

**ANSWER TO QUESTION NO. 10**

Whether or not Patrick is entitled to each of three items depends upon whether a valid inter vivos gift was effectuated. In order for a gift to be valid, three elements must be satisfied: (1) the donor must possess the intent to transfer title gratuitously to the donee, (2) there must be actual or constructive delivery of the subject matter to the donee, unless it is already in the donee's possession, and (3) the donee must accept the gift.

It appears that Patrick will be able to compel the return of the dog. The facts indicate that Patrick was given the dog at his surprise birthday party in October, and the couple continued living together for three months before their relationship ended. The facts indicate that Dorothy intended to give Patrick the dog, that it was actually delivered to Patrick, and that he accepted the dog at his birthday party.

Patrick will not be able to recover the cufflinks. Although the facts indicate that Dorothy intended to transfer ownership of the cufflinks, there has been no delivery of the cufflinks to Patrick. In order to show delivery, there must be a showing that the donee possessed dominion and control over the gift. *Osius v Dingell*, 375 Mich 605 (1965). Here, Patrick never actually possessed the cufflinks--he has only seen a picture of them. Moreover, the picture does not constitute constructive delivery. Constructive delivery occurs only where the gift is not capable of actual delivery because of the size or nature of the item, such as delivering the keys to a safe deposit box. Because Dorothy never delivered the cufflinks to Patrick, a valid inter vivos gift was not created, and Dorothy can retain the cufflinks.

Patrick will be able to compel the return of the engagement ring. An engagement ring is a conditional gift given in contemplation of marriage, and the gift does not become absolute until the marriage occurs. There are two lines of cases dealing with which party gets the gift when the condition is not fulfilled. Under a "fault" based inquiry, the party responsible for the termination of the relationship loses the ring to the innocent party. Michigan, however, follows a "no-fault" inquiry. Because an engagement ring is a conditional gift, the donor is entitled to the return of the ring when the condition is not fulfilled *without* regard to fault. Thus, the fact that the engagement was broken due to Patrick's infidelity is irrelevant. *Meyer v Mitnick*, 244 Mich App 697 (2001).