

The transfer of property act, 1882

[Law](#), [Common Law](#)



THE TRANSFER OF PROPERTY ACT, 1882 PERSONS COMPETENT TO TRANSFER (Section-7) Submitted by: Ananya mohapatra BBA-LLB (A) 5th Semester 1082015 PERSONS COMPETENT TO TRANSFER (Section-7) Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force. Who is a Transferor? Every person who is competent to contract as per the Indian Contract Act is also competent to transfer a property provided that he is authorized to transfer it as per the law. The term " authorized" needs to emphasize. If transferor is not owner of the property he purports to transfer he must show that he is otherwise authorized by law to transfer the property. Who is a Transferee? As far as a transferee is concerned there is no such requirement that he must be competent to contract. So, a minor, lunatic- all they can be transferees. However, a few limitations are there. First in the lease of lease both transferor and transferee have to be major or otherwise competent to make contract. Second, if a gift is made to a minor, it has to be accepted by its guardian. Apart from these, there may also be some special provisions which attach some (dis)qualification to a person wanted to be a transferee. For Eg: S. 136 of the T. P. Act provides that officers of the court including judges and advocates cannot be assignee of actionable claims. COMPETENT TO TRANSFER Under S 6(h) (3), any person is competent to be a transferee, unless legally disqualified. This section deals with the competency of a transferor. The transferor must be- a) competent to contract; and b) have

title to the property or authority to transfer it if not his own. **COMPETENT TO CONTRACT** This is the same condition as is enacted by S 7 of the Indian Trusts Act, 1882 for the creation of a trust. S 11 of the Indian Contract Act 1872 defines the capacity to contract. The power to transfer must depend upon the power to contract, for without an antecedent contract to give and take; there can be no transfer at all. **MINOR AS A TRANSFEROR** The transferor must have attained the age of majority according to the law to which he is subject. The Privy Council held that a contract by a minor is void and so therefore the transfer by a minor is also void. Although a minor is not competent to transfer, yet a transfer to a minor is valid. **LUNATIC AS A TRANSFEROR** Under S. 12 of the Indian Contract Act 1872, a person is of sound mind for the purpose of making a contract if he is capable of understanding and of forming a rational judgment as to its effect upon his interests. A contract made by a lunatic is void under the Indian Contract Act 1872, and so also a transfer by him of his property is void. **Disqualified to contract** A statutory disqualification to contract imports, as in the case of a minor, inability to transfer. Such a disqualification ensues when the owner's property is under the management of the Court of Wards, or of an officer appointed under Encumbered Estates Act. A judgment debtor whose property is being sold in execution by the collector is also incompetent to alienate. **Oral Transfer: Formalities of a Transfer** Section 9 of the TP Act states that in every case where writing is not required a transfer can be made orally. The meaning is that if writing is not required by Law- property can be transferred by delivery of possession of the property. **Pre-requisites of a valid transfer:** 1) Property must be transferable S. 6 2) Transferor must be

competent to contract and should not be disqualified under any special law
S. 7 3) Transferee should also not be qualified under special law S. 7 4) Legal formalities required by law should be fulfilled S. 9 5) Consideration and object of transfer should not be contrary to law or public policy S. 6(h) (A person's conduct in collecting rents and managing an estate of the landlord does not empower him to transfer the land as the landlord's agent; Balai Chandra Mondal v. Indurekha Devi, AIR 1973 SC 782.)
