

Transfer of Property

KSLU LL.B. — Complete Exam-Ready Study Bundle

KSLU LL.B. Study Bundle

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Read this first page, then go to your unit. This single file holds the whole subject: how to use the notes, the rules that win marks, and all units of content. Everything is in plain English, every Latin maxim is translated in [brackets], and every topic is built backwards from the real exam questions.

How to Use These Notes

What this is. A complete, exam-focused bundle covering all units of KSLU Transfer of Property. Every topic is built from one question: *what will the examiner ask, and how do I score full marks?* High-frequency questions get the most space; the years listed under each question tell you where to spend revision time.

Who it is for. The first-time learner (understand before memorising), the revision student (fast high-yield recall), and the last-week crammer (which questions repeat and how to answer them).

What is inside every topic — the same blocks, in the same order:

Block	Its job	The mark it earns
Previous Year Questions	Real questions + years asked	What to prepare and how often it repeats
The Hook	A true story / landmark-case opener	Memorable; a strong opening line
Jurist / Statutory Quotes	Exact definitions & sections	Examiners reward precise authority
In Simple Terms	Plain-English translation	Ensures you <i>understand</i>
The Visual (chart)	Maps the topic structure	Recall and structure at a glance
Case Laws	Landmark judgments + ratio	Case names with years are pure marks
Tracker + Risk Alert	Answer plan + applied IRAC	Converts knowledge into a scoring answer

Each unit closes with a **Quick Revision & Case Law Table** for the final hour.

The 4-step study plan. (1) Read the PYQ box first. (2) Understand, then memorise. (3) Trace the chart from memory. (4) Rehearse the Tracker and one Risk Alert.

A note on Unit V. The law of trusts is governed by the **Indian Trusts Act, 1882**, not the Transfer of Property Act — section references in that unit are to the Trusts Act.

The 10 Rules That Win Marks

1. **Lead with a definition + roadmap.**
2. **Follow the Blueprint Tracker** stage by stage.
3. **Name the case AND the year** every time.
4. **Quote the exact section / jurist** where given.
5. **Translate every Latin maxim in [brackets].**
6. **Use the four IRAC headings** for problems; spot the decoy fact.
7. **Always give a definite verdict.**
8. **Use the chart's structure** to organise the body.
9. **Close with a short, confident conclusion.**
10. **Manage time** so no high-mark question is left unwritten.

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UNIT 1 – General Principles of Transfer of Property

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1. Transfer of Property — Meaning, What May and May Not Be Transferred

Previous Year Questions

- **[16M]** Define “transfer of property”. State the essentials/legal requirements of a valid transfer. (Dec 2015, Dec 2018, Nov 2021, Jun 2025) ★★
- **[16M]** “Property of any kind may be transferred.” Explain the general rule with its exceptions. (Jan 2011, Jun 2011, Dec 2012, Dec 2013, Jun 2016, Dec 2019) ★★
- **[10M]** Define transfer of property and state the properties which cannot be transferred. (Jun 2019, Feb 2025, Jan 2026) ★★

The Hook

In 1882 the British-Indian legislature faced a mess. Courts were deciding land disputes by borrowing scraps of English equity, Hindu law and Muslim law, with no common code. The Transfer of Property Act, 1882 was passed to bring one clear rule for transfers between living persons. Its very first working rule — Section 6 — flips the common assumption: the law starts by saying *everything* is transferable, then lists the narrow exceptions.

What is a Transfer of Property?

A “transfer of property” is an act by which a living person conveys property to one or more other living persons, or to himself and others. The key idea is *inter vivos* [between living persons]. The Act mainly governs voluntary transfers by act of parties, not transfers by operation of law such as inheritance, forfeiture or court sale.

“Property” here is read very widely. It covers movable and immovable property, and not just things you can touch but also rights in them. Section 6 then states the master rule: property of any kind may be transferred, **except as otherwise provided** by this Act or any other law.

The essentials of a valid transfer are: (a) the property must be transferable (s.6); (b) the transferor must be competent — of the age of majority, of sound mind, and entitled to or authorised to transfer (s.7); (c) the transferee must be a competent transferee (must exist, with the unborn-person exception); (d) the object and consideration must be lawful; and (e) the transfer must be made in the form the law requires (writing, attestation and registration where the Act demands it).

Section 5, Transfer of Property Act, 1882: *“Transfer of property’ means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons; and ‘to transfer property’ is to perform such act.”*

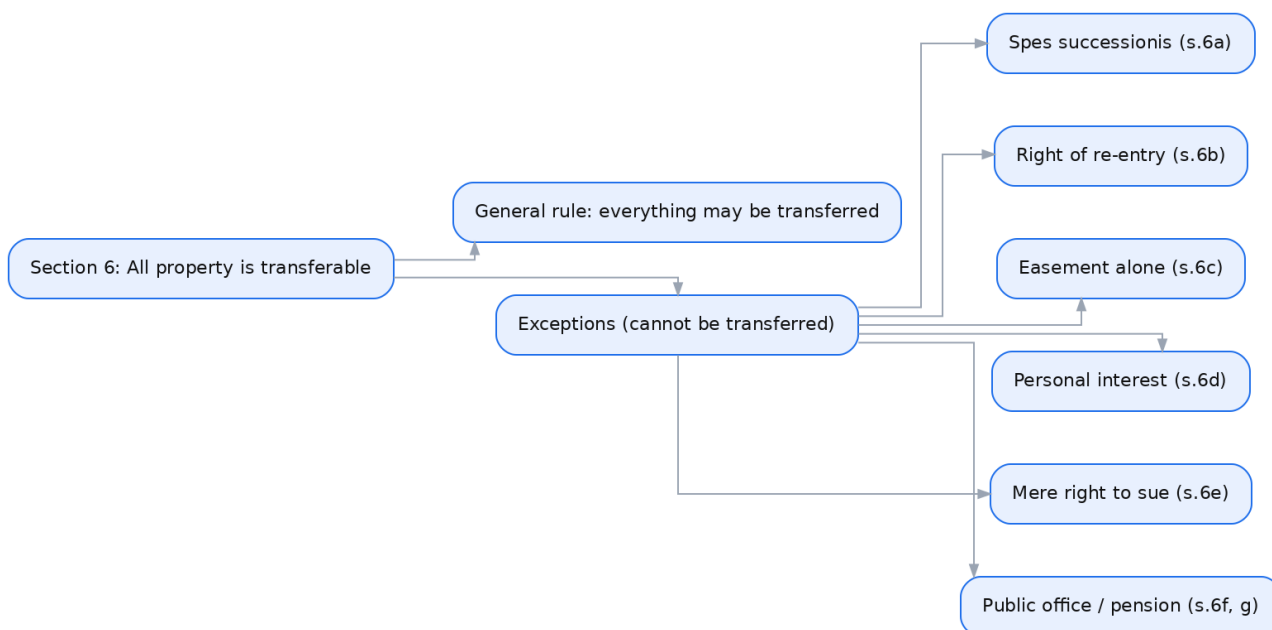
In Simple Terms: One living person hands over property — now or later — to another living person (or to himself with others). If nobody living receives it, or it passes only on death, it is not a “transfer” under this Act.

The Exceptions — Property That Cannot Be Transferred (Section 6)

Section 6 lists what *cannot* be transferred. The high-scoring ones: (a) **spes successionis** [the mere chance of an heir succeeding] — a bare expectancy is not property; (b) a **right of re-entry** for breach of a condition, apart from the land; (c) an **easement** apart from the dominant heritage; (d) an interest **restricted in its enjoyment to the owner personally**; (dd) a **right to future maintenance**; (e) a **mere right to sue**; (f) a **public office** and the salary of a public officer; (g) **pensions** and stipends; and (h) transfers

opposed to the **nature of the interest, unlawful objects, or to a disqualified transferee.**

The Visual



Case Laws

- **Jugalkishore Saraf v. Raw Cotton Co. Ltd. (1955)** — a mere right to sue is not assignable, but a right joined to property may pass with it.
- **Official Assignee, Madras v. Sampath Naidu (1933)** — a mortgage of a mere expectancy (spes successionis) is void even if the expectancy later materialises.

📖 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** open with the 1882 codification story; state that s.6 begins with “all property is transferable” and you will explain the rule then its exceptions.
- **STAGE 2** → **Definition + essentials:** quote s.5; list the five essentials (transferable property, competent transferor, competent transferee, lawful object, required form).
- **STAGE 3** → **The general rule:** s.6 — property of any kind may be transferred.
- **STAGE 4** → **The exceptions:** walk through s.6(a)-(h) with one-line examples; cite Sampath Naidu for spes and Jugalkishore for right to sue.
- **STAGE 5** → **Verdict:** the Act favours free alienability — restrictions are read narrowly and exceptions are exhaustive.

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: A grants B, for Rs. 10,000, the oral right to catch and carry away all the fish from his lake. B later sues to enforce it. (decoy: it “feels” like a sale of movable fish.)

- **I — ISSUE:** Is a profit à prendre (right to take fish from another’s land) a transfer of immovable property that needs writing and registration?
- **R — RULE:** A profit à prendre is a benefit arising out of land and is “immovable property”; a tangible immovable property worth Rs. 100 or more must be transferred by registered instrument (s.54), so an oral grant is invalid.
- **A — ANALYSIS:** The subject is not the fish but the right to take them from the land — an interest in immovable property. The decoy (movable fish) is irrelevant; the grant is over land. Being oral and unregistered, it fails the form requirement.
- **C — CONCLUSION:** The grant is invalid; B acquires no enforceable right to the fishery.

2. Meaning of Immovable Property

Previous Year Questions

- **[16M]** Define immovable property. What properties have been judicially recognised as immovable? (Jun 2014, Jun 2015, Jun 2017, Apr 2021) ★★★
- **[Short Note]** Immovable property. (Dec 2013, Dec 2015, Dec 2018, Nov 2022, Aug 2024, Feb 2025) ★★★

The Hook

A villager sells the “standing teak trees” on his land but keeps the land. Are the trees movable goods or immovable property? The answer decides whether the deal needs registration. Indian courts have wrestled with mango trees, growing grass and the right to ferry passengers — and the line they drew still appears in exam problems every year.

What is Immovable Property?

The Transfer of Property Act does not give a full definition. Section 3 only says immovable property does **not** include standing timber, growing crops or grass. We therefore read three statutes together. The General Clauses Act, 1897 says immovable property includes

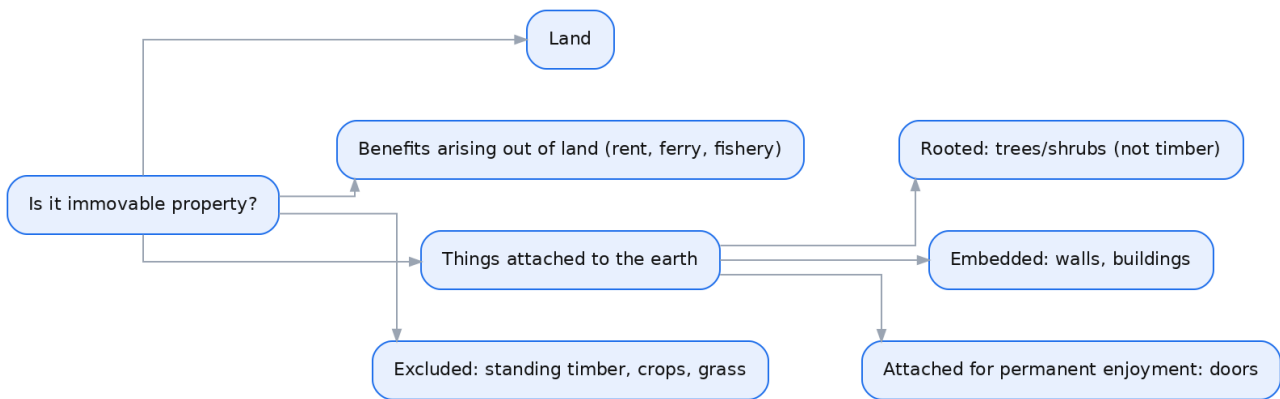
land, benefits to arise out of land, and things attached to the earth. The Registration Act, 1908 adds buildings, hereditary allowances, rights of way, lights, ferries and fisheries.

“Attached to the earth” (s.3) means: rooted in the earth (trees and shrubs); embedded in the earth (walls, buildings); or attached to what is so embedded for permanent beneficial enjoyment (doors, windows). The test is the **degree and object of annexation** — how firmly and *why* the thing is fixed.

Section 3, Transfer of Property Act, 1882: “‘immovable property’ does not include standing timber, growing crops or grass.”

In Simple Terms: The Act tells you what is *left out*, not what is included. Land, things permanently fixed to land, and benefits arising out of land are immovable. Trees meant to be cut soon (timber), crops and grass are movable because their use lies in severance.

The Visual



Case Laws

- **Shantabai v. State of Bombay (1958)** — a right to enter land and cut bamboos over years is a benefit arising out of land, hence immovable property.
- **Marshall v. Green (1875)** — trees sold for immediate felling are “standing timber”, i.e. movable.
- **Ananda Behera v. State of Orissa (1956)** — the right to catch and carry fish from a lake is a profit à prendre and therefore immovable property.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** open with the teak-tree puzzle; say you will define immovable property by reading three Acts together.
- **STAGE 2** → **The statutory position:** s.3 (exclusion), General Clauses Act (inclusion), Registration Act (examples).
- **STAGE 3** → **“Attached to the earth”:** rooted / embedded / attached for permanent enjoyment; the degree-and-object test.
- **STAGE 4** → **Judicial recognition:** Shantabai, Ananda Behera, Marshall v. Green; timber vs fruit-bearing trees.
- **STAGE 5** → **Verdict:** the use to which the thing is put decides — severance points to movable, permanence to immovable.

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: A sells “the mango trees” in his orchard to B. Is the subject movable or immovable property? (decoy: all trees look like “standing timber”.)

- **I — ISSUE:** Are fruit-bearing mango trees immovable property, or “standing timber” excluded by s.3?
- **R — RULE:** Trees rooted in the earth are immovable unless they are “standing timber” — trees meant to be cut and used as timber. Fruit-bearing trees, intended to remain and yield fruit, are immovable.
- **A — ANALYSIS:** Mango trees are kept for their fruit, not felled for wood. The decoy (“they are trees, so timber”) fails: the object of the parties is continued enjoyment, not severance. They are attached to the earth for permanent benefit.
- **C — CONCLUSION:** The mango trees are immovable property; the transfer needs a registered instrument if worth Rs. 100 or more.

3. Doctrine of Notice (Actual & Constructive)

Previous Year Questions

- **[16M]** Explain the doctrine of constructive notice with leading cases. (Jun 2012, Mar 2022, Nov 2022) ★★
- **[16M]** What is notice? When is a person deemed to have notice under the TP Act? (Dec 2012, Jun 2018) ★★

The Hook

A buyer pays full price for a house, deliberately never visiting it. A tenant is living inside under an earlier agreement. Can the buyer say “I never knew”? The law answers: you *should* have known — and treats you as if you did. That is constructive notice, and it routinely decides who wins between two claimants.

What is Notice?

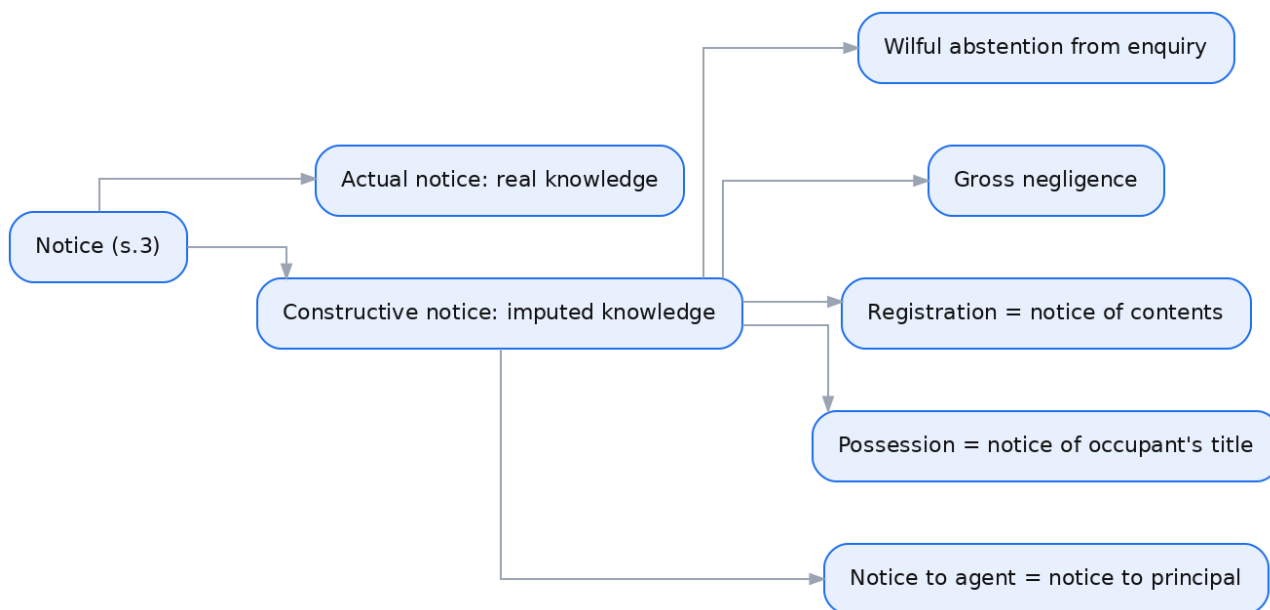
Notice means knowledge of a fact. Section 3 recognises two kinds. **Actual notice** is real, direct knowledge of a fact. **Constructive notice** is knowledge the law *imputes* to a person — it treats him as knowing what he would have discovered with ordinary diligence.

A person is deemed to have constructive notice in these situations: (1) **wilful abstention** from an enquiry he ought to make; (2) **gross negligence** in not making an enquiry; (3) **registration** of a document operates as notice of its contents (Explanation I); (4) **actual possession** of a person puts others on notice of his title or interest (Explanation II); and (5) notice to an **agent** is notice to the principal (Explanation III).

Section 3, Transfer of Property Act, 1882: “a person is said to have notice of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.”

In Simple Terms: If you actually know — that is notice. If you shut your eyes to obvious facts or were carelessly ignorant, the law still says you knew. Registration and someone’s open possession also count as notice to the world.

The Visual



Case Laws

- **Tilakdhari Lal v. Khedan Lal (1921)** — registration is constructive notice only when the deed is one that competes for the same property and ought to have been searched.
- **Daniels v. Davison (1809)** — a buyer is fixed with notice of the rights of a tenant in actual possession.
- **Hunt v. Luck (1902)** — possession of a tenant is notice of the tenant's rights, but not automatically of the landlord's title.

📑 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** open with the “deliberately blind buyer”; state you will explain actual vs constructive notice and the five statutory situations.
- **STAGE 2** → **Definitions:** quote s.3; explain actual notice.
- **STAGE 3** → **Constructive notice:** wilful abstention, gross negligence, the three Explanations (registration, possession, agent).
- **STAGE 4** → **Cases:** Tilakdhari Lal, Daniels v. Davison, Hunt v. Luck.
- **STAGE 5** → **Verdict:** notice protects honest purchasers and punishes those who shut their eyes; it is the gateway to s.41, s.51 and s.53 defences.

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: A buys land already registered as mortgaged to a bank but never searches the register; he claims he had no knowledge of the mortgage. (decoy: he genuinely did not read the register.)

- **I — ISSUE:** Is A fixed with notice of a prior registered mortgage he never actually read?
- **R — RULE:** Under Explanation I to s.3, registration of an instrument operates as constructive notice of its contents to a subsequent transferee who ought to have searched.
- **A — ANALYSIS:** A's actual ignorance (the decoy) does not help him. A prudent buyer searches the register before paying; the mortgage was registered against the same property. A is deemed to know it.
- **C — CONCLUSION:** A takes subject to the mortgage; he cannot claim the protection of a bona fide purchaser without notice.

4. Transfer for the Benefit of an Unborn Person

Previous Year Questions

- **[16M]** "The Act applies to transfers *inter vivos*, but a transfer for the benefit of an unborn person is an exception." Discuss. (Jan 2012, Jun 2013, Nov 2022) ★★
- **[16M]** Discuss the rules relating to transfer for the benefit of an unborn person. (Dec 2018, Nov 2022, Dec 2019, Jan 2026) ★★

The Hook

You cannot hand property to someone who does not yet exist. Yet wealthy families have always wanted to provide for grandchildren not yet born. The Act solves the puzzle with a clever device: hold the property through a living person first, then let it vest in the unborn child when it arrives — but only on strict terms.

How a Transfer to an Unborn Person Works (Sections 13-14)

A direct transfer to an unborn person is impossible — a transferee must exist at the date of transfer (s.5). Section 13 allows an *indirect* route. Two conditions must be met. **First, a prior life interest** must be created in favour of a living person — the property is given to a living person for life, and the unborn person takes after. **Second, the whole of the**

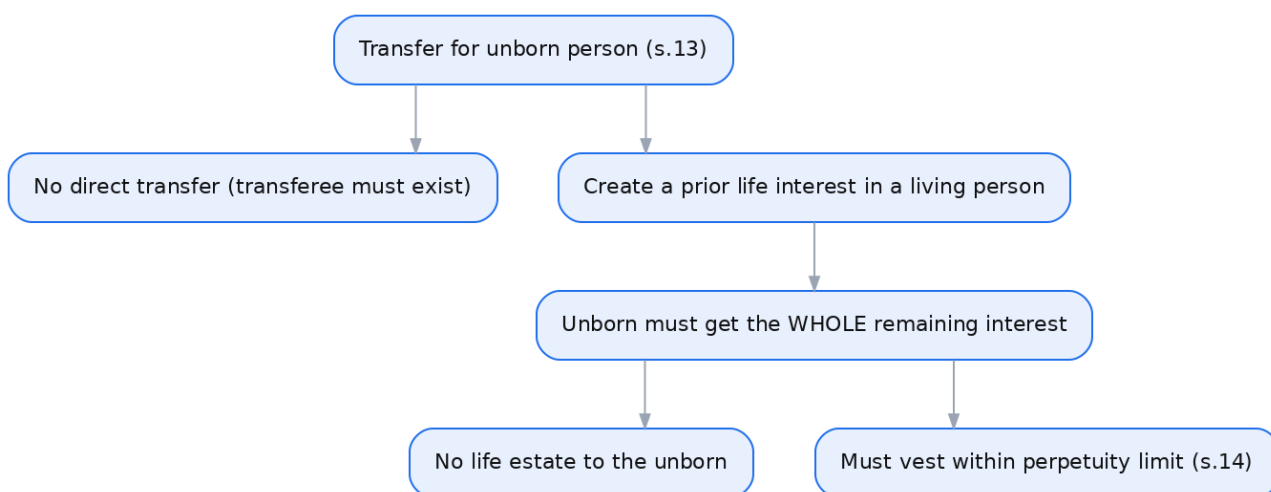
remaining interest must be given to the unborn person; you cannot give the unborn person merely a life interest. The unborn beneficiary must get the *absolute* remaining interest.

The transfer to the unborn must also obey the rule against perpetuity (s.14): the interest must vest, if at all, not later than the life of the prior interest-holder plus the minority of the unborn person. The unborn person must come into existence before the death of the last prior life-interest holder.

Section 13, Transfer of Property Act, 1882: “Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.”

In Simple Terms: Give the property first to a living person for life. The child not yet born can take afterwards — but you must give that child *everything that is left*, not just a life slice.

The Visual



Case Laws

- **Girjesh Dutt v. Datadin (1934)** — a gift to an unborn daughter limited to a life interest is void, and the subsequent gift dependent on it also fails.
- **Sopher v. Administrator-General of Bengal (1944)** — an interest to an unborn person that may vest beyond the permitted period is void for perpetuity.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the grandchild-not-yet-born problem; you will explain the s.13 device and its two conditions.
- **STAGE 2** → **The bar and the device:** s.5 needs an existing transferee; s.13 allows an indirect transfer via a prior life interest.
- **STAGE 3** → **The two conditions:** prior life interest + whole remaining interest to the unborn (no life estate to the unborn).
- **STAGE 4** → **Perpetuity link + cases:** s.14 timing; *Girjesh Dutt, Sopher*.
- **STAGE 5** → **Verdict:** the law balances family planning with free circulation of property — hence the strict “whole interest” rule.

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: A transfers property to X for life, then to X’s first son (not yet born) for life, then to Y absolutely. Is the gift to X’s unborn son valid? (decoy: a “life interest” to the unborn son sounds generous.)

- **I — ISSUE:** Can an unborn person be given a mere life interest under s.13?
- **R — RULE:** Section 13 requires that the interest created for the unborn person must extend to the whole remaining interest; a life interest to an unborn person is void.
- **A — ANALYSIS:** The gift to X’s unborn son is only a life interest — exactly what s. 13 forbids. The decoy (it looks like a valid provision) hides the defect. Because the gift to the unborn is void, the later gift to Y dependent on it also fails (*Girjesh Dutt*).
- **C — CONCLUSION:** The transfer to the unborn son is void; the property reverts to A (or his estate).

5. Conditions Restraining Alienation & Repugnant Restrictions

Previous Year Questions

- **[16M]** “An absolute restraint on alienation is void, but a partial restraint is valid.” Discuss with exceptions. (Jun 2012, Jun 2016, Apr 2021, Mar 2022, Apr 2023) ★★
- **[Short Note]** Condition restraining alienation. (Jan 2012, Jun 2013) ★★

The Hook

A father gifts a house to his son but writes: “You shall never sell it.” Touching as it sounds, the law tears up that clause. Once you give property absolutely, you cannot also chain the owner’s power to sell. The right to alienate is built into ownership itself.

Absolute vs Partial Restraint (Sections 10-12)

Section 10 says: where property is transferred subject to a condition *absolutely restraining* the transferee from parting with or disposing of his interest, the condition is **void**. The transfer stands; only the chain falls away. The reason is policy — free alienability of property and the repugnancy of a clause that contradicts the very ownership granted.

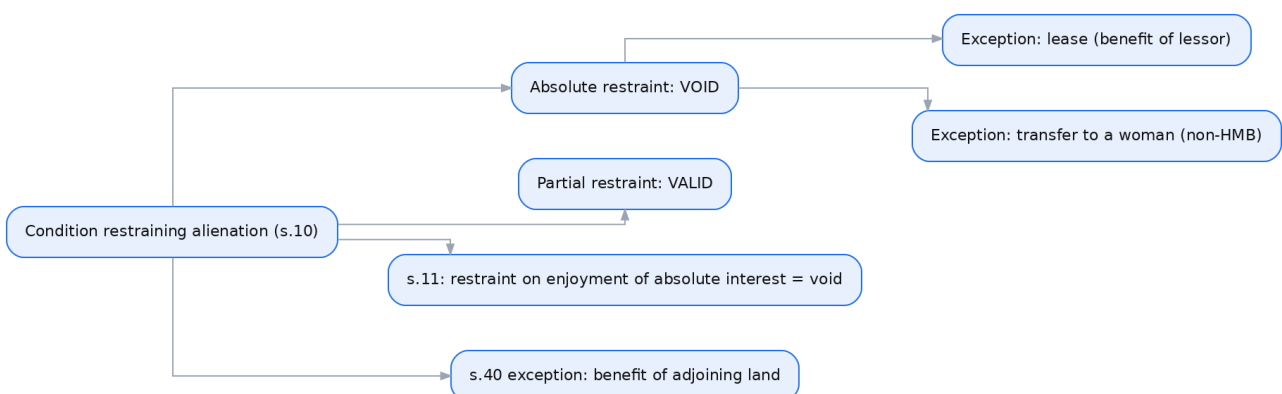
But a **partial restraint** — one that limits alienation only to some extent (a particular time, a particular person, or a class) — is **valid**. There are two exceptions to s.10: (1) a lease, where the condition is for the benefit of the lessor; and (2) a transfer to or for the benefit of a woman (not being a Hindu, Muslim or Buddhist) so she cannot transfer or charge it.

Section 11 strikes down conditions that make an *absolute* interest subject to a restriction on its **enjoyment** — they are void (except a restriction for the benefit of adjoining land under s.40). Section 12 voids a condition that makes an interest cease on the transferee becoming insolvent or attempting to alienate.

Section 10, Transfer of Property Act, 1882: “Where property is transferred subject to a condition or limitation absolutely restraining the transferee ... from parting with or disposing of his interest in the property, the condition or limitation is void ...”

In Simple Terms: “Never sell” is void; “do not sell for three years” or “do not sell to outsiders” can be valid. A total ban dies; a reasonable partial limit may live.

The Visual



Case Laws

- **Rosher v. Rosher (1884)** — a condition that the property be offered first to the transferor at a fraction of its value is an absolute restraint and void.
- **Mata Prasad v. Nageshar Sahai (1925)** — a partial restraint limited in operation may be upheld as valid.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the “never sell” gift; you will explain s.10 and the absolute/partial divide.
- **STAGE 2** → **The rule:** s.10 voids absolute restraints; the transfer survives the condition.
- **STAGE 3** → **Partial restraints & exceptions:** valid partial restraints; lease and woman exceptions.
- **STAGE 4** → **Allied sections + cases:** s.11 (enjoyment), s.12 (insolvency), s.40; Rosher v. Rosher, Mata Prasad.
- **STAGE 5** → **Verdict:** ownership carries the power to alienate; the law guards free circulation of property.

⚠️ FACT-PATTERN RISK ALERT

Scenario: A makes an absolute gift of a house to B, directing that B shall not raise the building higher so as to block air and light to A’s adjoining house. Is the direction valid? (decoy: it looks like a void restraint on enjoyment under s.11.)

- **I — ISSUE:** Is a restriction on enjoyment of an absolute gift void under s.11, or saved as a benefit to adjoining land under s.40?
- **R — RULE:** Section 11 voids restraints on enjoyment of an absolute interest, but s. 40 expressly saves a restriction imposed for the more beneficial enjoyment of the transferor’s adjoining land.
- **A — ANALYSIS:** The decoy pushes you to s.11. But the restriction benefits A’s adjoining house — exactly the s.40 carve-out. It creates an obligation annexed to ownership, enforceable against B (and later transferees with notice).
- **C — CONCLUSION:** The direction is valid under s.40; B cannot build so as to obstruct A’s air and light.

6. Rule Against Perpetuity & Exceptions

Previous Year Questions

- **[16M]** Explain the rule against perpetuity and state its exceptions. (Jun 2013, Jun 2014, Jun 2015, Dec 2016, Dec 2017, Nov 2021, Apr 2022, Aug 2024) ★★★
- **[Short Note]** Rule against perpetuity. (Feb 2025) ★★★

The Hook

Imagine property locked away forever — tied up generation after generation, never free to be bought, sold or developed. Medieval landed families tried exactly this. The rule against perpetuity is the law's answer: property cannot be made inalienable beyond a fixed, human-scale period. It keeps wealth circulating.

The Rule (Section 14)

Section 14 forbids a transfer that postpones vesting of an interest beyond a permitted period. That period is: **the lifetime of one or more persons living at the date of the transfer, plus the minority of an unborn person** who must come into existence before the death of that last living person. In short — life or lives in being + 18 years (the minority of the ultimate beneficiary).

So the maximum a vesting may be delayed is: the duration of the prior life interests, then the gestation period and minority of the unborn ultimate owner. The interest must vest in that unborn person **not later than** when he attains majority. If it *may* vest later, the whole gift is void from the start — even if events would have made it vest in time. We test possibilities, not actual outcomes.

Section 14, Transfer of Property Act, 1882: *“No transfer of property can operate to create an interest which is to take effect after the lifetime 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.”*

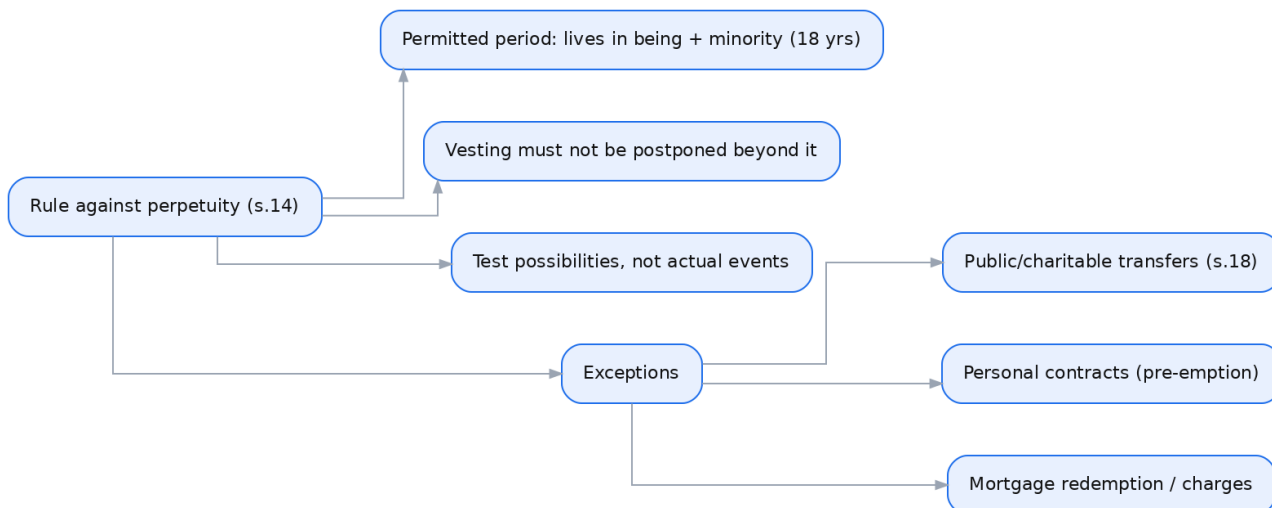
In Simple Terms: You may tie up property only for: lives that exist now + the childhood (18 years) of the final owner who must already be conceived. Tie it up any longer and the gift fails completely.

Exceptions to the Rule

The rule does **not** apply to: (1) transfers for the benefit of the **public** — for religious, charitable, or similar purposes (s.18); (2) **personal agreements** that do not create an

interest in property (e.g. a contract of pre-emption or an option to purchase, which bind only the parties); (3) a **covenant of redemption** in a mortgage; (4) **charges** (which are not transfers of an interest); and (5) leases with a covenant for perpetual renewal.

The Visual



Case Laws

- **Ram Baran Prasad v. Ram Mohit Hazra (1967)** — a contract of pre-emption is a personal obligation and not hit by the rule against perpetuity.
- **Sopher v. Administrator-General of Bengal (1944)** — an interest that may vest beyond the permitted period is void for perpetuity.

📋 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** property locked away forever; you will explain the permitted period and the exceptions.
- **STAGE 2** → **The rule:** s.14 — lives in being + minority; vesting cannot be delayed further.
- **STAGE 3** → **The “possibilities” test:** void if it may vest too late, regardless of actual events.
- **STAGE 4** → **Exceptions + cases:** s.18 public transfers, personal contracts (Ram Baran Prasad), mortgage/charges.
- **STAGE 5** → **Verdict:** the rule serves the public interest in keeping property freely alienable.

⚠ **FACT-PATTERN RISK ALERT**

Scenario: A transfers property to B for life, then to B's eldest son on his attaining the age of 25; B has no son at the date of transfer. Is the transfer valid? (decoy: 25 looks like a reasonable age.)

- **I — ISSUE:** Does a vesting age of 25 for an unborn beneficiary breach the perpetuity rule?
- **R — RULE:** Under ss.13–14, an interest to an unborn person must vest within the life of the prior holder plus the minority (18 years) of the unborn person; postponing vesting to age 25 exceeds the period.
- **A — ANALYSIS:** The unborn son might attain 25 long after B's death + 18 years. The decoy ("25 is reasonable") ignores that the test is the permitted period, not reasonableness. Vesting may fall outside the limit, so the gift is void from inception.
- **C — CONCLUSION:** The gift to the unborn son is void for perpetuity; property reverts to A's estate after B's life interest.

7. Direction for Accumulation of Income

Previous Year Questions

- **[16M]** State and analyse the provisions relating to direction for accumulation of income; suggest exceptions. (Jan 2011, Dec 2017) ★★
- **[Short Note]** Direction for accumulation. (Dec 2012, Dec 2015, Apr 2021) ★★

The Hook

A transferor says: "Let nobody touch the income from this property — pile it up for fifty years." This is a cousin of perpetuity: instead of locking the property, it locks the *income*. The law allows it, but only for a short, defined window.

The Rule (Section 17)

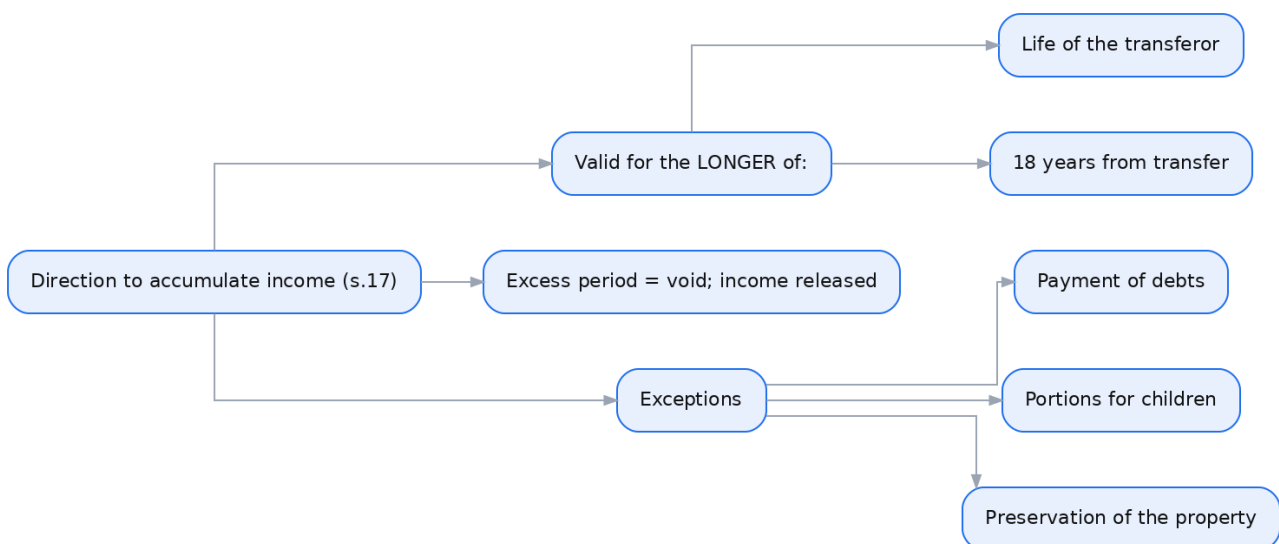
Section 17 limits how long a transferor may direct that the income of property be accumulated. The direction is valid only for the **longer** of two periods: (a) the life of the transferor; or (b) **eighteen years** from the date of the transfer. Any direction to accumulate beyond that period is **void as to the excess** — the surplus accumulation is released and goes to the person who would have been entitled to the income.

Two exceptions allow longer accumulation: (1) for the **payment of debts** of the transferor or any other person taking an interest under the transfer; and (2) for **raising portions** (provision) for children or other issue of the transferor or of a person taking an interest, or for the **preservation or maintenance** of the property transferred.

Section 17, Transfer of Property Act, 1882: “Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than — (a) the life of the transferor, or (b) a period of eighteen years from the date of transfer, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods ...”

In Simple Terms: You can order the income to be saved up only for your own lifetime or 18 years — whichever is longer. Beyond that the surplus is freed, unless it is being saved to pay debts, provide for children, or maintain the property.

The Visual



Case Laws

- ***Thellusson v. Woodford (1805)*** — the English case that prompted statutory limits on excessive accumulation of income.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** “pile up the income for fifty years”; you will explain the s.17 limit and exceptions.
- **STAGE 2** → **The permitted periods:** life of transferor or 18 years, whichever is longer.
- **STAGE 3** → **Effect of breach:** void as to the excess; surplus income released to the person entitled.
- **STAGE 4** → **Exceptions:** debts, portions for children, preservation of property; link to Thellusson.
- **STAGE 5** → **Verdict:** s.17 mirrors the perpetuity policy — it stops indefinite tying-up of income.

⚠️ FACT-PATTERN RISK ALERT

Scenario: A directs by deed that the entire income of his estate be accumulated for 30 years and only then paid to his nephew. (decoy: the nephew is a real, living beneficiary.)

- **I — ISSUE:** Is a direction to accumulate income for 30 years valid?
- **R — RULE:** Section 17 permits accumulation only for the transferor’s life or 18 years, whichever is longer; the excess is void unless it falls within an exception (debts, portions, preservation).
- **A — ANALYSIS:** If A lives fewer than 30 years and no exception applies, accumulation beyond the longer of his life or 18 years is void. The decoy (a real beneficiary) is irrelevant — the vice is the length, not the beneficiary.
- **C — CONCLUSION:** The direction is valid only up to the permitted period; the surplus income for the excess years is released to the person otherwise entitled.

8. Vested and Contingent Interest

Previous Year Questions

- **[16M]** Define vested interest and contingent interest and distinguish between them. (Dec 2013, Dec 2014, Jun 2016, Jun 2018, Apr 2021, Jan 2026, Aug 2024, Nov 2022) ★★★
- **[Short Note]** Vested interest / vested and contingent interest. (Apr 2023, Nov 2021) ★★★

The Hook

“To B when he turns 18” and “to B if he turns 18” look almost identical — but one word changes everything. The first gives B an interest the moment the deed is signed; the second gives him nothing unless and until he reaches 18. Examiners love this single-word trap.

Vested Interest (Section 19)

A vested interest is created when a transfer gives an interest in favour of a person **without specifying a time** for it to take effect, or on the happening of an event that is **certain to happen**. The right to ownership is fixed at once; only enjoyment may be postponed. A vested interest is not defeated by the death of the transferee before he obtains possession — it passes to his heirs. It is transferable and heritable.

Contingent Interest (Section 21)

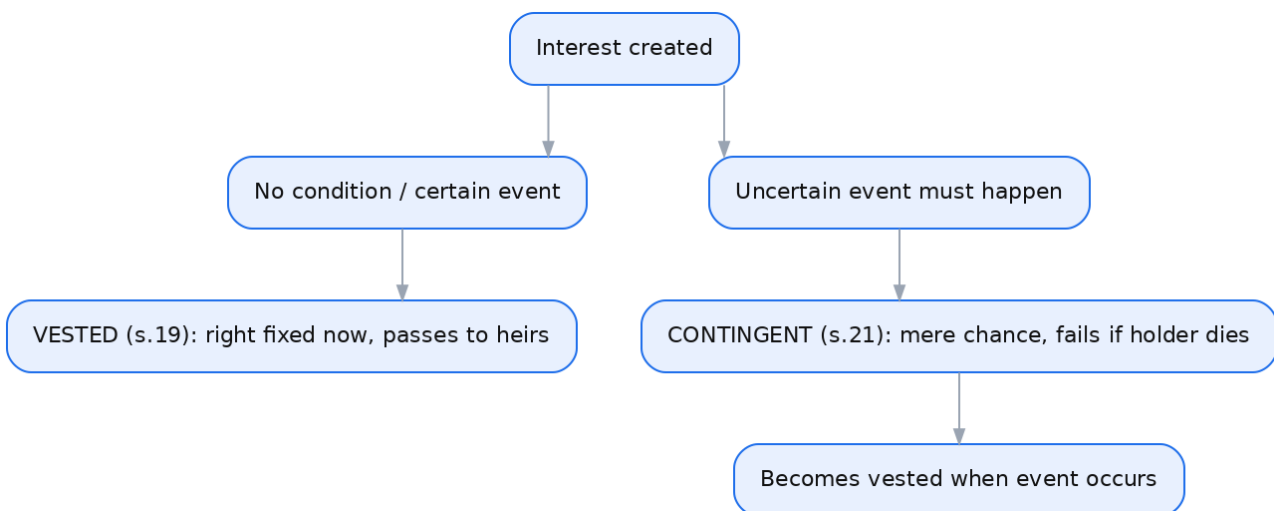
A contingent interest is created when the interest takes effect only **on the happening of a specified uncertain event**, or if a certain event does not happen. The transferee gets nothing until the condition is fulfilled; until then he has a mere chance. If the person dies before the contingency happens, the interest fails. It becomes vested the moment the uncertain event occurs. Note also **s.20**: where an interest is created for the benefit of an unborn person, he acquires a *vested* interest on his birth, even though his right of enjoyment is postponed until he attains a stated age.

Basis	Vested Interest (s.19)	Contingent Interest (s.21)
Condition	None / certain event	Uncertain event
Present right	Yes — fixed now	No — mere chance
On death before possession	Passes to heirs	Fails
Transferable/heritable	Yes	Transferable but precarious

Section 19, Transfer of Property Act, 1882: “Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested ...”

In Simple Terms: “When” (a sure event) = vested; “if” (an unsure event) = contingent. Vested survives the holder’s death; contingent dies with him until the condition is met.

The Visual



Case Laws

- **Rajes Kanta Roy v. Santi Debi (1957)** — the law leans in favour of vesting; an interest is treated as vested unless a clear contrary intention appears.
- **Leake v. Robinson (1817)** — a gift “on attaining 25” with no prior gift of income is contingent, not vested.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the “when vs if” trap; you will define both interests and distinguish them.
- **STAGE 2** → **Vested interest:** s.19 — present fixed right, heritable, enjoyment may be postponed.
- **STAGE 3** → **Contingent interest:** s.21 — depends on an uncertain event; fails if holder dies first.
- **STAGE 4** → **Distinction table + cases:** Rajes Kanta Roy (lean to vesting), Leake v. Robinson.
- **STAGE 5** → **Verdict:** courts prefer early vesting to keep title certain and property circulating.

⚠️ **FACT-PATTERN RISK ALERT**

Scenario: An estate is transferred “to A until he marries, and after his marriage to B.” What is the nature of B’s interest? (decoy: marriage looks “uncertain”, suggesting contingent.)

- **I — ISSUE:** Is B’s interest vested or contingent where it follows A’s marriage?
- **R — RULE:** An interest is vested if it depends on an event that is certain or, on the construction of the deed, treated as bound to determine the prior interest; the lean is in favour of vesting (s.19, *Rajes Kanta Roy*).
- **A — ANALYSIS:** The prior interest to A ends on marriage; B is to take after. The gift to B is not subject to any condition personal to B — only the time of enjoyment is postponed. The decoy treats marriage as a contingency for B, but it merely fixes when B enjoys.
- **C — CONCLUSION:** B has a vested interest in the property (enjoyment postponed until A marries), heritable and transferable in the meantime.

9. Conditional Transfers — Void Conditions & Rule of Acceleration

Previous Year Questions

- **[10M]** Distinguish condition precedent and condition subsequent; explain the rules relating to their performance. (Apr 2021) ★
- **[Short Note]** Rule of acceleration. (Apr 2021, Aug 2024, Jan 2026) ★★

The Hook

A man transfers land to a woman on condition she desert her husband within two months. Should the law reward such a bargain? Of course not — and the way it deals with the void condition (does the transfer fall too, or stand free of the condition?) depends on a precise distinction examiners test every year.

Conditions Precedent and Subsequent (Sections 25-34)

A **condition precedent** must be fulfilled *before* the interest can vest (s.25). If the condition is impossible, immoral, or opposed to public policy, the **transfer itself is void** (s.25). A condition precedent need only be *substantially* complied with (s.26).

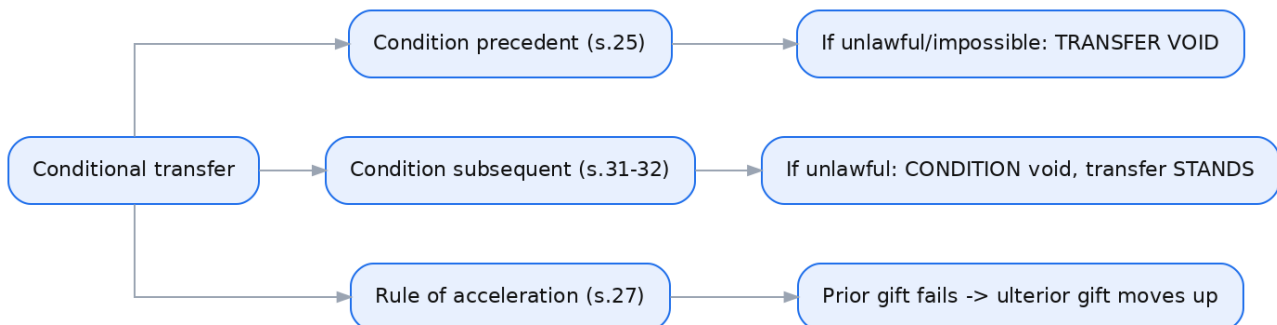
A **condition subsequent** operates *after* the interest has vested, to divest or defeat it (s. 31). If a condition subsequent is illegal, impossible or against public policy, **the condition is void but the transfer stands** — the transferee keeps the property free of the condition (s.32). A condition subsequent must be strictly fulfilled.

Rule of acceleration (s.27): where, on a transfer, an interest is given to one person and, on the failure of a prior disposition, to another, the ulterior disposition takes effect on the failure of the prior even though the failure does not happen in the manner contemplated — the later interest is *accelerated* and takes effect. The ulterior gift is not defeated merely because the prior gift failed for a reason other than the one specified, unless a contrary intention appears.

Section 25, Transfer of Property Act, 1882: “An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or ... is fraudulent, or involves ... injury to the person or property of another, or ... is immoral or opposed to public policy.”

In Simple Terms: A bad condition *precedent* kills the whole gift. A bad condition *subsequent* is struck out and the gift survives clean. When a prior gift fails, the next gift in line is moved up (accelerated).

The Visual



Case Laws

- **Ambika Charan v. Sasitara (1915)** — an immoral or public-policy-defying condition precedent renders the transfer void.
- **Underwood v. Wing (1855)** — illustrates failure of a prior gift accelerating the ulterior disposition.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the “desert your husband” condition; you will distinguish precedent/subsequent and explain acceleration.
- **STAGE 2** → **Condition precedent:** s.25 — unlawful condition voids the whole transfer; s.26 substantial compliance.
- **STAGE 3** → **Condition subsequent:** ss.31-32 — unlawful condition struck out, transfer survives; strict compliance.
- **STAGE 4** → **Rule of acceleration:** s.27 — ulterior disposition advances on failure of the prior; cases.
- **STAGE 5** → **Verdict:** the law refuses to enforce immoral bargains yet protects an innocent transferee’s vested interest.

⚠️ FACT-PATTERN RISK ALERT

Scenario: A transfers a farm to B “for her life, and if she does not desert her husband, to C.” B does not desert her husband. Can C claim the farm? (decoy: B “performed” the condition, so C seems entitled.)

- **I — ISSUE:** Can an ulterior gift (to C) take effect where it rests on a condition opposed to public policy?
- **R — RULE:** A condition that a person desert her spouse is opposed to public policy. Where an ulterior disposition is made to depend on such a void condition, the ulterior disposition cannot take effect (ss.25, 31-32).
- **A — ANALYSIS:** C’s gift hinges on B’s conduct regarding her marriage — a condition the law will not enforce. The decoy frames “not deserting” as performance entitling C; but the law strikes the whole conditional limitation as against public policy. B’s prior interest is unaffected.
- **C — CONCLUSION:** C cannot claim the farm; the void condition cannot found C’s ulterior interest.

10. Spes Successionis & Feeding the Grant by Estoppel

Previous Year Questions

- **[Short Note]** *Spes successionis*. (Dec 2017, Nov 2021) ★
- **[Problem]** *Transfer of an expectancy that later materialises; feeding the estoppel*. (Jun 2011, Jun 2018, Apr 2022, Nov 2022, Dec 2019) ★★

The Hook

A grandson, sure he will inherit, sells his “future share” today for ready cash. Years later the grandfather dies and the share actually falls to him. Can the buyer hold him to the old sale? The Act first says the sale was void — then a second rule swoops in to do justice.

Spes Successionis (Section 6(a))

Spes successionis [hope of succession] is the bare chance of an heir succeeding to an estate, the chance of a relation obtaining a legacy, or any other mere possibility of a like nature. Section 6(a) declares it **cannot be transferred** — it is not “property”, only a hope. A transfer of a mere expectancy is **void** from the start.

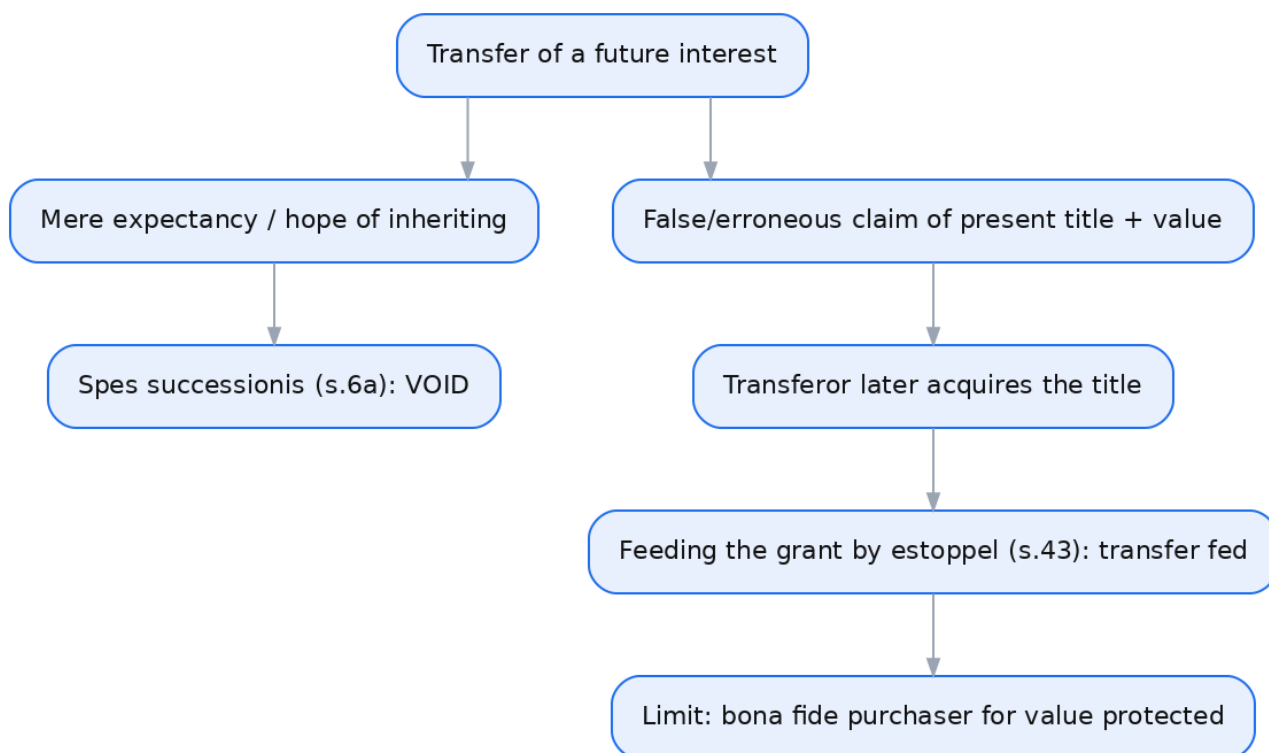
Feeding the Grant by Estoppel (Section 43)

Section 43 cures the harshness in a particular case. Where a person **fraudulently or erroneously represents** that he is authorised to transfer certain immovable property and purports to transfer it for consideration, then if he **later acquires** an interest in that property, the transferee may at his option compel the transfer to operate on that newly-acquired interest. The grant is “fed” by the title the transferor afterwards gets. This protects a transferee who took for value relying on the representation. It does not apply where the transferee *knew* the truth (no representation relied on), and it does not override the rights of a subsequent bona fide purchaser for value without notice.

Section 43, Transfer of Property Act, 1882: *“Where a person fraudulently or erroneously represents that he is authorised to transfer certain immovable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists ...”*

In Simple Terms: Selling a mere “hope of inheriting” is void (s.6a). But if a person *wrongly claims* he owns property, sells it for value, and then actually gets the title, the buyer can hold him to the bargain (s.43).

The Visual



Case Laws

- ***Jumma Masjid v. Kodimaniandra Deviah (1962)*** — s.43 applies even where the transferee knew the transfer was of an expectancy, provided there was an erroneous representation of present title; s.6(a) and s.43 operate in different fields.
- ***Official Assignee, Madras v. Sampath Naidu (1933)*** — a transfer of a mere spes successionis is void.

☰ 16-MARK ESSAY BLUEPRINT TRACKER

- **STAGE 1** → **Hook + Roadmap:** the grandson selling his “future share”; you will explain s.6(a) void rule and the s.43 cure.
- **STAGE 2** → **Spes successionis:** s.6(a) — a mere chance is not property; transfer void; *Sampath Naidu*.
- **STAGE 3** → **Feeding the grant:** s.43 — fraudulent/erroneous representation + consideration + later acquisition.
- **STAGE 4** → **Reconciling the two:** *Jumma Masjid* — different fields; protect transferee for value; bona fide purchaser exception.
- **STAGE 5** → **Verdict:** the Act voids speculation in bare hopes yet uses estoppel to prevent a fraudulent transferor profiting from his own wrong.

⚠ **FACT-PATTERN RISK ALERT**

Scenario: A, expecting to succeed to B's estate, sells B's property to C during B's lifetime; later A actually inherits B's property. Can C claim it? (decoy: the original sale was of a mere expectancy and void under s.6(a).)

- **I — ISSUE:** Can C enforce a transfer that, when made, was of a spes successionis, after A acquires the very title?
- **R — RULE:** A transfer of bare expectancy is void (s.6(a)); but where the transferor represented a present title and later acquires the interest, s.43 lets the transferee for value compel the transfer to operate on the acquired interest (*Jumma Masjid*).
- **A — ANALYSIS:** If A merely sold a known expectancy, s.6(a) governs and the sale is void. But if A represented present authority/title and C paid relying on it, A's later acquisition feeds the grant under s.43. The decoy stops at s.6(a); the resolving rule is whether there was an erroneous representation of present title.
- **C — CONCLUSION:** Where A made such a representation and C paid value, C may compel the transfer to operate on A's after-acquired title (subject to no intervening bona fide purchaser).

Quick Revision & Case Law Table

One-line memory hooks

- **Transfer of property:** living-to-living; s.6 — all property transferable except the listed exceptions.
- **Immovable property:** defined by exclusion (no timber/crops/grass); land + benefits + things attached; severance vs permanence.
- **Notice:** actual or constructive; registration and possession are notice; shut eyes = deemed knowledge.
- **Unborn person:** prior life interest + whole remaining interest to the unborn; no life estate to the unborn.
- **Restraint on alienation:** absolute void (s.10), partial valid; s.11 enjoyment restraint void but s.40 saves adjoining-land benefit.
- **Perpetuity:** lives in being + minority; test possibilities; public/charitable & personal contracts exempt.
- **Accumulation:** life of transferor or 18 years, whichever longer; excess void.
- **Vested vs contingent:** "when" (certain) vs "if" (uncertain); lean to vesting.
- **Conditions:** bad precedent kills the gift; bad subsequent is struck out; acceleration moves the next gift up.

- **Spes & s.43:** selling a hope is void; a false claim of title fed by later acquisition.

Master Case List for Unit 1

Case	Topic	One-line ratio
Jugalkishore Saraf v. Raw Cotton Co. (1955)	Property transferable	Bare right to sue not assignable
Official Assignee v. Sampath Naidu (1933)	Spes successionis	Transfer of expectancy is void
Shantabai v. State of Bombay (1958)	Immovable property	Right to cut bamboos over years = immovable
Ananda Behera v. State of Orissa (1956)	Immovable property	Right to take fish = profit à prendre, immovable
Marshall v. Green (1875)	Standing timber	Trees for immediate felling are movable
Tilakdhari Lal v. Khedan Lal (1921)	Notice	Registration is notice of competing deeds
Daniels v. Davison (1809)	Notice	Tenant's possession is notice of his rights
Girjesh Dutt v. Datadin (1934)	Unborn person	Life interest to unborn is void
Sopher v. Administrator-General (1944)	Perpetuity	Interest that may vest late is void
Rosher v. Rosher (1884)	Restraint on alienation	Sell-back at undervalue = absolute restraint, void
Ram Baran Prasad v. Ram Mohit Hazra (1967)	Perpetuity	Pre-emption is a personal contract, not hit
Rajes Kanta Roy v. Santi Debi (1957)	Vested interest	Law leans in favour of vesting
Leake v. Robinson (1817)	Contingent interest	Gift "on attaining 25" is contingent

Case	Topic	One-line ratio
Jumma Masjid v. Kodimaniandra Deviah (1962)	Feeding the grant	s.43 cures erroneous representation of title

End of Unit 1.

Transfer of Property

KSLU LL.B. — Question Bank · Model Answers (Essays & Problems)

KSLU LL.B. Question Bank

Medha-Academy

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Notes Version: **v1.0**

June 2026

Read this first, then go to your unit. This companion to the study notes gives you a full, exam-ready **model answer** to every 16M essay, every 10M short / explanatory note, and every fact-pattern problem asked in past KSLU Transfer of Property papers — grouped by unit and topic in the same order as the notes. Sub-10-mark short notes (5M / 6M / 8M) are answered in the notes bundle, not here.

How to Use This Question Bank

What this is. A rehearsal book. The study notes teach the concept; this bank shows you how to *write the marks* — a complete answer in the exact shape an examiner rewards.

The 3-step drill. (1) Read the question and try a 2-minute plan from memory. (2) Read the model answer; note the structure, the cases, the verdict. (3) For problems, re-do the IRAC in your own words under time.

Priorities. The ★ rating shows how often a question repeats — ★★★ (5+ times) is a near-certainty; do these first. The Priority Index below lists them ranked.

House rules that win marks. Lead with a definition + roadmap; name the case **and** the year; quote the exact section; for problems use the four IRAC headings and always give a definite verdict. Underlined fragments in each answer are the must-write cores — read alone, they form a passing skeleton.

A note on Unit V. The law of trusts is governed by the **Indian Trusts Act, 1882**; section references in that unit are to the Trusts Act.

Exam Pattern & Mark Weights

KSLU Transfer of Property is set both as a 100-mark and an 80-mark paper. The long questions carry 16 marks (15 in some sittings); short / explanatory notes carry about 10 marks; and the problem question (often the compulsory Q9) sets two fact-patterns. Always attempt the compulsory problem question first.

Mark slot	What it is	How many	Where it's drilled
16M	Long essay	Answer ~5 of 8	Section A of each unit
10M	Short / explanatory note	As set	Section B of each unit
Problems	Fact-pattern, IRAC	Compulsory question	Section C of each unit

Priority Index – Questions by Frequency

Rank	Question (short)	Type	Times asked	Unit
1	Kinds of mortgages & their features	16M	★★★★ (15+)	3
2	Doctrine of election	16M	★★★★ (10+)	2
3	Transfer by ostensible owner (s.41)	16M	★★★★ (11)	2
4	Essentials & revocation of gift	16M	★★★★ (13)	4
5	Doctrine of apportionment	16M	★★★★ (11)	2
6	“Once a mortgage, always a mortgage” / redemption	16M	★★★★ (10+)	3
7	Rule against perpetuity & exceptions	16M	★★★★ (8)	1
8	Vested & contingent interest	16M	★★★★ (8)	1
9	Doctrine of lis pendens	16M	★★★★ (10)	2
10	Rights & liabilities of seller and buyer	16M	★★★★ (13)	4
11	Kinds of trusts / public trust	16M	★★★★ (9)	5
12	Define TP + essentials of valid transfer	16M	★★★★ (7)	1
13	Determination of lease & holding over	16M	★★★★ (8)	4
14	Duties & liabilities of trustees	16M	★★★★ (7)	5
15	Marshalling & contribution	16M	★★★★ (7)	3
16	Charge (s.100)	10M	★★★★ (10)	3
17	Election problem — coal mine (s.35)	Prob	★★★★ (5)	2
18	Restraint on alienation problem (s.10)	Prob	★★★★ (4)	1

Year Index — Questions by Paper

Year (paper)	Essays asked (sample)	Short notes asked	Problems asked
2025/2026(100)	Q3.4, Q2.5, Q2.6, Q4.3, Q4.8, Q5.2	S3.1	P1.4, P4.7
2024(80)	Q1.6, Q2.1, Q3.6, Q5.5	S3.1, S5.2	—
2023(80)	Q1.2, Q1.5, Q5.7	S3.1	P1.9, P3.6, P4.8
2022(100/80)	Q1.6, Q2.1, Q3.4, Q4.4, Q5.2	S2.2, S3.2	P2.3, P2.4
2021(100/80)	Q2.2, Q3.5, Q4.4, Q5.5	S1.1, S3.3, S5.2	P1.5(type), P3.1, P3.2
2019(100/80)	Q1.3, Q3.2, Q4.7, Q5.3	S1.3, S5.1	P4.2
2018(100)	Q1.4, Q2.2, Q3.4, Q4.2	—	P1.12, P1.13, P4.4
2017(100)	Q2.5, Q3.2, Q4.2, Q4.9	S1.2	P1.6, P1.11, P4.6
2016(100)	Q1.6, Q2.1, Q3.2, Q4.1	—	P2.1, P2.3
2015(100)	Q2.6, Q3.4, Q4.1, Q5.6	—	P2.2, P3.5, P4.9
2011-2014(100)	Q1.2, Q2.1, Q3.3, Q4.8, Q5.1	—	P2.1, P3.3, P4.1, P4.5

UNIT 1 – General Principles of Transfer of Property · Question Bank

Transfer of Property · KSLU LL.B. · Medha-Academy.in

Scope of this unit's bank: full model answers to every **16M essay** (§A), every **10M short / explanatory note** (§B), and every **fact-pattern problem** (§C) asked in past KSLU papers for this unit. Sub-10-mark short notes (5M / 6M / 8M) are answered in the study-notes bundle, not here.

A. Essay Questions (16M) – Model Answers

Q1.1 — [16M] Define “transfer of property”. Explain the essentials / legal requirements of a valid transfer.

Asked: 2015(100), 2018(100), 2021(100), 2025(100), 2019(80), 2025(80), 2026(80) · ★★ ★ · Notes: Unit 1 → Transfer of Property

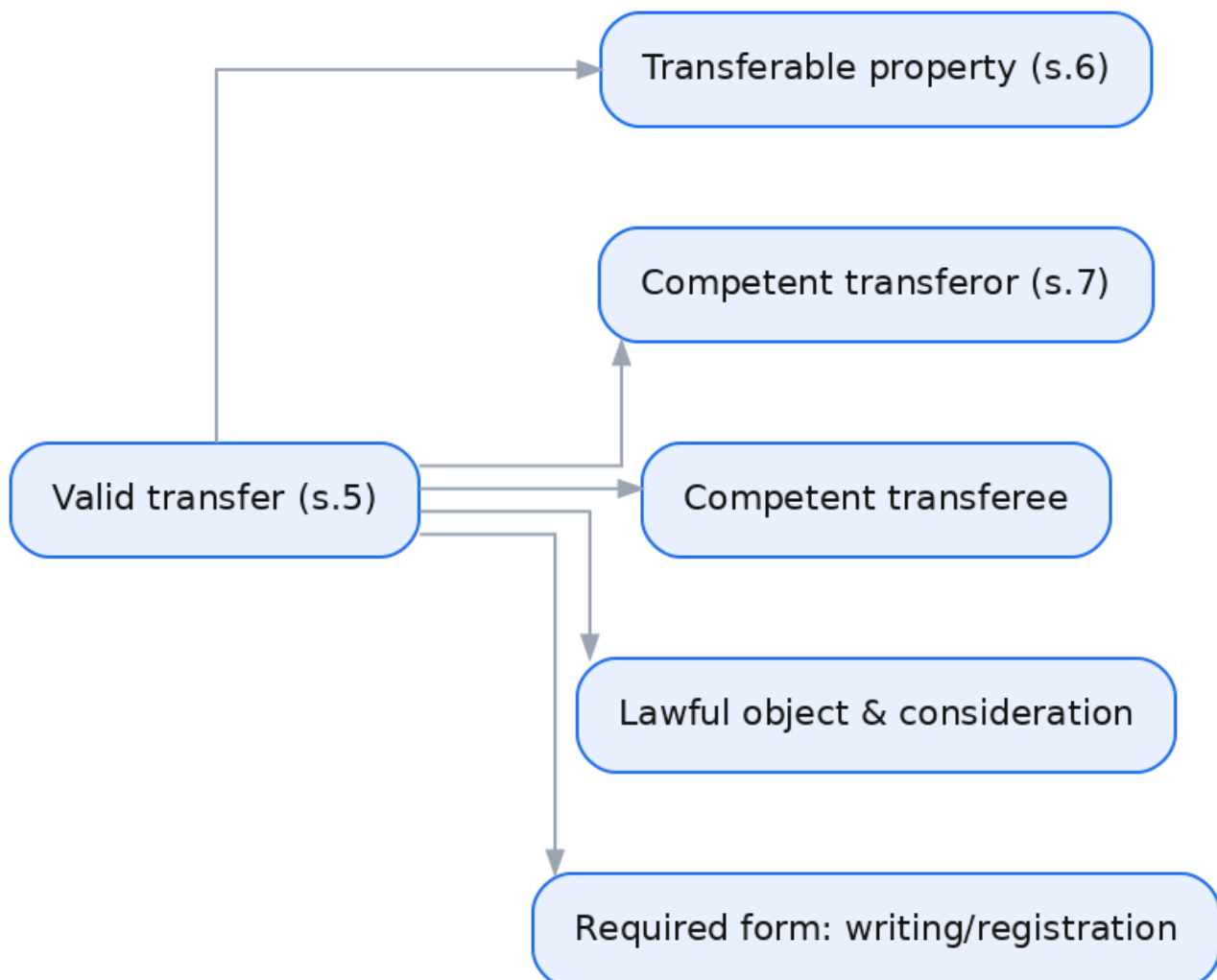
Introduction. “Transfer of property” (s.5) means an act by which a living person conveys property, in present or in future, to one or more living persons, or to himself, or to himself and others. The defining feature is that it is *inter vivos* [between living persons]; a disposition that operates only on death is a will, not a transfer under this Act. This answer states the definition and then the essentials a transfer must satisfy to be valid.

Meaning of transfer (s.5)

1. A conveyance between living persons — both transferor and transferee must be living at the date of transfer. The expression “living person” includes a company, association or body of individuals, so corporate transfers fall within the Act. Because of this requirement, succession, forfeiture and a court sale — which operate by law, not by act of parties — are outside s.5.
2. “Conveys” an existing right — there must be an actual passing of some right from the transferor to the transferee, whether the whole ownership (sale, gift) or a limited interest (mortgage, lease). The property transferred must exist; one cannot transfer future property, though a transfer of existing property may be made to take effect in the future.

Essentials of a valid transfer

1. Transferable property (s.6) — the subject must be property the law allows to be transferred. The items excepted by s.6 — spes successionis, a mere right to sue, a public office, and so on — cannot be transferred, and a purported transfer of them is void.
2. Competent transferor (s.7) — he must be of the age of majority, of sound mind, and either entitled to the property or authorised to dispose of it. A minor or a person of unsound mind cannot make a valid transfer of his property.
3. Competent transferee — the transferee must be a person in existence at the date of transfer, the only relaxation being the unborn-person device of s.13; he must also not be legally disqualified (e.g. a judge buying property in litigation before him).
4. Lawful object and consideration (s.6(h)) — the purpose of the transfer must not be forbidden by law, fraudulent, immoral, or opposed to public policy, otherwise the transfer fails.
5. Form required by law — the Act prescribes writing, attestation and registration for particular transfers: a sale of tangible immovable property of Rs.100 or more (s.54), a gift of immovables (s.123), and mortgages other than by deposit of title deeds (s.59). Non-compliance with the prescribed form renders the transfer inoperative.



Sketch this in the exam — the 30-second version earns presentation marks.

Leading cases

- ***Harish Chandra v. Chandra Shekhar (1977)*** — a transfer must convey an existing right from one living person to another to fall within s.5.
- ***Jugalkishore Saraf v. Raw Cotton Co. (1955)*** — only property recognised as transferable under s.6 can be conveyed; a bare right to sue cannot.

Conclusion. A valid transfer requires transferable property, a competent transferor and a competent transferee, a lawful object and consideration, and the form the Act prescribes. The absence of any one essential renders the transfer void or inoperative, for the Act treats each requirement as mandatory.

Q1.2 — [16M] “Property of any kind may be transferred.” Explain the general rule and its exceptions.

Asked: 2011(100), 2011(100), 2012(100), 2013(100), 2016(100), 2019(100), 2023(80)
· ★★★ · Notes: Unit 1 → Transfer of Property

Introduction. Section 6 lays down the master rule that property of any kind may be transferred, except as otherwise provided by this Act or by any other law in force. The Act therefore begins from a presumption in favour of free alienability, and treats the restrictions as specific, narrowly-construed exceptions. This answer states the general rule and then explains each statutory exception.

The general rule

1. Free transferability is the norm — every species of property, movable or immovable, tangible or intangible, vested or contingent, is presumptively transferable. The policy is that property should circulate freely in commerce, so a person alleging that a particular item is non-transferable must bring it within an express exception.

The exceptions (s.6(a)-(i))

1. Spes successioneis (s.6(a)) — the mere chance of an heir succeeding to an estate, the chance of a relation obtaining a legacy, or any other mere possibility of a like nature cannot be transferred. It is only a hope, not a present interest, so a transfer of it is void even if the expectancy later materialises.
2. Right of re-entry (s.6(b)) — a bare right of re-entry for breach of a condition cannot be transferred apart from the land to which it relates; it can be exercised only by the owner of the property affected.
3. Easement (s.6(c)) — an easement (such as a right of way or of light) cannot be transferred apart from the dominant heritage it serves, because it exists only for the beneficial enjoyment of that land.

4. Restricted personal interest (s.6(d)) — an interest restricted in its enjoyment to the owner personally cannot be transferred, since the benefit is intended for him alone (e.g. a right of residence given personally).
5. Right to future maintenance (s.6(dd)) — a right to future maintenance, in whatever manner secured, is for the personal benefit of the holder and is non-transferable.
6. Mere right to sue (s.6(e)) — a bare right to sue (for instance for damages for breach or for a tort) cannot be assigned, to discourage trafficking in litigation; a right joined to property may, however, pass with the property.
7. Public office and pensions (s.6(f), (g)) — a public office, the salary of a public officer whether before or after it becomes payable, and stipends and pensions allowed to military, civil or other pensioners, are non-transferable as they are granted for personal services.
8. Unlawful or repugnant transfers (s.6(h)) — no transfer can be made in so far as it is opposed to the nature of the interest affected, or for an unlawful object or consideration, or to a person legally disqualified to be a transferee.

Leading cases

- ***Official Assignee, Madras v. Sampath Naidu (1933)*** — a transfer of a mere expectancy (spes successionis) is void even if it later materialises.
- ***Jugalkishore Saraf v. Raw Cotton Co. (1955)*** — a bare right to sue is not assignable, though a right joined to property may pass with it.

Conclusion. Property of every kind is transferable; only the items expressly excepted by s.6 cannot be transferred, and a transfer of an excepted item is void. The exceptions, being departures from the policy of free alienability, are construed strictly.

Q1.3 — [16M] Define immovable property. What properties have been judicially recognised as immovable?

Asked: 2014(100), 2015(100), 2017(100), 2021(100), 2019(80) · ★★★ · Notes: Unit 1 → Immovable Property

Introduction. The Transfer of Property Act does not give a complete definition; s.3 says only that “immovable property” does not include standing timber, growing crops or grass. The full meaning is constructed by reading the TP Act with the General Clauses Act, 1897 and the Registration Act, 1908. This answer states the statutory position, the test of attachment, and the properties courts have recognised as immovable.

The statutory position

1. Section 3, TP Act — defines the term negatively, by excluding standing timber, growing crops and grass, because the value of these lies in their severance from the land.

2. General Clauses Act, 1897 — immovable property “shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth”.
3. Registration Act, 1908 — adds buildings, hereditary allowances, rights of way, lights, ferries, fisheries and other benefits arising out of land.

“Attached to the earth” (s.3) — the three modes

1. Rooted in the earth — trees and shrubs (other than standing timber, growing crops or grass), because they draw their nourishment from and are fixed to the soil.
2. Embedded in the earth — walls and buildings, which are sunk into and rest upon the soil.
3. Attached for permanent beneficial enjoyment — things fastened to what is embedded, such as doors and windows, where the object is permanent enjoyment of that to which they are attached. The governing test is the **degree and object of annexation** — how firmly, and for what purpose, the thing is fixed.

Properties judicially recognised as immovable — a right to collect rents of immovable property, a right of ferry, a right of fishery, a right to take fish from a lake, a right to cut bamboos or grass over a number of years, a mortgage-debt, the equity of redemption, and a hereditary office. Each is treated as immovable because it is a benefit arising out of or annexed to land.

Leading cases

- **Shantabai v. State of Bombay (1958)** — a right to enter land and cut bamboos over a period of years is a benefit arising out of land, hence immovable property.
- **Ananda Behera v. State of Orissa (1956)** — a right to catch and carry away fish from a lake is a profit à prendre and immovable property.
- **Marshall v. Green (1875)** — trees sold for immediate felling are “standing timber”, and therefore movable.

Conclusion. Immovable property means land, benefits arising out of land, and things permanently attached to the earth, but excludes standing timber, growing crops and grass; in doubtful cases the object of annexation decides whether a thing is movable or immovable.

Q1.4 — [16M] “The Act applies to transfers inter vivos, but a transfer for the benefit of an unborn person is an exception.” Discuss the rules relating to transfer for the benefit of an unborn person.

Asked: 2012(100), 2013(100), 2018(100), 2022(100), 2022(80), 2019(80), 2026(80) · ★★ · Notes: Unit 1 → Unborn Person

Introduction. As a rule a transferee must exist at the date of transfer (s.5), so property cannot be given directly to a person not yet born. Section 13 creates a controlled exception, permitting an interest to be created for the benefit of a person not in existence, subject to a prior interest and to strict conditions. This answer explains the device, its two conditions and its link with the perpetuity rule.

The bar and the device

1. No direct transfer to an unborn person — because a transferee must be a living person, a gift made directly to one not yet born would fail; there is no one in existence to take.
2. The indirect route (s.13) — the property is first given to a living person for life (the prior interest), and the interest for the unborn person is engrafted upon it, to vest when the unborn comes into existence.

The two conditions (s.13)

1. A prior life interest in a living person — there must be an intermediary, a living person who holds the property for life, so that the gift to the unborn is “subject to a prior interest created by the same transfer”.
2. The whole remaining interest to the unborn — the interest created for the unborn must extend to the **entire remaining interest** of the transferor; the law does not allow a mere life interest to be given to an unborn person, because that would enable property to be tied up through successive generations of unborn life-holders.

The perpetuity link (s.14)

1. Vesting must fall within the perpetuity period — the interest of the unborn must vest, if at all, not later than the life of the prior interest-holder plus the **minority** of the unborn person, who must be in existence before the prior interest ends; otherwise it is void.

Leading cases

- ***Girjesh Dutt v. Datadin (1934)*** — a gift of only a life interest to an unborn daughter is void, and the gift dependent on it also fails.
- ***Sopher v. Administrator-General of Bengal (1944)*** — an interest to an unborn person that may vest beyond the permitted period is void for perpetuity.

Conclusion. An interest may be created for an unborn person only through a prior life interest, only if the whole remaining interest is given to him, and only if it vests within the perpetuity period; failing any of these, the gift to the unborn is void.

Q1.5 — [16M] “An absolute restraint on alienation is void, but a partial restraint is valid.” Discuss with exceptions.

Asked: 2012(100), 2016(100), 2021(100), 2022(80), 2023(80) · ★★ · Notes: Unit 1
→ Restraint on Alienation

Introduction. Section 10 declares void a condition or limitation that absolutely restrains the transferee from parting with or disposing of his interest in the property; the transfer stands and only the offending condition falls away. The rule rests on the principle that the power of alienation is an incident of ownership, and a clause negating it is repugnant to the interest granted. This answer explains absolute and partial restraints and the exceptions.

Absolute restraint (s.10)

1. A condition totally barring alienation is void — a clause such as “the transferee shall never sell or mortgage” wholly takes away the power to alienate, contradicts the ownership conferred, and is therefore void.
2. The transfer survives the void condition — only the restraint is struck out; the transferee keeps the property and may deal with it freely, because the policy is to free the property, not to defeat the gift.

Partial restraint — valid

1. A partial restraint is good — a restraint limited as to time (“not for three years”), as to persons (“not to a stranger to the family”), or as to mode may be valid, because it does not destroy but only regulates the power of alienation.

Exceptions to s.10

1. Lease — a condition restraining the lessee from assigning or sub-letting, imposed for the benefit of the lessor, is valid, since the lessor has a legitimate interest in who occupies his property.
2. Transfer to a woman (not Hindu, Muslim or Buddhist) — a condition that she shall not have power during marriage to transfer or charge the property is valid.

Allied provisions — Section 11 voids a condition restraining the *enjoyment* of an interest transferred absolutely, except a restriction for the more beneficial enjoyment of the transferor’s adjoining land under s.40; s.12 voids a condition making the interest cease on the transferee’s insolvency or attempted alienation.

Leading cases

- **Rosher v. Rosher (1884)** — a condition requiring the property to be offered back to the transferor at a fraction of its value is an absolute restraint and void.
- **Mata Prasad v. Nageshar Sahai (1925)** — a partial restraint limited in its operation may be upheld as valid.

Conclusion. An absolute restraint on alienation is void, while a reasonable partial restraint is valid, subject to the lease and woman exceptions; in every case the transfer itself survives the void condition, because the policy of the Act is to keep property freely circulating in commerce rather than to defeat the transferee’s title.

Q1.6 — [16M] Explain the rule against perpetuity. State its exceptions.

Asked: 2013(100), 2014(100), 2015(100), 2016(100), 2017(100), 2021(100), 2022(100), 2024(80) · ★★★ · Notes: Unit 1 → Rule Against Perpetuity

Introduction. Section 14 forbids a transfer that postpones the vesting of an interest beyond the lifetime of one or more persons living at the date of transfer plus the minority of an unborn person who is to take the interest. The object is to prevent property being tied up and rendered inalienable for an indefinite time, which would withdraw it from commerce. This answer explains the permitted period, the test applied, and the exceptions.

The permitted period

1. Lives in being + minority — the maximum permissible postponement of vesting is the duration of one or more prior life interests of persons living at the date of transfer, followed by the period of gestation and the **minority (18 years)** of the unborn ultimate beneficiary.
2. The ultimate taker must exist before the prior interest ends — the unborn person in whom the interest is finally to vest must come into existence before the death of the last prior life-holder, and the interest must vest in him by the time he attains majority.

The “possibilities” test

1. Possibilities, not actual events, are tested — if, judged at the date of transfer, the interest *may* vest beyond the permitted period, the gift is void from the outset, even though subsequent events would in fact have brought the vesting within the period. Certainty of vesting within time must appear at the date of transfer.

Exceptions to the rule

1. Public / charitable transfers (s.18) — the rule does not apply to transfers for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other beneficial purpose.
2. Personal contracts — a covenant such as a contract of pre-emption or an option to purchase creates no interest in property and binds only the parties, so it is outside the rule.
3. Mortgage redemption and charges — a provision for redemption of a mortgage, and a charge, do not create a postponed proprietary interest and are unaffected.

Leading cases

- ***Ram Baran Prasad v. Ram Mohit Hazra (1967)*** — a contract of pre-emption is a personal obligation and is not hit by the rule against perpetuity.
- ***Sopher v. Administrator-General of Bengal (1944)*** — an interest that may vest beyond the permitted period is void for perpetuity.

Conclusion. An interest must vest, if at all, within lives in being plus the minority of the ultimate beneficiary, or it is void; the rule yields only to public/charitable transfers, personal contracts and mortgage covenants, and it strikes down the gift from the outset wherever vesting may possibly fall outside the permitted period.

Q1.7 — [16M] State and analyse the provisions relating to direction for accumulation of income. Suggest the exceptions.

Asked: 2011(100), 2017(100) · ★★ · Notes: Unit 1 → Accumulation

Introduction. Section 17 limits the period for which a transferor may direct that the income arising from property be accumulated instead of being paid out. It is the income-side counterpart of the perpetuity rule: just as property may not be kept inalienable indefinitely, its income may not be locked up beyond a fixed period. This answer states the permitted periods, the effect of breach, and the exceptions.

The permitted periods (s.17)

1. Life of the transferor — a direction to accumulate the income may validly extend over the whole of the transferor's life; or
2. Eighteen years from the date of the transfer — whichever of the two periods is the **longer**. The transferor may choose the longer measure, but no direction to accumulate may exceed it. Thus if the transferor lives twenty-five years after the transfer, accumulation is good for his whole life; if he dies within five years, it is good for the full eighteen years.

Effect of a breach

1. Void as to the excess — a direction to accumulate beyond the longer of the two permitted periods is void only to the extent of the excess; the earlier, valid part of the direction stands. For the surplus years the income is released and goes to the person who would have been entitled to receive or apply it had the accumulation not been directed — ordinarily the person entitled to the property itself. The section therefore does not strike down the whole gift; it merely cuts back the excessive accumulation, preserving as much of the transferor's intention as the law permits.

The exceptions — longer accumulation allowed

1. Payment of debts — accumulation for the payment of the debts of the transferor or of any other person taking an interest under the transfer is permitted beyond the ordinary period.
2. Portions for children — accumulation for raising portions (provisions) for children or remoter issue of the transferor, or of any person taking an interest, is allowed.
3. Preservation or maintenance of the property — accumulation for the preservation or maintenance of the property transferred is permitted.

Leading case

- ***Thellusson v. Woodford (1805)*** — the case of an extravagant direction to accumulate income that prompted statutory limits on accumulation.

Conclusion. Income may be directed to be accumulated only for the transferor's life or for eighteen years from the transfer, whichever is longer, the excess being void, unless the accumulation is for debts, portions for children, or preservation of the property — the section mirroring the perpetuity policy by refusing to let income be locked up indefinitely.

Q1.8 — [16M] Define vested interest and contingent interest. Distinguish between them.

Asked: 2013(100), 2014(100), 2016(100), 2018(100), 2021(100), 2026(100), 2024(80), 2022(80) · ★★★ · Notes: Unit 1 → Vested & Contingent Interest

Introduction. A vested interest (s.19) arises where a transfer creates an interest without specifying the time for it to take effect, or on an event that is certain to happen; a contingent interest (s.21) arises where the interest is to take effect only on a specified uncertain event. The distinction decides whether a transferee has a present right or a mere chance. This answer defines each and contrasts them.

Vested interest (s.19)

1. A present, fixed right of ownership — the transferee acquires the interest immediately; what may be postponed is only the *enjoyment* or possession, not the ownership itself. For example, a gift “to A, the property to be possessed at 21” vests at once, though possession waits.
2. Heritable and transferable — because the right is fixed now, it is not defeated by the transferee's death before he obtains possession; it passes to his legal heirs, and he can transfer it in the meantime.

Contingent interest (s.21)

1. A mere chance dependent on an uncertain event — the transferee acquires nothing in praesenti; he has only a possibility that ripens into ownership if and when the specified uncertain event happens.
2. Fails on death before the contingency — if the transferee dies before the uncertain event occurs, his interest fails and does not pass to his heirs; the moment the event happens, the interest becomes vested.

Distinction

Basis	Vested (s.19)	Contingent (s.21)
Condition	None / certain event	Uncertain event
Present right	Yes — fixed now	No — a mere chance
Death before possession	Passes to heirs	Fails
Transfer / inheritance	Fully transferable & heritable	Precarious until event happens

Leading cases

- ***Rajes Kanta Roy v. Santi Debi (1957)*** — the law leans in favour of vesting unless a contrary intention clearly appears.
- ***Leake v. Robinson (1817)*** — a gift “on attaining 25” with no prior gift of income is contingent, not vested.

A useful practical test is to ask what happens if the transferee dies before taking possession: if the interest still passes to his heirs, it was vested; if it lapses, it was contingent. Section 20 adds that where an interest is created for an unborn person, he acquires a vested interest on his birth, though enjoyment is postponed; and s.21 itself notes the exception that a gift to members of a class who attain a particular age may give a vested interest to those who reach it.

Conclusion. A vested interest is a present, heritable and transferable right; a contingent interest is a mere chance dependent on an uncertain event and fails if the holder dies before it occurs — and where the language is ambiguous, courts prefer the construction that vests, to keep title certain and property freely transferable.

Q1.9 — [16M] Explain the doctrine of constructive notice. When is a person deemed to have notice under the TP Act?

Asked: 2012(100), 2018(100), 2022(100), 2022(80) · ★★ · Notes: Unit 1 → Notice

Introduction. Notice (s.3) means knowledge of a fact; constructive notice is the knowledge the law imputes to a person who, but for wilful abstention from an enquiry he ought to make, or gross negligence, would have known that fact. The doctrine is the gateway to several protections under the Act, since many rights turn on whether a transferee had notice. This answer explains actual and constructive notice and the situations of deemed notice.

Actual and constructive notice

1. Actual notice — direct and definite knowledge of a fact actually present in the person’s mind; mere vague rumour is not enough.

2. Constructive notice — knowledge the law attributes to a person because, acting with ordinary prudence, he would have acquired it; the law refuses to let a person profit by deliberately remaining ignorant.

Situations of deemed (constructive) notice

1. Wilful abstention from enquiry — where a person deliberately abstains from an enquiry or search that he ought to have made, he is fixed with what the enquiry would have revealed, because his ignorance is of his own making.
2. Gross negligence — where a person, through gross (not merely casual) carelessness, fails to make an enquiry a prudent man would make, he is treated as knowing the fact.
3. Registration (Explanation I) — registration of an instrument operates as notice of its contents to a subsequent transferee who ought to have searched the register, provided the registration was duly made.
4. Possession (Explanation II) — actual possession of a person is notice to the world of his title or interest in the property; a buyer must enquire into the rights of the person in occupation.
5. Notice to agent (Explanation III) — notice to an agent, of a fact material to the transaction and received in the course of the agency, is imputed to the principal.

Leading cases

- ***Tilakdhari Lal v. Khedan Lal (1921)*** — registration is constructive notice of a competing deed that the transferee ought to have searched for.
- ***Daniels v. Davison (1809)*** — a buyer is fixed with notice of the rights of a tenant in actual possession.

Conclusion. A person has notice when he actually knows a fact, or would have known it but for wilful abstention or gross negligence, and is deemed to have notice through registration, possession and notice to his agent; constructive notice prevents a party from profiting by shutting his eyes to the obvious, and is the foundation on which the protections of ss.41, 51 and 53 of the Act depend.

B. Short Notes (10M) — Model Answers

S1.1 — [10M] Distinguish condition precedent and condition subsequent; explain the rules relating to their performance.

Asked: 2021(80) · ★ · Notes: Unit 1 → Conditional Transfers

Introduction. A condition precedent must be fulfilled before an interest can vest (s.25); a condition subsequent operates after the interest has vested, to defeat or divest it (s.31).

The distinction is decisive, because a defective condition precedent destroys the whole gift while a defective condition subsequent is merely struck out.

Condition precedent (ss.25-26)

1. Must be satisfied before vesting — the interest does not arise at all until the condition is performed, so everything depends on the condition being capable of fulfilment.
2. If unlawful or impossible, the transfer is void — where the condition precedent is impossible, forbidden by law, fraudulent, immoral or opposed to public policy, the interest dependent on it fails altogether (s.25).
3. Substantial compliance suffices — a condition precedent need only be **substantially** complied with; literal or exact performance is not insisted upon (s.26).

Condition subsequent (ss.31-32)

1. Operates after vesting — the interest first vests and is then liable to be divested on the happening of the specified event.
2. If unlawful, the condition is void but the transfer stands — an illegal or impossible condition subsequent is ignored, and the transferee holds the property free of it (s.32).
3. Strict compliance required — to divest a vested interest, a condition subsequent must be **strictly** and exactly fulfilled.

Leading case

- ***Ambika Charan v. Sasitara (1915)*** — an immoral condition precedent renders the whole transfer void.

Conclusion. A bad condition precedent voids the entire transfer, whereas a bad condition subsequent is struck out and the transfer survives; and the former needs only substantial, the latter strict, compliance — so correctly classifying the condition is the first step in every answer on conditional transfers.

S1.2 — [10M] **Spes successionis.**

Asked: 2017(100), 2021(80) · ★ · Notes: Unit 1 → Spes Successionis

Introduction. Spes successionis [hope of succession] is the bare chance of an heir succeeding to an estate, the chance of a relation obtaining a legacy, or any other mere possibility of a like nature; s.6(a) declares it non-transferable.

Nature and effect

1. A hope, not property — the apparent heir of a living person has no present right in that person's property; he has only an expectancy which may never materialise (the owner may sell, gift, or change his will). The law does not treat such a hope as property.

2. Transfer is void (s.6(a)) — a transfer of a mere expectancy is void from the very inception, and remains void even if the expectancy later materialises, because nothing existed to be transferred when the transfer was made.
3. Rationale — to prevent speculative trafficking in the chances of inheritance, which would be uncertain, would tempt heirs to gamble away their prospects, and would be opposed to public policy.

The s.43 qualification

1. Feeding the grant by estoppel — where the transferor erroneously or fraudulently represented a present title and later actually acquires the property, the transferee for value may compel the transfer to operate on the acquired interest (s.43); s.6(a) and s.43 thus occupy different fields, as held in ***Jumma Masjid v. Kodimaniandra Deviah (1962)***.

Leading case

- ***Official Assignee, Madras v. Sampath Naidu (1933)*** — a transfer of spes successionis is void.

It should be distinguished from a transfer of a present, vested right of an heir-apparent under a family arrangement, which may be valid; what s.6(a) forbids is the transfer of the naked chance itself.

Conclusion. A mere chance of succession cannot be transferred, and any such transfer is void under s.6(a), subject only to the distinct estoppel operation of s.43.

S1.3 — [10M] Concept of immovable property and transfer of immovable property.

Asked: 2019(80), 2019(100) · ★ · Notes: Unit 1 → Immovable Property

Introduction. “Immovable property” is defined negatively in s.3 — it does not include standing timber, growing crops or grass — and is supplemented by the General Clauses Act and the Registration Act, which include land, benefits arising out of land, and things attached to the earth.

What is included

1. Land — the surface of the earth, the soil and minerals below, and the column of space above, all treated as one immovable subject.
2. Benefits arising out of land — rights of ferry, fishery, of way, and to collect rent, which though intangible are annexed to land and so immovable.
3. Things attached to the earth — trees rooted in the soil, buildings embedded in it, and fixtures fastened for permanent enjoyment, judged by the degree and object of their attachment.

Transfer of immovable property

1. Form requirements — a sale of tangible immovable property of Rs.100 or more must be by a **registered instrument** (s.54); a gift of immovables requires a registered, attested deed (s.123); most mortgages require a registered deed (s.59).
2. The object-of-annexation test — whether a borderline item (a tree, a machine bolted to the floor) is immovable depends on how firmly and for what purpose it is fixed.

Leading case

- ***Shantabai v. State of Bombay (1958)*** — a right to cut bamboos over years is a benefit arising out of land, hence immovable.

The classification matters because only immovable property attracts the registration and attestation requirements of the Act, and a wrong classification can render a whole transaction inoperative.

Conclusion. Immovable property is land, the benefits arising out of it, and things permanently attached to it, and is transferred only in the form the Act prescribes.

C. Problems — Model Answers (IRAC)

P1.1 — [Prob] A sells/gifts a house to B with a condition that B shall not alienate it without A's consent (or shall not alienate at all). Is the condition valid?

Asked: 2011(100), 2018(100), 2025(100), 2017(100) · ★★ · Notes: Unit 1 Risk Alert

Issue. Is a condition restraining the transferee from alienating absolutely-transferred property valid, and to what extent?

Rule. Section 10 makes void a condition or limitation absolutely restraining the transferee from parting with or disposing of his interest; only a reasonable **partial** restraint is valid.

Rosher v. Rosher (1884) held a condition compelling sale back to the transferor at a gross undervalue to be, in substance, an absolute restraint and therefore void, while ***Mata Prasad v. Nageshar Sahai (1925)*** upheld a genuinely partial restraint.

Application. Where the condition totally bars alienation — “B shall not alienate at all” — it is an absolute restraint, void under s.10, and B holds the house free of it, the transfer itself remaining good. The planted decoy is the assumption that any term the parties agreed to must bind B; but the power of alienation is an incident of the ownership conferred, and the law will not allow the transferor to negate the very interest he has granted. A condition “not without A's consent” must be examined for substance: if the requirement of consent is, in effect, a means of total prohibition (consent which may be withheld at pleasure), it is

an absolute restraint and void; if it is a genuinely limited, partial regulation, it may be upheld.

Conclusion. An absolute restraint is void and B may alienate freely; only a genuinely partial restraint would bind him, the transfer standing in either case.

P1.2 — [Prob] Property is transferred to A for life, then to A's first son (unborn) for life, then to B absolutely. Is the transfer to the unborn son valid?

Asked: 2011(100), 2016(100), 2021(100), 2022(80) · ★★ · Notes: Unit 1 → Unborn Person

Issue. Can an unborn person be given a mere life interest under s.13, and what is the effect on the subsequent gift?

Rule. Section 13 requires that an interest created for an unborn person extend to the **whole remaining interest** of the transferor; a life interest given to an unborn person is void. ***Girjesh Dutt v. Datadin (1934)*** so held, adding that a gift dependent on the void interest also fails.

Application. A's life interest is valid, as A is a living person. But the gift to A's unborn first son is only a **life interest**, exactly what s.13 forbids — the unborn must take the absolute remaining interest, not a life slice, otherwise property could be tied up through successive unborn life-holders. The decoy is that a life provision for a son looks reasonable and generous; the statute, however, voids any interest to the unborn short of the whole remaining interest. Because the gift to the unborn son is void, the ulterior gift to B, which was dependent upon it, also fails.

Conclusion. The transfer to the unborn son is void under s.13, and the dependent gift to B fails; the property reverts to the transferor's estate after A's life interest.

P1.3 — [Prob] A, expecting a legacy under B's will, transfers his expectancy to C during B's lifetime. Is the transfer valid?

Asked: 2011(100), 2019(80), 2019(100), 2022(100) · ★★ · Notes: Unit 1 → Spes Successionis

Issue. Is a transfer of a mere expectancy (spes successionis) valid?

Rule. Section 6(a) declares that the chance of a relation obtaining a legacy, or of an heir succeeding to an estate, or any other mere possibility of a like nature, cannot be transferred; such a transfer is void. ***Official Assignee, Madras v. Sampath Naidu***

(1933) confirmed that a transfer of spes successionis is void even if the expectancy later materialises.

Application. During B's lifetime A has no interest whatever in B's property — he has only a hope of receiving a legacy, which B may defeat by altering the will or disposing of the property. The decoy is that A confidently expects the legacy, which makes the transfer feel substantial; but a mere expectancy is not property and cannot be the subject of a valid transfer. The transfer to C is therefore void at its inception. It would be different only if A had **represented a present title** and afterwards acquired it, when s.43 might feed the grant — but that is not the case here, where A transferred a known expectancy.

Conclusion. The transfer of A's expectancy to C is void under s.6(a); C acquires no interest in B's property.

P1.4 — [Prob] A transfers property to B on condition that B shall touch the sky with his little finger (or run at 100 km/h). Is the transfer/condition valid?

Asked: 2025(100), 2021(100), 2026(100) · ★★ · Notes: Unit 1 → Conditional Transfers

Issue. What is the effect of a transfer subject to an impossible condition precedent?

Rule. Section 25 provides that an interest created on a transfer and dependent upon a condition fails if the fulfilment of the condition is **impossible**; an impossible condition precedent voids the transfer itself, not merely the condition.

Application. Touching the sky with one's finger, or running at 100 km/h, is physically impossible of performance; it operates as a **condition precedent** that can never be satisfied, so the interest can never vest. The decoy is to classify the condition merely as "unlawful", or to ask whether B can substantially comply under s.26; but impossibility is a separate and complete ground under s.25, and substantial compliance presupposes a condition capable of performance. Being a condition precedent, its failure destroys the whole gift, in contrast to an impossible condition *subsequent*, which would simply be struck out under s.32 leaving the interest intact.

Had the same impossible condition been framed as a condition *subsequent* — "B takes the property, but it shall pass to X if B touches the sky" — only the condition would be void and B would keep the property absolutely.

Conclusion. The transfer is void under s.25 because it rests on an impossible condition precedent; B takes nothing.

P1.5 — [Prob] A sells property to B with a condition that B shall not sell during A's lifetime. Is the condition valid?

Asked: 2012(100) · ★ · Notes: Unit 1 → Restraint on Alienation

Issue. Is a restraint on alienation confined to the transferor's lifetime an absolute restraint (void) or a valid partial restraint?

Rule. Section 10 voids absolute restraints on alienation but permits **partial** restraints limited as to time, persons or mode; a restraint confined to a defined period may be a valid partial restraint.

Application. The condition bars B from selling only "during A's lifetime" — a restraint limited in time, not a total and perpetual bar. The decoy is the tempting generalisation that every restraint is void under s.10; but the section voids only *absolute* restraints, and a time-limited restraint regulates rather than destroys the power of alienation. Provided the limitation is not so framed as to amount in substance to a total bar, it is partial: B is restrained only while A lives and is free to sell thereafter.

The position would change if the restraint were perpetual or so wide as to leave B with no real power to alienate at all — such a clause, though dressed up as partial, would be struck down as an absolute restraint in substance.

Conclusion. The condition is a valid partial restraint under s.10; B is bound not to sell during A's lifetime but may sell after A's death.

P1.6 — [Prob] A makes an absolute gift of a house to B, directing that B shall not raise it higher so as to obstruct air and light to A's adjoining house. Is the direction valid?

Asked: 2017(100) · ★ · Notes: Unit 1 → Restraint on Alienation

Issue. Is a restriction on the enjoyment of an absolute gift void under s.11, or saved as a benefit to adjoining land under s.40?

Rule. Section 11 voids a condition restraining the enjoyment of an interest transferred absolutely; **but s.40** saves a restriction imposed for the more beneficial enjoyment of the transferor's own adjoining land, creating an obligation annexed to ownership enforceable against the transferee and later takers with notice.

Application. The direction restrains B's enjoyment of his own house by forbidding him to build higher, which s.11 would ordinarily render void. The decoy is precisely that s.11 framing. But the restriction is imposed for the benefit of A's **adjoining** house, to preserve its air and light — squarely within the s.40 exception. It is therefore not a void restraint on

enjoyment but a valid obligation annexed to ownership, binding B and anyone who takes from him with notice.

The key is that the burden is annexed to A's neighbouring land and is intended for its beneficial enjoyment, which is exactly the situation s.40 was enacted to protect; a buyer from B who took with notice of the restriction would be equally bound.

Conclusion. The direction is valid under s.40; B cannot build so as to obstruct the air and light of A's adjoining house.

P1.7 — [Prob] Is a mango tree movable or immovable property? Decide.

Asked: 2011(100), 2022(80) · ★ · Notes: Unit 1 → Immovable Property

Issue. Is a fruit-bearing mango tree immovable property, or "standing timber" excluded from it by s.3?

Rule. Section 3 excludes standing timber from immovable property; but trees rooted in the earth and intended to remain attached and yield produce are **immovable**, while trees intended to be cut and used as timber are movable. ***Marshall v. Green (1875)*** treats trees sold for immediate felling as movable.

Application. A mango tree is grown and kept for its fruit, not to be felled for its wood; it is rooted in the soil and intended to remain there for years. The decoy is the broad assertion that "all trees are timber" and hence movable; but "standing timber" means trees that are fit for, and intended to be used as, building or repair material and are to be cut. A fruit-bearing mango tree is attached to the earth for permanent beneficial enjoyment and so answers the description of immovable property.

By contrast, if the same parties had agreed that the trees were to be cut down immediately and removed as firewood, they would for that purpose be treated as standing timber, and therefore movable, requiring no registration. The classification thus turns on the object of the parties — continued enjoyment points to immovable, severance to movable.

Conclusion. A mango tree is immovable property, and a transfer of it requires a registered instrument if its value is Rs.100 or more.

P1.8 — [Prob] A orally grants B, for Rs.10,000, the right to catch and carry away fish from his lake (or the right of ferry). Is the grant valid?

Asked: 2012(100), 2022(80) · ★ · Notes: Unit 1 → Immovable Property

Issue. Can a benefit arising out of land (a profit à prendre) be transferred by an oral grant?

Rule. A right to take fish from a lake, or a right of ferry, is a **profit à prendre** — a benefit arising out of land — and therefore **immovable property**; s.9 allows oral transfer only where writing is not expressly required, and a transfer of such an interest worth Rs.100 or more needs a **registered instrument** (s.54). ***Ananda Behera v. State of Orissa (1956)*** held a right to catch and carry away fish to be immovable property.

Application. The subject of the grant is not the fish themselves but the **right** to take them from A's lake — an interest in immovable property valued at Rs.10,000. The decoy is to view the fish as movable goods that may be sold orally; but what is granted is a benefit arising out of land, which the law classifies as immovable. A transfer of immovable property of that value must be by a registered instrument, so an oral grant cannot create the right.

Conclusion. The oral grant is invalid and B acquires no enforceable right to the fishery or ferry, for want of a registered instrument.

P1.9 — [Prob] Property is transferred to A for life, remainder to A's eldest son on his attaining 25; A has no son on the date of transfer. Examine validity.

Asked: 2023(80) · ★ · Notes: Unit 1 → Rule Against Perpetuity

Issue. Does fixing the vesting age of an unborn beneficiary at 25 breach the rule against perpetuity?

Rule. Under ss.13–14, an interest created for an unborn person must vest, if at all, within the life of the prior interest-holder plus the **minority (18 years)** of the unborn person; an interest that may vest beyond that period is void (***Sopher v. Administrator-General (1944)***).

Application. A's eldest son is unborn at the date of transfer, so he is the unborn ultimate taker. Requiring him to attain the age of **25** may postpone vesting to a point beyond A's death plus 18 years — for instance, if the son is very young when A dies, vesting at 25 falls outside the permitted period. The decoy is that 25 sounds a sensible, modest age; but the rule tests *possibilities*, not reasonableness, and because vesting *may* occur too late, the gift is void from inception. (Under English law s.20-type “age reduction” might save it, but the Indian Act applies the strict possibilities test.)

Conclusion. The remainder to the son is void for perpetuity; the property reverts to the transferor's estate after A's life interest.

P1.10 — [Prob] An estate is transferred to A until he marries, and after his marriage to B. What is the nature of B's interest?

Asked: 2026(100) · ★ · Notes: Unit 1 → Vested & Contingent Interest

Issue. Is B's interest, which takes effect after A's marriage, vested or contingent?

Rule. Section 19 makes an interest vested where the event on which it depends merely fixes the **time of enjoyment** rather than the existence of the right; and the law leans in favour of vesting (*Rajes Kanta Roy v. Santi Debi (1957)*).

Application. The prior gift to A is to determine on A's marriage, and B is to take afterwards. B's interest is not made to depend on any condition personal to B; only the **time** at which B will enjoy the property is postponed until A marries. The decoy is to treat A's marriage as an "uncertain event" and so brand B's interest contingent; but it is A's interest that ends on marriage, while B's right is fixed in B from the date of the transfer, with enjoyment merely deferred. B therefore takes a vested interest, which is heritable and transferable in the meantime.

The result follows from the rule that an interest is contingent only where the *right itself* depends on an uncertain event; here the right is already fixed in B, and the marriage merely marks when B's enjoyment begins. Were the deed instead "to B if B marries", B's own interest would be contingent on B's marriage.

Conclusion. B has a vested interest in the estate, with enjoyment postponed until A's marriage.

P1.11 — [Prob] A transfers property to M with a condition that she will desert her husband within two months. Validity of the transfer?

Asked: 2017(100) · ★ · Notes: Unit 1 → Conditional Transfers

Issue. What is the effect of a transfer subject to a condition precedent opposed to public policy?

Rule. Section 25 voids an interest dependent on a condition that is immoral or **opposed to public policy**; a condition requiring a person to desert her spouse is opposed to public policy, and being a condition precedent it voids the transfer itself.

Application. The transfer to M is conditioned on her deserting her husband within two months — a condition that strikes at the marital relationship, which the law protects. The decoy is the temptation to give effect to the gift while disregarding the offending condition; but where the void condition is a **condition precedent**, s.25 destroys the

whole transfer, because the interest was to arise only on fulfilment of that very condition. M cannot take by performing an act the law condemns.

The distinction from a condition *subsequent* is important: had the gift been “to M absolutely, but if she does not desert her husband the property shall pass to N”, only the offending condition would be void under s.32 and M would keep the property absolutely. Here, the desertion is a condition precedent, so the whole transfer falls.

Conclusion. The transfer is void under s.25 as it rests on a condition precedent opposed to public policy; M takes nothing.

P1.12 — [Prob] A transfers a farm to B for her life, and if she does not desert her husband, to C. B does not desert her husband. Can C claim the farm?

Asked: 2018(100) · ★ · Notes: Unit 1 → Conditional Transfers

Issue. Can an ulterior gift take effect where it is made to depend on a condition opposed to public policy?

Rule. Under ss.31–32, where an ulterior disposition is to take effect on the breach or non-fulfilment of a condition that is itself opposed to public policy, the ulterior disposition cannot take effect; a void condition cannot found a valid interest.

Application. Here B takes a valid life interest, unaffected by anything. C’s interest, however, is made to arise on the footing of B’s conduct in relation to her marriage — “if she does not desert her husband”. The decoy frames B’s “not deserting” as a performance that should let C take; but the condition annexed to C’s gift is opposed to public policy, and the law strikes the whole conditional limitation, so it can give C nothing. The property remains with B for life and reverts to A’s estate thereafter.

This problem is the mirror image of the “desertion as a condition precedent” case: there the gift failed entirely; here the prior gift to B survives and only the ulterior gift to C is defeated, because the void condition was attached to C’s interest alone.

Conclusion. C cannot claim the farm; the void condition cannot create his ulterior interest, while B’s life interest stands.

P1.13 — [Prob] A, falsely representing he is entitled, sells B’s property (or his own expectancy) to C for value; A later acquires the very property. Can C claim it?

Asked: 2022(100), 2018(100) · ★★ · Notes: Unit 1 → Feeding the Grant

Issue. Can a transferee enforce a transfer that, when made, was of property the transferor had no title to, once the transferor afterwards acquires that title?

Rule. Section 43 (feeding the grant by estoppel) provides that where a person **fraudulently or erroneously represents** that he is authorised to transfer certain immovable property, and professes to transfer it for consideration, then if he afterwards acquires an interest in that property, the transferee may **at his option** require the transfer to operate on that interest. ***Jumma Masjid v. Kodimaniandra Deviah (1962)*** held that s.43 applies even where the property transferred was an expectancy, so long as there was an erroneous representation of a present title, and that s.6(a) and s.43 operate in different fields.

Application. When A made the transfer he had no title, which invites the decoy conclusion that the transfer was simply void under s.6(a). But A had **represented a present title or authority**, and C parted with value relying on that representation. When A afterwards acquired the very property, s.43 lets C elect to have the earlier transfer fastened on A's after-acquired interest — A is estopped from setting up his original want of title and cannot keep both the price and the property. This is subject to the rights of any intervening bona fide purchaser for value without notice, of whom there is none here.

Conclusion. C may, at his option, compel the transfer to operate on A's after-acquired title under s.43, the grant being fed by estoppel.

End of Unit 1 Question Bank.

