

EXAMINERS' ANALYSIS OF QUESTION NO. 7

1. **ROGER:** In Michigan there is no legal distinction between lost and mislaid property with respect to a finder's legal status as it relates to the owner. In either case, the Lost and Unclaimed Property Act, MCL 434.21 et al, (the "Act") requires the finder to follow certain requirements if seeking to gain full ownership rights in an item when the legal owner is either not determined or does not claim the property. The Act provides in relevant part that:

"A person who finds lost property shall report the finding or deliver the property to a law enforcement agency in the jurisdiction where the property is found. * * * If the person wishes to receive the property if it is not claimed by the legal owner as provided in this act, the person shall provide his or her name and current address to the law enforcement agency and shall inform the agency of any change in his or her address."

MCL 434.22 (1). Law enforcement is responsible for taking certain steps pursuant to the Act to establish the legal owner. The property is classified by law enforcement in one of nine categories, one of which is "property of major value." MCL 434.22(2). Property of major value is statutorily defined as "any property that is not collectible currency, contraband, currency, evidence, hazardous material, junk, perishable property, or property of minor value." MCL 434.21(j). Law enforcement would be required to mail notice to any known legal owner of major value property identifying, among other things, its location, the date found, type of property, etc. MCL 434.25(1). Property categorized as having major value may be returned to the finder if the owner fails to claim it within six months from the date of the notice. MCL 434.25(2) and 434.26(1). Similarly, if a legal owner cannot be established or located, the finder is entitled to return of the property from law enforcement.

Because Melinda purposely placed her phone behind the chairs outside of the testing room, intending to later retrieve it but forgetting to do so, she mislaid the phone. Therefore, Roger had no automatic legal right to the phone as the finder. It should have been obvious to Roger that the phone was mislaid.

It was positioned and hidden in such a way that evidences that Melinda was "storing" the phone for safekeeping so as to avoid its discovery before she was able to retrieve it following the exam. Moreover, it was the latest model of the phone which would not likely have been deliberately discarded. Under such circumstances, Roger would be required to follow the requirements of the Act and report his find or deliver the cellphone to the local law enforcement agency. It is likely that the phone would be classified as a major value item under the Act since the facts state that it was of considerable value. As such, Roger will only be entitled to return of the cellphone if the law enforcement agency is unable to determine ownership, unable to locate Melinda or Melinda does not claim the phone within six months after the notice date.

2. MARCUS. It appears that Dillon abandoned her bar review materials. Personal property is deemed abandoned when the owner (1) intends to relinquish all rights to the property, and (2) carries out an external act which effectuates that intent. *Emmons v Easter*, 62 Mich App 226, 237 (1975). See also, *Sparling Plastic Industries v Sparling*, 229 Mich App 704, 717-718 (1998). According to the facts, Dillon's intent was to part with the course materials because she was "very confident" that she had passed the exam and that she would not need the materials again. She acted on that intention by purposefully removing the materials from her car and placing them in a public area next to a receptacle for disposal. That act was indicative of her desire to permanently part with the materials and of a disregard for what would later happen with them (e.g. disposal, retrieval, etc.). There are no statutory or other legal proscriptions with respect to a private party who finds abandoned property of that nature. Therefore, as a (non-governmental) private party finder of this abandoned property, Marcus acquired full ownership interests in the materials once found and retrieved, and may legally keep them.