

## DOCTRINE OF ELECTION

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### INTRODUCTION

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The doctrine of elections is stated in sections 35 and 180-190 of the Transfer of Property Act of 1882, as well as sections 180-190 of the Indian Succession Act. The choice between two separate or competing rights is called an election. You can choose between two rights granted in such a way that one is superior to the other. You can't have it all. The applicant must choose between two disputes or other rights; the applicant cannot use both. In fact, it means that the person making the profit must also face the costs.<sup>1</sup>

It is a crucial aspect of the 1882 Transfer of Property Act, which helps citizens settle property disputes. This view is based on the principle of equity, which states that a person cannot keep any of the profits of the sale, so he cannot keep the asset but to reap the benefits. They have to decide whether to support the opposition or not. The election doctrine is a common law that requires a beneficiary to determine whether or not they want to own someone else's property and whether or not they want to keep it.

Example: Make a promise to pay B 50 lakh if he sells his house C. B must now make a decision. If he approves A's application, he will have to give C his home. However, if he doesn't get it, he won't get the \$ 50,000, so he'll have to pick between the two possibilities.<sup>2</sup>

Election doctrine is a common law of equality which means that if an auditor tries to dispose of another person's property while making a promise to that person, the beneficiary must choose between keeping the property and accepting what he or she has done. An election is a mandate imposed by an equal rights group on a party to choose between two competing rights in situations where the recipient expresses a strong desire to not have both. That anyone who receives an award under a deed of deed or will is obliged to accept all the contents of the instrument. The concept of an election is based on the principle that anyone who benefits from something must also take responsibility for it. It is against the general rule

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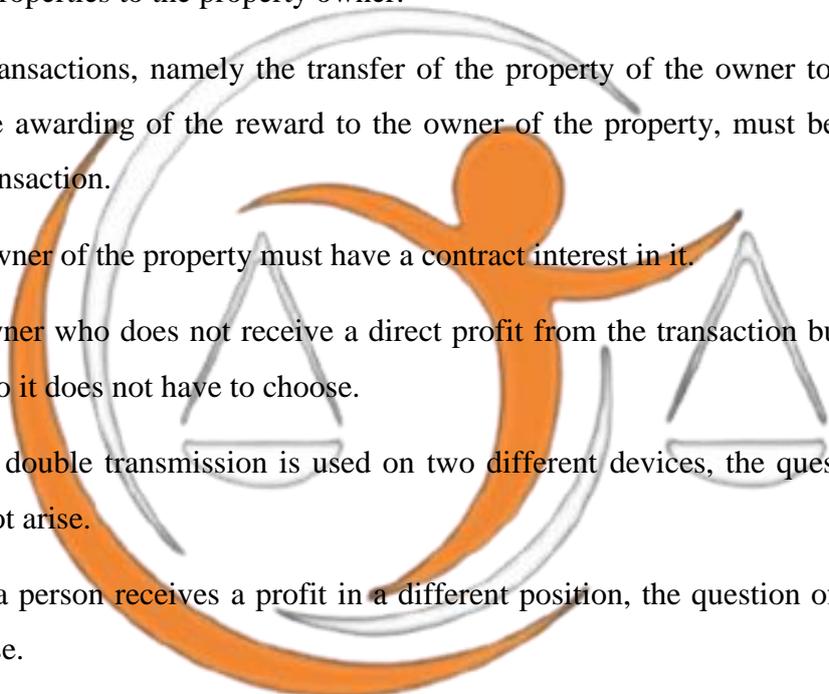
<sup>1</sup> C. Beepathuma V. Viduri Shankar Narayana Kadambolithya, AIR 1965 SC 241

<sup>2</sup> Shukla S.N. transfer of property act 24 the edition edited by Dp Ghousal reprint 2007

not to heat and heat at the same time. The metal writer is thought to wish to make any part of it, according to the principle.<sup>3</sup>

## **ESSENTIAL CONDITIONS FOR THE APPLICATION OF DOCTRINE OF ELECTION**

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1. The transferor must be the owner of the property being transferred.
  2. The transferor is responsible for transferring the property of another (owner) to a third party.
  3. Using the same instrument and his own money, the transferor must also hand over those properties to the property owner.
  4. Two transactions, namely the transfer of the property of the owner to the transferor and the awarding of the reward to the owner of the property, must be completed in that transaction.
  5. The owner of the property must have a contract interest in it.
  6. An owner who does not receive a direct profit from the transaction but transfers the profit to it does not have to choose.
  7. If this double transmission is used on two different devices, the question of choice does not arise.
  8. When a person receives a profit in a different position, the question of election does not arise.
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## **EXCEPTIONS**

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1. When the owner prefers to keep the property rather than earn a specific benefit, he is not obligated to donate any additional proceeds from the sale.<sup>4</sup>
2. If the original owner is aware of his or her activities and circumstances that may affect the prudent person in making the choice, his or her acceptance of the benefit shall be deemed to be an election by him or her to ensure that action.<sup>5</sup>

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<sup>3</sup> Muhammad Kader Ali Fakir vs. Fakir Lakman Hakim PLR 1956 Dacca 370

<sup>4</sup> G.C.V Subba Rao, Law of Transfer of Property (4th edn, Universal Law Publishing 2010).

3. If the recipient receives the benefit for more than two years, this experience may be considered. Under the heading "Electoral Methods," there has been another debate on this.
4. If the original owner does not make a decision within one year of the sale, the transferor has the right to force him or her to do so. And if he does not choose after the right time, the real owner is considered to have preferred the transfer of the property as his option.
5. Unless provided by a caregiver, the election process for a minor will be suspended until the candidate reaches the age of majority.

### **SECTION 35 OF TRANSFER OF PROPERTY ACT, 1882**

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#### **Election when necessary-**

When a person claims to be transferring property that he or she does not have the right to sell and the owner of the property receives a certain profit from the transaction, the owner must choose whether or not he or she agrees to the transfer. In the latter case, he or she must waive the benefit given to him or her, and the benefit thus released will return to the transferor or his or her representative as if it had not been discarded, subject to the following: as if you were not abandoned. It is charged with doing good to a person who is dissatisfied with the amount or value of the property attempted to transfer to him or her in all cases where the transfer is considered.

#### **Illustration-**

C owns the Sultanpur estate, which is valued at Rs. 800. A promises to pass it to B via a gift instrument, while also offering Rs. 1,000 to C via the same instrument. C makes the decision to retain the farm. He refuses to accept the Rs. 1,000 gifts. A dies before the election in the same situation. Out of the Rs. 1,000, his representative will pay Rs. 800 to B.

An individual who does not directly benefit from a price but profits indirectly from it is not required to make a decision. In one place, an individual who gains a transaction can reject it in another.

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<sup>5</sup> ibid

**With the exception of the previous four laws-**

If the transferor is claimed to have paid the property owner a certain advantage, and that gain is said to be in the region of that property, if the owner contests that property, he must waive that specific interest but is not required to release any other interests. Receipt of a benefit by the recipient means his or her choice to ensure the transfer of funds if he or she remembers his or her obligation and the circumstances that may affect the decision of the eligible candidate or if he or she withdraws from the investigation. Any act on his part that makes it impossible to position the affected persons in the property is said to have been moved to the same situation, and the fact that such an act was not performed may be considered knowledge or omission.

**Drawing-**

As part of the same deal, selling an inheritance in B that C is entitled to, as well as a coal mine in C. C has possession of the mine and makes good use of it. As a result, he has agreed to the estate's move to B.

If he or she fails to inform the appellant or his or her representatives to confirm or reject the transfer within one year of the transfer's date, the appellant or his or her representative will require him or her to make a decision after that time has passed. Also, if this action does not comply with the mandatory application within a reasonable period after obtaining it, you are considered to have chosen to validate it. In the case of an accident, the election can be postponed until the condition is removed or until a decision is made by the competent authority.<sup>6</sup>

**TIME LIMIT FOR ELECTION**

When the property owner identifies the transferor or his or her agent within one year from the date of the transfer, in terms of section 35. Even though they know the expiration date and have received information from their representatives, it is considered that they have been selected to confirm the election if they do not respond after the expiration date.

Nomination by a person with a disability is not possible unless the following conditions are met:

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<sup>6</sup> Valliammai v. Nagappa, AIR 1967 SC 1153.

- Her disability is no longer a problem.
- Someone, who is not disabled, is voting for himself.

## DOCTRINE OF ELECTION APPLIED ON THE FOLLOWING LAWS

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- **Hindu Law-**

Hindus have always been treated according to this concept. The Privy Council, according to *Rungamma v atchamma*<sup>7</sup>, made a rule that a person could not accept or reject things based on his preferences. It is impossible to consider anything unless one benefit from it, and it is impossible to avoid accepting anything until prejudice.

- **English Law-**

The customer who chooses not to transfer does not lose money, however, they are forced to reimburse those who are disappointed. There is a difference between the Anglo-American World Power. There is a distinction between English and British law depending on one's education. The following is a significant distinction: In British law, the principle of restitution is used, while in English law, mortgage laws are used.

English law does not apply during election season. According to British law, the landlord has a year to decide whether or not to confirm this action. If the owner refuses to approve the re-use, it is assumed that he or she was chosen to ensure delivery.

## WHEN DOES A PERSON ELECT TO DISSENT?

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According to section 35, if the owner refuses to approve the transfer, the transferred service will be made to him and returned to the transferor or his representative as if he had not been released. The following conditions may apply:

- The transfer is voluntary, and the Transfer has passed away or is unable to make any further transfer
- It is the duty of the transferor or his agent to return the disgruntled customer in all situations where the transfer is to be checked. The payment sum is the value or value of the property to be transferred if an option is selected.

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<sup>7</sup> (1858) 4 Moo Ind App 1:7 Suth WR 57

## OTHER IMPORTANT CONDITIONS

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### 1. Proprietary Interest-

A person should not apply for an option on the property unless he or she has a vested interest in the disposal of property that infringes on human rights.<sup>8</sup> As a result, the selection is not possible if the assets to be transferred by the transferor are not held by the person to whom the interest has been transferred.

It will also not happen if the transferor does not contribute a certain amount to the real property owner.

One of the most important requirements in electoral education to operate is that compensation granted to the original owner is included in the same contract to which he or she transfers the assets he or she is not entitled to transfer.

The fact that the two buildings have different personalities is not a barrier to ownership,

as in the case of *Ammalu v. Ponnammal*<sup>9</sup>, where an individual who was managing the properties of his deceased brother's daughter died leaving a will bequeathing a portion of it to B. The doctrine of election was found to extend to the niece.

In the landmark case of *Ramayyar v. Mahalaxmi*<sup>10</sup>, a widow made an out-of-state gift and then left a will that said, "Except for the properties which I have already given away, I will make the following dispositions." According to the Court, the election doctrine did not preclude the petitioner under the will from contesting the previous donation, which had nothing to do with the will.

### 2. The intention of Donor-

In order to establish an election circumstance, the testator's purpose about the disposition of property that he does not own must be transparent. Due to the fact that parol proof is not acceptable, the purpose must be prima facie clear.

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<sup>8</sup> Mst Dhanpatti v. Devi Prasad (1970) 3 SCC 779

<sup>9</sup> 36 MLJ 507

<sup>10</sup> AIR 1922 Mad 357 (358)

### 3. Indirect Benefit-

The profit that the original owner receives must be direct because if it is indirect, he does not have to choose. “When the devisee who claims derivatively by another does not take under the deed and is not bound by the equity attaching thereto,” says Section 184 of the Indian Succession Act, 1925.<sup>11</sup>

### 4. Capacity Differences-

In one capacity, a person can take advantage of a benefit, and in another capacity, he or she can object to or reject the benefit. It means that an individual may play two roles at the same time, for example, accepting a legacy for an estate while still keeping the property in his competence.<sup>12</sup>

## DEATHS

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- **Death of transferor-**

The transferor's death has no bearing on the real owner's decision to ensure the transfer after his death. If he or she does not agree, the proceeds will be returned to the appellant's attorney as if he or she had not been disqualified, with a charge of doing good to the appellant who is dissatisfied with the amount or value of the asset.

- **Transferee's death-**

If the transferor dies before voting, his or her representative is entitled to a benefit under the transfer because the law does not require them to participate.

- **Death of the property owner prior to the election-**

Where a member of the party responsible for the election dies before the premium, the section does not provide the provision. It is alleged that no election could be held in that case. In England, where a man was planning his wife's lifelong values, all that was left of his son, and the wife did not choose or ask for those treasures to be hers, her boss could not argue with this.

The story of the son who died before his mother stands out and he had to make a choice under his nomination papers. It was decided that the authorities who were

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<sup>11</sup> By Akash Mishra; “Doctrine of Election”, <https://www.lawctopus.com/academike/doctrine-election/> (last visited 7<sup>th</sup> March,2021)

<sup>12</sup> G.C.V Subba Rao, Law of Transfer of Property (4th edn, Universal Law Publishing 2010) 744.

dissatisfied with the mother would have the right to bring the son's estate to the census, or, in other words, to demand that the estate be used for their own free will.<sup>13</sup>

## CASE LAWS RELATED TO DOCTRINE OF ELECTION

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### **1. Mumbai International Airport Pvt. Ltd. V. Golden Chariot Airport<sup>14</sup>**

The 'Doctrine of Election,' as well as the common law doctrine prohibiting 'approbation' and 'reprobation,' as mentioned in the Latin maxim *qui approbat non reprobatur* (one who approbates cannot reprobate). The related portions of the decision are reproduced below.

- i. The question now is if the contesting respondent can argue for an irrevocable license before the Estate Officer and now before this Court, reversing its previous role.
- ii. The response must be categorically negative. Is a legal proceeding like a game of chess? Is it possible for a litigant to alter and choose his or her position as he or she sees fit, thus prolonging a civil case based on such evasive pleas?
- iii. A feature of the law of estoppel is the prohibition of approbation and reprobation, which is well known in our jurisprudence as well.

### **2. Mohd. Kader Ali fakir v. lukman hakim<sup>15</sup>**

The doctrine of choice is founded on the principle that an individual who uses a metal object must also bear the weight that it imposes, and that he cannot hold on to the floor while also being under the same metal. No one should admit or deny that this is a breach of the general laws. This doctrine is based on the legal premise that the metal maker wants to produce a certain portion of ether. Anyone who uses a will or other instrument is responsible for making that instrument a complete success, for donors and non-residents. However, what effect could his contract have on the same instrument? The applicant's job of fully utilizing the tool will be governed by the principle. And if part of the tool is invalid, what is left is enough to put someone else to vote if they say so.

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<sup>13</sup> Pickersgill v Rodger, (1877) 5 Ch. D. 163

<sup>14</sup> (2010) 10 SCC 422

<sup>15</sup> (1956) 8 DLR 112.

### **3. National Insurance Company v. Masan & Anr.<sup>16</sup>**

“Due to the differences in the terms of the two Acts, a party to a Lis cannot impose the insurer's obligations under both Acts. He'll have to choose one. The ‘doctrine of election’ is a branch of the ‘rule of estoppel,’ in which an individual can be prevented from asserting a right that he would otherwise have had by his behavior, or silence when it is his duty to speak.

When two solutions for the same relief are open, the aggrieved party has the option to elect either of them but not both, according to the doctrine of election. While there are some exceptions to the same law, the same does not apply in this instance.”

## **CONCLUSION**

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An election is a method of selecting between two choices or privileges that are incompatible. You can choose one of them by giving one of them a higher privilege than the other. You can't have anything. The recipient must choose between two disputes or other rights; the applicant cannot use both at the same time.

In essence, this means that the obligation must be shared by the recipient. Taken from the principle of equality, which undoubtedly means that one cannot benefit from both sides. This doctrine has proven to be effective in resolving the many disputes of poverty. The critical study of the provisions, namely the Principle of Forfeiture and the Principle of Reimbursement, highlights the contradiction between Indian and English legal views. Various aspects of the Electoral Education model have been addressed and clarified, including Proprietary Interest, Compensation Estimated, Indirect Gain, Donor Intention, and so on.

Requirements for the first owner's selection have been given special attention. Controversies between the views of Indian and English law are discussed here in order to better evaluate what is provided, including the Terms of Reference and Compensation. The doctrine of election is founded on the principle that an individual who is awarded a reward should also accept responsibility for it. You can't take it down and against the same metal, to put it another way.

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<sup>16</sup> 2006 (2) SCC 641 IA