

### EXAMINERS' ANALYSIS OF QUESTION NO. 7

The question posits whether the watch is a gift to Charlie or is abandoned property first found by Laura.

Although perhaps not a winning one as against Laura's claim, Charlie's strongest argument is that the pocket watch was a gift from Jordan to him. The elements required for a valid gift are (1) that the donor possess the intent to pass gratuitously title to the donee; (2) that actual or constructive delivery be made; and (3) that the donee accept the gift. *Osius v Dingell*, 375 Mich 605, 611 (1965).

Charlie should argue that Jordan expressed an intent that Charlie have the watch. Because Jordan was rich, and Charlie was obviously poor, Charlie should contend that Jordan stopping directly in front of Charlie and dropping the watch, coupled with Jordan's statement that he was "too rich," and did not want the watch anymore, is indicative of intent to transfer, rather than abandon the property, which he could have done anywhere. This contextual view of the facts helps to support Charlie's claim that the watch was intended as a gift to him.

Delivery is made where the donor "place[s] the property within the dominion and control" of the donee, "with the intent to transfer title to" the donee. *In re Herbert's Estate*, 311 Mich 608, 612-613 (1945). Charlie should argue that Jordan's act of dropping the watch within his reach constitutes delivery. Although Laura grabbed the watch first, it was dropped within Charlie's immediate vicinity-within his "dominion and control." This likely would be the hardest element for Charlie to prove, because Laura seized the watch first.

Finally, "[a]cceptance is presumed if the gift is beneficial to the donee." *Davidson v Bugbee*, 227 Mich App 264, 268 (1997), citing *Osius*, 375 Mich at 611. The facts specify that the pocket watch is "valuable," so it is beneficial to the donee and presumed accepted by Charlie. Additionally, Charlie reached for the watch, indicating that he was accepting it.

Laura, on the other hand, should argue that Jordan abandoned the property and that she is the finder. Two

requirements must be met to establish abandonment: (1) an intent to relinquish the property and (2) a showing of acts that put that intention into effect. *Log Owners' Booming Co v Hubbell*, 135 Mich 65, 69 (1903); *Sparling Plastic Indus, Inc v Sparling*, 229 Mich App 704, 718 (1998); 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 3.

Laura should argue that Jordan intended to abandon the watch as evidenced by his act of simply dropping it on the ground, while declaring that he did not want it anymore. Laura should contend that the watch was not intended as a gift to Charlie because Jordan's action in simply dropping the watch to the ground did not direct the watch to anyone in particular. Instead, Jordan intended only to relinquish the watch, not that someone else receive it. If Jordan intended the watch as a gift, he could have made some further outward indication that Charlie was the intended recipient. For example, he could have handed it to Charlie, or verbally addressed Charlie specifically. Indeed, simply dropping the watch on the ground might well have damaged it, consequently undercutting a donative intent.

Thus, Laura should argue that the watch is rightfully hers because it was abandoned, and she was the first person to take possession. The finder of abandoned property acquires an absolute ownership interest. 1 Am Jur 2d Abandoned, Lost, and Unclaimed Property § 24; Cf. *Wood v Pierson*, 45 Mich 313, 317 (1881). Laura is both the person who first saw the watch after Jordan dropped it, and the person who first took physical possession of the watch. Thus, she should argue that she was the first finder and her interest is superior to Charlie's.

A well-prepared applicant will recognize that the common law of abandoned property has been altered by various statutes, but that the personal property at issue here is not governed by any of them. The pocket watch is not abandoned property discovered by law enforcement, so it is not subject to the Stolen or Abandoned Property Act, MCL 434.181 et seq., nor is it abandoned personal property coming under the Disposition of Lost, Unclaimed, or Abandoned Personal Property Act, MCL 434.151 et seq., nor is it unclaimed property within the ambit of the Uniform Unclaimed Property Act, MCL 567.221, et seq.