

EXAMINERS' ANALYSIS OF QUESTION NO. 10

If a valid gift occurred, then the watch would belong to Mike. If not, then the watch became part of David's estate when he died and thus would belong to Herbie.

The elements required for a valid gift are (1) that the donor possesses the intent to pass gratuitously title to the donee; (2) that delivery be made; and (3) that the donee accept the gift. *Osius v Dingell*, 375 Mich 605, 611 (1965). To constitute a valid gift *causa mortis*, the gift must also be "made by a person in the expectation of imminent death, on condition that the donor dies as anticipated, leaving the donee surviving him" *Brooks v Gillow*, 352 Mich 189, 197 (1958). It is the apprehension or expectation of imminent death, and not the actual imminence of death, which is evaluated. See *In re Van Wormer's Estate*, 255 Mich 399, 406 (1931); *Brooks*, 352 Mich at 197; *In re Reh's Estate*, 196 Mich 210, 218 (1917). Unlike a gift *inter vivos*, a gift *causa mortis* does not transfer title to the donee until the death of the donor because such gifts are revocable during the lifetime of the donor." *Id.*

From his words and actions at dinner, David clearly intended the watch as a gift to Mike. However, because the gift was made with impending death in mind, the gift must meet the requirements of a gift *causa mortis*. Although a more typical case of a gift *causa mortis* comes from a person suffering impending death from disease or injury, see *In re Reh's Estate*, 196 Mich 210, 218-219 (1917), the Michigan Supreme Court has held that a gift made in contemplation of suicide may be a valid gift *causa mortis*. *In re Van Wormer's Estate*, 255 Mich at 406.

The requirement of apprehension of imminent death was satisfied. David's depressed condition and his statements at dinner, including, "I'm quite sure I'm not going to make it out of this, Mike. I can't take this depression any longer," show that David expected he would die soon. Further, that Mike took the watch with the statement, "I cannot wait to hand it back to you once you make it out of this," suggests that he understood the gift to be revocable in the event that David did not succumb to his depressed condition.

Next, David physically gave the watch to Mike and put it on Mike's wrist, so delivery was properly made.

Finally, acceptance is presumed if the gift is beneficial to the donee. *Davidson v Bugbee*, 227 Mich App 264, 268 (1997), citing *Osius, supra* at 611. The gold watch is presumably beneficial to Mike. Moreover, Mike said, "thank you," took it home with him, and wore it daily – further indications of acceptance. On the other hand, Mike said, "I cannot wait to hand it back to you once you make it out of this." It can be argued that this statement should not rebut the presumption that Mike accepted the watch, and that as such, as the statement should be interpreted as an encouraging word to his friend, and not as a rejection of the gift. However, credit will be given for a cogent analysis which concludes that acceptance was not valid.

An applicant who fully analyzes the gift elements and characterizes the gift as an *inter vivos* gift, rather than as a gift *causa mortis*, will also receive full credit. As noted above, to constitute a valid gift, there must be donative intent, actual or constructive delivery, and acceptance. Here, donative intent is established by David's words to Mike, David physically delivered the gold watch to Mike, and acceptance is arguably present because of Mike's expressed gratitude and the fact that he wore the watch daily. However, as with an analysis of the gift as *cause mortis*, it can also be argued that Mike's acceptance was conditional and thus, that under an *inter vivos* analysis, the gift would fail.