

# **Some Aspects yet to be Answered by the Revocation of Irrevocable Deeds of Gift on the Ground of Gross Ingratitude Act, No. 5 of 2017**

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**Key words** - Revocation of irrevocable deeds of gift, RDL, Third party rights, unjust enrichment, bonafide

## **Introduction**

The Roman Dutch Law as the common law of Sri Lanka covers so many areas of law including land law.<sup>1</sup> The ownership of a land and other matters connected with it governed by Roman Dutch Law principles. The ownership of a land includes three major rights as right to Possession, Use and Enjoyment and Disposition.<sup>2</sup> With regard to a land, the rights therein could be granted to another by a deed of transfer or a deed of gift. When a land is gifted/donated under a deed of gift/donation, concepts of donation are also governed by the Roman Dutch Law. Under the Roman Dutch Law, the donee has a right to revoke a deed of gift due to Gross Ingratitude. Until recently this aspect was governed by the principles of RDL. However, due to a lack of clarity regarding this particular area of the RDL some confusion has crept in to the legal system and this was clearly seen in the case of *Wilson vs. Sumanawathie & others*<sup>3</sup>. To clarify the law relating to revocation of irrevocable gifts the government introduced the Irrevocable Deeds of Gift on the ground of Gross Ingratitude Act, No. 5 of 2017. However, it seems that the current legislation has not considered some important issues with regard to its subject area. This extended abstract focuses on some aspects yet to be answered by the current legislation with regard to an effective implementation of the Act.

## **Objective**

This paper seeks to examine the issues yet be answered by the Irrevocable Deeds of Gift on the ground of Gross Ingratitude Act, No. 5 of 2017 and provide an emphasis to address these issues and suitable recommendations to the Act.

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<sup>1</sup> Cooray L.J.M., “*An Introduction to the Legal System of Sri Lanka*”, A Stamfordlake publication, 1972, 47-51pgs.

<sup>2</sup> Lee RW, *Introduction to Roman-Dutch Law*, Fifth edition, 121pg.

<sup>3</sup> CA 535/95(F) - DC Kalutara 348/L

## Method

This is a literature survey based on Textbooks, Journal articles, Law enactments and case law. In collecting secondary sources library and internet resources have been utilized.

## Discussion and Findings

This research focuses on some aspects yet to be answered by the Irrevocable Deeds of Gift on the ground of Gross Ingratitude Act, No. 5 of 2017. In the beginning of the discussion, it should be highlighted that the purpose of enacting this legislation, as points out at the parliament debate is to address some issues faced by banking sector, because of the verdict given by *Wilson vs. Sumanawathie & others* case<sup>4</sup>. In this judgment, a donor can revoke an irrevocable deed of gift by executing a deed of revocation without filing action and obtaining a decision of Court. However, this is not the previous legal position on the subject matter. Due to that banking sector faced difficulties in order to grant loans that produced the titled irrevocable deed of gift<sup>5</sup>. It affected the economic growth of the country. Nevertheless, The author's main argument is, this Act should address wider range of issues with regard to its subject area without focusing on issues of banking sector only.

**The unfairness of the situation where the gift received by the donor is revoked after significant development, resulting in increased market value, was made to the gift by the donee.** As such an incident identify some ambiguous in law. It is clear that the donee was the real owner of that gift when it was developed. Further, the donee has developed the gift with the bonafide intention upholding that he is the true owner of that property. The point is if the donor proves the gross ingratitude against the donee, the legal position is not clear because donee has developed the gift as its true owner with the bonafide intention.

**The Act does not cover third party rights in the event of revocation consequent to the donation being subject to a bond by the donee.** The Bankers, Creditors, Lessors, Tenants can be identified as the third party where the gift being subject to a bond by the donee. The third parties accept the gift based on that the donee is the absolute owner of that gift with bonafide intention and consider the gift as perspicuous titled. Such a case, revoke the gift that

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<sup>4</sup> Ibid

<sup>5</sup> The Sri Lankan Parliamentary debates (Hansard) Official report on 23<sup>rd</sup> of March 2017, 901-902 Pgs.

is already subjected to a bond is unfair to the rights of third party. Due to that revocation, donee will be unjust enriched. Therefore, the legislature or Judiciary should consider this issue in order to ensure the rights of third party based on proportionality principles.

**Time periods stipulated in the Act makes bankers think twice before granting loans to customers who have irrevocable deeds and Roman Dutch Law does not provide any prescribed time period for a revocation of irrevocable gifts.** According to the section 3<sup>6</sup> of the Act the bankers disincline to grant loans to donees if that gift has not completed the 10 year time period. Since, the donor can revoke the gift at any time within the 10 year time period based on gross ingratitude. Therefore, it is bit unfair to donees and they have to wait until ten years to develop their gift. On the other hand, it is a safeguard to bankers for maintain their credit proceedings without taking a risk.

With regard to the ten year time period, there is no prescribed time period for litigation to revoke an irrevocable deed of gift based on gross ingratitude. However, that 10 year time period also should be re-considered with regard to the rights of both parties. Since, it is contrary to the purpose of the Act when soon or at any time after the 10 year is not subjected to the litigation. There also have another issue that the Act does not specifically identify a date with regard to its operation. Therefore, the relevant time frame of the transactions in question is unclear in the Act.

**The Act does not address situations where the donor is incapacitated or is dead.**<sup>7</sup> Before exceed the time period of 10 year, it is unclear that the right to litigate against the donee either delegate to successors of the donor or not. If that right delegate to the successors of the donor, then from which grounds or legal basis? Therefore, It should be clarified by the legislature or judiciary.

**Yet another problem arises where both the donor and donee collude with each other to revoke an irrevocable gift in order to defraud a bank.**<sup>8</sup> This may be occurred due to cagey activities of the both donor and donee in order to cheat the bankers or other third parties for

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<sup>6</sup> Court shall not entertain an action referred to in section 2, unless it is filed within a period of ten years from the date of the execution of such deed of gift and within two years from the date on which the cause of action arose.

<sup>7</sup> The Sri Lankan Parliamentary debates (Hansard) Official report on 23<sup>rd</sup> of March 2017, 923Pg.

<sup>8</sup> Ibid

take loans. However, if bankers wait until ten years to grant loans, then such a situation may not be occurred.

**The high cost of litigation and severe delay in the resolution of disputes are the most of severe issues with regard to land matters.** It is undoubted that the severe delay and high cost of litigation regard to land matters aggrieve people very much. Therefore, the Act should require courts to pay special attention to these cases so they may be decided without further delay. It will be a relief for the parties and approximate the justice to the people who already suffered.

### **Conclusion**

When enacting legislation, it should consider and predict the issues, which already have and have to be occurred. Otherwise, it will lead so many ambiguous legal uncertainties in law with delays in court proceedings and substantial law. Therefore, the legislature should amend the current legislature addressing those issues, which already have or have to be occurred. Unless, judiciary should adopt some principles when these kinds of issues may occurred. It will be helpful for an effective implementation of the Act.

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