



Telangana

Judicial Services Exam

CIVIL JUDGE (Junior Division)

Volume - 6

Transfer of Property Act 1882, The Registration Act 1908, The
Commercial Courts Act 2015 & The Indian Succession Act 1925



Transfer of Property Act, 1882

Maxims related to doctrines under the TPA (Section-wise)

Section 3 (Doctrine of Constructive Notice):

- Where a person doesn't actually know a fact, the court presumes knowledge under the circumstances. This means they are deemed to have notice, even without direct information. It ensures due diligence in property transactions.

Section 3 (Animo Attestandi):

- This refers to the intention to attest. It's crucial for valid attestation of documents like mortgages or wills, signifying the witness's purpose to verify execution.

Section 3 (Quicquid Plantatur solo, solo cedit):

- Whatever is planted in or affixed to the soil, belongs to the soil." This maxim defines what constitutes immovable property, where things attached to the land become part of it.

Quicquid inaedificatur solo, solo cedit (No Section Mentioned):

- Whatever is built into or embedded into or attached to soil becomes part of the earth and consequently whoever is the owner of that piece of land will also become owner of the thing attached or embedded in it." This maxim reinforces that constructions or permanent attachments become part of the land's ownership.

Section 6 (Alienation rei praefertur juri accrescendi):

- Law favours alienation and not accumulation." This principle promotes the free transferability of property and is against tying up property indefinitely. It underlies restrictions on perpetuities and restraints on alienation.

Section 6 (Nemo est heres viventis):

- A living person does not have any heir." This maxim means that until a person dies, their heir's interest is merely an expectancy and cannot be transferred as a vested right. It's about the transferability of contingent interests.

Sections 7, 41, 42, 43 and 44 (Nemo dat quod non habet):

- No one can transfer a better title than he himself has." This fundamental rule prevents a transferor from conveying more rights than they possess in the property. Sections 41, 42, 43, and 44 provide exceptions or elaborations.

Section 8 (Accessorium non dicit, sed sequitur suum principale).

- The accessory does not lead, but follows its principal."
- This maxim underpins Section 8 of the TPA, which states that unless a different intention is expressed or necessarily implied, a transfer of property passes to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof. For example, when a house is sold, its doors, windows, keys, etc., being accessories, also pass to the buyer. Similarly, a transfer of debt also carries the securities for that debt

Section 13 (Doctrine of Double Possibilities):

- This rule prevents the creation of an interest that fetters the free disposition of property for more than one generation. It ensures that property doesn't remain tied up indefinitely for unborn persons.

Section 14 (Rule against Perpetuity):

- No transfer can create an interest that takes effect after the lifetime of persons living at the transfer date, plus the minority of a person who will exist at that period's end. This prevents property from being perpetually tied up.

Section 14: Rule against remoteness of vesting

- This is an alternative name for the Rule against Perpetuity. It addresses the delay in the vesting of an interest in property.

Section 16 (Doctrine of Failure of Prior Interest):

- If a prior interest in a property transfer fails under Section 13 (unborn person) or 14 (perpetuity), any subsequent interest created in the same transaction also fails. This ensures the entire scheme of transfer remains valid.

Section 17 (Doctrine of Accumulation):

- A direction to accumulate income from property means restraining its free enjoyment. This section limits the period for which income from property can be accumulated.

Section 23 (Real Property Rule):

- In transfers with a prior interest and a subsequent contingent interest, if the contingency doesn't occur before the prior interest terminates, the subsequent interest fails. This prevents interests from remaining in abeyance indefinitely.

Section 27 (Doctrine of Acceleration):

- If two interests are created in a transaction and the first fails, the subsequent interest takes effect immediately. This occurs even if the first interest's failure wasn't as originally intended by the transferor.

Section 28 (Doctrine of Conditional Limitation):

- This describes a limitation that divests an existing interest and vests it in another person upon the fulfillment of a condition. It allows for shifting interests based on specified events.

Section 29 (Martland's Rule):

- Section 29 requires strict fulfillment of a condition subsequent, as described in Section 28, for the second transfer to take place. This emphasizes the precise adherence to conditions that determine property interests.

Section 35 (Rule of Conscience):

- This equitable principle states that no one is allowed to "probate and reprobate" at the same time. It's the basis for the Doctrine of Election, ensuring fairness in accepting benefits and burdens.

Section 35 (Doctrine of Election):

- If a transaction confers benefits and imposes liabilities on a person, they must either accept both or reject both. They cannot selectively choose the beneficial part while rejecting the liabilities.

Section 35 (Qui sentit commodum, debet et sentire onus):

- "He who deserves a benefit ought also to bear a burden." This maxim is the foundational principle for the Doctrine of Election, linking benefits to corresponding obligations.

Section 36 (Doctrine of Contribution):

- If a tenant knows a property is co-owned, they should pay rent to each co-sharer proportionally to their contribution. This prevents disproportionate payments and ensures equitable distribution.

Section 36 (Doctrine of Apportionment):

- This doctrine deals with the proportional distribution of periodical payments (like rent or interest) when a person's interest in the property determines. It ensures fair division based on time or share.

Section 41 (Doctrine of Holding Out):

- Where a person allows another to appear as the owner of an estate, and a third party buys it for consideration from this ostensible owner, the original person cannot later deny the transfer. This protects innocent purchasers.

Section 43 (Feeding the Grant by Estoppel):

- When a person without authority professes to transfer immovable property, they are estopped from denying the transfer if they subsequently acquire the authority. This validates the initial transfer by later acquired title.

Sections 41, 43 (Assignatus Utitur Jure Auctoris):

- "An assignee is clothed with the rights of his principal." This means the transferee (assignee) acquires the same rights as the transferor (assignor). Sections 41 and 43 demonstrate this principle.

Section 44 (Dominium):

- This refers to ownership. Section 44 deals with the transfer of property by one of two or more co-owners, impacting their ownership rights.

Section 44 (Duo non possunt in solido unam rem possidere):

- "Two cannot possess one thing each in entirety." This maxim highlights that co-owners hold undivided shares, not separate complete ownership of the whole. It relates to joint ownership.

Section 48 (Doctrine of Priority):

- This doctrine states that when there are multiple transfers of the same property, the first one in time prevails. It determines the order of satisfaction among competing interests, such as multiple mortgagees.

Section 48 (Qui prior est tempore potior est jure):

- "He who is prior in time is stronger in right." This maxim is the foundational principle for the Doctrine of Priority, emphasizing that earlier rights generally take precedence over later ones.

Section 52 (Doctrine of Lis Pendens):

- During the pendency of a suit, no new interest or title should be created." This doctrine prevents parties from transferring or dealing with property that is the subject of ongoing litigation, ensuring the court's decree is effective.

Section 52 (Pendente lite nihil innovature):

- During litigation nothing should be changed." This maxim is another way of expressing the Doctrine of Lis Pendens, emphasizing the stability of rights during legal proceedings.

Section 53A (Doctrine of Part Performance):

- If a person takes possession of immovable property under a sale contract and has performed or is willing to perform their part, they cannot be dispossessed simply because the sale is incomplete or unregistered. This equitable doctrine protects possession.

Sections 56 and 81 (Doctrine of Marshalling):

- If a property owner mortgages multiple properties to one person and then sells some, the buyer can demand the mortgage debt be satisfied from the properties not sold to them first. This protects subsequent purchasers.

Section 61 (Doctrine of Consolidation):

- When two or more mortgages are made to the same mortgagee, the mortgagee can require the mortgagor to redeem all mortgages together. This allows for a combined redemption process.

Section 73 (Doctrine of Substituted Security):

- This is the mortgagee's right to claim the proceeds from a revenue sale or compensation if the mortgaged property is acquired. It ensures the security for the loan is maintained.

Section 92 (Doctrine of Subrogation):

- Any person, other than the mortgagor or co-mortgagor, who has an interest in the mortgaged property and redeems the mortgage, is entitled to step into the shoes of the mortgagee. This allows them to claim the rights of the original mortgagee.

Section 94 (Redeem up, Foreclose Down):

- In cases of multiple mortgagees, a later mortgagee can only redeem those mortgages prior to them and can foreclose on those subsequent to them. This establishes the order of rights among different mortgagees.

Section 111 (Doctrine of Merger):

- When a limited interest in property becomes an absolute interest, the smaller interest merges with the larger one and ceases to exist. This applies to leasehold interests when the lessee acquires the freehold.

Section 111 (Nemo potest esse tenens et dominus):

- No man can be at the same time tenant and landlord of the same tenement." This maxim explains the basis of the Doctrine of Merger, as one cannot hold both subservient and dominant interests simultaneously in the same property.

Section 112 (Doctrine of Waiver of Forfeiture):

- Forfeiture of a lease can be waived if the lessor accepts rent, distresses for rent, or performs any act indicating an intention to treat the lease as continuing. This prevents arbitrary termination by the lessor.

Section 116 (Doctrine of Holding Over):

- If a lessee remains in possession after their lease ends and the lessor accepts rent or assents to their continued possession, a new tenancy is created. This governs the status of a tenant remaining after lease expiry.

Section 127 (Qui sensit commodum debet et sentire onus):

- "He who enjoys the benefit ought also to bear the burden." This is a general principle applied in various contexts, including Section 127, where the donee of a gift is bound by the conditions attached

Chapter I – Preliminary

Act no. 4 of 1882

Date of enactment: 17th February 1882

Section 1 – Short Title, Commencement, and Extent

1. Short Title:

- ✓ This Act is called the Transfer of Property Act, 1882.

2. Commencement:

- ✓ The Act came into force on 1st July, 1882.

3. Extent:

- ✓ Initially, the Act applied to the whole of India except:
 - Part B States (before 1 November 1956),
 - Some parts of Bombay, Punjab, and Delhi.
- ✓ However, the State Government can, through a notification in the Official Gazette:
 - Extend this Act (or any part of it) to any area within its state.
 - Exempt any area (retrospectively or prospectively) from certain provisions:
 - Sections 54 (para 2 and 3), 59, 107, and 123.

4. Exception Clause:

- ✓ Even if the Act is extended to an area, Sections 54 (2 & 3), 59, 107, 123 won't apply in regions where the Indian Registration Act, 1908 is not in force.

Note:

- The Transfer of Property Act governs voluntary transfers (not inheritance or court-decreed ones).
- Certain areas or laws (like Registration Act exemptions) may restrict the operation of specific sections.
- States have the flexibility to apply or exempt parts of this Act as per their administrative needs.

Section 2 – Repeal and Saving Clause

- This section repeals old laws listed in the Schedule of the Act, but preserves certain rights and laws.
- What this section ensures:
 - 1. What is repealed?**
 - ✓ The previous laws specified in the Schedule are repealed.
 - 2. What is saved or protected?**
 - ✓ The following are not affected by this Act:
 - Other laws which are not expressly repealed.

- b.** Existing terms of contracts or incidents of property if they are:
 - Consistent with this Act.
 - Allowed by the law in force.
- c.** Rights or liabilities arising before this Act came into force.
- d.** Transfers by law or court orders (like inheritance, sale in execution of decree, etc.), except as mentioned in:
 - Section 57 (relating to charges and encumbrances).
 - Chapter IV (relating to Mortgages of Immovable Property).

3. Muslim Law Not Affected:

- ✓ Nothing in Chapter II (Transfer of Property – General Principles) affects any rule of Muslim Personal Law (previously referred to as Muhammadan law).

Immovable Property

Section 3 interpret the term 'immovable property'.

It provides that immovable property does not include standing timber, growing crops or grass. This section **does not define** 'immovable property' and also does not specify what is included in 'immovable property'.

According to **Section 3(26) of the General Clauses Act, 1897** immovable property includes

- (a) Land;
- (b) Benefits to arise out of land; and
- (c) Things attached to earth.

Section 2(6) of the Registration Act, 1908 provides that 'immovable property' includes land, buildings, hereditary allowances, right to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops or grass.

Examples of immovable property include, beneficial interests arising out of land, e.g, right of way, rights under lease or tenancy, right to extract minerals from mines, right of fishery, right of ferry, right to collect dues from fair or haat.

Following properties are **judicially recognised as Immovable properties**

1. Right to collect rent of Immovable property
2. Right to collect Ferry
3. A right of way, light, fishery.

4. Debt secured by Mortgage.
5. Hereditary offices of worship.
6. Equity on Redemption.
7. Right to collect lac from trees.

Following properties are **not immovable properties**:

1. Right of worship, a royalty (a payment made to the writer of a book by publisher).
2. A decree for arrears of rent.
3. Right to recover maintenance.
4. Machinery which is not permanently attached to the earth.
5. Government promissory notes.
6. Standing Timber, Growing Crop, Gross

Things Attached to the Earth

Attached to the earth" means- (trick to remember is **RIA**)

1. **Rooted in the Earth.**
Ex. Trees and shrubs.
2. **Imbedded in the Earth.**
Ex. Walls or buildings that are fixed into the ground.
3. **Attached to an Imbedded Structure for Permanent Benefit.**

Ex. Fixtures like doors, windows, or machinery permanently affixed to a building or land.

➤ **Things rooted in the earth:** Trees, plants or shrubs which grow on the land are rooted in the earth.

In **Suresh Chandra v. Kundan, (2001) 10 SCC 221** - the Supreme Court held that standing trees being rooted in earth are part of the land and when there is transfer of property in land the interest in the property would also include anything attached to the land agreed to be sold unless there is an intention, express or implied, to the contrary. As a general rule all the trees, plants, herbs and shrubs are immovable properties **except-**

- (a) standing timber
- (b) growing crops
- (c) growing grass

Things embedded in the earth: Things embedded in the earth means the things which are fixed firmly in the earth and as such become part of the land.

For example, buildings, houses, walls or electricity poles etc.

➤ **Things attached to an imbedded structure for permanent benefit** : Where a thing is attached to something which is embedded in the earth for its permanent beneficial enjoyment, the thing so attached also becomes immovable property. **For example**, doors, windows or shutters of a house are attached to its walls for the permanent enjoyment of that house.

How to determine whether a movable property, when attached to the earth or permanently fastened to something attached, becomes immovable property?

following maxims or tests are applied to determine whether a movable property, when attached to the earth or permanently fastened to something attached, becomes immovable property, -

English Law Maxims:

1. Quicquid plantatur solo, solo cedit – Anything planted in the earth becomes part of it.
2. Quicquid inaedificatur solo, solo cedit – Anything built into or attached to the land becomes part of it.

Tests to Determine Fixation:

1. Degree/Mode of Annexation Test: If an object is deeply fixed or cannot be removed without damage, it is presumed immovable (**Wake v. Halt, 1883**).
2. Object/Purpose of Annexation Test: If an object is permanently attached for the benefit of immovable property (e.g., electrical wiring), it is considered immovable.

Therefore, it all depends on the intention of the parties. If the intention is to make movable property part of immovable property, it will become part of immovable property and will be treated as immovable property. It will then shed its character as movable property.

Duncans Industries Ltd. v. State of Uttar Pradesh, (2000)

In this the supreme held held that whether a **machinery** embedded in the earth can be treated as movable property or immovable property depends upon the intention of the parties.

Attested

Section - 3

Attested" means witnessing the signing of an instrument by at least two witnesses.

1. Each witness must either:
 - ✓ See the executant sign or affix their mark on the instrument.
 - ✓ See another person sign the instrument on behalf of the executant, in their presence and under their direction.
 - ✓ Receive a personal acknowledgment from the executant confirming their signature, mark, or the signature of the other person.
2. Each witness must sign the instrument in the presence of the executant.
3. Both witnesses do not need to be present at the same time.
4. There is no specific format required for attestation.

The object of the attestation is :

- to ensure the authenticity or truthfulness of its execution.
- to protect the executant from coercion, fraud, or undue influence.

Kumar Harish Chandra Singh Deo v. Bansidhar Mohanty, 1965

- The Supreme Court held that attestation also protects the executant from being required to execute a document by the other party by force, fraud or undue influence.
- The Supreme Court in **M.L. Abdul Jabbar Sahib v. H. Venkata Sastri, 1969**, clarified that attestation requires a witness to sign animo attestandi—to affirm seeing the executant sign or acknowledge their signature. Signing for another purpose (e.g., as a scribe or identifier) does not qualify as attestation.

Actionable Claim

S. 3 - An “actionable claim” refers to, a claim:

- to any debt (unsecured debt), **except** when the debt is secured by:
 - (a) A mortgage on immovable property, or
 - (b) Hypothecation or pledge of movable property, or
- to a **beneficial interest** in movable property that the claimant does not physically possess, either directly or indirectly, or
- that Civil Courts recognize as a valid reason to seek legal relief.

➤ **whether the debt or interest is:**

- (a) Existing (already due),
- (b) Accruing (expected to be due soon),
- (c) Conditional (dependent on certain conditions),
- (d) Contingent (dependent on future events).

The expression "beneficial interest in movable property" includes the right to claim the benefit of a contract for the purchase of goods.

Examples of actionable claim include, claim for arrears of rent, claims for money due under insurance policy, claim for return of earnest money, right to get the proceeds of a business etc.

Actionable claim is regarded as a property, so it can be transferred. Provisions for the transfer of the actionable claims are provided in Chapter **VIII, Sections 130-137** of Transfer of Property Act, 1882.

Notice of a Fact

Section - 3 - A person is said to have notice of a fact in the following cases:

1. (Actual Knowledge) When the person knows the fact directly, or
2. (Constructive Knowledge) When the person should have known the fact but failed to inquire due to **willful neglect or gross negligence**.

Explanations:

➤ **Explanation I (Registration as notice):**

If a registered instrument is legally required for an immovable property transaction, any person acquiring rights in that property is presumed to have notice of the registered document from the date of its registration.

If the property is in multiple sub-districts, the notice is effective from the earliest date on which a memorandum of the registered instrument is filed in any relevant Sub-Registrar's office.

➤ **This presumption applies only if:**

1. The instrument is duly registered as per the Indian Registration Act, 1908.
2. It is entered or filed in official record books under Section 51 of the Act.
3. The transaction details are correctly recorded in indexes under Section 55 of the Act.

➤ **Explanation II (Actual possession of property as notice):**

If a person is acquiring immovable property or a share in it, they are presumed to have notice of any existing ownership or title rights of the person currently in actual possession of the property.

➤ **Explanation III (Notice to agent is notice to principal):**

If an agent learns of a fact while acting on behalf of their principal (employer/client) in a business matter, the principal is deemed to have notice of that fact.

Exception: If the agent fraudulently hides the fact, the principal is not responsible for the notice against persons aware of the fraud.

Doctrine of Constructive Notice

Doctrine of constructive notice is based on equity. **Equity treats a man who ought to have known a fact, as if he actually does know it.** Where a person actually does not know about a fact but the court treats that under the circumstances, he must be deemed to have knowledge of that fact, the notice is constructive.

Therefore, constructive notice is legally imputed notice.

Legal presumptions with the respect to constructive notice

Following are the legal presumptions raised in constructive notice: -

1. Wilful abstention from an enquiry or search
2. Gross negligence
3. Registration as notice (Exp.I)
4. Actual possession as notice (Exp.II)
5. Notice to agent is notice to principal (Exp.III)

Define “transfer of property” with reference to cases. Is partition a transfer or property?

According to section 5:

➤ A transfer of property means an act where a living person conveys property to:

- ✓ one or more other living persons, or
- ✓ himself (alone or along with others),

The transfer can be for present or future ownership.

➤ A “**living person**” includes a company, an association, body of individuals, whether incorporated or not.

However, this definition does not override any existing laws on property transfers involving companies or associations.

- In **Sk. Sattar Sk. Mohd. Choudhary v. Gunappa Amabads Bukati, 1997** Supreme Court held that Section 5 contemplates transfer of property by a person who has a title in the said property to another who has no title.
- The person who makes the transfer is called 'transferor' and the person who receives transferred property is called 'transferee'.
 - ✓ In **Jugalkishore v. Raw Cotton Co. Ltd., 1995**, the Supreme Court held that the words 'in present or in future' in Section 5 of the Transfer of Property Act qualify the word 'conveys' and not the word 'property'. It means that the transfer is conveyance of such property that must be in existence at present. It does not refer to conveyance of **future property**.
 - ✓ In **V.N. Sarin v. Ajeet Kumar, 1966**, the supreme court held that **partition is not the transfer of property** - It involves division of property. After partition, share of each coparcener is specified and instead of collective rights, they acquire individual rights over the property. It does not involve any divesting or vesting of the rights.

In light of section 5 discuss -

- (i) Whether family arrangement is a transfer?
- (ii) Whether surrender amounts to transfer?
- (iii) Whether a transfer to an Idol amounts to transfer?
- (iv) Whether release deed amounts to transfer?

1. Family Arrangement:

- A family arrangement is an agreement between family members to divide and hold property separately. It does not involve transferring property from a person with title to one without title.
- The **Supreme Court in Sadhu Madho Das v. Pandit Mukund Ram and Ganeshi v. Ashok** held that a family arrangement is not a transfer under Section 5 of the Transfer of Property Act.

2. Surrender:

- Surrender means merging a smaller interest into a greater interest without expanding the greater interest.
- In **Makhanlal v. Nagendranath**, the court held that surrender of a lease is not a transfer under Section 5 because it is a merger, not a conveyance. Similarly, a widow surrendering her life interest is not considered a transfer.

3. Transfer to an Idol:

- Section 5 states that a transfer must be between living persons (i.e., inter-vivos). Corporations and firms are considered living persons, but an idol is not.
- Since an idol is a juristic person but not a living person, dedicating property to an idol is not a transfer under Section 5 and is governed by religious or charitable endowment laws.

4. Release Deed:

- A release deed gives up a person's right or title over a property.
- In **Suresh Chand Gupta v. Man Mohan Gupta**, the court held that a release deed does not transfer property but can confirm an existing title.
- In **Thayil Mammo v. K Ramunni**, the Supreme Court ruled that if a release deed transfers rights and title for consideration, it can be a transfer. Whether a release deed is a transfer depends on the case.

Section 6. What may be transferred.

- According to **section 6** of the transfer of property Act:
- **General Rule:** Any property can be transferred unless prohibited by this Act or any other existing law.

Exceptions (What Cannot Be Transferred):

➤ Future & Uncertain Interests:

- (a) The chance of an heir-apparent inheriting property, The chance of a relative receiving a legacy after someone's death, or any other mere possibility of a similar nature.

➤ Restricted Rights:

- (b) A right of re-entry for breach of a condition cannot except to the owner of the affected property.
- (c) An easement (right to use another's land) separately from the property it benefits.
- (d) Property interests that are meant only for the owner's personal use. (dd) A right to future maintenance, in any form.
- (e) A mere right to sue.

➤ Public & Government-Related Interests:

- (f) A public office and the salary of a public officer.
- (g) Stipends of military, naval, air-force, civil, and political pensions.

➤ Illegal & Invalid Transfers:

- (h) Transfers:
 1. that are against the nature of the interest, or
 2. for an unlawful object or consideration (as per Section 23 of the Indian Contract Act, 1872), or
 3. to a person legally disqualified from being a transferee.

➤ Special Cases (Tenants, Farmers, and Lessees)

- (i) Tenant, on transferable rights of occupancy,
Farmer of an estate who has defaulted on revenue payments, or
Lessee of an estate (under the management of a court of wards).

Mere Right to Sue (Section 6e)

1. Section 6(e) prohibits the transfer of a mere right to sue. The word "mere" is important as it means a right to sue without any interest in property is non-transferable. A right to sue is not considered as property but only an uncertain future claim.
 - For example, if A contracts to buy 2000 packets of biscuits from B for ₹5000 but later refuses, causing B a loss of ₹1000, B has a right to sue A for damages. However, B cannot transfer this right to sue to another person.
2. This clause only prohibits a mere right to sue, but if a property is transferred along with the right to recover damages related to that property, such a transfer is valid.
 - For instance, if A contracts to supply wheat to B, and before the due date, B transfers his beneficial interest in the wheat to C, then if A fails to deliver, C can sue A, since he has both the right to sue and an interest in the property.
 - In **Union of India v. Sri Sarada Mills Ltd.**, the Supreme Court held that a bare right to sue for damages cannot be assigned, as the law does not allow transactions resembling maintenance and champerty. However, if there is an existing interest in the subject matter, the transfer may be valid.

Spes Successionis (Expectation of Succession)

1. Section 6 (a) states that spes succession cannot be transferred.

Spes Successionis refers to the expectation of inheriting property in the future. It is not a present property and cannot be transferred.

- In **Collyer v. Issacas (1881)**, the court ruled that a person cannot transfer what does not exist. Allowing such transfers would encourage speculation and litigation.
- **Spes Successionis includes:**
 1. The chance of an heir-apparent inheriting property.
 2. The chance of receiving a legacy under a Will.
 3. Any other similar mere possibility.

➤ Heir-Apparent

An heir-apparent is someone who may inherit property in the future but is not a legal heir until the person they may inherit from dies. The maxim "nemo est heres viventis" means a living person has no heir.

For example, if a father and son are both entitled to inherit from each other, but the father dies first, the son becomes the heir. However, if the son dies first, he never inherits. Therefore, during the father's lifetime, the son is only a heir-apparent with no legal right to the property.

➤ **In Re Parsons: Stockley v. Parsons (1890)**, the court confirmed that no one can have a legal interest in the property of a living person—they only have a mere expectation.

➤ **Chance of Getting a Legacy**

A legacy refers to property passed under a Will. Since a Will takes effect only after the testator's death, the legatee (person named in the Will) only has a chance of receiving the property. If the legatee dies before the testator, or if the testator revokes or changes the Will, the legatee gets nothing.

➤ **Agreement to Transfer Spes Successionis**

Since spes successionis is non-transferable, an agreement to transfer it is also void. Under English law, it is also non-transferable, but if the transfer is supported by consideration, it may be recognized under equity.

Persons Competent to Transfer

➤ **Section 7** of the Transfer of Property Act, 1882, lays down the competency of a person to transfer property. It states that:

(a) The transferor must be competent to contract under the Indian Contract Act, 1872, which means they must be:

- Of sound mind,
- Not a minor, and
- Not disqualified by law.

(b) The person must either:

- Have ownership rights over the property, or
- Be authorized to transfer the property (such as a trustee, legal guardian, or power of attorney holder).

(c) The transfer can be:

- Whole or partial,
- Absolute or conditional,
- Subject to the extent and manner prescribed by law.

➤ In **Balai Chandra Mondal v. Indu Rekha Devi (AIR 1973 SC 782)**, the Supreme Court clarified that mere management or collection of rents does not grant an agent the authority to transfer property unless explicitly empowered.

Who can be a transferee?

- However, Section 7 does not specify who can be a transferee. That is covered under Section 6(b), which states that a transfer cannot be made to someone legally disqualified from acquiring property. A minor is not disqualified from being a transferee, even though a contract with a minor is void under contract law.
- Section 7 does not prevent a person incompetent to contract (such as a minor) from being a transferee. If a minor acquires property through a guardian or next friend, they can be a purchaser or mortgagee. However, they cannot independently enter into such transactions.

Effects of transfer

Section 8 explains the **effect of a property transfer**. The key principles are:

1. Immediate Transfer of all the Interest:

- When a property is transferred, the entire interest of the transferor in that property automatically passes to the transferee unless stated otherwise.
- It is based on the maxim res sessovira sequitur rem principale i.e., the accessory follows the principle. The principle underlying in this section is that all the interest of the transparent in the property will pass to the transferee as also the legal incidents thereof.

2. Legal Incidents of Property:

- The transfer includes not just the property but also its associated rights and benefits.

These depend on the nature of the property. Legal Incidents of Different Types of Property are as follows:

Property Type	Legal Incidents Transferred
Land	Easements, rents, profits, and all things attached to the earth (trees, shrubs, etc.).
House	Easements, future rent, locks, keys, bars, doors, and other permanent fixtures.
Machinery attached to the earth	Movable parts of the machinery.
Debt	Securities (right to claim payment from property securing the debt).
Money or income-yielding property	Interest or income accruing after the transfer.

- In **Vishwa Nath v. Ram Raj, 1991**, the court held that transfer of land presumes the transfer of everything attached (trees, shrubs) unless stated otherwise. However, the reverse is not true (transferring trees does not mean transferring land).
- In **Kodun Venkata Subbaiah v. Abburi Rangaiah, 1972**, the court ruled that a widow transferring property under an invalid will did not transfer her full interest, as she had inherited a separate interest as an heir. Section 8 does not apply if a different intention is expressed or implied.

Oral transfer

(Section 9)

Section 9 states that property can be transferred orally (without writing) unless a writing is expressly required by law.

There are two main modes of transfer:

1. Delivery of Possession – When writing is not necessary, property (especially movable property) can be transferred simply by delivering possession.
2. Registration – If required by law, a transfer must be in writing and registered. The following transactions must be in writing and duly registered:
 - a. Sale of immovable property exceeding ₹100 (Section 54)
 - b. Sale of reversion or intangible property (Section 54)
 - c. Simple mortgage (Section 59)
 - d. Mortgages (except deposit of title deeds) securing sums over ₹100 (Section 59)
 - e. Lease for over a year or with yearly rent (Section 107)
 - f. Exchange of immovable property over ₹100 (Section 118)
 - g. Gift of immovable property (Section 123)
 - h. Transfer of actionable claims.

Thus, while oral transfers are valid in some cases, certain transactions require written and registered documents.