BLOGS

Notes on Gift under the Transfer of Property Act

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The Transfer of Property Act, 1882, governs the transfer of property in India. The Act lays down the rules and regulations governing the transfer of immovable property, which includes land, buildings, and any other structure that is attached to the land. In this context, gifts are an important aspect of the transfer of property.

Definition of Gift under the TPA

A gift is a transfer of property made voluntarily and without consideration. It is a transfer of property that is made by the donor to the donee, without any expectation of receiving something in return. The Transfer of Property Act has specific provisions relating to gifts of immovable property.

Section 122 under the TPA

Section 122 of the Transfer of Property Act defines a gift as a voluntary transfer of property made without consideration, by one person (the donor) to another person (the donee), who accepts the gift. This section outlines the conditions that must be met for a gift to be valid, including the requirement that the donor must be competent to make the gift, and that the gift must be accepted by the donee.

Once the gift is made, it becomes irrevocable, except in certain cases where the donee dies before accepting the gift or the gift is not registered. The section also notes that gifts can be made by way of a registered gift deed or by way of an oral gift, which must be made in the presence of witnesses. The section also emphasizes that gifts of immovable property are subject to the payment of stamp duty and registration fees.

Conditions for validity of Gift

For a gift to be valid under the Act, there are certain conditions that must be fulfilled.

- The transfer must be made voluntarily and without any consideration.
- The donor must be competent to make the gift, which means that the donor must be of sound mind, and must be of the age of majority.
- The gift must be accepted by the donee.
- The gift must be accepted by the donee during the lifetime of the donor. If the donee dies before accepting the gift, it becomes void.

Once the gift is made, it becomes irrevocable. The donor cannot revoke the gift, and the donee cannot return the gift. However, if the donee dies before accepting the gift, the gift becomes void. Similarly, if the donee dies after accepting the gift, but before the gift is registered, the gift becomes void.

How can a gift be made?

Under the Transfer of Property Act, gifts can be made in two ways:

- Firstly, a gift can be made by way of a registered gift deed.
- Secondly, a gift can be made by way of an oral gift, where the donor hands over possession of the property to the donee, and the donee accepts the property.

Registered Gift Deed

In the case of a registered gift deed, the gift must be made by way of a written document, which is registered with the appropriate authority. The gift deed must contain the details of the property being gifted, as well as the details of the donor and the donee. The gift deed must be signed by both the donor and the donee, and two witnesses must also sign the deed.

Once the gift deed is registered, the property is deemed to have been transferred to the donee. The donee becomes the owner of the property, and the donor has no right to revoke the gift.

In the case of an oral gift, the gift is made by the donor handing over possession of the property to the donee, and the donee accepting the property. In such cases, it is important that the gift is made in the presence of witnesses. The witnesses should be able to testify to the fact that the gift was made voluntarily and without any consideration, and that the donee accepted the gift.

It is important to note that gifts of immovable property are subject to the payment of stamp duty and registration fees. The stamp duty is calculated as a percentage of the market value of the property being gifted, and the registration fees are a fixed amount. The stamp duty and registration fees must be paid by the donor at the time of making the gift.