



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.

