



**FACULTY OF JURIDICAL SCIENCES**

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## **Competency of the Donor: Capacity and Right**

A person who makes the declaration of a gift is called a donor. A donor must be a competent person to make a gift. Every **Muslim**, male or female, married or unmarried, who has attained the **age of majority** and has a **sound mind** is a competent donor. For the purpose of making a gift, the age of majority is the attainment of 18 years and 21 years if he is under a certificated guardian.

### **Capacity to make a Hiba**

**Mental capacity:** A person who is of sound mind and has the mental capacity to understand the legal implications of his act is eligible to make a gift. However, a gift made by a person of unsound mind during lucid intervals is a valid gift. Also, the donor must be free from any coercive or fraudulent influence while making a gift.

In the case of Hussaina Bai v. Zohara Bai, the validity of a gift made by parda-nasheen ladies was declared by the court. In this case, a parda-nasheen Muslim lady was brought from Nagpur to Burhanpur on an excuse that her brother-in-law was seriously ill. After reaching the place, she had a fit of hysteria, and soon after it, she was made to sign a gift deed without informing her the content of the deed and no opportunity was given to her to take an independent decision. The court held that-

*“When a gift is made by a parda-nasheen lady, it is important to establish that the consent of the lady was free and she made the gift on her independent advice. The burden to prove that the gift was made free from compulsion lies on the donee. In this case, the deed was executed from the lady under compulsion, it was not her voluntary act, and hence, the deed was held invalid.”*

**Financial Capacity:** According to the Hanafi view, if a person is under insolvent circumstances, he is allowed to make a gift. However, the Kazi has the power to declare any gift as void if it is made with a view to defraud the donee. The Indian courts have accepted the view of the Hanafi school that from the fact of indebtedness or embarrassing financial circumstances of the donor, it cannot be inferred that the donor has fraudulent intentions.

So, in every gift, there must be a bona fide intention on the part of the donor to transfer property to the donee. Evidently, if a gift is made with a malafide intention to defraud the donee, the gift is invalid.

### **Right to make a Hiba**

Capacity to make a gift is not solely enough. The donor must also have a right to make a Hiba. A Muslim has a right to gift only those properties of which he has the ownership. If he is simply a tenant in a house, he is not allowed to gift that house to someone because he does not have the ownership of that house. Such a gift is considered as invalid.

However, a Muslim has a right to gift away all his properties which are under his ownership at the time of declaration of the gift. The transfer of the property by the donor must be in the absolute interest of the donee. Therefore, it is imperative that the donor himself has the ownership of that property which he intends to pass on to the donee.

### **Competency of the Donee**

The person in whose favour the gift is made is known as the donee. For being a competent donee, the only essential requirement is that a donee must be any person in existence at the time of the making of a gift. He may be a person of any religion, sex, or state of mind. Thus, a Muslim can make a lawful Hiba in favour of a non-muslim, female, minor or an insane person.

**Child in Womb:** A child in the mother's womb is a competent donee provided that it is born alive within six months from the date on which the gift was made. If after the declaration of the gift the child dies in the womb or an abortion takes place, the gift becomes void. Also, the child must be in existence in the mother's womb at the time of the making of the gift. If a child is not in the mother's womb or the conception takes place after the declaration of the gift, such a gift is void ab initio.

**Juristic Person:** A juristic person includes a firm, corporation, company, association, union, university or any other organization. A juristic person is presumed to be an adult of sound mind like a human being in the eyes of law and hence, is a competent donee in whose favour a gift can be made. A gift in favour of a mosque, temple or a school is valid.

**Two or more Donees:** A donee may be an individual or a class of persons. In case the donee is a group of people, all the people in that particular group must be ascertainable.

## MCQ

1. A person who makes the declaration of a gift is called:  
a) Donor    b) Donee    c) Legatee    d) Legator
  
2. Who have Capacity to make a Hiba?  
a) Muslim, male or female,  
b) married or unmarried,  
c) Who has attained the age of majority and has a sound mind  
d) All the above
  
3. Juristic Person: A juristic person includes:  
a) A firm,    b) A corporation,    c) A company,    d) All the above
  
4. A child in the mother's womb is a competent donee provided that it is born alive within six months from the date on which the gift was made.  
a) True    b) False
  
5. Hussaina Bai v. Zohara Bai, case is related :  
a) Gift    b) Will    c) Mortgage    d) Sale