

**EXAMINERS' ANALYSIS OF QUESTION NO. 12**

(1) Desmond could file an action against Pamela for wrongfully locking him out of the studio. Under Michigan law, MCL 600.2918 is commonly known as the anti-lockout statute and states in pertinent part:

(1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, is entitled to recover 3 times the amount of his or her actual damages or \$200.00, whichever is greater, in addition to recovering possession.

(2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner is entitled to recover the amount of his or her actual damages or \$200.00, whichever is greater, for each occurrence and, if possession has been lost, to recover possession. Subject to subsection (3), unlawful interference with a possessory interest includes 1 or more of the

following:                   \*       \*       \*

(b) Removal, retention, or destruction of personal property of the possessor.

(c) Changing, altering, or adding to the locks or other security devices on the property without immediately providing keys or other unlocking devices to the person in possession.                   \*       \*       \*       \*

(3) An owner's actions do not unlawfully interfere with a possessory interest if any of the following apply: (a) The owner acts pursuant to court order.

\*       \*       \*       \*

(6) A person who has lost possession or whose possessory interest has been unlawfully interfered with may, if that person does not peacefully regain possession, bring an action for possession pursuant to section [600.]5714(1)(f) or bring a claim for injunctive relief in the appropriate circuit court. .

(7) The provisions of this section may not be waived.

(8) An action to regain possession of the premises under this section shall be commenced within 90 days from the time the cause of action arises or becomes **known** to the plaintiff. . .

Pamela could have pursued legal remedies against Desmond because of his failure to pay rent, namely employing the judicial process **by filing** a summary proceedings action in district court for either non-payment of rent or termination of the **tenancy, both** of which could ultimately result in Pamela obtaining a court order of eviction. MCL 600.5701 et al. The self-help that Pamela employed was not a legal option, however, and exposed her to liability to Desmond under the anti-lockout statute. *Deroshia v Union Terminal Piers*, 151 Mich App 715, 717 (1986). Absent a court order of eviction, both Pamela's removal of Desmond's personal property and her changing the locks to the property without giving Desmond a key constituted **an "unlawful interference"** with Desmond's possessory interest in the property. Additionally, nothing in the written lease agreement between the parties could shield Pamela from liability in this regard as the provisions of the anti-lockout statute cannot be waived. Desmond must act quickly, though, to pursue a cause of action for repossession of the property since the anti-lockout statute allows only 90 days to file an action under its provisions. MCL 600.2918(8).

(2) The law of fixtures governs whether Desmond is entitled to return of the overhead lights and acoustic speakers. Fixtures generally remain with the real property. "Property is a fixture if (1) it is annexed to the realty, whether the annexation is actual or constructive; (2) its adaptation or application to the realty being used is appropriate; and (3) there is an intention to make the property a permanent accession to the realty." *Wayne County v Britton Trust*, 454 Mich 608, 610 (1997). Even if an item is considered a fixture, however, an exception is made for trade fixtures which are considered to be the tenant's personal property to which the tenant is entitled and can remove from the realty. *Outdoor Systems Advertising, Inc v Korth*, 238 Mich App 664, 667-668 (1999). "A trade fixture is merely a fixture that has been annexed to leased realty by a lessee for the purpose of enabling him to engage in a business. The trade fixture doctrine permits the lessee, upon the termination of the lease, to remove such fixture from the lessor's real property." *Id.*, quoting *Michigan Nat'l Bank*

*Lansing v Lansing*, 96 Mich App 551, 555 (1980), *aff'd* 414 Mich 851 (1982).

In the instant case, while an argument could be made that the acoustic speakers mounted on the wall and overhead lighting might be considered fixtures under the general rule to which Pamela would be entitled as the real property owner, the facts do not show that Desmond had the intention to make those items "a permanent accession to the realty," *supra*, Britton at 610, especially given the relatively short 2-year lease term. In any event, a strong argument could be proffered that Desmond made those improvements to the real property specifically for the purpose of conducting his business as a music producer. Therefore, those items would be considered trade fixtures to which Desmond is entitled.