

Eleventh Edition

Business Law and the Regulatory Environment

Concepts and Cases

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Personal Property and Bailments

Chapter 23

Nature of Property

- Property – something that is capable of being owned.
- Property ownership – bundle of rights that the law recognizes and enforces.

Nature of Property

- Private ownership of property is protected by the U.S. Constitution.

Classifications of Property

- Property is divided into a number of categories based on its characteristics.

Personal Property Versus Real Property

- Real property – the earth's crust and all things firmly attached to it.
- Personal property – all other objects and rights that may be owned.

Personal Property Versus Real Property

- Real property may be turned into personal property if it is detached from the earth.

Personal Property versus Real Property

- When personal property is attached to real property it is known as a fixture.

Tangible versus Intangible Personal Property

- Tangible property – has a physical existence.
- Intangible property – has no physical existence.

Public and Private Property

- Public property – property owned by the government or a governmental unit.
- Private property – property owned by an individual, a group of individuals, a corporation, a corporation, or some other business organization.

Acquiring Ownership of Personal Property

- The most common ways of obtaining ownership of property are by producing it or purchasing it.

Production or Purchase

- Unless the work is for another party, a person owns the property she makes.

Possession of Unowned Property

- The first person to take possession of a wild animal normally becomes its owner.

Lost, Mislaid, and Abandoned Property

- Abandoned property – the owner intentionally placed property out of his possession with the intent to relinquish ownership of it.
- Lost property – the owner did not intend to part with possession of the property.

Lost, Mislaid, and Abandoned Property

- Mislaid property – the owner intentionally placed the property somewhere and accidentally left it there, not intending to relinquish ownership.

Lost, Mislaid, and Abandoned Property

- All states have a statutes of limitations that require the owner to reclaim it or bring legal action to recover possession within a certain number of years.

Abandoned Property

- The finder of abandoned property who takes possession with the intent to claim ownership becomes the owner.

Lost Property

- The finder of lost property does not acquire ownership of the property.
- He acquires better rights to the property than anyone other than the owner.
- The true owner may recover the lost property from someone who purchases it from the finder.

Mislaid Property

- The finder acquires no rights to mislaid property.
- The owner of the real property on which the mislaid property is located has better rights to the property than anyone other than the true owner.

Leasing

- Lease of personal property – a transfer of the right to possess and use personal property to another.

Gifts

- Gift – a voluntary transfer of property from one party to another for which the party does not receive consideration.
- Donee – the person who receives the gift.
- Donor – the person who gives the gift.

Gifts

- A valid gift requires that:
 - The donor intended to make a gift.
 - The donor delivered the gift.
 - The donee accepted the gift.

Gifts *Inter Vivos*

- Gift *inter vivos* – between two living persons.

Gifts *Causa Mortis*

- Gift *causa mortis* – a gift made in contemplation of death.

Gifts *Causa Mortis*

- A gift causa mortis is a conditional gift and is effective unless one of the following occurs:
 - The donor recovers.
 - The donor revokes or withdraws the gift before death.
 - The donor dies after the donee.

Conditional Gifts

- Conditional gift – the donee must comply with certain restrictions or perform certain acts.

Conditional Gifts

- A conditional gift may be revoked by the donor before the donee complies with the condition.

Uniform Transfers to Minors Act

- Governs how an adult may transfer money, securities, real property, insurance policies, and other property to a minor.

Uniform Transfers to Minors Act

- In general, the transferor delivers, pays, or assigns, the property to a custodian who acts for the benefit of the minor.

Will or Inheritance

- Ownership of personal property may pass by the terms of a will or if no valid will, to heirs according to state laws.

Confusion

- Title to personal property may be obtained by confusion.
 - **Confusion** – the intermixing of different owners' goods in such a way so that the goods cannot later be separated.

Accession

- Accession – increasing the value of property by adding materials, labor, or both.
- As a general rule, the owner of the original property becomes the owner of the improvements.

Bailments

- Bailor – the owner of personal property who delivers it to another to be held in bailment.
- Bailee – the person to whom personal property is delivered when creating a bailment.

Nature of Bailment

- Bailment – the delivery of personal property by the bailor to the bailee who accepts it and expressly or impliedly agrees to return it to the bailor or someone designated by the bailor.

Elements of a Bailment

- The bailor owns the property or has the right to possess it.
- The bailor delivers exclusive possession and control of the property to the bailee.

Elements of a Bailment

- The bailee knowingly accepts the property with the understanding that he owes a duty to return the property as directed by the bailor.

Creation of a Bailment

- A bailment is created by an express or implied contract.

Types of Bailments

- Bailments for benefit of bailor
- Bailments for benefit of bailee
- Bailments for mutual benefit

Bailments for Benefit of Bailor

- The bailee renders some service to the bailor but does not receive anything in return.

Bailments for Benefit of Bailee

- The bailee is allowed to use the bailor's property free of charge.

Bailments for Mutual Benefit

- Both bailee and bailor receive benefits from the bailment.

Special Bailments

- Some professional bailees, such as innkeepers and common carriers, are held to a higher level of responsibility than the ordinary bailee.

Duties of the Bailee

- Take care of the property that has been entrusted to her.
- Return the property at the termination of the bailment.

Duty of Bailee to Take Care of Property

- The bailee is responsible for taking steps to protect the property during the time it is in her possession.

Duty of Bailee to Take Care of Property

- The degree of care traditionally has depended in large part on the type of bailment involved.

Duty of Bailee to Take Care of Property

- Bailment for benefit of bailor – the bailee is expected to exercise only a minimal degree of care for the protection of the bailed property.

Duty of Bailee to Take Care of Property

- Bailment for mutual benefit – the bailee is expected to exercise ordinary or reasonable care.

Duty of Bailee to Take Care of Property

- Bailment for the benefit of the bailee – the bailee is expected to exercise a high degree of care.

Bailee's Duty to Return the Property

- An essential element of a bailment is the duty to return the property when the bailment terminates.

Bailee's Duty to Return the Property

- Unless the bailee is without fault, she is liable to the bailor if the property is lost or is returned in a damaged condition.

Bailee's Liability for Misdelivery

- The bailee must must return the property to the bailor or to her designee.

Bailee's Liability for Misdelivery

- The bailee is liable to a third-party claimant who is entitled to receive the property if the bailee refuses to deliver it to him.

Limits on Liability

- It is possible for a bailee to limit his liability to a certain amount or relieve himself for certain perils.

Limits on Liability

- Courts generally do not enforce any attempts by a bailee to limit her liability for wrongful acts or negligence.

Limits on Liability

- Disclaimers are likely not to be enforced if the disclaimer is offered on a take it or leave it basis and was not subject of arm's-length bargaining.

Right to Compensation

- Whether the bailee receives compensation depends on the express or implied contract of bailment.

Right to Compensation

- In some cases, the bailee will have a lien on the bailed property to secure payment for the reasonable value of the services.

Bailor's Liability for Defects in the Bailed Property

- If the bailment is made solely to benefit the bailee, the bailor is liable for injuries resulting from known defects.

Bailor's Liability for Defects in the Bailed Property

- If the bailment is for mutual benefit, the bailor must use reasonable care to inspect the property and make it safe.

Special Bailments

- The rules covering common carriers and hotelkeepers differ from those covering bailments in general.

Common Carriers

- Common carrier – licensed by governmental agencies to carry the property of anyone requesting its service.

Common Carriers

- A common carrier is liable for the loss of the goods it carries unless caused by:
 - An act of God.
 - An act of a public enemy.
 - An act or order of the government.
 - An act of the person who shipped the goods.
 - The nature of the goods themselves.

Hotelkeepers

- A hotelkeeper is liable for the loss of its guest's property unless caused by:
 - An act of God.
 - An act of a public enemy.
 - An act of a governmental authority.
 - The fault of a member of the guest's party.
 - The nature of the goods.

Safe-Deposit Boxes

- In the rental of a safe-deposit box, the bailor is the renter of the box and the bank is the bailee.
 - As a result, the bank is not an insurer of the contents of the box.

Involuntary Bailments

- Involuntary bailment – arises when a person finds himself possessing someone else's property without having agreed to accept possession.

Involuntary Bailments

- An involuntary bailee does not have the right to use or destroy the property.

Personal Property and Bailments

End of Chapter 23