

PROPERTY PRACTICE QUESTIONS

ANSWER 7

Gerry W. Beyer

Governor Preston E. Smith Regents Professor of Law



Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Jack v. Sally

- Sally's argument – \$10,000 was a valid *causa mortis* gift
- In order to qualify as a valid *causa mortis* gift, the gift must satisfy the following elements:
 - *Present donative intent*
 - *Voluntary*
 - Nancy gave Sally the keys to the safe voluntarily, without duress
 - *Donative*
 - Nancy did not charge Sally anything for access to the safe
 - *Present*
 - Nancy told Sally that she was giving her the gift and gave her the keys to the safe at the same time
 - *Delivery*
 - *Constructive*
 - Nancy turned over to Sally the means and methods of gaining access to the safe by giving her the keys

- Constructive delivery may pose some problem since the courts strictly construe the delivery requirement with gifts *causa mortis* and prefer actual delivery
- Sally's argument: "there is nothing else Nancy could have done, she was about to go into surgery"
- **Acceptance**
 - Sally accepted the keys
- **Made in contemplation of immediate and impending death**
 - *Must be an emergency situation where death is likely*
 - Going into brain surgery should qualify
- **Revocability of *causa mortis* gifts**
 - *Common law view (majority view)*
 - Gift is automatically revoked if donor survives
 - *Modern approach (minority view, followed by the Restatement)*
 - Survivor donor loses the right to revoke the gift if it is not expressly revoked within a reasonable time
- **Conclusion:**
 - Sally's gift most likely meets the requisite *causa mortis* transfer of ownership requirements (provided courts are OK with constructive delivery)
 - The case will turn upon the revocability approach followed by the jurisdiction where it is brought
 - If brought in a jurisdiction following the majority approach, Jack wins
 - In a minority jurisdiction Sally has a chance, but whether or not six months is a reasonable time is a question of fact
- **Note - gift trumps the will**
 - If the court finds that Sally received a valid *causa mortis* gift that was not revoked, she will get to keep it even though Nancy's will disposes of the property otherwise