

**JULY 2015 MICHIGAN BAR EXAMINATION  
EXAMINERS' ANALYSES**

**EXAMINERS' ANALYSIS OF QUESTION NO.**

**Car:** Because there was no consideration for Dan's promise (either explicit or implied) Paul cannot succeed on a contract claim. Applicants received credit for identifying the lack of consideration in Dan's promise. Applicants also received credit for discussion of acceptance as an element of contract formation and the extent to which, if any, Paul's notation and "voicing his agreement" is relevant to this element.

His only other possible theory of recovery is that there was an intended *inter vivos* gift of the car. A gift is a voluntary transfer of property by one person to another without any consideration. Absolute title to property passes to the donee at completion of the gift. A valid gift requires three elements: (1) present donative intent; (2) delivery, either actual or constructive; and (3) acceptance. *Buell v Orion State Bank*, 327 Mich 43, 55 (1950).

Paul cannot enforce the *intended* gift of the car for two reasons. First, although Paul accepted the promise of a gift, the car was never delivered. To effectuate an *inter vivos* gift, there must be an unconditional delivery, either to the donee directly or to his agent. *Chaddock v Chaddock*, 134 Mich 48, 50 (1903). Second, the donative intent must be *present in time*. An intention to make a gift in the future, no matter how clearly expressed, does not satisfy the present donative intent requirement. *Loop v Des Autell*, 294 Mich 527, 531 (1940). Dan's expressed desire to give Paul a gift in the future has no binding effect on Dan. Paul's memorialization of Dan's promise in his notebook is irrelevant, even though it was made contemporaneously.

**Motor scooter:** Normally, a person claiming title to personal property by gift has the burden of proving the gift by a preponderance of the evidence, as the law does not presume a gift. *Molenda v Simonson*, 307 Mich 139, 144 (1943). However, a conveyance from a parent to a child is generally presumed to be a gift. See *Love v Francis*, 63 Mich 181, 191 (1886) ("It requires less positive and unequivocal testimony to establish the delivery of a gift from a father to his children than it does between persons who are not related, and in cases where there is no suggestion of fraud or undue influence very slight evidence [e.g., evidence of constructive delivery] will suffice."

Thus, when the parties are in a parent/child relationship, the burden shifts to the person contesting the gift to overcome the presumption. *Id.* Here, because Dan is Paul's father, Dan has the burden of proving that the motor scooter was not intended as a gift. According to the fact pattern, Paul will succeed as against Dan's counterclaim because the elements of a gift were otherwise satisfied, and there are no facts to overcome the presumption.

Applicants received credit for identifying that Dan's transfer of the scooter to his son lacked consideration.