

# GIFT

## 1. INTRODUCTION

The Transfer of certain existing moveable or immovable property is called gift if it is made voluntarily without consideration by one person to another person. A gift can also be revoked.

## 2. RELEVANT PROVISIONS

Section 122 to 128 of the Transfer of Property Act 1882.

## 3. MEANING OF GIFT

According to Black law Dictionary

The act of voluntarily transferring property without compensation (consideration).

## 4. DEFINITION OF GIFT: SECTION 122

Gift is transfer of certain existing moveable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee, and accepted by or on behalf of the donee.

- **Acceptance when to be made:**

Such acceptance must be made during the life time of the donor and while he is still capable of giving. If the donee dies before acceptance the gift is void.

## 5. OBJECT OF WILL

The object of will is to distribute the balance of the estate in accordance with the known or presumed intention of the deceased.

## 6. ESSENTIALS OF A VALID GIFT

Essentials of a valid gift are as under:

*Owner of property  
offer — Acceptance  
Transfer of ownership*

### (I) Parties

There are two parties in gift one is called Donor and other is called Donee.

### (II) Subject Matter

The subject matter of the gift may be moveable or immovable property. But subject matter of thing must be in existence. The subject matter may be immovable property or goods or an actionable claim.

### (iii) Existing Property

Such property must exist at the time of gift.

### (IV) Without Consideration

Property is made without consideration.

### (V) Made Voluntarily

The transfer by gift should be made voluntarily.

### (VI) Acceptance

There must be acceptance of gift. Acceptance must be made during the life time of donor.

## 7. TRANSFER HOW EFFECT: SECTION 123

### (I) In case of Immoveable Property

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

### (II) In Case of Moveable

For the purpose of making a gift of immovable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered.

## 8. GIFT OF EXISTING AND FUTURE PROPERTY: SECTION 124

A gift comprising both existing and future property is void as to the letter.

**9. GIFT OF SEVERAL OF WHOM ONE DOES NOT ACCEPT: SECTION 125**

A gift of a thing to two or more donee, of whom one does not accept it is void as to the interest which he would have taken had he accepted.

**10. WHEN GIFT MAY BE SUSPENDED OR REVOKED: SECTION 126**

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part as the case may be.

A gift may also be revoked in nay of the cases in which if it were a contract it might be rescinded.

Save as aforesaid, a gift can not be revoked.

Nothing contained in the section shall be deemed to affect the right of transferees for consideration without notice.

**ILLUSTRATION:**

- (i) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.
- (ii) A gives lakh of rupees to B, reserving to himself with B's assent, the right to take back at pleasure Rs. 10000 out of the lakh. The gift holds good as to Rs. 90000 but is void as to the 10000 which continue to belong to A.

**11. ONEROUS GIFT: SECTION 127**

Where a gift is in the form of as a single transfer to the same person of several things of which one is and the other are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

**(I) ONEROUS GIFT TO DISQUALIFIED PERSONS:**

A donee not competent to contract and accepting property burdened by an obligation is not bound by his

acceptance. But if after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

#### **ILLUSTRATIONS:**

- (a) A has shares in X, a prosperous joint stock company and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. he can not take the shares in X.
- (b) A having a lease for a term of years of house at a rent which he and his representative are bound to pay during the term and which is more than the house can be left for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

#### **12. UNIVERSAL DONEE: SECTION 128**

Subject to the provisions of section 127 where a gift consists of the donor's whole property the donee is personally liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

#### **13. CIRCUMSTANCES WHEN REGISTRATION REQUIRED:**

The registration of the property is required when the value of the gift is Rs. 100 or upward.

#### **14. CIRCUMSTANCES WHEN REGISTRATION NOT REQUIRED:**

The registration of the property is not required when the value of the gift is less than Rs. 100

#### **15. CONCEPT OF GIFT UNDER MUSLIM LAW**

Under Muslim Law, Gift has following three essentials:

- (i) Declaration of gift by donor.
- (ii) Acceptance by donee.
- (iii) Delivery of possession.

**Case Law:** AIR 1932 All 144

There must be actual acceptance of a gift, in fact, though it need not be express.

16. **DISTINGUISH BETWEEN GIFT UNDER MUSLIM LAW AND TRANSFER OF PROPERTY ACT**

UNDER MUSLIM LAW	UNDER TRANSFER OF PROPERTY ACT
<b>(i) Procedure of Moveable and Immoveable Property:</b>	
There is same procedure for moveable property and immoveable property.	There is different procedure for moveable property and immoveable property.
<b>(ii) Delivery:</b>	
Delivery must be made.	Delivery is not necessary
<b>(iii) Mode:</b>	
Written instrument is not necessary.	Written instrument for immoveable property is necessary.
<b>(iv) Oral Gift Delivery:</b>	
Oral gift can be made.	No oral gift can be made.
<b>(v) Gift of Future Property:</b>	
Gift of future property can be made.	Gift of future property can not be made.

17. **CONCLUSION**

To conclude that gift is an unconditional transfer of property, made immediately and without any exchange or consideration by one person to another person and accepted by or on behalf of the latter. The gift under Islamic Law and the gift under transfer of property are different in many ways.