

A man decided to cut back a tree on his property. The man borrowed his neighbor's chainsaw and, as an expression of gratitude, offered to also cut down a tree on her property. The man cut back his tree according to the chainsaw instructions, which stated that the chainsaw should not run continuously for more than five minutes at a time. The man then attempted to cut down the neighbor's tree, which took considerably longer due to the thickness of the tree trunk. At one point, the man ran the chainsaw for seven minutes in a row, causing the motor on the chainsaw to overheat and break.

The man returned the broken chainsaw to the neighbor. When the neighbor demanded that he pay for a new one, the man refused.

If the neighbor files a negligence action against the man, will the neighbor likely prevail?

- A. No, because the man used the chainsaw for the neighbor's benefit.
- B. No, because the man used the chainsaw in a reasonable manner when he cut back his own tree.
- C. Yes, because the man failed to use reasonable care when cutting down his neighbor's tree.
- D. Yes, because the man owed the neighbor a duty of extraordinary care and breached that duty while cutting both trees.

## Explanation:

**Bailment** occurs when one party (the bailor) **temporarily entrusts** his/her **personal property to another** (the bailee) without transferring ownership of the property. The **bailee's duty of care** with respect to that property **depends on who benefits** from the bailment transaction:

Bailor receives the sole benefit – the bailee has a lesser duty to care for the property and is liable for harm to the property only if the bailee has been *grossly negligent*

Bailee receives the sole benefit – the bailee must exercise *extraordinary care* for the property and is liable for harm to the property even if the bailee has been only slightly negligent

**Bailor and bailee both benefit** – the bailee **must take *reasonable care* of the property** and is liable for harm to the property under ordinary negligence principles

Here, the bailment was a single transaction that benefited *both* the neighbor (bailor) and the man (bailee) because the man borrowed the chainsaw to cut back his own tree and to cut down the neighbor's tree. Consequently, the man had a duty to take *reasonable care* of the chainsaw **(Choice D)**. He breached that duty by running the chainsaw for seven minutes in a row—when the instructions stated that it should not run continuously for more than five minutes—while cutting the neighbor's tree. Therefore, the neighbor will likely prevail **(Choice A)**.

**(Choice B)** The man may have used the chainsaw in a reasonable manner when he cut back his own tree. But he failed to use reasonable care when he cut down his neighbor's tree by running the chainsaw for more than five continuous minutes.

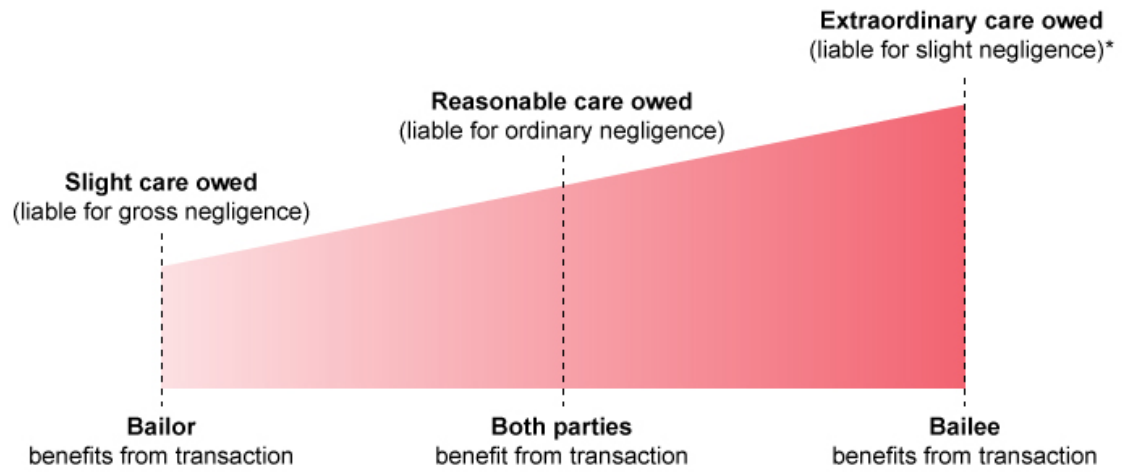
## Educational objective:

A bailee's duty of care with respect to bailed property depends on who benefits from the bailment transaction: (1) if only the bailor benefits, the bailee has a lesser duty of care; (2) if only the bailee benefits, the bailee must exercise extraordinary care; and (3) if both parties benefit, the bailee must exercise reasonable care.

## References

8A Am. Jur. 2d Bailments §§ 7–9 (2020) (classification of bailments).

## Bailee's duty of care for bailed property



\*Bailees are strictly liable for violating the express conditions of the bailment.