

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**
Course: Law of Transfer of Property and Easement
Semester-VI (Batch: 2013-18)

Mid Semester Test: Feb-Mar. 2016



Date: 4th March, 2016

Duration: 2 hours

Max. Marks: 30

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 any thing 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.
- **Bare Act is not allowed.**

Answer all the questions

Marks

- Q.1 A particular building, together with the land whereon it was situated, originally belonged to C ('the covenantee'). By an assignment deed (A1) dated 13.8.1998, C sold the southern half of that building and land to E with a covenant which was as follows: (06)

'...though one half of the northern wall of the building in the schedule property is included in this deed, in case of reconstruction of the said building (in the portion assigned under the assignment), separate wall shall be constructed in such a way as not to cause damage to the northern wall and leaving a space of 12 fingers towards south from the said wall....'

On the same day (13.8.1998), the northern portion of the building and the land was assigned (by way of another assignment deed A2) to RD. A similar covenant, as stated above, was made in this assignment deed (A2) also directing RD to leave the same space towards north from the common wall.

E, who got the southern portion of the building and land, assigned that portion to J as per an assignment deed (A3) dated 7.7.2003. In A3 (assignment deed), it was stated that in case the assignee (J) reconstructed the building (in the southern portion), he should comply with the covenant contained in A1. J reconstructed the building in the southern portion complying with the covenant contained in A1 and A3, and sold the reconstructed building and land to FA (as per assignment deed A4, dated 29.5.2004). While he (FA) was in possession and enjoyment of the building and land (as per A4), RD started reconstructing his portion of the building on the northern portion. FA instituted a suit for a decree for injunction to restrain RD from constructing the building without leaving space at a width of 12 fingers as directed in A2.

In A1, A3 and A4 which conferred title and possession of the southern portion of the building on FA (and his assignors), there was no specific assignment of the benefit of the covenant imposed on RD as per A2.

Could the covenant be enforced by FA against RD? Decide the character (positive or negative) of the covenant and its enforceability by the assignee of the covenantee.

- Q.2 P was an old lady. She had a son, S. Being an old lady, she allowed her son S to look after and manage certain parcel of land (the suit property) on her behalf. Taking advantage of the same, S, without the knowledge and consent of P, got mutated the suit land in his name. He sold the entire suit land to A, who purchased the same without verifying the title of S and got a registered sale deed on 28.12.2008. When this fact came to the knowledge of P, she moved the court by filing a suit for declaration of title and possession of land. There was no evidence to show that the P had expressly or tacitly allowed S to execute the sale in favour of A. The trial court decreed the suit holding that P was the owner and had title to the suit property, and directed delivery of possession of the suit land. The court also directed S to refund the purchase price to A, who, by preferring an appeal, challenged the decree granted in favour of P. (06)

S died during the pendency of the appeal, and his only son GS (who was the only grandson of P) was, therefore, substituted in his place in the appeal. One week after the death of S, and during the pendency of the appeal, P also died.

In this background, A argues that even assuming that S had no title to the property as his mother (P) was the absolute owner; GS being the legal heir and representative of S would step into the shoes of P as title holder. Although S had no title to sell the property, yet his son got the title on account of the death of his grandmother (P) through his father, S.

On the basis of the above factual matrix, could the principle of *feeding the grant by estoppel* be invoked by A against GS, so as to validate the sale deed executed by S in favour of A (by virtue of the death of P)?

- Q.3 On 25.4.2003, DA (seller) and PR (purchaser) entered into an 'agreement to sell' a certain plot of land for a total sale consideration of ₹ 50,00,000/-. DA received a sum of ₹ 10,00,000/- as earnest money. The date for registration of the sale deed was fixed as 26.4.2004. The actual physical possession of the land was handed over, at the spot, to PR at the time of agreement. It was provided in the agreement to sell that in case the seller fails in executing the sale deed, then, the purchaser would get it executed through the process of court; and in case the purchaser fails in execution of the sale deed, then, earnest money should be forfeited. It was alleged by PR that on 26.4.2004, he reached the office of Sub-Registrar along with the balance sale consideration and expenses for stamp, etc for registration of the sale deed; but despite waiting, DA did not turn up. On 27.4.2004, a legal notice was sent to DA to perform his part of the agreement, but the notice was received back with a report of refusal. At last, PR had to file a suit. (06)

DA, in his written statement, negated the allegations of PR and pleaded that the agreement was an act of fraud as he (DA) was in need of ₹ 10 lakh for the marriage of his daughter for which he had requested PR, who had agreed to give money to him on interest at the rate of 1.5% per month and asked him to execute some document towards security. It was alleged that he (DA) had thumb marked some documents, which were converted into an agreement to sell. It was also averred that he (DA) was ready to make the payment of ₹ 10 lakh along with agreed interest.

Now, PR prays for relief of permanent injunction for restraining DA from interfering in his possession over the suit land and also for restraining DA from ousting him (PR) from the land in question.

Assuming yourself as a judge on the bench, decide whether or not PR is entitled to the decree for protection of his possession by way of specific performance of the agreement to sell dated 25.4.2003 of the suit land. Could PR succeed in restraining DA from ousting him (PR) from the land in question?

Q.4 'Where a deed or Will professes to make a general disposition of property for the benefit of a person named in it, such person cannot accept a benefit under the instrument, without at the same time conforming to all its provisions, and renouncing every right inconsistent with them.' Elucidate the principle enshrined in the statement. (04)

Q.5 Differentiate between the following: (4+4=08)
(a) 'Vested interest' and 'contingent interest'.
(b) Section 13 and section 14.

