RAMA UNIVERSITY

FACULTY OF JURIDICAL SCIENCES

COURSE:

Semester

SUBJECT:

SUBJECT CODE:

NAME OF FACULTY:

Lecture-1

The term Musha has been derived from the Arabic word which refers to Shuyua which actually means 'confusion'. It means Musha the 'undivided part' or share, which could also be a common building or land. As a gift of a part of a thing which is capable of division is not valid unless that particular part is divided off and separated from the property of the donor, however, the gift of an indivisible thing is absolutely valid. In Muslim law, Musha signifies an undivided share in joint property. Musha is thus, a co-owned which is also the joint property. Moreover, if one of the several owners of that particular property makes a gift of their own share, there may be a confusion regarding the matter that which part of the property has to be given to the donee. In other words, there could be a real difficulty in delivering the possession of the gift if it is of a joint property which is made by a donor without partition of that gifted share. In order to avoid such confusions and difficulties in the stage of delivery of possession, the jurists pertaining to the Hanafi law have evolved the principle of Musha where the matter of a gift is co-owned or joint property, the doctrine of Musha becomes applicable for examining the validity of that particular gift. The doctrine is strictly confined to the rules by the interpretation of judiciary and has been cut down in a considerable manner.

Musha which is indivisible:

The Gift of Musha indivisible is valid. There are some of the properties which are by its very nature indivisible. The physical partition or the division of those properties is not practical. Moreover, if it is against the nature of such properties, their partition or division is affected at all and hence their identity is lost entirely, they do not remain the same properties which they were before the partition. For instance; a bathing ghat, a staircase or the cinema house cannot be divided as Musha properties. However, if on the bank of a river or a tank, there is a bathing ghat which is in the co-ownership of two or more persons, then each of the owner has right to deal with his share as he deems fit including the right to make a gift of his share, however, if a sharer has attempted to separate his share, the utility of the ghat will get completely finished. Where a staircase is jointly owned by, for instance, two persons, then each being the owner of half of the stair-case, is entirely entitled to make a gift of his or her share, but, if the stair-case is divided into two parts, it would either be too narrow to be used by anyone, or the upper half may come in the share of one and the other lower half is in the other's share hence, in both the cases the staircase would become useless for both of them and also for the donee as well. It has also been provided that to every Hiba the doctrine of Musha applies, except insofar as it must be taken that the creators of the doctrine could not have contemplated that it should be applied to the subject-matter of any particular gift.

Musha which is divisible:

In the Hanafi law, the gift of Musha of the divisible property is termed to be irregular that is fasid if made without partition, however, a co-owned piece of land, house or a garden, is Musha which is divisible. The land can be divided and the specific share can be separated by a visible mark of identification. Similarly, a house which is jointly owned may be divided by a partition wall without changing its entire identity. However, under the Hanafi doctrine of Musha, the gift without partition and the actual delivery of possession is not void ab initio; it is merely irregular which means fasid.

The result is that where such a gift has been made, it may be regularized by the successive partition and by giving to the donee the actual possession of the specified share of the property. It is clearly evident that the doctrine of Musha is limited, both in its application as well as in its effects.

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()