

## Critical Legal Cases for Chapter 47

**47.3 Gift:** Yes. Victor Gruen made a valid gift *inter vivos* of the Klimt painting to his son Michael. An *inter vivos* gift requires that the donor intends to make an irrevocable present transfer of ownership. Here, Victor intended to transfer ownership of the painting to Michael but to retain a life estate in it. Victor did transfer a remainder interest in the painting to his son at that time. The letters unambiguously establish that Victor Gruen intended to make a present gift of title. In order to have a valid *inter vivos* gift, there must be a delivery of the gift, either by a physical delivery of the subject of the gift or a constructive or symbolic delivery. What Victor Gruen gave plaintiff was not all rights to the Klimt painting, but only title to it with no right of possession until his death. The appellate court held that Victor Gruen had made a valid gift *inter vivos* of the Klimt painting to his son Michael and awarded the painting to Michael. *Gruen v. Gruen*, 68 N.Y.2d 48, 496 N.E.2d 869, 505 N.Y.S.2d 849, Web 1986 N.Y. Lexis 19366 (Court of Appeals of New York)

**47.5 Abandoned Property:** No, Green and Vogel, the owners of the apartment building where Fuentes was shot, and the \$58,591 in cash was found, have no legal claim to the money. Green and Vogel asserted that they were entitled to the money because it was property that was abandoned on their premises. The court noted that it is true that under common law the finder of abandoned property—unlike the finder of lost or misplaced property—is entitled to claim absolute ownership of the property. The common law defines abandoned property as that which the owner voluntarily relinquishes all rights and title thereto. The court held that Fuentes had not abandoned the money at the time he was removed from the apartment and was taken to the hospital suffering from debilitating gunshot wounds in his neck and shoulder. If he ever did abandon the money, it was later after the money was in the possession of the City of Miami police. Therefore, the court held that Green and Vogel were not entitled to \$58,591 found in Fuentes' apartment under the theory of abandonment. The court also held that Green and Vogel had no claim to the money as lost or misplaced property or as treasure trove.

Note: The court held that under the Florida Disposition of Unclaimed Property Act, the state acquires title to unclaimed property if it remains unclaimed by the true owner for more than seven years. *State of Florida v. Green*, 456 So.2d 1309, Web 1984 Fla. App. Lexis 15340 (Court of Appeal of Florida).

**Lost Property case:** In June 1983, Danny Lee Smith and his brother, Jeffrey Allen Smith, found a 16-foot fiberglass boat lying beside the roadway in Mobile County, Alabama. Seeing two sheriff's deputies, they stopped them to discuss the boat. The Smiths made it clear that if the true owner of the boat was not found, they wanted the boat. The true owner did not claim the boat. Mobile County claimed the boat and wanted to auction it off for sale to raise money for county recreational programs. The Smiths claimed the boat as finders. Alabama did not have an estray statute that applied to the situation. Who gets the boat? *Smith v. Sheriff Purvis*, 474 So.2d. 1131 (Court of Civil Appeals of Alabama App. 1985).

**Answer:** The Smiths, as finders, are awarded the 16-foot fiberglass boat they found lying beside the roadway in Mobile County, Alabama. The court held that the boat was "lost property." Under the common law, a finder of lost property obtains title to the found property against the whole world except the true owner. Since Alabama does not have an estray statute that applies in this case, the common law rule applies. Therefore, the court awarded the boat to the Smiths. **Note:** If the true owner subsequently appears to claim the boat, the Smiths must transfer the boat to the owner.