



## CHAPTER

## 3(C)

## Property Law

**Learning Outcomes :**

Students will be able to

- Understand the meaning of the term property and transfer of property
- Understand the types of property under the Transfer of Property Act 1882 and Sale of goods Act 1930
- Distinguish between the types of property and its transfer
- Describe the Doctrine of Election and Doctrine of Lis pendence
- Elaborate the process of transfer of property
- Explain the different modes in which an immovable property can be transferred

**I. INTRODUCTION**

Before the advent of the British kingdom, each community in India was governed by its respective customary law in matters relating to transfer of property. With the establishment of the formal litigation 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 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, 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.

**II. TYPES OF PROPERTY**

The word **property** has not been defined in the Act, but it has a very wide meaning and includes properties of all descriptions. It includes movable properties such as cases, books, etc., and includes immovable properties also such as lands or houses. It also includes intangible properties such as ownership, tenancy, copyrights, etc.

As per Section 3, the immovable property does not include standing timber, growing crop and grass.

**Standing timbers:** standing timbers are trees fit for use for building or repairing houses. The word standing timber includes Babool Tree, Shisham, Peepal, Banyan, Teak, Bamboo, etc. The fruit-bearing trees like Mango, Jackfruit, Jamun, etc., are not standing timber, and they are immovable properties (**Fatimabibi v. Arrfana Begum**, AIR 1980 All 394).



**Growing Crop:** It includes all vegetable growths which have no existence apart from their produce such as pan leave, sugarcane etc

**Grass:** Grass is a movable property, but if it is right to cut grass it would be an interest in land and hence forms immovable property.

Whether trees can be regarded as movable or immovable depends upon the circumstances of the case. If the intention is that trees should continue to have the benefit of further sustenance or nutriment by the soil (land), e.g., enjoining their fruits, then such tree is immovable property. But if the intention is to cut them down sooner or later for the purpose utilizing the wood for building or other industrial purposes, they would be timber and accordingly be regarded as movable property (**Shantabai v. State of Bombay**, AIR 1958 SC 532)

As per Section 3(25), General Clauses Act, 1897 Immovable property shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth.

In the case of **Sukry Kurdepa v. Goondakull** (1872) court has explained that movability may be defined to be a capacity in~ a thing of suffering alteration. On the other hand, if a thing cannot change its place without injury to the quality it is immovable.

In **Marshall v. Green** (33 LT 404), there was a sale of trees where they were cut and taken away. The Court held that the sale was not that of immovable property.

**Section 2(c) of the Benami Transactions (Prohibition) Act, 1988** defines property as:  
 “Property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

**Section 2 (11) of the Sale of Good Act, 1930** defines property as:  
 “Property” means the general property in goods, and not merely a special property.

Basis	Movable Property	Immovable Property
(a) Movement of property	The movable property can easily be transported from one place to another, without changing its shape, capacity, quantity or quality.	The immovable property cannot easily be transported from one place to another.
(b) Transfer	Mere delivery with intention to transfer the movable property completes the transfer	Mere delivery does not sufficient for a valid transfer. The property must be registered in the name of the transferee
(c) Registration	Registration of movable property is optional under the Registration Act 1908	Registration of immovable property is compulsory/ mandatory under the Registration Act 1908, subject to the condition that its value exceeds Rs.100
(d) Legal provision	Transfer of movable property is regulated by Sales of goods Act 1932	Transfer of immovable property is regulated by Transfer of Property Act 1882

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V

UNIT VI

UNIT VII

UNIT VIII



### III. TRANSFER

Transfer of property is an act of conveying property from one person to another, in the present or future. Matters relating to the property are governed by the Transfer of Property Act, 1882 in India. The object of the Transfer of Property Act is to regulate the transfer of property between living persons. It shall also serve as the code of contract law governing immovable property.

The Transfer of Property Act, 1882 provides clarity on the subject: it is a systematic and uniform law on the transfer of immovable property in India.

The transfer of property may also take place by inheritance and succession. The laws relating to such transfer are governed by the respective religious laws or practices, as the case may be.

#### Who can transfer property?

Any person who is competent to contract (person above 18 years of age, having a sound mind and not disqualified by any law in force) and authorized to dispose of property viz., owner of the property or any person authorized to sell the property, can make a transfer. The person who transfers the property is called the transferor and the person to whom the transfer is made is called the transferee. According to section 8 of the Transfer of Property Act 1882 (The Act), by transferring property, the transferor transfers all rights in a property.

#### Essentials of a valid transfer

**With regard to the law of property, a transfer is a process of conveying the rights and liabilities with respect to a property by one person to another. It is therefore with the formation of an agreement culminating into a contract that the transfer of property takes place.**

(Transfer may be by agreement between parties i.e. by contract- explained in upcoming chapter of contracts- transfer by will or succession- here in this chapter we are dealing with transfer by agreement between parties)

The following are the essentials for a valid transfer of property:

- In a transfer of property, the transfer should be between two or more living persons.
- The property that is going to be transferred should be free from encumbrances (hindrances of any form) and be of a transferable nature.
- The transfer should not be: - for an unlawful object or an unlawful consideration (for a detailed understanding, refer the chapter on Contracts);
  - involving a person legally disqualified to be a transferor or transferee.
- The transferor who transfers the property must:
  - be competent to make the transfer;
  - be entitled to the transferable property;
  - be authorized to dispose off the property if the property is not his own property.
- The transfer should be made according to the appropriate mode of transfer. Necessary formalities like registration, attestation, etc. should be complied with.
- In the case of a conditional transfer, where an interest is created on the fulfillment of a condition, the condition should not be illegal, immoral, impossible or opposed to public policy.



## How can property be transferred?

### 1. Mode of transfer:

The mode of transfer of property varies according to the value of the property. If the value of the property is more than Rs. 100/-, then transfer has to be made only by a registered instrument. If the property is tangible where the value of the property is less than Rs. 100/-, then transfer has to be made only by delivery, whereas for intangible property, transfer has to be made only by registered instrument. (A registered instrument contains the records of the owner of the property- for example: shares, bonds, etc.)

### 2. Attestation:

A registered instrument must be attested at least by two witnesses to the transfer. The definition of attestation is given in section 3 of the Transfer of Property Act 1882. Attestation means affixing the signature to the instrument for the transfer of property. The witnesses should mark their signature too on the instrument with the intention to attest. The intention behind including this provision was to ensure that transfer was done with the free will of the executant.

### 3. Registration:

Registration of the instrument is an essential legal formality. During registration, the parties to the transfer must be present to affix their signatures to the document and complete the transaction with regard to immovable property. While doing so, the document for transfer must mention clearly the rights, obligations and liabilities of the parties to the transfer.

Registration shall take place by finally affixing a seal of the Registrar's office which shall be subsequently included in the official records.

Indian Registration Act is an act to consolidate the enactments relating to the registration of documents. Registration means recording of the contents of the document. Section 17 of the Indian Registration Act 1908, deals with the documents that are compulsory to be registered.

### 4. Mutation:

Once a property has been transferred by way of relinquishment, sale, or gift deed in the "name" of the recipient. It is also important to have the transfer recorded in the municipal records by way of mutation.

### 5. Payment of fee:

Stamp duty on transfer is payable as per applicable state laws.

In **Madam Pillai V. Badar Kali** (45 Mad 612 (FB)), the plaintiff being the first wife made a claim for maintenance to her husband. The husband orally transferred his lands of the value of Rs. 100/- to the plaintiff. Later, he executed an instrument of sale in favour of the defendant for the same property. The plaintiff initiated a suit stating that the transfer was initially made in her favour and the subsequent sale to the defendant was not valid. The defendant stated that the transfer in favour of the plaintiff failed for want of a registered instrument. The Court held that - the plaintiff acquired a title by way of oral transfer and she is entitled to the property though the instrument of sale was not registered.

## IV. DOCTRINE OF ELECTION

According to the principle of Doctrine of Election [Section 35 of the TPA], if a person to the transfer gets two selections (a benefit and a burden), then he has to accept both the benefit and the burden

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V

UNIT VI

UNIT VII

UNIT VIII





## UNIT I

or none. He cannot accept the benefit and reject the burden in a single transaction. In other words, while claiming advantage of an instrument, the burden of the instrument should also be accepted.

**Illustration:** A sells his garden as well as his house through one instrument to B. Whereas, B wants to retain only the house and wants to cancel the transfer regarding the garden. According to the Doctrine of Election, B has to retain the garden if he wants to retain the house, or cancel the whole transaction. B cannot retain the house and cancel the transfer regarding the garden.

## UNIT II

The doctrine of election is based on the principle of equity that one cannot take what is beneficial to him and disapprove that which is against him under the same instrument. The Latin maxim “quod approbo non reprobo” means that ‘no one can approve and reprobate.’ In other words, a person cannot accept a thing and reject another in the same instrument. This maxim is one of the underlying principles of doctrine of election. In simple words, where a person takes some benefit under a deed or instrument, he must also bear its burden.

## UNIT III

“quod approbo non reprobo” - Approbate and reprobate means to approve and disapprove. This principle is based on the maxim ‘quod approbo non reprobo’ which translates to **‘that which I approve, I cannot disapprove’**. Therefore, an individual has to either accept the whole contract, order etc. or reject the whole thing.

## UNIT IV

The principle of the doctrine of election was explained by the House of Lords in the leading case of **Cooper vs. Cooper**. In Cooper v. Cooper, Lord Hather explained the principle underlying the doctrine of election in the following words, “... there is an obligation on him who takes a benefit under a will or other instrument to give full effect to that instrument under which he takes a benefit; and if it be found that instrument purports to deal with something which it was beyond the power of the donor or settlor to dispose of, but to which effect can be given by the concurrence of him who receives a benefit under the same instrument, the law will impose on him who takes the benefit the obligation of carrying the instrument into full and complete force and effect.” Section 35 of the Transfer of Property Act, 1882 embodied the doctrine of election. The Court also held that the doctrine of election applied on every instrument and all types of property.

## UNIT V

## V. DOCTRINE OF LIS PENDENS

Doctrine of *lis pendens* is embodied in Section 52 of the Transfer of Property Act, 1882. *Lis pendens* literally means a pending suit.

## UNIT VI

The doctrine states that a property under a pending suit should not be transferred to a third-party during a pending suit in such a way it affects the rights of any party concerned with the property. That means, no new interest should be created by way of transfer of a property during the pendency of a suit relating to it.

## UNIT VII

The Doctrine of *lis pendens* emerged from the Latin maxim ‘ut lite pendent nihil innovetur’ meaning ‘nothing new should be introduced in a pending litigation’.

The objective of the doctrine of *lis pendens* is to subjugate all parties to a pending litigation of a property, to the authoritative decision of the Court. The doctrine reflects the control which a court acquires over property involved in a pending suit until its final judgment.

## UNIT VIII

When a suit or litigation is pending on an immovable property, then that immovable property cannot be transferred.

To constitute *lis pendens*, the following conditions should be satisfied:

- A suit or proceeding involving the immovable property should be pending;
- The right to the immovable property must be in question in the suit or proceeding;



- The property in litigation should be transferred;
- The transferred property should affect the rights of the other person to the transfer.

**Illustration:** A has litigation in determining the title of the property with X. During the period of litigation, A initiates a sale of the property in favour of B. According to the Doctrine of Lis Pendens, the property cannot be sold because the property is involved in litigation.

The Supreme Court (SC) in *Dev Raj Dogra and others v Gyan Chand Jain and others* interpreted the meaning of the Section 52 of the T P Act and laid down the pre-conditions as follows:

1. A suit or a proceeding in which any right to immovable property must be directly and specifically in question, must be pending;
2. The suit or the proceeding shall not be a collusive one;
3. Such property during the pendency of such a suit or proceeding cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the right of any other party thereto under any decree or order which may be passed therein except under the authority of Court. In other words, any transfer of such property or any dealing with such property during the pendency of the suit is prohibited except under the authority of Court, if such transfer or otherwise dealing with the property by any party to the suit or proceeding affects the right of any other party to the suit or proceeding under any order or decree which may be passed in the said suit or proceeding.

(source: India kanoon)

The SC observed that Section 52 of the Act does not declare a *pendente lite* transfer by a party to the suit as void or illegal, but only makes the *pendente lite* purchaser bound by the decision of the pending litigation. (*Hardev Singh V Gurmail Singh*)

Thus, if during the pendency of any suit in a court of competent jurisdiction, in which any right of an immovable property is in question, such immovable property cannot be transferred by any party to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such a suit.

## VI. MODE OF TRANSFER

### VI.1.SALE

Sale means a transfer of ownership (right to possess something) of the property in exchange for a price (money) [Section 54 of the TPA]. Seller is the person who transfers the property and buyer is the person to whom the property is transferred. The consideration in a sale is usually money (for a detailed understanding, refer the chapter on Contracts).

**Illustration:** A sells his house for Rs. 2 lakhs to B. This is called sale. Here, A is the seller and B is the buyer. Rs. 2 lakhs is the consideration which is money.

The following are the essentials for a sale to be valid:

- There should be two different parties- the seller and the buyer;
- Both the parties should be competent to transfer;
- The property to be transferred should be in existence;
- Consideration for the transfer should be money;
- The contract should be in accordance with law.

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V

UNIT VI

UNIT VII

UNIT VIII



## VI.2. Lease

A lease under the transfer of property act, is a contract by which one party transfer the right to enjoy the land, property, services, etc. to another for a specified time, usually in return for a periodic payment. but does not constitute a sale. It is called a lease. [Section 105 of the TPA]. A lease can be done only of immovable property.

A lease is a transfer of the right to enjoy a property for a specific period of time in consideration of a price. The lessor is the person who lets out the property for lease or transferor, and the lessee is the person to whom the property is leased or the transferee in a lease. The lessee can also sub-let the lease and the relation between the lessee and the sub-lessee will be that of the lessor and lessee.

A sublease is the renting of property by a tenant to a third party for a portion of the tenant's existing lease contract. Even if a tenant subleases a property, the original tenant is still liable for the obligations stated in the lease agreement, such as the payment of rent each month. Subleasing with the consent of the Landlord is legal in India. If the agreement allows the tenant to sublease it, the tenant can sublease a portion of the property to a third party. When a tenant whose name is on the lease rents a room, a portion of the property, or all of the property to another, it is referred to as subleasing (or subletting). The subtenant must pay rent and comply with the lease terms, but the principal tenant remains ultimately responsible for the lease.

**Illustration:** A for a period of 3 years lets out his property for use to B for a sum of Rs. 50,000/- This is called a lease. A is the lessor and B is the lessee. If B sub-lets the property to C, then B will be the lessee and C will be the sub-lessee. The relation between B and C will be of that relationship that is between A and B.

## VI.3. Exchange

When two persons transfer ownership of one thing for the ownership of another, it is called exchange [Section 118 of the TPA]. Transfer of property by exchange can be made only by way of sale. The rights and liabilities of the parties to exchange shall be that of the rights and liabilities of the buyer to the extent of receiving and that of the seller to the extent of giving.

**Illustration:** A offers to sell his cottage to B. B in consideration of the cottage sells his farm to A. Instead of getting money for his cottage, A has received a farm from B. This is an example for Exchange. The rights and liabilities of A will be that of seller towards the sale of the cottage and will be that of buyer towards the sale of the farm. Similarly, the rights and liabilities of B will be that of buyer towards the sale of the cottage and that of seller towards the sale of the farm.

## VI.4. Gift

A transfer of ownership of property that is made voluntarily and without consideration is called Gift [Section 122 of the TPA]. The person making the transfer is called the donor and the person to whom it is made is called the donee. If the donee expires before accepting the gift, it becomes void.

**Illustration:** A gives his car to B. B accepts the car. But B does not pay anything in return for the car. This is known as Gift. In this case, A is the donor and B is the donee.





### Sale, Lease, Exchange and Gift

Basis	Sale	Lease	Exchange	Gift
Transfer	Transfer of ownership for price	Transfer of limited ownership for rent	Transfer of ownership for some other property	Transfer of ownership without consideration
Consideration	Price	Rent	Another Property	No consideration
Mode	Sale deed should be registered	Lease deed should be registered	Sale deed should be registered	Gift of immovable property should be registered.

### Exercise

1. X is an owner of mango groves where exceptional quality of mangoes are produced by hybrid mode. He is one of the largest exporters of mangoes. Till the year 2020, he has been into exporting mangoes. Due to setback to his business because of covid, from 2021 he shifted to selling mango wood in local markets. Identify if there is any difference in the type of property he has been dealing with in the year 2020 and in 2021 respectively.
2. A has a matter pertaining to the title of immovable property situated at Bangalore with B. the matter is subjudice in the court of Civil Judge at Bangalore. During the period of pendency of suit, A's mother was to be operated for open heart surgery and to accommodate the financial need, he sold this property situated at Bangalore to C. Decide the validity of the transfer made by A to C. Explain the requisites of principle of law involved.
3. Manan and Ketan enter into an agreement of lease of property for a tenure of 24 months at a consideration of Rs 9000/- per month. Ketan is expected to return the property at the expiry of this term in the condition in which he received it. Ketan was transferred to another city but for a short span. He sub-lets the property to Manoj for a sum of Rs 10,000/-. Manoj carries out such alterations as would depreciate the property. Decide if Ketan is authorised to make such transfer by sub-lease. Also highlight the remedy available to Manan.
4. Elucidate on the importance of Attestation as an important step preceding Registration.