



FACULTY OF JURIDICAL SCIENCES

COURSE NAME : LLB

SEMESTER : IIIrd

SUBJECT : FAMILY LAW II

SUBJECT CODE: LLB -304

LECTURE :30

FACULTY NAME: Mr JP Srivastava

Who can make a valid gift? Essential requirements of a valid gift, Subject matter of gift.

A Muslim can devolve his property in various ways. Muslim law permits the transfer of property inter vivos (gift) or through testamentary dispositions (will). A disposition inter vivos is unrestricted as to quantum and a Muslim is allowed to give away his entire property during his lifetime by gift, but only one-third of the total property can be bequeathed by will. Conventionally, a gift, being a transfer of property is governed by the Transfer of Property Act, 1882.

But Chapter VII of the Transfer of Property Act, 1882 regulating the gifts does not apply to the 'Muslim Gifts' or the 'Hiba'. Although there is no such difference between a gift made by a non-muslim or a Muslim yet, the formalities of Hiba are different from that of a gift made by a non-muslim. Therefore, Hiba is governed by the Muslim Personal Law.

Meaning and Definition of Gift

A gift is generally a transfer of ownership of a property by a living person to another living person without any consideration. In Islamic law, gifts are known as 'Hiba'. To be very precise, gift implies to an extensive overtone and appertain to all kind of transfers of ownership not involving any consideration. On the other hand, the term 'Hiba' includes a narrow connotation. It is basically transferred inter vivos i.e. between living person.

According to **Hedaya**– *“Hiba is an unconditional transfer of ownership in an existing property, made immediately without any consideration.”*

According to **Ameer Ali**– *“A Hiba is a voluntary gift without consideration of property by one person to another so as to constitute the donee the proprietor of the subject-matter of the gift.”*

According to **Mulla**– *“A Hiba is a transfer of property, made immediately and without any exchange by one person to another and accepted by or on behalf of the latter.”*

According to **Fyzee**– *“Hiba is the immediate and unqualified transfer of the corpus of the property without any return.”*

Salient Features of a Hiba

After anatomizing the definitions and meaning, some prominent features of Hiba emerge as follows:

Hiba is a transfer of property by **act of the parties** and not by operation of law. It means that any transfer of property done by the court of law or any transfer of ownership by the Muslim law of inheritance will not be considered as Hiba.

Under Hiba, a living Muslim voluntarily transfers the ownership of any property to another living person. Hence, it is a **transfer inter vivos**.

The transferor transfers ownership of the property in **absolute interest** and the transferee gets the complete title in respect of the property given to him. Conditions, restrictions or partial rights in the gifted property are averse to the concept of Hiba under Islamic law.

Hiba is **operative with immediate effect** and deprives the transferor of his control and ownership over the property. Moreover, as the property is passed immediately to the transferee, the property must be in existence at the time when the gift is made. A gift made for a property which will exist in future is termed as void.

A Hiba is a transfer of property **without any consideration**. If anything of any value is taken by the transferor in return or exchange, such a transfer of property is not a gift.

MCQ

1.

A gift to unborn person under Muslim law is	Valid	Void	Voidable	None of these
---	-------	------	----------	---------------
2.

Gift is a transfer of –	Movable property	Immovable property	Movable property and immovable property	None of these
-------------------------	------------------	--------------------	---	---------------
3.

Who can gift?	A competent person who can make a contract	Property owner	Who has power to dispose property	All of the above persons
---------------	--	----------------	-----------------------------------	--------------------------
4. A Hiba is a transfer of property **without any consideration**.
a) True b) False
5. Hiba is a transfer of property by **act of the parties** and not by operation of law
a) True b) False