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:**

**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”


**Topic 2 – Attestation (Sec. 3)**

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


**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


**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

Topic 5 - What Kind of Property can be transferred (Ssecs. 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


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
22. **K. Muniswamy v. K. Venkatapossamy**, AIR 2001 Kant. 246
23. **Tulk v. Moxhay** (1848) 2 Ch. 774

Topic 7 - Transfer for the benefit of unborn persons (Ssecs. 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

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

Definition of and distinction between vested and contingent interests

**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

30. *Govinda Pillai Gopala Pillai v. Aiyappan Krishnan*, AIR 1957 Ker. 10 149

**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


**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

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
Topic 12 - Gift (Secs. 122-126)
Definition of gift; Mode of execution of gift; Suspension and Revocation of gifts

42. *Tila Bewa v. Mana Bewa*, AIR 1962 Ori. 130

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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