

# When gifts come with a liability

An onerous gift has both benefits and liabilities attached to it and it is up to the person receiving it to accept or reject it in totality

## htestates LEGAL REMEDIES

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A gift of an immoveable property is generally considered to be a voluntary transfer of property without any kind of consideration. Whenever a person is gifted an immoveable property, it is presumed that he has received something that is valuable and beneficial for him. However, such a gift can sometimes come with an obligation to fulfill certain conditions. This is referred to as an onerous gift.

Onerous gifts are accompanied by certain charges that are imposed by the donor (giver of the gift) on the donee (recipient of the gift). It is based on the principle that 'he who accepts the benefit of a transaction must also accept the burden of the same'.

Here's how one can illustrate the same with an example. 'A' gifts his house to his son 'B' but

the property is mortgaged and B, if he is ready to pay for it, can accept the gift. He also has the option to reject the offer.

Once an onerous gift has been accepted, subject to the conditions imposed, it cannot be disclaimed. The position in law is that it is open to the receiver/beneficiary/donee to whom an onerous gift is given either to accept it in totality or to reject it altogether.

If a person accepts such a gift, he cannot refuse to carry out the obligation subject to which it is given or has been received.

Courts have on various occasions stated that such burden of obligation is attached to the ownership of the gifted property and the donee is bound to discharge the obligation he has accepted with the gifted property.

Also, such a gift can be disclaimed by the donee if a disclaimer to the effect is accepted by the donor.

If a donee refuses to carry out the obligation so attached to the gifted property and the donor wants to revoke the gift so made by him, he can do so only

if the gift is executed with a condition and there is an express mention of the power to revoke the gift so made by the donor in case of non-compliance of such condition/obligation.

There may be a case where several properties (with an obligation to pay a loan) are gifted to a person through a single gift deed and only one is burdened with an obligation.

In such a case, if the donee decides to accept the gift, he has to accept the gift as a whole (including the one with the obligation attached) or not accept it at all.

A person may also be gifted properties through various independent gift deeds. In such a case, it is completely on the discretion of the donee to accept only those gifts which, he thinks, are going to be beneficial for him. He can choose to reject the gifts which come with burdensome obligations attached to them.

Thus, the basic principle underlying the onerous gift of



### OBLIGED TO PAY

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a property is to gift both benefit and liability attached to the gift being made to an individual/ receiver of such gift.

It is totally up to the donee to accept or reject such gifts in totality.

However, once an onerous gift has been accepted, it cannot be disclaimed by donee (unless disclaimer is accepted by the donor) and the donee is then bound to fulfill the obligation imposed on him by accepting such a gift.

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