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CHAPTER: SALE OF IMMOVEABLE PROPERTY

A. DEFINITION OF SALE

Sale is a transfer of ownership for a money consideration. It implies an absolute transfer of all rights in the property sold. No rights in the property sold are left in the transferor. Under the Transfer of Property Act 1882, Section 54 states that sale is characterized as the transfer of ownership of a property in exchange at a cost paid or guaranteed or part of the way paid or part guaranteed.

Therefore the elements of sale are:-

1. **Transfer of ownership** – ownership is the collection of the multitude of rights and liabilities in a property. When there is the transfer of ownership, the total or absolute, all things considered, and liabilities in a property are transferred from transferor to the transferee.
2. **Money consideration** – the ‘price’ that is highlighted in section hints to money consideration. Where the ownership of property is transferred in consideration for money it adds up to sale however in the event that it is transferred for whatever else it amounts to deal yet on the off chance that it is transferred for whatever else it adds up to exchange.

B. ESSENTIAL ELEMENTS OF SALE

1. **The parties to the sale (seller and buyer) should be competent to transfer-** The transferor of the immovable property executing the sale is known as the seller. The person who receives the property sold to him for a consideration that is the transferee is known as the buyer. The transferor or the seller must be competent to contract and entitled to the transferable property. A transferee should be competent to receive the transfer and he shall not be disqualified by law to receive the property transferred.
2. **The subject matter of the transfer must be a transferable immovable property-** Section 54 only governs the sale of immovable property. Immovable property can be tangible or intangible. Tangible property is one that can be touched, such as a house, a tree etc., while intangible property refers to property that cannot be touched such as a right of fishery, a right of way etc.

3. **The consideration for the sale must be paid, promised, part paid or part promised-** Price is a consideration paid for the transfer of property. Therefore price is money but not necessarily money immediately paid in notes and coins, it includes money which might be already due or payable at a future date. A transfer is not a sale if no price is paid or promised or partly paid or promised.

4. **There has to be a transfer of ownership by the seller to the buyer-** Under the Transfer of Property Act 1882, Section 54 states that sale is characterized as the transfer of ownership of a property in exchange at a cost paid or guaranteed or part of the way paid or part guaranteed.

C. LIABILITIES/DUTIES OF SELLER

According to section 55(1) of transfer of property act 1882, Liabilities or duties of Seller can be summarised according to the following points which are as follows:-

A. ***LIABILITY/DUTY BEFORE SALE***:- The liabilities of seller before sale can be stated as follows:-

1. **Liability to Reveal Fault**:- It is the duty of the seller, to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

2. **Liability to Submit Document**:- It is the duty of the seller, to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power.

3. **Answer relevant questions as to title**: It is the duty of the seller to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto.

4. **Liability to Execute Conveyance**: It is the duty of the seller on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

B. ***LIABILITY/DUTY AFTER SALE***:- The liabilities of seller after sale can be stated as follows:-

1. **Liability to Deliver up Occupation:** It is the duty of the seller to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits.

2. **Delivery of title deeds:** After completing the sale, the seller has to transfer title deeds to the buyer, who thereafter, becomes the rightful owner of the property and title deeds is no use of the seller. Seller is bound to transfer all other documents related to the property and is required by the buyer.

D. LIABILITIES OF BUYER

According to section 55(5) of transfer of property act 1882, Liabilities of Buyer can be summarised according to the following points which are as follows:-

A. ***LIABILITY/DUTY BEFORE SALE:-*** The liabilities of buyer before sale can be stated as follows:-

1. **Liability to disclose facts**– It is the liability of the buyer to disclose to the seller any fact as to the nature or extent of the seller’s interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest.

2. **Liability of payment of purchase money-** It is the liability of the buyer to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto.

B. ***LIABILITY/DUTY AFTER SALE:-*** The liabilities of Buyer after sale can be stated as follows:-

1. **Liability to bear damages**– It is the liability of the buyer that where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller.

2. **Liability to pay due amount-** It is the liability of the buyer that where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due. In the case of *Gangi V/s Govinda* it was held that the buyer is liable to pay all the charges after sale. ~~Due amount includes revenue, principal, interest etc.~~

E. RIGHTS OF SELLER

According to section 55(4) of transfer of property act 1882, Rights of Seller can be summarised according to the following points which are as follows:-

A. ***RIGHT BEFORE SALE***:- The Rights of Seller before sale can be stated as follows:-

1. **Right to get Rent and Profit**:- Before completing the sale, the seller has all rights over the property since he still remains the owner of the property and has the right to get rents, profits, and other benefits over the property. But after the transfer of ownership, this right belongs to the buyer, and the seller has no right to get all these benefits.

B. ***RIGHT AFTER SALE***:- The Rights of Seller after sale can be stated as follows:-

1. **Interest on unpaid price**: Seller also has a right to get interest on the unpaid price. If the buyer is already in possession of the property, the seller is entitled to claim interest on the unpaid amount from the date on which such possession was delivered, and not from the date of transfer of ownership. The seller has a right not only to get his unpaid price but also to an interest in it.

2. **Transfer of sellers charge**: The charge created in favour of the seller is an unsecured money debt, and therefore is an actionable claim. Actionable claim is transferable in nature and therefore, so is charge.

F. RIGHTS OF BUYER

According to section 55(6) of transfer of property act 1882, Rights of Buyer can be summarised according to the following points which are as follows:-

A. ***RIGHT BEFORE SALE***:- The Rights of Buyer before sale can be stated as follows:-

1. **Buyer's charge**: Unless he has improperly declined to accept delivery of the property, the buyer is entitled to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

B. *RIGHT AFTER SALE*:- The Rights of Buyer after sale can be stated as follows:-

1. **Right to get Benefits, Rents**- the buyer is entitled to get all the rights over property inclusive of all rents, profits, and also any other benefits over the property. The buyer becomes the property owner after completion of the sale or, in other words, after the transfer of ownership, and he/she is entitled to all the benefits from the date of transfer of ownership.

G. DIFFERENCE BETWEEN SALE AND EXCHANGE

The differences between Sale and Exchange can be summarised from the following points:-

1. Sale refers to immovable property only, whereas exchange refers to both movable and immovable properties.
2. The consideration in sale is price paid or promised and partly paid or partly promised, exchange on the other hand has the consideration for transfer of one property in exchange for another property.
3. The seller has the charge from unpaid purchase-money in the case of sale and in exchange there can be no seller's charge for unpaid purchase money.

CHAPTER: GIFT OF IMMOVEABLE PROPERTY

A. MEANING OF GIFT

Gift is dealt with under Section 122 of the Transfer of Property Act. Gift is the transfer of certain existing moveable or immoveable 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. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void. This Section defines a gift as a gratuitous transfer of ownership in some property that already exists. The definition includes the transfer of both immovable and moveable property.

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

B. ESSENTIAL REQUIREMENTS OF A VALID GIFT

1. **Parties to the gift** - There must be two parties i.e. the donor and the donee. The transferor is called the donor and he must be a competent person (competency as defined in Indian Contract act 1872). The transferee is called the donee and he need not be competent to contract. A gift made to a minor or an insane person or even if it is made to an unborn person is valid and can be accepted by their guardian.
2. **Without consideration**: A gift must be gratuitous i.e. without consideration. Any consideration, however negligible, given in exchange of the ownership of the property, would transform the gift into either a sale or barter. Consideration for the purpose of this requirement has the same meaning as envisaged under Section 2(d) of the Indian Contract Act, 1872. A gift should be a gratuitous transfer out of natural love and affection and must be without consideration.

3. **Voluntarily:** It must be made with donor's free will and free consent without any force, coercion, undue influence, fraud, misrepresentation and mistake. If a gift has been obtained through any one of the above-mentioned means, it can be said that such a gift has not been made voluntarily and hence declared void. Voluntarily done also mean that donor had full knowledge about the transaction and its nature.
4. **Acceptance of gift:** A gift must be accepted by the donee or someone on behalf of donee. Acceptance must be made before the death of the donee and before the revocation by the donor. After the donor makes a gift to a donee, the transaction becomes complete only when the donee accepts it. If the donor doesn't accept it, then it is treated as if the gift isn't made. Such acceptance can be either express or implied.

C. UNIVERSAL DONEE

Section 128 of Transfer of Property Act, 1882 talks about universal donee. When a gift is gifted to a donee from a donor, and such gift consists of the donor's whole property, the donee becomes a universal donee. As the donee is gifted with the donor's whole property, the donee is liable to all the benefits and burdens that the donor holds. In this case, the donee is personally liable to pay all the debts and dues of the donor. This liability to pay back all the dues applies only to the extent of the property's value and not more than that.

A universal donee is one to whom the donor's whole property is given and who consequently becomes liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised in the gift. Section 128 incorporates an equitable principle that one who gets certain benefits under a transaction must also bear the burden therein. However, the donee's liabilities are limited to the extent of the property received by him as a gift. If the liabilities and debts exceed the market value of the whole property, the universal donee is not liable for the excess part of it. This provision protects the interests of the creditor and makes sure that they are able to chase the property of the donor if he owes them. The concept of universal donee is not recognised under English law, although universal succession, according to English law is possible in the event of the death or bankruptcy of a person.

For example, A gifts to B all his properties. The value of A's whole property is 10 million. However, if the debts and dues of A are 11 million, B is liable to pay only 10 million as the gift value is only 10 million. B doesn't have to pay back the remaining 1 million from his personal property.

D. VOID GIFTS

The following gifts are considered to be void gifts and they are:-

1. A gift comprising both existing and the future property is void as to the latter.
2. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.
3. A gift made for an unlawful purpose. A gift in consideration of past illicit cohabitation is immoral and invalid.
4. A gift depending on a condition, the fulfilment of which is impossible or forbidden by law.
5. Where the donee dies before acceptance.
6. Gift by a person incompetent to contract.
7. A gift which under an agreement between the parties is revocable wholly or in part at the mere will of the donor is void wholly or in part as the case may be.

E. REVOCATION OF GIFT

The Section 126 lays down the mode and situations of revocation of gifts. There are two modes of revocation:-

1. **Revocation by Mutual Agreement-** When both the parties i.e. the donor and the donee mutually agree that the gift shall be suspended or revoked upon the happening of an event not dependent on the will of the donor, it is called a revocation of gift subject to a condition laid down by the mutual agreement. It must consist of the following essentials:-
 - a) The condition must be expressly laid down
 - b) The condition must be a part of the same transaction, it may be laid down either in the gift deed itself or in a separate document being a part of the same transaction.

- c) The condition upon which a gift is to be revoked must not depend solely on the will of the donor.
- d) Such conditions must be valid under the provisions of law given for conditional transfers. Eg. a condition totally prohibiting the alienation of a property is void under Section 10 of the Transfer of Property Act.
- e) The condition must be mutually agreed upon by the donor and the donee.
- f) Gift revocable at the will of the donor is void even if such a condition is mutually agreed upon.

2. **Revocation by the rescission of the contract-** A gift is a transfer and it is thus preceded by a contract for such transfer. This contract may either be express or implied. If the preceding contract is rescinded, then there is no question of the subsequent transfer to take place. Thus, under Section 126, a gift can be revoked on any grounds on which its contract may be rescinded. For example, Section 19 of the Indian Contract Act makes a contract voidable at the option of the party whose consent has been obtained forcefully, by coercion, undue influence, misrepresentation, or fraud.

For example, A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

CHAPTER: LEASE OF IMMOVEABLE PROPERTY

A. MEANING OF LEASE

Section 105 of transfer of property act, 1882 defines Lease. Section 105 of the Transfer of Property Act defined Lease as “A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms”.

When there is a lease of immovable property for a year or more than this can be made simply by registered deed. All other leases of immovable property can be made by registered deed or and oral agreement accompanied by possession of that property. In the case of leases of multiple properties lease will be made by both lessor and lessee. In the case of *Punjab National Bank v. Ganga Narain Kapur*, Court held that if the lease is done through an oral agreement, then the provisions of Section 106 will apply.

B. ESSENTIAL ELEMENTS OF LEASE

There are various essential elements of a contract of lease mentioned under the Transfer of Property Act, 1882 and they are as follows:-

1. **Parties** – For a Lease agreement, the existence of two or more parties is necessary for the proper transfer of rights of the immovable property. The Lessor and the Lessee must be of sound mind, major and not subject to any law which restricts them to be a part of a valid contract. If the transfer of the right of property is done to a minor, then a legal guardian is necessary to work on behalf of the minor till he or she attains a majority age. A lessee can be a juristic person that is, a company or a registered firm etc. If a lease deed is executed by one of the partners of behalf of the firm, the lessee is the firm not the partner.
2. **Subject matter of lease** – The subject matter or the purpose of the lease agreement is compulsory and necessary to be mentioned in the contract. A contract of Lease can be made only for immovable property or assets. It cannot be done for a ~~moveable property.~~

3. **Duration** – The period for which the right to use the property is transferred is called the term of the lease. The term may be any period of time, longer or shorter, or even for perpetuity, but it has to be mentioned in the deed.
4. **Consideration** – Lawful consideration is necessary for the fulfilment of a contract of lease. The transfer of the rights of the immovable property is made by giving consideration in the form of money as premium or rent, shared profit or as share of crops and services.
5. **Possession of Property** – In the contractual agreement of lease, right of enjoyment can only be done when there is transfer of possession and therefore, transfer of the right of property is made and the parties exchange the right of possession of the property for a certain period of time and do not exchange the ownership of the immovable property.

C. RIGHTS OF LESSOR

Rights of the lessor are as follows:-

1. A lessor has a **right to recover the rent** from the lease which was mentioned in the lease agreement.
2. Lessor has a **right to take back the possession** of his property from the lessee if the lessee commits any **breach of condition**.
3. Lessor has a **right to take back the possession** of his property from the lessee on the **termination of the lease term** prescribed in the agreement.

D. LIABILITIES OF LESSOR

The liabilities of Lessor are as follows:-

1. **Duty to disclose latent material defect:** Lessor must disclose latent material defect in the property to the lessee. Defect in the property is latent if it is not apparently visible but the lessor has knowledge of it. Such defect is material if it is of substantial nature.
2. **Duty to give possession:** Lease is transfer of the right to enjoy or use an immovable property. Without possession, enjoyment of property is not possible. Lessor is therefore, liable to deliver the possession of property to lessee so that he may use it or enjoy it.

E. THE RIGHTS OF LESSEE

The rights of lessee under the transfer of property act, 1882 are as follows:-

1. **Right to Accretions:** Accretions can be defined as the additions made to the property either by human being or by the operation of natural forces. If during the continuance of lease some accretion has been made to the property, it is then presumed to be the part of the property.
2. **Right to avoid lease on destruction of property:** Where the property is rendered substantially and permanently unfit for use due to fire, flood, violence, mob or other uncontrollable reason, the lessee has the right to get the lease terminated before the expiry of the term.
3. **Right to deduct cost of repairs:** The lessor has no obligation to repair the property. But under an express agreement, the lessor may take the obligation of making necessary repairs in the tenanted property.
4. **Right to remove fixtures:** After termination of lease, the lessee has the right to remove the fixtures made by him during the continuance of the lease. The lessee can remove and take out these fixtures even after the determination of the lease.
5. **Right to remove crops:** After the termination of lease, the lessee is entitled to remove the crops sown by him during the subsistence of the lease.

F. LIABILITIES OF LESSEE

The liabilities of lessee under the transfer of property act, 1882 are as follows:-

1. **Duty to pay rent:** The lessee is bound to pay the rent or premium as stipulated in the lease deed. But, the tenant's liability to pay rent begins from the date on which he takes the possession and not from the date from which the landlord signs the deed.
2. **Duty to maintain property:** The lessee is bound to keep and maintain the property in the same condition in which it was given to him. He has, therefore, to take reasonable care in keeping the property in good condition.
3. **Duty to use property reasonably:** The lessee has a duty to use and enjoy the tenanted property as a person of ordinary prudence would use his own property.

4. **Duty not to erect permanent structure:** The lessee cannot erect any permanent structure on the leased property without the consent of the lessor. If a lessee makes permanent constructions without the lessor's consent, he is entitled to remove them without causing damage to the tenanted property. If the permanent structures on the leased property are not removed by lessee, then on the expiry of lease they belong to the landlord.
5. **Duty to restore Possession:** Upon the expiry of the term or determination of the lease before its expiry the lease must re transfer the possession to the lessor. It is the duty of the lessee to vacate the possession and restore it to the lessor after expiry of the term.

CHAPTER : EASEMENT

A. MEANING OF EASEMENT

The Law of Easements under section 4 of the Easements Act, 1882, describes easement as a pre-emptive right of a person. A right which the 'original owner' or 'dominant possessor' of a land has over another land, not his own, for the beneficial enjoyment of his own land or to do or continue to do something or to prevent something being done in respect of another land, not his own. The term 'to do something' includes any and every sort of eradication or appropriation prevented by the dominant owner on the soil of another land held by another called the 'servient owner' in such a case.

For instance, A owns a house alongside B whose house falls in the middle of A's property and the main road. A here owns a right of easement to enjoy free passage between his house and the main road and can prevent B from appropriating or eradicating anything on his property to block A's right to free passage. Although the right is exercised by A, it is not for A to exercise as a personal right. The right of easement is thus a right attached to the house i.e. it cannot be detached from it.

B. CHARACTERISTICS OF EASEMENT

1. **Dominant Heritage and Servient Heritage-** The first essential element of the easement is that there must be dominant heritage & Servient heritage. The heritage (property) in which there are some privileges, is called Dominant heritage and its owner is called dominant and the property upon which some liabilities are imposed is called Servient heritage. Two properties are necessary for the easement.
2. **Dominant and Servient Heritage to be separate-** It is compulsory for an easement that the dominant and servant heritage must be separate properties. An easement is not created on the happening of one property in two properties and it is also expected that the owner of the two properties must be separate or different.
3. **The use of easement done for the beneficial consumption-** The dominant owner must use it for beneficial consumption of the dominant property. Beneficial consumption includes facilities, remote profits, etc.

4. **Non-availability of the easement to Servitude owner-** Easement is available to Dominant owner, not to Servitude owner.
5. **Right-in-rem of easement-** It is a right-in-rem. This right is available not only against servitude owner but also against the whole world. If any person interferes in the easement of the dominant owner, then the dominant owner can file a suit against, the person in court.

C. MODES OF EXTINCTION OF EASEMENT

Section 37 to 47 of the Indian Easements Act, 1882, provides for the mode of extinction of easements and they are:-

1. **Dissolution of Servient Owner's right-** In the situation where the grantor ceases to have any right in the servient tenement because of some reason, then the right of easements ceases to exist as well. This has been specified under Section 37 of the Act.
2. **Expiry of time or happening of an event-** When an easement is acquired on certain conditions or for certain purpose or for certain period of time. On the fulfilment of such condition or purpose or expiry of the time, the right of easement extinguishes as well as in accordance with Section 6 of the Act.
3. **Extinction by release-** Where in a situation the owner of the dominant heritage releases the right of easement to the servient owner, the right ceases to exist. Such a release can be both expressly or impliedly made.
4. **Permanent change in the Dominant Heritage-** When the nature of the dominant heritage changes permanently with increase in burden on tenement, then the right of easement ceases to exist as the purpose of it was the beneficial enjoyment of the dominant heritage. For example- A's house is located such that he has a right of way by passing through B's house. Later, due to earthquake, B's house got cut off and thus, right of easement ends.
5. **Unity by ownership-** By unity of ownership it is indicated that when one person becomes the owner of both the dominant and servient heritage then the right of easement terminates. For instance, A has right of easement over B's property. Later on, A purchases B's property and becomes the owner of B's property. In such a case, easement extinguishes.

D. LICENSE

License is only a personal right. It is only a right in personam and therefore, not so enforceable. License cannot be assigned at all except where it is a license to attend a place of public entertainment. License is so revocable, except where the grantor is stopped by his conduct from exercising the power of revocation conferred by law. A license is permissive right traceable to a grant from the licensor either expressly or impliedly.

License is invariably positive and cannot be negative in character. It may be that there are cases in which a negative obligation might be cast on the licensor with the object of protecting a licence coupled with a grant but such obligation is due to the grant accompanying the licence and not to the licence per se.

Section 60 of the Transfer of Indian Easement Act, 1882 provides that license can also be irrevocable. If the license is coupled with a transfer of property and the transfer is in force, it cannot be revoked. This is subject to the agreement. Hence, the power can be reserved. The rule is that a bare license may be revoked but if coupled with a transfer of the property, then it is irrevocable. A license coupled with an interest in a land is binding. A license coupled with profit a *prendre* is irrevocable, for example, Right to excavate earth and carry it to make earthen wares, right to cut and carry timber on payment of royalty.
