



## **LAWMINDS**

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**STUDY MATERIAL**  
*for*  
**PROPERTY LAW**

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This study material is intended to be used as supplementary material to the online classes and recorded video lectures. It is prepared for the sole purpose of guiding the students in preparation for their examinations. Utmost care has been taken to ensure the accuracy of the content. However, it is stressed that this material is not meant to be used as a replacement for textbooks or commentaries on the subject. This is a compilation and the authors take no credit for the originality of the content. Acknowledgement, wherever due, has been provided.

## Property Law

### Objectives

The student shall be able to understand the different types of transfer recognized by law. They shall have a clear idea about the various types of transfer like sale, mortgage, lease, exchange gift & actionable claim. They shall also become familiar to the various requirements of a valid transfer. They shall also understand in detail the effect of various elements like conditions, election, and apportionment on the transfer. They shall also understand the status of a transfer when made by certain other persons.

### UNIT-I

Section 1 of the act is called as the transfer of Property Act, 1882. Section 1 gives the title of the act. It is helpful in some instances as an internal aid for the interpretation of any provision in the Act. The title gives the idea about the object of the Act, policy & purpose of the Act.

**Application of the Act:** the T.P Act applies to transfers by acts of parties. & not by the operation of law

The act deals with transfer of property between two living persons. The majority of the act deals with transfers relating to immovable property. This act does not apply to transfer of property governed by personal law, for ex, Mohammedan Law.

### Section 3 defines Immovable Property

We know that property is the total wealth of a person. It may include land, buildings, mortgage rights, debts owed to him, insurance money due, cheque received, cash, etc. The Transfer of Property Act, 1882, defines immovable property as that which does not include standing timber, growing crops and grass. This is a very vast definition though, so we must look at the definition furnished by the **General Clauses Act, 1897**, wherein it is mentioned that immovable property includes – a) land, b) benefits arising out of land, c) things attached to the earth, or d) permanently fastened to anything attached to the earth. Also, the **Registration Act** defines immovable

property as land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries, or any other benefits arising out of land and things attached to the earth, but not standing timber, growing crops or grass. Actionable claim is dealt with in the Transfer of Property Act.

**Attestation:**

Section 3 of the T.P. Act defines attestation. Attesting of an instrument means that the documents must be attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the document. Further each of them must have signed the instrument in the presence of the executant. The attester's must have intention of attesting. It is not necessary that more than one should be present at the same time. Law also does not prescribe any particular form of attestation. The usual procedure is that the attester's must sign with address and date.

The Privy Council in *Shamu v. Abdul Khandir*, resolved the controversy whether the attester's should have actually seen the execution or not, of the document. It held that the attester's who sign the document must have actually seen the document executed.

Attester's should be a *Sui juris* i.e. person legally capable signature includes even the thumb impression.

Attestation does not mean that the attester's have the idea of the content of the instrument. It means that they see the executor of the document putting his signature.

Therefore it confirms the fact of execution. **Constructive Notice**

Section 3 defines notice. A notice may be actual or constructive. There is actual notice, when knowledge of a fact is brought directly to the person concerned. It is constructive when there is a presumption of the knowledge of the fact. The following are its different kinds

- i) Knowledge is presumed when the party wilfully abstains from making enquiry.
- ii) Gross negligence of the party.
- iii) Registration:

Registration of a transfer amounts to notice, from the date of registration.

### **Possession as notice**

If a person is actually in possession of a property, then the acquirer of the property is deemed to have notice of the title, if any, of the person in possession of the property. v) Notice to agent is treated as notice to the principal. The agent must have notice during the course of his business. If an agent fraudulently conceals the fact, then there is notice to the principal. The principal should not be a party to the fraud.

### **Section 5: defines the phrase Transfer of Property**

It is an act by which a living person conveys property in present or future or to himself & one or more living persons.

The word property used in the definition means- Tangible material things e.g. land and houses. Rights which are exercised over any material things, e.g right to enjoy a property. Rights regarding repayment of debt, etc.

The word transfer means a transfer of all the rights & interest in the property or transfer of one or more rights relating to the property.

Therefore the phrase transfer of property means

- 1) Transfer of things
- 2) Transfer of one or more rights regarding a thing
- 3) Transfer of the debt.

The effect of the transfer may take place in present or in future. The property to be transferred must be in existence at the time of a transfer. The transfer of property must be from one living person to another living person. However there are exceptions to this general rule as given under section 13 & 14. The transfer of property recognizes such transfers which create a new right or title or interest in favour of the transferee.

The following transfer is not governed by the T.P act: as they do not create any title in favour of the transferee.

- 1) Partition
- 2) A charge
- 3) A relinquishment or surrender
- 4) A family settlement
- 5) Partition by family settlement.

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