

GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
 Course: **Law of Transfer of Property and Easement**
Semester-VI (Batch: 2017-22)

End Semester Online Examination: February 2021

Date: 10th February, 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.

- | | | Marks |
|-----|---|--------------|
| Q.1 | <p>a) There are some tests to be observed in judging whether a chattel has become a fixture or not. Discuss the relevant tests. (Word Limit: 300-400 words)</p> <p>b) On 01 February 1995, <i>K</i> executed an agreement for sale of a parcel of land in favour of <i>A</i>. At that time, there were some plants and saplings on the land and that there was no existence of trees on the land. Further, there was no mention in the agreement that the saplings were not being sold along with the land.</p> <p>Since <i>K</i> did not execute the sale deed, therefore, <i>A</i> brought a suit for specific performance of the agreement for sale. While the matter was pending before the court, the plants and saplings (on the said parcel of land) had grown into full-fledged trees. Consequently, <i>K</i> raised an objection on the ground that what was agreed to be transferred was land and not the trees standing thereon; and that since the trees had not been agreed to be sold, the possession of the land could not be delivered to <i>A</i>. On the other hand, <i>A</i> contended that the plants and saplings which had grown into full-fledged trees would be treated as benefit arising out of the land, and thus, the trees were also vested in <i>A</i>. In other words, <i>A</i> contended that the land, which was agreed to be transferred, would also include subsequently fully grown trees thereon.</p> <p>Based on the afore-stated facts, decide whether or not the trees, which at the time of agreement for sale were mere saplings on the land, would also vest in <i>A</i> (the transferee), along with the said parcel of land? (Word Limit: 300-400 words)</p> | (5x2=10) |
| Q.2 | <p>For mine extraction, the landowner enters into a contract with the other party. The other party may or may not have the possession of the land. But, he will enter the land, do mining operations and extract the mineral. Is this transaction a sale, where the mine is being sold? Or, is it a lease where the property is being enjoyed? Support your answer with the help of convincing reasoning and leading case laws. (Word Limit: 400-500 words)</p> | (10) |

- Q.3 *PS* was a permanent tenant of a piece of land. On 02 January 2008, he executed a usufructuary mortgage in favour of *M*. Under the terms of the said usufructuary mortgage, the mortgaged property was put in possession of the mortgagee (*M*). One of the terms of the mortgage deed was that the initial responsibility for the payment of rent was that of the mortgagor (*PS*) and that, if for any reason he did not pay the rent, the mortgagee (*M*) was under an obligation to pay off the arrears to the landlord and to obtain a receipt acknowledging the payment. In the course of time, the mortgagee (*M*) did not pay the arrears of rent. As a result, the said property (piece of land) was brought to sale for recovering the arrears of rent. *M* (the mortgagee) himself purchased the piece of land. The sale was confirmed. While *M* was in possession of the property as a mortgagee, the court gave him possession as the owner of the land. (10)

PS filed a suit against *M* for redemption of the mortgage. *M* contended that he had become the owner of the land and *PS*'s right to redeem the mortgage had got extinguished. He argued that he had purchased the equity of redemption in execution of the rent decree, as a result of which, the relationship of mortgagor and mortgagee ceased to exist and that *PS* (the mortgagor) had no longer any right to sue him for redemption.

On the other hand, *PS* contended that, as the sale was the result of apparent negligence of duty imposed upon the mortgagee (*M*) by the terms of the transaction, the purchase by the mortgagee would only be in trust for the mortgagor and, therefore, the suit for redemption was maintainable.

In view of the afore-stated facts and circumstances, decide whether or not the right of the mortgagor (*PS*) to redeem the property is extinguished? (Word Limit: 300-400 words)

- Q.4 a) '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.' (5x2=10)

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. (Word Limit: 300-400 words)

- b) A person (*P*) signed a gift deed which was duly attested by witnesses. *P* gave the gift deed to the beneficiary (*B*). Before, however, *B* could apply for registration of the deed, *P* changed his mind about the gift. He filed an application before the court for injunction against *B* (donee) registering the gift deed. *B* applied for registration of the deed, and the deed was registered pending the litigation. *P* (the donor) contended that he could revoke the gift before registration. Is the contention of *P* valid? Could *B* get the deed legally registered? Support your answer with the help of relevant statutory provisions and convincing reasoning. (Word Limit: 300-400 words)

Q.5 Answer **any two** of the following:

(5x2=
10)

- a) With the help of convincing reasons, decide whether or not a decree is an actionable claim? (Word Limit: 250-300 words)
- b) With the help of illustrations, explain 'Redeem Up, Foreclose Down'. (Word Limit: 250-300 words)
- c) Discuss the constitutionality of section 129 of the Transfer of Property Act, 1882. (Word Limit: 250-300 words)
