

**ALL ABOUT SALE AND MORTGAGE UNDER TRANSFER OF
PROPERTY ACT 1882**

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Q.1 What is Sale ?

Ans. According to section 54 of Transfer of Property Act 1882 sale is defined as –

"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promise."

Q.2 How is Sale made?

Ans. According to Section 54 –

Sale can be made in 2 ways:

1. Where the value of Tangible Immovable Property is Rs.100 or more than that or in the case of a reversion or other intangible thing, sale can only be made through Registered Instrument.
2. Where the value of Tangible Immovable Property is less than Rs.100 , sale can be made through Delivery of Possession

Delivery of Tangible Immovable Property is said to be completed when the Seller handover the possession of property to buyer or such person as he directs.

Q.3 What is Contract of Sale ?

Ans. A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property

Q.4 What are the essential elements of a sale ?

Ans. The essential elements of sale are:

1. Parties to Sale

There are two parties to sale

- (a) the Transferor and
- (b) the Transferee

The transferor is known as the seller who sells his property , and the transferee known as the buyer, to whom the property is being sold . A contract of sale must be based on a mutual agreement between the seller and the buyer. The transferor or the seller must be a person who is competent to enter into a contract i.e., he must be a major and of sound mind and should not be legally disqualified to transfer the property. A minor or a person of unsound mind is incompetent to transfer his own property despite being its owner.

2. Subject Matter of a Sale

The subject matter of sale must only be IMMOVABLE PROPERTY as governed by Sec.54 of the act. Immovable property can be tangible or intangible. Tangible property is one that can be touched while intangible property refers to property that cannot be touched such as a right of fishery, a right of way etc.

3. Price or Consideration

The consideration must only be in MONEY to constitute a Sale. If it is for exchange of some other item it is not sale.

Q.5 What are the rights and duties of Seller ?

Ans. The rights and duties of seller are subject to the contract. In the absence of any contract to the contrary, the rights and duties of seller and buyer are governed by section 55, Transfer of Property Act. The rights and duties of seller and buyer under the provisions of section 55 of Transfer of Property Act are as under:

❖ Duties of Seller Before Sale

1. The seller is bound to disclose all the material defects to the buyer of the property which the buyer is not aware of and cannot find in ordinary course of action.
2. The seller is bound to produce all documents relating to property to the buyer if he ask for those documents which are in the possession or power of seller.
3. The seller is bound to give answer of all the question to the best of his knowledge which are put before him by the buyer in respect to property,
4. The seller is bound between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto, which are in his possession as an owner of ordinary prudence would take of such property and documents.
5. The seller is bound to pay all the charges and rent, dues or government fees up to the date of sale.

❖ Duties of seller after sale

1. After completion of the sale, it is the seller's duty to gave possession to the buyer. The seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property
2. The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same.
3. Where the whole of the purchase money has been paid by the buyer, Seller is bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power;

❖ Seller's Rights before Sale

1. Section 55 (4) (a) - Seller has right to receive all the rents and profits out of property.

❖ Seller's right after sale

1. Seller has the right to Lien or charge on the property , if any amount is unpaid by the seller. According to Section 55(4) (b) if price remains unpaid, the seller cannot refuse

delivery of possession for can claim back the possession if already given to buyer, but he (seller) is given a right to recover unpaid purchase money from and out of the property.

Q.6 What are the Rights and Duties of Buyer ?

Ans. The rights and duties of buyer are subject to the contract. In the absence of any contract to the contrary, the rights and duties of seller and buyer are governed by section 55, Transfer of Property Act. The rights and duties of buyer under the provisions of section 55 of Transfer of Property Act are as under:

❖ Duties of Buyer before Sale:

1. The buyer bound to disclose, facts which materially increases the value of property, Section 55(5)(a) of the Act provides that, “the buyer is bound to disclose to the seller any fact as to the nature or extent of the seller’s interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest”
2. Section 55(5) (b).- Buyer is bound to pay the price of property to Seller

❖ Duties of buyer after Sale :

1. Section 55 (5) (c) - The buyer is bound to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller where the ownership of the property has passed to the buyer.
2. Section 55(5) (d) - The buyer is liable to pay the outgoings, e.g., Government dues, rents, revenue or taxes

❖ Buyer’s right before sale-

Section 55(6) (a) - Buyer is entitled to (unless he has improperly declined to accept delivery of property):

- A charge on the property for the purchase money properly paid by him in anticipation not the delivery.

- (ii) Interest on such purchase money.
- The earnest , and cost awarded to him in a suit to compel specific performance of the contract or to obtain a decree for its recession in case he properly declines to accept delivery.

❖ Buyer's right after Sale-

Section 55 (6) (a) - Buyer is entitled to receive any benefit of any appreciation of the property or increase in its value and to the rents and profits thereof.

Q.7 What is Mortgage ?

Ans. According to Section 58(a) of Transfer of Property Act 1982 ,” A mortgage is the transfer of an interest in specific **Immoveable property** for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability”

Q.8 Who all are the parties to Mortgage ?

Ans. The person who transfers his property i.e. Transferor is called a Mortgagor, And the person to whom the property is being transferred i.e. Transferee is called Mortgagee. The principal money and interest of which payment is secured for the time being are called the Mortgage-Money. The instrument (if any) by which the transfer is effected is called a Mortgage-Deed.

Q.9 What are the different types of Mortgages ?

Ans. Section 58 classified the mortgage into the following six types :

1. **Simple mortgage:-** In Simple mortgage, the mortgagor does not deliver the possession of the mortgaged property, but he gives a person undertaking to the mortgagee that he will repay the amount due under the mortgage. [sec 58 (b)]
2. **Mortgage by conditional Sale:-** In this type, mortgagor first sell the property, in favour of mortgagee, with a condition to revert it back to him, if mortgagor repays his loan with interest, and if he fails do it then mortgagee will become absolute owner. [sec 58 (c)]
3. **Usufructuary mortgage:-** The word 'usufruct' means the right to use and take advantage of others property. In case of usufructuary mortgage , the mortgagor delivers possession of the mortgaged property and the mortgagee is entitled to receives the rents and profits accruing from the property and to settle the same in lieu of interest and the principal sum. mortgagor authorizes him to retain such possession until payment of the mortgage-money. [sec 58 (d)]
4. **English mortgage :-** Here the mortgagor transfers the property absolutely to mortgagee and promises to pay the mortgage amount on a certain fixed date and on payment of such amount the mortgaged property should be retransfer to the mortgagor as agreed. [sec 58 (e)]
5. **Mortgage by deposit of title deeds :-** In this type mortgagor declares to a mortgagee or his agent documents of title to immovable property , with intent to create a security. [sec 58 (f)]
6. **Anomalous mortgage: -** A mortgage which does not belong to any of the above 5 types is called an anomalous mortgage. [sec 58 (g)]

Q.10 What are the rights of Mortgagor ?

Ans. The mortgagor has the following rights :-

1. Right of redemption (Sec.60):- the mortgagor has the right to redeem i.e. to get back his mortgaged property after paying the mortgage money , at any time after the stipulated date of payment , but he is not entitled to redeem it before the mortgage money becomes due on the date fixed by parties for repayment of money . For e.g. A borrows money from B and agrees to pay it after 2 years against the security of his property. A now wants to pay mortgage money at the end of 1st year and wants to redeem his property , he is not entitled to do it because his right to redeem arises only when the money has become due at the end of 2 years.
2. Right to inspection and production of document :- Mortgagor has got the exclusive right to call for documents and inspect and make copies of all documents, till his right of redemption subsists, at his own cost of the mortgaged property which is under the power of mortgagee.
3. Obligation to transfer to third party instead of re-transference to mortgagor :- The mortgagor after paying the mortgage money may direct the mortgagee to transfer the property to third person instead of re-transferring to mortgagor.
4. Accession and Improvement to Mortgaged property:- When mortgagee has done any improvement or accession voluntarily in mortgaged property than on redemption the mortgagor is entitled to all such accession and improvement, unless there is contract to the contrary, but if such improvement is done in compliance of lawful order of any public servant or authority and to save the property from destruction and for property security, then mortgagor is liable to pay the cost for such in absence of contract to contrary.

Q.11 What are the liabilities of mortgagor ?

Ans. Following are the duties of mortgagor –

1. The mortgagor must indemnify the mortgagee for the defective title to the property.
2. The mortgagor must compensate the mortgagee for payment of all taxes and public charges.
3. When the mortgaged property is leased, the mortgagor must direct the rent payable under the lease, etc to the mortgagee.

Q.12 What are the rights of Mortgagee ?

Ans. The mortgagee has the following rights :-

1. Right to sue for mortgage money – The mortgagee has right to file a suit in court for mortgage money if the mortgagor binds himself to repay the mortgage money or the mortgaged property is destroyed and the security rendered is insufficient and mortgagor has not provided further security or if mortgagee is deprived of his security by mortgagor by any unlawful manner.
2. Right of sale – Mortgagee has right to sale the mortgaged property after getting the decree from court if the mortgage money is not paid. Mortgagee has right to sale without the intervention of court under certain circumstances mentioned in section 69 of Transfer of property act.
3. Right to accession of property – If the mortgagee has right to accession to the increased mortgaged property.
4. Right to foreclosure- The mortgagee has the right to obtain a decree of foreclosure from the court at any time after which the mortgage money becomes due.

5. Right of possession – Mortgagee is entitled to the possession of mortgaged property as under the terms of mortgage deed.
6. Right to renewal of lease - If the mortgaged property is under lease, the mortgagee is entitled for renewal of the lease for purpose of security.

Q.13 What are the liabilities of mortgagee ?

Ans. Following are the liabilities of mortgagee –

1. To manage the property as he would manage if it were his own.
2. To collect the rents and profits of same.
3. In the absence of a contract to the contrary, to pay Government revenue and the other charges of a public nature.
4. In the absence of a contract to the contrary, to make such necessary repairs as the income of the property permits.
5. Not to commit any act which is destructive or permanently injurious to the property.
6. To maintain accounts of all sums received and spent by him and render them to the mortgagor when asked.