

12/26/2012



LAW OF  
TRANSFER OF  
PROPERTY

## VESTED AND CONTINGENT INTEREST



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## **Introduction:**

It is pertinent to mention that chief object of the enactment of Transfer Property Act, 1882 is to bring the rules which regulate the transmission of property between living persons into harmony with rules affecting its devolution on death and thus, to furnish and complement the work commenced in framing the law of testamentary and intestate succession and secondly to complete the code of contract law so far as it relates to immoveable property.

In addition to it, it is mentionable also that the principles statutorily recognized in the Transfer of Property Act are necessarily principles of justice, equity and good conscience. And provisions relating to vested and contingent interest are nothing but the reflection of the justice, equity and good conscience.

The provisions of vested and contingent interest carries one of the object of the enactment of Transfer of Property Act also by maintaining relation with contract law, because the term agreement key to contract law is to be found in both concept of the vested and contingent interest. Concepts of these two expressions are deadly crucial not only in case of transfer of property but also in other laws at least laws relating to property.

It is worth-mentioning here that though Transfer of Property Act is not exhaustive, without insertion of provisions relating to vested and contingent interest very purpose of enacting Transfer of Property Act would be nugatory. Between these two expressions, Contingent interest is capable to meet peculiar, rare as well as inconvenient situation of transferor. Insertion of provision of contingent interest should be appreciated, because it rescues the transferor from unwelcome situation. These two expressions are interrelated and also keep express and implied relation with other provisions of the same Act.

By going through the concerned provisions one can definitely be introduced with few more considerable concept which also may come into use in better outstanding of legal provisions. Plenty of judicial decisions have extended the range of its significance and have proved its essentiality.

So, there is no scope of denying contribution thereof to transfer of property law. By keeping line with philosophy behind the insertion of vested and contingent interests a comprehensive discussions on the same are stated below.

## Interest

In the field of Transfer of Property Act (Act No. IV of 1882) the term 'interest' generally means 'estate' or right in property. The transfer of property Act deals with two kinds of interest:-

- a. Vested interest
- b. Contingent interest

### Sources of Interest in respect of Transfer:

#### (1) General Sources:

- a) Vested interest- Sections 19, 20 of Transfer of Property Act deals with vested interest.
- b) Contingent interest- Sections 21 and 23 of Transfer of Property Act are the sources of characteristics of contingent interest.

#### (2) Corresponding Sources:

- a) Vested interest- Corresponding sources of vested interest is Section 119 of Succession Act, 1925
- b) Contingent interest- Corresponding sources of features of contingent interest is Section 120 of Succession Act, 1925.

## Vested Interest

### General Definition:

An interest is said to be vested when it is not subject to any condition precedent, when it is to take effect immediately, or on the happening of an event which is certain.

### Meaning of Vested interest:

In the field of law of transfer of property vested is one kind of interest. According to ordinary rules of grammar, 'vested' means 'fixed', 'given'. So vested interest creates present and immediate right.

### Definition by Black's Law Dictionary:

"An interest for which the right to its enjoyment, either present or future, is not subject to the happening of a condition precedent."

**Definition by case laws of DLR:**

The true criterion is the certainty or uncertainty of the event on the happening of which the gift is to take effect (*4 m124: 9B 491*)

The question whether particular words create a vested interest or not is one of construction, the words of the grant being construed in their plain and ordinary meaning (*28C 621 – 28IA 159 PC*)  
An interest may be vested with possession as without possession. It must be noted that an interest may be vested even though it does not give a right to immediate possession. An estate may be vested although the facts may be such that it never become vested in possession and never gives a right to the actual enjoyment of the land.

**Example:** A property is transferred to 'A' for life and after his death to 'B'. Here although a prior interest in favour of A intervenes but B's interest is vested as the determination of A's interest is on a certainment.

## Contingent Interest

**General Definition:**

A contingent interest is one in which neither any property interest nor a right of enjoyment is given at present, but both depend upon further uncertain events.

**Meaning of Contingent Interest:**

Contingent is opposite of vested. 'Vested' means fixed but 'Contingent' means uncertain, not fixed. Section states that 'effect only on the happening or not happening of a specified uncertain event.'

**Definition in Black's Law Dictionary:**

"An interest that the holder may enjoy only upon the occurrence of a condition precedent."

**Definition by Case Law of DLR:**

Features of one of the features of a contingent interest is that if a person dies before the contingency disappears and before the vesting occurs the heirs of such a person do not get the benefit of the gift. (*Rajes kanta Roy v Shanti Debi PLD 1957 SC 261*)

So we can define contingent interest an interest created on a transfer of property in favour of a person is said to be contingent when it is expressed to take effect:

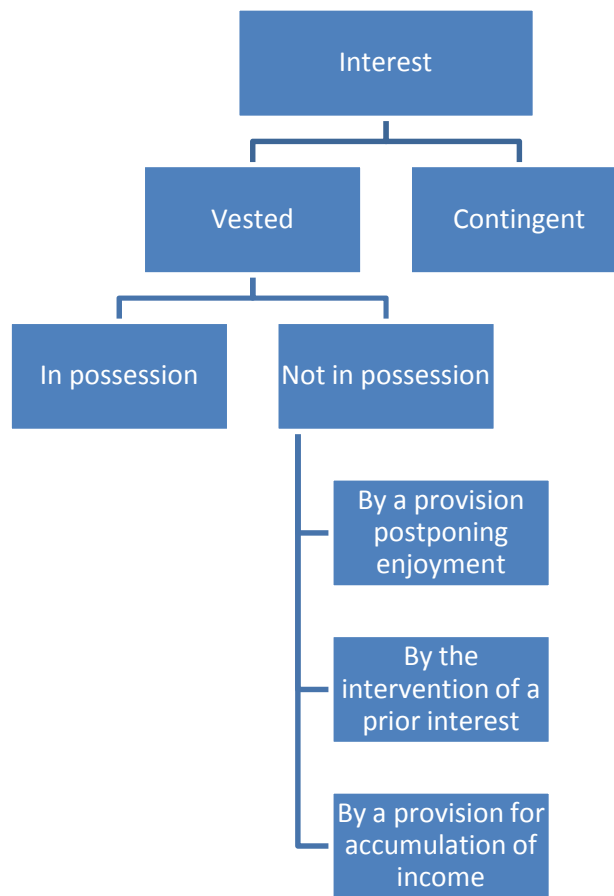
- a. on the happening of a specified uncertain event.

- b. if specified uncertain event shall not happen.

Example: A property is transferred to D in case A, B, C shall all die under the age of 18. 'D' had contingent interest in the property, until A, B and C all die under 18.

### Summary of Interest in TP Act (1882):

The following is a short, tabular summary of the law as to interests in the transfer of property Act-



### Vested interest:-

1. A transfers property to B in trust for C, and directs B to give possession of the property to C when C attains the age of 25. C has a vested interest in the property and is entitled to its possession at the age of 25.

2. A executes a deed of gift in favour of B, but directs that B is not to take possession of a portion of the property until after the death of both A and A's wife. B has a vested interest in the property, only the enjoyment is postponed.

3. Property is settled in trust for A for life, with a direction to the trustees to pay A, taka 1,000 a year out of the rents and profits, and to apply the balance to the discharge of a mortgage, and after A's death, to convey the land to B. Even if B does not survive A, B's interest is vested in A's lifetime.

4. To A until B attains the age of 18 and then to B. The interest of B is a vested interest. Since the law favours the vesting of estate, the gift to A is construed as one for a term of years for the specified period, with a vested remainder to B. [illustration 4 to section 119, Indian Succession Act 1925]

**Analysis of these illustrations:**

From the analysis of these illustrations we see that-

1. A vested interest does not depend upon the fulfillment of a condition.
2. It creates present and immediate right, though the enjoyment may be postponed to a future date.
3. It may, therefore be vested in possession or vested and yet not in possession.
4. A vested interest is not defeated by the death of the transferee before obtaining possession; it will pass on to his heirs.
5. A vested interest is transferable as well as heritable.

**Contingent interest:-**

1. A property is transferred to D in case A,B,C shall die under the age of 18. D had contingent interest in the property until A, B and C all die under 18.

2. An estate is transferred to A for life and then after his death to B shall then be living but if B shall not there be living to C, B and C each take a contingent interest in the estate, until the event which is to vest if one or the other has happened.

3. A sum of money is bequeathed to A in case he shall attain the age of 18. A's interest in the legacy is contingent until the condition shall be fulfilled by his attaining that age.

4. An estate is bequeathed as in the last case supposed. B dies in the lifetime of A and C. Upon the death of B, C acquires a vested right to obtain possession of the estate upon A's death.

**Analysis of these illustrations:**

From analysis of these illustrations we find that-

1. A contingent interest is solely dependent upon the fulfillment of a condition, so that in case of fulfillment of the condition, the interest fails through.
2. If the transferee dies before obtaining possession, the contingent interest fails, and the property reverts to the transferor.
3. It is transferable. It is quite different from a mere chance.
4. Whether it is heritable or not depends on the nature of the contingency.

### **Section Analysis: Vested Interest**

Section 19 of the Transfer of Property Act, 1882 defines vested interest with an explanation in the following ways-

*“Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.*

*A vested interest is not defeated by the death of the transferee before he obtains possession.”*

**Explanation:**

*An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.*

So, from the above section it is clear that, an interest is said to be vested when it is not subject to any condition precedent. When an interest is vested, the transferee's title is already perfect as the transfer is complete. When the condition precedent in contingent interest is fulfilled, the transfer takes effect and the interest is vested.

**Example:**

A gift to 'A' on the death of 'B' creates a vested interest in A even during B's lifetime, for there is nothing more certain than death.

**Scope:-**

This section 19 and the corresponding section 119 of Succession Act, 1925, give expression to the English notion of vested interests and make it the law of the land except in the case of Muslims. It is however, to be noted that this section does not apply unless there is a transfer of property.

**Classification of Vested interest:-**

There are two stages of a vested interest. It may be –

- i) an interest vested in possession;
- ii) an interest vested and yet not in possession.

**i) An interest vested in possession:**

Vested interest may be an interest vested in possession, or where a transfer is made in general terms, without specifying the time when it is to take effect, or is exercised to take effect forthwith.

An interest is said to be “vested in possession or enjoyment” when it gives a present right to immediate possession of property, or when the property is transferred to A without specifying the time when it is to take effect.

**ii) An interest vested and yet not in possession:**

An interest is said to be vested and yet not in possession, when it gives a present right to the future possession of property. In other words, it means that, there is a present indefinite right to future possession or enjoyment, when enjoyment is postponed by some prior interest created by the same transfer. An interest may be vested although the facts may be such that it never becomes vested in possession and so never gives a right to the actual enjoyment of land.

Example: On a transfer to A for life with remainder to B for life with remainder to C. B's estate invested notwithstanding that if B dies before A, his interest will never vest in possession for there is still nothing but A's estate between B and the enjoyment of the land.

**Analysis of the section:**

An interest created on a transfer of property in favour of a person is said to be vested where –

- i) No time is specified for it to take effect, or

- ii) It is expressed to take effect forthwith; or
- iii) It is to take effect on the happening of an event which must happen.

**Essentials:**

A vested interest is nonetheless a vested interest even where the transfer deed contains a provision whereby:

- a) the enjoyment thereof is postponed, or
- b) a prior interest in the same property is given to some other person; or
- c) the income arising from the property is directed to be accumulated until the time of enjoyment arrives; or
- d) On the happening of a particular event, the interest passes to another person.

**Illustration:**

A makes a gift to B of Rs. 100 to be paid to him on the death of C. B gets a vested interest in the sum transferred, and if he dies before C, his representatives are entitled to the sum of money so transferred. (The interest of B takes effect on the happening of an event that is certain and so it is vested) The event, namely, C's death is certain and therefore B's interest is vested.

**1. Enjoyment postponed:-**

A condition postponing enjoyment does not prevent the interest vesting immediately; but it is itself for repugnancy after the transfer has attained majority [*Sewdayal v Official trustee (1931)*]

**Illustration:** A transfers property to B in trust for C, and directs B to give possession of the property to C when he attains the age of 25. C has a vested interest and is entitled to possession at the age of 18.

The appointment of an executor or guardian during the minority of the devisee with a direction to hand over the property on his attaining majority does not postpone the vesting of the bequest.

Thus, if a Hindu widow adopts a son but there is an agreement postponing the son's estate during the lifetime of the widow, the interest created in favour of the adopted son is a vested right; it does not depend upon a condition precedent; the adopted son has a present proprietary right in the estate, the right of possession and enjoyment being deferred; and therefore he can transfer the property even during widow's lifetime.

**Illustration:**

- a) A executed a deed of gift in favour of B, but directed that B was not to take

possession of a portion of the property until after the death of A and A's wife. B has a vested interest, enjoyment only being postponed. [*Lacbmán v Baldeo (1919)*]

- b) The mere fact that a transferee is not entitled to immediate enjoyment does not necessarily make the interest a contingent one. [ *AIR 1933 Mad. 885 (DB)* ]
- c) A provision for postponement will be valid where the right of enjoyment is given in the meanwhile to some other person, or the transferee is under the age of majority and the enjoyment is postponed till he attains that age. [ *(1859) 70 ER 423+13 Bom. 463 (DB)* ]
- d) Direction postponing payment was held to be repugnant to the estate created unless the property was given for the benefit of another in the interval. [ *AIR 1927 Lah. 404* ]

## **2. Prior interest:-**

A prior interest does not postpone the vesting of the subsequent interest. Where the enjoyment of the property is postponed but the present income thereof is to be applied for the benefit of the donee, the gift is vested and not contingent.

Example: a gift by a testator to A at the death of the testator's wife, A's interest vests at the testator's death.

## **Leading Cases:**

*Heliflax v Wilson (1829) 16 ves. 168*

In this case, a bequest to A from and after his attaining the age of 18 is prima facie contingent, because it is postponed until the happening of an event which may never happen. But a bequest to B for life and then to A from and after the death of B vests immediately in A, for enjoyment is postponed until the termination of a life estate, an event which must happen.

*Blamive v Geldart 16 Ves. J. 314*

An interest may be vested through the prior interest given to some other person.

*Chunilal v Bai Muli (1900) ILR 24 Bom 420*

It was held that there was a bequest to a widow for life and then to a daughter, and the daughter took an immediate vested interest.

*Rewun Persad v Radha Beeby [(1846) 4 MIA 137]*

Case decided under Hindu law, the testator gave his wife a life estate, and after her death one moiety of the estate to his brother B, and the other moiety to his son C and D. B and C died during the lifetime of the widow, but as their shares were vested, and as C and D took as tenants in common, C's widow was entitled to succeed to C's share.

*Bhagabati v Kali Charan [(1911 ILR 38 Cal. 68)]*

The bequest was to the mother for life, then to the wife for her life, and then to the nephews, and it was held that the nephews took a vested and transmittable interest on the death of the testator.

**3. Accumulation of Income:-**

A direction for accumulation of income is a particular made of restraining the enjoyment of property. A direction which separates the income from the ownership of property so as to form a separate fund, or so as to postpone the beneficial enjoyment of property, is a direction for accumulation according to Section 17 of the Transfer of Property Act.

A direction for accumulation of income if in excess of the period sanctioned by Section 17 is invalid for the excess. Within the limit sanctioned by the section, it is a provision for the postponement of enjoyment, and as such it does not postpone the vesting of the interest. A direction for the accumulation of the income of a minor is ineffective after he attains majority. [\[Saunders v Vautier \(1841\) Cr and Ph 240\]](#)

In the case of [Blease v Burgh, 2 Beav. 226](#) it was held-

“A gift in terms which import a present vested interest with a postponed time of payment is not made contingent by a direction to accumulate till the time of payment arrives.”

Section 17 allows accumulation of income during either of the following two periods only:

- i) the life of the transferor, or
- ii) a period of 18 years from the date of transfer (whichever is longer one);

According to Section 11 of the TP Act, 1882, any condition restraining the enjoyment of the property which is transferred absolutely is void. On the other hand, a direction for accumulation of income is a particular mode of restraining enjoyment of property.

Such direction for accumulation would be void and inoperative according to the principle embodied in Section 11. But section 17 provides an exception to Section 11 and permits a direction for accumulation of income to operate in certain cases.

**According to Section 17(2),**

This section shall not affect any direction for accumulation for the purpose of-

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

- (ii) the provision of portions for children on remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation of maintenance of the property transferred;

And such direction may be made accordingly.

An intention that an interest shall not be vested is not to be inferred from a direction to accumulate the income arising out of the property until the time of payment arrives. [(1840) 48 ER 1164]

#### **4. Transfer on happening of future certain event:-**

Where the transfer is to take place on the happening of future event which must happen, this section would apply. Therefore, where a transfer is made to A for life and then to B, B's interest is a vested interest. [(1846) 4 Moo Ind. App. 137(PC)]

Where the testator provided that A and B should get his property after his and his wife's death A and B obtained under the will a vested interest. [33All 558 (DB)]

Where A nominated B as one entitled to receive provident fund of A in event of A's death B took a vested interest in the fund even before A's death. [AIR 1936 Mad 477 = 59 Mad. 855 (DB)]

Where the property was given to A for life and after his death to B if he survived A, or to his heirs if he did not survive A. B took a vested interest and not a contingent interest on his surviving A. [AIR 1925 All 339 (DB)]

But where an estate is to vest in a person on fulfillment of certain condition, the intention being clear that it should not vest unless the condition is fulfilled then strict compliance is necessary before the party claiming the estate under instrument can assert that he has become the owner of the estate. [AIR 1954 Hyd. 185 = ILR 1954 Hyd]

#### **5. Contrary intention:-**

Where the transfer is covered by this section, a vested interest in it is created unless contrary intention appears from the terms of transfer.

The Court has to approach the task of construction with a bias in favour of a vested interest unless the intention to the contrary is definite and clear. [PLD 1957 SC (Ind.) 361]

The burden of proving the contrary intention is on those who assert it, and the weight of the burden is aggravated by the elimination in the explanation of circumstances which might, apart from the explanation, be thought sufficient to discharge it. [AIR 1931 Cal. 651]

#### **6. Time of vesting:-**

'Transfer of property' means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons, according to Section 5 of the TP Act, 1882.

As soon as the transfer is complete, the interest vests and no particular form of words is necessary to effect a vesting, That means when whether in present or in future, the transfer is complete. The interest becomes vested.

In the case of *Rukhmanibai v Shivaram AIR 1981 881*, A deed of settlement gave life estate to X, with remainder to his children not in existence at the time of settlement. It was held that the interest of the children was a contingent one and not vested.

### **7. Conditional Sale:-**

A provision that if a particular event shall happen the interest shall pass to another person is what is called in English Law a conditional limitation. A conditional limitation diverts an estate which has vested, and vests it in another person. A condition subsequent divests an estate which has vested and reverts it in the grantor, Section 28 deals with conditional limitation, while condition subsequent are dealt with in Section 31.

A conditional limitation, therefore, does not prevent an estate from vesting; on the contrary, the condition itself implies that the estate which preceded it has vested. This is explained in-

#### *Sundor Bibi v Rajendra Narain (1925) ILR 47 All 496*

In this case the terms of a compromise provided that-

L should have an estate for life, and that after his death R was to be full owner of the estate, if he survived L; but that if he did not survive L, the estate would pass to lineal male descendants of R according to the rule of primogeniture. Before the death of L the question arose whether R had only a contingent interest, or a vested interest which could be attached. Now if the provision had been merely this that the estate would pass to R, if he survived L and nothing more had been said, there can be no doubt that R would have had an estate contingent on his surviving L. But the further provision of a gift over to another person was a conditional limitation, which have the effect of vesting the estate in R. The reason given by the court was that the condition affected the retention of the interest, and not in its acquisition. R, therefore, took a vested interest liable to be divested if he did not survive L.

Another similar case is –

*Raja Lal Bahadur v Rajendra Narain (1934) ILR 9 Luck 173*

A compromise between two brother L and R provided that L was to have a life interest and that if R survived L, R would be permanent owner with power of transfer and transmitting inheritance; but that if R did not so survive, 'his male descendants according to the rule of lineal primogeniture will be entitled to the same property.' This was held to confer, not contingent, but an immediate vested interest in R, although the estate fail in the event of R not surviving L was probably invalid. A condition precedent followed by a gift over is generally construed as a conditional limitation so as to favour the vesting of the prior estate.

**8. Power of appointment:-**

A power of appointment confers upon the donee of the power, a right of disposition of the property of the creator of the power, i.e. the appointor. The power may be either general, to appoint to anyone the donee pleases, or special, to appoint anyone of a specified class of persons.

The appointee, or person in whose favour the donee exercise the power derive title from the creator of the power, and not from the donee. However, the property vests when the power is exercised, and not when it is created. [*Marlbrough v Godolphin (1750)*]

Until the power is exercised the property does not vest in the donee of the power; but if there is an independent gift to a class with power to apportion the shares of each member of the class, the property vests by virtue of the gift even though the power is not exercised. [*Bardly v Cortwright (1867) LR 2 CP 511*]

Again, the power may be such that it is the duty of the donee to exercise it, and in that case if there is no gift over, the court will imply a gift for the objects of the power. [*Brown v Higgs (1799) 4 ves, 708*]

**9. Death of the transferee:-**

A transfer of property in favour of a person simply confers a vested interest with an immediate right to the possession and enjoyment of the property. And such vested interest is not defeated by the death of the transferee even before getting possession of the property. A transfer of property not in possession is effective. If the transferee dies, his interest vests in his representatives, irrespective of whether he has obtained possession.

**Illustration:** A bequeaths to B 100 taka, to be paid to him at the death of C. On A's death the legacy becomes vested in interest in B and if he dies before C, his representatives are entitled to the legacy.

Here, in this illustration, the interest of B takes effect on the happening of an event that is certain, as here death is certain, so it is vested.

When an interest is vested, it becomes the property of the transferee and is under Section 6 of the TP Act, transferable by him even before he has obtained possession; for a transfer of property not in possession is effective. If the transferee dies, his interest vests in his representatives, irrespective of whether he has obtained possession.

One of the factors for determining whether an interest is vested or contingent, is whether the property devolves on the heirs of the transferee or reverts to the estate. [*Rajes Kanta Roy v Santi Debi (1957)*]

## Section Analysis: Contingent Interest

Section 21 of the Transfer of Property Act, 1882 defines vested interest with an exception in the following ways-

*“Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the later, when the happening of the event becomes impossible.”*

**Exception:** *Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income of so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.*

### Analysis of Section:

When an interest created in favour of a person takes effect only on-

- i) the happening of a specified uncertain event
- ii) or on not happening of a specified uncertain event

Such person acquires a contingent interest in the property.

But when under a transfer of property a person becomes entitled to an interest:-

1. upon attending a particular age and
2. the transferor –
  - a) gives to him absolutely the income to arise from such interest before he reaches that age, or;

b) directs the income to be applied for his benefit the interest does not become contingent.

## **Essential points in analyzing this section**

### **1. Prior Interest:**

A contingent interest does not necessarily require a prior interest for its support, and does not always take effect after the termination of a prior interest.

Where on death of last surviving widow of late Raja his daughter, or failing her next heir, if any, was to inherit the property. It was held that until the death of the last surviving widow, interest created in favour of the daughter was only contingent on her surviving the last widow. [AIR 1936 PC 131]

And where there was a settlement in favour of the wife in case of disagreement between husband and wife. Interest of the wife is contingent. [AIR 1956 Mad. 304]

### **2. Death of beneficiary:**

One of the features of a contingent interest is that if a person dies before the contingency disappears and before the vesting occurs, the heirs of such a person do not get the benefit of the gift. There is no present fixed right and accordingly it may be defeated by the death of the transferee before he obtains possession.

### **3. Two or more contingencies:**

Where on a transfer of property interest created in favour of a person was to take effect on happening of more contingencies than one. All the contingencies must be fulfilled before the interest can become vested.

Thus where there was a transfer to A for life then to her adopted son. If she died without adopting, then to B and her sons. B obtained only a contingent interest. [AIR 1920 Bom. 259(DB)]

### **4. Direction:**

A direction has practically the same effect as a gift but not a power. Where a trust deed provided that trustees should hold the trust fund for the use and benefit of the son or sons of the settler to be made over to him or them on attainment by him or them of the age of 21 years with power in the meantime to spend such sum or sums out of the income for the maintenance of such son or sons as the trustee thought fit and accumulate the balance to form part of the corpus. It was

held that the power given to the trustee was not a direction. Interest in favour of the sons would be contingent. [[AIR 1931 Cal. 651](#)]

### **5. Transfer of contingent interest:**

A contingent interest not being an existing right is not sufficient for a suit for a declaration of right. It cannot be made subject of forced sale in attachment proceedings. A contingent interest may be transferred and such transfer passes to the transferee all interest possessed by the transferor when contingency happened and interest vested in possession.

### **Characteristics of Vested and Contingent interest:**

Every expression or concept contains its own distinct features by the reason of which it becomes exceptional and unique. These features are criteria to identify a particular term or expression.

Vested interest and contingent interest, as a term and from the perspective of utility and essentiality, are crucial to the transfer of property. Characteristics of these two concepts make them outstanding as well as applicable to laws relating to property.

### **Characteristics: Vested Interest**

In order to be vested interest following characteristics should be there:-

#### **i) Not defeated by the death of the transferee:**

A vested interest is not defeated by the death of the transferee before he obtains possession. The representative of the deceased will be entitled to its benefit.

**Illustration:** A & B, two persons in whom interest vests, A has a wife and a son. A dies, whole property does not pass to other by survivorship but pass to living person means B, and the heir means the son and the wife.

**Case reference:** In the case of '[Krishna Aiyar v Swaminath](#)' 1918 M.W.N. 503, 8 L.W. 140 47 I.C. 723 it was held that -

“Where out of two persons in whom an estate vests, one person dies, the whole property does not pass to the other by survivorship but is divisible between the living person and the heir of the deceased.”

#### **ii) Perfect title:**

In vested interest, owner's title is already perfect. Title is in no possibility of being divested. Title is absolute and is capable of being used by the owner according to his own will without any interruption.

Though in vested interest, title is perfect, so he can use right in rem in respect of title and other associated with it.

**iii) As to commencement:**

A vested interest takes effect from the date of transfer. A vested interest takes effect from the date of transfer, because in case of vested interest, no time is specified when it is to take effect.

**iv) Absolute right:**

In case of vested interest, owner owns the right absolutely. There is nothing left to be acquired. Right acquired by or vested with owner can be used as a right in rem. This right will not be extinguished by any terms. Owner can transfer this right as well.

**v) Fulfillment of condition:**

A vested interest does not depend upon the fulfillment of a condition; it creates a present and immediate right though the enjoyment may be postponed to a future date. It may, therefore be vested in possession, or vested and yet not in possession.

**vi) As to investitive fact:**

In case of vested interest, the investitive fact from which owner derives the right is complete.

**vii) As to postponement:**

Vested interest is not defeated by a provision postponing enjoyment. The fact that the estate granted is subject to partial trusts or charges for partial purposes does not postpone the vesting in possession.

**Case reference:**

*Cally Nath v Chunder Nath, 8 Cal. 378*

**Fact-** A testator, after directing the payment of some annuities to some persons for their lives, gave the whole of his property to his grandsons to be divide among them only after the annuities have ceased on the death at the annuitants

**Decision-** It was held that the fact that the estate was subject to partial trusts did not postpone the vesting in possession of the gift to the grandsons.

A condition postponing enjoyment does not prevent the interest vesting immediately, but it is itself void for repugnancy after the transferee has attained majority.

**Illustration:** A transfer property to B in trust for C, and directs B to give possession of the property to C. When he attains the age of 25, C has a vested and is entitled to possession at the age of 18.

**viii) No specification of Time:**

In case of vested interest, time of taking effect is not specified.

**ix) No particular word as to form:**

No particular words are necessary to the vesting of an interest of the grantor must be construed in their plain ordinary meaning.

**x) No specification of term:**

In case of vested interest, terms are not specified that it is to take effect forthwith. This characteristic is to be found in section 19 of TP Act, 1882. For the non-specification of terms, an interest is vested immediately after the transfer and also transferred under Section 6 of the TP Act.

**xi) In Mahomedan Law:-**

Sunni law does not recognize an estate for life with a vested remainder. There is some doubt as to whether the law on this point has been altered by the decision of the Privy Council in *Amjad Khan v Ashraf Khan AIR 1929 PC 149*. It led to a difference of opinion in the case *Rasoolbibi v Yusuf Ajan (1933) ILR 57 Bom. 737* decided by Bombay High Court.

Such interests are recognized in Shia law, and in the case of a talukdari estate owned by a Mahomedan family in Oudh. [*Abdul Qayum v Abdul Rahman 146 IC 710, AIR 1933*]

A life estate with a vested remainder is recognized both for Shias and Sunnis by the 'Mussalman Wakfs validating Act, 1913' in the case of wakfs.

**xii) In Hindu Law:-**

Before 1929 Section 19 was inapplicable to the Hindus and Buddhists. But the amendment of Section 2 makes Section 19 applicable to Hindus. Section 106 of the Succession Act, 1865, was applied to some Hindu wills by Section 57 and schedule III of the Same Act. The principle of the

section has always been recognized by Hindu Law, and some of the cases noted were decided under that law.

Thus, in *Gosavi Shivgar v Rivett carnac (1888)*, there was a bequest of property to a minor with a direction that it should not be given to him till he attained the age of 30, paying the devisee the whole income subject to the charge.

In *Ram Kaur v Atma Singh (1927) ILR 8 LAH 181*, the testator devised his estate to his sons and directed that the widow should manage it during her lifetime, but it had held that the estate vested immediately in the sons, and as the widow was given no prior interest, they were entitled to immediate possession.

### **Characteristics: Contingent Interest**

Characteristics of Contingent interest are as follows:-

#### **i) Imperfect Title:**

In case of contingent interest title is yet imperfect. Though title is imperfect but it is capable of being perfect on the happening of specified uncertain event. By this imperfect title no right can be exercised. This imperfect title is not capable of being transferable under Section 6 of the TP Act.

#### **ii) Conditional Right:**

In case of contingent interest owners own the right conditionally. This conditional right is also capable of being absolute on the fulfillment of condition precedent.

#### **iii) On happening of specified uncertain event:**

The term 'specified uncertain event' is a event which is specified but uncertain that may or may not happen. A contingent interest in order to become vested depends upon such event.

Illustration: An estate is transferred to A until he shall marry and after that event to B. B's interest is contingent until the condition is fulfilled by A's marrying.

#### **iv) Non-fulfillment of condition precedent:**

Contingent interest may be defeated by reason of non-fulfillment of the condition precedent. Such condition has to be satisfied before the interest becomes vested.

#### **v) Non-application to Muslim Law:**

Contingent interest does not affect the rules of Muslim Law. Because a contingent interest cannot be subject of a valid gift under Muslim law.

**vi) Prior Interest:**

Contingent interest does not necessarily require a prior interest for its support and does not always take effect after the termination of a prior interest.

**vii) Declaration of right:**

A contingent interest not being an existing is not sufficient for a suit for a declaration of right. Ultimately in fine it may be concluded that characteristics of both contingent and vested interest placed these two expressions in a mentionable part of Transfer of Property law. For dealing issues relating to transfer of property, we must go through concept of these two expressions.

**Condition Precedent and Condition Subsequent:**

***Whether there is any condition upon which the vested and contingent interest depends or not:-***

If we dissect or scrutinize the two concept 'vested interest' and 'contingent interest' in other words Section 19 and Section 21 of the Transfer of Property Act, 1882, then an important element comes forward upon which their enjoyment/validity of enjoyment depends, that is the condition.

Because, these two sections say themselves about the conditions upon which they depend, set out by that section. Such as -

Section 19 says --

Where an interest is created in favour of a person-

- 1) Without specifying the time when it is to take effect.
- 2) Or in terms specifying that it is to take effect forthwith.
- 3) Or on the happening of an event which must happen

such interest is said to be vested interest.

Here, vested interest depends upon the fulfillment of the above three conditions.

Moreover, Section 21 says --

Where an interest is created in favour of a person to be effected-

- 1) on the happening of a specified uncertain event
- 2) or if a specified uncertain event shall not happen

Such interest is said to be contingent interest.

The creating of vested interest and contingent interest is a transfer which is effected after the fulfillment of condition. Transfer may be absolute (as when a father gives a Car to his son as a gift) or conditional (when a father agrees to give a Car to his son provided the son passes his law examination)

When an interest is created on a transfer of property and is made to depend on a condition, the transfer is said to be conditional transfer.

A condition is a provision which makes the existence of a right dependent on the happening or non happening of a thing, Conditions are of three kinds; viz: a. Condition precedent

b. Condition subsequent

c. Conditional limitation

A conditional limitation is a combination of a condition precedent and a condition subsequent, it is one containing a condition which -

-- divests an estate that has vested

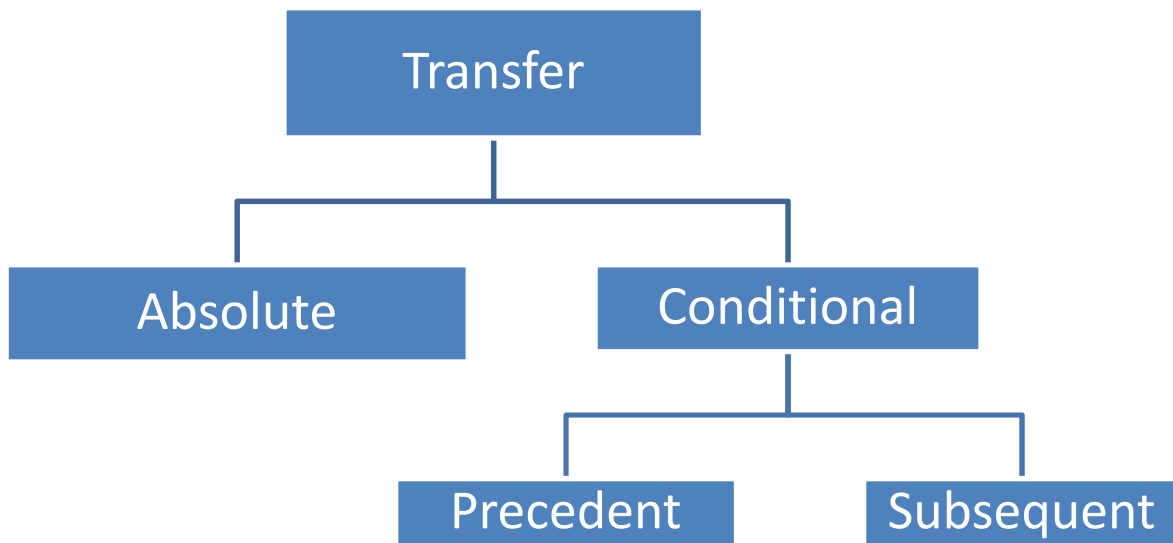
-- vest it in another person

As regards the prior interest, it is a condition subsequent and as regard the ulterior interest, it is a condition precedent. For example -

'A gives a house to his daughter B. B, with a condition that if she marries a person not approved by him, the house would go to his son, C.'

Here, as far as B is concerned, it is a condition subsequent but as far as C is concerned it is a condition precedent.

Since, our main concern about the condition precedent and condition subsequent, it can be discussed elaborately in below. So, now it can be summarized that -



### **Condition Precedent:**

When an interest is created or made to accrue on the fulfillment of the contingency the condition is said to be condition precedent. It is such a condition by the fulfillment of which an inchoate right of interest is completed. In case of condition precedent, a person by the performance of condition precedent acquires absolutely what he has acquired conditionally. If the condition precedent is not fulfilled then transfer of interest will be ineffective, unless the person on whom this condition lies, fulfills. If the condition is being illegal or impossible then the transfer will be effective without performance of that condition.

Illustration of condition precedent:-

(a) X transfers tk. 5,000 to A on condition that he shall marry with the consent of B, C, D and E, A marries with the written consent of B. C is present at the marriage. D sends as present to A previous to the marriage. E has been personally informed by A of his intentions and has made no objection. A has fulfilled the condition [*Woods v Towney, 11 Hare 314*]

(b) A made a gift to nieces who should be living in England. It was held that, nieces in America were excluded but not to a niece who was living in Ireland where her husband is regiment were quartered, or a niece who was staying with her. [*Underwood v wing MQG. 633*]

### **Characteristics:-**

1. A condition precedent is one which must happen before the estate can vest.

2. Where the condition is precedent, the estate does not vest in the transferee until the condition is performed.
3. In the case of a condition precedent being or becoming impossible to be performed, or being immoral or opposed to public policy, the transfer will be void.
4. A condition precedent fulfilled if it is substantially complied with.

### **Condition Subsequent:**

If the interest already created is to cease to exist or is to pass on to another on the happening of the condition super added, it is called a condition subsequent. It is such kind of condition, by the fulfillment of which the interest already completed is extinguished. A person loses absolutely what he has already lost conditionally, terminates the interest and reverts to the grantor. If the condition subsequent should be valid otherwise it will not have the effect of terminating the interest to which it is attached.

Illustration of condition subsequent:-

(a) An estate is bequeathed to A, provided that, if he marries under the age of 25 without the consent of the executors named in the will, the estate shall cease to belong to him. A marries under 25 without the consent of the executors. The estate ceases to belong to him [illustration (ii), section 134 of the Succession Act, 1925]

(b) An estate is transferred to A, with a proviso that if she becomes a nun, she shall cease to have any interest in the estate. A becomes a nun, she loses her interest in the estate [*Wainwright v Miller 2 Ch. 255*]

### **Characteristics:-**

1. a condition subsequent is one by the happening of which an existing estate will be defeated.
2. Where the condition is subsequent, the estate immediately vests in the transferee, and remains in him till the condition is broken.
3. In the case of an impossible or immoral condition subsequent, the estate becomes absolute and the condition will be ignored.

Thus in *Ram Sarup v Bela, 6 All 313 PC*, where a gift was made with a condition superadded that the donee should marry a particular person on or before she attained the age of 21, and the person named died before she attained that age, it was held that the fulfillment of the condition subsequent having become impossible, the estate became absolute.

4. a condition subsequent must be strictly fulfilled.

**Differences between Condition Precedent and Condition Subsequent:**

There are some distinct differences between Condition precedent and Condition subsequent, Such as:

Condition Precedent	Condition Subsequent
<p>1. As to the vesting of estate-</p> <p>(a) precedes the vesting i.e. the condition comes before the creating of the interest</p> <p>(b) vesting of estate is postponed till the performance of the condition</p> <p>(c) Interest once vested never is divested by reason of non fulfillment of the condition.</p> <p>(d) Estate is not vested in the grantee until the condition is performed</p> <p>(e) affects the acquisition of an estate</p>	<p>1. As to the vesting of estate-</p> <p>(a) Follows the vesting i.e. the interest is created before the condition can operate to determine.</p> <p>(b) Vesting is complete and not postponed.</p> <p>(c) Interest even though vested, is liable to be divested by reason of non fulfillment of the condition.</p> <p>(d) Estate immediately vests in the grantee and remains in him till the condition is broken.</p> <p>(e) Affects the retention of the estate.</p>
<p>2. Where the condition is-</p> <p>(a) impossible of performance</p> <p>(b) opposed to public policy</p> <p>Transfer will be void.</p>	<p>2. When the condition is-</p> <p>(a) impossible of performance</p> <p>(b) immoral</p> <p>Transfer becomes absolute and the condition will be ignored.</p>
<p>3. The condition must be valid in law</p>	<p>3. This condition need not be valid in law; invalidity of the condition will be ignored.</p>
<p>4. The doctrine of Cy-pres applies, as a condition precedent is fulfilled if it is substantially complied with.</p>	<p>4. The doctrine of Cy-pres does not apply, as condition subsequent must be strictly fulfilled.</p>

**Upon which conditions ‘the vested interest’ and ‘the contingent interest’ depend:**

It is the main point of our discussion that, upon which fulfillment of condition, the vested and contingent interest depends.

Upon the justification of above long discussion about condition precedent and condition subsequent, it can be aptly said in one sentence that, “both the vested and contingent interest depend upon the condition precedent not on condition subsequent.” But there are substantial differences among the condition precedent of vested interest and condition precedent of contingent interest. So, this can be discussed elaborately in below-

**Firstly,**

We generally know that, once an interest is vested it is never divested. So if the vested interest depends upon fulfillment of condition precedent then, by standing on condition precedent to be fulfilled, how an interest can be vested?

The answer of this question can be provided in following way:

According to Section 19 of the TP Act, the conditions were laid down—

Where on a transfer of property, an interest is created in favour of a person-

- a. without specifying the time when it is to take effect
- b. or in terms specifying that it is taken forthwith
- c. or on the happening of an event which must happen

The interest is vested.

Since this above mentioned section says, ‘on a transfer of property’, that means the transfer is completed but enjoyment may be standing on the conditions. So it is already vested before happening of the conditions.

We know that condition precedent is such which must happen or be fulfilled before the act, that also may either be happening or not, if the condition is fulfilled then the interest or transfer is complete if not then transfer is void.

Since, the three condition as mentioned for the vested interest, is certain and there no impossibility that the condition will not be fulfilled, rather it is the matter of time. So, it can be deemed that, conditions must happen, and the interest which would vest upon the fulfillment of the condition precedent as it would happen upon contingency, is already vested because the condition is certain and not upon any contingency.

**Secondly,**

According to Section 21, contingent interest is depended upon the condition precedent, in this case the condition, the happening of which depends upon the uncertain future event which is contingent that either it may happen or not, if it happens or does not happen as it is conditioned, if it fulfilled then the contingent interest becomes vested interest.

**When Condition Precedent construed as condition subsequent:**

A condition precedent, when followed by a gift over is sometimes construed as a condition subsequent so that the interest dependent on it is not contingent, but vested. Thus, a devise to A if or when he shall attain a given age, with limitation over on his death under that age without issue, confers a vested estate on A defeasible only in the event of his death without issue under the specified issue. [*Phips v Ackers 1835 9 Cl & Fin 583*]

The English Court have adopted two rules of construction namely

- (1) that the gift of income of same fund until the contingency happens, to the very person who will on attaining a particular age take the fund makes the gift of the fund, apparently contingent upon the attainment of that age, a vested interest, and
- (2) that a gift over upon failure of a prior gift may have effect of converting the prior gift apparently contingent upon attaining of a particular age into a vested interest, subject to divested on the death before that age.

The first of the above two rules of construction have been adopted in Bangladesh by the exception to Section 21. The second rule has not been adopted in any section of the TP Act.

**Differences between Vested and Contingent Interest:**

There are some distinctions between vested and contingent interest which are given below:

**1. As to definition:**

An interest is said to be a vested interest when there is a immediate right of present enjoyment or a present right of future enjoyment. On the happening of an uncertain event or condition a contingent interest becomes a vested interest.

On the other hand, an interest is said to be contingent if the right of enjoyment is made dependent upon some event or condition which may or may not happen. Actually it can be said that contingent interest in the prior stage of vested interest.

In other words, where, on a transfer of property, an interest therein is created in favour of a person-

**A. In case of vested interest –**

- I. Without specifying the time when it is to take effect; or
- II. Specifying that it is to take effect forthwith or on the happening of an event which must be happen, such interest is vested.

**B. In case of contingent interest –**

- I. to take effect only on the happening of an specified uncertain event; or
- II. if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property.

**2. As to effect of transferee's death:**

Vested interest is not defeated by the death of the transferee before he obtains possession. On the otherhand, contingent interest passes on the death of the transferee or not depends on the nature of the contingency. [*Rajes Kanta Roy v Santi Debi (1957) AIR 1957 SC 255*]

**3. As to fulfillment of condition:**

Vested interest does not depend upon the fulfillment of any condition; it creates an immediate right, though the enjoyment may be postponed to a future date. [*Sundar Bibi v Rajendra Narain AIR (1934) Oudh 454*]

On the other hand, contingent interest is solely dependent upon the fulfillment of the condition so that if the condition is not fulfilled, the interest may fall through. [*Kanai Lal v Kumar Purendu Nath (1946) 51 Cal. WN 227*]

**4. As to Owner's title:**

In a vested interest the owner's title is already perfect, but in a contingent interest the title is as yet imperfect but capable of being perfect. [*Helifax v Wilson (1829) 16 Ves. 168*]

**5. Whether complete or incomplete:**

In case of vested interest the investitive fact from which a person derives the right is complete. On the other hand, in case of a contingent interest it is incomplete.

**6. Whether transferable and heritable:**

Vested interest is both transferable as well as heritable. If the transferee of a vested interest dies before actual enjoyment, it passes on to his heirs. [*Rukabai v Shivram, AIR 1981*]

On the other hand, contingent interest is transferable, whether it is heritable or not depends on the nature of the contingency. If the transferee of a contingent interest dies before obtaining possession, the contingent interest fails, and does not pass on to his heirs. [*Sopher v Administrator General of Bengal 71 IA 93; AIR 1994*]

**7. As to Present right of enjoyment:**

In a vested interest, there is a present immediate right, even when its enjoyment is postponed.

On the other hand, there is no present right of an enjoyment in contingent interest. In contingent interest there is a mere promise for giving such right; and such promise may be nullified by the failure of the condition. [*Sewdayal v Official Trustee (1931) ILR 8 Cal. 768*]

**8. As to illustrations:**

(i) Vested interest:-

A bequeaths to B 100 taka, to be paid to him at the death of C. On A's death the legacy becomes vested in inherent in B, and if he dies before C, his representatives are entitled to the legacy. [illustration (i), section 119, Succession Act 1925]

(ii) Contingent interest:-

A legacy is bequeathed to D in case A, B, C & D shall all die under the age of 18, D has a contingent interest in the legacy until A, B and C die under 18 no one of them attains that age. [illustration (i) Section 120; Succession Act, 1925]

### **Additional Points**

**Status of right transferred by Gift, Trust and Will as vested and contingent interest are discussed below:**

**1. Gift:**

A gift may create a vested or contingent interest. A provision for gift over will not render the prior gift a contingent one. The true criterion is the certainty or uncertainty of the event on the happening of which the gift is to take effect.

Where the event is certain though future, and the payment or enjoyment is postponed by reason of the circumstances connected with the estate or for the convenience of the estate, as for instance, where there are prior life or other estate or interest, the ulterior interest to take effect after them will be vested.

Thus, under a gift by a testator to A, at the decease of the testator's wife A's interest vests at the testator's death. [*Subramaniam v Subramaniam, 4 Mad. 124*]

When a testator gives his property to his wife for life and thereafter to his daughter, the gift over to daughter creates a vested interest. [*Lallu v Jagmohan, 22 Bom. 409 (414)*]

But where the gift being an entire fund payable to a class of persons equally on their attaining a certain age, a direction to apply the income of the whole fund in the meantime for their

maintenance does not create a vested interest in a member of that class who does not attain that age. [*In re Parker, 16 Ch. D. 44*]

If, in addition to the provision for a gift over the grantor uses words clearly showing an intention to create only a contingent interest, the intention will prevail and the interest created will only be a contingent one.

Mere direction by the testator that his legacies or gifts are to be given after the debts are discharged would not make the gifts, which are otherwise vested, contingent. [*Raghunatha v Mahana Krishna, AIR 1926 Mad. 645*]

## 2. Trust:

Where the property is to be held in trust and interest of the beneficiary is specified along with the time when they have to take the property, a vested interest in property is created forthwith.

Where the interest created in favour of the two sons of the settlor is to take effect after the termination of the trust. And the deed of trust provides that the trust will come to an end on the death of the settlor and on the discharge of the debts specified in the deed including the debts to be incurred by the trustee for the discharge of the settlor's debt. The interest in favour of the sons is vested. [*Rajes Kanta Roy v Santi Debi, AIR 1957 SC 255*]

Thus in the Case of *Ma Yait v Official Assignee, AIR 1930 PC 17(18)* where a settlement was made by which the settlor transferred to the trustee a large amount of property in trust to allow the settlor during his life time to manage the property, and to have the sole benefit of the income of the properties. The settlement then proceeded to declare certain trusts that should come into operation after his death.

These trusts were that as to the property comprised in three schedules, the trustees, during the life of the widow and until the youngest son attained the age of 20, were to distribute the income in the manner provided.

After the youngest child attained the age of 20, the property was to be sold and the proceeds were to be divided in equal shares between the children then surviving. The issue of any child who was dead was to represent his father's share.

As regards the property in the fourth schedule it was not to be distributed until the death of the youngest child and it was to be divided then amongst the children living at that date.

It was held by the Privy Council that – the result of this disposition was to create first of all a vested interest in all the children in the income of the property. Secondly, it created a contingent interest in all the children in the corpus in respect of all the property until, at any rate, the youngest

child reached the age of 20. The children who were alive at the date obtained a vested interest and to have the proceeds distributed among them as to the property in schedules 1, 2 and 3.

As to the property in the schedule 4, all the children took a contingent interest until the death of the youngest child, and as soon as the youngest child died, the children then surviving, and of course their issue, obtained a vested right to have the property distributed among them.

### **Regarding Succession Act**

#### **Section 19 of the Transfer of Property Act with the corresponding section 119 of the Succession Act, 1925:**

There are similarities between Section 19 of the TP Act and Section 119 of the Succession Act in terms of vesting the interest in lieu of transferee's death or without receiving the interest:-

The main theme of Section 19 of the TP Act is that, if an interest in favour of a person is said to take effect on the happening of an event, and if the event is certain and which must happen, such interest is vested. If the fact is as like as discussed, then the vested interest shall not be defeated by the death of the transferee before he obtains possession.

So, the heirs of the transferee are entitled to get the vested interest in case of death of their predecessor.

The same provision is conferred in Section 119 of the Succession Act, 1925. Section 119 says that,

“Where by the terms of a bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested in interest.”

So the Principles of both sections in these terms are:-

- i) After declaring the legacy the interest shall be vested, even though the transferee is not entitled to immediate possession of the vested interest.
- ii) the right to receive the interest shall be vested to the transferee on the testator's or transferor's death.

- iii) If the transferee dies without having received the interest, the representatives or the heirs of the transferee will take the interest.

Section 19 of the TP Act with corresponding illustrations of Section 119 of the Succession Act:

Section 119 of the Succession Act prescribes following illustrations:

1. *A bequeaths to B, 100 taka to be paid to him at the death of C on A's death, the legacy becomes vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.*

Here, in this illustration, the interest of B takes effect on the happening of an event that this is certain and so it is vested.

2. *A bequeaths to B, 100 taka, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.*

Under this illustration, the interest is one of which the enjoyment is postponed. It illustrates the well-settled rule that, the words "to be paid" or payable at a certain age do not render a bequest contingent. [[Re Couturier Conturier v Shew Case, 1907, 1, Ch 470](#)]

**Exception:**

It was held in the [Hanson v Grabam \[1801\] & Leake v Robinson, All, ER Rep 498](#) case that, if or when a certain age is attained, or upon attaining a certain age, is contingent, as is shown by the second illustration to Section 120 of the Succession Act, 1925.

3. *A fund is bequeathed to A for life, and after his death to B. On the testator's death the legacy to B becomes vested in interest in B.*

Under this illustration, a prior interest intervenes. Though there is prior interest but no interference will be held for the interest to be vested in the transferee. Because the determination of that prior interest is a certain event.

4. *A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.*

In this illustration, it might be supposed that, B's interest was contingent on his attaining the age of 18, but it is construed as a gift to A for a term of years with remainder to B. It rests on the principle that, the law favours the vesting of interest.

In *Re Blackwell & Taylor v Grabam (1878)*, Mr. Pollock quoted with approval the following passage from 'Hawkings on Will',

"In the construction of devices of real estate, it has long been an established rule for the guidance of courts...that, all estates are to be held vested. Except estates in the devise of which a condition precedent is so clearly expressed, that the court cannot treat them as vested without deciding in the direct opposition to the terms of the will."

*5. A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.*

Under this illustration, there is a divestment after the payments of debts. Jarman says that, such a devise confers an immediately vested interest.

*6. A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18, and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes, so subject, to his representatives.*

Under this illustration, the words "to be paid" import a vested interest, but that interest, is liable to be divested on the happening of the event specified and vested in another person. This is an instance of a conditional limitation.

For example, an interest liable to be divested by a condition subsequent and vested in someone else.

**Section 21 of the Transfer of Property Act with the corresponding section 120 of the Succession Act, 1925:**

The same provision has been quoted under S. 21 and S. 120 of the above two Acts. Both the Sections say that, if, on transfer of property, an interest therein created is in favour of a person to take effect only:

- a. on the happening of a specified uncertain event, or
- b. if a specified uncertain event shall not happen,

then a contingent interest is created. And the interest shall not be vested until either one provision of the two is fulfilled.

And both the sections prescribe same exceptions about contingent interest.

Section 21 of the TP Act with corresponding illustrations of Section 120 of the Succession Act:

Section 120 of the Succession Act lays down 13 illustrations connected with the terms of contingent interest. Among these illustrations no (ii), (v), (vii), (x), (xii), (xiii) are directly connected and applicable with the provision of Section 21 of the TP Act.

So, the illustrations are:

**Illustration No.**

(ii) *A sum of money is bequeathed to A "in case he shall attain the age of 18", or "when he shall attain the age of 18". A's interest in the legacy is contingent until the condition is fulfilled by his attaining that age.*

A bequest 'at' a given age or 'upon attaining' or as the legatee shall attain, or after his attaining a given age is prima facie contingent.

It was held in *Steepleton v Cheals (1711) Pre-ch 315*, and *Leake v Robinson (1817)*, the condition precedent of attaining any age, if, is given, then the given age is prima facie contingent.

**Illustration No.**

(v) *A legacy is bequeathed to A when she shall attain the age of 18, or shall marry under that age with the consent of B, with a proviso that, if she neither attains 18 nor marries under that age with B's consent, the legacy shall go to C. A and C each take a contingent interest in the legacy. A attains the age of 18. A becomes absolutely entitled to the legacy although she may have married under 18 without the consent of B.*

Under this illustration, the conditions are in the alternative and it is sufficient if one is fulfilled.

No. (vii) *An estate is bequeathed to A until he shall take advantage of any law for the relief of insolvent debtors, and after that event to B. B's interest in the bequest is contingent until A take advantage of such a law.*

As regard to this illustration, the condition of defeasance on insolvency is a condition subsequent as regards A; but a condition precedent as regards B. Such a condition is invalid in a transfer *inter vivos* as provided under Section 12 of the TP Act.

**Illustration No.**

(x) *A fund is bequeathed to A if B shall not marry C within five years after the testator's death. A's interest in the legacy is contingent until the conditions is fulfilled by the expiration of the*

*five years without B's having married C, or by the occurrence within that period of an event which makes the fulfillment of the conditions impossible.*

Under this illustration, the condition is a negative condition which is discharged by the event becoming impossible.

**Illustration No.**

*(xi) A fund is bequeathed to A if B shall not make any provision for him by will. The legacy is contingent until B's death.*

*(xii) A bequeaths to B 500 Taka a year upon his attaining the age of 18, and directs that the interest, or a competent part thereof shall be applied for his benefit until he reaches that age. The legacy is vested.*

In both the illustrations, the exception of Section 21 of TP Act will be applied.

**Illustration no.**

*(xiii) A bequeaths to B 500 Taka when he shall attain the age of 18, and directs that a certain sum, out of another fund, shall be applied for his maintenance until he arrives at the age. The legacy is contingent.*

There the income of another fund, and so the exception does not apply as conferred in Section 21 of the TP act.

**Philosophy behind the insertion of provisions of Vested and Contingent interest:**

Behind the promulgation of every law there are causes or philosophy. In keeping line with philosophy, laws are made.

Common philosophy of all laws is welfare of people and avoiding wrongful loss and gain as well as to ensure justice, good conscience and equity.

In case of insertion of Section 19, that is vested interest, philosophy is to protect the right of transferee in inconvenient and unwelcome situation. This philosophy can be better understood from the last sentence of the concerned section and its explanation, which is – “A vested interest is not defeated by the death of the transferee before he obtains possession.”

Insertion of Section 21, or provision of contingent interest has also a philosophical reason. Which is, to meet the demand of transferor. By using Section 21, transferor may fulfill his demand, arisen in a particular situation. Here, transferor is allowed to protect his interest by transferring his property.

In fine, it should be mentioned that existing philosophy of one law may be replaced, modified by another new philosophy.

### **Conclusion**

In fine on observation of above discussion it may be concluded that for better dealing with issues relating to transfer of property, both expressions vested and contingent interest are not only very much considerable but also incredible for legal interpretation. One should go through concerned topics along with judicial decisions as well as other related provisions.

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