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PRACTICE NOTE — PROPERTY LAW

The Transfer of Property Act, 1882 — Key Points

General principles, sale, mortgage, lease, exchange and gift of property — foundational law for conveyancing and deed drafting

IN FORCE FROM

1 July 1882

STRUCTURE

8 Chapters, 137 Sections

APPLIES TO

Transfers of property by act of parties (inter vivos) — not transfers by operation of law

REGISTRATION

Sale ₹100+ (S.54), gift of immovable property always (S.123), lease over 1 year (S.107) — registered instrument required

READ WITH

Registration Act, 1908; Indian Contract Act, 1872; Indian Succession Act, 1925

GENERAL PRINCIPLES — CHAPTER II (S.5–S.53A)

WHAT MAY BE TRANSFERRED (S.5–S.8)

- "Transfer of property" is an act by which a living person conveys property, in present or future, to one or more living persons (S.5).
- Property of any kind may be transferred unless expressly excepted — e.g. **spes successionis** (mere chance of an heir succeeding), a mere right of re-entry, an easement apart from the dominant heritage, a right to future maintenance, or a mere right to sue.
- A transfer passes all the interest the transferor is capable of passing, unless a different intention is expressed (S.8).

RESTRAINTS & FUTURE INTERESTS (S.10–S.14)

- A condition **absolutely restraining** the transferee from alienating the property is void (S.10) — partial/reasonable restraints may still be valid.
- Transfer for the benefit of an **unborn person** must be preceded by a prior interest and must transfer the whole of the remaining interest (S.13).
- **Rule against perpetuity** (S.14) — vesting cannot be postponed beyond the life/lives of persons in being plus the minority of the ultimate beneficiary.

DOCTRINE OF NOTICE & OSTENSIBLE OWNER

- **S.40**: an obligation arising out of contract and annexed to the ownership of land (but not amounting to an easement/interest) binds a subsequent transferee with notice of it.
- **S.41**: a transfer by an **ostensible owner** (with consent, express/implied, of the real owner) for consideration is not voidable, provided the transferee acted in good faith after taking reasonable care to verify the transferor's authority.

ESTOPPEL, CO-OWNERS, LIS PENDENS & FRAUD

- **S.43** (feeding the grant by estoppel): an erroneous/fraudulent transfer by a person without title becomes valid, at the transferee's option, if the transferor later acquires title.
- **S.44**: a transfer by one co-owner operates only on their own share/interest.
- **S.52** (lis pendens): property that is the subject-matter of a pending suit cannot be transferred so as to affect the rights of the other litigating party.
- **S.53**: a transfer made with intent to defeat or delay creditors is voidable at the option of the defrauded creditor.

DOCTRINE OF PART PERFORMANCE — S.53A

PROTECTION FOR A TRANSFEREE IN POSSESSION

- Where there is a written contract to transfer immovable property for consideration, signed by the transferor, and the transferee has taken/continued possession in part performance and has performed or is willing to perform their part, the transferor is barred from enforcing any right against the transferee inconsistent with the contract — even if the formal transfer (e.g. registration) is not complete.
- **A shield, not a sword:** S.53A protects possession against the transferor; it does **not** by itself confer title, and cannot be used offensively to establish ownership against third parties.

SALE OF IMMOVABLE PROPERTY — CHAPTER III (S.54–S.57)

SALE DEFINED (S.54)

- Sale is a transfer of ownership in exchange for a price, paid, promised, or part-paid and part-promised.
- Sale of tangible immovable property of ₹100 or more (in practice, virtually all real estate) can be made **only by a registered instrument**.
- A mere **contract for sale does not create any interest or charge** on the property — it only gives a right to obtain a further, completed transfer (or specific performance).

RIGHTS & DUTIES OF SELLER/BUYER (S.55)

- **Seller's duties:** disclose material defects/facts, produce title documents for inspection, deliver possession, execute conveyance, covenant for title, pay outgoing up to the date of sale.
- **Buyer's duties:** disclose facts materially increasing the property's value, pay the price, bear loss/enjoy benefit once ownership passes, pay outgoing after that date.

MORTGAGE — CHAPTER IV (S.58–S.104)

TYPE	POSSESSION	KEY FEATURE
Simple Mortgage	Remains with mortgagor	No possession transfer; mortgagee's remedy is sale through a court decree on default
Mortgage by Conditional Sale	Remains with mortgagor	Ostensible sale becomes absolute on default, subject to conditions; remedy is foreclosure
Usufructuary Mortgage	Delivered to mortgagee	Mortgagee retains possession and takes rents/profits in lieu of interest/principal; no personal covenant to repay
English Mortgage	Remains with mortgagor (formally)	Absolute transfer to mortgagee, subject to a proviso for re-transfer on payment by a fixed date
Mortgage by Deposit of Title Deeds (Equitable)	Remains with mortgagor	Created merely by depositing title deeds with intent to create security, in notified towns
Anomalous Mortgage	Varies	Combination of two or more of the above kinds, terms governed by the deed

S.60 — Right of Redemption: mortgagor may redeem on payment once the principal becomes due; a clog on redemption is void ("once a mortgage, always a mortgage"). **S.67 — Foreclosure/Sale:** mortgagee's remedy accrues only after the mortgage-money becomes due.

LEASE — CHAPTER V (S.105–S.117)

LEASE DEFINED & CREATION (S.105, S.107)

- A lease is a transfer of a right to enjoy immovable property for a certain time (express or implied) or in perpetuity, in exchange for a price (premium) and/or rent.
- A lease from year to year, for a term exceeding 1 year, or reserving a yearly rent, can be made **only by a registered instrument**; other leases may be made orally, with or without delivery of possession.

DURATION WITHOUT CONTRACT — S.106 (AS AMENDED, 2003)

- **Agricultural/manufacturing purpose:** deemed year-to-year tenancy, terminable by **6 months'** notice.
- **Any other purpose:** deemed month-to-month tenancy, terminable by **15 days'** notice.
- Notice period runs from the date of receipt of the notice, not the date of issue.

DETERMINATION OF LEASE — S.111

- By efflux of the agreed time; happening of a specified event; express surrender; implied surrender; forfeiture (breach of an express condition, denial of landlord's title, or insolvency where so provided); or by the lessor/lessee giving a valid notice to quit.

EXCHANGE & GIFT — CHAPTERS VI–VII (S.118–S.129)

EXCHANGE (S.118–S.121)

- Mutual transfer of ownership of one thing for another, where neither (or not only) thing transferred is money.
- Each party is deemed the seller of the thing they give and the buyer of the thing they take; the provisions relating to sale apply, so far as they can be made applicable.

GIFT (S.122–S.127)

- Voluntary transfer of existing property, without consideration, by a donor to a donee, accepted by/on behalf of the donee during the donor's lifetime while still capable of giving.
- Gift of **immovable property** must be by a **registered instrument** signed by the donor and attested by at least **two witnesses** — regardless of value (unlike sale's ₹100 threshold).
- Once accepted, generally **irrevocable**, except where the donor and donee agreed revocation could occur on a specified event not dependent solely on the donor's will, or on grounds available to rescind a contract (coercion, fraud, undue influence) (S.126).
- **Onerous gifts** (S.127): where several things are gifted together and one carries a burden, the donee must accept the gift as a whole or not at all.

ACTIONABLE CLAIMS — CHAPTER VIII (S.130–S.137)

TRANSFER OF ACTIONABLE CLAIMS (S.130)

- An "actionable claim" is a claim to an unsecured debt or a beneficial interest in movable property not in the claimant's possession (e.g. book debts, insurance claims).
- Transferable by an instrument in writing signed by the transferor (or their duly authorised agent) — no particular form is prescribed, and no registration is required merely because of the transfer of the claim.
- The transfer is complete and effectual between transferor and transferee on execution of the writing; **notice to the debtor** is not needed for validity between the parties but is necessary to bind the debtor and protect the transferee against a discharge given to the transferor.

PRACTICE NOTES

Registration Is Non-Negotiable

Sale (₹100+), gift of immovable property (any value), and leases over 1 year all require a registered instrument — an unregistered document (outside the narrow S.53A protection) generally cannot be received as evidence of the transaction affecting immovable property, read with S. 49 of the Registration Act, 1908.

Part Performance Is a Shield, Not a Sword

S.53A only protects a transferee's possession against the transferor personally — it does not confer title and cannot be pleaded offensively against third parties or to resist a suit for possession by a person with better title.

Draft Restraint Clauses Narrowly

Absolute restraints on alienation are void (S.10) — reasonable, partial restraints (e.g. rights of pre-emption among co-sharers, restrictions for a limited period) are more likely to survive judicial scrutiny; avoid boilerplate absolute prohibition clauses in sale/gift deeds.

Verify Lease Purpose Before Issuing Notice to Quit

Confirm whether the tenancy is for an agricultural/manufacturing purpose (6 months' notice) or any other purpose (15 days' notice) under S. 106 — a notice with the wrong period can invalidate the entire eviction proceeding.

For internal practice reference only — this note highlights select, frequently used provisions and does not cover all 137 sections. Cross-check exact section text, State amendments/stamp duty rules, and the latest High Court/Supreme Court rulings before relying in proceedings or drafting. Prepared 28 July 2026.

Primary sources: Transfer of Property Act, 1882 (indiacode.nic.in); Registration Act, 1908; standard commentaries on conveyancing practice.