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Transfer Of Property Act 1882

Objective: to amend the laws relating to the transfer of property by acts of parties.

Not Applicable: on transfer by operation of law i.e. sale in execution, forfeiture, insolvency etc and also excludes testamentary succession i.e. transfers by will (this is governed by the Indian Succession Act).

Scope: it is confined to transfer **INTERVIVOS** means (transfer takes effect between two living person).

Definitions :

Instruments : means a non testamentary instrument.

Attached to the earth :

It means

- Rooted in the earth (like tree and shrubs)
- Imbedded in the earth (like walls etc)
- Attached in such a way which gives permanent beneficial enjoyment.

Absolute interest:

Means ownership which consists of a bundle of rights, rights to possessions, right to enjoyment etc or any other way so that a owner can deal or dispose off.

Reversion :

The residue of an original interest which is left after the grantor has granted the lessee a small estate. Ex- if a property has given on lease for 5 years, after the period of 5 years, the property which reverts back to him is called the reversion or reversionary interest.

Remainder:

In this case, limited interest in favour of a other person (1 mentioned person) by the owner of the property and gives remaining to other (2nd person) it is called a remainder.

Vested interest

- Vested interest should be without any condition

(i) Vested in possession- when it is a right to present possession for ex- our residential house

(ii) Vested in interest – when it is not a right to present possession but a right to future possession.

Example- a land & building is given to Ramesh for his life with a remainder to B , in that case A's right is vested in possession ,B's right is vested in interest .i.e. after A's death property will come to B without any condition.

A vested interest is transferrable and heritable

Contingent interest:

- Is an interest which takes effect after the condition is satisfied.
- Condition should be precedent.
- Example-(i) if Salman marries with Katrina, then only he will get the property.

Rules relating to transfer of property (Section -5).

- Transfer of property means an act by which a living person conveys (transfers) property in present or in future to one or more living person
- Living person means or includes a company or AOP/BOI whether incorporated or not.
- Property must be in existence for effecting transfer.
- Property may be movable or immovable.
- A transfer of property not in existence for effecting operates as a contract to be performed in future which may be specially enforced as soon as the property comes into existence.

Section 6

- No transfer can be made which may effect nature of the interest or for an unlawfully object or to a person legally disqualified to be a transferee.
- **EXCEPTIONS**-Means the following properties cannot be transferred, namely:
 - 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 other mere possibility of a like nature cannot be transferred.
 - ii. A mere right of an re entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.
 - iii. An easement cannot be transferred apart from the dominant heritage, example – if A, The owner of a house X, has a right of way over an adjoining plot of land belonging to B, he cannot transfers this right of way to C. But if he transfers the house itself to C, that easement is also transferred to C.
 - iv. An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him. Example-the office of a priest of a temple etc.
 - v. A mere right to sue cannot be transferred.
 - vi. A public office cannot be transferred nor can the salary of a public officer whether before or after it has become payable.
 - vii. Stipends allowed to military , naval, air force and civil pensioners of the government and pensions cannot be transferred.
 - viii. A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.

Who can transfer the property (Section 7)

- "COMPETENT TO CONTRACT"- As per Indian Contract Act 1872, it means he is a major , sound mind and is not disqualified from contract
- Minor can be transferee.
- A mortgage can be validly executed in favour of a minor to be a transferee ,who has paid a consideration(CASE LAW-HARI MOHAN V.MOHINI)

Formalities of transfer.

- Properties can be transfer either orally or by writing.
- Movable property can be transferred by delivery of possession or by registration.

(a).Attestation

- Attestation is an important formalities in connection with the execution of transfer
- Attest means to testify a factor to bear witness to a fact.
- Attestation is valid and complete when two witnesses sign the instrument. according to the definition given in TOP act (Section 3) .the following essentials are required for valid attestation.
 - i. There must be at least two or more witnesses
 - ii. Each witnesses must see
 - The executants' sign or affix his mark to the instrument
 - Some other person sign the instrument in the presence of the executants.
 - receive from the executants a personal acknowledgement of his signature.
 - iii.Each witness must sign the instrument in the presence of the executants .
- It is not necessary that both attesting witnesses should be present at the same time.
- Attestation cannot take place before the execution of the deed.
- No particular form is prescribed for attestation.
- Attestation witness may not be described as such on the face (CASE LAW – YAKUB V. KALZURKAN),only requirement of signature with Intention to Attest(ANTMUS ATTESTANDI).

(b).Registration

It is necessary for creating valid transfer in certain cases. Further discussed in Registration act,1908.

(c)Notice

- It may be actual or constructive.
- A person is deemed to have knowledge of notice when
 - i. He willfully absents from an enquiry or search which he ought reasonably to have made
 - ii. Gross negligence on his part, he would have known it.
- Example – where a purchaser was informed that the title deeds were in the possession of a bank for safe custody and yet failed to make any enquiry in the bank. It was held gross negligence and deemed to have notice of the rights of the banks which has the custody of the title deeds.(CASE LAW -IMPERIAL BANK OF INDIA V. RAI GYAND)

Restraint on transfers or rule against inalienability (section 10)

- After transfer of property, transferee should not be restrained absolutely from alienating the property.
- Conditions can be imposed but should not prevent the transferee from alienating the property.
- Example- B gives property to A and his heirs adding a condition in case of transfer it should revert to B.(Such condition is not valid condition).

➤ **EXCEPTION** of above –

- a. In case of lease, the lesser impose the condition that the lessee shall not sublet the property or sell his leasehold interest.
- b. In respect of women who is not a Hindu, Buddhist or Muslim. In such case, a condition to the effect that she shall not have power during her marriage to transfer the property is valid.

Partial restraint valid-

If there is a condition, not to transfer the property outside the family it has been held by the courts that they are partial restraints.

Restraint on enjoyment (section 11)

- The section says that where the land is transferred by one to another, the transferor should not impose conditions as to HOW and in WHAT manner the transferee should enjoy the property.
- Ex-A sells ahis house to B and adds a condition that B only should reside in that house, such condition is invalid.
- **EXCEPTION** – Seller can impose such condition which may interfere with the rights of enjoyment of the transferee. ex-A has properties X and Y .he sells property Y to B and puts a condition that B should not construct on property Y more than one storey so that A's property X which he retains should have good light and free air. Such condition is valid.
- Section 12 says that transfer is void if a property is transferred to any person adding a condition that if such person (buyer) becomes insolvent he ceases to hold that property. It is void condition but Exception in case of lease, he can impose a condition on the lessee that if the lessee becomes insolvent the lease should come to an end.

Transfer for benefit of unborn person (section 13)

- If a property is given to an unborn person, then two conditions should be satisfied:
 - i. It should be preceded by a life estate in favour of a living person. and
 - ii. It should comprise the whole of the remaining interest of the transferor so that there can be no further interest in favour of others.

Rule against Perpetuity (Section 14):

- It says that no transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfers and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age ,the interest created is to belong.
- As per section 14 of the Act ,the rule contains two prepositions;
 - i. No transfer is valid after the life time of one or more persons living at the date of such transfer. Transfer can remain in effect only during the life time of an existing person.
 - ii. Transfer can be extended to a person who is not in existence but if he is in existence at the time of remuneration of the period of last transfer. The moment the person is born he shall have contingent interest and after minority i.e. after the age of 18 years ,he shall have vested interest .Barring these two conditions ,a restriction on alienation of a property is void
- **EXCEPTION** – the transfer of property is for the benefit of the public in the advancement of religion, knowledge, commerce etc.

Accumulation of income (Section 17)

- The law allows accumulation of income for a certain period only. the period for which such accumulation is valid is :
 - i. The life of the transferor or
 - ii. Eighteen years from the date of transfer.
- Any direction to accumulate the income beyond the period mentioned above is void except where it is for :
 - i. The payment of the debts of the transferor or any other persons taking any interest under the transferor,
 - ii. Portions for children or any other person taking any interest in the property under the transfer and
 - iii. For the preservation and maintenance of the property transferred .

Conditional transfer (Section 25)

- When an interest is created on the transfer of property but is made to depend on the fulfillment of a condition by the transferee, the transfer is known as a Conditional transfer.
- Condition can be precedent or subsequent.
- If the interest is made to accrue on the fulfillment of a condition, that condition is said to be condition precedent. ex- Salim agrees to sell his land to Salman if he marries with "Katrina."
- The condition precedent will be allowed to operate only if it is not hit by section 25 of the Act. Section 25 says that:
 - i. The condition must not be impossible to fulfill, (ex- Chand tare toodne wali)
 - ii. The condition must not be forbidden by law.
 - iii. It should not be of such a nature that if permitted it would defeat the provisions of any law. (Ex-supari business)
 - iv. It should not be fraudulent, ex- X gives a false receipt to Y on behalf of principle in consideration of transfer of land.
 - v. The condition should not be such as to cause injury to the person or property of another.
 - vi. The condition should not be immoral or opposed to public policy.
- If the condition is not hit by section 25, then it is a valid condition.
- Subsequent conditions- is one which destroys or divests the rights upon the happening or non happening of an event.
- Difference between both of them – in condition precedent, the condition comes before the interest, whereas in condition subsequent, the interest is created before the condition.

Doctrine of Election (Section – 35)

- Election may be defined as "the choosing between two rights where there is a clear intention that both were not intended to be enjoyed.
- Election may be express or implied by conduct.
- The base of this doctrine is that a person taking the benefit of an instrument must also bear the burden, and he must not take under and against the same instrument. (CASE LAW – COPPER V. COPPER)
- The question of election arises only when a transfer should be happens from the same instrument, if the transferor makes a gift of property by one deed and by another asks the donee to part with his own property then there is no question of election.

Doctrine of Holding Out or Transfer by Ostensible (Section – 41)

- Where with the consent of the person interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it and transferee has obtained reasonable care that he has acted in a good faith.
- The following conditions are necessary for the application of above section –
 - i. The transferor is the Ostensible owner.
 - ii. He is so by the consent, express or implied of the real owner.
 - iii. The transfer is for consideration and
 - iv. The transferee has acted in good faith taking reasonable care is not entitled to the transferor had power to transfer.
 - v. If any of the above conditions or element is absent, the transferee is not entitled to the protection of this section.
- Ostensible owner is one who has all the **INDICIA** (means symbol, token or mark) of ownership without being the real owner.

Doctrine of Feeding the Grant by Estoppel (Section -43)

- Where a person fraudulently or erroneously represents that he is authorized to transfer certain immovable property and professes to transfer such property for consideration, at the option of transferee, operates as an assignment of interest in the property transferred provided contract is not rescinded by transferee.
- In order to invoke section 43, the transferee must prove that
 - i. There was a representation, fraudulent or erroneous
 - ii. Transferor is entitled to transfer the immovable property
 - iii. The transferor is found to have subsequently acquired the interest which he professed to transfer
 - iv. The transfer of property was for consideration
 - v. The transferee has not rescinded the contract
 - vi. The transferee acted in good faith for consideration and without notice of the rights under the prior transfers.
- Ex- A, a Hindu, who has separated from his father B, sells to C three fields X, Y and Z, representing that A is authorized to transfer the same. If the field Z doesn't belong to A, retained by B after his death this will go to A. C, not rescinding the contract of sale may acquire A to deliver Z to him.
- Thus under this doctrine a grantor has to grant an interest in land which he did not have at the time of possession, but subsequently acquires the benefit of his subsequent acquisition goes automatically to the earlier grantee.

Doctrine of LIS PENDENS (Section 52)

- Lis pendens means pending suits, actions. Petition or the like.
- It states that during the pendency of a suit in a court of law, property which is subject to litigation cannot be transferred.
- Necessary conditions as laid down in section 52 are :
 - i. There must be a suit or proceeding in a court of competent jurisdiction.
 - ii. The suit or proceedings must not be collusive

- iii. The litigation must be one in which right to immovable property is directly and specifically in question.
 - iv. There must be transfer of or otherwise dealing with the property in dispute by any party to the litigation.
 - v. Such transfer must affect the right of the other party that may ultimately accrue under the terms of the decree or order.
- **EXCEPTION –**
- i. A suit in foreign court cannot operate as lis pendens.
 - ii. It also does not apply to moveables.

Doctrine of Fraudulent Transfer (Section – 53)

Section 53 states that – “Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditors so defeated or delayed.

- Fraudulent transfers means when a person transfers his property so that his creditors shall not have anything out of the property.
- A debtor in order to defeat or delay the rights of a creditors, may transfer his property to some person, may be to his relatives or a friend. Such transfer is voidable at the option of the creditors.
- Above transfer is valid till creditors did not challenge same in the court and gets a declaration that the transfer is invalid.
- The creditor has to satisfy the court that there was an intention to defeat his rights.
- In case of many creditors, merely giving preference to some creditors can not be said to be fraudulent transfers.
- But other creditors can file a petition in the court within 3 months of the transfers praying that the debtor be declared insolvent, in such case their interest will be protected and transfer is declared to be a fraudulent preference and property will be distributed among all creditors.

Doctrine of Part Performance (Section 53 A)

- Main conditions for the operation of the doctrine of part performance as:
 - i. There must be a contract to transfer immovable property.
 - ii. It must be for consideration
 - iii. The contract should be in writing and signed by the transferor himself or on his behalf.
 - iv. The terms necessary to constitute the transfer must be ascertainable with reasonable certainty from the contract itself.
 - v. The transferee should have taken the possession of the property in part performance of the contract
 - vi. The transferee must have fulfilled or ready to fulfill his part of the obligation under the contract.
- If all the above conditions are fulfilled then the transferor and the other person has been debarred from exercising any rights in relation to the property except expressly provided in contract, notwithstanding that the instrument is not registered or completed. (CASE LAW – DELHI MOTOR CO. V. BASURKAS)

Provisions relating with specific transfers

Sale (Section -54)

- Sale has been defined as a transfer of ownership in exchange for a price paid or promised or part paid and part promised.

- Essentials conditions –
 - i. The seller must be a person competent to transfer.
 - ii. The buyer must be any person who is not disqualified to be the transferee
 - iii. The subject matter is transferable property.
 - iv. There is a transfer of ownership
 - v. It must be an exchange for a price paid or promised to pay.
 - vi. There must be a money consideration.
- Modes of transfers of sale –
 - i. In case of transfer of immovable property, if the value exceeds 100 rs or more, it should be transfer only by registered document. Or by a registered instrument or by a delivery of property when its value is less than 100 rs.
 - ii. Where the property is tangible or a reversion, only by a registered instrument.

Exchanges (Section 118 to 121)

- When two persons mutually transfer the ownership of one thing for the ownership of another neither thing being money only, the transaction is called an exchange.
- Essentials conditions-
 - i. The person making the exchange must be competent to contract
 - ii. There must be mutual consent
 - iii. There is a mutual transfer of ownership though things and interests may not be identical.
 - iv. Neither party must have paid money only.
- This section applies over to both movable or immovable property.
- Mode of exchange:
A transfer of property in completion of an exchange can be made only in the manner provided for the transfer of such property by sale.

Gift Section (122 to 128):

Definitions- Gift is 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.

Essentials

- i. There must be a transfer of ownership
- ii. The subject matter of gift must be a certain existing movable or immovable property.
- iii. The transfer must be made voluntarily
- iv. It must be done without consideration
- v. There must be acceptance by donee or on his behalf.

Formalities (section 123):

It must be made by a registered document signed by the donor and attested by atleast two witnesses.

Onerous gift:

- It may be possible that several things are transferred as a gift by single transaction. Whereas some of them are really beneficial the others convey burdensome obligations.
- Example- A makes a gift of shares in the companies X and Y. X is prosperous but heavy calls are expected in respect of shares in Y Company. The gift is onerous.

Mortgages (Section 54 to 104)

Definations: A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the 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 transferor is called mortgagor, the transferee a mortgagee,
- The principal money and interest the payment of which is secured for the time being are called the mortgage money
- The instrument by which the transfer is affected is called a mortgage deed.
- Essentials conditions of a mortgage:
 - i. Transfer of interest.
 - ii. Specific immovable property
 - iii. To secure the payment of a loan.

Kinds of Mortgage:

Simple Mortgage –

- i. No right of possession or foreclosure is available to the mortgagee.
- ii. The mortgagor binds himself personally to pay debt and agrees in the event of his failure to pay the mortgage money.
- iii. In case of failure the mortgagee can bring a personal action against the mortgagor and obtain a decree.

Mortgage by Conditional Sale-

- i. The property is mortgaged with a condition super added that in the event of a failure by the debtor to repay the debt at the stipulated time, the transaction should be regarded a sale.
- ii. If the loan is repaid, the sale becomes void.
- iii. When the debt has been repaid at the stipulated time, the mortgagee shall re-transfer the property to the mortgagor.
- iv. Under this, mortgagor doesnot bind himself personally to repay the debt.
- v. The mortgagee is not given the possession of the property.

Usufructuary mortgage Section 58(d)

A Usufructuary mortgage has the following features:

- i. Possession of the property must be delivered to the mortgagee.
- ii. There is no personal liability on the part of the mortgagor to pay
- iii. The mortgagee is entitled to rents and profits in lieu of interest or principal or both
- iv. The mortgagee however is not entitled to foreclosure the mortgagee or to sue for sale.

English mortgage Section -58(e)

- i. The mortgagor binds himself to repay the mortgage money on a certain day, in other words there should be a personal undertaking to pay.
- ii. The mortgaged property is absolutely transferred to the mortgagee.
- iii. Such absolute transfer is subject to a proviso that the mortgagee will reconvey the property to the mortgagor upon payment by him of the mortgage money on a fixed day.

Mortgage by deposits of the title deeds or equitable mortgage:

- i. A persons delivers to the creditors or his agent documents of title of his immovable property with an intension to create a security, and obtains loans
- ii. The requisites of such a mortgage are debt, deposits of title deeds, an intension that deeds shall be security for the debt.
- iii. In such case, an oral agreement between the person and the creditors followed by the delivery of the documents of title to the property is enough.

- iv. It should be noted that this type of mortgage can be created in certain towns and not everywhere in India like Metros cities, jaipur, Bangalore etc..

Anomalous Mortgage Section 58(g):

- i. A mortgage which doesnot falls in above category is called Anomalous mortgage.
- ii. Basically it is combination of various other mortgages

Sub-mortgage

Where the mortgagee transfers by mortgage his interest in the mortgage property, or creates a mortgage of a mortgage the transaction is known as a sub mortgage,ex- A mortgages his house to B for Rs.10000 and B mortgage his mortgagee right to C for Rs 8000.B creates a sub mortgage.

Puisne mortgage:

Where a mortgagor mortgage his property to another person to secure another loan, the second mortgage is called a Puisne mortgage, ex- where A mortgages his house worth Rs . 1 Lakhs to B for Rs.40000 and mortgages the same house to C for a further sum of Rs.30000,the mortgage to B is first mortgage and that of C the second or Puisne mortgage.

Rights of mortgagor:

- Right of redemption:

Means right of the mortgagor is the right to redeem i.e. take back the mortgaged property by paying the mortgage money at any time for repayment.

- Right against clog on equity of redemption:

Means any provision inserted in the mortgage deed to prevent, evade or hamper redemption is void.

- Right of partial redemption:

Section 61, gives a right of partial redemption stating that “a mortgagor who has executed two or more mortgages in favour of the same mortgagee shall. In the absence of the mortgages has become due, be entitled to redeem any one such mortgage separately or any two or more of such mortgages together”.

Ex-A mortgages property X to B and obtains a loan of Rs.2000.A again mortgages the same property to B and obtains a further loan of Rs.1000. A can redeem the first mortgage of Rs 2000 or he can redeem both together.

Implied contract by mortgagor:

In the absence of a contract to the contrary, the mortgagor shall be deemed to have contracted with the mortgagee that the:

- i. Mortgagor is entitled to transfer the interest.
- ii. Mortgagor will assist the mortgagee to enjoy quiet possession.
- iii. Mortgagor will pay public charges in respect of the mortgaged property
- iv. Mortgagor covenants as to payment of the rent due on lease where, the mortgaged property is leased.
- v. Mortgagor covenants as to payments of interest and principal on prior encumbrances, where the mortgage is a second or subsequent encumbrance on the property.

Rights of mortgagee and his remedies:

- i. Remedies against the property are –
 - Right to bring property to sale
 - Right to foreclose
 - Right to the possession of the property
- ii. Right to sue for mortgage money
- iii. Right of private sale- a sale without the intervention of the court if ,the loan is not paid on a certain date in the following cases-

Where the mortgage is an English mortgage and neither the mortgagor or mortgagee is a Hindu, Mohammedan or Buddhist.

Where the mortgagee is the government and the mortgage deed confers an express power of sale.

Where the mortgage property was on the date of execution of the mortgage situated within the towns of Metros cities. And the mortgage deed confers express power of sale.

This right is not exercise unless and until –

Notice in writing requiring payment of the principal money has been served on the mortgagor and default has been made in payment of the principal money or part there of ,for three months after such service

Some interest under the mortgage amounting at least to five hundred rupees in arrear and unpaid for three months after becoming due.

Liabilities of the mortgagee in possession-

According to section 76,a mortgagee in possession is bound :

- To manage the property as a person of ordinary prudence would manage his own.
- To use his best endeavors to collect the rents and profits thereof
- To pay out of the income all government revenue or other charges of a public charges
- Not to commit any act which is destructive to the property
- To keep full and accurate accounts of all income and expenditure
- When the mortgagor tenders or deposits the mortgage money ,to account for his receipts from the property from the date of tender or deposited etc

Marshalling Section 81:-

If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgage is, in the absence of a contract to the contrary, entitled to have the prior mortgage debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgage.

Example – Dharmendra mortgages properties X and Y to Sunny. Then he mortgages property Y to Bobby .Suppose Sunny obtains a decree on his mortgage for the sale of property X and Y which from security for his mortgage. Suppose Sunny applies to court for sale of property Y which is also mortgagee to Bobby, Bobby would be entitled to have the prior debt of B satisfied out of property X, if not satisfied then afterwards proceed towards property Y.

Subrogation Section 91:

The person who may sue for redemption the primary right to redemption is given to the mortgagor under Section 60,but in addition to the mortgagor certain other persons are also entitled to redeem or institute a suit for redemption of the mortgaged property, namely-

- Any person who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same.
- Any surety for the payment of the mortgage property.
- Any creditors of the mortgagor who has in a suit for the administration of his estate a decree for sale of the mortgaged property.

Doctrine of Priority:

- The general rule is that in case of different mortgages on the same property, successive mortgage is paid after the prior mortgage has been satisfied.
- In case of not satisfying both out of the mortgage property, then prior mortgage should be first satisfied.

- But where the prior mortgage suffers from fraud, misrepresentation or gross neglect, the subsequent mortgage shall have priority over prior mortgage, or of any other person who has for consideration acquired an interest in any of the properties.

Charges (Section -100):

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

Charge by acts of parties:

When in a transaction of value, for both the parties (debtor or creditors) intend that the property existing or future shall be made available as security for the payment of a debt and that the creditors shall have a present right to have it made available, there is a charge.

Example- A inherited an estate from his grandfather and executed an agreement to pay his sister B a fixed amount sum out of the rents of estate .B has a charge on the estate.

Charge by operation of Law:

Are those which arise on account of some statutory provisions. They are not created by the voluntary action of the parties but arise as a result of some legal obligation.

Example- W files a suit against her husband H for maintenance, the court grants a decree awarding the wife Rs.10000 per month, and in case of default by the husband makes his property liable for the month of maintenance, here a charge is created over the husband's property.

Types of charges:

- a) Fixed charge: is a charge on specific property.
- b) Floating charge: is an equitable charge on the assets for time being of a going concern.
 - It is a charge on class of assets both present and future.
 - The class of assets charged is one which in the ordinary course of business would be changing from time to time.

Crystallization of charge:

A floating charge becomes fixed in the following:

- When the money becomes payable under a condition in the debenture and the debenture holder (the creditors) takes some steps to enforce the security for their rights.
- The company ceases to carry on business.
- The company is being wound-up.

Leases (Section 105):

A “lease of immovable property is a transfer of a right to enjoy property.

The essentials of a lease are –

- It is a transfer of a right to enjoy immovable property.
- Such transfer is for a certain time or perpetuity
- It is made for consideration which is either premium or rent or both
- The transfer must be accepted by the transferee.

Lease and licence:

If the document creates an interest in the property, it is lease but if it only permits another person to make use of the property of which legal possession retains with the owner. It is called licence. (CASE LAW- ASSOCIATED HOTEL OF INDIA V. R.N.KAPOOR)

Formalities:

- As per section 107, a lease from year to year or for any term exceeding 1 year can be made only by a registered document. it must be effected by a registered document.
- If a lease is for a term below one year, it can be made by a oral agreement but accompanied by delivery of possession

Types of tenancies:

- Tenancy from year to year: may be made by a grant of land from year to year.
 - i. If the period of tenancy for a period more than a year, the landlord wants to terminate or ends the lease, he has to give a six month notice to the lessee to quit.
 - ii. In case of tenancy from month to month, a 15 days notice is required.
- Tenancy at will :
 - i. It is recognized in law.
 - ii. This comes into existence when a tenant holds over with the consent is let into occupation.
 - iii. If the tenant is in possession after the expiry of the period, if the tenant stays with the consent of the landlord till such time as further period is fixed or a fresh contract is made, the tenancy is called a tenant at will.
 - iv. The landlord will decide for what further period shall the tenancy be given
 - v. The tenancy at will does not mean that the landlord has to give a proper notice to quit.
 - vi. The tenant at will cannot sublet during that period because no valid contract for further extension in his favour has been made.
- A tenancy by sufferance:
 - i. This is a tenancy which is created by fiction of law.
 - ii. If a tenant continues to be possession after the determination of the period of the lease without the consent of the landlord, he becomes a tenant by sufferance.
 - iii. No notice is required to such a tenant.
 - iv. This tenant is not responsible for rent, he only pays compensation for use and occupation of the land.

Requirement of valid notice:

- In order that a notice to quit is valid it must be a proper notice.
- Intension to terminate the tenancy agreement and must specify the date in which the tenancy would expire.
- As above we have seen the requirement for 6 months and 15 days notice.
- The landlord cannot ask his tenant to quit at anytime before the expiry of a month or a year of the tenancy.

Determination of leases:

- By efflux of time or lapse of time:
- By the happening of a special event
- Merger
- By surrender
- By forfeiture

Duties of the lessor :

- The lessor is bound to disclose to the lessee any material defect in the property with reference to its intended use of which the lessor is and the lessee is not aware.
- The lessor is to put the lessee in possession of the property.
- The lessor is what is usually called covenant for quite enjoyment. Means right to undisturbed possession so long as lessee pays rent.

Duties of the lessee:

- The lessee is bound to disclose to the lessor any fact as to nature or extent of the interest that the lessee is about to takeoff which both are not aware.
- Bound to pay rent and other charges timely.
- He uses the property as a person of ordinary prudence would make use of
- He should not do any act which is destructive of or permanently injurious to the property.
- The lessee should handover the property at the end of the lessee.

Rights of the lessee:

- If during the continuance of the lease any accession is made to the property, such accession is deemed to be comprised in the lease, the lessee has a right to enjoy same.
- The landlord has agreed to repair the property, the lessee can carry out the repairs and deduct the expenses from the rent if the landlord fails to do so.
- The lessee has a right to remove the fixtures he has erected during the term of the lease.
- If any amount has been in the form of municipal taxes, by lessee to lessor, then he must paid same to government.

Actionable claims:

Definition – A Claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property ,or to any beneficial interest in movable property not in the possession ,either actual or constructive of the claimant which the civil courts recognize as affording grounds for relief, wheather such debt or beneficial interest be existent,accuring,conditional, or contingent.

- Actionable claims are claims ,to unsecured debts
- If a debt is secured by the mortgage of immovable property it is not an actionable claim because the section clearly excludes such a debt.
- Example- arrear of rent accrual constitute a' debt' so it is actionable claim(Case law- Shenu Gobind Singh v. Gauri Prasad)
- Money due under the insurance policy
- Not A.C.-debentures are secured debts and therefore not regarded as actionable claim.
- Actionable claims are transferred by the execution of an instrument in writing signed by the transferor or his duly authorized agent.

T20 CHAPTER REVISION:

- The law relating to transfer of property is governed by the Transfer of Property Act, 1882. 'Transfer of Property' means an act by which a living person conveys property, in present or future, to one or more other living persons, or to himself, and one or more other living persons. 'living person' includes a company or association or body of individuals, whether incorporated or not.
- Every person who is competent to contract and entitled to transferable property, or authorized to dispose of property is competent to transfer such property. Property can be transferred either orally or by writing. Moveable property can be transferred by delivery of possession or by registration. In the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, transfer can be made only by a registered instrument. In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.
- When property is transferred, the transferee should not be restrained absolutely from alienating the property. One may give property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property. A transfer may also be made subject to a contingency which may or may not occur. This is known as condition subsequent. Condition subsequent is one which destroys or divests the rights upon the happening or non-happening of an event.

- Section 35 of the Transfer of Property Act deals with what is called doctrine of election. Election may be defined as "the choosing between two rights where there is a clear intention that both were not intended to be enjoyed". The foundation of doctrine of election is that a person taking the benefit of an instrument must also bear the burden, and he must not take under and against the same instrument.
- Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it, provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith. This is called doctrine of Holding Out.
- Doctrine of Feeding the Grant by Estoppel means where, a person fraudulently or erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.
- Where a person transfers his property so that his creditors shall not have anything out of the property, the transfer is called a fraudulent transfer. A debtor in order to defeat or delay the rights of a creditor, may transfer his property to some person, who may be his relative or a friend. The law does not allow this.
- The Act does not allow accumulation of income from the land for an unlimited period without the income-being enjoyed by owner of the property. The law allows accumulation of income for a certain period only. The period for which such accumulation is valid is : (a) the life of the transferor, or (b) eighteen years from the date of transfer. Any direction to accumulate the income beyond the period mentioned above is void. However, this is subject to certain exceptions.
- Lis pendens means a pending suit, action, petition or the like. Section 52 of the T.P. Act incorporates the doctrine of Lis pendens. It states that during the pendency of a suit in a court of law, property which is subject to litigation cannot be transferred.
- The Act expressly provides for special types of transfers such as sale, exchange, gift, mortgage and lease. In a sale, exchange and gift, there is a transfer of the ownership of property but mortgage is a transfer of an interest in specific immovable property and lease is a transfer of the right to enjoy immovable property.
- Actionable claims are claims, to unsecured debts. If a debt is secured by the mortgage of immovable property it is not an actionable claim, because the Section clearly excludes such a debt.
- Charge under the Act has been defined as "where immovable property of one person is by the act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property".
- As is evident from the above definition, a charge comes into existence either by the act of parties or by operation of law. A charge may be floating as well as fixed. A fixed charge is a charge on specific property but a floating charge is an equitable charge on the assets for time being of a going concern. It is peculiar to companies which are able to borrow money without any interference with their assets so long as they are going concerns.