

1981

the Estate of David E. Ross, Deceased : Reply Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

In the Matter of the Estate)
of DAVID E. ROSS,)
Deceased.)

No. 16816

REPLY BRIEF OF APPELLANTS

Appeal from the Judgment of the
Third Judicial District Court, Salt Lake County
Honorable David B. Dee

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FILED

JAN - 7 1981

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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REPLY BRIEF OF APPELLANTS

On July 31, 1980, Respondent filed his brief in opposition to Appellants' brief. For purposes of this Reply Brief, Appellants have adopted the organization of Respondent in order that this Court may be able to more easily compare the arguments advanced by Respondent with those offered in rebuttal by Appellants.

STATEMENT OF FACTS

Respondent asserts that five "separate incidents" have been omitted from Appellants' Statement of Facts which "had significant persuasive impact on the trial court judge" (Respondent's Brief, pp. 1-2). A review of these "incidents," however, shows that their inclusion into the record does not assist Respondent in any way in establishing an inter vivos gift.

First, the conversations occurring at the Beneficial Life office and Galen Ross' home go to the question of David Ross' intent but not to the question of delivery. Since Appellants have already conceded the element of intent, such conversation is irrelevant.

Likewise, the second conversation occurring in 1978 between the decedent and Dianne Ross Worthen also goes to the question of intent and motive but not to proving delivery.

The testimony of Rod Ross that in February of 1978 he physically touched some of the stock certificates is also irrelevant to delivery. Mr. Ross was unable to identify which certificates he touched, did not know which company they were issued from and, as later clarified in his testimony, did nothing more than to pick them up, look at them, and place them down on the desk. He stated:

I touched at least two of the certificates. I picked them up and I noticed on the certificates that my name had been spelled out Earl Roderick Ross and Anita Ross and there were asterisks on the certificates. I did not pay any special attention to them other than picking them up, looking at them at which time I placed them back on Dad's desk." (Tr. 283).

Certainly, as has been discussed previously and as will be discussed infra, Respondent's contact with an unknown share of stock on this casual basis hardly amounts to a delivery as required by law.

Finally, the events at the Ross Brothers Corporation meeting also go to the question of intent and not delivery. Admittedly, the decedent made statements to several people about his intention of leaving additional shares of stock to Respondent. This question is not at issue in this Appeal and therefore a redundancy of these statements serve no purpose. The Ross Brothers Corporation meeting had no effect whatsoever upon the delivery of stock in the other corporations.

For these reasons, therefore, the omitted facts complained about by Respondent were properly left out since they serve no useful purpose in this Appeal.

ARGUMENT

A. The Trial Court Incorrectly Interpreted the Evidence and Improperly Applied Utah Law When it Held That the Decedent Had Made A Valid Inter Vivos Gift of Stock to His Son, Rod Ross.

Respondent seems to argue in his Brief that once it is shown that there is a clear intent for a person to give a gift inter vivos that no real evidence of delivery is required or, stating it another way, the stronger the person's intent, the less evidence is required of a delivery. (Respondent's Brief, pp. 5-6). As this Court correctly noted in the Helper State Bank case cited by Respondent (Respondent's Brief, p. 6), each case must be examined individually as to the legal requirements of delivery. For example, the elements to prove delivery of a diamond necklace would be far different from that required to show a conveyance of real property, insurance proceeds, or bank accounts.

This Court in the recent case of Wiggill v. Cheney, 597 P.2d 1351 (Utah 1979) referred to a previous decision of this Court in Singleton v. Kelley, 61 Utah 277, 212 P. 63 (1922) as to the separate elements of intent and delivery, and their relationship to each other. This Court noted the following principle:

[That the Courts will carry out the grantor's intentions whenever this is possible] is true, but without any evidence of delivery, it can be

of no importance whatever what the intentions of the grantor in this case were. One may have an intention to convey his property to another, but unless the deed is delivered to the grantee or someone for him, title cannot pass, and the undelivered deed is a nullity. Id. at 66.

Thus, even if it is assumed that the decedent unmistakably and clearly intended for Rod Ross to be the recipient of inter vivos gifts of stock, this fact is not sufficient to allow a gift to be declared without the concurrent showing of a valid delivery.

Respondent contends that the "decedent did everything necessary to make complete transfers of the stock on the corporate books and records of each corporation" (Respondent's Brief, p. 7). Again, Appellants do not disagree with this statement, but assert that the mere transfer of stock on the corporate books without actual delivery of the stock certificates themselves to the donee is insufficient as a matter of law to constitute delivery. Thus, regardless of the effort the decedent took in the corporate books, there was no valid gift.

Respondent also states that since there is no evidence that the decedent ever attempted to "undo" these transactions, this conclusively shows that the decedent intended on making the gifts to Rod (Respondent's Brief, pp. 7-8). Again, it is not a question of intent but is a question of delivery. It is not a question of whether the decedent tried to "undo"

the transaction but whether he had the ability and power to revoke the gift because the corporate books and safe were both under his sole control. Once again, therefore, intention is irrelevant to deciding delivery.

Respondent asserts that some of the certificates were actually "physically handed to Rod Ross." (Respondent's Brief, p. 8). Again, however, the mere touching of the certificate as a curiosity object hardly constitutes the requirements of delivery which requires a complete dominion and control being surrendered by the donor and acquired by the donee. American National Bank v. Robinson, 184 S.W.2d 393 (Tenn. App. 1948). There was no evidence that Respondent Rod Ross was given the certificates by his father and told that he could do with them as he pleased. Mere casual observation of the certificates in which his father still maintained all dominion and control does not constitute a valid delivery.

Respondent argues that since decedent kept and maintained the stock certificates of other members of the family, this custodianship somehow validated the delivery of the stock certificates to Rod Ross. (Respondent's Brief, pp. 8-9). Again, such an argument is without merit. There is no doubt but that all of the certificates kept by the decedent were given to him by the various owners for him to preserve. In such cases no question arose as to proper delivery of the stock certificates. In the case of Rod Ross, however, the supposed owner of the stock certificates never had actual physical

possession of them nor did he ever authorize his father to keep them on his behalf. All that can be said is that the decedent on his own initiative kept custody of the stock certificates made out to Rod Ross but could have just as easily have destroyed such certificates with no legal liability to his son. Thus, the decedent's custodianship of family stock does not show a delivery of stock to Rod Ross.

Finally, the fact that Rod Ross received limited cash dividends and some stock dividends does not show that he owned legal title and interest in the corpus. A person may choose to give another person income from property without actually giving him the property itself. In Re Busch's Trust, 81 N.W.2d 615 (Minn. 1957).

For these reasons, Respondent has failed to show any valid delivery of the stock certificate under any one of their four asserted acts.

B. Appellants' Statement of the Utah Law of Inter Vivos Gift is Correct.

(1) Clear and Convincing Evidence Does Not Support the Facts Found by the Lower Court.

Respondent has characterized two arguments which Appellants are asserting in this Appeal. Appellants agree with this characterization. (Respondent's Brief, p. 11). Appellants assert "that Respondent failed to prove an essential element of his case" which is, of course, delivery. Second, Appellants agree "that as a matter of law Respondent did not offer proof adequate to satisfy the 'clear and convincing' standard" which is also true since there is no clear and convincing evidence

of delivery.

It would serve no useful purpose to redefine the "clear and convincing" standard required in inter vivos gift transactions. It is sufficient to state that Respondent had the burden to show, by clear and convincing evidence, that a delivery of the stock certificate had occurred utilizing the legal principles required for a valid delivery.

Because Respondent failed to show an actual transfer of the stock certificates themselves as required by Utah law, Respondent obviously failed to produce the necessary evidence required to prove an inter vivos gift. Thus, it is not really a matter of the quantum of evidence the lower Court examined as to this necessary requirement but is simply that no evidence whatsoever was produced by any standard of review.

(2) Actual Physical Delivery of the Certificates is Required for a Valid Inter Vivos Gift of Stock in Utah.

Respondent devotes a large portion of his Brief in the citation of cases from other jurisdictions in which it is held that the mere transfer of stock on the corporate books constitutes a valid delivery (Respondent's Brief, pp. 14-20). Again, Appellants do not dispute that there is a split of authority in the United States as to whether the transfer on corporate books alone constitutes a sufficient delivery. Many of the decisions cited by both sides are dependent upon the statutory language contained in the state codes.

As Appellants have noted in their Brief in chief, there are numerous cases in other jurisdictions in which it is held

that actual delivery of the stock certificate is required and that the transfer on corporate books is insufficient. See Appellants' Brief, pp. 17-20.

Appellants do not dispute the cases cited by Respondent from other jurisdictions in which corporate book transfers were upheld. It would serve no useful purpose to enter into a listing contest of cases from other jurisdictions going in both directions. However, it is clear from the very authorities cited by Respondent that there is a strong and probable majority position in support of Appellants' contentions.

For example, Section 50 of 38 Am Jur 2d, Gifts, states that actual delivery of a stock certificate is necessary in the absence of a constructive delivery of the stock or a delivery of the instrument of gift. Section 51, quoted by the Respondent, concludes by stating "but where the donor retains dominion and control over the stocks, the transfer thereof on the corporate books, even though it is coupled with the issuance of a new certificate in the donee's name, does not constitute the necessary delivery to effect a valid gift." Id. at p. 858.

The annotation cited by Respondent also supports the contentions of Appellants. It is stated in the annotation, for example:

Where the donor continued to have access to the safe deposit box, or other receptacle, in which the stock certificate, alleged to have been given, was placed, it has been held that the gift was incomplete, for lack of the necessary delivery or relinquishment of ownership and control by the donor. 23 ALR 2d. 1171, 1184.

Similarly, this same source states:

Where the donor retains dominion and control over the stocks, it has been held that the transfer thereof on the corporate books, though coupled with the issuance of a new certificate in the donee's name, does not constitute the necessary delivery to effect a valid gift. Id. at 1188.

Regardless of the law in other states, however, it is clear that in Utah a valid delivery can only arise by the actual physical transfer and endorsement of the stock certificate. The three Utah cases previously cited by Appellants and referred to by Respondent (Respondent's Brief, pp. 13-14) all support the principle that it is the delivery of the stock certificate and not changes in the corporate books which transfers legal title of stock. Respondent's attempt to distinguish these cases is groundless.

The case of Sims v. George, 466 P.2d 831 (Utah 1970) further supports this position since in that case the stock certificate had been physically delivered to the defendant with the appropriate endorsement even though the stock was not transferred on the company books. This Court noted that the certificates were given to the donee and that he was "free to do with them as he chose." Id. at 833. In the instant case, however, Rod Ross could do nothing with his supposed stock interest since he never had possession of the stock certificates which would have allowed him to sell, obtain a loan on, or otherwise utilize his alleged stock interest.

Thus, the only decisions of this Court concerning the transfer of stock unanimously and clearly hold that it is the

stock certificate which evidences title and not the transfer in the corporate books. Since stock is "personal property," Brown v. Wright, 161 P. 448 (Utah 1916), it is as necessary to delivery the stock certificates to a donee as it would be a diamond necklace or set of golf clubs.

This is especially true in light of the mandatory Utah statute dealing with stock transfers.

(3) Commercial Statutes Control the Law of Inter Vivos Gifts.

Respondent asserts that "commercial statutes" in other states "are not controlling on the issue of what acts are sufficient for delivery of a gift." Again, Appellants do not dispute that cases in other jurisdictions distinguish commercial transactions. (Respondent's Brief, p. 21). However, there are numerous other cases from jurisdictions previously cited by Appellants (Appellants' Brief, p. 22) and from Respondent's own cited sources (23 ALR 2d. 1171, 1194-1197) which hold that courts will follow the commercial statutes in determining whether a valid delivery of a gift has been made.

In Utah, it is crystal clear that the Utah Legislature has intended delivery in commercial transactions to be deemed to have occurred when the actual physical possession of a stock certificate has been relinquished.

Section 70A-8-309, U.C.A., specifically states that a transfer does not occur even after a stock certificate has been

endorsed until "delivery of the security on which (the endorsement) appears."

Likewise, Section 70A-8-313, U.C.A., states "delivery to a purchaser occurs when (a) he or a person designated by him acquires possession of a security." Finally, Section 70A-8-314, U.C.A., states that a transferor's duty to deliver a security is not fulfilled "until he places the security in form to be negotiated by the purchaser in possession of the purchaser."

It should be noted that in 1977 the Commission on Uniform Laws substantially amended the Uniform Act and specifically amended both Section 8-313 and 8-314. A copy of the proposed amendment is included herein as appendix. The amendment specifically provided, for the first time, for the transfer of "uncertificated securities" which provided that upon the entry of changes in the corporates books a transfer was deemed to have occurred. In the case of certificated securities, however, the act still required actual possession of the certificate.

Although the Utah Legislature extensively amended Article 8 of the Uniform Commercial Code in 1977, it did not amend Section 8-313 or Section 8-314. This failure to amend clearly shows the Legislature did not want to deviate from the present law in which stock certificates were required and in which actual change of possession was mandated.

Respondent argues that the case of Jackson v. James, 89 P.2d 235 (Utah 1939) shows that this Court will not look

to commercial statutes in deciding gift requirements. However, an examination of that case, a subsequent case, and the principles involved shows that this assertion is incorrect.

In Jackson, a defendant was given actual physical possession of a Dodge coupe as a wedding present. The plaintiff claimed that the car had not been properly registered with the state and, therefore, title had not transferred. This Court noted that the applicable sections of the Automobile Act cited by plaintiff were not construed as an absolute and mandatory requirement to pass title. This Court found that the Act only applied in certain instances. It also found "that as between the parties to the transaction" the statute was never intended on governing transfer of ownership.

In the subsequent case of Jones v. Cook, 223 P.2d 423 (Utah 1950) another case arose as to whether the gift of an automobile had been made to a son of the decedent prior to his death. In that case, the automobile was maintained in the decedent's garage and the certificate of ownership still remained in the name of the decedent. The Court in distinguishing Jackson noted that in the Jones case the donor had not divested himself of all dominion and control over the property. Instead, the decedent was only letting the son have the use of the car during the father's lifetime to the

extent it would not interfere with the decedent's enjoyment.

Thus, in Jackson the automobile itself was clearly given and retained by the donee even though the official title had not been transferred. On the other hand, in Jones, the automobile was still under the control of the donor and the title was still in the donor's name.

It is evident that in the case of an automobile the actual physical possession and control is the governing consideration as opposed to state title. Clearly, as between the parties, the actual transfer of the automobile constitutes a sufficient delivery regardless of the transfer of the state title.

Corporate stock is also personal property. The only way in which it can be effectively delivered is by means of the stock certificate. The delivery of the stock certificate is analogous to the delivery of the automobile. The transfer of the stock in the corporate books is analogous to the transfer of the title with the state. In both cases, it is actual physical delivery and not the paper transaction which is controlling.

Just as this Court held in Jackson that the passage of state title was not controlling as between the parties, the change of corporate title is not controlling as between the parties in the sale or gift of corporate stock. Rather, it is the actual change of physical possession of the stock certificate between the parties which governs. Rasmussen v. Sevier

Another authority has stated this rule as follows:

[A] transfer of a certificate of stock on the books of a corporation to the name of the donee is generally held not to be a requisite of a valid, completed gift of corporate stock as between the parties In many cases the courts, without discussing the necessity of a transfer on the books of the corporation, have held that an effective gift of stock may be made either by delivery of the stock or by assignment. 38 Am. Jur. 2d, Section 49, Gifts, p. 854.

Thus, the Jackson case cited by Respondent is actually authority against his position. It is clear that in Utah the Uniform Commercial Code and the decisions of this Court mandate that a proper delivery of stock can only be made when the dominion and control of the stock certificate itself is given up by the donor and given to the donee unconditionally so that the donee may use the stock as if it were his own.

In this case, there would clearly be no valid "sale" of the stock under the Uniform Commercial Code and since the burden of proving a gift is much greater than a sale, there is certainly no evidence permitting a finding that a valid gift was made.

CONCLUSION

It appears that the question of what is required to constitute a valid gift of corporate stock is one of first impression in Utah. The elements of a gift, however, and the law concerning stock transfer is well-established. The solution to the problem merely requires a "mixing" of the two legal concepts.

If it is assumed that the decedent intended on giving Respondent additional shares of stock from the other children, the first element of a gift has been met. While Appellants believe there is conflicting evidence as to his variable intent, Appellants concede there was enough evidence for the lower court to find such intent.

The second element -- valid delivery -- is not present even viewing the facts most favorably to Respondent. The decedent had control and dominion over all of the corporate books and records. He had control over the stock certificates that could be issued. He had control over the safe in which the certificates were kept. Respondent had control over none of these things.

In this particular case, therefore, there was nothing to stop the decedent from changing his mind in the future and reissuing the stock in his own name. The Respondent was not even aware that a change had been made in the certificate and was unaware of the location of the certificates.

The purpose of requiring unconditional delivery is to prevent a decedent from "hedging" -- i.e., claiming the benefits of a gift while actually keeping the property himself. The law is clear that an inter vivos gift to one heir must be proven by clear and convincing evidence because of the severe effect such a gift can have on family harmony and basic fairness.

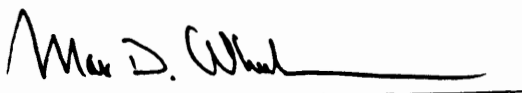
In the case of stock certificates, it is no more difficult for a donor to physically give to the donee a stock certificate than it is a car, necklace or other item of personal property.

The donee, at that moment in time, can require the corporation to transfer the stock in his own name. The converse, however, is not true since a corporation is not required to issue stock certificates even if the books have been changed until the donee can show a right to receive such shares, including a bona fide delivery of the certificate.

Respondent wishes this Court to impose one standard on commercial transactions (actual physical delivery and endorsement of the certificate as required by the U.C.C.) and a different standard for gifts of the same stock (change on the books only). Certainly there should be only one standard and, in any event, the standard for a gift should be stricter than a sale -- not easier.

For these reasons it is apparent that the alleged inter vivos gift of stock by decedent to Rod Ross is invalid as a matter of law and the judgment of the lower court should be reversed.

Respectfully submitted,


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MAILING CERTIFICATE

I hereby certify that I mailed two true and correct copies of the foregoing Reply Brief of Appellants to Kenneth W. Yeates, attorney for Respondent E. Roderick Ross, at 50 South Main, Suite 1600, Salt Lake City, Utah, this 7th day of January, 1981.

John Hill

A P P E N D I X

§ 8—313. When [Delivery] Transfer to [the] Purchaser
Occurs: [; Purchaser's Broker] Financial In-
termediary as [Holder] Bona Fide Purchaser;
"Financial Intermediary"

(1) [Delivery] Transfer of a security or a limited interest
(including a security interest) therein to a purchaser occurs
only [when]:

- (a) at the time he or a person designated by him acquires possession of a certificated security; [or]
- (b) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;
- (c) [(b)] at the time his [broker] financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser; [or]
- (d) [(c)] at the time [his broker] a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies [a specific security in the broker's possession] as belonging to the purchaser [; or]

- (i) a specific certificated security in the financial intermediary's possession;
 - (ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or
 - (iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;
- (e) [(d)] with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, [when] at the time that person acknowledges that he holds for the purchaser; [or]
- (f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;
- (g) [(e)] at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under Section 8—320[.];
- (h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by
 - (i) a financial intermediary on whose books the interest of the transferor in the security appears;
 - (ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;
 - (iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge;
or

- (iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;
- (i) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or
- (j) with respect to the transfer of a security interest where the secured party is a financial intermediary and the security has already been transferred to the financial intermediary under paragraphs (a), (b), (c), (d), or (g), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) The purchaser is the owner of a security held for him by [his broker] a financial intermediary, but [is not the holder] cannot be a bona fide purchaser of a security so held except [as] in the circumstances specified in [subparagraphs] paragraphs [(b)] (c), (d) (i), and [(e)] (g) of subsection (1). [Where] If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs (d) (ii) and (d) (iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the [broker] financial intermediary or by the purchaser after the [broker] financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the [broker] financial intermediary or as to the purchaser. However, as between the [broker] financial intermediary and the purchaser the purchaser may demand [delivery] transfer of an equivalent security as to which no notice of [an] adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer.

§ 8—314. Duty to [Deliver] Transfer, When Completed

(1) Unless otherwise agreed, [where] if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to [deliver when] transfer at the time he:

(i) [he] places [such] a certificated security in the possession of the selling broker or of a person designated by the broker; [or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and]

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested, causes an acknowledgment to be made to the selling broker that [it] a certificated or uncertificated security is held for [him; and] the broker; or

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to [deliver] transfer at the time he:

(i) [by placing the] places a certificated security [or a like security] in the possession of the buying broker or a person designated by [him or] the buying broker;

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) [by effecting] effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as [otherwise] provided in this section and unless otherwise agreed, a transferor's duty to [deliver] transfer a security under a contract of purchase is not fulfilled until he:

(a) [he] places [the] a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser; [him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him.]

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) [at the purchaser's request] if the purchaser requests, causes an acknowledgment to be made to the purchaser that [it] a certificated or uncertificated security is held for [him] the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within [this] subsection (2) and not within subsection (1).

Reasons for 1977 Change

This section presently provides that a transferor's duty is fulfilled by physical delivery of a certificated security. This rule is preserved in subparagraphs (1)(a)(i), (1)(b)(i) and (2)(a). New subparagraphs (1)(a)(ii), (1)(b)(ii) and (2)(b) permit the transferor also to perform by causing the registration of transfer of an uncertificated security to the transferee or his designee. Another alternative, causing a third party holder to acknowledge that he holds for the transferee if the transferee so requests, is provided in the present section and is explicitly stated in new subparagraphs (1)(a)(iii) and (2)(c). A selling broker may also fulfill his duty by effecting clearance pursuant to exchange rules. This is stated in new subparagraph (i)(b)(iv).