



# Case Brief

## Gruen v. Gruen

### Citation: 68 N.Y.2d 48 (1986)

#### Fact Summary:

Plaintiff contends that he is the owner of a painting gifted to him by his father, prior to his father's death, even though his father retained possession of the painting.

#### Rule:

In order to have a valid inter vivos gift one must show an intent of the part of the donor to make a present transfer, delivery of the gift, and acceptance by the donee.

A present transfer may include the creation of a remainder in chattel.

#### Facts:

Plaintiff's father wrote a letter to the Plaintiff on his birthday stating that he was giving his son a Klimt painting but that he wished to retain possession of the painting for his lifetime.

Plaintiff was later instructed to destroy this letter in two subsequent letters sent by his father.

One of the subsequent letters provided that Plaintiff was to be given the painting and made no mention of his father's retention of a life estate. Plaintiff never took possession of the painting during his father's lifetime.

Following his father's death, Plaintiff requested the Klimt painting from his step mother, Defendant, and she refused.

Plaintiff then brought this cause of action.

#### Issue:

Whether a valid inter vivos gift of chattel may be made where the donor has reserved a life estate in the chattel and the donee never had physical possession of it before the donor's death?

#### Conclusion:

Holding of the Court affirmed.

A valid inter vivos gift of chattel may be made even if the donor reserves a life estate in the chattel for himself. The elements of a valid inter vivos gift are present in this case and therefore

Plaintiff is the rightful owner of the painting.

In order to have a valid inter vivos gift there must be clear and convincing evidence of: one an intent on the part of the donor to make the present transfer; two delivery of the gift - actual or constructive; and three acceptance by the donee.

If the intention is to make a testamentary disposition effective only after death the gift is invalid unless made in a will.

However if the maker intended the gift to transfer some present interest then it will not fail for lack of intent.

In the present case the Plaintiff's father transferred a present interest, the remainder after his life estate, when he wrote the letters to his son.

Delivery may be either by a physical delivery of the subject of the gift or some constructive or symbolic delivery that divests the donor of dominion or control.

The circumstances of each case must be observed to see what is sufficient to constitute delivery. In the present case physical delivery was not required as it would have been impracticable.

Accordingly, when a gift is of value to the donee the law will presume an acceptance.