

DOCTRINE OF ELECTION

DOCTRINE OF ELECTION: SECTION 35

Section 35 of the Act makes following provisions in respect of the rule of election.

- i) Where a person professes to transfer a property not his own,
- ii) and, in lieu of this transfer the transferor confers certain benefits upon the owner of the property and,
- iii) the two things *i.e.* transfer of property and conferring of the benefit forms part of the same instrument

Then, the owner of property is bound to elect (choose) either to take the benefit and transfer his property or to retain his property and gift up the benefit

What is Doctrine of Election?	<p>Section 35 incorporates the doctrine of election.</p> <p>Election means choosing between two inconsistent or alternative right. Under any instrument if two rights are conferred on a person in such a manner that one right is in lieu of the other, he is bound to elect (choose) only one of them.</p> <p>A person cannot take under and against the same instrument. Thus, where some money is gifted to A and in lieu of it A is required to transfer his house to B then A would not be allowed to retain his house and also take the gift. He cannot enjoy both. A will have to choose</p> <p>⇒ either taking of the gift in which case he must transfer his house to B or</p> <p>⇒ retain his house in which case he must relinquish the benefit of gift. In the language of law, A shall be put to election.</p>
Principle upon which Doctrine of Election is based.	<p>⇒ The doctrine of election is based on equitable principle under which a person may not be allowed to approve that part of an instrument which is beneficial to him and disapprove its that part which goes against him.</p> <p>⇒ No one can approbate and reprobate at the same time. In other words, where a person takes some benefit under a deed or instrument, he must also bear its burden.</p>
Analysis of Section 35	<p>Section 35 may be read as given below for clarity:</p> <ol style="list-style-type: none"> i) The Doctrine of Election as given in Section 35 applies ii) When any person say 'A' when he; <ol style="list-style-type: none"> a. transfers, or b. proposes to transfer,

	<ul style="list-style-type: none"> c. any property, d. movable or immovable or both e. that is, his own, f. to any other person say 'B' <ul style="list-style-type: none"> iii) And, iv) At the same time. v) in same transaction vi) By the same deed vii) The same person A - <ul style="list-style-type: none"> a. transfer, or b. proposes to transfer, c. any property, d. movable or immovable or both, e. of that other person, 'B' f. without his consent or knowledge, g. to any third person say 'C' Viii) B is under a statutory obligation under this section to <ul style="list-style-type: none"> a. either accept the proposal or transfer as it is, or b. to reject it. ix) B must accept the whole of the deed or must reject the whole of it. He plainly speaking cannot bifurcate the proposal so as to accept one part that is beneficial and to reject the other part, that is burdensome or onerous.
Sec.35 is applicable to all properties.	<p>Section 35 of the Act embodies a principle of highest equity, and as such it applies to all persons irrespective of their personal laws.</p> <p>It applies to all kinds of property, vested, contingent, reversionary and remote as well as immediate interests, whether movable or immovable.</p> <p>There is no distinction for the purpose of this principle between personal estate and real estate, between specific and residuary legatees and next-of-kin of an estate.</p>
Transferor Professes to Transfer Property not his own	<p>Section 35 applies where a person professes to transfer the property of another person. 'Professes' means purports or makes contract. Since such person is not owner, he cannot transfer that property. But, he can contract or make arrangement for transfer of property which he does not own.</p> <p>For example A may profess to transfer a property to B, which is owned by C and also confer on C a benefit of Rs. 1,000/-. In this contract A is not transferring C's property, he is simply professing (contracting) to transfer a property which he does not own. Therefore, A is not transferor. But, for the sake of convenience, hereinafter A may be called as a transferor'.</p>
Part of Same Transaction	<p>⇒ The rule of election operates only when the transfer' and 'benefit' form part of the same transaction. Thus where the 'benefit' and 'transfer are interdependent and inseparable they form part of the same transaction.</p>

	<p>⇒ There is no election if the two are Independent transactions. However, it is not necessary that these two transactions are provided on one instrument.</p> <p>⇒ It is possible that two separate instruments may be executed to carry out one and the same transaction. Similarly, it is also possible that there is only one instrument containing two separate and independent transactions.</p> <p>Example - Under A 's marriage settlement his wife is entitled if she survives him, to the enjoyment of the estate of sharanpur during her life.</p> <p>A, by his will, bequeath to his wife an annuity of Rs 20,000 during her life in lieu of her interest in the estate of Saharanpur, which estate he bequeathes to his son.</p> <p>He also gives his wife a legacy of Rs. 1,00,000.</p> <p>The widow elects to take what she is entitled to under the settlement. She is bound to relinquish the annuity but not the legacy of Rs. 1,00,000.</p>
Owner's Duty to Elect	<p>⇒ The operative part of Section 35 is that if a property is professed to be transferred and in the same transaction some benefit is given to the owner of property then such owner is under a duty to elect.</p> <p>⇒ By his election he may either accept the instruments with its all contents or reject it altogether. He has no option to accept only the beneficial part of instrument. Where he elects to accept the instrument, he is entitled to get the benefit; but he is bound to transfer his property. If he elects to reject the instrument he cannot claim benefit; but he may retain his property.</p>
Mode of Election.	<p>Election may be express or implied. It is a question of intention of the owner of property who is given the benefit. He may express his intention in clear and specific words. Where election is express, it is final and conclusive. The intention of the owner may also be inferred from his acts or conduct. This is implied election.</p>
Implied Election	<p>Election is implied when the owner of property (donee)</p> <ol style="list-style-type: none"> i. being aware of his duty to elect and ii. having full knowledge of the circumstances, accepts the benefit. Such election would mean that he has chosen in favour of the transaction. <p>Ex-A transfer to B an estate owned by C and as part of the same transaction gives to C a Coal-mine. C does not elect in express words but takes possession of the Coal-mine and exhausts it. C is presumed to have elected to take the benefit and thereby transfer his property to B. This is so, because if C now dissents the transaction it would not be possible for him to place the parties (A and C) in the position prior to his exhausting the said Coal-mine.</p>
Requisition to Elect	<p>⇒ This is special procedure for expediting election.</p> <p>⇒ After the expiry of one years, if owner of property does not elect i.e, neither confirms nor dissents the transfer, the transferee may require him to make such election. And, if he does not elect, within a reasonable time after such</p>

	requisition, he is deemed to have elected in favour of the transfer.
Suspension of Election	Where at the time of transfer the elector (<i>.e.</i> owner of property) is legally disabled, the election is postponed until such disability ceases or until the election is made on his behalf by a competent authority e.g. his guardian. Legal disability may be minority or lunacy of the elector. Thus, his duty to effect is suspended during his minority or lunacy unless the election is made by his legal guardian.
Election against Transfer	The owner of property whose duty is to make election has freedom to elect either for the transfer or against it. Where he elects against it <i>i.e.</i> dissents from the professed transfer, he forfeits his claim to the 'benefit' conferred on him. The benefit so conferred reverts back to the transferor or his representative. However, he can claim any other benefit which is given to him independently of the transfer under the same instrument. For example , where a person is given two benefits X and Y under an instrument but only X has given in lieu of property then, if he elects against the transfer he forfeits only benefit X. But he is entitled to claim benefit Y.
Rights of disappointed Transferee	When the owner of property elects against the transfer, the transferee to whom the property was professed to be transferred, cannot get the property. He becomes disappointed as he must have had some hope of getting the property. However, such disappointed transferee is required to be compensated by the person who professed to transfer or his Legal Representative in case of his death.
Illustration	The farm of Sultanpur is the property of C and its market value is Rs. 800000/-. A by an instrument professes to transfer it to B giving by the same instrument a benefit of Rs. 10,00000/- to C. C elects against the transfer and decides to retain his farm. C forfeit the benefit of Rs. 10,00000/- which reverts back to A or his representatives. Now, if A dies before C makes election, his representatives must compensate B (disappointed transferee) by giving B Rs. 80000/- out of Rs. 10,00000/

QUESTIONS OF PREVIOUS YEARS' EXAM.

1	What is Transfer of Property? Distinguish between sale and exchange (100 Words)
2	A has a wife B and a daughter C. C in consideration of Rs. 1000/- paid to her by A executes a release of her rights to share in the inheritance to A's property. A dies and C claims her one-third share in the inheritance. B resists the claim and sets up a release signed by C. Is release a valid defense and if not, Why? (100 Words,)
3	Discuss Doctrine of Election. (100 Words,)
4	"The foundation of Doctrine of Election is that no one can approbate and reprobate at

	the same time." Discuss and illustrate your answer. (500 Words,)	
5	All properties can be transferred. Are there any exceptions to this rule under the Transfer of Property Act? (500 Words,)	
6	A transfers his property to B for thirty years and the property which will remain thereafter to the eldest son of C, unborn at the time of transfer is the transfer in favour of the said son of C legal? (300 Words,)	
7	"Though the Transfer of Property Act deals with transfer <i>inter-vivos</i> yet as interest may be created in favour of an unborn person "Discuss. (150 Words,)	
8	"The foundation of Doctrine of Election is that no one can approbate and reprobate at the same time." Discuss with illustration (150 Words,)	
9	State with examples the rule of Transfer of Property for the benefit of unborn person. (100 Words,)	
10	Discuss the validity of following transfers: (100 Words,] a) "A" transfers field to "B" on the condition that he shall walk one hundred miles an hour. b) "A" transfer a field to his niece "C" on the condition that she will leave her husband.	
11	<i>Short Note: Spes Successionis</i> (100 Words,)	
12	"A" transfers property of which he is the owner to "B" in trust of "A" and his intended wife successively for their lives and after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. Does the interest so created for the benefit of the eldest son take effect? Decide. (250 Words,)	
13	Explain Conditional Transfer. [150 Words,)	
14	Define property and mention which properties are not transferable? [150 Words,)	
15	Discuss between 'Condition Precedent and Condition Subsequent'. [200 Words,)	
16	The basis of the Doctrine of Election is that a person taking the benefit of an instrument must also bear the burden Discuss this doctrine with reference to the case law.	
17	Distinguish between 'Condition Precedent' and 'Condition subsequent with the help of illustrations. (150 Words]	
18	To what extent and subject to what conditions does the Transfer of Property Act permits transfer for the benefit of unborn persons? (150 Words)	
19	<i>Short Note: Election.</i> [100 Words)	
20	Describe with examples the provision against the accumulation of the income of Property and discuss the justification for the rule and its exceptions. (200 Words,)	