



FACULTY OF JURIDICAL SCIENCES

COURSE: BALLB &BBALLB

SUBJECT: Law of Property

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Lecture-31



Gift

Introduction:

Gift under Transfer of Property Act deals with section 122 to section 129. " Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called Donor, to another, called the Donee and accepted by and behalf of the Donee.

Every transfer of property will take effect only when it is considered by both the parties. However, gift is an exception to section 25 of Indian Contract Act, 1872. Where a contract or an agreement without consideration is void to which gift is an exception. Gift is transfer of both existing movable and immovable property with the transfer of ownership without consideration. A gift can only be made in favour of an ascertainable person means it cannot be in favour of an idol or public. Under the transfer of property act it is essential that gift must be accepted by the donee though it could not be necessary to be expressly accepted.

The definition of "Gift" is defined under section 122 of Transfer of Property act which states that "***Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called donor, to another, called the donee and accepted by and behalf of the donee***".

An acceptance of a gift is to be made only when a donor is still capable of giving or during the lifetime of the donor.

The essentials of gift:

- I. **There must be two persons:** to make a gift there must be two persons i.e. donor and the donee. The donor must be of sound mind, competent to make a gift, must have attained the age of majority, and should not be disqualified by law.
- II. **Gift should be made voluntarily:** Gift should be made out of free wish and will and it should not be under any undue influence, coercion etc.
- III. **Transfer of ownership:** When a gift is to be made, the property transfers with the transfer of ownership with all the rights and liabilities.
- IV. **Gift must be existing and transferable:** Gift cannot be made of uncertain property or of future property. The property must be existed and must be transferable.
- V. **Donor and Donee must be living:** A gift is an intervivos i.e. between two living persons. It is necessary that donor and donee must be living at the time of transfer and acceptance. If the Donee dies before the acceptance then the gift become void.

Void gifts:

Void gifts means a gift which is not enforceable by the law due to the incompetence of a person or both the persons i.e. donor or donee.

Void gifts can be:

1. Donee died before the acceptance of a gift.
2. When a gift is made for unlawful purpose.
3. When a condition which is impose is forbidden by law or unlawful
4. When a person is incompetent to make a gift i.e. minor or lunatic

Mode of making a gift (section 123):

According to section 123, Transfer of immovable property through gift will be effective only by a registered instrument which is signed by or on behalf of the donor, and it

should be attested by at least two witnesses. But, if the instrument is not registered then the title of the immovable property to the donee cannot pass.

However, transfer of movable property will be effective either by the registered instrument which is signed by or on behalf of the donor and attested by at least two of the witnesses or merely delivery of possession is sufficient. And such delivery will take place in the same way as the goods sold may be delivered.

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1. Which of the following gifts is valid?

- (a) A gives Rs. 8,000 to B on condition that he shall murder C
- (b) A makes a gift of his field to B with a proviso that if B becomes insolvent, B interest in the field shall cease
- (c) A makes a gift of his field to B with a condition that if B does not within a year set fire to C house, his interest shall cease
- (d) A makes a gift of a house to B on the condition that the gift will be forfeited if B does not reside in it)

2. What is not required in gift?

- (a) Donor and Donee
- (b) Consideration
- (c) Moveable or immovable property
- (d) Transfer and acceptance

3. Assertain (A): Legal incidents of a gift include absolute enjoyment of the gift.

Reason (R): Donee cannot be restrained in his enjoyment of gift by any condition.

- (a) Both A and R are true and R is the correct explanation of A .
- (b). Both A and R are true but R is not correct explanation of A
- (c) A is true but R is false
- (d) A is false but R is true

4. In case of a gift if the donee dies before acceptance, the gift is:

- (a) valid
- (b) void
- (c) revocable
- (d) irrevocable

4. Under transfer of Property Act gift of future property is:

- (a) Valid
- (b) Voidable

(s) Void

(d) Irregular

5. A gift of immovable property can be given

- (a) By delivery of immovable property
- (b) written instrument
- (c) By delivery and registration of document
- (d) None of the above