

Property

- Module 15
- Gifts

Gifts

- Elements of a Valid Gift:
 1. Present Donative Intent
 2. Delivery
 3. Acceptance

Gifts

● Intent

- Present intent vs. future (or testamentary) intent
 - Compare:
 - “I give you this ring”
 - “I want you to have this ring when you get married”
 - “I promise to give you this ring when I die”
 - “I want you to have this ring when I die”
 - Only present intent will support a valid gift
- Identification of the intended gift

Gifts

● Delivery

- A *delivered* chattel has been placed outside the donor's control and entirely within the donee's control.
- Reasons for requiring delivery
 - Evidentiary
 - Psychological
- *In re Estate of Evans*

In re Estate of Evans (PA 1976)

- Were safe deposit box contents a gift to Kellow during Evan's file?
 - What were the contents?
- Evidence of intent to make contents a gift
- Delivery? ("if there is no delivery, the gift must fail.")
 - The day after Evans' visit to the box the keys were turned over to Kellow
 - versus
 - Delivery of the contents
- View of dissent



Gifts

- Delivery
 - Actual vs. Constructive/Symbolic Delivery:
 - Actual delivery will be required unless impractical
 - Constructive/Symbolic delivery is delivery of some *symbol* of the chattel or some *means of controlling* the chattel:
 - A written instrument of gift
 - The keys to a car, a locked piece of furniture, a safe

Gifts

- Acceptance
 - Assumed if the property has any value
 - But refusal is possible; if a testamentary gift is refused, we say it is *disclaimed*.

Gifts

- Revocation
 - In general, a gift that satisfies all three elements is *irrevocable*. Put differently: if it were revocable, it would not be a valid gift.
 - Exceptions:
 - Gifts *causa mortis* (literally “because of death”):
 - Gifts made in contemplation of impending death can be revoked if the donor escapes the immediate mortal peril.
 - Gifts *causa mortis* are closely scrutinized, especially for delivery