



Weekly Information Sheet 06

GIFTS -

There are two principal types of gifts.

These types of gifts have distinct legal names.

Types of Gifts

1. Gifts Inter Vivos.
(Gifts During Lifetime)

2. Gifts Causa Mortis
(Gifts in Contemplation of Death)

There are also three factors that make the transfer of property a gift.

These factors must be present for the gift to be legally valid.

The Three Factors that make a Gift

- 1. Donor's Intent**
- 2. Delivery**
- 3. Acceptance**

Certain Special Circumstances

In order for a gift in contemplation of marriage to be legally valid:

- **The marriage has to happen.**

In order for a gift causa mortis to be upheld:

- **The person offering the gift has to die (but not of what they were afraid they would die of); and**
- **The recipient of the gift must show evidence of actual delivery**

Liens

Lien Defined:

Black's Law Dictionary defines a "LIEN" as:

1. A charge or security or encumbrance upon property;
2. A claim or charge on property for payment of some debt, obligation or duty;
3. A right to retain property for payment of debt or demand

Liens can be statutory or based upon a common law right

Classes of Liens:

There are two principal *classes* of liens.

These classes of liens have distinct legal names.

1. General Liens.

(The Lien attaches as security to ALL the effected property of the person against whom the lien is levied – such as all the items left by a patron in a hotel room).

2. Special Liens

(The Lien attaches as security to ONE single item of property of the person against whom the lien is levied – such as a car in a car loan).

Where a doubt exists as to whether the lienholder has a general or special lien, the law presumes the lien to be special rather than general.

Important Qualities to Know About Liens:

A Lien:

- Gives the Lien holder the right to possess and retain certain property under certain circumstances;
- Cannot be levied against an item not given by its owner; and
- Can be deemed waived by contract, acceptance of other security, or by a demand for unlawful charges.

Bailments

Bailment Defined:

Bailments can be understood from their definition. This definition is:

“A bailment is the relationship created by the transfer of possession of an item of personal property by one called the bailor to another called the bailee for the accomplishment of a certain purpose.”

Elements of a Bailment: DAPPER

A Bailment can be broken down to a series of *Elements*.

These elements include:

- Delivery
- Agreement
- Personal Property
- Purpose
- Entered into for the Benefit of one or both parties; and
- Ended with Redelivery

In order for a Bailment to be valid, all of the above *Elements* must be present.

Important Issues for a Bailment

For a bailment to exist, there must be:

- A Transfer of Possession; and
- An intent of the bailee to take control of the bailed item.

Duty of Care for a Bailment

The level of the duty of care of a bailee depends upon:

- Whose benefit the bailment is for. (3)