



**FACULTY OF JURIDICAL SCIENCES**

**COURSE NAME : LLB**

**SEMESTER : IIIrd**

**SUBJECT : FAMILY LAW II**

**SUBJECT CODE: LLB -304**

**LECTURE : 34**

**FACULTY NAME: Mr JP Srivastava**

## **Revocation of Hiba**

Although Prophet was against the revocation of gifts, it is a well-established rule of the Islamic law that all voluntary transactions, including Hiba, are revocable. Different schools have different views with regard to revocation. The Muslim law-givers classified the Hiba from the point of view of revocability under the following categories:

### **Revocation of Hiba before the delivery of possession**

All gifts are revocable before the delivery of possession is given to the donee. For such revocation, no orders of the court are necessary. As discussed above that under Muslim law, no Hiba is complete till the delivery of the possession is made, and therefore, in all those cases where possession has not been given to the donee, the gift is incomplete and whether it is revoked or not, it will not be valid till the delivery of possession is made to the donee.

It implies that the donor has changed its mind and not willing to complete the gift by delivery of possession.

**For example**, X, a Muslim, makes a gift of his car to Y through a gift deed and no delivery of possession has been made to Y. X revokes the gift. The revocation is valid.

### **Revocation after the delivery of possession**

In this situation, a Hiba can be revoked in either of the following ways:

With the consent of the donee

By a decree of the court.

Mere declaration of revocation by the donor or filing a suit in the court or any other action is not enough to revoke a gift. The donee is entitled to use the property in any manner until a decree is passed by the court revoking the gift.

### **Gift to Minor**

Any gift made in favour of a minor or insane person is valid. They may not have the capacity to understand the legal consequences but they are persons in existence and thus, are competent donee. But such gifts are valid only if accepted by the guardian of the minor or insane donee. A gift is void without the acceptance by the guardian.

For the purpose of acceptance of the gift, the guardian of a minor or insane donee are as under in the order of priority:

Father

Father's executor

Paternal grandfather

Paternal grandfather's executor

Therefore, in the presence of the father, the paternal grandfather is not allowed to accept the gift on behalf of the minor or insane and so on. If all the above-mentioned guardians are not present, then the gift is accepted by the 'guardian of the property of minor or insane'.

If a guardian himself makes a gift in favour of his ward, he will declare the gift acting as a donor and has the capacity to accept the gift as the guardian of the minor or insane.

It is to be noted here that the **mother is not recognized as the guardian of the property of her minor child**. Hence, she is not entitled to accept the gift on behalf of her minor child.

Where a gift is made to a minor or lunatic, the gift is complete only if the guardian has taken the actual or constructive delivery of possession of the property on behalf of such persons. If the possession is taken by any other person who is neither a legal guardian nor a de facto guardian, the gift becomes ineffective and void.

*Katheessa Ummand v. Naravanath Kumhamuand* is a leading case on this point.

**Facts:** In this case, a Muslim husband made a registered gift to his wife who was a minor. The gift was accepted by the donee's mother. Unfortunately, after two years, the husband died and soon after it the donee (wife) also died. The validity of the gift was challenged by the elder brother of the donor (husband) on the ground that there was no delivery of possession as a gift to the minor was accepted by her mother who is not a legal guardian according to the Islamic law.

**Issue:** The question before the court was whether a gift by a Muslim husband to his minor wife and accepted by the mother on behalf of the minor wife, is valid?

**Held:** The court, in this case, held that it is a well-established rule under Islamic law that mother is not a legal guardian of the minor's property, therefore, she is incompetent to take the delivery of the possession on behalf of the minor donee. But, in case there is no legal guardian to accept the gift, the completion of the gift for the benefit of the minor has the utmost significance.

If the donee had already attained the age of puberty, the gift is valid even if it is accepted by a person who has no authority to accept the gift on behalf of a minor. In this case, the gift was held to be valid although the delivery of possession was not accepted by any competent guardian on behalf of minor but since the minor had reached the age of discretion (fifteen years) and was competent to accept the gift herself.

## MCQ

1. Gift given for Religious and charitable endowments is invalid.

- A) True
- B) false
- C) Partly
- D) None of Above

2. The rule of 'shasvata' applied to donation given to religious and charitable institutions.

- A) True
- B) false
- C) Partly
- D) None of Above

3. All gifts are revocable before the delivery of possession is given to the donee of actual amount.

- B) True
- B) false
- C) Partly
- D) None of Above

4 Revocation after the delivery of possession

In this situation, a Hiba can be revoked in either of the following ways:

- A) With the consent of the donee
- B) By a decree of the court.
- C) Both A & B
- D) None of Above

5. Mother is not recognized as the guardian of the property of her minor child..

- A) True
- B) false
- C) Partly
- D) None of Above.