

TRANSFER OF PROPERTY

1. INTRODUCTION

Under Transfer of Property Act 1882, every person is competent to transfer his own property if he is competent to contract, authorized to dispose transferable property or is entitled to transferable property. Generally transfer of property is made by the owner of property. Transfer of Property Act deals with the transfer of *In* moveable property.

2. RELEVANT PROVISIONS

Section 5 and 8 of Transfer Property Act 1882.

3. MEANING OF TRANSFER:

The term transfer means to convey one thing from one person to another. The execution of conveyance may take place in the following two ways,

- (I) By operation of law
- (II) By act of parties.

For an efficient transfer it is necessary to show the documents which prove the transfer of property.

4. MEANING OF PROPERTY:

According to Black's Law Dictionary:

"In strict legal sense it is an aggregate of rights which are guaranteed and protected by Government. In criminal law it means anything of value."

5. DEFINITION OF TRANSFER OF PROPERTY

According to Section 5 Transfer of Property Act 1882.

"Transfer of property means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons and "to transfer property" is to perform such act.:

Explanation: "Living person" includes a company or association or body of individual, whether incorporated or not, but nothing here in contained shall effect any law for the time being law force relating to transfer of property to or by companies, associations or body of individuals.

6. KINDS OF PROPERTY:

There are two kinds of property, which are,

- (I) Movable property
- (II) Immovable property

(I) MOVABLE PROPERTY:-

Section 3 (34) of the General Clauses Act defines it as,

"Property of every description except immovable property."

(II) IMMOVABLE PROPERTY:-

In this clause of TPA the definition of Immovable property is not exhaustive and it is not defined either in the Transfer of

Property Act or in the Code of Civil Procedure. However, it has been defined in the General Clauses Act.

(i) **General Clauses Act 1987:- Section 2 (25)**

It includes, lands, benefits arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth. The terms immovable property comprehends all that would be real property according to English Law, and possibly more, therefore, if a thing can not change its place without injury to the quality by virtue of which it is what it is, it is immovable. An interest in immovable property would be immovable property.

(ii) **Registration Act:- Section 2 (6)**

Immovable property shall include, land, building, hereditary allowances, right to way, lights, fisheries, or any other benefit to arise out of land, and things attached to the earth or permanently fastened to the earth, but no standing timber, growing crops or grass.

➔ **Examples:-**

- (i) Doors, windows, windows shutter from part of building to which they are attached.
- (ii) ^{Things} Trees rooted in earth are immovable property, Electric installations of buildings.

7. FIX / ATTACHED TO EARTH:-

Anything which is fixed in the earth is attached to the earth. Attached to the earth is divisible in the following three kinds,

- (I) Rooted
- (II) Attached
- (III) Embedded

➔ **NOT INCLUDED IN PROPERTY:-**

Following are the items which can not be considered as property or included in the property,

- Standing timber
- Grass
- Growing crops

8. ESSENTIALS OF VALID TRANSFER

(I) **COMPETENCY OF TRANSFEROR**

Transferor should be competent to transfer the property.

- (i) Major
- (ii) Sound minded
- (iii) Not disqualified by law

(II) COMPETENCY OF TRANSFEREE

The transferee must be capable of holding property and must not be a person disqualified by law to receive a transfer property.

(III) TRANSFER MUST BE BETWEEN LIVING PERSON

It is necessary that transfer must be made by one living person to another living person.

(IV) EXISTENCE OF PROPERTY

For a valid transfer, the property must be in existence at the time of transfer.

(V) LAWFUL OBJECT

The object of transfer of property must be lawful.

(VI) LAWFUL CONSIDERATION

The consideration must also be lawful. Law does not recognize a transfer made for an unlawful consideration.

(VII) PROPERTY MUST BE TRANSFERABLE

Property must be transferable under Section 6 of the Transfer of Property Act 1882. However, it has two exceptions, which are as follows:

- (i) By this Act itself or
- (ii) By any other Act which is in force

(VIII) IDENTICAL

Transfer and transferee must be identical.

(IX) OTHER FORMALITIES

- (i) Attestation
- (ii) Registration etc.

(X) IMMOVEABLE PROPERTY

Transfer must be concerned with immoveable property.

9. MODES OF TRANSFER OF PROPERTY UNDER TRANSFER OF PROPERTY ACT 1882

Under transfer of property act there are six modes of transfer of property which are following:

- (i) Sale (Section 54)
- (ii) Mortgage (Section 58)
- (iii) Lease (Section 108)
- (iv) Exchange (Section 118)
- (v) Gift (Section 122)
- (vi) Actionable gift (Section 130)

10. EFFECT

(I) OPERATION OF TRANSFER: Section 8 of TPA 1882

Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easement thereto the rents and profits thereof accruing after the transfer and all things attached to earth;

- and where the property is machinery attached to the earth, the moveable parts thereof;
- and where the property is house, the easement annexed thereto the rent thereof, accruing after the transfer and the locks, keys, bars, doors, windows and all other things provided for permanent use there with and where the property is debt or other actionable claim, the securities therefore except where they are also for other debt or claims not transferred to the transferee, but not arrears of interest accrued before the transfer;
- and where the property is in money or other property yielding income, the interest of income thereof accruing after the transfer takes effect.

11. HOW DOES THE TRANSFER OPERATES?

As a general rule, whenever a person transfers his property to another person, all the interest that a transferor has in the property is transferred to the transferee. However, if a different intention is expressed or, necessarily implied, the whole interest in the property will not pass to the transferee on the transfer of property.

Section 8 defined what legal incidents of each particular class of property are passed along with the property when it is transferred;

- (a) For **land**: The incidents are easements, rents, profits and all the things attached to earth;
- (b) For **house**: The easements, rents after transfer, locks, keys, bars, doors etc. which are provided with the house for permanent use;
- (c) For **machinery**: Its movable parts;
- (d) For **debt**: It is security; and
- (e) For **money**: It is interest after transfer.

12. WHO ARE COMPETENT TO TRANSFER?

Section 7 of the Act provides that every person, competent to contract and entitled to transferable property, or authorized to dispose of property not his own, is competent to transfer such property, either wholly or in part, either absolutely or conditionally.

Thus the transferor must be;

1. Competent to contract, and
2. Have the title to the property, or the authority to transfer the property not his own, in order to be a competent transferor.
3. Must have attained the age of majority according to the law to which he is subject. Therefore, the transfer by a minor and by a lunatic is void

13. NOT INCLUDED IN TRANSFER OF PROPERTY:

The following are not regarded as the transfer of property,

Family arrangement

- | | |
|----------------------|--------------------------------|
| (i) Will | (ii) Charge |
| (iii) <u>Release</u> | (iv) <u>Covenant</u> Agreement |

◆ *ابنات منقولہ دارائے*
 CASE LAW:- LAW NOTES 1980 SC 34

In this case where property sold was subject matter of gift, the sale was challenged by donee on ground that he was owner of property and question whether purchaser protected on the ground that he was bona fide purchaser of land without notice, leave granted by Supreme Court to examine the question.

14. CONCLUSION:

To conclude that transfer of property is to convey whether moveable or immoveable property by one person to another person. It is effected by transfer of ownership and all rights vesting in the property by free consent and voluntary action of the parties concerned. The provisions of the Transfer of property Act do not extend cantonment area in Punjab. Transfer of property Act applies to the transfer which is the result of inter parties act.