

TRANSFER OF PROPERTY ACT, 1882

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TRANSFER OF

PROPERTY ACT,

1882 PART 1

TRANSFER OF PROPERTY ACT, 1882 PART 1
CONCEPT OF PROPERTY AND GENERAL PRINCIPLES
REGARDING TRANSFER OF PROPERTY:

INTRODUCTION AND HISTORICAL BACKGROUNG

Property is one of the fundamental elements of socio-economic life of an individual. The law relating to transfer of property is governed by the Transfer of Property Act, 1882. Before this Act came into force there was practically no law as to deal property in India. Barring few points which were covered by certain Regulations and Acts, the Courts in India in the absence of any statutory provisions, applied rules of English law as the rule of justice, equity and good conscience. Transfer of Property deals with certain doctrines having their Origin in the Common Law of England i.e. "Rule against Perpetuities", of 'Election', of, Accumulation, of Acceleration, of "Ostensible Owner", of 'Lis Pendens', of "Feeding the Estoppel" of "Part Performance", "Marshaling & Contribution", of Subrogation, of Tacking etc... The scope of the Transfer of Property Act is limited. It is not a complete code of transfer of property. It covers only a specific mode, transfer of property between living persons. Transfer of moveable goods is dealt with Sale of Goods Act, 1930.

TPA IS NOT EXHAUSTIVE—

It does not contain complete law for all kinds of transfers in India; for all the modes of transfers of property of every kind. The blow mentioned diagram is showing the properties and governed by following act:

Sr. No	Property	Transfer between	Act
1	Immovable property	Living to living	Transfer of property Act, 1882
2	Movable property	Living to living	Sale of goods Act, 1930
3	Immovable property and Movable property	Dead to living	Indian Succession Act, 1925

The bill was introduced in the Legislative Council in 1877. The bill was then referred to a Select Committee and it was also sent to the Local Governments for their comments. This Bill was discussed and redrafted on many points and referred to a Third Law Commission. The Third Law Commission consisted of Sir Charles Turner, Chief Justice of Madras, Sir Raymond West and Mr. Whitely Stokes, Law Member of the Council of the Governor-General. Transfer of Property Act came into force on 1st July 1882 which was introduced by

Whitley Stokes. It contains the transfer of both movable and immovable property but a major portion of the enactment is applicable to the transfers of immovable properties only. The Bill pertaining to Transfer of Property Act, 1882 was prepared not less than seven times before the final Bill was passed and it came into force with effect from 17th February 1882, as Transfer of Property Act, 1882 (4 of 1882). The Transfer of Property Act 1882 was amended substantially in 1929. There are 8 chapters and 137 sections in this act.

PREAMBLE

The provisions of the Transfer of Property Act, 1882 have no application in a case where the transfer of property takes place by operation of law as it appears from the Preamble of the Act. The same applies only to transfer by act of parties. A transfer of property by operation of law is not validated or invalidated by anything contained in the Act.

A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of the Property Act or the Indian Registration Act. Section 11 of the Act provides for a non-obstante clause. An overriding effect, therefore, has been given thereby over all other laws for the time being in force.

OBJECTIVES OF TRANSFER OF PROPERTY ACT, 1882

1. As per the preamble of the Act, the Transfer of Property Act, 1882 is to define, amend or regulate the law relating to the transfer of property by the acts of the parties.
2. The Act provides a clear, systematic and uniform law for the transfer of immovable property between living persons.
3. The Act is an extension to the Code of Contract since it is an enacted law for transfers that take place in the consequence of a contract.
4. With provision for inter-vivos (between two living persons) transfers, the Act, provides a law parallel to the existing laws of testamentary and intestate transfers.
5. The Act is not exhaustive because it does not cover the entire dimension of transfer of property. Hence we can say its scope is limited.
6. The Act provides scope to apply the principles of Justice, Equity and Good Conscience if a particular case is not governed by any provision of law. - The Act envisages the following six types of transfer:
 - Sale
 - Mortgage
 - Lease
 - Exchange
 - Gift
 - Actionable claim.

Thus in other words this Act was enacted with the object to amend the law relating to the transfer of property by act of parties. The Act excludes from its purview the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession. The scope of the Act is limited, as it is confined to transfers inter vivos and excludes testamentary succession, i.e. transfers by will.

CHARACTERISTICS OF TRANSFER OF PROPERTY ACT, 1882

1. The Act applies to transfer by the act of parties and not by the application of the law. Thus, its operations are limited to transfers by the act of parties only except in a few cases saved by Section 2 of the Act.
2. The Act does not incorporate rules for all modes of transfer in existence. The Act does not even claim to be a complete code as apparent from the omission of the term 'consolidate' from its Preamble.
3. The Act mainly deals with the transfer of immovable properties only.
4. In case of a conflict between the Act and rules of Muslim Law, the latter will prevail.
5. Certain incidents of contract or essential nature of properties are an exemption from the operation of the act by operation of section 2 of this act.

APPLICABILITY OF TRANSFER OF PROPERTY ACT

It extends in the first instance to the whole of India except the territories which immediately before the 1st November, 1956, were comprised in Part B States or in the State of Bombay, Punjab and Delhi. But this Act or any part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the State Government concerned.

And any State Government may, from time to time, by notification in the Official Gazette, exempt, either retrospectively or prospectively, and part of the territories administered by such State Government from all or any of the following provisions, namely Sections 54, paragraphs 2 and 3, 59, 107 and 123.

In simple words, the territorial jurisdiction of an Act means the places in which an Act is applicable. The territorial jurisdiction of the Transfer of Property Act, 1882, extends to the whole of India except Punjab. It was made applicable in different parts of India from time to time at different times. Transfers of immovable property by 'act of parties' in Punjab are regulated by the rules of equity, justice and good- conscience.

Where the Act is not in force, Section 1 empowers the State Government not only to extend the whole Act but also only some of its provisions. The State Government is also empowered to extend the Act or a part thereof only to certain specified territories.

EXEMPTION AND EXTENSION OF SPECIFIED SECTIONS

Under Section 1, the State Governments are provided powers also to exempt any part of its territory from the operation of Sections 54 (2, 3), 59, 107 and 123 of this Act. The State Governments may exempt either all the above mentioned sections or, only few of them. The result is that if certain areas in a State are exempted from the application of these sections, the registration of transactions of sale, mortgage, lease and gifts would not be necessary under the Transfer of Property Act. But as the Indian Registration Act is also in force, such transactions are to be registered under the Registration Act.

REPEAL OF ACTS AND SAVING OF RIGHTS ETC

Section 2 of the Transfer of Property Act, 1882, provides for the repeal of old law and statutes dealing with transfer of property. While repealing the earlier statutes, Section 2 also saves certain pre-existing enactments and some of the rights and incidents of property which accrued before the promulgation of this Act. The provisions of this Act do not affect the following statutes and rights of property etc.

Only those enactments, Regulations and provisions thereof are repealed by this Act which are expressly mentioned in its schedule to have been wholly or partially repealed therein. Other Acts, Statutes or Regulations still prevail. The customs and usages mentioned in these enactments remain unaffected even though they are contrary to the provisions of this Act.

RULES OF MUSLIM LAW

The concluding part of Section 2 saves contrary rules of Muslim personal law from application of Chapter II of this Act. The exemption from the application of Transfer of Property Act is with regard to only those rules of Muslim personal law which comes in conflict to any provision of law contained in Chapter II. It is important to mention here that only the contrary rules of Muslim law have been exempted. In case where there is no inconsistency between the rules of Muslim law and the provisions of law in Chapter II of this Act, the provisions of the Transfer of Property Act to be applied.

In Mohammad Raza v Abbas Bandi Bibi the Privy Council had applied Section 10 of this chapter to a transfer under family arrangement and held that a condition restraining further transfer to a person outside the family was not absolute restraint and was, therefore, 'valid.

SECTION 3- INTERPRETATION CLAUSE

In this Act, unless there is something repugnant in the subject or context,-

1. IMMOVABLE PROPERTY

"Immovable property" does not include standing timber, growing crops or grass;

Section 3 of the T.P Act defines the term Immovable property but the definition is neither clear nor complete. It simply says that immovable property excludes standing timber,

growing crops or grants. It is not clear as what it includes, so we have to depend upon the General Clauses Act 1897 for its clear definition.

ACCORDING TO SECTION 4 OF THE GENERAL CLAUSES ACT,

Immovable property includes land, benefits to arise out of land and things attached to the earth. Hence the definition of the immovable property which is defined in the General Clause Act is applicable to the Transfer of Property. In order to get clear and complete meaning of the immovable property it is necessary to consider the definitions given in section 3 of the Transfer of property and as well as definition given under the General Clause Act. On the basis of the definition given in the both the Acts the expression immovable may be defined properly in the following words:

IMMOVABLE PROPERTY INCLUDES:

1. Land,
2. Benefits to arise out of land,
3. Things attached to the earth, i.e.,
 - Things embedded to the earth,
 - Things attached to what is so embedded in the earth,
 - Things rooted in the earth except:
 - Standing timber
 - growing crops
 - growing grass

WHAT IS LAND?

Land means surface of the earth. **It includes everything upon the surface of the land, under the surface of land and also above the surface of the land.** Anything upon the land, so long as it is not removed from there, shall be part of the land.

For example:-Soil, mud deposited on the surface of the earth would be immovable property. The water collected in a pit or accumulated in the pond or lake is also immovable property because the water is part and parcel of the surface of the earth. Water flowing in the river gives the impression that it is moveable but its water always remains on the surface of the earth.

Everything under the surface of land is also the part of the land and is included in the expression immovable property example Sub-soil, minerals, coal or gold mines and the underground streams of water are immovable properties because they flow under the land.

WHAT IS BENEFITS TO ARISE OUT OF LAND?

Besides land, **the benefit which a person gets from land is also an immovable property.** Beneficial interest in a property is called beneficial right or interest of that property, thus any right which is exercised over the land or any other immovable property and by the exercise of which a person gets certain profit or gain would be his intangible immovable property.

For example land is used in wider sense it means and includes everything upon its surface and everything beneath the land. Therefore the right of a tenant to live in the house of his landlord is an immovable property of the tenant, in the same way right of fishery, right to catch fish in the pond or lake is an immovable property.

WHAT IS THINGS ATTACHED TO THE EARTH?

The things attached to the earth means

1. Things embedded in the earth
2. Thing attached what so embedded in the earth
3. Thing rooted in the earth.

THINGS EMBEDDED IN THE EARTH

Things which are fixed firmly in the earth and became part of the land are things embedded in the earth. For example houses, buildings, wall, electricity polls are immovable property because they are things embedded in the earth. Walls and polls are not fixtures or not just placed on the surface of the land but they are dug deep and thereafter the whole structure is fixed permanently. Where are things which placed on the surface of the earth without any intention to make them part of the land the things may not be immovable property. For example road roller or heavy stone which placed on the land may go two to three feet deep depending upon the weight therefore such things are not called as immovable property.

THINGS ATTACHED TO WHAT IS SO EMBEDDED IN THE EARTH

Where a thing is attached to something which is embedded in the earth for its permanent beneficial enjoyment, the thing so attached would also become immovable property. For eg., doors, windows and walls of permanent enjoyment of that house. The things which are attached without any intention making then to be part of the house would not be immovable property eg., electric bulb, window screen etc.

THINGS WHICH ARE ROOTED IN THE EARTH

Trees, plants or shrubs which are grown on land are rooted in the earth with help of their roots, they keep themselves fixed in the earth and become the part of the land. Until it is cut down, therefore a general rule in respect of all the trees, plants, herbs and shrubs is that they are immovable properties. However there is an exception to this general rule i.e.

- a. Standing timber.
- b. Growing crops.

c. Growing grass.

Standing timber is a moveable property provided its woods are generally used for timber purposes i.e. making for house hold furniture. In *Shanti Bai v. State of Bombay, AIR 1958 SC 532*, the Supreme Court held that if the owner of a tree is interested in the further vegetative growth of the tree (i.e. intends to keep the tree alive) it is a 'tree' (immovable); but if it is intended that the tree is to be cut reasonably early, the tree is a standing timber (movable).

Growing crops and growing grass are also movable property although the crops say wheat and barley are nothing but collection of plants which are rooted in the earth but every crop and grass can be cut in future when it becomes ripe.

EXAMPLES OF IMMOVABLE PROPERTY

Besides well known types given above, there are several interests or rights which have been recognized by the Courts as immovable property. Some of them are as follows:

1. Beneficial interest arising out of land for example, right of way or an easement.
2. Right under lease or tenancy.
3. Right to extract gold silver coal or other minerals from mines
4. Right to fishery i.e. right to catch fish from the pond
5. Right to ferry (right to transport through rivers)
6. Right to collect dues from fair or hat
7. Right to hold exhibition or fair on ones land
8. Right to take forest produce (tendu leave etc. and soil for making bricks)
9. Right to collect lac from its trees
10. Mortgage debt i.e. a loan secured by mortgaging an immovable property
11. Equity of redemption
12. Office of the hereditary priest of a temple and also its emoluments.
13. Right of a Maha Brahmin to receive dues at a funeral.

EXAMPLES OF MOVABLE PROPERTY

1. Standing timber, growing crops and the growing grass.
2. Government Promissory Notes.
3. Royalty or, copyright.
4. Right of worship i.e. right to offer prayers
5. Yajman Vritti i.e. right to receive offerings in cash or kind from the Yajmans

6. Payments made to Pandas by the pilgrims
7. Decree for the arrears of rent.
8. Decree for sale of any immovable property on a mortgage
9. Right to get maintenance allowance even if its payment is a charge on some immovable property.
14. Right to enjoy the usufruct (benefit) of fruit trees e.g. right to enjoy palm nuts (Sultan Ahmed v. State of Madras, AIR 1954 Mad. 949).

DISTINCTION BETWEEN IMMOVABLE AND MOVABLE PROPERTY

Immovable property	Movable property
1. It includes land, benefits to arise out of land and things attached to the earth (Sec. 3 of General Clauses Act).	1. It includes stocks and shares, growing crops, grass and things attached to or forming part of the land, and which are agreed to be severed before sale, or under the contract of sale, sec. 2 of Sale of goods Act.
2. If the thing is fixed to the land even slightly or it is caused to go deeper in the earth by external agency, then it is deemed to be immovable property.	2. If the thing is resting on the land merely on its own weight, the presumption is that it is movable property, unless contrary is proved.
3. If the purpose of annexation of a thing is to confer a permanent benefit to the land to which it is attached, then it is immovable property.	3. If the purpose was only to enjoy the thing itself, then it is movable property even though it is fixed in the land.
4. Examples:- Benefits to Arise out of land such as hereditary Allowances, right of way, ferries and fisheries right to collect rent and profits of immovable property; a mortgage-debt; right to cut grass for one year; a factory; etc.	4. Examples:- Right of worship; royalty a decree for sale of immovable property; a decree for arrears of rent; Government promissory notes standing timber growing crops and grass.
5. Transfer of immovable property requires registration of the document.	5. No registration is required to transfer a movable property.

2. ATTESTATION

Attestation means to sign and witness any fact. A property may be transferred by delivery of possession or by a written document. When the property is transferred through document, it is said that the deed or document of the transfer has been executed by the transferor.

The transferor of property who executes the deed is known as an executant. For the execution of the deed, it is necessary that two persons must be present who must witness that only the executant has written or signed the deed. This process of witnessing the execution of a deed is called attestation, and such persons are known as attesting witnesses.

Kumar Harish Chandra Singh Deo v Bansidhar Mohanty (AIR 1965 SC 1738)

In the present case it was held that as the object of attestation is to protect the executant from being required to execute a document by the other party thereto by force, fraud or undue influence, a party to the attestation cannot attest it. But any other party who is not a party to a deed may attest the document although he is a person interested in the transaction.

Attested in relation to an instrument, means attested by two or more witnesses each of whom has:

1. Seen the executants sign or affix his mark to the instruments
2. Seen some other person sign the instrument in the presence of and by the direction of executants
3. Received from executants a person acknowledge of his signature or of the signature of such other person
4. Signed the instrument in the presence of the executants

It is not necessary that all the witnesses should be present at the same time. Also no particular form of attestation is necessary.

EFFECT OF INVALID ATTESTATION

The Transfer of Property Act deals with the transfer of 'movable' and 'immovable' property and the transfer when made in the form of a 'Gift' or 'Mortgage' requires attestation. Such attestation if invalid in nature renders the entire transaction of the transfer of property invalid, and therefore no property passes under it. Thus the deed cannot be invoked in a court of law.

Girja Dutt v Gangotri Datt Singh (AIR 1955 SC 346)

In the present case two persons had identified the testator at the time of registration of will and had appended their signatures at the foot of endorsement by the sub-registrar, were not witnesses as their signatures were not put animo attestandi.

DISTINCTION BETWEEN ENGLISH LAW & INDIAN LAW

The English law mandates that the attestators i.e. the attesting witnesses should be present at the time of the execution of the legal instrument, document in order to testify that the particular deed was executed by the very same person who claims to have executed it voluntarily. The English law does not recognize personal acknowledgement given by the executant to the attestator as is the case with the Indian law.

3. REGISTERED

According to the Transfer of Property act, 1882 'registered' means registered in any part of the territories to which the Act extend under the law for the time being in force regulating the registration of documents.

For registration, it is necessary to fulfill all the requirements of the Registration Act.

4. ATTACHMENT TO EARTH

Attach to the earth means:

1. Rooted in the earth (Example: trees and shrubs)
2. Imbedded in the earth (Example: walls or buildings)
3. Attached in such a way which gives permanent beneficial enjoyment

5. ACTIONABLE CLAIMS

According to the Transfer of Property Act, 1882 'actionable claim' means a claim to any debt, other than debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing conditional or contingent.

UNSECURED DEBT

Unsecured debt refers to all monetary obligations of a certain amount, and that is not covered by any security in the form of mortgage, pledge or hypothecation. This is not just limited to the concept of loans forwarded by a creditor to a principal debtor. It extends to all kinds of monetary obligations, such as rent or payment on sale of property etc. The three requirements for a transaction to qualify as unsecured debt are:

1. Monetary obligation
2. No security
3. Certainty of amount of money obligated

According to *Sunrise Associates v. Govt. of NCT of Delhi* AIR 2006 SC 1908- An actionable claim may be existent in praesenti, accruing, conditional or contingent.

A debt is conditional or contingent if it becomes payable on the fulfillment of a condition or contingency. It is called conditional debt when the stipulation is in control of the parties.

For example, an agreement between A and B that A will pay Rs. 1000 if B buys C's house, then this is a conditional debt. Here, Rs. 1000 becomes payable and B can claim it only after he fulfills the condition.

On the other hand, when the stipulation is beyond human control, then it is called a contingent debt.

For instance, if A promises to pay a particular amount to B if C's ship sinks, then since the sinking of the ship is beyond the control of the parties, so it is a contingent debt.

INSTANCES OF ACTIONABLE CLAIMS

Some examples of actionable claims are:

- Claim for arrears of rent.
- Claim for money due under insurance policy.
- Claim for return of earnest money.
- Right to get back the purchase money when the sale is set aside.
- Right of a partner to sue for an account of the dissolved partnership firm.
- Right to claim benefit under a contract for the purchase of goods.
- Right to get the proceeds of a business.

In all of these instances the amount for which the suits are filed are certain and definite. So, such claims are transferable under actionable claims.

In the case of ***Jai Narayan v. Kishun Dutta AIR 1924 Pat 551***- it was held that a claim for mesne profits is not an actionable claim, as mesne profits are unliquidated damages and it is not a claim to any beneficial interest in moveable property, not in the possession, either actual or constructive, of the claimant. Thus, it was a "mere right to sue" and not an actionable claim.

Savitri Devi v. Dwarka Prasad, (1939) ALJ 71- Rights such as copyright, patent or trademark are not actionable claims because they already vest in the person who has it. These have their own governing Acts and are not transferable as they are the intellectual property of the claimant, and any other person cannot be allowed to claim that.

INSTRUMENT

"Instrument" means a non-testamentary instrument.

Generally speaking, an instrument is a legal document. Section 3 of the Transfer of Property Act, 1882 defines 'instrument' as a non-testamentary instrument. As the Act itself does not deal with testamentary transfers (wills etc.) the term 'Instrument' does not cover testamentary instruments. It is not only an evidence of the transfer of property mentioned in it but it signifies the transfer of property as such.

4. ABSOLUTE INTEREST

It means ownership which consists of a bundle of rights, the right to possession, right to enjoyment and right to do anything such as selling, mortgaging or making gift of the property.

Example –

If A is the owner of a land, he has an absolute interest in the land. If A sells his land to B, then B becomes the owner and he acquires an absolute interest in the land as he has purchased from A.

Likewise if A makes a gift of his property to B, there again B gets an absolute interest in the property which is gifted to him. These are instances where persons may have an absolute interest.

5. Reversion

The residue of an original interest which is left after the grantor has granted the lessee a small estate.

Example

If a property has been given on lease for 5 years, after the period of 5 years, the property which reverts back to him is called the reversion or revisionary interest.

6. Remainder

When the owner of the property grants limited interest in favor of other person (1st mentioned person) and gives remaining to other (2nd person) it is called remainder.

7. Notice

Doctrine of Notice

The foundation of the doctrine of notice is knowledge of a fact. Knowledge here is not restricted to absolute certainty but is inclusive of such a belief in the existence of the fact in question as would make a reasonable and prudent man act, in the ordinary affairs of life. This knowledge can either be actually possessed by a person or may be imputed to him by law. The doctrine of notice necessitates either knowledge of a fact or proof that under the given circumstances, one must have had knowledge of that fact. However, it is pertinent to note that knowledge is not synonymous to notice. There can be a notice without express knowledge of that fact and there can be situations where knowledge of the fact does not amount to notice. Thus, notice may be briefly defined as the legal cognizance of a fact. In the Transfer of Property Act, 1882 the doctrine of notice is essential to determine the claims of two or more persons (against each other) who are involved in an unconscionable transaction.

According to the Transfer of Property Act, 1882 'a person is said to have notice of a fact – When he actually knows that fact i.e. actual notice or When but for –

- Wilful abstention from an inquiry or search which he ought to have made, or
- Gross negligence -He would have known it i.e., constructive notice

Thus simply notice means information or knowledge of a fact. When a person has knowledge about a fact or under the existing circumstances, it can be proved that he must have knowledge about a fact, it is said that he has notice of that fact. Notice may be of two types –

- Actual or express notice,
- Constructive or implied notice.

ACTUAL NOTICE

Actual notice is express or formal communication of a definite fact relevant to the transaction to one party by another party interested in the transaction. Direct or express knowledge or intimation of a fact to a person is said to be an actual notice of the fact to that person. Definite knowledge, it should not be hearsay or rumours and it is a settled rule that a person is not bound to attend to vague rumours or statements by mere strangers.

CONSTRUCTIVE NOTICE

When there is no express information, but knowledge of a fact is presumed owing to the existence of certain circumstances, it is constructive notice. A person under constructive notice is not in actual possession of the knowledge about a fact. In case of a constructive notice, the court presumes that under the given circumstances, the person ought to have had knowledge of the fact, and so the person is deemed to have knowledge of the fact, and a notice of the fact is imputed on him. In accordance with the provisions of the Transfer of Property Act, 1882 a constructive notice is said to be imposed upon a person under the following circumstances:

1. WILLFUL ABSTENTION FROM INQUIRY OR SEARCH:

In this situation where a person deliberately avoids taking notice of a fact which a reasonable man would have taken in the ordinary affairs of life is said willful abstention. The principle underlying a presumption of notice in this situation is that the existence of means of acquiring knowledge is equivalent to actual knowledge. A constructive notice will not be inferred, unless it is brought to the court's view that the situation offered a starting point of an inquiry, which if prosecuted would have led to the discovery of the fact.

GROSS NEGLIGENCE:

Negligence simply means want of care. Negligence involves either the doing of an act which a reasonable man guided by prudence which regulate the general conduct of human affairs would not do, or the omission of such an act. However, mere negligence to take cognizance

of a fact does not result in a presumption of notice. It is when the negligent act is so grave that a man of ordinary prudence can never be expected to act in that way, it amounts to gross negligence.

REGISTRATION AS NOTICE:

Explanation I to section 3 of the Transfer of Property Act, 1882 provides for drawing a presumption of notice of all the facts stated in a document or which can be reasonably inferred from the contents of the document, when that document is registered. The legislative intent behind this explanation was to make it clear that only for those documents in which registration is a compulsory requirement, constructive notice of the document is to be inferred on registration, as a general rule. On registration, the facts in the registered document come in the public domain, so a reasonable notice to parties interested in the transaction concerning that document is construed.

ACTUAL POSSESSION AS NOTICE OF TITLE:

Under Explanation II to section 3 of the Transfer of Property Act, 1882, actual possession of an immovable property is considered to be constructive notice of such title or that much interest which the person in possession may have. In order to operate as constructive notice, possession must be actual possession. Constructive possession does not give rise to a presumption of notice. When an actual or physical possession is proved, the transferee cannot take the plea that he had no knowledge of the title held by the possessor.

NOTICE TO AGENT AN IMPUTED NOTICE TO PRINCIPAL:

Explanation III to section 3 of the Transfer of Property Act, 1882 deals with the situation where a notice to an agent is treated as notice to the principal. The underlying principle governing such inference of notice is that he, who acts through another, is deemed to act in person i.e. *qui facit per alium facit per se*. The doctrine of notice is based on the principle of equity.

PRINCIPLES OF THIS RULE

The applicability of notice to an agent being an imputed notice to the principal rests on the following conditions:

1. Notice should be obtained by the agent in his capacity as an agent. Existence of a principal-agent relationship is an essential condition for a presumption of notice in this case.
2. The agent should have been appointed for that specific transaction to which the notice relates to. If the agent is appointed for transaction A and the notice is pertaining to transaction B, for which he is not appointed, any notice to the agent pertaining to transaction B will not be imputed notice to principal.

3. The agent must have acquired the notice in the course of his employment as an agent to the principal. Knowledge of any fact prior to appointment as an agent and after the termination of appointment is not imputed notice to the principal.
4. Notice acquired by the agent must be material to the transaction or relevant to that particular transaction for which the agent is appointed. Knowledge of facts not related to the particular business for which the agency exists does not result in an imputed notice to the principal.
5. There must not have been any fraudulent concealment of facts from the principal by the agent. When the agent, with a dishonest intention deliberately conceals information from the principal, a notice of that fact is imputed on the principal so long as the third party to whom the principal is accountable, is not a party to the fraudulent concealment by the agent.

SECTION 4 - ENACTMENTS RELATING TO CONTRACTS TO BE TAKEN AS PART OF CONTRACT ACT

As stated earlier, the Transfer of Property Act, 1882 completes the Indian Contract Act, 1872 i.e. the Code of Contract because without being executed in the form of transfer of property for which the contract is made, the very purpose of contract remains unfulfilled. It is obvious that in a transfer of property there are elements of contract. Section 4 of this Act makes it clear that all such provisions of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

Second paragraph of Section 4 provides that Sections 54 (2, 3), 59, 107 and 123 shall be read as supplement to the Indian Registration Act, 1908. It may be noted that the above-mentioned sections of the Transfer of Property Act provide for the registration of documents under which these transfers are being made. For example, in the case of sale of immovable property of the value exceeding one hundred rupees or in the case of mortgage, lease and gift of immovable property, it is provided that the transfers are to be made through registered documents.