*Chapter 23*

# Personal Property,

# Bailments, and Insurance

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***What is real property? What is personal property?*** *Real property* means the land and everything permanently attached to it. Every­thing else is *personal property.* Personal property can be tangible or in­tangible. Tangible personal property has physical substance. Intangible per­sonal prop­erty represents some set of rights and interests but has no real physical existence.

**2A.** ***What are the three necessary elements for an effective gift?*** To make an effective gift, the donor must intend to make the gift, the gift must be delivered to the donee, and the donee must accept the gift.

**3A.** ***What are the three elements of a bailment?*** A bailment is formed (1) by the delivery of personal property, without transfer of ti­tle, (2) by a bailor to a bailee, under an agreement, often (3) for a particular purpose.

**4A. *What are the basic duties of a bailee?*** The bailee has two basic responsibilities: (1) to take appropriate care of the property and (2) to surrender the property at the end of the bailment. The appropriate degree of care required for the bailor’s property depends on whether the bailment is for the benefit of the bailor, the benefit of the bailee, or for their mutual benefit.

**5A.** ***What is an insurable interest? When must an insurable interest exist?*** For real and personal property, an insurable interest exists when the insured derives a pecuniary benefit from the existence of the property and would sus­tain a pecuniary loss from its destruction.

For a life, an insurable interest ex­ists when a person has a reasonable expectation of benefit from the continued life of another. The benefit may be pecuniary, or it may be founded on the rela­tionship between the parties (by blood or affinity).

For property insurance, the interest must exist at the time the loss occurs but need not exist when the pol­icy is pur­chased. For life insurance, the interest must exist at the time the pol­icy is obtained.

## Answer to Critical Thinking Question

**in the Feature**

# Adapting the Law to the Online Environment—Critical Thinking

***How might a couple who enjoy purchasing virtual and digital goods together avoid property division issues in the event of a divorce?*** Couples can specify in pre-nuptial agreements who gets what if divorce occurs. As they add new virtual and digital property, they can create addenda to their existing agreements.

## Answers to Critical Thinking Questions

**in the Cases**

**Case 23.1—Critical Thinking—Legal Consideration**

***Under what circumstances would Corbello* not *be entitled to an accounting? Why?*** Corbello would not be entitled to an accounting if she were not a co-owner of the work’s copyright. This situation could exist if Woodward’s interest in the copyright had not passed to her or if she had previously transferred the interest to another party.

If she had granted the right to create a derivative work to the members of the Four Seasons, or another party, Corbello would not be entitled to an accounting. This might have been the case if her consent had been obtained before the creation of “Jersey Boys.”

Of course, if no derivative work had been created, Corbello would not be entitled to an accounting.

One reason that she would not be entitled to an accounting in these circumstances is that she would have no right to one. Without an ownership interest in the copyright, she would have no legitimate claim to any profit from the use of the copyrighted work. Similarly, without the creation of a derivative work, there would be no basis for a claim.

# Case 23.2—What If the Facts Were Different?

***Suppose that Gladys Piper had told Clara Kaufmann that she was giving the rings to Clara but that she wished to keep them in her possession for a few more days. Would this have affected the court’s decision in this case? Explain.*** Whether a gift would exist would de­pend on whether Clara had ac­quired the unconditional right to remove the rings whenever she chose. In other words, the court would ask whether Gladys had given up complete control of the rings before it would rule that Clara was entitled to claim them as gifts. In such a situation, however, the fact that the rings remained in Gladys’s possession would suggest that there was no effective delivery even though Clara might ar­gue that she was given the power to remove the rings whenever she chose.

**Case 23.3—Critical Thinking—Economic Consideration**

***Why is an insurable interest required for the enforcement of an insurance contract?*** The existence of an insurable interest is a primary concern in determining liability under an insurance policy. Without an insurable interest, there is no enforceable contract. An insurable interest is required for the enforcement of the contract because the contract would otherwise be little more than a wager on the risk that a loss might occur.

A person can insure anything in which she or he has an insurable interest. With respect to property, an insurable interest exists when the insured derives a pecuniary benefit from the property—that is, when he or she would suffer a financial loss from its destruction. Thus, for property insurance, as in the *Breeden* case, the insurable interest must exist at the time the loss occurs whether or not it existed when the policy was procured.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Type of property***

Real property is land and its fixtures (everything permanently attached to it). Intent that an item be a fixture can be assumed from its permanent installation. Personal property encompasses all other types of property. A key distinction between personal and real property is that real property is not movable. Here, the dome was movable because it was detachable from its foundation, which indicates an intent that it not be a fixture.

**2A.** ***Type of gift***

Denai’s gift of the land was a gift *inter vivos*—a gift made during one’s lifetime and not in contemplation of imminent death.

**3A.** ***Type of bailment***

Finney was the bailor and Denai was the bailee in an ordinary, voluntary, gratuitous bailment for the sole benefit of the bailor. It is ordinary because it is not special—Denai is not a common carrier, a warehouse company, or an innkeeper. It is voluntary because the property was voluntarily delivered with the knowledge of both parties. It is gratuitous because the facts do not indicate consideration. It is for the sole benefit of the bailor because it exists for his convenience and benefit alone. The duty of care required of Denai (the bailee) is to exercise reasonable care to preserve the sailboat (the bailed property) but the degree of that care is slight, because the bailment is for the sole benefit of the bailor.

**4A.** ***Standard of care***

Doty was acommon carrier (a publicly licensed transportation service, such as a trucking company). A common carrier is held to a standard of care based on strict liability*,* rather than reasonable care, in relation to bailed personal property. The carrier is thus liable, regardless of care, for all loss or damage to goods, except damage caused by: (1) an act of God, (2) an act of a public enemy, (3) an order of a public authority, (4) an act of the shipper, or (5) the inherent nature of the goods. Common carriers cannot contract away this liability but they can limit their dollar liability to an amount stated on the shipment contract.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

***Common carriers should not be able to limit their liability.*** Those who use common carriers for shipping should not have to worry about what happens if a parcel is lost or damaged.  After all, customers of common carriers do not control in what manner their parcels are handled during shipping.  Liability should be shouldered uniquely by the carrier.

If common carriers had unlimited liability, they would have to purchase much more expensive insurance to cover their increased liability.  Consequently, common carriers would have to raise their rates, thereby hurting all customers.  Customers should simply buy more insurance themselves for their shipments.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***While walking to work, Bill finds an expensive ring lying on the curb. Bill gives the ring to his son, Hunter. Two weeks later, Martin Avery, the true owner of the ring, discovers that Bill had found the ring and demands that Hunter return it. Who is entitled to the ring, and why?*** The ring is classified as lost property—that is, property discovered under circumstances indicating that the owner had not placed the property there volun­tarily. Therefore, the general rule is that the finder of the lost property has the right to possession (and eventual title) over all others *except* the true owner of the lost property. Only if the property is mislaid will the owner of the premises on which the property is discovered have the right of possession. There is an exception in some states, however, if an employee finds lost property during the course of his or her employment. In these situations, the *employer* becomes an involuntary bailee and is entitled to possession. Martin, as the true owner of the ring, is entitled to repossess the ring from Hunter.

**2A.** ***Rosa de la Mar Corporation ships a load of goods via Southeast Delivery Company. The load of goods is lost in a hurricane in Florida. Who suffers the loss? Explain your answer***. Rosa de la Mar Corporation, the shipper, suffers the loss. A common carrier is liable for damage caused by the willful acts of third per­sons or by an accident. Other losses must be borne by the shipper (or the re­cipient, depending on the terms of their contract). This shipment was lost due to an act of God.

Answers to Questions and Case Problems

at the End of the Chapter

Business Scenarios and Case Problems

**23–1A . *Gifts***

Jaspal has made a gift *causa mortis* of the car to Friedrich. The gift meets all three tests to be effective: delivery (symbolic by car keys), donative intent, and donee acceptance. A gift *causa mortis* is revocable at any time prior to Jaspal’s death and is automatically re­voked if Jaspal survives the illness that initiated the gift. Thus, for the gift to be abso­lute, Jaspal would have had to die from the illness con­templated—the heart attack. Because Jaspal survived the heart at­tack, the gift to Friedrich was revoked, and the car passed back to Jaspal. It now belongs to Jaspal’s es­tate, and Uncle Sam is correct in demanding its re­turn.

**23-2A.** ***Duties of the bailee***

One of the duties of the bailor is to provide the bailee with goods that are free from de­fects that could cause injury to the bailee. If the bailed goods are defec­tive, the bailor’s duty is to give the bailee *appropriate* notice. Failure to do this may cause the bailor to be liable for negligence.

**1.** In a gratuitous bailment for the sole benefit of the bailee, the bailor’s duty of no­tice to the bailee applies only to *known* defects. Therefore, un­less Max actually knew of the loose blade, he has not breached his duty and will not be liable to Orlando for Or­lando’s injuries.

**2.** In a mutual benefit bailment (a rental bailment is one in which both partners re­ceive benefits), the bailor has a duty to notify the bailee of all known defects and any hidden defects that the bailor should have known about or *could have discov­ered* with reasonable diligence or proper in­spec­tion. If Max had been paid a fee for the use of the rototiller, he would have breached his duty by failure to notify Orlando of the defect and would be liable for Orlando’s injuries.

**23–3A. *Timing of insurance coverage***

Probably not. A life insurance policy is effective only when it is issued by the in­surance company. Before the issuance of Joleen’s policy, the insurance firm would need to evaluate her application and the results of her physical exami­na­tion. Because Joleen had been unable to complete the requirements of the appli­ca­tion (which included the physical examination) before her death, the policy could not have been issued, nor was it issued. Therefore, Jay could not collect on the policy. If, on receiving Joleen’s premium payment, the insurance com­pany had issued a binder stating that Joleen would be temporarily covered until the application and the results of the physical examination were evalu­ated, then the situation would be different. If no such binder had been issued, then Jay is entitled to a refund of the premium Joleen paid for the policy but not to the amount of the policy—$50,000.

**23–4A. *Gifts***

A gift is a transfer of property without consideration. To make a valid gift, the donor must part with the control of the property that is to be the gift with “donative intent” (an intent that title to the property will pass to the donee). There are three requirements: (1) the donor’s donative intent, (2) delivery of the property, and (3) the donee’s acceptance. John’s use of James’s name to open the account may indicate donative intent. But the most significant element in this case is delivery, which requires the donor to part with possession of the property and relinquish control. Delivery may be actual or constructive. Notice to James of the account’s existence might have been sufficient to constitute constructive delivery. In this case, however, there was no delivery. James never received actual delivery of the funds in the account. And as for constructive delivery, James was not even aware of the existence of the funds until after they were withdrawn and the account was closed. The court in the case on which this problem is based ruled in James’s favor, and a state intermediate appellate court affirmed this ruling. On Quick and Reilly’s appeal, the Connecticut Supreme Court reversed on the reasoning stated above.

**23–5A. *Insurance provisions and clauses***

Farrington should not be included as an insured within the meaning of the property insurance policy between Darling's and Philadelphia. The existence of an insurable interest is a primary concern when determining liability under an insurance policy. In the case of personal property, an insurable interest exists when the insured derives a pecuniary benefit from the preservation and continued existence of the property. One has an insurable interest in property when one would sustain a financial loss from its destruction. As for an insurance policy’s language, courts interpret the words according to their ordinary meanings and in light of the nature of the coverage involved.

Darling's is entitled to recover the value of the loss to covered vehicles by virtue of its ownership of those vehicles and the fact that it is the owner that suffers the loss when one of its vehicles is damaged. In other words, under the Philadelphia policy, Darling’s had an insurable interest in the car when Farrington smashed into the moose. Farrington might have had an insurable interest as well when he agreed to be responsible for any damage to the car, but he declined the insurance coverage offered in the rental contract.

In the actual case on which this problem is based, in Philadelphia’s suit against Farrington, the court entered a judgment in the insurer’s favor.

**23–6A . Business Case Problem with Sample Answer—*Bailment obligation***

Moreland should be awarded damages, and Gray should take nothing. The bailee must exercise reasonable care in preserving the bailed property. What constitutes reasonable care in a bailment situation normally depends on the nature and specific circumstances of the bailment. If the bailed property has been lost or is returned damaged, a court will presume that the bailee was negligent.

In the circumstances of this problem, when the bailor (Moreland, the owner of the aircraft) entrusted the plane to the bailee’s (Gray’s) repair shop for painting, the work was not properly performed. This violated the bailee’s duty to exercise reasonable care and breached the bailment contract. Because the plane was returned damaged, this may also constitute negligence. In the event of a breach, the bailor may sue for damages. The measure of damages is the difference between the value of the bailed property in its present condition and what it would have been worth if the work had been properly performed.

Thus, Gray is liable to Moreland for failing to properly paint the plane. In the actual case on which this problem is based, the court upheld a jury award to Moreland of damages and attorneys’ fees.

**23-7A.** ***Gifts***

Nielsen can take the Stig with him—Koerner is not the Stig's rightful owner. A gift is a means of transferring the ownership of personal property. A gift is a voluntary transfer of property ownership. There are three requirements for an effective gift—(1) donative intent on the donor’s part, (2) delivery, and (3) acceptance by the donee.

In this problem, Koerner adopted a dog, the Stig. She apparently brought the Stig to the residence she shared with Nielsen, her live-in boyfriend. She wrote and presented to Nielsen a poem in which she expressed her intent to give the Stig to Nielsen as a gift. When the relationship between Koerner and Nielsen ended, Nielsen agreed to move out. He may have indicated that he intended to take Stig with him, or he may have actually taken the dog. In either circumstance, he is entitled to possession—the facts show Koerner’s donative intent (the poem), delivery (Stig’s presence in their shared residence), and acceptance (Nielsen sharing the Stig’s care and expressing an intent to keep the dog).

In the actual case on which this problem is based, Koerner filed a suit in an Illinois state court against Nielsen to establish ownership of the Stig. From a judgment in Nielsen’s favor, Koerner appealed. A state intermediate appellate court affirmed the lower court’s judgment, holding that the evidence supported the finding of a gift of the dog.

**23-8A.** ***Lost property***

Simon’s cell phone was lost. Property that is involuntarily left is lost property. Property that has voluntarily been placed somewhere by the owner and then inadvertently forgotten is mislaid property. Property that has been discarded by the true owner, who has no intention of reclaiming title to it, is abandoned property.

The finder’s responsibility with respect to lost property is to return it. A finder of the property can claim title to the property against the whole world, except the true owner. If the owner demands its return, the finder must return it.

Lawrence cannot successfully argue that he did not know the phone was Simon’s. When a finder of lost property knows the true owner and fails to return the property to that person, the finder has committed the tort of conversion—the wrongful taking of another’s property—and the crime of theft.

In this problem, Simon misplaced her phone. Shawn Vargo contacted her, claiming to have it, and promising to send it to her if she would wire $100 to him through Mark Lawrence. She spoke to Lawrence about the wire, referring to the phone as hers and indicating the she wanted it to be returned. Instead of returning it, however, Lawrence traded it for credit at a Best Buy store. Based on these facts, Simon’s phone was lost property—involuntarily left, not voluntarily placed and forgotten or discarded with no intent to reclaim it. Lawrence could not successfully contend that he did not know the phone was Simon’s because she told him it was hers and he was working with Vargo, who clearly knew who the owner of the phone was.

In the actual case on which this problem is based, Lawrence was convicted in a Kansas state court of theft of lost property. A state intermediate appellate court affirmed. “A rational factfinder could find beyond a reasonable doubt that Lawrence possessed actual knowledge that [Vargo] was not the owner.”

**23–9A . A Question of Ethics—*Gifts***

**1.** A gift is a voluntary transfer of property ownership for which no consideration is given. The elements of a gift are (1) donative intent on the donor’s part, (2) delivery of the property, and (3) acceptance on the donee’s part. The circumstances in the *Lashmett* case included Marcella and Christine’s usual course of dealing, which always featured a payment to the mother from the daughter, and Marcella’s filing of a gift tax return after each transaction with her daughter. In the “transaction” involving the old tractor, however, there was neither a payment to Marcella nor the filing of a return. Christine’s use of the tractor as a trade-in might arguably evidence Marcella’s “delivery,” in terms of relinquishing control, and Christine’s “acceptance.” But there is nothing in the facts as stated that indicates Marcella’s donative intent.

The court ruled that the tractor was not a gift, characterizing the “transaction” instead as conversion by Christine. The court found that Christine was indebted to the estate for $55,296.28, the amount of the trade-in credit. On Christine's appeal, a state intermediate appellate court affirmed this finding. The court pointed out that “it was [Christine’s] burden to prove that the tractor used as a trade constituted a gift” and concluded that she did not prove her claim. The court reasoned, “In contravention of [Christine’s] assertion is the evidence that [Marcella] memorialized prior gifts to Christine by the preparation and filing of a gift tax return. .  .  . While the decedent died prior to the date by which such a return should have been filed, only one person had the necessary information to generate the return at its due date: Christine. Her inaction is as much evidence of whether the tractor transaction was a gift, especially given her fiduciary relationship to her mother and the estate, as anything else.”

**2.** Christine argued in part that “her production of a check for $20,000 written to the decedent marked ‘void’ is evidence of her claim that she attempted to pay her mother for at least a part of the tractor. As a corollary, she argues the check is evidence of the credibility of her testimony that the trade was accomplished with the decedent's consent and that her mother did not want any proceeds from the transaction.” In effect, Christine asserted that the check and Marcella’s refusal of it evidenced donative intent.

The appellate court explained that “[t]he trial court is in the best position to evaluate the credibility of the witnesses and to determine therefrom the facts of the case. .  .  . Here, the trial court had the testimony of Christine, the alleged voided check, and some history of the dealings between Christine and her mother.” Reiterating that no gift tax return had been filed, among other facts, the appellate court stated, “We find there was sufficient evidence upon which the trial court could base its decision to find Christine failed to meet her burden of proof and to include the proceeds of the trade-in in the estate.”

**Critical Thinking and Writing Assignments**

**23–10A. Business Law Critical Thinking Group Assignment**

**1.** Roslyn is entitled to the return of the cash. There was a bailment between her and Sébastien. A bailment is formed by the delivery of personal property without the transfer of title by one person, the bailor, to another, the bailee, usually under an agreement for a particular purpose. On the completion of the purpose, the bailee is obligated to deliver the property to the bailor or a third person, or to otherwise dispose of it. Here, Roslyn delivered the cash to Sébastien for the purpose of further delivering it to her family in Mexico. She did not transfer title to the money to Sébastien. Thus, she had the right to assert her title to it against any person, including the government.

**2.** The government’s best argument that the arrangement between Roslyn and Sébastien was not a bailment is that whoever possesses cash has title to it. On that ground, Roslyn transferred title to the cash when she gave it to Sébastien. There was thus no bailment, and Sébastien had title to the cash when the customs inspector found it.