UNIT – I

General Principles of Transfer of Property

Concept of Property • Competence • Conditions • Rule against Perpetuity • Vested & Contingent Interests

Including Landmark Judgments under the Transfer of Property Act, 1882

OVERVIEW

Unit Structure & Learning Outcomes

01

Concept of Property & Immovable Property

Meaning, nature of property rights, distinction between movable & immovable

02

Transfer inter vivos & Competence

Who can transfer, what can be transferred, operation of transfer

03

Conditions & Restrictions

Restraints on alienation, repugnant conditions, rule against perpetuity

04

Vested & Contingent Interests

Distinction, acceleration, fulfilment of conditions subsequent

Concept and Nature of Property Rights

Property is a bundle of rights. It includes the right to possess, enjoy, exclude others, and alienate.

Under the Transfer of Property Act, 1882 (TPA), “transfer of property” means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons (S. 5).

Key characteristics of property rights:
- Right in rem (against the world)
- Transferable (subject to restrictions)
- Heritable
- Capable of being owned absolutely or limitedly

The Act deals only with transfers by act of parties inter vivos (between living persons). Transfers by operation of law (succession, insolvency, etc.) are outside its scope.

Concept and Meaning of Immovable Property

TPA does not define “immovable property” exhaustively. S. 3 says it does not include standing timber, growing crops or grass.

General Clauses Act, 1897 (S. 3(26)): “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.

“Attached to the earth” means:
• Rooted in the earth (trees, shrubs)
• Embedded in the earth (walls, buildings)
• Attached to what is so embedded for permanent beneficial enjoyment

Landmark cases:
• Shantabai v. State of Bombay (1958) – Trees can be movable or immovable depending on intention.
• Ananda Behera v. State of Orissa – Fishery rights are benefits arising out of land → immovable property.
• Marshall v. Green – Distinction between sale of timber and sale of land with timber.

Persons Competent to Transfer

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

Essentials:
1. Competence to contract (as per Indian Contract Act – age of majority, sound mind, not disqualified)
2. Title or authority to transfer the property

A minor cannot transfer property (though he can be a transferee). A guardian may transfer on behalf of a minor under the personal law or Guardians and Wards Act with necessary permissions.

A person can transfer only what he has (nemo dat quod non habet), subject to exceptions such as ostensible ownership (S. 41) and part performance (S. 53A).

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.

Exceptions (non-transferable):
(a) Mere chance of an heir-apparent succeeding (spes successionis)
(b) Mere right of re-entry for breach of condition subsequent
(c) Mere easement apart from the dominant heritage
(d) Restricted interest personal to the transferee
(e) Mere right to sue
(f) Public office or salary of a public officer
(g) Stipends allowed to military/naval/air force/civil pensioners
(h) Transfer opposed to the nature of the interest (e.g., religious office in some cases)

Landmark: Official Assignee of Madras v. Sampath Iyengar – Chance of succession cannot be transferred.

Operation of Transfer

Section 8 – Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

This includes:
• Easements attached
• Rents and profits
• Machinery attached to earth for beneficial enjoyment
• Where house is transferred – the locks, keys, bars, doors, windows

Section 9 – Oral transfer is valid except where writing is expressly required by law (e.g., sale of immovable property of value ₹100 and upwards requires registered instrument under S. 54).

Conditions Restraining Alienation

Section 10: Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest, the condition or limitation is void.

Exceptions:
• Condition in a lease that lessee shall not transfer (without lessor's consent)
• Transfer to a woman (not Hindu, Muslim or Buddhist) so that she shall not have power during marriage to transfer

Absolute restraint is void; partial restraint may be valid if reasonable.

Landmark: Muhammad Raza v. Abbas Bandi Bibi – Distinction between absolute and partial restraints. A condition against transfer to a particular person or class may be valid.

Restrictions Repugnant to the Interest Created

Section 11: Where, on a transfer of property, an interest is created for the benefit of a person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he may nevertheless enjoy the interest as if there were no such direction (unless the direction is for the benefit of another).

Once an absolute interest is given, any restriction on the mode of enjoyment is void as repugnant.

Illustration: A transfers property to B with a direction that B shall not cut trees. The direction is void; B can cut the trees.

Exception: Direction for the benefit of another person is valid (e.g., to pay maintenance to C out of the property).

Rule against Perpetuity

Section 14: No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of the transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Maximum period = lives in being + minority of the ultimate beneficiary.

Object: To prevent property from being tied up indefinitely and to keep property freely alienable.

Exceptions (Ss. 15–18):
• Transfer for the benefit of the public (advancement of religion, knowledge, commerce, health, safety, etc.)
• Provisions for payment of debts, maintenance of relatives, etc. in certain cases

Landmark: Ram Newaz v. Nankoo – Application of the rule; interest must vest within the perpetuity period.

Direction for Accumulation

Section 17: Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be valid only for:

• The life of the transferor; or
• A period of 18 years from the date of transfer

(whichever is longer).

Any direction for accumulation beyond this period is void to the extent of the excess.

Exceptions: Accumulation for payment of debts of the transferor or of any person interested, or for providing portions for children, or for the preservation/maintenance of the property itself.

This provision works in tandem with the rule against perpetuity to prevent prolonged tying-up of income.

Vested Interest

An interest is vested when:
- It is created in favour of a person
- It is not subject to any condition precedent (other than the mere efflux of time)

Characteristics of vested interest (S. 19):
- It does not depend on an uncertain event
- It is transferable and heritable even before the actual possession is obtained
- Death of the person before taking possession does not defeat the interest – it passes to his heirs

Example: A transfers property to B to be given to B on B attaining 18 years. If no further condition, the interest is vested; only enjoyment is postponed.

“Vested in interest” vs “vested in possession” – important distinction.

Contingent Interest

An interest is contingent when it is created in favour of a person to take effect only on the happening of a specified uncertain event (S. 21).

Characteristics:
• Depends on a condition precedent that may or may not happen
• Not heritable or transferable in the same way as vested interest until the event happens
• If the event becomes impossible, the interest fails

Example: A transfers property to B if B marries C. B's interest is contingent on the marriage.

Distinction from vested interest is crucial for succession, taxation and alienation.

Section 22–24 deal with contingent interests in particular situations (class gifts, alternative contingent interests, etc.).

Void Conditions, Acceleration & Fulfilment of Conditions Subsequent

Condition subsequent: A condition that attempts to defeat or divest an interest already created on the happening of a specified event.

If the condition subsequent is void (illegal, impossible, or contrary to public policy), the interest remains absolute (S. 28–30 principles).

Rule of Acceleration (S. 27–29): Where an interest is created for the benefit of a person subject to a condition precedent and the condition becomes impossible or is illegal, the subsequent interest may accelerate and take effect immediately (subject to the terms).

Fulfilment of condition subsequent: Once the condition is fulfilled in the manner prescribed, the interest is divested. Strict compliance is generally required unless the condition is substantially performed where the law so permits.

Landmark Judgments – Property & Transfer

Shantabai v. State of Bombay (1958)

Trees – whether movable or immovable depends on the intention of the parties and whether they are to be cut soon or left to grow.

Ananda Behera v. State of Orissa (1956)

Profit à prendre (right to catch fish) is a benefit arising out of land and hence immovable property.

Muhammad Raza v. Abbas Bandi Bibi (1932)

Partial restraint on alienation (e.g., prohibition on transfer to strangers) may be valid; absolute restraint is void under S. 10.

Ram Newaz v. Nankoo

Application of the rule against perpetuity; interest must vest within the prescribed period.

Landmark Judgments – Conditions & Interests

Tagore v. Tagore (1872)

Classic Privy Council decision on the limits of testamentary disposition and creation of successive interests under Hindu law (influenced perpetuity thinking).

Sopher v. Administrator-General of Bengal (1944)

Important decision on the rule against perpetuity and contingent interests.

Official Assignee of Madras v. Sampath Iyengar

Spes successionis (mere chance of succession) is not transferable property under S. 6(a).

Raje Anandrao v. Shamrao

Illustrates the distinction between vested and contingent interests and the consequences of each.

COMPARATIVE

Vested Interest vs Contingent Interest

Aspect	Vested Interest	Contingent Interest
Condition	No uncertain condition	Depends on uncertain event
Heritability	Yes, even before possession	Generally no, until vesting
Transferability	Freely transferable	Limited until event happens
Effect of death	Passes to heirs	Fails if event not fulfilled
Example	To A on attaining 18	To A if he marries B

FLOW

Scheme of General Principles under TPA

1	2	3	4	5
What is Property?	**Who can Transfer?**	**What can be Transferred?**	**How does it Operate?**	**Limits on Freedom**
Immovable / Movable distinction	Competence under S. 7	S. 6 exceptions	S. 8 – all interest passes	Ss. 10–18 conditions & perpetuity

Key Takeaways – Unit I

- Transfer of Property Act, 1882 governs transfers by act of parties inter vivos.
- Immovable property includes land, benefits arising out of land, and things attached to the earth.
- Absolute restraints on alienation are void (S. 10); partial restraints may be valid.
- Rule against perpetuity (S. 14) prevents property from being tied up beyond lives in being + minority.
- Vested interest is transferable and heritable even before possession; contingent interest depends on an uncertain event.
- Once an absolute interest is created, restrictions on mode of enjoyment are generally void as repugnant (S. 11).

End of Unit – I

General Principles of Transfer of Property
Concept • Competence • Conditions • Perpetuity • Vested & Contingent Interests

Proceed to Unit-II: Doctrine of Election, Lis Pendens, Part-Performance & Related Doctrines