

Chapter VII

Of Gifts

122. "Gift" defined—"Gift" 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.

Acceptance when to be made—Such acceptance must be made during the lifetime of the donor and while he is till capable of giving.

If the donee dies before acceptance, the gift is void.

Case Law

Sections 122 & 123: Hindu law—gift.—It is sufficient for a valid attestation, if the attesting witnesses received acknowledgment from the executant of the deed that he put his signature or mark on the deed though the attesting witnesses themselves did not see him do it. *8 DLR 65.*

Acceptance of a gift under the Hindu Law may be either express or implied inasmuch as there is nothing in section 122 of the Transfer of Property Act to say that it must be express. *8 DLR 65.*

Section 122—A Burmese Buddhist religious gift is not valid unless registered. *11 Bur LT 259—45 IC 925; 50 IC 809.* See also *40 IC 54.* The Courts in deciding as to whether or not a particular transaction is a gift

according to Mohammedan Law, would look not to the provisions of section 112, but to the rule of Mohammedan Law, on the point. *1936 ALJ 1027—1936 A 600.* The word "voluntarily" in section 122 bears its ordinary popular meaning, denoting the exercise of an unfettered free will and not its technical meaning of "without consideration." The donee of a mere special power of appointment, in exercising that power cannot be said to do it "voluntarily," as he is under both a duty and an obligation to appoint without consideration and by way of gift. The appointment, though it may be a "transfer", does not amount to a "gift" and therefore need not be effected by a registered instrument. *1938 Rang LR 678—179 IC 903—1939 R 76.*

Where a deed of gift was delivered over to the donee immediately after execution it would be sufficient acceptance of the transfer by the donee under section 122 and effective from that moment, although it was not duly stamped then and the stamp was paid after the death of the donor under orders of the Collector and the deed then registered. 46 CWN 477.

Gift may be made to a minor: 39 IC 46; 32 C 129; 11 M 26; to an idol or deity or a temple: 32 C 129; 3 P 842; 37 C 128; 32 C 129; and to a Mutt 28 B 215. But the donee must be an ascertained person or persons, or capable of being ascertained. See 18 MLJ 364. As to gifts by pardanashin woman, proof would be required that it is her *bona fide* act as a free agent on independent advice and that the transaction was not tainted by fraud or coercion. 18 C 548 (PC); 15 C 584; 20 A 447; 15 IC 529. Gift differs from sale or exchange in that there is no consideration for the gift. "Consideration" contemplated in this section is valuable consideration i.e., consideration either in money or money's worth; consideration of love and affection or of moral or spiritual benefits are not contemplated by this section 1929 P 591. "Dan" is gift and is governed by this Act. 1929 P 591. In order to effect a valid gift, both a transfer and an acceptance is necessary. 1923 P 165 See also 28 C 720 (PC); 3 P 842—80 IC 980 [in the case of a donee incapable of signifying acceptance (as minors, idiots or deity), the acceptance may be made by somebody competent to act on their behalf]. 11 M 246; 32 C 129; 27 B 31.

Acceptance may be express or implied. 1932 ALJ 335. The circumstances that the *bona fides* of the transaction is undisputed;

that after a gift deed was obtained from the Registration Officer it was made over to the elder of the two donees who was then a major and who kept it in a box used commonly by the donor as well as the donees; that the mutation of name was effected in the municipal registers; that the taxes were assessed in the names of the donees and were collected from them; and that the donees were in constructive possession inasmuch as they as well as the donor lived in the house constituted sufficient data from which acceptance can be inferred 179 IC 730—1939 R 49. Acceptance may be presumed until dissent is signified. 41 IC 389. There is no presumption of acceptance operating immediately upon the gift whether known or unknown to the donee.

Actual or constructive possession is however proof of acceptance and in zamindari property, and especially in a case concerning husband and wife, mutation means delivery of possession and the acts of the husband after mutation are acts on behalf of his wife. (25 ALJ 69, Ref) 54 A 534—1932 A.444. Where the gift is an interest in land, the donor is not required to transfer the corpus of the property, but only possession of the interest. If the interest is transferred, the omission to deliver the corpus is immaterial 43 IC 857. A minor can accept a gift without the intervention of a guardian, provided it is not an onerous gift. 39 IC 46—13 NLR 18. Where a Hindu donor adopted between the date of handing over the debt of gift of ancestral property and its registration, the adopted son cannot question the gift. 1923 M 282—17 LW 232; 62 IC 280—13 LW 187. Release of security without consideration is not gift under this section 42 CLJ 582—1926

C 170. A gift once legally made is irrevocable. *1936 AMLJ 118.* Gift to shares in a company becomes complete only when there is a transfer of entry in the company's books. *66 IC 586—48 C 686.*

Where a gift was made by a husband to his wife while he was in embarrassing circumstances and the gift was kept secret till he was declared insolvent, but the wife never obtained possession, title did not pass. *24 CWN 145—34 IC 700.* But see *1928 L 9; 3 P 842—80 IC 980.* It is not enough that there is a registered deed of gift. There must also be a voluntary giving by the donor and an acceptance by or on behalf of the donee. The registered deed of gift may be merely a nominal transaction on the part of the executant to give effect to its terms. *3 P 842—80 IC 980.* There is no authority for the view that for an acceptance of an onerous gift acceptance of the gift itself is not sufficient but an acceptance of the onerous condition also at the same time is necessary. *37 CWN 149—1933 C 438.*

Section 122—It is not disputed that Abdul Sattar got the suit property by transfer not from real owner namely, Sufia Begum but from Abdul Sattar to his son on the basis of oral gift confirmed by a declaration through a photostat copy of an affidavit sworn before a Notary Public which having not been corroborated by any witnesses and the same has not been attested with original or duplicate copy and the Notary Public attested the same merely collecting the execution of the affidavit from his memory cannot be said a declaration of oral gift has been proved as required by the Evidence Act. *Government of*

Bangladesh & others vs Paper Converting & Packaging Ltd & others 6 BLC 467

Section 122—Suit for declaration—Gift, validity of—Plaintiffs had alleged that they had never made gift of suit-land in favour of the defendants and that mutation of gift allegedly attested and further sale of the suit-land by defendants by means of sale-deed, were bogus and illegal—Defendants had claimed that plaintiffs were their “Murids” and defendants had been friends in need of the plaintiffs and out of gratitude plaintiffs had gifted away the suit-land to the defendants—Copy of mutation of gift was alleged to have been entered by Patwari on the statement of one of the plaintiffs, but neither there was any reference to any report in Roznamcha Waqiyati nor any report was mentioned in the mutation—Possession of suit-land was still with the plaintiffs and was never delivered to the defendants—Patwari and original mutation were not produced and Chairman who alleged to have identified the plaintiffs before Revenue Officer had also not been produced—Except the self-serving statement of one of the defendants, no evidence was on record to the effect that plaintiffs were “Murids” of defendants and that plaintiffs had gifted away suit-land to defendants out of gratitude—One of the plaintiffs had entered the witnesses-box but no suggestion was put to him that plaintiffs were. “Murids” of defendants nor that they had appeared before the Revenue Officer at the time of attestation of mutation—Gift though was a gratuitous transaction, but under section 25, Contract Act, 1872 it had to be for love and affection which were missing in the case—Trial Court had rightly decreed the suit and appellate Court below was not

justified to set aside the decree passed by trial Court. *Bashir vs Noor Hassan 2001 CLC 1650.*

Section 122—Gift—Validity—Where land was jointly owned and one co-sharer alienated some land from jointly owned land, it could not be said that except donor and his heirs no other person could challenge validity of gift deed on basis of non-delivery of possession of gifted land to donees—Any co-sharer who was owner in possession of land was competent to challenge validity of gift deed on ground that donor was not competent to alienate land. *Abdul Sattar vs Tariq Aziz; 1999 CLC 1146.*

Section 122—Gift—Validity—Suit for declaration—Limitation—Findings of two Courts below that no gift was made by owner of property in dispute and that plaintiff was entitled to his due share, was upheld by High Court—Validity—Defendants had failed to prove that findings of Courts below suffered from any non-reading or disregard of any material evidence on record—Gift being claimed as inoperative, fake and void, plaintiff could file suit under Article 120 of Limitation Act, 1908 and that right to sue would accrue after demise of owner of property and his heirs could not file suit during his lifetime. *Hameedan Bibi vs Atta Ullah 1999 SCMR 2266.*

Sections 122 & 41—Mutation of gift and sale—Review—Revisional jurisdiction of High Court, exercise of—Donee of land in dispute, sold away land after about ten years from the date of attestation of gift entry in Revenue Record—Revenue Authorities, after ten years of sale of land, on their own, reviewed gift and sale mutation on ground

that original owner/donor of land had transferred area in excess of his ownership by gift mutation and reverted land covered by mutations of gift and sale to original owner/donor—Suit filed by vendee of land in dispute against said reversion was concurrently decreed by two Courts below, but High Court in exercise of revisional jurisdiction reversed concurrent judgments and decrees of Courts below and dismissed suit filed by vendee of land—Validity—Mutations of gift and sale were cancelled by Revenue Authorities in review and land was reverted to original owner/donor on ground that donor had gifted land in excess of his entitlement, but same donor after reversion of land to him, again sold same to different vendees, and Revenue Authorities did not object to such sales—Entire exercise for review by Revenue Authorities, thus, was motivated by ulterior motive—Correctness or otherwise of gift mutation was a matter between donor and donee and donee having not challenged gift mutation, High Court was not legally justified in doubting genuineness of gift mutation on ground that there was no evidence about transaction of gift except mutation. *Akbar Khan vs Khair Khanum 1999 SCMR 399.*

Sections 122 & 123—Gift—Validity—Gift made orally in favour of donee who was real daughter of donor was challenged on ground that donor, who died after 5 days of making oral gift in favour of donee, was suffering from Maraz-ul-Maut and was not in her senses at the time of making oral gift in favour of donee—Plea of Maraz-ul-Maut was not raised by plaintiff/respondent who challenged validity of gift in his plaint, but was raised by him at the time of arguing the

case—Revenue Officer who had recorded statement of donor regarding oral gift had deposed that donor was in fit state of mind at the time of making statement and testimony of Revenue Officer was duly supported by witnesses—Heavy burden lay on plaintiff/respondent to prove that gift was made by donor during Maraz-ul-Maut, but plaintiff/respondent had failed to discharge that burden by producing any medical certificate or by producing any evidence in that respect—Basis to declare gift invalid was stated to be that during alleged Maraz-ul-Maut, donor, because of imminent fear of death, was incapacitated to take proper decision with regard to gift—Held, mental incapacity was more important than physical incapacity—If despite physical incapacity, donor was also to take intelligent decision then transaction of gift could not be nullified—Evidence of Revenue Officer who had recorded donor's statement had clearly established that donor was in fit state of mind—Mere old age or illness per se were not sufficient to hold that donor was suffering from any death illness—Two Courts below had not taken into consideration mental condition of donor, length of ailment and cause of death of donor, but had based their finding merely on fact that donor died after 5 days of making statement before Revenue Officer—Said Courts, in the circumstances, had committed an error of law in declaring gift as invalid—Judgments and decrees of Courts below were set aside. *Pathani vs Ramzan 1999 MLD 3374*.

Sections 122 & 123—Gift—Validity—Land had come to the shares of three brothers in equal shares by way of family partition—One of co-sharers had gifted away his share

of land to his sons through gift deed and did all to divest himself of ownership of his share of property and got a mutation sanctioned in the name of donees and also placed them in a position to get possession of gifted land—Donees who had stepped into shoes of donor, had become co-sharers with other co-sharers of land as possession of one co-sharer would be deemed to be possession of other co-sharers—Donees, in law thus, were in symbolic possession of land gifted to them, though actual possession of some of gifted land had not been delivered to them—If donor could not deliver actual physical possession of some of gifted land to donees, gift deed could not have been held invalid. *Abdul Sattar vs Tariq Aziz 1999 CLC 1146*.

Sections 122 & 123—Gift, validity of—Gift in respect of property made by husband in favour of his wife was objected to contending that even though the gift was made by husband to his wife, delivery of possession was to be proved and in absence of any such proof gift could not be held to be valid—Validity—Where the property had been gifted away by a husband to his wife, proof of delivery of possession to donee would not be necessary, particularly when the control and management of the property was in the hands of the donor husband and possession with the donor after the gift would be deemed to be on behalf of the donee—Rationale behind delivery of possession, was to ensure that property forming subject-matter of the gift had been transferred and that the donor had divested himself of that once for all—Donor by getting the gift-deed registered and subsequently by getting the mutation attested on the basis of the registered deed, had left nothing unturned in

divesting himself of the subject-matter of the gift—Gift would not become invalid for want of delivery of possession where donee was a female because possession with the donor after gift would be deemed to be on behalf of the donee—Change of possession would be complete if a recital was made in the gift-deed about the same. *Roheela vs Mazhar Ali Shah 2001 CLC 1013.*

Sections 122 & 123—Acquisition of land—Compensation—Entitlement—Gift, validity of—Appellants had claimed ownership of acquired land in dispute on the ground that land had been gifted away to them by their grandfather through gift mutation and they being owners of the land were entitled to receive compensation thereof—Respondents had also claimed the ownership of land in dispute on the ground that the same was purchased by their father from grandfather of the appellants through sale-deed duly executed and mutated in Revenue Record—Alleged gift mutation was not given effect to in subsequent Jamabandis and possession of land was never transferred to the appellants/alleged donees as in the column of cultivation of Khasra Girdawari the names of appellants were not recorded, which was one of the essential ingredients for establishing a valid gift—Respondents on the other hand, had produced sufficient undisputed evidence on record to prove that sale-deed was executed by grandfather of the appellants in favour of the father of respondents and sale transaction was duly mutated and was included in subsequent Jamabandis and possession was also transferred to the vendee and respondents being owners had not only raised construction over land in dispute by spending

huge amount, but had also transferred certain portions to other respondents—Alleged gift mutation in respect of land in dispute, even if presumed to be entered and attested, it could be said that donor had subsequently, revoked the same which was not given effect in Revenue Record and possession was also not transferred to the appellants (donees)—Gift mutation, in circumstances, was declared invalid and sale-deed in favour of father of respondents was valid and genuine—Respondents, in circumstances, were rightly held entitled to receive compensation of acquired land and cost of superstructure duly determined and appellants who could not prove their ownership in respect of land in dispute, were rightly held not entitled to receive the compensation—No misreading or non-reading of evidence in the finding of trial Court having been pointed out, appeals were dismissed by the High Court with modification in the rate of compensation. *Abdul Samad Khan vs Government of NWFP 2001 CLC 988.*

Sections 122 & 123—Gift—Validity—Suit for possession and declaration—Plaintiff had sought declaration to the effect that mutation of gift of her property allegedly sanctioned in favour of defendants, was illegal, collusive, *ultra vires*, void and ineffective against her interests—Defendants had claimed that plaintiff who was their sister, had gifted away disputed property to them through validly sanctioned mutation—Evidence led by defendants to prove valid gift in their favour was discrepant and they had not come out with any reason as to why plaintiff had made gift to them when she had her own children and she was under no obligation whatsoever to the defendants—

Plaintiff was living with her husband in her house and the defendants had not even alleged any service having been rendered by them to the plaintiff and it had not come on record that plaintiff had so much love and affection for the defendants that she would gift away her property depriving her own children—Trial Court decreed the suit after appreciation of evidence on record, but appellate Court set aside the judgment and decree passed by trial Court—Appellate Court had acted with material irregularity in the exercise of its jurisdiction while setting aside the judgment and decree of the trial Court in face of the pleading, evidence and the attending circumstances of the case—Judgment and decree passed by appellate Court were set aside by High Court in exercise of its revisional jurisdiction and those of trial Court were restored. *Zaneb Bibi vs Abdul Rashid* 2001 CLC 1676.

Section 122 & 123—Suit for declaration—Interim injunction, grant of—Plaintiffs filed suit claiming themselves to be owners of the suit-land on basis of an oral gift in their favour by their father and along with the suit, application for grant of interim injunction was also filed—Courts below concurrently dismissed application for grant of interim injunction—Nothing was on record to substantiate the contention of the plaintiffs that they had ever been alienated the suit land by way of alleged gift in their favour—Basic ingredients for issuing interim injunction being lacking in the case, both the Courts below had rightly dismissed the application for grant of interim injunction—Concurrent orders of Courts below passed in accordance with law, would not call for any interference by High Court. *Hafifan Bibi vs Muhammad Sharif* 2001 MLD 1240.

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Sections 122 & 126—Gift—Revocation—It was Judge/Qazi who would take note of and explain circumstances under which a decree could be passed revoking gift. *Ashiq Hussain vs Ali Ahmad 1999 YLR 2209.*

Sections 122 & 126—Gift—Revocation—Limitation—If delivery of possession had taken place in gift transaction, revocation of such gift was permissible only by means of a decree of a Court—Suit for revocation of gift after delivery of possession must be governed by Article 91, Limitation Act, 1908, providing three years for filing a suit for setting aside or cancellation of any instrument—Gift was made in 1962 whereas suit for revocation was filed by the donor in 1978 after about sixteen years of execution of gift deed—Suit filed by donor was liable to be dismissed being barred by time—Bare solitary statement of donor of having become aware of gift a few days before institution of suit, was not acceptable when possession of suit land had been passed to the donee under the gift a long time back. *Ashiq Hussain vs Ali Ahmad 1999 YLR 2209.*

¹123. 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 registered instrument signed as aforesaid or by delivery.

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

1. As to limitation to the territorial operation of section 123, see section 1 supra, Section 123 extends to every cantonment in the Provinces, etc.—see section 287 of the Cantonments Act, 1924 (II of 1924).

Case Law

Section 123—Rule of Hindu Law—delivery of possession.

As regards Hindu gifts to which the Transfer of Property Act applies the rule of pure Hindu Law that delivery of possession is essential to the validity of a gift is abrogated by section 123 of the Act. A gift under the act can only be effected in a manner provided by section 123. 8 DLR 65.

Section 123—In the absence of a registered instrument a gift by a person belonging to Hindu community (governed by the Dayabhaga School of Hindu Law) is not valid under section 123 of the Act. *Kala Miah vs Gopal Chandra Paul and others Kala Miah vs Gopal Chandra Paul and others* 51 DLR 77

Section 123—The consistent view of the apex courts of this Sub-Continent is that not only a gift under Muhammadan Law but also under the Transfer of Property Act, a gift must be coupled with acceptance and delivery of possession of the property. Mere registration of such deed of gift is not at all sufficient. something more has to be done for making a valid gift which is lacking in the present case. Bangladesh, represented by the Secretary, *Ministry of Housing and Public Works & another vs Shirely Anny Ansari* 6 BLC (AD) 85.

Sections 123 & 129—Since it is a gift under the Muhammadan Law it need not be registered in view of the exemption provided by section 129 of the Transfer of Property Act. *KZ Alam vs Secretary, Ministry of Housing and Public Works* 54 DLR 451

Sections 123 and 129—On the strength of the section 129 of the said Act non-attestation of a deed of gift will not invalidate the gift and the deed of gift will also, not be hit under section 123 of the said Act. Under the Muhammadan Law writing is not essential to the validity of a gift either of movable or immovable property and oral gift is also permissible and recognised under the Muhammadan Law. It transpires that in this case the deed of gift though registered was not attested by any attesting witness when only the scribe wrote the deed and put his signature thereon and, though he did not write his name both as scribe and attesting witness but scribe can also be taken as attesting witness in the facts and circumstances of the present case. Mere non-attestation of the deed of gift by any attesting witness cannot make the same invalid and section 123 of the Transfer of Property Act is not applicable to any deed of gift made by one Muhammadan to another Muhammadan under the Muhammadan Law. *Abdul Khaliq @ Md A Khaliq and another vs Siratun Rowshan and ors* 5 BLC 616

Abstract

1. Sections 122 and 123
2. Hindu Law
3. Muhammadan Law
4. Buddhist Law
5. Attestation
6. Registration
7. Delivery of Possession
8. Dedication to Temple
9. Estoppel

1. Sections 122 and 123

A gift of immovable property which has not been completed by acceptance though the deed is executed and registered may be revoked by the donor prior to its acceptance. *1939 M 290-(1939) IMLJ 337.*

Section 123 extends to every cantonment in British India—A gift to God Almighty is not a gift to a living person and consequently does not require a registered instrument. *11 PLT 658—1930 P 610; 25 LW 806; 42 M 440; 1926 N 469.* (It was held by the Allahabad High Court that section applies to gifts both for secular as well as religious objects. *33 IC 989.*) Section has no application to partition of joint property, the same not being a gift. *15 NLR 93; 25 IC 498; 1925 M 1174.* But where a transaction is substantially a gift the formal requirements of this section cannot be avoided by calling it by a different name. *49 MLJ 150—1925 M 1174.*

An oral gift though accepted by a document by the donee is invalid. *28 Bom LR 421—1926 B 261.* Husband making a gift of the house to wife—Both living in the house before and after gift—Gift deed executed and registered—Gift is complete. See *111 IC 251—1928 L 9.* As to gift by husband to wife when donor was in pecuniary embarrassment, see *24 CWN 145—30 CLJ 228—54 IC 700.* A fixed deposit was in the following terms:— "Mr and Mrs H, repayable to either or survivor". There was no evidence of any gift of his interest by the husband to the wife.

Held: that Mrs H was not entitled to, more than half of the money deposited with the Bank. *1931 ALJ 417.* On this section, see also *30 Bom LR 451—1928 B 250.* Even prior to the amendment of 1929, section was

held applicable to gifts under Hindu or Buddhist Law. *7 OWN 953—1931 p 14.*

2. Hindu Law

A division of property by a father in his lifetime to his children is not a partition but a gift and must be registered. *1 Bur LJ 26.* Delivery of possession is not necessary when the deed is registered. *83 IC 41—1925 N 199.* Among Hindus, gift made subsequent to the Act do not require delivery of possession if there is registration. Acceptance by the donee is essential under Hindu Law. It may be implied and may be presumed until dissent is signified. *41 IC 389 (P).*

There is no real distinction in principle between the essential ingredients requisite for a valid gift or dedication in Hindu Law and those laid down in the Transfer of Property Act. *3 P 842—1924 P 657.* A Hindu lady, who is the full proprietor of immovable property, can by a registered instrument duly signed and attested, validly make an immediate gift of it, although she reserves to herself the enjoyment of the usufruct or profits of a part of the property for her lifetime and without detaining any power of alienation over it. Delivery of possession is not essential to the validity of the gift. *20 ALJ 744—1922 A 467(FB).* See also *1922 A 44,* following *27 A 169; 25 A 353; 83 IC 41—1925 N 199.* A gift of immovable property by a Hindu father to his daughter at the time of marriage by way of *sankalap* is not valid in law as a registered document is necessary under section 123, Transfer of Property Act. *26 ALJ 944—1928 A 699.* Section 123 applies to the Hindus even before the Amending Act XX of 1929 was passed. No gifts *inter vivos* of any immovable property

could, therefore, be validly made by a Hindu except by a registered document as contemplated by section 123. *44 CWN 357—1940 C 254.*

3. Muhammadan Law

The section does not apply to gifts under the Muhammadan Law. *28 IC 180—18 OC 122; 38 A 212—35 IC 14—14 ALJ 119.* See also *100 IC 296—1927 C 197.* But in Burma, a gift of immovable property by one Muhammadan to another must be made by a registered instrument, duly attested, in accordance with the provisions of section 123: *14 R 439—1936 R 430(FB).* As to the law when gift is in issue in High Court of Rangoon, see *14 R 485—1936 R 522.*

Under the Muhammadan Law to constitute a valid gift, there must be delivery of possession. See *38 A 627; 31 IC 281; 36 B 214; 29 MLJ 733; 29 IC 439; 28 IC 180; 35 MLJ 541.* Registration alone will not do. Delivery of possession is also necessary. *26 IC 466—19 CWN 1311.* Transfer in lieu of dower is a sale and not a gift. *64 IC 126.* See also *1936 ALJ 1027—1936 A 600.*

4. Buddhist Law

As in the case of a Hindu after the passing of this Act, delivery of possession is not essential for a valid gift under Buddhist Law. See *1924 R 309.* The Buddhist Law cannot be applied to the case of gift unless a question of marriage, inheritance or religious usage is involved in it. A gift made during donor's last illness is not valid without delivery of possession. *40 IC 54.* See also *1938 R 303; 50 IC 809; 45 IC 925.* Land allotted in partition by Burmese father—

Father cannot afterwards allege the act to be gift. See *2 R 649—88 IC 76.* If a rule of Buddhist Law requires delivery of possession to validate a gift of immovable property, such a rule must be held to be abrogated by section 123 and section 129 of the Transfer of Property Act. *2 R 131—83 IC 557; 1 R 351—75 IC 166.* But see *14 R 439—1936 R 430 (FB).* (Case of Muhammadan gift). As per Burmese law, gift by bridegroom to the bride at the time of marriage must be in writing and registered. Otherwise it will revert to the husband on divorce *33 IC 129—9 BLT 87.* Transfer of property of first wife and husband to daughter to prevent it from going to second wife, amounts to partition of inheritance and not a gift. *4 BLT 186—11 IC 855.*

5. Attestation

The provisions of the section are mandatory and the requirements of the section have to be strictly fulfilled. The strict rule of attestation applicable to the case of mortgages is equally applicable to the case of gifts. *1930 ALJ 623—1930 A, 669.* Want of attestation invalidates deed of gift. See also *86 IC 676—1925 p 151; 9 MLT 57—8 IC 887.* Before the endorsement by the Sub-Registrar can be treated as valid attestation, it must be proved that he signed in the presence of the executant. *1931 MWN 1242; 61 C 525—38 CWN 753—1934 C 772.* In spite of denial of attestation by an attester from other circumstances, Court can conclude that he had in fact attested. *1 R 557—1924 R 139.* Whether scribe is an attesting witness, see *36 IC 272—10 Bur LT 106* (See also notes under section 59, *supra*). See also *1931 MWN 1242.* A marksman can in law be a valid

attester to a gift deed *58 M 220—1935 M 178(2)—68 MLJ 191*.

the part of the executant to give effect to its terms *3 p 842—1924 p 627*.

6. Registration

Where there was no registered instrument in respect of the alleged gift, the subject-matter thereof being immovable property, the provisions of section 123 are not complied with and the gift is not valid: *12 R 238—1934 PC 67—66 MLJ 144 (PC); 1939 Pat 258; 1937 N 1*; need not be at the owner's instance or with his consent. *10 ALJ 300-35 A 3*. But see *14 IC 61—9 ALJ 300; 19 M 433*. Gift of mortgage can be only by a registered instrument. *44 M 196-40 MLJ 25*. Gift of mango tree must be registered. *90 IC 769*. Registration can be after the donor's death without the consent of his legal representative. *40 M 204—31 NLJ 690*. But see also *28 MLJ 378—28 IC 271*. Registration is necessary even in case of religious gifts. *36 IC 280*. Retiring gratuity is in the nature of a gift. The gift is completed only by a registered document or by payment. A transfer intended to operate as a gift, but invalid as such, will not constitute the donor a trustee (i.e.,) an imperfect gift cannot be construed as a declaration of trust. *25 Bom LR 599—1924 B 88*. In the case of transfer by gift, the alienation is complete when the conveyancing document is completed and is not postponed until date of registration. *167 IC 48—1937 N 1*. A registered deed of gift alone is not sufficient to operate as a gift. There must be a complete divesting of the ownership on the part of the donor and an acceptance of the gift by the donee. A registered deed of gift or any other document, may be merely a nominal transaction without any intention on

7. Delivery of Possession

In case of gift of insurance policy money, execution of assignment deed and transfer of name in the company's register are sufficient. No delivery of documents is necessary. *38 IC 248—4 LW 339*. A gift of movable property, unless it is effected by a registered deed, can only be completed by delivery of property to the donee. *(1940)2 MLJ 963—1941 M 154*. A gift subject to a life interest of the donor is valid. *20 ALJ 744—1922 A 467 (FB); 1922 A 44*. A gift is void when the donee is an unregistered body which has no legal existence and is not capable of holding property *38 IC 183—14 ALJ 103*. On this section, see also *28 Bom LR 411—1936 B 261*. To constitute a valid gift of immovable property in place where the Act is in force, execution and registration of a gift deed would be sufficient. Delivery of possession need not be made. *3 Bur LJ 111—1924 R 353; 1930 ALJ 623—1930 A 669*. But in determining the question whether the power of revocation for non-payment of debts had been contemplated, the fact that possession was not delivered cannot be lost sight of. *1930 ALJ 623—1930 A 569*.

When the gift is complete the relationship of the donor in possession to the donee is that of a trustee. *87 IC 312—1924 B 88*. Where there is a deed of gift and before its registration an endorsement is made therein that possession is delivered to the donee and the deed is subsequently registered, the burden of proving that possession was not given and therefore gift is invalid is on those asserting its invalidity. Where there are tenants on the property, their attornment to the donee is sufficient delivery

of possession. *16 LW 894—1923 M 52*. The mutation of names by itself creates no proprietary title. [*31 A 73 (PC), Ref*] *76 IC 218—1924 N 214*.

8. Dedication to Temple

The provision of section 123 apply to gifts, direct, as well as to gifts through the intervention of a trust. The title, therefore, in an endowed property passes to the idol, who must be treated as a juristic person, on the execution of a deed of endowment by the donor. *7 OWN 953—1931 O 14*. Property may be dedicated to a temple in one of three modes, (1) by making a gift to trustees on behalf of the idol, (2) by a dedication to the idol itself, and (3) generally on occasions of death or marriage by taking a leaf of the *tulsi* plant in hand and with water offering the property, in the presence of the persons assembled. Of these modes, (1) must comply with the provisions of section 123 of the Act. In mode (2) if the dedication is in writing, it must be registered. In mode (3) the gift is not within the provisions of the Act, although the intention may be that embodiment of the universal soul worshipped in the particular temple should have the benefit of the dedication. *42 M 440—36 MLJ 575*. See also *1941 PWN 75—1941 PLT 239*. A mere unexpressed intention to dedicate cannot operate as a formal dedication so as to invalidate a transfer of that property to a third person made after the idea of dedication had been formed in the mind of the transferor. *13 p 356—1934 p 612*.

9. Estoppel

There can be no estoppel by conduct when requirements of the section are not

satisfied. *45 B 164—38 IC 403*. But see *1 R 557—1925 R 139; 1 R. 651; 2 R 549—1925 R 184*. Where there is a gift of lands in favour of minor under which the donors divested themselves of the ownership of these lands and the minor has alone been in possession since the date of the gift: in a suit by the donors or any person claiming through them, the minor can resist the claim on the ground of estoppel, even though there was no registered deed of gift. The Transfer of Property Act was enacted in order to prevent fraud and deception and it is founded on the highest principles of justice, equity and good conscience. *1 R 665; 1924 R 200*. [But see *1929 R 316*, holding that the doctrine of part performance has no application to the case of a donee. See also section 53A]. Where the transfer is made on the basis of an ante-nuptial agreement, and the donee is in possession for a number of years, the donor is estopped from urging that the transfer is invalid as not being evidenced by registered deed. *52 C 425—85 IC 799*.

Where a donor made a gift of immovable property and transferred possession of the land without any registered deed and on the death of the donor the donee submitted a report to the revenue surveyor for mutation of names in the official record, the heirs of the donor attesting the report and being present when it was made the heirs are estopped from impeaching the gift thereafter. *1 R 651—1926 R 105*. Where a donee of property is in *bona fide* possession of it, though the gift had not been perfected by a registered instrument in accordance with law, the donor or his representative cannot oust the donee who had been in undisturbed possession of the property for a long period though such period

falls short of 12 years. But this rule can have no application to a case where the person is a donee from the donee, neither of the gifts having been perfected by a registered instrument, and especially when it is proved that the ultimate donee was not in absolute and exclusive possession of the property. 101 IC 703—1927 R 128.

124. Gift of existing and future property—A gift comprising both existing and future property is void as to the latter.

Case Law

Sections 124 and 125—"If an estate is limited to two jointly, the one capable of taking the other not he who is capable shall take the whole. *Humphrey vs Tyleur, cited in 16 C at p 682.* Where a gift was made by a Hindu to his daughter and her husband jointly, and the gift is found to be invalid as to the husband, the daughter would take the whole. 16 C 677—16 IA 44.

125. Gift to several of whom one does not accept—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.

Case Law

Sections 125 and 124—"If an estate is limited to two jointly, the one capable of taking the other not he who is capable shall take the whole. *Humphrey vs Tyleur, cited in 16 C at p 682.* Where a gift was made by a Hindu to his daughter and her husband jointly, and the gift is found to be invalid as to the husband, the daughter would take the whole. 16 C 677—16 IA 44.

126. When gift may be suspended or revoked—The donor and donee may agree that in 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 may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

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 ¹[Taka] to B, reserving to himself, with B's assent, the right to take back at pleasure ¹[Taka] 10,000 out of the lakh. The gift holds good as to ¹[Taka] 90,000, but is void as to Tk 10,000, which continue to belong to A.

Case Law

Section 126—See 14 Bom LR 340—15 MLJ 378—28 IC 271; 6 A 313; 1939 AWR IC 529; 4 ALJ 708; 5 BLR 522; 34 B 607—

12 Bom LR 341—6 IC 513. A gift validly made cannot be revoked at the mere will of the donor: 23 B 131 See also 1 MHCR 393; 1933 R 418. Once a gift deed is executed and has been delivered to the donee, the donor cannot revoke it even before its registration on the ground that the gift is not completed until the deed is registered. 52 B 313—1928 PC 86—54 MLJ 573 (PC); 50 M 193—54 IA 89—52 MLJ 346, (PC); 49 B 388—87 IC 490(FB), overruling 48 B 435. See also 28

Section 126 does not lay down that a gift can be revoked in the same manner as a contract can be rescinded. The right given thereunder is personal to the donor. 152 IC 146—1934 ALJ 817—1934 A 507. (Agreement to revoke gift must be entered into at the time of gift; if the term is added after the completion of the gift and subsequently, it is not valid. 6 A 313). Right of rescission of a gift is limited to fraud, mistake, coercion, undue influence,

1. Substituted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and 2nd Schedule for "Rs" (with effect from the 26th March 1971).

misrepresentation or the like as would operate to invalidate a contract. 45 C 434—22 CWN 210 See also 42 CWN 14—1938 Cal 157; 7 LW 339; 44 IC 413 (undue influence); 15 IC 529.

As to gift by an old infirm woman and by pardanashin ladies, see also 18 C 545. A gift voidable at the option of the donor can be avoided after his death by his heirs. 23 ALJ 376—1925 A 437. But see 2 p 52—1922 p 514, holding that the right of a person to avoid a gift is one personal to donor and cannot be transferred. Where certain property was gifted subject to the condition that the

donee should not transfer it without the consent of the donor, the restraint was a mere personal promise to the donor, and was enforceable under section 126 and is not hit at by section 10 of the Act. 7 R 306—1929 R 226. As to *power to revocation for non-payment of debts by donee*, see 1930 ALJ 623—1930 A 669.

Sections 126 & 122—Gift—Revocation—It was Judge/Qazi who would take note of and explain circumstances under which a decree could be passed revoking gift. *Ashiq Hussain vs Ali Ahmad* 1999 YLR 2209.

127. Onerous gift—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.

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 has shares in X, a 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 the 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.

Case Law

Section 127—The section is an application of the rule of election to gifts: *20 M 147*; and as embodying rules of justice and equity is also applied to Hindus and Muhammadans: *35 C 767*. In the case of disqualified donee accepting onerous gifts, the option to refuse is only to the donee but the gift is binding on the donor. *19 C 236*; *10 C 1102*. It has also been held that a minor donee can accept a beneficial gift personally without the intervention of a guardian. (*33 M 312 at 314 R*) *13 NLR 18—39 IC 46*. But a minor would not be bound during his minority by his acceptance of an onerous gift (See last para of the section).

Sections 127 and 68—In the case of an onerous gift the donee is liable to meet the obligation incurred under the deed of gift. The fact that the mortgage which the donee is asked to discharge, was found to be void, cannot relieve him of his liability. Nor the fact, that the donee being a minor has under section 127 an option of repudiation, exempt such a donee from liability till in fact the option is exercised. Section 68 of the Transfer of Property Act cannot obviously apply as the claim is based on the deed of gift and not on the mortgage. Moreover, section 63 presupposes a valid mortgage. The donee is liable to the extent of the gifted property in his hands. *1937 OWN 1096—1937 O. 517*.

128. Universal donee—Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by ¹[and liabilities of] the donor at the time of the gift to the extent of the property comprised therein.

Case Law

Section 128—Section does not conflict with any rule of Muhammadan Law. Where a Muhammadan made a gift of all his property to his son and directed him to pay all his debts, the son is a *universal donee* and is liable to pay all the debts. *7 OWN 523—1930*

O 268 See also *155 IC 308—1935 OWN 589*; *18 NLJ 179* (Surrender by Hindu widow of her estate to daughter and daughter's son). Section applies only to universal donee: *50 A 818*. As to who is a *universal donee*, see *50 A 818—115 IC 114*. A transfer in consideration

1. Inserted by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 60.

of donee undertaking to pay the debts of the donor is a sale and not gift. *50 A 818—115 IC 114*. A deed executed by a husband in favour of his wife, under which he transfers to her absolute proprietary title in the whole of his immovable property in part payment of her deferred dower, is not a deed of gift, but a deed of *hiba-bil-ewaz* and the provisions of section 128 have no application. The settlement of dower debt due to a wife is a legitimate settlement, and where it is conducted in a proper manner and there is nothing to show that the wife had any knowledge of the existence of a promissory note executed by her husband in favour of a third person, the property transferred is not liable to attachment and sale in execution of a decree obtained on the basis of the promissory note. *4 OWN 456—1927 O 176*.

A universal donee is, on the principle embodied in section 128, liable to pay the debts of the donor out of the estate in his hands. *42 PLR 307—1940 L 285*.

The essential condition to constitute a universal donee is that the gift must consist of the donor's whole property. If any portion of the donor's property, no matter whether it is movable or immovable is excluded from the operation of the gift, the donee is not the universal donee. *1930 ALJ 99—1930 A 180; 8 OWN 1291*.

But where the donee was in possession of all the properties except a small item which was given over to the donor under a lease for his lifetime: the donee is a universal donee liable for all the debts of the donor. If he found that the property was burdened with too much debt, he could throw away the property. *140 IC 120(A)*. Where a person sues another on the ground that the latter is a

universal donee, the onus lies on the plaintiff to prove that the transaction amounted to a deed of gift and that the defendant was a universal donee. *26 ALJ 753—50 A 818*. On this section, see also *4 LW 339—38 IC 248*.

A creditor of the donor can tack the secured and unsecured debts of the donor together and insist, when the donee seeks to redeem the secured debt alone, that the unsecured ones should be redeemed at the same time. *7 B 101*. On the death of a tenure holder, the tenure devolved upon his daughters. A rent decree was obtained by the landlord against them. The daughters relinquished their interest in favour of the reversioners by a family arrangement and the reversioners had specifically taken over the liability to pay debts. Under section 128, the reversioners as donees would be liable for the debts of their donor and the landlord can sue the reversioners on the basis of the family arrangement. (*23 C 454, rel on*) *1937 C 226*.

Where a person incurs a debt under a promissory note executed by him and then makes a gift of the whole of his movable and immovable properties, the donee is liable under section 128 for the debt due by the donor. The fact that subsequent to the gift the donor renews the original promissory note makes no difference to the donee's liability, because it cannot be said that the debt in question was not a liability of the donor in existence at the time of the gift. *1937 MWN 395*. Where a donor at the time of gift still owns a house, holds certain ex-proprietary tenancy rights and has grains, bullocks, etc and also has still vested in him the equity of redemption in respect of a property other than that gifted, the donee is not a universal donee. *1941 OWN 56—1941 O 205*.

129. Saving of donations *mortis causa* and Muhammadan Law—Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan Law ¹* * *

Case Law

Section 129—In view of the amendment, the question raised in *104 IC 299—1927 O 278*, as to applicability of section to Hindus or Buddhists does not arise. Section 129 as it stood before the amendment of 1929 kept the rules of Hindu Law unaffected by anything contained in Chapter VII of the Act. *42 CWN 14—1938 C 157*.

Sections 129 and 117—Section 129's application is not to a particular class of lands. *Jabed Ali vs Abu Shaikh 35 DLR (AD) 31*

Gifts in Contemplation of Death

See *3 BLR (OCJ) 113*. (Gifts of Government Promissory Notes made in contemplation of death passed by mere delivery without endorsement will constitute a legal and valid gift.)

Muhammadan Law

The rules as to gifts under the Muhammadan Law are contrary to the rules under the Transfer of Property Act and the latter do not apply to a Muhammadan gift. *14 PLT 599*. See also *1937 R 240*. This section does not state that the provisions of this chapter shall not at all apply to Muhammadans, but it only lays down that its

provisions shall not affect any rule of Muhammadan Law. Hence, insofar as the rules in this chapter are in consonance with justice and equity and do not conflict with any rule of Muhammadan Law, they would be applied to Muhammadans also. See *35 C 767*. See also *1936 R 430; 1936 R 522*. Under Muhammadan Law registration alone is not sufficient. Delivery of possession also is essential. *38 A 627—43 IA 212—31 MLJ 607 (PC)*.

The power to extend any part of the Transfer of Property Act given to the Local Government by section 1 of that Act does not authorise the Local Government to extend particular sections of the Act so as to give those sections a different operation from that which they had in the Act itself, read as a whole; it cannot abrogate in the area to which the extension is made the existing rule of Mohamedan Law as to delivery of possession regarding gifts as to which the Legislature has expressly provided that it should remain unaffected by the Act. *54 IA 23—5 R 7—52 MLJ 362 (PC)*. Oral gift by Muhammadan in favour of his wife in lieu of her dower debt is *hiba-bil-ewaz*, which is pure gift and not sale. Being a valid gift under Muhammadan Law, provisions of Chapter VII, are not applicable

1. The words "or, save as provided by section 123, any rule of Hindu or Buddhist law" repealed by the Transfer of Property (Amendment) Act, 1929 (XX of 1929), section 61.

and such gift can be made orally, without a registered instrument. 1936 ALJ 1027—1936 A 600. The section does not apply to a transfer by way of gift governed by section 130. 38 IC 248—4 LW 339.

Section 129—Muhammadan Law—Gift—Gift by Muslim husband in favour of his Muslim wife in lieu of dower—Document wherein deceased husband had acknowledged factum of gift and transfer of possession did not require registration when donee had accepted such gift—Provision of

section 129, Transfer of Property Act, 1882, requiring making of gift of immovable property through registered instrument would not apply to gift made by Muslims—To complete gift under Muhammadan Law, declaration, acceptance and transfer of subject-matter of gift were required—Essentials of gift having been completed, gift made in favour of plaintiff by her deceased husband was genuine and valid—Registration Act (XVI of 1908), sections 17 49. *Mst Charagh Bibi vs Mehraj Bibi* 1998 CLC 796.