

EXAMINER'S ANALYSIS OF QUESTION NO. 15

These inquiries involve analysis and application of Michigan law on gifts. Three elements are necessary to constitute a valid gift: (1) the donor must possess an intent to gratuitously pass title to the donee; (2) there must be actual or constructive delivery; and (3) the donee must accept the gift, although a gift beneficial to the donee will be presumed to have been accepted. See *Brooks v Gillow*, 352 Mich 189, 197-98 (1958); *Osius v Dingell*, 375 Mich 605, 611 (1965); *Lumberg v Commonwealth Bank*, 295 Mich 566 (1940).

Whether a party has acted with donative intent presents a question of fact. *Osius*, 375 Mich at 611. When there is no evidence of donative intent, courts will find that no gift has been made. *Id.* at 611-612. Delivery of the gift "must be unconditional and it may be either actual or constructive; the property may be given to the donee or to someone for him." *Id.* at 611. Further, the delivery "must place the property within the dominion and control of the donee . . . [which] means that a gift inter vivos must be fully consummated during the lifetime of the donor and must invest ownership in the donee beyond the power of recall by the donor." *Id.* As to the acceptance element, "where a gift *causa mortis* is beneficial to the donee and imposes no burdens upon the donee, acceptance by him or her is presumed as a matter of law" *Lumberg*, 295 Mich at 569; *In re Handelsman*, 266 Mich App 433, 438 (2005).

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

Anna v Bob - Anna can keep the necklace

The tennis bracelet given to Anna constitutes a valid gift. Bob intended to give it to her as a testament of his love to her, which is shown in the facts when he said "this is just because I love you." The delivery element is clearly met in that he gave it to her. And, lastly, acceptance can be shown by the fact that she thanked him multiple times for the gift and wore it. There are no facts that would suggest that the elements of donative intent, delivery or acceptance are in dispute. As such, Bob's desire to get the gift back, although understandable, does not legally obligate Anna to return it.

Doug v Carla - Carla must return the ring

Most gifts convey absolute irrevocable title to the donee; however, some gifts are conditional. For instance, in Michigan, an engagement ring is considered a conditional gift that is given in contemplation of marriage, so the gift is a completed gift only upon marriage; "if the engagement is called off, for whatever reason, the gift is not capable of becoming a completed gift and must be returned to the donor." *Meyer v Mitnick*, 244 Mich App 697, 703-704 (2001).

Thus, Doug could legally demand the return of the engagement ring at any time prior to marriage. Carla called off the wedding and so the condition of marriage was never satisfied. As such, the gift was never complete and Carla is obligated to return the ring to Doug.

Edward v Frank - the money should be returned to Edward's estate.

The money left by Edward in the safe deposit box should be returned to his estate because a consummated gift was not established. Edward did not part with control of the gift or make effective delivery thereof, either actual or constructive, to Frank.

Edward's letter to Frank stating that he wanted Frank to have everything in the safe deposit box shows that Edward had the donative intent to gift the money to his son Frank. Acceptance of the gift can be presumed because a gift of money would clearly be beneficial. The delivery element, however, is at issue. Placing the money in a marked envelope in the safe deposit box to which both Frank and his son Edward had access does not put the money beyond Edward's control. Additionally, Edward's act of mailing his safe deposit key to himself at his home does not effect a constructive or symbolic delivery of the alleged gift. Had he returned he would have been entitled to his key and the right to have the money left by him in the safe deposit box. His death by suicide does not alter the legal aspect of the matter. Edward never made delivery of the money to his son Frank and hence a valid gift was not made. See *Taylor v Taylor*, 292 Mich 95 (1940).