



## **FACULTY OF JURIDICAL SCIENCES**

**COURSE: BALLB/BBALLB VI Semester**

**SUBJECT: Law of Property**

**SUBJECT CODE: BAL-603/BBL-603**

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# Lecture-5



## **Transfer of Property – Meaning and Types**

Section 5 of the Act defines “Transfer of Property” as “In the following sections ‘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, or to himself, and one or more other living persons, and “to transfer property” is to perform such act.

In this section “Living Person” includes “a company or association or body of individuals whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.”

The word “property” has not been defined in the Act, but it has a very wide meaning and includes properties of all descriptions. It includes movable properties such as case, books, etc., and includes immovable properties also such as lands or houses. It also includes intangible properties such as ownership, tenancy, copyrights, etc.

The word ‘transfer’ has also very wide meaning. It may be either transfer of all the right and interests in the property or transfer of one or more of subordinate right in the property.

The transfer of property may be made to take place with immediate effect or to take place on a future date; however the property must be in existence at the date of transfer. There can be no transfer of future property. The expression ‘in present or in future’ governs the word ‘conveys’ and not the word ‘property’, e.g., A transfers his property to B for life and then to C. The transfer in favour of B is present (although he gets only life interest) but the transfer in favour of C is future transfer.

The transfer of property as defined under Section 5, is an act between two living persons. Thus the conveyance of the property must be from one living person to another living person. However transferee need not be a competent person like transferor. A transferee may be a minor, insane or child in mother’s womb.

The word “living person” includes corporations and other association of person. A transfer can be made by a person to himself, as for instance when a person vests property in trust and himself becomes the whole trustee.

### **Kinds of Transfer**

The Act contemplates the following kinds of transfers:

- (1) Sale,
- (2) Mortgage,
- (3) Lease
- (4) Exchange, and
- (5) Gift.

Sale is an out-and-out transfer of property. In mortgage, there is a transfer of limited interest in property. A lease is a transfer of a right to enjoy immovable property for a certain time or in perpetuity. Exchange is like a sale, but differs from it as regards the consideration. In sale, the consideration is money, while in exchange, the consideration is another thing. In a gift, there is no consideration.

In *Harish Chandra v. Chandra Shekhar*, AIR 1977 All 44 , it was held that a release-deed is a conveyance, hence a transfer of property. If the release deed states that the releaser was the owner and it shows an intention to transfer his title and its operative word sufficiently was the conveyed the title it would amount to transfer.

### **Transfer of Property Act, 1882 not amounting to Transfer of Property**

As the transfer of property’ means ‘conveying of property’, i.e., creation of new title or interest in the favour of the transferee, if new title or interest has not created in favour of transferee , the property cannot be said to be conveyed, thus no transfer of property.

**Partition-** As nothing new is obtained by a co-sharer on partition, it is not a transfer of property. His specific share, which vested in him earlier, is simply separated.

The only right created in a charge is a right to payment out of the property subjected to charge, thus it is not a transfer. [*Gobind Chandra v. Dwarka Nath*, (1908) 35 Cal 837]

**Relinquishment:**—It is an extinction of a right and therefore, there is nothing left to transfer. Thus a relinquishment by a reversioner of his reversionary interest does not amount to transfer (*Barati Lal V. Salik Ram*, 38 All 107). But if the person in whose favour the ‘release’ is executed, gets certain rights by virtue of such release, the transaction may amount to a transfer [*Maniapp pillai v. Periasami*, (1975) 1 MU 236].

**Surrender.**—It is not a transfer as it is the manager of a lesser estate with a greater one [*Multhan Lal Saha v. Nagendra Nath Adhikari*, (1933) 60 Cal 379].

**Easement.**—The creation of an easement does not amount to a transfer.

**Will.**—Because it operates from the death of the person making it, while the definition contemplates a transfer by a living person, does not fall within the definition of transfer.

**Compromise.**—It may or may not amount to transfer. It depends on the facts and circumstances of each case. In *Hussiaa Banu v. Shivanarayan*, AIR 1968 MP 307, it was held that where one of the parties to a settlement gives up a claim to receive a certain sum of money from the other, in consideration of the latter’s given up the right to certain property claimed by him, it would amount to a transfer.

**Family arrangement/settlement.**— A family settlement entered into by the parties for the purpose of putting an end to the disputes among family members does not amount to transfer, not being an alienation it does not amount to the creation of an interest.

## MULTIPLE CHOICE QUESTION

**1. In which section Transfer of Property defines in T.P Act,1882**

- (a) 2                      (b) 3                      (c) 4                      (d) 5

**2. According to section 5 of the Transfer of Property Act, 1882, living person includes:**

- (a) company or association or body of individuals  
(b) individual human being only  
(c) only important company or associations  
(d) none of the above

**3. Which of the following is not kinds of transfers under Transfer of Property Act,1882**

- (a) Sale,                      (b) Mortgage,                      (c) Lease                      (d) Will

**4. Which of the following is kinds of transfers under Transfer of Property Act,1882**

- (a) Compromise                      (b) Partition  
(c) Exchange                      (d) Family arrangement/settlement

**5. The creation of an easement under T.P Act 1882**

- (a) not amount to a transfer                      (b) amount to a transfer  
(c) Can not say                      (d) None of the above