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Making a Gift Properly

A properly-made gift is one that the law will uphold as valid when challenged.

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*Thorough preparation must lead to success.
Neglect nothing.”*

Arthur Currie

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Unlike real estate, movables (objects) often do not have a title deed indicating who the owner is. Any change of ownership arising from giving a movable away must therefore be purposeful and clear. Otherwise, when the donor is no longer around or able to attest to the gift, the recipient lies vulnerable to a challenge that the gift was not made.

What does it take to make a gift during your lifetime (an *inter-vivos gift*) properly?

It is not uncommon for a parent to give a watch, jewelry, art works or any object of sentimental or high value to one's child. If the gift is not made properly, it can be challenged by the executor of the parent's estate as belonging to the parent at the time of demise. If the executor's challenge succeeds, the object will be distributed according to the contents of the Will or where there is none, according to the Intestate Succession Act.

In the High Court case of **Teo Song Kheng v Teo Poh Hoon** [2020] SGHC 47, a son found himself in such a position. The co-executor (his sister) of his mother's estate claimed that pieces of jewelry in a safe deposit box, held jointly by the son and mother, was part of the mother's estate. The son's position was that his mother had gifted these to him.

The law

The Judge reiterated how a valid gift can be made during one's lifetime.

The son had to prove that these 3 elements were satisfied:-

- The **donor's (subjective) intention** to relinquish the object at the time of gifting;
- Certainty as to the **subject matter of the gift**; and
- The **delivery or parting with possession** of the object from the donor to recipient

The Judge's decision

The third element was fulfilled by virtue of the jewelry being kept in a safe deposit box that was jointly held by the mother-donor and the son. But the son failed to prove the first and second elements.

The second element was not proven, as the son could not identify the precise items that constituted the gift. In that box were many items; the jewelry that the children had gifted to their mother from time to time, gold items and the disputed items which were alleged by the son to have been gifted to him.

His mother had not segregated these items but had bundled everything in the box. Neither had she drawn up an inventory list. On the witness stand, the son admitted that some of the items in the box had not been gifted to him; eg. a Tag Heuer watch which had been held on trust for another. Hence the second element of certainty as to the subject matter of the gift was not fulfilled.

The son also failed to prove the first element of the mother's subjective intention to make the gift. Because there was no documentation and the mother could not testify, having passed away, the burden of proving the mother's intention to make the gift was an uphill task and one the son could not discharge.

The Court was called upon to rely on emails and documents, none of which were by the mother, and all of which were not contemporaneous with the making of the gift. Ultimately, the Court had nothing to go on other than the son's testimony while he was on the witness stand. And the Court found this to be contradictory and unconvincing.

Not surprisingly, the Court held that the jewelry belonged to the mother's estate. The gift had not been made.

A gift to take effect after the donor's lifetime

While on the witness stand, the son at one point testified that his mother had said that the box would be his *in future* – it would not be his *when she was alive*.

This raised the possibility that the mother had not made the gift during her lifetime but had instead intended to have it made after her demise. This suggested that she had essentially made a verbal will (a nuncupative will). Such wills are invalid. Only Wills that are in writing and comply with the Wills Act are valid.

Takeaways

- Best to state in your Will all the inter-vivos gifts that you have made. These no longer belong to you.
- Document the gifts made during your lifetime. A deed of gift identifying the gift should be drawn up.
- If documenting the gift is difficult, make sure that there are a number of credible witnesses (and not the recipient) who can vouch for your intentions to give. Also make sure that there is certainty as to the **subject matter of the gift** and clear **delivery or parting with possession** of the object from the donor to recipient
- If you want to keep the object after having given it away, you would be borrowing it. If this is not what you want, keep the object and pass its ownership through your Will.
- Segregate the gift from other objects if you are still holding on to the gift.
- If this is not convenient, identify the gift clearly in an inventory list with photographs.

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Thorough preparation makes its own luck.

Joe Poyer

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