

# INDEX

	<b>PART 1</b>	<b>2-16</b>
<b>CHAPTER 1</b>	<b>TRANSFER OF PROPERTY</b>	<b>17-34</b>
	<b>(SECTION 5-12)</b>	
<b>CHAPTER 2</b>	<b>TRANSFER OF PROPERTY</b>	<b>35-94</b>
	<b>(SECTION 13-63)</b>	
<b>CHAPTER 3</b>	<b>SALE OF IMMOVABLE PROPERTY</b>	<b>95-102</b>
<b>CHAPTER 4</b>	<b>MORTGAGE OF IMMOVABLE</b>	<b>103-127</b>
	<b>PROPERTY AND CHARGES</b>	
<b>CHAPTER 5</b>	<b>LEASE</b>	<b>128-137</b>
<b>CHAPTER 6</b>	<b>EXCHANGE</b>	<b>138-141</b>
<b>CHAPTER 7</b>	<b>GIFTS</b>	<b>142-145</b>
<b>CHAPTER 8</b>	<b>TRANSFER OF ACTIONABLE</b>	<b>146-149</b>
	<b>CLAIM</b>	

# **TRANSFER OF PROPERTY ACT, 1882**

## **PART 1**

### **CONCEPT OF PROPERTY AND GENERAL PRINCIPLES**

#### **REGARDING TRANSFER OF PROPERTY:**

#### **INTRODUCTION AND HISTORICAL BACKGROUN**

Property is one of the fundamental elements of socio-economic life of an individual. The law relating to transfer of property is governed by the Transfer of Property Act, 1882. Before this Act came into force there was practically no law as to deal property in India. Barring few points which were covered by certain Regulations and Acts, the Courts in India in the absence of any statutory provisions, applied rules of English law as the rule of justice, equity and good conscience. Transfer of Property deals with certain doctrines having their Origin in the Common Law of England i.e. "Rule against Perpetuities", of 'Election', of Accumulation, of Acceleration, of "Ostensible Owner", of 'Lis Pendens', of "Feeding the Estoppel" of "Part Performance", "Marshaling & Contribution", of Subrogation, of Tacking etc... The scope of the Transfer of Property Act is limited. It is not a complete code of transfer of property. It covers only a specific mode, transfer of property between living persons. Transfer of moveable goods is dealt with Sale of Goods Act, 1930.

#### **TPA IS NOT EXHAUSTIVE—**

It does not contain complete law for all kinds of transfers in India; for all the modes of transfers of property of every kind. The blow mentioned diagram is showing the properties and governed by following act:

Sr. No	Property	Transfer between	Act
1	Immovable property	Living to living	Transfer of property Act, 1882
2	Movable property	Living to living	Sale of goods Act, 1930
3	Immovable property and Movable property	Dead to living	Indian Succession Act, 1925

The bill was introduced in the Legislative Council in 1877. The bill was then referred to a Select Committee and it was also sent to the Local Governments for their comments. This Bill was discussed and redrafted on many points and referred to a Third Law Commission. The Third Law Commission consisted of Sir Charles Turner, Chief Justice of Madras, Sir Raymond West and Mr. Whitely Stokes, Law Member of the Council of the Governor-General. Transfer of Property Act came into force on 1st July 1882 which was introduced by

Whitley Stokes. It contains the transfer of both movable and immovable property but a major portion of the enactment is applicable to the transfers of immovable properties only. The Bill pertaining to Transfer of Property Act, 1882 was prepared not less than seven times before the final Bill was passed and it came into force with effect from 17th February 1882, as Transfer of Property Act, 1882 (4 of 1882). The Transfer of Property Act 1882 was amended substantially in 1929. There are 8 chapters and 137 sections in this act.

### **PREAMBLE**

The provisions of the Transfer of Property Act, 1882 have no application in a case where the transfer of property takes place by operation of law as it appears from the Preamble of the Act. The same applies only to transfer by act of parties. A transfer of property by operation of law is not validated or invalidated by anything contained in the Act.

A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of the Property Act or the Indian Registration Act. Section 11 of the Act provides for a non-obstante clause. An overriding effect, therefore, has been given thereby over all other laws for the time being in force.

### **OBJECTIVES OF TRANSFER OF PROPERTY ACT, 1882**

1. As per the preamble of the Act, the Transfer of Property Act, 1882 is to define, amend or regulate the law relating to the transfer of property by the acts of the parties.
2. The Act provides a clear, systematic and uniform law for the transfer of immovable property between living persons.
3. The Act is an extension to the Code of Contract since it is an enacted law for transfers that take place in the consequence of a contract.
4. With provision for inter-vivos (between two living persons) transfers, the Act, provides a law parallel to the existing laws of testamentary and intestate transfers.
5. The Act is not exhaustive because it does not cover the entire dimension of transfer of property. Hence we can say its scope is limited.
6. The Act provides scope to apply the principles of Justice, Equity and Good Conscience if a particular case is not governed by any provision of law. - The Act envisages the following six types of transfer:
  - Sale
  - Mortgage
  - Lease
  - Exchange
  - Gift
  - Actionable claim.

Thus in other words this Act was enacted with the object to amend the law relating to the transfer of property by act of parties. The Act excludes from its purview the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession. The scope of the Act is limited, as it is confined to transfers inter vivos and excludes testamentary succession, i.e. transfers by will.

### **CHARACTERSTICS OF TRANSFER OF PROPERTY ACT, 1882**

1. The Act applies to transfer by the act of parties and not by the application of the law. Thus, its operations are limited to transfers by the act of parties only except in a few cases saved by Section 2 of the Act.
2. The Act does not incorporate rules for all modes of transfer in existence. The Act does not even claim to be a complete code as apparent from the omission of the term 'consolidate' from its Preamble.
3. The Act mainly deals with the transfer of immovable properties only.
4. In case of a conflict between the Act and rules of Muslim Law, the latter will prevail.
5. Certain incidents of contract or essential nature of properties are an exemption from the operation of the act by operation of section 2 of this act.

### **APPLICABILITY OF TRANSFER OF PROPERTY ACT**

It extends in the first instance to the whole of India except the territories which immediately before the 1st November, 1956, were comprised in Part B States or in the State of Bombay, Punjab and Delhi. But this Act or any part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.

And any State Government may, from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, and part of the territories administered by such State Government from all or any of the following provisions, namely Sections 54, paragraphs 2 and 3, 59, 107 and 123.

In simple words, the territorial jurisdiction of an Act means the places in which an Act is applicable. The territorial jurisdiction of the Transfer of Property Act, 1882, extends to the whole of India except Punjab. It was made applicable in different parts of India from time to time at different times. Transfers of immovable property by 'act of parties' in Punjab are regulated by the rules of equity, justice and good- conscience.

Where the Act is not in force, Section 1 empowers the State Government not only to extend the whole Act but also only some of its provisions. The State Government is also empowered to extend the Act or a part thereof only to certain specified territories.

## **EXEMPTION AND EXTENSION OF SPECIFIED SECTIONS**

Under Section 1, the State Governments are provided powers also to exempt any part of its territory from the operation of Sections 54 (2, 3), 59, 107 and 123 of this Act. The State Governments may exempt either all the above mentioned sections or, only few of them. The result is that if certain areas in a State are exempted from the application of these sections, the registration of transactions of sale, mortgage, lease and gifts would not be necessary under the Transfer of Property Act. But as the Indian Registration Act is also in force, such transactions are to be registered under the Registration Act.

## **REPEAL OF ACTS AND SAVING OF RIGHTS ETC**

Section 2 of the Transfer of Property Act, 1882, provides for the repeal of old law and statutes dealing with transfer of property. While repealing the earlier statutes, Section 2 also saves certain pre-existing enactments and some of the rights and incidents of property which accrued before the promulgation of this Act. The provisions of this Act do not affect the following statutes and rights of property etc.

Only those enactments, Regulations and provisions thereof are repealed by this Act which are expressly mentioned in its schedule to have been wholly or partially repealed therein. Other Acts, Statutes or Regulations still prevail. The customs and usages mentioned in these enactments remain unaffected even though they are contrary to the provisions of this Act.

## **RULES OF MUSLIM LAW**

The concluding part of Section 2 saves contrary rules of Muslim personal law from application of Chapter II of this Act. The exemption from the application of Transfer of Property Act is with regard to only those rules of Muslim personal law which comes in conflict to any provision of law contained in Chapter II. It is important to mention here that only the contrary rules of Muslim law have been exempted. In case where there is no inconsistency between the rules of Muslim law and the provisions of law in Chapter II of this Act, the provisions of the Transfer of Property Act to be applied.

*In Mohammad Raza v Abbas Bandi Bibi* the Privy Council had applied Section 10 of this chapter to a transfer under family arrangement and held that a condition restraining further transfer to a person outside the family was not absolute restraint and was, therefore, 'valid.

## **SECTION 3- INTERPRETATION CLAUSE**

In this Act, unless there is something repugnant in the subject or context,-

### **1. IMMOVABLE PROPERTY**

"Immovable property" does not include standing timber, growing crops or grass;  
Section 3 of the T.P Act defines the term Immovable property but the definition is neither clear nor complete. It simply says that immovable property excludes standing timber,

Our address - HO: SCO-209, 1st & 2nd floor, Sector-36/D, Chandigarh

Phone: 0172-4024244, 7087878746

Website: [www.thedivinegroup.in](http://www.thedivinegroup.in), [www.divineinstitute.co](http://www.divineinstitute.co)