

EXAMINERS' ANALYSIS OF QUESTION NO. 10

(1) Benny created a bailment relationship with Cedric when he delivered his bike to the bicycle shop specifically for repair.

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. *In re George L Nadell & Co, Inc*, 294 Mich 150, 154; 292 NW 684 (1940); *National Ben Franklin Ins Co v Bakhaus Contractors, Inc*, 124

Mich App, 510, 512, n 2; 335 NW2d 70 (1983). Phrased another way, it is a relationship wherein a person gives to another the temporary use and possession of property other than money, the latter agreeing to return the property to the former at a later time.

Godfrey v City of Flint, 284 Mich 291, 295-296; 279 NW 516 (1938)." *Goldman v Phantom Freight, Inc*, 162 Mich App 472, 479-480 (1987).

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. *Caldwell 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. 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, 3 Michigan Civil Jurisprudence, Bailments § 6 (2016), but who at any rate is not an insurer of the property.

Beller v Shultz, 44 Mich 529 (1880).

In the instant case, a commercial bailment was created for the mutual benefit of Benny and Cedric in connection with performance of a bicycle repair in exchange for compensation.

Accordingly, Cedric owed a duty of ordinary care with respect to Benny's personal property. Cedric breached that duty when he (a) failed to return the bike to Benny upon demand when the purpose of the bailment had been achieved, and (b) subsequently left the bike unattended and unsecured in public when it was stolen. *Columbus Jack Corp v Swedish Crucible Steel Corp*, 393 Mich 478, 486 (1975). Moreover, the fact that the bike was stolen by a third party does not necessarily operate to extinguish Cedric's liability where he failed to exercise ordinary care. *Eckerle v Twenty Grand Corp*, 8 Mich App 1, 9-10 (1967).

(2) In addition to possible broader claims of negligence and breach of contract, Benny could also bring a claim against Cedric for conversion of Benny's personal property. The law of conversion in Michigan is established both by common law and statute. Under Michigan common law, conversion is "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." *Aroma Wines & Equipment, Inc v Columbian Distribution Services, Inc*, 497 Mich 337, 346 (2015), quoting *Thoma v Tracy Motor Sales, Inc*, 360 Mich 434, 438 (1960), quoting *Nelson & Witt v Texas Co*, 256 Mich 65, 70 (1931). Here, Benny could argue that Cedric wrongfully exerted control over his bike when he refused Benny's requests to retrieve it despite Cedric having completed the repairs, causing Benny to suffer damages with the subsequent theft.

A separate statutory claim for conversion is created by MCL 600.2919a and, unlike a common-law conversion claim, allows recovery for treble damages, attorney fees and costs. It specifically states:

- (1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages, plus costs and reasonable attorney fees:
 - (a) Another person's stealing or embezzling property or converting property to the other person's own use.
 - (b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

* * *

Benny could argue recovery under a statutory conversion theory because Cedric converted Benny's personal property to Cedric's own use by wrongfully conducting personal business with Benny's property. Cedric's wrongful use of the bike led to it being stolen by a third party when he failed to take reasonable precautions.

Benny is very likely to succeed on each of these theories for recovery against Cedric, although the most beneficial recovery would be under the statutory conversion claim with its attendant treble damages, costs and attorney fees.