

**Actionable claim means a debt or a claim on which action can be started in a Court of law for comfort or relief.**

The civil Courts recognized as giving the grounds for relief whether such claims are conditional, accruing and other. In general terms, an actionable claim is a debt or claim for which the person can take an action and also approach the Court for recovery his debt or claim.

Tangible or touchable movables such as chairs or bikes and many have physical existence and can be possessed. Some movable property is an actionable claim. It is also a claim for unsecured debt and any beneficial interest in the moveable property and the property is not in any kind of possession.

Like example- X is a person who needs a loan or money from Y. Then X takes loan 50,000/- from Y. And Y does not take any security. It means X takes loan 50,000/- from Y without any security. So the debt or claim given by Y is an actionable claim. And if the X failure on his part or not repay the money then Y can approach the Court.

**Definition**

As per section 3 of **transfer of property Act 1882**, “Actionable claim” means a **claim to any debt, other than**

- a **debt secured by mortgage** of immovable property or
- by **hypothecation or**
- by **pledge** of moveable property, or
- to **any beneficial interest in moveable property not in the possession,**
- either actual or constructive, of the claimant,
- which the **Civil Courts recognise as affording grounds for relief,**
- whether such debt or beneficial interest **be existent, accruing, conditional or contingent.**

Actionable claim means a claim for any debt which is related to any benefit arising out from any movable property which is not in possession and for which relief can be claimed in civil court.

Further It means that for which action is necessary to take the claim of it and if any action for its realisation being not taken then it can't be said as actionable claim.

√ It means that Claim of secured debt is not actionable claim.

√ “Beneficial interest in moveable property” is a right or expectancy in movable property

**Some examples of actionable claim, these following claims are the actionable claim-:**

1. Claim for arrear rent.
2. Claim for rent to fall due in future.
3. A choice offered to repurchase the property once again.
4. Book debts or claims
5. The right to claims maintenance.
6. Claim the benefit of the contract.
7. Deposit receipt.

**The following claims are not the actionable claim-:**

1. A claim which is decreed.
2. “Right to sue”, it is a right but it is not an actionable claim.
3. The claim for the mesne profits.

In the case of the *Jugalkishore Saraf Vs Raw Cotton Co. Ltd*, the Supreme Court held that a judgment debt or decree is not an actionable claim for action is necessary.

In the leading case *Lachmi Koeri Vs the State of Bihar*, the Court has been pointed out the transfer of arrears of rent is a type of a transfer of actionable claim. And the transfer of arrears of rent could be

transferred in accordance with the provisions of the Transfer of Property Act.

In the case of *Rekhath Koeri*, where the Court said that the transfer of arrears of rent is really a transfer of actionable claim and it could be transferred in accordance with the rules and regulations of Transfer of Property Act.

### **Important Provisions Dealing With Actionable Claim Under Transfer Of Property Act**

Under **Section 130 of the Transfer of Property Act**, the mode of transfer of actionable claim is described. According to Section 130,

- The transfer can be done by only a written instrument;
- And signed by the transferor or his legal agent; and
- The transfer will be complete.

**Exceptions of the Sec 130-Sec 130 does not apply on the transfer of marine and insurance of fire policy.**

In the case of *Simon Thomas vs. State Bank of Travancore*, in this case, there should be an intention to transfer the debt represented by the written receipts.

Under **Section 132 of the Transfer of Property Act**, defines the liability of the transferee of actionable claim. The liabilities and equities of the transferor are transferred to the transferee.

**Section 133** of the Transfer of Property Act described the warranty of solvency of the debtor. In this section when a claim is transferred the transferee may run the chance or risk of losing the debt, in this case, the debtor is insolvent. So as a precautionary measure, the transferee should be assured that the debtor is solvent.

**Section 134** of the Transfer of Property Act is deals with the mortgaged debt.

**section 135** of the Transfer of Property Act deals with the assignment of rights under the policy of insurance against fire.

**Section 136** deals with the incapacity of officers connected with the Court of justice. The person who includes in section 136 are:-

- Legal practitioner;
- Judges of the Court; and
- The legal or officer who concerned with the justice of the Court.

And the last **Section 137** describes the saving of negotiable instruments and etc.

In the case, State of Kerala and Ors. Vs. Mini Shamsudin and Ors., the Court said that actionable claims are 'goods' and movable property but it is not for the purpose of the sales tax acts.