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FACULTY OF JURIDICAL SCIENCES

E- CONTENT

COURSE: BALLB-Vth Sem

SUBJECT: EQUITY AND TRUST

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NAME OF FACULTY: DR. ANKUR SRIVASTAVA

Lecture-20





LECTURE-20

SATISFACTION: *Continued*

What is a Portion?

It is natural for a father either in his lifetime or at different times or by will to make various gifts to his child. This is to be expected in the context of the relationship existing between a father and a child or between a person in *loco parentis* and a *quasi*-child. However, not every such gift is a portion, and yet it must be established that a gift is by way of portion before a presumption of satisfaction can be sustained.

As to what is a portion, the authorities seem to have established that a portion is something given by a father to

his child with a view to establishing the child in life. See **Taylor v. Taylor** (1875) L.R. 20 Eq. 155. Examples of gifts by way of portions include, marriage portion; money laid out either for the training of the child into a profession or setting him up in business; paying for his commission, paying for the goodwill of child's business and giving him stock-in-trade.

As Romer J. stated in **Re Lacon** (1891) 2 Ch. 482, cases show that gifts of shares of residue, of shares in partnership property and of real estate have been considered and treated as portions. Whether or not a gift is to be regarded and treated as a portion depends on the intention of the donor which may be drawn from the circumstances in which the gift was made. See **Re Georges Will Trust** (1948) 2 All E.R. 1004 at 1009.

There is no difficulty where the purpose for which the gift is made is expressly stated, but where in the absence of such evidence a father gives a large sum of money to a child

in one payment, the presumption is strengthened that the money is intended to start him in life or make a provision for him; but if it is a small amount that is so given, it requires strong evidence to show that it is intended to be a portion. See **Taylor v. Taylor** (supra). However, there is presumption of a portion where the purpose for which the payment was made has been shown to be that which every one would recognise as being for establishing the child or making a provision for the child.

It is not an overstatement that it is not every payment made or gift to a child that is to be regarded as advancement by way of portion. This point was emphasised by Jenkins J., in **Re George's Will Trusts** (supra), when he said, quoting the Master of **Rolls in Re Vaux** (1939) Ch. 465, 'when the words "portion" is used in reference to a gift inter vivos, it has a qualitative significance, in this sense, that it is not every gift inter vivos that will cause the rule to come into operation. Similarly, there may be various reasons why the testator

should give property to a child. He may wish to free him from some embarrassment, or something of that kind. In cases of that sort upon the facts a gift may not be a portion at all, in which case, of course, the rule does not apply'. **Re George's Will Trust** (supra) at 1008. In that case, the testator left substantial part of his residuary estate to his son. Later he gave live and dead farm stock and assigned leases to the same child. Jenkins J., held that a gift by a farmer to his son of live and dead stock with which to set up in business as a farmer may be in the nature of a portion and in the absence of circumstances tending to show the contrary, would generally be regarded as such.

In **Re Scott** (1903) 1 Ch. 1, it was held that a sum expended by a father in paying his son's debts is not necessarily an advance to the son by way of portion but may be regarded as a temporary assistance. Casual or occasional gifts of no qualitative significance will not be regarded as portions, neither would the aggregate of such gifts; 'the

court has never added up small sums in order to show that if the child claims those sums as well as the larger provision made for him by the parent, he would be taking a double portion.' See Wigram V.C. in **Suisse v. Lowther** (1843) 2 Hare 424, at 434, 67 E.R. 175; *Re Peacock's Estate* (172) L.R. 14 Eq. 236.

Where the father is a donee of a special or general power of appointment and he exercises it by appointing the property to a child, the gift will be regarded as a portion just as much as if the property were the father's own. In **Re Peel** (1911) 2 Ch. 165 at 170, a testator, who had a special power under a marriage settlement to appoint certain funds, exercised it by will appointing it among his seven children equally. Later, he exercised it by deed appointing a seventh share of the funds to each of two of these children. Joyce J. held that the two children could not claim to share in the appointment under the will. 'In popular language, the sums appointed by deed, as also bequeathed by the will, are

portions properly so called in legal language'; a portion includes a sum of money secured to a child out of property either coming from or settled upon its parents, it does not cease to be a portion because it is given to all the children.

MCQs

- 1. Equitable doctrine of satisfaction is said to be founded on the maxim that equity imputes an intention to fulfill an obligation.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
- 2. Where a testator gives a legacy to his creditor without any reference to the debt, such legacy, (subject to the fulfillment of the requirements discussed below), will be presumed to be a satisfaction of the testator's indebtedness to the donee.**
 - i. True
 - ii. False
 - iii. Cannot say
 - iv. None of these
- 3. "Where there is a question of satisfaction, there must be a reference to the intention. Satisfaction is a**

substitution of one thing for another; and the question in cases of that kind is whether the substituted thing was given for the thing proposed."

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

4. Examples of gifts by way of portions include, marriage portion; money laid out either for the training of the child into a profession or setting him up in business; paying for his commission, paying for the goodwill of child's business and giving him stock-in-trade.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**

5. Satisfaction is the gift or donation of a thing with the intention that it shall be taken either wholly or partly in extinguishment of some prior claim of the donee.

- i. True**
- ii. False**
- iii. Cannot say**
- iv. None of these**
