

# GIFT

## **Gift Giving Invalid Without Consent**

*May a person coerce another into giving or accepting a gift?*

The giver and the recipient must agree to the gift; a gift coercively taken from the giver or forcefully given to the recipient is invalid; agreement may be written, spoken or unspoken (e.g. a nod).

## **Impermissibility Of Restricting Gift's Usage**

*May the giver of the gift attach restrictive conditions to the usage of the gift?*

It is impermissible for the giver to impose conditions on how the gift will be used by the recipient.

## **Physical Possession Not Requirement For Valid Gift Giving**

*Must the giver be in physical possession of the gift intended to be given?*

Physical possession by the giver is not a condition of valid gift giving; for example, it is permissible to gift an item that has already been entrusted to a trustee merely by stating so.

## **Gifting To Children**

*What is the ruling on gifts given to children?*

Gifts to children are of two types: 1) gifts given to the parent or guardian for the ostensive purpose of benefiting the child, are the property of the parent or guardian (who is closest in relationship to the giver) who may use the gift in any manner they choose; and 2) gifts given directly to the child, in which case the child owns the gift and the parent or guardian (in the order of guardianship) keep it on the child's behalf.

## **Gift Should Leave Giver's Possession**

*Must the gift be separated from the giver's property?*

The gift should be separated from the giver's property and until it is separated it remains the property

of the giver, even if he considers the gift as having been given.

### **Gifting One's Share In Undivided Property**

*Would it be permissible for an individual to gift his share in an undivided, shared property?*

It is impermissible to gift one's share in an undivided property shared by two or more individuals, unless all the owners of the property gift the entire property or the gift giver's property is divided from the rest, provided the property is dividable.

### **Permissibility Of Taking Back Gift With Recipient's Agreement**

*Is it permissible to take back a gift?*

It is impermissible to take back a gift, unless the recipient agrees to its return (except for children and the insane, whose permission is invalid).

### **Taking Back Gift In Which There Has Been Substantial Value Addition**

*The recipient has agreed to a gift's return, but the gift has increased considerably in its worth due to substantive value addition (e.g. gold turned to jewelry). Would it still be valid for the giver of gift to accept the gift's return?*

It is permissible to take back a gift that the recipient willingly returns, unless the value-addition to the gift is substantial enough to have increased the value of the item (e.g. gold turned to jewelry), in which case it is impermissible to do so even if the recipient is willing (though the recipient is entitled to gift the item). It is, however, permissible to take back a gift that the recipient willingly returns if the value-addition created by the gift is separable from the gift itself, such as the capital gains earned from gifted company stock or the offspring produced by a gifted animal; the original gift is returnable but not the value-addition (though the recipient is entitled to gift the item).

### **Reclaiming Gift Before Possession**

*What is the exact time before which the giver may reclaim his gift?*

The giver may reclaim a gift before the recipient takes constructive possession of it, but not after, however insignificant the gift.

## **Validity Of Mistakenly Given Gift**

*Is a gift given by mistake considered a valid gift?*

A gift given in error is still considered to have been given validly and may not be reclaimed by the giver unless the recipient agrees to its return. Once the gift is validly reclaimed, ownership rights return to the claimant.

## **Gift Not Returnable Once Giver Or Recipient Dies**

*Would the gift be returnable if either the giver or the recipient dies?*

No gift is returnable once either the giver or the recipient dies.

## **Rules Pertaining to Gift Giving**

*What are the rules pertaining to gift giving?*

Gifts, or hiba, must have an offer, an acceptance, and possession. The offer should be made in such a way that the intention of the person giving the gift should be clearly understood by the one receiving it. This may take place without the exchange of a verbal offer and acceptance.

The intention of the gift giver and the acceptance of the receiver may be expressed merely by their manner, such as a nod. Once a gift is sent to a person and he takes possession of it, it is equivalent to an exchange of an offer and acceptance between both parties.

In a sale and purchase transaction, the offer and acceptance must take place while both parties are present, however, in the offer and acceptance of a gift, the presence of both parties together is not a prerequisite. In the event that after an offer and before an acceptance has taken place either party passes away, the offer and acceptance is automatically annulled. A contract of gift may not be made for the future.