

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Transfer of Property and Easement
Semester-VI (Batch: 2016-21)

End Semester Examination: April-May 2019

Date: 9th May, 2019

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 anything 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.

Marks

(5+5=10)

- Q.1 (a) 'Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.' *RN Gosain v Yashpal Dhir* AIR 1993 SC 352.

In view of the afore-stated observation of the Supreme Court of India, elucidate the doctrine of election.

- (b) Discuss the conditions that must be satisfied before the doctrine of part performance can be applied. Expound the legal effect of the Amending Act (48 of 2001) in section 53A of the Transfer of Property Act, 1882.

- Q.2 (a) X mortgages a property to Y. X, thereafter, sells one-third of that property to M, one-third to N and one-third to the mortgagee Y. Can M redeem his one-third share (in the said property) for one-third of the debt? (4+4+2=10)

- (b) A mortgaged his property to B. Thereafter, A died leaving three sons: C, D and E. B purchased from E his share in the equity of redemption. Would B be entitled to recover two-thirds of the debt from the shares of C and D?

- (c) E transfers his property in 1970 to F for life and then to F's first son (unborn) when he would attain the age of 18 years. F dies in 2018 and the first son of F was born in 2005. Decide the validity of the transfer.

- Q.3 (a) A suit is brought in 2013 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceable and openly enjoyed by him, and as of right from 01 January 1992 to 01 January 2012. The defendant proves that during this duration, for a period of two years (from 01 January 2005 to 01 January 2007), the plaintiff was entitled to possession of the servient heritage as a lessee thereof and enjoyed the right as such lessee. Whether or not the plaintiff is entitled to judgment in his favour? Decide. (5+5=10)

- (b) 'Once a mortgage always a mortgage and nothing but a mortgage'. Explicate the rationale underlying this statement.



- Q.4 (a) By advancing convincing reasons, decide whether the following instances are lease or licence: (2.5+2.5+5=10)
- (i) An employee living in the quarters allotted by his employer for greater convenience of the employer's work.
 - (ii) P grants Q a lease for two years to tap toddy from Palmyra trees in his garden; but, Q is not to cut the leaves.

- (b) 'Although a person who is let into exclusive possession is, *prima facie*, to be considered to be tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy.'

In the light of the afore-stated observation, discuss the propositions established by the judiciary to ascertain whether a transaction is a lease or license.

- Q.5 Answer **any two** of the following: (5+5=10)
- (a) Manner and effect of assignment of actionable claim.
 - (b) Revival of easement.
 - (c) Onerous gift.
