

**THE  
Transfer Of Property Act  
IV of 1882**

[17<sup>th</sup> February 1882]

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**Q No.1- When TP was enacted?**

Ans: It was enacted on 17<sup>th</sup> February 1882.

**Q No.2- What is the transfer of property and what may be transferred?**

Ans: It means an act by which a living person conveys property, in present or future, to one or more other living persons, living persons includes a company or association or body of individual whether incorporated or not.

Any property may be transferred except:-

1. An easement can not be transferred apart from the dominant heritage.
2. A right to future maintenance.
3. Mere right to sue.
4. A public office and the salary of a public officer.
5. An interest in property restricted in its enjoyment to the owner personally can not be transferred.
6. Stipend allowed to the military, naval, air force and civil pensions of the Government and political pensions.
7. Inherited chances of any property.
8. Right of pre-emption can not be transferred.

**Q No.3- (Section 3) What is an actionable claim?**

Ans: Actionable claim means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property not in the possession either actual or constructive of the claimant, in short, claim recognized by civil Court as affording grounds for relief either:-

1. As to unsecured debt or,
2. As to beneficial interest in movable property not in possession.

Example:

1. Claims for arrears of rent.
2. Claims for future rent for it is accruing debt.
3. Share in partnership.

Following are not actionable claims:-

1. Decree.
2. Damages for breach of contract or tort, for it, is merely a right to sue.
3. Claim for mesne profit.

**Q No.4- ( Section \_\_\_\_ ) Distinguish between Novatio and a transfer of actionable claim?**

Ans: A owes money to B under a contract, it is agreed between A, B, C that henceforth B shall accept C as his debtor instead of A, is this arrangement a Novatio or transfer of an actionable claim.

**DIFFERENCE**

1. If the parties to a contract agreed to substitute a new contract for it, there is Novatio, while in case of transfer of in an actionable claim, all the rights and remedies of the

transfer, whether by way of damages or otherwise vest in the transferee and are not extinguished. No new obligation arises in this case.

2. The transfer of actionable claim is affected only by the execution of an instrument but in case of no way show, an instrument in writing is not essential.

3. In no way, show agreement between all the parties to the contract is essential to substitute a new contract for it, while in transfer in an actionable claim, the transferer may transfer the actionable claim without notice to the debtor. The debtor can not stop the transfer.

Q No.5- (Section \_\_\_\_\_) Definite and distinguish between vested and contingent right?

An: Section 19 of TP deals with a vested interest as to where on a transfer of property an interest created for a person without specifying a time for its taking effect, or in terms specifying that it is to take effect immediately or on the happening of an event which must happen.

Section 21 of TP defines contingent interest as:-

The interest which is created in favour of a person to take effect on the happening of a specified in a certain event.

Differences:

1. A vested interest does not depend upon the fulfilment of any condition, it creates immediate right, though the enjoyment may be postponed for a future \_\_\_\_\_, but, a contingent interest solely depends upon the fulfilment of incumbent condition so in failure to the fulfilment of the condition the interest may fall through.

2. A vested interest is not defeated by the death of transferee before he obtains possession, but contingent interest can not take effect.

3. A vested interest is transferable and heritable but a contingent interest is not so.

4. Invested interest there is a present, immediate right even when its enjoyment is postponed, but not in contingent.

Q No.6- (Section\_\_\_\_\_) Can a transfer be made in favour of unborn person? If so under what circumstances? And with what restrictions?

Ans: Section 13 provides that interest can be created in favour of unborn and subject to the prior interest created by the same transfer, the following conditions must be fulfilled:

1. A prior interest in the property must be created by the same transfer in favour of living persons.

2. Un-born person, on ceasing the prior interest should have come into existence i.e. should have been born.

3. The whole of remaining interest should be transferred by the transferer to the unborn person.

4. The wasting of interest in the unborn person should not be postponed beyond the lifetime of the person living at the date of transfer and the minority of person unborn i.e. the interest should vest in him of his coming of age at the \_\_\_\_\_.

Q No.7- (Section \_\_\_\_ ) Explain the Rules as to the doctrine of election, are there exceptions under TP to these rules?

Ans: Election is the choice between two alternative or inconsistent rights or claims, in cases where there is a clear intention that both were not intended to be enjoyed. The party who is to take has the choice but he can not enjoy the benefit of them both.

The Occasion, for an election where a person professes to transfer property which he has no right to transfer and as the party of the same transaction, confers any benefit on the owner of the property such owner is there to confirm such transfer or to dissent from it and in the latter case he shall relinquish the benefit so conferred and the benefit so relinquished shall revert to the transferer or his representative as it has not been disposed of.

Q No.8- (Section \_\_\_\_ ) As ostensible owner having his name entered in the revenue record as owner. He mortgages the property. On the date of the mortgage, the rightful owner's suit against him for recovery of possession of the property was pending and it was decreed subsequently to a mortgage. When the rightful owner seeks to avoid the mortgage, the mortgage resists the claim by pleading that the mortgager was the ostensible owner of the property when it was mortgaged. How you will decide?

Ans: The mortgage whose name was recorded in the revenue record and who was in possession was no doubt ostensible owner, but as the real had filed a suit against him it is clear that he was not in the date on which mortgage was made ostensible owner with consent, express or implied of the real owner and the mortgage is not entitled to the benefit of section 41 of TP.

The doctrine of lispendence U/s 52 excludes the doctrine of the ostensible owner.

Q No.9- (Section \_\_\_\_ ) Discuss the doctrine of lispendence showing clearly the principle underlying it?

Ans: During pendency in any Court of the competent authority of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property can not be transferred or otherwise dealt with by any party to the suit or proceeding to affect the rights of other parties thereto under any decree or any order which may be made therein except under the authority of the Court end on such terms as it may impose.

OR

If during the pendency of a suit related to immovable property, that property is transferred by any party to the suit and the right to that property is directly in the suit, the transfer will not affect the right of any other party under any decree or order of the Court.

According to the case of Atta Muhammad Vs. Zubair Muhammad Khan 1980 CLC 446, lispendence literary means a pending suit or case and lispendence has been defined as "Jurisdiction, power or control which a Court acquire over property involved in a suit, until final judgment therein".

The doctrine of lispendence is based on common law maxim "Pendente lite nihil innovator" mean during litigation, nothing new should be introduced".

Objects of lispendence:- To prevent multiplicity of the suit. The plaintiff would be liable to be defeated in every case by the \_\_\_\_\_ alienating before the judgment or decree and would be driven to commence his proceeding afresh.

Applicability:- According to the case of Khursheed Alm Vs. Muhammad Shahnawaz 1985 CLC 1286, the rule of lis pendence applied to the pre-emption suits but it does not affect the validity of the sale effected by the vendee.

According to the case of Ghulam Rasool Vs. Muhammad Latif 1986 CLC 2830 where vendee improves his status after the period of limitation otherwise than through inheritance or succession applicable in pre-emption suit.

Q No.10- (Section \_\_\_\_ ) State law briefly to the law relating to the fraudulent transfer?

Ans: Section 53 of TP enacts the law as to fraudulent transfer which provides as follows:

1. Every Transfer of immovable property made with intent to defeat or delay the creditors of the transferer shall be voidable at the option of any creditors so defeated or delayed.
2. Every transfer of immovable property made without consideration with intent to defraud or subsequent transferee shall be voidable at the option of such transferee.

Q No.11- (Section \_\_\_\_ ) What protection U/s 53-A of TP is available to tenant from the ejectment of tenancy?

Ans: The protection under section 53-A of the TP Act 1882 is available to a tenant if he proves that such an agreement was executed and that he had paid a considerable amount towards the sale price and that there is a stipulation in the agreement for the exemption of the payment of rent. This defence can be taken irrespective of the suit for specific performance of the contract or declaratory suit.

Q No.12- (Section \_\_\_\_ ) Define sale and how does a sale differ from the contract from the sale and an exchange?

Ans: Sale is defined U/s 54 of TP, it is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

The Essential element of sale:

1. The parties
2. The subject matter (immovable property)
3. Conveyance
4. Price

Difference between sale and contract for sale:

- ➔ A Sale passes an absolute interest in the property to the purchaser, a contract for sale does not.
- ➔ A sale creates a right in rem which is good against all the world (creates right in rem) which a contract for sale only a personal right or a right in person in favour of the contract.
- ➔ A contract for sale does not require registration.

Difference between sale and exchange:-

A sale is a transfer of ownership for a price between parties while exchange implies a transfer of ownership but not for the price.

Q No.13- (Section \_\_\_\_ ) Define mortgage and distinguish it from the charge?

Ans: Mortgage:- Section 58 of TP explains mortgage as the transfer of an interest in specific immovable property to secure money/loan.

Charge: Section 100 of TP, where the immovable property of one person is by an act of parties or by operation of law made security for the payment of money to another and the transaction does not amount to the mortgage, the latter person is said to have a charge on the property.

Difference between mortgage and charge:-

- ➔ The mortgage is a transfer of interests in an immovable property which in charge there is no transfer of an interest in immovable property, although property stands as security.
- ➔ The mortgage is only created by an act of parties and never by operation of law, while charge can be created by either way.
- ➔ A charge is always enforceable within 12 years while a mortgage within 12 or 60 years according as it is simple or usufructory.
- ➔ The charge can be enforced by sale of property through Court but a mortgage can be enforced through sale, foreclosure or suit for money.
- ➔ A charge is a wider term than mortgage. Every mortgage is a charge but not vice versa, there may be a covenant to pay in a mortgage but not so in charge.

Q No.14- (Section \_\_\_\_ ) What are different kinds of mortgage?

Ans:

1. Simple mortgage:- it is a transaction in which without delivering the possession of the mortgaged property the mortgager binds himself personally to pay mortgaged money according to his contract, the mortgager shall have the right to the mortgaged property to be sold and apply for payment of the mortgaged money in default of mortgager.

2. Mortgage by conditional sale:- A mortgage by conditional sale is a transaction in which the mortgager sales his property conditionally:

i) That default of payment of the mortgage money on a certain date, the sale shall become absolute.

ii) That on such payment being made, the sale shall become void.

iii) That on such payment being made, the buyer shall retransfer the property to the seller.

3. Usufructory Mortgage:- It is a transaction in which the mortgager delivers possession of the mortgaged property to the mortgage and utilize him to retain such possession until payment of the mortgaged may and to receive rents and profits accruing from the property.

4. English Mortgage:- Where the mortgager binds himself to repay the mortgaged money on a certain date and transfers the mortgaged property absolutely to the mortgage but subject to a proviso that he will retransfer it to the mortgager upon payment of mortgaged money as agreed.

5. Mortgage by deposit of title deeds:- This is called in English law an Equitable mortgage, if a person deposits his title deeds to the immovable property with the creditor or his agent with intent to create a security thereon, the transaction is called an equitable mortgage or a mortgage by deposit of title deeds.

6. Anomalous Mortgage:- It is a mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructory mortgage an English mortgage or mortgage by deposit of title deeds, it is a mortgage which does not fall in any of other five classes. An instance of an anomalous mortgage is a combination of simple and usufructory mortgage.

Q No.15- (Section 60) What is meant by right of redemption?

Ans: It means the right of mortgager to get back his property free of all conditions or liens on payment of his debit, at any time after the principal money has become payable and before his equity of redemption has been foreclosed notwithstanding any stipulation to the contrary.

Q No.16- (Section 90) Who may sue for redemption?

Ans: 1. Mortgager, 2. Any person, other than mortgager who has any interest, 3. Any surety, 4. Any creditor of a mortgage.

Q No.17- (Section \_\_\_\_ ) What is meant by right of redeem?

Ans: It is a right to require a mortgage in payment of mortgage money to do various things referred in section 60, such right occurs when mortgage money becomes due.

Note: The mortgage deed if provided a period for payment of mortgaged money, mortgagers right to redeem would arise only after the expiry of that period not before.

Q No.18- (Section\_\_\_\_) What is subrogation?

Ans: Any of the persons other than the mortgager and nay co-mortgager shall on redeeming property subject to the mortgage, have so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgager or any other mortgagee.

Kinds of Subrogation:- It arises when a person who pays off in full the mortgage debit has no interest to protect but he advances money under a registered agreement that he would be subrogated to the right and remedies of the creditor.

Note: Subrogation means substitution by operation of the law of the rights and interests of a mortgagee in the property mortgaged (Art: 132 of LA)

Q No. 19- (Section 100) Define charge and how it is enforced?

Ans: Where immovable property of one person is by an act of parties or by operation of law made security for the payment of money to another and the transaction does not amount to a mortgage “the latter person is said to have a charge on property”.

Example: 1. charges created by an act of parties, 2. Vendor’s charge for unpaid purchase money, 3. A party entitled to claim contribution under S. 82 requires a charge in respect of payment.

Q No. 20- (Section \_\_\_\_ ) Define lease, lessor, lessee, premium and rent?

Ans: A lease of immovable property is a transfer of right to enjoy such property, made for certain time express or implied for money paid or promised to be paid. The transferor is called lessor, a transferee is called lessee, the price is called premium and the money, share and the service or other thing to be so rendered is called rent.

Q No. 21- (Section \_\_\_\_ ) Different between lease and license?

Ans:

- ➔ A license can be revoked while a lease can not.
- ➔ A lease can sue a trespasser while a license can not.
- ➔ A lease is a transferable but not so license.
- ➔ A lease can be assigned but not so a license.
- ➔ A license is determined by the death of either party but the lease is not affected by the death of lessor or lessee.
- ➔ A license can be granted without writing or registration unless it is coupled with the transfer of interest, while lease can be created only by registered document if it is from year to year.

Q No.22- (Section \_\_\_\_ ) Differentiate lease from easement?

Ans:

1. In lease ownership of the land remains with lessor but possession goes to a lessee, whereas an easement the ownership and possession both remain with the owner.
2. In a lease, lessee gets unlimited rights to use the property while the holder of an easement gets a limited right to use the land.

Q No. 23- (Section \_\_\_\_ ) What do you understand by tenancy at will?

Ans: A tenancy at will can be terminated at the desire of either the landlord or tenant. It arises impliedly under the law in case of permissive occupation when a person is in the possession of the premises with the assent of the owner or expressly by an agreement to let off in indefinite term. Death of either party determines such tenancy.

Q No. 24- (Section 122) Define Gift under transfer of property act and give its main characteristics?

Ans: Section 122 of TP Act defines a gift as “it is a transfer of certain movable or immovable property made voluntarily without consideration by one person called doner and accepting a gift is called the donee.

**CHARACTERISTICS OF VALID GIFT:-**

1. Two parties.
2. The subject matter of the gift
3. There should be no consideration
4. Acceptance
5. The transfer must be made in the manner prescribed by the law.

Q No. 25- (Section \_\_\_\_ ) What do you mean by revocation of gift?

Ans: A Gift can be revoked in the following two cases.

1. When doner and donee agree that on the happening of any specified event which does not depend upon the will of doner, the gift shall be revoked.
2. A gift may also be revoked in any of the cases [save for want or failure of consideration] in which if it were a contract it might be rescinded i.e (Under Section 19 of Contract Act).

Q No. 26- (Section \_\_\_\_ ) Can a doner revoke the gift after delivery of deed but before its registration?

Ans: After the delivery of gift deed and before registration, a donor can not revoke the gift when an instrument of gift has been handed over by the donor to the donee and same accepted by him, the former has done everything in his powers to complete his donation and made it effective.

Registration does not depend upon his consent but is the act of an officer appointed by law for this purpose.

Q No. 27- (Section 127) What do you mean onerous gift and what is its legal effect under the TP Act?

Ans: In onerous gift is one burdened with an obligation.

Illustration:

A gift a field to B which is subject to the payment of Tax, this is an onerous tax.

Legal Affect:

1. Where a gift is in the form of a single transfer to the same person of several things of which one is another or not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.
2. Where the gift is in form of two or more separate and independent transfer to the same person or several things, the donee is at liberty to accept one of them and refuse the others although the former may be beneficial in the latter onerous.

Q No. 28- (Section \_\_\_\_ ) Define universal donee?

Ans: A universal donee is a person to whom the doner's whole property is given/gifted.

Q No. 29- (Section \_\_\_\_ ) Whether a gift to a minor or child is valid "en-Ventruie-samere"?

Ans:

1. No, the doctrine of "en-Ventruie-samere" does not apply to the gifts. The main element to applying the doctrine is that there must be a contract of transfer of property for the consideration (Section 53-A TP) but in the case of gifts, there is no consideration at all or any contract.
2. Yes, a gift to a minor or child is the womb is valid when the donee is incapable of a gift, his guardian on his behalf can accept it. A child in the womb for several purposes is treated under the law as if he has born.

Q No. 30- (Section \_\_\_\_ ) How an actionable claim be transferred?

Ans: The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent.

Actionable Claim: Term actionable claim generally means a claim for which an action will lie, furnishing for action and according to S. 3 of TP Act a claim forwards debit.