

Thus, to with the
condition that after



Thus, a gift made by a person in favour of another for life, and in the event of his death without leaving a male issue to X; the gift is contingent with respect to X. Where a Muslim made a gift to his wife for life, and after her death to such of his children as might be living at his death, the gift was held to be contingent.

Gifts with Conditions and Life Estates:

“ All our masters are agreed that when one has made a gift and stipulated for a condition that is Jasad or invalid, the gift is valid and the condition is void”. In Muslim law, gift is not rendered invalid, by involving an invalid condition. Hanafi law clearly lays down that in such a case the gift is valid and the condition is void. Thus, where gift of promissory notes is made by A to with the condition that after a month would return to him one-fourth of them, or where a gift of his house is made by X to Y with a condition that Y will not sell it to a particular person, then the gift is valid and the condition is void.

The rule is that in contracts where complete seisin is a condition nugatory provision do not avoid the contract but are themselves rendered void”. For instance, where a person makes a gift of his house by saying that the donee will retain it for his life, and after his death it will revert to the donor, the gift is valid and the condition is void. Where the donee was given absolute right in the property by the gift deed and it was also stated that after the death of the donee property shall go to another person, this condition was held invalid. Under Shia law, if the condition attached to a gift is subsidiary, then both the gift and the condition are valid. On the point as to how far Muslim law recognizes life estates and limited estate, there are several Privy Council

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decisions. In *Md. Raza v. Abbas Bandi*, the Privy Council held that where a restraint on alienation is partial, both the gift and the condition are valid.

Thus, where a gift is made to with the condition that he should not sell the property to anyone but to the members of the donor's or donee's family, both the gift and the condition are valid. Similarly, where in a gift made by A to a condition is attached that should pay a part of usufruct to A or to X, both the gift and the condition are valid. Ameer Ali gives the reason thus: Where the intention is clear to transfer the entire right of property in the corpus of the gift, a mere reservation of interest in its rents and issues, or any profit accruing there from or a subordinate share in its enjoyment does not affect the validity". In the leading case on the subject, *Nawab Umjad Ali Khan v. Muhamadee Begum*, father made a gift of government promissory notes to his son endorsing and delivering them to the latter with the condition that the son should pay him for his life the recurring income of the promissory notes. The gift and the condition both were held valid. The Privy Council observed: " But as this arrangement between the father and the son is founded on a valid consideration, the son's undertaking is valid and could be enforced against him in the courts in India as an agreement raising a trust and constituting a valid obligation to make a return of the proceeds during the time stipulated".

This was a case under Shia law. This principle was held applicable to the Sunnis also in *Md. Abdul v. Fakhr Jahan*; *Mohideen v.*

Madras State is a good illustration of this rule. A Muslim executed a deed under which she made a gift of her large estate to her two sons. P and Q,

with the condition that out of the income of this estate P and Q would pay a sum of Rs. 500 per annum to her for her life, and a sum of Rs. 350 per annum to her daughter D for her life, and thereafter her heirs and successors in perpetuity. The donor died in 1909.

D died in 1950. In 1951 the estate was acquired by the governor of Madras. The heirs of D filed a claim against the government of Madras under the settlement. The settlement was held valid by the Madras High Court on the ground that Muslim law made a clear cut distinction between the corpus and the usufruct and the validity of the obligation imposed upon the donee to pay a yearly sum in perpetuity could be supported on the principle of trust. In *Any ad Khan v. Ashraf Khan*, a Muslim by a deed made a gift of his entire property to his wife, W, with the stipulation that W was to remain in absolute possession over one-third of property with full power of alienation, and she was to remain in possession for her life time over two-third of the remaining property. After her death, the entire two-third property and whatever was left of the one-third, was to revert to the donor's collaterals.

On W's death her brother claimed the entire property on the plea that it was a gift with a restrictive condition and, since the condition was void and gift was valid, W took absolutely; he, being the heir of W, was entitled to the entire property. The Privy Council held that the life interest cannot be enlarged into an absolute estate. However, the Privy Council left open the question of the validity of the life estate.

Then came *Nawazish Ali Khan v. Ali Raza*. In this case, a Muslim belonging to the Ithana Ashari school disposed of his entire estate by will and created

three successive life-estates; one in favour of his nephew A, thereafter in favour of his son and lastly in favour of his another nephew C. He also gave a power of appointment to the last surviving donee to nominate his successor from among the descendants of the three life-estate holders.

After the death of the testator, A succeeded to the estate. After A's death the estate passed on to . Ñ died during the life time of , exercised the power of appointment and nominated C's son D as a successor, D was in existence at the time of his nomination but not at the time of testator's death. The Privy Council held that the power of appointment was not known to Muslim law, and, therefore, the appointment of D was void. The estate passed on to B's heirs. In the course of the judgment, the Privy Council observed: " If it is a gift of the corpus, then any condition which derogates from absolute dominion over the subject-matter of the gift will be rejected as repugnant; but if upon construction the gift is held to be one of a limited interest, the gift can take effect out of usufruct, leaving the ownership of the corpus unaffected except to the extent to which its enjoyment is postponed for the duration of the limited estate". All these cases, as well as the cases of the High Court's dealing with the subject, were analyzed and discussed by Mukherjee, J.

in *Anjuman Ara v. Nawab Asif Kadar*. The learned judge very lucidly stated the law thus: " To appreciate the true legal position it is necessary to remember that ' life-estate', that is, life-grant of a property which is usually called a life-estate is not regarded in Mahommedan law as an estate or interest in the ' corpus'.

That law recognizes only one kind of estate, namely, full ownership in the ' corpus. The corpus means the ' article'; the ' thing' or ' the substance'. It is distinct from the usufruct which means the ' use' of the article or the produce, the bundle of rights in the thing, or ' the substance', in other words, full rights over the ' article' or complete dominion over the ' substance'. That dominion is absolute and indivisible. It permits no slicing and tolerates no obstacle or restriction.

Grant of full dominion over the corpus may, however, be accompanied by a gift of the use or usufruct to another, that is, a condition or limitation as regards the ' usufruct', and both the grant and the condition will be valid. Limited estate short of complete ownership may also be created but not in the form of a gift of the corpus subject to a condition affecting the same ' the thing' or ' the substance'. Any such interest-whether ' limited' in point of quality or in point of ' duration' is in Mahommedan Law, different from the ' corpus' and take effect out of the usufruct. In the ' usufruct' however, limited interest can be created and the limitation may well be in point of time and duration, e.

g., for life or for a fixed period. Limited interests are thus recognized in Mahommedan law though not in the corpus but only in the usufruct and where the grant is of a limited character but not a grant of the corpus subject to the condition it takes effect out of the usufruct and is not regarded as a grant of the corpus at all but only as a grant of or in the usufruct". Thus, for the creation of limited interests, it is necessary that the donor must deliver possession of the property to the life-tenant (in short, all conditions of hiba must be fulfilled), the first grantee must be in existence at the time of

the grant, the successive grantees should be in existence when the grant opens out. Any type of property can be the subject-matter of grant, provided the property must admit of use without being consumed”.

It is well-settled that under the Shia law the following three types of limited interest can be created; (a) umra a life grant, Le., a grant of the use or usufruct for life, (b) sukna, Le., the right to reside in a house for life, and (c) ruqba, Le.

, the right to take the usufruct for a fixed period. Under Shia law vested remainders are unlawful and void. In *Zameela Begum v. Controller of Estate Duty*, under a settlement deed, the settlor conferred absolute rights, title and interest in the property on his son subject to the obligation of payment of the income of the property to him during his life time and after his demise to his widow for her life. The Supreme Court said that the settlement and the condition are being valid and the wife of settlor having had a charge on the property for realization of the income during her life time. On her death the interest ceased and passed on to the beneficiary son. Since under Muslim law a distinction is made between the corpus and usufruct of the gift, the gift was held valid.