



SHIA COLLEGE OF LAW

SEMESTER 3rd

TRANSFER OF PRPPERTY ACT -1882

(UNIT-1 - MODULE-2)

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Unit 1 (Module 2)

Transfer of property

Introduction:

The transfer of property Act, 1882 mainly deals with transfer of immovable property between two living persons, i.e. transfer inter vivos.

Transfer: Meaning : The term 'transfer' means a process or an act by which something is made over to another. However the transfer is not absolute always.

Property : Meaning : The word 'property' may be used in the objective sense of a physical thing which is the subject of ownership or other rights; or it may be used in the sense of the rights and interests of the owner or other person in the property.

The world property for the purpose of the transfer of property Act is not restricted only to physical thing but goes beyond what is seen, touched or felt by a layman but much ahead what law considers to be Property. It includes the right to let cattle graze on property.

Transfer of Property : Meaning & Definition¹ : The expression Transfer of Property means 'passing of a right in the property from one person to another.

In one case there may be passing of entire bundle of rights from transferor to transferee, but in another case there may be transfer of only some of such rights i.e. partial interest.

In other words, the transfer of property under the TP act may be the transfer of absolute interest in the property (e.g. sale, gift etc.) Or the transfer of limited interest in the property (E.g. Mortgage, Lease etc.).

Transfer of property means an act by which one living person conveys property in present or in future to....

- a) One or more other living persons; or
- b) To himself; or
- c) To himself and one or more other living persons and to transfer property to perform such act.

The living person includes a company or association or body of individuals whether incorporated or not.

By observing the above definition we may analyse it as follows:-

- 1) Transfer of property is an act. Every act leads to some consequences. Here transfer also leads to a consequence i.e. conveyance of rights in the property from one person to another.
- 2) The consequence of the act may be in the present or in future.
- 3) Although the transfer of property maybe in present or in future but the property should be in existence at the date of transfer and so there is no transfer of future property.
- 4) The convenience must be from one living to another living. So it is not applicable to convenience from one deed to another living person.

we now see weather the following are transfer or not according to the T.P. act.

1) Partition:

Partition is not a transfer because there is no new right obtained by one co- sharer on partition . It is an adjustment in the existing right and does not create any new right and so it is not a transfer.

2) Charge:

Charge on property is not a transfer within the meaning of section 5 of the TP act. as there is no transfer of interest made in favour of Charge Holder except the right to payment out of the property subject to charge.

3) Easement:

Creation of an easement is not a transfer.

4) Surrender of lease:

Surrender of a lease is not a transfer. In surrender lessee's interest falls into the lessor's greater interest and so no new right is transferred in this process.

5) Dedication of property:

Dedication of property to an Idol or temple is not a transfer within the meaning of this section.

References:

1. Section 5 of the TP act. 1872

Bibliography:

1. Dr. Rega Surya Rao, Lecture on law of property, Asia law house Hyderabad, reprint 2018.
2. Dr. T. P. Tripathi, Transfer of property act, Allahabad law agency publication, eight edition 2008.
3. Bare act, transfer of property act,1872, CLA'S edition, 2015.