

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: Law of Transfer of Property & Easement
 Semester-VI (Batch: 2014-19)

End Semester Examination: April-May 2017

Date: 6th May, 2017

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed.**

Marks

Part A
 (Answer any three)

(3x5
=15)

- Q.1 What are the essentials of easement? Distinguish between 'easement' and 'licence'.
- Q.2 What do you mean by extinguishment of easement? Enumerate the circumstances which result in extinction of easement.
- Q.3 X built a house in 1990 with a window facing Y's land. In 2007, Y built a house on his land with the result that light and air were cut off from X's window. X objected to the obstruction and filed a suit in 2015 to remove the obstruction. X claimed easement acquired by prescription. Decide the fate of the suit.
- Q.4 A is the owner of two adjoining houses, H1 and H2. He sells H1 to B and retains H2. There were some gutters and drains common to the two houses and necessary for enjoying the houses when the sale takes effect. Decide the entitlement of A and B with respect to H2 and H1 respectively as to the benefit of the said gutters and drains common to H1 and H2.

Part-B
 (Compulsory)

- Q.5 A, an old man of 80 years, executes a usufructuary mortgage in favour of B on 1 January 2010. He subsequently puts B in possession of the property. On 1 December 2010, A orally sells the property to C. (1+2=03)

With reference to the above-stated facts, answer the following questions:

- (a) Is the sale deed valid? Give reasons.
- (b) What are the essentials of a valid sale under the Transfer of Property Act 1882?

- Q.6 MR Lindley, in *Stanley v Wilder* (1899), defined mortgage to be, "a conveyance of land or an assignment of chattel as a security for a payment of debt or the discharge of some (2+4=06)

other obligation for which it is given". In view of this statement, answer the following questions:

- (a) How is mortgage defined in the Transfer of Property Act?
- (b) What are the different types of mortgages? Give suitable examples.

- Q.7 A, a licensed dealer in milk, mortgaged his premises and goodwill to B & Co, subject to a condition that if A paid all the money along with interest, B & Co would reconvey the property to A or any person directed by them. There was a covenant in the mortgage deed that on the continuance of the term whether or not any money be due on the security, A would not sell upon the premises milk not obtained from B & Co. A sold milk not obtained from B & Co, and consequently B & Co claimed breach of contract. A instituted a suit for recovery of the premises. (2+2+2=06)

Answer the following questions:

- (a) Elaborate the principle of the Transfer of Property Act applicable in this case.
- (b) Which provision of the Transfer of Property Act would be applicable to confer remedies on the parties in question in the mortgage deed?
- (c) What will be the outcome of A's suit against B & Co for possession?

- Q.8 On 27 March 1979, B (mother-in-law of A) gifted away the suit lands in favour of A (daughter-in-law), by a registered deed of gift. Until 1982, A remained in possession of the suit lands and lived with her husband who died in 1985. After the husband's death, A lived with B (mother-in-law) till 1986. In 1986, A having been neglected by B, left for her father's house. Thereafter, A applied for mutation in respect of the suit lands. On 31 May 1986, B executed a deed of cancellation of the gift deed. Thereafter on 19 September 1986, a suit was filed by A for declaration of title and possession in respect of the suit lands. (2+3=05)

Answer the following questions:

- (a) What is the nature of gift deed made in this case?
- (b) Which provision of Transfer of Property Act would be applicable to confer remedies to the parties in question in the gift deed? Explain.

- Q.9 A created a tenancy of the premises at Kolkata in favour of B, who was inducted into the premises as the monthly tenant. B in turn created an agreement with C styled as lease and license for running a petrol pump, a service station and for sale of motor spare parts. B was not empowered under the agreement to create a sub-tenancy of the interest that he had in the property without the consent of the landlord. In the deed, it was specifically mentioned that the license was granted for the purpose of using, occupying, enjoyment, running and working of the petrol station and that B was empowered to revoke the license in the event of the breach of any condition. (2+2=04)

Answer the following questions:

- (a) What is the nature of the deed created? Explain the nature of the rights of A and B by invoking the relevant provisions of the Transfer of Property Act.
- (b) Differentiate between lease and mortgage.

- Q.10 On 17 May 2012, A deposited his title deed with Bank X to secure an overdraft. Subsequently, on 5 December 2012, A asked Bank X to return the title deed by saying that he wanted to sell the property and clear the overdraft. However, A made Bank X believe that he would not get a good price if the purchaser came to know that the Bank had the title deed of the property. Bank X returned the title deed to A on 10 March 2013. A again borrowed money from Bank Y on 6 June 2013, on the deposit of the (2+3=05)

same title deed falsely representing that there was no encumbrance on the property. **Bank X** sued **A** for the recovery of the mortgage money and return of title deed from **Bank Y**.

Answer the following questions:

- (a) Who had a better title to the property? Give reasons.
- (b) Which doctrine of the Transfer of Property Act is applicable in the case? Explain.

Q.11 Write short notes on **any two**:

(2×2=

- (a) Right of Foreclosure.
- (b) Charges and Merger.
- (c) Marshalling and Contribution.
- (d) Doctrine of Subrogation.

04)

Q.12 Which of the following is/are actionable claim:

(4×0.5

- (a) Right to get damages for breach of contract.
- (b) Debt secured by mortgage of immovable property.
- (c) A claim to *mesne profit*.
- (d) Claim for the money due under an insurance policy.

=2)
