GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR
Course: **Law of Transfer of Property and Easement**
Semester- VI (Batch: 2020-25)

End Semester Examination: May 2023

Date: 05ᵗʰ May, 2023
Duration: 3 hours   **Max. Marks: 50**

Instructions:
- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- 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: 600-800 words for each question

Answer **any five** of the following questions.   **Marks**

Q.1   *HS* allegedly transferred a property (*P*) in favour of his wife (*UK*) in lieu of maintenance   (10)
pursuant to a compromise entered into by and between them. She claimed herself to be
the absolute owner thereof. She filed a suit against *HS* (her husband) for a declaration
that she was the owner in possession of the suit property. The Trial Judge was of the
opinion that as she had been in possession of the property in lieu of maintenance,
therefore, she was 'entitled to enjoy the fruits thereof only during her life time'. An
appeal was preferred against the judgment, and the appellate court declared her to be the
full owner in possession of the suit property. During the pendency of the said suit, *HS*
sold the said property to *R* by a sale deed and he was given possession thereof. *HS* sold
the property to *R* in order to frustrate the claim of *UK*. *R* raised a plea that he was a
bonafide purchaser for value, whereas the case of *UK* was that as the property was
purchased during pendency of the suit, the same was hit by the doctrine of *lis pendens*.
Further, during the pendency of the said suit, *UK* passed away. After the death of *UK*,
HS was the heir of her property.

R, accordingly, claimed that the property devolved upon *HS*; and thus, he should be
declared to be the owner of the property. Could *R* succeed in claiming the property on
the basis of the sale deed in his favour? Substantiate your answer with the help of
relevant statutory provisions and case laws.

Q.2   a)   Discuss the law relating to positive and negative covenants with the help of relevant   (5x2=
      statutory provisions and judicial pronouncements.   10)
    b)   Decide the validity of a gift deed which was executed by the donor, but registered
      after the death of the donor.

Q.3   *P*, the owner of a certain parcel of agricultural land, was in need of money, and therefore,   (10)
he borrowed Rs 3,00,000/- from *DN* on 22 February 1999 by executing a document
titled 'Conditional Sale Deed' as a security for the loan amount. The document reads as
under:

      'I, the Executant, give in writing that I execute this Conditional Sale Deed in your
      favour in the presence of the Sub-Registrar, as I am taking Rs 3,00,000/- (rupees
      three lakh only) from you for my household expenses in respect of a parcel of
      agricultural land which is in my possession owned by me and enjoyed by me
      absolutely on this date … The said land owned and enjoyed by me, along with all

materials standing on it including trees, stones, mud, etc, is being handed over to you by me for your possession on the condition that you retransfer the land back to me anytime within one year from the date of this sale deed when I repay the above amount to you. In case of non-payment by me of the said amount within the stipulated period, this Sale Deed will be taken as a permanent one and you will enjoy the possession of the land as your own. Any future disputes in respect of the said land will be dealt with by me if they arise. I sign this Sale Deed today on 22 February 1999.'

On 01 February 2009, *P* requested *DN* to re-convey the said land by accepting the loan amount, but *DN* refused to do so. On 25 February 2009, *DN* transferred the land in favour of his brother (*B*). *P*, therefore, filed a suit against *DN* and *B* on 25 May 2009 for redemption of the mortgaged property and possession. The claim of *P* is that the transaction dated 22 February 1999 was in the nature of mortgage even though it was titled as the Conditional Sale.

Based on the afore-stated factual matrix, decide: whether the document dated 22 February 1999 was a document of 'conditional sale' or a 'mortgage'?

Q.4   a)   Can the right of redemption be exercised by depositing the mortgage-money in the court? If yes, elucidate comprehensively the right of the mortgagor in this regard, as also the procedure thereof laid down in the Transfer of Property Act, 1882.   (5x2= 10)

      b)   Elucidate: 'marshalling supersedes contribution'.

Q.5   *RL* inducted *TA* into a building pursuant to an agreement. The agreement was described as the 'Agreement of Leave and Licence', and the parties as the licensor and the licensee and the rent as compensation for use and occupation, and it was provided that: (10)

'(i)   *TA* shall pay monthly rent regularly on or before the 5th day of each consecutive month;

(ii)   *TA* shall not sub-let, under-let or part with possession; nor shall keep the building vacant for more than three months without the consent of the licensor;

(iii)   *On* the expiry of the deed, it may be renewable at the will of the licensee; and

(iv)   With the consent and approval of *RL*, *TA* may transfer the building for a maximum period of six months.'

There was no relationship or friendship between the parties. Ten years after the expiry of the above agreement, *RL* instituted a civil suit for a decree of eviction of *TA* on the ground that *TA* was in occupation as a licensee and has illegally refused to vacate the building. *TA*, on the other hand, claimed to be in its occupation as a month to month lessee.

Based on the afore-stated factual matrix, decide: whether the document executed by the parties (*RL* and *TA*) at the time *TA* was inducted in the disputed building is a 'Deed of Leave and Licence' or a 'Deed of Lease'? State the distinction between 'leave and licence' and 'lease'.

Q.6   Elucidate the scope and applicability of the following: (5x2= 10)

      a)   The doctrine of election.

      b)   The doctrine of part-performance.

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