UNIT – IV

Sale • Lease • Exchange
Gift • Actionable Claims

Rights & Liabilities of Parties • Creation • Determination

Including Landmark Judgments

OVERVIEW

Unit Structure

01

Sale of Immovable Property

Ss. 54–57 – definition, rights & liabilities of seller and buyer

02

Leases of Immovable Property

Ss. 105–117 – creation, rights, determination, holding over

03

Exchange & Actionable Claims

Ss. 118–121 & Ss. 130–137

04

Gifts

Ss. 122–129 – definition, mode, universal & onerous gifts

Sale of Immovable Property – Definition

Section 54: “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Such transfer, in the case of tangible immovable property of the value of ₹100 and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than ₹100, such transfer may be made either by a registered instrument or by delivery of the property.

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

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. It does not, of itself, create any interest in or charge on the property.

Rights and Liabilities of Buyer and Seller

Seller's Duties / Liabilities

- Disclose material defects in property/title
- Produce title documents for examination
- Answer relevant questions as to title
- Execute conveyance on payment
- Take care of property between contract and delivery
- Give possession
- Pay outgoings till ownership passes
- Covenant for title (implied)

Buyer's Duties / Liabilities

- Disclose facts materially increasing value (if known)
- Pay the price
- Bear loss after ownership passes
- Pay outgoings after ownership passes
- Where possession delivered before ownership – care of property

DISTINCTION

Sale vs Contract for Sale

Sale (S. 54):
• Transfer of ownership is complete
• Creates a right in rem
• Requires registered instrument (if value ≥ ₹100)
• Buyer gets title

Contract for Sale:
• Only an agreement that a sale shall take place in future
• Creates a right in personam (personal right against the seller)
• Does not itself create any interest in or charge on the property
• Specific performance can be claimed under the Specific Relief Act

This distinction is fundamental and frequently litigated.

Lease of Immovable Property – Definition

Section 105: A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee the lessee, the price the premium, and the money, share, service or other thing to be so rendered the rent.

Essentials: Transfer of right to enjoy, for a certain time or in perpetuity, for consideration (premium or rent).

How Leases are Made

Section 107:

- A lease of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.
- All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease is made by a registered instrument, such instrument or instruments must be executed by both the lessor and the lessee.

State Governments may permit oral leases accompanied by delivery of possession even for longer terms in certain cases.

Rights and Liabilities of Lessor and Lessee

Lessor’s Rights / Liabilities

- Disclose material defects
- Give possession
- Covenant for quiet enjoyment
- Pay public charges (in absence of contract)
- On transfer of lessor’s interest – rights and liabilities pass to transferee (S. 109)

Lessee’s Rights / Liabilities

- Right to accretions
- Right to avoid lease for destruction of property
- Duty to pay rent
- Duty to keep property in good condition
- Not to use for purpose other than that for which it was leased
- Not to commit waste
- To restore possession on determination

Determination of Lease

A lease determines (S. 111):
(a) By efflux of the time limited
(b) Where time is limited conditionally – on the happening of the condition
(c) On the happening of an event which the parties agree will put an end to the lease
(d) On merger of the interests of lessor and lessee
(e) By express surrender
(f) By implied surrender
(g) By forfeiture (for breach of condition, denial of title, etc.)
(h) On the expiration of a notice to determine or to quit

Forfeiture requires strict compliance with the terms and, in many cases, notice under S. 114A or relief against forfeiture under S. 114.

Effect of Holding Over

Section 116: If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-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.

Acceptance of rent after determination creates a new tenancy by holding over. The terms of the original lease (other than duration) generally apply.

Exchange

Section 118: When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an “exchange”.

A transfer of property in completion of an exchange can be made only in the manner provided for the transfer of such property by sale.

Rights and liabilities of parties (S. 120): Each party has the rights and is subject to the liabilities of a seller as to what he gives and of a buyer as to what he takes.

Exchange of money (S. 121) is governed by the same rules as sale of goods.

Actionable Claims

Actionable claim (S. 3) means a claim to any debt (other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property) or to any beneficial interest in movable property not in the possession (actual or constructive) of the claimant, which the civil courts recognise as affording grounds for relief.

Transfer of actionable claim (S. 130): Can be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent. It is complete and effectual upon the execution of such instrument.

The transferee takes subject to all the liabilities and equities to which the transferor was subject (S. 132).

Notice to the debtor is not necessary to complete the transfer, but is advisable for protection.

Gift – Definition and Essentials

Section 122: “Gift” is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person (the donor) to another (the donee), and accepted by or on behalf of the donee.

Essentials:
1. Transfer of ownership
2. Existing property (movable or immovable)
3. Voluntary
4. Without consideration
5. Acceptance by or on behalf of the donee (must be made during the lifetime of the donor and while he is still capable of giving)

If the donee dies before acceptance, the gift is void.

Transfer how effected (Mode of Gift)

Section 123:
- For immovable property – gift must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.
- For movable property – gift may be effected either by a registered instrument signed as aforesaid or by delivery.

Delivery of movable property may be made in the same way as goods sold are delivered.

Acceptance is essential. Registration alone does not complete the gift if acceptance is lacking.

Landmark: Many decisions emphasise that both registration and acceptance are mandatory for a valid gift of immovable property.

Universal Gifts and Onerous Gifts

Universal Gift (S. 124)

A gift comprising the whole of the donor's property is called a universal gift. The donee is personally liable for all the debts and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

Onerous Gift (S. 127)

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

Where the gift is of several things independently, the donee may accept one and reject the other.

Landmark Judgments

Nathulal v. Phoolchand

On the distinction between sale and agreement to sell and the doctrine of part-performance.

K. Balakrishnan v. K. Kamalam (2004)

Supreme Court on essentials of a valid gift – acceptance is mandatory.

Asokan v. Lakshmikutty (2007)

On the mode of making a gift of immovable property and the necessity of registration + acceptance.

Smt. Shantabai v. State of Bombay

Relevant for understanding transfer of interest in trees / benefits arising out of land.

COMPARATIVE

Sale vs Gift vs Exchange vs Lease

Aspect	Sale	Gift	Lease
Consideration	Price	None	Rent/Premium
Transfer of	Ownership	Ownership	Right to enjoy
Writing	Registered (usually)	Registered (immovable)	Registered (long term)
Acceptance	Not required separately	Mandatory	By taking possession

Key Takeaways – Unit IV

- Sale transfers ownership for a price; a contract for sale only creates a personal right.
- Lease transfers a right to enjoy property for a term in consideration of rent or premium.
- Gift must be voluntary, without consideration, and accepted during the donor's lifetime.
- Gift of immovable property requires a registered instrument attested by two witnesses.
- Actionable claims are transferred by a written instrument; notice to the debtor is not mandatory but protective.
- Holding over after determination of lease, coupled with acceptance of rent, creates a new tenancy.

Quick Reference – Important Sections

Sale – Definition & Mode	S. 54
Rights & Liabilities of Buyer/Seller	S. 55
Lease – Definition	S. 105
How Leases are Made	S. 107
Determination of Lease	S. 111
Holding Over	S. 116
Exchange	Ss. 118–121
Gift – Definition & Mode	Ss. 122–123
Actionable Claims	Ss. 130–137

End of Unit – IV

Sale • Lease • Exchange • Gift • Actionable Claims

Proceed to Unit-V: Law of Trusts