

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: **Law of Transfer of Property and Easement**
Semester- VI (Batch: 2019-24)

End Semester Online Examination: May 2022

Date: 08th May, 2022

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: 700-800 words.

Marks

- Q.1 *P* mortgaged his house to *D* for Rs 30,000/- by a registered mortgage deed dated 20 April 1993 for a term of 90 years. At the time of mortgage, *P* was financially hard-pressed, as he was heavily indebted to other persons. Possession of the property was given to *D*. *D* inducted tenants in the said property, and was receiving the rents. He (*D*) was given liberty to spend any amount of money he liked for the improvement of the mortgaged property and also had the right to rebuild the entire property. There was a stipulation in the mortgage deed permitting him construction of structure after demolishing the existing structure, and cost of which was to be paid by the mortgagor (*P*). Furthermore, the mortgagor was not allowed to discharge interest liability periodically, but he had to pay the whole amount of interest due thereon along with the principal money at the end of 90 years at the time of redemption of the mortgage. (10)
- In the year 2021, *P* filed a suit for redemption of the mortgage and for the recovery of possession. *D* resisted the suit on the ground that the term of mortgage was 90 years, so the suit filed before the expiry of that period was indeed premature.
- Based on the afore-stated factual matrix, decide whether the term of the mortgage and the conditions of the mortgage-deed amounted to clog on the right of redemption?
- Q.2 *A* owned a small house property at Gandhinagar. His son was taken ill. He did not have sufficient liquid resources to incur the necessary expenditure for treating his ailing son. Consequently, on 01 January 2000, he entered into a transaction with *B*, who was a resident in the same locality. The essential features of the transaction were as follows: (a) *A* executed a document pertaining to ostensible sale of the property in question for a consideration of Rs 70,000/- in favour of *B*; (b) On the same day, a contemporaneous document was executed by *B* in favour of *A* agreeing to sell the property in question for a sum of Rs 70,000/- within ten years of the date of the execution of the aforesaid document; (c) The possession of the property remained with *A* and he was to pay Rs 1000/- per month as rent; and (d) The municipal and other taxes in respect of the property were to be paid by *A*. (10)

When nearly nine and a half years passed and the deadline for getting the sale deed executed from *B* on the expiry of ten years in pursuance to the agreement was approaching fast, then, *A* personally contacted *B* and made a number of requests to him to fulfil his obligation by executing the sale deed in his (*A*'s) favour. But, *B* refused to honour his commitment. Five days before the deadline (completion of the said ten years from the date of the transaction), he sent to *B* a notice through his advocate calling upon him to execute the sale deed in his favour as stipulated in the agreement. *B*, however, did not reply to the notice, and never conveyed in writing to *A* that he was ready and willing to convey the property to *A* in order to discharge the obligation undertaken by him under the agreement. *B* rather maintained a complete silence.

Some two years after the completion of the said ten years from the date of the transaction, *A* instituted a suit seeking recovery of the property in question for Rs 70,000/-, asserting that it was a transaction of mortgage. *B* contended that it was a sale with an option of repurchase, and after the passage of ten years from the date of transaction/agreement, *A* had lost the right to exercise the option of repurchase.

In consideration of the foregoing facts, decide the real nature of the transaction between *A* and *B*. Whether the transaction was really one of mortgage though apparently of sale in form?

- Q.3 'From the earliest times the courts have always leant against any device to render an estate inalienable. It is the policy of the law always to make estates alienable, and it is immaterial by what device it is attempted to prevent an owner from exercising the power of ownership.' (10)

In the light of the afore-stated observation and with the help of relevant judicial pronouncements, discuss the relevant statutory provisions of the Transfer of Property Act, 1882 which incorporate the principles enshrined in the foregoing observation.

- Q.4 Whether a servant/employee occupying the premises/quarters of his employer does so as a tenant or a licensee? Explicate in the light of the statutory provisions and relevant judicial pronouncements. (10)

- Q.5 'According to some authorities, a pending suit must be regarded as notice to all the world, and pursuant to this view it is argued that any person who deals with property involved therein, having presumably known what he was doing, must have acted in bad faith and is therefore, properly bound by the judgment rendered. Other authorities, however, take the position that the doctrine is not founded on any theory of notice at all, but is based upon the necessity, as a matter of public policy, or preventing litigants from disposing of the property in controversy in such manner as to interfere with execution of the court's decree.' (10)

In view of the foregoing observation, elucidate the scope and basis of the doctrine of *lis pendens*. Substantiate your answer with the help of pertinent judicial pronouncements.
