BLOGS

Meaning of Gift under the Transfer of Property Act

Harshita Gulati · 12 Oct 2021

"**Gift**" under TPA is the transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

A gift may either be a gift inter vivos i.e. between living persons or gifts testamentary i.e. 'will' operative only after the death of the transferor or testator.

Following are the essentials of a valid gift:

- There must be a transfer of certain existing movable or immovable property. There cannot be a gift of future property.
- The subject matter of gift may be corporeal or incorporeal. An actionable claim can be validly gifted.
- The gift should be made voluntarily and without consideration. In the case of Kartari v. Kewal Krishan it was held by the court that a gift deed executed by an old widow, under undue influence and fraud is void.
- The donor is the person who makes the gift. He should be a person who is competent to contract. Thus a minor cannot make a gift of his properties.
- The donee is the person who makes the gift. A gift must be accepted by the donee or by someone on his behalf. The donee must be an ascertainable person. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the done dies before acceptance, the gift is void.
- The acceptance by the donee may be express or implied.

Transfer how effected

For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

A gift deed registered by the done after the death of the donor without the consent of the legal representative is valid as it is not necessary that the deed should be registered by the donor himself.

Gift of Movable Property

In a gift of movable property, the registration is optional; the other mode of transfer is delivery of possession. An actionable claim is an incorporeal movable property not capable of being transferred through the delivery of possession.

Void Gifts

Following gifts are void:

- A gift comprising both existing and the future property is void as to the latter.
- A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.
- A gift made for an unlawful purpose. A gift in consideration of past illicit cohabitation is immoral and invalid.
- A gift depending on a condition, the fulfilment of which is impossible or forbidden by law.
- Where the donee dies before acceptance
- Gift by a person incompetent to contract
- A gift which under an agreement between the parties is revocable wholly or in part at the mere will of the donor is void wholly or in part as the case may be.

When gift may be suspended or revoked

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift once made is irrevocable except in the following cases:

Revocation by an Agreement

A gift is revocable if the donor and the donee have agreed that on the happening of a specified event and not depending upon the will of the donor, the gift should be suspended or revoked.

It is important that the donor and the donee must have agreed to the condition at the time of the gift, for a gift which is complete and absolute at the time it is made cannot be modified by a condition subsequently added.

Revocation on the grounds of undue influence, fraud etc.

A gift may also be revoked in any of the cases in which if it were a contract, it might be rescinded on the grounds of undue influence, fraud, coercion etc. The onus of proving the grounds of revocation lie on the party who wants to get the gift set aside. A gift is not liable to be set aside or revoked merely on the ground of 'mistake' provided it is not vitiated by fraud, undue influence etc.

Illustrations

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds goods as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to

Onerous gifts

Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

It is based on the principle that he who wants the roses must not fear the thorns (*Qui senti commodum, debt et sentire onus*). The rule is analogous to the doctrine of election, as the donee has to elect to accept the whole gift or not to accept anything at all.

Onerous gift to disqualified person-

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations

(a) A shares in X, prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept then shares in Y. He cannot take the shares in X.

(b) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

Universal donee

A universal donee is one to whom the donor's whole property is given and who consequently becomes liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised in the gift.

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