

### ANSWER TO QUESTION NO. 7

A bailment is created when the owner of personal property (the bailor) delivers his or her property to the possession of another (the bailee) in trust for a specific lawful purpose. *In re George L. Nadel, & Co*, 294 Mich 150, 154 (1940). Here, Vienna Victim and Oliver Owner entered into a bailment agreement whereby Vienna delivered her jewelry (bracelet and watch) to the possession of Oliver for repair and cleaning. Although the bailment temporarily transferred physical possession of the jewelry from Vienna to Oliver, a bailment does not alter the title of personalty. See *Dunlap v Gleason*, 16 Mich 158 (1867).

**Vienna can recover her watch from Dan:** MCL 600.2920 codifies the common law action for *replevin* and allows someone to recover specific personal property that has been "unlawfully taken or unlawfully detained," as long as the plaintiff has a right to possess the personalty taken or detained. MCL 600.2920(1)(c). Vienna remains the title owner of her watch because, as stated, a bailment does not change the title of personalty. Accordingly, even a good faith recipient of property (i.e., Dan) lacks title to that property as against the rightful owner (Vienna). *Ward v Carey*, 200 Mich 217, 223 (1918).

An action for conversion against Dan, as someone buying stolen property, will not be successful, unless there is evidence that Dan knew that the bracelet was stolen. MCL 600.2919a(1)(b). No such evidence is present here, as the facts indicate an arms length business transaction between Dan and the burglar.

**Vienna can recover monetary damages from Oliver for conversion of her bracelet:** Under the common law, a bailee converted a bailor's property by using it in an unauthorized way and in defiance of the bailor's title in the property, for instance, by using the property himself, *Bates v Stansell*, 19 Mich 91 (1869). Michigan has codified the tort action of conversion at MCL 600.2919a, which allows the owner of personal property to recover "3 times the amount of actual damages sustained, plus costs and reasonable attorney fees" when another person "convert[s] property to the other person's own use." In this case, Oliver converted Vienna's bracelet to his own use, i.e. creating a gold ingot for sale to investors, and not for the intended purpose of the bailment. Vienna's actual damages from Oliver's conversion are \$2,000, the appraised value of the bracelet. Accordingly, she will

be able to collect \$6,000 in monetary damages from Oliver, the statutory award for treble damages, in addition to costs and attorney fees.

The availability of this remedy "in addition to any other right or remedy the person may have at law or otherwise," MCL 600.2919a(2), does not necessarily preclude an action to recover the property (i.e., what was known under the common law as a replevin action), MCL 600.2920. However, where property sought to be recovered has been destroyed, a common law replevin action will not lie. *Gildas v Crosby*, 61 Mich 413 (1886). Oliver's destruction of the bracelet left Vienna with the sole remedy of a conversion action for monetary damages.

**Vienna can likely recover monetary damages from Oliver in connection with her stolen watch:** The obligations of a bailee depend on the nature of a particular bailment: whether the bailment is for the benefit of the bailee, for the benefit of the bailor, or for the mutual benefit of both parties. The nature of the bailment here was for the mutual benefit of both parties, because Oliver agreed to repair and clean Vienna's jewelry, and Vienna paid Oliver for this service. See *Godfrey v City of Flint*, 284 Mich 291 (1938). As the bailee in a bailment for the mutual benefit of both parties, Oliver is bound to exercise ordinary care of the subject matter of the bailment and is liable to Vienna if he fails to do so. *Id.* at 297-298.

The failure of a bailee to return the property subject to a bailment is prima facie evidence of negligence, and it becomes the bailee's burden to establish that his negligence was not the proximate cause of the bailor's damages. *Columbus Jack Corp v Swedish Crucible Steel Corp*, 393 Mich 478 (1975). "This may require a defendant-bailee to produce evidence of the actual circumstances surrounding the origins of the fire or the theft, including the precautions taken to prevent the loss." *Id.* at 486. The facts here provide strong evidence that Oliver was negligent in protecting Vienna's watch from the burglar: although Oliver had a state-of-the-art vault readily available to him, he failed to place Vienna's watch inside the vault for several nights in a row. Placing the watch inside the vault would likely have prevented the theft of the watch, since the items inside the vault were untouched. Such circumstances are likely to create a fact question for a jury to decide whether Oliver is liable to Dan for the loss. See *id.* at 486 n 3.

Although Vienna has the right to proceed to recover monetary damages for the theft of her watch, the extent of monetary damages that Oliver owes Vienna is affected by whether Vienna pursues an

action to recover the watch from Dan. By law, damages confined to the detention of personal property cannot be recovered twice. *Briggs v Milburn*, 40 Mich 512 (1879). Thus, if she elects to recover the watch from Dan, whatever monetary damages that Oliver owes Vienna are mitigated by the recovery of the watch. Nevertheless, Vienna may also be entitled to other damages reasonably foreseeable from Oliver's negligence. See *Solecki v Courtesy Ford, Inc*, 16 Mich App 691 (1969).