



**FACULTY OF JURIDICAL SCIENCES**

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## The Subject matter of Hiba

Islamic law does not make any distinction between ancestral or self-acquired or between movable or immovable property as far as the concept of Hiba is concerned. Any form of the property upon which the dominion can be exercised may constitute the subject-matter of the Hiba. Both incorporeal and corporeal property can be the subject-matter of a Hiba.

Similarly, a gift can be made of property on lease, a property of attachment or any actionable claim. Unlike the concept of the will or wasiyat under Islamic law in which only one-third of the total property can be bequeathed by a will, a Hiba or gift can be made of the entire property.

### Formalities of a Hiba

It is often supposed that the word 'gift' connotes the exact identical meaning as the term 'Hiba'. A gift is a broad and generic concept whereas Hiba is a narrow and well-defined legal concept. Juristically, in Islamic law, a Hiba is treated similar to a contract consisting of an offer to give something on the part of donor and acceptance on the part of the donee. Thus, to make a Hiba three essential formalities have to be fulfilled.

A declaration of gift by the donor

Acceptance of the gift by the donee

Delivery of possession by the donor and taking of possession by the donee

These three formalities are discussed in detail below:-

Declaration of gift by the Donor

Declaration simply signifies the intentions of the donor to make a gift. It is a substantiation of the intention of the donor to transfer the ownership of the property to the donee.

**Oral or Written:** The donor may declare a gift of any kind of property either orally or through a written deed.

In the case of *Md. Hesabuddin v. Md. Hesaruddin*[2], a Muslim woman made a gift of her immovable properties in favour of her son. The gift was written on ordinary paper and was not a registered deed. The court held the validity of such gifts in this case as-

*“ Under Muslim law, writing is not essential for the validity of a gift whether it is moveable or immovable property. Therefore, the gift, in this case, was held to be valid because writing and registration of a gift are not mandatory requisites to make a valid gift. ”*

**Express Declaration:** A declaration of a gift must be expressly made in clear words that the donor is conceding his ownership of the property completely. A gift made in ambiguous words is null and void.

In *Maimuna Bibi v. Rasool Mian*[3], it was held that-

*“ It is necessary that the donor divest himself completely of all the dominion and ownership over the property of gift. The donor must express his explicit intention to transfer the ownership to the donee clearly and unequivocally.”*

**Free Consent:** The consent of the donor in making the gift must be free. A declaration of a gift must be made voluntarily by the donor. Any gift made by a donor under threat, force, coercion, influence or fraud is not a valid gift.

**Bona fide Intention:** Mere announcement of a gift is not considered as a valid declaration until it entails the intention of the donor. Absence of real and honest intention to transfer the ownership of the property will make a gift ineffective. A gift made with an intention to defraud the donee is void. A gift without an intention may be pretence gift, colourable or Benami transaction etc. however, mere indebtedness does not affect the competency of the donor unless his malafide intention is established.

#### **Acceptance of gift by the Donee**

For the validity of a gift, it must be accepted by the donee. Acceptance manifests the intention of the donee to take the property and become its new owner. Without acceptance, the gift is considered to be incomplete. Since under Islamic law, Hiba is treated as a bilateral transaction, therefore, it is important that the proposal made by the donor to transfer the ownership of the property must be accepted by the donee.

**Minor:** In case the donee is minor, the acceptance on behalf of a minor can be given by the guardian of the property of the minor.

**Juristic person:** If a gift is made in favour of any institution or any other juristic person, the acceptance of the gift is made by either manager or any other competent authority.

**Two or more Donees:** Gift made in favour of two or more donees must be accepted by each and every person separately. If the share of each person is explicitly specified by the donor then, they will get the separate possession in the same way as declared by the donor. But if the share under a gift is not specified and no separate possession is given by the donor, then also the gift is valid and the donees will take the property as tenants-in-common.

## MCQ

1. Gift term is defined under the act –  
In the Transfer of property Act  
In the Hindu succession Act  
In the partnership Act  
In Indian Contract Act
2. Gift is a deposition of –  
Movable property  
Immovable property  
Movable property and immovable property  
None of these
3. Gift is a alienation of property –  
With consideration  
Without consideration  
With some consideration  
None of the above
4. ....property is a coparcenary .  
Ancestral property  
Jointly acquired property by the member of joint family  
A and B both  
None of the above
5. According to mitakshara gift may be –  
By orally  
In writing  
Orally or in writing  
Depends upon parties
6. The following property may validity disposed by gift –  
Impartible property  
Stridhana  
Intrest of copercenar  
all the above