



Slide 4

**QUESTION #2**

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**What type of property transfers are we talking about?**

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Slide 5

**Answer #2**

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**It might be:**

- **A gift of land or personal property;**
- **Creating a joint tenancy of ownership of land or an account; or**
- **Placing property in trust.**

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Slide 6

**QUESTION #3**

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**What is a gift?**

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**Answer #4 cont'd**

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□ The presumption of a resulting trust places the burden on the donee to prove on a balance of probabilities that a gift was intended.

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Slide 11

**QUESTION #5**

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What is the presumption of advancement and how does it relate to the presumption of resulting trust?

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Slide 12

**Answer #5**

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□ The presumption of advancement applies as between spouses and parents and infant children.

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Slide 13

**Answer #5 cont'd**

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□ The presumption of advancement means that spouses are expected to look after or advance the interests of each other, or alternatively, parents look after or advance the interests of their infant children, and therefore, transfers are presumed to be gifts and not held on resulting trust.

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Slide 14

**QUESTION #6**

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**What is undue influence and its role in relation to transfers of property?**

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Slide 15

**Answer #6**

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□ A gift is a voluntary transfer. If someone is unduly influenced to make a transfer gratuitously and without consideration the act is no longer voluntary, and therefore, evidence of undue influence may result in a gift being set aside.

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**Answer #7**

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□ A leading case in Canada is *Geffen v. Goodman Estate* decided by the SCC in 1991.

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Slide 20

**QUESTION #8**

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**What is Geffen about?**

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**Answer#8**

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□ Annie left her home to her daughter Tzina who was troubled and bi-polar.  
□ Tzina's three brothers, Sam, Jack and Ted were concerned and persuaded Tzina, with involvement of a lawyer, to place the house in a trust for her lifetime (20 years) and then to distribute to all grandchildren of Annie.

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**Pecore v. Pecore cont'd**

- The court concluded the presumption of a resulting trust was rebutted and joint accounts were upheld.

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**Case Comment**  
**Inch v. Stead BCSC 2007**

- Deceased created two joint accounts and made one transfer to daughter. About \$200,000. in total and \$100,000. left in estate equally divided between son and daughter.
- Court held one joint account was a resulting trust, upheld other account and transfer and did not vary the 50/50 will.

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**Case comment**  
**Archer v. St. John ACQB 2008**

- Deceased father put part of farm holdings in joint tenancy with daughter. Son complained. Will said lands were to two sons with 20 year tenancy to daughter on lands on which her home sat. Daughter received life insurance.

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**Archer v. St John cont'**

- ❑ Father was incapacitated and signed the joint tenancy at a social function. There was no disclosure of this gift by daughter to brothers.
- ❑ The joint tenancy was set aside. There was also a finding of undue influence. Credibility issues existed.

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**Powers of Attorney Question #10**

- ❑ What is a Power of Attorney ("PA")?

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**Answer #10**

- ❑ A PA is an instrument whereby a donor grants to the donee the authority to act on the donor's behalf in respect of the donor's legal and financial affairs.
- ❑ Essentially it is an agency of a unilateral nature.

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**Answer #12**

- At common law it terminates if the donor becomes incapacitated; and
- A PA may be enduring and survive the donor's incapacity.

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**Question #13**

What is the scope of power under a PA?

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**Answer #13**

- It may be general or specific.

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**Question #15**

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**Is an attorney under a PA a fiduciary?**

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**Answer #15**

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**Yes, an attorney must act in the donor's best interests.**

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**Question #16**

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**May an attorney use a PA for personal benefit?**

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