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When is a transfer a gift?

Cohen got along famously with his son-in-law Raymond, who went to work in his father-in-law's scrap metal company. Raymond became one of Cohen's most valuable assistants. In 2006 Cohen sold the company. He and Raymond each received three-year employment contracts. However, they were not very happy working for the successor, and began to seek other business opportunities. The pair traveled to Germany together to observe scrap metal operations in that country.

Cohen wanted Raymond to become familiar with the world of investing. To that end, he created a brokerage account in Raymond's name at Merrill Lynch, depositing \$250,000 in the account. Apparently, there were no formalities observed in this transaction, such as a written loan agreement. Cohen later testified that he thought the account would be "seed money" for a future venture.

Unfortunately, Cohen's stepdaughter and Raymond divorced two years later. Next, Raymond withdrew \$50,000 from the Merrill Lynch account. Cohen demanded that Raymond repay the entire \$250,000, and he filed a lawsuit to get it. The trial court ruled that there is a "weak" presumption that a transfer of assets to an in-law is really a gift. The presumption means that Cohen has to prove that a gift was not intended.

The New Hampshire Supreme Court came to Cohen's rescue. The Court held that the presumption of a gift applies only to transfers to a spouse or children, not to transfers to in-laws. When the case returns to a lower court, Raymond will have the burden of proof to show that a gift really was intended at the time that the Merrill Lynch account was set up for him.

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