

# Doctrine of Election

The Doctrine of Election, codified under Section 35 of the Transfer of Property Act, presents a legal scenario where a person must choose between two conflicting rights or benefits derived from the same instrument. This doctrine upholds fairness in legal dealings by preventing an individual from selectively accepting favourable terms while rejecting associated obligations.

## Principles

- ❖ **Exclusive Choice:** An individual must decide between two rights where one is conferred in substitution for the other. The essence of this doctrine is to compel a choice that inherently excludes the simultaneous holding of contradictory rights granted by the same instrument.
- ❖ **Equitable Foundations:** Rooted in equity, the doctrine prohibits a beneficiary from cherry-picking elements within a legal instrument. The fundamental principle here is fairness; it is inequitable for someone to accept benefits while disregarding the corresponding responsibilities or burdens that the instrument also imposes.

## Legal Requirements

- ❖ **Conflicting Benefits:** The doctrine applies when a property transfer under a legal instrument involves rights that conflict with each other. The recipient is compelled to choose one, thereby excluding the other.
- ❖ **Interconnectedness:** The benefit and the transfer must be part of the same transaction and inseparably linked. This connection ensures that the choice between the benefits is meaningful and adheres to the instrument's intentions.

## Consequences of Election

If a benefit is accepted under the doctrine, the recipient must adhere to all the provisions of the instrument. This includes any duties or relinquishments specified within the instrument.

Conversely, rejecting the transfer or benefit requires the individual to forsake the associated benefit. This may also involve compensation to the disappointed party, effectively balancing the equities and preserving fairness among the parties involved.

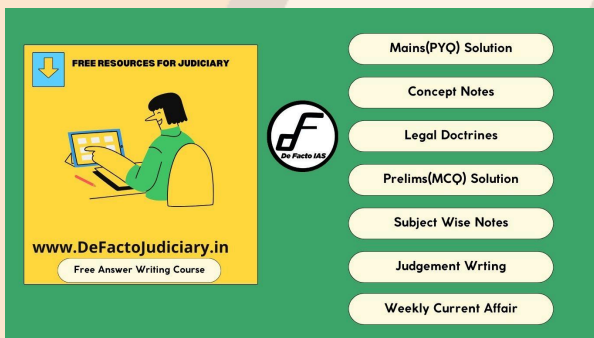
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### Mode of Election

- ❖ Election can be clearly stated or implied by one's actions. For instance, overtly accepting benefits under the instrument can imply consent to all its terms.
  
- ❖ Presumed Acceptance: Two specific conditions lead to presumed acceptance:
  - Duration of Enjoyment: If the individual enjoys the benefits for two years without any objection, it is presumed that they have accepted the terms.
  - Irreversible Actions: Performing acts that make it impossible to return to the original conditions also indicates acceptance.



### Time Limit for Election

The individual must make their election within one year from the date of the transfer. Failing to declare a choice within this time frame, and upon subsequent request, may lead to a presumption of acceptance if not acted upon within a reasonable period post-request.