



## Weekly Information Sheet 05

# **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)