

ACTIONABLE CLAIM

1. INTRODUCTION:

If a person affects a policy on his own life with a insurance company and assigns it to a Bank for securing the payment of an existing or future debt. If that person dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of his executor, subject to the proviso in sub section 1 of section 130 and to the provisions of section 132

2. RELEVANT PROVISION:

Section 130 to 134 and 136 to 137 of the Transfer of Property Act 1882 deals with the actionable claim.

3. **TRANSFER OF ACTIONABLE CLAIM: SECTION 130**

(I) The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise shall vest in the transferee whether such notice of the transfer as is hereinafter provided be given or not.

Provided that every person dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(II) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

(II) **EXCEPTION:**

Nothing in this section applies to transfer of a marine or fire policy of insurance or affects the provisions of section 38 of the Insurance Act, 1938

(IV) **ILLUSTRATIONS:**

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131 pays B. The payment is valid and C can not sue A for the debt

(ii) A effects a policy on his own life with an insurance company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub section 1 of section 130 and to the provisions of section 132

4. **NOTICE TO BE IN WRITING SIGNED: SECTION 131**

Every notice of transfer of an actionable claim shall be in writing signed by the transferor or his agent duly authorized in this

behalf, or in case the transferor refuses to sign, by the transferee or his agent and shall state the name and address of the transferee.

5. LIABILITY OF TRANSFEREE OF ACTIONABLE CLAIM: SECTION 132

The transferee of an actionable claim shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

ILLUSTRATIONS:

- (i) A transfers to C a debt due to him by B, A being then indebted to B. C uses B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him, although C was unaware of it at the date of such transfer.
- (ii) A executed a bond in favour of B under circumstances entitled the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C can not enforce the bond against A.

6. WARRANTY OF SOLVENCY OF DEBTOR: SEC. 133

Where the transferor of a debt warrants the solvency of the debtor, the warranty in the absence of the contract to the contrary, applies only to his solvency at the time of the transfer and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

7. MORTGAGED DEBT: SECTION 134

Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first in payment of the costs of such recovery secondly, in or towards satisfaction of the amount for the time being secured by the transfer and the residue, if any, belongs to the transferor or other person entitled to receive the same.

8. INCAPACITY OF OFFICERS CONNECTED WITH COURTS OF JUSTICE: SECTION 136

No judge, legal practitioner or officer connected with any court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in any actionable claim, and no court of justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims, so dealt with by him as aforesaid.

**9. SAVING OF NEGOTIABLE INSTRUMENTS;
SECTION 137:**

Nothing in the foregoing sections of this chapter applies to stocks, shares or debentures or to instruments which are for the time being by law or custom, negotiable or to any mercantile documents of title to goods.

10. CONCLUSION:

To conclude that the transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent, shall be complete and effectual upon the execution of such instrument and thereupon all the rights and remedies of the transferor whether by way of damages or otherwise shall vest in the transferee whether such notice of the transfer as is hereinafter provided be given or not.