-Agent Relationship: If someone with authority from another person, performs an act amounting to a tort, the person who authorised the act will Select Civil Laws be held liable for any injury caused. This principle flows from the maxim ‘Quit facit per alium, facit per se’ which means that the act of an agent is the act of the principal.
* Partnership: The relationship and liability rule that applies to principal and agent applies to partners in a business as well. If one of the partners commits a tort, all the partners will be held equally guilty.

Q.14. Wildlife Protection Act, 1973.

* Ans. Wildlife Protection Act, 1972:

India has been implementing various laws to save the wildlife and the **Wildlife Protection Act 1972** is one of them.

* **Wildlife Protection Act 1972**was passed on August 21, 1972, but was later implemented on September 9, 1972.
* This act prohibits the capturing, killing, poisoning or trapping of wild animals
* It extends to the whole of India except the State of Jammu and Kashmir

According to Conservation India's portal, the Government of India has enacted the Wildlife (Protection) Act 1972 with the various objectives.

### THE OBJECTIVES ARE AS FOLLOWS:

* Prohibition of hunting
* Protection and management of wildlife habitats
* Establishment of protected areas
* Regulation and control of trade in parts and products derived from wildlife
* Management of zoos

### **This act includes:**

* Wildlife Protection Act 1972 (WLPA) prohibits the injuring, destroying and removing any part of a wild animals body
* In the case of wild birds and reptiles, the act also forbids disturbing or damaging their eggs
* WLPA is also against **taxidermy,** which is the preservation of a dead wild animal as a trophy, or in the form of rugs, preserved skins, antlers, horns, eggs, teeth, and nails

### **Punishments under the Act**

Penalties for any violation under this act can be carried out by agencies like:

* The Police
* The Central Bureau of Investigation
* The forest department
* The customs

Charge sheets are filed by the Forest Department and other agencies who encounter violators, then usually hand over their case to the Forest Department.

Q.15. Judgement and Decree:

Ans. DECREE: SEC-2(2);  
  
Means the formal expression of an adjudication which,

* So far as regards the Court expressing it,
* Conclusively determines the rights of the parties,
* With regards to all or any of the matters in controversy in the suit,
* And may be either preliminary or final.

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudications completely disposes of the suit. It may be partly preliminary and partly final.

**A final decree may be said to be final in two ways:**  
(I) when the time for appeal has expired without appeal being filed against the preliminary decree or the matter has been decided by the highest court;  
(II) When, as regards to the court passing the decree, the same stands completely disposed of.  
  
It is the latter sense that the word ‘decree’ is used in section 2(2) of the Code.”

## Judgment: Sec-2(9)

“Judgment” means the statement given by a judge on the grounds of a decree or order.  
The essential element of a judgment is that there should be a statement for the grounds of decision.  
As the Supreme Court in **Balraj Taneja V. Sunil Madan**, AIR 1999 SC 3381 held, a Judge cannot merely say “Suit Dismissed” or “Suit Decreed”. The whole process of reasoning has to be set out for deciding the case one way or the other.  
So, Every Judgment other than that of a Court of Small Cause should contain  
1. A concise statement of the case,  
2. The points for determination,  
3. The decision thereon, and  
4. The reason for such decision.  
  
A judgment of a Court of Small Cause may contain only point (2) and (3).

Q.16. Mortgage.

Ans. MORTGAGE

Mortgage is the transfer of an interest in some immovable property. The ownership of the property remains with the debtor but some of his interests in the property are transferred to the creditor who has given loan. In case the advanced money can not be recovered by the creditor, he can recover his money on the basis of his interest in that property.

There are six kinds of mortgages:

1) Simple Mortgage

2) English Mortgage

3) Mortgage by deposit of title deeds or equitable mortgage

4) Unsufructuary Mortgage

5) Mortgage by conditional sale

6) Anomalous Mortgage.

Another important concept is that of Sub-mortgage which is the mortgage of a mortgage.

Mortgage security, being an immoveable property, can be mortgaged by the mortgagee and such a mortgage is called a sub-mortgage. By such a mortgage the mortgagee transfers all his rights, title and interest in the mortgaged property together with his rights and powers as mortgagee to the sub-mortgagee. The sub-mortgage is governed by the provisions of the Transfer of Property Act just like a mortgage. The Act does not define a sub-mortgage nor does it contain any special provisions regarding the same. Therefore, all the provisions of law applicable to a mortgage will apply to a sub-mortgage, such as, those relating to attestation, stamp duty and registration.

The stamp duty on a mortgage deed is payable by the mortgagor (Section 29, Indian Stamp Act). Under the Transfer of Property Act, a simple mortgage deed and all other mortgage deeds (except mortgage by deposit of title deeds) securing rupees one hundred or more should always be registered (Section 59).