

CHAPTER 8 (GET ORIENTED AND “OWN” YOUR PRIOR KNOWLEDGE)

Practice Exercises:

1. Read the following “Summary of Contents” from Property and Lawyering,¹ a popular Property casebook [printed in the main text on p. 116]. In the space provided here, take a guess as to why the casebook authors may be treating “Gifts of Personal Property” and “Gifts of Land” in separate sections in Chapter 3:

Students have no way of knowing exactly why the authors did this. The purpose of this question is to get students to continue to think about developing hypotheses about their reading based on what they already know and their common sense.

Here, a student might hypothesize that there must be different rules of law, perhaps based on entirely different lines of precedent, for the transfer of personal property and the transfer of real property.

2. Read the following excerpt from the beginning of Chapter 3 of the Property and Lawyering casebook [reprinted at p. 117 of the main text]:

In the space below, write out some tentative answers to the three questions the casebook authors raise at the end of that paragraph (remembering that there is NOTHING up to this point in the casebook that would have provided you with answers to these questions. The casebook authors are expecting you to hypothesize – take a guess – based on your life experience and common sense):

(a) “Why does the law require delivery of the object of the gift?”

Perhaps to avoid ambiguity about whether the gift was a loan or an outright gift?

(b) “What purposes does the delivery requirement serve?”

It clears up that ambiguity and also makes the owner make a concrete decision about the gift. Also, it would let other possible heirs know that the property no longer belongs to the original owner, and therefore might reduce disputes about ownership after the original owner passes away.

(c) “What actions are (or should be) necessary to constitute an effective delivery?”

A student might guess: (1) physically giving the gift over to the other person; (2) giving up use of the gift by the present owner.

¹ JAMES L. WINOKUR, R. WILSON FREYERMUTH, & JEROME M. ORGAN, PROPERTY AND LAWYERING, at xv-xvi (2002).

3. Read *In Re Estate of Evans*, reprinted below, which is the first case in the Property and Lawyering² casebook following the section you read immediately above:

Before you begin reading, venture a guess (in writing below) as to what you think the primary legal issue is that you're going to be reading about in this case in this part of this Property casebook (Note: you may think that more than one issue will be covered – and you could be right!):

Students might rationally guess any number of things, but their thoughts might include any of the following:

I think the casebook author is going to look at what constitutes a viable transfer of property as a gift, including looking at why there is a delivery requirement and what you have to do to make a valid delivery. (I got this because the background reading wouldn't be there – and wouldn't raise the questions it does – if the case wasn't going to address those issues).

4. Answer the following questions about your reading of this case:

(a) Why do you think the court was careful to include the information about Mr. Evans' trip with Mr. Turley into town?

To establish that Mr. Evans was physically capable of transferring the actual contents of the safety deposit box to Ms. Kellow, and that he had the opportunity to do so and chose not to, and to distinguish the facts of this case from In Elliott's Estate (referred to by the court on p. 124), where the court found actual delivery through keys when the owner of the safety deposit box was not ambulatory.

(b) In the sixth paragraph, the court states, "The lower court correctly noted that the requirements for a valid inter vivos gift were donative intent and delivery, actual or constructive."

i. Is this statement exactly the same as the one the authors made in the section of the casebook set out in Question 2 above? *No. What does it add or take away? This court recognizes constructive delivery as one way to deliver and does NOT require acceptance of the gift by the donee. Do you think this court's statement is inconsistent with that made by the casebook authors, or is it just a different way of saying the same thing (or does it emphasize a different part of the casebook authors' statement, or expand upon it)? It sounds like a more specific statement expanding the basic concept introduced by the casebook authors (i.e., you can't effectuate delivery if the gift isn't actually accepted anyway and a delivery – whether actual or constructive – was foreshadowed by the casebook author).*

² *Id.* at 201.

ii. Look back at the guess you made concerning what topics this case might cover in answer to Question 3 above. Once you read this sixth paragraph, did you need to modify your guess? If so, how?

This question is designed, again, to encourage students to take guesses and to modify their guesses as their reading continues. Most students would not have anticipated that the case might discuss symbolic/constructive transfer.

iii. In 1976, in the State of Pennsylvania, under what circumstances could the transfer of a gift be made “symbolically”?

It seems to me that a gift could be made “symbolically” when there wasn’t any other practical way to do it and when such symbolic delivery gave the donee full and exclusive use of the property and when the donor did not have further access to it.

iv. One good way to save time when you read is to figure out (as soon as you can) whether an author is introducing a new concept when a new word is introduced, or if the author is merely introducing a synonym for the same concept. In the middle of the opinion, this court discusses an older case called Ream Estate (the case about the transfer of the automobile). In discussing that case, does the court use the words “symbolic” and “constructive” interchangeably? *It seems to me that the court does use the terms to mean the same thing.* Is use of “shifting terms” (use of more than one word to describe what is probably one concept) helpful or confusing to you as a reader? *I find use of shifting terms to be confusing because it makes me slow down when I read and try to figure out if the author is introducing a whole new concept or just varying his or her vocabulary. In law, use of different words is often indicative of different (often in subtle ways) concepts.*

5. One of the things this Chapter emphasizes is the importance of recognizing that our prior personal experiences can influence how we read a case. Have you had any experiences with situations similar to the facts described in this case? For example, have you cared for an elderly relative or friend? Do you have an aging parent, grandparent, or friend who may need help in the future? Have you been the recipient of an inheritance? Have you studied the concept of inheritance in another subject or discipline? Do you or your family have strong feelings about rights of inheritance? Do you or your family have strong feelings about honoring the wishes of elders? About paying back good deeds?

Students should respond here concerning whether they have any personal associations with the facts of the case.

If so, did any of these experiences influence how you thought this case would turn out?

Most anyone who reads this case will be able to identify at some level with the parties. Most readers would have thought that Mr. Evans’ wishes would have carried the day and that justice would have demanded that Ms. Kellow would get the bulk of his estate as he intended.

If you could choose one word to describe the emotional feelings that reading this case brought up in you, what would it be? *Many words would do – the point is that students should avoid having NO reaction to this case (which is pretty heart-wrenching). Students might pick words like: sad, frustrated, surprised. Were any other feelings touched on as you read this case? It is hard to predict how this case might have impacted students emotionally. At the least, some students will feel the result was callous and will be frustrated or angry with the law that brought about this result. Rule-oriented students may be satisfied with the case, comfortable with the fact that sometimes hard decisions must be reached in the interest of predictability and uniformity. Other students may feel that Mr. Evans may not have meant for Ms. Kellow to have these bonds or he would have carried out the transfer differently.*

6. Go back now and reread the opening paragraph of this case and the facts as presented in the next four paragraphs. How much money was in the safety deposit box? *\$800,000 in bonds, preferred and common stock.. If Ms. Kellow had won this case, who would have gotten all of that money? Mrs. Kellow would have gotten the money. What amount did she end up with instead? Mrs. Kellow would get only what was expressly named for her in Mr. Evans' holographic will. The court here found, as a matter of law, that the trial court was correct in dismissing this case (not allowing her claim to be heard by a jury) because it found that Mr. Evans did not properly execute his intent to deliver the contents of the safety deposit box to Ms. Kellow.³ As the judge who wrote this opinion made decisions about how to write it, why do you think the judge did not specifically name the amount of money involved in the opening paragraph of the opinion, but rather chose to include it inconspicuously several paragraphs later? This is a huge amount of money and the amount of money involved might have shifted the readers' focus away from the underlying legal principles and the simple story the court told.*

7. Go back up to Question 2 above and rethink your answers to the three questions raised by the casebook authors. Would you change any of your answers now that you've read the accompanying case? In your own words, in four or fewer sentences, write out what you think the "main idea" of this case is within the context of the casebook.

Students' answers will all vary, but the gist of the "main idea" is that an inter vivos gift is a valid way of transferring personal property, but to be successful, the gift has to be delivered (actually or symbolically/constructively) AND there has to be donative intent AND, possibly, acceptance by the donee. Symbolic or constructive delivery is not going to be easy to establish.

³ Note that the casebook authors did not include language that expressly confirmed this specific decision on the court's part, but you could read between the lines (especially reading the last paragraph of the opinion in the context of the first) to figure out that this is what happened. If you are new to legal reading, this would have been a challenging inference to reach and an example of how reading in law becomes easier with experience.

8. Do you feel intellectually and emotionally comfortable with the result the court reached? Would you have decided the case differently? If you're curious, and have time, you can go to <http://www.unc.edu/~ramckinn> to read a strong dissenting opinion from a judge who would have allowed Ms. Kellow to have her day in court. If you choose to read this dissenting opinion, which is included in the casebook itself, consider how the thoughts it contains might have saved you time answering some of the other questions raised in this Exercise, relieved any emotional angst you felt when you finished the majority opinion, or helped you understand this area of law more thoroughly.

The dissent provides a clearly reasoned alternative to the result reached by the court and the two opinions together are an excellent illustration of how the characterization of the facts (see Chapter 3) will determine the outcome of a case even where the rule of law itself does not change.

9. It's always a good idea to think about time when you are reading law. Before you began, did you estimate how long it might take you to read the opinion set out in Question 2 above? If you did estimate a time before beginning, did you write it down and stay within your limits? If you did not estimate a time, can you take a guess now about how long it took you to read that case?

Again, the purpose of this question is to continue to encourage students to focus on time management and efficient reading as factors in their development of expert legal reading skills.