

## ANSWER TO QUESTION NO. 9

**The Pearl Necklace:** Whether Nancy is required to return the pearl necklace to Gina turns on whether a valid *inter vivos* gift occurred. A valid *inter vivos* gift transfer title to the donee and requires three elements: (1) the donor must have the present intent to transfer title gratuitously to the donee; (2) actual or constructive delivery of the subject matter to the donee must occur, unless it is already in the donee's possession; and (3) the donee must accept the gift. *Detroit Bank v Bradfield*, 324 Mich 124, 130-131 (1949). It appears that Nancy will be entitled to keep the pearl necklace. The facts indicate that Gina intended to give Nancy the necklace, that it was actually delivered to Nancy, and that Nancy accepted the necklace. Because the necklace is a valid *inter vivos* gift, Nancy will not be required to return the necklace to Gina.

**The Diamond Bracelet:** Whether Nancy is required to return the diamond bracelet turns on whether the bracelet was an *inter vivos* gift or a gift *causa mortis*. A gift *causa mortis* does not transfer title to the donee until the death of the donor because it is "revocable during the lifetime of the donor." *In re Reh's Estate*, 196 Mich 210, 218 (1917). A gift *causa mortis* requires three elements: (1) the gift must be made with a view of the donor's death from a present sickness or peril; (2) such actual or constructive delivery of the subject matter must occur as the circumstances permit; and (3) the donor's intent must be conditioned to become absolute only upon the donor's death. *Id.* Here, the facts indicate that each of the three elements of a gift *causa mortis* is met. First, Gina made the gift in view of her death. Second, she actually delivered the bracelet to Nancy. Finally, Gina's donative intent was expressly conditional on her death. Accordingly, the bracelet was the subject of a gift *causa mortis* and not an *inter vivos* gift. Gina can revoke the gift at any time before her death, and her demand that Nancy return the bracelet shows her intent to do so. Therefore, Nancy will not be entitled to keep the bracelet.

**The \$20,000:** Whether Nancy is entitled to receive the money turns on whether a valid *inter vivos* gift occurred merely by Gina's intent to give the gift in the future. As stated, the elements of an *inter vivos* gift are: (1) the donor must have the present intent to transfer title gratuitously to the donee; (2) actual or constructive delivery of the subject matter to the donee must

occur, unless it is already in the donee's possession; and (3) the donee must accept the gift. Even if Gina intended to give Nancy the money at some point in the future, Gina did not have the *present* intent to transfer the money. Furthermore, no actual or constructive delivery occurred to effect the transfer of title in the money. Mere expressions of the intention to give a gift do not legally transfer title without actual or constructive delivery of the subject matter. *Loop v DesAutell*, 294 Mich 527, 532 (1940). This is true even when the intent is accompanied by a promise. See *Sanilac Co v Aplin*, 68 Mich 659 (1888). Moreover, the promise to make a future gift is not itself enforceable. *White v Grismore*, 333 Mich 568, 574 (1952).