

# PROPERTY

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## CLASS 20: TRANSFER & ALIENABILITY

# Class Outline

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1. The right to transfer
2. Statute of Frauds
3. Delivery requirement
4. Gifts
5. Gifts *causa mortis*

## 2 Principles of the Right to Transfer

- It may be necessary to restrict owner autonomy with respect to the right to transfer in order to preserve the right to transfer for others.
- Transfer is closely bound up with the delivery of possession.

# *Irons v. Smallpiece*



# Gifts

Gifts require:

1. An intent to give; and
2. Delivery - actual, or symbolic (e.g., deed of gift; i.e. something written).

# Gifts Causa Mortis

- Gifts *causa mortis* (gifts made “in contemplation of death”) are basically deathbed gifts of personal property, made on the understanding that death is imminent.
- If the donor recovers, then the gift is rescinded by operation of law (i.e., the gift *causa mortis* ceases to exist).
- Gifts *causa mortis*, like other gifts, require actual or symbolic delivery of the property if they are to be enforced as valid transfers.

## *Foster v. Reiss*

“In the kitchen, in the bottom of the cabinet, where the blue frying pan is, under the wine bottle, there is one hundred dollars. Along side the bed in my bedroom, in the rear drawer of the small table in the corner of the drawer, where my stockings are, you will find about seventy-five dollars. In my purse there is six dollars, where the coats are. Where the coats are, in a round tin box, on the floor, where the shoes are, there is two hundred dollars. This is Dianna’s. Please put it in the bank for her. This is for her schooling.”