

Property transfer for an unborn child

Though a property can be transferred only to a living person, in certain cases, interest in it can be created in favour of a yet-to-be born child

htestates

LEGAL REMEDIES

Sunil Tyagi

htestates@hindustantimes.com

READY RECKONER

- On a transfer of property, interest can be created in favour of an unborn person
- Transfer of property to an unborn person must be preceded by a prior transfer in favour of a living person
- Interest on property given to an unborn person must be whole of the transferor's interest in the property
- Unborn person acquires vested interest on such property on his/her birth, although the enjoyment of such property may be postponed

in favour of a living person after whom the property may vest in the unborn person or by appointing a trustee to hold the property for the benefit of the unborn person.

For example, 'A' transfers his property, by gift, to 'B' for life and after B's death to B's eldest child who is not born at the time of transfer. Here 'B' acts as intermediary between 'A' and the unborn child.

The second condition is that the whole of the transferor's interest in the property must be transferred to the unborn person in question, meaning

thereby that there should be an absolute transfer of property to such a person (unborn). Thus, the transfer of interest should be without any condition. In the example cited above, transfer of property to B's unborn child is valid if an absolute interest on property is transferred and the transfer is not subject to any limitations.

However, any transfer of property, where whole of the interest is not transferred to the unborn person, may be void. For example, 'A' transfers property, by gift, to 'B' for life and after B's death to B's eldest child, say

'C', and after C's death to B's second child, say 'D'. On the date of transfer, neither 'C' nor 'D' are in existence. Here 'A' has created a life estate in favour of 'B' and a subsequent life estate in favour of B's unborn child, 'C'.

The life interest on property created in favour of 'C' would entitle her a right to enjoyment and possession of property. However, she may not be entitled to exercise all the rights of ownership on such property, such as right to alienation. Thus transfer of property to B's eldest child is void as it entails transfer of limited interest on the property, and not whole of the interest, in favour of the unborn person.

It is important to note that an interest, being created in favour of an unborn person, is acquired by such person upon his/her birth although the enjoyment of such property may be postponed beyond his/her birth. In the above example when life interest is created in favour of 'B', 'C' would acquire vested interest in the property on his birth. However, 'C' would not be entitled to the property



The whole of the transferor's interest in the property must be transferred to the unborn person in question, meaning that there should be an absolute transfer of property to such a person (unborn)

THINKSTOCK

till the death of 'B'.

The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of

specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in