

Course Name – LL.B 4th sem
Subject – Transfer of Property
Act
Teacher – Mrs. Aakanksha
Cncept - Gift

**“Gift is the gratuitous transfer of property from one person to another”:
Discuss the concept of gift under the Transfer of Property Act.**

Introduction:

A gift is generally considered as the exchange or transfer of ownership of any property from one person to another where the sender willingly transfers his/her property to the receiver without any compensation i.e., without considering any monetary value. A gift is often called a form of reward. It may be given by sender to receiver during any events like Weeding Ceremony, Birthday Party etc. A gift may be in the form of moveable property or immovable property. When the sender will have intention to deliver any gift to the receiver of that gift and when the receiver will accept that gift without any consideration from sender by law then this gift should be recognized as a legal gift by law. A gift may become revoked and void by law when the essential elements of a gift are not implemented properly.

Analysis of Definition of a Gift by Law:

The term “Gift” is considered as the transfer of property in the eye of law. Without proper giving and taking process between donor and donee, the legal aspects of a gift will be collapsed.

According to Section 122 of Transfer of Property Act, 1882 - “*A Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor or grantor or sender, to another, called the donee, and accepted by or on behalf of the donee or guarantee or receiver.*” Any gift may be void and suspended if the rules and regulations of giving and taking a gift are not observed properly. For Example: If the receiver or donee of any gift dies before accepting it although the sender or donor have done proper intention and delivery to give that gift to the donee then that gift may be void by law because of lack of acceptance of the donee.

But, the term “Gift” is defined differently in Mohammedan Law (Muslim Law in India) from Transfer of Property Act, 1882.

According to Mohammedan Law (Muslim Law in India), “A gift is a transfer of property or right by one person to another in accordance with the provisions given in the Mohammedan law and includes- a) A Hiba, an immediate and unconditional transfer of the ownership of some property or of some right, without any consideration or with some return (ewaz); and b) An ariat, the grant

of some limited interest in respect of the use or usufruct of some property or right.”[1]

If any property or right is made as a gift without consideration with the object of acquiring religious merit, then it is called “Sadaqah” by Mohammedan Law.[2] For Example : Mr. M has gifted 5 acres of land to I Foundation for establishing a Mosque and Madrasa Complex.

In Mohammedan Law, The terms “Hiba” and “Gift” are often indiscriminately used but the term “Hiba” is only a kind of transaction which are covered by the general term “gift” which is a transfer without consideration. [3] *“A gift given by any Muslim in favor of his co-religionist must be under the Mohammedan Law. A gift is not a contract or an agreement (though in original Muslim law it is called a contract) but the principle may be applicable even to gift.”*

A gift should be legally approved by Mohammedan Law when the donor of the gift has intention to give gift to the donee with proper delivery and when the donee will accept it.

Types of Gifts:

Gift has various types. These are:

i. Lifetime Gifts:

When the donor has intention to deliver any gift to the donee during lifetime period of the donor then that gift shall be considered as Lifetime Gifts. Lifetime Gifts are mainly given to the donee by the donor on the basis of some occasions like Birthday Party, Wedding Ceremony etc.

Example: Mr. V wants to give a Nokia Smartphone to his son Master Q during 21st birthday celebration of Master Q as a lifetime gift.

ii. Deathbed Gifts:

Deathbed gifts are future gifts which shall be expected to deliver to the donee after the death of the donor on the basis of intention made by the donor. These gifts are also considered as donations made by donor to the donee. So, any deathbed gift shall not be effective until the death of the donor. **Example:** Mr. V wants to donate Tk.1 crore after his death to Q Orphanage Trust as a deathbed gift.

iii. Onerous Gift:

Any gift which is made with a burden or obligation imposed on the donee by the donor on any immovable property is called onerous gift. This gift is also called the exchange of debt of an object from the donor to the donee. This gift is generally illegal but if the donee has no obligation to carry the burden of the gifted object then that gift may become valid on the basis of Section 127 of Transfer of Property Act, 1882 **Example:** Mr. Q wants to give his one of the building of Gulshan as a gift to Mr. E which has been mortgaged to N bank for Tk.2 Crore. If Mr. E wants to take burden of the mortgaged loan of that house by acceptance then this gift may be valid or otherwise it is illegal.

Essential elements or Conditions of a gift:

Some essential elements or conditions are required to make a gift legally approved. These are:

1. Absence of Consideration:

A gift should be legally approved when the donor or guarantor gives the gift to the donee or guarantee without any consideration i.e., without taking any compensation or monetary value.[4] **Example:** Mr. X wants to gift his private car to his employee Mr. Y for his good job performance without taking any cash or monetary value for that car.

2. Parties of a Gift:

According to law, there should be two legal parties for giving and taking a gift.[5] These are:

i) Donor or Guarantor:

The person who is involving in giving a gift is known as donor or guarantor.[6] **Example:** Mr. X has given a Nokia N8 Smartphone as a gift to Mr. M at his birthday. Here, Mr. X is the donor of the gift of Nokia N8 Smartphone.

ii) Donee or Guarantee:

The person who is involving in taking a gift from donor is known as donee or guarantee.[7] **Example:** Mr. X has given a Nokia N8 Smartphone as a gift to Mr. M at his birthday. Here, Mr. M is the donee of the gift of Nokia N8 Smartphone.

3. Subject matter of the gift:

The object which is to be given as a gift to the donee by the donor is considered as the subject matter of the gift.[8] The subject matter of the gift must be in form of moveable property or immovable property.[9] A future property shall not be considered as the subject matter of the gift.[10]

i) Moveable Property as a Gift:

Moveable property is a kind of object which can be moved from one place to another. It can also be called personal property or private property.[11] Any donor can legally gift his/her personal moveable property to the donee.[12] It may be tangible in nature such as Mobile Phone, Private Car etc or intangible in nature such as Share, Bond etc. [13]

ii) Immoveable Property as a Gift:

Immoveable property is a kind of object which can't be moved or transferred from one place to another.[14] For Example: Land, Building etc real estate based object. Any donor can legally gift immovable property to the donee by a written deed or agreement without taking any compensation. [15]

4. Intention or Declaration of the donor:

When the donor of any gift will have the intention or declaration to give any moveable or immovable property as a gift to the donee then that gift will be legally approved. If the donor wants to give a gift in future to the donee, then he/she have to make a promise to the donee by making a legal contract or agreement.[16] For Example: Mr. B has an intention to give a HP Laptop to his son Master C (currently 16 years old) during 18th birthday celebration of Master C. Thus, Mr.B can't give HP Laptop as a gift to his son until his son's 18th birthday appears.

5. Proper delivery or Transferability of the gift:

A gift should be legally valid when the donor of any gift shall deliver or transfer the gift according to his/her intention to the donee within the promised time. For Example: Mr. B who has an intention to give a HP Laptop to his son Master C (currently 16 years old) during n birthday celebration of Master C should be legally valid when that laptop will be delivered or transferred to his son on 18th birthday of his son.

6. Acceptance of the gift by the donee:

When the donee of any gift will accept the gift from intention and delivery made by the donor on the promised time then that gift should be legally valid. Otherwise, that gift should be legally invalid.[17] For Example: Mr. B who has an intention to give a HP Laptop to his son Master C (currently 16 years old) during 18th birthday celebration of Master C should be legally valid when his son will accept that laptop from his father on his 18th Birthday through proper delivery or transfer of the HP Laptop.

7. Taxability of the gift:

The tax which is to be paid by donor of any monetary value of a gift during purchase of that gift except for donation and religious purpose is called Gift tax. A gift may not become valid after performing proper delivery and acceptance between donor and donee because of absence of tax on a gift.[18] According to Gift Tax Act, 1990 of Bangladesh, any gift shall be taxed by the donor of the gift at highest rate of 20% except some situations like any gift of immovable property of outside of Bangladesh, any gift valued within Tk.20,0000, any gift of government securities like Government Bond, any gift to religious and charity based institutions, any deathbed gift etc. So, some taxes on gift are exempted by Gift Law of Bangladesh which are placed in foreign countries or which are intended for donations or welfare of religion and nation.

Reasons of Revoking or Suspending or Voiding a Gift by Law:

A donee or donor can revoke or suspend any future gift but a gift which is already delivered and accepted can't be revoked or suspended or void. [19] According to Section 126 of the Transfer of Property Act, 1882,-Any gift may become revoked or suspended or void for following reasons:

Ø If donee want to get a gift like Laptop from donor on a specific event like Birthday but the donor has not have intention to give any Laptop on birthday of the done but has been forced to give that gift then that gift shall become legally revoked or suspended or void.[20]

Ø If the donee does not want to get any gift from the donor but has been forced to get that gift by the donor then that that gift shall become legally revoked or suspended or void.[21]

Ø If the subject matter of the gift is illegal and full of debts then that gift shall become legally revoked or suspended or void.

Ø If both donor and donee have intention to suspend any gift then that gift shall become legally revoked or suspended or void

Ø If any gift is presented to the donee with misrepresentation and fraud information made by the donor then that gift shall be legally revoked or void or suspended.

Ø If any gift contains compensation or consideration made by donor or donee then that gift shall be legally revoked or void or suspended.

Ø If the donor of any gift dies before delivery then that gift shall be legally revoked or void or suspended.

Ø If the donor or the donee of any gift is minor or disqualified person then that gift shall be legally revoked or void or suspended.

Thus, any gift may become legally void or suspended or revoked.

Reasons for Non-Revoking of a Gift:

According to Mohammedan Law (Muslim Law in India), any gift can't be revoked for following reasons:

Ø If any gift is prepared by any Husband for his Wife or any Wife for her Husband then that gift can't be legally revoked.

Ø If any gift is intended for religious purpose, then that gift can't be revoked.

Ø If the subject matter of the gift is damaged or destroyed then that gift can't be revoked.

Ø If the donee dies before acceptance then that gift can't be revoked.

Ø If any immovable property has been willed by donor for donee then that gift can't be revoked.[\[22\]](#)

Ø If the donee of the gift receives monetary value or other object in exchange of the original gift then that gift can't be revoked.[\[23\]](#) For Example: Mr. H wants to gift a Private Car to Mr.U. But, Mr. H does not know what mobile car brand

would attract Mr.U as a gift. So, if Mr. H wants to give money of Tk.25, 00,000 in exchange of a private car then this gift exchange process can't revoke the gift contract. Rao, K. K. (n.d.). Thus, any gift can't be revoked by Mohammedan Law.

Conclusion & Recommendations:

At last we can conclude that, Any gift is the transfer of any object which can be moveable property or immovable property. To make a gift valid it is essential to maintain rules and regulations which are absence of consideration, Presence of Donor & Donee, Subject matter of the gift in the form of moveable properly or immovable property, Intention of the Donor, Delivery of the gift, Acceptance of the gift by donor, Paying taxes on gifts by donor except gift situated in abroad and charity & religious related gifts etc. A gift may become revoked due to lack of lack of donor's will & donee's acceptance, death of the donee, disqualification of the donor or done, illegal subject matter, misrepresentation of subject matter etc except of having intention for exchanging gift, giving gift to close relatives, giving gfts for religious purpose etc.[24] If anyone maintain all rules and regulations regarding contents and suspension of a gift, then all legal aspects of giving and taking any gift should be implemented.