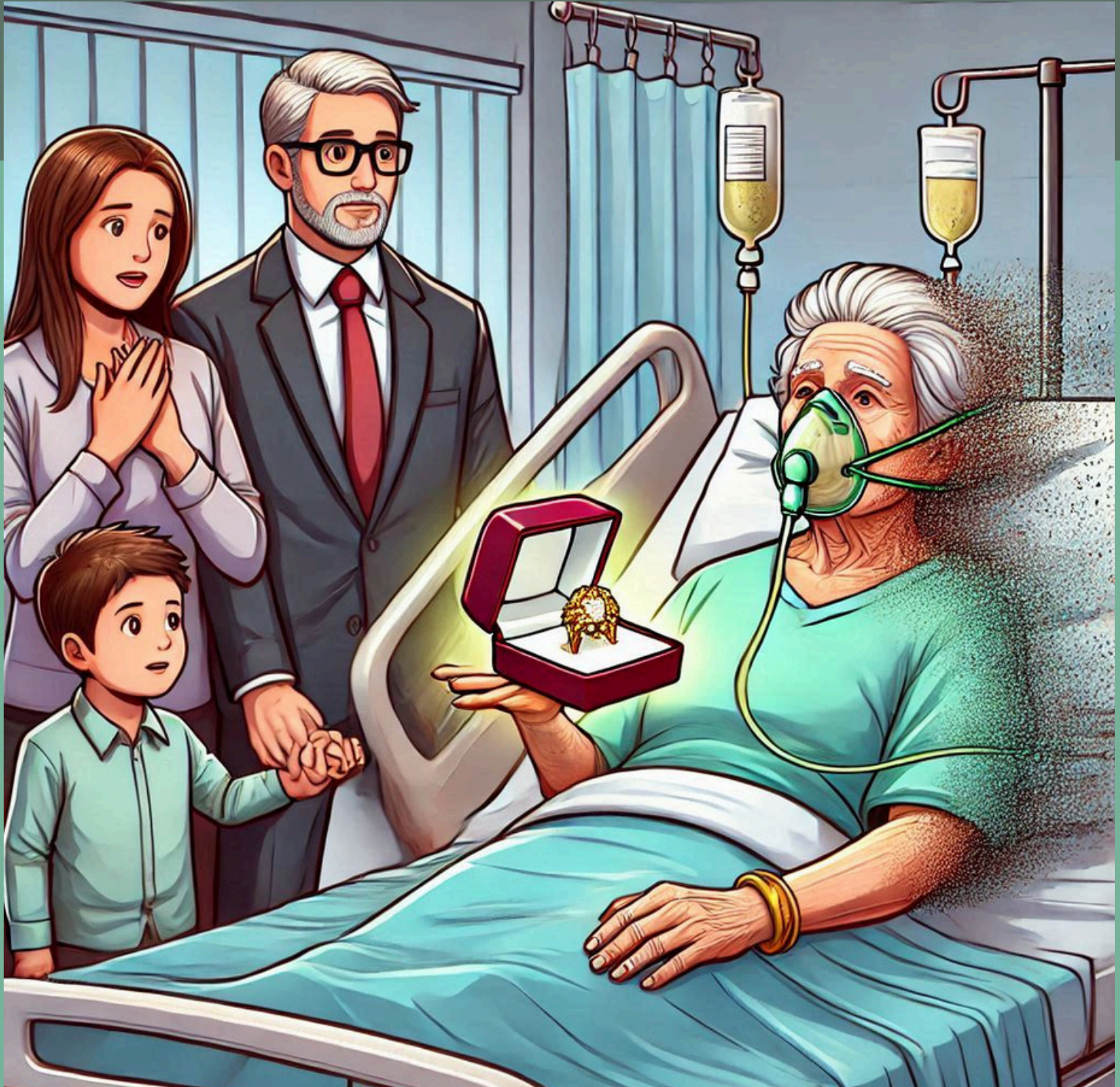


DONATIO MORTIS CAUSA: GIFTS MADE IN CONTEMPLATION OF DEATH



WEDNESDAY WISDOM 15/01/25

1. Introduction [1]:

Consider a scenario where, a grandmother fears that she may not live long enough to witness her granddaughter's marriage due to poor health. Aware of her fading health, she decides to gift her cherished jewellery to her granddaughter, hoping that it will be a great memory for the granddaughter.

Such type of a gift given by a person anticipating their imminent demise, is called a gift in contemplation of death. These gifts, usually made by individuals who are gravely ill or may anticipate their own demise, hold a special legal status under Indian Laws. They are considered conditional gifts, effective only if the donor passes away as anticipated. If the donor survives, such gifts may be revoked. They are treated differently for purposes of inheritance and taxation.

Legal Provision

Section 191 of The Indian Succession Act, 1925, states that:

Property transferable by gift made in contemplation of death:

- (1) A man may dispose off, by gift made in contemplation of death, any moveable property which he could dispose off by will.
- (2) A gift is said to be made in contemplation of death where a man, who is ill and expects to die shortly of his illness, delivers, to another the possession: of any moveable property to keep as a gift in case the donor shall die of that illness.
- (3) Such a gift may be reclaimed by the giver; and shall not take effect if he recovers from the illness during which it was made; or if he survives the person to whom it was made.

Explanation

In the landmark case of Cain Vs Moon [2], the concept of gifts in contemplation of death or donatio mortis causa is stated. In the said case, a daughter had given to her mother a bank deposit note to hold in custody. This was not initially a gift while couple of years later, when the daughter fell seriously ill, she informed her mother that the note was intended to be hers upon daughter's death.

[1] The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] 1896 LawSuit(UKHC) 182/ [1896] 2 Q.B. 283 (D.C.)

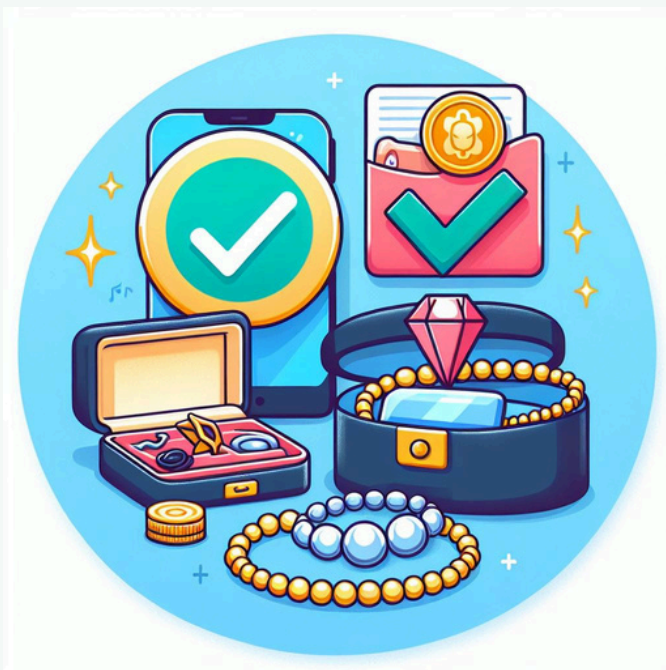
Key Characteristics of donatio mortis causa:

- 1.The gift must be made in anticipation of death due to an existing or imminent illness.
- 2.The gift becomes effective only upon the donor's death.
- 3.The donor retains the right to revoke the gift during his lifetime.
- 4.If the donor recovers from the illness, the gift becomes void, and the donor may demand its return.

Illustrations

A. Mr. A, aged 80, is diagnosed with a terminal illness and is expected to survive for only 6 months with medical treatment. He gave his car to Mr. C, his grandson, to inherit in the event of his death. A month later, Mr. A passed away. As per his wishes, the car was inherited by Mr. C on his death.

B. Mrs. X has a chronic but non life threatening illness and believed that she will not survive from this illness. In anticipation of her death from this illness she gifted her jewellery to her sister Mrs. Y, stating that it should be inherited by her in the event of her death from this illness. A few months later she recovered from this illness, and took back the possession of the gift. After few months, Mrs. X passed away due to a massive heart attack. In such a scenario, Mrs. Y shall not inherit the jewellery, as Mrs. X did not die of the illness as she had contemplated when making the gift.



**Gift in contemplation
of death**

**Returned in case of
survival**

How will law differentiate between Intervivos gifts and Donatio Mortis Causa:

The law differentiates between gifts made during a person's lifetime (inter vivos gifts) and those made in contemplation of death (donatio mortis causa) based on several key factors, primarily the timing and conditions under which the gift takes effect.

Usually inter vivos gifts don't have any conditions attached, and donor transfers the possession of the property to donee. These gifts are usually used for family arrangements, estate planning, tax benefits.

On the other hand, Donatio Mortis Causa gifts are based on an emotional aspect. They are much complex as they have a condition attached to them, and can be revoked in case donor survives. These gifts are usually made with the intention that donee will receive the property only if the donor does not survive the anticipated event.

Conditions to a valid Donatio Mortis Causa:

In the case of Commissioner of Gift Tax Vs Abdul Karim Mohammed [3], the Supreme Court laid down 5 conditions for a valid Donatio Mortis Causa:

- i) the gift must be of movable property;
- ii) it must be made in contemplation of death;
- iii) the donor must be ill and he expects to die shortly of the illness;
- iv) possession of the property should be delivered to the donee;
- v) the gift does not take effect if the donor recovers from the illness or the donee predeceases the donor.

These requirements are similar to the constituent elements of a valid donatio mortis causa.

Taxation Aspect

As per the prevalent taxation laws namely The Income Tax Act, 1961, section 56 (2) states all amounts received in excess of Rs. 50,000/- shall be taxed as per the applicable income tax slab of the particular individual. However, Gifts/Money received in contemplation of death of the payer are an exception to the above section. Thus, no tax is applicable on the gift or the money received as it falls outside the usual gift taxation provisions.

Thus, gifting in contemplation of death may be used as a tax saving tool for any individuals who are expected to inherit such gifts from individuals who are not the family members within the meaning of Income Tax Act, 1961.

[3] 1991 AIR 1847



Case Law:-

Income-Tax Officer vs Shri Vijayraj Uttamchand Mundada [4]

In the said case, Late Pushpa Shirole, Ms. Malini Shirole and Ms. Vasundhara Shirole are sisters. Late Pushpa Shirole died on 15.03.2008. Before her demise, on 10.03.2008 she handed over blank cheques and fixed deposit to the assessee, Mr. Vijayraj Mundada. Thereafter, her sister, Malini Shirole passed away within two months of the death of Ms. Pushpa Shirole. Vijayraj did not deposit the cheques that he had received from Late Pushpa Shirole after her demise. He returned the cheques received to the surviving sister Ms. Vasundhara, who wanted to honour her sister's last wishes, and again issued fresh cheques to meet the said purposes.

The assessee Shri. Vijayraj Mundada, filed his Income tax return and was selected for scrutiny. It was mentioned in the return that amount was received as a gift for Rs. 1 crore, and he had subjected the same to claim exemption under the tax laws. The Assessing officer disallowed the claim of the gift, stating that the gift was not in contemplation of death as Vijayraj had claimed, as Vijayraj failed to prove the gift was not in contemplation of death by providing a will and that the amount was received from the sister of the deceased, and not from the deceased herself. Aggrieved by this order dated 23.12.2011, Vijayraj filed an appeal before the ITAT.

The Hon. Income Tax Appellate Tribunal studied all the facts and concluded that Late Pushpa expressed her will to give gift to Vijayraj before her death and accordingly gave the said cheques. This will of her was substantiated by her neighbour who stated the fact that she wished to give such a gift to Mr. Vijayraj as he was a trusted family friend. Her legal heir i.e. surviving sister Ms. Vasundhara, did not raise any objection to this fact, but endorsed the same, and strived to fulfil the last wishes of Late. Pushpa. Ms. Vasundhara facilitated the encashment of FDRs and cheques handed over by Late Pushpa to Vijayraj. Thus, the claim of Assessing officer was denied, and appeal of Mr. Vijayraj regarding the exemption of the amount was allowed.

[4] ITA No.592/PUN/2014

Best Practices for Gift in Contemplation of death

- i) Clear Intention - The donor's intention to give the gift should be clear and unambiguous to avoid any confusion about the gift's purpose and conditions.
- ii) Witness- though not mandatory, it is advisable that a witness is present when the gift is being bequeathed. This ensures that there is record of the donor's intent, especially in case of future disputes.
- iii) Conditional gifting- It should be clarified that the ownership of the gift shall be valid upon the death of the donor.
- iv) Specific Movable Property- The gift should be clearly identified, so as to avoid confusions and potential conflicts amongst heirs.
- v) Documentation- It is advisable to document the intention of giving gift for clarity and to avoid any future complications.



Conclusion

The gift in contemplation of death, albeit a small concept in succession and transfer of property is an important one, which seeks to honour the last wishes of a person in the face of imminent death. The conditional nature of such gifts, which only takes effect upon the donor's death, distinguishes them from inter vivos gifts and wills. By adhering to these principles and best practices, individuals can navigate the complexities of donatio mortis causa with confidence and clarity, safeguarding their legacy and honoring their final wishes

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