Ques.) "RULE AGAINST PERPETUITY"

: No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

"Perpetuity" means indefinite period. Rule against perpetuity is the rule which is against a transfer making the property inalienable for an indefinite period or forever. It's better name is RULE AGAINST REMOTENESS OF VESTING. Where a property is transferred in such a way that it becomes non-transferable in future and the property is tied up forever. Perpetuity may arise in two ways:

(a.) By taking away from the transferee his power of alienation;

(b.) By creating future remote interest.

Sec. 10, TP Act, states:

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void.

* OBJECT OF RULE AGAINST PERPETUITY :

The object of rule against perpetuity to ensure free and active circulation of property both for the purpose of trade and commerce, as well as for the betterment of the property itself.
Frequent disposition of property is in the interest of the society and also necessary for its more beneficial enjoyment. A transfer which renders property inalienable for an indefinite period is detrimental to the interest of its owners who are unable to dispose it of even in their urgent needs or for any higher value. It is also a loss to society because the property is tied up in one family for generations and the society will remain deprived of any benefit from such property and the social consequences of creating perpetuity would be devastating.

* Rule against perpetuity under Sec. 14, TPA :

Sec. 14, TPA, provides that vesting of interest cannot be postponed beyond the life of last preceding interest in the living person or persons and the minority of the ultimate beneficiary. The essential elements of the rule against perpetuity are as follows :

(i.) There is a transfer of property ;
(ii.) The transfer is for the ultimate benefit of an unborn person who is given absolute interest;
(iii.) The vesting of interest in favour of ultimate beneficiary is preceded by life or limited interest of living person or persons;

(iv.) The ultimate beneficiary must come into existence before the death of the last preceding living person;

(v.) Vesting of interest in favour of ultimate beneficiary may be postponed only upto the life or lives of living person plus minority of ultimate beneficiary but not beyond that.

Property may be transferred to any number of persons who are living at the date of transfer. Vesting of interest in favour of ultimate beneficiary may be postponed for any number of years. Thus, property may be transferred to 'A' for life then to 'B' for life and then to 'C' for life and so on. However, as required under Sec. 13, TPA, such ultimate beneficiary must be born before the termination of the last preceding interest. According to Sec. 13, TP Act, where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Vesting of interest cannot be postponed even for a moment. Sec. 14, T.P. Act, however, provides that vesting of interest may be postponed, but not beyond the life of preceding interest and the minority of the ultimate beneficiary. Where property is made to vest within the limit prescribed under Sec. 14, the transfer is valid and any delay beyond this period would make the transfer void.

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⇒ Ultimate beneficiary in mother's womb :

Where the ultimate beneficiary is in the mother's womb, i.e., it is a child "en ventre sa mere", the latest period upto which vesting may be postponed (after the preceding interest) is the minority plus the period during which the child remains in mother's womb. It may be noted that minority is counted from the date of worldly birth, whereas for purposes of being a transferee a child in mother's womb is a competent person. Where the ultimate beneficiary is in the mother's womb when the last person dies, the property vests immediately in him while he is still in mother's womb. Therefore, the exact period from which the minority begins to run is the date when ultimate beneficiary is conceived. Thus, the minority upto which the vesting is permitted to be postponed under Sec. 14, TP Act, would include the period during which the ultimate beneficiary remains in womb before he is born alive.

Therefore, maximum permissible remoteness of vesting = Life of the preceeding interest + Period of gestation of ultimate beneficiary + Minority of the ultimate beneficiary

The ultimate beneficiary should be actually in mother's womb at the death of the last living person. Where the ultimate beneficiary is already a born person, the gestation period cannot be counted in addition to minority.

⇒ EXCEPTIONS TO RULE AGAINST PERPETUITY :

The rule against perpetuity is not applicable in the following cases :

(i.) Transfer for the benefit of public : Where a property is transferred for the benefit of public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind, the transfer is not void under the rule against perpetuity.

Sec. 18, TP Act, 1882 also provides that the restrictions in Sec. 14, 16, 17, TP Act, do not apply in case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.

(ii.) Personal agreement : Personal agreement which do not create any interest in property are exempted from the rule against perpetuity because rule against perpetuity is applicable only to a transfer of property. The Hon'ble S.C. in Rambaran V. Ram Mohit, AIR 1967 S.C. and

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also in Shivji V. Raghunath, AIR 1997 S.C., has held that a mere contract for sale of an immovable property does not create any interest in the immovable property and therefore, the rule against perpetuity cannot apply to such contracts. Similarly, this rule is not applicable to mortgages because there is no creation of any future interest. Similarly, an option by the lessee to the lessor to return the lease-hold land and thus, the rule against perpetuity shall not apply.

⇒ Rule against perpetuity under Hindu and Muslim Law: The provisions of TP Act including Sec. 14, TP Act, are applicable to Hindu except gifts for religious or charitable purposes. Although Chapter II of the TP Act, 1882 is not applicable to Muslim, but a gift to remote and unborn generation was held void. The only exception is made in case of "Waqfs".