

# Validity and Legal Implications of Oral Transfer

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## ABSTRACT

This article provides a comprehensive analysis of the validity and legal implications of oral transfers under Section 9<sup>1</sup> of the Transfer of Property Act, 1882. It allows property transfers to be made orally, provided that the law does not expressly require a written instrument. The article explores the scope of this provision, focusing on movable property and certain types of immovable property, including transactions valued below Rs. 100 and transfers of future interests. It also delves into the practical challenges of oral transfers, particularly regarding evidentiary issues, the applicability of the Registration Act, 1908, and the Indian Evidence Act, of 1872<sup>2</sup>. Judicial interpretations and case law offer insight into the enforceability of oral transfers, emphasizing the significance of possession in validating such transactions. Despite the legal validity of oral transfers, the article highlights the risks of uncertainty, fraud, and difficulties in proving ownership, making oral transfers less common in modern property transactions.

**KEYWORDS:** Oral Transfer, Moveable Property, Trust, Contract, Easy sales and return

## INTRODUCTION

The transfer of property in India is governed by the Transfer of Property Act, 1882 (TPA), a crucial statute that regulates the process by which property can be transferred from one person to another. One of the intriguing provisions within this legislation is Section 9, which deals with the validity of oral transfers of property. Oral transfers, in certain circumstances, can be legally valid, despite the absence of a formal written agreement. This concept raises several legal and practical questions about its scope, enforceability, and implications. The objective of this article is to offer a detailed exploration of the validity and legal implications of oral transfers under Section 9 of the TPA, analyzing the language of the statute, its historical context, judicial interpretations, and its practical impact on property transactions in India. "A transfer of property may be made without writing in every case in which a writing is not expressly required by law."<sup>3</sup> The essence of this provision is that in cases where the law does not specifically mandate the execution of a written document, a transfer of property can be affected orally. This section essentially carves out an exception to the general requirement for written instruments in property transactions, as long as the applicable law does not explicitly require written formalities.

## SCOPE OF SECTION 9: TYPES OF PROPERTY TRANSFERS

To fully appreciate the significance of Section 9, it is important to understand the different types of property transfers that may or may not require writing under the TPA. Section 9 applies to certain kinds

<sup>1</sup> A transfer of property may be made without writing in every case in which a writing is not expressly required by law."

<sup>2</sup> Section 91, also known as the "Best Evidence Rule," states that no evidence can be provided to alter or contradict a written document; however, oral evidence may be admissible when no document exists

<sup>3</sup> <https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>

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of property transfers where a writing is not mandatory. These include:

**Movable Property:** Oral transfers are generally valid in the case of movable property. The Sale of Goods Act, 1930<sup>4</sup> governs the sale of movable property, and under that statute, there is no strict requirement for a written document in all cases.

**Immovable Property Below Rs. 100:** Section 54<sup>5</sup> of the TPA specifies that sales of immovable property worth less than Rs. 100 can be made either by a registered instrument or by delivery of possession. This suggests that for such transactions, an oral agreement accompanied by the transfer of possession could be valid.

**Transfer of Future Property:** For certain future interests in property, oral agreements might be valid, provided no statutory provision mandates a written instrument. But, other transfers, such as sales or mortgages of immovable property exceeding Rs. 100, leases, and gifts of immovable property, generally require written instruments duly registered under the Registration Act, 1908. Section 9 does not supersede these specific legal requirements.

## ORAL TRANSFERS IN PRACTICE

### 1. Transfers of Movable Property

Movable property (such as goods or chattels) is subject to different legal norms than immovable property. The transfer of movable property can often occur without a written instrument. The Sale of Goods Act, 1930, for instance, permits oral agreements for the sale of goods unless the contract exceeds a certain monetary threshold. However, oral transfers of movable property still pose practical difficulties, especially in proving the terms of the transfer and the intent of the parties. While oral contracts for movable property are valid, issues related to proof and evidence arise frequently in disputes.

### 2. Immovable Property Below Rs. 100

Section 54 of the Transfer of Property Act is significant here. It provides that immovable property worth less than Rs. 100 may be transferred either by a registered instrument or by delivery of possession. In cases of oral transfers, possession plays a crucial role in establishing the validity of the transaction. Courts have recognized oral transfers under Section 54 in instances where possession has been effectively handed over. Though, this aspect is less significant in modern practice, given the inflationary impact on property values and the rarity of immovable property transactions involving values below Rs. 100.

### 3. Transfers Involving Future Property Interests

While the TPA does allow for the transfer of certain future property interests, such transfers, when done orally, must still comply with general principles of contract law, including certainty of terms and consideration. The difficulty in proving oral transfers of future interests often limits their practical application. In such cases, courts require clear and convincing evidence that both parties had a mutual agreement regarding the future property rights.

## LEGAL IMPLICATIONS OF ORAL TRANSFERS

### 1. Evidentiary Issues in Oral Transfers

One of the most critical implications of oral transfers is the challenge of proving the existence and the terms of the transfer in court. The absence of a written document means that the transferor or transferee must rely on oral testimony or circumstantial evidence, which can be inherently uncertain. Courts tend to

<sup>4</sup> <https://www.indiacode.nic.in/bitstream/123456789/2390/1/193003.pdf>

<sup>5</sup> "Sales of immovable property of less than Rs. 100 can be made either by a registered instrument or by delivery of possession."

scrutinize oral transfers closely, and the burden of proof lies with the party asserting the transfer. Given that oral evidence is subject to credibility assessments and is easily disputed, the risk of litigation increases in cases of oral transfers. In disputes, courts often look for additional supporting evidence, such as witness testimony, possession of the property, or any acts of part-performance that indicate the intention of a transfer.

## 2. Applicability of the Registration Act, 1908

The Registration Act, 1908, plays a crucial role in determining whether a transfer of property must be executed in writing. Section 17 of the Registration Act mandates that certain documents relating to the transfer of immovable property, such as sales, leases, and gifts, must be registered. Failure to register such documents renders the transfer invalid for legal purposes, regardless of the intent of the parties. This implies that oral transfers of property that fall under the purview of the Registration Act (e.g., immovable property worth more than Rs. 100, leases over a certain duration) are not valid unless they are recorded in a registered document.

## 3. Applicability of the Bharatiya Sakshya Adhinyam, 2023

The Bharatiya Sakshya Adhinyam, 2023<sup>6</sup> governs the rules related to the admissibility of oral evidence in property disputes. Section 94 of the Bharatiya Sakshya Adhinyam, known as the Best Evidence Rule, states that when the terms of a contract, grant, or other disposition of property are reduced to writing, no evidence shall be given in proof of the terms of such contract, except the document<sup>7</sup> itself. This section restricts the use of oral evidence to prove written contracts. However, in the absence of a written instrument (as in cases of oral transfers), oral evidence can be admissible, though it is considered weaker compared to documentary evidence. Therefore, in oral transfers of property, litigants face the challenge of meeting the evidentiary standard required to convince the court of the validity of the transfer.

## 4. Validity of An Oral Agreement

An oral agreement is as equally valid, as a written one. The legality, of an oral agreement, cannot be questioned, if it falls under the ambit of the requirements stated in section 10<sup>8</sup> of the Indian Contract Act, 1872<sup>9</sup>. This was substantiated by the Delhi High Court, in the case of Nanak Builders and Investors Pvt. Ltd. vs. Vinod Kumar Alag<sup>10</sup>, whereby the Court held that even an oral agreement can be a valid and enforceable contract. Therefore, in the strict sense, it is not essential that a contract must be in writing, unless specified by law or the parties themselves contemplate the reduction of terms of agreement to writing.

The same was reiterated by the Supreme Court in the case of Alka Bose vs. Parmatma Devi & Ors<sup>11</sup>, whereby the Court held that even a sale agreement can be oral and have the same binding value and enforceability, as a written agreement. The agreement should be in tandem with the essentials listed in section 10 of the Indian Contract Act, 1872 and thus, will have the equal force of evidentiary value, as a written one.

<sup>6</sup> <https://wccb.gov.in/WriteReadData/UserFiles/file/Notification/BSA%202023.pdf>

<sup>7</sup> Page no- 45 of the The Bharatiya Sakshya Adhinyam, 2023

<sup>8</sup> All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

<sup>9</sup> <https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf>

<sup>10</sup> AIR 1991 Delhi 315

<sup>11</sup> CIVIL APPEAL NO(s). 6197 OF 2000

## PRACTICAL CONCERNS AND RISKS OF ORAL TRANSFERS

### 1. Lack of Legal Certainty

One of the significant risks associated with oral transfers is the lack of legal certainty. Unlike written agreements, oral contracts are vulnerable to disputes about the exact terms, intent, and scope of the transfer. This uncertainty often leads to litigation, with courts being required to interpret oral agreements based on circumstantial evidence and witness testimony.

### 2. Risk of Fraud and Misrepresentation

Oral transfers also pose a risk of fraud and misrepresentation. In the absence of a written document, one party may later deny the existence of the transfer or dispute the terms of the transaction. The lack of formal documentation makes it easier for dishonest parties to exploit the situation, particularly in property transactions where large sums of money and valuable assets are at stake.

### 3. Difficulties in Proving Ownership and Transfer

The absence of a written record also complicates the proof of ownership and the transfer of title. In property transactions, written documents such as sale deeds, lease agreements, or gift deeds serve as concrete evidence.

## COMPARISON BETWEEN ORAL AND WRITTEN CONTRACTS

### NATURE

The most crucial aspect of a written contract is its tangible nature, which facilitates ease of reading and correction in case of any discrepancies in execution. Oral contracts, on the other hand, are intangible in nature. For instance, in a group discussion between the parties, conclusions are reached without any written proof. This can be an obstacle in future deals if some terms are not clear.

Oral contracts are memory-based, so if there is a breach of any transaction, the resolution will also depend on the memory of the communicator and the medium used for communication, such as e-mail, voice mail, written notes, etc., or any other electronic form of communication to decide a dispute. This dependence on memory and varied communication mediums can contribute to disputes. In contrast with a written contract, a skilled professional can promptly clarify the issues for both parties related to a clause and rectify the problem. Once the entire process is completed, a final draft will be prepared, and both parties will express their consent by signing it. Once a contract is notarized and signed, neither party can repudiate it or claim it is false, as may be the case with an oral contract.”

### ENFORCEABILITY

The agreement is valid if it contains the essential elements of the contract, such as an offer, acceptance, consideration, competent parties and free consent. If any of these elements are missing from an oral or written agreement, it is deemed invalid in the eyes of the law. Therefore, it is easier to prove the terms of a written agreement. Conversely, proving the enforceability of an oral agreement is challenging, depending on the judge’s discretion, and it is also more challenging to prove as the terms rely on the parties’ memories. During a courtroom hearing, documentary evidence is preferred over verbal evidence, giving a written contract evidentiary value. An oral agreement is equally valid as a written one; the legality of an oral agreement cannot be questioned if it falls under the ambit of requirements stated in [Section 10 of the Indian Contract Act of 1872](#).

## LIMITATION

A verbal contract is easy to evaluate when there are few terms and conditions. However, as the number of clauses in the contract increases, it becomes challenging for the parties to remember every detail. In such circumstances, a written contract is preferable to a verbal contract.

In a written contract, if one of the parties breaches the agreed-upon terms, a reminder can be sent to prompt the other party to fulfil their obligations. In contrast with an oral contract, if a party breaches any condition of an agreement, then there may be a risk of fraud without any proof. For instance, Company A has a verbal contract with Wholesaler B, wherein Company A is to provide a stock of 10 million rupees with the condition of replenishing the stock if the retailer orders 70% of the stock from the wholesaler in a given month. The following month, the wholesaler placed an order for replenishment, but Company A refused, stating that 80% of the products were not sold in the previous month, as per the oral agreement. In this scenario, the wholesaler cannot easily prove that the 70% sales requirement for stock replenishment is due to the limitations of the oral agreement.

## CONCLUSION

In conclusion, Section 9 of the Transfer of Property Act, 1882, provides an important but limited exception to the general rule that property transfers must be made in writing. While oral transfers are valid under specific circumstances, such as for movable property and certain immovable property transactions under Rs. 100, their practical application remains fraught with challenges. Evidentiary issues, the risk of fraud, and legal uncertainty make oral transfers less desirable in modern legal practice. Judicial interpretations emphasize the need for clear proof, especially through possession, to establish the validity of oral agreements. Despite the legal standing of such transfers, written documentation continues to offer a more reliable and secure means of ensuring the enforceability and legitimacy of property transactions. As a result, while oral transfers remain valid in certain cases, their risks often outweigh their benefits, underscoring the importance of written agreements in property dealings.