



# FACULTY OF JURIDICAL SCIENCES

**COURSE: BALLB/BBALLB VI Semester**

**SUBJECT: Law of Property**

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# Lecture-9



## **Rule against perpetuity**

It is basic rule of Transfer of Property that one must enjoy the property absolutely during his lifetime. One cannot be deprived of his right of enjoyment in respect of the property as he like in his lifetime. The policy of the law has been to prevent property from being tied up forever. Perpetuity is an interest, which will not vest till a remote period. One cannot postpone the vesting of the property in the transferee beyond a certain limit. The period for which vesting may be lawfully postponed is called :perpetuity period '.

### **Sec.14 - Rule against perpetuity**

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

The rule against perpetuity in short - ' vesting cannot be postponed beyond the life of living person and minority of Unborn person'. This provision permits perpetuity up to certain period, beyond that period law does not allow perpetuity.

The head note is wrongly worded or Framed, because Section 14 allows to certain extent the postponement of vesting and therefore the title should have been 'rule of perpetuity'.

### **Illustrations -**

1) If an estate is given to a living person, A for life, then to a living person, B for life and then to Unborn son of B. Here the son of B must be in existence on or before the date of expiry of the life estate in favour of B .

2) The vesting of absolute interest in favour of an Unborn person maybe postponed until he attains full age. for example an estate may be transferred to A, living person, and after his death To His unborn son when he attains the age of 18. Such a transfer would not be violative of the rule against perpetuity.

### **Philosophy underlying the principle -**

The general rule is that disfavour perpetuity and it is based on the following Grounds..

### **Jurisprudential aspect**

Sir D. Mulla "Liberty of alienation shall not be exercised or used for its own destruction. This is because if the owner having inherent power to transfer the property uses the right to the extreme and he thereby destroys the further right of alienation of future transferee.

### **Social aspect**

If perpetuities are allowed the property which is the subject matter of the transfer will become ex-commercial, for example put out of Commerce. Though the transferee receives the property, he has no power to alienate it .

### **logical aspect**

Sir D. Mulla , " It is illogical to imagine a dead person below his Grave controlling properties above his grave."

### **Illustration**

- 1) Property to be transferred to A for life then to B for life then to such of B's son as shall First attain the age of 18 years and one day. Transfer is void.
- 2) property transferred to A for life then B for life both A and B are leaving at the date of the transfer. The transfer is valid.

### **Exception:**

following are the nine exception to the rule against perpetuity .

- 1) vested interest is not affected by the rule because once the interest are vested it cannot be bad for remoteness.
- 2) The rule is not applicable to land purchased or held by Corporation.
- 3) Gift to charities, the rule does not apply to transfer for the benefit of public for religious, pious, or charitable purposes.
- 4) Properties settled upon individuals for memorable Public Service.
- 5) The rule against perpetuity does not apply to Personal agreement. for example.. agreement which do not create any interest in the property.
- 6) A covenant of redemption in mortgage does not effect by the rules the rule.
- 7) The does not apply to contracts for Perpetual renewal of lease.

8) The rule also does not apply where only charges is created which does not amount to a transfer of an interest.

9) Contract of preemption also not affected by rule against perpetuity.

#### **Case Law -**

##### **1) Anand Rao Vinayak Vs Administrator general of Bombay,1896 .**

In this case Bombay High Court declared that the gift void as offering against perpetuity when a gift was made of movable property to a son with gift of shares in the property to son's sons son when they should attend the age of 21.

##### **2) Abdul fata Mahomed VS Rasamaya ,1894.**

The privy Council held thar a gift to an Unborn generations is Forbidden by Mohammedan law except in the case of Wakf.

##### **3) Rambaran vs Ram Mohit AIR 1967 S.C. 744 .**

Supreme Court held that the rule against perpetuity does not apply to Personal agreements.

## MCO

### **1. Rule against perpetuity is not applicable to a case where:**

- (a) interest in property is created generation after generation
- (b) property is transferred for the benefit of the public
- (c) contingent interest has been created by transfer
- (d) transfer of property purports to be effective beyond minority of ultimate transferee who has not been in existence at the date of the transfer [MP A.P.P. 2010) Ans. (b)

### **2. Assertion (A): Section 14 of Transfer of Property Act, provides for the rules against perpetuity**

**Reason (R): This rule is based on public policy select the correct answer from the codes given below: Codes:**

- (a) Both (A) and (R) are true and (R) is the correct explanation of (A)
- (b) Both (A) and (R) are true but (R) is not the correct explanation of (A)
- (c) (A) is true but (R) is false
- (d) (A) is false but (R) is true

### **3. Section 14 of the Transfer of Property Act deals with:**

- (a) Rule against perpetuity
- (b) Doctrine of Election
- (c) Doctrine of Apportionment
- (d) Transfer for the benefit of unborn person

### **4. 38. The rules against the perpetuity is provided in section .....of the Transfer of Property Act, 1882**

- (a) 14
- (b) 15
- (c) 16
- (d) 17.

### **5. No transfer of property can operate to create an interest which is to take effect after the life time of one or more persons living at the date of such transfer. These provisions come under:**

- (a) rules against retrospective transfer only
- (b) rules against perpetuity
- (c) rules against prospective transfer
- (d) none of the above.