

ALL INDIA JUDICIARY



Transfer of Property Act, 1882

Pre + Mains Session

Section 5



Transfer of Property
संपत्ति के अंतरण

By Anoop Upadhyay





The Transfer of Property Act, 1882

Ch-2: General Principles (सामान्य सिद्धान्त)

[5-53-A]

Of transfer of property
(संपत्ति का अंतरण)

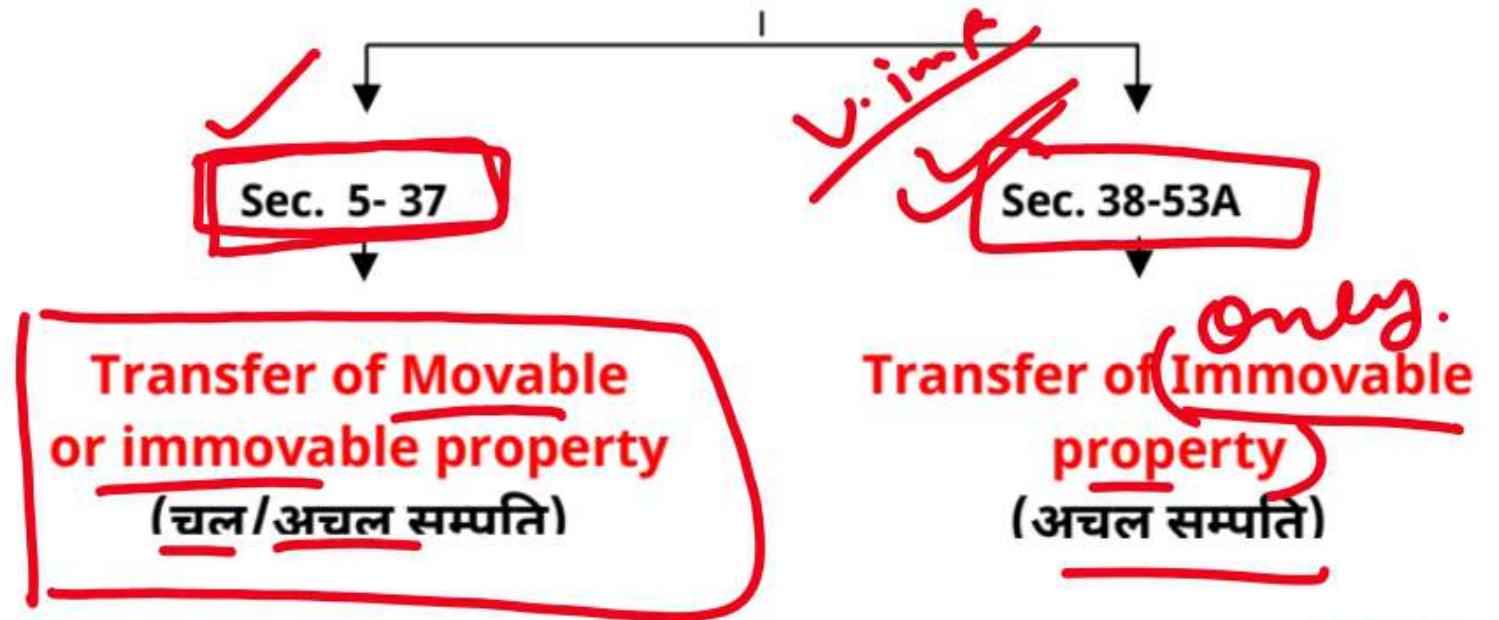
By Act of parties
(पक्षकारों के कार्य द्वारा)

(H.P.JS 2012)

Transfer by
Operation of law
↓
Ex → will

T.P. Act → Indian Succession Act, 1925

The Transfer of Property Act, 1882



CJS 2020

The Transfer of Property Act, 1882

Sec. 5 = (Transfer of property) defined

'सम्पत्ति के अंतरण', परिभाषा

[BJS 2012]

Sec 5 Iwt.
(law)

Transfer of property means -

(सम्पत्ति के अन्तरण' से तात्पर्य -)

The Transfer of Property Act, 1882

Transfer of property means - (सम्पत्ति के अन्तरण' से तात्पर्य -)

(i) An act
(एक कार्य)

(ii) Act inter-vivos
(living persons)
(जीवित व्यक्ति)

(iii) To himself
(स्वयं को)

(iv) Act convey
(existing property)
(किसी विद्यमान संपत्ति
का अंतरण किया जाना)

(v) To another
living person
(दूसरे जीवित व्यक्ति
के लिए)

(vi) Transfer of property
may be made effective in
"present or in future"
(सम्पत्ति का अंतरण वर्तमान में या
भविष्य में प्रभावी हो सकता है -)

The Transfer of Property Act, 1882

(i) An act (एक कार्य) -

Transfer of property is an activity or process

(सम्पत्ति का अन्तरण एक ~~निश्चित~~ अथवा प्रक्रिया है।)



कार्य

Act is passing of property from one person to another.

(एक व्यक्ति से दूसरे व्यक्ति को सम्पत्ति चले जाना कार्य है।)

The Transfer of Property Act, 1882

(ii) Act inter-vivos (living persons) (जीवित व्यक्ति)



Transfer of property must be made ^{b/w} ~~by~~ living person.

(सम्पत्ति का अंतरण जीवित व्यक्ति द्वारा होना चाहिए)

✓ TP Act governs transfers between living persons only.

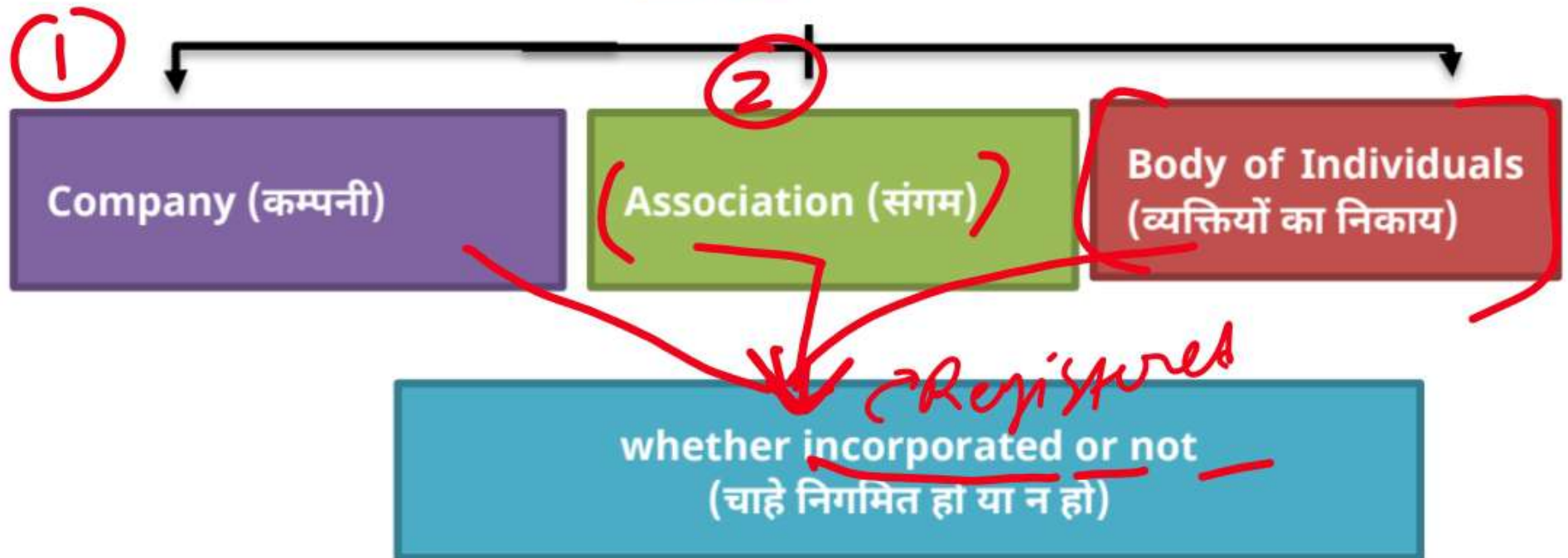
(MP. 2009)

The Transfer of Property Act, 1882

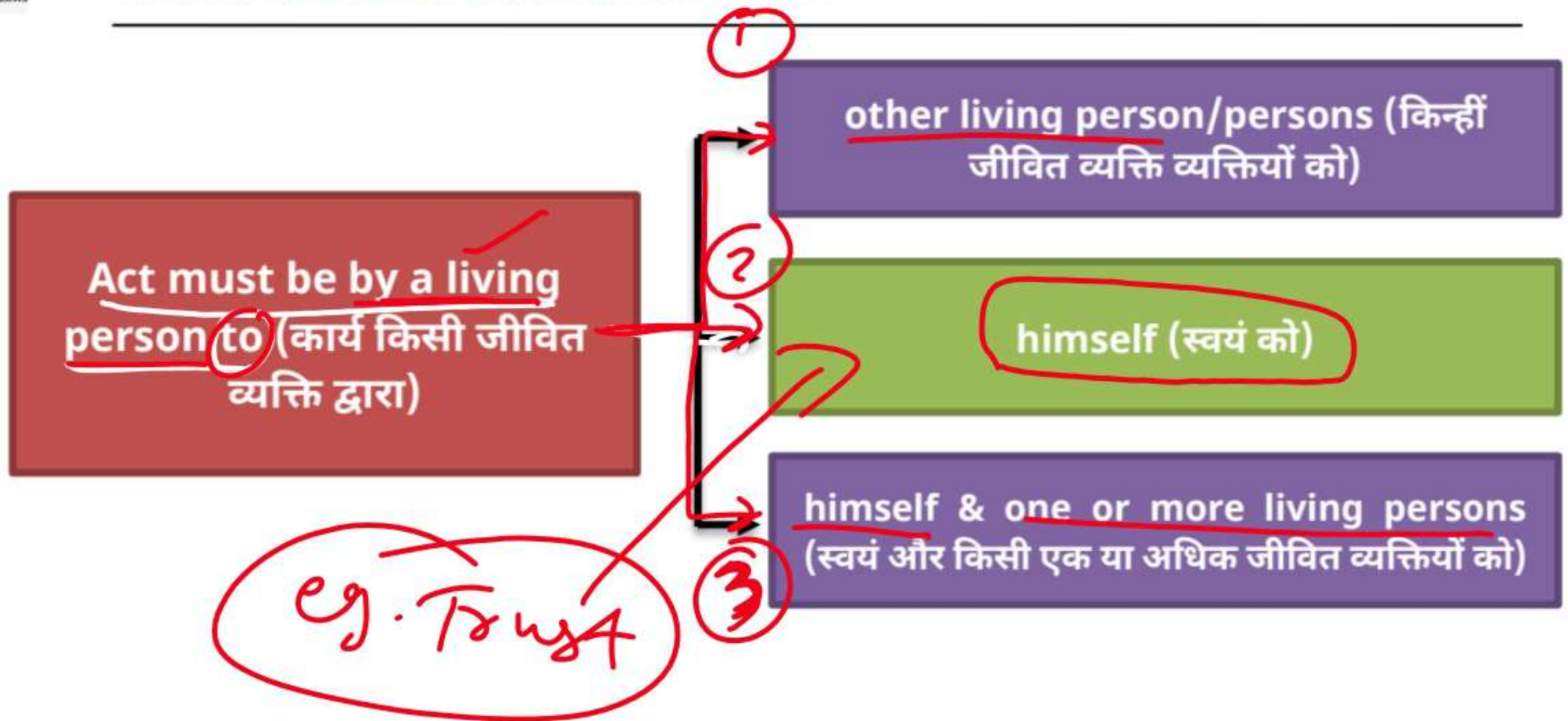
- Q.
- ✓ Transfer of property means transfer between
 - ✓ living being
 - ✓ living person and trust
 - ✓ legal persons ← (HPJS)
 - Partnership firm. (UJS 2018)

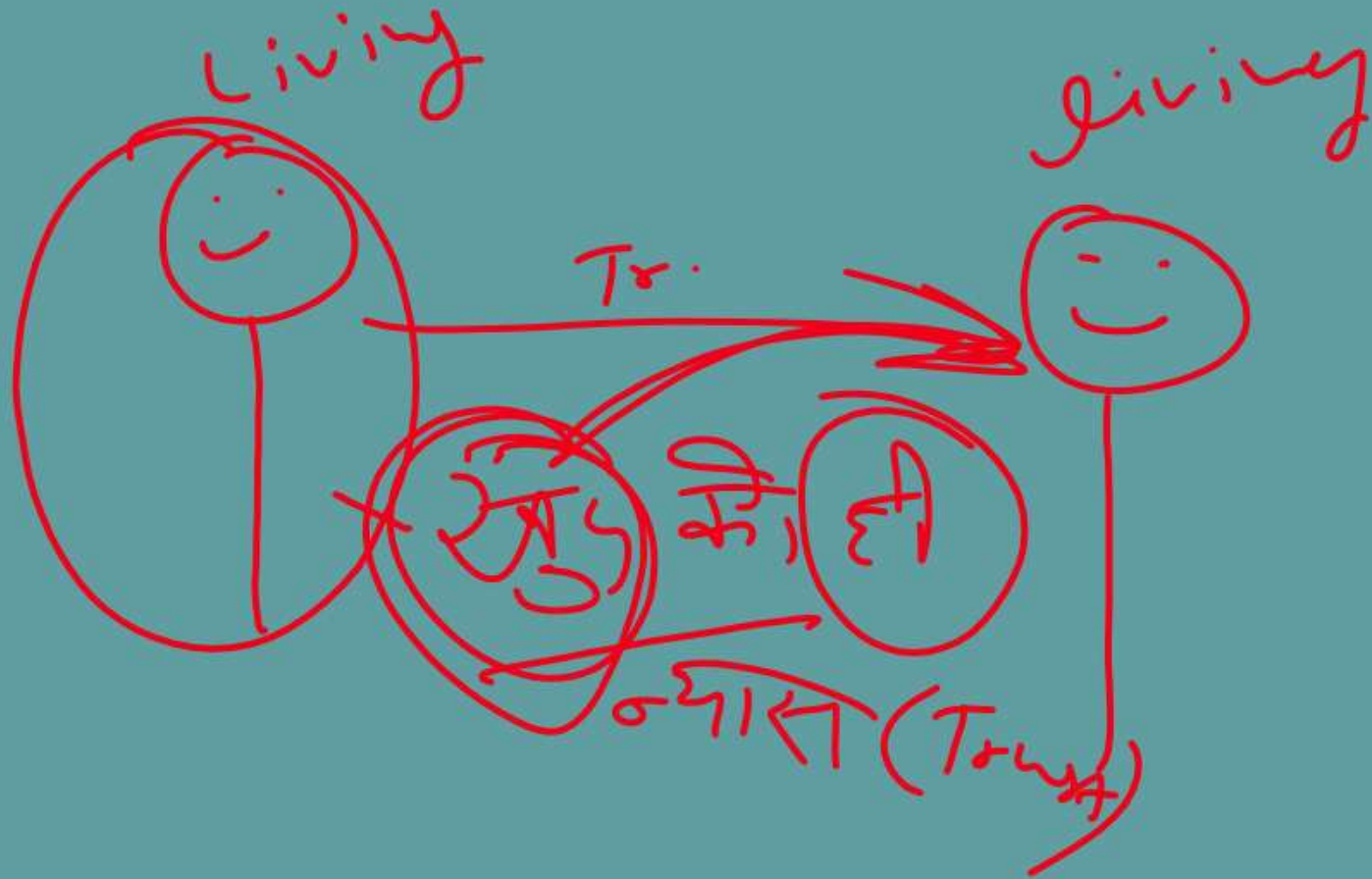
The Transfer of Property Act, 1882

* "living person" includes
('जीवित व्यक्ति' के अन्तर्गत आता है)



The Transfer of Property Act, 1882





The Transfer of Property Act, 1882

* One cannot transfer property to one self

OJS 2013

True

True

False

True

* Living person

"Living person" does not include idol of God or temple.

"जीवित व्यक्ति" में भगवान की मूर्ति या मंदिर शामिल नहीं है।

The Transfer of Property Act, 1882



It does not mean that the property cannot be transferred to the idol of God or temple:

इसका मतलब यह नहीं है कि संपत्ति को भगवान की मूर्ति या मंदिर में स्थानांतरित नहीं किया जा सकता है:

It means that if the person transfers such property to the idol of God or temple, then it will not be governed by the provisions of this Act rather the relevant religions or charitable endowments Act will be applicable.

इसका अर्थ है कि यदि व्यक्ति ऐसी संपत्ति को भगवान की मूर्ति या मंदिर में स्थानांतरित करता है, तो यह इस अधिनियम के प्रावधानों द्वारा शासित नहीं होगा बल्कि प्रासंगिक धर्म या धर्मार्थ बंदोबस्ती अधिनियम लागू होगा।

The Transfer of Property Act, 1882

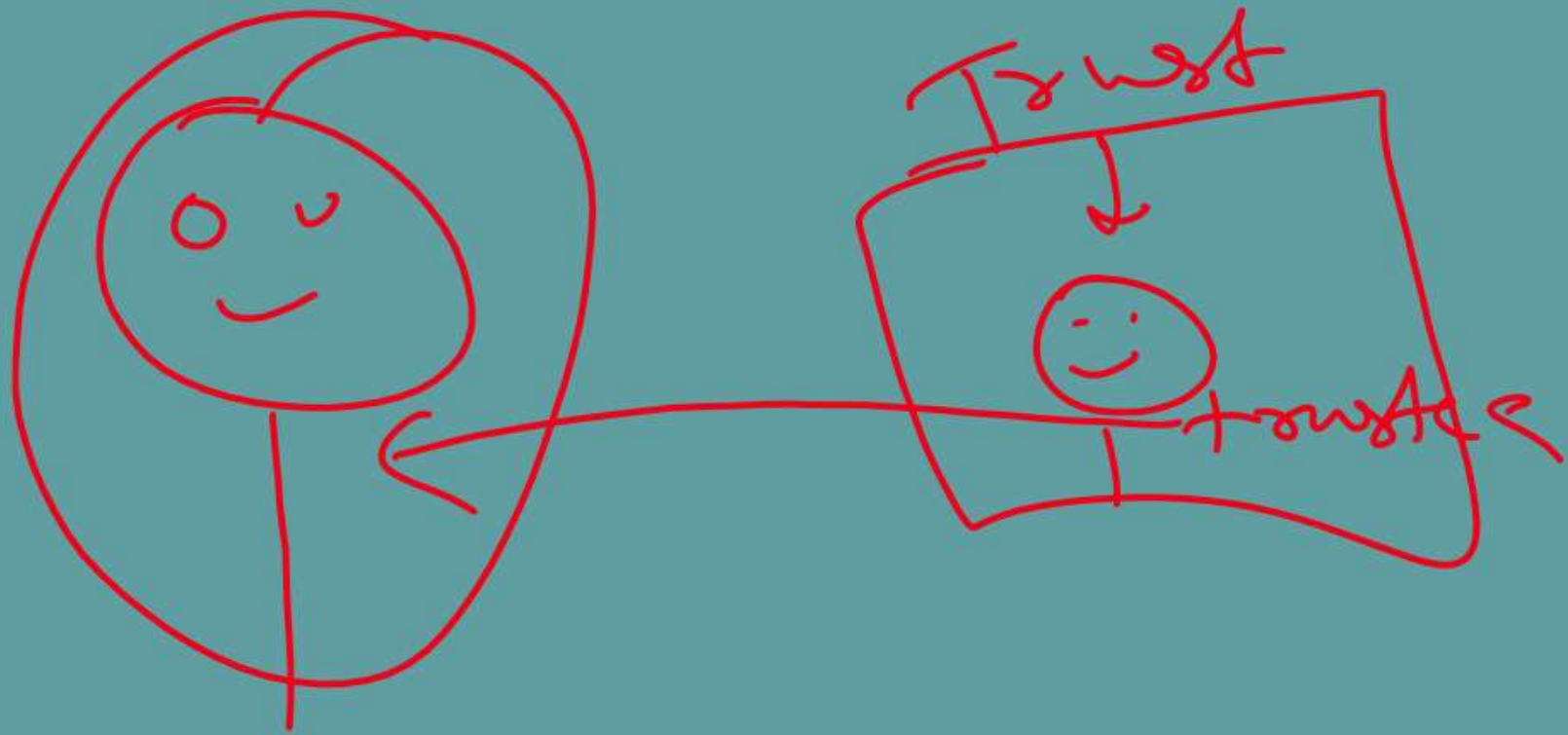
(ii) To himself (स्वयं को)

The word to himself - added by the Amending Act, 1929 - in section 5.

Example → Trust (न्यास) -

where a person makes any settlement of his property in a trust & appoints himself as the sole trustee.

As trustee a person can transfer to himself.
But No person can transfer the property to him
in the same capacity.



The Transfer of Property Act, 1882

(iv)

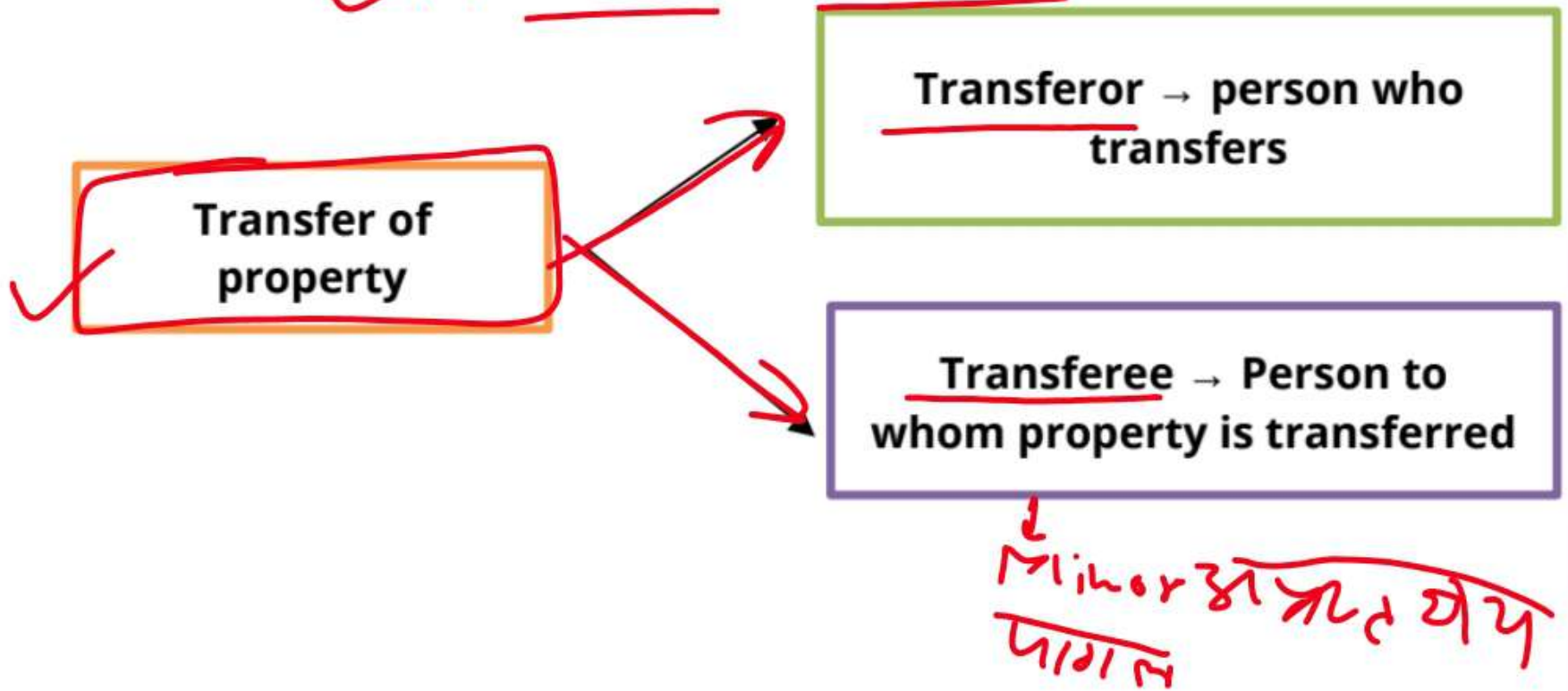
Act convey existing property

(किसी विद्यमान संपत्ति का अंतरण किया जाना)

only

The Transfer of Property Act, 1882

(v) To another living person



The Transfer of Property Act, 1882

* transferee must be a living person.

V.V-Imp.

* Transferee need not be a Competent person.

स्थानांतरित व्यक्ति का सक्षम व्यक्ति होना आवश्यक नहीं है।

* Transferee may be-

✓ Minor

✓ insane or

✓ even a child in mother's womb

Transferees

Sec. 13

imp



The Transfer of Property Act, 1882

* Transferee must be in existence when transfer is being made.

जब ट्रांसफर किया जा रहा हो तो ट्रांसफरी अस्तित्व में होना चाहिए।

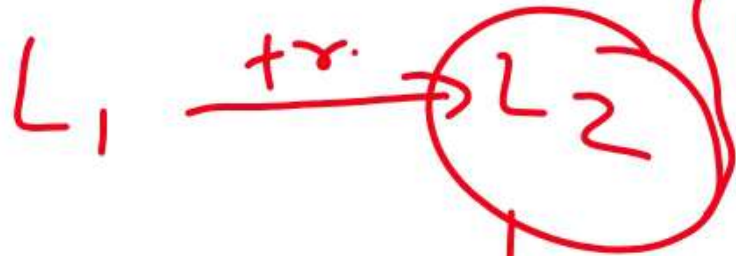
* Property cannot be transferred to a person who is on the date of transfer

संपत्ति को उस व्यक्ति को हस्तांतरित नहीं किया जा सकता है जो हस्तांतरण की तिथि पर ~~है~~

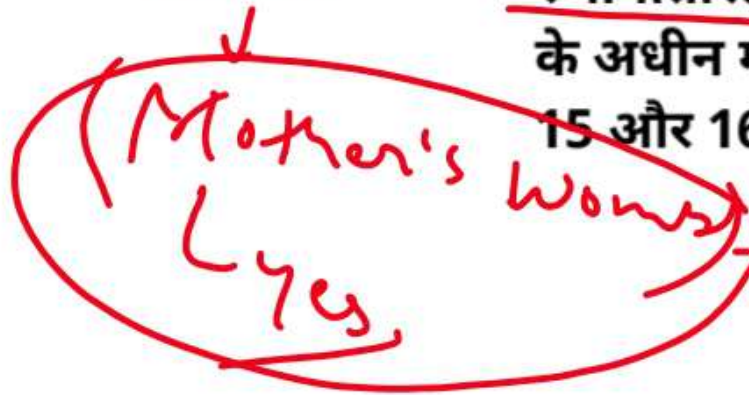
(अस्तित्व में नहीं है) is not in existence.

The Transfer of Property Act, 1882

Gen. Rule



Child



However, property can be transferred for the benefit of an unborn person (i.e. person not in existence even in mothers womb subject to provisions of Sec. 13, 14, 15 and 16.

हालाँकि, संपत्ति को एक अजन्मे व्यक्ति के लाभ के लिए स्थानांतरित किया जा सकता है, जो कि धारा के प्रावधानों के अधीन माता के गर्भ में भी अस्तित्व में नहीं है। 13, 14, 15 और 16।

आधारा (13-16)

$L_1 \rightarrow$ Transfer \rightarrow (L_2) + child in Mother's womb

\downarrow
exception (अनुत्पत्ति)

$[13-16] \rightarrow$ unborn child
की जी Prop.
Transfer ही वह
होता है

The Transfer of Property Act, 1882

(v) Transfer of property may be made effective in "present or in future"

(सम्पत्ति का अंतरण वर्तमान में या भविष्य में प्रभावी हो सकता है -)



Property ~~future~~
↓
existence ✓

The Transfer of Property Act, 1882

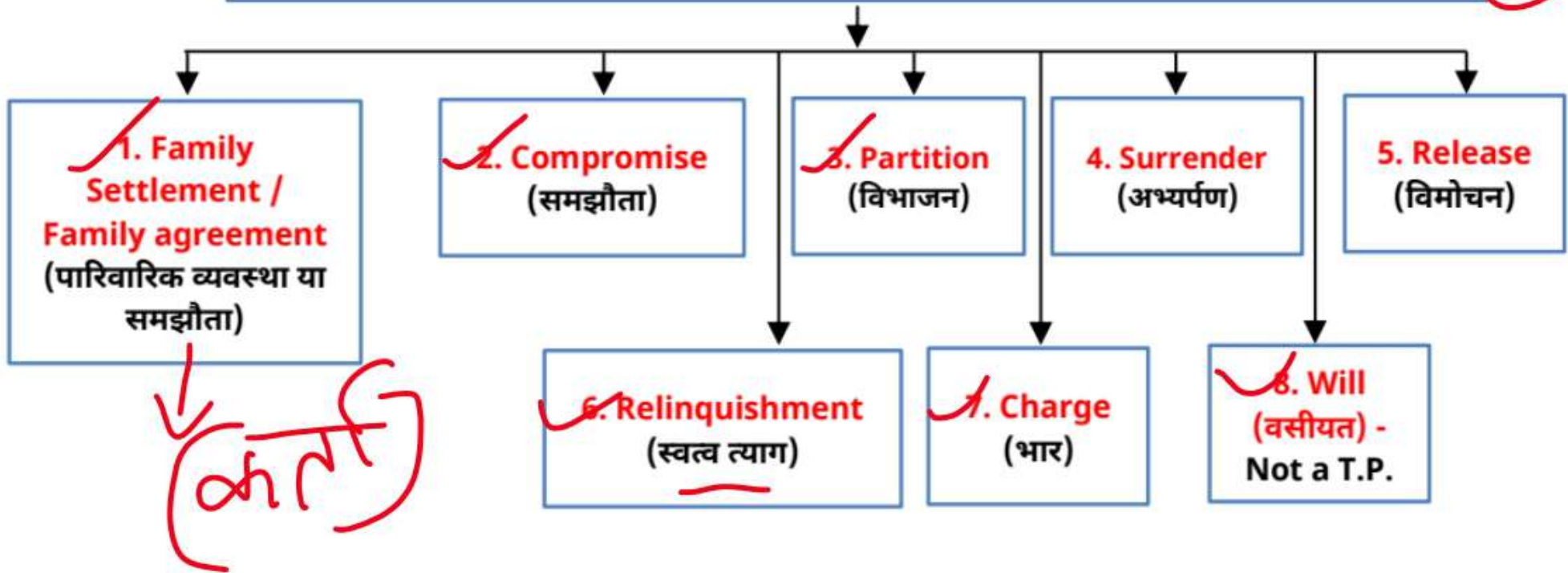
* The transfer of property may be made so as to take place with immediate effect or on some future date

Exceptions of Section 5
↓

The Transfer of Property Act, 1882

Following transactions are not transfer of property
(निम्नलिखित संव्यवहार सम्पत्ति अंतरण नहीं है-)

②



The Transfer of Property Act, 1882

✓ 1. Family Settlement / Family agreement
(पारिवारिक व्यवस्था या समझौता) -

↓
Not a transfer of property under T.P. Act .
T.P. Act . के तहत संपत्ति का हस्तांतरण नहीं ।

↓
It is informal arrangement where the
members of the family agreed to divide
the property among themselves.

यह (अनौपचारिक व्यवस्था) है जहां परिवार के सदस्य
संपत्ति को आपस में बांटने के लिए सहमत होते हैं।



The Transfer of Property Act, 1882



✓ ✓ Case: Tek Bahadur v/s Devi Singh, (1966) SC

In family settlement there is a mutual agreement between the members of the family to hold their respective shares & Separately.

पारिवारिक निबटारे में परिवार के सदस्यों के मध्य परस्पर करार होता है कि वे अपने-अपने अंश पृथक रूप में धारण करेंगे।



It simply acknowledges defines the title of each member.

यह सामान्य रूप में प्रत्येक सदस्य के स्वत्व की साधारण तथा स्वीकार करता है।

The Transfer of Property Act, 1882

Case: Narendra Prasad Singh v/s Ram Ashish Singh & others (2018) SC



There is no need to register the family settlement.

(पारिवारिक निबटारे का राजिस्ट्रीकरण आवश्यक नहीं है)

2/ Compromise (समझौता)

It means agreement for the settlement of doubtful claims, between the parties in respect of some property.

(इसका अर्थ है किसी सम्पत्ति के सम्बद्ध में पक्षकारों के मध्य संदिग्ध दावों को तय करने का करार)

↓
Not a T. P.



The Transfer of Property Act, 1882

Subhigyan
2023

3. Partition (विभाजन)

Case : V.N.Sarin V/S Ajeet Kumar (1966) SC.

Sec. 5

T.P. Act, 1882 does not govern the transfer by operation of Law.

by Act of Party

The Transfer of Property Act, 1882

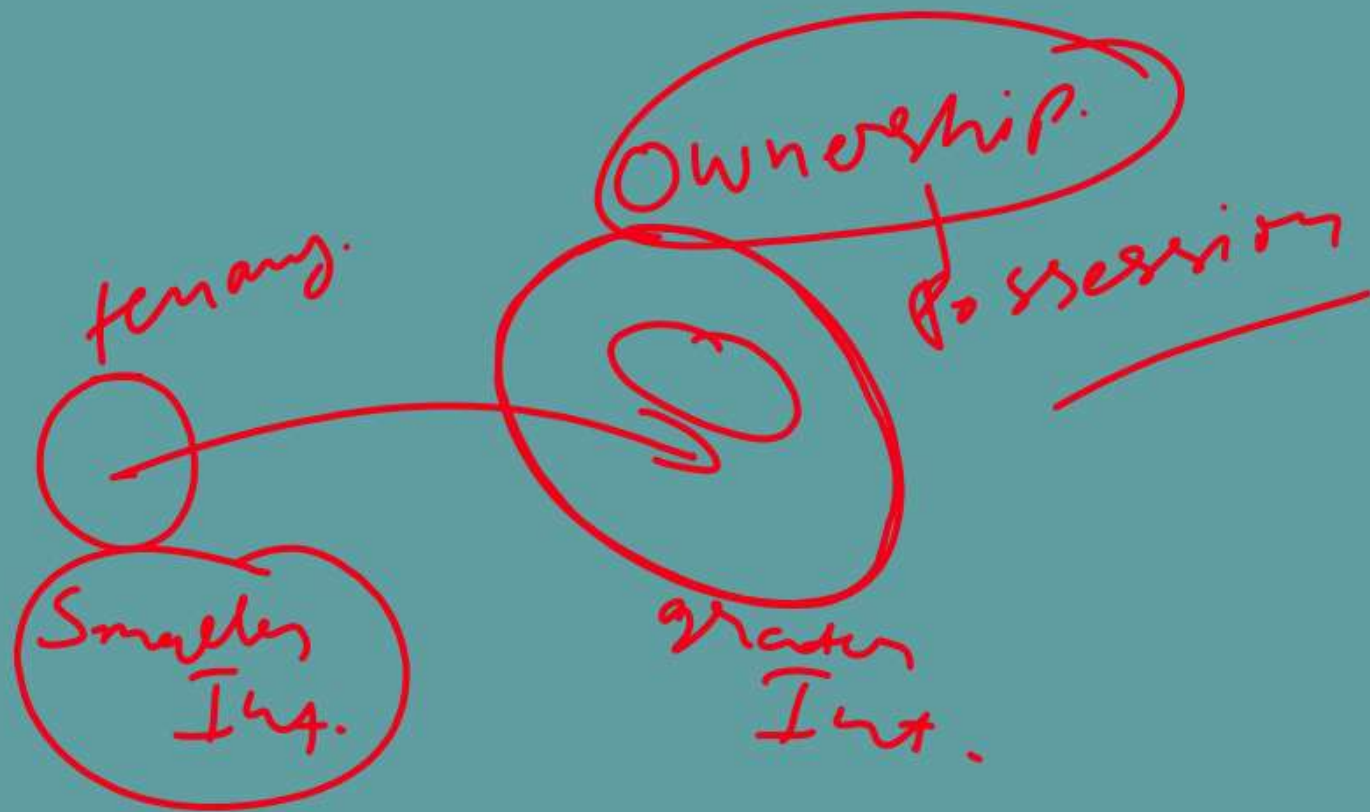
Partition is not a transfer of property.
(विभाजन एक सम्पत्ति का अन्तरण नहीं है)

(4) Surrender (अभ्यर्पण)

Not a T.P.

Surrender means merging of a smaller interest with a greater interest in such manner that the greater interest is not enlarged.

अभ्यर्पण का अर्थ अपेक्षाकृत बड़े हित में ऐसी रीति में विलय हो जाना है कि दीर्घतर हित विस्तृत नहीं हो



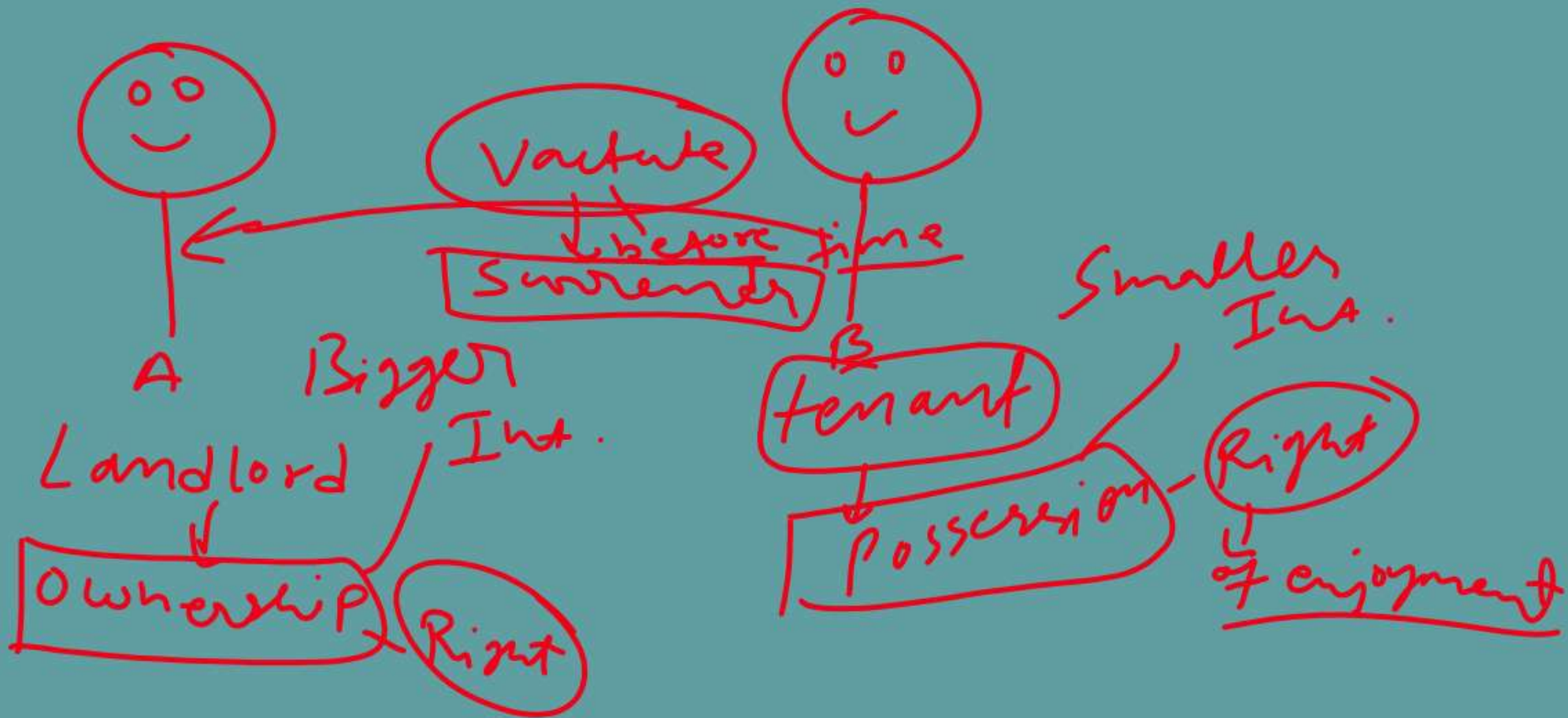
The Transfer of Property Act, 1882

Example: A is landlord and B is his tenant. A as landlord has ownership of the house. Ownership or absolute interest is a larger interest.

क स्वामी है और ख किरायेदार है। क भवन का स्वामित्व रखता है। स्वामित्व अथवा पूर्ण हित दीर्घतर हित है।

B as a tenant has also an interest in A's house but B's interest is smaller interest because it is limited only to right of enjoyment.

किरायेदार के रूप में ख भी क के भवन में रहने का हित रखता है किन्तु, ख का हित लघुतर हित है क्योंकि यह केवल उपभोग के अधिकार तक ही सीमित है।



Now if X vacates the house before expiry of the terms of tenancy, it would amount Surrendering of his right of residence.

अब यदि ख किरायेदारी की अवधि की समाप्ति के पहले भवन खाली कर देता है तो यह निवास को के उसके अधिकार का अभ्यर्पण करने के तुल्य होगा।

The Transfer of Property Act, 1882

⑤ Release

under Fraud or

①7

undue influence

①6

(5) Release (विमोचन)

impl.

In General release may be with or without consideration

It is T.P.

(If release-deed was executed under fraud or undue influence)

Not a T. P.

The Transfer of Property Act, 1882

(6) Relinquishment (स्वत्व त्याग)

means giving up one's right or interest. (अर्थ अपने अधिकारों तथा हितों को छोड़ देना है।)

It is extinction of one's right
(यह अपने अधिकार की समाप्ति है।)

There is no intention that the person relinquishing his interest is conveying that interest in favour of another person
(यहाँ कोई आशय नहीं है कि अपने हित को छोड़ने वाला व्यक्ति इस हित को अन्य व्यक्ति के पक्ष में छोड़ देता है।)

So it is not a T.P.
(इसलिए सम्पत्ति का अन्तरण नहीं होता है।)

(7) Charge (भार)

Not a T.P.

When the property is charged for securing
Certain payments is not a transfer.

जब सम्पत्ति कुछ भुगतान प्रतिभूत करने के लिए भारित की जाती है तो यह 'अन्तरण नहीं है।

The Transfer of Property Act, 1882

✓ (8) Will (वसीयत) - Not a T.P.



Indian Succession Act, 1925



The Transfer of Property Act, 1882

CHAPTER-II

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES / पक्षकारों के कार्य द्वारा संपत्ति- अंतरण के विषय में

(A) Transfer of Property, whether moveable or immovable / जंगम या स्थावर संपत्ति का अंतरण

5. **"Transfer of property" defined** (" संपत्ति के अंतरण " की परिभाषा)- In the following sections "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.

आगामी धाराओं में, "संपत्ति के अंतरण " से ऐसा कार्य अभिप्रेत है, जिसके द्वारा कोई जीवित व्यक्ति एक या अधिक अन्य जीवित व्यक्तियों को या स्वयं को अथवा स्वयं और एक या अधिक अन्य जीवित व्यक्तियों को वर्तमान में या भविष्य में सम्पत्ति हस्तान्तरित करता है और "संपत्ति का अंतरण करना" ऐसा कार्य करना है।

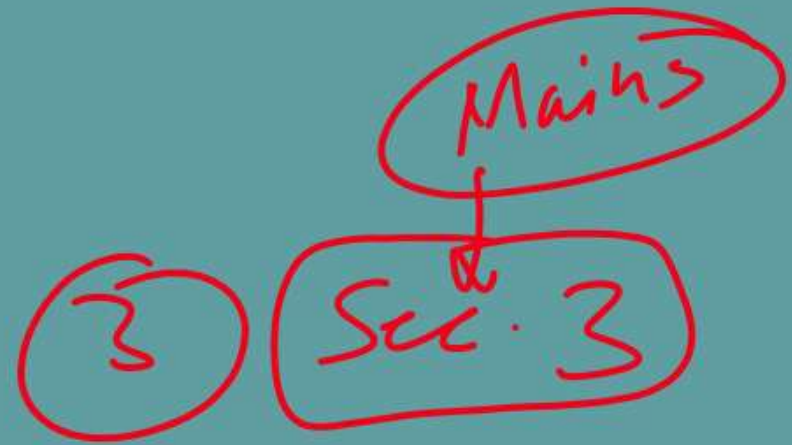
The Transfer of Property Act, 1882

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

इस धारा में "जीवित व्यक्ति" के अन्तर्गत कम्पनी या संगम या व्यक्तियों का निकाय, चाहे वह निगमित हो या न हो, आता है, किन्तु एतस्मिन् अन्तर्विष्ट कोई भी बात कम्पनियों, संगमों या व्यक्तियों के निकायों को या के द्वारा किए जाने वाले संपत्ति- अंतरण से सम्बन्धित किसी भी तत्समय प्रवृत्त - विधि पर प्रभाव न डालेगी।

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CIVIL JUDGE SELECTION

RJS (RANK-3)	RJS (RANK-4)	RJS (RANK-5)	RJS (RANK-6)	RJS (RANK-10)	RJS (RANK-17)	RJS (RANK-21)	RJS (RANK-26)	RJS (RANK-28)	RJS (RANK-35)	RJS (RANK-42)	RJS (RANK-43)	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22
Mahavir Saini	Trapiti Jain	Richa Agrawal	Rishi Gupta	Arunima Singh	Animesh Rajpurahit	Kiran Prajapat	Shivani	Mahima Shrimali	Vaidani Singh Rajpurahit	Harsh Vardhan	Ritika Agrawal	Shini Jain	Sakat Jain	Mansi Agnihotri	Bharat Pomar
RJS (RANK-46)	RJS (RANK-56)	RJS (RANK-63)	RJS (RANK-66)	RJS (RANK-74)	RJS (RANK-75)	RJS (RANK-78)	RJS (RANK-88)	RJS (RANK-97)	RJS (RANK-105)	RJS (RANK-112)	RJS (RANK-119)	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22
Lucky Sani	Devendra Puri	Komal Bhati	Kartika Gehlot	Yeena Suwalka	Trilochana Rathore	Akshay Tambi	Richa Shikhowat	Meenakshi Khatri	Dimpal Kumar	Anita Rajwaniya	Shivani Meena	Dharmveer Singh Rathor	Shrishty Kushwaha	Srishti Sahu	Akshita Shukla
MPCJ	MPCJ	MPCJ	MPCJ	MPCJ	MPCJ	BJS	HCS(JB) RANK-5	HCS(JB) RANK-6	HCS(JB) RANK-16	HCS(JB) RANK-18	HCS(JB) RANK-36	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22
Akanaksha Gupta	Utkarsh Jain	Trapiti Jain	Kundan Kachhiwaha	Sanjeet Chourasia	Amber Shrivastava	Kumari Preeti	Paras Chaudhary	Jodinder Jangra	Arunima Chauhan	Ritiz Arora	Jasmeet Kaur	Ratnapriya Shrivastava	Sarfaraz Khan	Swapnil Varma	Provesh Kabra
GJS (RANK-1)	GJS (RANK-7)	GJS (RANK-8)	GJS (RANK-11)	GJS (RANK-12)	GJS (RANK-13)	GJS (RANK-16)	GJS (RANK-37)	GJS (RANK-54)	HCS(JB) RANK-43	HCS(JB) RANK-50	HCS(JB) RANK-73	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22
Aditya Rajeshbhai Gor	Meghaben	Prahlad kumar	Mayuri Jain	Pankti Soni	Kirti Sharma	Shipra Soyat	Divyakant Pandya	Kaushar Banu	Prince Garg	Jaspreet Kaur	Saru Goyal	Shweta Arya	Avani Vyas	Shweta Yadav	
MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22	MPCJ 2021-22
Shivangni Bhatt	Salinder Pannu	Prachi Gunwan	Swati Bhargava	Drutika Upadhyay	Kajal Nayak	Yinay Sharma	Abhay Pratap Singh	Manvendra Singh	Preeti Rathore	Priya Chauhan	Aika Soni	Vaishali Chauhan	Hiteshi Sharma	Vikas Thakur	

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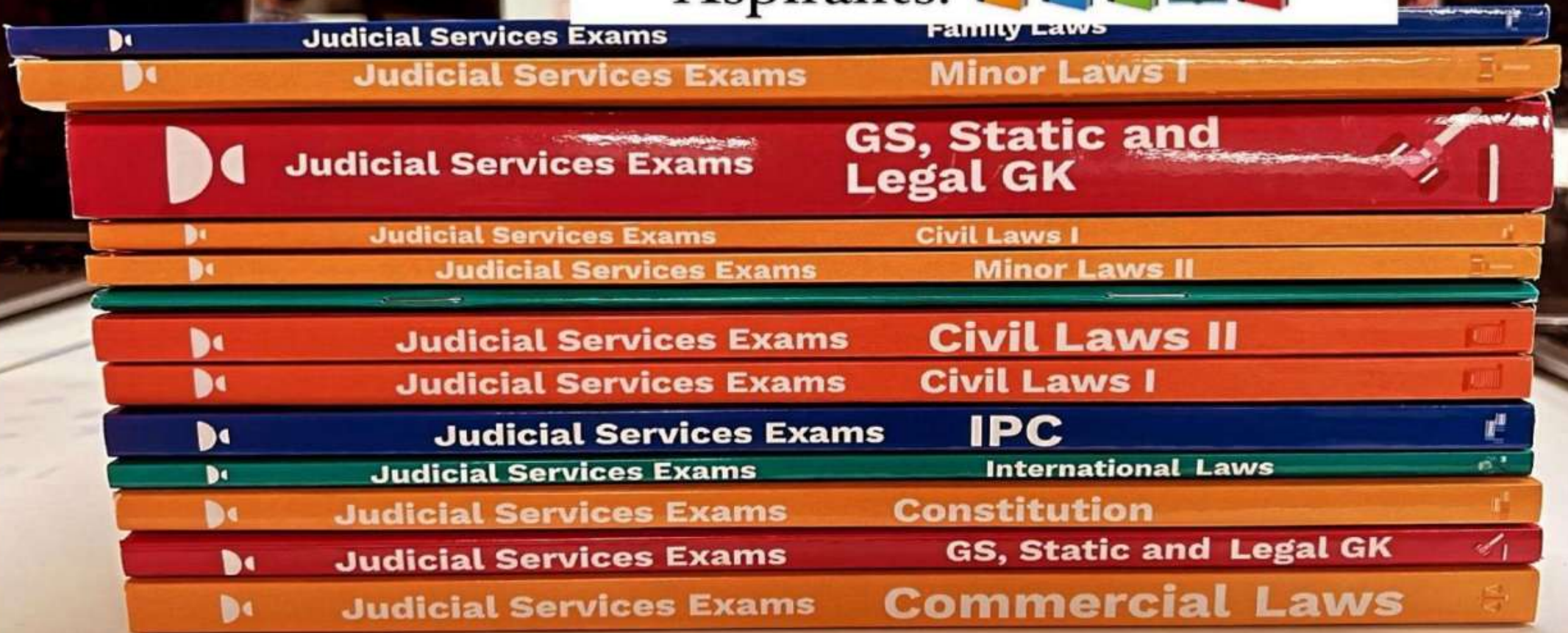
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