

EXAMINERS' ANALYSIS OF QUESTION NO. 7

The law of bailments governs this inquiry. 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 (1940); *National Ben Franklin Ins Co v Bakhaus Contractors, Inc*, 124 Mich App 510, 512, n 2 (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." *Goldman v Phantom Freight, Inc*, 162 Mich App 472, 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. *Cadwell v Peninsular State Bank*, 195 Mich 407, 412, 413 (1917). 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 (2009), but who at any rate is not an insurer of the property. *Beller v Shultz*, 44 Mich 529 (1880). A bailment that 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.

Belle, Glenda and Asia were bailors creating a bailment relationship with bailees Darby's Cleaners, Cara and Tracy, respectively, when the gown for various reasons was delivered to the bailee for possession temporarily. The following is an analysis of possible liability for damage to each of the gowns.

ONE: With respect to Belle and Darby's Cleaners, a commercial bailment was created for the benefit of them both. Darby's was being paid for the service it was providing to Belle. As such, Darby's owed a duty of ordinary care for Belle's gown. The fact that there was an uncapped bottle of chemical stripper near the garment that led to it being accidentally knocked over and causing the damage, could be found to be a breach of the ordinary care that was due to Belle. This would likely result in liability to Darby's.

TWO: With respect to Glenda and Cara, a bailment was created for the sole benefit of Glenda the bailor. Accordingly, Cara as the bailee had a very low degree of responsibility with respect to the gown. Since there was previously no history of Cara's cat damaging clothing, the gown damage was not foreseeable in the least. Consequently, Cara is not likely liable.

THREE: With respect to Asia and Tracy, a bailment was created for the sole benefit of Tracy the bailee since Tracy borrowed the gown from Asia. Thus, Tracy would be liable for even the slightest negligence resulting in damage to the gown. While not the insurer against any and all damage to the garment, Tracy was well aware of her groom's history of antics and had been tossed in a pool by him previously. Tracy even subsequently revealed her suspicion that some similar prank was likely. Therefore, it is likely that Tracy would be liable for the damage to the gown given the slight negligence standard.