

**ACTIONABLE CLAIM**

**UNDER TPA 1882**

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Actionable Claim in general terms signifies a claim or a debt for which you can take an action, which means there's a claim and you can approach the court for the enforcement of the same. Here it signifies a debt and the actionable claim holder can move to the court for the recovery of that debt.

*The debt here is an unsecured debt. Actionable claim resembles Chose in Actions of English Law. But the law in India regarding actionable claims is narrower than English Chose in Action.*

**Examples:**

1. A lends Rs. 1, 00,000/- to B without any security. The debt given by A is an actionable claim and in case of failure on the part of B to repay it, A can move to the court.



2. A lends Rs. 1, 00,000/- to B. B keeps his property X as a security, which is worth Rs. 10, 00,000/-. This debt is not an actionable claim. Also, there is no need on the part of A to approach the court for the recovery of the same as he already has a security that is worth more than the debt itself. It doesn't mean that A cannot approach the court. But this case will be covered under the mortgage.

**Section 3 of Transfer of Property Act, 1882:**

Section 3 of Transfer of Property Act, 1882 defines Actionable Claim.

According to Section 3, an actionable claim is a claim to:

1. any debt which is not secured by:

- Mortgage of immovable property, or
- Hypothecation, or pledge of movable property



Or

2. Any beneficial interest in movable property, which is not in possession of the claimant. The possession can be actual or constructive.

And the civil court recognizes these claims to be the affording ground for relief. The debt or beneficial interest can be:

1. Existent,
2. Accruing,
3. Conditional
4. contingent

In brief, it can be said that an actionable claim means a claim to an unsecured debt or any interest in movable property which is not in the possession of the claimant.



2. X promised Y to buy a product P from him. But later on, he refused to do the same and as a result, Y had to sell P at the loss of Rs. 500. Now Y can claim the damages from X but this claim is not an actionable claim.
3. A agrees to sell to B, a product P in the future. Here B gains a beneficial interest and hence is an actionable claim.
4. The rent due on the part of the tenants is an actionable claim.
5. 10,000 was given by A to B as earnest money for B's house. Later on, B refuses to sell the house to A. The 10,000 rupees given as earnest money is an actionable claim.
6. Life insurance.



**Debt:**

Debt is a certain amount of money given by one person to another and the debtor is under an obligation to pay the money back. When the debt is already due, it is called existing debt and when it is due at present but is to be paid in the future, it is called accruing debt.

When there exists a claim to a certain sum of money but is payable subject to a certain condition, it is called conditional debt. Similarly, when there exists a claim to a certain sum of money but becomes payable on happening of some event/contingency, it is known as contingent debt.

*A secured debt is one where some security is provided or given for its repayment. When a debt is taken merely on the basis of a promise to pay back, it is an unsecured debt.*



An actionable claim is transferrable. Transfer of Actionable claim is dealt with under Chapter VIII of Transfer of Property Act, 1882. Chapter VIII is the last chapter of TPA and it covers from Section 130 to Section 137.

Section 130 describes the mode of transfer of Actionable Claim. According to it:

1. The transfer can be done only by:
2. An instrument in writing,
3. Signed by the transferor or his duly assigned agent.
4. The transfer can be with or without consideration.
5. The transfer will be complete and effective when executed.
6. The transfer vests all the rights and remedies of the transferor in the transferee.



The section further provides that

- The notice of the transfer to the debtor is not necessary. The payment made by the debtor to the principle creditor would be valid.
- The transferee of the actionable claim has the right to sue on the claim so transferred in his own name. For suing or for claiming the debt, the consent of the transferor would not be needed.

Example: A lends money to B. A transfers the debt to X. The notice of the transfer is provided to B. X demands money from B. B doesn't pay the debt. X can sue B claiming the payment of the debt without obtaining consent from A.

**Exceptions to the Section are:**

1. Negotiable instruments, stocks, shares, debentures<sup>[1]</sup>
2. The marine policy of insurance
3. Fire insurance policy
4. Cases falling under Section 38 of Insurance Act, 1938.





**A burden of a contract cannot be assigned:**

A benefit of a contract can be assigned but the burden cannot be assigned. It is based on the fact that the promissory cannot shift the burden without novation. When a contract is broken, mere a right to sue for damage is left and that cannot be transferred. In order for an assignment to be effective, it is important that all the interests of the assigner under the contract must be transferred and conveyed to the assignee.

Example of valid assignment: endorsement on an instrument that represents the debt.

**Notice of the transfer to the debtor is not necessary**



It means that the transfer of an actionable claim will be valid irrespective of the fact whether the debtor had the knowledge of it or not. But if the notice has not been given to the debtor, then he is not bound by the transfer. Hence, the payment made by him to the principle creditor would be valid.

Hence, in order to bind the debtor with the transfer, the notice must be provided to him. Section 131 of TPA further provides that mere providing the debtor with the notice is not enough, the notice should be expressed one. The notice must be :

1. In writing,
2. Signed by
3. the transferor or his duly authorized agent on his behalf,



or

2. Where the transferor refuses to sign, the transferee or his agent
3. Shall specify the name and address of the transferee.

Example: A lends money to B. A transfers the debt to X. X demands money from B. B refuses to pay X and instead he pays A. The payment is valid and B cannot be sued for refusing to pay X.

#### **No registration is necessary**

For the transfer of actionable claim, it is not necessary to register the instrument or the transfer.

#### **Lottery Tickets**

The question as to whether lottery tickets are goods properly so-called or are actionable claims arose in:

- **H. Anraj v. Govt. Of Tamil Nadu**[2]



A lottery ticket is a good properly so-called and the transfer of lottery tickets was a sale.

- In **Sunrise Associates v. Govt. of NCT of Delhi** on 28<sup>th</sup> April 2006, SC[3],

Supreme Court held: The right to participate in a draw is a beneficial interest in movable property. The object of the participation would be to win the prize. Transfer of right is thus a beneficial interest in movable property not in possession. Hence, a lottery is an actionable claim.

#### **Liability of the transferee:**

The word liabilities suggest that the assignee cannot get a better title than the assigner. Section 132 of TPA provides the liabilities of the transferee of actionable claims. It provides that the transferee takes all the liabilities and equities which the transferor was subjected to at the date of the transfer in the same respect.



The word 'equities' brings the transfer into lines with Section 49 of the Code of Civil Procedure, 1908. A right to set-off is an example of equity. Here, a debtor when sued by the assignee of his creditor is entitled to set off the debt due to him by the assignor independent of the debt assigned.

Example: B owes rs1000 to A. A owes Rs. 500 to B. A transfers the debt due to him by B to C. C sues B for the recovery of debt. B here is entitled to set off irrespective of the fact whether C was aware of it or not. C would get Rs. 500.

#### **Restriction on being an assignee**

Section 136 of TPA provides a list of persons who are unable / barred to take actionable claims by assignment. The persons include:

1. Judge,
2. Legal practitioner, and
3. The officer concerned with any court of justice.



The section prohibits these persons from:

1. Buying or trafficking in,
2. Stipulating for, or
3. Agreeing to receive,

Any share or interest in any actionable claim.

*The term legal practitioner includes: according to Section 3 of Legal Practitioners Act, an advocate, vakil or an attorney of High Court, pleader, a mukhtar or revenue agent.*

The section follows the principle of Natural Justice: Rule Against Bias. It is based upon the fact that the judgment should not be considered as influenced by any personal consideration.

