Law of Property

Property

- Definition
  - all the legal rights of a person over a thing
  - complete ownership on material as well as incorporeal things
  - **Not defined in TOPAct**
- Includes
  - Corporeal Things
    - Land
    - Things
  - Incorporeal Things
    - Patents
    - Copyrights
- Types
  - Movable
    - Standing timber
    - Growing crops
    - Trees
    - Royalty
    - A decree of sale or sale of immovable property on a mortgage
    - Right of the purchaser to have land registered in the name
    - Right to receive maintenance allowance from the estate of the deceased through immovable Property
  - Corporeal
    - Right of way
    - Right to collect the rent of immovable Property
  - Immovable
    - Right of ferry
    - mortgagee's right to redeem the mortgage
    - The interest of the mortgagee in immovable Property
    - Right of fishery
    - Right to collect tax from trees
    - **As per Sec 2(5 of TOP Act: " Immovable property does not include standing timber, growing crops or grass."**
    - **1. standing timbers are trees fit for use for building or repairing houses.**
    - **2. Growing Crop includes all vegetables growths which have no existence apart from cultivation such as pan items, sugarcane etc.**
    - **3. Cross is an movable property, but if it is right to cut grass it would be an interest in land and hence forms immovable property.**
  - Incorporeal
    - Patents
    - Right in re propria
      - Copyright
      - Commercial goodwill
    - Right in re aliena
      - encumbrances

Doctrine of Marshalling & Contribution

EIL

- Marshalling
  - TOPA Sec 56 and Sec 81
    - Means
      - Arranging things
      - Systematic
      - Regular
    - Right of subsequent mortgagees
    - The right to demand from the owner that the property be free from any and all encumbrances before the buyer purchases the property.
    - **Sec 56**
    - The rule of marshalling should not be so applied as to affect the interest of any of the person who has acquired an interest with consideration in any of the properties.
    - **Sec 81**
- Contribution
  - TOPA Sec 82
    - Means
      - Collective contribution towards a mortgage debt by mortgagors.
    - Right to Contribution is controlled by the Right of Marshalling
    - Right of mortgagors.
    - If a person owns one property subject, with the property of other persons. In a proportionate contribution towards the mortgage debt, he is entitled to call upon the owners of the other property to bear their proper proportion of the burden.
    - **Sec 82**

Transfer of Property

- Oral Transfer
- Essentials
  - The Property must be transferable
  - Must be done by a competent person
  - To be a living or juristic person
  - Should be made in a prescribed form
  - Transfer through Conveyance
  - The rule against perpetuity
  - Property cannot be transferred to an unborn child
  - Conditional transfer of property
- Types
  - Sale
  - Mortgage
  - Lease
    - **Sukhlen Leases Ex Cifru**
  - Exchange
  - Gift
- Conditional Transfer Sec. 25 of TOPA
  - Precedent
    - Sec. 26 of TOPA
  - Subsequent
    - Sec. 25 of TOPA
  - Condition-Collateral

Lease

- Definition (Sec. 105)
  - transfer of immovable property for a consideration for a certain time in consideration of which the transferee has accepted the terms contained in the agreement.
- Time Period
- Essentials
  - Rent
  - Acceptance
  - Possession Rights
  - Competent Parties
    - **Lessee Essential**
    - **TRAP Competent Parties**
- Lease Types
  - Absolute
  - Conditional
  - Derivative
    - Sub-lease
    - Under-lease
  - Fixed term
  - Periodic Lease
  - Lease in perpetuity
    - **Ab Sub Fixed Period Lease**
- Lessor
  - Rights
    - To receive the rent
    - To take back the possession
      - Breach of condition
      - Termination
    - To receive the amount of damages
    - To disclose any material defect of property
  - Liabilities
    - Bound by the request to give right of possession
    - To enter into contract with lessee
    - alterations under same lease
- Lessee
  - Rights
    - Property destroyed - lease void
    - Disclose all related material facts
  - Liabilities
    - Obligation to pay the rent
    - proceedings relating to the property
    - Notify lessor when there is
      - encroachment
      - any interference
    - maintain property in original condition
    - Prevent others from using property
    - cannot attach any permanent structure without consent
    - return possession at the end of period
- Termination Types (sec 111)
  - Lapse of time
  - Specified event
  - Lessor Interest to Cease
  - Same owner
  - Express Surrender
  - Implied Surrender
  - Forfeiture
    - breach of an express condition
    - Misconduct his character
    - Insolvency
  - Expiry of Notice to Quit

License

- Definition (Sec. 52 of Easement Act)
  - one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called, a license.
- Section
  - License - 105 TOPA
  - License - 52 Of Easement
- Transfer of Right
  - License - Possible
  - License - Not Possible
- Inheritable
  - License - Possible
  - License - Not Possible
- Revocation before expiry
  - License - Not Possible
  - License - Possible
- Revocation at pleasure
  - License - Not Possible
  - License - Possible
- Notice to quit
  - License - Possible
  - License - Not Possible
- maintain suit on own name
  - License - Possible
  - License - Not Possible
- Death of either party
  - License - Revocable
  - License - Gets Terminated

Mortgage

- Definition (Sec 100)
  - Where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction is called a mortgage, the person so making his property is said to have a charge on the property and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge.
- Essentials
  - Does not amount to a Mortgage
  - The charge created by an act of parties
  - Charges arising by operation of law
- Exceptions
  - Trust Property
  - Without Notice
- Types
  - Fixed Charge
    - created over ascertainable assets
    - borrower has possession of the asset and the lender has full control over the asset
    - borrower doesn't have the right to
      - Sell
      - Dispose of
      - Transfer
    - Obligation to pay off due amount first
  - Floating Charge
    - **Crystallisation is a process in which the floating charge is converted into a fixed charge.**
    - created over unascertainable assets
    - value and quantity fluctuate periodically
    - borrower has the right to
      - Sell
      - Dispose of
      - Transfer
    - No obligation to pay off due amount first
- Charge vs Mortgage
  - Section
    - Charge - Sec 100 of TOP Act
    - Mortgage - Sec 58 of TOP Act
  - Transfer of Ownership
    - Charge - No
    - Mortgage - Yes
  - Creation Mode
    - Charge - By Parties or Operation of Law
    - Mortgage - By Parties Only
  - Duration
    - Charge - Infinite
    - Mortgage - Fixed
  - Personal Liability
    - Charge - By Agreement
    - Mortgage - By Default
  - Mode
    - Charge - Oral or Written
    - Mortgage - Only Written
  - Creation Mode
    - Charge - By Parties or Operation of Law
    - Lien - By Operation of Law Only
  - Charge on Lien
    - Charge - Only on Immovable Property
  - Upon
    - Mortgage - Movable and Immovable Property
  - Possession
    - Charge - No
    - Mortgage - Yes

Vested Interest

- Definition (Sec 19)
  - It is an interest which is created in favour of a person without fixing any time or without any condition of the happening of a specified certain event.
- Characteristics
  - The person having the vested interest does not get the possession of that property immediately but he gets it only after the happening of upon happening of a specified certain event.
  - Created immediate right
  - Possession/Enjoyment is postponed
  - Death of transferee will not render transfer invalid
  - Transferable and heritable right

Doctrines

- Doctrine of Election
  - Sec. 35
  - Allegans contraria non est audiendus
    - Waiver
      - he is not to be heard who alleges things contradictory to each other.
    - Meaning
      - Election means a choice between two alternative or conflicting rights.
      - Granting two rights in such a way that one is higher than the other, you can choose either of them. You cannot have both.
      - It means that the person taking the benefit should also bear the burden.
    - Essentials
      - A transfer of property by a person who has no right to transfer.
      - As a part of the same transaction, he must confer some benefit on the owner of the property and
      - Such owner must elect either to confirm such transfer or to disent from it.
- Lis pendence
  - Section 52
  - Meaning
    - Transfer of property pending suit relating thereto
    - In a suit, which is still pending in terms of its determination, the status quo should be maintained and therefore it should not be disturbed by the act of any of the parties to the suit.
    - Essentials
      - There should be a pending suit or proceeding.
      - The suit or proceeding must not be collusive one.
      - The suit or proceeding must be pending in a Court of competent Jurisdiction.
      - The suit or proceeding must be one in which right to immovable property is directly and specifically in question
      - that property directly and specifically in question must be transferred during such pendency.
      - The transfer by any party to the suit must be such as may affect the right of the other party after the case is finally disposed of.

Gift

- Essential
  - transfer of an existing movable or immovable property voluntarily and without consideration.
  - Transferor is known as the donor and the transferee is called the donee.
  - The gift must be accepted by the donee.
  - by a competent person
- Donor
  - Sec. 123
  - capacity and right to make the gift.
  - Competent to transfer
  - Need not be competent to contract
- Donee
  - gift made to an insane person by a minor, or even to a child existing in the mother's womb is valid subject to its lawful acceptance by a competent person on his/ her behalf.
  - gift made to the general public is void
- Transfer of Ownership
  - Existing property
  - Transfer without consideration
  - Voluntary transfer with free consent
  - Acceptance of the gift
- Death bed Gift
  - Known as Marz-ul-Maut
  - Essentials
    - no disqualification of a successor or heir
    - net value of the property that can be transferred should not be greater than 1/3rd of the total value
  - The illness or malady must result in death
  - Such illness must cause a genuine apprehension of death in the mind of the sufferer
  - In case a person does not die the will made by him will be null and void.
- Other conditions
  - Were apprehension of death because of old age is not a ground for Marz-ul-Maut. Therefore, a man dying from natural causes after the age of 60 years is not come under the purview of this law.
  - There should be some external indication of the malady or serious illness.
  - Delivery of possession must be given to the donee.

Attestation

- Sec. 3
- Definition
  - Sec. 52 of Evidence Act
  - Sec. 68 of TOP Act
  - Sec. 3 of TOP Act
  - Sec. 63 of Indian Succession Act
  - Sec. 3 of Transfer of Property Act
  - Sec. 3 of Registration Act
  - Sec. 3 of Indian Evidence Act
- Ingredients
  - The attestation witnesses must be competent in law to attest.
  - There should be atleast two attesting witnesses.
  - The witness should be literate.
  - The attester should sign in the presence of the executant.
  - The attester has to sign after the execution of the document.
  - The attesting witness should sign for the purpose of the transaction.

Subrogation

- Section 92 of TP Act
- meaning
  - substitution of one person or thing for another.
  - Because of such substitution, the same rights and obligations attached to the original person or thing, the same rights and obligations are attached to the substitute person or thing.
- Application
  - A person having interest in the mortgaged property or has any right of redemption.
  - Any creditor of the mortgagor.
  - Also a co mortgagor.
  - Mortgagor's surety redeeming the mortgage.
- Types
  - Legal Subrogation
  - Conventional Subrogation.

Alienation

- meaning
  - declared from the Roman Law
- Thing
  - transferring of property
  - Gifts
  - Sales
  - Mortgage
- Absolute Restraints
- Conditions
  - Sec. 10 - 14
- Partial Restraints

Rule Against Perpetuity

- Sec. 14
- maximum time period
- Perpetuity Period

Notice

- Types
  - actual notice
  - constructive or implied notice
  - notice to agent or imputed notice

Exchange

- Sec. 118
- Definition
  - When two persons mutually transfer the ownership of one thing for the ownership of another.
  - Neither thing nor both things being money, the transaction is called an exchange.
  - a property is changed for another property, is called an exchange.
  - Transfer of ownership
- Essentials
  - Properties need not be immovable
  - Exchange includes barter
  - Mode of transfer

Doctrines

EIL

- Maxim
  - Nemo dat quod non habet
- Meaning
  - A person, who has no right to transfer any immovable property, cannot transfer that property.
  - Transfer by such person will be called the transfer by an unauthorized person.
- Exceptions
  - A fraudulent or erroneous representation of ownership
  - A transfer for consideration
  - At the option of the transferee
  - A subsisting contract of transfer
  - When the transferee is aware of the true transaction
  - When the transfer is forbidden by law such as lunatic, minor
- Essential
  - When the several transferee acquires rights
- Feeding the grant by Estoppel

Sale

- Definition
  - Sale can be defined as a transfer of ownership in exchange for a price which is paid or promised or part paid and part promised.
- Essentials
  - Parties
  - Subject Matter
  - Price
  - Delivery of Property
- Before Sale
  - To disclose any material defect
  - To produce documents of title
  - To answer question about the property or the title thereto
  - To execute conveyance
  - To take care of the property and title documents
  - To pay outgoings
- After Sale
  - To deliver possession of the property
  - Implied covenant for title
  - To deliver title deeds on receipt of consideration
- Duties of Seller
- Duties of Buyer
  - To bear loss to the property
  - To pay public charges and rents

Will

- Meaning
  - also called 'testament'
  - A legal declaration of transfer of property by a person after his death.
  - who executes the Will
    - Legator or Testator
  - person in whose favour Will is made
    - Legatee
  - Competent legator
- Essentials
  - Legatee must be capable of taking such endowments
  - The property which is endowed by the legator must be a transmittable property
  - Free consent of the legator and the legatee
  - The legator must possess testamentary rights over the property.
- Codicil
  - instrument made in relation to will, Explaining altering or adding to its dispositions and deemed to be a part of will.
- Others
  - Same legal requirements as original will
  - Muslim can make a Will in favour of anyone, only to the extent of one third of his total property.

Easement

- Definition (Sec. 4 of TOP Act)
  - A right which the owner or occupier of certain land to do and continue to do something or to prevent and continue to prevent something being done in or upon in respect of certain another land not of his own.
- Essentials
  - Dominant Heritage and Servient Heritage
  - Separate owners
  - Beneficial Enjoyment
  - Positive or Negative
- Classification Sec 13
  - Continuous or Discontinuous
  - Apparent or Non- Apparent
  - Limitations or Conditions
  - Restrictive Easements
  - Express Grant
- Modes of Aquisition
  - Implied Circumstances
    - Easement of Necessity
    - Quasi Easements
    - Prescriptive Easements
    - Customary Easements

EIL

EIL

EIL