

ANSWER TO QUESTION NO. 12

(a) Biff will not be able to recover his comic book collection from Tammy.

MCL 600.2920 codifies the common law action for replevin and allows a property owner to recover specific personal property that has been "unlawfully taken or unlawfully detained." Under the common law, even a good faith purchaser of property unlawfully taken or detained lacked title to that property as against the owner whose property has been converted. *Ward v Carey*, 200 Mich 217, 223 (1918). Thus, in the absence of any statute that precludes an action under MCL 600.2920, Biff can recover the comic book collection from Tammy if Greg unlawfully detained or took Biff's comic book collection.

However, the Self-Service Storage Facility Act, MCL 570.521 et seq, precludes Biff's recovery of the comic books. The Act creates a property right in "a purchase in good faith of the personal property sold" to enforce a lien created under the Act, "despite noncompliance by the owner with the [notice] requirements" of the Act. MCL 570.525(12). Thus, because the lien created under the Act applies to "all personal property . . . located at [a] self-service storage facility," MCL 570.523(1), if Tammy is a good faith purchaser of the comic books, she owns them free and clear of any claim by Biff. A good faith purchaser is one who is an "innocent purchaser of the property for value." *Bellows v Goodfellow*, 276 Mich 471, 475 (1936). There is nothing in the facts given to indicate that Tammy is not a good faith purchaser. However, if she had either *actual* or *constructive* knowledge that Greg's sale violated the Self-Service Storage Facility Act, she is not a good faith purchaser, and, therefore would not have a property interest in the comic books superior to Biff. In that event, MCL 600.2920 allows Biff to recover the comic books from Tammy as explained above.

(b) Biff will be able to recover monetary damages from Greg for the sale of his comic books.

Under the common law, a lien is "a right or claim against some interest in property created by law as an incident of [a] contract." *Chaff v Haan*, 269 Mich 593, 598 (1934). An essential characteristic of a lien is the right of enforcement by sale of the encumbered property. *McClintic-Marshall Co v Ford Motor Co*, 254 Mich 305, 323 (1931). However, such sale only occurs when allowed by statute or approved by court order. *Aldine Manufacturing Co v Phillips*, 118 Mich 162, 164 (1898). Accordingly, under the common law, Greg would only have been able

to *detain* Biff's property until the debt is paid. He is therefore without authority to sell Biff's property under the common law, absent a court order, and would be liable to Biff for conversion in the absence of statutory authority to sell the property.

The Self-Service Storage Facility Act, MCL 570.521 *et seq*, gives Greg the authority to sell Biff's property in certain circumstances. The Act gives a statutory lien to the owner of a self-storage facility on all personal property held at such facilities. MCL 570.525 provides a mechanism for enforcing the lien by sale and is the exclusive means of enforcing the statutory lien. MCL 570.525(1). However, the statute requires Greg to demand payment through "a written notice delivered in person or by certified mail," MCL 570.525(2)(b), to give Biff "no less than 14 days" to pay his debt to Greg, MCL 570.525(2)(c), and requires publication of an advertisement of the sale of Biff's property "once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-storage facility . . . is located." MCL 570.525(5).

The Self-Service Storage Facility Act also provides Biff with a remedy for Greg's violation of the enforcement provisions of the Self-Service Storage Facility Act. MCL 570.526(1) allows Biff to "bring an action in a court of appropriate jurisdiction for the actual amount of the damages or \$250.00, whichever is greater, together with reasonable attorney fees." He will be able to recover the full \$10,000 value of his comic book collection (minus the \$75.00 in rent owed Greg), plus reasonable attorney fees, if he can show that he would have paid the requested debt but for Greg's illegal sale in violation of the Self-Service Storage Facility Act's notice requirements. Given that he knew about the debt and sale immediately upon his return to Michigan on December 10, 4 days before the earliest payment deadline to which Biff is statutorily entitled, MCL 570.525(2)(b), he is likely to show such compliance. Moreover, even if Biff cannot show that he would have paid the requested debt prior to a lawful sale under the Self-Service Storage Facility Act, he is statutorily entitled to any remaining proceeds of the sale after satisfying Greg's lien and any other "outstanding balances owed perfecting lienholders." MCL 570.525(13) and (14).