

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: Law of Transfer of Property and Easement
Semester- VI (Batch: 2018-23)

End Semester Online Examination: July-August 2021

Date: 31st July, 2021

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.
- Word Limit: 10 Marks: 500-800 Words.

Marks

- Q.1 *P* and *D* were known to each other; and owing to such acquaintance, *P* had taken a sum of money from *D*. When *P* received the sum of Rs 5,00,000/-, the same was construed as consideration for a plot of land owned by *P*, and *D* was accordingly put in possession of the said property. A registered sale deed (dated 10 December 2008, Document 1) was executed in favour of *D*. Another agreement (dated 10 December 2008, Document 2) was also entered into between the parties whereby *P* had agreed to repay the said amount and secure re-conveyance of the property (plot of land). One more agreement (Document 3) was entered into on 29 August 2009 between the parties under which *P* agreed that he had taken Rs 5,00,000/- from *D* and the possession of the land was also given to *D*. In addition, *P* also received another sum of Rs 2,00,000/- without any interest. Thus, *P* had taken in all Rs 7,00,000/-. *P* agreed that if the amount was not repaid by 01 January 2010, the deed (Document 1) would be considered as an absolute sale deed. (10)

Subsequently, *P* claimed that he was prepared to repay the amount so as to secure back the property and, in that regard, construing the transaction as a mortgage, got issued a demand notice (dated 10 September 2010) through his advocate. *D* replied to the said notice on 23 September 2010 and disputed the claim put forth by *P*. *P*, therefore, filed a suit seeking a judgment and decree for redemption of mortgage and recovery of the possession of the suit land. *D* disputed the claim.

The case set up by *D* was that notwithstanding the Documents 2 and 3 by virtue of which *D* had agreed to re-convey the property, the sale deed had become absolute, as *P* had failed to repay the amount and secure the re-conveyance by 01 January 2010. However, *P* contended that since the Documents 2 & 3 refer to the relationship of debtor and creditor, the sale deed (dated 10 December 2008) should be construed as a mortgage by conditional sale.

Based on the afore-stated factual matrix, decide: Whether the deed (dated 10 December 2008, Document 1) and the contemporaneous documents (Documents 2 & 3), amounted to a 'mortgage by conditional sale' or 'sale' transaction?

- Q.2 L is the landlord of a shop. T took the shop on rent @ Rs. 20,000/- a month for running a business. The agreement/rent deed between L and T, which remained unregistered, came into force on 28 July 2003. The house tax and electricity bills were undertaken to be paid by the tenant (T). Rent was to be paid up to the 5th day in each month to the owner (L). In the event, T failed to make the payment of rent up to the prescribed date in advance, L had the right to get the shop vacated. If L needed the shop, he could serve notice of one month and get the shop vacated from T. T also undertook to make the payment of rent money by increasing 10 per cent each year. (10)

The relevant clauses of the agreement/rent deed are as under:

- (1) *The tenant shall make the payment of a sum of Rs 20,000/- (twenty thousand only) a month in advance up to the 5th day of every month to the owner of the shop, L.*
- (2) *The rent deed shall be applicable from 28 July 2003.*
- (3) *The amount of the house tax and the electricity bills regarding the above-said shop shall be paid by the tenant (T).*
- (4) *The tenant shall be bound for making the payment of the rent money by increasing 10% (ten percent) each year.*
- (5) *If the tenant fails to make the payment of the rent up to the prescribed date in advance, then the shop owner shall have the right to get the shop vacated.*
- (6) *The tenant has paid the amount of Rs 1,00,000/- (one lakh only) to the shop owner as a security. After vacating the shop and handing over the possession to the shop owner, the tenant shall be entitled to the refund of this security amount.*
- (7) *If the shop owner needs the shop, then, by serving the notice of one-month period, he can get the shop vacated from the tenant. There shall be no objection by the tenant in this regard.*

On 18 March 2006, L filed an application under the relevant Urban Rent Restriction Act, praying for eviction of the tenant (T) along with arrears of rent and house tax and interest on the arrears of rent. L's case was that rent and house tax were not paid for one year. T objected to the application on the ground that the agreement/rent deed between L and T, being an unregistered document, could not be relied upon by L for evicting him (T).

Based on the afore-stated factual matrix, decide: Whether the agreement/rent deed between L and T was a document, which required compulsory registration under section 17(1)(d) of the Indian Registration Act, 1908?

- Q.3 Discuss the law relating to positive and negative covenants with the help of relevant statutory provisions and judicial pronouncements. (10)

- Q.4 'The circumstances which by a deeming fiction impute notice to a party are based, on his wilful abstinence to enquire or search, which a person ought to make or, on his gross negligence. This presumption of notice is commonly known as constructive notice.' (10)

In the light of the above observation, elaborate the concept of constructive notice as stated in the Transfer of Property Act, 1882.

- Q.5 In the year 1929, section 53A was inserted in the Transfer of Property Act, 1882, which imported into India a modified form of the equity of part-performance as developed in England. This insertion set at rest the considerable uncertainty prevailing in Indian law. Yet again, para 4 of section 53A has been amended by the Registration and Other Related Laws (Amendment) Act, 2001. In view of the Amending Act of 2001, elucidate the scope and applicability of the doctrine of part-performance in India. (10)
