More on Malfeasance:
Bribery, Gift-giving and patronage

Lecture 12

AK Awedoba July, 2016
Outline of Lecture

- The gift and its characteristics;
- Gift Taxation?
- Bribery;
- Loans and borrowing
- Subversions & Transformations of gift culture;
- Suggestions for dealing with the bribery.
Comment

• Giving and receiving go back to the cradle of civilisation. The Bible (see Acts 20:35 in which Paul reported quotes Jesus) comments: "It is more blessed to give than to receive".

• The Koran equally recommends giving. See ‘Those who act kindly in this world will have kindness in Qur'an 39.10.’ It encourage alms giving.

• Giving and receiving can be moral or immoral, legal or illegal. It can be economic, religious, and political in flavour.

• People give, buy, barter, borrow, extort, even insult and fight by giving and receiving.
The Case of Bribery

Bribery may involve financial inducement or exchange of favours between officials and members of the public. It may be the inducement that an official requires to perform his/her duty.

Officials who should follow laid down rules may either ignore the rule or apply it in a way that benefits the bribe giver and taker.

Involved instruments: Solicited / unsolicited donations and gifts of all sorts - hampers at X-mas time, sexual favours, etc.

Patronage/indirect bribery: using hand-outs/favours to cultivate relationships with officialdom so as to induce officials to grant unwarranted favours in the future.
Gifts as conduit to Corruption
‘Lawyer: Judges can't accept gifts’

Patronage in the Judiciary?
A renowned private legal practitioner, ...., has called on judges to desist from accepting gifts from lawyers and members of the public, since the practice has the tendency to compromise their neutrality. He indicated that ... such gifts were given out with the future in mind and judges who accepted them risked compromising their positions on cases involving their benefactors.

Source: Graphic. Posted on: 27-Sep-2007
What is a gift?

It can be tangible/intangible item of property- thing, a service, even a person, given and received.

- **Gift ≠ Commodity** bought & sold in the market.

- Giver & Taker: Usually are acquaintances.

- It’s usually **assumed that gifts are free & voluntary.** This may be true, since no one can be charged in a law court for failing to give gifts.

But there is a **motive** and that makes it necessary to give a gift. **Thus gifts are not entirely free.**
Gift from Perspective of Ghanaian Law

“You make a gift if you give property (including money), or the use of or income from property, without expecting to receive something of at least equal value in return.”

This definition is in relation to the Ghanaian law on Gift Tax. However, from other points of view there is more to the gift. It is not only a material object of quantifiable commercial value or physical cash.
Resemblances.
Resemblance can mislead

- **Gifts** resemble **bribes** but they also differs.
- A **gift** resembles **purchase/barter**, but they differs.
- A **bribe** resembles **purchase**, but there are differences too.

Bribes can be disguised as gifts.

Bribe is like purchase except that it is illegal.

Parametres: legality, equivalence, morality
Bribery vrs other transactions

- Bribery is like *gift-giving*, but it is not.
- Bribery is like *purchase*, but it is not.

- **Bribes are illegal.**
- Favours given & taken are not in the gift of the giver, who in this case violates the rules, if he/she is a public servant.
- Civil/public servant isn’t public ‘master.’ S/He is paid by the public to do a job based on laid down procedures. There may be room for discretion if it promotes the public good not the interests of the public servant at the expense of the state.
The Morality of Gifts Imposes Obligations

There is a social and moral pressure to engage in gift-giving. This can vary between cultures. Cultural norms therefore make gifts not to be entirely free.

With regards to gifts social & moral obligations exist:
- **to give**: a person can lose face & prestige, even friends or be estranged from kin, when he/she does not give when it is expected. **Kindness is critical in life**.

- **to accept**: gifts cannot be refused gifts without good reason; refusal creates social problems. ‘You don’t look a gift horse in the mouth’

- **to make a return**. recipients of gift are expected to make a return gift at some time. There is a saying that ‘one good term deserves another’.
Indefiniteness of Quantities in Gift-giving

Whether tokens or expensive things gifs are economic and states even require citizens to declare gifts and pay gift tax.

• Yet the economic character of gifts is suppressed.

Example: Quantities & values of things used as gifts are not highlighted.

Good form demands that gift & counter-gift should not be seen to be equivalent.

A decent time lapse should separate one gift act from its counter.
Why Gift is Not Purchase/ Barter

Purchase employs **money**, but gift, like barter, does not depend on money.

- **Purchase/barter**: there is **semblance of equivalence** in value between items used. Gift-giving seeks not equivalence, in any case not in the short run.

- **Purchase/barter**: ‘transactors’ may be strangers, but not so in case of gifts. **What about the street beggar?**

- In purchase, **exchange is simultaneous**, or ought to be.

- **Purchase is episodic**: as it concludes, relationship also ends, but gift establishes enduring ties.

- In purchase **transactors know what they want**, but in gift, expectations are vague. Surprise is possible in gift-giving.
Features of the Bribe

Bribe is like purchase, **but it is immoral & illegal**.

- Laid down rules and **procedures are violated**.
- Like a gift, bribe involves **reciprocal exchange** and anything at all may be used.
- Like purchase, **objective is specific and known** to the parties.
- Like purchase, **it is short term**: undue delays are not tolerated.

When desired object is not forthcoming one of the parties may **blow the whistle**.

- **Bribe is not voluntary**; it may be solicited, or the parties feel they can best obtain their desires by giving to induce.
Bribe: Purchase and Gift

Note: Gifts bind people, create & sustain relationships between people. In bribery personal relationships are not the issue.

Bribe has features of both gift and purchase/barter. For that reason it can be dressed in the clothes of a gift. A gift may aim at establishing immoral obligations in the future. In this case the gift is not a gift but a bribe. Some people cultivate relations with the police, judges, etc. now so that some day they can use the relationship to make demands that cannot be refused. In this respect, gifts help to establish patron-client ties.
Gifts that corrupt

Often bribe is made to look like a gift. Thus gift-giving, which is culturally acceptable, has been seen in a negative light.

However, a true gift differs from a bribe;
- Gifts oil social relations;
- Gifts are moral & legal: they do not aim to subvert official or bureaucratic functions;
- Gifts may demand reciprocation, but usually they leave the parties free to determine time, mode and medium of reciprocation;
- Where these conditions are not fulfilled a gift is not a gift.
<table>
<thead>
<tr>
<th>Features</th>
<th>Bribe</th>
<th>Purchase</th>
<th>Gift</th>
<th>Barter</th>
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</thead>
<tbody>
<tr>
<td><strong>Legality</strong></td>
<td>Illegal-Immoral</td>
<td>Legal</td>
<td>Legal</td>
<td>Legal</td>
</tr>
<tr>
<td><strong>Timing Return</strong></td>
<td>Immediate</td>
<td>Immediate</td>
<td>delayed</td>
<td>Immediate</td>
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<tr>
<td><strong>Medium</strong></td>
<td>Anything</td>
<td>Money</td>
<td>Anything</td>
<td>Direct exchange</td>
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<tr>
<td><strong>Partners</strong></td>
<td>Unrelated/relationship weak</td>
<td>Relationship unimportant</td>
<td>Relationship Important</td>
<td>Relationship unimportant</td>
</tr>
<tr>
<td><strong>Equivalence</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Not insisted on</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Obligation</strong></td>
<td>None</td>
<td>None</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td><strong>Obligation to accept</strong></td>
<td>No</td>
<td>None</td>
<td>Yes</td>
<td>None</td>
</tr>
<tr>
<td><strong>Return obligation</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes, not immediate</td>
<td>Yes</td>
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<tr>
<td><strong>Event</strong></td>
<td>Episodic</td>
<td>Episodic</td>
<td>Cumulative, Enduring</td>
<td>Episodic</td>
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<tr>
<td><strong>Reneging</strong></td>
<td>Partner blows</td>
<td>Report to</td>
<td>Loss of</td>
<td>Report to Police</td>
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Loans and Lending

• Loans are legal i.e. are not illegal to transact.
• They are not immoral, although those who habitually contract loans are not highly respected.
• There is an obligation to settle the loan by returning the object lent out or a similar object or a cash value.
• Loans are like purchase and gift in some respects, but they are not like bribes.
• Loans may be commercial or not.
Features of the Loan

• Loan is based on assumption that what is given at one time will be returned at a future date.
• The amount of time that should elapse before the return is agreed to at point of initiating the transaction.
• The initial loan object may be of same kind as the returned object. This implies sameness in kind, value and amount.
• Non-commercial loans obtain between kin, friends & associate. Temporary denial to owner of use of his/her property may not be compensated for.
• In the case of commercial loaning the loan attracts interest. For example in banking.
Gift Tax. What is it?

... a tax on the transfer of property by one individual to another while receiving nothing, or less than full value, in return. The tax applies whether the donor intends the transfer to be a gift or not.

... applies to the transfer by gift of any property. You make a gift if you give property (including money), or the use of or income from property, without expecting to receive something of at least equal value in return. If you sell something at less than its full value or if you make an interest-free or reduced-interest loan, you may be making a gift.

http://www.irs.gov/businesses/small/article/0,,id=164872,00.htm

Legal Requirements on Gift Tax

- Ghana Revenue Authority (GRA) is expected to charge 15% as gift tax.
- We are informed that any gift is a taxable gift, but the following gifts are not taxable gifts.
  - Tuition or medical expenses paid.
  - Gifts to your spouse.
  - Gifts to a political organization for its use.
  - Gifts to recognised charities. The value of such gifts are deductible in tax declarations.
Popularity of the Gift Tax

- The Gift Tax has never been popular with Ghanaians for whom gift-giving is a cultural issue. Even heads of state don’t resist the temptation to accept gifts; it appears they do not pay any taxes on what they receive on their rounds.

- It is a curious fact however that among southern Ghanaians donor and donee may have to signal their gift by what Akans call *asida* which is a public acknowledgement. It may take the form of a drinks party to be enjoyed by all present.
How can transformation of gifts into bribes be prevented?

If bribe is disguised as gift, **unmask** it and treat as such.

- A bribe **can be nullified** by paying the giver; i.e. making it a commodity. Thus, once the payment has been effected the taker owes nothing to the giver.

Any role for whistle-blower? **Yes, but dangerous.** Ask Anas: even with video evidence it is not plain sailing.

Neither solicit, give nor accept bribes. **This takes courage.**

- Need for stiffer sanctions and penalties.