

An analysis of gifts Inter Vivos under the Statutory Law of Inheritance

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Abstract

Property generally is acquired through inheritance or purchase by payment for the acquisition of an unexpired lease on a property or even an outright sale of the property. Inheritance is the devolution of property on an heir or heirs, upon the death of the owner. However, property can be passed to another while the owner is still alive and not as sale but as a gift inter vivos. It is a transfer of property while the owner of the property is still alive which ordinarily would have formed part of the assets of the estate of the owner when he eventually dies. The aim of this study is to analyse the legal implications of a transfer of an inter vivos gift and compare it to a testamentary disposition of assets. The methodology adopted in this research is a qualitative research with the use of materials from primary and secondary sources providing a detailed study on inter vivos gifts, the elements, the requirements, challenges associated with this method of disposition of assets and how to revoke an inter vivos gift as well as its enforcement even after the death of the donor. This paper also proposes and recommends to incorporate the disposition of a gift inter vivos into a testamentary distribution of assets in order to give the transaction more legal protection while seeking to enforce it. The general notion that a gift inter vivos of land should be supported by legal documentation is laudable however, this paper will demonstrate the necessity for such a gift to also be included in the Will or any other document apart from the transaction papers.

Keywords: Inter vivos, inheritance, gift, sale of property, testamentary disposition.

INTRODUCTION

Property is a term describing anything that a person or a business has legal title over, affording owners certain enforceable rights over said items.¹ Property can be real property which is interest in land, real estate and personal property which is tangible movable property such as furniture, vehicles, clothing or intangible assets such as stocks and shares.² Property can be acquired or transferred through inheritance, sale or gift. Inheritance can be used interchangeably with succession, it is simply the practice of passing on assets and properties to beneficiaries and heirs.³ This is done after the death of the giver. Inheritance is a popular form of property acquisition, according to customs and statutory laws, children and beneficiaries inherit the property after the death of their parents, relatives or benefactors. It is carried out in two forms; testate and intestate. Testate succession is the type of succession that is carried out according to the instructions of a deceased person written in a will for the distribution of his/her property. Intestate succession occurs when a person dies without leaving a valid will. The assets of the deceased will be determined by the laws of intestacy in the state where the person passed away or the personal customary law of the deceased. Thus, the rules of intestate succession vary.⁴

However, disputes arise from property transfer through inheritance due to contesting of wills, wills not properly executed for testate succession and in the case of intestate succession, discrimination can occur, especially for cultures that practice primogeniture or ultimogeniture, the wishes of the deceased might not be carried out, however, with gifting particularly inter vivos gift, which is between two living persons, the situation can be quite different.⁵ Property acquisition through gift involves voluntary transfer of ownership rights from the recipient without any monetary compensation.⁶

The concept of gifts seldom generates disputes, gifts given out cannot be retrieved under the law except if the gift is conditional or does not meet up with the requisite conditions that satisfy an act as a gift. The giver is called the Donor and the recipient is called the Donee. A gift is a legally enforceable transfer of interest in a thing provided it is carried out in accordance with the legal prerequisite.⁷ Therefore, the donor or benefactor has the opportunity to distribute his estate while

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¹ Bloomenthal A, "What Is Property? Definition, Types, Valuation, and Taxation," Available at <https://www.investopedia.com/terms/p/property.asp> accessed 23rd November 2023.

² Ibid.

³ "Inheritance and customary law in Nigeria" (2018) available at < <https://www.leadwaycapital.com/inheritance-and-customary-law-nigeria> > accessed 5 September 2023.

⁴ "intestate succession" available at < <https://www.cornell.edu/wex/intestate-succession> > accessed 6 September 2023.

⁵ EB Shea, "The Validity of an Inheritance Tax on Gifts Inter Vivos within Six Years of Death" (1924) 9(1) *Marquette Law Review*,

⁶ I Adeyeye, "What are the Methods for Acquiring Land in Nigeria?" available at < <https://www.linkedin.com/pulse/what-are-methods-acquiring-land-nigeria> > accessed 25 November 2023.

⁷ P Olajengbesi, "A Gift is Recognised In Law as a Complete Voluntary Transfer of Interest in a Property or Thing and Cannot Be Rescinded, Revoked or Retrieved" Sahara Reporters (August 2022) available at <

alive to his chosen beneficiaries, who can be a relative or a stranger as what is best for the estate without fear of the estate passing to an unqualified, incompetent or irresponsible person after his/her death.⁸

INTER VIVOS GIFTS

Inter Vivos is a Latin phrase that means “during life” or “among the living.” The meaning of inter vivos is between living person to another. An inter vivos gift, otherwise referred to as inter vivos transfer refers to any gift or transfer made by a person while they are alive.⁹ The Black’s Law Dictionary, Ninth Edition, defines a gift as a voluntary transfer of property or a thing to another without compensation. Hence, a gift is the transfer of something of value to another without receiving anything in return. The giver of the gift is called the Donor while the recipient is called the Donee.¹⁰ A gift may be real or manual. A real gift refers to gifts of immovable property such as land and houses or anything affixed on the land. Manual gifts are gifts of personal, tangible in action, which refers to transferrable interest in property which can be enforced by taking action, not by physical possession, such as shares.¹¹

Section 4 of the Statute of Frauds Act prescribes all transactions, transfers pertaining to land, including gifting be executed in writing, describing the property and signed by the donor. Although customary law requires no writing for the transfer of land by way of gift, in lieu of writing however, there must be actual handing over of the land to the donee in the presence of witnesses and the acceptance by him of the gift.¹² For transfer to be considered a “gift” rather than a contract or an exchange, the giver must receive nothing in return. It must be given voluntarily and donor must have mental and physical capacity.¹³

A gift may be gift inter vivos, gift causa mortis or testamentary gift.¹⁴ In the case of *Anyaegbunam v Osaka*¹⁵ where the appellant was a member of an organization, light of Christ Praying Band, Onitsha. The appellant owned a parcel of land and he made a layout of the land in 1978 and gave it to the organization as an outright gift and this was evidenced in writing on the 4th of February 1978. The deed of gift was between the appellant as donor, and the six respondents as donees. Later on, in 1985 the appellant filed a suit claiming the respondents induced him to make the gift

<https://saharareporters.com/2022/08/21/gift-recognised-law-complete-voluntary-transfer-interest-property-or-thing-and-can-not> > accessed 25 November 2023.

⁸ IE Sagay, *Nigeria Law of Succession Principles, Cases, Statutes and Commentaries*, 1st Edn. (Ibadan: Malthouse Press Limited, 2006) 64.

⁹ E Reed, “What is an Inter Vivos Gift?” <https://smartassest.com/taxes/inter-vivos-gift>. Accessed on the 5th of December 2022.

¹⁰I Olanjengbesi, (note 7).

¹¹ Ibid.

¹² Ibid.

¹³ VC Ikpeze, *Gender Dynamics of Inheritance Rights in Nigeria. Need for Women Empowerment* (Benin: Folmech Printing & Publishing Co. Ltd, 2009) 143.

¹⁴ PO Itua “Legitimacy, Legitimation and Succession in Nigeria: An appraisal of Section 42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) on the Rights of Inheritance,” (2012) 4(3) *Journal of Law and Conflict Resolution*, 31-44.

¹⁵ [2000] 5NWLR (Pt 654) 386.

when the organization did not exist because it was not incorporated. The Supreme Court in determining the appeal defined a gift *inter vivos* as:

A gift *inter vivos* is an act whereby something is voluntarily transferred from the true possessor to another person with full intention on the part of the receiver to retain the thing entirely as his own without restoring it to the giver.

Thus, the essential thing to consider is that the gift is complete when the donee has accepted it. *Inter vivos* gift was also defined in *Nweke v. Nweke*¹⁶ as a gift made during the donor's life time and delivered with intention of irrevocably surrendering control over the property. It is also termed gift *inter vivos*; life time gift, absolute gift. It is an act whereby something is voluntarily transitioned from the true possessor to another person with full intention that the thing shall not return to the donor. Gift *inter vivos* as contemplated in the law of succession, are such that the owner of the property or assets donates it to another without expectation of death. In case of *inter vivos* the gift must go into immediate and absolute effect. It is also well established that where the gift has been made, delivery to the beneficiary is necessary to consummate the gifts.¹⁷ In *Pellington & Anor v. Waine & Ors*,¹⁸ The court emphasized that "An *Inter Vivos* gift exists if the donor, while alive, intends to transfer unconditionally legal title to property and either transfers possession of the property to the donee or some other document evidencing an intention to make a gift and the donee accepts the gift."¹⁹

ELEMENTS OF AN INTER VIVOS GIFT

The elements of an *inter vivos* gift are as follows;

1. Donative Intent
2. Lack of Consideration
3. Delivery
4. Acceptance

This is the conscious desire to make a gift, as distinguished from giving something as a gift by mistake or under pressure.²⁰ It is the intent to give some or all of an ownership interest in property to another. Black's Law Dictionary (11th edition) defines donative intent as the intent to surrender dominion and control over the gift that is being made.²¹ Donative intent to make a gift is essentially determined by the donor's words, but the courts also consider the surrounding circumstances, the relationship of the parties and the behavior of the donor toward property subsequent to the

¹⁶ [2019] 17 NWLR (Pt 1701) 267.

¹⁷ G Kiletyen, "The Conundrum of Gifts *Inter Vivos* and Bringing Property to the HotchPot" available at <https://www.linkedin.com/pulse>. Accessed on the 5th of December 2022.

¹⁸ [2000] ALL E Reports.

¹⁹ G Kiletyen (note 17).

²⁰ Legal Information Institute, "Donative Intent", available at <https://www.law.cornell.edu/wex> Accessed on the 8th of December 2022.

²¹ *Law Insider*, "Donative Intent definition" available at, <https://www.lawinsider.com/dictionary/donative-interest> Accessed on the 8th of December 2022.

purported gift. The intent must be present at the time the gift is made.²² Therefore, the donor must have a desire to make the gift to the donee, voluntarily and free from undue influence or coercion. Another element of a gift is lack of consideration. This means that one party is not obliged in any way. Consideration is a promise, performance or forbearance bargained by a promisor in exchange of their promise.²³ It is an inducement given to enter a contract that is sufficient to render the promise enforceable in the courts.²⁴ Under both civil law and common law, a gift requires a transfer of property from the donor to the donee without any consideration.²⁵

Delivery of a gift is complete when it is made directly to the donee or a third party on the donee's behalf. In the event that the third person is the donee's agent, bailee or trustee, delivery is complete only when such person actually hands the property over to the donee. A delivery may be actual, implied or symbolic, provided some affirmative act takes place.²⁶ Delivery can only occur when the donor surrenders control of the property.²⁷

Delivery means that the donor must do an act that demonstrates an intent to transfer the property, where physical delivery is impractical, constructive delivery is allowed, this is accomplished by handing over the means of obtaining ownership or some sort of symbolic act relinquishing dominion and control over the property.²⁸ In the case of *Safeti v Safeti*,²⁹ Per Tanko J.C.A, stated that, "A gift becomes valid in law once it is validly made and the donee has taken possession thereof."

The final requirement for a valid gift is acceptance which means that the donee unconditionally agrees to take the gift.³⁰ Acceptance is a vital part of making a gift. An inter vivos gift is not complete or perfect until the desired receiver accepts the gift. Where there is an unaccepted gift there is no gift.³¹ The apex court concluded in *Anyaegbunam v Osaka*³² per Uthman Muhammad J.S.C that, "The essential thing to consider is that the gift is complete when the donee has accepted it."

²² LawShelf Educational Media, "Inter-Vivos Gifts" available at <https://lawshelf.com/coursewarecontentview/inter-vivos-gift> Accessed on the 8th of December 2022.

²³ Law Cornell, "Consideration", available at <https://www.law.cornell.edu/wex> Accessed on the 8th of December 2022.

²⁴ Britannica, "Consideration" available at <https://www.britannica.com/topic> Accessed on the 8th of December 2022.

²⁵ "The Concept of a Gift" available at <https://www.justice.gcca/eng/rp-pr> Accessed on the 8th of December 2022.

²⁶ "Gift, Rules of Gift-giving" available at <https://law.jraw.org/pages/7144/rules-of-gift-giving> Accessed on the 8th of December 2022.

²⁷ Y Y Bambale, *Acquisition and Transfer of Property in Islamic Law* (Ibadan: Malthouse Press Limited, 2007) 11.

²⁸ LawShelf Educational Media, "Inter-Vivos Gifts" <https://lawshelf.com/coursewarecontentview/inter-vivos-gift> Accessed on the 8th of December 2022.

²⁹ [2006] LPELR 7579(CA).

³⁰ LawShelf Educational Media, "Inter-Vivos Gifts" available at <https://lawshelf.com/coursewarecontentview/inter-vivos-gift> Accessed on the 8th of December 2022.

³¹ Unini Chioma, "Acceptance of Gift and Effect of Failure to Accept Gift." Available at <https://thenigerianlawyer.com> Accessed on the 8th of December 2022.

³² [2000] 5 NWLR (Pt657) @ 386.

REQUIREMENTS FOR A VALID INTER VIVOS GIFT

The requirements for a valid inter vivos gift are legal capacity, it must be written and registered, irrevocable transfer of title, donor must be alive and elements must be complete.

Legal capacity is the capability and power under law of a person to occupy a particular status or relationship with another or to engage in a particular undertaking or transaction.³³

Legal capacity for a valid inter vivos gift includes:

The donor must be of legal capacity and be of at least 18 years old when making the gift. A minor who is a person under the age of 18 does not have the legal capacity to grant a gift, hence cannot be a donor. However, a minor can accept gifts through their legal guardian.³⁴

A donor must be mentally fit to make a decision towards the transaction and should show an intent to make a gift, which is inferred from the nature and purpose of the gift. Common Law courts have interpreted mental capacity as the ability to understand “the nature and extent of one’s property, the relationship between oneself and those persons who ought to be in one’s mind at a time.”³⁵ In Common Law, every person is presumed to have mental capacity until the contrary is proved.³⁶ Mental deficiency and mental derangement are two general types of mental conditions that prevent a donor, from standard of capacity and invalidate the transaction of gift. The mentally deficient person suffers a defect that precludes him or her from understanding the nature and extent of his property or the nature of the act he attempted. It may result from age, sickness or injury.³⁷ Mental derangement on the other hand, may have capacity to understand what the person is doing but the person cannot act rationally and has moments of insane delusions. If the delusion affects the subject matter of the transaction, the gift will be deemed to be invalid.³⁸

Section 4 of the Statute of Frauds Act prescribes all transactions, transfers pertaining to land, including gifting be executed in writing, describing the property and signed by the donor.³⁹ Although, customary law requires no writing for the transfer of land by way of gift, in lieu of writing however, there must be actual handing over of the land to the donee in the presence of witnesses and the acceptance by him of the gift.⁴⁰

In the case of *Chibuzor v Chibuzor*,⁴¹ per Umar JCA stated that the law is settled that a gift of interest in land must be backed with written documents or evidence of witnesses in case of

³³ Merriam Webster Dictionary, “Legal Capacity” available at <http://www.merriamwebster.com/dictionary/legal-capacity> Accessed on the 8th of December 2022.

³⁴ Wonder Legal, “Deed of Gift,” <https://www.wonder.legal/ng/deed-of-gift> Accessed on the 8th of December 2022.

³⁵ “Capacity to Make a Gift” available at <https://gifts.uslegal.com/capacity-to-make-a-gift> Accessed on the 8th of December 2022.

³⁶ “Capacity to make gifts, settle property and contract” <https://www.lexisnexis.co.uk>legal> Accessed on the 8th of December 2022.

³⁷ “Capacity to Make a Gift” available at <https://gifts.uslegal.com/capacity-to-make-a-gift> Accessed on the 8th of December 2022.

³⁸ Ibid.

³⁹ E Azinge, *Restatement of Customary Law of Nigeria*, 1st ed, (Lagos; Nigeria Institute of Advance Legal Studies, 2013) 87.

⁴⁰P Olanjengbesi (note 7).

⁴¹ [2018] LPELR 46305 (CA).

customary law...” There will be a document, the document outlines the name and address of the donor and donee; and the description of the gift.⁴² After completing the document, the donor and the donee are to sign the document, if the donee is a minor, the legal guardian of the minor is to sign the document on behalf of the minor. If either of the parties is a company, either two directors or one director and one company secretary should sign the document if either of the parties is an organization and not a company, an authorized representative (general manager, managing partner) of the organization should sign the document.⁴³ In the case of an unincorporated organization, trustees can be appointed to handle the gift and they will sign the agreement, as held in *Anyaegbunam v Osaka*.⁴⁴

An irrevocable transfer means a grant of an intent where transferor does not retain any right to revoke the interest granted.⁴⁵ The donor must make a present and irrevocable transfer of interest. Gift Inter Vivos as contemplated in the law of succession are such that the owner of the property or asset donates it to another without expectation of death.⁴⁶ Inter Vivos simply means “between the living,” therefore the donor has to be alive and the donee has to receive it during the donor’s lifetime else it is not an inter vivos gift. It is a gift given without expectation of death or after death through a will.

BENEFITS OF INTER VIVOS GIFTS

Gift inter vivos offers flexibility and control over asset distribution. For testamentary gifting, the donor has to be dead before property is passed, at that time the testator will not have control over the estate distribution and there is no guarantee, the property will pass to the desired benefactor, as the will can be contested by unsatisfied heirs leading to legal disputes. In the case of *Lawal Osula v. Lawal Osula*,⁴⁷ Chief Lawal Osula made a testamentary disposition of his property. In it he devised his *Igiogbe* to another child of his, while his eldest son was still alive. The court unanimously held; *Igiogbe* cannot be taken away from the eldest son who succeeds him.⁴⁸ Also, *Okungbowa v. Okungbo*,⁴⁹ the deceased gave out the main house where he lived and died to his eldest daughter who took care of him very well before he died, while the boys quarter was given to the eldest son. The court held that the eldest son cannot be deprived of the *Igiogbe* which is the

⁴² AA Kolajo *Customary law in Nigeria through Cases* (Ibadan: Spectrum Books Limited, 2007)156.

⁴³ DH Parry, *The Law of Succession: Testate and intestate* (London: Sweet and Maxwell Ltd, 1972) 3.

⁴⁴ [2000] 5 NWLR (Pt 657 @ 386

⁴⁵ Law Insider, “Irrevocable transfer definition” available at <https://www.lawinsider.com/dictionary> Accessed on the 8th of December 2022.

⁴⁶ P Olanjengbesi, (note 7).

⁴⁷ [1995] 9NWLR (Pt419) SC 259.

⁴⁸ ES Osamuade, “Benin Customary Law of Succession” < <https://www.edoworld.net/Benin-customary-law-of-succession.html> > accessed 20 September 2023.

⁴⁹ (unreported) Suit8/493/87.

main dwelling house.⁵⁰ However, with gift inter vivos, there is immediate transfer and guarantee that the property belongs to the desired beneficiary.⁵¹

Furthermore, it saves the cost of probate probate can be time consuming and expensive. Probate fees and court costs can reduce the estate's overall value, impacting the amount distributed to beneficiaries. Gift inter vivos does not require probate which is good because probate process can delay the distribution of estate which can be bad for those depending on the inheritance for financial support.⁵²

Finally, inter vivos gifts help reduce the size of the estate, potentially simplifying the probate process and reducing overall costs associated with administering, maintaining and distributing an estate after the death of the owner.⁵³

REVOKING AN INTER VIVOS GIFT

Revocation usually means the official taking back or cancelling some kind of right, status or privilege that has already been given or approved, it typically refers to the withdrawal of an offer or the nullification of a legal contract like a will.⁵⁴ Generally, it is trite in law that a donor of an absolute gift cannot revoke the gift after it has been accepted by the donee.⁵⁵ In the case of *Yesufu & Ors V Oke Baale (Osogbo) NUT Co-Operative Investment Credit Society Ltd & Anor*,⁵⁶ the Court of Appeal while determining the case held that “ it is trite in law that a donor of an absolute gift cannot revoke the gift after it has been accepted by the donee. Additionally, in case of *Osagie v Osagie*,⁵⁷ it was stated that “the essential thing to consider is that the gift is complete when the donee has accepted it, if that condition is satisfied, the donor has no right to revoke the gift. This principle was applied in the international case of *Balai Chandra Puiiu v Smt. Durga Bala Dasi & Ors*,⁵⁸ it was held that in a normal course when a gift has been executed by the donor, accepted by the donee and registered by the registering authority, there is no scope left for revocation of the same. However, if the parties decide on a condition for revocability or if the deed is executed under coercion, undue influence, fraud or misrepresentation, revocation is possible.⁵⁹

⁵⁰ ES Osamuade (note 48).

⁵¹ RAI Ogobobine, *Materials and Cases on Benin Land Law* (Benin: Bendel Newspapers Corporation, Benin City, 1978) 47.

⁵² T Tamplin, “Testamentary vs Intervivos Gifting?” Finance Strategist (May 2023) available at < <https://www.financestrategist.com/estate-planning-lawyer/testamentary-vs-intervivos-gifting> > accessed 25 November 2023.

⁵³ *Ibid.*

⁵⁴ Dictionary,” Revocation” available at <https://www.dictionary.com/browse/revocation> Accessed 9th December 2022.

⁵⁵ P Olanjengbesi (note 7).

⁵⁶ [2014] LPELR-22102 (CA).

⁵⁷ [2009] LPERLR-4533(CA).

⁵⁸ AIR [2004] CAL 276.

⁵⁹ B Kolawole, “Can gift be revoked, rescinded or retrieved?” available at <https://www.thehopenewspaper.com> Accessed 9th December 2022.

Furthermore, in the case of *Imah v Okogbe*,⁶⁰ it was stated that “an unconditional gift of land made by a donor to a donee, once validly executed, cannot be revoked in the absence of fraud, mistake, and misrepresentation. It can only be revoked if the donor reserves the right to revoke.” Therefore, a gift can only be revoked by the following: Coercion or undue influence, fraud, misrepresentation, mistake and unfulfillment of condition. These factors are hereunder examined.

Coercion is the act or process of persuading someone forcefully to do something they do not want to do.⁶¹ It is the making of something to happen or someone to do something by force. It is the use of physical or moral force to compel a person to do something. Undue influence occurs when an individual is able to persuade another’s decisions or actions due to the relationship between the parties. Often, one of the parties is in a position of power over the other due to elevated status, higher education or emotional ties.⁶² Undue influence is an equitable doctrine that involves one person taking advantage of a position of power over another person.⁶³ Lord Browne-Wilkinson identified two distinct classes of undue influence in *Barclays Bank Plc v O’Brien*⁶⁴ as actual undue influence and presumed undue influence. These can further be categorized as protected relationship; this includes parent and child but not an adult as held in *Avon Finance Co Ltd v Bridger*,⁶⁵ solicitor and client, doctor and patient. Other cases; relationship in which influence can be presumed, but it is not automatically so. In *Royal Bank of Scotland Plc v Elridge*⁶⁶ presumed influence was clarified, the relationship between the parties would give a presumption of influence, but not necessarily undue influence, this is for the claimant to prove.

Fraud is an intentionally deceptive action designed to provide the perpetrator with an unlawful gain or to deny a right to a victim, it involves deceit with the intention to illegally or unethically gain at the expense of another. It involves the false representation of facts, whether by intentionally withholding important information or providing false statements to another party for the specific purpose of gaining something that may not have been provided without the deception.⁶⁷ Fraud can also be defined as the intent of false representation or concealment of a material fact for the purpose of inducing another to act upon it to his or her injury.⁶⁸ In order to constitute fraud, the party making the false statement must know or believe that it is untrue or incorrect and intended to deceive the other party. In proven cases of fraud, the perpetrator, a person who carries out the act

⁶⁰ [1993] 9 NWLR (Pt 316) pg 159 @173.

⁶¹ Collins Dictionary, “Coercion” available at <https://www.collinsdictionary.com/coercion> Accessed 9th December 2022.

⁶² A Hayes, “What is Undue Influence? Definition, How it works and examples” available at <https://www.investopedia.com> Accessed 9th December 2022.

⁶³ Ibid.

⁶⁴ [1994] 1 AC 180.

⁶⁵ [1985] 2 ALL ER 281.

⁶⁶ [2002] UKHL 44.

⁶⁷J Chen, what is fraud? “Definition, types and consequences” available at <https://www.investopedia.com/terms/f/fraud.asp> Accessed on the 9th of December 2022.

⁶⁸ Western Illinois University, “what is fraud?” available at www.wiu.edu/internal-audacity/fraud.php Accessed 9th December 2022.

have committed a criminal or civil offence. Perpetrators of criminal fraud may be punished by fines and or imprisonment, victims of civil fraud may file lawsuits against the perpetrator seeking monetary compensation.⁶⁹ The elements necessary to prove fraud are: misrepresentation of material fact, knowledge of falsehood, intent to deceive, reasonable reliance by the victim and actual loss or injury suffered.

Misrepresentation means a false statement of fact made by one party to another party, which has the effect of inducing that party into the contract. Misrepresentation is a false statement made orally or in writing from one party to another in order to induce the party into entering a contract. For a misrepresentation to have an operative effect it must satisfy the following. Inducement: a misrepresentation occurs when one party makes a false statement with the intention of inducing another party into doing something. For inducement to be established it must be proved that the other party relied on the false statement of fact. The false statement must be a statement of fact and not an opinion, therefore, words like “I think” or mere “boast” are expression of opinion and not fact. As a general rule, mere silence is not misrepresentation, in some circumstances which silence amounts to misrepresentation includes; when circumstances change, partial disclosure when full disclosure is required or when the party though silent conducts his or her self in a manner which suggests a particular fact exists.⁷⁰

A mistake is a false understanding or interpretation which affects the contract made. The presence of mistake in the setting of gift transactions will often give rise to the inquiry of as to the right of the donee to obtain perfection of gift or the right of the donor to obtain cancellation or revocation.⁷¹ Mistake can be made in relation to the quantum of the gift, the identity of the subject of the gift or the identity of the donee. Frequently, the mistake occurs in either the donee receiving more than the donor intended or a stranger receiving gift or property not intended for him at all. Therefore, the donor has the right to correct it or obtain restitution of the gift.⁷²

A conditional gift becomes irrevocable only upon fulfilment of the condition upon which it was given. In the case of *Odede & Anor v Jonah & Anor*⁷³ the appellant was given a family land to build a church pending when the land will be partitioned. He was supposed to build temporary structures but started changing the walls, before the respondents stopped him. The court held that what he had was not an outright gift but conditional license to occupy the land with the understanding that structures built should be temporary.⁷⁴ Where a donor can prove that the gift was subject to a condition which has been broken, such a completed gift will be revoked.

⁶⁹ R Longley, “Definition and Examples of Fraud” available at <https://www.tthoughtsco.com/fraud> Accessed 9th December 2022.

⁷⁰ E Aloba, *Law of Contract*, 2nd Edn, (Lagos Princestone Publishers, 2022) 232-235.

⁷¹ *Pitt v Holt* (consolidated appeal with *Futter v Futter*) [2013] UKSC 26, [2013] 2 AC 10 where the Supreme Court of England held that a voluntary deed could be set aside only if there was a ‘causative mistake of sufficient gravity’, such that it would be ‘unconscionable’ to leave the mistaken disposition uncorrected.

⁷² B. Hacker, “Mistaken Gifts after *Pitt v Holt*,” (2014) 67 *Current Legal Problems* 333–372 at p 334.

⁷³ [2019] LPELR 4909 (CA).

⁷⁴ P Olanjengbesi, (note 7).

CHALLENGES OF GIFT INTER VIVOS

Improper documentation can complicate the process. Without proper documentation, it may be difficult for the recipient of the gift to prove ownership of the gifted asset. In the case of the donor's death, without proper documentation, the gift can be included as part of the donor's estate and be distributed to someone else.⁷⁵ Also, without proper documentation, the donor can revoke the gift at anytime his/her intentions change whether or not the condition for the gift has been fulfilled and the gift accepted. Additionally, if the donor lacked the requisite capacity to make gratuitous transfer then the gift can be contested, if the donor lacked capacity to transfer the gift, then he/she could not properly form the intention to gift and the gift is not perfected. It can be easily rebutted evidence or circumstances that put the capacity in doubt.⁷⁶

CONCLUSION AND RECOMMENDATIONS

Inheritance which is the most popular form of property acquisition is not without challenges as wills can be contested, by dissatisfied heirs or beneficiaries in the case of testamentary gifts and under intestacy, estate can be divided in a discriminatory way like in primogeniture or ultimogeniture cultures, dependants who are not family members can easily be left out. However, with gifting, it is different. Inter vivos gift, is a transfer of something of value to another without receiving anything in return which unlike inheritance, the giver does not have to be dead, it is a transfer between two living persons, in order to make such transfer, there must be a conscious desire to make a gift, the donor must have the capacity to make such transfer which is dependent on the property been passed without consideration, it is then delivered directly to the donee or a third party on behalf of the donee and by accepting the gift, it is complete. Conclusively, in order to have more options and to avoid the problems with property/estate transfer through inheritance, people can give out their estate either wholly or partly while still alive to beneficiaries of their choice, in order to ensure their will is fulfilled through inter vivos gifts.

Sensitization by lawyers: gift inter vivos should be encouraged and offered by lawyers to their clients. Thus, lawyers should sensitize their clients on gift inter vivos, in order to reduce the conflict that arises with inheritance, either testate, when the family challenges the provisions of the will or intestate, when a family member or dependent feels left out or cheated. Gift inter vivos fulfils the will of the donor while he is still alive to see it and the benefactor ensures property is passed to the rightful beneficiary.

⁷⁵ Faster Capital, "Gift Intervivos: The Importance of Proper Legal Documentation In Gifting" available at < <https://fastercapital.com/content/gift-intervivos-the-importance-of-proper-legal-documentation-in-gifting>. > accessed 25 November 2023.

⁷⁶ K Whaley, "Attacking Inter vivos Gifts: Why they may Stand or Fail" Estate Planning & Litigation Forum (April 2015) available at < https://welpartners.com/resources/wel_attacking-inter-vivos-gifts-april2015. > accessed 25 November 2023.

Legal documentation & registration: gifts must be evidenced by a letter signed by the donor, to make a gift inter vivos legally binding. It must be documented in writing, the documentation should include the names, addresses of the donor and donee, description of the property or asset transferred and the date of the transfer.⁷⁷

Legal documentation can protect the interests of both parties, without proper legal documentation, misunderstandings can occur and disputes can arise, the terms of the gifts are clearly outlined and that each party understands their rights and responsibilities. Where there is lack of proper documentation, a gift may be rendered invalid, leading the legal disputes and financial loss. It offers legal protection and clarity.⁷⁸

Legal Advice: seeking legal advice before gifting inter vivos is crucial to ensure the gifting and transfer is done properly, ensuring compliance with legal requirements and the procedure to adopt in case of revocation and knowing their rights and obligations towards the gift. From the donor's perspective, seeking legal advice can assist by knowing on how to go about gifting, what conditions to attach and revocation. For the donee, it can protect their interests, how they should receive the gift and making sure it is properly enforced even when the donor is no longer alive.⁷⁹ Gifts inter vivos agreements must be executed properly. This typically involves signing the agreement in the presence of witnesses. As held in *Ayinke v Ibidunni*⁸⁰ in the absence of writing, the presence of witnesses to the transaction is a necessity.

⁷⁷ Faster Capital, "Gift Intervivos: The Importance of Proper Legal Documentation In Gifting" available at < <https://fastercapital.com/content/gift-intervivos-the-importance-of-proper-legal-documentation-in-gifting>. > accessed 25 November 2023.

⁷⁸ *Ibid.*

⁷⁹ Faster Capital, "Gift Intervivos: The Importance of Proper Legal Documentation In Gifting" available at < <https://fastercapital.com/content/gift-intervivos-the-importance-of-proper-legal-documentation-in-gifting>. > accessed 25 November 2023.

⁸⁰ {1959} FSC 280 @282.