

UNIT - III

Hiba (Gift) • Wakf • Pre-emption

Essentials of Gift • Revocation • Mutawalli • Right of Pre-emption (Shufa)

Unit Structure

01

Hiba (Gift) under Muslim Law

Definition, essentials, kinds, revocation

02

Wakf

Definition, essentials, creation, Mutawalli – powers & duties

03

Pre-emption (Shufa)

Meaning, who can claim, when the right is lost

Hiba – Definition and Essentials

Hiba is an immediate and unconditional transfer of property (movable or immovable) made without consideration by one person (donor) to another (donee) and accepted by or on behalf of the donee.

Essentials:

1. Declaration of gift by the donor (ijab)
2. Acceptance by the donee (qabul)
3. Delivery of possession (qabza) – actual or constructive

No writing is required under pure Muslim law, though registration may be necessary under the Transfer of Property Act / Registration Act for immovable property of certain value. Delivery of possession is the most critical requirement.

Kinds of Hiba and Related Concepts

Hiba-bil-Iwaz

Gift with return – a gift made in return for something. Once completed it is treated like a sale.

Hiba-ba-Shart-ul-Iwaz

Gift with a stipulation for return. The return is not given at the time of gift.

Sadaqah

Charitable gift made with a religious motive – cannot be revoked.

Ariyat

Licence to enjoy the usufruct – not a transfer of ownership.

Revocation of Gifts

A gift can be revoked by the donor before delivery of possession.

After delivery of possession, revocation is possible only with the consent of the donee or by a decree of the court, and is subject to exceptions.

Gifts that cannot be revoked include:

- Gift to a spouse
- Gift to a relation within the prohibited degrees
- Sadaqah (charitable gift)
- When the donee has alienated the property
- When the subject-matter is lost or changed
- When the donor has received iwaz (return)

The general policy is to uphold completed gifts.

Wakf – Definition and Essentials

Wakf is the permanent dedication by a Muslim of any movable or immovable property for any purpose recognised by Muslim law as religious, pious or charitable.

Essentials:

1. Permanent dedication
2. By a person competent to make a wakf (Muslim of sound mind and adult)
3. Of any property (subject to certain restrictions)
4. For a purpose recognised as religious, pious or charitable

Once a valid wakf is created, the property is locked permanently for the stated purpose. The ownership is transferred to God (Allah) and the Mutawalli only manages it.

Mutawalli – Appointment, Powers and Duties

The Mutawalli is the manager / superintendent of the wakf property. He is not the owner.

Appointment: By the founder (wakif) in the wakf deed, or by the executor, or by the court, or by the existing Mutawalli under certain circumstances.

Powers: To manage and administer the wakf property, collect income, spend for the stated purposes, and do acts necessary for the preservation of the property. He cannot sell, mortgage or exchange the wakf property without the permission of the court (unless the deed gives such power).

Duties: To carry out the objects of the wakf, keep accounts, protect the property, and act in good faith.

Removal: The court can remove a Mutawalli for misconduct, breach of trust, unfitness or other sufficient cause.

Pre-emption (Shufa) – Meaning and Nature

Pre-emption is a right which the owner of an immovable property possesses to acquire by purchase another immovable property which has been sold to another person.

It is a right of substitution – the pre-emptor steps into the shoes of the buyer.

Under Muslim law the right arises in three cases:

1. Shafi-i-Sharik – co-sharer in the property
2. Shafi-i-Khalit – a participator in immunities and appendages (e.g., common right of way or water)
3. Shafi-i-Jar – owner of adjoining immovable property (neighbour)

The right is available only when the sale is complete and is subject to strict procedural requirements (demands).

When the Right of Pre-emption is Lost

The right of pre-emption is lost in the following cases:

- When the pre-emptor fails to make the necessary demands (talab) in the prescribed manner and time
- When the pre-emptor has acquiesced in the sale
- When the property has been improved by the buyer and the pre-emptor refuses to pay the enhanced value
- When the pre-emptor himself sells his own property that gave him the right
- By death of the pre-emptor (in some schools the right is not heritable)
- By release or waiver

Modern statutory changes and judicial decisions have limited the scope of pre-emption in many states.

Landmark Judgments

Mohammad Raza v. Abbas Bandi Bibi

Relevant for understanding restrictions and gifts under Muslim law.

Fazal Rab Choudhary v. G.D. Bagga

On the essentials of a valid hiba and delivery of possession.

State of Uttar Pradesh v. Bansi Dhar

On the nature of wakf and the position of Mutawalli.

Bhau Ram v. Baij Nath Singh

Constitutional validity and scope of pre-emption rights (though more general).

Key Takeaways – Unit III

- Hiba requires declaration, acceptance and delivery of possession; writing is not essential under pure Muslim law.
- A completed gift is generally irrevocable except in limited circumstances.
- Wakf is a permanent dedication of property for religious, pious or charitable purposes; ownership vests in God.
- The Mutawalli is only a manager and cannot alienate wakf property without authority.
- Pre-emption is a right of substitution available to co-sharers, participators in appendages and neighbours, subject to strict demands.
- Modern law has restricted the operation of classical pre-emption in many jurisdictions.

End of Unit – III

Hiba • Wakf • Pre-emption

Proceed to Unit-IV: Muslim Inheritance & Indian Succession Act