

**JULY 2019 MICHIGAN BAR EXAMINATION
EXAMINER'S ANALYSES**

EXAMINERS' ANALYSIS OF QUESTION NO. 1

These inquiries involve analysis and application of Michigan law on gifts. The three elements of a valid gift are: (1) an intent by the donor to pass gratuitous title to the donee; (2) delivery of the gift, either actual or constructive; and (3) acceptance of the gift by the donee. *In re Handelsman*, 266 Mich App 433, 437-438 (2005). If the property given benefits the donee, the law presumes that it has been accepted. *Id.* at 438. Most gifts convey absolute irrevocable title to the donee. However, some gifts are considered conditional. For instance, engagement rings are an exception to the general irrevocable title rule since it is impliedly given in contemplation of marriage. If the engagement is cancelled, the ring must be returned if the donor so requests since the gift is not capable of being completed because the condition or marriage is not met. *Meyer v Mitnick*, 244 Mich App 697, 703-704 (2001). Moreover, delivery of the property "must be unconditional . . . must place the property within the dominion and control of the donee . . . [and] must invest ownership in the donee beyond the power of recall by the donor." *Osius v Dingell*, 375 Mich 605, 611(1965) (citations omitted). See also, *In re Casey Estate*, 306 Mich App 252, 263-264 (2014).

Based upon the above law, the following applies with respect to each of the factual scenarios:

1. The necklace given to Samantha constitutes a gift. Darren intended to give it as a testament to their then longstanding friendship. He delivered the valuable necklace to her and she wore it. There is no dispute that the elements of

donative intent, delivery and acceptance were met. As such, Darren's change of heart about the gift, while perhaps understandable, does not legally obligate Samantha to return it.

2. Tyson could have legally demanded return of the engagement ring from Debra prior to the marriage. However, once the condition of marriage was satisfied, the gift was deemed completed and Debra is not obligated to relinquish the ring to him just because the marriage was in jeopardy just months later.

3. Jeremy is not entitled to the vintage car as a gift from Papa Earl. Donative intent was established by Papa Earl's offer to give the car to Jeremy, and it is at the very least legally assumed that Jeremy was accepting of the offer given the car's value and utility. However, no delivery of the property to Jeremy occurred since he failed to retrieve the title, keys and car as directed. Therefore, a gift of the car to Jeremy was not established. As such, Papa Earl was at liberty to change his mind and instead gift the car to Liza who is now the legal owner as all the elements of a gift are satisfied with respect to her.