

EXAMINERS' ANALYSIS OF QUESTION NO. 15

Tessa: The general rules regarding bailments were provided by the Court of Appeals in *Orton v Markward & Karafilis, Inc*, 83 Mich App 548, 551 (1978):

A bailment requires the delivery of personal property in trust. *In re George L Nadell & Co, Inc*, 294 Mich 150, 154 (1940). In order to constitute a sufficient delivery of the subject of the bailment, there must be a full transfer to the bailee so as to exclude the possession of the owner and all other persons and to give to the bailee the sole custody and control thereof. 8 Am Jur 2d, Bailments, §56, p 961. As a general rule, the creation of a bailment requires the possession and control over the subject matter pass from the bailor to the bailee. 8 Am Jur 2d, Bailments, §54, p 960.

Here, Tessa took Peter's watch under a bailment relationship, as Peter left his watch in Tessa's care without intent to transfer title. Tessa merely had possession and control of the watch while she attempted the repair. Therefore, Tessa became the bailee of the property of Peter, the bailor.

There are three general classifications of bailment. The characterization of the relationship determines the level of care the bailee is required to exercise toward the bailor's property: "(1) Those for the sole benefit of the bailor; (2) those for the sole benefit of the bailee; and (3) those for the benefit of both parties." *Godfrey v City of Flint*, 284 Mich 291, 295 (1938). The bailment here was clearly for the benefit of both parties. Peter initiated the arrangement by bringing his watch to Tessa's shop to have it repaired. Tessa agreed to repair the watch in exchange for \$100. Both parties received, or intended to receive, a benefit from the bailment relationship.

When a bailment is initiated for the benefit of both parties, the bailee is "bound to exercise ordinary care of the subject-matter of the bailment, and is liable for ordinary negligence." *Godfrey*, 284 Mich at 298. In this case, Peter is likely to succeed in an action for negligence against Tessa

because she owed him a duty of ordinary care, which was likely breached by placing Peter's valuable watch in a briefcase with a known hole. It was foreseeable that the watch could fall out of the briefcase through its hole and be lost. Therefore, Tessa is likely responsible for the lost watch.

Mitt: Peter could also maintain a lawsuit against Mitt for the return of the watch. In Michigan, the disposition of all lost property is governed by the Lost Property Act, MCL 434.21, *et seq.* As provided in part by that act:

A person who finds lost property shall report the finding or deliver the property to a law enforcement agency in the jurisdiction where the property is found.

MCL 434.22(1). The act further provides that g[a]ll property of major value shall be returned to the legal owner when the law enforcement agency is reasonably satisfied of that ownership. If the legal owner is not located and after 6 months from the date of the notice as prescribed in section 5, the property shall be disposed of pursuant to this act." MCL 434.24(7).

Because Mitt did not report his discovery of Peter's watch to the local authorities, his attempt to sell the watch prior to the six-month waiting period required under the act for property of major value like Peter's expensive watch, was in violation of the law. Peter could maintain a lawsuit for return of the watch from Mitt, and he would likely prevail in court. The act provides legal owners with superior claim to all found property in the state. Upon sufficient proof of his legal ownership of the watch, Peter would easily prevail on his claim in a lawsuit against Mitt.