



## FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB/BBALLB VI Semester

SUBJECT: Law of Property

SUBJECT CODE: BAL-603/BBL-603

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# Lecture-3



# Actionable Claim

Actionable Claim in general terms signifies a claim or a debt for which you can take an action, which means there's a claim and you can approach the court for the enforcement of the same. Here it signifies a debt and the actionable claim holder can move to the court for the recovery of that debt.

## Examples:

1. A lends Rs. 1, 00,000/- to B without any security. The debt given by A is an actionable claim and in case of failure on the part of B to repay it, A can move to the court.
2. A lends Rs. 1, 00,000/- to B. B keeps his property X as a security, which is worth Rs. 10, 00,000/-. This debt is not an actionable claim. Also, there is no need on the part of A to approach the court for the recovery of the same as he already has a security that is worth more than the debt itself. It doesn't mean that A cannot approach the court. But this case will be covered under the mortgage.

## Section 3 of Transfer of Property Act, 1882:

Section 3 of Transfer of Property Act, 1882 defines Actionable Claim.

According to Section 3, an actionable claim is a claim to:

1. any debt which is not secured by:
  - ❖ Mortgage of immovable property, or
  - ❖ Hypothecation, or pledge of movable property

Or
2. Any beneficial interest in movable property, which is not in possession of the claimant. The possession can be actual or constructive.

And the civil court recognizes these claims to be the affording ground for relief. The debt or beneficial interest can be:

1. Existent,
2. Accruing,
3. Conditional
4. contingent

In brief, it can be said that an actionable claim means a claim to an unsecured debt or any interest in movable property which is not in the possession of the claimant.

**Examples:**

1. X owes 500 rupees to Y. This is an actionable claim.
2. X promised Y to buy a product P from him. But later on, he refused to do the same and as a result, Y had to sell P at the loss of Rs. 500. Now Y can claim the damages from X but this claim is not an actionable claim.
3. A agrees to sell to B, a product P in the future. Here B gains a beneficial interest and hence is an actionable claim.
4. The rent due on the part of the tenants is an actionable claim.
5. 10,000 was given by A to B as earnest money for B's house. Later on, B refuses to sell the house to A. The 10,000 rupees given as earnest money is an actionable claim.
6. Life insurance.

**Debt:**

Debt is a certain amount of money given by one person to another and the debtor is under an obligation to pay the money back. When the debt is already due, it is called existing debt and when it is due at present but is to be paid in the future, it is called accruing debt.

When there exists a claim to a certain sum of money but is payable subject to a certain condition, it is called conditional debt. Similarly, when there exists a claim to a certain sum of money but becomes payable on happening of some event/contingency, it is known as contingent debt.

An actionable claim is transferrable. Transfer of Actionable claim is dealt with under Chapter VIII of Transfer of Property Act, 1882. Chapter VIII is the last chapter of TPA and it covers from Section 130 to Section 137.

Section 130 describes the mode of transfer of Actionable Claim. According to it:

1. The transfer can be done only by:
2. An instrument in writing,
3. Signed by the transferor or his duly assigned agent.
4. The transfer can be with or without consideration.
5. The transfer will be complete and effective when executed.

6. The transfer vests all the rights and remedies of the transferor in the transferee.

The section further provides that

- The notice of the transfer to the debtor is not necessary. The payment made by the debtor to the principle creditor would be valid.
- The transferee of the actionable claim has the right to sue on the claim so transferred in his own name. For suing or for claiming the debt, the consent of the transferor would not be needed.

Example: A lends money to B. A transfers the debt to X. The notice of the transfer is provided to B. X demands money from B. B doesn't pay the debt. X can sue B claiming the payment of the debt without obtaining consent from A.

**Exceptions to the Section are:**

1. Negotiable instruments, stocks, shares, debentures
2. The marine policy of insurance
3. Fire insurance policy

Cases falling under Section 38 of Insurance Act, 1938.

## MULTIPLE CHOICE QUESTION

**1. An actionable claim is a claim to:**

- (a) any debt which is not secured
- (b) Any beneficial interest in movable property, which is not in possession of the claimant
- (c) Both (a) and (b)
- (d) neither (a) nor (b)

**2. X promised Y to buy a product P from him. But later on, he refused to do the same and as a result, Y had to sell P at the loss of Rs. 500. Now Y can claim the damages from X but this claim is:**

- (a) an actionable claim
- (b) not an actionable claim
- (c) can not say
- (d) None of the above

**3. The rent due on the part of the tenants is**

- (a) an actionable claim
- (b) not an actionable claim
- (c) can not say
- (d) None of the above

**4. Transfer of Actionable claim is dealt with under Chapter ..... of Transfer of Property Act, 1882.**

- (a) V
- (b) VI
- (c) VII
- (d) VIII

**5. Exceptions to the Section 130 are:**

- (a) Negotiable instruments, stocks, shares, debentures
- (b) The marine policy of insurance
- (c) Fire insurance policy
- (d) All of the above