LAW AND THE FAMILY

"Gifts to Spouses"

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LAST CHRISTMAS Mr. James Jones was hailed by Mrs. Jones as a living Santa Claus. The neighborhood gossip reported Mr. Jones gave his wife the top-of-the- line Rolex President watch (surrounded by diamonds). This warmly embraced public display of affection cost Mr. Jones a mere $25,000, raising the stakes dramatically for those who wish to keep up with the Joneses. Today James wants his watch back.

Most American courts have held that the traditional rules as to gifts should be melded to the realties of the husband-and-wife relationship. It begins with the party claiming the gift. It is that person who has the burden of proving a voluntary transfer of property to him or her, [FN1] without any consideration or compensation for it, and the essential elements of donative intent, delivery and acceptance. [FN2] For example, the marital relationship may give rise to a rebuttable presumption as to donative intent, delivery or acceptance. However, clear and convincing proof that no gift was intended or countervailing equities may prevent a presumption from arising. To be more specific, where the marital relationship exists, delivery of a gift may be more readily inferred, and joint possession may not negate the conclusion that a gift occurred. [FN3]

Donative Intent

Where one spouse pays for property purchased by the other spouse, a gift may be implied, [FN4] and so too where one spouse pays for real property title to which is taken in the other spouse's name. [FN5] A donative intent may be inferred where one spouse endorses a

check and hands it over to the other [FN6] or gives him or her the keys to a car or a container. [FN7] In general, where one spouse transfers funds or property to the other or expends money to improve the other's property, [FN8] or makes a deposit of money in the other spouse's bank account, [FN9] a rebuttable presumption arises that a gift was made. The same may be true where a spouse invests his or her funds in their joint names, and where joint funds are invested in one spouse's name, or, in some instances, in their joint names.

Since such presumptions are rebuttable, circumstances negating any donative intent, delivery or acceptance of a gift may vitiate the presumption. Authorities are divided as to whether there is any presumption of a gift where the one spouse provides the consideration and title is taken in the other's name. [FN10]

Decisions from other states also indicate that ordinarily it may be easier to establish a gift to a wife than a gift from a wife to a husband. It has been said that equity will give a keener scrutiny and check more closely for fraud where the wife is the alleged donor and that weaker evidence will support a finding of fraud, misrepresentation or undue influence.

Some of the more ticklish situations are the disputes revolving around the cherished "household furnishings and furniture" in the former love nest. It is these trinkets, the treasured ornaments and cherished belongings that have subtly, but consistently, created a plethora of cases from which to choose one's position.

In Manheim v. Manheim, [FN11] the husband and wife jointly selected household items for their home, the husband paying for them. The wife contended that her participation in the selection of the household items and their joint possession and use created an undivided half interest in such property and that hence the husband should not succeed, in his replevin action to recover the property. A strong equity against the wife was that she surreptitiously had the contents of the Southampton home removed and placed in storage. Justice Bernard Meyer held that the wife had failed to sustain her burden of proof that the husband had made a gift to her of a half interest in the furniture and furnishings. To hold otherwise, he suggested, would "import community property concepts into New York law."

Justice Meyer seized upon the General Obligations Law (GOL) in concluding that no presumption arises from joint use or possession and that the result is that the purchaser retains complete title to the

household effects. "A rule that would create in one spouse a joint tenancy or tenancy in common in property used by both would be clearly inconsistent with the policy of those statutes," he said.

In Tausik v. Tausik, [FN12] the problem was approached from a different direction. With no reference to the GOL, Justice Levy held that no presumption arises from the payment of the purchase price, and the result is that the items in question belong to both parties. Interestingly, there is ample authority for a compromised position, which suggests no presumption arises concerning the ownership of items used in common where such items were purchased with the funds of the husband or wife or both, and that title to particular items depends on the facts of the individual case.

The approach in Tausik [FN13] is more in accord with current public policy as reflected in the Equitable Distribution Law (EDL).

New Definition of 'Marital Property'

Of course, the decision in Manheim, [FN14] predated the EDL, [FN15] its new definition of "marital property" and its emphasis upon interspousal contributions as a significant factor in determining distribution in divorce cases. Under the new law, legal title is not controlling, and household furnishings follow the occupant of the marital home. Moreover, the policies reflected in the EDL support the view that, ordinarily, furniture and household effects should be regarded as jointly owned, regardless of who paid for them since marriage is an economic partnership.

The relationship between the law pertaining to gifts and that applying to equitable or equal distribution upon divorce warrants further comment. Most if not all states have statutes or precedents governing property distribution in matrimonial actions, but the applicable rules are by no means uniform. In New York, and in many states, it is marital or community property that is subject to distribution upon divorce; separate or individual property (however defined) is excluded from the "pot" as such, although such excluded property may have a bearing on what is a fair and equitable division of marital property.

The common and statutory law as to gifts, with its attendant presumptions, is most significant in non-matrimonial actions, but it also may have a bearing on the classification of family assets as separate or marital property and hence the inclusion or exclusion of particular assets in or from the "pot" subject to distribution upon divorce. It may not be misleading to say that there are two different

laws in New York pertaining to gifts: one applicable in nonmatrimonial actions and another that governs equitable distribution upon divorce or annulment. This is caused by the definitions given to marital and separate property in the EDL and its specific provision in Domestic Relations Law s236 [8] [1] [c] that legal title is not controlling. Under New York law "separate property," which is excluded from equitable distribution, includes property acquired by "gift from a party other than the spouse." [FN16]

An award of possession and occupancy can be made without regard to title. However, title does affect the division of the proceeds, if and when the property is sold. Pursuant to DRL s234, questions as to title are resolved in accordance with the principles of general property law, [FN17] even though possession and occupancy may be awarded to a non-title holder or a coowner pending ultimate sale and distribution of the proceeds. [FN18]

Joint Ownership

The public policy reflected in the EDL [FN19] should be carried over to nonmatrimonial actions where an issue arises as to ownership of property held by one or both parties to the marriage. If modern marriage is viewed as an economic partnership with its own division of labor and it is assumed that a housewife or househusband should receive something for his or her contributions to the family, at a minimum, there should be a presumption of joint ownership derived from joint possession in the family unit, even though items of a personal nature are excluded from the rule. Moreover, in some situations a gift to one spouse of the whole interest in the property may be a reasonable conclusion. Some support for such a conclusion may be derived from Lindt v. Henshel [FN20] where the court of Appeals held that a Brancusi statue -- "Muse in Repose" -- was the separate property of the wife even though the husband had paid the entire purchase price and the statue was placed on display in their home.

The unusual facts of the case made it clear that the statue was a personal item intended exclusively for the wife. The wife was a former student of Brancusi and a longtime friend. She attended an art auction and made a successful $7,000 bid for the statue in question. Later, the husband paid the auctioneer, although he grumbled that he was upset that anyone would pay "so much for a piece of stone like that," and added "if she likes it, she can have it." Two years later they separated, and he kept the statue despite his wife's demands for it. A year later the husband died, and the executrix of his estate in accordance with his will delivered the

statue to the Guggenheim Foundation. The Court of Appeals held that the statue was the property of the wife because of her sentimental interest in that particular statue and the circumstances of the case warranted the conclusion that it was a personal gift.

There are problems where there is a third-party donor, and it is not clear whether the gift was to one spouse or both. The classic example of the problem involves wedding gifts. [FN21] Such gifts may be in the form of realty, personalty or cash. Of course, if a wedding gift is earmarked for one spouse at the time of delivery, it will be regarded as separate property, although there may be a subsequent gift of a half interest at a later time.

The leading New York decision as to who owns wedding gifts is Avnet v. Avnet [FN22] where it was pointed out that the authorities "are few and elusive to put it mildly [and] only Emily Post's chauvinistic and unsupported assertion that "Wedding presents are all sent to the bride, and are, according to law, her personal property," and doubted that her pronouncement had the dignity of stare decisis. Approaching the problem from the standpoint of donative intent, the court concluded that wedding presents are sent to the bride for one of three reasons: (1) because the donor wished the gift to be the exclusive property of the bride, (2) because etiquette dictates that wedding presents are to be sent to the bride, and (3) because by indicating the bride-to-be's residence on the invitation notices, the donor is politely told where to send the gift. It was held that wedding gifts are the joint property of husband and wife in the absence of clear and convincing proof that the donor intended to make a personal gift to one party.

Justice Chimera, who wrote the opinion in Avnet, also wrote the decision in Brenner v. Legum [FN23] and adhered to his principle that ordinarily wedding presents are joint property unless earmarked for one spouse and held that such joint interest was not affected by one spouse leaving the marital apartment, whether justified or not.

In Plohn v. Plohn, [FN24] the trial court attempted to modify the above rule by holding that if the spouse left the marital home, with or without justification, he or she forfeited all interest in wedding presents left in the home. The First Department reversed the trial court on this issue and held there was no forfeiture of property rights in wedding presents because a spouse leaves the marital home.

Difficulty arises where there is no clear expression of donative intent and the gift is of such character that it may have been intended for one spouse or for both.

Although there is authority in other jurisdictions for about every possible view, including the positions that wedding presents ordinarily become the separate property of the husband, or the wife, the New York rule that absent a clear donative intent to the contrary, wedding presents are joint property best reflects the partnership concept of modern marriage. Of course, items of a purely personal nature carry with them the implication that the donor intended a gift of separate property. [FN25]

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FN1 See Re Maijgren's Estate (1948) 193 Misc. 814, 84 NYS2d 664; Re McKay's Will (1953, Sur) 120 NYS2d 738, affd 282 App. Div. 744, 122 NYS2d 926; Le Libow's Estate (1965) 46 Misc2d 919, 261 NYS2d 115; Conklin v. Conklin (1880, NY) 20 Hun 278.

FN2 See Re McKay's Will (1953, Sur) 120 NYS2d 738, affd 282 App. Div. 744, 122 NYS2d 926, supra. See also Re Chorney's Estate (1971) 66 Misc2d 963, 323 NYS2d 138.

FN3 See De Wilton's Estate (1953, Sur) 121 NYS2d 226; and Re Springarn's Estate (1952, Sur) 11 NYS2d 172, affd 280 App. Div. 974, 117 NYS2d 467.

FN4 Lindt v. Henshel (1969) 25 NY2d 357, 306 NYS2d 436, 254 NE2d 746; Leis v. Shaugnessy (1960) 26 Misc2d 536, 209 NYS2d 648.

FN5 See Rigold v. Rigold (1922) 93 NJ Eq. 357, 116 A 690. See also, Yancey v. Yancey. 171 NYLJ No. 42, p.20, cols 1-2 (March 4, 1974), where the court refused to reform a deed or to impose a constructive trust on realty purchased by the husband title to which was taken as tenants by the entity.

FN6 Re Estate of Moore (1925) 237 Ill. App. 190. But compare Re Hayes' Will (1928) 224 App. Div. 643, 232 NYS 147, revd 252 NYS 147, revd 252 NY 148, 169 NE 120 (wife's endorsement of check payable to both did not constitute gift to husband).

FN7 Re Parker's Estate. 3 Pa Dist 370, 15 Pa Co 7, 12 Lanc L Rev 32, 10 Montg Co LR 152, 34 WNC 376, but compare the questionable decision in Scheiderler v. Scheiderler (1962) 37 Misc2d 965, 236 NYS2d 871, where it was held that the husband did not give a car to his wife even though he presented her with a set of keys to the car on Christmas Day since he had not endorsed and delivered the certificate of registration or the insurance policy, hence there was no delivery.

FN8 See Clark, Law of Domestic Relations 224-225 (1968). In Mazzarelli v. Massarelli (1977, 2d Dept.) 55 App. Div2d 946, 391 NYS2d 443, affd 44 NY2d 801, 406 NYS2d 285, 377 NE2d 738, the wife deposited money in a bank in her own name, the money' having been provided by her husband for the purchase of an automobile and took a passbook loan to pay for the automobile. The Appellate Diviion, Second Department, held that since defendant husband apparently intended the car to be a gift for the wife, the funds in the bank that the husband provided for this purpose should belong to the wife alone.

FN9 Re Holmes (1903) 79 App. Div. 264, 79 NYS 592, affd 176 NY 603, 68 NE 1118. There is no gift where the husband retains control of the funds. See Re Wilkin's Will (1928) 131 Misc. 188, 226 NYS 415.

FN10 Clark, Law of Domestic Relations 225 (1968), says that where the wife pays for the land and title is taken in the husband's name, a gift is not presumed and a resulting trust in the wife's favor is created.

FN11 (1969) 60 Misc2d 88, 302 NYS2d 473, affd 34 App. Div2d 735, 310 NYS 2d 1017.

FN12 (1962) 38 Misc2d 11, 38 Misc2d 24, 235 NYS2d 776.

FN13 Tausik v. Tausik supra.

FN14 Manheim v. Manheim supra.

FN15 DRL s236, Part 19.

FN16 See DRL s236 [8] [1] [d] [1].

FN17 Fluhr v. Fluhr (1965) 44 Misc2d 1098, 255 NYS2d 996.

FN18 See DRL s236. Part 19. subdiv 5-f.

FN19 DRL s236. Part 19.

FN20 (1969) 25 NY2d 357, 306 NYS2d 436, 254 NE2d 746.

FN21 Annotation: 75 ALR2d 1365, Rights in wedding presents as between spouses.

FN22 (1953) 204 Misc 760, 124 NYS2d 517.

FN23 (1965) 46 Misc2d 552, 260 NYS2d 73.

FN24 (1956, 1st Dept.) 1 App. Div2d 824, 149 NYS2d 32, reh and app den (1st Dept.) 1 App. Div2d 885, 150 NYS2d 778.

FN25 Bloss v. Bloss (1915) 187 Mich 425, 153 NE 666. See also, Richmond v. Richmond (1960) 340 Mass 367, 164 NE2d 155.

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