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Study Notes

Transfer of Property

Act, 1882

Descriptive Question

Notes

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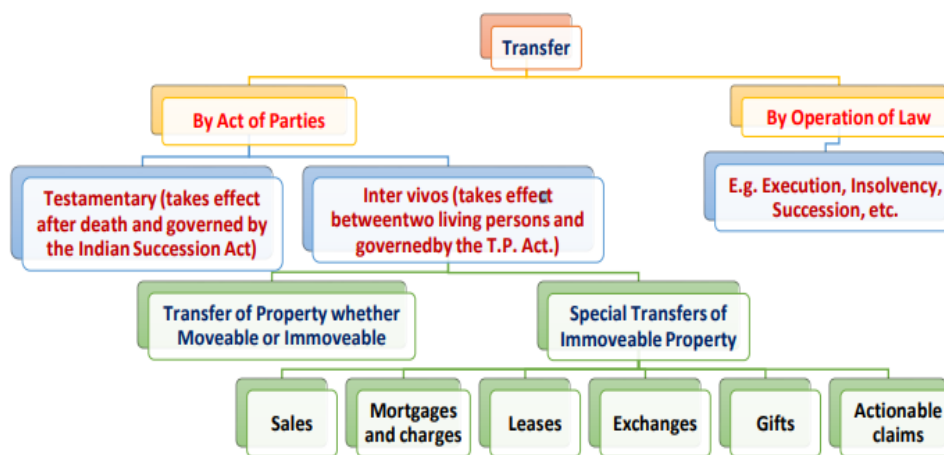
Question no. 1. What is Transfer of property? State different modes of transfer as per Transfer of Property Act.

Ans.

- **Introduction:**

Transfer of Property Act is an act to amend the Law relating to the Transfer of Property by act of parties. The purpose of this act is to consolidate them in a modified form. An interesting thing about this act is that it is limited to transfers by act of parties. The Act does not apply to cases of transfers by operation of law.

- **Scheme of Transfer of Property Act-**



- **Meaning of Transfer of Property**

Section 5 of the Transfer of Property Act, 1882 defines the term transfer of property. According to this section, 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 and other living persons.

- **What may be transferred S. 6.**

Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force.

- The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.
- A mere right of re-entry for breach of a condition subsequent cannot be transferred to anyone except the owner of the property affected thereby.
- An easement cannot be transferred apart from the dominant heritage.
- An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

- (dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.
- (e) A mere right to sue cannot be transferred.
- (f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.
- (g) Stipends allowed to military, [naval], [air-force] and civil pensioners of [Government] and political pensions cannot be transferred.
- (h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872 or (3) to a person legally disqualified to be transferee.
- (l) Nothing in this section shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.

- **Rule of Spes Successionis:**

S. 6 (a) excluded the chance of an heir-apparent of succeeding to an estate from the category of transferable property. The technical expression for such a chance is Spes Successionis.

Suggestive Questions-

- Q. What is Transfer of Property by act of parties?
- Q. What kind of property may not be transferred as per TP Act?
- Q. What kind of property is transferable under TP Act?

Question no. 2. Who are the persons competent to transfer property under TP Act?

Ans. **Introduction:**

S. 7 of the Transfer of Property Act specifically provides for the persons who are competent to transfer. A person who is legally competent to propose a transfer only can transfer a property.

- **Meaning of Transfer of Property**

(take reference from answer to Q.no.1)

- **Persons competent to transfer**

The subject of persons competent to transfer is dealt with under section 7

S.7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either; absolutely or conditionally, in the

circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force."

- **Persons competent to Contract as per Contract Act**

Section 11 of the Indian Contract Act, 1872 defines persons who are competent to enter into contracts. It provides "Every person is competent to contract who if of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject."

Suggestive Questions-

Q. 'Persons competent to transfer are persons competent to contract.' Comment.

Question no. 3. Elucidate Transfer of Property to an Unborn person.

Ans. Introduction:

Transfer of property is an act in which a living person conveys property, in the present or in the future, to one or more living persons, or himself and one or more than one living person, or himself and one or more than one living person. The living person can be a company, association, or body of individuals, whether incorporated or not.

- **Transfer for benefit of unborn person- an exception**

section 5 of the Transfer of Property Act helps us understand that the person must be from one living person to another. This implies that both persons must be living at the time of Transfer. Only such transfers are valid. However, this has an exception incorporated under Section 13, which facilitates the transfer of immovable property in favor of an unborn person.

- **S. 13. Transfer for the benefit of an unborn person.**

Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest made by the same transfer, the interest created for the benefit of such person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property.

- **Necessary conditions for transfer for benefit of unborn person.**

There are two necessary conditions for transferring property:

- ✓ The property cannot be directly transferred to the unborn person, so a prior interest must be created in favor of a living person.
- ✓ The absolute Interest must be transferred in favor of the unborn child.

Suggestive Questions-

Q. S. 13 covers Transfer for the benefit of unborn person. Discuss.

Q. How is transfer for the benefit of an unborn person an exception to S. 5 of TP Act?

Question no. 4. What is rule against perpetuity and condition restraining alienation?

Ans. **Introduction:**

“Perpetuity as defined by the Merriam Webster Dictionary is **“the state of being perpetual”** i.e., **“to hold something for an unlimited period of time.”** Therefore, it can be inferred that perpetuity under property law is holding a property for an unlimited period of time, thereby, making it inalienable or untransferable; that being the case, the Rule Against Perpetuity is the law that prohibits the transfer of property from generation to generation and restrains the property from becoming inalienable. Condition restraining alienation is an absolute restraint on alienation which entirely removes or limits the right to dispose of the property.

- **Rule against Perpetuity S. 14.**

No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

- **Condition restraining alienation S. 10**

Section 10 deals with condition restraining alienation. It states that " Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void , except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Mohammedan or Buddhist), so that she shall not have the power during her marriage to transfer or Change the same or her beneficial interest therein."

- **Objective of rule against perpetuity and rule against alienability**

It is to ensure that property is freely circulated so that trade and commerce in the country is boosted and to uphold the principles of equality and justice in the country.

By doing so, the welfare of the society and the property is taken into consideration. In the absence of such a rule the State will be deprived of earning revenue and the owner himself will not be able to transfer the property when the need arises.

Suggestive Questions-

Q. What is the objective of doctrine of rule against perpetuity?

Q. What is the objective of S. 10 that is condition restraining alienation?

Question no. 5. What is vested interest and contingent interest as per Transfer of Property Act?**Ans. Introduction:**

Vested interest is dependent on a condition of the happening of a specified certain event. Contingent Interest is created on fulfilling a condition of happening of a specified uncertain event.

- **Vested interest S. 19.**

S.19 of Transfer of Property Act of 1882 defines vested interest as –

“Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. A vested interest is not defeated by the death of the transferee before he obtains possession.”

A vested interest is an interest developed in favor of a person when the condition provided for the contract of property transfer is definite, and the event will occur in the future.

The transferer and the transferee enter into a property transfer contract, and the transferer creates a condition for the fulfillment of the property transfer, and upon accomplishment of the condition, the transferee has ownership of the property.

The transferee may not receive ownership of the property immediately after signing the contract, but he might anticipate it after meeting certain conditions. If the transferee dies before getting the property in his possession, the interest vested in him will be vested in his legal heirs and they will get the possession of that property after the condition is fulfilled.

- **Contingent interest S. 21.**

S. 21 of the Transfer of Property Act, 1882 states about Contingent Interest. It is an interest which is created in favour of a person on fulfilling a condition of happening of a specified uncertain event. The person having the contingent interest does not get the possession of the property but receives it upon happening of that event but will not receive the property if the event does not happen. Contingent interest is entirely dependent on the condition imposed on the transfer.

- **Difference between Vested and Contingent interest.**

- ✓ Vested interest creates a current right that comes in effect immediately, although the enjoyment is postponed to the time prescribed in the transfer. It does not entirely dependent on the condition as the condition involves a certain event.
- ✓ Contingent interest only happens when the condition is fulfilled.

Suggestive Questions-

Q. Differentiate between Vested interest and Contingent interest.

Q. What are the essential characteristics of Vested interest and Contingent interest.

Question no. 6. Write a short note on conditional transfer.

Ans. **Introduction:**

The conditional transfer is regulated by Section 25 of The Transfer of Property Act of 1882. Any transfer that has conditions attached to it from one party to the other party is conditional in property law. An absolute transfer is one in which the transferee becomes the unconditional owner of the property immediately, whereas a conditional transfer is dependent on a condition attached to it.

- **Conditional Transfer S. 25.**

An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

- **Illustration**

For example, X offers to transfer his property to Y, but the condition attached is that Y has to give up his car. So this transfer is completed when Y agrees and gives his vehicle for receiving the property.

This is a conditional transfer in property law.

- **Types of Conditional Transfer**

- ✓ **Condition Precedent:** A condition precedent is a condition that must be fulfilled before the transfer of property becomes effective. For example, "A" agrees to transfer a piece of land to "B" on the condition that "B" builds a house on the land within a year. In this case, the transfer of the property will only become effective if "B" fulfills the condition of building the house within a year.

- ✓ **Condition Subsequent:** A condition subsequent is a condition that, if fulfilled, causes the transfer of property to become void. For example, "A" transfers a piece of land to "B" on the condition that "B" shall not use the land for commercial purposes. In this case, if "B" uses the land for commercial purposes, the transfer of the property will become void.

- **Conditional Limitations:** A conditional limitation is a condition that limits the right of the transferee to the property transferred. For example, "A" transfers a piece of land to "B" on the condition that "B" shall not transfer the land to anyone else for the next 10 years. In this case, the condition limits "B"'s right to transfer the land to someone else for the next 10 years

Suggestive Questions-

Q. What is a Conditional Transfer and state its types.

Question no. 7. Define Sale of Immovable Property.

Ans. Introduction:

Sale of immovable property has been defined as a transfer of ownership in exchange for a price paid or promised or partly paid and partly promised by the Transfer of Property Act. Section 54 provides essentials for a sale of immovable property and Section 55 deals with rights and duties of buyer and seller.

- **Sale S. 54.**

S. 54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-- Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

- **Contract for sale.--** A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

- **Rights and Liabilities of Buyer and Seller S. 55.**

Section 55 of the Transfer of Property Act, 1882 describes right and liabilities of buyer and seller. In any property transaction, buyers and sellers are subject to right and liabilities. In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the rights and liabilities as mentioned under S. 55.

- **Rights and Duties of Seller**

Duties :To disclose any material defect.

To produce documents of title.

Rights: Right to get Rent and Profit:

Right to get Interest on Unpaid buying money.

- **Rights and Duties of Buyer.**

Rights: Right to get Benefits, Rents.

Right to get Interest.

Duties: Duty to disclose necessary facts.

Duty to pay money in time.

(Elaborate pointwise different rights and liabilities of Buyer and Seller).

Suggestive Questions-

Q. State the essential elements of Sale under TP Act.

Q. What are the rights and duties of Buyer and Seller as per TP Act.

Question no. 8. What is Mortgage? Differentiate it from Charge.

Ans. **Introduction:**

In ancient system of law a mortgage was actually a pledge the property being conveyed was forfeited on default of payment. The transaction was effected either by delivery of possession or by conditional conveyance. The concept of Mortgage has developed from different ancient laws and now has been codified under Transfer of Property Act 1882 in India.

- **Mortgage Meaning and definition S. 58.**

A mortgage is a transfer of an interest in specific immovable property as security for repayment of a debt. But, such interest itself is immovable property. The nature of the right transferred depends upon the form of mortgage.

- ✓ **S. 58. Mortgage , mortgagor , mortgagee , mortgage-money and mortgage- deed defined.**

(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

- ✓ The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage -money, and the instrument (if any) by which the transfer is effected is called a mortgage -deed.

- **Charges S. 100.**

Charge refers to the security for securing the debt, by way of pledge, hypothecation and mortgage. Charge means, a right created by the borrower on the property to secure the repayment of debt (principal and interest thereon), in favor of the lender i.e. bank or financial institution, which has advanced funds to the company. In a charge, there are two parties, i.e. creator of the charge (borrower) and the charge-holder (lender).

According to Sec 100 of Transfer of Property Act, 1882- Where immovable property of one person is by act of parties or operation of law pledged as security for the payment of the money to another, and the transaction does not constitute a mortgage, the latter would acquire the charge over the property.

- **Essentials of a Charge:**

1. Immovable property of one person is made security for the payment of money to another.
2. This transaction does not amount to a mortgage.
3. By the act of parties or by operation of law

- **Difference between Mortgage and Charge**

- ✓ The term mortgage alludes to a form of charge, in which the ownership interest in a particular immovable property is transferred. On the other hand, Charge is used to mean the creation of right over the assets in favor of the lender, for securing the repayment of the of the loan.
- ✓ The mortgage is created out of the act of the parties concerned, whereas charge is created either by the operation of law or by the act of the charger holder and charge creator.
- ✓ A mortgage requires compulsory registration under the Transfer of Property Act, 1882. Conversely, when the charge is created as a result of the act of the parties concerned, registration is must, but when the charge is created by operation of law, no such registration

is needed at all.

- ✓ The mortgage is for a specified term. Unlike charge, which continues forever.
- ✓ A mortgage carries personal liability, except when it is specifically excluded by an express contract. As against this, no personal liability is created. Nevertheless, when the charge comes into effect due to a contract, then personal liability may be created.

Suggestive Questions-

Q. "Mortgage is security for the repayment of money". Discuss.

Q. What is Charge?

Q. What is the difference between Mortgage and Charges?

Question no. 9. What are the different types of Mortgage as per Transfer of Property Act?

Ans. **Introduction:**

A mortgage is a transfer of an interest in specific immovable property as security for repayment of a debt. But, such interest itself is immovable property. The nature of the right transferred depends upon the form of mortgage.

- **Meaning**
 - (as discussed in Answer no. 8)
 - **Types of Mortgage Under the Transfer of Property Act**
 - **Simple Mortgage S. 58(b)**
 - **Mortgage by Conditional Sale S. 58(c)**
 - **Usufructuary Mortgage S. 58(d)**
 - **English Mortgage S.58(e)**
 - **Mortgage by deposit of title deeds. 58(f)**
 - **Anomalous Mortgage S. 58(g)**
 - (Elaborate each type of Mortgage in brief)
 - **Mortgagor's Right of Redemption S. 60.**
 - **Mortgagee's Right to Foreclose or Sale. S. 67.**

Suggestive Questions-

Q. Mortgage is divided into 6 categories as per TP Act. Elaborate on all the types of Mortgages with Illustrations.

Q. What is Mortgage and its Types?

Q. What is Right to Redemption and Right to Foreclose or Sale?

Question no. 10. What is Lease of Immovable Property?

Ans. **Introduction:**

A lease is the transfer of right to enjoy property made of a certain time, or which is made in perpetuity, or in consideration of a price paid or promised to be paid. Transfer of property act deals with the concept of Lease. Lease is type of transfer not of ownership or any security interest but transfer of right to enjoy the immovable property for a period of time or perpetually.

- **Meaning and definition of Lease S. 105.**

S. 105. A lease of immovable property is a transfer of a right to enjoy the such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specific occasions to the transferor by the transferee, who accepts the transfer on such terms. Lessor, lessee, premium, and rent defined.— The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service, or another thing to be so rendered is called the rent.

- **Essential Elements of Lease**

- ✓ Atleast 2 parties- Lessor and Lessee.
- ✓ Lease is transfer of limited estate
- ✓ Duration of Lease.
- ✓ Premium or Rent is the Consideration in lease. The consideration paid at one time is called as the premium. But the consideration paid periodically is called as the rent.

- **Determination of lease S. 111.**

- 1) By lapse of time
- 2) By happening of specified event
- 3) Termination of lessor's interest
- 4) By Merger
- 5) By express surrender
- 6) By Implied Interest
- 7) By Forfeiture

- **Option to determine lease S. 110.**

- ✓ Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

- **Rights and Liabilities of Lessor and Lessee S. 108.**

Rights of Lessee

- Right to Accretions
- Right to avoid lease on destruction of property

Rights of Lessor

- Lessor entitled to retransfer of possession on Determination of Lease

Liabilities of Lessor

- Duty to disclose latent material defect to Lessee.

Liabilities of Lessee

- Duty to pay rent.

Suggestive Questions-

Q. What is a Lease and its essential elements?

Q. What are the Rights and Liabilities of a lessor?

Q. What are the Rights and Liabilities of a lessee as per TP Act?

Q. What is Determination of Lease and who has the option to determine the lease?

Question no. 11 Explain Gift with special reference to the concept of onerous gift.

Ans. **Introduction:**

A property can be transferred in several ways such as Gift, Sale, and Exchange etc. and is under the act of 1882. Among these, one vital element of property transfers addressed by the Act is “gift.”

Gift under the TPA is the voluntary transfer of existing property (movable or immovable) by one person (the donor) to another (the donee), without any consideration. This means the transfer is free, devoid of any expectation of payment or service in return. When a gift is made, a property already owned by one person is unilaterally transferred to another without payment.

- **Meaning and Definition of Gift**

Gift, as defined under Section 122 of the Transfer of Property Act, is the transfer of certain existing immovable or movable property made voluntarily and without consideration, by one person (the donor) to another (the donee), and accepted by or on behalf of the donee. Furthermore, the section solely applies to inter vivos gifts, or gifts made between living people, as is clear from the legislation’s phrasing. Mortis causa gifts and inheritance are not covered. Section **122 to Section 129** contained in Chapter VII of Transfer of Property Act, 1882 deals with gifts.

- **Essential elements of a Gift.**

- ✓ Parties to the gift - There must be two parties to a gift that is donor and donee.
- ✓ Absolute transfer of ownership.
- ✓ Subject matter of property can be movable or immovable.
- ✓ Without consideration and voluntary.
- ✓ Acceptance of Gift by donee during lifetime of donor is a must.

- **Onerous Gift S. 127.**

Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the

others, although the former may be beneficial and the latter onerous.

- **Universal donee. S. 128.**

Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

Suggestive Questions-

- Q. What is subject matter of gift?
- Q. Define Gift along with onerous gift.
- Q. Who is a donor and universal donee?

Question no. 12. Define Exchange and elaborate it as a valid mode of transfer under TP act.

Ans. **Introduction:**

Exchange is defined in section 118 of the Transfer of Property Act, 1882. The exchange of property in this act relates to immovable property only. The exchange of moveable property is governed by the Sale of Goods Act. The literal meaning of exchange is giving and taking of something. The Concept of Exchange is quite similar to earlier Barter system.

- **Meaning and Definition S. 118.**

S. 118. When two persons mutually transfer ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "Exchange". The peculiar feature in a transaction of exchange is that it is not for any price or consideration like sale. The only difference between Sale and Exchange is that in Sale price is a must. The consideration is always in terms of money whereas in Exchange consideration is the transfer of ownership of property in exchange of ownership of another property of similar value.

- **Essential elements of Exchange**

- At least 2 parties.
- Their intention to transfer the things must be with mutual consent.
- There must be a transfer of ownership of a thing from one person to another and vice-versa.

- **Exchange of money for money**

As per S. 121 of the Transfer of Property Act if money is exchanged between the parties, then the parties must assure the other party regarding the genuineness of money he has given to the other. The proving of the genuineness of money is essential, if exchanged.

- **Difference between Sale and Exchange**

Consideration is the chief difference; procedure remains same for both.

Suggestive Questions-

- Q. What is exchange and state its essential elements.
- Q. How is Exchange different from Sale?

Question no. 13. Write a short note on Doctrine of Election.**Ans. Introduction:**

The “doctrine of election” in the context of the Transfer of Property Act, 1882 pertains to a situation where a person is given a choice to either accept or reject a transfer of property. This doctrine is primarily outlined in Sections 35 and 36 of the TP Act.

• Doctrine of Election S. 35

Election means choosing between two alternative rights. If two rights are endowed on a person under any instrument in such a manner that one right is more preferable than the other, he is bound to elect or choose only one of them. Section 35 of the Transfer of Property Act, 1882 deals with Doctrine of election

Illustration: By a deed, X (transferor) gives to Y (transferee) a farmhouse belonging to Z (owner), and by the same deed, X gives a factory belonging to himself (X) to Z. Now, Z is put to election that means Z has to choose whether he wants to take over the factory of X by giving his farmhouse to Y or not. In this case, Z is entitled to X’s factory only when he conforms to all the provisions of the deed by renouncing his rights in the farmhouse and by giving it to Y.

• Essential Elements of Doctrine of Election

- ✓ A person having no right to transfer, transferring property
- ✓ He must transfer some benefit on the owner of the property, as part of the same transaction
- ✓ The owner must elect either to confirm the transfer or to dissent from it.[iii]
- ✓ Effect of election against the transfer-
- ✓ Where the owner dissents from the transfer of his property –
 - He must forgo the benefit
 - The benefit contemplated for him would then go back to the transferor.

Question no. 14. Write a short note on Doctrine of part performance**Ans. Introduction:**

The Doctrine of Part Performance is an equitable principle designed to prevent fraud and unlawful exploitation resulting from the non-registration of a document. This doctrine operates under the maxim that equity regards an action as if it has been done, which should have been done.

• Doctrine of part performance S. 53 A

The Doctrine of Part Performance is a legal principle recognized in property law. It is a doctrine that allows for the enforcement of an oral or incomplete written contract to transfer immovable property if certain conditions are satisfied. It is based on the principle of equity and aims to prevent injustice and fraud resulting from non-compliance with formal requirements such as registration.

S. 53 A. “When any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty and the transferee has, in part performance of the contract, taken possession of the property or any part thereof or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

- **Essential Conditions for applicability of this doctrine:**

The doctrine of part performance is a crucial provision within the Transfer of Property Act. To invoke this doctrine, certain conditions must be met. The person must have entered into a contract for the transfer of immovable property in exchange for consideration, as prescribed by statutory provisions. The transfer must be in writing and duly signed by the transferor or their representative.

Question no. 15. Write a short note on Actionable claim.

Ans. Introduction

An actionable claim is a right to claim a debt, which can be transferred from one person to another. It is important to note that the transfer of an actionable claim does not transfer the property itself, but only the right to claim the debt. This means that the debtor still owes the debt to the new creditor and is required to make payment to the new creditor. The debt that is transferred is an unsecured debt and therefore it is known as an actionable claim.

- **Meaning and Definition S. 3.**

According to section 3 of the transfer of property Act, actionable claim means, **actionable claim** means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

- **Transfer of Actionable claim S. 130.**

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 authorized agent, shall be complete and effectual upon the execution of such instruments, 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 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.

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.