

# LL.B. II Term

## Paper : LB - 204 - Property Law

Before the advent of the Britishers, each community in India was governed by its respective customary law in matters relating to transfer of property. With the establishment of the formal litigative system and in absence of any legislation in this area, to begin with, the English judges applied the common law of England and the rules of equity, justice and good conscience with respect to disputes relating to transfer of property. The unsuitability of these provisions to the Indian conditions; the resulting conflict and the need for clarity of rules relating to this important branch of law necessitated the enactment of a legislation. Drafted in 1870, the Transfer of Property Act saw the light of the day in 1882 and provided the basic principles for transfer of both movable and immovable properties. Based primarily on the English law of 'Real Property', it attempted to mould these principles to suit the Indian conditions; but certain provisions of the Act remained inapplicable to Hindus and Muslims, to start with. In order to put at rest the confusion created by the conflicting decisions and extend the application of the Act in totality to Hindus, the Transfer of Property Act, 1882 was amended in 1929. However, till date, the provisions of Chapter II of the Act that are inconsistent with the Quranic laws are inapplicable to Muslims. Moreover, a separate enactment titled the 'Sale of Goods Act, 1930' was passed to deal with transfer of movable property by sale.

The Transfer of Property Act, 1882 contains the general principles of transfer of property and detailed rules with respect to specific transfer of immovable property by sale, exchange, mortgage, lease and gift. The present course will cover a study of important terms relevant to transfer of property, meaning of 'transfer' under the Act, general principles relating to transfer of property and definitions and rules relating to specific transfers of immovable properties by mortgage, lease and gift.

### Prescribed Legislation:

The Transfer of Property Act, 1882.

### Prescribed Books:

1. Poonam Pradhan Saxena (Rev.), *Mulla's The Transfer of Property Act* (11<sup>th</sup> ed. 2012)
2. Poonam Pradhan Saxena, '*Property and Easement*', *Halsbury Laws of India*; Vol. 12 (2002).
3. Poonam Pradhan Saxena, *Property Law* (2<sup>nd</sup> ed. 2011)
4. Vepa. P. Sarathi (Rev.) *G.C.V. Subba Rao's Law of Transfer of Property* (3<sup>rd</sup> ed., 2002)
5. Sen Gupta (Rev.), *Mitra's Transfer of Property Act* (18<sup>th</sup> ed., 2004)
6. S.M. Lahiri, *Transfer of Property Act* (10<sup>th</sup> ed., 1986)

### **Topic 1 - Movable / Immovable Property (Sec. 3)**

Concept of property; Definition of and distinction between movable and immovable property; Meaning of “things attached to earth” and Concept of “Doctrine of fixtures”

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| 1. | <i>Shantabai v. State of Bombay</i> , AIR 1958 SC 532 : (1959) SCR 265                                     | 1  |
| 2. | <i>State of Orissa v. Titaghur Paper Mills Company Limited</i> ,<br>AIR 1985 SC 1293 : (1985) Supp SCC 280 | 7  |
| 3. | <i>Bamdev Panigrahi v. Monorama Raj</i> , AIR 1974 AP 226  | 28 |
| 4. | <i>Duncans Industries Ltd. v. State of U.P.</i> (2000)1 SCC 633  | 36 |

### **Topic 2 – Attestation (Sec. 3)**

Importance of attestation; who may be a competent witness; mode of attestation; attestation by a Pardanashin woman

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| 5. | <i>Kumar Harish Chandra Singh Deo v. Bansidhar Mohanty</i> ,<br>AIR 1965 SC 1738 : (1966) 1 SCR 153 | 42 |
| 6. | <i>M.L. Abdul Jabbar Sahib v. H. Venkata Sastri</i> , AIR 1969 SC 1147 :<br>(1969) 1 SCC 573        | 44 |
| 7. | <i>Padarath Halwai v. Ram Narain</i> , AIR 1915 PC 21   | 49 |

### **Topic 3 - Notice (Sec. 3)**

Relevance of doctrine of Notice; Actual and Constructive Notice; Wilful abstention from making an inquiry and gross negligence; Actual Possession; Registration and Notice to agent as Constructive Notice

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| 8.  | <i>Ahmedabad Municipal Corporation v. Haji Abdul Gafur Haji Hussenhai</i> , AIR 1971 SC 1201 ; (1971) 1 SCC 757 | 50 |
| 9.  | <i>Md. Mustafa v. Haji Md. Isa</i> , AIR 1987 Pat 5   | 58 |
| 10. | <i>H.N.Narayanaswamy Naidu v. Deveeramma</i> , AIR 1981 Kant 93   | 64 |
| 11. | <i>Ram Niwas v. Bano</i> , AIR 2000 SC 2921 : (2000) 6 SCC 685  | 67 |

### **Topic 4 - Meaning of Transfer of Property (Sec. 5)**

Meaning of ‘Transfer of Property’ under the Act; Transfer *intervivos*; Living person distinguished from juristic person; Status of partition of joint family property

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| 12. | <i>V.N. Sarin v. Ajit Kumar Poplai</i> , AIR 1966 SC 432 :<br>(1966) 1 SCR 349 | 71 |
| 13. | <i>Kenneth Solomon v. Dan Singh Bawa</i> , AIR 1986 Del 1                      | 76 |
| 14. | <i>Mohar Singh v. Devi Charan</i> , AIR 1988 SC 1365 :<br>(1988) 3 SCC 63      | 80 |

15. *N. Ramaiah v. Nagaraj S*, AIR 2001 Kant. 395 83

**Topic 5 - What Kind of Property can be transferred (Secs. 6(a) and 43)**

Transfer of “*Spes Successionis*”; Transfer by heir apparent; Chance of a relation obtaining a legacy on the death of a kinsman; Comparison with fraudulent and erroneous unauthorized transfers; Doctrine of “Feeding the grant by estoppel”; Status of bonafide transferee for consideration and without notice

16. *Jumma Masjid, Mercara v. Kodimaniandra Deviah*,  
AIR 1962 SC 847: 1962 Supp (1) SCR 554 87
17. *Kartar Singh v. Harbans Kaur* (1994) 4 SCC 730 94

**Topic 6 – Conditional Transfer (Secs. 10 and 11)**

Transfers subject to a condition or limitation; Absolute and partial restraints on transfer; Exception in case of lease and married women; Restrictions repugnant to interests created; General principles; Restrictions for beneficial enjoyment of one’s own land; Positive and negative covenants

18. *Rosher v. Rosher* (1884) 26 Ch D 801 96
19. *Muhammad Raza v. Abbas Bandi Bibi*, (1932) I.A. 236 98
20. *Manohar Shivram Swami v. Mahadeo Guruling Swamy*,  
AIR 1988 Bom 116 103
21. *Zoroastrian Co-operative Housing Society Ltd. v. District Registrar,  
Co-op. Societies (Urban)* (2005) 5 SCC 632 105
22. *K. Muniswamy v. K. Venkataswamy*, AIR 2001 Kant. 246 115
23. *Tulk v. Moxhay* (1848) 2 Ch. 774 119

**Topic 7 - Transfer for the benefit of unborn persons (Secs. 13-18)**

Creation of prior interests and absolute interests in favour of unborn persons; Rule against perpetuity; Period of perpetuity; Rule of possible and actual events; Transfer to a class; Transfer when prior interest fails; Directions for accumulation of income; Exceptions

24. *Ram Newaz v. Nankoo*, AIR 1926 All 283 121
25. *Ram Baran v. Ram Mohit*, AIR 1967 SC 744 : (1967) 1 SCR 293 122
26. *R. Kempraj v. Burton Son & Co*, AIR 1970 SC 1872 :  
(1969) 2 SCC 594 128

**Topic 8 - Vested and Contingent interests (Secs. 19 and 21)**

Definition of and distinction between vested and contingent interests

27. *Rajeh Kanta Roy v. Shanti Debi*, AIR 1957 SC 255 : 1957 SCR 77 131

**Topic 9 - Transfer during pendency of litigation (Sec. 52)**

Concept of “*Lis Pendens*”, Meaning of proceedings; Collusive suits; Commencement and conclusion of suits; Specific rights in specific immovable property; Voluntary and involuntary alienations

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| 28. | Jayaram Mudaliar v. Ayyaswamy, AIR 1973 SC 569 :<br>(1972) 2 SCC 200  | 140 |
| 29. | Supreme General Films Exchange Ltd v. Maharaja Sir<br>Brijnath Singhji Deo, AIR 1975 SC 1810 : (1975) 2 SCC 530 | 147 |
| 30. | Govinda Pillai Gopala Pillai v. Aiyappan Krishnan,<br>AIR 1957 Ker. 10  | 149 |
| 31. | Sri Jagannath Mahaprabhu v. Pravat Chandra Chatterjee,<br>AIR 1992 Ori. 47                                      | 154 |
| 32. | Dalip Kaur v. Jeewan Ram, AIR 1996 P & H 158  | 159 |

**Topic 10 - Mortgage (Secs. 58-60, 100)**

Definition of Mortgage; Kinds of mortgages; Mode of execution of mortgages; Redemption and Foreclosure of mortgages; Clog on equity of redemption; Distinction between mortgage and charge

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| 33. | Ganga Dhar v. Shankar Lal, AIR 1958 SC 770   | 161 |
| 34. | Pomal Kanji Govindji v. Vrajlal Karsandas Purohit,<br>AIR 1989 SC 436 : (1989) 1 SCC 458 | 167 |
| 35. | Shivdev Singh v. Sucha Singh, AIR 2000 SC 1935 :<br>(2000) 4 SCC 326                     | 179 |
| 36. | Sangar Gagu Dhula v. Shah Laxmiben Tejshi, AIR 2001 Guj. 329                             | 185 |

**Topic 11 - Lease and License (Secs. 105, 106 and Indian Easement Act, 1882 Sec. 52)**

Definition of lease; Absolute and derivative lease; Lease for a specific time; Periodic lease and lease in perpetuity; Distinction between lease and license

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| 37. | Associated Hotels of India v. R.N. Kapoor, AIR 1959 SC 1262               | 193 |
| 38. | Quality Cut Pieces v. M. Laxmi, AIR 1986 Bom 359                          | 204 |
| 39. | B.V. D'Souza v. Antonio Fausto Fernandes, AIR 1989 SC 1816                | 213 |
| 40. | Samir Kumar Chatterjee v. Hirendra Nath Ghosh, AIR 1992 Cal 129           | 216 |
| 41. | Delta International ltd. v. Shyam Sunder Ganeriwalla,<br>AIR 1999 SC 2607 | 223 |

**Topic 12 - Gift (Secs. 122-126)**

Definition of gift; Mode of execution of gift; Suspension and Revocation of gifts

42.	<i>Tila Bewa v. Mana Bewa</i> , AIR 1962 Ori. 130	236
43.	<i>Kartari v. Kewal Krishan</i> , AIR 1972 HP 117	240

**IMPORTANT NOTE:**

1. The students are advised to read only the books prescribed above along with legislations and cases.
2. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.
3. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.

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