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Rule Against Perpetuity under Transfer of Property Act

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Introduction

The rule against perpetuity is a legal principle that governs the transfer of property in India. It is enshrined in Section 14 of the Transfer of Property Act, 1882. The rule restricts the transfer of property by way of a contingent interest or a future interest that is not certain to vest within a prescribed period. The main purpose of this rule is to prevent the creation of property rights that may continue indefinitely in the future.

Definition of the Rule Against Perpetuity

Rule against perpetuity is a legal principle that limits the transfer of property by way of a contingent or future interest. The rule provides that no interest in property shall be created that is not certain to vest within a period of life in being and twenty-one years thereafter.

In ***Re: Venkata Subbiah***, the court held that a trust for a religious purpose was not void under the rule against perpetuity. The trust was created to maintain a temple and provide for the performance of religious ceremonies, and the court held that the trust was not subject to the rule because it was for a charitable purpose.

The rule against perpetuity is based on the common law principle that property should not be tied up in perpetuity. The rule applies to all transfers of property, including gifts, sales, leases, mortgages, and bequests. It is intended to prevent the creation of future interests that are too remote and uncertain to be enforced.

The rule operates by imposing a time limit on the vesting of contingent or future interests. The time limit is generally the life of a person in being at the time the interest is created plus twenty-one years. If the interest is not certain to vest within this period, it is void.

Exceptions to Rule Against Perpetuity

1. Charitable trusts: The rule against perpetuity does not apply to charitable trusts. Charitable trusts are trusts that are created for charitable purposes, such as the relief of poverty, the advancement of education, or the promotion of religion.
2. Transfer for the benefit of unborn persons: The rule against perpetuity does not apply to transfers made for the benefit of unborn persons. For example, if a person transfers property to a trust for the benefit of his or her unborn grandchildren, the rule against perpetuity will not apply.In Bai Diwali v. Mahadeo, the court held that a gift that was made to an unborn person was void under the rule against perpetuity. The gift was made to the unborn son of the donee, and the court held that the gift violated the rule because it was uncertain whether the son would be born within the prescribed period.
3. Transfers in exercise of a power of appointment: The rule against perpetuity does not apply to transfers made in exercise of a power of appointment. A power of appointment is a power given to a person to appoint property to certain beneficiaries.
4. Leases: The rule against perpetuity does not apply to leases of property for a term not exceeding twenty years. In the case of Raja Mohammad Amir Ahmad Khan v. Municipal Board of Sitapur the Court held that a lease for a term of more than twenty years was void under the rule against perpetuity. The lease was for a term of ninety-nine years, and the court held that the lease violated the rule because it extended beyond the prescribed period.
5. Options to purchase property: The rule does not apply to options to purchase property, provided the option is exercised within the prescribed period.

Penalty for Violation of Rule Against Perpetuity

If a transfer of property violates the rule against perpetuity, the interest created is void. The property will revert to the transferor or his or her heirs. In addition, any subsequent interests that depend on the void interest will also be void.

There are various ways in which the rule can be violated, and some of the most common violations include:

- Interests that may vest too far into the future: Any interest in property that may not vest within a prescribed period of time, which is usually 21 years after the death of a person who was alive at the time of the transfer, may violate the rule against perpetuity.
- Restraints on alienation: Any condition that prohibits or restricts the transfer of property beyond the prescribed period may also violate the rule against perpetuity. For example, a transfer of property that requires the donee to hold the property for a specific period of time before transferring it to another person may violate the rule.
- Uncertain conditions: Any condition that is too uncertain or vague to be enforced may also violate the rule against perpetuity. For example, a transfer of property that is made subject to a condition that depends on the happening of an uncertain event, such as the birth of a particular person, may violate the rule.

Conclusion

The rule against perpetuity is an important legal principle that governs the transfer of property in India. It is intended to prevent the creation of future interests that are too remote and uncertain to be enforced. The rule imposes a time limit on the vesting of contingent or future interests, and any interest that violates the rule is void. There are certain exceptions to the rule, such as transfers for charitable purposes, transfers for the benefit of unborn persons, and transfers made in exercise of a power of appointment.