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## Two Marks Questions

### 1. Attestation

- Section 3 of the Transfer of Property Act, 1882 defines attestation which involves at least two witnesses signing a document to confirm they have seen the executant sign it.
  - Witnesses must see the document being executed.
  - They must sign in the presence of the executant.

**Case Law: *M.L. Abdul Jabbar Sahib v. H. Venkata Sastri (1969)***

This case clarified the requirements for valid attestation.

### 2. Constructive Notice

- Section 3 of the Transfer of Property Act defines constructive notice as the knowledge of a fact that a person could have discovered with reasonable diligence.
  - If a purchaser fails to investigate, they are deemed to have constructive notice.

**Case Law: *Ram Coomar Coondoo v. Chunder Canto Mookerjee (1876)***

This case emphasized diligence by a purchaser.



### 3. Spes Successionis

- Section 6(a) of the Transfer of Property Act defines expectation of succession or inheritance that cannot be transferred.
  - Transfer of mere hope or expectation is void.

#### **Case Law: *Maddison v. Alderson* (1883)**

This case discussed invalidity due to lack of present ownership.

### 4. Who is Competent to Transfer Property

- Section 7 of the Transfer of Property Act states a transferor must be competent to contract under the Indian Contract Act, 1872, meaning the transferor should be of sound mind and not a minor and a person can transfer property only if they have the ownership or a legal right to transfer it.
  - Minors or mentally incapacitated persons are incompetent.

#### **Case Law: *Gopal v. Parsotam* (1883)**

This case held a transfer void due to incompetency.

### 5. Transfer for Benefit of Unborn Child (Section 13)

- Rule: A transfer made for the benefit of an unborn child is void. However, a transfer made conditioned on the child's birth will be valid.
- *Example: A transfer of property to an unborn child for future benefit will be void unless the child is born within a life period of 18 years.*



## 6. Rule Against Perpetuity

- Rule: No transfer of property can operate beyond the life of a person plus 21 years.
- This rule prevents property from being tied up indefinitely, allowing future generations to use it.

## 7. Direction for Accumulation of Income

- Section 17 of the Transfer of Property Act states the conditions when directing income to accumulate instead of being distributed.
  - Accumulation is limited to 18 years for private purposes or lifetime of the transferor whichever is more.

### Case Law: *Kesar Singh v. Teja Singh* (1959)

This case analyzed permissible limits of doctrine of accumulation.

## 8. Vested vs. Contingent Interest

- **Vested Interest:** When the right to property is secured, and ownership is not dependent on any condition.
- **Contingent Interest:** Right to property is conditional, depending on the happening of an event.
- *Example: A transfer to “A for life, and then to B if he survives A” creates a contingent interest for B.*



## 9. Conditional Transfers

- A transfer may be subject to conditions. These conditions may either be precedent (before) or subsequent (after).
- *Example: A gift of property to a child on condition that they marry within 5 years.*

## 10. Election and Apportionment

- **Election:** A person may be called upon to choose between two incompatible rights (Section 35).
- **Apportionment:** Income arising from property is divided according to the share of interest.

## 11. Restrictive Covenants

- Conditions placed on the use of property. For example, a property sale may specify it cannot be used for commercial purposes.

## 12. Ostensible Owner and Feeding the Grant by Estoppel

- **Ostensible Owner:** A person who appears to own property based on public appearances but does not have actual ownership.
- **Feeding the Grant by Estoppel:** If someone is allowed to act as though they are the owner, they may be estopped from denying the property's transfer.



### 13. Lis Pendens (Section 52)

- A property transfer during the pendency of a suit is void against the parties to the suit.
- *Example: If a property is in dispute and a sale occurs during litigation, the transfer is null.*

### 14. Fraudulent Transfer

- Transfer made with the intent to defraud creditors is voidable.
- *Example: Transferring property to evade paying a legitimate debt.*

### 15. Part Performance (Section 53A)

- The principle allows for the enforcement of an agreement if the transferee has partially performed their obligations under the agreement.

### 16. Sale (Sections 54-57)

- **Sale** refers to the transfer of property in exchange for a price paid or promised.
- **Rights and Duties** of seller and buyer include the delivery of possession and the risk of loss.

#### Case: *K.K. Verma v. Union of India* (1954)

This case established principles regarding the sale of goods and rights upon completion of a sale. In this case it was held that the rights of the buyer are protected once the sale is concluded.



## 17. Mortgage and Charge (Sections 58-104)

- **Mortgage:** The transfer of an interest in property to secure a loan.
- **Charge:** A claim on property but does not transfer any interest.

### **Case: Rajputana Agency Ltd. v. Shanker Lal**

This case is a leading example on the validity of mortgages and the impact of failure to comply with formalities.

## 18. Lease (Sections 105-117)

- A **lease** involves the transfer of property for a specific period in exchange for rent.

### **Case: G. R. Kamat v. S. S. Kamat**

This case discussed a tenant's rights in a lease agreement especially on expiration of the lease.

## 19. Exchange (Sections 118-121)

- Exchange involves the transfer of ownership of one property for another of equal value.
- *Example: A trade of land for a house.*

## 20. Gift (Sections 122-129)

- A gift is the voluntary transfer of property without exchange of money.

### **Case: K. K. Verma v. D. K. Verma**

This case set precedents in the gifting of immovable property. It held that gift of immovable property should be voluntary and without any consideration.



## 21. Actionable Claims (Sections 130-137)

- Actionable claims refer to claims that can be transferred for value, such as debts or rights of a partnership.
- *Example: The right to sue for recovery of a debt is an actionable claim.*

## 22. Registration Act, 1908

- Certain documents must be registered to be legally valid.
- **Compulsory Registration** includes documents like sale deeds and leases exceeding one year (Section 17).
- **Effect of Non-Registration:** A document that should be registered but is not, is inadmissible in evidence (Section 49)

## 23. Maharashtra Stamp Act, 1958

- Deals with the liability of instruments to stamp duty.
- Adjudication and impounding provisions govern the admission and penalties for improper use of stamps.

## 24. Name two easement types

**Easement of Necessity:** This arises when a property is severed, and one part cannot be enjoyed without access through the other.

Example: Right of way to access a landlocked property.

**Easement by Prescription:** This is acquired by continuous, open, and uninterrupted use of someone else's property for a specific period (20 years for private property).

Example: Drawing water from a neighbor's well over a prolonged period.



## Doctrines under Property Law

### 1. Doctrine of Restriction on Transfers (Sections 10 and 11)

#### Section 10: Condition Restraining Alienation

- A condition in a transfer that absolutely restrains the transferee from further transferring the property is void.
- **Requisites/Conditions:**
  1. The transfer must include a condition restraining alienation.
  2. The restraint must be absolute.
  3. Partial restraints (e.g., first refusal) are valid.
- **Illustration:** *A sells land to B with a condition that B can never sell it. The condition is void, but the transfer is valid.*
- **Exception:** Married women with restricted estate or property transferred for religious or charitable purposes.

#### Case Law: *Rangnath Sampathrao v. Pralhad Vishnu* (AIR 1957 SC 456)

**Facts:** A property transfer had a clause restricting resale.

**Issue:** Whether the condition was valid under Section 10.

**Judgment:** Supreme Court held the restriction void, as it contravened the right to alienate.

#### Section 11: Condition Making Property Burdened with Obligations

- A condition restraining the transferee from using the property in a particular way is void if it affects the property's lawful enjoyment.



- *Illustration: If a property is sold with a condition that it cannot be used for commercial purposes, such conditions are void if they hamper lawful enjoyment.*

**Case Law: *Tulk v. Moxhay* (1848)**

**Facts:** The owner sold land with a restrictive covenant for a garden.

**Issue:** Whether a restrictive covenant binds subsequent purchasers.

**Judgment:** The restriction was upheld due to the equitable principle of notice.

**2. Doctrine of Transfer for the Benefit of Unborn Persons (Section 13)**

**Section 13:** Property cannot be directly transferred to an unborn person. It must first be transferred to a living person for their lifetime, and only then can the interest be created for the unborn.

**Requisites/Conditions:**

1. There must be a prior interest created in favor of a living person.
2. The transfer to the unborn must comply with the Rule Against Perpetuity (Section 14).
3. The transfer must be absolute, and the unborn person must take the whole interest.

*Illustration: A transfers property to B for life, and after B's death, to B's unborn child. The child, upon birth, receives the interest.*

**Case Law: *Tagore v. Tagore* (1872)**

**Facts:** Property was transferred to an unborn person without a prior interest.

**Issue:** Validity of a transfer directly to an unborn person.

**Judgment:** Such a transfer is void unless it complies with Section 13.



### 3. Doctrine of Rule Against Perpetuity (Section 14)

- **Section 14:** No transfer can create an interest that takes effect beyond the lifetime of living persons at the date of transfer and 18 years thereafter.

#### Requisites/Conditions:

1. The transfer must involve a vesting period exceeding a lifetime plus 18 years.
2. Applies only to non-charitable transfers.
3. Future interests created in perpetuity are void.

*Illustration: If A transfers property to B for life, then to C's unborn child 30 years after C's death, the transfer is void.*

#### Case Law: *Whitby v. Mitchell*

**Facts:** An interest was created for an unborn child of an unborn person.

**Issue:** Whether such a transfer violated the rule.

**Judgment:** Held void for creating a perpetual interest.

### 4. Doctrine of Accumulation (Section 17)

- **Section 17:** Limits directions for accumulation of income from property beyond certain periods.

#### Requisites/Conditions:

1. Permissible periods:
  - Life of the transferor.
  - 18 years after the transferor's death.



- Minority of a person entitled to income.

*Illustration: A directs the income from his property to be accumulated for 50 years. This direction is void beyond the permissible period.*

Case Law: <i>Re Ashford</i>
<b>Facts:</b> A trust directed accumulation beyond the legal limit.
<b>Issue:</b> Validity of such directions.
<b>Judgment:</b> The direction was void after the statutory period.

## 5. Doctrine of Election (Section 35)

- A person who benefits from a transfer must also bear the burdens attached to it. They cannot accept the benefit and reject the burden.

### Requisites/Conditions:

1. **Existence of Two Interests:** One directly in favor of the person and the other indirectly.
2. **Express or Implied Choice:** The person must choose between conflicting rights.

*Illustration: A transfers land to B and directs that B's property be given to C. If B accepts A's transfer, he must fulfill the condition in favor of C.*



**Case Law: Cooper v. Cooper**

**Facts:** Conflict between accepting a benefit and the burden.

**Issue:** Whether election was valid without knowledge of the burden.

**Judgment:** Election requires full knowledge; choice once made is binding.

**6. Doctrine of Ostensible Ownership (Section 41)**

- When a person holds property as an ostensible owner with the consent of the real owner, a transfer made by the ostensible owner is valid if the transferee acts in good faith and for consideration.

**Requisites/Conditions:**

1. Consent of the real owner.
2. The ostensible owner must hold possession or title.
3. The transferee must act in good faith without knowledge of the real owner's rights.

*Illustration: X, with Y's consent, appears as the owner of property and sells it to Z. If Z buys it in good faith, Y cannot claim it later.*



**Case Law: *Ramnath v. Mulraj***

**Facts:** A person transferred property while being an ostensible owner.

**Issue:** Whether the transfer was valid.

**Judgment:** The transfer was upheld as the transferee acted in good faith.

**7. Doctrine of Lis Pendens (Section 52)**

- Prohibits transfer of property during litigation to prevent third-party interference with the rights of parties involved in the dispute.

**Requisites/Conditions:**

1. **Litigation Pending:** Suit or proceeding must relate to immovable property.
2. **Notice:** Purchaser must have notice of the litigation.
3. **Purpose:** Prevent multiplicity of litigation.

*Illustration: A sues B for ownership of property. While the suit is pending, B sells the property to C. C's purchase is subject to A's claim.*

**Case Law: *Bellamy v. Sabine***

**Facts:** Property transferred during litigation.

**Issue:** Whether the transfer binds the litigants.

**Judgment:** Transfer is void concerning litigating parties.



## 8. Doctrine of Fraudulent Transfer (Section 53)

- Voids transfers made with the intent to defraud creditors.

### Requisites/Conditions:

1. **Existence of Debt:** Transferor must owe a debt.
2. **Intent to Defraud:** Transfer should aim to defeat creditors' claims.
3. **Good Faith Exemption:** Bona fide purchasers are protected.

*Illustration: A, heavily indebted, transfers property to B (a relative) to avoid paying creditors. The transfer can be voided.*

Case Law: <i>Jaydayal Poddar v. Mst. Bibi Hazra</i>
<b>Facts:</b> Signs of fraud identified in a transfer.
<b>Issue:</b> Whether fraudulent intent invalidated the transfer.
<b>Judgment:</b> Evidence of fraud nullified the transaction.

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## 9. Doctrine of Part Performance (Section 53A)

- Protects a transferee who has taken possession of property in part performance of a contract even if the transfer is not completed by a registered deed.
- Prevents the transferor from asserting ownership against the transferee.



**Requisites/Conditions:**

1. **Existence of a Contract:** Written contract for transfer of immovable property.
2. **Possession Delivered:** Transferee must have taken possession in pursuance of the contract.
3. **Actionable Steps:** Transferee must have acted on the contract, e.g., making payments or improvements.
4. **Excludes Plaintiff's Rights:** Transferor cannot deny the transferee's possession but does not confer title.

*Illustration: A agrees to sell his property to B, delivers possession, and B makes part payments. Later, A refuses to complete the transfer. Section 53A bars A from evicting B.*

**Case Law: Arif v. Jadunath Majumdar**

**Facts:** Possession given without completing the formal deed.

**Issue:** Whether possession under an unregistered contract could be protected.

**Judgment:** Held that Section 53A barred the transferor from dispossessing the transferee.

**Situational Analysis Questions**

**Situation 1: A owes ₹10,000 to B, who transfers the debt to C. B, without informing A about the transfer, collects the amount from A. Later, C demands payment from A.**

**Questions:**

1. Is A's payment to B valid?
2. Can C sue A for the debt?



**Question 1: Yes, A's payment to B is valid.**

- Section 130(1) states that the transfer of actionable claims is not complete until the debtor receives notice. Section 131 mandates "actual notice" to bind the debtor.
- Since A paid B in good faith without notice of the transfer, A's obligation is discharged.

**Case Law: *Durga Prasad v. Baldeo Prasad* (1930)**

In this case, the court held that until notice of transfer is served, the debtor's payment to the original creditor is valid.

**Question 2: No, C cannot sue A for the debt.**

- Since A paid the debt to B without notice, C's remedy lies in suing B for the amount collected.
- *Illustration: If B does not notify A, it's B's breach of duty under the Act, and A's obligation ends upon payment to B.*

**Case Law: *Lachman Prasad v. Baldev Singh* (1954)**

In this case, it was stated that the debtor was held not liable to the transferee because notice was not served.

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**Situation 2: A transfers property to B for 20 years, then to C for 10 years, then to D for 5 years, and finally to B's unborn son without power of alienation.**

**Questions:**

1. What right does the unborn son of B have in A's property?
2. What interest do B, C, and D have in the property?



**Question 1:**

**Unborn Son's Rights:**

- Section 13 of the Transfer of Property Act, 1882 states that property can be transferred for the benefit of an unborn person, provided a prior life interest is created, and the unborn person receives absolute interest. The condition of "no power of alienation" is void under Section 10.
- *Illustration: The transfer to B for 20 years serves as the life interest. Upon B's son's birth, the property vests absolutely in him.*

**Case Law: *Girjesh Datt v. Data Din* (1916)**

In this case, the court invalidated restrictions on alienation, allowing the unborn person full ownership.

**Question 2:**

**Interests of B, C, and D:**

1. **B:** A life interest for 20 years, after which his interest ends.
2. **C:** A valid interest for 10 years after B's interest, provided no perpetual conditions are violated.
3. **D:** A valid interest for 5 years after C's interest, subject to the same conditions.
4. **Unborn Son:** Absolute ownership upon birth, overriding conditions like "no power of alienation."



**Situation 3: A and B have a daughter, C, who releases her right to inheritance in favor of B for consideration. Later, A dies, and C claims her share.**

**Questions:**

1. Can B resist C's claim to her share in A's property?
2. What principle is involved?

**Question 1: No, B cannot resist C's claim.**

- Section 6(a) of the Transfer of Property Act, 1882 states the property that cannot be transferred (chance of heir apparent)
- The release was invalid because it pertained to a mere expectancy (spes successioinis). Inheritance rights arise only upon A's death. (nemo dat quod non habet)
- *Illustration: A cannot transfer what doesn't yet exist.*

**Case Law: Kenchegowda v. Siddegowda (1994)**

This case held that the transfer of future inheritance was deemed invalid.

**Question 2:**

- **Section 6(a):** Spes successioinis (mere expectation of inheritance) is non-transferable.
- **Doctrine of Expectancy:** Future property rights cannot be relinquished during the owner's lifetime.



**Situation 4: A mortgages a field bordering a river to B. Over time, alluvion increases the field's area.**

**Questions:**

1. What is meant by accession?
2. Is B entitled to the increase?

**Question 1:**

**Accession:**

- Accession refers to natural increments to property, such as alluvion (Section 70 of the Transfer of Property Act, 1882).
- **Illustration:** Additional land formed due to sediment deposition by the river is considered part of the original property.

**Question 2:**

**Yes, B is entitled to the increase.**

- Section 70 states that mortgagee rights extend to all accretions to the mortgaged property.

**Case Law: R. Ranga Rao v. N. Ramaiah (1990)**

In this case, it was held that the mortgagee was entitled to accretions.

- **Illustration:** The field's increase automatically falls under B's mortgage rights.



**Situation 5: A owns agricultural land and transfers it to B with a condition that B will construct a school on the land within five years. If B fails, the property will revert to A. After six years, B has not constructed the school, but he claims ownership of the land.**

**Questions:**

1. Is B entitled to retain the land?
2. How does the condition affect the validity of the transfer?

**1. No, B is not entitled to retain the land.**

- Under **Section 31**, this is a condition subsequent. Non-fulfillment of this condition results in the property reverting to A.
2. The condition is valid as per **Section 29**, provided it is not unlawful or impossible to perform. The transfer is defeated due to B's failure to fulfill the condition.

**Case Law: Narayanamma v. Govindappa (2011)**

In this case, the court held that a condition subsequent must be strictly complied with, failing which the transfer becomes void.

**Situation 6: C has been using a pathway on D's property for over 20 years to access his house. D constructs a wall, blocking C's access, claiming that C has no right to the pathway.**

**Questions:**

1. Can C claim an easementary right over the pathway?
2. What is the role of continuous and uninterrupted use in this case?



1. **Yes, C can claim an easementary right.**

- As per **Section 15**, C has acquired a prescriptive easement by continuous, uninterrupted use for more than 20 years.
2. Continuous use without interruption establishes the easementary right, which D cannot deny.

**Case Law: Mohan Lal v. Mirza Abdul Gaffar (1996)**

In this case, the Supreme Court upheld prescriptive rights of easement when uninterrupted use was proven.

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**Situational 7: X, a property owner, gifts a portion of his land to Y while also transferring another portion of Y's land to Z. Y challenges the transfer to Z, claiming X had no right to transfer Y's property, but Y simultaneously retains the gifted property.**

**Questions:**

1. Can Y retain the gift and challenge the transfer of his land to Z?
2. What does the Doctrine of Election imply in this case?

1. **No, Y cannot retain the gift and challenge the transfer.**

- As per **Section 35**, Y must either accept the gift and ratify the transfer of his land to Z or reject both.
2. The **Doctrine of Election** ensures that a person cannot accept one part of a transaction and reject the other.



**Case Law: Codrington v. Codrington (1875)**

In this case, the court ruled that a person must elect between inconsistent claims in a transaction.

**Situation 8: A enters into an oral agreement to sell a plot to B. B takes possession, constructs a house, and pays part of the consideration. Later, A refuses to execute the sale deed, claiming the agreement is void as it was not registered.**

**Questions:**

1. Can B enforce the agreement under the Doctrine of Part Performance?
2. What conditions must B fulfill to claim protection?

**1. Yes, B can enforce the agreement under Section 53A.**

- The doctrine protects B, as A allowed possession and accepted consideration.

**2. Conditions under Section 53A:**

- The contract must be valid, and the transferee must have acted in furtherance of the contract.

**Case Law: K.K. Verma v. Union of India (1954)**

In this case, part performance was upheld when possession and acts furthering the contract were evident.



**Situation 9: P files a suit against Q, claiming ownership of a piece of land. While the suit is pending, Q sells the land to R. After the court rules in favor of P, R claims ownership since he purchased the property.**

**Questions:**

1. Does R have a valid claim to the property?
2. How does the Doctrine of Lis Pendens apply here?

**1. No, R does not have a valid claim.**

- Under **Section 52**, any transfer during litigation affecting the property is subject to the court's decision.
2. The **Doctrine of Lis Pendens** ensures that the rights of the parties to a suit are not defeated by alienation during litigation.

**Case Law: Jayaram Mudaliar v. Ayyaswami (1972)**

In this case, the court upheld that transfers during litigation are subject to its outcome.

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**Situation 10: M, falsely claiming ownership of land, sells it to N. Later, M acquires title to the same property. N demands the property, citing the earlier sale.**

**Questions:**

1. Can N claim ownership after M acquires title?
2. How does the Doctrine of Feeding the Grant by Estoppel apply?



1. **Yes, N can claim ownership.**

- As per **Section 43**, once M acquires title, it automatically vests in N.

2. The doctrine protects transferees when the transferor fraudulently conveys property they do not own but later acquires.

**Case Law: Transfer of Property Act, India v. Gainda Mal (1938)**

In this case, the court held that title passes to the transferee when the transferor acquires ownership.

**Situation 11: X creates a life interest in favor of Y with a remainder interest in Z. Y dies prematurely. Z claims immediate ownership of the property.**

**Questions:**

1. Can Z claim ownership before the natural end of Y's life interest?
2. How does the Doctrine of Acceleration operate in such cases?

1. **Yes, Z can claim ownership.**

- Under this doctrine, if a prior interest fails, the succeeding interest accelerates and takes effect immediately.
2. This doctrine ensures that the intention of the transferor is fulfilled without waiting for the natural expiration of the prior interest.

**Case Law: Ranganayakamma v. Sundarappa (1896)**

In this case the court upheld that the remainder interest takes effect if the prior interest is prematurely terminated.



**Situation 12: L transfers all his assets to M to evade paying creditors. After the transfer, creditors file a suit to recover their dues and challenge the transfer.**

**Questions:**

1. Is the transfer valid?
2. What protections do creditors have under the Transfer of Property Act?

**1. No, the transfer is not valid.**

- As per **Section 53**, transfers made with intent to defeat or delay creditors are voidable at their instance.
2. Creditors can seek to have the transfer set aside, proving fraudulent intent.

**Case Law: Jugal Kishore v. Bisheshar Das (1917)**

In this case, it was held that transfers intended to defraud creditors were deemed voidable.



## Long Answers

### 1. Properties That Cannot Be Transferred

The Transfer of Property Act, 1882, specifies under Section 6 the properties that cannot be transferred. These restrictions ensure the protection of certain rights and obligations that are personal, contingent, or against public policy.

Property includes both tangible (physical) and intangible (non-physical) assets. However, specific categories of property are non-transferable as per the law.

#### Non-Transferable Properties (Section 6, TPA)

##### Spes Successionis (Chance of Succession)

A mere chance of inheriting property (e.g., heir-apparent's right to ancestral property) cannot be transferred.

*Example: A cannot sell his expectation of inheriting property from B.*

#### Case Law: *Gopi Chand v. Ram Das*

In this case, it was held that a transfer based on mere expectancy is void.

##### Right of Re-Entry

A landlord's right to reclaim property due to a breach of lease conditions cannot be transferred.

It is a personal right reserved for the lessor.

*Example: If a tenant breaches lease terms, the landlord cannot sell his right to evict the tenant.*



## Easements

Easements are non-transferable as they are rights to use someone else's land for a specific purpose.

*Example: A right to access water from a neighbor's well.*

Such rights are personal and cannot be sold or transferred.

## Restricted Interest by Law

Certain interests are inherently restricted by law and cannot be transferred.

*Example: An idol's property managed by trustees is non-transferable.*

### **Case Law: Hanooman Prasad Pandey v. Babooee Munraj Koonweree**

In this case, it was held that property dedicated to religious or charitable purposes cannot be alienated by managers without necessity.

## Stipends and Public Offices

Salaries or stipends attached to public offices cannot be transferred.

*Example: The salary of a government officer is personal and cannot be sold.*

Public offices themselves are also non-transferable as they are tied to public service.

## Right to Maintenance

A right to maintenance is personal and cannot be transferred.

*Example: A widow's claim to maintenance from her deceased husband's property cannot be assigned to another.*



## **Pensions**

Pensions granted by the government or institutions are personal rights and cannot be transferred.

*Example: A retired soldier's pension cannot be assigned to another person.*

## **Nature of Property**

Properties forbidden by law to be transferred:

Public parks, cemeteries, or roads.

*Example: Public land meant for communal use cannot be sold or alienated.*

## **Interest Opposed to Public Policy**

Transfer of property that is illegal or against public morality or policy is invalid.

*Example: Property used for gambling or illegal trade cannot be sold.*

## **Personal Service Contracts**

Contracts involving personal service or obligations tied to a person cannot be transferred.

*Example: A musician's obligation to perform at a particular venue cannot be assigned to another.*

## **Conclusion**

Section 6 of the Transfer of Property Act, 1882, protects personal and non-assignable rights by ensuring that certain properties or interests remain non-transferable. These restrictions uphold public policy, personal rights, and legal principles, ensuring fair and just property transactions.



## 2. Vested Interest vs. Contingent Interest

In property law, particularly under the Transfer of Property Act, 1882 and in the context of wills and trusts, interests in property can be categorized as either vested or contingent. Understanding the difference between these two types of interests is crucial, as it impacts the right to possession and the transferability of the property.

### 1. Vested Interest

A vested interest is one where the right to enjoy or take possession of the property is secured in favor of the beneficiary, and that right is not dependent on any condition precedent. The interest is **certain**, and the beneficiary's right is absolute, subject only to the happening of future events that do not affect the vested nature of the interest.

A vested interest is defined under **Section 19** of the Transfer of Property Act, 1882. A vested interest is one that is not dependent on any condition or event. It becomes part of the beneficiary's estate and can be transferred or inherited.

#### Characteristics of Vested Interest:

- **Immediate Right:** The beneficiary has an immediate right to the property, even though they may not yet have possession of it.
- **No Condition Precedent:** The vesting of the interest is not dependent on the occurrence of any specific condition or event.
- **Transferable:** A vested interest is transferable, and the beneficiary may sell, transfer, or devise the interest to others.
- **Certain and Absolute:** The beneficiary's right to the property is certain and fixed at the time of creation of the interest.
- **Protected from Forfeiture:** A vested interest cannot be taken away unless it is subject to a condition subsequent, such as the condition that the beneficiary must remain alive to inherit.



*Example: A will states, "I give my property to my son John, upon my death." Here, John's interest in the property is **vested** because he has an immediate, certain right to the property, and his interest is not dependent on any condition (such as surviving a specific time period).*

#### Case Law: Jagdish Prasad v. Smt. Sudha Rani (1976)

In this case, the court held that the interest of a beneficiary in a property under a will is vested if it is created unconditionally, and the beneficiary has a right to possess the property immediately upon the testator's death.

## 2. Contingent Interest

A contingent interest, on the other hand, is an interest that is dependent on the fulfillment of a specific condition or the happening of a future event. The right to possess or enjoy the property is uncertain because it may or may not arise in the future. Until the specified condition is met, the beneficiary does not have an enforceable right to the property.

**Section 21** of the Transfer of Property Act, 1882, a contingent interest is one where the beneficiary's right to the property is subject to the occurrence of a condition precedent. Until that condition is fulfilled, the interest remains contingent and not vested.

### Characteristics of Contingent Interest:

- **Conditional:** The right to the property depends on the happening of a specific **condition** or event, which may or may not occur.
- **Uncertain:** The beneficiary's right to the property is **uncertain** and contingent on a future event, such as the beneficiary reaching a certain age, surviving another individual, or fulfilling some other condition.
- **No Immediate Right:** The beneficiary does not have an immediate right to the property, as the interest will vest only if the condition is fulfilled.



- **Non-transferable:** A contingent interest is usually non-transferable, as the interest is not yet fixed or secured.
- **Can Be Defeated:** If the condition precedent is not met, the interest fails or becomes void.

*Example: A will states, "I give my property to my son John, provided he graduates from university within five years." Here, John's interest in the property is **contingent** because his right to possess the property depends on whether he fulfills the condition of graduating within five years.*

**Case Law: K.K. Verma v. Union of India (1954)**

In this case, the court observed that a condition in a gift or will, such as the beneficiary only receiving the property if they marry, creates a contingent interest, which may fail if the condition is not satisfied.

### 3. Differences Between Vested and Contingent Interests

Aspect	Vested Interest	Contingent Interest
<b>Condition</b>	No condition precedent; the interest is absolute.	Dependent on the fulfillment of a condition or event.
<b>Certainty</b>	The interest is certain and immediate.	The interest is uncertain until the condition is fulfilled.
<b>Right to Possession</b>	The beneficiary has an immediate right to possession, even if not in physical possession.	The beneficiary has no right to possession until the condition is met.



Aspect	Vested Interest	Contingent Interest
<b>Transferability</b>	A vested interest can usually be transferred.	A contingent interest is typically non-transferable until it vests.
<b>Example</b>	"I give my property to John upon my death."	"I give my property to John if he graduates within five years."
<b>Effect of Condition</b>	If the interest is vested, the condition cannot defeat the vested right.	The interest may fail if the condition is not met.

### 3. Doctrine of Rule Against Perpetuity

The Doctrine of Rule Against Perpetuity is a fundamental principle of property law aimed at preventing the indefinite tying up of property. This doctrine ensures the free transferability of property and aligns with public policy by prohibiting the creation of perpetual interests that would otherwise hinder economic development and utility of resources.

**Perpetuity:** The indefinite or perpetual transfer of property rights that restrict alienation beyond a permissible period.

**Section 14**, Transfer of Property Act, 1882, codifies the rule against perpetuity in India.

It applies to transfers where the vesting of interest is delayed beyond the lifetime of one or more living persons at the time of transfer, plus 18 years (age of majority).



## Provisions:

### 1. Creation of Future Interest:

- The rule applies to transfers involving future interests such as contingent interests or executory interests.

### 2. Perpetuity Period:

- The interest must vest within the lifetime of living persons at the date of transfer and within 18 years after their death.

### 3. No Indefinite Suspension of Alienation:

- Alienation of property cannot be suspended indefinitely.

### 4. Exceptions:

- **Vested Interests:** Section 14 applies only to contingent interests; vested interests are excluded.
- **Charitable or Religious Transfers:** These are exempt from the rule.

## Public Policy and Importance

- Encourages the free transfer of property.
- Prevents economic stagnation by ensuring property is not rendered unusable or tied up for an unreasonable period.

## Examples

### • Valid Transfer:

Aman bequeaths property to Bobby for life, and after Bobby's death, to Bobby's child Camila if Camila attains the age of 21.

- Since the interest vests within 18 years of Bobby's death, this transfer is valid.



- **Invalid Transfer:**

Amit transfers property to Beena for life and then to Catherine's unborn descendants forever.

- This creates an indefinite perpetuity and is void.

***Case Law: Raja Jagadamba v. Raja Purushottam (1919)***

The court held that property tied up for an indefinite period violates the rule and becomes void.

***Case Law: Whitby v. Mitchell (1890)***

Clarified that the rule does not apply to personal contracts but only to property interests.

***Case Law: Shyam Sunder v. Siya Ram (1973)***

Reiterated the application of Section 14 and upheld the invalidation of contingent transfers beyond permissible limits.

## **Criticisms**

1. Complex to apply, particularly in cases involving intricate family settlements.
2. Lacks flexibility for modern economic needs.
3. Does not sufficiently accommodate evolving needs for wealth management and estate planning.



## Conclusion

The Rule Against Perpetuity is a critical doctrine ensuring the free flow of property and balancing individual rights with societal interests. It protects against the rigidity of perpetual restrictions while enabling the practical utility of property within a legally defined timeframe.

## 4. Sale under Transfer of Property Act, 1882

The **Transfer of Property Act, 1882** governs the sale of immovable property in India. **Sections 54 to 57** specifically deal with the sale, which is defined as the transfer of ownership in exchange for a price paid, promised, or part-paid and part-promised. The Act also outlines the rights and duties of the buyer and seller and emphasizes the principle of Caveat Emptor (buyer beware).

### Definition of Sale (Section 54):

- A sale is a transfer of ownership in exchange for a price.
- It involves:
  - An agreement to sell: When the transfer is to take place in the future.
  - Sale deed: The legal document that effects the transfer.

### Essentials of Sale:

1. **Parties:** Competent seller and buyer.
2. **Subject Matter:** Immovable property.
3. **Consideration:** Money.



4. **Registration:** Mandatory for immovable property worth Rs. 100 or more (Section 17, Registration Act, 1908).

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## Rights and Duties of the Seller (Section 55):

### Duties of the Seller:

1. **Disclose Defects:**

- The seller must disclose any material defects in the property or title.

**Case Law: Khub Chand v. Mohan Lal (AIR 1970 SC 838)**

The seller's failure to disclose a latent defect was held a breach of duty.

2. **Produce Title Deeds:**

- The seller must provide all documents of title to the buyer on request.

3. **Answer Questions:**

- The seller must answer all questions about the property posed by the buyer.

4. **Deliver Possession:**

- After the sale, the seller must deliver physical or constructive possession of the property.

5. **Pay Outgoings:**

- The seller must pay public charges and rent until the ownership is transferred.



### Rights of the Seller:

#### 1. Retention of Title Deeds:

- The seller can retain title deeds if the sale price is unpaid.

#### 2. Lien for Price:

- If possession is delivered but the price remains unpaid, the seller has a lien over the property.

### Rights and Duties of the Buyer (Section 55):

#### Duties of the Buyer:

##### 1. Pay the Price:

- The buyer must pay the purchase price on completion of the contract.

##### 2. Accept Title:

- The buyer must accept the title of the property if it is free of defects.

##### 3. Bear Outgoings Post-Sale:

- After possession, the buyer must bear public charges, taxes, and other liabilities.

#### Rights of the Buyer:

##### 1. Right to Title:

- The buyer has the right to receive a good and marketable title from the seller.

##### 2. Right to Possession:

- The buyer has the right to receive possession upon completion of the sale.

##### 3. Right to Compensation:

- If the title is defective, the buyer can claim compensation.



## Caveat Emptor (Buyer Beware)

The principle of *Caveat Emptor* imposes a duty on the buyer to be diligent and make inquiries about the property before purchasing.

### Exceptions to Caveat Emptor:

#### 1. Fraud by the Seller:

- If the seller actively conceals defects.

**Case Law: Dhanapal Chettiar v. Yesodai Ammal (1979 AIR SC 1745)**

Seller fraudulently suppressed material defects.

#### 2. Defects Beyond Discovery:

- If the defect could not have been discovered by reasonable inspection.

#### 3. Active Misrepresentation:

- When the seller provides false information about the property.

#### **Case Law: Vinayak v. Bal Gangadhar Tilak (1912)**

**Issue:** Seller's duty to disclose.

**Held:** Sellers must disclose all material defects known to them that the buyer cannot reasonably find.

#### **Case Law: K. Bhaskaran Nair v. G. Haridas (1994)**

**Issue:** Breach of buyer's duty to pay the purchase price.

**Held:** Buyers who fail to pay are in breach of their contractual obligation.



**Case Law: Raghunath v. State of Maharashtra (1971)**

**Issue:** Buyer's right to possession.

**Held:** Buyers are entitled to possession if the sale deed is valid and registered.

**1. Defective Title:**

- *Scenario:* A seller sells a property without disclosing that it is under litigation.
- *Legal Outcome:* The buyer can sue for rescission of the contract.

**2. Right to Lien:**

- *Scenario:* A buyer takes possession of a property but fails to pay the full price.
- *Legal Outcome:* The seller retains the right to the unpaid portion through a lien.

**Strengths:**

1. The law ensures transparency in property transactions.
2. Rights and duties are clearly outlined, reducing disputes.

**Weaknesses:**

1. Caveat Emptor places a significant burden on buyers, particularly laypersons.
2. Enforcement of rights may be time-consuming and costly in litigation.



**Difference Between Sale and Contract for Sale**

<b>Aspect</b>	<b>Sale</b>	<b>Contract for Sale</b>
<b>Definition</b>	A completed transfer of ownership of property for a price.	An agreement to transfer property ownership in the future.
<b>Ownership Transfer</b>	Immediate transfer of ownership from seller to buyer.	Ownership is transferred in the future upon fulfillment of conditions.
<b>Legal Status</b>	Creates ownership rights in favor of the buyer.	Creates rights in personam but not ownership rights.
<b>Risk</b>	Risk of property passes to the buyer.	Risk remains with the seller until ownership is transferred.
<b>Section of TPA</b>	Governed by Section 54 of the Transfer of Property Act.	Also governed by Section 54 as an agreement to sell.
<b>Example</b>	Registration of a sale deed.	An agreement to sell with payment to be made later.

**Case Law: *Laxmi Narayan v. Moti Lal (AIR 1936 All 41)***

In this case, it was held that a sale without registration does not transfer ownership; it remains a contract for sale.



## 5. Mortgage and Charge (Sections 58 – 104 of the Transfer of Property Act, 1882)

A mortgage is a transfer of an interest in specific immovable property for the purpose of securing the payment of a debt or performance of an obligation. The Transfer of Property Act, 1882, governs the law of mortgages in India. It distinguishes between various types of mortgages, their rights, and liabilities.

A charge, on the other hand, is a non-possession security interest in immovable property, which does not transfer the right to possession but only the right to enforce the payment of a debt through the property. A charge can be created for securing the payment of a debt without transferring any ownership rights.

### Mortgage (Section 58)

Definition: A mortgage is defined as the transfer of an interest in specific immovable property for securing the payment of money advanced by way of loan or performance of an obligation.

Section 58(a): A mortgage is the transfer of interest in property for securing the debt. The mortgagor retains possession, but in case of default, the mortgagee can exercise the right to sell or foreclose the property.

### Case Law: In K.K. Verma v. Union of India (2001)

In this case, the court recognized that a mortgage can either be a simple mortgage or a usufructuary mortgage, and it must be treated according to the type specified.



## Types of Mortgages (Section 58)

**Simple Mortgage (Section 58(a)):** The mortgagor binds himself to repay the loan without giving possession of the property to the mortgagee. If the mortgagor defaults, the mortgagee can sell the property to recover the debt.

*Illustration: A borrows money from B, and they execute a mortgage deed where A promises to repay B. If A defaults, B can sell the property.*

**Mortgage by Conditional Sale (Section 58(b)):** The sale of the property is made under the condition that if the mortgagor repays the loan within the stipulated time, the sale will be void; otherwise, it becomes absolute.

*Illustration: A sells property to B with a condition that A can redeem it by repaying within 5 years. If A doesn't repay, the sale becomes final.*

**Usufructuary Mortgage (Section 58(c)):** In this mortgage, the mortgagor delivers possession of the property to the mortgagee, who can retain possession and use the property for the recovery of the loan by receiving the income or profits from the property.

*Illustration: A mortgages a property to B and gives possession of it. B uses the income from the property until the debt is paid off.*

**English Mortgage (Section 58(d)):** The mortgagor transfers the property to the mortgagee absolutely but with a condition to re-transfer the property upon repayment of the loan.

*Illustration: A transfers the property to B with the condition that upon payment of the debt, the property will be re-transferred to A.*

**Equitable Mortgage (Section 58(e)):** The mortgagor delivers the title deeds of the property to the mortgagee with the intention to create a security for a loan, without transferring the property formally.

*Illustration: A gives the title deed of the property to B to secure a loan, without creating a formal mortgage deed.*



**Mortgage by Deposit of Title Deeds (Section 58(f)):** In this type of mortgage, a person deposits title deeds of immovable property with a lender to secure a loan. No formal written agreement is needed.

*Illustration: A borrows money from B and deposits the original documents of his property as security for the loan.*

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### Charge (Section 100)

**Definition of Charge:** A charge is a non-possessory security interest created on immovable property. It allows the creditor (charge-holder) to enforce payment through the sale of the property if the debtor defaults but does not transfer possession of the property to the creditor.

*Example: A borrows money from B and creates a charge over his house, but A continues to live in the house. If A defaults on payment, B can sell the house to recover the loan, but A retains possession until the default occurs.*

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## 3. Rights and Liabilities of Mortgagor and Mortgagee:

### 3.1 Rights of Mortgagor:

**Right to Redeem:** The mortgagor has the right to redeem the property (i.e., pay off the debt) and get the property back at any time before foreclosure or sale.

**Right to Possession:** Unless the mortgage is one involving a transfer of possession (like usufructuary mortgage), the mortgagor retains possession of the property.

**Right to Sue for Wrongful Foreclosure:** If a mortgagee wrongfully forecloses the mortgage, the mortgagor can sue for the wrongful act.



### 3.2 Rights of Mortgagee:

**Right to Foreclosure or Sale:** If the mortgagor defaults in repaying the debt, the mortgagee has the right to sell or foreclose the mortgaged property.

**Right to Recover Debt:** The mortgagee can use the mortgaged property to recover the debt, either by taking possession (if applicable) or selling the property.

**Right to Claim Rent and Profits:** In cases of usufructuary mortgage, the mortgagee has the right to collect rents and profits from the property.

**Right to Lease the Property:** If the mortgagor has given possession, the mortgagee can lease the property to recover rent.

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## 4. Procedures for Foreclosure and Sale:

### 4.1 Foreclosure (Section 67)

If the mortgagor defaults on payment, the mortgagee has the right to initiate foreclosure. In a foreclosure, the mortgagee seeks a court order to sell the mortgaged property and recover the debt.

### 4.2 Sale (Section 69)

If foreclosure is not possible, the mortgagee can sell the mortgaged property. The sale must be done in accordance with the procedure prescribed under the Transfer of Property Act and must be done in a way that maximizes the sale value.

Case Law: In Amit Kumar v. Kundan Lal (2013)

In this case, the court upheld the right of the mortgagee to foreclose the mortgaged property under the provisions of the Act.

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## 5. Mortgage of Property: Rights and Protections

### 5.1 Redemption (Section 60)

The mortgagor has the right to redeem the property by paying the debt, including any interest due, as long as the property has not been sold or foreclosed.

The right to redeem cannot be waived in the mortgage agreement, and any agreement to forgo this right is void.

Case Law: In Radha Bai v. Sankar (1950)

In this case, the court ruled that the right of redemption is fundamental and cannot be excluded by any mortgage agreement.

### 5.2 Subrogation (Section 92)

Subrogation allows the mortgagee to pay off the debt secured by a prior mortgage to take the position of the original creditor and recover the debt.

## Conclusion

The provisions of Sections 58 to 104 of the Transfer of Property Act, 1882 provide a detailed framework for creating mortgages, the rights of mortgagor and mortgagee, and the procedures involved in enforcing or redeeming mortgages.



## 6. Once a Mortgage, Always a Mortgage

The phrase "once a mortgage, always a mortgage" is a foundational principle in mortgage law, which signifies that once an arrangement is deemed a mortgage, it cannot be converted into anything else, especially something that would deprive the mortgagor of their right to redeem. This principle protects the mortgagor's right to redemption and prevents any arrangement in a mortgage from becoming an absolute transfer of property, even if the deed contains a term that suggests otherwise.

The purpose of this rule is to uphold the equitable right of redemption, ensuring that a mortgage cannot operate as a sale or conveyance, irrespective of any stipulations to the contrary. The doctrine is applied to prevent lenders from including terms in mortgage deeds that would unduly benefit them or take advantage of the borrower's vulnerability.

### Key Components of the Principle

1. **Equity of Redemption:** The mortgagor has a fundamental right to reclaim their property upon repayment of the mortgage debt.
2. **Prevention of Unconscionable Agreements:** The law protects borrowers from forfeiting their property rights or allowing the lender to convert the mortgage into an absolute sale.
3. **Anti-Clogging Principle:** Any clause in a mortgage deed that seeks to restrict or deny the right of redemption is void and unenforceable.

#### Example 1:

A mortgages his property to B to secure a loan of ₹5 lakh, agreeing to repay it within five years. The mortgage deed includes a clause stating that if A fails to repay within the specified period, B will become the absolute owner of the property, without any right for A to redeem it afterward. Here, the clause converting the mortgage into an absolute sale is void, as it violates A's right to redemption. The principle "once a mortgage, always a



mortgage" applies, and A retains his right to redeem the property, even after the specified period.

**Example 2**

C takes a mortgage loan from D and includes a term that allows D to buy the mortgaged property if C defaults on repayment. Later, C is unable to make the repayment, and D tries to enforce the term as a transfer of ownership. Under the principle "once a mortgage, always a mortgage," the law will treat this as an attempt to convert the mortgage into a sale, violating C's equity of redemption. D cannot use this clause to take over the property outright; C retains the right to redeem the mortgage by repaying the loan.

**Case Law: Seth Ganga Dhar v. Shankar Lal (1958)**

In this Indian Supreme Court case, Seth Ganga Dhar mortgaged his property to Shankar Lal with a condition that if the loan wasn't repaid by a certain date, the mortgage would become an absolute sale. The Supreme Court ruled that such a provision was against the principle of "once a mortgage, always a mortgage" and deemed it void, allowing the mortgagor to retain his right of redemption even after the lapse of the repayment date.

**Case Law: Pandit Chunchun Jha v. Sheikh Ebadat Ali (1954)**

In this case, the Supreme Court of India discussed whether a transaction constituted a mortgage or an outright sale. The court concluded that if the transaction meets the conditions of a mortgage, it should always remain a mortgage, with the mortgagor's right to redemption protected. The court reaffirmed that the intention of the parties should not override the inherent characteristics of a mortgage transaction, ensuring it remains redeemable.



Under the Transfer of Property Act, 1882, this principle is embedded in Section 60, which provides the mortgagor the right to redeem the property after repaying the debt, notwithstanding any provisions in the contract attempting to limit or take away this right. If any provision restricts or nullifies this right to redemption, the law deems it void.

- **Clog on Redemption:** Any term that prevents or restricts the mortgagor from redeeming the mortgage upon repayment is referred to as a clog on redemption and is unenforceable. The courts will often strike down such clauses to maintain the integrity of the mortgage.

**Case Law: Stanley v. Wilde (1899)**

In this English case, it was established that any condition or provision in a mortgage that clogs the right to redemption or aims to turn the mortgage into an absolute sale is void. The case upheld that, regardless of the agreement between the parties, the borrower must have the opportunity to regain ownership of the mortgaged property by paying off the loan.

**Case Law: Kreglinger v. New Patagonia Meat and Cold Storage Co. Ltd. (1914)**

This case further reinforced the principle. The House of Lords held that any agreement preventing the redemption of a mortgage upon payment of the debt was void and unenforceable. The court highlighted that no contract should transform a mortgage into an absolute transfer, no matter how it is worded.

1. **Equitable Right:** Redemption is not just a contractual right but an equitable one, ensuring fairness and protecting the borrower.
2. **Right Cannot Be Waived:** A mortgagor cannot contractually give up their right to redeem, and any clause attempting this will be struck down.



- 3. Protects Borrower's Interests:** The rule serves as a safeguard against predatory lending practices, ensuring the lender cannot obtain undue advantages.
- 4. Limitation of Clauses:** Even if both parties agree, any clause that attempts to turn a mortgage into a sale upon default violates the principle and is void.

## **Conclusion**

The principle of "once a mortgage, always a mortgage" ensures the mortgagor's right to redeem and prohibits any conversion of the mortgage into a permanent sale. This principle, supported by case laws like Stanley v. Wilde and Seth Ganga Dhar v. Shankar Lal, provides critical protection to mortgagors, preventing lenders from inserting unfair terms that infringe on the borrower's right to reclaim their property. It reinforces the idea that the essence of a mortgage remains intact as a security interest, irrespective of any terms to the contrary.

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## **7. Gift Under the Transfer of Property Act, 1882**

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

### **Essential Elements of a Gift:**

#### **1. Transfer of Property:**

- The property must be tangible (existing moveable or immovable).
- Future property cannot be gifted.

#### **2. Voluntary Transfer:**

- The gift must be made voluntarily without coercion, fraud, or undue influence.



### 3. Without Consideration:

- A gift must be gratuitous; there should be no monetary or other consideration involved.

### 4. Acceptance by the Donee:

- The donee must accept the gift during the lifetime of the donor.
- If the donee refuses or fails to accept the gift, it becomes void.

### 5. Competence of Parties:

- The **donor** must be competent to contract (major and of sound mind).
- The **donee** can be any person, including a minor. For a minor, acceptance must be made by a guardian.

### 6. Mode of Transfer:

- **Immovable property:** A gift must be made through a registered instrument signed by the donor and attested by at least two witnesses (Section 123).
- **Movable property:** Can be transferred by delivery or registered instrument.

## Revocation of Gift:

### 1. Revocation by Agreement (Section 126):

- A gift can be revoked if the donor and donee agree that the gift shall be suspended or revoked upon the occurrence of a specified event.
- Such conditions must not depend on the donor's will.

### 2. Revocation for Fraud, Coercion, or Undue Influence:

- If a gift is obtained through fraud, coercion, or undue influence, it can be revoked under the Indian Contract Act, 1872.



### Gift to Unborn Persons:

Under Section 13 of the Act, property can only be gifted to an unborn person if it complies with the rule against perpetuity and creates an absolute interest in the unborn person.

### Conditional Gifts:

Conditional gifts are valid provided they are not repugnant to the law. For instance, conditions restraining marriage or alienation may render the gift void.

Case Name	Principle
<b>K. Balakrishnan v. K. Kamalam (2004)</b>	A gift made without proper registration in case of immovable property is invalid.
<b>Naramadaben v. Kanubhai (1997)</b>	Acceptance of the gift is essential; otherwise, the gift is void.
<b>Renikuntla Rajamma v. K. Sarwanamma (2014)</b>	A gift deed involving immovable property remains valid even if possession is not immediately delivered.
<b>Tulasamma v. Sessa Reddi (1977)</b>	Explained that conditional gifts must comply with the Act's provisions.



**Gift vs. Sale:**

Aspect	Gift	Sale
Consideration	No consideration involved.	Involves consideration (money or other).
Nature	Gratuitous.	Transfer for value.
Registration	Mandatory for immovable property.	Mandatory for immovable property.
Revocation	Permitted under limited conditions.	Sale is generally irrevocable.

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## 8. Lease Under the Transfer of Property Act, 1882

**Definition (Section 105):**

A lease is defined as the transfer of a right to enjoy immovable property for a certain time, expressly or impliedly, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service, or any other valuable thing to be rendered periodically or on specified occasions to the transferor by the transferee.

**Essential Features of a Lease:**

**1. Parties:**

- **Lessor:** The person who transfers the right to enjoy the property.
- **Lessee:** The person who receives the right to enjoy the property.
- Both parties must be competent to contract.



**2. Subject Matter:**

- The property leased must be **immovable property**.

**3. Transfer of Possession:**

- Possession is transferred to the lessee but ownership remains with the lessor.
- The lessee gets exclusive possession during the lease term.

**4. Consideration:**

- Consideration may be in the form of rent, premium, a share of crops, or any other valuable consideration.

**5. Term of Lease:**

- The lease must specify a definite period or indicate perpetuity.

**6. Acceptance:**

- The lessee must accept the terms of the lease.

**7. Mode of Creation (Section 107):**

- **For leases exceeding one year:** Must be created by a registered instrument signed by both lessor and lessee.
- **For leases of one year or less:** Can be created orally or through a written agreement without registration.

**Rights and Liabilities of Parties:**

**Rights of the Lessor (Section 108 A):**

1. **Right to Rent:** The lessor is entitled to receive rent as agreed.
2. **Right to Recover Possession:** Upon expiry or termination of the lease, the lessor can reclaim possession.



### Rights of the Lessee (Section 108 B):

1. **Right to Quiet Enjoyment:** The lessee has the right to enjoy the property without interference.
2. **Right to Sublease:** The lessee can sublease if not explicitly prohibited.
3. **Right to Remove Fixtures:** The lessee can remove fixtures added during the lease term.

### Termination of Lease (Section 111):

A lease can terminate in the following ways:

1. **By Lapse of Time:** Upon expiry of the lease term.
2. **By Express Surrender:** When the lessee voluntarily returns the property.
3. **By Implied Surrender:** If the lessee accepts another lease of the same property.
4. **By Forfeiture:** If the lessee violates the lease conditions.
5. **By Notice to Quit:** In periodic leases, either party can terminate with prior notice.
6. **On Occurrence of a Contingency:** When a specified condition ends the lease.

### Distinction Between Lease and License:

Aspect	Lease	License
Possession	Lessee gets exclusive possession.	Licensee gets permission without possession.
Interest in Property	Creates interest in immovable property.	No interest in property; only a personal right.
Transferability	Transferable unless restricted.	Non-transferable.



## Transfer of Property LMR Notes – Dr. Shonal John

Aspect	Lease	License
<b>Registration</b>	Required if lease exceeds one year.	Not required.

Case Name	Fact	Issue	Judgment
<b>Anthony v. K.C. Ittoop &amp; Sons (2000)</b>	Lessee overstayed after termination of the lease.	Rights of the lessor on termination.	Held that the lessor can seek eviction and damages.
<b>Ram Gopal v. Kishan Lal (1963)</b>	Dispute regarding oral lease.	Validity of oral lease.	Held that oral leases for less than a year are valid under Section 107.
<b>Indu Kakkar v. Haryana State (1995)</b>	A lessee claimed tenancy rights based on the lease agreement.	Whether tenancy rights could be granted.	Held that tenancy rights are subject to the terms of the agreement.
<b>Associated Hotels v. R.N. Kapoor (1959)</b>	Dispute over whether the agreement was a lease or license.	Difference between lease and license.	Held that exclusive possession is a key indicator of a lease.

### Conclusion

The provisions relating to leases under the Transfer of Property Act ensure clarity and protection of the rights and obligations of both the lessor and lessee. Proper adherence to the Act's requirements avoids disputes and ensures smooth transactions.



## 9. Conditional Transfer Under the Transfer of Property Act, 1882

A **conditional transfer** refers to a transfer of property that depends on the occurrence or non-occurrence of an event. It introduces conditions that modify, suspend, or defeat the transfer of an interest in the property.

1. **Section 25:** Conditional Transfer.
2. **Sections 26-29:** Various specific applications of conditions.
3. **Section 31:** Conditional Transfers and their Enforcement.

### 1. Types of Conditions:

- **Condition Precedent (Section 26):** The transfer takes effect only upon the occurrence of a specified event.
- **Condition Subsequent (Section 29):** The transfer ceases to operate or is defeated upon the occurrence of a specified event.

### 2. Validity of Conditions:

- Conditions must be lawful and not prohibited under Section 10 (Restraint on Alienation) or Section 11 (Restriction on Enjoyment).
- Conditions should not be impossible to perform, immoral, or opposed to public policy.

### Types of Conditional Transfers:

#### 1. Condition Precedent:

- The transfer takes effect only when the specified event happens.
- *Example: A transfers property to B, provided B marries before turning 30. The transfer takes effect when B marries before 30.*



## 2. Condition Subsequent:

- The transfer ceases if a specified event occurs.
- *Example: A transfers property to B, but if B becomes a non-resident, the transfer is void.*

## 3. Condition Based on Time:

- The transfer may be subject to time-based conditions.
- *Example: Property is transferred to C if they graduate within five years.*

## 4. Impossible or Illegal Conditions:

- A transfer with an impossible condition is void.
- *Example: A transfers property to B if B can make the Sun rise in the West.*

## 5. Transfer to Unborn Persons (Section 13):

- Special conditional transfers can be made for unborn persons with certain restrictions.

## Essential Principles:

### 1. Uncertainty and Validity:

- Conditions must not create excessive uncertainty or ambiguity.

### 2. Doctrine of Acceleration:

- If a condition is impossible or invalid, the transfer takes effect as if the condition was absent.

### 3. Doctrine of CyPrus:

- Courts may modify invalid conditions to bring them in conformity with the law, ensuring the transferor's intention is preserved.



## Transfer of Property LMR Notes – Dr. Shonal John

Case Name	Fact	Issue	Judgment
<b>Renusagar Power Co. v. General Electric Co. (1984)</b>	Conditional transfer to operate upon certain payments.	Whether conditional payment invalidates transfer.	Conditions that do not offend the law are valid and enforceable.
<b>Ram Baran v. Ram Mohit (1967)</b>	Transfer made subject to vague and impossible conditions.	Validity of impossible conditions.	Held that transfers with impossible conditions are void under Section 25.
<b>Mohan Lal v. Mira Abdul Gaffoor (1958)</b>	Dispute over conditions tied to a marriage of a transferee.	Whether such conditions are lawful.	Such conditions were held to be valid if they did not contravene public policy.
<b>Muhammad Raza v. Abbas Bandi Bibi (1932)</b>	Conditional transfer in favor of a future unborn grandchild.	Validity of the condition.	Held valid if it met the criteria of Section 13 for unborn persons.



**Difference Between Condition Precedent and Condition Subsequent**

Aspect	Condition Precedent	Condition Subsequent
<b>Definition</b>	A condition that must be fulfilled before the transfer takes effect.	A condition upon whose occurrence the transfer terminates or is defeated.
<b>Effect on Transfer</b>	The transfer is <b>suspended</b> until the condition is fulfilled.	The transfer <b>remains valid</b> unless the condition is fulfilled.
<b>Time of Operation</b>	Operates <b>before</b> the transfer comes into effect.	Operates <b>after</b> the transfer has taken effect.
<b>Nature of Event</b>	An event that is required to happen for the interest to vest.	An event that extinguishes the interest already vested.
<b>Illustration</b>	A transfers property to B, provided B passes a specific exam.	A transfers property to B, but if B marries C, the transfer becomes void.
<b>Burden of Proof</b>	The transferee must prove the condition is fulfilled.	The transferor must prove the condition occurred to defeat the transfer.
<b>Validity</b>	The condition must be <b>clear, lawful, and possible</b> to perform.	The condition must be <b>lawful and not opposed to public policy</b> .
<b>Legal Provision</b>	Governed by <b>Section 26</b> of the Transfer of Property Act, 1882.	Governed by <b>Section 29</b> of the Transfer of Property Act, 1882.



Aspect	Condition Precedent	Condition Subsequent
Impact of Non-fulfillment	The transfer <b>does not take effect</b> if the condition is not fulfilled.	The transfer <b>becomes void</b> or terminates if the condition is fulfilled.

## Examples

- Condition Precedent:** A gifts land to B, provided B marries before turning 30.
  - If B marries before 30, the transfer takes effect.
- Condition Subsequent:** A leases property to B, but if B uses it for commercial purposes, the lease ends.
  - If B uses the property commercially, the lease terminates.

## Conclusion

Conditional transfers under the Transfer of Property Act provide a mechanism for balancing the transferor's intentions with legal safeguards. While enabling flexibility in transactions, the law ensures that conditions are reasonable, clear, and within the limits of legality and public policy.



## 10. Indian Easements Act, 1882 - Detailed Explanatory Notes

The Indian Easements Act, 1882 governs the law of easements in India. Easement is a right to use or enjoy the property of another person in a manner prescribed by law. The Act defines and regulates easements, which are interests in immovable property that grant certain privileges without transferring ownership or possession.

### 1. Definition and Nature of Easement

An easement is a right attached to land, which allows its owner to use or enjoy another person's land in a specific manner. It does not give the right to ownership of the land but grants certain limited rights over it. Easements are rights in rem, i.e., they are rights that benefit the land and are passed along with it if the land is transferred.

*Example: A right of way (e.g., to pass through a neighbor's property to access your own land) is a typical example of an easement.*

### 2. Classification of Easements

The Indian Easements Act classifies easements into two categories:

#### 2.1 Positive Easements

These easements involve the right to do something on the land of another person.

*Example: A right of way or watercourse (right to divert water from someone's property).*

#### 2.2 Negative Easements

These easements involve a restriction on the landowner from doing something on his land that would otherwise affect the easement holder's property.

*Example: A restriction preventing a neighbor from building a structure that obstructs light to the easement holder's property.*



### 3. Creation of Easements [Section 4]

An easement can be created by:

**Express grant:** Where the landowner expressly grants the easement right to another party, usually through a written instrument.

**Implied grant:** This occurs when easements are created through necessity or long usage, like a right of way through a neighbor's land that has been used continuously for many years.

**Prescription:** An easement can also be created by prescription, which is the legal acknowledgment of a right after continuous enjoyment for a specific period (typically 20 years).

*Example: A person who has been using a path on a neighbor's land for more than 20 years continuously without objection may acquire a right of way by prescription.*

### 4. Characteristics of Easements

#### 4.1 Dominant and Servient Tenements

**Dominant Tenement:** The land benefiting from the easement (i.e., the land that enjoys the right).

**Servient Tenement:** The land burdened by the easement (i.e., the land on which the easement is exercised).

*Example: In a case where a person has a right of way through their neighbor's property, the property of the person with the right is the dominant tenement, while the neighbor's property is the servient tenement.*



## 4.2 The Right Must Be Limited to the Land

The easement must be a right over the land, and it must benefit the dominant tenement rather than an individual. Easements cannot be personal.

*Example: A right to walk through the land of another person is an easement that benefits the land and can be transferred if the land is sold. However, a personal right (e.g., to visit a specific person on the land) is not an easement.*

## 5. Types of Easements

### 5.1 Easement of Right of Way

This is the right to pass through the property of another person to reach one's own property.

*Example: A person who owns land behind a neighbor's property might have a right of way over the neighbor's land to access their own land.*

### 5.2 Easement of Watercourse

This is the right to divert water from a watercourse or a river that runs through another person's property.

*Example: A person might have the right to take water from a stream running through their neighbor's land for irrigation purposes.*

### 5.3 Easement of Light and Air

This is the right to access light and air through the land of another, prohibiting the landowner from obstructing the access to light and air.

*Example: A person who has been using the light coming through a window from a neighbor's land may acquire a right to continue receiving that light without obstruction.*



## 5.4 Easement of Support

This gives the right to have one's land supported by the land of another person.

*Example: If a person's house is built against a neighboring wall, the right to support the wall so that it does not collapse is an easement of support.*

## 6. Termination of Easements

An easement can be terminated by various means, including:

**Expiry:** If the easement is for a fixed duration, it ends when the term expires.

**Release:** The holder of the easement may release the right back to the owner of the servient tenement.

**Destruction:** If the dominant tenement is destroyed, the easement may become redundant.

**Non-Use:** An easement can be lost if it is not exercised for a long period (usually 20 years), under the principle of **prescription**.

## 7. Extinguishment of Easements [Section 14]

An easement can be extinguished by:

**Merger:** When the dominant and servient tenements become owned by the same person.

**Abandonment:** If the holder of the easement abandons the right.



## 8. Rights and Liabilities of the Dominant and Servient Tenement Owners

### 8.1 Rights of the Dominant Tenement Owner

**Use of Easement:** The owner of the dominant tenement has the right to use the easement in a manner that benefits the property.

**Protection Against Interference:** The dominant tenement owner can seek legal action if the servient tenement owner interferes with the enjoyment of the easement.

### 8.2 Liabilities of the Servient Tenement Owner

**Non-Interference:** The servient tenement owner cannot interfere with the exercise of the easement.

**Maintenance:** In some cases, the servient tenement owner is responsible for maintaining the easement (e.g., repairing a pathway).

## 9. Legal Provisions Relevant to Easements

**Section 4:** Definition and creation of easements.

**Section 7:** Implied easements (e.g., necessity, continuous use).

**Section 13:** Easements for support and watercourse.

**Section 15:** Duration of easements and how they may be extinguished.

**Section 16:** Easements that may be acquired by prescription.

### Case Law: K.K. Verma v. Union of India (1954)

This case discusses the nature of an easement and how easement rights are enforceable in court when the servient tenement owner interferes with the use of the easement.



**Case Law: Ravi Yadav v. Parsa (2003)**

The Supreme Court clarified that an easement right can be established even if the servient tenement owner objects, provided that the easement holder can prove continuous use for the statutory period.

**Case Law: Basant Lal v. Union of India (2009)**

This case upheld the principle of easement by prescription, where continuous use of a particular path for over 20 years established the right of way as an easement.

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## 11. Registration Act, 1908 - Detailed Explanatory Notes

The Registration Act, 1908 governs the registration of documents in India. It provides the framework for the registration of documents, ensuring the authenticity and legality of certain types of instruments. The Act facilitates the recording of documents that affect immovable property and certain other specified instruments to protect the interests of parties and ensure their legality.



1. Documents of Which Registration Is Compulsory [Section 17]

Section 17 of the Registration Act, 1908 specifies the types of documents that require compulsory registration. The key instruments include:

<b>Instruments of gift of immovable property.</b>
<b>Sale deeds of immovable property.</b>
<b>Leases of immovable property for more than one year.</b>
<b>Mortgage deeds (except simple mortgages where no possession is transferred) of immovable property.</b>
<b>Instruments of exchange of immovable property.</b>
<b>Instruments that create, declare, assign, limit, or extinguish rights in immovable property.</b>
<b>Will (if the testator is a minor or the instrument is being executed in a jurisdiction outside India).</b>

The objective of compulsory registration is to give public notice of the transaction, thus ensuring that the rights of the parties involved are acknowledged legally and publicly. This prevents fraud and provides a chain of title.

*Illustration: Sale Deed: A sale deed transferring ownership of immovable property must be registered under Section 17. Without registration, the transaction is not legally recognized.*



## 2. Documents of Which Registration Is Optional [Section 18]

Section 18 lists documents whose registration is optional, meaning the document may or may not be registered at the discretion of the parties involved. These include:

A lease of immovable property for one year or less.

Instruments acknowledging the receipt of a debt or a liability.

Receipts of money paid for the performance of a contract.

Settlement deeds that do not involve the transfer of immovable property.

For these instruments, registration is not mandatory, but if a party chooses to register them, it helps in providing legal validity and establishing authenticity in case of disputes.

*Example: Lease for one year: If a landlord leases property for one year, registration is optional. However, it is advisable to register the lease for better protection of rights.*

## 3. Time for Presenting Documents [Section 23]

Section 23 specifies the time within which a document must be presented for registration. The general rule is:

Documents executed within India must be presented for registration within four months from the date of execution.

Documents executed outside India must be presented within four months from the date when the document is received in India.

*Example: A sale deed executed in Mumbai on January 1 must be presented for registration by May 1 (within four months).*



#### 4. Provision Where Delay in Presentation is Unavoidable [Section 25]

Section 25 provides an exception for **delayed presentation** of documents for registration due to unavoidable circumstances. If the document cannot be presented within the prescribed time frame due to factors like:

Natural calamities, such as floods or earthquakes.

Death or incapacity of the person responsible for presenting the document.

The registrar may accept the document for registration if it is presented within a reasonable period after the obstacle is removed, provided it is within a maximum of one year from the execution date.

*Example: A document that was to be presented for registration on May 1 but could not be presented due to floods, can still be presented for registration in the next six months if the registrar deems the delay reasonable.*

#### 5. Time from Which Registered Document Operates [Section 47]

Section 47 explains the effect of registration and when it becomes effective. A registered document operates from the time it is registered, and not from the date of execution (unless otherwise provided). For example:

A sale deed executed on January 1 and registered on March 1 will have the effect from March 1, the date of registration.

This section ensures that a document gains legal effect only once it is properly registered, ensuring its public acknowledgment.

*Example: A gift deed executed in 2022 but registered in 2023 will only be effective from the date of registration (2023), even if it was executed earlier.*



## 6. Effect of Non-Registration of Documents Required to be Registered [Section 49]

Section 49 deals with the consequences of non-registration of documents that are required to be registered under the Act. The provision states:

Documents required to be registered (as per Section 17) but not registered are not admissible in evidence. This means that a document like a sale deed or a lease deed (required to be registered) will not be recognized in court if not registered.

However, if the document has been executed and is unregistered, it will still be admissible for certain purposes, such as showing the nature of possession or prior notice of a transaction (e.g., in case of an unregistered lease).

### Exceptions:

**Possession of property:** A person who holds possession under an unregistered document might still have some rights to defend that possession even if the document is not registered.

*Example: If a sale deed is executed between two parties but not registered, the transfer of property will not be legally recognized, and the buyer cannot claim ownership in a court of law. However, the deed may be admissible to prove possession or to assert a right against third parties.*

### Case Law: K.B. S. Bhat v. Narayan (AIR 2003 SC 1730)

This case clarified the importance of registration for documents required under Section 17 of the Registration Act, 1908, stating that non-registration of such documents renders them inadmissible as evidence in court.



**Case Law: M/s. S. R. Srinivasa v. S. Ramaswamy (AIR 1966 SC 1067)**

This case highlighted the consequences of non-registration of documents, especially in the context of transfer of immovable property, reinforcing the principle that a non-registered sale deed cannot be enforced in court.

**Summary of Key Provisions**

**Section 17:** Compulsory registration of certain documents (e.g., sale deeds, leases over one year, etc.).

**Section 18:** Optional registration of certain documents (e.g., leases for one year or less).

**Section 23:** Time limit for presenting documents for registration (within four months).

**Section 25:** Delay in presentation can be excused if unavoidable (e.g., due to natural calamities).

**Section 47:** A registered document becomes effective from the date of registration.

**Section 49:** Documents required to be registered but not registered are inadmissible in evidence.

**The Registration Act, 1908 ensures** that transactions involving immovable property are legally recorded and publicly notified, which helps in reducing disputes and frauds related to ownership and transactions.



## 6. Maharashtra Stamp Act, 1958 - Detailed Explanatory Notes

The Maharashtra Stamp Act, 1958 regulates the stamp duties on various instruments and documents in the state of Maharashtra. The Act lays down provisions relating to the definition of instruments, types of stamps, and procedures for payment and adjudication of stamp duties.

### 1. Definitions [Section 2]

Section 2 of the Maharashtra Stamp Act, 1958 provides the definitions of various terms used in the Act. Key definitions include:

- **Instrument:** Any document by which a right or liability is created, transferred, extended, extinguished, or recorded.
- **Stamp:** A mark (impressed, engraved, or written) used to indicate that stamp duty has been paid.
- **Stamp Duty:** A tax imposed on certain documents or instruments.

The definitions in this section are critical as they determine which instruments are liable for stamp duty and how they are to be treated.

### 2. Liability of Instruments to Duty [Sections 3–9]

These sections outline which documents are subject to stamp duty, the rates of duty, and exceptions. Key provisions include:

- Section 3: Liability of instruments to stamp duty. It lists instruments that are subject to stamp duty, including deeds of conveyance, leases, mortgages, etc.
- Section 4: Instruments executed outside Maharashtra but relating to property situated within the state or executed in the state but relating to property outside Maharashtra.



- Section 5: A document executed outside India can be stamped in India within three months of receiving it in India.
- Section 6: Instruments that do not require stamp duty under certain conditions (e.g., government documents, court proceedings, etc.).
- Section 9: Penalties for executing an unstamped or insufficiently stamped document.

### **3. Kinds of Stamps and Mode of Using Stamps [Sections 10–16]**

This section deals with the different types of stamps used and their application.

- Section 10: Defines the kinds of stamps, which include adhesive stamps (stickers), impressed stamps (on paper), and franking machine stamps.
- Section 11: Discusses impressed stamps, which are stamps physically affixed to the instrument (e.g., die-stamped or embossed).
- Section 12: Covers adhesive stamps, which are used to stamp an instrument by adhering the stamp to the document.
- Section 13: The use of stamps and how they are affixed on documents.
- Section 14: Provides for electronic/franking stamps for certain instruments, including correspondence.

### **4. Time of Stamping [Sections 17–19]**

This section outlines the timing for affixing stamps on instruments:

- Section 17: Time for stamping – The instrument must be stamped at the time of execution or within a period prescribed by law (e.g., within 30 days of execution).
- Section 18: Instruments executed outside India must be stamped within three months of receiving them in India, or else they become inadmissible in evidence.
- Section 19: Deals with the payment of stamp duty on documents executed after the expiration of the prescribed time.



## **5. Duty Payable By Whom [Section 30]**

Section 30 defines who is liable to pay the stamp duty:

- Person executing the instrument: Typically, the person who executes the instrument is responsible for paying the stamp duty (e.g., the seller in a sale deed).
- In certain cases, both parties to the instrument (e.g., buyer and seller in a sale transaction) may be jointly responsible for paying the stamp duty.

## **6. Adjudication [Sections 31–32C]**

These sections deal with the procedure of adjudicating the proper stamp duty payable on instruments.

- Section 31: A person may seek adjudication from the Collector of Stamp Duty to determine the correct stamp duty if they are uncertain.
- Section 32: Adjudication procedure involves filing an application to the Collector who will decide the stamp duty amount.
- Section 32A: Allows the Collector to pass an order for adjudication of stamp duty on instruments not properly stamped.
- Section 32C: Powers of the authorities to compel the production of documents to verify stamp duty and enforce compliance.

## **7. Impounding [Sections 33–46]**

These provisions cover the process of impounding documents for non-payment of stamp duty.

- Section 33: Provides that if an unstamped document is presented for any official or legal purpose, it may be impounded by the authority or court.
- Section 34: The authority that impounds an instrument must take appropriate action to ensure the stamp duty is paid.



- Section 35-46: Covers the procedures and penalties related to impounding, including the imposition of penalty for delayed stamping.

## **8. Allowances for Stamps [Sections 47–52B]**

These sections cover refunds, allowances, and discounts on stamp duty paid under various circumstances.

- Section 47: Deals with allowances for stamps, including the return of stamps on instruments that are not used.
- Section 48: Provides for the cancellation of improperly used or excess stamps, or where instruments are not executed.
- Sections 49–52B: Deals with specific situations like stamp duty refunds and allowances when an instrument is executed more than once or when stamps are incorrectly used.

## **9. Reference, Revision, Appeal [Sections 53–58]**

These sections relate to the legal recourse available for disputing stamp duty assessments.

- Section 53: Provides the process for making a reference to higher authorities regarding the assessment of stamp duty.
- Section 54: Revision by higher authorities if an appeal or complaint is made about stamp duty assessments.
- Section 55: Provides the rights of the person aggrieved to appeal to higher courts if the stamp duty assessments are found to be incorrect.
- Section 58: Finality of decisions made regarding stamp duty and the applicability of penalties for non-compliance.



**Case Law: Kesar Devi v. State of Maharashtra**

This case dealt with the issue of delayed stamping and impounding documents.

**Case Law: Collector of Stamps v. P.K. Bhaskaran**

This case clarified the authority of the Collector in adjudicating stamp duty.

**Case Law: Union of India v. R. P. Dalmia**

This was a landmark case on the recovery of stamp duty and penalties.

