

EXAMINERS' ANALYSIS OF QUESTION NO. 11

While Jerry made a gift to Ella of an engagement ring, engagement rings are considered "conditional gifts given in contemplation of marriage," and "[b]ecause 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." *Meyer v Mitnick*, 244 Mich App 697, 702-703 (2001). Thus in this regard, Michigan is a "no-fault" state. See *id.* Here, the donor (Jerry) is entitled to return of the ring because the condition—the marriage—was not fulfilled. The fact that Jerry was unfaithful and caused the condition to not be fulfilled is not legally relevant.

The damage to Jerry's car involves the issue of bailment. A bailment is created when personal property is delivered by one person to the possession of another in trust for a specific purpose. *In re George L. Nadell & Co*, 294 Mich 150, 154 (1940). Jerry's loan of his car to Phil for keeping/use until Jerry could recover from the engagement breakup, created a bailment even though this was an informal arrangement, made without documentation. *Godfrey v City of Flint*, 284 Mich 291, 297 (1938).

There are three general classifications of bailment that govern the level of the care a bailee must exhibit during the bailment: (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*, 284 Mich at 295. The bailment here is certainly not for the sole benefit of Phil (the bailee), as it was an arrangement initiated by Jerry as a favor to Jerry (the bailor).

If the bailment was 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. If the bailment could be characterized as one for mutual benefit, Jerry will likely be able to succeed in an action in negligence because Phil owed only a duty of ordinary care which he arguably breached by "not paying much attention" to the contents of the shelf which contained heavy objects, even though Jerry's car was parked nearby.

However, it is more likely that Jerry solely benefitted from the bailment. A gratuitous bailment exists where the

bailment is for the sole benefit of the bailor and the bailor's goods are cared for without charge and as an accommodation. *Cadwell v Peninsular State Bank*, 195 Mich 407, 413 (1917). First, Phil already had a car, and the car from Jerry was of the same make and model. Phil did not receive use of a nicer, newer car that would be considered a benefit. Moreover, there is no evidence that Phil was going to drive the car or charged for keeping it. Finally, the arrangement was, as Jerry described it, a "favor," or, an accommodation to Jerry. If the bailment is properly characterized as a gratuitous bailment, Phil is only responsible for damage caused by gross negligence—the "lowest degrees of responsibility in the triple division of neglects in bailments." *Cadwell*, 195 Mich at 413. Phil did not commit gross negligence by merely failing to account for the heavy weights on the shelf. Therefore, Jerry is not likely to succeed in a suit against Phil for damages to the car.