

The Transfer of Property Act, 1882

(Applicable in Bangladesh)

Scope and General Principles

The Transfer of Property Act, 1882 is a principal piece of legislation in Bangladesh governing the transfer of immovable property. This Act lays down a detailed framework through which a living person may transfer property to another, either immediately or conditionally. According to **Section 5**, the term “transfer of property” refers to an act by which a person conveys property to one or more living persons, including himself, and may be made inter vivos. This Act applies primarily to transfers by act of parties and does not cover property transfers occurring through will or inheritance. It is applicable throughout Bangladesh and regulates sales, mortgages, leases, exchanges, and gifts. The Act serves to establish transparency, protect ownership rights, and ensure equitable treatment in dealings involving real estate and immovable assets.

Conditions and Limitations on Transfer

Transfers under this Act are subject to several conditions to ensure they are lawful, voluntary, and based on legal capacity. Under **Section 6**, it is stated that property of any kind may be transferred, except for those expressly prohibited by law. Some properties that cannot be transferred include future maintenance rights, a mere right to sue, and public office or salaries. Moreover, **Section 7** defines the competency of the transferor, stating that the person must be competent to contract and entitled to the transferable property. Further, **Section 10** provides that any condition which absolutely restrains the transferee from transferring the property is void, although partial restraints are valid under limited circumstances. These conditions collectively ensure that the principle of free transfer is balanced with legal and public policy restrictions, safeguarding both individual rights and broader social interests.

Types of Transfer and Registration

The Act identifies several modes of property transfer, including sale, mortgage, lease, exchange, and gift. Under **Section 54**, a sale is defined as the transfer of ownership in exchange for a price paid or promised. A sale of tangible immovable property valued at one hundred taka or more must be registered under the Registration Act. Mortgages are defined under **Section 58**, and may be simple, usufructuary, or conditional. Leases, governed by **Section 105**, are transfers of the right to enjoy immovable property for a specified time in return for consideration. Each of these types of transfer requires documentation, registration, and compliance with formalities, ensuring legal enforceability and clarity of ownership. These transactions are also subject to legal scrutiny in courts when disputes arise, with title deeds and registered instruments serving as primary evidence.

Doctrine of Notice and Fraudulent Transfers

The Transfer of Property Act includes provisions to prevent fraud and ensure good faith in transactions. One such safeguard is the **doctrine of notice**, explained in **Section 3**, which binds a transferee to any fact he knew, should have known, or would have known with reasonable diligence. A person acquiring property without notice of prior interests may be protected as a bona fide purchaser, but a transferee who ignores notice may be held accountable. Moreover, **Section 53** declares that any transfer made with intent to defeat or delay creditors is voidable at the option of the creditor. Similarly, **Section 53A** protects the rights of transferees who have taken possession under an unregistered contract, preventing the transferor from reclaiming possession. These doctrines play a central role in preserving fairness and discouraging deceitful conduct in property dealings.

Conditions, Rights and Obligations of Parties

The rights and liabilities of transferors and transferees are governed by specific provisions in the Act. Under **Section 55**, in the case of a sale, the seller is bound to disclose material defects, produce title documents, answer relevant questions, and deliver possession upon completion. The buyer, in turn, must pay the purchase money and bear the loss if property is destroyed after ownership has passed. In a lease, **Section 108** outlines the mutual rights, including obligations related to repair, rent, subletting, and termination. In gift transactions under **Section 122**, the transfer must be voluntary, made without consideration, and accepted during the lifetime of the donor. Once executed, a gift cannot be revoked except under conditions stated in **Section 126**, which permits revocation by mutual agreement or in cases of fraud. These detailed sections preserve contractual balance and support the sanctity of voluntary transactions.

Illegal Transfers and Associated Punishment

While the Transfer of Property Act, 1882 itself is a civil law statute and does not contain dedicated penal sections for breach or illegal transactions, violations involving fraud, forgery, or coercion can attract punishment under general criminal laws. For instance, if a person intentionally conceals a prior transfer and sells the same property again, he may be prosecuted under **Section 420** of the Penal Code for cheating. Forging property documents or title deeds would fall under **Sections 463 to 471** of the Penal Code, which deal with forgery and using forged documents. Moreover, fraudulent transfer to delay creditors as prohibited under **Section 53** of the Act may also lead to proceedings under the Code of Civil Procedure for setting aside such transfers. In cases of willful concealment, misrepresentation, or tampering with title, legal action may be initiated under **Sections 193 or 209** of the Penal Code for giving false evidence or making a false claim in court.

Restrictions on Transfer for Unlawful Purposes

The Act also clearly bars transfers made for unlawful objectives. **Section 23 of the Contract Act, 1872** (which works in conjunction with the Transfer of Property Act) prohibits agreements

where the consideration or object is unlawful. If a property transfer is executed with the intent of facilitating an illegal act—such as harboring criminal activity or defrauding the government—it shall be deemed void. Likewise, under **Section 25** of the Transfer of Property Act, any interest created on a condition that is impossible or illegal is void. These restrictions are meant to uphold public morality and legal integrity by ensuring that property law is not exploited for purposes that contravene public policy or criminal law.
