

ANSWER TO QUESTION NO. 9

A bailment is created when the owner of personal property (the bailor) delivers his or her property to the possession of another (the bailee) in trust for a specific lawful purpose. *In re George L. Nadell & Co*, 294 Mich 150, 154 (1940). There were two separate bailment agreements here: between Carolyn and Tammy and between Jimbob and Tammy.

The obligations of a bailee depend on the nature of a particular bailment: whether the bailment is for the benefit of the bailee, for the benefit of the bailor, or for the mutual benefit of both parties. The nature of each bailment here was for the mutual benefit of both parties. The nature of each bailment here was for the mutual benefit of both parties, because Tammy agreed to return each muskrat to Carolyn and Jimbob at a future time, and Carolyn and Jimbob each agreed to pay Tammy for the taxidermy services. See *Godfrey v City of Flint*, 284 Mich 291 (1938). As the bailee in a bailment for the mutual benefit of both parties, Tammy is bound to exercise ordinary care of the subject matter of the bailment and is liable to Carolyn and Jimbob if she fails to do so. *Id.* at 297298.

(a) Based on the facts, Tammy is likely negligent for mistakenly giving Gregggy to Jimbob and is liable to Carolyn for damages. Tammy owed Carolyn a duty to exercise ordinary care, and the ordinary care of bailees includes surrendering bailed property only to the proper bailor. See *General Exchange Ins Co v Service Parking Grounds*, 254 Mich 1, 7 (1931). Accordingly, she is likely liable for the damages attendant to giving Gregggy to Jimbob instead of Carolyn. If Carolyn is successful in recovering Gregggy from Jimbob, however, her recovery will offset some or all of the damages she is entitled to from Tammy.

(b) Based on the facts, Tammy is likely not liable for damages to Jimbob's muskrat, which was damaged as a result of the arson next door. As with Carolyn, Tammy owes Jimbob a duty to exercise ordinary care. A showing that personal property was damaged or destroyed while in the possession of the bailee creates a rebuttable presumption of negligence. *Columbus Jack Corp v Swedish Crucible Steel Corp*, 393 Mich 478, 510-511 (1975). Here, this would require Tammy to "produce evidence of the actual circumstances of the fire . . . including the precautions taken to prevent the loss." *Id.* at 511. Under the facts presented, it is

likely that Tammy can rebut the presumption of negligence because (1) her store is in a low-crime area, (2) the fire was not set as a result of her own negligence or the negligence of her employees, and (3) she has taken the precaution of a state-of-the-art sprinkler system. See *Id.* at 511 n 3. Accordingly, she has likely exercised ordinary care in protecting Jimbob's personalty.

Tammy is, however, liable to Jimbob for monetary damages if Carolyn is successful in recovering Gregggy from Jimbob (see part c, *infra*). As stated, Tammy owes Jimbob a duty to exercise ordinary care. Tammy's failure to exercise ordinary care in selling Carolyn's personal property to Jimbob is the only basis for Carolyn's recovery of Gregggy from Jimbob. The amount of damages is Jimbob's actual loss, or "his bargain which he would have realized but for defendant's breach." *Demirjian v Kurtis*, 353 Mich 619, 622 (1958). Jimbob paid Tammy for Gregggy, and, in the event of Carolyn's recovery of Gregggy from Jimbob, he would have no stuffed muskrat to show for his payment to Tammy. Although Jimbob is not entitled to receive a muskrat from Tammy, because Tammy was not negligent as it relates to his personal property, neither was Tammy entitled to receive payment from Jimbob for a stuffed muskrat that did not belong to him. Therefore, Jimbob is entitled to recover his payment to Tammy in damages.

(c) Carolyn is likely able to recover Gregggy from Jimbob. MCL 600.2920 codifies the common-law action for replevin and allows someone to recover specific personal property that has been "unlawfully taken or unlawfully detained," as long as the plaintiff has a right to possess the personalty taken or detained. MCL 600.2929(c). Carolyn remains the title owner of Gregggy because a bailment does not change the title of personalty. See *Dunlap v Gleason*, 16 Mich 158 (1867). Under the common law, for the purposes of a replevin action, even a good faith recipient of property lacks title to that property as against the rightful owner. *Ward v Carey*, 200 Mich 217, 223 (1918).

Finally, the statutory exceptions to an action to recover property under MCL 600.2920 do not apply here. Carolyn is not trying to recover property "taken by virtue of a warrant for the collection of a tax, assessment, or fine," MCL 600.2920(1)(a), nor is she trying to recover property "seized by virtue of an execution or attachment." MCL 600.2920(1)(b).

Examinees discussing the application of the UCC to the facts will be awarded credit. Specifically, points will be awarded for addressing any of the following: (1) whether Tammy is a merchant; (2) whether as a taxidermist, Tammy deals in stuffed animals retail; (3) whether the taxidermy transaction can be characterized

as sales; and (4) whether the sale to Jimbob will transfer good title to him thus making the muskrat not subject to Carolyn's attempt to replevy it.