

UNIT – IV

Conveyancing I — sale, mortgage, lease, gift

Sale · Mortgage · Lease · Gift

Explanatory Lecture Slides

Drafting, Pleading and Conveyance · Clinical-III · Semester IX

DRAFTING, PLEADING AND CONVEYANCE

Topics covered in this unit

01

Draft the operative parts of a sale deed

02

Place mortgage forms under TP Act s.58

03

Draft a lease with s.105–108 in mind

04

Draft a gift under s.122

05

Note registration, stamping and attestation

06

Note capacity and consideration recitals

How this unit is organised

01	02	03	04	05	06
Sale deed	Mortgage	Lease	Gift	Registration & stamp	Recitals

Sale — TP Act s.54

A transfer of ownership in exchange for a price paid or promised. Immovable $\geq$ ₹100: registered instrument. Operative words: 'transfers and conveys'. Schedule of property. Possession clause. Indemnity against defect of title. Payment clause (already paid / unpaid / escrow).

- Agreement to sell is not a sale (s.54 last para). Part-performance s.53A is a shield, not a sword (after 2001). A 16-mark: recitals, operative, habendum, covenants, schedule, attestation, registration.
- Karnataka: e-stamping, Kaveri portal — name the practice without fake portal-steps.

Sale — TP Act s.54

MUST

- Parties.
- Price.
- Property.
- Transfer in praesenti.
- Registration if s.54 requires.

COVENANTS

- Title.
- Quiet enjoyment.
- Further assurance.
- Indemnity.

Mortgage — s.58

A transfer of an interest in specific immovable property for securing a loan. Simple, mortgage by conditional sale, usufructuary, English, equitable (deposit of title deeds — s.58(f), specified towns), anomalous.

- A 16-mark of forms in a table: who keeps possession, whether a sale can be forced, whether a document is needed (equitable mortgage may be by deposit, with a contemporaneous memorandum that often must be registered if it is the bargain — the State of Haryana v Narinder line as taught).
- s.60 right to redeem is statutory; clog is void.

Mortgage — s.58

ALWAYS ASK

- Which s.58 form?
- Who has possession?
- What is the redemption?

NEVER

- A clog on redemption dressed as a sale.

Lease — ss.105–117

A transfer of a right to enjoy, for a term, for rent. s.107: lease $\geq$ 1 year (and some others) by registered instrument. s.108 covenants (quiet enjoyment, repair, assignment as the deed says). Duration, rent, purpose, determination, option, security deposit.

- Licence (Easements Act s.52) is not a lease — no interest, only occupation. A 10-mark of lease v licence (Associated Hotels / Qudrat Ullah).
- Stamp on a lease often follows rent $\times$ term — get the article of the State stamp Act right, or the deed does not move.

Lease — ss.105–117

LEASE

- Interest in immovable property.
- Exclusive possession usually.

LICENCE

- A permission.
- Revocable as the law allows.

Gift — ss.122–129

Voluntary, without consideration, accepted in the donor's lifetime. Immovable: registered instrument, signed, attested by two. s.126 suspension/revocation only on a specified event, not at will. s.129: Muslim gifts sit partly outside this Chapter.

- A 10-mark specimen: recital of love and affection (not a hidden price — that is a sale), acceptance clause, delivery of possession as the State practice expects, two attesting witnesses.
- A gift-deed that is a sale in costume fails both stamp and s.54.

Gift — ss.122–129

NEED

- Voluntariness.
- Acceptance.
- Registration of immovable.
- Two attesters.

FAIL

- A secret price.
- Acceptance after death.
- No registration.

Registration, stamp, attestation

Registration Act ss.17, 49: an unregistered document required to be registered will not affect the property or be received as evidence of the transaction (proviso for collateral). Stamp: State Act; an under-stamped deed is impounded. Attestation: s.3 TP Act — two witnesses who have seen the executant sign.

- A drafting viva that cannot name s.17 and s.49 is a fail. Will-attestation (IS Act s.63) is a neighbour in Unit V.

Registration, stamp, attestation

S.17

- What must be registered.

S.49

- What happens if you did not.

Recitals and capacity

Recitals: the story (how the vendor got title). They do not transfer; they estop and they help a later search. Capacity: majority, sound mind, a guardian's permission (Hindu Minority and Guardianship Act s.8 for a minor's immovable), a company's board authority, a POA that itself is stamped and, where it conveys, registered.

- A forged POA is the most common Karnataka land-fraud. Verify. Do not draft on a xerox of a xerox.

Recitals and capacity

RECITALS

- Story and estoppel, not the transfer.

CAPACITY

- Age.
- Mind.
- Authority.
- A real POA.

Gift — ss.122–129

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Cases a KSLU answer should name

CASE

Suraj Lamp & Industries v State of Haryana

(2012) 1 SCC 656

SA/GPA/will is not a sale — s.54 still wants a registered deed.

CASE

K.B. Saha & Sons v Development Consultant

(2008) 8 SCC 564

s.49 — an unregistered document's limited use.

CASE

Associated Hotels of India v R.N. Kapoor

AIR 1959 SC 1262

Lease v licence — exclusive possession is a strong, not a conclusive, mark.

Provisions & materials to quote

TP Act ss.54, 58, 60,

Sale, mortgage, redemption, lease, gift.

Registration Act ss.17

Compulsory registration and the cost of skipping it.

s.3 TP Act

Attestation.

Stamp Act (State)

A deed that is not stamped does not travel.

HMG Act s.8

A minor's immovable — court permission.

10 / 16-mark frames from this unit

Q1

What are the essential contents of a sale deed? Why is an agreement to sell not a sale?

Q2

Explain the kinds of mortgage. What is a clog on redemption?

Q3

Distinguish a lease from a licence. What must a lease deed contain?

Q4

Write a note on gift / s.17 Registration Act / Suraj Lamp.

Unit recap

- 1 Sale of immovable $\geq$ ₹100 = registered deed (s.54).
- 2 Suraj Lamp: GPA is not a sale.
- 3 Mortgage: name the s.58 form; s.60 is sacred.
- 4 Lease $\geq$ 1 year: s.107 registered; licence is a permission.
- 5 Gift of immovable: register, two attestors, acceptance in life.