

## APPLICABILITY &amp; OBJECTS

**Q1. Write a short note on: Basic rights of consumers**

[June 2013 (3 Marks)]

**Ans.:** Consumer rights is defined u/s 2(9) of Consumer Protection Act, 2019 as:-

Consumer rights include-

- (i) the right to be protected against the marketing of goods, products or services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices;
- (iv) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forum;
- (v) the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers; and
- (vi) the right to consumer awareness.

**Q2. Discuss the basic rights of consumers under the Consumer Protection Act, 2019.**

[June 2014 (8 Marks)]

**Ans.:** Please refer to answer of Question No. 1.

**Q3. What are the basic rights of consumers that are sought to be promoted and protected under the Consumer Protection Act, 2019?**

[June 2015 (5 Marks)]

**Ans.:** Please refer to answer of Question No. 1.

## CONSUMER

**Q4. Write a short note on: Commercial Purpose [Dec. 2009 (3 Marks)]**

**Ans.:** (a) **Not a consumer:**- As per the definition of 'Consumer' as defined under the Consumer Protection Act, 2019, if person purchases the goods for 'commercial purpose' then he is not 'Consumer' and no benefit under the Act will be available to him.

(b) **Criteria for Commercial Purpose:**- Goods purchased are for commercial purpose in the following conditions are satisfied

- (i) Used for profit making activity on large scale and
- (ii) There is close and direct nexus between purchase of goods and profit making activity

(c) Commercial purpose does not include use by a consumer of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood, by means of self-employment.

(d) **Laxmi Engineering Works v. P.S.G. Industrial Institute :-** Supreme Court in *Laxmi Engineering Works v. P.S.G. Industrial Institute* held that the purpose for which a person has bought goods is a 'commercial purpose' is always a question of facts and to be decided in the facts and circumstances of each case.

If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self employment such purchaser of goods would yet be a consumer. The Supreme Court further observed that if a person purchased a machine to operate it himself for earning his livelihood, he would be a consumer. If such person took the assistance of one or two persons to assist him in operating the machine, he would still be a consumer.

But if a person purchases a machine and appoint or engage another person exclusively to operate the machine, then such person would not be a consumer.

**Q5. Jolly Ltd. maintained a guest house for the use of its managing director and other executives. It entered into an agreement with a firm for the installation of central air-conditioning system. The system installed did not function, developed snags and there was leakage of water from ducting system. The company filed a complaint claiming compensation for deficiency in service under the Consumer Protection Act, 2019. Will it succeed? Give reasons with reference to case law, if any.**

[June 2010 (5 Marks)]

**Ans.:** (a) **Facts of Case:**- Jolly Ltd. maintained a guest house for the use of its managing director and other executives. It entered into an agreement

with a firm for the installation of central air-conditioning system. The system installed did not function, developed snags and there was leakage of water from ducting system. The company filed a complaint claiming compensation for deficiency in service under the Consumer Protection Act, 2019.

(b) **Provision:-** In *J.K. Puri Engineers v. Mohan Breweries & Distilleries Ltd.*, it was held that even where the goods are purchased for commercial purpose, if there is a warranty, as in this case, for its maintenance, the purchaser becomes a consumer in respect of the services rendered or to be rendered by the manufacturer or supplier during the warranty period. The complainant is, therefore, a consumer. The system was installed only to provide comfort to director and other executive which have not been used for Commercial purpose. Further the complainant had drawn the attention of service provider and there was no reply from them for quite some time, there was thus gross deficiency in service.

(c) **Conclusion:-** Thus, Jolly Ltd. can file a complaint before the consumer forum and it will succeed.

**Q6. Write a short note on: Commercial Purpose [Dec. 2012 (3 Marks)]**

**Ans.:** Please refer to answer of Question No. 4.

**Q7. Ramesh, an industrial employee contributing to ESI Fund was treated in an ESI hospital. Due to negligent diagnosis at the hospital, his condition deteriorated and he had to be shifted to a private hospital. He filed a complaint before the Consumer Disputes Redressal Forum seeking compensation from the ESI hospital. His complaint was dismissed on the ground that medical service rendered by the ESI hospital was gratuitous in nature. The State Commission and the National Commission upheld the decision of the District Forum. Ramesh intends to prefer an appeal before the Supreme Court. Will he succeed? Give reasons.**

[June 2013 (5 Marks)]

**Ans.:** (a) **Facts of Case:**- Ramesh, an industrial employee contributing to ESI Fund was treated in an ESI hospital. Due to negligent diagnosis at the hospital, his condition deteriorated and he had to be shifted to a private hospital. He filed a complaint before the Consumer Disputes Redressal Forum seeking compensation from the ESI hospital. His complaint was dismissed on the ground that medical service rendered by the ESI hospital was gratuitous in nature.

(b) **Provision:-** Supreme Court in *Kishore Lalv. Chairman, Employees State Insurance Corporation* held that appellant is a consumer within the ambit of Section 2(7) of the Consumer Protection Act, 2019 and the medical service rendered in the ESI hospital/dispensary by the respondent Corporation

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falls within the ambit of section 2(42) of the Consumer Protection Act and therefore, the consumer forum has jurisdiction to adjudicate upon the case of the appellant. The jurisdiction of the consumer forum is not ousted by virtue of section 75 of the Employees' State Insurance Act, 1948.

(c) **Conclusion:-** Thus, Ramesh will succeed in his appeal

**Q8. Explain the meaning of the term 'consumer' as defined in the Consumer Protection Act, 1986.** [June 2016 (5 Marks)]

**Ans.: Consumer [Section 2(7)]:** Consumer means any person who:

- (i) Buys goods for a consideration and includes user of goods but does not include a person who obtains such goods for resale or for any commercial purpose or
- (ii) Hires or avails of services for a consideration and includes beneficiary of services.

It is to be noted that consideration for goods or services may be paid or promised to be paid or partly paid and partly promised. Consumer also includes a person who takes goods or services under deferred payment system.

Goods bought or services availed if for commercial purpose then the person is outside the ambit of definition of Consumer.

**Explanation:** Commercial purpose does not include use by a consumer of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood, by means of self-employment.

Eg: Mr. Ramlal purchased car for his son for then Ramlal as well as son both are consumer.

**Q9. Ramesh purchased a tractor from Mahi Ltd. for tilling the land but he used it in idle time for transportation of agricultural produce on hire. Some defects were developed in the engine of the tractor. He complained to Mahi Ltd., but all in vain. Then he filed a suit in Consumer Disputes Redressal Forum for damages caused by the defects.**

**Mahi Ltd. pleaded that Ramesh is not a 'consumer' within the definition of section 2(7) of the Consumer Protection Act, 2019, as he is using the tractor for commercial purposes. Whether Ramesh will succeed in his case? Refer to relevant provisions of law in support of your answer with reference to case law, if any.**

[June 2016 (5 Marks)]

**Ans.: Facts of Case:-** Ramesh purchased a tractor from Mahi Ltd. for tilling the land but he used it in idle time for transportation of agricultural produce on hire. Some defects were developed in the engine of the tractor. He complained to Mahi Ltd., but all in vain. Then he filed a suit in Consumer

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Disputes Redressal Forum for damages caused by the defects. Mahi Ltd. pleaded that Ramesh is not a 'consumer' within the definition of section 2(7) of the Consumer Protection Act, 2019, as he is using the tractor for commercial purposes.

**Provision:-** As per the definition of 'Consumer' as defined under the Consumer Protection Act, 2019, if person purchases the goods for 'commercial purpose' then he is not 'Consumer' and no benefit under the Act will be available to him.

Commercial purpose does not include use by a consumer of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood, by means of self-employment.

In *Bhupendra Jang Bahadur Guna v. Regional Manager & Others*, it was held that a tractor purchased primarily to till the land of the purchaser and let out on hire during the idle time to till the lands of others would not amount to commercial use.

**Conclusion-** Thus, Ramesh is 'Consumer' under the Consumer Protection Act, 1986 and he can file the claim if there is any defect in the tractor.

### DEFECT IN GOODS & DEFICIENCY IN SERVICE

**Q10. Raman purchased a car by taking a loan from a bank and gave post-dated cheques to the bank not only in respect of repayment of loan instalments but also towards premium of insurance policy for succeeding 3 years. On the expiry of the policy in the first year, the bank failed to get the policy renewed for the second year. In the meantime, the car met with an accident. Raman brought an action against the bank for 'deficiency in service' under the Consumer Protection Act, 2019. Will he succeed?**

[Dec. 2009 (5 Marks)]

**Ans.:** In *Pradeep Kumar Jain v. Citi Bank*, the Supreme Court held that there is no deficiency in service because the obligation to renew the policy was on the appellant alone. But merely passing on two cheques to the bank for being paid to the insurance company the appellant would not absolve himself of his liability to renew the policy. The appellant also have certain duties to discharge in the matter of obtaining the policy and cannot merely pass the blame to someone else.

**Q11. Prakash, aged 37 years, was travelling from Mumbai to Delhi by air. When he occupied his seat in the aircraft, an announcement was made that his luggage was lying on the ground unidentified and that he should disembark to identify his luggage. When Prakash was stepping down from**

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the aircraft, the ladder was suddenly removed as a result of which he fell down sustaining bodily injuries causing 10% disablement. As against the claim of ₹ 10 lakhs filed by Prakash towards compensation, the airline was willing to pay ₹ 40,000 which according to it was the maximum statutory liability of the airlines under the Carriage by Air Act, 1972. However, the State Commission awarded ₹ 4 lakh towards compensation and an additional ₹ 1 lakh for mental agony and distress plus costs. Is the order passed by the State Commission justified? If so, give reasons and refer to the decided case law.

[Dec. 2010 (5 Marks)]

**Ans.:** In *Station Manager, Indian Airlines v. Dr. Jiteswar Ahir*, when the complainant-passenger occupied his seat in the aircraft, an announcement was made that his luggage was lying on the ground unidentified and that he should disembark to identify his luggage. According to the complainant, he moved towards the rear door, and finding that the step ladder was attached to the aircraft door, he stepped out on to the staircase but before he could actually put his entire body weight on the staircase the ladder was suddenly removed as a result of which he fell down on the ground and sustained bodily injuries which was reported to be about 10%. As against the complainant's claim of ₹ 10 lakhs the airline was willing to pay ₹ 40,000 as compensation which according to them was the maximum statutory liability of the Corporation under the Carriage by Air Act, 1972. The State Commission, after examining witnesses and the medical boards reports, held that there was dangerous deficiency in service and having regard to the expert opinion and other medical reports, it ordered payment of compensation of ₹ 4 lakhs and ₹ 1 lakh for mental agony and distress plus costs. In appeal by the Corporation, the National Commission, upheld the State Commissions order, held that in terms of regulations relied upon by the appellant Corporation, if it was proved that the accident caused to the complainant had resulted in a permanent disablement, incapacitating him from engaging in or being occupied with his usual duties or his business or occupation.

**Q12.** Mohan made a deposit of ₹ 1.50 lakh with the Housing Board for a house proposed to be built by it. There was a stipulation that the house would be completed within 2 years. The house could not be completed and possession was not handed over as promised. The Housing Board pleaded that construction was not up to the mark and expected level because of the use of low cost technology. Expressing regret, the Housing Board suggested that it was prepared to refund the deposit amount adding that there was no provision to pay any interest charges.

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Mohan is not satisfied with the explanation and intends to approach the Consumer Disputes Redressal Forum for claim of refund amount, interest and compensation, if any. Will Mohan succeed? Refer to decided case law, if any. [June 2011 (5 Marks)]

**Ans.:** **Facts of Case:-** Mohan made a deposit of ₹ 1.50 lakh with the Housing Board for a house proposed to be built by it. There was a stipulation that the house would be completed within 2 years. The house could not be completed and possession was not handed over as promised. The Housing Board pleaded that construction was not up to the mark and expected level because of the use of low cost technology. Expressing regret, the Housing Board suggested that it was prepared to refund the deposit amount adding that there was no provision to pay any interest charges.

Mohan is not satisfied with the explanation and intends to approach the Consumer Disputes Redressal Forum for claim of refund amount, interest and compensation, if any.

**Provision:-** In *S.P. Dhavaskar v. Housing Commissioner, Karnataka Housing Board*, wherein it was held by the National Commission that a person who had deposited huge sums could not be asked to take back refund after 2 years without interest or to opt for alternative house at increased price which might be beyond his financial capacity.

**Conclusion:-** The Housing Board has been grossly negligent in rendering services and it cannot return deposit without interest. Therefore, Mohan will succeed in his claim.

**Q13. Write a short note on: Deficiency in service [June 2012 (3 Marks)]**

**Ans.:** **Deficiency [Section 2(11)]:** Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service and includes:-

- ◆ Any act of negligence or omission or commission by such person which causes loss or injury to the consumer; and
- ◆ Deliberate withholding of relevant information by such person to the consumer

**Example:** A delay in delivery of article or non-deliver is deficiency in service by the organization engaged in courier service. However, courier can limit the damage payable by having terms of contract.

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**Q14.** A school owned a swimming pool and offered swimming facilities to the public on payment of fees. The school conducted summer swimming training camps to train children in swimming and for this purpose had engaged a trainer/coach.

Mohan had enrolled his son for learning how to swim. One day while swimming, the child died due to drowning. The school authorities maintained that the trainer/coach was fully qualified for the job and challenged the complainant's claim for compensation in the consumer disputes redressal forum. Should the school authorities be held liable to pay compensation for 'deficiency in service'? Who is entitled to receive compensation? Give reasons. [Dec. 2012 (5 Marks)]

**Ans.:**

**Provision:-** In the case of *Sashikant Krishnaji Dole v. Shikshan Prasarak Mandali*, the school owned a swimming pool and offered swimming facilities to the public on payment of a fee. The complainants had enrolled their son for learning swimming under the guidance of the coach. The State Commission held the school and the coach deficient in rendering service to the deceased, that the coach was not fully trained, did not exercise even the basic commonsense needed to counter an accident in swimming. Dismissing the appeal the National Commission observed that the State Commission had given cogent reasons for holding the school and the coach responsible for death of the deceased.

**Decision/Conclusion:-** Thus, Mohan will succeed in claiming compensation from the school and the coach under the Consumer Protection Act, 2019

**Q15.** Mohan was suffering from a serious ailment. He was admitted to a well-known private hospital in Gurgaon. He was subjected to various tests. Even after diagnosis and subsequent treatment, his condition deteriorated. The doctor advised surgery during which Mohan collapsed and died. Sushma, his wife, preferred a claim for compensation of ₹ 50 lakhs under the Consumer Protection Act, 2019 for 'deficiency in service'. The hospital authorities contended that medical profession was being unnecessarily hounded. Is the contention tenable? Refer to relevant case law laying down the guidelines for medical profession. [June 2014 (5 Marks)]

**Ans.:** In *Kusum Sharma & Others v. Batra Hospital & Medical Research Centre & Others*, the Supreme Court held that hospital could be charged as guilty if it is shown that hospital was negligence in its duties. However, the medical professionals are entitled to get protection so long as they perform their duties with reasonable skill and competence and in the interest of the

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patients. The interest and welfare of the patients have to be paramount for the medical professionals. In given case, the Mohan was given reasonable and standard treatment by the hospital. Even, after this he was expired, then hospital and doctors cannot be held liable as there is no deficiency in service.

**Q16.** What amounts to 'defect in goods' under the Consumer Protection Act, 2019? [June 2015 (3 Marks)]

**Ans.:** Defect [Section 2(10)]: Defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

It is clear from the above definition that non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect.

Therefore, contravention of any of the provisions of following enactments will be treated as a defect under the Act:

- ◆ Drugs & Cosmetics Act, 1950
- ◆ Prevention of Food Adulteration Act, 1955
- ◆ Indian Standards Institution (Certification Marks) Act, 1952

Contravention of the conditions or implied warranties under the Sale of Goods Act, 1930 in relation to any goods has also been treated as a defect under the Act.

Fault, imperfection or shortcoming in quality, quantity, potency, purity or standard in relation to goods is to be determined with reference to the warranties or guarantees expressly given by a trader.

Eg: Mobile phone company promised that battery life will be 10 hours but mobile phone battery life in real is 5 hours is defect.

**Q17.** Ms. Neelam, daughter of Ashok, was travelling by train. She fell down from the running train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head.

Ashok claimed compensation from the Railways for deficiency in service. The Railways contended that the redressal agencies under the Consumer Protection Act, 2019 had no jurisdiction to consider a complaint of this

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nature. They also contended that all the coaches of the train had been thoroughly checked at the starting point of the train and no defect was reported.

**Will Ashok succeed in getting compensation? Give reasons and refer to decided case law, if any.** [June 2015 (5 Marks)]

**Ans.: Facts of Case:-** Ms. Neelam, daughter of Ashok, was travelling by train. She fell down from the running train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head. Ashok claimed compensation from the Railways for deficiency in service. The Railways contended that the redressal agencies under the Consumer Protection Act, 2019 had no jurisdiction to consider a complaint of this nature. They also contended that all the coaches of the train had been thoroughly checked at the starting point of the train and no defect was reported.

**Provision** It was held that a railway passenger travelling in a train on payment of consideration was a consumer within the meaning of the Consumer Protection Act, 1986.

In *Union of India v. Nathmal Hansaria*, the National Commission held that the death of the passenger could not be described as resulting from railway accident but an accidental death caused by the absence of safety device in the vestibule passage way.

**Decision/Conclusion:-** Thus, there is deficiency in service and Railway is liable in given case.

**Q18. Pawan booked an air ticket for New York with Skyhigh Airlines. At New Delhi airport, authorities found visa in order; but at Amsterdam, when his visa was checked it was found that the visa bears the photocopy of photograph. Thus, Pawan missed his flight to New York. However, the airlines helped him to reach New York on the same day. After reaching New York, Skyhigh Airlines tendered an apology to Pawan for the inconvenience caused to him and paid as a goodwill gesture, a sum of ₹ 2,500. Pawan filed a complaint with National Commission under the Consumer Protection Act, 2019. Will Pawan succeed? Give reasons with reference to case law, if any.** [Dec. 2015 (5 Marks)]

**Ans.: Facts of Case:-** Pawan booked an air ticket for New York with Skyhigh Airlines. At New Delhi airport, authorities found visa in order; but at Amsterdam, when his visa was checked it was found that the visa bears the photocopy of photograph. Thus, Pawan missed his flight to New York. However, the airlines helped him to reach New York on the same day. After reaching New York, Skyhigh Airlines tendered an apology to Pawan for

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the inconvenience caused to him and paid as a goodwill gesture, a sum of ₹ 2,500. Pawan filed a complaint with National Commission

**Provision:-** The facts of present case is similar to case of *Ravneet Singh Bagga v. KLM Royal Dutch Fintimes*, the Supreme Court held that the respondent could not be held to be guilty of deficiency in service. The staff of the airline acts keeping in mind security and safety of passengers and not the original which was unusual. In the circumstances, the staff took some time to ascertain the truth and helped the appellant to reach New York the same day

**Conclusion:-** Hence, Raman will not succeed in his claim against Skyhigh Airline for deficiency in service under the Consumer Protection Act, 2019.

**Q19. Samir, on a holiday with his family, hired a taxi service. The taxi was in a poor condition and the driver had not adequate rest and drove rashly. Eventually, it went burst in the middle of the way. As a result, Samir and his family could not reach the airport in time to catch their flight. Decide, whether, Samir may be treated as a consumer under Consumer Protection Act, 2019?** [June 2017 (3 Marks)]

**Ans.:** As per facts given in case, Samir hired taxi service and hence Samir is consumer within the meaning of definition of 'consumer' as given in section 2(7) as he take service for consideration. Thus, there is contract between Samir and provider of taxi service.

The service provider has a duty as per contract to reach the destination as indicated by the consumer safely and in time. It is also duty of provider of taxi service to see that tax is in good and running condition in ordinary circumstance. If taxi is in poor condition and also diver drive the car in rashly causing inconvenience to consumer then it is definitely deficiency in service.

**Q20. Pankaj booked a flat in Sagar Housing Board colony. Housing Board registered it and agreed to give possession within two years. After receiving the price of the flat Housing Board failed to give possession to Pankaj within the agreed period. Is it a deficiency in service under Consumer Protection Act, 2019?** [Dec. 2017 (3 Marks)]

**Ans.:** The above case is similar to the case of [*Lucknow Development Authority v. Roop Kishore Tandon*] where failure of a Housing Board to give possession of the flat after receiving the price and after registering it in favour of the allottee was held to be 'deficiency in service'.

As per facts given in case, Pankaj booked a flat in Sagar Housing Board colony and after receiving price of the flat, Housing Board has failed to

give possession to Pankaj within agreed period which is clearly deficiency in service as per case law given above.

**Q21.** The complainant booked a ticket from Delhi to New York by a KLM plane. The airport authorities in New Delhi did not find any fault in his visa and other documents. However, at Amsterdam, the airport authorities instituted proceedings of verification because of which the appellant missed his flight to New York. After reaching New York, the airlines tendered apology to the appellant for the inconvenience and paid as a goodwill gesture a sum of ₹ 2,500. The appellant made a complaint to the National Commission under the Consumer Protection Act, 2019. Whether the complainant will succeed? Give reasons with the help of decided case law. [Dec. 2018 (4 Marks)]

Ans.: Please refer to Answer of Q. No. 18

**Q22.** Rajni got herself operated in the Devashri Hospital for removal of her uterus, as a cyst was found to have developed near one of her ovaries. The surgeon, who performed the operation, left abdominal pack in the abdominal. This caused lot of pain, suffering and uneasiness to her. The abdominal pack was subsequently removed by another surgical operation. It was alleged that due to negligence of the surgeon, the patient suffered all the consequences, therefore it should be treated as negligence in the treatment. But the Hospital authorities contended that the patient's problem was removed by the second operation, hence it is not deficiency. Rajni sought the relief under Consumer Protection Act, 2019 stating that this negligence may be treated as deficiency and compensation may be paid to her. Decide whether Rajni will succeed or not? Why? [June 2019 (4 Marks)]

Ans.: **Provision:- (a) Meaning of Deficiency:-** According to section 2(11) of the Consumer Protection Act, 2019, "Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

**(b) Kusum Sharma & Others versus Batra Hospital & Medical Research Centre & Others**

The facts of the given case are similar to Kusum Sharma & Others versus Batra Hospital & Medical Research Centre & Others

As long as the doctors have performed their duties and exercised an ordinary degree of professional skill and competence, they cannot be held guilty of medical negligence. In the present case the doctor is liable for medical

negligence as by leaving abdominal pack in the abdomen, his conduct fell below that of the standards of a reasonably competent practitioner in his field. The doctor has breached all the above stated principles.

**(c) Conclusion:-** Therefore, he is liable for medical negligence. And Rajani will succeed in her case.

### OTHER DEFINITIONS

**Q23.** Write a short note on: Complainant under the Consumer Protection Act, 2019 [Dec. 2010 (3 Marks)]

Ans.: **Complainant [Section 2(5)]:** Complainant means -

- ◆ A consumer
- ◆ Any voluntary consumer association registered under any law for time being in force
- ◆ Central or State Government which makes a complaint
- ◆ Central Authority
- ◆ One or more consumers, where there are numerous consumers having the same interest
- ◆ In case of death of consumer, his legal heir or legal representative
- ◆ In case of a consumer being minor, his parent or his guardian.

**Q24.** What do you understand by 'restrictive trade practices'? [Dec. 2016 (3 Marks)]

Ans.: **Restrictive Trade Practice [Section 2(41)]:** Restrictive trade practice means a trade practice which manipulate price or conditions of delivery or flow of supplies relating to goods or services in a manner to impose unjustified costs or restrictions on the consumers and shall include:

- (a) A trade practice to raise price by making delay in supply of goods or rendering of service
- (b) Any agreement requiring a purchaser of goods, as a condition of such purchase, to purchase some other goods or services. (*i.e. tie in sale*)

### CONSUMER PROTECTION COUNCIL & REMEDIES AVAILABLE UNDER THE ACT

**Q25.** Distinguish between: Pecuniary and territorial jurisdiction of the District Forum [Dec. 2012 (5 Marks)]

**Ans.: Jurisdiction of the District Forum [Section 34]:** The District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation claimed does not exceed ₹ 1 Crore. A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction:

- ◆ The opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, ordinarily resides or carries on business or has a branch office or personally works for gain; or
- ◆ Any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case the permission of the District Commission is given; or
- ◆ The cause of action arises.
- ◆ The complainant resides or personally works for gain.

**Q26. Explain the nature and scope of remedies available under the Consumer Protection Act, 2019. [Dec. 2013 (5 Marks)]**

**Ans.:** As per Section 39 of the Consumer Protection Act, 2019, where the goods suffer any defect or there is deficiency in service, the District Forum, State or National Commission may pass the following orders:

- ◆ To remove the defects.
- ◆ To replace the goods.
- ◆ To return the price or the charges paid by the complainant.
- ◆ To pay compensation amount to the consumer for any loss or injury.
- ◆ To remove the defects in goods or deficiencies in the services.
- ◆ To discontinue the unfair trade practice or the restrictive trade practice.
- ◆ Not to offer the hazardous goods for sale.
- ◆ To withdraw the hazardous goods from being offered for sale.
- ◆ To cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature.
- ◆ To pay such sum as may be determined by it if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently.
- ◆ To issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party.
- ◆ To provide for adequate costs to parties.

**Q27. State the composition and jurisdiction of National Commission under Consumer Protection Act, 2019. [June 2017 (5 Marks)]**

**Ans.: National Commission:** The Central Government has established the National Consumer Disputes Redressal Commission, by notification in the Official Gazette. [Section 53(1)]

Section 54 provides that the National Commission shall consist of —

- (a) President
- (b) not less than four and not more than such number of members as may be prescribed.

**Maximum age for President and Members:-** President shall not be more than 70 years of age and members should not be more than 67 years of age.

**Term of appointment and reappointment:-** President and members of the National Commission shall hold office for such term as specified in the rules made by the Central Government but not exceeding five years from the date on which he enters upon his office and shall be eligible for re-appointment

**Jurisdiction of National Commission:** Section 58 provides that the National Commission shall have jurisdiction:

- (a) Complaints where the value of the goods or services paid as consideration exceeds rupees ten crore.
- (b) To entertain appeals against the orders of any State Commission.
- (c) To entertain appeals against the orders of any Central Authority.
- (d) To call for the records and pass appropriate orders in any consumer dispute which is pending before, or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

**Q28. Discuss the process of filing an appeal by an aggrieved person under the Consumer Protection Act, 2019 [Dec. 2017 (5 Marks)]**

**Ans.: Appeal with State Commission-Section 41:-** If the aggrieved party is not satisfied by the decision of the district forum, he can file an appeal to State Commission within **45 days** by **50% of penalty amount whichever is less**. On sufficient cause

The State Commission may entertain an appeal after the expiry of 30 days.

**Appeal with National Commission-Section 51:-** In case the aggrieved party is not satisfied with the order of State Commission then he can file an appeal in National Commission within **30 days** by depositing **50% of amount whichever is less**.

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On sufficient cause, the National Commission may entertain an appeal after the expiry of 30 days.

**Appeal with Supreme Court (Section 67)** If aggrieved party is not satisfied with the order of National Commission he can file an appeal in Supreme Court within **30 days**.

On sufficient cause, the Supreme Court may entertain an appeal after the expiry of 30 days.

**Limitation Period - Section 69:** The District Commission, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. Thus, an Appeal from the order of the District Forum lies to the State Commission, against the order of the State Commission to the National Commission and against the order of the National Commission to the Supreme Court.

### MISCELLANEOUS

**Q29. Distinguish between: Contract of service and contract for service.**  
[June 2010 (5 Marks)]

**Ans.:** Following are the main points of distinction between contract of service and contract for service:

Points	Contract of service	Contract for service
<b>Meaning</b>	A contract of service is an agreement whereby a person agrees to employ another as an employee and the employee agrees to serve his employer as an employee.	A contract for service is an agreement whereby a person is engaged as an independent contractor for carrying out an assignment or project.
<b>Relationship</b>	There exists master and servant relationship in contract of service.	In contract for service there is no master and servant relationship.
<b>Example</b>	X Ltd. employs Mr. Ram, a Company Secretary. This is contract of service.	X Ltd. appoints Mr. Ram as a Secretarial Auditor. This is contract for service.
<b>Nature of work</b>	In contract of service the employee is bound to work under the supervision and directions given by the employer.	In contract for service, a person executes his work as per his own skill and experience.

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**Q30. Ram Dhenu Ltd. and Diamond Engineers entered into a contract for the supply of electrical equipments. The contract contained an arbitration clause to refer the disputes to an arbitral tribunal. Ram Dhenu Ltd. made a complaint to the Consumer Disputes Redressal Forum for 'deficiency in service'. The opposite party opposed the complaint in view of the arbitration clause contained in the contract. Will it succeed? Give reasons.**  
[Dec. 2011 (5 Marks)]

**Ans.: Facts of Case:-** Ram Dhenu Ltd. and Diamond Engineers entered into a contract for the supply of electrical equipments. The contract contained an arbitration clause to refer the disputes to an arbitral tribunal. Ram Dhenu Ltd. made a complaint to the Consumer Disputes Redressal Forum for 'deficiency in service'.

**Provision:- Act not in derogation of any other Law [Section 100]:** The provisions of the Consumer Protection Act, 2019 shall be in addition to and not in derogation of the provisions of any other law for the time being in force. If an agreement contains arbitration clause, the dispute must be referred to arbitration, as per **Section 8** of the **Arbitration & Conciliation Act, 1996**. However in *Skypack Courier Ltd. v. Tata Chemical Ltd.*, it has been held that if there is arbitration agreement, a consumer forum can entertain consumer complaint, as remedy provided under the Act is in addition to provision of any law for the time being in force.

**Decision:** Thus, Ram Dhenu Ltd. can file complaint in Consumer Forum and opposite party will fail in objection even though agreement contains arbitration clause.

**Q31. Distinguish between: Contract of service and contract for service**  
[June 2012 (5 Marks)]

**Ans.:** Please refer to answer of Question No. 29.

**Q32. Sohan has a truck which was driven by a driver, Shyam, but Shyam did not have valid licence for driving the truck. The truck was insured with an insurance company. On the way, all of a sudden the truck started burning. Sohan filed a claim with the insurance company. The insurance company repudiated the claim on the ground that driver of the said truck did not have valid driving licence. The truck owner pleaded that the claim is not related to 'driving' of the truck but the insurance company did not change its earlier decision. Sohan filed a complaint with the District Consumers' Disputes Redressal Forum. Will Sohan succeed? Discuss with reference to decided case, if any.**  
[Dec. 2016 (5 Marks)]

**Ans.: Facts of Case:-** Sohan has a truck which was driven by a driver, Shyam, but Shyam did not have valid licence for driving the truck. The truck was insured with an insurance company. On the way, all of a sudden the truck started burning. Sohan filed a claim with the insurance company. The insurance company repudiated the claim on the ground that driver of the said truck did not have valid driving licence. The truck owner pleaded that the claim is not related to 'driving' of the truck but the insurance company did not change its earlier decision.

**Provision/Land Mark Case:-** The above facts are similar to the case *Jitendra Kumar v. Oriental Insurance Company Ltd.* and another, the Supreme Court has held that where the fire has occurred due to mechanical failure and not due to any act or omission of the driver. Driving licence has no relevance or connection with fire. The insurance company cannot repudiate the claim because of lack of valid driving license.

**Decision:-** Thus, Sohan will succeed in his claim.

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**Q33. Distinguish between: Contract of service and contract for service.**  
[June 2019 (3 Marks)]

**Ans.:** Please refer to answer of Question No. 29.

# 15

## TRANSFER OF PROPERTY ACT, 1882

### CHAPTER

#### VESTED & CONTINGENT INTEREST

**Q1. Distinguish between: Vested & Contingent Interest**

[Dec 2009 (4 Marks)]

**Ans.:** Following are main points of distinction between vested and contingent interest:

Points	Vested Interest	Contingent Interest
Section	Vested Interest is provided in Section 19	Contingent Interest is provided in Section 21 of Transfer of Property Act
Meaning	It is a present right to future possession.	A contingent interest depends upon the fulfilment of some conditions which may or may not happen.
Right of ownership	This right is created as soon as the interest is vested	There is mere chance to be having the ownership rights
Takes effect	A vested interest takes effect from the date of transfer.	A contingent interest in order to become vested is conditioned by a contingency which may not occur.
Death of transferee	A vested interest cannot be defeated by the death of the transferee before he obtains possession.	A contingent interest may fail in case of death of transferee before the fulfilment of condition.
Example	If a land is given to Kalyani for life with a remainder to Piyusha, Kalyani's right is vested in possession, Piyusha's right is vested in interest.	A gift to Aakash on the marriage of Mahesh creates a contingent interest, for Mahesh may never marry at all.

**Q2. Distinguish between: Vested & Contingent Interest**

[June 2012 (4 Marks)]

**Ans.:** Please refer to answer of Question No. 1.

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Q3. Differentiate between vested and contingent interest under the Transfer of Property Act, 1882. [June 2017 (3 Marks)]

Ans.: Please refer to answer of Question No. 1.

### MOVABLE & IMMOVABLE PROPERTY

Q4. Distinguish between: Movable Property & Immovable Property. [Dec 2011 (4 Marks)]

Ans.: Following are the main points of difference between movable & immovable property:

Points	Movable Property	Immovable Property
Definition in General Clauses Act, 1897	"Movable Property" shall mean property of every description, except immovable property. [Section 3(36)]	"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. [Section 3(26)]
Definition in TP Act, 1882	The expression 'movable property' is not defined by the Transfer of Property Act, 1882.	Section 3 of the Transfer of Property Act, 1882 defines the term 'immovable property' negatively; it says that immovable property does not include standing timber, growing crops or grass.
Contract	It can be oral or written contract	It is generally written contract
Registration	Generally, registration is optional	Registration is compulsory
Shifted/Movable	It can be shifted or moved without loss/damage	It cannot be shifted or transported without any loss or damage and if transported, it will lose its original shape, capacity, quality or quantity
Example	Following have been held to be movable property. <ul style="list-style-type: none"> <li>◆ Government promissory notes</li> <li>◆ Royalty</li> <li>◆ Right to recover maintenance allowance</li> </ul>	Following have been held to be immovable property. <ul style="list-style-type: none"> <li>◆ Right to collect rents of immovable property</li> <li>◆ Right to way</li> <li>◆ Right to collect dues from fair on a piece of land</li> </ul>

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<ul style="list-style-type: none"> <li>◆ Copyright</li> <li>◆ Decree for sale on a mortgage-deed</li> <li>◆ Decree for arrears of rent</li> <li>◆ Machinery which is not permanently attached to earth</li> <li>◆ Standing timber, growing crop and grass</li> </ul>	<ul style="list-style-type: none"> <li>◆ Hereditary offices</li> <li>◆ Equity of redemption</li> <li>◆ Interest of mortgagee</li> <li>◆ Right to collect lac from trees</li> <li>◆ Right of ferry</li> <li>◆ Right of fishery</li> <li>◆ Right to receive future rents and profits of land</li> <li>◆ Reversion in property leased a factory</li> </ul>
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Q5. State the meaning and characteristics of immovable property as per Transfer of Property Act, 1882. [June 2013 (4 Marks)]

Ans.: (a) General Clauses Act, 1897: Definition

- (i) **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.
- (ii) **Attached to the earth** means (a) rooted in the earth, as in the case of trees and shrubs; (b) embedded in the earth, as in the case of walls or buildings; or (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.
- (iii) **Things rooted in the earth**: Trees and Shrubs are immovable property according to this definition subject to the exception as to standing timber.
- (iv) **Things embedded in the earth**: A house being embedded in the earth is immovable property and this is so even if it is sold for enjoyment as a house with an option to pull it down. The mode of annexation and object of annexation are the two tests to determine whether it is immovable property or not.
- (v) **Attached to what is so...**: The attachment must be as the Section says for the permanent beneficial enjoyment of that to which it is attached e.g. the doors, windows of a house or movable parts of fixed machinery. But the attachment must be intended to be permanent.
- (b) Transfer of Property Act:- [Section 3]**: (i) The immovable property does not include standing timber, growing crops, or grass. (ii) The term "immovable property" is also not defined under the Transfer of Property Act. It just says what cannot be treated as immovable property.

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(c) **Registration Act, 1908:** Immovable property includes the benefits to arise out of land, hereditary allowances, rights of way, lights, ferries and fisheries

**Q6. What do you mean by 'immovable property' under the Transfer of Property Act, 1882?** [June 2015 (3 Marks)]

Ans.: Please refer to answer of Question No. 5.

**Q7. Distinguish between: Movable Property & Immovable Property.** [June 2016 (5 Marks)]

Ans.: Please refer to answer of Question No. 4.

### RULES RELATING TO TRANSFER OF PROPERTY

**Q8. Write a short note on: *Spes Successionis*** [Dec 2010 (4 Marks)]

Ans.:

- Property of any kind may be transferred, except as otherwise provided by the Transfer of Property Act, 1882 or by any other law for the time being in force.
- One of the exceptions to the general rule that property of any kind may be transferred is "*Spes Successionis*".
- The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman (*a man who is one of a person's blood relations*) or any other mere possibility of a like nature cannot be transferred.
- If property is neither in existence nor is the person the owner of the property then it cannot be transferred.
- Example: (1)** Suppose A is the owner of the property and B is his son. B is the heir of A. During the life time of his father A, B has only a hope expectancy that he will inherit the property of his father. This type of property which B hopes to get after the death of the father cannot be transferred, during the lifetime of A.  
(2) Suppose A, a Hindu who has separate property, dies leaving a widow W and a brother L, L's succession to the property is dependent upon two factors, viz, (i) his surviving the widow, W, and (ii) W leaving the property intact. L has only a bare chance of succession to the property left by A. This is spes successionis, and therefore, cannot be transferred.

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**Q9. A makes a gift of a house to B with whom he had illicit relation in the past. Is this transfer valid? Will it make any difference if A's consideration for this transfer is adulterous relations of B with A? Give reason.** [Dec 2014 (8 Marks)]

Ans.:

- What may be transferred :-** Section 6 of the Transfer of Property Act, 1882 deals with "what may be transferred". Section 6 provides that, property of any kind may be transferred, except as otherwise provided by the Act or by any other law for the time being in force. Clauses (a) to (i) of Section 6 provides that which property cannot be transferred.
- Indian Contract Act:-** As per Section 6(h), no transfer can be made for an unlawful object or consideration within the meaning of Section 23 of the Indian Contract Act, 1872.
- Immoral or opposed to Public Policy:-** Section 23 of the Indian Contract Act, 1872 declares that - the consideration or object of an agreement is if Court regards it as immoral or opposed to public policy.
- In *Nagaratnam v. Ramayya*, the Supreme Court held that past cohabitation was only motive and not a consideration for the gift and such transfer is not hit by Section 6(h) and gift of immovable property for past illicit cohabitation is valid.
- However, adulterous relations are offence and hence it is immoral and opposed to public policy. It is unlawful consideration as per Section 23 of the Indian Contract Act, 1872 and hence transfer of immovable property is not valid as per Section 6(h) of the Transfer of Property Act, 1882.

**Q10. Enumerate the properties which cannot be transferred under the provisions of the Transfer of Property Act, 1882.** [June 2016 (5 Marks)]

Ans.: **What may be transferred [Section 6]:** Property of any kind may be transferred, except as otherwise provided by the Act or by any other law for the time being in force.

**Exceptions:** Some exceptions to the general rule that property of any kind may be transferred. Thus, following properties cannot be transferred:

- Spes Successionis:*** The chance of an heir apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman (*a man who is one of a person's blood relations*) or any other mere possibility of a like nature cannot be transferred.

**Example:** Suppose A is the owner of the property and B is his son. B is the heir of A. During the lifetime of his father A, B has only a hope

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expectancy that he will inherit the property of his father. This type of property which B hopes to get after the death of the father cannot be transferred, during the lifetime of A.

- (2) **Right of re-entry:** 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.

**Example:** A grants his land by way of lease to B, a limited liability company on condition that the land should revert to A from B if the company goes into liquidation. This is a mere right in favour of A and this right of A cannot transfer to anyone as this is a personal right which can be exercised by A only. But if A transfers the whole of his interest in the land including the right of re-entry to C, there the right to re-entry is a legal incident of property and can be validly transferred along with the property.

- (3) **Transfer of easement:** An easement cannot be transferred apart from the dominant heritage. (*An easement means a right to cross or otherwise use someone else's land for a specified purpose.*)

**Example 1:** The right of certain villagers to bath in another's tank cannot be transferred.

**Example 2:** If A, the owner of a house X, has a right of way over an adjoining plot of land belonging to B, he cannot transfer this right of way to C. But if he transfers the house itself to C, the easement is also transferred to C.

- (4) **Restricted interest or personal interest:** An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him. Examples of such restricted interest or property are the following:

- ◆ The right of preemption given under the Mohammedan Law.
- ◆ The office of a Shebait of a Temple or mount of a mutt or mutt-walli of a wakf.
- ◆ Emoluments attached to a priestly office.
- ◆ Service tenures.

- (5) **Right to future maintenance:** A right to future maintenance in whatsoever manner arising, secured or determined, cannot be transferred.

- (6) **Mere right to sue:** A mere right to sue cannot be transferred.

**Example:** A commits an assault on B, B can file a suit to obtain damages but B cannot assign the right to C and allow him to obtain damages. In contract also, the rule is the same. If A breaks a contract which he has entered into with B, B can bring action for damages, but B cannot transfer this right to C to recover damages.

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- (7) **Transfer of public office & salaries, stipends, etc.:** A public office cannot be transferred nor can the salary of a public officer, whether before or after it has become payable.

- (8) **Stipends allowed to military, naval, air force and civil pensioners of the Government and political pensions** cannot be transferred. Since these allowances, pensions and stipends are given on personal basis, the law does not allow these types of property to be transferred.

(For 5 marks you can avoid giving example, if for more marks write examples as well)

### RESTRAINT ON TRANSFERS/RULES AGAINST INALIENABILITY

Q11. Anil has two properties - Property-X & Property-Y. He sells Property-Y to Sunil and puts a condition that Sunil should not construct on Property-Y more than one storey so that Anil's Property-X which he retains should have good light and free air. Is such a condition valid? Give reasons in support of your answer. [Dec 2009 (5 Marks)]

Ans.:

- (a) **Facts of Case:-** Anil has two properties - Property-X & Property-Y. He sells Property-Y to Sunil and puts a condition that Sunil should not construct on Property-Y more than one storey so that Anil's Property-X which he retains should have good light and free air.

- (b) **Provision:-** As per **Section 11** of the Transfer of Property Act, 1882,

- (i) When a property is transferred absolutely, the transferee should be free to enjoy the property in any manner he likes. If the transferor imposes any restraint on the enjoyment of the property by the transferee, the restraint is treated as clog in the enjoyment of the property by the transferee; the restraint is treated as void.

- (ii) For e.g. A sales his house to B and he adds the condition that only B shall reside in the house. The condition is invalid.

- (iii) It may be noted that if a person transfers a property to another keeping some other property for himself, he can impose certain conditions which may interfere with the rights of enjoyment of the transferee so that the transferee can enjoy the transferred property in a particular manner only.

- (c) **Conclusion:-** Thus, it is clear that the condition which is imposed by Anil is for the benefit of another property which he retains. Such a condition is valid.

**Q12. Distinguish between: Conditions restraining alienation and condition restraining enjoyment.** [Dec 2010 (4 Marks)]

**Ans.:** Following are the main points of difference between conditions restraining alienation and condition restraining enjoyment:

Points	Conditions restraining alienation	Condition restraining enjoyment
Meaning	Conditions restraining alienation means transferor restrains transferee from parting with or disposing the property.	Condition restraining enjoyment means transferor restrains transferee from enjoyment of property.
Validity of transfer	Where property is transferred subject to a condition absolutely restraining the transferee from parting with or disposing the property, the transfer is valid but condition is void. Though absolute restraints are bad in law, partial restraints are valid if conditions imposed are reasonable.	Restraint on the enjoyment of the property is invalid. Where land is transferred by one to another, the transferor should not impose conditions as to how and in what manner the transferee should enjoy the property.
Section	This is dealt by Section 10 of the Transfer of Property Act, 1882.	This is dealt by Section 11 of the Transfer of Property Act, 1882.
Example	Ram gives property to Shyam (his heirs) adding a condition that if the property is alienated it should revert to Ram. The transfer is valid and takes effect but the condition not to alienate the property is void. The transferee can ignore such condition.	Aalia sells her house to Babita and adds a condition that Babita should reside in that house. Here again transfer is valid but the condition is invalid. Aalia cannot put such condition on Babita regarding enjoyment of property. Babita can ignore such condition.

**Q13. Tarun has two properties, Property-X and Property-Y. He sells his Property-Y to Jolly and puts a condition that Jolly should not construct more than one storey on Property-Y so that Property-X, which he retains, shall have good light and free air. Whether the condition imposed by Tarun is 'valid' under the Transfer of Property Act, 1882? Give reasons.** [Dec 2016 (3 Marks)]

**Ans.:** (a) **Facts of Case:** Tarun has two properties, Property-X and Property-Y. He sells his Property-Y to Jolly and puts a condition that Jolly should not construct more than one storey on Property-Y so that Property-X, which he retains, shall have good light and free air.

(b) **Provision:** (i) As per Section 11, where land is transferred by one to another, the transferor should not impose conditions as to how and in what manner the transferee should enjoy the property.

(ii) If a person transfers a plot of land keeping another plot for himself, he can impose certain conditions which may interfere with the right of enjoyment of the transferee.

(c) **Conclusion:** Thus, it is clear that the condition imposed by Tarun is for the benefit of another property which he retains. Such a condition is valid.

### TRANSFER FOR THE BENEFIT OF UNBORN PERSON

**Q14. State the circumstances in which a property may be transferred in favour of unborn person.** [June 2010 (4 Marks)]

**Ans.:** Transfer for benefit of unborn person [Section 13]: If there is transfer of property for the benefit of unborn person, subject to a prior interest created by the same transfer, interest created for the benefit of unborn person shall not take effect unless it extends to the whole of the remaining interest of the transferor in the property.

Thus, if a property is given to an unborn person, two conditions should be satisfied:

- (1) It should be preceded by a life estate in favour of a living person, and
- (2) It should comprise the whole of the remaining interest of the transferor so that there can be no further interest in favour of others.

**Example:** Ram transfers property of which he is the owner to Shyam in trust for Ram and his intended wife successively for their lives, and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for Ram's second son. The interest so created to the benefit of the eldest son does not take effect, because it does not extend to the whole of Ram's remaining interest in the property. (i.e. to say eldest son is getting only a life interest and not an absolute interest)

**Effect of a transfer on failure of prior interest [Section 16]:** Further, where by reason of any rules contained in Section 13 interest created for the benefit of a person fails in regard to such person, any interest created in the same transaction and intended to take effect or upon failure of such prior interests also fail.

**Q15. Describe the essential conditions required for transfer for benefit of unborn person.** [Dec 2016 (5 Marks)]

**Ans.:** Please refer to answer of Question No. 14.

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**RULE AGAINST PERPETUITY**

**Q16.** There was a partition of property between a Hindu father and his five sons. The deed provided that if any one of his sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger. The consideration for that share shall be ₹ 1,000 only. Are these conditions valid? Give reasons.

[June 2011 (5 Marks)]

**Ans.:** (a) **Facts of Case:** There was a partition of property between a Hindu father and his five sons. The deed provided that if any one of his sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger. The consideration for that share shall be ₹ 1,000 only.

(b) **Provision:** As per **Section 10** of the Transfer of Property Act, 1882, where property is transferred subject to a condition absolutely restraining the transferee from parting with or disposing the property, the transfer is valid but condition is void.

Thus, one may give property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property.

(c) **Conclusion/Decision:** In given case the deed provided that if any one of the sons wanted to sell his share, he shall sell it to one of his brothers only and not to any stranger. The consideration for that share shall be ₹ 1,000 only. This condition is invalid and the transferee can ignore such condition. The transfer takes effect and is valid, and the condition not to alienate the property is void.

**Q17. Exceptions to the rule that absolute restraint on transfer of property is void. Comment.**

[Dec 2012 (4 Marks)]

**Ans.:** **Condition restraining alienation [Section 10]:** Where property is transferred subject to a condition absolutely restraining the transferee from parting with or disposing the property, the transfer is valid but condition is void.

Thus, one may give property to another subject to a condition, but the condition should not be one which absolutely prevents the transferee from alienating the property.

**Exception to the rule that absolute restraint on transfer of property is void**

(1) In the case of a lease, the lessor can impose a condition that the lessee shall not sublet the property or sell his leasehold interest. Such conditions are valid. The reason why such an exception is made in the case of a lease is that the lessor may have confidence in the lessee but may not have the same confidence in some other person. So, if the lessor

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puts a condition restraining the lessee from transferring the property to someone, the condition is valid.

(2) The second exception is made in respect of a woman who is not a Hindu, Buddhist or Muslim. In such a case, a condition to the effect that she shall not have power during her marriage to transfer the property is valid.

**CONDITIONAL TRANSFER**

**Q18.** Raman makes transfer of his house in favour of Sohan with the condition that Sohan will get the house only if he marries Shyama with the permission of her three brothers. Before the marriage is solemnized, one of the brothers dies. Sohan marries Shyama with the permission of the remaining two brothers. Can he claim the house.

[Dec 2000 (5 Marks)]

**Ans.:** (a) **Facts of Case:** Raman makes transfer of his house in favour of Sohan with the condition that Sohan will get the house only if he marries Shyama with the permission of her three brothers. Before the marriage is solemnized, one of the brothers dies. Sohan marries Shyama with the permission of the remaining two brothers.

(b) **Provision:** As per **Section 26** of the Transfer of Property Act, 1882, a condition precedent shall be deemed to have been fulfilled if it has been substantially complied with.

A transfers ₹ 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(c) **Decision/Conclusion:** In the given case, Sohan marries Shyama with the consent of two brothers i.e. the condition precedent is substantially fulfilled, more particularly when one brother has already died before the marriage is solemnized. Thus, Sohan will get the house.

**Q19.** Anurag transfer ₹ 10,000 to his sister in law provided she deserts her husband. Is the transfer valid?

[June 2003 (5 Marks)]

**Ans.:** (a) **Facts of Case:** Anurag transfer ₹ 10,000 to his sister in law provided she deserts her husband.

(b) **Provision:** (i) As per **Section 25** of the Transfer of Property Act, 1882, the condition should not be such as to cause injury to the person or property of another or should not be immoral or opposed to public policy. (ii) If it is causing injury to person or property or is immoral or opposed to public policy then the transfer is invalid.

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E.g.: A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void  
 (c) **Conclusion:-** By referring the above facts and provision Anurag have done conditional transfer to his sister in law which is invalid and hence there is no valid transfer.

**DOCTRINE OF ELECTION**

**Q20.** What is the 'doctrine of election' as enunciated under the Transfer of Property Act, 1882? [June 2015 (3 Marks)]

**Ans.:** (a) **Election when necessary [Section 35]:** Where a person—

- Professes to transfer property which he has no right to transfer, and
- As part of the same transaction, confers any benefit on the owner of the property, such owner must **elect either to confirm the transfer or to dissent** from it.

(b) **Dissent:-** If he dissents from it -

- He must relinquish the benefit so conferred and
- The benefit so relinquished reverts to the transferor or his representative as if it had not been disposed of.

(c) **Meaning of Election:-** Election may be defined as "the choosing between two rights where there is a clear intention that both were not intended to be enjoyed"

(d) **Principle:-** The foundation of doctrine of election is that a person taking the benefit of an instrument must also bear the burden

(e) **Example:** Let us suppose that one farm of Sultanpur is the property of C of ₹ 80,000. A professes to transfer that farm of Sultanpur to B and by same instrument ₹ 1,00,000 to C. C, the owner of the farm of Sultanpur, is to elect either to confirm the transfer or to dissent from it. If C elects to transfer his Farm of Sultanpur of ₹ 80,000 to B then only he can receive ₹ 1,00,000 from A.

However, if C elects to retain the farm then he will not receive the gift of ₹ 1,00,000.

In the same case, if A dies before the election is made by C. The representatives of A must, out of the ₹ 1,00,000 pay ₹ 80,000 to B to make good to the disappointed transferee the amount or value of the property attempted to be transferred.

**Exception to the doctrine of election:** Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if

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such owner claims the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

**Example:** Let us suppose that X transfers to Y the property P1, in lieu of Y's property P2 which is given to Z. X also gives to Y the property P3. If Y elects to retain his own property he must relinquish claim over P1 but not P3.

**TRANSFER BY OSTENSIBLE OWNER/DOCTRINE OF HOLDING OUT**

**Q21.** An illegitimate son of a deceased owner of a property gets possession of the property to which he is not legally entitled but his name is entered in the papers as owner. He mortgages the property. On the date of mortgage, the rightful owner's suit against him for recovery and possession was pending and it was decreed subsequently. When the rightful owner sought to avoid the mortgage, the mortgagee resisted the claim by pleading that mortgagor was the ostensible owner of the property when he mortgaged it. Decide. [Dec 2003 (6 Marks)]

**Ans.:** (a) **Facts of Case:-** An illegitimate son of a deceased owner of a property gets possession of the property to which he is not legally entitled but his name is entered in the papers as owner. He mortgages the property. On the date of mortgage, the rightful owner's suit against him for recovery and possession was pending and it was decreed subsequently. When the rightful owner sought to avoid the mortgage, the mortgagee resisted the claim by pleading that mortgagor was the ostensible owner of the property when he mortgaged it.

(b) **Provision:-** General rule regarding the transfer of property is that no one can transfer a better title than what he himself possesses. However, **Section 41** of the Transfer of Property Act, 1882 makes an exception to this rule. Thus, transfer made by the ostensible owner of the property is valid subject to condition specified in Section 41.

(c) **Conclusion/Decision:-** As per facts mentioned in case, illegitimate son of a deceased owner of a property is not ostensible owner of the property and hence he cannot transfer or mortgage the property to another. Hence, rightful owner of the property will succeed in avoiding the mortgage.

**Q22.** Sachin made an unconditional gift of property to Amit but continued in possession of gifted property. Sachin revoked the gift deed transferred it to Naresh. Amit wants to recover possession from Naresh. Discuss it in the light of provisions of Transfer of Property Act, 1882, whether Naresh can withhold the gifted property? [June 2019 (4 Marks)]

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**Ans.: (a) Facts of Case:-** Sachin made an unconditional gift of property to Amit but continued in possession of gifted property. Sachin revoked the gift deed transferred it to Naresh. Amit wants to recover possession from Naresh.

**(b) Provision:-** (i) As per **Section 41** of the Transfer of Property Act, 1882, where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it, provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

(ii) In simple words, if sale is made by ostensible owner for a consideration, then such sale is valid if transferee has taken reasonable care to see that transferor has power to make such sale.

(iii) Unconditional gift cannot be revoked.

(iv) Sachin is not an "ostensible owner" as he does not hold the property with the consent of the real owner (Amit). After acceptance of unconditional gift by Amit from Sachin, Amit is the real owner.

**(c) Conclusion:-** Thus, Naresh cannot seek the protection of Section 41 of the Transfer of Property Act, 1882 and cannot withhold the property gifted to Amit by the Sachin.

### DOCTRINE OF FEEDING THE GRANT BY ESTOPPEL

**Q23.** Arun, a Hindu, who was separated from his father Bharat, sells to Chandan three fields X, Y & Z representing that Arun is authorized to transfer the same. Of these fields, Field-Z does not belong to Arun, as it was retained by Bharat at the time of partition, but after Bharat's death Arun being the heir obtained Field-Z. What are rights of Chandan now? [Dec. 2011 (5 Marks)]

**Ans.: (a) Facts of Case:-** Arun, a Hindu, who was separated from his father Bharat, sells to Chandan three fields X, Y & Z representing that Arun is authorized to transfer the same. Of these fields, Field-Z does not belong to Arun, as it was retained by Bharat at the time of partition, but after Bharat's death Arun being the heir obtained Field-Z.

**(b) Provision:-** (i) According to **Section 43** of the Transfer of Property Act, 1882, if a transferor transfer the property of other which he is not entitled, then subsequently when he acquires the property, he will have to transfer the property to the transferee.

(ii) It is also known as "Doctrine of Feeding the Grant by Estoppel".

(iii) Essentials of "Doctrine of Feeding the Grant by Estoppel".

15.17

- ◆ There was fraudulent or erroneous presentation of ownership by transferor.
- ◆ The transferee must have acted on the fraudulent or erroneous representation of the transferor.
- ◆ The transferor should not have transferable title on the property transferred.
- ◆ The transfer should be for consideration.
- ◆ The transferor must subsequently acquire title upon the property transferred on the basis of fraudulent or erroneous representation of ownership.
- ◆ The transferee has not cancelled contract.
- ◆ The transferee acted in good faith for consideration and without notice of the rights under the prior transfer

**(c) Decision/Conclusion:-** As per the facts given in case, Arun has no authority to sale Field-Z and Chandan has yet not rescinded the contract, hence by applying provisions of Section 43 Chandan can require Ajay to deliver Field-Z acquired by him on the death of his father.

### DOCTRINE OF FRAUDULENT TRANSFER

**Q24.** "Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed, for which he may move to the court." [June 2016 (5 Marks)]  
Comment.

**Ans.: Fraudulent Transfer [Section 53]:** Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Thus, where an owner of the property contracts a debt and then transfers his property to someone so that the creditor cannot proceed against the property to realize his debt, such a transfer is voidable at the option of the creditor. The transfer is valid so long as the creditor does not challenge it in a Court of law and gets a declaration that the transfer is invalid.

**Suit by Creditor:-** A suit instituted by a creditor to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transfer or shall be instituted on behalf of, or for the benefit of all the creditors.

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**Transfer Invalid:** Once the creditor sues the debtor and says that the debtor has the intention to deceive him, the transfer can be declared invalid by the Court.

**Burden of Proof:** The creditor has to satisfy the Court that there was an intention on the part of the debtor to defeat his rights.

**Example:** Suppose a man takes a loan from the creditor. He does not pay the loan. The creditor sues him in a Court to get back his debt. On seeing this, the debtor transfers his property to his friend or some other person who simply holds the property on behalf of the transferor. Again, the debtor may make a gift of his property to his wife or sell it to a friend who will afterwards retransfer the same to the transferor. Under these circumstances, we can easily say that the debtor's intention was to prevent the creditor from taking the property by a suit in the Court and to realize his debt.

**Exception:-** But suppose the debtor has several creditors and he transfers his property to one of his creditors in satisfaction of his whole debt to him. This is not a fraudulent transfer. A mere preference of one creditor over the others is not fraudulent, even if the whole property is so transferred and nothing is left for the other creditors.

**Remedy to other Creditor:-** But the other creditors may file a petition in the Court within **three months** of the transfer praying that the debtor be declared insolvent. If the debtor is adjudicated an insolvent, their interest will be protected and the transfer will be declared as **fraudulent preference**. The transfer will be set aside and the property will be distributed among all the creditors.

However, the rights of a transferee in good-faith and for consideration are protected. It says nothing shall affect or impair the rights of a transferee in good-faith and for consideration.

### DOCTRINE OF PART PERFORMANCE

**Q25. Discuss briefly the doctrine of part performance embodied in section 53A of the Transfer of Property Act, 1882. [Dec. 2009 (4 Marks)]**

**Ans.:** Doctrine of part-performance is embodied in **Section 53A** of the Transfer of Property Act.

A Contract for the sale of land has been entered into between A and B. The transferee has paid the price entering into possession and is willing to carry out his contractual obligation. As registration has not been effected A, the transferor, seeks to evict B from the land. Can he do so?

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No. B will not be allowed to suffer simply because the formality of registration has not been through. The legislature grants some relief to such a transferee under Section 53A, which embodies the doctrine of part-performance.

### Essential Conditions:

- ◆ There must be a contract to transfer immovable property.
- ◆ It must be for consideration.
- ◆ The contract should be in writing and signed by the transferor.
- ◆ The terms must be ascertainable with reasonable certainty.
- ◆ The transferee should have taken the possession of the property. In case he is already in possession, he must have continued in possession.
- ◆ The transferee must have fulfilled or ready to fulfil his part of the obligation.

If all the abovementioned conditions are satisfied, then, the transferor and the persons claiming under him are debarred from exercising any right in relation to the property other than the right expressly provided by the terms of the contract notwithstanding the fact that the instrument of transfer has not been registered or complete in the manner prescribed therefore by the law for time being in force.

**Q26. Discuss briefly the 'doctrine of part-performance', which is embodied in section 53A of the Transfer of Property Act, 1882.**

[June 2018 (5 Marks)]

**Ans.:** Please refer to answer of Question No. 25.

**Q27. A contract for the sale of land has been entered into between A and B. The transferee has paid the price entering into possession and is willing to carry out his contractual obligations. As registration has not been effected, A the transferor, seeks to evict B from the land. Can he do so? Explain.**

[Dec. 2018 (4 Marks)]

**Ans.:** Please refer to answer of Question No. 25.

### ACCUMULATION OF INCOME

**Q28. Write a short note on: Accumulation of income**

**Ans.:** **Direction for accumulation [Section 17]:** Accumulation of income from the land for an unlimited period without the income-being enjoyed by owner of the property is not allowed. The law allows accumulation of income for a certain period only. The period for which such accumulation is valid is:

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- ◆ Life of the transferor, or
- ◆ 18 years from the date of transfer.

Any direction to accumulate the income beyond the period mentioned above is **void**.

**Exceptions:** In following cases any direction for accumulation of income beyond the period prescribed above is allowed:

- ◆ For the payment of the debts of the transferor or any other person taking any interest under the transferor.
- ◆ For provision of portions for children or any other person taking any interest in the property under the transfer, and
- ◆ For the preservation and maintenance of the property transferred.

### Doctrine of *lis pendens*

**Q29.** Explain the rule of *lis pendens* as provided in the Transfer of Property Act, 1882. [June 2010 (4 Marks)]

**Ans.:** (a) **Meaning:-** *Lis* means dispute, "*pendens*" means pending, *Lis pendens* means a pending suit, action, petition or the like.

(b) **Provision - Transfer of property pending suit relating thereto [Section 52]:** During the pendency of a suit in a court of law, property which is subject to litigation cannot be transferred i.e. property may be transferred but this transfer is subject to the rights that are created by a court's decree.

(c) **Maxim:-** The provision is based on maxim- "*us lite pendente nihil innovetur*". During litigation nothing new should be introduced

(d) **Essential of Rule of *Lis Pendens*:-**

- (i) Suit is filed in the Indian Court
- (ii) Suit is not filed in foreign court
- (iii) Suit is in relation to immovable property in question
- (iv) It should not be vexatious suit

(e) **Movable Property:-** The doctrine of *lis pendens* does not apply to movables.

(f) The doctrine is **not applicable** in favour of a **third-party**.

**Example:-** Specific office building is under litigation. Balwant and Chetan are parties to litigation. Balwant during pendency of suit transfer property to Aman. The suit end in favour of Chetan. Aman is bound by order of court and Chetan can recover property from Aman

15.21

**Q30.** What do you mean by the rule of *lis pendens*? Write down the essentials of rule of *lis pendens* as provided in the Transfer of Property Act, 1882. [June 2013 (4 Marks)]

**Ans.:** Please refer to answer of Question No. 29.

**Q31.** What is meant by the doctrine of "*lis-Pendens*" under Transfer of Property Act, 1882? Discuss its essential elements. [Dec. 2017 (7 Marks)]

**Ans.:** Please refer to answer of Question No. 29.

**Q32.** "Nothing new should be introduced in a pending litigation", is a well-known concept of property law. Critically evaluate this concept. [June 2018 (3 Marks)]

**Ans.:** Please refer to answer of Question No. 29.

**Q33.** A and B are litigating in a court of law over property X and during the pendency of the suit, A transfers the property X to C. The suit ends in B's favour. Decide, who shall be entitled for property X under the provisions of the Transfer of Property Act, 1882 ? [Dec. 2019 (4 Marks)]

**Ans.:** (a) **Facts of Case:-** A and B are litigating in a court of law over property X and during the pendency of the suit, A transfers the property X to C. The suit ends in B's favour.

(b) **Provision:-** As per Section 52 Transfer of Property Act, 1882, during the pendency of a suit in a court of law, property which is subject to litigation cannot be transferred i.e. property may be transferred but this transfer is subject to the rights that are created by a court's decree.

The provision is based on maxim "*us lite pendente nihil innovetur*" - During litigation nothing new should be introduced.

When we say that property cannot be transferred what we mean in this context is that property may be transferred but this transfer is subject to the rights that are created by a Court's decree. For example, A and B are litigating in a Court of law over property X and during the pendency of the suit A transfers the property X to C. The suit ends in B's favour

(c) **Conclusion:-** Here C who obtained the property during the time of litigation cannot claim the property. He is bound by the decree of the Court wherein B has been given the property

15.22

## SALE, EXCHANGE, GIFT, LEASE

**Q33A. Distinguish between: Lease & License** [Dec. 2009 (4 Marks)]

Ans.: Following are the main points of difference between lease and license.

Points	Lease	License
Meaning	Lease of immovable property is a transfer of a right to enjoy property.	A license is a right to do or continue to do in or upon the immovable property of the grantor, something which would, in the absence of such a right, be unlawful.
Possession	A lease involves a transfer of interest followed by possession of the property for a specified period.	In case of license, the legal possession continues to be with the owner of the property, but the licensee is permitted to make use of the premises for a particular purpose.
Enjoyment of property	In the case of a lease, there is a transfer of a right to enjoy the property.	In the case of a license there is something less than a right to enjoy the property in the licensee.
Transfer of property	Lease would amount to transfer of property.	A mere license does not create interest in the property to which it relates.
Transfer	The lease is both transferable and heritable.	License is personal to the grantee. It is neither transferable nor heritable.
Termination	Lease comes to an end only in accordance with the terms and conditions stipulated in the contract.	License can be withdrawn at any time at the pleasure of the grantor.

**Q34. Distinguish between: Sale and Contract for sale** [Dec. 2010 (4 Marks)]

Ans.:

(a) **Sale:-** (i) "Sale" has been defined as a transfer of ownership in exchange for a price paid or promised or part paid and part-promised.

(ii) **Essential of Valid sale-**

- ◆ Owner must be competent to contract
- ◆ Subject matter must be immovable property
- ◆ There is transfer of ownership
- ◆ It is for consideration which is in price
- ◆ It is between two or more persons

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(b) **Contract of Sale (i)** "Contract for sale" includes both a present sale and a contract to sell at a future time.

(ii) A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

(iii) A contract for the sale of immovable property differs from a contract for the sale of goods in that the Court will grant specific performance of it unless special reasons to the contrary are shown.

**Q35. Ajoy voluntarily makes a gift of his immovable property to Bijoy. Bijoy accepts the gift. The possession of the property was given to Bijoy but the gift deed which required registration under section 123 of the Transfer of Property Act, 1882 was not registered. Whether Ajoy, the donor can revoke the gift? Decide.** [Dec. 2010 (6 Marks)]

Ans.: (a) **Facts of case:-** Ajoy voluntarily makes a gift of his immovable property to Bijoy. Bijoy accepts the gift. The possession of the property was given to Bijoy but the gift deed which required registration under section 123 of the Transfer of Property Act, 1882 was not registered.

(b) **Provision:-** It was held by privy council in *Kalyan Sundaram Pillai v. Karuppa Moppanar* when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it.

Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with. It should be presented within the reasonable time, it can be duly registered.

(c) **Conclusion/Decision:-** Thus, as per the facts given, gift is complete as it was accepted by the donee and once the gift is complete donor cannot revoke it. Thus, Ajoy, the donor cannot revoke the gift.

**Q36. Distinguish between: Sale and Exchange** [Dec. 2011 (4 Marks)]

Ans.: Following are the main points of difference between sale and exchange:

Points	Sale	Exchange
Meaning	"Sale" has been defined as a transfer of ownership in exchange for a price paid or promised or partly paid and partly promised.	When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an 'exchange'.

Points	Sale	Exchange
Money consideration	In sale whole or part consideration should be money.	Money consideration is not involved in exchange.
Section	Section 54 of the Transfer of Property Act, 1882 deals with the 'sale'.	Sections 118 to 121 of the Transfer of Property Act, 1882 deals with the 'exchange'.

**Q37.** Amrit (*lessor*) grants his immovable property (premises) on lease for 4 years to Sukant (*lessee*) commencing from 1st June, 2001. The lessor gives a notice to the lessee on 1st February, 2008 for vacating the premises on 1st March, 2008:

- Is this notice a valid notice?
- If the lease is continued after 4 years, will the tenancy be on monthly basis or yearly basis? Decide. [Dec. 2012 (6 Marks)]

**Ans.:** (a) **Facts of Case:-** Amrit (*lessor*) grants his immovable property (premises) on lease for 4 years to Sukant (*lessee*) commencing from 1st June, 2001. The lessor gives a notice to the lessee on 1st February, 2008 for vacating the premises on 1st March, 2008:

(b) **Provision:-** (i) **Section 106 of the Transfer of Property Act, 1882 :-** In the absence of a contract or local law or usage to the contrary

(ii) **Lease for Agricultural or manufacturing Purpose** a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year.

(iii) **Lease for other than agricultural or manufacturing purpose:** Lease of immovable property for any purpose other than agricultural or manufacturing purposes shall be deemed to be a lease from month to month.

(iv) **Mutual Consent:-** However, landlord and tenant can mutually agree and make the lease of immovable property for agricultural or manufacturing purposes on month to month basis.

(v) **Notice:** (i) In case of a tenancy for a period more than a year the landlord wants to terminate or end the lease, he has to give 6 months notice to the lessee to quit, (ii) In case of a tenancy from month to month, 15 days notice to quit is necessary.

(vi) The monthly tenancy may be created either by contract or may be presumed from the nature of the tenancy to be one, from month to month.

(vii) **Effect of holding over [Section 116]:** If a lessee of property remains in possession after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month

to month, according to the purpose for which the property is leased, as specified in Section 106.

(c) **Conclusion:-** As per facts given in case Amrit has granted his immovable property on lease for 4 years to Sukant. The problem does not specifically specify that the lease of immovable property is for agricultural or manufacturing purposes; hence it is deemed to be lease for month to month basis. The lease is granted for 4 years on 1st June 2001 which end on 31st May 2005. Sukant remains in possession after the determination of the lease; hence applying effect of holding out it will be lease of month to month after 31st May 2005.

Since it is lease of month to month notice of 15 days will be necessary. Amrit has given notice Sukant on 1st February, 2008 for vacating the premises on 1st March 2008. Notice period is of 1 month which is more than statutory period of 15 days. Thus, notice given by Amrit is valid.

**Q38.** How is 'lease' different form 'licence'? [Dec. 2014 (5 Marks)]

**Ans.:** Please refer to answer of Question No. 33.

**Q39.** What is meant by 'onerous gift'? [June 2016 (4 Marks)]

**Ans.:** **Onerous gifts [Section 127]:** Sometimes several things are transferred as a gift by single transaction. In such case some of them are really beneficial while the other conveys burdensome obligations. Such gift is known as onerous gift and the donee takes nothing by the gift unless he accepts it fully.

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

**Examples:**

- A shares in X, prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.
- A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

**Q40.** If the gift of an immovable property is accepted but not registered, does it amount to a valid gift? Give reasons. [June 2016 (3 Marks)]

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**Ans.:** According to Section 123, a gift of immovable property must be made by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. A gift of movable property may be made by a registered instrument or by delivery of property.

**Revocation of gift:** A revocable gift is one which may be revoked by the donor at any time. It is to be noted that, a gift cannot be revoked at the will and pleasure of the grantor. If the revocation of gift depends upon the mere will or pleasure of the donor, then such a gift is void. But on the other hand, if the condition is one which does not depend on the will or pleasure of the donor, the gift can be revoked on the happening of such condition.

**Illustrations:**

- A gives a field to B, reserving to himself, with B's assent, the rights to take back the field in case B and his descendents die before A, B dies without descendents during A's lifetime. A may take back the field.
- A gives ₹ 1,00,000 to B, reserving to himself with B's assent the right to take back at leisure ₹ 10,000 out of ₹ 1,00,000. The gift holds goods as to ₹ 90,000 but is void as to ₹ 10,000 which continue to belong to A.

It was held by the Privy Council, that while registration is a necessary solemnity for the enforcement of a gift of immovable property, it does not suspend the gift until registration actually takes place, when the instrument of gift has been handed over by the donor to the donee and accepted by him, the former has done everything in his power to complete the donation and to make it effective and if it is presented by a person having necessary interest within the prescribed period the Registrar must register it. Neither death nor the express revocation by the donor, is a ground for refusing registration, provided other conditions are complied with. [*Kalyan Sundaram Pillai v. Karuppa Moppanar*]

### ACTIONABLE CLAIMS

**Q41. Distinguish between: Actionable Claim and mere right to sue**

[June 2012 (4 Marks)]

**Ans.:** Following are the main points of difference between actionable claim and mere right to sue:

Points	Actionable Claim	Mere right to sue
Section	Referred in Section 3 of the Transfer of Property Act, 1882	Referred in Section 6 of the Transfer of Property Act, 1882

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	Actionable Claim	Mere right to sue
Points		
Meaning	Actionable claim is a claim to an unsecured debt, which the civil court recognizes as affording grounds for relief of the person who claims it.	The 'right to sue' is a personal right available to the party to contract in case of breach of contract by other party.
Transfer	Actionable claim which can be validly transferred.	A mere right to sue cannot be transferred.
Example	Aman agrees on 1.2.2019 to deliver 1,000 gunny bags to Balu on 1.3.2019. On 1.2.2019 Balu assigns interest in the contract to Chirag. Aman fails to deliver the bags on 1.3.2019. Chirag can sue Aman because a beneficial interest in a subsisting contract which relates to movable property is an actionable claim which can be validly transferred.	<ol style="list-style-type: none"> <li>Ram commits assault on Balu, Balu can file a suit to obtain damages; but Balu cannot assign the right to Chandan and allow him to obtain damages.</li> <li>If A breaks a contract which he has entered into with B, B can bring action for damages, but B cannot transfer this right to C to recover damages.</li> </ol>

### MORTGAGES & CHARGES

**Q42. Distinguish between: Mortgage & Charge [Dec. 2009 (4 Marks)]**

**Ans.:** Following are main points of distinction between Mortgage & Charge:

Points	Mortgage	Charge
Meaning	A mortgage is the transfer of an interest in specific immovable property for the purpose of securing payment of money advanced.	Although in a charge, the property is made a security for the payment of the loan, yet the transaction does not amount to mortgage.
Transfer of interest	In mortgage there is transfer of interest in the property.	In charge there is no transfer of any interest in the property.
Created	A mortgage can only be created by act of parties.	A charge may be created by act of parties or by operation of law.
Registration	A mortgage deed must be registered and attested by two witnesses.	A charge need not be made in writing, and if reduced to writing, it need not be attested or registered.
Foreclosure	In certain types of mortgage the mortgagee can foreclose the mortgaged property.	The charge-holder cannot foreclose though he can get the property sold as in a simple mortgage.

<b>Personal liability</b>	In a mortgage, there can be security as well as personal liability.	In a charge the remedy of the charge-holder is against the property only.
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**Q43. Explain the doctrine of marshalling** [Dec. 2009 (4 Marks)]

**Ans.: Marshalling [Section 81]:** If the owner of two or more properties mortgages them to one person and then mortgages one or more of those properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary - entitled to have the prior mortgage debt satisfied out of the properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or any person who has for consider action acquired an interest in any of the properties.

**Example:** Ram has three properties P<sub>1</sub>, P<sub>2</sub> & P<sub>3</sub>. He mortgages all the three properties to Shyam. He again mortgages property P<sub>1</sub> & P<sub>2</sub> to Mohan. Since properties P<sub>1</sub> & P<sub>2</sub> are common to both Shyam and Mohan, Mohan can invoking doctrine of marshalling can compel Shyam to have the prior mortgage debt satisfied out of the property P<sub>3</sub> which was not mortgaged to Mohan.

**Q44. Distinguish between: Mortgage & Charge** [Dec. 2010 (4 Marks)]

**Ans.:** Please refer to answer of Question No. 42

**Q45. Discuss briefly right of redemption.** [Dec. 2011 (4 Marks)]

**Ans.:** A mortgager has a right of redemption. Any clause or provision inserted in the mortgage deed to prevent, evade, or hamper redemption is void. "Once a mortgage always a mortgage" rule is based on the principle of equity. The court will not allow or permit any condition which will impede the redemption of mortgage or the repayment of loan for which the security of property was given.

A mortgage deed, providing that if the amount is not paid within a stipulated time, the mortgages would become the absolute owner of the property, was held to be a clog on equity of redemption. [Murari Lal v. Dev Karani]

However, when conditions are reasonable and do not prevent the mortgagor to redeem the property, they will be recognize as valid and binding.

Conditions like "no redemption during cultivating season of a land, for a certain period", were held valid and enforceable. But where "no redemption on a particular day", barred the mortgagor from redeeming for a further long period, it was held to be a clog on redemption, hence not valid.

**Q46. Distinguish between: English mortgage and mortgage by conditional sale** [June 2012 (4 Marks)]

**Ans.:** Following are the main points of difference between English mortgage and mortgage by conditional sale:

Points	English Mortgage	Mortgage by Conditional Sale
<b>Meaning</b>	Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will retransfer it to the mortgagor upon payment of the money as agreed, the transaction is called an "English Mortgage".	In this type of mortgage, the property is mortgaged with a condition super added that in the event of failure by the debtor to repay the debt by the stipulated time, the transaction should be regarded as a sale. In case the loan is repaid within the stipulated time, the sale shall be invalid, or on condition that on such payment being made, the buyer shall transfer the property to the seller.
<b>Sale of property</b>	In English mortgage the property is absolutely sold to the mortgagee.	In mortgage by conditional sale, the mortgaged property is conditionally sold.
<b>Personal liability</b>	The mortgagor has personal liability to pay the debt.	The mortgagor has no personal liability to pay the debt.
<b>Right of foreclosure</b>	The mortgagee has no right of foreclosure.	The mortgagee has right of foreclosure.
<b>Mesne profits</b>	The ownership is transferred to mortgagee and the mortgagee enjoys the <i>mesne profits</i> .	If mortgagor commits defaults title of property can be transferred to mortgagee.
<b>Possession</b>	The mortgagor has right to possession.	The mortgagor has no such right.

**Q47. Distinguish between: Mortgage & Charge** [Dec. 2012 (4 Marks)]

**Ans.:** Please refer to answer of Question No. 42.

**Q48. Write a short note on: Usufructuary Mortgage** [Dec. 2013 (5 Marks)]

**Ans.:** (a) **Possession of Property:-** In this type of mortgage, the mortgagor has to deliver possession of the property to the mortgagee.

(b) **Receive rent and profits:-** The mortgagor expressly, or by implication binds himself to deliver possession of the mortgaged property to the mortgagee; and authorizes him to retain such position until payment of the mortgage money, and to receive the rents and profits accruing from

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the property or any part of those and to appropriate the same in lieu of interest or partly in payment of mortgage money. This is also known as mortgage with possession.

(c) **Example:** Mr. A have mortgaged his building to Mr. B and allowed Mr. B to collect rent and adjust against the outstanding loan and interest.

**Q49. Distinguish between: Mortgage & Charge** [Dec. 2013 (5 Marks)]

Ans.: Please refer to answer of Question No. 42.

**Q50. Explain the doctrine of 'clog on equity of redemption' under the Transfer of Property Act, 1882.** [Dec. 2014 (5 Marks)]

Ans.: Please refer to answer of Question No. 45.

**Q51. What do you understand by 'crystallization of floating charge' under the Transfer of Property Act, 1882?** [June 2016 (5 Marks)]

Ans.:

(a) **Meaning of Floating Charge:** A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets having a floating charge till the happening of some event which determines this right.

(b) **Example:** RIL Ltd created charge on raw material worth ₹ 100 crore in favour of HDFC Bank

(c) **Crystallization of Charge:** (i) Crystallization is the process by which a floating charge becomes a fixed charge

(ii) In certain cases like default, liquidation etc. the lender can take physical possession of the assets and realize his dues by selling the current assets, without the intervention of the Court. This is termed as 'crystallization of charge'.

(d) **Example:** ABC Ltd created floating charge of ₹ 100 crore on finished goods kept in Delhi Godown in favour of Debenture holder. ABC Ltd is now in the process of liquidation. Then all the finished goods will not under the control and direction of Debenture trustee (crystallization of charge)

(e) **Situation when floating charge becomes fixed charge:** A floating charge crystallizes and the security becomes fixed in the following cases:

- ◆ When the company goes into liquidation
- ◆ When the company ceases to carry on the business

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- ◆ When the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged
- ◆ On the happening of the event specified in the deed.

(f) **Effect of crystallization of a floating charge:** On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding-up get priority over the claims of the debenture holders having floating charge.

**Q52. Distinguish between 'English mortgage' and 'mortgage by conditional sale'.** [Dec. 2016 (5 Marks)]

Ans.: Please refer to answer of Question No. 46.

**Q53. Explain the meaning of 'Usufructuary Mortgage' as given under the Transfer of Property Act, 1882.** [Dec. 2017 (3 Marks)]

Ans.: In Usufructuary Mortgage, the mortgagor has to deliver possession of the property to the mortgagee. The mortgagor expressly, or by implication binds himself to deliver possession of the mortgaged property to the mortgagee; and authorizes him to retain such position until payment of the mortgage money, and to receive the rents and profits accruing from the property or any part of those and to appropriate the same in lieu of interest or partly in payment of mortgage money. This is also known as mortgage with possession.

**Q54. Define the term 'Puisne Mortgage'.** [June 2018 (3 Marks)]

Ans.: **Puisne Mortgage:** Where the mortgagor, having mortgaged his property, mortgages it to another person to secure another loan, the second mortgage is called a *puisne* mortgage.

**Example:** Where A mortgages his house worth ₹ 1,00,000 to B for ₹ 40,000 and mortgages the same house to C for a further sum of ₹ 30,000, the mortgage to B is first mortgage and that to C the second or *puisne* mortgage C is the *puisne* mortgagee, and can recover the debt subject to the right of B, the first mortgagee, to recover his debt of ₹ 40,000 plus interest.

**Q55. Distinguish between: Mortgage and Charge** [Dec. 2018 (3 Marks)]

Ans.: Please refer to answer of Question No. 42.

**Q56. Distinguish between: Mortgage and Charge** [June 2019 (3 Marks)]

Ans.: Please refer to answer of Question No. 42.