



ODISHA

Judicial Services Exam

CIVIL JUDGE CADRE

Odisha Public Service Commission

Volume - 2



ODISHA JUDICIAL SERVICES

CONTENTS

1.	The Code of Civil Procedure 1908	(Pg. 1)
	PART	
	PART - I : Suits in General	1-35 B
	PART - II : Execution	36-74
	PART - III : Incidental Proceedings	75-78
	PART - IV : Suits in Particular Cases	79-88
	PART - V : Special Proceedings	89-93
	PART - VI : Supplemental Proceedings	94-95
	PART - VII : Appeals	96-112
	PART- VIII : Reference, Review and Revision	113-115
	PART - IX : Special provisions of HC which are not judicial commissions	116-120
	PART - X : Rules	121-131
	PART - XI : Miscellaneous	132-158
	ORDER	
	PART - 1 : Parties of Suits	Order 1-20A
	PART - 2 : Execution of Decrees and Orders	Order 21
	PART - 3 : Incidental Proceedings	Order 22-51
	• Order 22 (Death, marriage and Insolvency)	
	• Order 23 (Withdrawal and Adjustment)	
	• Order 24 (Payment in Court)	
	• Order 25 (Security of Cost)	
	• Order 26 (Commission)	
	• Order 27-37 (Suits)	
	• Order 38-40 (Supplemental Proceedings)	
	• Order 41-45 (Appeal)	
	• Order 46-51 (Reference, Review)	
2.	Transfer of Property Act, 1882	(Pg. 147)
	Ch. I Preliminary	1-4
	Ch. II Transfers of Property by Act of Parties	5-53A
	Ch. III Sales of Immovable Property	54-57
	Ch. IV Mortgages of immovable property and charges	58-104
	Ch. V Leases of Immovable Property	105-117
	Ch. VI Exchanges	118-121
	Ch. VII Gifts	122-129
	Ch. VIII Transfers of actionable claims	130-137

Transfer of Property Act

Transfer of Property Act, 1882

- * Act no 4 of 1882.
- * Consent of Governor General, 17 Feb 1882
- * Came in force 1 July 1882.
- * 8 chapter, 137 section

TPA		
<ul style="list-style-type: none"> * Preliminary (Sec 1-4) 	<ul style="list-style-type: none"> * General Principals (Sec 5-53 A) 	<ul style="list-style-type: none"> * Transfers of Various Types * Sale (54-57) * Mortgage (58-104) * Lease (105-117) * Exchange (118-121) * Gift (122-129) * Actionable Claim (130-137)

Transfer		
Law		Act of Parties
E.g.: Land Acquisition Act	Intervivos (b/w living person)	Testamentary (One dead one living E.g.: Hindu Succession Act, Indian Succession Act)

- * Transfer of Property Act only considers those transfer which relate to only Intervives act of Parties.
- * TPA, not apply on following:
- * Part B, states were formed on 1-11-1956.

Chapter - 1

Preliminary

Section 1: Part B state; Bombay, Punjab, Delhi, till notification.

Section 2: TPA, not apply to Muslims.

- * Where any act is not expressly repealed, contract shall continue, till they are not inconsistent with TPA.
- * Any right or liability before these enactments does not apply on it.
- * Not applicable on Decree of court.

Section 4: Along with TPA, contract Act, Registration Act shall be read supplemental.

Section 3: Immovable property = It does not include standing timber, Growing crops and Grass. (Refer Sec 2 Clause 6 of Registration Act).

- * Includes following things: (Also refer general clause Act 3(26))
 - a. Land
 - b. Building
 - c. Hereditary allowance
 - d. Way
 - e. Light
 - f. Fisheries

- a. Benefit arising from land, things attached to land.
- b. Things permanently attached to land by which there is permanent beneficial enjoyment.
 - * It does not include standing timber, Growing Grass and Crops.
 - * Attached to earth = Rooted in earth like trees
 - * Embedded in Earth = like wall building etc.
 - * Permanently attached to such imbedded things so that there is permanent beneficial use such as door, window, etc.
 - * TPA, Came by first law commission.
 - * "Profit a pender" that means produce of land shall also be considered immovable property.
 - * Anand Bihari vs State of Orissa.

- * Wherever there is fishery it shall also be considered immovable property.
- * Hajji Sukhan vs Board of Revenue
- * The fertilizer from waste is also an immovable property.
- * Fatima Bibi vs Gurfana Begum
- * Shanta bai vs State of Bombay
- * Trees are of two types.
 - a. One whose object is to bear fruits; it is not considered as standing timber.
E.g.: mango, Guava etc.
 - b. The object of few trees is to cut and make furniture is called standing timber. It is not immovable property.
E.g.: babul.

Following is also considered immovable property: -

- a. Right to passage.
- b. Right to Fisheries.
- c. Hereditary office in temple.
- d. Right of fair etc.
- e. Right to obtain lakh.
- f. Right to graze animals.

Similarly following not included as immovable property:

- a. Right to worship.
- b. If machine is not permanently attached.
- c. Right of Royalty.
- d. Maintenance.
- e. Promissory Notes.
 - * Attested: Two or more witness.
 - * Has seen the executants sign or affix mark.
 - * Other person in presence or direction of executants.
 - * Or received executants' personal acknowledgment.
 - * It is not required that all the person should be present at the same time.
 - * Kundanlal vs Asharfi Begum

- * It is not necessary that person's face should be seen to identify.
- * Rao ganga Prasad vs Ganga Prasad

If personal acknowledgment is received after transfer, then also valid.

Notice	Constructive
Person is given notice	Following shall also be considered notice. <ol style="list-style-type: none"> a. Willful abstinence b. Gross Negligence c. Registration (Exp. 1) d. Actual Possession (Exp. 1) e. Notice to Agent (Exp. 3)

The object of notice is that person comes to know about the defects.

Actionable Claim: Those claims which are in civil court.	
<ul style="list-style-type: none"> * All types of Debt except. <ol style="list-style-type: none"> a. Mortgage in immovable property. b. Hypothecation or pledge in moveable property. (Secured loan) 	<ul style="list-style-type: none"> * Beneficial Interest in Moveable Property which is not in possession of person and civil court considers grounds of relief. * Interest is of following types: <ol style="list-style-type: none"> a. Existence Interest b. Accruing Interest c. Conditional Interest d. Contingent Interest

Chapter - 2

Transfer of Property by act of Parties

Section 5: Golden Rule

- * Transferor, Transferee, and property all must be present.
- * Any living person to himself or other person.
- * Can transfer property in present or future.
- * Property must be present transfer can be in present or future.
- * Living Person = Natural Person Companies, association, society, body of person whether incorporated or not.
- * Himself = E.g.: Trust

Q. Which property cannot be transferred?

Ans.

Section 6: Spec-Succession = chance of being heir apparent.

- * Mere right of re-entry in property. (This right is with property only)
- * Easement: (This is with dominant heritage)
- * Interest in property which is personal to the owner.
- * Right of future maintenance.
- * Mere right to sue.
- * Public Office
- * Stipends, pensions (To military personels, to civil pensioners)
- * Nothing can be transferred whose object and consideration is unlawful under section 23 of Indian contract Act 1872 and person is legally disqualified.
- * Wherever any tenant has untransferable right of occupancy with respect to.
 - a) Any farmer has made default in the payment of revenue.
 - b) Any lease under management under court of wards.
 - c) Then it cannot be transferred.

Q. Who can transfer?

Ans.

Section 7: To transfer every person is competent.

- a. Who are competent to contract?
- b. Who is owner/authorized to transfer the property? (Karta of family)

Q. What do you understand by legal incidents? Section 8

Ans. Wherever Transfer is done then along with property all legal incidents are transferred.

Transfer	Legal incidents
Land	Easement, Rent, Other benefits, all things attached to land.
Machinery	All moveable parts
house	All easements all rents, lock key, window, door and other things which are permanently attached for beneficial interest.
Money	Interest.
Debt, Actionable claims	All securities.

Q. How transfer is done? Section 9:

Ans. Transfer can be oral or written.

- * Where transfer should be written in law then it must be in writing.
- * In following circumstance it must be written: -
 - a. Actionable Claim = It is written, but no need of registration.
- * In all the remaining there must be registration also along with writing.
 - b. Sale
 - c. Exchange
 - d. Mortgage
 - e. Lease

If or more than 100 Rs then registration. If moveable property or immovable property less than 100 Rs, then registration not required.

- * Wherever gift then it must be registered wheter of innovable property it is one Rs also. (In movable not required.)

Conditional Transfer	
Condition Valid	Condition Void
Transfer Valid	* Transfer valid (Sec 10, 11, 12) * Transfer Void (Sec 13, 14, etc.)

- * Wherever defect is latent then such defect/condition can be avoided and transfer is valid.

Section 10: Wherever there is any condition on any property by which transferee is absolutely: restrained that he shall not transfer his/her interest (stop 100%).

- * Then such condition is void and transfer is valid.
- * There are following exceptions to this rule:
 - a. Lease
 - b. Scheme of Housing Board
 - c. Family settlements.
- * In this section Parsi's, Christians and Jew women were stopped from further transfer. (Section 10 applied), but not applicable on Hindu, Muslim and Buddhist women.
- * John Vallamatton Vs UOI
- * Now restriction on Parsi, Christian and Jew women is unconstitutional.

Section 11: Wherever any restriction which is against rights created that things shall be used in a particular manner.

- * Then such conditions are void but transfer is valid.
- * If restriction is even 1% then also condition void.
- * Exceptions:
 - a. Easement
 - b. Restriction by law

Section 12: Wherever transfer is with this condition that if transferee is insolvent.

- * Then transferred property shall come back to the transferor.
- * Such condition is void but transfer is valid.
- * Exception ->Lease:

Condition Void so transfer Void	
Interest	
<p>Absolute Interest:</p> <ul style="list-style-type: none"> * Where any person can do anything which includes transfer of property also. 	<p>Limited Interest:</p> <p>can do all the things but can't transfer the property.</p>

Golden Rule: Transferor or Transferee and property must be existing at the same time.

- * Section 13 is exception to this rule.
- * There are following in section 13 by which transfer to unborn child also.

Transferor -Intermediary (Limited)-Transferee (Unborn Absolute)
Transferor - I₁-I₂-I₃ (There can be more than one intermediary).

Section 13: Wherever transfer is to be done to the unborn child. Then first give the property to the intermediary who shall have limited interest.

- * Such intermediary shall give the property to unborn when he is born absolutely. (Living-living)
- * Unborn should be born before death of intermediary.
- * Wherever there are more than one intermediaries then child should be born in the lifetime of any of the intermediaries.
- * If transferor is alive then no need of intermediary, he shall directly give.
- * Unborn can only be given rights not liabilities.
- * If child is born after the death of transferor, intermediary then no property shall be transferred.

Transferor wants to give property to 'U' unborn person and choose following intermediaries. Transferor and intermediaries die in following time period.

T-I₁-I₂-I₃-V

T (1990) , I₁- (1992), I₂ (1991), I₃ (1994), U (1992)

Q. Explain property shall be with which intermediaries?

Ans.

- * Only to I₁, because unborn, born in 1992, so no I₂ (I₁-V)
- * Since I₂ is dead before I₁, I₁ will not give to I₂ (I₁-I₂)
- * Limited Interest is also called life interest i.e. till he is alive, he shall have interest and after his death, interest will be transferred.

T(2001)-> I1(2001)->I2(2003)->I3(2004)15 Jan->U

- i. U is born on 16 Jan, 2004
- ii. U is born on 14 Jan, 2004
- iii. U is born on 14 Jan, but died on 16

Ans

- (i) No transfer because child is born on after death of I3, so property will go back.
- (ii) Property is transferred to U by I3.
- (iii) Property has been transferred to U but after U's death to his successors.

T (1995) → I1 (2012) → I2 (2003) → I3 (2004) → U (2003)

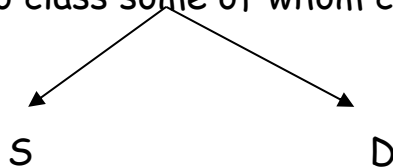
- (i) Before U how many intermediaries have property?

Ans. Only I1-U

Section 14: (Sec 14 = Sec 13+18 yrs) Majority.

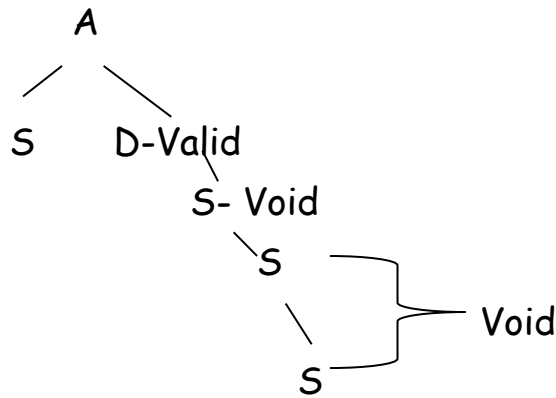
- * This also called as Rule against perpetuity that is nobody can bind property for all eternity. The maximum time period to bind is birth of unborn child (sec 13) and age of majority.
- * If any person tries to bind the property for more than 18 yrs, of unborn child, then such condition is void and transfer is also void.
- * The maximum age for condition is 18 yrs, i.e. condition can be up to 18 yrs of age only.
- * Same rules shall apply of sec 13 (life and death).
- * In following places rules against perpetuity not apply:
 - a. On Muslims
 - b. On vested Interest
 - c. If property is purchased by company
 - d. Section 18 (trust)
 - e. On personal Covenants (Pujari)
 - f. Perpetual lease with renewal
 - g. Right of pre-emption

Section 15: Transfer to class some of whom come under sec 13 and 14.



- * Wherever property is transferred to several persons and due to sec 13 and 14 right of few person fail then right of those person only fail not of whole persons.

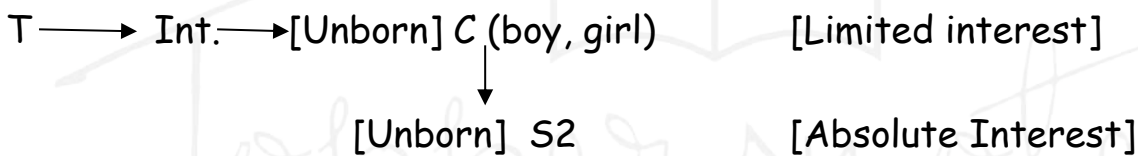
Section 16:



Wherever any prior interest fail due to sec 13 and 14 or on it other interest is dependent than due to failure of prior interest subsequent interest shall also fail and become void.

Q. What do you understand by principle of double possibility?

Ans. Witty Vs Mitchell



* Law can only recognize one possibility not two possibility.

1stPossibility:

- (1) If 1st child unborn is given then only limited interest shall be given.
- (2) If 1st child unborn is boy then whole property shall be given. And after that son is unborn he shall have absolute interest.

Court shall only give recognition to only one and to unborn property can't be limited.

Section 18: Wherever restriction of sec 14, 16, 17 then those restriction don't apply on following:-

- (i) Wherever for the benefit of public following things were done advancement of religion, knowledge, commerce, health, safety and mankind.

Q. There are exceptions to the golden rule (sec 5). Explain? (Sec 13-18)

Q. What do you understand by rule of accumulation?

Ans.:

Section 17: Wherever there is restriction which is against rights created, things shall be enjoyed/used in a particular manner than such condition is void and transfer is valid.

- * The exception to this rule is Sec 17: Wherever any person transfers his property then he can place following restriction that all the benefit which accrued from the benefit shall be accumulated from the following time period.
 - a. Till the life time of transferor.
 - b. Till 18 yrs of transfer.

Whichever is more!

- * On following section 17 not apply:
 - a. For payment of debt.
 - b. If transfer is for the benefit of children or remote issues (Muslim Laws- Wagf-ul-Allud)
 - c. For preservation and Maintenance of property.

Transfer			
Interest		Time	
Limited Interest	Absolute Interest	Vested Interest	Contingent Interest

Vested Interest Section 19	Contingent Interest Section 21
<ul style="list-style-type: none"> * Wherever any transfer without specifying time i.e. - immediate or on such event which will take effect i.e.- death. * There is immediate transfer. * Event is certain. * Once vested it is always vested. 	<ul style="list-style-type: none"> * Wherever transfer of any property is based on happening and non-happening of the event this is called contingent interest i.e.- On becoming RJS, car-will be gifted. * On happening of event. * Event is uncertain.

<ul style="list-style-type: none"> * It is heritable or transferable * If before possession transferee died then also it is vested because has taken place before-hand. 	<ul style="list-style-type: none"> * On happening or non-happening of event contingent interest become vested interest. * It is transferable on event only. * Here on event only transfer so no property is received if transferee dies before time.
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On person property is vested although no possession is given:

- a. Use can be postponed.
- b. There can be prior interest.
- c. Other person can be reserved
- d. There can be rule accumulation.
- e. If specific event then property to other person.

Section 20: Wherever as soon as vested interest to an unborn child then property vest on him on birth.

Section 21: Following is also considered vested interest:

- a. Property on particular age shall vest then on attaining that age only (14).
- b. With this direction also that interest shall be used.

Section 22 + Section 14

- * Wherever matter is of unborn child and property on attaining particular age then that class property only when they attain that age.
 E.g.: Boy - son (15 yrs)
 Girl - Son (18 yrs)

Sec. 23:

Transfer contingent on happening of specified uncertain event -

- * Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such

event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Sec. 24:

Transfer to such of certain persons as survive at some period not specified -

Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Conditional Transfer

Q. What do you understand by conditional transfer?

Ans.

Condition		
Condition precedent 1 st condition fulfill then transfer	Condition and transfer simultaneously	Condition Subsequent i.e. 1st transfer than condition.

Condition precedent Section 26	Condition Subsequent Section 29
<ul style="list-style-type: none"> * Wherever there is any condition before transfer which has to be complied with it is called condition precedent. * Property shall not vest till condition is fulfilled. * Substantial compliance is sufficient [79.99] 	<ul style="list-style-type: none"> * Wherever there is any condition after transfer which is to be complied it is called condition subsequent. * Property has been vested and transfer if condition is not fulfilled then it shall go back to the transferor.
Section 25 + 26 when condition is void transfer is also void.	Section 25 + 29 If condition is void then transfer is valid.

Q. What are those conditions when conditional transfer becomes void?

Ans.:

Section 25:

- a. Wherever condition becomes Impossible
- b. Forbidden by law
- c. If permitted, defeat the provision of law.
- d. Fraudulently
- e. Injury to body or property of person.
- f. Against public policy or immoral.

In all the above condition shall be void.

* Also refer ICA, Sec 23

Q. What do you understand by acceleration?

Ans.

Sec 27:

Wherever there is transfer of property and by which interest is created on any person and by the same transaction ulterior disposition to another person [2nd transfer] then If 1st transaction fail by any reason whether contemplated by parties or not then ulterior disposition shall take effect.

E.g.: Crown

Sec. 28: Ulterior transfer conditional on happening or not happening of specified event. -

On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27

Section 30: If ulterior disposition is not valid then it shall have no effect on prior disposition.

Election [Both Moveable and Immovable]

Q. What is the rule of election?

Ans. **Section 35:** Wherever any person has professed to transfer the property which he has no right to transfer and by such transfer he has conferred benefit to the owner of the property. Then it is at the option of such owner that he elects whether:

- a. Confirm the transfer
- b. Or refuse, if done so then relinquish/return the benefit.

* Wherever such is done [refuse then]

- a. If transfer is gratuitous [free]
- b. If transfer or dies or incapable before election.
- c. Where transfer is for consideration.