

The definition of
marz-ul-maut is that a
malady



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The law relating to the marz-ul-maut is a combination of rules derived from both the branches. Buckley, L. J., aptly described as *donatio moritis causa*, as a gift of amphibious nature; not exactly a gift, nor exactly a legacy, but partaking the nature of both. The different schools of Muslim law take divergent views on the marz-ul-maut gifts.

The Malikis take the view that the marz-ul-maut gifts are void. The Hanafis and the Shia hold that such gifts to the extent of one-third are valid.

Marz-ul-maut:

A gift to be valid as marz-ul-maut gift must be made during marz-ul-maut, or death-illness. The most valid definition of marz-ul-maut is that a malady which, it is highly probable, will issue fatally. A gift must be deemed to be made during marz-ul-maut, if it was made “ under pressure of the sense of the imminence of death. But where the malady is of long duration, such as consumption or albuminuria, and there is no apprehension of death, the malady cannot be called marz-ul-maut.

The Muslim law-givers hold the view that if a disease continues for a period of more than one year then it cannot be called marz-ul-maut, because, as the *Durr-ul-Mukhtar* puts it, when a person suffers from a malady which is ordinarily mortal for over a year, it ceases to have any apprehensive influence on his mind as it has become part of his nature. However, even then the disease may become marz-ul-maut if it reaches a stage where the apprehension of death is genuine or death is highly probable. When a person is in imminent fear of death whether from disease or any other cause, so that in case of an illness the man is so broken by it as to be incapable from

conducting his ordinary avocations outside his house; for example, a fakih (jurist) from going to the mosque, a tradesman to his shop, a woman from attending to her indoor occupation, it is marz-ul-maut. Another test is thus laid down: when the malady has become so severe as to make it permissible for the sufferer to offer his prayers without standing up, it must be regarded as illness of death.

Hectic fever, haemorrhage, bilious, bloody swelling and fetid purgings have been considered to be marz-ul-maut by Muslim authorities. The Shia authorities are to the same effect. Sharaya-ul-Islam holds that every malady which is accompanied by a genuine apprehension of death is marz-ul-maut. Thus, temporary fever, headache, ophthalmia and tubercle on tongue are not marz-ul-maut. It is submitted that all those ailments, whether dangerous or not, which result in death, should be regarded as marz-ul-maut maladies and those from which death does not ensure should not be regarded as marz-ul-maut maladies. A feeling, a sense of imminent death should be there.

But an apprehension in the mind of an old man that he may die suddenly at any time is not such a feeling of imminent death which may be called marz-ul-maut. It is now established that in order to constitute a marz-ul-maut gift, the following conditions must be satisfied: (i) The malady or illness must result in death, (ii) The malady or illness must cause a reasonable or genuine apprehension of death in the mind of the sufferer, (iii) There should be some external indicia of a serious illness or malady, and (iv) Delivery of possession must be given to the donee. In every case, whether a malady or illness is marz-ul-maut or not, will depend upon its facts.

It is an essential ingredient of a marz-ul-maut gift that the donor must die of the malady from which he was suffering at the time when he made the gift. What is required to be proved upon the preponderance of probabilities is whether the gift was made by the ailing person while under the apprehension of the death and further whether while so ailing he died. If he survives the malady whatever is the nature of malady-the gift cannot be called the marz-ul-maut gift. In such an eventuality the only question will be whether there has been a valid hiba. If it is valid as a hiba, then it will take effect as hiba.

The second requirement of a marz-ul-maut gift is that there must be an apprehension of death in the mind of the donor, irrespective of the fact whether there is or there is none, in the mind of others attending on him, including the physician. If there is an apprehension of death in the mind of the sufferer, it is not necessary that he should be confined to bed. It is a unique feature of marz-ul-maut gift that it must fulfil all the requirements of a valid hiba, including the delivery of possession, and, at the same time, it is subject to all the restrictions of a will. " It is, therefore, necessary to understand that a gift by a mariz (sufferer) is a contract and not a wasiyat, and the right of disposition is restricted to a third on account of the right of heirs which attaches to the property of the mariz. And as it is an act of bounty is effective so far only as the law allows and that is a third. And being a contractual disposition it is subject to the conditions relating to gifts, among them taking of possession by the donee before the death of the donor". Thus, a marz-ul-maut gift cannot exceed one-third of the properties

of the deceased. Under the Hanafi law, a marz-ul-maut gift cannot be made to an heir, unless other heirs consent to it.

Under the Ithana Ashari law, it can be made to an heir also. But among the Ismailiya Shias such a gift cannot be made to an heir without the consent of other heirs.

Acknowledgement of Debts:

Like Hindus, Muslims also emphasise the moral and legal obligation of a man to pay his debts. According to a tradition, when the heir of a deceased Muslim was brought to the Prophet and on his coming to know that the deceased had died in debt, he refused to conduct the funeral service, until someone undertook to pay the debt of the deceased. Under Muslim law, a person may acknowledge his liability or debt whether in health or ailing. The Muslim authorities take the view that a declaration or admission of liability by a Muslim is binding not only on the person, who makes the declaration or admission, but also on his heirs. When the only proof of a debt or liability of the deceased is the death-bed acknowledgement of it, then the Muslim law-givers rank it, in respect of priority, midway between other debts and legacies.

This means that other debts have priority over the death-bed acknowledgement. Such debts have priority over legacies. Under a Hanafi law, a marz-ul-maut acknowledgement of debt or liability in favour of an heir is no proof of debt or liability at all, and no effect can be given to it. Under the Ithana Ashari law, such an acknowledgement is valid. In death-illness acknowledgement of debts and liability, the danger of fictitious

acknowledgements is great and a duty is cast on the court that such acknowledgements should not become an engine of fraud and fraudulent preference. A divorce pronounced by person, who is suffering from a mortal malady, cannot deprive the wife of her right of inheritance.