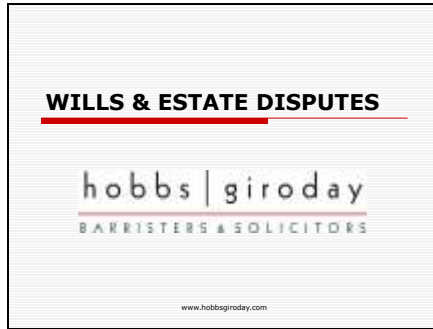
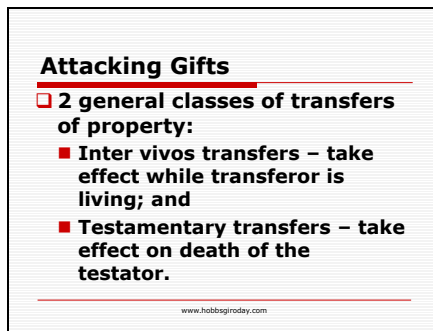


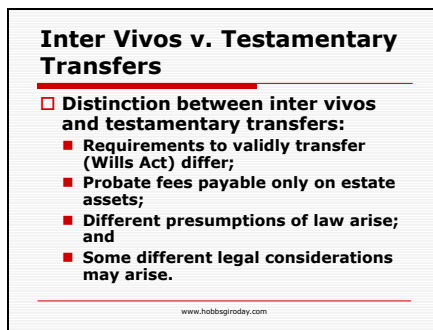
Slide 1



Slide 2



Slide 3



Slide 7

Presumptions of Law

- Inter vivos transfer:**
 - transfers to spouses and infant children presumed to be gifts (presumption of advancement);
 - Transfers to others presumed to create a resulting trust (presumption of resulting trust);

www.hobbsgroday.com

Slide 8

Presumptions of Law

- Are just that-presumptions.**
- Can be rebutted by the evidence.**

www.hobbsgroday.com

Slide 9

Presumption of Advancement

- Places the burden of proof on the person(s) challenging the transfer to demonstrate that a gift was not intended.**
- Civil standard of proof is applicable (balance of probabilities).**

www.hobbsgroday.com

Slide 16

Pecore v. Pecore

- ❑ Thus, M. claimed the balance formed part of the residue and should be distributed according to the Will;

www.hobbsgrodny.com

Slide 17

Pecore v. Pecore

- ❑ The lower courts held that the father intended to make a gift of the beneficial interest in the accounts upon his death to P. alone;
- ❑ Outcome?

www.hobbsgrodny.com

Slide 18

Pecore v. Pecore

- ❑ Held:
- ❑ The presumption of resulting trust applies, but is rebutted;
- ❑ The evidence clearly demonstrated that father's intention was to gift the balance left in the joint accounts to P. alone on his death through survivorship;

www.hobbsgrodny.com

Slide 28

Legal Considerations

Inter vivos transfers – other legal considerations that may arise;

www.hobbsgroday.com

Slide 29

Perfecting a Gift

Requirements to perfect a gift:

- **Donor's intention to make a gift;**
- **Delivery; and**
- **Acceptance by the donee.**

www.hobbsgroday.com

Slide 30

Transferor of Unsound Mind

Transferor found to be of unsound mind or a patient in a mental health facility.

In an action by or against such a transferor, an opposite or interested party is not entitled to obtain a judgment on his own evidence unless that evidence is corroborated by other material evidence

(s. 9, Evidence Act)

www.hobbsgroday.com

Slide 40

Capacity

- **Evidence**
 - **The evidence of capacity from the person who took instructions on and prepared the Will (or deed of gift) is highly relevant.**
 - **Evidence of lay persons who routinely interacted with the testator/transferor is also important.**

www.hobbsgroday.com

Slide 41

Capacity

- **Medical records and expert opinions can also be very important.**

www.hobbsgroday.com

Slide 42

Undue Influence in Suspicious Circumstances

- **A person may have capacity to make a Will or inter vivos gift, but same may be invalid if she was unduly influenced to the extent that, through coercion, her free and disposing mind was overwhelmed;**

www.hobbsgroday.com

Slide 43

Undue Influence in Suspicious Circumstances

- The party who alleges undue influence bears the burden of proof;
- A difficult claim to prove – the influence must go beyond the influence of affection or attachment.

www.hobbsgrodny.com

Slide 44

Undue Influence in Suspicious Circumstances

- Suspicious circumstances may include:
 - Age and infirmity of donor;
 - Is the alleged wrongdoer's relationship to the donor relatively new?

www.hobbsgrodny.com

Slide 45

Undue Influence in Suspicious Circumstances

- Do the impugned transaction(s) upset long held estate plans?
- Is the alleged wrongdoer controlling others' access to the donor?

www.hobbsgrodny.com

Slide 46

Undue Influence in Suspicious Circumstances

- Has the alleged wrongdoer poisoned the donor's mind to his relatives and others he might otherwise benefit?
- Has the alleged wrongdoer played a prominent role in the choice of the donor's legal, medical and financial advisors?

www.hobbsgrodny.com

Slide 47

Undue Influence in Suspicious Circumstances

- Is the donor reliant upon the alleged wrongdoer for care and living needs?

www.hobbsgrodny.com

Slide 48

Trusts

- The donee / beneficiary may have been given property on an express or a secret trust that she will hold the beneficial interest in it for another person;

www.hobbsgrodny.com

Questions?

We would be pleased to answer any (further) questions you may have.

www.hobbogrodny.com
