

EXAMINERS' ANALYSIS OF QUESTION NO. 10

1. Spencer v Kate:

The ring constituted a gift from Spencer to Kate. A valid gift requires the following three elements (1) an intent by the donor to pass title "gratuitously" to the donee; (2) either actual or constructive delivery of the gift; and (3) acceptance of the gift by the donee. *Buell v Orion State Bank*, 327 Mich 45, 55 (1950). If the gift benefits the donee, there is a legal presumption that it has been accepted. *Id.* These elements were satisfied in the instant case.

However, while most gifts convey absolute irrevocable title to the donee, a gift of an engagement ring is an exception. Under Michigan law, "an engagement ring given in contemplation of marriage is an impliedly conditional gift that is a completed gift only upon marriage. If the engagement is called off, for whatever reason, the gift is not capable of becoming a completed gift and must be returned to the donor." *Meyer v Mitnick*, 244 Mich App 697, 703-704 (2001). Thus, because the engagement was cancelled, Spencer is entitled to the return of the ring or its value, and it matters not who is to "blame" for the break-up. "Because the engagement ring is a conditional gift, when the condition is not fulfilled the ring or its value should be returned to the donor no matter who broke the engagement or caused it to be broken." *Id.* at 702. Accordingly, Kate's proffered defenses against liability to Spencer have no legal support in Michigan.

2. Kate v Joseph:

Kate created a bailment relationship with Joseph when she delivered her ring to him specifically for work to be performed. A bailment is formed by "the delivery of personal property by one person to another in trust for a specific purpose, with a contract, express or implied, that the trust shall be faithfully executed and the property returned or duly accounted for when the special purpose is accomplished." *Goldman v Phantom Freight, Inc.*, 162 Mich App 472, 479-480 (1987) (citations omitted).

A bailee who is entrusted with the bailor's personal property is responsible for exercising a level of care over the bailed property that corresponds with the three categories of bailment that are distinguished according to who benefits from the relationship. *Godfrey v City of Flint*, 284 Mich 291, 295-296 (1938). Thus, where a bailment is for the sole benefit of the bailor (property owner), the bailee who possesses the property as a favor to the bailor owes "the lowest degrees of responsibility in the triple division of neglects in bailments" and is liable for only gross negligence. *Cadwell v Peninsular State Bank*, 195 Mich 407, 412-413 (1917). A bailment which benefits both parties requires that the bailee exercise ordinary care in connection with the property and is liable for ordinary negligence. *Godfrey* at 297-298. A bailment that benefits only the bailee requires the highest duty of care by the bailee who could be liable for even the slightest negligence. *Beller v Shultz*, 44 Mich 529 (1880).

In the instant case, a commercial bailment was created for the mutual benefit of Kate and Joseph in connection with performance of work on the ring in exchange for compensation. Accordingly, Joseph owed a duty of ordinary care with respect to Kate's personal property. Joseph appears to have acted in conformance with the ordinary care standard, having properly secured the jewelry shop before the break-in by a third party occurred. Such diligence by Joseph, while not preventing the theft, would likely absolve Joseph from liability to Kate for failing to return the ring to her. *Eckerle v Twenty Grand Corp*, 8 Mich App 1, 9-10 (1967).