Conveyance of Real Estate - Parol Gift of Land - Statute of Frauds

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Recent Decisions

Conveyance of Real Estate—Parol Gift of Land—Statute of Frauds—The Pennsylvania Supreme Court has held that an alleged parol gift of land between blood relatives lacked immediate donative intent and a clear and unambiguous acceptance, where the donee rejected conveyances of the same property, because of issues collateral to the gift and independent of the disputed property interest.


During the 1930s, defendant-appellant Margaret Fuisz ("mother") and her husband purchased fifty acres of land and a farm house in Lower Nazareth Township, Pennsylvania. During the 1960s, the mother and her husband gave their two children, plaintiff-appellee Richard ("son") and Robert Fuisz, several subdivisions of their land by fully executed deeds of conveyance. In 1972, the son constructed a house, valued between $40,000 and $70,000, on two and one-half acres (hereinafter "the parcel") of land that were owned by his parents but not deeded to him. The son constructed the house with the full knowledge and consent of his parents and lived there until 1979. The parents paid the parcel's property taxes and maintained dominion and control over a rental cottage on the land. The parents charged their son no rent

2. Id. Richard Fuisz was a highly educated physician and entrepreneur. Id at 1049.
3. Id at 1048.
4. Id. The son paid for utilities, expenses and most of the maintenance associated with the house and lawn; however, he paid his parents no rent. Id. After a divorce in 1979, the son's ex-wife and children continued to reside in the house. Id.
5. Id. The mother's maintenance man may have mowed the parcel's lawn on certain occasions. Id.
for the parcel.\textsuperscript{6}

In 1982, the mother offered her son a deed for the parcel.\textsuperscript{7} The son rejected this deed, however, because it lacked an easement to access his parents' driveway and did not permit the use of their barn.\textsuperscript{8} Subsequent family disharmony precluded any further offers for the conveyance of the disputed parcel.\textsuperscript{9}

In 1987, the son filed a suit in equity against his mother in the Court of Common Pleas of Northampton County, alleging that his mother breached an oral agreement to convey the parcel,\textsuperscript{10} and sought to obtain legal title through a decree of specific performance.\textsuperscript{11} The mother filed an answer denying the existence of an oral agreement,\textsuperscript{12} averring that damages were an adequate remedy and raising the affirmative defense of the statute of limitations.\textsuperscript{13} The mother alleged that she offered to make a gift of the parcel on several occasions, however the son did not accept these offers.\textsuperscript{14} The mother offered her son the options to either move the house or to allow his ex-wife to continue living there.\textsuperscript{15}

The trial judge, sitting as chancellor in a non-jury trial, found that the evidence was insufficient to establish a contract.\textsuperscript{16} Instead,
an adjudication and decree nisi\textsuperscript{17} were entered granting specific performance for conveyance of the parcel on the basis of a parol\textsuperscript{18} gift of land.\textsuperscript{19} Over the mother's exceptions to this decree, the judge ordered the decree final.\textsuperscript{20} The mother appealed to the Pennsylvania Superior Court,\textsuperscript{21} which affirmed the decision of the trial court.\textsuperscript{22} The Pennsylvania Supreme Court granted the mother's appeal.\textsuperscript{23}

On appeal, the supreme court considered whether the superior court erred in affirming the chancellor's finding that the mother made a valid parol gift to her son when she testified that, in 1972, she told her son to "take the land whenever he wished," and the son built a house, treated the parcel as his own, but declined to accept a deed as a matter of convenience.\textsuperscript{24} The mother argued

\begin{enumerate}
\item A decree nisi is "a provisional decree, which will be made absolute on motion unless cause be shown against it." \textit{Black's Law Dictionary} 411 (West, 6th ed 1990).
\item Parol is "expressed or evidenced by speech only; as opposed to by writing or by sealed instrument [such as a common law deed for the conveyance of land]." Id at 1116.
\item \textit{Fuisz}, 563 A2d at 540. In \textit{Fuisz}, No 1987-CE-651 at 6, the chancellor refused to consider family arguments and allegations that the son in 1982 and 1983 failed to show his mother love and respect, or that the mother favored other family members over her son. Instead, the chancellor discarded emotion and considered that: Equity is loth to undo a gift or contract at the instance of one who has neglected to move for its rescission until the passing years have grafted new equities upon the transaction, until the donee . . . has spent the prime of his manhood in the use and improvement of a property long regarded as his own.
\item \textit{Sower's Administrator} v \textit{Weaver}, 84 Pa 262, 268 (1877).
\item \textit{Fuisz}, 563 A2d at 540. The chancellor stated that the doctrine of equitable estoppel applied to this dispute. \textit{Fuisz}, No 1987-CE-651 at 6.
\item \textit{Fuisz}, 591 A2d at 1049. On appeal, the mother raised five issues: (1) the trial court acted improperly in granting relief on grounds different than the son alleged in his complaint, (2) the court erred in applying the law of specific performance to the case, (3) the court erred in failing to grant the mother's motion for nonsuit at the conclusion of the son's case, (4) the court erred in failing to find a violation of the statute of limitations, and (5) the court erred in failing to find that damages were adequate compensation. \textit{Fuisz}, 563 A2d at 541.
\item \textit{Fuisz}, 563 A2d at 540. The superior court held that the equitable remedy of specific performance was proper even though the son's original prayer did not ask the court to find a gift; that the trial court committed no abuse of discretion in finding donative intent in the making of a gift; and that the statute of limitations was not an affirmative defense in this equity action. Id at 541-42.
\item The court referenced \textit{Concorde Investments, Inc. v Gallagher}, 345 Pa Super 49, 497 A2d 637 (1985), and noted that due to real estate's unique character, the remedy of specific performance in equity is appropriate when substantial improvements were made to the land. \textit{Fuisz}, 563 A2d at 542.
\item \textit{Fuisz}, 591 A2d at 1049-50. The son was dissatisfied because the deed did not grant the right to use his parents' driveway and barn. Id at 1050. However, the son also did not want graphic evidence of a conveyance in the 1970s because it could endanger the well-being of his terminally ill father. Id at 1051 n 2. In addition, because of his marital difficul-
that substantial evidence did not support the existence of a valid parol gift of real estate consistent with the requirements of *In re Yarnall's Estate.* Furthermore, the mother alleged that the superior court's decision conflicted with Pennsylvania case law in *Van Buskirk v Van Buskirk.*

The supreme court, in an opinion by Justice Flaherty, considered whether the parties met the requirements of *Yarnall's Estate* for the creation of a valid parol gift of land. The requirements for the creation of a valid parol gift (hereinafter the "three-part test") include: (1) direct, positive, express, and unambiguous evidence of a gift, (2) exclusive, open, notorious, adverse, and continuous possession of the land that is taken at the time or immediately after the making of the gift, and (3) the donee made valuable improvements to the property that cannot adequately be compensated by damages.26

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26. 378 Pa Super 418, 548 A2d 1270 (1988), alloc granted, 524 Pa 630, 574 A2d 71 (1990), vacated on other grounds, 527 Pa 218, 590 A2d 4 (1991); Brief for Appellant at 4, Fuisz, 591 A2d 1047 (1991). In *Van Buskirk*, parents attempted to give real property to their son and his wife. A deed was executed and notarized. However, the deed was neither recorded nor delivered because the father was concerned about his son's marital problems. *Van Buskirk*, 548 A2d at 1271. Nevertheless, the son and his wife started construction of a home using funds primarily provided by the parents. Id. The trial court ruled that there was a valid parol gift. Id. The superior court reversed and held that there was no gift because there was no delivery of a deed, there was no intent by the father to effect an immediate transfer, and the parents maintained dominion and control over the property and financed the house. Id at 1271-72. Moreover, failure of the father to deliver the deed corroborated his lack of donative intent. Id. The supreme court vacated this decision because the parents were indispensable parties to the dispute. *Van Buskirk v Van Buskirk*, 527 Pa 218, 590 A2d 4, 7 (1991) (this case was not cited by the supreme court in Fuisz).

27. The court noted that their scope of "appellate review of equity matters is limited to a determination of whether the chancellor committed an error of law or abused his discretion." *Fuisz*, 591 A2d at 1049-50, citing *Sack v Feinman*, 489 Pa 152, 413 A2d 1059, 1066 (1980). A final decree in equity is not disturbed unless it is unsupported by the evidence or demonstrably capricious. *Fuisz*, 591 A2d at 1050.

28. Justice Flaherty was joined in his opinion by Chief Justice Nix and by Justices McDermott, Zappala, Papadakos, and Cappy. *Fuisz*, 591 A2d at 1048. Justice Larsen filed a dissenting opinion. Id at 1051.

29. Id at 1049.


A "purported donee must meet a very stringent test of establishing by clear, precise, and indubitable evidence that the purported donor, at the time of transferring possession, manifested an intention to make a gift of legal title." Levin, *Summary of Pennsylvania Jurisprudence* § 214 at 182 (cited in note 11), citing *Shellhammer v Ashbaugh*, 83 Pa 24 (1876). The donee must also establish:
The general requirements for the conveyance of real property through the delivery and acceptance of a deed, provided by the Statute of Frauds, are not required when the stringent requirements of Yarnall's Estate are clearly met. However, between a parent and child, evidence of an even more clear and weighty nature is required for a parol gift of land. On review, the supreme court determined that the record did not contain direct, positive, express, and unambiguous evidence of a clear and weighty nature to establish the mother's gift.

The court noted that the chancellor's finding was based on inferences, as opposed to direct testimony from either party, that a gift was completed. Instead, the chancellor inferred a gift because of the son's reliance in constructing the house and making valuable improvements on his parents' land, and his expectation that he would eventually own the property. Nevertheless, this reliance merely satisfied the third element of the three-part Yarnall's Estate.

an unequivocal change of possession and such valuable improvements as to make it inequitable not to recognize as valid the oral gift. In other words, an oral gift or promise to convey real property will be enforced in equity where there has been part performance thereof by the donee, or acts have been done by him in reliance on the promise which placed him in a situation that will result in fraud or prejudice to him unless the promise is performed.


31. 33 Pa Stat § 1 provides, in pertinent part, that: interests of freehold made or created by parol, and not put in writing, and signed by the parties shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, nor any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding.


32. Fuisz, 591 A2d at 1049. The supreme court noted that the policy of the three-part test exists to encourage the proper transfer of real property by deed, and to foreclose any questionable claims of ownership in another's property. Id.

33. Id, citing Yarnall's Estate, 103 A2d at 758; Rarry, 62 A2d at 48. In Glass v Tremellen, 294 Pa 436, 144 A 413 (1928), the supreme court provided the rationale for requiring weightier evidence of a parol gift between parents and children:

Nothing is more common than that a father speaks of a farm, upon which he has placed a son, as the son's farm, or a house in which he permits the son to live, as the son's house. It is every day's occurrence that a father speaks of having given a lot of ground to a son, when it is plain there was no intention to transfer the ownership. . . Were courts to look at the language of parents, expressed to others, as evidences of title in children, it would annihilate domestic confidence, and it would doubtless, in most cases, be giving an effect to loose declarations that was never intended.

Glass, 144 A at 413-14, quoting Ackerman v Fisher, 57 Pa 457, 459 (1868).

34. Fuisz, 591 A2d at 1049.

35. Id at 1050.

36. Id.
Although the mother testified that, in 1972, the son "could take the land whenever he wished," the son did not accept ownership.\(^{38}\) Moreover, the son testified that he "deferred taking a conveyance" until 1982.\(^{39}\) The mother also testified that, in 1982, she told her son that "he should have [the land] surveyed and take as much land as he wants."\(^{40}\) Although the son surveyed the land in anticipation of a future gift, he declined to accept the deed.\(^{41}\) Based upon that testimony, the court concluded that in both instances, in 1972 and 1982, this "indirect, inferential and ambiguous" evidence "fell short of an express declaration of an immediately effective gift."\(^{42}\)

The supreme court, citing *In re Rogan's Estate*\(^ {43}\) and *Wagner v Wagner*,\(^ {44}\) stated that a transfer of ownership by gift requires that there be a present donative intent, and not merely an intention to make a gift at some future time.\(^ {45}\) A donor's mere intent to make a future gift and a donee's expectation to receive that gift are not substitutes for an actual gift.\(^ {46}\)

In reviewing the chancellor's decision, the supreme court disagreed that the 1982 deed inferred a prior gift of land.\(^ {47}\) Moreover, because the mother used the delivery of deeds to effect previous gifts of land, there arose an implication that the delivery of a deed was neither a superfluous act nor a mere affirmation of a prior parol gift.\(^ {48}\) Furthermore, the son's complaint failed to allege that he received a parol gift, but instead admitted that he deferred taking a conveyance of the parcel.\(^ {49}\)

Finally, the supreme court cited *In re Sipe's Estate*\(^ {50}\) and Wagner for authority that the donee's acceptance is a necessary ele-
ment of a valid gift. Because the son failed to accept a conveyance of the parcel at any time from 1972 through 1982, he "failed to make a clear and unambiguous acceptance." Therefore, the supreme court held that the son failed to satisfy the standards set forth in Yarnall's Estate and failed to prove the existence (and express acceptance) of an immediately effective parol gift from his mother by direct, positive, express and unambiguous evidence of a clear and weighty nature. The evidence of record did not meet the standards required to establish a parol gift of land between a parent and a child. Therefore, the supreme court reversed the superior court's decision.

Justice Larsen filed a dissenting opinion noting that, although the Yarnall's Estate standards were correctly articulated, the majority's additional test, which required the acceptance of a written instrument to confirm the parcel's conveyance, made "no sense." Although acceptance is a required element, documentation of the acceptance is not an essential element in a parol gift between a mother and her son. Therefore, the only proper question on appeal was whether there was clear and weighty parol evidence of a gift.

Justice Larsen examined whether the record was "devoid of direct and unambiguous evidence that a gift was made." However, unlike the majority, Justice Larsen found that the mother testified in clear and certain terms that she gave the parcel to her son. Therefore, because this testimony provided abundant parol evidence of a gift that was both made and accepted, Justice Larsen

51. Fuisz, 591 A2d at 1051.
52. Id.
53. Id at 1049, 1051.
54. Id at 1051.
55. Id.
56. Id (Larsen dissenting).
57. Id. Justice Larsen noted that, in 1972, the son built the house with his own money and treated the property as his own. Id. Furthermore, his subsequent divorce property settlement agreement permitted his wife to live on the property for as long as she wished. Id. Therefore, Justice Larsen disagreed that the facts did not support a clear and unambiguous (implied) acceptance by the son. Id.
58. Id.
59. Id.
60. The mother testified, "I've given [the property] to [my son] twice." Id at 1051 n 1, quoting Deposition of Margaret Fuisz at 10 (May 5, 1987). Furthermore, during the trial she also stated, "I gave [my son] that land. I offered that land to him a number of times. And the last time when he had it surveyed, I told him he could take as much as he wanted." Id at 1051 n 1, quoting Notes of Testimony at 17 (Jan 27, 1988) (emphasis in original).
would have affirmed the order of the superior court.\textsuperscript{61}

In order to fully understand the \textit{Fuisz} holding, a review of prior Pennsylvania cases that developed and interpreted the three-part test for a valid parol gift of land is necessary. In \textit{Yarnall's Estate}, the three-part test was applied to a widow contesting a life estate\textsuperscript{62} against her children.\textsuperscript{63} After the decedent's death, the widow and her two children each shared one-third interests in real estate.\textsuperscript{64} The mother alleged that her children gave her a life estate out of their shares.\textsuperscript{65} The court first examined whether the evidence supported a direct, positive, express and unambiguous gift of a life estate.\textsuperscript{66} Unfortunately, the testimony indicated that the children favored a gift of only four to five years\textsuperscript{67} and they intended to maintain their fair share of dominion and control through the payment of taxes.\textsuperscript{68} The testimony also indicated that only the children, and no additional witnesses, were present when the alleged gift was made.\textsuperscript{69} The court concluded that these factors evidenced that the children gave no more than mere permissive use.\textsuperscript{70}

Secondly, the widow failed the immediate and exclusive possession test because she continued to occupy the premises with her daughter after the death of her husband.\textsuperscript{71} In fact, her daughter resided with her for two or three years, and the widow only exclusively controlled the real estate after the departure of her daughter.\textsuperscript{72} Here, the court emphasized the importance of taking possession "in pursuance of and immediately following"\textsuperscript{73} a parol gift.\textsuperscript{74}

\begin{thebibliography}{99}
\bibitem{61} \textit{Fuisz}, 591 A2d at 1051 (Larsen dissenting).
\bibitem{62} A life estate is "an estate whose duration is limited to the life of the [tenant] holding it . . . . Upon the death of the life tenant, the property will go to the holder of the remainder interest or to the grantor by reversion." \textit{Black's Law Dictionary} 924 (West, 6th ed 1990).
\bibitem{63} \textit{Yarnall's Estate}, 103 A2d at 758.
\bibitem{64} Id at 755. As a tenant in common with her children, the mother owned an undivided one-third interest in the estate for her life and a one-third interest in the remainder.
\bibitem{65} Id. In other words, the mother alleged that her two children gave their one-third interests in the estate for her life in exchange for her gift of a one-third interest in the remainder.
\bibitem{66} Id at 758.
\bibitem{67} Id. Hence, the children contended that they merely gave one-third interests in the estate for a term of years, and not for their mother's life, in exchange for the mother's one-third interest in the remainder.
\bibitem{68} Id.
\bibitem{69} Id at 755.
\bibitem{70} Id at 758.
\bibitem{71} Id.
\bibitem{72} Id at 758-59.
\bibitem{73} Id. Similarly, in oral contracts for the sale of land, the purchaser must take possession "at the time when or immediately after [the oral contract] was entered into." Levin,
Finally, the court examined whether the widow made valuable, permanent improvements to the property for which compensation would be inadequate. Although the widow did pay for repairs and maintenance, she made no improvements. Therefore, these circumstances precluded any equitable remedy, because the payment of maintenance, or even partial taxes, was easily compensated by monetary damages if not by the free rental use of the property. Hence, because of the failure of these tests, the children received their shares through a partition of the property.

While the burden of proof for donative intent in a parol gift varies significantly upon whether the donor and donee are relatives or merely strangers, variations also exist depending upon whether the gift is money or real estate. In Wagner, a father filed suit for the return of corporate stock by his five children, the sole asset of the corporation being a parcel of real estate. The chancellor addressed the question of whether the father possessed the donative intent to make an immediate and valid parol gift to his children. In considering the evidence, the chancellor rejected the father's testimony and accepted the children's testimony, which provided a reasonable inference that the father intended to make an immediate parol gift. On appeal, the supreme court affirmed the chancellor and noted that the relation of parent and child supported this


74. The supreme court rejected the question of adverse possession because the widow's possession of the house was neither "adverse" nor "hostile," but instead was "permissive." Yarnall's Estate, 103 A2d at 759.

75. Id at 758. "The requirement of the law that the improvements be such that compensation would be inadequate does not mean that no amount of compensation, however large, would be sufficient, but that it would be impracticable, if not impossible, to determine such amount with any fair degree of accuracy by ordinary and available standards." Id.

Similarly, in oral contracts for the sale of land, such improvements must: (1) add value and be permanent, (2) not be compensable through monetary damages, and (3) not be reimbursable by ordinary profits during the purchaser's possession. Levin, Summary of Pennsylvania Jurisprudence § 211 at 180 (cited in note 11).

76. Yarnall's Estate, 103 A2d at 759.

77. Id.

78. Id.

79. Rarry, 62 A2d at 48.

80. Compare Yarnall's Estate, 103 A2d at 758 (finding insufficient evidence of donative intent in an alleged parol gift of land from children to their mother) with Wagner, 353 A2d at 821-23 (finding sufficient evidence of donative intent in a parol gift of corporate stock from a father to his children).

81. Wagner, 353 A2d at 820-21.

82. Id at 822.

83. Id.
In re Yeager's Estate\(^8\) provides a similar example where a father, prior to surgery, entrusted his daughter with money and securities.\(^6\) However, after his daughter's subsequent death, the father alleged that these were gifts causa mortis\(^7\) to the daughter.\(^8\) The supreme court ruled in favor of the daughter's estate and stated that in gifts from parent to child, as opposed to gifts between strangers, the donor's acts are natural and require less demonstrative evidence of donative intent.\(^8\)

Nevertheless, in parol gifts of real estate between parents and their children, a different rule of law applies. In *Montrenes v Montrenes*,\(^9\) a son filed suit to quiet title in real estate that his mother deeded to his sister.\(^9\) The son alleged that his mother gave him a parol gift of this land, that he and his wife restored two dwellings that were damaged by fire, and that they thereafter resided in one of the houses.\(^2\) The trial court considered the testimony of three witnesses who stated that the mother frequently discussed her gift to her son.\(^9\) Nevertheless, the court found insufficient evidence to establish a parol gift.\(^9\)

On appeal, the superior court affirmed and stated that clearer and weightier evidence is necessary to prove a parol gift between parent and child than between persons who are not blood relatives.\(^9\) The proof of a parol gift between parent and child requires that "the witnesses ... must have heard the bargain when made and their testimony must bring the parties face to face; the transaction must not be inferred merely from the declarations of one of

\(^{84}\) Id at 822 n 7. The supreme court stated, "Because gifts from parents to their children are natural and common, donative intent may be found more readily in cases involving such gifts than in cases in which the donor and donee are not so related." Id, citing *McClements v McClements*, 411 Pa 257, 191 A2d 814 (1963); *Thompson v Curwensville Water Co.*, 400 Pa 380, 162 A2d 198 (1960); *Brightbill v Boeshore*, 385 Pa 69, 122 A2d 38 (1956).

\(^{85}\) 273 Pa 359, 117 A 67 (1922).

\(^{86}\) *Yeager's Estate*, 117 A at 67.

\(^{87}\) A gift causa mortis is "a gift of personal property made in expectation of donor's death and on condition that donor die as anticipated." *Black's Law Dictionary* 688 (West, 6th ed 1990).

\(^{88}\) *Yeager's Estate*, 117 A at 67-68.

\(^{89}\) Id at 68.

\(^{90}\) 355 Pa Super 403, 513 A2d 983 (1986).

\(^{91}\) *Montrenes*, 513 A2d at 983-84.

\(^{92}\) Id at 984.

\(^{93}\) Id.

\(^{94}\) Id.

\(^{95}\) Id at 984-86.
the parties. 96

Another requirement of both donative intent and a valid parol gift, as noted in Rogan's Estate, is that the donor must exhibit "an intention to make an immediate gift" to the donee. 97 A gift made purely for convenience, with the donor intending to maintain dominion and control until his death, does not qualify as a gift inter vivos 98 and is at best testamentary. 99 Nevertheless, less concrete equitable considerations, involving both the donor and the donee, are not always disregarded by the courts. 100

In Rarry v Shimek, 101 a servant worked for a farmer who owned a tract of land for twenty-two years. 102 The farmer built a house on this land and, upon completion, the servant and his wife immediately moved in and made numerous improvements to the property. 103 However, after nearly ten years, the farmer deeded the house to new owners who subsequently filed suit to eject the servant. 104 The trial court directed a verdict for the owners and the servant appealed. 105 On appeal, the supreme court reversed and invoked the three-part test to establish a valid parol gift of land, 106

96. Id at 955, citing Rarry, 62 A2d at 48; Ackerman, 57 Pa at 459.
97. Rogan's Estate, 171 A2d at 180.
99. Rogan's Estate, 171 A2d at 180.
100. See note 19.
102. Rarry, 62 A2d at 47.
103. Id at 48-49.
104. Id at 47.
105. Id.
106. The three-part test for a valid parol gift of land may be compared and contrasted with the parallel rule for an oral contract for the sale of land subject to partial performance. In Concorde Investments, 497 A2d 637, the superior court stated that partial performance, benefiting the party invoking the Statute of Frauds, may bar the rule where: (1) there has been an oral contract (versus direct, positive, express, and unambiguous evidence of a gift), (2) the property was occupied by continuous and exclusive possession (versus immediate exclusive, open, notorious, adverse, and continuous possession), and (3) improvements were made by the buyer not readily compensable in money (versus valuable improvements). Concorde Investments, 497 A2d at 640 (emphasis added).

However, in Kurland v Stolker, 516 Pa 587, 533 A2d 1370 (1987), the supreme court provided a more comparable test and stated:

[(1)] The terms of the contract must be shown by full, complete, and satisfactory proof... [(2) it] must establish the fact that possession was taken in pursuance of the contract, and, at or immediately after the time it was made, the fact that the change of possession was notorious, and the fact that it has been exclusive, continuous and maintained... [(3)] performance or part performance... could not be compensated in damages, and such as would make rescission inequitable and unjust.
notwithstanding the Statute of Frauds.107 The court discounted the need for direct evidence that the donor made the gift to the donee "face to face" and stated that a gift transaction could be inferred from the direct testimony of one of the parties.108 However, the ten-year period of time that the servant possessed the home was an important equitable consideration.109

Finally, acceptance, in the absence of express renunciation, is a required element in any gift.110 Questions often arise, however, whether such acceptance must be express or implied. In Sipe's Estate, the decedent executed a signature card, in his name and the donee's name, to create a joint savings account.111 The donee did not personally sign the signature card; however, the decedent gave the donee a passbook for the account.112 About two weeks before the decedent's demise, the donee returned the passbook because the decedent's income tax return was due.113 After the decedent's death, his executor possessed the passbook and challenged the validity of the gift to the donee.114

The supreme court stated that the requirements for a gift inter vivos are intent,115 delivery and acceptance.116 Acceptance need not

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107. Rarry, 62 A2d at 47-49. "The celebrated Statute of Frauds is one of the most formidable and salutary safeguards of property in the lexicon of law. Through its application, title to land acquires a firmness and permanence as solid and enduring as the particular piece of earth to which it gives metes, bounds and a name." Klingensmith v Klingensmith, 375 Pa 178, 100 A2d 76, 77 (1953) (footnote omitted).

The object of the statute is to prevent the assertion of verbal understandings in the creation of interests or estates in land and to obviate the opportunity for fraud and perjury. It is not a mere rule of evidence, but a declaration of public policy. In the absence of equities sufficient of themselves to take the case out of the statute, it operates as a limitation upon judicial authority to afford a remedy unless renounced or waived by the party entitled to claim its protection. Kurland, 533 A2d at 1372, quoting Haskell v Heathcote, 363 Pa 184, 69 A2d 71, 73 (1949). "The owner of land is fortified in his ownership and to compel him to relinquish it . . . a writing bearing his signature must exist or an exception to the rule of this statute [must be] established." Hoyle v Dunstan, 57 Lack Jur 109, 112 (Pa Com Pl, Lackawanna Cty 1955).

108. Rarry, 62 A2d at 48.
109. Id at 49. See note 19.
110. Sipe's Estate, 422 A2d at 828.
111. Id at 827.
112. Id at 827-28.
113. Id at 829.
114. Id.
115. Evidence of insufficient donative intent is illustrated by an example: At the marriage of S to B, S's father, F, declared that he intended to give his son a home. Thereafter F built a home close to his own and when it was completed, gave his son S the keys and told him to move in. S thanked F and moved into the home. He lived there many years and made many valuable improvements. F continued to
be express and is presumed "in the absence of express renunciation" when the gift is beneficial to the donee. The court stated that the formality of signing a document, such as a signature card, to acknowledge acceptance is not required. The donee's return of the passbook, merely for income tax reasons, was not a renunciation of the gift.

When examined in the context of prior Pennsylvania decisions, the holding of Fuisz, especially in light of Justice Larsen's dissent, apparently adds clear and unambiguous acceptance of a written instrument as a fourth element to the three-part Yarnall's Estate test. One method of understanding the Fuisz holding is to examine what it should not mean. This is accomplished through a hypothetical that results in an absurd consequence.

R orally gives E, a blood relative, land in fee simple absolute. Direct, positive, express, and unambiguous evidence supports their face to face meeting at the alleged making of this gift. However, E fails to expressly accept the gift. Nevertheless, immediately thereafter, E takes exclusive, open, notorious, adverse, and continuous possession of the land. E also relies on the gift and makes valuable improvements to the land. These improvements are unique and monetary damages would be inadequate compensation for E's reasonable reliance in this gift. Ten years later, R conveys by deed a life estate to E of the same land with a reversion to R. Upon exam-

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116. Sipe's Estate, 422 A2d at 828. Moreover, this rule is applied to all cases such as gifts of money, bank accounts, stock or farm animals. Id.
118. Sipe's Estate, 422 A2d at 828. The court placed the burden of proof, by clear and convincing evidence, on the executor to demonstrate the absence of a gift inter vivos. Id at 829. Nevertheless, Justice Roberts, writing for the dissent, strongly noted that black letter law places this heavy burden on the donee. Id. Because the donee's signature was a "sham," the decedent continued to exercise dominion and control over the property such that delivery never occurred. Id at 830.
119. Id at 829.
120. A fee simple absolute is defined as:
An estate limited absolutely to a person and his or her heirs and assigns forever without limitation or condition. An absolute or fee-simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during one's life, and descending to one's heirs and legal representatives upon one's death intestate. Such estate is unlimited as to duration, disposition, and descendibility. Black's Law Dictionary 615 (West, 6th ed 1990).
ination of the deed, E objects to the limited duration and descendibility of the estate. Therefore, not wishing to cloud his putative title in fee simple absolute, E rejects the deed because it merely provides a life estate. Unable to receive a suitable deed, E files suit to obtain the equitable remedy of specific performance. The chancellor denies relief, after applying a “four-part test,” because there was no express acceptance of the gift or deed.

Assuming that each of the three Yarnall’s Estate elements are met, this hypothetical produces the absurd consequence of the donee’s loss of land. Two factors emphasize this absurdity: first, the donee is faced with either acquiescing to a lessor interest in land by accepting the deed or, even worse, losing the entire estate through the renunciation of the deed. Either loss is contradictory to the purpose of the three-part test: to take a parol gift of real estate out of the Statute of Frauds and provide the entire interest contemplated by the gift.

Second, because such a parol gift is out of the Statute, the requirement for a writing can be eliminated. The donated interest is only limited when the gift is within the Statute. Furthermore, the supreme court clearly did not overrule the three-part test. Nevertheless, the implication that acceptance of a deed was added as a fourth element led Justice Larsen to state, “This makes no sense.”

Given this apparent contradiction, the majority opinion of Fuisz can partially be explained by the discrete events surrounding the disputed parol gift in 1972 and the uncontested renunciation of the

121. While some jurisdictions hold that acceptance is not rejected by merely returning a deed to the grantor for safekeeping or for correcting a mistake in the acknowledgement or property description, others hold that acceptance is negated on return where the deed is unsatisfactory or where conditions precedent to the acceptance remain executory. 74 ALR2d Deed-Acceptance § 14 at 1023 (1960).

122. Yarnall’s Estate, 103 A2d at 757.
To take a parol contract [or gift] out of the statute, it is necessary not only that it be partly performed by delivery of the possession, but that it be on a valuable consideration paid or secured to be paid; or in the case of a gift, that there be an expenditure of money or labor in consequence of it, which comes to the same thing; and this for the plain reason that no equity arises from the naked delivery of the possession, and without a specific equity a chancellor would not interfere to compel a conveyance of the contract.

123. See Statute of Frauds, 33 Pa Stat § 1 (1967) (providing that “interests of freehold... made or created... by parol, and not put in writing, and signed by the parties... shall [be] at will only”).

124. Id (which limits the freehold interest of a parol gift to an at will possession).

125. Fuisz, 591 A2d at 1051 (Larsen dissenting).
First, the court found that there was an absence of donative intent from 1972 until the making of the deed in 1982. Thus, the failure of the first element of the three-part test placed the gift within the Statute of Frauds.

Second, given the complete failure of the three-part test, only a valid conveyance, such as the delivery of an executed deed, could properly transfer title to the land. However, the son’s express renunciation of the 1982 deed clearly failed to meet these requirements.

Finally, dictum in Fuisz states that even if the mother’s “actions . . . were to be construed as an attempt to make a parol gift, it is evident that [the son] failed to make a clear and unambiguous acceptance.” Although the court cited both Sipe’s Estate and Wagner for the requirement of acceptance in a valid gift, both cases declare that acceptance is inferred where beneficial in the absence of renunciation.

126. The court separated the events of 1982 from those of 1972 by stating, “When one offers to convey land by deed [in 1982], it cannot be presumed that the proposed recipient already owns the land through a prior [parol] gift [in 1972].” Id at 1050.

127. Id. The court noted that “the statements made by [the mother] in both 1972 and 1982 would certainly have provided a basis for [her son’s] expectation that he would eventually receive the land, they nevertheless fell short of an express declaration of an immediately effective gift.” Id.

The court further concluded (after discussing the absence of acceptance from 1972 through 1982) that, “the evidence relied upon by the chancellor in finding that a gift had been made was indirect, inferential and ambiguous. Such evidence falls substantially short of what is required to establish a parol gift of land between a parent and child.” Id at 1051.

Two additional factors, not stated by the court, may or may not strengthen the finding of an invalid parol gift because of the lack of donative intent. First, Montrenes and Rarry accentuate the need for witnesses of a face to face transaction that is not inferred from the declarations of one of the parties. Montrenes, 513 A2d at 985. However, it is unreasonable to assume that the donor’s express admission of a face to face meeting would be insufficient evidence. Instead, the court emphasized that the mother’s statements that the son “‘could take the land whenever he wished’ . . . fell short . . . of an immediately effective gift.” Fuisz, 591 A2d at 1048 (emphasis added).

Second, Rogan’s Estate emphasizes that a donor’s intent to maintain dominion and control disqualifies a gift inter vivos. Rogan’s Estate, 171 A2d at 180. The second element of the three-part test also requires exclusive possession of the land. Yarnall’s Estate, 103 A2d at 758. The son did not possess the rental cottage, did not pay property taxes and allowed his mother’s maintenance man to mow the lawn on several occasions. Fuisz, 591 A2d at 1048. Hence, the son did not exclusively possess the land and the mother, at least partially, exercised dominion and control over a portion of the land.

128. Fuisz, 591 A2d at 1049.
129. Van Buskirk, 548 A2d at 1271.
130. Fuisz, 591 A2d at 1050.
131. Id at 1051 (emphasis added).
132. Id.
133. Wagner, 353 A2d at 821 (stating that, “often there is no express acceptance by
Removed from the Statute of Frauds, a conveyance is typically evidenced by delivery and acceptance\textsuperscript{134} of a deed.\textsuperscript{135} However, when the three-part test is utilized to provide an equitable remedy, acceptance may be inferred to benefit the donee because of the lack of such formalities. Under the three-part test, donative intent provides evidence of the donor’s “offer” to make a parol gift. Similarly, the second and third elements, immediate possession and reliance in making valuable improvements, \textit{may} infer the donee’s “acceptance” of such gift.\textsuperscript{136}

In \textit{Fuisz}, the son declined to accept a conveyance by deed between 1972 and 1982,\textsuperscript{137} although he \textit{attempted} to accept the alleged gift by immediate possession and reliance.\textsuperscript{138} The court’s use of a “clear and unambiguous” standard for acceptance under these circumstances must therefore be derived from the first element of the donee, but if the gift is beneficial to the donee acceptance is presumed in the absence of evidence of rejection”); \textit{Sipe’s Estate}, 422 A2d at 828 (stating that acceptance need not be express and is presumed when the gift is beneficial to the donee, “in [the] absence of express renunciation”).

134. “It is ordinarily unnecessary to show any express acceptance of [a] deed by the grantee. From the moment of the delivery of the deed, the \textit{acceptance by the grantee is presumed in the absence of his dissent}, and title thereby passes to him subject to his right to reject and thereby cause title to revest in the grantor as though the deed had never been accepted.” Levin, \textit{Summary of Pennsylvania Jurisprudence} § 241 at 207 (cited in note 11), citing \textit{Feeley v Hoover}, 130 Pa 107, 18 A 611 (1889) (emphasis added).

The acceptance of a deed by the grantee may be evidenced by his taking or entering into possession of the property which it purports to convey, or by his using, improving, or repairing it, or, where he was previously in possession thereof, by continuing such possession. However, \textit{possession of the property} is not necessarily conclusive of the question, and \textit{has been held under some circumstances not to constitute acceptance of the deed}. Also, possession of the property by the grantee is not essential to acceptance.

\textit{In order to predicate acceptance upon the grantee’s possession, use, or improvement of the property, it should appear that it was under or by virtue of the deed, and not independent thereof.} 74 ALR2d Deed-Acceptance § 11 at 1017-18 (1960) (emphasis added).

135. \textit{Van Buskirk}, 548 A2d at 1271. “Even though [a deed] has been duly executed and acknowledged, [it] does not become effective to pass title unless and until a delivery thereof from grantor to grantee is established and an acceptance of such delivery by the grantee is shown.” Levin, \textit{Summary of Pennsylvania Jurisprudence} § 236 at 204 (cited in note 11), citing 16 Am Jur 497 Deeds §§ 108 et seq (1938).

136. Justice Larsen stated that even in the absence of documentation there was a clear and unambiguous acceptance because the son considered the land his own after 1972 and used his own funds to build the house. \textit{Fuisz}, 591 A2d at 1051 (Larsen dissenting).

137. Id. In the 1970s, the son declined to accept a conveyance of the disputed parcel for the collateral reasons of his father’s ill health and his marital difficulties. Conversely, in 1982, he rejected a deed because of alleged limitations in the property interest defined by this deed. Id. See note 24.

the three-part test. This element requires, in part, clear and unambiguous evidence of a gift.\textsuperscript{139} But, the elements of a gift include intent, delivery and acceptance.\textsuperscript{140} Therefore, the court must hold a donee’s acceptance, and the absence of renunciation, subject to the same degree of scrutiny that is assigned to a donor’s donative intent.

The three-part\textit{Yarnall’s Estate} test remains a valid exception to the Statute of Frauds. Nevertheless, under the\textit{Fuisz} dictum, a renunciation of a conveyance by deed, for reasons collateral to an alleged parol gift, that is contemporaneous with an attempted acceptance by immediate possession and reliance, may sufficiently cloud a donee’s acceptance. The requirement of a clear and unambiguous acceptance, which is inferred if it benefits the donee, compels a donee to expressly accept a donor’s reasonable offer of conveyance by deed. Nevertheless, an attempted conveyance of an unreasonably restricted property interest, compared to the original parol gift, should permit rejection of the instrument of conveyance without clouding either the acceptance or the equitable property right provided by the three-part test.

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\textsuperscript{139} \textit{Yarnall’s Estate}, 103 A2d at 758.
\textsuperscript{140} \textit{Sipe’s Estate}, 422 A2d at 828.