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# Exceptions to the Rule Against Perpetuity

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## ABSTRACT

*The modern English rule against perpetuities or remoteness has been adopted under section 14 of the Transfer of Property act of 1882, with certain modifications. But from the words ago, originally, the rule emerged from the English Common law system. Which says that “where the vesting of any interest in the property, whether legal or equitable, is postponed for a period exceeding a life or lives in being at the date of instrument creating it, or where the disposition is a will, at the death of the testator, and twenty-one years after the expiration of such life or lives such interest is void.”*

*Perpetuity in general means continuous or underlying transaction. It is tying up property for an indefinite period. A transfer involving generations after generation is known as creating perpetuities. Thus concluding the literal meaning of perpetuity, it is regarded as “the state or quality of lasting forever or a bond or other security with no fixed maturity date or forever or something that is perpetual and unending”. However, there are a few exceptions to the rule, as discussed below.*

## I. UNDERSTANDING RULE AGAINST PERPETUITY<sup>2</sup>

To begin with, let us consider a real-life example. Imagine a beach where we have low and high sea tides. Can we tie them permanently? The answer is No. Similarly, a property cannot be attached forever as per section 14 of the Transfer of Property act, 1882. (hereinafter referred to as ‘TPA’)

Often regarded as the extension to section 13 of TPA, it is interestingly related to the concept of a maximum timeline, i.e. you can transfer your property to any living persons including one unborn person (last person of the transfer) with a

timeline of pregnancy and attaining the age of majority. i.e. 18 years and period of gestation.

Therefore, the section ensures that property does not remain in the same family for an unlimited timeline. It also ensures that one can utilize his property for his benefit in the true sense (Transfer/Sale/Gift etc.) This section helps for Industrialization, and it also helps the government to earn income in the form of property registration etc.

## II. EXCEPTIONS TO THE RULE

The rule against perpetuity does not apply to the following:-

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<sup>2</sup> The Transfer of Property Act, 1882 (Act 4 of 1882), §.14.

### 1) Transfer for the benefit of the public (Charities)

Rules against perpetuity do not apply to transfers made for the benefit of the public “in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.”<sup>3</sup> When the transfer of property is made for the welfare of the people, it becomes *res extra commercium* (not the subject matter of commerce) and, therefore, generally kept intact, used for an indefinite period only for the purpose it is made. Generally, this is done through religious or endowment trusts. Hence it is desirable that it should be kept out of bounds of rules against perpetuity. If the rule against property is made applicable to trusts, ***then every trust would become void, and it will be very difficult to create for the welfare of the people.***

Looking at the real-life example where “a trust *wakf-alal-aulad* was created by a Muslim. Settlor executed trust by selling properties for the benefit of family, children or descendants from generation to generation, and thereafter for maintenance of holy shrine. As held by the Supreme Court in *Trustees of Sahebzadi Oalia Kuslum Trust v. Controller of State Duty, A.P.*,<sup>4</sup> it is valid creation of trust and not hit by rules against perpetuity. The wakf settlor made a dedication in perpetuity of the subject-matter of these trusts for purposes which are considered pious under Islamic laws.”

### 2) Personal Agreements

The rule against perpetuity is a branch of the law of property and not of contract. Hence it has no application to personal agreements which do not create any interest in the property. Thus “a contract to pay money to a person, his heirs or legal representatives upon future contingency, which may happen beyond life or lives in being and 18 years thereafter, is perfectly **valid** and not hit by the rule. Similarly, a contract for the sale of land was neither subject to the rule against perpetuities, nor void on the ground of uncertainty.”

### 3) Covenants for pre-emption

A contract for sale or a covenant for pre-emption made after passing of TPA, in respect of land unrestricted in point of time and expressed to be binding on the parties, their heirs and successor, does not create an interest in land and, therefore does not offend rule against perpetuity. There was a lot of conflict with regard to this between the high courts, which was later resolved.

The Supreme Court in *Ram Baran v. Ram Mohit*<sup>5</sup> has considered the effect of section 14, 40 and 54, of TPA and held “Reading section 14 along with section 54 of TPA; it is manifest that a mere contract for the sale of immovable property and it, therefore, follows that ***the rule of perpetuity cannot be applied to a covenant for pre-emption even though there is no time limit within which the option has to be exercised.*** It is true that the second paragraph of section 40, TPA, makes a substantial departure from the English law for an obligation under a contract which creates no assignee of the land who takes

<sup>3</sup> *Supra* note 2, §.18.

<sup>4</sup> AIR 1988 SC 2986.

<sup>5</sup> AIR 1967 SC 744.

from the promisor either gratuitously or takes for value but with notice. A contract of this nature does not stand on the same footing as a mere personal contract, for it can be enforced against an assignee with notice.”

The Court further observed that “there is a superficial kind of resemblance between the personal obligation created by the contract of sale as described under section 40, of TPA which arises out of the contract, and annexed to the ownership of immovable property, but not amounting to an interest therein or easement thereon and the equitable interest of the person purchasing under the English law, in both these rights are liable to be defeated by a purchaser for value with notice. But the analogy cannot be carried further, and the rule against perpetuity which applies to equitable estates in English law *cannot be applied to a covenant of pre-emption because section 40 of the statute does create an interest in the land.*”

#### 4) Covenants running with the land

A covenant running with the land<sup>6</sup> is free from any taint of perpetuity. It is because it is “annexed to the land and passes to the transferee along with land much the same way as the title deeds of the property.”<sup>7</sup>

#### 5) Charge and rule against perpetuities

In charge, there is no transfer of an interest in the property; hence it is **not** tainted by the rules against perpetuity.

#### 6) Mortgage and rule against perpetuities.

Rules against perpetuity **do not apply to mortgages**. The apex court in *Padamnabhan Ayyar v. Sitaram Ayyar*<sup>8</sup> held that “rule against perpetuity applies only to cases where there was a new interest in immovable property, contemplated to be created after the expiry of the period prescribed by rule, but there was no such future interest contemplated to be created in the property, that is the right of redemption in the exercise of which alone the property was sought to be redeemed”.

### III. CONCLUSION

Therefore the above mention exceptions are the ones taken into account commonly; however, “**vested interests** <sup>9</sup>are also not affected by this rule, as when the interest has once existed, it cannot be taken away. Also, where the income of a property is accumulated for the purpose of the payment of debts of the transferor or any person taking any interest under the transfer, such a direction is not affected by the rule against perpetuity.”

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### IV. REFERENCES

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<sup>6</sup> *Supra* note 2, §40.

<sup>7</sup> A.Ramanrao v.A. Thimmappa, AIR 1925 Mad 732(733).

<sup>8</sup> AIR 1928 Mad 28(33).

<sup>9</sup> *Supra* note 2, §.19.

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