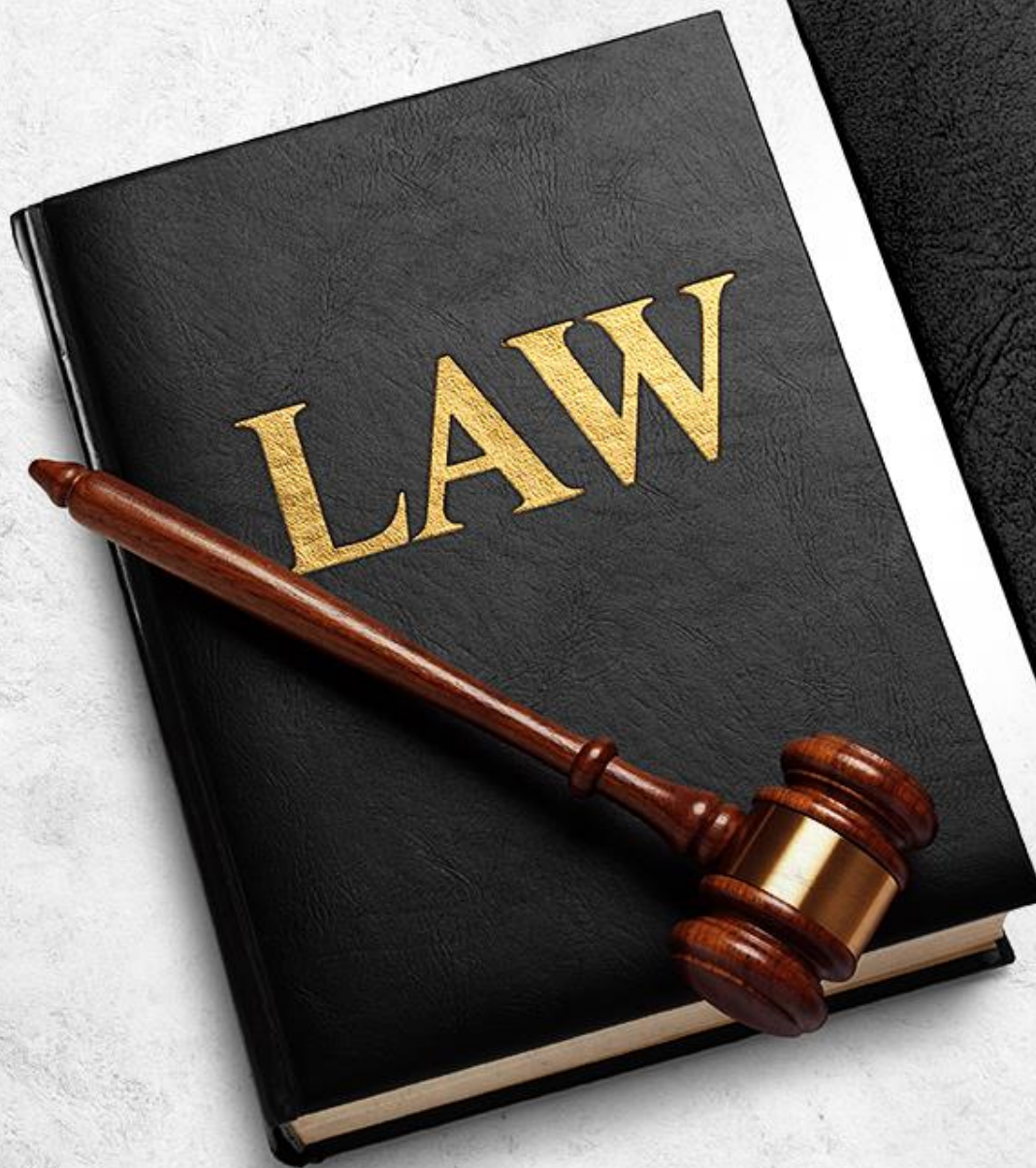


Real Property

Session 02

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Inter Vivos Gifts

- **Elements**

- 1. Donative Intent:
 - Must be intent to transfer a ***present interest*** (even if that present interest is to a right that will only vest in the future)
 - Intent must be to deliver title, not just possession
 - Must be ***irrevocable***
- 2. Delivery to the donee or the donee's agent
 - "Constructive" delivery is also effective; e.g.:
 - Delivery of a key to a safe deposit box
 - Delivery of a "deed" even to personal property
- 3. Acceptance
 - Need not be actually proven; will be presumed if the gift benefits the donee
- **All 3 elements must be completed while the donee and donor are both alive.**



Gruen v. Gruen

68 N.Y.2d 48 (1986)

- **Facts**

- The Plaintiff brings an action against the Defendant, Kemija Gruen (Defendant), his stepmother seeking a declaration that he is the rightful owner of a painting by Gustav Klimt.
- The Plaintiff asserts that his now deceased father wrote him a letter stating that he was giving the Plaintiff the painting for his birthday, but he, the father, wished to retain possession of it during his lifetime.
- This letter is not in evidence, as it was destroyed per the father's instructions.
- Two other letters exist declaring the father's intent to give the painting to his son as a gift.
- The Plaintiff never took possession of the painting during his father's lifetime, but sought possession of the painting upon his father's death.
- The Defendant claims the purported gift was testamentary in nature and did not meet the formalities of a will or alternatively, that a donor may not make a valid inter vivos gift of a chattel and retain a life estate with a complete right of possession.



Gruen v. Gruen

68 N.Y.2d 48 (1986)

- **Facts (continued)**

- The lower court found for the Defendant, finding that the Plaintiff did not establish any of the elements of an inter vivos gift and that in any event an attempt by a donor to retain a present possessory life estate in a chattel invalidated a purported gift of it.
- The appellate division reversed the trial court's decision and held that a valid gift may be made reserving a life estate.
- The Defendant appealed to the Supreme Court.

- **Issue**

- Can a valid inter vivos gift of a chattel may be made where the donor has reserved a life estate in the chattel and the donee never has had physical possession of it before the donor's death?



Gruen v. Gruen

68 N.Y.2d 48 (1986)

- **Holding and Rule**

- Yes; Affirmed.
- A valid inter vivos gift was made as the donor intended to make a gift to his son, only constructive delivery was needed as actual delivery of the painting to the Plaintiff would have defeated the donor's intent to retain a life estate in the painting and acceptance is deemed presumed as it is a benefit to the donee.

- **Explanation**

- In order for an inter vivos gift to be valid, there must be intent on the part of the donor to make a gift, delivery by the donor to the donee and acceptance of the gift by the donee.
- An inter vivos gift requires that the donor intend to make an irrevocable present transfer of ownership.
- Delivery of the gift can be by physical delivery or constructive delivery, sufficient to divest the donor of dominion of the property.
- Acceptance by the donee will be presumed when the gift is of value to the donee.



Gruen v. Gruen

68 N.Y.2d 48 (1986)

Analysis Grid

Issue	Son's position	Estate's position	Court's resolution
Did the father have intent to transfer a present interest?	Yes; because he wanted to give it as a birthday present then	No; because he wanted to keep it for the rest of his life	A transfer with a retained life estate is still a present interest
Was the painting delivered to the Son	Yes; the note was delivered to the son	No; the father kept the painting in his house	The note delivered to the son served as a "deed" to the painting
Did the son accept the painting?	Yes; he certainly wanted it	No; there was no evidence he accepted it	Acceptance of a gift is presumed



Gift *Causa Mortis*

- Definition: A gift given because of a fear or impending death
 - The death need not be imminent
 - The death need not actually occur
- **IMPORTANT:** Gifts *Causa Mortis* require the same 3 elements as do *inter vivos* gifts.
- Differences in law between *inter vivos* gifts and gifts *causa mortis*:
 - Gifts *causa mortis* are completely revocable until the death of the donor
 - Recall that an *inter vivos* gift must be irrevocable to be valid
 - Gifts *causa mortis* are automatically revoked if the situation that caused the fear of impending death passes
- Gifts *causa mortis* are effective upon delivery and acceptance. Thus, delivery must be made while the donor is alive. The only type of gift that can be effective after the donor's death is by a Will.



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- Plaintiff was eighty years old at the time of trial in April 1989.
- He was retired and had never been married.
- All his adult life he had lived with and supported his sister Leocadia.
- Plaintiff brought defendant Adela Gonzales into his home when she was six years old and had raised her as if she were his own daughter.
- In December 1986 plaintiff had a certificate of deposit worth more than sixty-seven thousand dollars in the Bank of Floresville.
- On December 29, 1986, plaintiff met with a vice president of the bank, Frances Giona.
- He told her he wanted his name taken off the certificate of deposit, thereby transferring it to Adela.
- Adela and plaintiff's sister Leocadia were already listed on the certificate as co-holders, with rights of survivorship.
- Plaintiff signed a relinquishment form which removed his right to the money represented by the certificate of deposit.
- The following year Adela decided to withdraw the money.
- The original certificate of deposit was lost.

A black book with the word "LAW" in gold letters, with a wooden gavel resting on it.

Gonzales v. Zerda

802 S.W.2d 794 (1990)

- **Facts (continued)**

- Adela could not withdraw the money, until plaintiff signed a "lost certificate affidavit."
- Plaintiff accompanied Adela to the Bank of Floresville on August 25, 1987, and signed the affidavit, allowing Adela to withdraw the money, which she placed in bank accounts in San Antonio.
- The following summer plaintiff demanded the return of the balance of the remaining money.
- Adela refused. This suit followed.
- Plaintiff claims he made a gift *causa mortis* to Adela, revocable upon his survival. The jury agreed.

- **Issue**

- Under what circumstances is a gift considered to be *causa mortis*?



Gonzales v. Zerda

802 S.W.2d 794 (1990)

- **Holding and Rule**

- Reversed.
- Plaintiff did not make a gift *causa mortis*; he simply made an irrevocable gift.
- Plaintiff failed to establish that he made a gift *causa mortis* in two respects:
 - He failed to prove that the gift to Adela was made in contemplation of death from present illness; and
 - That at the time of making the gift he intended it to be one *causa mortis*.



Quick Quiz

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Bailments – Elements of Formation

- **Bailment** occurs when physical possession of personal property, or a chattel, is transferred from one person (the “bailor”) to another person (the “bailee”) who subsequently has possession of the property.
 - It arises when a person gives property to someone else for safekeeping, and is a cause of action independent of contract or tort.
 - A common example of bailment is leaving your car with a valet.
 - 1) Intent
 - The intent must be to deliver possession, not title
 - 2) Delivery
 - Delivery can be actual or constructive
 - Same rules as with *inter vivos* gifts’ delivery
 - 3) Acceptance
 - Unlike the *inter vivos* gift, acceptance is not presumed, because a bailment places a burden on the recipient, not just a benefit
 - Because there is no actual acceptance, parking your car in an unattended lot is not a bailment; instead, it is likely a license.
- Bailment can also be created constructively, e.g. a finder of a lost object



Bailments – Liability of the Bailee

- Liability for harm that comes to the property while in bailee's possession:
 - If the bailee is a "gratuitous bailee" (watches the object for no compensation):
 - Bailee is only liable for gross negligence
 - If the bailee is a "bailee for hire" (both parties benefit):
 - Bailee is liable for ordinary negligence
 - If the bailee is the sole beneficiary (i.e., the bailee is a simple borrower):
 - Bailee is liable for even slight negligence
 - Strict liability for misdelivery!
 - Scope of liability:
 - Liability extends only to objects the bailee knew or should have known the existence of
 - However, the fact that the bailee did not know the value of the bailment is not relevant to liability



End Of Class Review Quiz

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**THE
BIG
QUIZ**



