



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

SUBJECT CODE: BAL-603/BBL-603

NAME OF FACULTY: Dr. Ravi Kant Gupta

Lecture-8



When an Unborn Person Acquires Vested Interest:

Section 20 of the Transfer of Property Act, 1882:

The provisions of **section 20** of the Transfer of Property Act, 1882 mention the concept that in what circumstances unborn person acquires vested interest. Unborn person may not be able to enjoy the possession of property as soon as he is born but he may, however, acquire a vested interest in the property since his birth. Where, on a transfer of immovable property interest is created for the benefit of an unborn person, he acquires upon his birth, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth. The mentioned provision however may be waived off if the terms of the agreement mention a contrary clause.

The section lays down that an interest created for the benefit of an unborn person vests in that unborn person as soon as he is born. Such interest remains vested interest even though he may not be entitled to the enjoyment thereof immediately on his birth.

For example, if “A” transfers an estate to trustees for the benefit of A’s unborn son with a direction to accumulate the income of such estate for a period of ten years from the date of the birth of A’s son and then to hand over the funds to him. A’s unborn son acquires a vested interest upon his birth, although he is not entitled to take and enjoy the income of the property for a period of ten years.

Views of the Apex Court in Reference to the Transfer to Unborn Person:

The Supreme Court of India in various cases from time to time has interpreted the provisions of the Transfer of Property Act, 1882 in respect of the transfer of property done for the benefit of unborn persons. In the famous case of *Girjesh Dutt vs. Datadin*, the Apex Court made important observations. Facts of the case enumerate that “A” made a gift of her properties to “B”, who was her nephew’s daughter. The gift made by A was made for the life of B and then to B’s daughter without power of alienation and if there was no heir of B, whether male or female, then to A’s nephew. B died without having any children. Thus considering the facts of the case, the court held that the gift in favour of unborn daughters was invalid under **Section 13** as the gift was a limited interest and also subject to the prior interest in favour of B.

Another case related to this concept is of *Raja Bajrang Bahadur Singh v. Thakurdin Bhakhtrey Kuer*. In the instant case the Apex Court had observed that no interest can be created in favour of an unborn person but when the gift is made to a class or series of persons, some of whom are in existence and some are non-existent, it does not fail completely, it is valid with respect to the persons who exist at the time of testator's death and is invalid with respect to the rest.

Thus from the above discussion it is clear that the transfer of property can be executed in respect of unborn persons. Though, the transfer cannot be operated directly but it can be executed indirectly by the machinery of trusts. In other words, the interest in favour of the unborn person shall constitute the entire interest in that particular immovable property. The underlying fundamental principle enshrined under section 13 of the Transfer of Property Act is that a person disposing of property to another person shall not create hurdles for the free disposition of that property in the hands of one or more generations.

Thus, for the validity of a transfer in favour of an unborn person, it is important that the whole of the remaining interest of the person transferring the property should be conveyed to the unborn person. Moreover, as soon as the transfer of property comes into operation, the vested interest is also transferred to the unborn person. The transfer of immovable property to unborn persons can, thus take effect only according to the provisions discussed above. Else, the transfer will be declared as void.

MCQ

1. Unborn person acquires interest in property

- (a) Vested interest
- (b) Contingent interest
- © Can not say
- (d) None of the above

2., which one of the following is essential For creating an interest in favor of an unborn person

- (a) Creation of absolute life interest in favor of living persons
- (b) Absolute interest is to be given to unborn person
- (c) Unborn person must be born before the termination of last prior interest
- (d) All of the above

3. Under the provisions of the Transfer of Property Act, 1882, the unborn person acquires vested interest on transfer for his benefit:

- (a) upon his birth
- (b) 7 days after his birth
- (c) 12 days after his birth
- (d) no such provision is made in the Act.

4. Under the provisions of the Transfer of Property Act, 1882 an unborn person acquires vested interest on transfer upon his birth, although

- (a) he may not be entitled to the enjoyment immediately on his birth
- (b) he is entitled after 7 days after his birth
- (c) no such provision is made
- (d) none of the above.

5. Girjesh Dutt vs. Datadin, case is related to

- (a) Unborn person
- (b) rule against perpetuity
- (c) Both (a) and (b)
- (d) None of the above