

# Possession and Ownership

## Possession

Possession may be legal or illegal and possession does not mean just acquisition but the claim as well to use and retain perpetually.

### What does possession mean in Law

“Possession” means physical control over a thing or an object. It expresses the closest relation of fact that can exist between a thing and the person, who possess it. In law, possession means it includes not only physical control over a thing but also an intention to exercise that physical control. Example: A has an article in his hand.

### SC Verdict

There is no fixed or precise definition of possession. The difficulty arises by the fact that the nature of possession can be both legal and illegal. Supreme Court verdict in Superintendent Remembrancer Legal Affairs vs Anil Kumar, AIR 1980 SC 52 is important in this context. The court held that it is impossible to work out a completely logical and precise definition of Possession uniformly applicable to all situations in the context of all the statutes.

### What are the Elements of Possession

The definition above clearly indicates that there are two essential elements in possession.

1. Actual power over the object possessed. i.e. corpus possessionis and
2. Intention of the possessor to exclude any interference from others. i.e. animus possidendi.

### Different Kinds of Possession

Possession can be of two types or categories.

- (a) Possession in fact and
- (b) Possession in law.

**Possession in fact or de facto:** It means the possession, which physically exists in term of control over it. It can be seen landlord and tenant where tenant holds possession of house physically or de facto, but it is not possession in law or de jure.

**Possession in law or de jure:** It is the possession which, in the eyes of law, exists. It may exclude physical control over it. It is also called constructive possession. A servant may possess car, but in the eyes of law, it is possession of master. Possession of bailor through bailee is de jure possession on the part of bailor.

**Corporeal and incorporeal possession:** Corporeal possession is the possession of a material or tangible objects, thus it is

continuing exercise of a claim on the use of material or tangible object. Incorporeal possession is the possession of a non-material or intangible object. Thus it is continuing exercise of a claim on the use of non-material or intangible object.

**Kinds of corporeal possession:** Immediate possession means direct or proximate possession without agency and mediates possession means in between or remote possession. It is acquired with agency.

- A being a servant holds something for his master B. A has immediate possession while possession of B is mediate. A has exclusive right of possession on his land while right of way over his land is concurrent
- Where both claim possession, e.g., tenant and landlord.
- In case of bailment, pledge or mortgage, both have claim.

### Animus and corpus: Two elements necessary in possession

- **Animus** is the intent or mental condition or activity or claim of exclusive use of the thing possessed. Cloth at tailor’s shop is in possession of tailor but he may not intend to exclude the owner or subject of the owner. Animus may be legal or illegal.
- **Corpus** is second element, which is essential and completes possession. It is objective part of possession. Both animus and corpus are necessary for possession. The intent to exclude to others from interfering with the object possessed must be evidenced by physical facts.

### Possession and ownership: How is it Acquired?

#### How is Possession Acquired

Possession is acquired when both the animus and corpus are present:

- **By taking:** When someone takes anything, he has possession. It may either be rightful or wrongful possession.
- **By delivery:** The thing is acquired by delivery with consents of previous possessor.
- **Actual delivery:** Actual delivery is a kind in which goods are delivered while constructive delivery is the rental or sold goods.

**How the possession is acquired:** Lease, renting out, pledge, mortgage, theft, fraud, and bailment etc. is the general mode of acquisition of possession. Possession is of two kinds, i.e., possession in fact or de facto and possession in law or de jure. Some discordance in law and fact occurs. Law something presumes which may not actually exist. Normally possession in law and possession in fact exist in a person but it may vary.

According to Salmond, in the whole range of legal theory, there is no conception more difficult than that of Possession. Possession is the most basic relation between man and a thing. Possession is an evidence of ownership.

### How the possession is acquired and lost

- Possession itself is evidence being owner. Pen in my hand is evidence being owner, regardless legally or illegally.
- The person in possession is presumed to be the owner. A house in my possession is presumed my ownership along-with all the things lying in it.
- Anything can be held wrongfully or by fraud.
- Long possession of twelve years confers the title in property, which may belong to others. When a title is conferred to another even without ownership is acquisition of possession.

Possession is defined as "it is continuing exercise of a claim to the exclusive use of it." It does not cover incorporeal possession. Possession is different from ownership but normally possession and ownership lie together.

### When is Possession Complete

- **Power of possession:** If I have something it amounts to possession. A mobile phone in my hand excludes others thus possession is complete. I have my objects under lock and key. They are also possession.
- **Presence of possession:** It doesn't matter whether someone is feeble and unable to exclude other. If something is with him, he possesses it. Even a child can have possession. For example a child who carries cash has the possession of cash.
- **Secrecy:** Mere knowledge that I have cash in bank, which is exclusive knowledge, is possession.
- **Continuing use:** I use pen continuously, read book continuously, use of transport continuously, is possession.
- **Customs:** In some localities people are not allowed to interfere to other things even presence is not there, like in Saudi Arabia where people leave their shops remain open and go to offer prayer and no interference is allowed. It is possession even in absence.
- **Respect of rightful claim:** In law-abiding societies people do not interfere in the right of other and rightful claim generally obtain security from general acquisition.

### What is Res nullius in context of possession

Res nullius means ownerless things or objects. Terra nullius means no man land. A person, who finds lost goods, while passing on road, e.g., a wallet, being first finder, he has good title against the whole world except the true owner, even if it is found on another person property without committing trespass. This is the rule. Any other person who looks at finder of lost goods cannot demand his share from lost goods.

There are three exceptions in this rule:

- Owner of the property on which the thing is found is in possession of the thing itself as well as property, or
- If the finder is servant or agent then master or principal has title, or

- Wrongful act does not constitute possession. Trespass is not allowed.

Natural resources in economic zone like water, sea, land etc. belong to government. If treasure comes out from others property, it will also belong to government.

### Examples of Different kinds of Possession

#### Mediate and Immediate Possession

Mediate or Indirect Possession

- (a) 'X' has a car, which he leaves with his driver. The possession of the driver will be immediate whereas the Possession of 'X' will be mediate.
- (b) 'A' purchased a house through his agent and the agent got the possession. A's possession is said to be the mediate possession.

#### Immediate or Direct Possession

It is also called as Direct Possession. Direct or primary possession by a person over a particular object, which acquires or gets directly or personally. In immediate possession, as the thing is in possession of the possessor directly, he has higher degree of control over such thing. It means that there is no other person holding the thing.

- (a) 'X' has a car and he keeps it in his garage, this constitutes immediate possession.
- (b) 'A' purchased a house and takes Possession of the property it is called direct or immediate Possession.

#### Constructive Possession

Constructive possession is not actual possession it is a possession in law and not possession in fact. According to Pollock and Wright, it is a possession which arises only by the construction of law.

Example : The delivery of the keys of a building.

#### Adverse Possession

It means holding the land on his own behalf of some other person. if adverse possession continues peaceful and undisturbed for that number of years, he can claim ownership and the true owner's right( ownership) gets extinguish

#### De facto Possession

De facto Possession exists where the thing is in the immediate occupancy of a party. The person in de facto possession has the physical control of the thing to the exclusion of others and has Animus and Corpus over the material object. De facto possession may be described as actual Possession.

#### De jure Possession

De jure possession can be described as possession in law. De jure possession exists when person claims a thing as his own in natural normal legal manner by occupying a thing without any dispute as to his legal right to possess and enjoy the thing.

#### Why Law Protects Possession

The possessor has better title against the whole world, except true owner. Even if the possession is wrongful, the possessor if deprived of wrongfully, he is protected by law providing for possessory remedy.

There are many reasons for the protection of possession

1. According to the philosophical School of jurists, possession is protected because a man by taking possession of an object has brought it within the sphere of his will. The freedom of the will is the essence of personality and has to be protected so long as it does not conflict with the universal will which is the State.
2. Possession is an Evidence of ownership, Section 110 of Indian Evidence Act 1872- Provides ' when any question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not owner is on the person who affirm that he is not the owner.
3. The possession even if it is wrongful is a good title against the whole world except the true owner.
4. Possession is protected for the preservation of peace: It is the natural human Instinct that he does not easily part of with what he possesses. The interference with the possession leads to violence. Thus the protection is given to the Possession to aid criminal law and it prevents a breach of peace.
5. Section 145 of CrPC deals with the dispute of immovable property to provide speedy remedy for the prevention of breaches of peace out of such dispute. The object of this section is to enable an executive Magistrate to intervene and pass a temporary order in regard to the possession of the property in dispute, till the competent civil court determines the right of the parties.
6. Possession is protected as a part of law of tort. Law protects possession not only from disturbance by force but from disturbance by fraud. The protection thus afforded as a part of the law of tort.
7. **Section 53a Transfer of Property :** Doctrine of part performance which provides, there is a contract of sale in respect of immovable property where in transferor by writing, signed by him agrees to transfer such immovable property and the transferee has taken the Possession of the immovable property and continuous to be in possession of immovable property and the transferee has done something in furtherance of such transfer and ready and willing to perform transfers have done something his part under the contract of transfer, then even though such contract is required to be registered by any law and not registered in fact then also the transferor is debarred from claiming any right against such transferee.
8. **Section 47 sale of Goods Act:** right of the seller to lien. The seller if unpaid seller is and if the Possession is still with the seller he can retain the goods.
9. **Right of Bailee in contract of bailment:** Indian Contract Act 1872, Section. 170, 171. The Bailee too has a right to lien the goods bailed to unless he is paid remuneration by Bailor till then he is entitled to keep the position of the goods.
10. **In offence of theft in IPC Section 378:** Possession is essential element. Even though the possession was wrongful and the Possession of such thing is taken without the consent of the possessor with dishonest intention.

## Transfer and Acquisition of Possession

Transfer or acquisition of possession can be done in three ways, Viz., by taking, by delivery and by the operation of law.

1. As regards the acquisition or transfer of possession by taking, it is done without the consent of the previous possessor. This also may be done in two ways. One is called the rightful taking of possession and the other the wrongful taking of possession. A shopkeeper is entitled to get some money from a customer. This is an example of the rightful taking of possession. If a thief steals from an individual, his acquisition of possession is wrongful. However, if a person captures a wild animal which does not belong to anybody, possession is called original.
2. Another way of acquisition of possession is by delivery or tradition in such a case, a thing is acquired with the contents and cooperation of the previous possessor, delivery is of two kinds, Viz., Actual and constructive. In the case of actual delivery immediate possession is given to the transferee. There are two categories of actual delivery.  
Constructive delivery is that which is not direct or actual. There are certain things which cannot actually be Transferred by the owner to the purchaser or by the transferor to the transferee. In such Cases, constructive delivery alone is possible. There are three kinds of constructive delivery and those are traditio brevi manu, Constitution possessorium and attornment in the case of of traditio brevi manu, possession is surrendered to one who has already immediate possession. In such a case, it is only the Animus that is transferred as the corpus of possession already with the transferee.
3. Transfer of possession can be made by the operation of law as well. This happens when, as a result of law, possession changes hands. If a person dies, the possession of his property is transferred to his successor and legal representatives.

## Case Laws

### Relevant case law:

#### (a) *Elves v. Brigg Gas Co. 1886 Chancery Division.*

**Fact:** In this case the plaintiff was the owner of the land. He gave his land to defendant Company on lease for the purpose of excavation and erection of gas works thereon. During the course of excavation one of the man of the defendants Company found a pre-historic boat buried 6 feet below the surface.

**Issue:** Issue before the Court was whether the boat belonged to the landlord or lessee.

**Held:** J. Chitty observed that the landlord was entitled to the boat against the Company though it was discovered by the Company. It was observed that it was immaterial that the landlord was not aware of the existence of the boat. He was in possession of the ground not merely of the surface. Hence everything that lay beneath the surface down to the center of the earth consequently in possession of the boat. It did not matter that the plaintiff was not aware of the existence of the boat.

**Conclusion:** Possession is the most basic relation between man and a thing. Possession is *prima facie* a proof or an evidence of

ownership there is no fixed or precise definition of possession because it is legal as well factual concept. The four essentials of possession are subject matter of possession, physical control, intention and knowledge. Possession is nine points in law and law provides remedies to person having possession.

### **Ownership In Jurisprudence**

According to Hibbert ownership includes four kinds of rights within itself.

- Right to use a thing
- Right to exclude others from using the thing
- Disposing of the thing
- Right to destroy it.

#### **Austin's definition**

Austin while defining ownership has focused on the three main attributes of ownership, namely, indefinite user, unrestricted disposition and unlimited duration.

- Indefinite User
- Unrestricted Disposition
- Unlimited Duration

The abolition of Zamindari system India , the abolition of privy purses, nationalization of Bank etc. are some example of the fact that the ownership can be cut short by the state for public purpose and its duration is not unlimited. Austin's definition has been followed by Holland. He defines ownership as plenary control over an object. According to him an owner has three rights on the subject owned

- Possession
- Enjoyment
- Disposition

### **MODERN LAW AND OWNERSHIP**

Under modern law there are the following modes of acquiring ownership which may be broadly classed under two heads, viz.,

#### **Original mode**

#### **Derivative mode**

The original mode is the result of some independence personal act of the acquire himself. The mode of acquisition may be three kinds

- Absolute when a ownership is acquired by over previously ownerless object
- Extinctive, which is where there is extinctive of previous ownership by an independence adverse act on the part of the acquiring. This is how a right of easement is acquiring after passage of time prescribed by law.
- Accessory that is when requisition of ownership is the result of accession. For example, if three fruits, the produce belongs to the owner unless he has parted with to the same. When ownership is derived from the previous version of law then it is called derivate acquisition. That is derived mode takes place from the title of s prior owner. It is derived either by purchase, exchange, will, gift etc. Indian Transferee Acts of property rules for the transfer of immovable property, Sale of goods Acts for the transfer of property of the firm and the companies Act for the transfer of company property.

### **SUBJECT MATTER OF OWNERSHIP**

Normally ownership implies the following:

- The right to manage
- The right to possess
- The right to manage
- The right to capital
- The right to the income

### **CHARACTERISTICS OF OWNERSHIP**

An analysis of the concept of ownership, it would show that it has the following characteristics: Ownership ma either be absolute or restricted, that is, it may be exclusive or limited. Ownership can be limited by agreements or by operation of law. The right of ownership can be restricted in time of emergency. An owner is not allowed to use his land or property in a manner that it is injurious to others. His right of ownership is not unrestricted. The owner has a right to posses the thing that he owns. It is immaterial whether he has actual possession of it or not.

### **KINDS OF OWNERSHIP**

There are many kinds of ownership and some of them are corporeal and incorporeal ownership, sole ownership and co-ownership, legal and equitable ownership, vested and contingent ownership, trust and beneficial ownership, co- ownership and joint ownership and absolute and limited ownership.

#### **Corporeal and Incorporeal Ownership**

Corporeal ownership is the ownership of a material object and incorporeal ownership is the ownership of a right. Ownership of a house, a table or a machine is corporeal ownership. Ownership of a copyright, a patent or a trademark is incorporeal ownership.

#### **Trust and Beneficial Ownership**

Trust ownership is an instance of duplicate ownership. Trust property is that which is owned by two persons at the same time. The relation between the two owners is such that one of them is under an obligation to use his ownership for the benefit of the other. The ownership is called beneficial ownership. The ownership of a trustee is nominal and not real, but in the eye of law the trustee represents his beneficiary. In a trust, the relationship between the two owners is such that one of them is under an obligation to use his ownership for the benefit of the other. The former is called the trustee and his ownership is trust ownership. The latter is called the beneficiary and his ownership is called beneficial ownership.

#### **Legal and Equitable Ownership**

Legal ownership is that which has its origin in the rules of common law and equitable ownership is that which proceeds from the rules of equity. In many cases, equity recognizes ownership where law does not recognize ownership owing to some legal defect. Legal rights may be enforced in rem but equitable rights are enforced in personam as equity acts in personam. One person may be the legal owner and another person the equitable owner of the same thing or right at the same time.

The equitable ownership of a legal right is different from the ownership of an equitable right. The ownership of an equitable mortgage is different from the equitable ownership of a legal mortgage.

### Vested and Contingent Ownership

Ownership is either vested or contingent. It is vested ownership when the title of the owner is already perfect. It is contingent ownership when the title of the owner is yet imperfect but is capable of becoming perfect on the fulfillment of some condition. In the case of vested ownership, ownership is absolute. In the case of contingent ownership it is conditional. For instance, a testator may leave property to his wife for her life and on her death to A, if he is then alive, but if A is dead to B. Here A and B are both owners of the property in question, but their ownership is merely contingent.

### Sole Ownership and Co-ownership

Ordinarily, a right is owned by one person only at a time. However, duplicate ownership is as much possible as sole ownership. When the ownership is vested in a single person, it is called sole ownership; when it is vested in two or more persons at the same time, it is called co-ownership, of which co-ownership is a species. For example, the members of a partnership firm are co-owners of the partnership property. Under the Indian law, a co-owner is entitled to three essential rights, namely

- Right to possession
- Right to enjoy the property
- Right to dispose

### Co-ownership and Joint Ownership

According to Salmond, "co-ownership may assume different forms. Its two chief kinds in English law are distinguished as ownership in common and joint ownership. The most important difference between these relates to the effect of death of one of the co-owners.

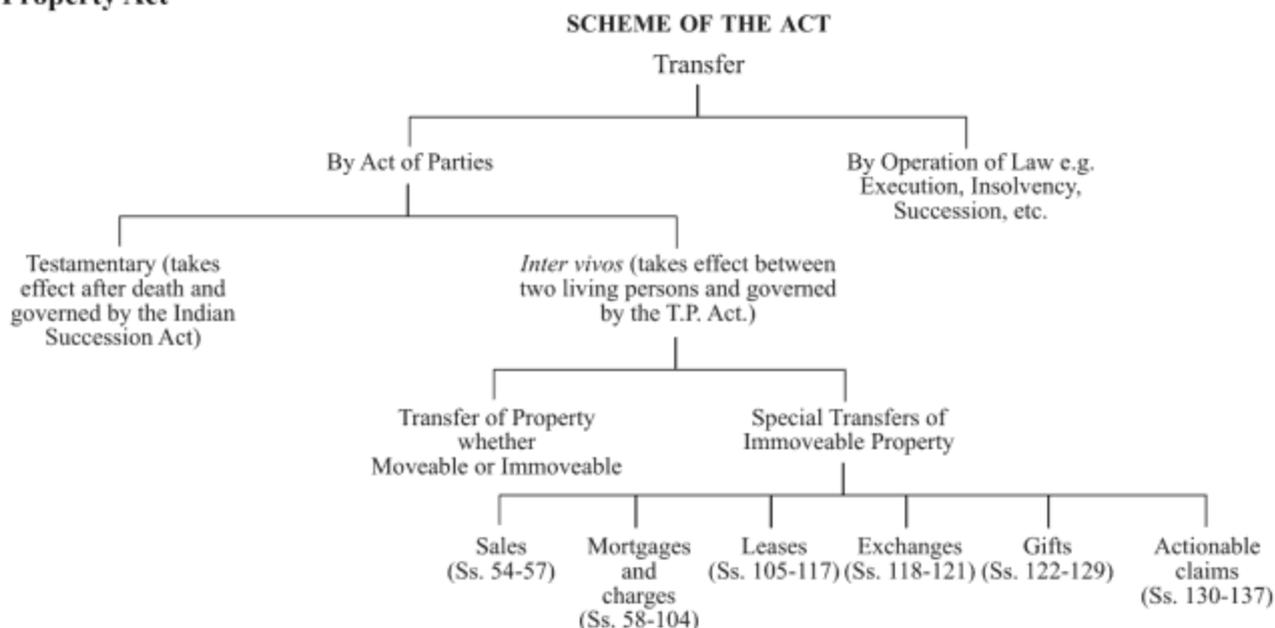
### Limited Ownership

An absolute owner is the one in whom are vested all the rights over a thing to the exclusion of all. When all the rights of ownership, i.e. possession, enjoyment and disposal are vested in a person without any restriction, the ownership is absolute. But when there are restrictions as to user, duration or disposal, the ownership will be called a limited ownership. For example, prior to the enactment of the Hindu Succession Act, 1956, a woman had only a limited ownership over the estate because she held the property only for her life and after her death; the property passed on to the last heir or last holder of the property. Another example of limited ownership in English law is life tenancy when an estate is held only for life.

### Difference between Possession and Ownership

No	Possession	Ownership
1	<b>Meaning:</b> "Possession" literally means 'physical control over a thing or an object'. The possessor has better title against the whole world, except the true owner. Possession is nine points in law.	<b>Meaning:</b> The term ownership is derived from Latin word 'own' which means "to have or to hold a thing." One holds a thing as his own is called owner and will have the right of ownership over it. Therefore the term ownership literally means legitimate and absolute right of a person over a thing.
2	<b>Definition :</b> It is very difficult to define the term possession. Some jurists have given different definitions. 1. <b>Savigny:</b> Savigny defines possession as, "intention coupled with physical power to exclude others from the use of material object." 2. <b>According to John Salmond</b> Possession is the continuing exercise of a claim to the exclusive use of an object.	<b>Definition:</b> Different writers defined the term ownership. Prominent among them are as follows 1. <b>Austin:</b> ownership is a right availing against the world indefinite in point of user, unrestricted in point of disposition and unlimited in point of duration over a thing. 2. <b>Holland:</b> Ownership is a plenary control over an object. The owner has three rights on the object owned. 1. possession 2. enjoyment 3. disposition
3	Possession is the most basic relation between man and a thing.	Ownership is the relation of the person with an object forming the subject matter on ownership.
4	The Transfer of possession is comparatively easier and less technical	The transfer of ownership in most cases involves a technical process of conveyancing
5	Possession is <i>prima facie</i> a proof or a evidence of ownership.	It consists bundle of rights and all the rights are right in rem.

## Transfer of Property Act



### Important Definitions

#### Absolute interest

It means ownership which consists of a bundle of rights, rights to possessions, right to enjoyment etc. or any other way so that an owner can deal or dispose of.

#### Reversion

The residue of an original interest which is left after the grantor has granted the lessee a small estate. Example If a property has given on lease for 5 years, after the period of 5 years, the 'property which reverts back to him is called the reversion or reversionary interest.

#### Remainder

When the owner of the property grants a limited interest in favour of a person or persons and gives the remaining to others, it is called a "remainder". For instance, A the owner of a land transfers property to B for life and then to C absolutely. Here the interest in favour of B is a limited interest, so after B's death the property will go to C, interest is called a remainder.

#### Vested Interest and Contingent Interest

##### Vested interest (Section -19)

- Word vest has two references here:
  - Vested in possession.
  - Vested in interest.

- Vested in possession means right to present possession of property,
- Vested in interest means present right to future possession of property,
- Vested interest means interest created in favour of person which is not subject to happening of an event or if subject to the happening of an event, then such event is bound to happen.

##### Example:

- Property is given to A for life with a remainder to B, A's right is vested in possession; B's right is vested in interest.
- Vested interest is transferable and heritable.
- If transferee dies before taking possession of property, such property passes to his legal representative.

##### Contingent interest

- Contingent interest means interest, created in favour of person, which will take effect on happening or non-happening of specified uncertain event
- **Example** A transfer property to B until B marries, and after marriage of B, to C. C has contingent interest in property.

Basis	Vested Interest	Contingent Interest
<b>Condition</b>	It does not depend on fulfillment of any condition.	It depends upon fulfilment of condition.
<b>Right and Enjoyment</b>	It present immediate right but its enjoyment may be postponed to some future date.	Right of enjoyment accrues on happening of an event which is uncertain.
<b>Transferee's Death</b>	It is not defeated by death of transferee	It is defeated by death of transferee
<b>Transferability</b>	It is transferable and heritable.	Contingent interest is non transferable

## Movable and immovable property

### Movable property

- Movable property is not defined under Transfer of Property Act.
- As per General Clauses Act, 1897 Movable property means “property of every description except immovable property”.
- As per Section 2(9) of Registration Act it includes property of every description excluding immovable property but including standing timber, growing crops and grass.

### Example of movable property

- Machinery fixed on land temporary.
- Intellectual property right.
- Standing timber and growing grass
- Right to recover maintenance allowance.
- Royalty.
- Copyright.

### Immovable Property

- Not defined under Transfer of Property Act. As per Section 3, immovable property does not include standing timber, growing crop and grass. Standing timbers are tree fit for use for building or repairing houses. This is an exception to the general rule that growing tree are immovable property.
  - (1) **Growing Grass:** It includes all vegetables growths which have no existence apart from their produce such as pan leave, sugarcane etc
  - (2) **Grass:** Grass is an movable property, but if it is right to cut grass it would be an interest in land and hence forms immovable property.
- As per Section 3(25), General Clauses Act, 1897 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.
- The Indian Registration Act expressly includes under to immovable property the benefits to arise out of land, hereditary allowances, rights of way, lights, ferries and fisheries.
- In the case of Sukry Kurdepa v. Goondakull (1872. court has explained that movability may be defined to be a capacity in a thing of suffering alteration. On the other hand, if a thing cannot change its place without injury to the quality it is immovable.

### Example of immovable property

- Chattel embedded in earth.
- Easement.
- Right of way.
- Right of enjoyment of immovable property under lease.
- A right of fishery.
- A right to collect rent of immovable property.
- Interest of mortgagee.

## Rules relating to transfer of property

### Transfer may be gift, sale, mortgage, pledge, charge, lease, actionable claims. Meaning of transfer (Whether movable or immovable) - Section 5

- Transfer of Property means an act by which a living person conveys property in present or in future to one or more other living person, to himself, and one or more other living person.
- Living person” includes a company or association or body of individuals whether incorporated or not.

### Legal rules for a valid transfer

- Property must be transferable.
- Transferor and transferee must be competent.
- Consideration and object of transfer must be lawful.
- Transfer must take place as per method prescribed under the Act.

### Who can transfer property – Section 7

- Every person, competent to contract and having ownership can transfer property
- A minor can be a transferee but a minor is not competent to be a transferor
- Persons who are authorised to transfer property can also transfer property validly

### Subject matter of transfer – Section 6

Every kind of property can be transferred. But following properties cannot be transferred:

- Chance of an heir apparent.
- Right of re-entry.
- Transfer of easement.
- Restricted interest.
- Right to future maintenance.
- Right to sue.
- Transfer of public office, salary and pension

### Formalities for transfer – Section 54

- Movable property
  - Orally (by delivery of possession)
  - Writing (by executing agreement)
- Immovable property
  - Tangible
- Value of 100 Rs. or above (Registration mandatory)
- Value of less than 100 Rs. (Registration optional)
  - Intangible
- Registration compulsory

### Property which cannot be transferred – Section 6

**General Rule:** Every kind of property can be transferred. But following properties cannot be transferred:

#### Chance of heir apparent (Spes successionis)

- This means an interest which has not arisen in future. It is in anticipation or hope of succeeding to an estate of a

deceased person. Such a chance is not property and as such cannot be transferred, if it is transferred, the transfer is wholly void.

- **Example:** A is the owner of the property and B is his son. B is the heir of A. This type of property which B hopes to get after the death of the father cannot be transferred, during the life time of A.

### Right of re- entry

- It means right of lessor to re-claim the leased property from lessee on breach of contract or express condition. It is personal benefit which can't be transferred.
- **Example:** If A leases his property to B with a condition that if he sublets the leased land, A will have the right to reenter, i.e., the lease will terminate. This right to reenter is personal benefit available to A, which can't be transferred.

### Transfer of easement

- An easement means an interest in land owned by another that entitled his holders to a specific limited use or enjoyment. An easement cannot be transferred.
- **Example:** 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 A transfers the house itself to C, the easement is also transferred to C.

### Restricted interest

- Certain rights enjoyment of which is reserved for certain person. If it is so, it is known as restricted interest. Restricted interest can't be transferred to another person. It includes 'religious office'.
- **Example:** The right of PUJARI in a temple to receive offering. The right of WIDOW under Hindu law to residence.

### Right to future maintenance

- Right to future maintenance is personal benefit to whom it is granted. However arrears of past maintenance can be transferred.
- **Example:** The right of a Hindu widow to maintenance is a personal right which cannot be transferred.

### Right to sue

- A mere right to sue cannot be transferred. The right refers to a right to damages arising both out of contracts as well as torts.
- **Example:** A commits an assault on B. B can file a suit to obtain damages; but he cannot assign the right to C and allow him to obtain damages.

### Transfer of public office

It is against public policy to transfer public offices, salary and pension. Pension and salary are given on personal basis, it can't be transferred.

### Occupancy Rights

- Transfer of occupancy rights of a tenant is prohibited.

- **Example:** Tenant can't transfer his right of tenancy and farmer can't transfer his right to land if he himself is a lease.

### Restraint on transfer or rule against inalienability

#### Restraint on transfer - Section 10

- If any property is transferred subject to a condition or limitation which absolutely restrains the transferee from parting with or disposing of his interest in the property such condition or limitation and not the transfer itself is void.
- Restraint on alienation of property may be either absolute or partial.
- Absolute restraint is void and transfer is valid, while partial restraint as regard to time, place or person is valid.
- **Absolute restraint:** If A transfers property to B and his heirs with a condition that if the property is alienated, it should revert back to A. Such a condition, being absolute, is void.
- **Partial restraint:** A transfers property to B with condition that he should not alienate it in favour of D who is his trade competitor. It contains partial restraint and therefore valid.

#### Exceptions to rule of restraint on transfer:

- In case of lease transition, lessor can impose condition that the lessee shall not sub lease it.
- In case of married woman, a condition that she will not have right during her marriage, to transfer the property.

### Restraint on enjoyment - Section 11

- When property is transferred absolutely, transferee has right to enjoy property as he likes,
- When transferor place restriction on the enjoyment of property which is transferred to transferee, restriction is treated as clog on property and such restriction is void.
- **Example:** A sells his house to B with condition that only B shall reside in the house. The condition is invalid.

**Exception to Section 11:** If a person transfers a property to another keeping some other property for himself, he can impose certain condition which may interfere with the rights of enjoyment of the transferee.

**Example:** A person has two adjoining houses, one of which is transferred, he may impose a condition not to construct a second floor on a property because transferor will not be able to enjoy sunlight.

### Condition as to insolvency - Section 12

- If person transfer property to another person with condition that property will be revert to transferor if transferee becomes insolvent, It is invalid condition.
- **Exception:** If lessor reserve right to get back leased property on declaration of lessee as insolvent, it is valid condition.

### Illegal or impractical condition - Section 25

- Interest created in a property under transfer, which depends on a condition the performance or satisfaction of which is either impracticable or disallowed under law or fraudulent or harmful to the person or property of another, is invalid.

# EXERCISE

**DIRECTIONS (Qs. 1-2):** Answer the following questions after application of the facts on principle.

1. **Legal Principle:** Possessor has better claim against all except the real owner.  
**Facts:** A boy finds a jewel and took it to the shop of the defendant, a goldsmith. The defendant refused to return the same on the ground that the boy is not the real owner. The boy (Plaintiff) brings an action against the goldsmith. Which one of the followings is the most appropriate answer?
  - (a) Defendant is entitle to retain the jewel because plaintiff is not the real owner.
  - (b) Defendant is entitle to retain the jewel because the plaintiff is only the finder.
  - (c) Plaintiff is entitle to the jewel under the facts his title is superior to whole world except against the true owner, and the defendant is not representing the true owner.
  - (d) None
2. **Principle:** Under the Transfer of Property Act, 1882 a property must be transferred by one living person to another living person. The Act deals only with transfer of property between living persons.  
**Facts:** "X" wants to transfer his property to the presiding deity in a temple situated within the estate of "A".
  - (a) Transfer of property by "X" will be valid
  - (b) Transfer of property by "X" will be invalid
  - (c) Transfer of property by "X" to the presiding deity will become a valid transfer to "A"
  - (d) None of the above is correct

**DIRECTIONS (Qs. 3-8):** Each Question consists of legal propositions/principles (hereinafter referred to as 'Principle') and facts. These principles have to be applied to the given facts to arrive at the most reasonable conclusion.

*Such principles may or may not be true in the real sense, yet you have to conclusively assume them to be true for the purposes of this section. In other words, in answering the following questions, you must not rely on any principles except the principles that are given herein below for every question.*

*Further, you must not assume any facts other than those stated in the question. The objective of this section is to test your interest towards study of law, research aptitude and problem solving ability even if the 'most reasonable conclusion' arrived at may be unacceptable for any other reason. It is not the object of this section to test your knowlege of law.*

3. **Principle:** Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the

transferor may acquire in such property at anytime during which the contract of transfer subsists.

**Facts:** 'A', a Hindu who has separated from his father 'B', sells to 'C' three fields, X, Y and Z representing that 'A' is authorised to transfer the same. Of these fields Z does not belong to 'A', it having been retained by 'B' on the partition; but on B's dying 'A' as successor obtains Z and at that time 'C' had not cancelled the contract of sale.

- (a) 'A' can sell Z to a third party
  - (b) 'A' is not required to deliver Z to 'C'
  - (c) 'A' is required to deliver Z to 'C'
  - (d) None of the above statements
4. **Principle:** Under the Transfer of Property Act, 1882 a property must be transferred, by one living person to another living person. The Act deals only with transfer of property between living persons.  
**Facts:** 'X' wants to transfer his property to the presiding deity in a temple situated within the estate of 'A'.
  - (a) Transfer of property by 'X' will be valid
  - (b) Transfer of property by 'X' will be invalid
  - (c) Transfer of property by 'X' to the presiding deity will become a valid transfer to 'A'
  - (d) None of the above
5. **Principle:** Where there is transfer of ownership of one thing for the ownership of some other thing it is called exchange, while transfer of ownership for consideration of money is called sale, whereas without consideration it becomes gift.  
**Facts:** 'A' transfers his house worth ₹50 lakh to 'B' for a shopping building worth the same amount, as consideration from 'B'
  - (a) The transaction is a gift
  - (b) The transaction is a sale
  - (c) The transaction is a an exchange
  - (d) The transaction is a mortgage
6. **Principle:** A gift comprising both existing and future property is void as to the latter.  
**Facts:** 'X' has a house which is owned by him. He contracted to purchase a plot of land adjacent to the said house, but the sale (of the plot of land) in his favour is yet to be completed. He makes a gift of both the properties (house and land) to 'Y'.  
*Under the afore-mentioned circumstances, which of the following derivations is correct?*
  - (a) Gift of both the properties is valid
  - (b) Gift of both the properties is void
  - (c) Gift of house is void, but the gift of the plot of land is valid
  - (d) Gift of house is valid, but the gift of the plot of land is void
7. **Principle:** The transferor of goods cannot pass a better title than what he himself possesses.

**Facts:** 'X' sells a stolen bike to 'Y'. 'Y' buys it in good faith. As regards the title to bike, which of the following derivations is correct?

- (a) The real owner cannot get back the bike from 'Y'
- (b) 'Y' will get no title, as transferor's (X's) title was defective
- (c) 'Y' will get good title, as he is a bona fide buyer
- (d) 'Y' will get good title, as he is a bona fide buyer

8. **Principle:** Interference with another's goods in such a way as to deny the latter's title to the goods amounts to conversion and thus it is a civil wrong. It is an act intentionally done inconsistent with the owner's right, though the owner may not know of, or, intend to challenge, the property or possession of the true owner.

**Facts:** 'R' went to a cycle stand to park his bicycle. Seeing the stand fully occupied, he removed a few bicycles in order to rearrange a portion of the stand and make some space for his bicycle. He parked his bicycle properly, and put back all the bicycles except the one belonging to 'S'. In fact, 'R' was in a hurry, and therefore, he could not put back S's bicycle. Some body came on the way and took away S's bicycle. The watchman of the stand did not take care of it assuming that the bicycle was not parked in side the stand. 'S' filed a suit against 'R' for conversion.

Which of the following derivations is correct?

- (a) 'R' could not be held liable for the negligence of the watchman.
- (b) 'S' would succeed because R's act led to the stealing of his bicycle.
- (c) 'S' would not succeed because 'R' did not take away the bicycle himself
- (d) 'S' would not succeed because R's intention was not bad

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**DIRECTIONS (Qs. 9-11):** Each problem consists of a set of rules and facts. Apply the specified rules to the set of facts and answer the questions. In answering the following questions, you should not rely on any rule(s) except the rule(s) that are supplied for every problem. Further, you should not assume any fact other than those stated in the problem. The aim is to test your ability to properly apply a rule to a given set of facts, even when the result is absurd or unacceptable for any other reason. It is not the aim to test any knowledge of law you may already possess.

**Rules:**

- A. Whoever intending to take any moveable property out of the possession of any person without that person's consent, moves that property out of his or her possession, is said to commit theft.
- B. A person who, without lawful excuse, damages any property belonging to another intending to damage any such property shall be guilty of causing criminal damage.
- C. Damage means any impairment of the value of a property.

**Facts:**

Veena, an old lady of 78 years, used to live with her granddaughter Indira. Veena was ill and therefore bedridden for several months. In those months, she could not tolerate any noise and it 'became quite difficult to clean her room. After she died, Indira hired a

cleaner, Lucky, to clean the room and throw away any rubbish that may be there.

There was a pile of old newspapers which Veena had stacked in a corner of her room. Lucky asked Indira if he should clear away the pile of old newspapers, to which she said yes, Lucky took the pile to a municipality rubbish dump. While Lucky was sorting and throwing away the newspapers, he was very surprised to find a beautiful painting in between two sheets of paper. He thought that Indira probably wouldn't want this old painting back, especially because it was torn in several places and the colour was fading. He took the painting home, mounted it on a wooden frame and hung it on the wall of his bedroom. Unknown to him, the painting was an old 'masterpiece, and worth twenty thousand rupees. Before mounting the painting, Lucky pasted it on a plain sheet of paper so that it does not tear any more.

By doing so, he made its professional 'restoration very difficult and thereby reduced its value by half.

Lucky's neighbour Kamala discovered that the painting belonged to Indira. With the motive returning the painting to Indira, Kamala climbed through an open window into Lucky's room when he was away one afternoon and removed the painting from his house.

9. Has Lucky committed theft?

- (a) Yes, Lucky has committed theft of the newspapers and the painting.
- (b) No, Lucky has not committed theft because he had Veena's consent.
- (c) Yes, Lucky has committed theft of the painting, but not of the newspapers
- (d) No, Lucky has not committed theft because he has not moved the painting out of Veena's possession.

10. Is Lucky guilty of criminal damage?

- (a) No, Lucky is not guilty of criminal damage as he did not intentionally impair the value of the painting.
- (b) Yes, Lucky is guilty of criminal damage as he intentionally stuck the paper on to the painting
- (c) No, Lucky is not guilty of criminal damage as he does not have the painting in his possession anymore.
- (d) No, Lucky is not guilty of criminal damage as he has not destroyed the painting.

11. If Lucky had discovered the painting before leaving Indira's house rather than at the rubbish dump, would he have been guilty of theft in this case?

- (a) Yes, he would be guilty of theft of the newspapers and the paintings.
- (b) No, he would not be guilty of theft.
- (c) Yes, he would be guilty of theft of the painting.
- (d) None of the above.

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**DIRECTIONS: (Qs. 12-14):** Each problem consists of a set of rules and facts. Apply the specified rules to the set of facts and answer the questions. In answering the following questions, you should not rely on any rule(s) except the rule(s) that are supplied for every problem. Further, you should not assume any fact other than those stated in the problem. The aim is to test your ability to properly apply a rule to a given set of facts, even when the result is absurd or unacceptable for any other reason. It is not the aim to test any knowledge of law you may already possess.

**Rules:**

- A. When land is sold, all 'fixtures' on the land are also deemed to have been sold.
- B. If a moveable thing is attached to the land or any building on the land, then it becomes a 'fixture'.

**Facts:**

Khaleeda wants to sell a plot of land she owns in Beghmara, Meghalaya and the sale value decided for the plot includes the fully-furnished palatial six bedroom house that she has built on it five years ago. She sells it to Gurpreet for sixty lakh rupees. After completing the sale, she removes the expensive Iranian carpet which used to cover the entire wooden floor of one of the bedrooms. The room had very little light and Khaleeda used this light-coloured radiant carpet to negate some of the darkness in the room. Gurpreet, after moving in, realizes this and files a case to recover the carpet from Khaleeda.

12. As a judge you would decide in favour of
- (a) Gurpreet because when the price was agreed upon, Khaleeda did not inform her about removing the carpet.
  - (b) Gurpreet because the carpet was integral to the floor of the bedroom and therefore attached to the building that was sold.
  - (c) Khaleeda because a fully-furnished house does not entail the buyer to everything in the house.
  - (d) Khaleeda because by virtue of being a carpet it was never permanently fixed to the floor of the building.

Assume that in the above fact scenario, Khaleeda no longer wants the carpet. She removes the elaborately carved door to the house after the sale has been concluded and claims that Gurpreet has no claim to the door. The door in question was part of Khaleeda's ancestral home in Nagercoil, Tamil Nadu for more than 150 years before she had it fitted as the entrance to her Baghmara house.

13. As a judge you would decide in favour of:
- (a) Khaleeda because while the rest of the building belongs to Khaleeda exclusively, the door is ancestral property and therefore the decision to sell it cannot be Khaleeda's alone.
  - (b) Gurpreet because the door is an integral part of the building as it is attached to it.
  - (c) Khaleeda because the door can be removed from the building and is therefore not attached to it.
  - (d) Gurpreet because the contract is explicitly for the whole house and since the door is part of house, it cannot be removed subsequent to the sale.
14. Amongst the following options, the most relevant consideration while deciding a case on the basis of the above two principles would be:
- (a) Whether the moveable thing was included in the sale agreement.
  - (b) Whether the moveable thing was merely placed on the land or building.
  - (c) Whether the moveable thing had become an inseparable part of the land or building.
  - (d) Whether the moveable thing could be removed.

**DIRECTIONS: (Qs. 15-19):** Each problem consists of a set of rules and facts. Apply the specified rules to the set of facts and answer the questions. In answering the following questions, you should not rely on any rule(s) except the rule(s) that are supplied for every problem. Further, you should not assume any fact other than those stated in the problem. The aim is to test your ability to properly apply a rule to a given set of facts, even when the result is absurd or unacceptable for any other reason. It is not the aim to test any knowledge of law you may already possess.

**Rule A:** An owner of land has the right to use the land in any manner he or she desires. The owner of land also owns the space above and the depths below it.

**Rule B:** Rights above the land extend only to the point they are essential to any use or enjoyment of land.

**Rule C:** An owner cannot claim infringement of her property right if the space above his or her land is put to reasonable use by someone else at a height at which the owner would have no reasonable use of it and it does not affect the reasonable employment of his or her land.

**Ramesh's case:** Ramesh owns an acre of land on the outskirts of Sullurpeta, Andhra Pradesh. The Government of India launches its satellites into space frequently from Sriharikota, near Sullurpeta. The Government of India does not deny that once the satellite launch has traveled the distance of almost 7000 kilometres it passes over Ramesh's property. Ramesh files a case claiming that the Government of India has violated his property rights by routing its satellite over his property, albeit 7000 kilometers directly above it.

15. Applying only Rule A to Ramesh's case, as a judge you would decide:
- (a) In favour of the Government of India because the transgression was at a height at which Ramesh could not possibly have any use for.
  - (b) That ownership of land does not mean that the owner's right extends infinitely into space above the land.
  - (c) In favour of Ramesh because he has the right to infinite space above the land he owns.
  - (d) In favour of the Government of India because it would lead to the absurd result that Ramesh and most other property owners would have a claim against airline companies and other countries of the world whose satellites orbit the earth.

**Shazia's case:** Shazia owns a single storeyed house in Ahmedabad which has been in her family for more than 75 years. The foundation of the house cannot support another floor and Shazia has no intention of demolishing her family home to construct a bigger building. Javed and Sandeep are business partners and own three story houses on either side of Shazia's house. Javed and Sandeep are also Ahmedabad's main distributors for a major soft drinks company. They have erected a huge hoarding advertising their products, with the ends supported on their roofs but the hoarding also passes over Shazia's house at 70 feet and casts a permanent shadow on her terrace. Shazia decides to hoist a huge Indian flag, going up to 75 feet, on her roof. She files a case, asking the court to order Javed and Sandeep to remove the hoarding for all these reasons.

16. Applying only Rule B to Shazia's case, you would decide in favour of:
- Javed and Sandeep because Shazia can easily hoist a flag below 70 feet.
  - Shazia because she has the right to put her land to any use and the court cannot go into her intentions for hoisting a flag at 75 feet.
  - Shazia because she has the absolute right to the space above her land.
  - Javed and Sandeep because hoisting a flag 75 feet above one's roof is not essential to the use and enjoyment of the land.
17. Applying only Rules A and B to Shazia's case, you would decide:
- In favour of Shazia only under Rule A.
  - In favour of Shazia under Rule A as well as B.
  - Against Shazia under Rule B.
  - Against Shazia under Rule A as well as B.
18. Applying only Rule B and C to Ramesh's case, you would decide:
- In favour of Ramesh only under Rule B.
  - In favour of Ramesh under Rule B as well as C.
  - Against Ramesh under Rule C.
  - Against Ramesh under Rule B as well as C.
19. Applying Rule C to Shazia's case, you would decide:
- In her favour because hoisting a 75 feet high flag is reasonable.
  - Against her because a 75 feet high flag is not reasonable.
  - Against her because the hoarding is a reasonable use of the space above her land.
  - In her favour because the permanent shadow cast by the hoarding affects the reasonable enjoyment of her land.
20. **Principle:** Whosoever by his act or omission causes environmental pollution shall be held liable for any loss caused by such pollution. It shall be no defence in such cases that all due diligence or reasonable care was taken while carrying out the act or omission in question.  
**Facts:** Han is carrying on a chemical and fertilizer industry near a bank of a river. In order to prevent and control any kind of harm to the environment, suitable waste treatment and disposal plants were installed in the factory. Due to some sudden mechanical/technical problem, these plants ceased to work properly and, therefore, caused environmental pollution, which ultimately caused substantial harm to the environment and to the people living around the factory. Victims of such pollution file a suit for suitable remedy.
- Victims cannot succeed as necessary precautions to prevent any harm were taken by Han.
  - Victims cannot succeed as the mechanical/technical problem was sudden and, therefore, beyond the control of Han.
  - Victims can succeed as it is the duty of Han to see that no harm is caused to the environment/people due to his activity under any circumstances.
  - Victims could succeed if treatment/ disposal plant were not installed in the factory.
21. **Principle:** If a person transfers movable or in movable property with its full ownership and without any consideration to some other person, then it is called a gift.  
**Facts:** S, who has no child of his own, makes a gift of his house worth ₹ 25 lacs to his nephew R. After completing all the legal formalities required for a valid gift, S says to R that in case of need I will provide that house to S for use without any questions. R does not react to it. After one year of this gift, S really needs that house and request R to make the house available to him, but R refuses to do so.
- R cannot refuse as he got the house without paying any consideration for that.
  - R cannot refuse as S is without children.
  - R can refuse as he has become full owner of the house.
  - R can refuse as he himself may be in need of the house.
22. **Principle:** A gift comprising both existing and future property is void as to the latter.  
**Facts:** "X" has a house which is owned by him. He contracted to purchase a plot of land adjacent to the said house but the sale (of the plot of land) in his favour is yet to be completed. He makes a gift of both the properties (house and land) to "Y".  
 Under the afore-mentioned circumstances, which of the following derivations is correct?
- Gift of both the properties is valid
  - Gift of both the properties is void
  - Gift of house is void, but the gift of the plot of land is valid
  - Gift of house is valid, but the gift of the plot of land is void
23. **Principle:** The transferor of goods cannot pass a better title than what he himself possesses.  
**Facts:** "X" sells a stolen bike to "Y". "Y" buys it in good faith as regards the title to bike. Which of the following derivations is correct?
- The real owner cannot get back the bike from "Y"
  - "Y" will get no title, as transferor's (X's) title was defective
  - "Y" will get good title, as he is a bona fide buyer
  - "Y" will get good title, as has not committed any wrong (stolen the bike)
24. **Principle:** Where there is transfer of ownership of one thing for the ownership of some other thing it is called exchange; while transfer of ownership for consideration of money is called sale, whereas, without consideration it becomes gift.  
**Facts:** "A" transfers his house worth ₹ 50 Lakhs to "B" for a shopping building worth the same amount, as consideration, from "B".
- The transaction is a gift
  - The transaction is a sale
  - The transaction is an exchange
  - The transaction is a mortgage
25. **Legal Principle:** In the law of evidence, a person missing for long and not heard of, for over seven years is presumed to have died.

**Facts:** A, B and C are children of F and M. At the age of 20, A went out in search of a job and was not contacting the family. All attempts to trace A by the family failed. Eight years after the death of the parents, B and C entered into a partition and took equal share in the property of F and M. One year after this, A returned home with his wife and two children and claimed his share in the property. Whether A's claim is legally sustainable?

- (a) Since A was not heard of, for more than eight years, the legal presumption of death will apply and hence, he cannot claim a share in the property.
- (b) It was A's duty to be in touch with the family at least once in a year. The failure of this duty will disentitle him from claiming property.
- (c) A will succeed because he is a legitimate son of F and M.
- (d) B and C are legally bound to give 1/3<sup>rd</sup> share of the property to A.

**26 Legal Principle:** Every partner is liable alone and jointly with other partners for the debts of a partnership firm incurred for the business. Every partner is an agent of every other partner while being a principal in his own right in the business of the partnership.

**Fact Situation:** Varun is a partner in a firm with Chinmoy and Jaffar. Jaffar purchases a car for his personal purpose and obtains credit for the same in the name of the partnership behind the back of the other partners. He fails to pay the due amount on the expiry of the period of credit. Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Varun, Chinmoy and Jaffar are liable to pay for the car since they are partners and the credit was obtained in the name of the firm.
- (b) Varun and Chinmoy are not liable to pay for the car since Jaffar purchased it for his personal purpose.
- (c) Varun, Chinmoy and Jaffar are liable as partners for all credit obtained in the name of the firm even if it is for the personal purpose of a partner.
- (d) Jaffar can use the credit of the firm to make purchases even for personal purposes since he is a partner in the partnership.

**27. Legal Principle:** A characteristic feature of partnerships is the principle of mutual agency, i.e., every partner is an agent for every other partner and will hence be able to bind them by his act, within the business of partnership.

**Fact Situation:** Ram and Shyam are partners of M/s R & S Trading Company which trades in rice varieties. Ram agrees to purchase ten tons of rice from Govind. Ram dies after the rice is delivered to the premises of M/s R & S Trading Company but before the payment of price is made. Is the agreement binding on Shyam?

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Being partners, Ram's agreement to purchase rice for their partnership, is not binding on Shyam.
- (b) Since Ram is no more, the agreement is not binding

on Shyam.

- (c) Being partners, Ram's agreement to purchase rice for their partnership, is binding on Shyam.
- (d) The agreement is binding on Ram and not on Shyam since the rice is delivered only to M/s R & S Trading Company and not to Shyam.

**28. Legal Principle:** 'Gift' means transfer of certain existing property made voluntarily and without consideration, by a donor, to a donee, and accepted by or on behalf of the donee during the lifetime of the donor.

**Facts:** Amit executed a gift deed for property 'X' in favour of Sooraj, who happened to be Amit's loyal servant's son settled in the U.S. Two months thereafter, Amit died without leaving a will regarding his assets. Amit's children initiated steps to partition his entire property, including property 'X' among themselves. At that time, Sooraj came to India, and learning about the gift, claimed the property 'X'.

- (a) Sooraj can legally get the property 'X', as soon as he gets to know about the gift.
- (b) Sooraj cannot legally claim the property 'X' because, the children of Amit have already initiated steps for partition.
- (c) Sooraj can claim the property 'X', because, his acceptance of the gift is implicit by his conduct of claiming the property as soon as he came to know about the gift.
- (d) Sooraj apparently did not comply with the essential requirements of a gift and hence, the entire property including property 'X', can be partitioned among the children of Amit.

**29. Facts:** Nandini, by deed of gift, made over certain landed property to Reena, her daughter. By the terms of the deed, which was registered, it was stipulated that an annuity of ₹ 3,000 should be paid every year to Subhashini, sister of Nandini. Reena executed in Subhashini's favour an agreement promising to give effect to stipulation. The annuity was, however, not paid and Subhashini sued to recover it. Reena is defending herself by claiming that there is no valid contract with Subhashini. Which of the following can be ground/s for court's decision?

- I. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person.
- II. Only a person who is a party to a contract may demand the execution of that contract from other party. But if there is a third party beneficiary to the contract then it is enforced to the extent of his/her benefit.
- III. The agreement is valid as both Reena and Subhashini agreed to it on the same thing in the same sense.
- IV. There is no privity of contract as Subhashini has furnished no consideration. Reena had promised to Subhashini but consideration was furnished by Nandini.

- (a) I, II
- (b) III, IV
- (c) I only
- (d) II only

## Hints & Solutions

1. (c)
2. (b) The possession of a property can be transferred by one living person to another living person. Here transfer of property by 'X' will be invalid.
3. (c) Section 43 of the Transfer of Property Act, is related with this situation, which is, transferred by unauthorised person who subsequently acquires interest in property transferred.  
In this problem, 'A' has not authority to transfer Z because it does not belong to him. But after B's death. 'A' is the immediate successor and subsequently obtains 'Z', so he needs to deliver 'Z' to C and he cannot cancel the contract.
4. (c) According to the provisions of Section 5 of the Transfer of Property Act, 'transfer of property' means an Act by which a living person transfers property, recently or in future, to one or more other living persons or to himself and one or more other living persons.  
In this Section, living person has a company or association of individuals, whether incorporated or not. So, in this situation the transfer of property by X to the presiding deity is not valid.
5. (c) Section 118 of the TRA expresses that when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both thing being money only.  
In this situation, 'A' transfers his house worth ₹50 lakh to B for a shopping building worth the same amount, as consideration from 'B'. Therefore, it is an exchange not consideration.
6. (d) Section 122 of the Transfer of Property Act points out that, 'Gift' is the transfer of certain existing movable or immovable property caused voluntarily and without consideration, by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee.  
The matter of the gift has to be an existing property and not a future property. In this case, gift of house is valid because it is an existing property, but the gift of the plot of land is invalid because it is a future property.
7. (c) According to section 21(1) of the Sale of Goods Act, the transferor of goods cannot pass a better title than he himself possesses. The rule states the common law's traditional favour of the preservation of property rights.  
In this case, Y (buyer) will have a good title, because he is a real buyer.
8. (b) According to the law of Torts, conversion can be said a Tort being liable for damages. It establishes when a person intentionally interferes with personal property belonging to another person.  
In the given case, 'S' would succeed because R's act is under theft of the cycle.
9. (b) Lucky has not committed theft, the reason is that veena had given her consent to clean her room removing the rubbish lying there.
10. (a) Lucky is not guilty of criminal damage, the reason is that he without intention deface the value of the painting.
11. (b) If Lucky had found out the painting before departing from Indira's house rather than at the rubbish Dump, he would not be guilty of theft. The reason is that he had not intention for theft. Intention is essential for this.
12. (b)
13. (b) In this case, decision will go in the favour of Gurpreet because the door is an integral part of the building due to attachment with it.
14. (b)
15. (c) According to Rule (A), decision will be in favour of Ramesh. On the basis of natural law, he has the right to infinite space above his own land.
16. (b)
17. (b) Under the rule of (A) & (B) the decision will be in favour of shazia. The reason is that the sun light is essential to her and it is natural gift for human being. The owner of the land is able to use the land according to his necessity.
18. (d)
19. (d)
20. (c)
21. (c) According to the principle given, when a person transfers property with its full ownership and without any consideration to some other person, then it is called a gift. In this case R can refuse, because he is the full owner of the house which he received as a gift from S after completing all the legal formalities.
22. (d)
23. (b) Since the bike is stolen property, so the title of possessor is defective. The buyer with not get the title.
24. (c)
25. (a) Presumption of death is governed by sections 107 and 108 of the Evidence Act, which allows for presumption of death for a person missing for 7 years to be raised in appropriate proceedings before the court  
Hence option (a) is correct as he went missing for more than seven years and there was no evidence that he was alive so he can be easily presumed to be dead and can not claim his share in property. A dead person does not have any rights or duties.
26. (b) Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the

kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

In the light of the given legal principle and explanation provided above it is clear that Jaffer purchased the car for his personal use and obtained credit for it acting outside his authority behind the back of other partners, he was not acting as an agent of the company or as the partner to Varun and Chinmoy but was acting on behalf of himself and for a personal motive. Hence other two partners are not liable to pay. leading option (2) is the most appropriate statement

27. (c) Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.

Above discussion clearly explains that there is a mutual agency between partners acting with in authority for the purpose of business of partnership,

thus option (3) is the most appropriate statement that is being partner, Ram's agreement to purchase rice for their partnership, is binding on shyam .

28. (d) Section 5 of the Transfer of Property Act, 1882, gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Acceptance - Acceptance of the gift after its execution is a legal requirement and Donee must accept the gift during the lifetime of donor. In case donee fails to accept the gift, it is rendered invalid. The acceptance may be validated by acts such as taking possession of the property.

According to explanation given above acceptance of Sooraj for the gift was a legal requirement, to be fulfilled within the life time of Amit , however in the case presented to us this requirement was not fulfilled and hence Sooraj cannot claim the property "X" and it can be distributed among the children of Amit. Thus option (4) is the correct answer.

29. (a) In this case there is a contract between Nandini and Reena because there is an acceptance of offer by Reena from Nandini. There is a consideration in the promise made in this case and therefore this promise is enforceable. The court will look into this aspect to decide that Reena is liable to pay Suhasini as per the terms of the contract.