

LLB –Part 2

Law of transfer of Property (Paper-IV)

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Transfer of Property Act 1882

Q 01: Explain the doctrine “Lis Pendens” during a suit as understood with reference to transfer of property. And explain its ingredients.

1) Introduction

- A lis pendens is actually an official notice to the public which describes that this property cannot be transferred because a lawsuit has been filed and pending in the court against this particular property. Notice of Lis pendens warns any purchaser of this property that a lawsuit is pending in the court for this property and he will have to face the lawsuit regarding this property and plaintiff will be seeking justice from new owner.

2) Relevant provisions

- Section 52 of transfer of property act 1882 deals with the term Lis-pendens.

3) Meaning of Lis-Pendens

- The Latin word Lis-pendens is a combination of two words such as “Lis” which means a legal action and “Pendens” which means pending suit.

4) Definition of Lis-Pendens

- A lis pendens is a written public notice which shows that someone has filed a lawsuit against a particular property and new purchaser of the property will be facing lawsuit which is pending in the court.

5) Essentials of issuance of Lis-Pendens

Following are the essentials of doctrine of Lis-Pendens.

i. Existence of lawsuit

- The lawsuit must be existed in the court in order to issue a public notice under the doctrine of lis-pendens.

ii. Lawsuit must be pending

- The lawsuit should be pending in the court in order to issue a public notice under the doctrine of lis-pendens against the property that no transfer of property or any dealing with such property during the pendency of the suit is prohibited except by the court order.

iii. Lawsuit must be in a competent court

- The lawsuit should be pending in a competent court which has authority to handle such kind of matter in order to issue a public notice under the doctrine of lis-pendens that no transfer of property or any dealing with such property during the pendency of the suit is prohibited except by the court order.

iv. Must be related to immoveable property

- The property should be immoveable in order to issue a public notice under the doctrine of lis-pendens. that no transfer of property or any dealing with such property during the pendency of the suit is prohibited except by the court order

v. Must be non-collusive

- The lawsuit should be non-collusive in order to issue a public notice under the doctrine of lis-pendens.

6) Exception to this rule

Following is the exception to the rule lis-penden. Property can be transferred during the pendency of the suit.

1. Court order

- If the court where lawsuit has been filed by the parties, has issued an order to transfer the property to any other person, in this case the property under litigation can be transferred under the pendency of lawsuit.

7) Non-applicability of doctrine

Following are many examples where this doctrine does not apply.

- This rule is not applied in a private sale
- This rule is not applied in the cases of review
- This rule is not applied where the proceedings are collusive
- This rule is not applied in the friendly cases
- This rule is not applied in the moveable property
- This rule is not applied if the case is pending and no court order on it

8) Objectives of the lis-pendens

Following are the objective of lis-pendens.

- To avoid endless judicial proceedings.
- To escape the parties to involve in legal proceedings
- To avoid the parties to abuse the legal proceedings.
- To protect the rights of the parties
- Intimation to third person who is going to purchase the property about it is in litigation
- To prevent multiplicity of lawsuit

9) Doctrine of Lis-pendens

- When there is litigation between two persons related to any immovable property and one of party transfers the property under litigation, in this case a conflict may arise between the right of the transferee to whom property is transferred and the rights of the parties as declared by the decree of the court.

10) Basis of the doctrine of Lis-Pendens

This doctrine is based on the following Latin Maxim.

“Pendente lite nihil innovetur”

It means that during the legal proceedings nothing new should be introduced

11) Conclusion

- To conclude I can say that according to this rule during the pendency of the litigation, no party to the litigation can transfer the property in order to affect the rights of the opposite party. The section 52 protects the rights of the parties who claim title of ownership of property by filing a suit. Because the rule of Lis pendens is based on the maxim that "nothing new should be introduced in a pending litigation"

Q 02: Discuss the doctrine of part performance mentioned in the Sec 53 of transfer of property act. What are the essentials?

1) Introduction

- Section 53A of the transfer of property act 1882 deals with the doctrine of part performance. The general rule under this section says that an immoveable thing valued up to Rs. 100 Rupees to be registered or contracted but doctrine of part performance is an exception to this rule. This rule is relaxed in case of part performance.

2) Relevant provisions

- Section 53 A the transfer of property act 1882 deals with part performance.

3) Definition of part performance

- According to the terms and conditions of the contract, partial performance is an act which is performed by either party who is under an obligation to perform in order to complete the obligation of the contract by other party is called part performance. However the contract is not considered completed until it is fully performed.

➤ Example

- If A make a contract with B to sell his plot for 5 Lakh. A receives the 3 lakh the advance payment under this contract and hands over the possession of the said plot to B. After some time, B is ready to pay the remaining sale amount to A but A refuses to receive the remaining amount and A asks B to hand over the plot back to him.
- Here B is ready to perform his part of the contract but A is not. In such a case, B can file a case for specific performance from A. It does not matter that the sale was not registered.

4) Essentials of the doctrine of Part performance

Following are the essentials of part performance.

I. Must be Written

- The contract between the parties should be written. If the contract is not written by the parties and is just a verbal agreement between the parties. In this case the doctrine of part performance will not be applied on it.

II. Must be Signed

- The contract between the parties should be signed by the both parties or by other persons on behalf of them. If contract is in written but it is not signed by the parties, in this case the doctrine of part performance will not be applied on it.

III. Immoveable property

- The contract between the parties should be based on the transfer of immoveable property. If it is based on moveable property in this case the doctrine of part performance will not be applied on it. Trees, grass and fields do not come under the category of immoveable property.

IV. Possession of property

The transferee must have taken the possession of the immovable property and it is the first part performance of the contract.

V. Willful performance by transferee

- After taking the possession of the immovable property by transferee, he is under an obligation to partially perform the contract by paying the due payment to the transferor or shown his interest to perform in future

VI. Prior Performance

- This most important essential of the part performance that the prior performance of the contract will not be considered the part performance of the contract.

VII. Existence of consideration

- Contract between the parties should be based on consideration. Consideration is an object which can be in form of money, in form of to do something or not to do something or even other than these. If it is not based on consideration. In this case the doctrine of part performance will not be applied on it.

VIII. Certain conditions

- The terms and conditions of the contract should be certain and definite and must help the court to understand the case in order to issue an order for part performance.

5) Object of the part performance

Section 53A of the transfer of property act lays down the objects of the part performance.

i. To protect the transferee from fraud

- The main object of the part performance is to protect the rights of the transferee from fraud

ii. To protect the transferor from fraud

- The main object of the part performance is to protect the rights of the transferor from fraud

iii. To ensure the contract to be written

- The general rule of law of part performance ensures that the contract must be written by the parties.

iv. To ensure that the contract to be signed

- The general rule of law of part performance ensures that the contract must be signed by the parties.

v. Immoveable property only

- The general rule of law of part performance restricts the parties to form the contract on the base of immovable property only.

6) Origination of the doctrine

- Doctrine of Part Performance is based on principle of equity as originated in England and was added to the Transfer of Property Act, 1882 via the Amendment Act of 1929.

7) Conclusion

- To conclude i can say that in order to, be eligible for protection under the Doctrine of Part Performance the existence of the contract of transfer property for a consideration is needed.
- As well as, the contract must be in writing, signed, having certain and definite term, must be related to immoveable property and willful performance of the transferee. These are the essentials which help the transferor or transferee for the part performance of the contract and court makes its order on the basis of these essentials.

Q 03: Discuss lease and describe it's essentials as well as explain how it is made?

1) Introduction

- A lease is basically a written agreement between the owner of property and a person who will use the property for a prescribed period of time by paying a specific amount as prescribed in the agreement. In this situation the ownership of the property does not transfer to the lessee but lessee only can enjoy the property by paying a certain amount against this enjoyment.
- The owner of the property is known as the lessor and the person using the property is known as a lessee.

2) Relevant provision

- Sec 105, 107 and 108 of transfer of property act deals with lease.

3) Definition of lease

- Lease is basically a written agreement between the lessor and lessee in which lessor allows lessee to use his property as a tenant for a specified period of time by paying certain amount of money to lessor.

4) Parties of Lease

Following are the parties of a lease.

i. Lessor

- Lessor is a person who leases his property to another person is known as lessor, he is the owner in fact

ii. Lessee

- Lessee is a person who holds the lease of a property is known as lessee, he is the tenant in fact

5) Essentials of lease

Following are the essential elements of a lease. Details are as under:

I. Subject matter

- The subject matter of the lease is an important essential of a lease and it must be an immoveable property.

II. Name and address

- The full name of the tenant should be mentioned in a lease agreement and address of the property which is being leased should be mentioned in a lease agreement if property is on multiple locations in this each address of each property should be mentioned in the agreement

III. Duration of lease

- The duration of lease should be mentioned in lease agreement whether expressed or implied. The period of lease may be of one year, or more than one year.

IV. Termination of lease

- The agreement of a lease between the lessor and a lessee must contain the terms and conditions of the termination of lease that when and how an owner of the property can end the lease.

V. Security deposit

- The amount required for the security deposit and its relevant terms and conditions should be mentioned in the lease agreement.

VI. Consideration

- The agreement of a lease between the lessor and lessee should be based on the consideration.

VII. Repair and damages

- The responsibilities of the owner and the tenant should be mentioned in the lease agreement which will be defining that whether owner or tenant is responsible for the repair and damages of the property if any.

VIII. Right of entry

- The right of an owner to enter his property to inspect the premises with the prior notice to tenant should be mentioned in a lease agreement but the tenant has also a right of privacy and owner cannot subject to multiple visits.

IX. Signatures

- A lease agreement should be signed by the all adult parties. The owner will provide One copy to the tenants by keeping the original for him.

6) How it is made

- A lease agreement is made of an immoveable property from year to year or for any other duration which is exceeding one year by delivery of possession of the property to lessee as tenant for a prescribed payment.

Following are the ways of lease.

i. By registered deed

- A lease is made and recorded in the register of deed where the record is kept by the designated government officer that who is owner of the property and who is tenant under lease agreement

ii. By transfer of possession

- A lease is made by transfer of possession where the owner of the property transfers the possession of the property to the tenant

iii. By execution of instrument

- A lease is made by execution of instrument where both of the parties create a contract by signing it , in order to make it enforce by the law

7) Types of lease

Following are the different kinds of leases.

I. Gross lease

- In this type, the tenant pays monthly against the lease in which electricity , heat and air conditioning are included

II. Step lease

- In this type, the amount of rent is increased after every year within the period of life of the agreement.

III. Cost of living lease

- In this type, the rent is increased with the general inflation

IV. Single net lease

- In this type, the tenant pays a monthly rent after adding some of other expenses

V. Double net lease

- In this type the tenant pays rent also pays real estate taxes for the space occupied.

VI. Triple net lease

- In this type, the tenant pays rent, real estate taxes and other land's operating expenses too.

8) Conclusion

- To conclude i can say that in the lease agreement there are two parties one of them is known as lessor who is owner of the property and second one is known as lessee who is a tenant and receiving the property for its use by making an agreement between them. In a lease agreement the title of the ownership does not transfer but remains with real owner.

Q # 04: Discuss lease and discuss the rights and duties of lessor and lessee?

1) Introduction

- A lease is basically a written agreement between the owner of property and a person who will use the property for a prescribed period of time by paying a specific amount as prescribed in the agreement. In this situation the ownership of the property does not transfer to the lessee but lessee only can enjoy the property by paying a certain amount against this enjoyment.
- The owner of the property is known as the lessor and the person using the property is known as a lessee.

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ii. Lessee

- Lessee is a person who holds the lease of a property is known as lessee, he is the tenant in fact

5) Duties of lessor

Following are the duties of a lessor.

I. Delivery of possession

- According to the terms and conditions of lease agreement lessor is bound to give the possession of the property to the lessee

II. Security of possession

- According to the terms and condition of lease agreement lessor is bound to secure the possession of the property until it is handed over to the lessee

III. Disclosure of any defect

- According to the terms and conditions of lease agreement the lessor is bound to disclose any defect in the property which is given on lease to the lessee

IV. Bear the expenses of repairing

- According to the terms and conditions of lease agreement lessor is bound to give the money to the lessee if lessee has spent any money in order to repair the leased property.

V. Protection of rights of heirs

- According to the terms and condition of lease agreement lessor is bound to protect the rights of the heirs of lessee if lessee has been died during the period of lease agreement

6) Rights of Lessor

Following are the rights of lessor.

i. Right to receive rent

- According to the terms and conditions of lease agreement lessor has a right to receive the rent in the form of money from the lessee against the leased property

ii. Right to receive the property back

- According to the terms and conditions of lease agreement lessor has a right to receive the property back in the same condition as it was at the time of delivery of possession after the termination of lease agreement

iii. Right to enter his property

- According to the terms and conditions of lease agreement lessor has a right to enter into his property after serving a prior notice to the lessee

iv. Right to expel trespasser

- According to the terms and conditions of lease agreement lessor has a right to expel the trespasser from his property

v. Right to terminate the lease

- According to the terms and condition of lease agreement lessor has a right to terminate the lease agreement at any time due to any reason or without any reason and can end the enjoyment of the lessee

7) Duties of Lessee

Following are the duties of lessee.

I. Duty to pay rent

- According to the terms and conditions of lease agreement lessee is bound to pay the amount of rent on time to lessor as it was decided at the time of formation of lease agreement

II. Duty to return possession

- According to the terms and conditions of lease agreement lessee is bound to return the possession of the property to lessor after the termination of the lease agreement

III. Duty to protect the property

- According to the terms and conditions of lease agreement lessee is bound to protect the property of lessor from damage which has been taken by him on lease

IV. Duty to pay damages

- According to the terms and conditions of lease agreement lessee is bound to pay the damages if the damage has been occurred due to his negligence

V. Duty to use for the same purpose

- According to the terms and conditions of lease agreement lessee is bound the use the property of lease for the same purpose for which it was taken by lessee

8) Rights of lessee

Following are the rights of lessee.

I. Right of possession

- According to the terms and conditions of lease agreement lessee has a right to take the possession of the leased property which is taken by him from lessor

II. Right to reasonable use

- According to the terms and conditions of lease agreement lessee has right to reasonable use of the leased property for which purpose it was taken

III. Right of contract

- According to the terms and conditions of lease agreement lessee has a right to make a contract on the leased property during the period of the agreement

IV. Right to receive repairing expenses

- According to the terms and conditions of lease agreement lessee has a right to receive the repairing expenses which has been spent on the repairing of the leased property

V. Right to terminate the lease

- According to the terms and conditions of lease agreement lessee has a right to terminate the lease if the leased property deems unfit to him

9) Conclusion

- To conclude i can say that in the lease agreement there are two parties one of them is known as lessor who is owner of the property and second one is known as lessee who is a tenant and receiving the property for its use by making an agreement between them. In a lease agreement the title of the ownership does not transfer but remains with real owner.

Q 05: What do you understand by the term mortgage (Girvi rakhna)? What are different kinds of mortgage?

1) Introduction

- In a mortgage, there is an agreement between the debtor and a creditor. The debtor or mortgagor is the owner of the property, while the creditor or mortgagee is the owner of the loan. When the mortgage transaction is made, the debtor receives the money with the loan, and promises to pay the loan. The creditor will receive money back with interest on prescribed time. If the debtor does not pay the loan, the creditor may take the mortgaged property in place of the loan. This is called foreclosure. (Zabat krna)

2) Relevant provision

- Sec 58 of transfer of property act deals with mortgage.

3) Definition of mortgage

- Provision of property by debtor to a creditor as a security against the loan received on the condition that it shall be returned by creditor on the payment of the debt within a certain period

4) Parties of mortgage

Following are the parties of mortgage.

i. Mortgagor

- Mortgagor is a person to whom loan is given or is known as debtor

ii. Mortgagee

- Mortgagee is a person who given loan or is known as creditor

5) Essentials of mortgage

Following are the essentials of mortgage.

- There should be a specific immoveable property
- There should be transfer of an interest
- The mortgage should be based on consideration

6) Kinds of mortgage

Following are the various kinds of mortgage.

I. Simple mortgage

- Simple mortgage is such mortgage where mortgagor without delivering possession of the mortgaged property, binds himself personally to pay the mortgage money and agrees expressly or impliedly in case of failure to return the money to creditor the creditor cannot directly sell the property. The sale must be through the intervention of the court.

➤ **Essentials**

- The property is mortgaged unconditionally
- Possession of property is not delivered
- Personal obligation to pay the debt
- Obligation may be express or implied

II. usufructuary mortgage

- A usufructuary mortgage is such mortgage where the mortgagor delivers or agrees to deliver the possession of the mortgaged property to the mortgagee and authorizes him to hold the property until the payment of loan is given.

➤ **Essentials**

- There is no personal obligation to pay the debt on mortgagor
- The possession of the property is delivered to the mortgagee
- No time period is fixed to pay the mortgage money
- Mortgagee cannot sale the property
- Mortgagee is entitled to earn profit or can give the property on rent

III. Mortgage by conditional sale

- In this situation, the mortgagor sells the mortgaged property on condition that if mortgagor will fail to return the payment on a certain period, the sale of the property shall become absolute.

➤ **Essentials**

- This mortgaged property is subject to sale
- The sale becomes absolute on the non-payment of loan
- Possession of property is not given
- There is no personal obligation to pay the debt on mortgagor

IV. English mortgage

- English mortgage is such mortgage where the mortgagor binds himself to repay the loan on a prescribed time, but also transfers his property to mortgagee, and there is a promise between the mortgagor and mortgagee that mortgagee will re-transfer the property to mortgagor after receiving the payment of loan back. It is called English mortgage.

➤ **Essentials**

- Mortgagor binds himself to repay the loan on a certain date
- The possession of the property is delivered to the mortgagee
- The transfer is subject to that the mortgagee will return the property to mortgagor after receiving the payment of loan back

V. Mortgage by deposit, of title deeds

- Where a mortgagor deposits a document of title of his immoveable property to a mortgagee or his /her agent, with the intention to keep this document as a security and this transaction is called a mortgage by deposit of title deeds-.It is the most popular with banks.

➤ Essentials

- The document of title deed is deposited as a security
- There is a debt
- On repayment of the loan, the document of title deed is returned to the mortgagor

VI. Anomalous mortgage

- A mortgage other than any of the mortgages explained so far. An anomalous mortgage is such a mortgage which includes a mortgage formed by combination of two or more types of mortgages as explained above.

7) Remedies for mortgagor

Following are the remedies for mortgagor

1. Mortgagor can file a case if property is sold by mortgagee
2. Mortgagor can file a case for money

8) Conclusion

- To conclude i can say that the mortgage may be a thing moveable or immoveable which is handed over by debtor to creditor as a security against the loan taken, and it is returned to debtor when he repays the amount of loan to debtor, there are a lot of kinds of mortgage such as simple mortgage, conditional mortgage and mortgage by deposit of title deed etc.

Q 06: Define gift? How transfer of property is affected by gift? In what way it is different from a gift under Islamic law?

1) Introduction

- Gift is a transfer of a property and is defined in section 122 and 123 of the transfer of property act, 1882. This transfer is such transfer in which no consideration is involved and basic element of the gift is an absence of consideration. You can transfer moveable or immovable property through a gift deed. Like a sale deed, a gift deed contains details of the property, the transferor and recipient. A gift can also be canceled.

2) Relevant provisions:

- Sec. 122, 123 transfer of property act deals with gift

3) Definition of gift

- Gift is transfer of any moveable or immovable property made voluntarily and without consideration by one person to another person is called gift

4) Parties of Gift

Following are the two parties of the gift. Details are as under.

a) Donor

- Donor is a person who donates his property as a gift to other

b) Donee

- Donee is a person to whom property is donated by donor

5) Essentials of a valid gift

Following are the essentials of a gift.

i. Number of parties

- Presence of the two parties is necessary for validity of gift deed where one party is called donor and other is called donee.

ii. Subject matter of gift

- The subject matter of the gift should be movable or immovable property.

iii. Existence of property

- The property should exist at the time of gift

iv. No Consideration

- The transfer of the property as a gift should be without consideration if such transfer is being made for any amount, in this case it will not be a valid gift

v. Voluntarily

- The transfer of the property as a gift should be voluntarily if the donor has transferred his property under an undue influence in this case, it will not be a valid gift

vi. Acceptance

- The transfer of the property as a gift must be accepted during the life time of donor if the property is being accepted after the death of the donor in this case it will not be a valid gift

6) How transfer of property is affected

Following are the two methods of transfer of property.

✓ **In case of immoveable property**

- In case of transfer of immoveable property as a gift, the property will be transferred by a registered instrument which will be signed by the donor in the presence of at least two witnesses.

✓ **In case of moveable property**

- In case of transfer of moveable property as a gift, the property will be transferred by a registered instrument which will be signed by the donor or by delivery of the property. Such delivery is made in the same way as goods are sold

7) Revocation of gift

Under transfer of property act the gift can be revoked due to many reasons. Following are the some reasons where donor can revoke the gift even after delivery of possession of the property.

- When the gift is given under undue influe
- When the gift is given by the misrepresentation
- When the gift is taken fraudulently
- When the thing given is lost or destroyed
- When the donor has received something in the exchange of a gift
- When the donee is dead
- When the gift is made by a husband to his wife or by a wife to her husband

8) Difference between Muslim law and Transfer of property act

Following are the differences between Muslim law and transfer of property act under gift.

- I. As to moveable property**
 - There is same procedure for moveable property and immoveable property in both Muslim law and transfer of property act
- II. As to immoveable property**
 - There is same procedure for moveable property and immoveable property in both Muslim law and transfer of property act
- III. As to delivery**
 - Under Islamic law, the delivery of property is necessary.
 - Under transfer of property act, the delivery of property is not necessary
- IV. As to written statement**
 - Under Muslim law written instrument is not necessary.
 - Under transfer of property act, written instrument is necessary
- V. As to oral statement**
 - Under Islamic law, the property can be transferred by oral statement.
 - Under transfer of property act, the property can be transferred by oral statement
- VI. As to gift to future property:**
 - Under Islamic law, gift of future property can be made.
 - Under transfer of property act, gift of future property cannot be made.

9) Conclusion

- To conclude I can say that, gift is a form transfer of property without any consideration by one person to another person. The procedure of gift under transfer of property and under Islamic law is different. Any person who is the legal owner of a property can alone make a gift of his property. Basically, a gift is the transfer of something without consideration but such transfer should be voluntarily.

Q 07: Define Principle of subrogation, its kinds and essentials of it?

1) Introduction

- Subrogation is an equitable right and it arises when the insurer settles the claim of the assured, for the entire loss. In other words, the insurer is allowed to stand in the shoes of the assured and is under an obligation to compensate to loss on the place of wrongdoer.
- The principle of subrogation neither terminates nor ends the right of the assured to sue the wrong-doer and recover the damages for the loss. Subrogation only entitles the insurer to receive back the amount paid to the assured, any complaint or petition for recovery of compensation can be filed by the assured or by the insurer as co-plaintiffs.

2) Relevant provision

- Section 92 of the Transfer of the Property Act deals with the principle of Subrogation.

3) Definition

- Subrogation is the replacement of one person in the place of another person with regard to a lawful claim

4) Parties

Following are the two parties of the this principle of subrogation.

1) Insurer

- A company that guarantees to a party in an insurance by an agreement to pay compensation

2) Insured

- a person or organization covered by insurance

5) Types of subrogation

Following are the two types of subrogation.

i. Legal subrogation

- Legal subrogation arises when a person who doesn't owe the debt but pays it to insurer and then gets entitled to receive compensation by the creditor for injuries and losses received by the wrong doer

ii. Conventional subrogation

- Conventional subrogation arises on the contractual obligations of the parties and such contract can be express or implied. The right of subrogation can be claimed only if the insurer has agreed by registered instrument that he shall be liable to compensate the losses received by insured.

iii. Statutory subrogation

- Statutory subrogation is a right that exists only against a wrongdoer and insurer files the petition in order to get the amount of compensation

6) Conditions of subrogation

Following are the conditions of subrogation.

- The amount should be recovered by the wrong doer.
- The amount should be recovered against the full damage
- The partial recovery is not allowed in subrogation.

7) ESSENTIALS OF DOCTRINE OF SUBROGATION

Following are the essentials of subrogation.

i. Recovery of loss

- In case of any loss or damage received by the insured, all the actual value of the loss of the property should be compensated by the insurer to the person insured.

ii. Replacement of person

In case of any loss or damage received by the insured, insured person should be replaced in place of insurer who will bear all the loss and compensate the injured person against his loss

iii. Application of subrogation

- If the assured got compensation from third party before receiving the amount of compensation by insurer, the insurer will not be able to claim compensation from insurer

iv. Personal insurance:

- The doctrine of subrogation does not apply to personal insurance because the doctrine of insurance is not applicable to such insurance. The insurers have no right of action against the third party in respect of the damages.
- For example, if an insured dies due to negligence of a third party his dependent has right to recover the amount of the loss from the third party along with insurance policy amount. No amount of the policy would be subrogated by the insurer

8) SUBROGATION AND SALVAGE

- Subrogation is an equitable doctrine designed to avoid loss and to reimburse an innocent party who has suffered a financial loss. In an insurance context, an insurer which compensates an insured due to a loss caused by a third party is subrogated to the right of the insured to be compensated by that third party.
- Salvage is the equitable right of the insurer to receive the outstanding value of property for which the insurer has paid a total loss.
- Insurers commonly share subrogation and salvage recoveries with the reinsurers with contributed to the loss payments which generated the subrogation and salvage recoveries.

9) Waiver of Subrogation

- Both of the parties of the contract can waive his right of subrogation against other party, and court will not enforce this right.

10) Conclusion

- The doctrine of subrogation provides that if an insurer pays a loss to its insured due to the wrongful act of another, the insurer is subrogated to the rights of the insured and may prosecute a suit against the wrongdoer for recovery of its outlay. ... the right of equitable subrogation, i.e., by operation of law

The land acquisition act 1984

Q 01: Explain the difference between a reference to court under sec. 18 and sec 30 of the act.

1) Introduction

- If the award (amount of compensation) which is not being accepted by the parties, in this case the collector of the award can make reference before the court relating to the award because the land acquisition act 1984 is providing remedy for the collector to make a reference against the award. Along with every reference the Collector shall file notices in the appropriate form duly filled in and shall pay the Court-fees and postal charges payable for service of such notices

2) Relevant provisions

- Section 18 and section 30 of the land acquisition act 1984 is being discussed.

3) Explanation of section 18

- If the plaintiff is not satisfied with the award (amount of compensation) approved by the land acquisition officer. Under section 18 of the land acquisition act, he can make a reference to determine the market value of the property.

4) Explanation of section 30

- When the award (amount of compensation) has been approved under section 11, if any difference arises between the actual amount of land and the amount of compensation which is being given to collector, under section 18 of the land acquisition act 1984 the Collector may refer such difference upon the decision of the Court.

5) Definition of reference

- Any person who has not accepted the award by writing an application to the court in order to get the decision of the court upon any dispute between the two or more persons is called reference.

6) Reference is not an appeal

- An award (amount of compensation) made by the land acquisition officer is a judicial act, same as the reference sent to the court is not an appeal. It is only a request to determine the dispute before the court.

7) Kinds of reference under land acquisition act

Following are the two kinds of references.

- Reference under Sec. 18
- Reference under Sec. 30

8) Difference between reference to court under Sec. 18 and Section 30

Following are the differences between section 18 and section 30.

I. As to rights

- Sec 18 provides the statutory rights.
- Section 30 provides no statutory right

II. As to object

- Object of Sec. 18 is to correct the award.
- Object of Sec. 30 is to settlement of dispute.

III. As to grounds

Section 18 provides following grounds for reference.

- Measurement of the land.
Amount of compensation.
Distribution of the compensation.
- Under Sec 30 only the apportionment is the ground of reference.

IV. As to discretion of collector

- Under Sec. 18 collector has no discretionary power
- Under Sec. 30 collector has discretionary power

V. As to mode

- Under Sec 18 collector cannot refer in his own motion.
- Under Sec. 30, collector can take suomoto action.

VI. As to limitation

- Under section 18, time is limited for filing reference
- Under Sec. 30 time is not limited

VII. As to interest of Govt

- Under section 18, Interest of the Govt is involved
- under Sec. 30, no interest of the Govt is involved

VIII. As to scope

- Section 18 is wider in scope
- Section 30 is narrower in scope

IX. As to person entitled to reference

- Under Sec. 18 persons interested are entitled to reference to the court
- Under Sec. 30, the collector is entitled to reference to the court

X. As to remedy

- Sec. 18 provides remedy for person interested
- Sec. 30 helps only collector in settling dispute

9) Conditions of acquisition of the land

Following are the conditions of the acquisition of the land by the government.

- ✓ Necessary to start work within 5 years
- ✓ If work is not started, land will be returned to owner
- ✓ Approval of 80% of land owners is must and if the project is owned fully by government 70% people should agree
- ✓ Owner can go to court against the acquisition
- ✓ Government can't take cultivable land
- ✓ For individual land, approval of landlord is must

10) Conclusion

To conclude I can say that reference can be made under Sec. 18 and 30 of the land acquisition act but both are different in nature. In section 18 the person interested can file a reference to investigate the actual amount of the property if he is not satisfied with the award. And the section 18 of the land acquisition act 1984 the collector only can settle the dispute arisen between the person interested and collector.

Q # 02: Discuss the procedure of acquisition of land in case of urgency.

1) Introduction

- The Supreme Court has said that the government cannot forcefully acquire private properties by invoking the "urgency clause" unless there was a genuine need.
- If the State has failed to give a fair hearing to the land owners and invoke the urgency clause without proper reason, it would be violation of the fundamental right of the citizens as provided in the constitution. Government has a right to acquire the land for the public purpose. And a land acquisition officer can acquire the possession of land for public purpose.

2) Relevant provisions

- Section 17 of the land acquisition act 1984 deals with acquisition of land under urgency.

3) Definition of urgency

- Under land acquisition act urgency means when government is empowered to acquire the land of the citizens for public purpose for immediate or compulsory action.

4) Definition of collector

- The collector is an officer who is appointed by the provincial government in order to perform administrative functions such as acquisition of land within the district under the provision of constitution

5) Circumstances for acquisition of land

Following are circumstances when land can be acquired.

a. Under ordinary circumstances

- Under the land acquisition act a collector who is an administrative officer of the district can acquire the possession of the land for the public purpose under ordinary circumstance.

b. Under urgency.

- Under the land acquisition act a collector who is an administrative officer of the district can acquire the possession of the land for the public purpose under urgency.

6) Determination of urgency

➤ Case Law

- The declaration of an emergency is a matter to be determined by the government and is not a subject of judicial review.

7) Procedure in urgency

Collector who is an administrative officer of the district on the direction of the provincial government can acquire the possession of land before the expiration of fifteen days from the publication of notice.

8) Essential of procedure in urgency

Following are the essentials of procedure of the urgency.

I. Notice

- The notice should be published for the acquisition of the land by the collector and government must give an order of such kind of acquisition.

II. Measurement of land

- The required land for acquisition should be measured by the collector before acquisition.

III. Mark out of land

- The required land for acquisition should be marked out by the collector before possession.

IV. Nature of land

- The nature of land should be waste whose acquisition of possession is being made by the government for the purpose of public; it should not be a domestic land or cultivable land.

V. Nature of acquisition

- The nature of acquisition of the land should be declared by the collector, whether it would be permanent or temporary acquisition.

VI. Offer of compensation

- There should be an offer of compensation against the acquisition of the possession of the land.

VII. Assessment of compensation

- Before the acquisition of the possession of the land the compensation should be assessed by the collector which will be awarded to the owner of the land.

VIII. Public purpose

The acquisition of the possession of the land should be for the public purpose or for any company.

9) What constitution urgency

- The section 17 of the land acquisition act deals with urgency clause. Land of the public can be acquired by the State for the use of the public at large, or, for a company. To establish the purpose of acquisition of land acquisition is two-fold: firstly to fulfill the needs of Government and companies for their projects, and secondly, to determine and pay compensation to owners. The collector is only the person who can determine whether there is urgency or not.

10) Temporary Acquisition

- Temporary acquisition of waste land is distinguished from permanent acquisition of land in general. When such waste land is needed for any public purpose or for a Company the Provincial Government directs the Collector to procure the temporary acquisition and use the land for the same. Such temporary acquisition will not be exceeded three years from the commencement of the acquisition. Collector should pay the amount agreed upon to them

11) Application of Section 17

- Section 17 of the acquisition of land is applicable to waste land as well as all other lands of the state for the public use.

12) Conclusion

- To conclude it is said that the provincial government can acquire a waste land for the public use or for any company by marking out the land and measuring the land after the assessment of the amount of compensation for the owner of the property. And collector of the district is responsible for this and before such acquisition a notice must be served by him. And collector is a person who can declare the urgency for the declaration of the urgency.

Q # 03: What is the procedure of acquisition of land by companies?

1) Introduction

- A company is an association of a number of individuals formed for some common business. Most of the companies are incorporated under the companies' ordinance 1984. According to the land acquisition act 1984 a company is entitled to acquire the land for public purpose. No company can acquire the land if there is not public purpose.

2) Relevant provisions

- Section 38, 39,40,41,42, and 43 of the land acquisition act 1984 deals with acquisition of land by company.

3) Definition of Company

- A company is an incorporated association of persons which is formed to run the commercial business of the company.

4) Definition of Public purpose

- Public purpose is a legal term which is used in land acquisition act 1984, where private property is acquired for the beneficial use of public at large after giving the compensation to the owner of that property by companies or government.

5) Basis of acquisition

- Usage of private property for public purpose is based on the following Latin maxim

“Salus Populi Supreme Lex”

This means that benefits of the public are superior to private benefits

6) What are public purposes

Following are the public purpose. Details are as under.

- ✓ Usage of private property by company for public library
- ✓ Usage of private property by company for educational institute
- ✓ Usage of private property by company for industrial area
- ✓ Usage of private property by company for village market
- ✓ Usage of private property by company for residential house for industrial labour
- ✓ Usage of private property by company for settlement of immigrants
- ✓ Usage of private property by company for housing scheme

- ✓ Usage of private property by company for construction of god owns for storage of food
- ✓ Usage of private property by company for rehabilitation of refugees
- ✓ Usage of private property by company for roads and railways
- ✓ Usage of private property by company for accommodation of government servants

7) Essential of procedure of acquisition of land for companies

Following are the essentials of procedure of acquisition of land for companies.

I. Notice

- The notice shall be issued for the acquisition of the land by the collector to the board of revenue to intimate about the area and dimensions to be acquired.

II. Measurement of land

- The required land for acquisition should be measured by the any officer of the company before acquisition.

III. Mark out of land

- The required land for acquisition should be marked out by any officer of the company before acquisition.

IV. Nature of land

- The nature of land should be waste whose acquisition of possession is being made by company for the purpose of public; it should not be a domestic land or cultivable land.

V. Nature of acquisition

- The nature of acquisition of the land should be declared by the officer of a company, whether it would be permanent or temporary acquisition.

VI. Offer of compensation

- There should be an offer of compensation against the acquisition of the possession of the land by the officer of the company.

VII. Assessment of compensation

- Before the acquisition of the possession of the land the compensation should be assessed by the officer of the company which will be awarding to the owner of the land.

VIII. Public purpose

- The acquisition of the possession of the land should be for the public purpose or for any company.

IX. Consent of provincial government

- The consent of the provincial government is necessary to the acquisition of the land by the company.

8) Execution of agreement

In case where the government is satisfied, an agreement shall be made by the government with the company. Following are the terms and conditions of that agreement.\

- i. The company will pay the payment of the acquired land to the government
- ii. Time period will be mentioned in the agreement for which land is being acquired by the company
- iii. Time period shall be mentioned in the agreement in which the construction will be made
- iv. Terms and conditions shall be written in agreement upon which construction is being made
- v. Time of completion shall be written in agreement

9) Publication of agreement

- After execution of an agreement, the provincial government shall published this agreement in the official gazette.

10) Conclusion

- To conclude I can say that under the land acquisition act 1984, any company is entitled to acquire the private land for the public purpose in general, any officer of the company will visit the land , measure the area of land to be acquired, and assess the amount of compensation and send a report to the provincial government about his company's intention, if the government has accepted the report, in this case company can acquire the land for the use of public purpose but existence of public purpose is needed here.

The registration act 1908

Q 01: What are remedies available against sub registrar in case of refusal to registration of document?

1) Introduction

- Under the registration act 1908, a lot of powers have been vested in sub registrar, because he can refuse to register a document without any reason as well as by pointing out multiple reasons. In this case each and every person whose registration of document has been denied by the sub registrar, he can avail different remedies under the light of registration act 1908.

2) Relevant provisions

- Section 71 of the registration act 1908 deals with the remedies avail against the sub registrar.

3) Definition of document

- Document is a piece of written, printed stuff which contains information of the piece of land and serves as an official record is called document

4) Definition of remedy

- It is such penalty when injured person is compensated by the sub registrar against refusal of registration of his document

5) Appointment of sub registrar

- Under the registration act 1908, the provincial government appoints sub registrar, under some circumstance the persons appointed as sub registrar are public officers who perform the duties of registration of the properties. Sub registrar including registrar are responsible to register the properties but also can refuse to do this.

6) Remedies against sub registrar

Following are the remedies available to the aggrieved person against refusal to register his document by the sub registrar.

I. Appeal to registrar

- The aggrieved person can make an appeal in writing to Registrar of the District, along with a copy of refusal order and the document. The appeal can be presented by the appellant himself by his advocate. The appeal shall be preferred within 30 days from the date of refusal order.

II. Law suit in court

- The aggrieved person can file a case through the court of law against the sub registrar, along with a copy of refusal order and the document. The advocate of the aggrieved person will file the case in the court.

III. Damages

- In registration act 1908, damages is a remedy in the shape of money which is given to aggrieved person by the sub registrar against his loss after the refusal of the registration of the document through the court of law

IV. Injunction

- An injunction is also a remedy in registration act 1908, after the submission of application along with the refusal order by the appellant to the court , court determines the case and gives order to sub registrar to register the document

7) Reasons of refusal to registration

Following are the reasons when the sub registrar can refuse to register the document.

i. Time limit

- If the document is presented after prescribed time, in this case the sub registrar can refuse to register the document

ii. Language of document

- If the language of the document is not understandable which is used in district, in this case the sub registrar can refuse to register the document

iii. Location of property

- If the location of the property is not situated in the area of sub registrar or his sub district in this case the sub registrar can refuse to register the document

iv. Minor or lunatic

- If the document is being provided by any minor or by any lunatic, in this case the sub registrar can refuse to register the document

v. Stamp duty

- If the stamp duty is unpaid regarding that property whose document is needed to be registered, in this case the sub registrar can refuse to register the document

➤ **Case law**

It was held that the matter of fixation of the price of the value is between the purchaser and the seller, the seller can sell his property at a price less than the market rate and purchaser can purchase the property at a price higher than the market rate. In this case sub registrar is bound to register the property without making any charges on the property whose stamp duty has been paid.

8) Objectives of remedy

Following are the objectives of remedy.

- The objectives of remedy are the protection of the person's property rights.
- The primary objective of remedy is to compensate the aggrieved person.
- The secondary objective of remedy is to stop sub registrar to abusive use his powers
- The third objective of the remedy is the satisfaction of the aggrieved person

9) Conclusion

To conclude I can say that the sub registrar is an officer who is responsible to register the documents of the properties of his area under the registration act 1908. He is fully authorized if he found any discrepancy in the document such as document is presented for registration after prescribed time or presented by minor, lunatic or any other person who is not entitled to present it. Mean he can refuse the document to register on multiple grounds as well as without any reason.

Q 02: Document which registration is optional? Effects of non-registration of documents.

1) Introduction

- The real purpose of the Registration Act, 1908, is to provide a method of registration of documents, under this provision all kinds of documents need not to be registered compulsorily. There are some of the documents which registration is combined with the discretion of the party. But if a document which is compulsorily registrable, it should be presented for registration before an officer who is competent to register such document which can be read under Section 17 of the Act.

2) Relevant provisions

- Section 17 and 18 of the registration act 1908 deals with the documents which registration is optional.

3) Definition of document

- Document is a piece of written, printed stuff which contains information of the piece of land and serves as an official record is called document.

4) Documents which registration is optional

Any document whose registration is not compulsorily is needed under sec 17, may also be registered under this act. Following are the examples of documents which registration is optional

I. Will

- Under the registration act 1908, will is such document which registration is optional on the discretion of the party who may be registering it or not.

➤ Case law

- The will by a Muslim does not require registration because it can be in writing or verbal will. The registration act does not require a will to get register.

II. Power of attorney

- Under the registration act 1908, power of attorney is such document which registration is optional on the discretion of the party who may be registering it or not.

III. Agreement for partition

- Under the registration act 1908, agreement of partition is such document which registration is optional on the discretion of the party who may be registering it or not.

IV. Agreement to sell

- Under the registration act 1908, agreement sell is such document which registration is optional on the discretion of the party who may be registering it or not.

V. Agreement with tenant

- Under the registration act 1908, This agreement with the tenant can of the period of one year or less than one year and it is such document which registration is optional on the discretion of the party who may be registering it or not.

VI. Agreement of mortgage

- Under the registration act 1908, agreement of mortgage is such document which registration is optional on the discretion of the party who may be registering it or not.

VII. Promissory note

- Under the registration act 1908, promissory note is such document which registration is optional on the discretion of the party who may be registering it or not.

VIII. Deed of gift

- Under the registration act 1908, deed of gift is such document which registration is optional on the discretion of the party who may be registering it or not.

IX. Deed of adoption

- Under the registration act 1908, deed of adoption is such document which registration is optional on the discretion of the party who may be registering it or not.

X. Releases

- Under the registration act 1908, release is such document which registration is optional on the discretion of the party who may be registering it or not.

XI. Contract

- Under the registration act 1908, contracts are such document which registration is optional on the discretion of the party who may be registering it or not.

5) Effects in case of non-registration of documents which registration is optional

Following are the effects if the documents are not registered under the registration act 1908 of which documents registration is optional.

i. As to evidence

- Such document which has not been registered which registration is optional on the discretion of the party, it may be presented as evidence and it will be considered for the same and non-registration of such document does not effect it

ii. As to validity

- Such document which has not been registered which registration is optional on the discretion of the party, it is a valid document in the eye of the law and non-registration of such document does not effect it validity

iii. As to enforceability

- Such document which has not been registered which registration is optional on the discretion of the party, it is enforceable by the law and non-registration of such document does not effect it enforceability

iv. As to performance

- Such document which has not been registered which registration is optional on the discretion of the party, it can be performed by the parties because non-registration of such document does not effect it subject to its performance

6) Conclusion

- To conclude i can say that under registration act 1908 there are certain documents which registration is not compulsorily needed these may be registered or not. It is totally on the discretion of the party under section 17 of this act. Will, agreement to sell, agreement of tenancy, deed of adoption and deed of gift etc. comes under this category.

Q # 03: Discuss the duties and powers of the registering officer?

1) Introduction

- Under the registration act when any documents is introduced for registration to the registration officer, he approves the registration of every document presented before him, the person who is presenting such document must mention the date and put his signature on document and mentions the place of before presentation and gives receiving for the document to person who is presenting the document

2) Relevant provisions

- Section 52-62 of registration act deals with the duties and powers of the registering officer.

3) Definition of registration officer

- Registration officer is a person who is responsible to register the documents and maintains the record of the documents under registration act 1908.

4) Duties of registering officer

Following are the duties of registering officer under registration act 1908.

I. Endorsement of document

- Under the registration act 1908, registration officer is bound to endorse the date, hour, place of presentation of document and the signature of every person who are presenting a document for registration at the time when it is being presented.

➤ Case law

It was held that registrar is not under an obligation of verify the content of the document presented for registration.

II. Issuance of receipt

- Under the registration act 1908, registration officer is bound to issue a receipt to the person who is presenting a document for registration at the time when it is being presented.

III. Copy of document

- Under the registration act 1908, registration officer is bound to attach a copy of the document which has been presented before him for registration in appropriate book according to the order of its admission without delay at the time when it is being presented.

IV. Duty to authenticate the Document

- Under the registration act 1908, registration officer is bound to authenticate the book according to under the instructions of inspector general at the time when it is being presented.

V. Signature and Thumb Impression

- Under the registration act 1908, if the person presenting the document is a literate person, in this case his signature as well as his thumb impression shall be taken on the document which is required to be registered by the registering officer. And if the person presenting is an illiterate person in this case only thumb impression shall be taken.

VI. Issuance of certified copy

- Under the registration act 1908, registration officer is bound to issue a certified copy of the document registered to the person who has applied for copies.

VII. To return the registered document

- Under the registration act 1908, registration officer is bound to return the registered document to the person who has presented the document for registration.

5) Powers of the registering officer

Following are the powers of registering officer under registration act 1908.

i. Power of refusal

- Under the registration act 1908, only the registering officer is a person who has power of refusal to register the document presented for registration before him on valid grounds

ii. Power to delay

- Under the registration act 1908, only the registering officer is a person who has power to delay the process of registration of document presented before him on legal grounds

iii. Power of endorsement

- Under the registration act 1908, only the registering officer is a person who has power of endorsement of the documents presented for registration before him

iv. Power of investigation

- Under the registration act 1908, only the registering officer is a person who has power of investigation to examine the persons who are presenting documents for registration before him whether a person presenting document has a right to present it or not.

v. Power to sign the document

- Under the registration act 1908, only the registering officer is a person who has power of to sign the documents presented for registration before him after complete process

6) Qualifications of the registering officer

Following are the qualifications of the registering officer. Registering officer should be:

- Competent and reliable
- Experienced in dealing with receiving, obtaining and recording personal information from the general public
- Knowledge of the Electoral Division
- An eligible voter in the electoral division where employed as a RO
- Must be available to work
- At least 18 years of age
- A good character person and has not been convicted by the court

7) Conclusion

- To conclude I can say that under the registration act a registering officer is empowered to register a document presented before him. Under some circumstances if he is not satisfied with any document he can refuse to register the document. A lot remedies are available to aggrieved person on such kind of refusal to register the document by the registering officer.

The succession act 1925

Q 01: Explain the succession certificate and when it can be revoked? And what are the remedies against such revocation?

1) Introduction

- Under the succession act 1925, after the death of a person, the property of deceased person under his will gets transferred to his legal heirs who receives rights and obligations of deceased person after receiving succession certificate from the competent court. Under some circumstances there are some reasons which cause the revocation of the succession.

2) Relevant provisions

- Section 370-390 of the succession act 1925 deals with the revocation of succession certificate.

3) Definition of succession certificate

- Succession certificate is such document which is given by the competent court to the legal heir who represents the deceased person to collect the securities and debts of the deceased

4) Meaning of revocation

- It means, the official cancellation of the certificate by the court order is called revocation.

5) Grounds of revocation of succession certificate

Following are the grounds of revocation of succession certificate.

I. Substandard proceedings

- Under the succession act 1925, if the succession certificate was obtained after initiation of substandard proceedings, in this case the court of law can revoke the certificate at any time

II. Fraudulent acquisition

- Under the succession act 1925, if the succession certificate was obtained fraudulently, in this case the court of law can revoke the certificate at any time

III. Concealment of facts

- Under the succession act 1925, if the succession certificate was obtained by concealing the facts from the court related to the case, in this case the court of law can revoke the certificate at any time

IV. Useless certificate

- Under the succession act 1925, if the obtained succession certificate becomes useless under some circumstances , in this case the court of law can revoke the certificate at any time

V. Other proceedings

- Under the succession act 1925, if other proceedings of the court hit the validity or competency of the certificate, in this case the court of law can revoke the certificate at any time.

6) Remedies against revocation

Following are the remedies against the revocation of the succession certificate.

i. Appeal

- If a district judge has revoked the succession certificate in this case a person can make an appeal in the high court against the order of district judge to seek remedy against such revocation

This appeal contains the following procedure.

A. Declaration

- After receiving an appeal the High Court determines the appeal and if the court thinks fit, declares a person to whom the certificate is to be granted.

B. Direction to Judge

- After receiving an appeal the High Court determines the appeal and if the court thinks fit, directs a district judge to grant certificate to a person.

C. Suppression of certificate

- Certificate granted on the order of High Court supersedes all those certificates which have already been granted.

ii. Finality

- Under order of the High court the decision made by District Judge becomes final in favor of appellant and this order cannot be revoked again by the district court.

7) Who can revoke the certificate?

- Only the competent court of law can revoke the succession certificate if there is found any illegality in the process of obtaining the certificate

8) Who can apply for revocation?

- The application for the revocation of the succession certificate can be made by person who has an interest in the succession certification.

9) Who can apply Succession Certificate?

Following are the person who can apply to receive succession certificate.

- Should be sound minded persons
- Should be major person
- Those persons who having an interest in estate of deceased
- Secretary of state
- Those persons who having beneficial interest in the debt or security of deceased person.

10) Applicability of certificate

- Succession Act, 1925 is applicable within the whole republic of Pakistan and all interested persons can get this without any legal restriction regarding issuance of succession certificate.

11) Requirements to obtain succession certificate

- In order to get succession certificate, an interested person need certified death certificate of the deceased along with detail of subject assets, computer national identity card of the legal heirs to submit application for the same.

12) Conclusion

- To conclude I can say under the succession act 1925, this certificate is granted by the court to the heirs of the deceased person after completion due process but there are multiple grounds under the succession act where it may be revoked by the court on application of the person who has an interest in the succession certificate.

Q 02: Under the succession act 1925, what is the will, who can make it and explain in whose favor a will can be effectively made and to what extent?

1) Introduction

- Under the succession act 1925, will mean the legal declaration of the intention of a person towards his property, which he wants to be handed over to whom after his death. It is a one-sided document and takes effect after the death of the testator. Due to any reason this document can be cancelled or altered by the testator at any time as he has power to dispose of his property.

2) Relevant provisions

- Section 2H-59 and 62 of the succession act 1925 deals with will.

3) Meaning of will

- A will means is disposition of the property which takes effect after the death of the testator.

4) Definition of Will

- Will is a legal document in which a person shows his intention that who should receive possession of his property after his death such type of a person's choice in a particular situation is called will

5) Parties of will

Following are the parties of a will.

i. Testator

- Testator is a person who makes a will is known as testator

ii. Legatee

- Legatee is a person in whose favor the will is made is known as legatee.

iii. Executor

- Executor is a person who executes the will in favor of legatee is known as executor

6) Who can make will

Following are the person who can make will. Details are as under.

i. Sound mind

- Under the succession act 1925, each and every person who is of sound mind and owner of a certain property can make a will related to his property in order to appoint someone to collect his property after his death.

ii.Major

- Under the succession act 1925, each and every person who is major and owner of a certain property can make a will related to his property in order to appoint someone to collect his property after his death.

iii.Deaf, Dumb or Blind

- Under the succession act 1925, each and every person who is deaf, dumb or blind and owner of a certain property can make a will related to his property in order to appoint someone to collect his property after his death.

iv.Ordinary insane person

- Under the succession act 1925, each and every person who is ordinary insane and owner of a certain property can make a will related to his property during an interval in which he is of sound mind in order to appoint someone to collect his property after his death.

7) Who cannot make a will

- Under the succession act 1925, no one can make a will when he is in such a state of mind, whether arising from illness or from intoxication or from any other situation that he does not know about the goodness or badness of his deed. Minor and insane also cannot make will.

8) In whose favour will can be made

Following are the person in whose favor the will can be made.

i. An individual.

- Under the succession act 1925, a will can be made in favor of any individual

ii. An institution

- Under the succession act 1925, a will can be made in favor of any institution

iii. A non- Muslim

- Under the succession act 1925, a will can be made in favor of any non-muslim

iv. A minor

- Under the succession act 1925, a will can be made in favor of a minor

v. An insane

- Under the succession act 1925, a will can also be made even in the favor of an insane

9) Essentials of a valid will

Following are the essentials of a valid will.

- The property must be in existence at the time of death of testator
- The property must be able to be transferred
- Testator must be the owner of the property
- There must be a declaration by testator
- There should be an intention to give
- Will should not affect the legal shares of heirs
- Property should not be more than 1/3 of the total property
- The will should not be in favor of legal heirs
- The will should not be in favor of unborn person

10) Mode of revocation

Following are the modes of revocation of a will.

I. Express

- Testator can revoke the will at any time either in express terms or orally or in writing is called express revocation.

II. Implied

- Testator can revoke the will at any time without any express terms either orally or in writing is called implied revocation

11) Kinds of will

Following are the kinds of will.

- Joint will
- Mutual will
- Duplicate will
- Conditional will
- Unconditional will

12) Conclusion

- To conclude I can say that a will is the disposition of property which takes effect at the time of the death of the testator. It does not operate before the death of testator and testator in his life can revoke the will at any time due to any reason or even without any reason. It has a lot of kinds such as conditional will, unconditional etc.

Q 03: What do you understand by domicile? How a new domicile can be acquired.

1) Introduction

- Domicile of an individual is very significant certificate to get government job and for marriage, succession, taxation related issues. To make the matter worst, there is an acute confusion between a domicile certificate and a residence certificate. The interesting part about a domicile is that no one can be without a domicile and no one can have two domiciles. This is logical as well as a person domiciled in a particular place cannot acquire another domicile in any another foreign territory.

2) Relevant provisions

- Section 2H-59 and 610, 11,13,14,15 and 18 of the succession act 1925 deals with domicile.

3) Meaning of domicile

- The word domicile has been abstracted from a Latin word "domus" which means "the place where a person lives"

4) Definition of domicile

- Such place where a person has his legal and permanent residence where he intends to return if currently residing elsewhere and gets registered him with that place.

5) Modes of acquisition of domicile

Following are the modes of acquisition of domicile.

1. By origin of birth

- Under the succession act every person receives a domicile at origin of his birth which is considered his domicile, until he acquires a new domicile. The new domicile, acquired subsequently, is generally called a domicile of choice.

2. By Choice

- Under the succession act, it is the procedure of acquisition of domicile where a person acquires new domicile on his own choice but the domicile of origin continues until he acquires a domicile of choice in another country.

3. By operation of law

- Under the succession act, when domicile is provided to a person by the state, it is called acquisition by operation of law and provision of origin of birth certificate is one of the examples of it.

6) Importance of acquisition of domicile

- Domicile is such document which is important to have for all the individuals of this world. The domicile defines the rights and civil liberties of a person and his duties. Domicile is considered as a very importance document in succession of the property after the death of the person. A person can have a domicile of a country whether he has got a home or not and a person can only have one domicile if that person has got lot of homes.

7) Acquisition of domicile in Pakistan

Under the succession act, if any person who is living in Pakistan for one year he can apply to acquire domicile and following is the method.

- Make a file by attaching a copy of your CNIC, copy of your father's CNIC, 2 passport size pictures, Voter List which include your Father/Mother's Name, Affidavit of domicile and some Forms from nearest court. After completion of documentation, you will have to go with all docs to AC office in your District/Tehsil. And purchase a blank form for domicile of 20 Rupees from shop inside court and and write an application to acquire the domicile and submit application in the court and they will give you a certain date after 15 days for domicile in case of urgency you will have to pay 1000 and domicile will be handed over to you within a few hours.

8) Acquisition of new domicile

- Under the succession act a person is entitled to acquire a new domicile if he has permanently changed his residence from one place to another place after putting an application for acquisition of new domicile.

9) Acquisition of domicile by women after marriage

- Under the succession act after her marriage a women is entitled to acquire the domicile of her husband if she had not the domicile before.

10) Continuance of new domicile

- The newly acquired domicile continues until the previous domicile has not been cancelled

11) Domicile of minor

- Under the succession act, the domicile of the parents from whom he has acquired his domicile of origin, is considered the domicile of the minor, he shall not remain holder of domicile of his parents, once he has received his own domicile

12) Acquisition of domicile by lunatics

- Under the succession act , an insane person who cannot judge whether he is doing good or something bad or even does not know subsequent of his act, cannot acquire a new domicile or a domicile of choice but domicile of origin of his birth will automatically be granted to him by operation of law.

13) Difference between domicile and residence

Following is the difference between domicile and residence.

1. Domicile

- Domicile involves complex issues of law. An individual can be resident in more than one countries at the same time, but can only have one domicile at a time

2. Residence

- Generally the word residence is used to describe a home where someone lives, or the building itself. One person can have many residences but only one domicile.

14) Conclusion

- To conclude i can say that domicile is such certificate which is granted by the provincial government to the citizen of the state or to whom, who is living within the state for one year, succession act provides different modes of acquisition of domicile such as acquisition of new domicile, acquisition of domicile by a women after his marriage or rules related to acquisition of domicile by lunatic. To acquire domicile applicant should have to written an application in Pakistan.