

Property Law - Solved Answer Book, 2022-2024

**PROPERTY LAW**  
**SOLVED ANSWER BOOK**  
**2022, 2023 AND 2024**

*3 Years LL.B. (Honours) - 3rd Semester*  
*Course/Paper: LCC 3.3.3 / Property Law*

**Every answer starts with the exact question, followed by a marks-oriented answer.**

## 2022 - Property Law - Solved Answers

3 Years LL.B. (Hons.) Semester 3 Examination, 2022 | Subject: Property Law | Paper: LCC 3.3.3 | Full Marks: 80

### Group A - Answer all questions (2 x 5 = 10)

**Question (2 marks):** 1(a). What do you mean by "instrument" under Transfer of Property Act, 1882?

**Answer:**

Under Section 3 of the Transfer of Property Act, "instrument" means a non-testamentary instrument. It means a legal document operating during the lifetime of the person executing it, such as a sale deed, mortgage deed, lease deed or gift deed. A will is testamentary and therefore is not an instrument for this definition.

**Question (2 marks):** 1(b). Briefly explain the object of attestation.

**Answer:**

The object of attestation is to provide formal proof that the executant signed or acknowledged the document in the presence of witnesses. It prevents fraud and ensures authenticity. For example, a gift deed of immovable property must be attested by at least two witnesses under Section 123.

**Question (2 marks):** 1(c). What are the two types of Notice under Transfer of Property Act, 1882?

**Answer:**

The two types of notice are actual notice and constructive notice. Actual notice means direct knowledge of a fact. Constructive notice means knowledge which the law imputes to a person because he could have discovered the fact by reasonable inquiry or inspection.

**Question (2 marks):** 1(d). Which provision of the Transfer of Property Act embodies the doctrine of "lis pendens"?

**Answer:**

The doctrine of lis pendens is embodied in Section 52 of the Transfer of Property Act, 1882. It prevents transfers during pendency of litigation from affecting the rights of parties under the decree or order.

**Question (2 marks):** 1(e). Is Equity of redemption an immovable property?

**Answer:**

Yes. Equity of redemption is treated as an interest in immovable property. It is the mortgagor's right to redeem the mortgage by paying the mortgage money, and this right is transferable and inheritable unless lawfully extinguished.

### Group B - Answer any three of the following questions (10 x 3 = 30)

**Question (10 marks):** 2. State the exception to the general rule that property of any kind may be transferred.

**Answer:**

Section 6 of the Transfer of Property Act, 1882 states the general principle that property of any kind may be transferred, except where transfer is prohibited by the Act or by any other law. Thus, transferability is the rule and non-transferability is the exception.

The important exceptions are: (i) the chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any mere possibility of a like nature cannot be transferred; (ii) a mere right of re-entry for breach of condition subsequent cannot be transferred apart from the property affected; (iii) an easement cannot be transferred apart from the dominant heritage; (iv) an interest restricted in enjoyment to the owner personally cannot be transferred; (v) a right to future maintenance cannot be transferred; (vi) a mere right to sue cannot be transferred; (vii) public offices and salaries of public officers cannot be transferred; (viii) stipends allowed to military, naval, air-force and civil pensioners and political

pensions cannot be transferred; and (ix) transfers opposed to the nature of the interest, unlawful objects or persons legally disqualified are invalid.

The object is to prevent trade in uncertain expectancies, personal claims and public duties. Property law favours free circulation of property, but the Act protects personal rights, public policy and rights which have no independent proprietary existence.

**Question (10 marks):** 3. Discuss the legality of transfer for the benefit of unborn person.

**Answer:**

However, property may be transferred for the benefit of an unborn person by using the mechanism of Section 13. The transfer must first create a prior interest in favour of a living person. After that prior interest comes to an end, the unborn person may take the property, provided the unborn person comes into existence before the termination of the prior interest and the transfer gives him the whole of the remaining interest of the transferor.

The conditions are: first, there must be a transfer of property. Secondly, the transfer must not be directly to the unborn person. Thirdly, a prior life interest or other prior interest must be created in favour of a living person. Fourthly, the unborn person must be in existence when the prior interest ends. Fifthly, the unborn person must take the entire remaining interest and not a limited estate. If only a life estate is created in favour of the unborn person, the disposition is void because Section 13 insists on the whole residue of the transferor's interest.

Illustration: A transfers property to B for life and then to B's first son absolutely. If the son is born before B's life interest ends, the son takes the property. But if A transfers property to B for life, then to B's unborn son for life, and thereafter to C, the gift to the unborn son is invalid because the unborn son is not given the whole remaining interest.

**Question (10 marks):** 4. Explain the doctrine of 'feeding the grant by estoppel' as embodied in the Transfer of Property Act, 1882.

**Answer:**

The doctrine of feeding the grant by estoppel is contained in Section 43 of the Transfer of Property Act, 1882. It applies where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer it for consideration. If that person subsequently acquires an interest in the property, the transferee may, at his option, require that the after-acquired interest be used to make the earlier transfer effective.

The essential conditions are: (i) the transferor must have made a fraudulent or erroneous representation that he had authority to transfer; (ii) the transfer must be for consideration; (iii) the transferor must subsequently acquire interest in the same property; (iv) the contract of transfer must still subsist; and (v) the transferee must elect to take the benefit.

Illustration: A, who has no title to land, sells it to B for consideration representing that he is owner. Later A inherits the land. B can compel A to perfect the transfer in his favour. The doctrine protects a bona fide transferee who relied on the representation.

The proviso protects a subsequent transferee for consideration without notice. Therefore, if A after acquiring title sells to C, and C purchases in good faith without notice of B's claim, B cannot defeat C.

**Question (10 marks):** 5. Define sale. What are the essential elements of a valid sale of immovable property?

**Answer:**

Section 54 of the Transfer of Property Act, 1882 defines sale as a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. The essentials of a valid sale are: (i) parties competent to transfer and acquire; (ii) subject matter must be immovable property; (iii) there must be transfer of ownership and not merely possession; (iv) consideration must be price, that is money; (v) the property must be identifiable; and (vi) statutory formalities must be complied with.

In case of tangible immovable property of value one hundred rupees and upwards, or in case of a reversion or other intangible thing, sale can be made only by a registered instrument. Tangible immovable property below one hundred rupees may be transferred either by registered instrument or by delivery of possession. A contract for sale does not itself create any interest in or charge on the property.

**Group C - Answer any two of the following questions (20 x 2 = 40)**

**Question (20 marks):** 6. State the liabilities of seller and buyer before completion of sale.

**Answer:**

Section 55 of the Transfer of Property Act, 1882 states the rights and liabilities of buyer and seller. These duties operate unless there is a contract to the contrary.

The liabilities of the seller before completion are: (i) to disclose to the buyer any material defect in the property or in the seller's title which the buyer could not discover with ordinary care; (ii) to produce title deeds for inspection; (iii) to answer relevant questions relating to title or property; (iv) to execute a proper conveyance on payment of price; (v) to take reasonable care of the property and title documents between contract and delivery; (vi) to pay all public charges and rent accrued due up to the date of sale; and (vii) to give possession on being required after completion. The seller is also deemed to contract that the interest professed to be transferred subsists and that he has power to transfer it.

The seller's rights before completion include the right to rents and profits until ownership passes, and a charge on the property for unpaid purchase money after ownership passes, where possession has been delivered and the price remains unpaid.

The liabilities of the buyer before completion include: (i) to disclose to the seller facts as to the nature or extent of the seller's interest which materially increase the value of such interest and which the buyer knows but the seller does not; (ii) to pay or tender the price at the time and place of completion; and (iii) after ownership passes, to bear loss arising from destruction, injury or decrease in value not caused by the seller.

The buyer's rights include the benefit of any improvement or increase in value after ownership passes and the rents and profits of the property after ownership passes. He also has a charge on the property for purchase money properly paid by him in anticipation of delivery and for interest where the sale is not completed due to the seller's default.

These provisions ensure fairness in conveyancing by balancing disclosure, payment, title and possession obligations.

**Question (20 marks):** 7. Explain in detail the various kinds of Mortgage under Transfer of Property Act, 1882.

**Answer:**

A mortgage is defined in Section 58(a) of the Transfer of Property Act, 1882 as the transfer of an interest in specific immovable property for the purpose of securing payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to pecuniary liability.

The various kinds of mortgage under Section 58 are:

- Simple mortgage: The mortgagor does not deliver possession but personally binds himself to pay the mortgage money. The mortgagee gets a right to cause the property to be sold through court if payment is not made.
- Mortgage by conditional sale: The mortgagor ostensibly sells the property on condition that the sale shall become absolute on default, or become void on payment, or the buyer shall retransfer on payment. The condition must be embodied in the same document.

- **Usufructuary mortgage:** The mortgagor delivers or agrees to deliver possession to the mortgagee and authorises him to retain possession and receive rents and profits in lieu of interest or principal or both. The mortgagee has no personal remedy unless agreed otherwise.
- **English mortgage:** The mortgagor binds himself to repay on a certain date and transfers the property absolutely to the mortgagee, subject to a proviso for retransfer on repayment.
- **Mortgage by deposit of title deeds:** In notified towns, a debtor delivers documents of title to a creditor with intent to create security. No formal registered instrument is necessary for the creation of the mortgage itself.
- **Anomalous mortgage:** A mortgage which does not fall within the above categories or is a combination of two or more types is called an anomalous mortgage.

The classification is important because remedies differ. In a simple mortgage the remedy is sale; in a mortgage by conditional sale the remedy may be foreclosure; in a usufructuary mortgage the mortgagee enjoys possession and profits; and in an English mortgage there is an absolute transfer subject to redemption.

**Question (20 marks):** 8. Write a note on termination of Lease.

**Answer:**

Section 111 of the Transfer of Property Act, 1882 enumerates the modes by which a lease of immovable property is determined or terminated. Termination of lease means the legal ending of the lessee's right to enjoy the property.

The principal modes are: (i) by efflux of time - where the lease is for a fixed term, it ends when that term expires; (ii) by happening of a specified event - where the lease is conditional on an event, it ends when that event occurs; (iii) by termination of the lessor's interest or power - for example, where a person having only a life interest grants a lease, the lease ordinarily ends when his interest ends; (iv) by merger - where the interests of lessor and lessee become vested in the same person in the same right; (v) by express surrender - where the lessee yields up his interest to the lessor by mutual agreement; (vi) by implied surrender - where conduct of parties shows surrender, such as acceptance of a new lease inconsistent with the old; (vii) by forfeiture - where the lessee breaches an express condition, denies the lessor's title, or becomes insolvent where the lease so provides, and the lessor gives notice of his intention to determine the lease; and (viii) by expiry of notice to quit or notice of intention to quit under Section 106.

Section 106 is relevant where there is no contract or local law to the contrary. A lease for agricultural or manufacturing purposes is deemed to be from year to year, terminable by six months' notice expiring with the end of a year of tenancy. Other leases are generally deemed to be from month to month, terminable by fifteen days' notice expiring with the end of a month of tenancy.

After determination, the lessee must restore possession to the lessor. If he remains without consent, he may become a tenant at sufferance. If the lessor accepts rent or otherwise assents to continued possession, the case may become holding over under Section 116.

**Question (20 marks):** 9. State the rights and liabilities of a mortgagee.

**Answer:**

A mortgagee is the person in whose favour an interest in specific immovable property is transferred as security. His rights and liabilities depend on the nature of the mortgage and on the Transfer of Property Act, 1882.

The rights of a mortgagee include: (i) right to recover the mortgage money where a personal covenant exists; (ii) right to bring a suit for sale in a simple mortgage; (iii) right to foreclosure in cases where the Act permits foreclosure, such as mortgage by conditional sale; (iv) right to possession and enjoyment of rents and profits in a usufructuary mortgage; (v) right to spend necessary money to preserve the property, support title or renew leases, and add it to the mortgage money; (vi) right to accession to the mortgaged property where the security

is enhanced; (vii) right to benefit of renewed lease in certain cases; and (viii) right to marshalling or contribution in appropriate circumstances.

The liabilities of a mortgagee in possession are stated mainly in Section 76. He must manage the property as a person of ordinary prudence would manage his own. He must use best endeavours to collect rents and profits, pay government revenue and public charges from income, make necessary repairs, not commit destructive acts, keep accounts, and credit receipts towards interest and principal as required. He is liable for loss caused by his wilful default or gross negligence.

The mortgagee cannot impose a clog on redemption. Since the mortgagor's right to redeem is fundamental, any term which prevents or unfairly restricts redemption is invalid. The mortgagee's position is that of a secured creditor, not absolute owner, except to the extent allowed by law and decree.

## 2023 - Property Law - Solved Answers

3 Years LL.B. (Honours) 3rd Semester Examination, 2023 (CBCS) | Subject: Property Law | Course: LCC  
3.3.3 | Full Marks: 80

### Group A - Answer the following questions (2 x 5 = 10)

**Question (2 marks):** 1(a). Give two examples of non-transferable property.

**Answer:**

Two examples are: (i) a mere right to sue, such as a right to claim damages for breach of contract; and (ii) a chance of succession of an heir-apparent, such as the chance of a son inheriting his father's property during the father's lifetime.

**Question (2 marks):** 1(b). Who is an ostensible owner?

**Answer:**

An ostensible owner is a person who appears to be the owner of immovable property with the express or implied consent of the real owner, though he is not the real owner. Section 41 protects a transferee from such ostensible owner if the transferee acts in good faith, pays consideration and makes reasonable inquiry.

**Question (2 marks):** 1(c). State two essentials of a valid sale.

**Answer:**

Two essentials are: (i) there must be transfer of ownership in immovable property; and (ii) the transfer must be in exchange for a price paid, promised, or part-paid and part-promised. For property of value Rs. 100 and above, registration is compulsory.

**Question (2 marks):** 1(d). What do you mean by mortgagor's right of redemption?

**Answer:**

Mortgagor's right of redemption is the right to recover the mortgaged property by paying or tendering the mortgage money after it becomes due. It is recognised in Section 60 of the Transfer of Property Act and cannot be clogged or unfairly restricted.

**Question (2 marks):** 1(e). Mention two situations when a lease may be terminated.

**Answer:**

Two situations are: (i) by efflux of the time limited by the lease; and (ii) by forfeiture, for example where the lessee breaches an express condition and the lessor gives notice of intention to determine the lease.

### Group B - Answer any three questions (10 x 3 = 30)

**Question (10 marks):** 2. What is meant by immovable property? Explain with illustration.

**Answer:**

The Transfer of Property Act, 1882 does not give an exhaustive definition of immovable property. Section 3 states negatively that immovable property does not include standing timber, growing crops or grass. The General Clauses Act, 1897 gives a wider definition and includes land, benefits arising out of land, and things attached to the earth or permanently fastened to anything attached to the earth.

Thus, immovable property includes land, houses, buildings, walls, trees other than standing timber, rights of way, fisheries, ferries, leases, mortgage rights and other benefits arising from land. Things rooted in the earth, embedded in the earth, or attached to what is so embedded are generally immovable if intended for permanent beneficial enjoyment of the land.

Illustrations: A mango tree intended to bear fruit is immovable property, but a tree standing for the purpose of being cut as timber is standing timber and not immovable property under Section 3. A house, a pond, a right to collect rent from land, and a right of way are immovable property.

The test is not merely physical attachment but the purpose and degree of annexation. If attachment is permanent and beneficial to the land, the property is immovable; if it is temporary and intended for removal, it may remain movable.

**Question (10 marks):** 3. Explain the 'rule against perpetuity' highlighting the object of the rule.

**Answer:**

The rule against perpetuity is contained in Section 14 of the Transfer of Property Act, 1882. It provides that no transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of transfer and the minority of a person who is in existence at the expiration of that period and to whom the interest is to belong.

The object of the rule is to prevent property from being tied up for an indefinite period. Law favours free circulation and alienability of property. If a transferor could control property for generations, it would restrict commerce, family settlements and social utility of property.

The permissible period is: lives of persons in existence at the date of transfer plus the minority of the ultimate beneficiary. The interest must vest within that period. If vesting is postponed beyond the permitted period, the transfer is void to that extent.

Illustration: A transfers property to B for life, then to B's unborn son when he attains 25 years. The gift may be void because vesting is postponed beyond minority. But a transfer to B for life and then to B's unborn son absolutely on attaining majority is valid if the son exists at the end of B's life estate.

The rule applies to transfer of property inter vivos and must be read with Section 13 relating to unborn persons.

**Question (10 marks):** 4. Write a note on 'Doctrine of Election' with suitable illustrations.

**Answer:**

The doctrine of election is embodied in Section 35 of the Transfer of Property Act, 1882. It means that where a person transfers property which he has no right to transfer, and as part of the same transaction confers a benefit on the true owner, the true owner must elect either to confirm the transfer and take the benefit, or to dissent from the transfer and give up the benefit.

The principle is based on equity: a person cannot approbate and reprobate in the same transaction. He cannot accept the benefit under an instrument and at the same time reject the burden imposed by that instrument.

The essentials are: (i) the transferor must profess to transfer property which he has no right to transfer; (ii) the true owner must be given some benefit under the same instrument; (iii) the benefit must be direct and not merely incidental; (iv) the owner must have knowledge of his rights and of the circumstances; and (v) he must choose either to accept or reject the transaction.

Illustration: A transfers B's land to C and by the same deed gives Rs. 50,000 to B. B must elect. If B accepts the money, he must allow C to take the land. If B wants to keep the land, he must give up the benefit. Where he dissents, compensation may be payable to the disappointed transferee to the extent provided in Section 35.

The doctrine protects consistency in legal dealings and prevents unjust enrichment.

**Question (10 marks):** 5. The doctrine of Part-performance is an equitable doctrine. - Explain.

**Answer:**

The doctrine of part-performance is contained in Section 53A of the Transfer of Property Act, 1882. It is an equitable doctrine which protects a transferee who has acted on a contract for transfer of immovable property, although the formal transfer has not been completed in the manner required by law.

The necessary conditions are: (i) there must be a contract to transfer immovable property for consideration; (ii) the contract must be in writing and signed by the transferor or on his behalf; (iii) the terms must be ascertainable with reasonable certainty; (iv) the transferee must have taken possession, or continued in possession, in part-performance of the contract; (v) the transferee must have done some act in furtherance of the contract; and (vi) the transferee must have performed or be willing to perform his part of the contract.

The effect of Section 53A is defensive, not offensive. It does not create title in the transferee. It merely prevents the transferor or any person claiming under him from enforcing rights inconsistent with the contract, except rights of a transferee for consideration without notice.

For example, A agrees in writing to sell land to B, receives substantial consideration, and puts B in possession. If A later tries to evict B merely because a registered sale deed has not been executed, B can rely on Section 53A as a shield, provided he is ready and willing to perform his obligations.

### **Group C - Answer any two questions (20 x 2 = 40)**

**Question (20 marks):** 6. There cannot be any direct transfer to an unborn person. - Explain this statement emphasising the provisions relating to transfer of property for the benefit of an unborn person.

**Answer:**

Under the Transfer of Property Act, 1882 there cannot be a direct transfer of property to an unborn person because Section 5 defines transfer as an act by which a living person conveys property to one or more other living persons. An unborn person is not a living person in the eye of law and therefore cannot be the direct transferee.

However, property may be transferred for the benefit of an unborn person by using the mechanism of Section 13. The transfer must first create a prior interest in favour of a living person. After that prior interest comes to an end, the unborn person may take the property, provided the unborn person comes into existence before the termination of the prior interest and the transfer gives him the whole of the remaining interest of the transferor.

The conditions are: first, there must be a transfer of property. Secondly, the transfer must not be directly to the unborn person. Thirdly, a prior life interest or other prior interest must be created in favour of a living person. Fourthly, the unborn person must be in existence when the prior interest ends. Fifthly, the unborn person must take the entire remaining interest and not a limited estate. If only a life estate is created in favour of the unborn person, the disposition is void because Section 13 insists on the whole residue of the transferor's interest.

Illustration: A transfers property to B for life and then to B's first son absolutely. If the son is born before B's life interest ends, the son takes the property. But if A transfers property to B for life, then to B's unborn son for life, and thereafter to C, the gift to the unborn son is invalid because the unborn son is not given the whole remaining interest.

The rule must also be read with Section 14, the rule against perpetuity. Even if Section 13 is complied with, the interest must vest within the lifetime of one or more living persons and the minority of the person who is to take absolutely. The combined effect is that property can be settled for unborn persons, but only within a legally controlled period and only by vesting an absolute interest after the prior estate.

**Question (20 marks):** 7. Discuss the doctrine of 'Lis Pendens' highlighting the essential conditions for application of this doctrine.

**Answer:**

The doctrine of lis pendens is incorporated in Section 52 of the Transfer of Property Act, 1882. The expression means a pending litigation. The rule is that during the pendency of a suit or proceeding in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with so as to affect the rights of any party under the decree or order that may be passed, except under the authority of the court.

The doctrine is not founded on notice but on necessity. If parties were allowed to transfer property freely during litigation, every decree could be defeated by private dealings, and litigation would never end. The rule therefore preserves the subject matter of the dispute until the court decides the rights of the parties.

The essential conditions are: (i) there must be a suit or proceeding pending in a competent court; (ii) the suit must not be collusive; (iii) a right to immovable property must be directly and specifically in question; (iv) the property must be transferred or otherwise dealt with during the pendency; and (v) the transfer must affect the rights of the other party under the decree or order.

The pendency begins from the date of presentation of the plaint or institution of the proceeding and continues until the final decree or order has been obtained and complete satisfaction or discharge has taken place. A transfer pendente lite is not void. It is valid between the parties to the transfer, but it remains subject to the result of the litigation. The transferee is bound by the decree as if he were a party to the suit.

Illustration: A sues B for specific performance of a contract relating to land. During the suit B sells the land to C. C's sale is not void, but C takes the property subject to the decree. If A succeeds, C cannot defeat A's right by saying that he purchased during the suit.

**Question (20 marks):** 8. What are the Rights and Liabilities of a Lessee in a valid lease?

**Answer:**

A lease of immovable property is defined in Section 105 of the Transfer of Property Act, 1882 as a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee. The transferor is called the lessor, the transferee is called the lessee, the price is called premium, and the periodical payment is called rent.

The rights and liabilities of the lessee are primarily stated in Section 108. The rights of a lessee include: (i) right to possession and peaceful enjoyment during the lease; (ii) right to accretions to the leased property during the lease, subject to the contract; (iii) right to avoid the lease if the property is destroyed or rendered substantially unfit by fire, tempest, flood, violence or other irresistible force; (iv) right to make necessary repairs after notice to lessor and deduct the cost from rent where the lessor neglects to repair; (v) right to recover payments made to protect the lessor's title; (vi) right to remove things attached to the earth by the lessee during the lease, provided he leaves the property in the state in which he received it; and (vii) right to transfer his interest absolutely or by mortgage/sub-lease, unless restricted by contract.

The liabilities of the lessee include: (i) duty to disclose to the lessor any fact as to the nature or extent of the lessor's interest which materially increases the value of such interest and of which the lessee is aware; (ii) duty to pay rent or premium at the proper time and place; (iii) duty to keep the property in as good condition as it was at commencement, subject to reasonable wear and tear; (iv) duty to allow the lessor to inspect the property; (v) duty not to commit waste or use the property for a purpose different from the lease; (vi) duty not to erect permanent structures except for agricultural purposes without the lessor's consent; and (vii) duty to put the lessor into possession on termination.

A valid lease therefore creates a proprietary right of enjoyment, not merely a personal permission. It must involve competent parties, identifiable immovable property, transfer of right to enjoy, duration, consideration and compliance with the formalities of Section 107 where applicable.

**Question (20 marks):** 9. What are the essentials of a valid gift and explain the validity of a gift which is made to two persons jointly where one doesn't accept it.

**Answer:**

Section 122 of the Transfer of Property Act, 1882 defines gift as the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee, and accepted by or on behalf of the donee.

The essentials of a valid gift are: (i) there must be a donor competent to contract; (ii) there must be a donee capable of accepting the gift; (iii) the subject matter must be existing property, movable or immovable; (iv) the transfer must be voluntary and free from coercion, undue influence, fraud or misrepresentation; (v) there must be no consideration; (vi) the gift must be accepted during the lifetime of the donor and while he is capable of giving; and (vii) in the case of immovable property, Section 123 requires a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

Acceptance is very important. Without acceptance there is no completed gift. Acceptance may be express or implied from conduct, such as taking possession, receiving title deeds, or mutation where appropriate. If the donee dies before acceptance, the gift is void.

Where a gift is made to several persons and one of them does not accept it, Section 125 applies. The gift is valid as to the shares accepted by the accepting donees and void as to the share of the donee who does not accept. Therefore, non-acceptance by one joint donee does not necessarily destroy the entire gift, unless the nature of the gift shows that it was intended to take effect only jointly and indivisibly.

Illustration: A gifts a house in equal shares to B and C. B accepts and C refuses. The gift is valid as to B's share and void as to C's share. The rejected share remains with the donor, unless the deed validly provides otherwise.

## 2024 - Property Law - Solved Answers

3 Years LL.B. (Honours) 3rd Semester Examination, 2024 (CBCS) | Subject: Property Law | Course: LCC  
3.3.3 | Full Marks: 80

### Group A - Answer the following questions (2 x 5 = 10)

**Question (2 marks):** 1(a). Give two examples of properties which are considered as Non-transferable under the Transfer of Property Act, 1882.

**Answer:**

Two examples are: (i) a mere right to sue, such as a personal claim for damages; and (ii) a future right of maintenance. Both are personal rights and cannot be transferred under Section 6 of the Transfer of Property Act.

**Question (2 marks):** 1(b). State the legality of transfer of property made directly to an unborn person.

**Answer:**

A direct transfer to an unborn person is not valid because Section 5 requires transfer between living persons. Under Section 13, a transfer may be made for the benefit of an unborn person only by first creating a prior interest in favour of a living person and then giving the unborn person the whole remaining interest.

**Question (2 marks):** 1(c). State two points of distinction between Vested interest and Contingent interest.

**Answer:**

First, vested interest under Section 19 is a present fixed right to future enjoyment, whereas contingent interest under Section 21 depends on happening or non-happening of an uncertain event. Secondly, vested interest is generally heritable, but contingent interest fails if the contingency does not occur.

**Question (2 marks):** 1(d). Who is an Ostensible Owner?

**Answer:**

An ostensible owner is a person who appears to be the owner of immovable property with the consent, express or implied, of the real owner. A transfer by him may bind the real owner under Section 41 if the transferee acts in good faith, pays consideration and makes reasonable inquiry.

**Question (2 marks):** 1(e). Define anomalous mortgage.

**Answer:**

An anomalous mortgage is a mortgage which is not a simple mortgage, mortgage by conditional sale, usufructuary mortgage, English mortgage, or mortgage by deposit of title deeds, or which combines features of two or more of these mortgages. It is recognised under Section 58(g).

### Group B - Answer any three questions (10 x 3 = 30)

**Question (10 marks):** 2. What is clog on redemption and how does it affect mortgages under Transfer of Property Act?

**Answer:**

Clog on redemption means any term, condition or device in a mortgage transaction which prevents, obstructs or unfairly restricts the mortgagor's right to redeem the mortgage. Section 60 of the Transfer of Property Act gives the mortgagor the right to redeem after the mortgage money becomes due, unless the right has been extinguished by act of parties or decree of court.

The principle is expressed in the maxim: once a mortgage, always a mortgage. A mortgage is only a security for debt; it cannot be converted into an absolute transfer by oppressive conditions. Therefore, a clause which says that the mortgagor can never redeem, or can redeem only after an unconscionably long period, or must sell the property to the mortgagee on default, may be treated as a clog.

The effect is that such a condition is invalid or unenforceable, while the mortgage itself may remain valid. The court examines the substance of the transaction, bargaining position, length of term, adequacy of consideration and surrounding circumstances. The purpose is to preserve the equitable and statutory right of redemption.

**Question (10 marks):** 3. Write a note on Mortgagor's right on Accession to the mortgaged property after redemption, highlighting the various kinds of accession.

**Answer:**

Accession means addition or increase to property. Sections 63 and 63A of the Transfer of Property Act deal with the mortgagor's right to accession on redemption. When mortgaged property has received any accession during the continuance of the mortgage, the mortgagor is entitled to that accession upon redemption, unless there is a contract to the contrary.

Accession may be natural or artificial. Natural accession occurs by operation of nature, such as alluvial increase to land by river action. Artificial accession occurs by human act, such as construction of a building, improvement, installation or other addition made to the property.

If the accession was made at the mortgagee's expense and was necessary to preserve the property from destruction, forfeiture or sale, or was made with the mortgagor's consent, the mortgagor may have to pay the cost as part of redemption. If it was unnecessary or made without authority merely for the mortgagee's convenience, the mortgagee may not be entitled to charge it.

The rule is consistent with redemption: when the security is redeemed, the mortgagor gets back the property with its lawful accessions, subject to reimbursing necessary expenditure where the Act permits.

**Question (10 marks):** 4. Explain with illustration the concept of Marshalling securities under the Transfer of Property Act.

**Answer:**

Marshalling securities is dealt with in Section 81 of the Transfer of Property Act, 1882. Where the owner of two or more properties mortgages them to one person and then mortgages one or more of those properties to another person, the subsequent mortgagee is entitled, in the absence of a contract to the contrary, to have the prior mortgage debt satisfied out of the properties not mortgaged to him, so far as this can be done without prejudice to the prior mortgagee or other persons.

The object is equitable adjustment between mortgagees. The first mortgagee has security over several properties. The second mortgagee has security over fewer properties. Therefore, if possible, the first mortgagee should realise his debt from the properties not included in the second mortgage, leaving the second mortgagee's security intact.

Illustration: A owns properties X, Y and Z. A mortgages X, Y and Z to B for Rs. 10 lakh. Later A mortgages X only to C for Rs. 5 lakh. C can ask that B should first proceed against Y and Z, if B can be fully satisfied from them without prejudice. If Y and Z are insufficient, B may proceed against X also.

Marshalling cannot defeat the rights of the prior mortgagee. It is available only so far as it does not prejudice the prior mortgagee or a person claiming under him.

**Question (10 marks):** 5. Distinguish between 'Tenant-at-Sufferance' and 'Tenant by Holding over'.

**Answer:**

A tenant at sufferance is a person who entered possession lawfully under a lease but continues in possession after the lease has been determined, without the consent or assent of the landlord. His possession is not initially wrongful, but his continuance is without authority. He has no fresh tenancy and may be evicted according to law.

A tenant by holding over arises under Section 116 of the Transfer of Property Act. If a lessee remains in possession after determination of the lease and the lessor accepts rent or otherwise assents to his continued

possession, a new tenancy is created. Depending on the purpose, it may be from year to year or month to month.

The main distinctions are: (i) tenant at sufferance continues without landlord's assent; tenant by holding over continues with landlord's assent; (ii) tenant at sufferance has no new tenancy; holding over creates a fresh tenancy; (iii) acceptance of rent is absent in tenancy at sufferance but is important evidence of holding over; and (iv) tenant at sufferance is closer to wrongful occupation, while tenant by holding over has lawful tenancy rights until properly terminated.

**Group C - Answer any two questions (20 x 2 = 40)**

**Question (20 marks):** 6. Explain the modes of creating lease with suitable illustrations.

**Answer:**

A lease may be created by the modes recognised in Sections 105 and 107 of the Transfer of Property Act, 1882. Section 105 defines lease as transfer of the right to enjoy immovable property for a certain time or in perpetuity in consideration of premium, rent, service, share of crops or any other thing of value. Section 107 prescribes the mode of making leases.

First, a lease from year to year, or for any term exceeding one year, or reserving yearly rent can be made only by a registered instrument. Registration is compulsory because such leases create a substantial interest in immovable property.

Secondly, all other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Therefore, a short monthly tenancy may be created by oral agreement if possession is delivered, unless local law requires registration.

Thirdly, where a lease is made by a registered instrument, the instrument must be executed by both lessor and lessee. This ensures consent of both parties to the terms of the lease.

Fourthly, leases may arise by implication from conduct. For example, if a landlord lets a person occupy premises and regularly accepts monthly rent, a monthly tenancy may be inferred, subject to the facts and law.

Fifthly, holding over under Section 116 may create a new tenancy. If a lessee remains in possession after determination of lease and the lessor accepts rent or otherwise assents to continued possession, the lease is renewed from year to year or month to month according to the purpose of the lease.

Illustration: A lets a shop to B for three years. The lease must be by registered instrument. If A lets a room to B on monthly rent and puts B in possession, the lease may be created by oral agreement and delivery of possession. If B continues after expiry and A accepts rent, a tenancy by holding over may arise.

**Question (20 marks):** 7. Explain the concept of Actionable claim highlighting the provisions of Transfer of actionable claim under the Transfer of Property Act.

**Answer:**

Section 3 of the Transfer of Property Act, 1882 defines actionable claim as a claim to any debt, other than a debt secured by mortgage of immovable property, hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the claimant's possession, actual or constructive, which civil courts recognise as affording grounds for relief. The claim may be existing, accruing, conditional or contingent.

Examples of actionable claims include unsecured debts, arrears of rent, claims under a life insurance policy, and a beneficial interest in movable property not in possession. A secured debt is excluded because the security itself gives a proprietary remedy.

Transfer of actionable claims is governed by Sections 130 to 137 of the Act. Section 130 provides that transfer of an actionable claim must be effected by an instrument in writing signed by the transferor or his duly authorised agent. The transfer becomes complete and effectual upon execution of the instrument, and all rights and remedies of the transferor vest in the transferee, whether or not notice is given to the debtor. However,

notice is practically important because payment by the debtor to the original creditor before notice may protect the debtor.

The transferee may sue in his own name without making the transferor a party. The transferee takes the claim subject to all liabilities and equities to which the transferor was subject at the date of transfer. For example, if the debtor had a valid set-off against the transferor before receiving notice, the transferee may be affected by it.

Section 136 restricts certain persons connected with courts, such as judges, legal practitioners and court officers, from buying actionable claims for purposes contrary to policy. Section 137 excludes negotiable instruments, government securities and certain other instruments from this chapter because they are governed by special laws.

Thus, an actionable claim is transferable property, but its transfer requires written assignment and is subject to equities.

**Question (20 marks):** 8. Write a note on termination of Lease.

**Answer:**

Section 111 of the Transfer of Property Act, 1882 enumerates the modes by which a lease of immovable property is determined or terminated. Termination of lease means the legal ending of the lessee's right to enjoy the property.

The principal modes are: (i) by efflux of time - where the lease is for a fixed term, it ends when that term expires; (ii) by happening of a specified event - where the lease is conditional on an event, it ends when that event occurs; (iii) by termination of the lessor's interest or power - for example, where a person having only a life interest grants a lease, the lease ordinarily ends when his interest ends; (iv) by merger - where the interests of lessor and lessee become vested in the same person in the same right; (v) by express surrender - where the lessee yields up his interest to the lessor by mutual agreement; (vi) by implied surrender - where conduct of parties shows surrender, such as acceptance of a new lease inconsistent with the old; (vii) by forfeiture - where the lessee breaches an express condition, denies the lessor's title, or becomes insolvent where the lease so provides, and the lessor gives notice of his intention to determine the lease; and (viii) by expiry of notice to quit or notice of intention to quit under Section 106.

Section 106 is relevant where there is no contract or local law to the contrary. A lease for agricultural or manufacturing purposes is deemed to be from year to year, terminable by six months' notice expiring with the end of a year of tenancy. Other leases are generally deemed to be from month to month, terminable by fifteen days' notice expiring with the end of a month of tenancy.

After determination, the lessee must restore possession to the lessor. If he remains without consent, he may become a tenant at sufferance. If the lessor accepts rent or otherwise assents to continued possession, the case may become holding over under Section 116.

**Question (20 marks):** 9. Explain the term 'Easement' and illustrate the various kinds of Easements.

**Answer:**

An easement is a right possessed by the owner or occupier of one land to do something, or to prevent and continue to prevent something, in or upon or in respect of another land, for the beneficial enjoyment of his own land. The land for whose benefit the right exists is the dominant heritage, and the land over which the right is exercised is the servient heritage. The owner of the first is the dominant owner and the owner of the second is the servient owner.

The essential elements are: (i) there must be a dominant and a servient heritage; (ii) they must belong to different owners; (iii) the easement must benefit the dominant heritage; (iv) the right must be capable of forming the subject matter of a grant; (v) it must be sufficiently definite; and (vi) it cannot exist independently of the dominant heritage.

Important kinds of easements include: (a) continuous easements, whose enjoyment does not require human intervention, such as a drain; (b) discontinuous easements, whose enjoyment requires human act, such as right of way; (c) apparent easements, visible by permanent sign, such as a window or water channel; (d) non-apparent easements, which have no permanent visible sign; (e) positive easements, which allow doing an act on another's land; (f) negative easements, which restrict the servient owner from doing something; (g) easement of necessity, arising when property is severed and one part cannot be enjoyed without a right over another part; (h) quasi-easement, which existed as a facility before severance and becomes an easement after transfer; and (i) prescriptive easement, acquired by long, open, peaceable and as-of-right enjoyment for the statutory period.

Illustration: A owns land surrounded by B's land and has no access to a public road except through B's land. A may claim an easement of necessity. Similarly, if A has enjoyed a right of way openly and as of right for the statutory period, he may claim an easement by prescription.

## **Indicative Legal References**

- Transfer of Property Act, 1882 - Sections 3, 5, 6, 13, 14, 19, 21, 35, 41, 43, 52, 53A, 54, 55, 58, 60, 63, 63A, 76, 81, 105, 106, 107, 108, 111, 116, 122, 123, 125 and 130-137.
- General Clauses Act, 1897 - definition of immovable property.
- Indian Easements Act, 1882 - basic concept and kinds of easements.
- Commonly cited principles: once a mortgage always a mortgage; nemo dat quod non habet; equity prevents approbation and reprobation.