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Subject: Professional Practice-II
Topic: Immovable Property and Rent
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Immovable property and rent

Definition of Immovable Property

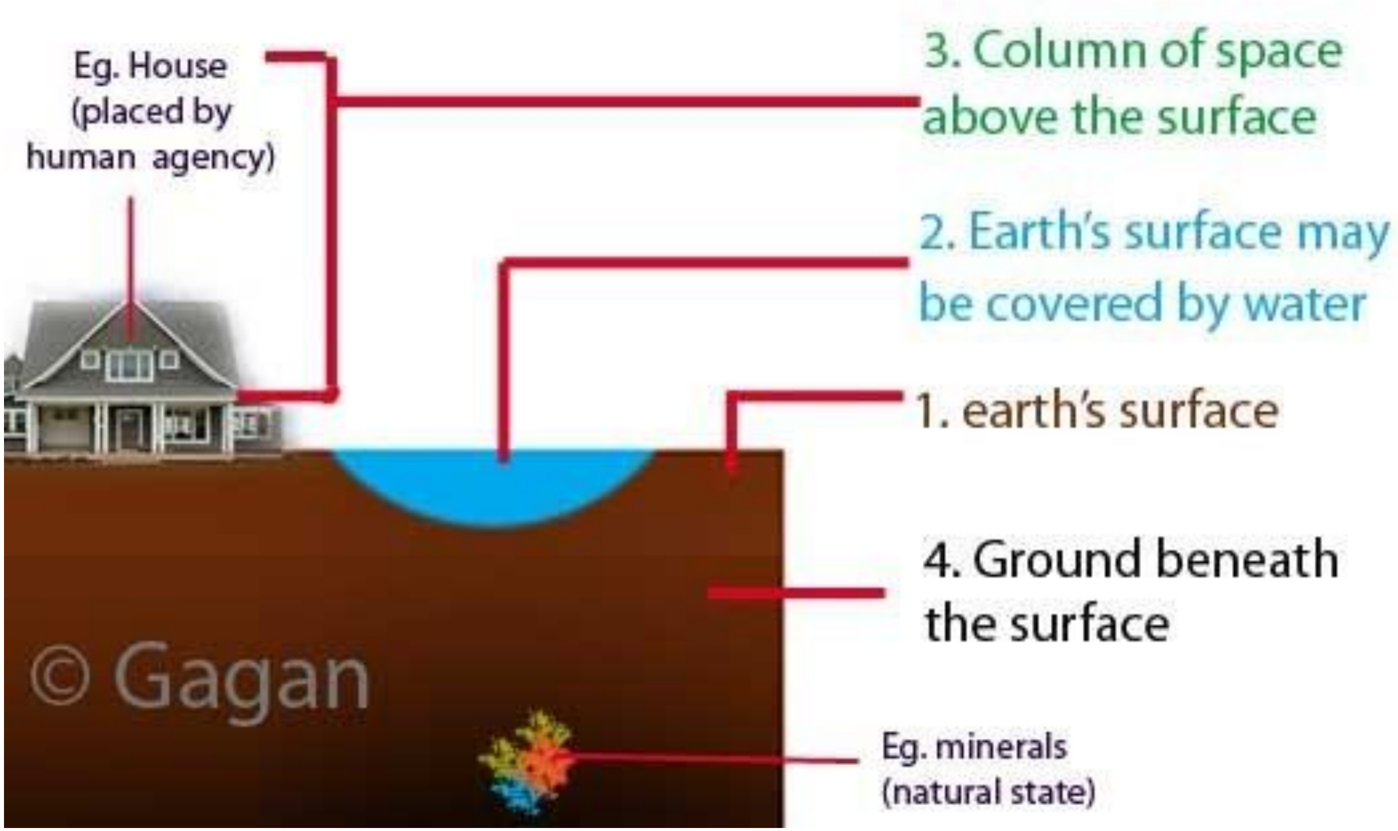
- **Immovable property** is property that cannot be moved from one place to another.
- It is generally connected to the ground or land on which it sits.
- However section 3(25) of the general clause act, 1897 defines the term “immovable property” as- immovable property shall include land, benefit to arise out of land, and things attached to land or permanently fastened to anything attached to the Earth.

Land include following elements-

- Determinate portion of Earth's surface.
- Column of space above surface.
- All objects either on or under the surface of land in their natural state. Ex. Minerals
- All objects placed by human with intention of permanent annexation.

Land includes

- 1. Earth's surface
- 2. Earth's surface covered by water
- 3. Column of space above the surface
- 4. Ground beneath the surface



Benefits arrising out of land

- All the benefits arising out of land are also considered as immovable property because such benefits cannot be served from the land and are incidents of it.
- Right to collect-lac , leaves etc. from trees, revenue from agricultural land, right to take out minerals, to collect fish ponds, debt secured by mortgage of immovable property, rent from tenanted property all are benefits arising out of land.

Things attached to the earth

- Section 3 of TPA says that ‘attached to the earth’ means-

a) Rooted in the earth, as in case of trees and shurbs.

b) Imbedded in the earth, as in case of wall or buildings

c) Attached to earth for permanent beneficial enjoyment.

Things included in immovable property

a) A right to ferry.
b) A right to way.
c) Right to collect rent of an immovable property.
d) A right to catch and carry away fish.
e) Hereditary offices i.e., office of a hereditary priest of a temple.
f) Right to collect dues from holding a fair on a piece of land.
g) Right to collect lac from trees.
h) Right of redemption of mortgaged property.
i) Reversion in property leased.
j) A factory
k) The interest of a mortgagee in immovable property.

Joint tenancy

- Joint Tenancy is shared ownership of a property between two or more persons, where each person owns an undivided interest in the whole property.
- This type of joint property ownership provides a right of survivorship; meaning that when the owner dies, the other owners get the deceased owner's interest.
- The entire share of the deceased owner automatically passes on to the surviving joint-tenants.

Tenancy in common

- Tenancy in common is an arrangement where two or more people share ownership rights in a property or parcel of land.
- When a tenant in common dies, the property passes to that tenant's estate.
- Each independent owner may control an equal or different percentage of the total property.
- the tenancy in common partner has the right to leave their share of the property to any beneficiary as a portion of their estate.

Land tenure

- Land tenure is rules invented by societies to regulate behaviour.
- Rules of tenure define how property rights to land are to be allocated within societies.
- They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints.
- In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.

Different types of tenures of land

- Private: the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization.
- Communal: a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.
- Open access: specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc, where there may be free access to the resources for all.
- State: property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralised level of government.

Leasehold and freehold

Leasehold	Freehold
Land belongs to the state, leased to owner for a certain number of years	Land belongs to the owner
At the end of the lease period, owners must pay to extend the lease	Ownership is indefinite
Requires state consent (obtained at the land office) to transfer ownership	Does not require state consent to transfer ownership (except in certain specially earmarked properties)
Most banks will not finance a property if the lease period is less than 30 years	Banks finance freehold properties easily

Rent

Renting means allowing, permitting or granting, wholly or partially an immovable property.
Only amount which is received in the nature of rent in respect of immovable property are covered under declared service and accordingly service tax is applicable on such amount.

Different types of rent

- Fair rent is the reasonable rent for a private property fixed and registered by a rent officer. Fair rent is fixed based on the size, condition, and usefulness of the property. In fixing fair rent, the scarcity of rented property is not taken into account and therefore fair rent is usually lower than the market rent.
- MUNICIPAL VALUE is the value determined by local authorities by making a periodical survey of all buildings in their jurisdiction. Such valuation helps in charging municipal tax.
- The standard rent is the rent, which would be permissible under the law to be charged to a tenant. The rent Act applies to premises let for residence, education, business, trades, storage, etc. Rent more than certain rent, even though the free market may support, is not allowed under the Act.

Rateable value

- Rateable value is an important determinant in taxation of any premises.
- The Annual Rateable Value (ARV) of any land or building assessable to property tax is the annual rent at which the land or building might reasonably be expected to be let-out from year to year.
- The rateable value may depend on: Size of the property Location Proximity of the property to certain landmarks, locality Condition of the premises, amenities provided.
- Generally, the rateable value cannot exceed the 'standard rent' as fixed under the Rent Control Act, if any. The standard rent acts as the upper limit. The basis of determining the rateable value may include actual rent received, hypothetical rent receivable, capital value of the property and so on.
- there cannot be two different rateable values for similar premises in the same building. This is also called the comparative method.