

1) Transfer of Property Act deals with transfers of an interest from one party to another in a property. There are different provisions have been enumerated under the Act related to the transfer of property. Such as mortgage, sale, exchange, lease and license. Gift is one of the provisions in the Act under Section 122, where there's a transfer of interest in a property takes place.

Transfer of Property Act is based on the principles of the contract Act, which defines, whenever there's a contractual obligation takes place, some amount of consideration must be there. It's rightly said in the contract Act, "No consideration, no contract".

In almost all the provisions of the Property Act, where there's a transfer of an interest takes place, some amount of consideration is present. But Gift is one exception to the above. Where ~~the~~ although there's a transfer of an interest takes place and no consideration is required.

The necessary ingredients to constitute a gift under Section 122 of the Act are as below:

i) There must be two persons, one is the ~~transferor~~ transferor of the property (called as donor) and a transferee of the property.

- ii) There must be a Property ; either movable or immovable .
- iii) The transferor must transfer the Property to transferee .
- iv) The above transfer must have been without any consideration
- v) The transferor must be a competent Person to transfer the property
- vi) The above Property must be existing at the time of transfer .
- vii) The transferor must hold the absolute right related to the Property
- viii) The transfer must take place while the donor is still capable of transfer the Property
- ix) The transferee or the donee must accept the transfer .
- x) He must accept it during his life time. ~~If the~~
The heirs of the deceased donee can't accept the Property on his behalf.
- xi) If the Property is immovable, then the transfer must take place, a) in writing, b) duly registered, c) must be attested by at least two witnesses .
- xii) If the Property is movable then it can take

Place either in a) registered instrument or,
b) by delivering it to the transferee.

XIII) ~~If~~ The Property must be ^{an} existing one. Future Property is void. when the property includes both present and future property, then it's void against the future property.

If all the above ingredients are present, then it constitute a valid gift.

Generally, Gift is not revocable. But there're two exceptions, satisfying of which, it can be revocable.

i) If there's an express condition in the contract of gift, that on happening of some specified event or not happening of an event, either party can revoke the gift.

ii)

The Principle of gift is applicable to everyone, except the following: (Exceptions)

a) when there's a transfer of movable property in contemplation of death of the person, which is also known "Mortis Causa" gift.

b) It doesn't apply to Mohammadans.

Gift can be of two types:

a) Simple gifts

b) Onerous gifts.

even in general questions case laws need to be cited.

If there's any burden on the Property which's being transferred from the donor to donee and donee will be liable of all the burdens associated with the gift property has been defined as an onerous gifts.

All other gifts except the onerous gifts are Simple gifts.

underline important phrases

One can't select only the gift of Property excluding the burden on it, if any. Either he has to accept the gift fully or relinquish it. (14)

Section 127 defines a Universal donee. When the donee will be liable for the ~~whole of the~~ burden of the whole of the property of donor's, then he's ~~also~~ called as Universal donee and the donor who gifts whole property is called Universal donor.

Use Section Headings & Sub Headings

2) Transfer of Property deals with transfer of an interest in the property from one person to another. The transfer of Property Act deals with various provisions where different properties are being transferred in various forms.

Section 5 of the Act ~~defines~~ deals with the transfer of property inter-vivos. That means it can be done from one living Person to another living Person by act of parties.

~~to~~ All most all the Properties can be transferred, except few, which are enumerated under ~~the~~ Section 6.

underline important phrases.
Hence we can conclude that transferability is the rule and non-transferability is an exception

Section 6 (a) to 6 (i) has defined different Properties which are non-transferable as below:

i) Section 6 (a)

Under this section, there are three kinds of Properties which are non transferable.

- The chance of an apparent succeeding in an interest
- Mere chance of an apparent on the death of a kinsman
- Mere chance of winning in any lottery or prize etc.

The first part under this section deals with, that the chance of an apparent who is succeeding in a property can't transfer the property.

For example, A has owned a building which is his self acquired property. B, his brother can't

^{good} # use of illustrations ^{is required} wherever possible
transfer the building in the life time of A, although he is the next successor to his brother. B can do so, if A dies intestate without any legal heir.

In the Second Part, the chance of an apparent getting the property on the death of a kinsman, can't transfer the property.

For example, A, the father of B makes a will in favour of B, to transfer a building. As will must be executed after the death of the testator, hence B can't transfer the Property during the life-time of A.

Third part is mere chance of winning in a lottery or getting a prize can't be transferred.

(ii) Section 6(b) → good (subsections need to be underlined).

Mere right of re-entry to a Property can't be transferred.

When a person owns a Property, he has a right of entry into that property and when a person gives the property in lease, then after the determination of lease, lessor or the owner can get a right of re-entry in to the Property.

This mere right of re-entry can't be transferred to anyone else except the owner of the Property.

This right of re-entry can be transferred if the owner has transferred his property to some other person, then that person will have the right of re-entry.

III) Section 6(c)

An easement can't be transferred apart from the dominant heritage. # underline important phrases

Easement is the right to enjoy on or upon a land from ~~some~~ the adjacent land. It can be of 6 types.

- easement of air
- easement of light
- easement of water course
- easement of use of water
- easement of any way.

The land ~~for~~ which such right to be enjoyed is called dominant heritage and on which it's to be enjoyed is called servient heritage.

This easementary right can't be transferred unless the whole land (dominant heritage) is transferred.

IV) Section 6(d) → good

When there's a restriction ^{applied} on an enjoyment in a property to some person, then he can't transfer it.

For example, the mahanta of a matha, wakif or muttawali.

v) Section 6(e)

Mere right to sue can't be transferred.
When a person has been dispossessed of from a property and he institutes a suit against the wrong doer for recovery of possession or mesne Profit, then he can't transfer only right to sue to someone else, but if he transfers the whole property, then it can be transferred.

vi) Section 6(f)

Any public office or salary of public officers can't be transferred as it's only conferred on them to uphold the dignity of the office.

vii) Section 6(g)

Similar to 6(f), Stipends to military or naval or political pensions can't be transferred.

viii) Section 6(h)

Three things under this can't be transferred.

- Free air, natural light etc. can't be transferred which's opposed to public policy
- If the Consideration in the Contract is illegal or immoral, then property can't be transferred.
- If the transferee is legally disqualified to be a transferee.

1x) Section 6(i)

Certain things under this section can't be transferred

a) Right of occupancy of a tenant

⑤

Hence all the above types of properties can't be transferred.

Section B

5) Specific relief Act Provides relief in specie.

It's of two fold:

a) for enforcing Primary right

b) for enforcing sanctioning right

Recovery of possession of Property is enforcing the Primary right; whereas grant of damages is called as enforcing of sanctioning rights.

Recovery of possession of immovable Property has been enumerated under section 5 and 6 of the Specific relief Act.

Under section 5, one may recover the possession of immovable property as provided under Civil Procedure code within 12 years from the date of dispossession by executing a decree.

But Section 6 is all together a different Principle

related to recovery of Possession of immovable Property.

It has been divided into two ^{Sub} sections; section 6(1) and Section 6(4).

Speedy remedy has been Provided under section 6(1) where as a summary remedy has been Provided under section 6(4).

To institute a Suit under Section 6(1), there must be following conditions to be satisfied:

- a) There must be two parties; Plaintiff and defendant.
- b) There must be an immovable Property.
- c) The plaintiff has been in peaceful possession of the Property.
- d) He has been wrongfully dispossessed of the Property by the defendant.
- e) Such wrongful dispossession must have been done without the plaintiff's consent.
- f) Such dispossession must have been done without due course of law.
- g) ~~There~~ The plaintiff must have instituted the Suit within six months of the wrongful dispossession.
- h) There shall be no appeal or review against the decision.

(6)

1) No such suit shall be brought against the government.

In this suit, the plaintiff will recover the possession of the immovable property if all the above conditions satisfied irrespective of ~~how good~~ the title of the property.

~~This is called~~ This has been defined as a speedy remedy as in this suit, the court will not go into the title of the property and provides a quick relief to the party who has been wrongfully dispossessed without due course of law by the defendant, who may have a better title on the property.

As there's no appeal or review against the above suit, the defendant in the above suit can institute a suit under section 6(4).

The necessary ingredients to institute a suit under Section 6(4) are:

- a) The plaintiff in this suit ~~b~~ was the defendant in the above suit
- b) He must have a better title against the property
- c) The defendant under this suit (6(4)) must be the plaintiff in 6(1), who has recovered the possession even if he didn't have a better title.

d) The plaintiff in this Suit must institute the suit within 12 years of the dispossession.

Suit under 6(4) is a regular suit, which is summary in nature as it goes into the title of the property and conferred to the person who has a better title between them.

Difference between Suits under 6(1) and 6(4)

- i) Suits under 6(1) is a speedy remedy, whereas Suits under 6(4) is regular in nature.
- ii) Suits under 6(1) can't be instituted against the government, whereas no such provision is there under 6(4).
- iii) Suits under 6(1) must be instituted within six months from the date of dispossession; whereas Suits under 6(4) must be instituted within 12 years.
- iv) There shall be no appeal or review against the order under 6(1); whereas no such provision is there under 6(4).
- v) Suits under 6(1) is based on the Previous Possession of the party within two years from the date of institution of suit, whereas Suits under 6(4) is based on the title of the party.

Specific relief Act gives relief in specie. It's the extension of the Contract Act.

Generally when ever two parties make a contract either to perform something or not to do something, they ~~are~~ become liable under contractual obligation. When there's any breach of conditions by any of the party, they file a suit for the recovery of damages suffered by any party.

In this case, the Contract Act only Provides relief as ~~damages~~ Compensation to the party whose right has been infringed. # ^{use and section} ^{sub section} ^{heading}

But in some cases, even if there's a Compensation awarded, it can't fulfill the obligation of the parties towards themselves. (19).

In this ~~and~~ scenario, relief as a specific Performance comes into the light and Compels the party to do his act as per the terms Of the Contract.

Hence Specific performance is the Very obligation conferred on the party who is unable or not interested to do his act and where Compensation is not an adequate relief.

Specific relief Act deals with specific performance which is equitable in nature.

Section 9 to 20 of the Act deals with specific performance of contracts.

Section 9 to 13 deals with contracts which can be specifically enforced; whereas section 14 deals with contracts which can't be specifically enforced.

As the very basis of the Act is the contract, hence a legal and proper contract can be only enforceable.

Below are the conditions, where any contract is not enforceable:

~~i) The contract whose~~

i) A contract is not enforceable, where compensation in money is an adequate relief. As the relief Act gives relief in specie, where compensation in money can afford relief to the party, it's not required to use the discretionary jurisdiction of the court to enforce the contract.

ii) A contract which runs into such minute or numerous details that court can't order for its specific performance.

For example, constructing a bridge on a river.

10) A contract which is dependant on the Personal qualification or volition of the parties, can't be specifically enforced.

Qualification means inherent quality like singing, Painting etc. and volition means sweet will.

For example, A contracts with B to sing at B's theatre for 10 days. But A couldn't sing in B's theatre after 5 days. Here B can't obtain specific performance against A.

There's a ^{saying} line, "You can drag the horse to the water but can't make it drink".

iv) A contract which is by nature is determinable

v) A contract by nature which can't be specifically enforced.

For example, A contract to marry some one.

vi) A contract which gives plaintiff an undue advantage over the defendant, which the defendant didn't foresee at the time of making of the contract. ~~and~~

vii) A contract which creates some hardship on the defendant.

viii) A contract which is made by fraud, coercion of the plaintiff.

ix) A contract for building a house on any land under the following circumstances can't be enforceable.

- a) Where the details of the contract hasn't been properly enumerated in the contract deed.
- b) where the plaintiff has no substantial interest
- c) where the defendant has not been occupied with any part of the land.

x) Lastly, the contracts which are either
a) illegal, b) immoral, c) without consideration or, d) want of mutuality, can't be enforced.

Doctrine of mutuality is an English law, which defines the specific performance must be enforced mutually, by both parties.

If one party is incompetent and specific performance can't be ~~compelled~~^{enforced} against him, then he is also not liable for specific performance.

For example, a minor can't enforce a specific performance against anyone.

Section - C

9) Limitation Act Prescribes the Period within which any legal action can be brought against the other party, # use Section headings
Beyond which, no suit, appeal or application can be instituted even if limitation has not been set up as a defence, even if there's some hardship against the parties.

The court also doesn't have any jurisdiction to extend the period of limitation, except under few circumstances, which has been enumerated under section 4 and 5 of the Act.

The first Problem in this case falls under Section 4 of the limitation Act.

Section 4 clearly states, if the court is closed on its normal working hours, then the period of limitation can be extended till the court reopens.

Here 'Z' seeks extension of limitation Period as the court was closed on the last date of limitation Period.

Even if it was the last date of limitation Period, it falls under section 4 and hence the Period of limitation for Z can be extended till the court reopens.

232A.D. ...
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...
The second Problem is based on the provisions of section 5.

Section 5 of the limitation Act states that, whenever there's any sufficient cause shown by the Party, the court in its discretion may condone the delay.

This section doesn't apply to suits; it only applies to appeal and application.

Although section 5 lays down, when the Party in good faith Proceeding in an high court by mistake, then that leads to a sufficient cause which can be condoned by the court.

But this's not exhaustive. Some other conditions are also regarded as Sufficient cause.

- a) Mistake of counsel
- b) Defective vakalatnama
- c) Mistake of advocate
- d) Serious illness
- e) imprisonment
- f) illiteracy
- g) ~~Acting~~ Prosecuting in wrong court

But engrossing in marriage is not a sufficient

cause as defined under Section 5.
Hence, § who seeks condonation of delay for not preferring an appeal within a period of limitation because of engrossing in his marriage, the court will refuse this and delay can't be condoned.

Law of limitation helps the diligent, not indolent.

12) a- Sufficient cause

Limitation Act Prescribes the period within which an appeal, suit or application to be instituted. Beyond that no party can institute it even if there's some hardship on the party or limitation hasn't been setup as a defence.

But under section 5 there are some circumstances provided, where by the discretion of court, it can condone the delay of filing any appeal or application beyond the period of limitation. There are different circumstances which are called sufficient causes, on the basis of which the court can condone the delay.

There're two ~~statutory~~ statutory restrictions under section 5.

- i) Section 5 is only applicable to appeal and application and doesn't apply to suit
- ii) The court must be satisfied that due to sufficient, the party is not able to file the appeal or application within prescribed time.

The court has furnished by way of instances, some sufficient causes

- a) when the party is misled by any order,
- b) judgement, or
- c) motion of a high court leads to sufficient cause.

However this's not exhaustive. There are some other causes which are also regarded as sufficient causes under section 5.

- i) Mistake of counsel
- ii) illness of serious nature
- iii) Death of the party; ~~or~~ any family member
- iv) Imprisonment of party
- v) breakdown of vehicle
- vi) Natural calamities which paralyzes the normal life.

- vii) Mistake of advocate
- viii) In good faith Proceeding in a wrong Court
- ix) Defective Vakalatnama
- x) Mistake of court
- xi) Wrong Proceeding in good faith.

As the Supreme Court says, the duration of length of delay is insignificant, what matters is, ~~that~~ that sufficient cause shown by the party can be accepted in the court in a belief that the party was really unable to file the appeal or application within the prescribed period.

It's purely in the discretion of the court which will allow or refuse the proceeding.

b) Acknowledgment

The term acknowledgment has not been defined. Acknowledgment means the admission of liability. Section 18 has provided the guidelines for an acknowledgment.

The necessary ingredients to constitute acknowledgment are:

- i) It must be made by the Party against whom any liability is claimed.

- i) It must have been made before the expiration of limitation period
- ii) It can be made to any Person, even if to a stranger
- iii) The acknowledgment must have been in writing
- iv) It must be signed by the acknowledger and must be dated
- v) Even if it's not dated, oral evidence can be given related to the date
- vi) Using of words such as, a time has not yet come or b) ~~refusal to~~ making a claim by way of set off or c) refusal to pay constitutes acknowledgment
- vii) The liability must have been clearly mentioned in the acknowledgment. Simple admission of debt is acknowledgment.

(17)

From the date of acknowledgment, ~~the time~~ it gives the fresh period of limitation. Part payment made on account of any debt or interest also gives fresh Period of limitation.

As the acknowledgment must be made before the Period of limitation, so as part payment.

Payment by cheque is dishonoured doesn't amount to Payment and same wouldn't save limitation as cheque is nothing but a mere order of payment.