"Gift" - under the Transfer of Property Act (ToPA), 1882 – Essentials, *sine qua non* requirements, etc.

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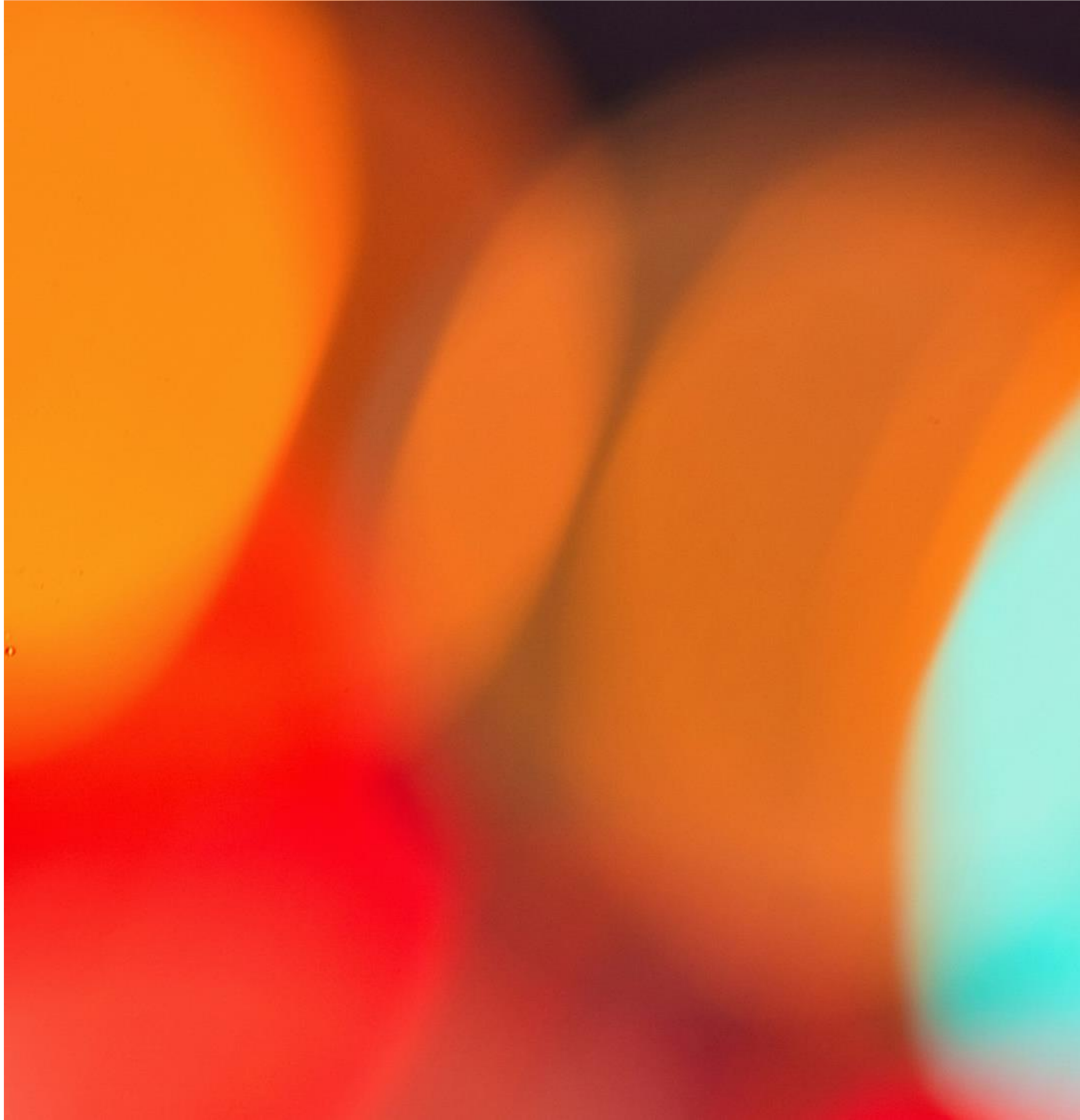


Chapter VII – "Of Gifts" - Section 122 to 129.

- **SECTION 122:**
- **122. "Gift" defined.**—"Gift" is the transfer of certain existing moveable or immoveable 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.

Chapter VII – "Of Gifts" - Section 122 to 129.

- **SECTION 123:**
- **123. Transfer how effected.**—For the purpose of making a gift of immoveable 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 moveable 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

Essential elements of a Gift per Section 122 of ToPA.

- Hon'ble Supreme Court has held: upon a perusal of Section 122 of the Transfer of Property Act, listed the following essential elements:
- (*i*) the absence of consideration;
- (*ii*) the donor;
- (*iii*) the donee;
- (*iv*) the subject-matter;
- (*v*) the transfer; and
- (*vi*) the acceptance. (per paragraph 13 of *Asokan v. Lakshmikutty,* (2007) 13 SCC 210)

Acceptance – How Made *Qua* Gifts – Implied conduct of Donee

- "14. Gifts do not contemplate payment of any consideration or compensation. It is, however, beyond any doubt or dispute that in order to constitute a valid gift acceptance thereof is essential. **<u>We must, however, notice that the Transfer of Property Act does not prescribe any particular mode of acceptance</u>**. It is the circumstances attending to the transaction which may be relevant for determining the question. **There may be various means to prove acceptance of a gift**. The document may be handed over to a donee, which in a given situation may also amount to a valid acceptance. The fact that possession had been given to the donee also raises a presumption of acceptance."
    - Hon'ble Supreme Court in *Asokan.*
- Reiterated by Three Judges decision in *Daulat Singh v. State of Rajasthan,* (2021) 3 SCC 459
- Cross-Reference with **Section 92** of the new **Income Tax Code, 2025**.

Two essential characteristics of a GIFT u/s. 122 of ToPA

Section 122 postulates that a gift must have two (2) essential characteristics:

- That it must be made voluntarily; and
- That it should be without consideration.
- This is apart from the ingredients like acceptance, etc., that was previously outlined (para. 21 of *Sonia Bhatia v. State of U.P.*, (1981) 2 SCC 585).
- *Sona Bhatia* also discusses the legal definitions of both 'gift' as well as 'consideration' threadbare by relying on various authorities.

A 'Gift' must be without 'Consideration':

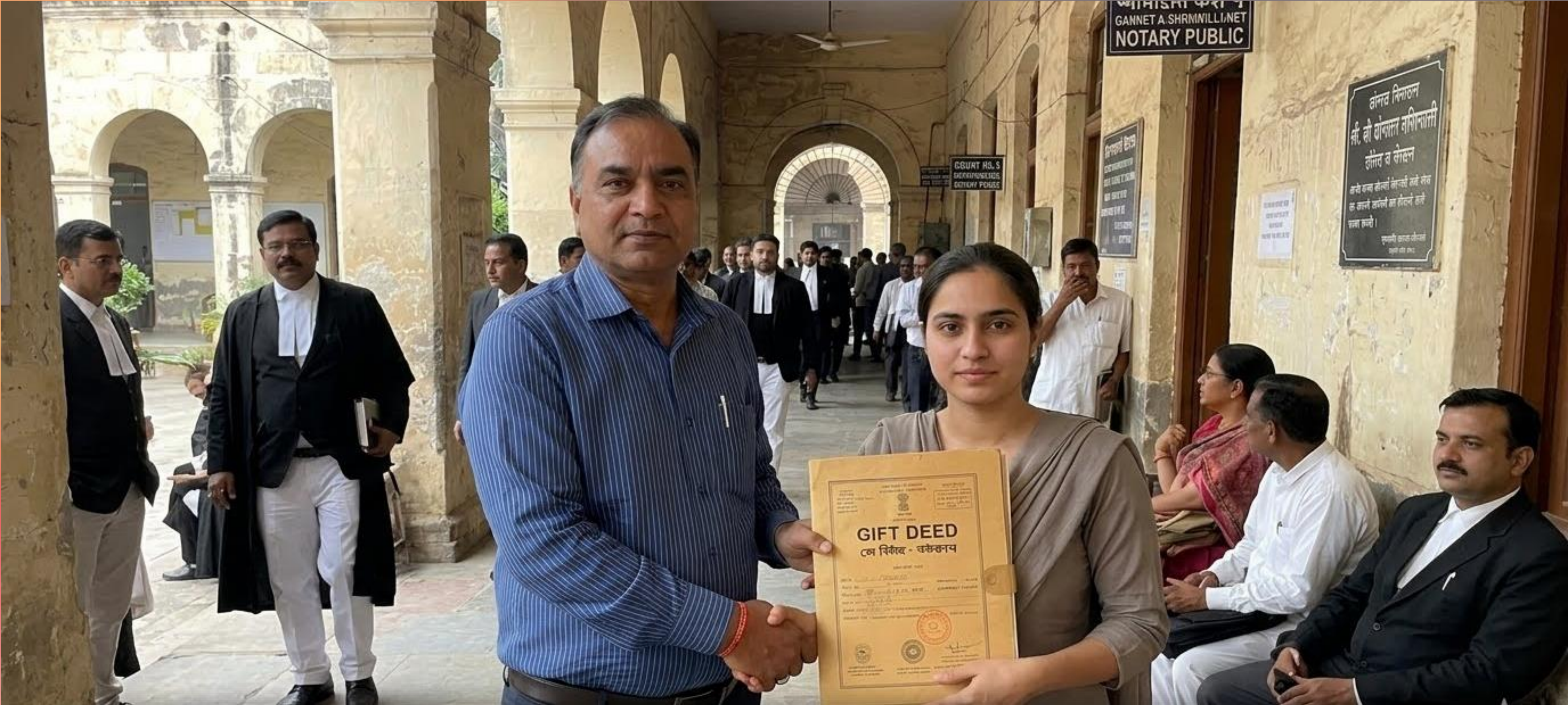
- ***16.*** *It is, therefore, clear from the statement made in this book that the concept of gift is diametrically opposed to the presence of any consideration or compensation. A gift has aptly been described as a gratuity and an act of generosity and stress has been laid on the fact that if there is any consideration then the transaction ceases to be a gift. Before closing this aspect of the matter we might also refer to the definition of consideration given in various books. BLACK'S LAW DICTIONARY defines "consideration" thus:*
- *"Consideration is not to be confounded with motive. Consideration means something which is of value in the eye of the law, moving from the plaintiff, either of benefit to the plaintiff or of detriment to the defendant." -* Hon'ble Supreme Court in *Sonia Bhatia*

Mode and Manner of 'Transfer' of a 'GIFT':

- Section 123 is divided into two parts:
- If immovable property, Section 123 makes transfer by a registered instrument mandatory; Intention of the Legislature - "the transfer must be effected"; (Section 123 to be read with – Section 3: "instrument" means non-testamentary instrument);
- **NOTE: Provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid & effective**.
- If movable property – simply requires that gift may be effected either by a registered signed instrument signed or by delivery.

Effect of Section 129: Poast-Amendment Effect after 1929

- **129. Saving of donations *mortis causa* and Muhammadan law.—** Nothing in this Chapter related to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law 2***.
- The words and figures "or, save as provided by s. 123, any rule of Hindu or Buddhist law" omitted by Act 20 of 1929, s. 61.
- **Effect** – Law as it stands today, post 1929, protects only the rules of Muhammadan law from the rigours of Chapter VII relating to Gifts. **Accordingly, Section 123 supersedes the rules of Hindu law insofar as such rules required delivery of possession to the donee**.



Participatory Case Studies

Applying the Essentials of Sections 122 & 123 of ToPA

Case 1: BARE FACTS

- Both parents executed separate registered gift deeds, in favour of their son. He was put into posession and out of love and affection, the property is gifted to you to lead a good family life.
- Subsequently, son does not fulfill onerous obligation – does not pay Rs. 5 lacs for the marriage of his sister.
- Note: said Son (Donee) does not render said financial assistance though he is resident in United Kingdom (UK).
- Parents (Donors) in turn, cancelled the gift deeds by two documents executed subsequent to refusal of payment of sum by son for his sister's marriage.
- Son moves the Ld. Trial Court.

Case 1 : Son (Plaintiff) v. Father (Def. No. 1) & Mother (Def. No. 2)

- Donee son moves the Ld. Trial Court and files a suit seeking declaration that he was the absolute owne of the suit properties.
- Doner parents contend that – son had not provided much needed financial assistance though he was employed in UK, and acceptance was not complete. Parents in their evidence stated that though son initially agreed to pay the sum, he changed his mind later on.
- **Issue for the consideration of the Ld. Trial Court: "1. Whether an avernment made in the gift deed qua handing over possession is sufficient proof of acceptance by Donee?; 2. Can subsequent conduct of donee result in rescission of a gift, if validly accepted?" Please adjudicate and decide.**

Change of Law and Purposive Interpretation of a Beneficial Legislation – The Maintenance & Welfare of Parents & Senior Citizens Act, 2007

- Section 2 (h) - "Senior Citizen" - means any person being a citizen of India, who has attained the age of sixty years or above;
- **Section 23**. Transfer of property to be void in certain circumstances.—(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.
- (2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.
- ***Urmila Dixit v. Sunil Sharan Dixit***, (2025) 2 SCC 787 - gift deeds were cancelled applying Section 23; Section 23 closely linked to the Statement of Objects and Reasons of the 2007 Act.

Case 2: BARE FACTS

- Plaintiff files suit seeking declaration – that revocation deed executed by the Defendant, in a purported exercise to revoke a gift deed – was null & void.
- Plaintiff's case – Gift had been accepted by the plaintiff when Defendant donee has reserved to herself during life, the right to benefits arising out of suit property.
- **Note: Both parties are Hindus.**
- Ld. Trial Court ruled in favour of Plaintiff since Defendant failed to prove fraud/sham document. No steps taken to assail gift deed for 12 years. Ld. First Appeallate Court affirms Trial Court view. Hon'ble High Court affirms view in second appeal.

Case 2 : Plaintiff (Donee) v. Defendant (Doner)

- Doner now moves the Supreme Court under Article 136, and files an SLP.
- Concurrent findings of three courts.
- Bearing Section 129 of ToPA in mind:
- **Issue for the consideration of the Court: "Whether the retention of possession of the gifted property for enjoyment by the donor during his lifetime and the right to receive rents from the property, in any way, affected the validity of the gift?" Please adjudicate and decide.**

Thank you for a patient hearing!