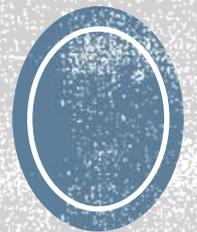




Real Property

Class 2



Inter-Vivos Gifts

- Elements:

1. **Donative Intent:**

- Must be intent to transfer a **present interest** (even if that present interest is to a right that will only vest in the future)
- Intent must be to deliver **title**, not just possession
- Must be **irrevocable**

2. **Delivery to the donee or the donee's agent**

- “Constructive” delivery is also effective; e.g.:
 - delivery of a key to a safe deposit box
 - delivery of a “deed” even to personal property

3. **Acceptance**

- Need not be actually proven; will be **presumed** if the gift benefits the donee

- All 3 elements must be completed while the donee and donor are both alive.



Gift *Causa Mortis*

- Definition: A gift given because of a **fear or impending death**
 - The death need not be imminent
 - The death need not actually occur
- **IMPORTANT:** Gifts *Causa Mortis* require the **same 3 elements as do *inter-vivos* gifts.**
- Differences in law between *inter-vivos* gifts and gifts *causa mortis*:
 - Gifts *causa mortis* are completely **revocable** until the death of the donor
(recall that an *inter-vivos* gift must be irrevocable to be valid)
 - Gifts *causa mortis* are **automatically revoked** if the situation that caused the fear of impending death passes
- Gifts *causa mortis* are effective upon delivery and acceptance. Thus, **delivery must be made while the donor is alive.** The only type of gift that can be effective after the donor's death is by a **Will.**



QUIZ TIME!



Bailments – Elements of Formation

- (Parties to a bailment: **bailor** is the **true owner** of the item; **bailee** is the person to whom the bailor is temporarily transferring **possession**)
 1. **Intent**
 - The intent must be to deliver **possession**, not title
 2. **Delivery**
 - Delivery can be actual or constructive
 - **Same rules as with *inter-vivos* gifts' delivery**
 3. **Acceptance**
 - Unlike with the inter vivos gift, **acceptance is not presumed**, because a bailment places a burden on the recipient, not just a benefit
- Bailment can also be created constructively (e.g., a finder of a lost object)



Bailments – Liability of the Bailee

- Liability for harm that comes to the property while in bailee's possession:
 - If the bailee is a "**gratuitous bailee**" (watches the object to nor compensation):
 - Bailee is only liable for **gross negligence**
 - If the bailee is a "**bailee for hire**" (both parties benefit):
 - Bailee is liable for **ordinary negligence**
 - If the **bailee is the sole beneficiary** (i.e., the bailee is a simple borrower):
 - Bailee is liable for even **slight negligence**
- **Strict Liability for misdelivery!**
 - **Scope of liability:**
 - Liability extends only to objects the bailee **knew or should have known the existence of**
 - However, the fact that the bailee did not know the **value** of the bailment is **not relevant to liability**



Gruen vs. Gruen

- Facts:
 - Father lived 300 miles away from son.
 - Father wanted to give son a painting for his 21st birthday, but wanted to keep it hanging in his living room
 - Father sent a letter to son explaining that he wanted to give it to son as a present but keep it in his living room for the rest of his life
 - After father died, his wife refused to give over the painting



Gruen vs. Gruen

| Issue | Son's position | Estate's position | Court's resolution |
|--|---|--|---|
| Did the father have intent to transfer a present interest? | Yes, because he wanted to give it as a birthday present then. | No, because he wanted to keep it for the rest of his life. | A transfer with a retained life estate is still a present interest. |
| Was the painting delivered to the son? | Yes. The note was delivered to the son. | No. The father kept the painting in his house. | The note delivered to the son served as the "deed" to the painting. |
| Did the son accept the painting? | Yes. He certainly wanted it. | No. There was no evidence he accepted it. | Acceptance of a gift is presumed. |

