



# DADABHOY INSTITUTE OF HIGHER EDUCATION

Main Campus, Karachi

Faculty of Law

(Final Term Examination BA- LLB – semester 05)

**COURSE TITLE: LAW OF PROPERTY**

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## **Q1: Define the term “Mortgage” and explain the kinds of mortgage.**

### **Definition:**

A mortgage is the transfer of an interest in the specific immovable property to secure the payment of money advanced or advanced by way of loan, an existing or future debt, or the performance of an engagement that may give rise to a pecuniary liability.

### **Different Types of Mortgage:**

There are six types of mortgages, which are as under:

1. Simple mortgage,
2. Mortgage by conditional sale,
3. Usufructuary mortgage,
4. English mortgage,
5. Mortgage by deposit of title deeds, and
6. Anomalous mortgage

These are described below:

### **Simple mortgage:**

A simple mortgage is one where;

Without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money and agrees expressly or impliedly that in the event of his failure to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold. The proceeds of the sale to be applied so far as may be necessary, in the payment of the mortgage money.

However, the mortgagee cannot directly sell the property, and the sale must be through the court's intervention.

The mortgagee will have to obtain first a decree from the court for the sale of the mortgaged property since the words used are “cause the mortgaged property to be sold.”

### **Mortgage by conditional sale:**

Mortgage by conditional sale is one where the mortgagor ostensibly sells the mortgaged property on the condition that –

On default of payment of the mortgage money on a certain date, the sale shall become absolute, or

On such payment being made, the sale shall become void, or

On such payment being made, the buyer shall transfer the property to the seller.

### **Usufructuary mortgage:**

A usufructuary mortgage is one where the mortgagor delivers or agrees to deliver the possession of the mortgaged property to the mortgagee and authorizes him –

To retain such possession until payment of the mortgage money,

To receive the whole or any part of the rents and profits accruing from the property, and

To appropriate such rents or profits; (i) in lieu of interest, or (ii) in payment of the mortgage money, or (iii) partly in lieu of interest and partly in lieu of the mortgage money.

### **English Mortgage:**

English mortgage has the following characteristics:

The mortgagor makes a personal promise to repay the mortgage money on a certain day.

The property mortgaged is transferred to the mortgagee. The mortgagee, therefore, is entitled to take immediate possession of the property. He/She may, under certain circumstances, sell the mortgaged property without the intervention of the court.

The transfer is subject to this condition that the mortgagee will re-transfer the property to the mortgagor upon making payment of the mortgage money as agreed.

### **Mortgage by deposit, of title deeds:**

A person delivers to a creditor or his/her agent documents of title to the immovable property to create a security thereon. The transaction is called a mortgage by deposit of title deeds.

This mortgage does not require registration, and it is the most popular with banks.

### **Anomalous mortgage:**

A mortgage other than any of the mortgages explained so far. It is an anomalous mortgage.

Such a mortgage includes a mortgage formed by the combination of two or more types of mortgages, as explained above.

It may, therefore, take various forms depending upon custom, local usage, or contract.

## **Q2: Explain the term vested Interest and contingent interest and also differentiate between the two.**

### **Meaning of vested Interest:**

Section 19 of Transfer of Property Act 1882 lays down the meaning of vested interest. Vested interest can take place in two stages. First when the transferee is in immediate and present possession of the property and second when the transferee has acquired an interest in the property but is not in the present possession of property that is the right to enjoyment is postponed to a future date.

Vested interest is when an interest in a property is transferred in favour of a person without specifying the time or a specific condition. Such interest must vest in the person on happening of an event which is bound to happen. The interest in the property remains vested in the transferee

even though the right to enjoyment of the property is postponed. In other words, interest is said to be vested when it depends on happening of a certain event precedent.

### **Illustration:**

X, the father of Y agrees to transfer an ancestral property in favour of Y after his death. The interest in the ancestral property in favour of Y is dependent on the condition of the death of his father X, which is certain. Hence on the death of X, Y will have vested interest in the ancestral property.

### **Meaning of Contingent Interest:**

In the Transfer of Property Act 1882, contingent interest is when interest is created in a property in favour of a person to whom such property is transferred, such interest is dependent on the happening of a specified uncertain event which may or may not take place. Hence the transfer of an interest in a property is dependent on a contingent event. This interest in the property can become vested interest in favour of the person to whom it is transferred on the happening of the event or when the happening of the specified event fails or becomes impossible. The creation of interest of the person's right to enjoyment, possession or ownership in the property is dependent on happening of a condition which may or may not take place.

### **Illustration:**

A agrees to transfer his house in favour of B on the condition that B should marry his daughter 'X'. Hence such a transfer of property in favour of B is dependent on the condition of B marrying A's daughter 'X'. B may or may not get married to 'X'. If B gets married to X, the interest in A's house gets transferred to B immediately on happening of the specified event.

### **Difference between contingent and vested interest:**

#### • **Vested interest:**

1. Section 19 of the act defines vested interest. Vested interest is an interest in a property transferred to a person on happening of a certain event. Whereas section 21 defines contingent interest.
2. Vested interest in property creates an immediate interest in the property though the right to enjoyment is postponed.
3. Vested interest is not defeated by the death of the transferee.
4. Vested interest is a transferable and heritable right.

#### • **Contingent Interest:**

1. Contingent interest is an interest in a property transferred in favour of a person on happening of an uncertain event which may or may not take place.
2. Contingent interest solely depends on the fulfilment of a specific condition. The interest in the property is created in favour of a person on fulfilment of the condition.
3. Contingent interest passes on the death of the person or not depends on the nature of transaction and contingency.

4. Contingent interest is transferable but if heritable or not depends on the nature of contingency.

- **Conclusion:**

Hence section 19 to 24 of the Transfer of Property Act 1882 explain the provisions related to vested interest and contingent interest. Such interests are acquired in immovable property in favour of the transferee on the transfer of such property to him. Such transfer of interest might take place immediately or on the occurrence of a specified event.