Business Law

Advanced Business Law
Business 6

Instructors:
All Instructors

Santa Monica College
Business Dept.

McGraw-Hill/Irwin
A Division of The McGraw-Hill Companies

Primis Online

Business Law

Advanced Business Law
Business 6

Instructors:
All Instructors

Santa Monica College
Business Dept.

McGraw-Hill/Irwin
A Division of The McGraw-Hill Companies

McGraw–Hill Primis

ISBN: 0–390–20805–1

Text:

Business Law and the Regulatory
Environment, Concepts and Cases, 11/e
Mallor

This book was printed on recycled paper.

Business Law

http://www.mhhe.com/primis/online/

111 BLAW ISBN: 0–390–20805–1

Business Law

Contents

Mallor • *Business Law and the Regulatory Environment, Concepts and Cases, 11/e*

Personal Property and Bailments

Chapter Outline

The concept of property is crucial to the organization of society. The essential nature of a particular society is often reflected in the way it views property, including the degree to which property ownership is concentrated in the state, the extent to which it permits individual ownership of property, and the rules that govern such ownership. History is replete with wars and revolutions that arose out of conflicting claims to, or views concerning, property. Significant documents in our Anglo-American legal tradition, such as the Magna Carta and the Constitution, deal explicitly with property rights. This chapter will discuss the nature and classification of property. It will also examine the ways that interests in personal property may be obtained and transferred, such as by production, purchase, or gift. The last half of the chapter explores the law of bailments. A bailment is involved, for example, when you check your coat in a coatroom at a restaurant or when you park your car in a public parking garage and leave your keys with the attendant.

Nature of Property

The word **property** is used to refer to something that is capable of being owned. It is also used to refer to a right or interest that allows a person to exercise dominion over a thing that may be owned or possessed.

When we talk about property ownership, we are speaking of a bundle of rights that the law recognizes and enforces. For example, ownership of a building includes the exclusive right to use, enjoy, sell, mortgage, or rent the building. If someone else tries to use the property without the owner's consent, the owner may use the courts and legal procedures to eject that person. Ownership of a patent includes the rights to produce, use, and sell the patented item, and to license others to do those things.

In the United States, private ownership of property is protected by the Constitution, which provides that the government shall deprive no person of "life, liberty or property without due process of law." We recognize and encourage the rights of individuals to acquire, enjoy, and use property. These rights, however, are not unlimited. For example, a person cannot use property in an unreasonable manner that injures others. Also, the state has **police power** through which it can impose reasonable regulations on the use of property, tax it, and take it for public use by paying the owner compensation for it.

Property is divided into a number of categories based on its characteristics. The same piece of property may fall into more than one class. The following discussion explores the meaning of **personal property** and the numerous ways of classifying property.

Classifications of Property

Personal Property versus Real Property

Personal property is defined by process of exclusion. The term *personal property* is used in contrast to *real property.* Real property is the earth's crust and all things firmly attached to it.[1] For example, land, office buildings, and houses are considered to be real property. All other objects and rights that may be owned are personal property. Clothing, books, and stock in a corporation are examples of personal property.

Real property may be turned into personal property if it is detached from the earth. Personal property, if attached to the earth, becomes real property. For example, marble in the ground is real property. When the marble is quarried, it becomes personal property, but if it is used in constructing a building, it becomes real property again. Perennial vegetation that does not have to be seeded every year, such as trees, shrubs, and grass, is usually treated as part of the real property on which it is growing. When trees and shrubs are severed from the land, they become personal property. Crops that must be planted each year, such as corn, oats, and potatoes, are usually treated as personal property. However, if the real property on which they are growing is sold, the new owner of the real property also becomes the owner of the crops.

When personal property is attached to, or used in conjunction with, real property in such a way as to be treated as part of the real property, it is known as a **fixture.** The law concerning fixtures is discussed in "Real Property."

Tangible versus Intangible Personal Property

Personal property may be either tangible or intangible. Tangible property has a physical existence. Cars, animals, and computers are examples. Property that has no physical existence is called intangible property. For example, rights under a patent, copyright, or trademark would be intangible property.[2]

The distinction between tangible and intangible property is important primarily for tax and estate planning purposes. Generally, tangible property is subject to tax in the state in which it is located, whereas intangible property is usually taxable in the state where its owner lives.

Public and Private Property

Property is also classified as public or private, based on the ownership of the property. If the property is owned by the government or a governmental unit, it is public property. If it is owned by an individual, a group of individuals, a corporation, or some other business organization, it is private property.

[1] See "Real Property" for laws on this subject.

[2] These important types of intangible property are discussed in "Unfair Competition."

Acquiring Ownership of Personal Property

Production or Purchase

The most common ways of obtaining ownership of property are by producing it or purchasing it. A person owns the property that she makes unless the person has agreed to do the work for another party. In that case, the other party is the owner of the product of the work. For example, a person who creates a painting, knits a sweater, or develops a computer program is the owner unless she has been retained by someone to create the painting, knit the sweater, or develop the program. Another major way of acquiring property is by purchase. The law regarding the purchase of tangible personal property (that is, sale of goods) is discussed in "Formation and Terms of Sales Contracts."

Possession of Unowned Property

In very early times, the most common way of obtaining ownership of personal property was simply by taking possession of unowned property. For example, the first person to take possession of a wild animal became its owner. Today, one may still acquire ownership of personal property by possessing it if the property is unowned. The two major examples of unowned property that may be acquired by possession are wild animals and abandoned property. Abandoned property will be discussed in the next section, which focuses on the rights of finders.

The first person to take possession of a wild animal normally becomes the owner.[3] To acquire ownership of a wild animal by taking possession, a person must obtain enough control over it to deprive it of its freedom. If a person fatally wounds a wild animal, the person becomes the owner. Wild animals caught in a trap or fish caught in a net are usually considered to be the property of the person who set the trap or net. If a captured wild animal escapes and is caught by another person, that person generally becomes the owner. However, if that person knows that the animal is an escaped animal and that the prior owner is chasing it to recapture it, then he does not become the owner.

[3]As wildlife is increasingly protected by law, however, some wild animals cannot be owned because it is illegal to capture them (e.g., endangered species).

Rights of Finders of Lost, Mislaid, and Abandoned Property

The old saying "finders keepers, losers weepers" is not a reliable way of predicting the legal rights of those who find personal property that originally belonged—or still belongs—to another. The rights of the finder will be determined according to whether the property he finds is classified as abandoned, lost, or mislaid.

1. *Abandoned property.* Property is considered to be abandoned if the owner intentionally placed the property out of his possession with the intent to relinquish ownership of it. For example, Norris takes his TV set to the city dump and leaves it there. The finder who takes possession of abandoned property with intent to claim ownership becomes the owner of the property. This means he acquires better rights to the property than anyone else in the world, including the original owner. For example, if Fox finds the TV set, puts it in his car, and takes it home, Fox becomes the owner of the TV set.

2. *Lost property.* Property is considered to be lost when the owner did not intend to part with possession of the property. For example, if Barber's camera fell out of her handbag while she was walking down the street, it would be considered lost property. The person who finds lost property does not acquire ownership of it, but he acquires better rights to the lost property than anyone other than the true owner. For example, suppose Lawrence finds Barber's camera in the grass where it fell. Jones then steals the camera from Lawrence's house. Under these facts, Barber is still the owner of the camera. She has the right to have it returned to her if she discovers where it is—or if Lawrence knows that it belongs to Barber. As the finder of lost property, however, Lawrence has a better right to the camera than anyone else except Barber. This means that Lawrence has the right to require Jones to return it to him if he finds out that Jones has it.

If the finder does not know who the true owner is or cannot easily find out, the finder must still return the property when the real owner shows up and asks for the property. If the finder of lost property knows who the owner is and refuses to return it, the finder is guilty of conversion and must pay the owner the fair value of the property.[4] A finder who sells the property that he has found can pass to the purchaser only those rights that he has; he cannot pass any better title to the

[4]The tort of conversion is discussed in "Intentional Torts."

property than he himself has. Thus, the true owner could recover the property from the purchaser.

The *Powell* case, which follows shortly, provides further discussion of the rights of a finder of lost property.

3. *Mislaid property.* Property is considered to be mislaid if the owner intentionally placed the property somewhere and accidentally left it there, not intending to relinquish ownership of the property. For example, Fields places her backpack on a coatrack at Campus Bookstore while shopping for textbooks. Forgetting the backpack, Fields leaves the store and goes home. The backpack would be considered mislaid rather than lost because Fields intentionally and voluntarily placed it on the coatrack. If property is classified as mislaid, the finder acquires no rights to the property. Rather, the person in possession of the real property on which the personal property was mislaid has the right to hold the property for the true owner and has better rights to the property than anyone other than the true owner. For example, if Stevens found Fields's backpack in Campus Bookstore, Campus Bookstore would have the right to hold the mislaid property for Fields. Stevens would acquire neither possession nor ownership of the backpack.

The rationale for this rule is that it increases the chances that the property will be returned to its real owner. A person who knowingly placed the property somewhere but forgot to pick it up might well remember later where she left the property and return for it.

Some states have a statute that allows finders of property to clear their title to the property. The statutes generally provide that the person must give public notice of the fact that the property has been found, perhaps by putting an ad in a local newspaper. All states have statutes of limitations that require the true owner of property to claim it or bring a legal action to recover possession of it within a certain number of years. A person who keeps possession of lost or unclaimed property for longer than that period of time will become its owner.

Powell v. Four Thousand Six Hundred Dollars U.S. Currency

904 P.2d 153 (Okl. Ct. App. 1995)

While driving home from a Valentine's Day party late in the evening of February 14, 1994, Martin and Robyn Hoel and their children came upon what they thought was money scattered along a road in Logan County, Oklahoma. They then decided to drive to the nearby home of some friends. While Mrs. Hoel contacted law enforcement officials, Mr. Hoel and the Hoels' son drove back to where they had seen the money. A Logan County deputy sheriff arrived at the scene, as did Mrs. Hoel. Mr. Hoel assisted the deputy in his search for the money. The search yielded $4,600 in hundred dollar bills. Before the deputy departed, Mr. and Mrs. Hoel told him that they wanted the money if the authorities could not locate its rightful owner.

An Oklahoma statute allows a county sheriff to seek court permission to deposit in a Sheriff's Training Fund money (including stolen, lost, and abandoned money) "which has come into [the sheriff's] possession," if the true owner is unknown and the sheriff has held the money for at least six months. The statutory procedure requires the sheriff to file an application requesting that the appropriate district court issue an order authorizing the deposit of the money. A hearing must be held on the application. According to the statute, if no one appears at the hearing and "prove[s] ownership," the court is to approve the deposit of the money in the training fund.

More than six months after the February 14, 1994, events described earlier, the Logan County sheriff, R. Douglas Powell, filed an application requesting the district court's permission to deposit the found money in his Sheriff's Training Fund. The Hoels appeared at the hearing and objected to the application. The district court ruled in favor of Sheriff Powell and issued an order approving the deposit of the money in the training fund. The Hoels, who were allowed to join the case as parties, appealed.

Jones, Judge Mr. Hoel testified [at the hearing on the sheriff's application] that he and his son returned to the place they had discovered the money in order "to secure the area," by which he meant that he wanted to "[m]ake sure nobody else comes along and picks it up . . . [W]e wanted to make sure nobody touched it." Apparently Mrs. Hoel picked up one or two of the bills, which the deputy examined for signs of forgery. Deciding that the money was indeed genuine legal tender, the deputy then instructed the

Hoels not to pick up any more money, because he wanted to check it for fingerprints and drug traces.

[The Hoels] rely on [statutory] and common law defining a finder's right to assert their claim to the money. By [Oklahoma] statute, if one chooses to take charge of lost goods he finds, he acquires both the rights and the obligations of a bailee for hire of the property owner. And, it is a basic maxim of the law that a finder of property acquires rights in found property which are superior to all claims except that of the rightful owner. [Sheriff Powell] contends this case should be governed by [the Oklahoma statute allowing the sheriff to] apply for court authority to deposit money "which has come into his possession" into the Sheriff's Training Fund. [The Hoels], by their own admission, assert no *prior* ownership of the money (i.e., prior to their discovery on the night of February 14, 1994). [Sheriff Powell therefore] argues that the "owner" of the money has not claimed it, and [that the Hoels] cannot "prove ownership," within the meaning of [the statute].

[The Hoels and the sheriff agree] that the money was truly "lost," i.e., that somehow the original owner(s) parted with the money involuntarily and unintentionally, and that he or she or they did not know that it lay scattered along the road where the Hoels discovered it. Two issues are presented here for us to resolve: first, whether the finder of lost property may qualify as an "owner" of the property, and so obtain sufficient legal rights in the property which would defeat a sheriff's application [under the statute]; and, second (assuming we give an affirmative answer to the first issue), whether the Hoels qualify as "finders" of the money.

The first issue has not been previously decided in this state. However, we conclude that [the Hoels], if they qualified as finders of the money, acquired a sufficient ownership interest in the money to be "owners" of the money as that term is used in the unclaimed property statute. The Legislature did not intend to negate the common or statutory law granting legal rights to finders of lost property. By interpreting the unclaimed property statute in this manner, both legal principles at issue here can be harmonized without undue violence to either.

Having decided that a finder of lost property acquires rights which are superior to the sheriff's rights under the unclaimed property statute, we must next determine whether [the Hoels] qualify as "finders" under the circumstances presented in this case. It is stated by general authorities that the finder of lost property is one who first reduces it to possession, or at least such possession of the thing as its nature and circumstances will permit. [The Oklahoma statute dealing with finders of lost items] expresses a related notion in its opening clause; thus in order to obtain the rights of a finder under the statute, one must "take charge" of [the property].

[I]t is undisputed that Mr. Hoel and his eldest son returned to where the money had been discovered in order to prevent any third person from interfering with the recovery of the money. We should not penalize [the Hoels] for their legitimate concern that the money might have some evidentiary value. In fact, the deputy who subsequently appeared on the scene directed [the Hoels] *not* to pick up the money, precisely because of the possibility it might bear fingerprints or trace evidence. Under these rather unique circumstances, we hold that [the Hoels] "took charge" of the money before the deputy sheriff arrived, and so acquired the rights of a finder under our statutory and common law.

District court's judgment in favor of Sheriff Powell reversed and remanded.

Leasing

A lease of personal property is a transfer of the right to possess and use personal property belonging to another.[5] Although the rights of one who leases personal property (a lessee) do not constitute ownership of personal property, leasing is mentioned here because it is becoming an increasingly important way of acquiring the use of many kinds of personal property, from automobiles to farm equipment.

Articles 2 and 9 of the UCC may sometimes be applied to personal property leases by analogy. However, rules contained in these articles are sometimes inadequate to resolve special problems presented by leasing. For this reason, a new article of the UCC dealing exclusively with leases of goods, Article 2A, was written in 1987. Article 2A has been presented to state leg-

[5] A lease of personal property is a form of bailment, a "bailment for hire." Bailments are discussed later in this chapter.

Concept Review

Rights of Finders of Personal Property

Character of Property	Description	Rights of Finder	Rights of Original Owner
Lost	Owner unintentionally parted with possession	Rights superior to everyone except the owner	Retains ownership; has the right to the return of the property
Mislaid	Owner intentionally put property in a place but unintentionally left it there	None; person in possession of real property on which mislaid property was found holds it for the owner, and has rights superior to everyone except owner	Retains ownership; has the right to the return of the property
Abandoned	Owner intentionally placed property out of his possession with intent to relinquish ownership of it	Finder who takes possession with intent to claim ownership acquires ownership of property	None

islatures for possible adoption. Approximately 40 states have adopted Article 2A.

Gifts

Title to personal property may be obtained by **gift.** A gift is a voluntary transfer of property to the **donee** (the person who receives a gift), for which the **donor** (the person who gives the gift) gets no consideration in return. To have a valid gift, all three of the following elements are necessary:

1. The donor must *intend* to make a gift.
2. The donor must make *delivery* of the gift.
3. The donee must *accept* the gift.

The most critical requirement is delivery. The donor must actually give up possession and control of the property either to the donee or to a third person who is to hold it for the donee. Delivery is important because it makes clear to the donor that he is voluntarily giving up ownership without getting something in exchange. A promise to make a gift is usually not enforceable[6]; the person must actually part with the property. In some cases, the delivery may be symbolic or constructive. For example, handing over the key to a strongbox may be symbolic delivery of the property in the strongbox. *King v. Trustees of Boston University,* which appears in this chapter's examination of bailments, discusses various issues concerning gifts and promises to make gifts for charitable purposes.

There are two kinds of gifts: gifts *inter vivos* and gifts *causa mortis.* A gift *inter vivos* is a gift between two living persons. For example, when Melissa's parents give her a car for her 21st birthday, that is a gift *inter vivos.* A gift *causa mortis* is a gift made in contemplation of death. For example, Uncle Earl, who is about to undergo a serious heart operation, gives his watch to his nephew, Bart, and says that he wants Bart to have it if he does not survive the operation.

A gift *causa mortis* is a conditional gift and is effective unless any of the following occurs:

1. The donor recovers from the peril or sickness under fear of which the gift was made, or
2. The donor revokes or withdraws the gift before he dies, or
3. The donee dies before the donor.

If one of these events takes place, ownership of the property goes back to the donor.

Conditional Gifts

Sometimes a gift is made on condition that the donee comply with certain restrictions or perform certain actions. A conditional gift is not a completed gift. It may be revoked by the donor before the donee complies

[6]The idea is discussed in "Consideration."

with the conditions. Gifts in contemplation of marriage, such as engagement rings, are a primary example of a conditional gift. Such gifts are generally considered to have been made on an implied condition that marriage between the donor and donee will take place. The traditional rule applied in many states provides that if the donee breaks the engagement without legal justification or the engagement is broken by mutual consent, the donor will be able to recover the ring or other engagement gift. However, if the engagement is unjustifiably broken by the donor, the traditional rule generally bars the donor from recovering gifts made in contemplation of marriage. As illustrated by the *Lindh* case, which follows, a growing number of courts have rejected the traditional approach and its focus on fault. Some states have enacted legislation prescribing the rules applicable to the return of engagement presents.

Lindh v. Surman *742 A.2d 643 (Sup. Ct. Pa. 1999)*

In August 1993, Rodger Lindh (Rodger) proposed marriage to Janis Surman (Janis). Rodger presented her with a diamond engagement ring that he had purchased for $17,400. Janis accepted the marriage proposal and the ring. Two months later, Rodger broke the engagement and asked Janis to return the ring. She did so. Rodger and Janis later reconciled, with Rodger again proposing marriage and again presenting Janis with the engagement ring. Janis accepted the proposal and the ring. In March 1994, Rodger again broke the engagement and asked Janis to return the ring. This time, however, she refused. Rodger sued her, seeking recovery of the ring or a judgment for its value. The trial court held in Rodger's favor and awarded him damages in the amount of the ring's value. When Janis appealed, the Pennsylvania Superior Court affirmed the award of damages and held that when an engagement is broken, the engagement ring must be returned even if the donor broke the engagement. Janis appealed to the Supreme Court of Pennsylvania.

Newman, Justice [W]e are asked to decide whether a donee of an engagement ring must return the ring or its equivalent value when the donor breaks the engagement. We begin our analysis with the only principle on which [the] parties agree: that Pennsylvania law treats the giving of an engagement ring as a conditional gift. In *Pavlicic v. Vogtsberger* (Sup. Ct. Pa. 1957), the plaintiff supplied his ostensible fiancée with numerous gifts, including money for the purchase of engagement and wedding rings, with the understanding that they were given on the condition that she marry him. When the defendant left him for another man, the plaintiff sued her for recovery of these gifts. Justice Musmanno explained the conditional gift principle:

> A gift given by a man to a woman on condition that she embark on the sea of matrimony with him is no different from a gift based on the condition that the donee sail on any other sea. If, after receiving the provisional gift, the donee refuses to leave the harbor—if the anchor of contractual performance sticks in the sands of irresolution and procrastination—the gift must be restored to the donor.

[T]he parties disagree, however, [over] whether fault [on the part of the donor] is relevant to determining return of the ring.

[Janis] contends that Pennsylvania law . . . has never recognized a right of recovery in a donor who severs the engagement. [She maintains that] if the condition of the gift is performance of the marriage ceremony, [a rule allowing a recovery of the ring] would reward a donor who prevents the occurrence of the condition, which the donee was ready, willing, and eagerly waiting to perform. Janis's argument that . . . the donor [should not be allowed] to recover the ring where the donor terminates the engagement has some basis in [decisions from Pennsylvania's lower courts and in treatises]. This Court, however, has not decided the question of whether the donor is entitled to return of the ring where the donor admittedly ended the engagement.

[T]he issue we must resolve is whether we will follow the fault-based theory argued by Janis, or the no-fault rule advocated by Rodger. Under a fault-based analysis, return of the rings depends on an assessment of who broke the engagement, which necessarily entails a determination of why that person broke the engagement. A no-fault approach, however, involves no investigation into the motives or reasons for the cessation of the engagement and requires the return of the engagement ring simply upon the nonoccurrence of the marriage.

The rule concerning the return of a ring founded on fault principles has superficial appeal because, in the most outrageous instances of unfair behavior, it appeals to our sense of equity. Where one [of the formerly engaged persons] has truly "wronged" the other, justice appears to dictate that the wronged individual should be allowed to keep [the ring] or have [it] returned, depending on whether [the wronged] person was the donor . . . or the donee. However, the process of determining who is "wrong" and who is "right," when most modern relationships are complex circumstances, makes the fault-based approach less desirable. A thorough fault-based inquiry would not . . . end with the question of who terminated the engagement, but would also examine that person's reasons. In some instances the person who terminated the engagement may have been entirely justified in his or her actions. This kind of inquiry would invite the parties to stage the most bitter and unpleasant accusations against those whom they nearly made their spouse. A ring-return rule based on fault principles will inevitably invite acrimony and encourage parties to portray their ex-fiancées in the worst possible light. Furthermore, it is unlikely that trial courts would be presented with situations where fault was clear and easily ascertained.

The approach that has been described as the modern trend is to apply a no-fault rule to engagement ring cases. Courts that have applied [this rule] have borrowed from the policies of their respective legislatures that have moved away from the notion of fault in their divorce statutes. [A]ll fifty states [have] adopted some form of no-fault divorce. We agree with those jurisdictions that have looked toward the development of no-fault divorce law for a principle to decide engagement ring cases. [In addition, the] inherent weaknesses in any fault-based system lead us to adopt a no-fault approach to resolution of engagement ring disputes.

Decision of Superior Court in favor of Rodger Lindh affirmed.

Cappy, Justice, dissenting The majority urges adoption of [the no-fault rule] to relieve trial courts from having the onerous task of sifting through the debris of the broken engagement in order to ascertain who is truly at fault. Are broken engagements truly more disturbing than cases where we ask judges and juries to discern possible abuses in nursing homes, day care centers, dependency proceedings involving abused children, and criminal cases involving horrific, irrational injuries to innocent victims? The subject matter our able trial courts address on a daily basis is certainly of equal sordidness as any fact pattern they may need to address in a simple case of who broke the engagement and why.

I can envision a scenario whereby the prospective bride and her family have expended thousands of dollars in preparation for the culminating event of matrimony and she is, through no fault of her own, left standing at the altar holding the caterer's bill. To add insult to injury, the majority would also strip her of her engagement ring. Why the majority feels compelled to modernize this relatively simple and ancient legal concept is beyond the understanding of this poor man. [A]s I see no valid reason to forego the [fault-based rule] for determining possession of the engagement ring under the simple concept of conditional gift law, I cannot endorse the modern trend advocated by the majority.

Uniform Transfers to Minors Act

The Uniform Transfers to Minors Act, which has been adopted in one form or another in every state, provides a fairly simple and flexible method for making gifts and other transfers of property to minors.[7] As defined in this act, a minor is anyone under the age of 21. Under the act, an adult may transfer money, securities, real property, insurance policies, and other property. The specific ways of doing this vary according to the type of property transferred. In general, however, the transferor (the person who gives or otherwise transfers the property) delivers, pays, or assigns the property to, or registers the property with, a custodian who acts for the benefit of the minor "under the Uniform Transfers to Minors Act." The custodian is given fairly broad discretion to use the gift for the minor's benefit and may not use it for the custodian's personal benefit. The custodian may be the transferor himself, another adult, or a trust company, depending again on the type of property transferred. If the donor or other transferor

[7]This statute was formerly called, and is still called in some states, the Uniform Gift to Minors Act.

fully complies with the Uniform Transfers to Minors Act, the transfer is considered to be irrevocable.

Will or Inheritance

Ownership of personal property may also be transferred upon the death of the former owner. The property may pass under the terms of a will if the will was validly executed. If there is no valid will, the property is transferred to the heirs of the owner according to state laws. Transfer of property at the death of the owner is discussed in "Estates and Trusts."

Confusion

Title to personal property may be obtained by **confusion.** Confusion is the intermixing of different owners' goods in such a way that they cannot later be separated. For example, suppose wheat belonging to several different people is mixed in a grain elevator. If the mixing was by agreement or if it resulted from an accident without negligence on anyone's part, each person owns his proportionate share of the entire quantity of wheat. However, a different result would be reached if the wheat was wrongfully or negligently mixed. Suppose a thief steals a truckload of Grade #1 wheat worth $8.50 a bushel from a farmer. The thief dumps the wheat into his storage bin, which contains a lower-grade wheat worth $4.50 a bushel, with the result that the mixture is worth only $4.50 a bushel. The farmer has first claim against the entire mixture to recover the value of the higher-grade wheat that was mixed with the lower-grade wheat. The thief, or any other person whose intentional or negligent act results in confusion of goods, must bear any loss caused by the confusion.

Accession

Ownership of personal property may also be acquired by **accession.** Accession means increasing the value of property by adding materials, labor, or both. As a general rule, the owner of the original property becomes the owner of the improvements. This is particularly likely to be true if the improvement was done with the permission of the owner. For example, Hudson takes his automobile to a shop that replaces the engine with a larger engine and puts in a new four-speed transmission. Hudson is still the owner of the automobile as well as the owner of the parts added by the auto shop.

Problems may arise if materials are added or work is performed on personal property without the consent of the owner. If property is stolen from one person and improved by the thief, the original owner can get it back and does not have to reimburse the thief for the work done or the materials used in improving it. For example, a thief steals Rourke's used car, puts a new engine in it, replaces the tires, and repairs the muffler. Rourke is entitled to get his car back from the thief and does not have to pay him for the engine, tires, and muffler.

The result is less easy to predict, however, if property is mistakenly improved in good faith by someone who believes that he owns the property. In such a case, a court must weigh the respective interests of two innocent parties: the original owner and the improver.

For example, Johnson, a stonecarver, finds a block of limestone by the side of the road. Assuming that it has been abandoned, he takes it home and carves it into a sculpture. In fact, the block was owned by Hayes. Having fallen off a flatbed truck during transportation, the block is merely lost property, which Hayes ordinarily could recover from the finder. In a case such as this, a court could decide the case in either of two ways. The first alternative would be to give the original owner (Hayes) ownership of the improved property, but to allow the person who has improved the property in good faith (Johnson) to recover the cost of the improvements. The second alternative would be to hold that the improver, Johnson, has acquired ownership of the sculpture, but that he is required to pay the original owner the value of the property as of the time he obtained it. The greater the extent to which the improvements have increased the value of the property, the more likely it is that the court will choose the second alternative and permit the improver to acquire ownership of the improved property.

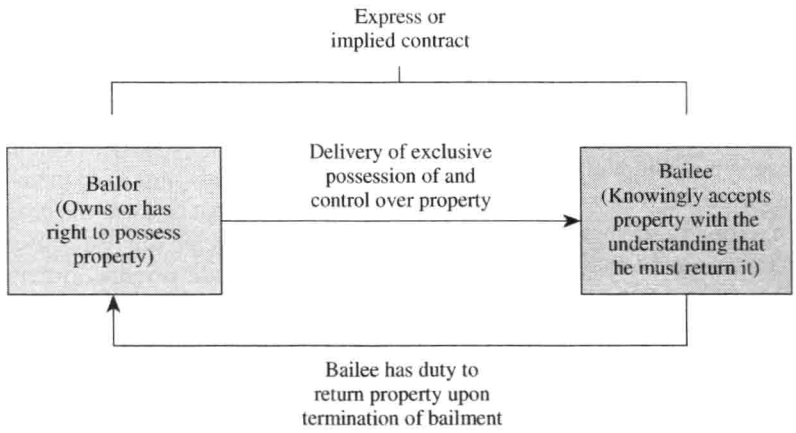
Bailments

Nature of Bailments

A **bailment** is the delivery of personal property by its owner or someone holding the right to possess it (the **bailor**) to another person (the **bailee**) who accepts it and is under an express or implied agreement to return it to the bailor or to someone designated by the bailor. Only personal property can be the subject of bailments.

Although the legal terminology used to describe bailments might be unfamiliar to most people, everyone is familiar with transactions that constitute bailments. For example, Lincoln takes his car to a parking garage where the attendant gives Lincoln a claim check and

Figure 1 *Creation of a Bailment*



then drives the car down the ramp to park it. Charles borrows his neighbor's lawn mower to cut his grass. Tara, who lives next door to Kyle, agrees to take care of Kyle's cat while Kyle goes on a vacation. These are just a few of the everyday situations that involve bailments.

Elements of a Bailment

The essential elements of a bailment are:

1. The bailor owns the property or holds the right to possess it.
2. The bailor delivers exclusive possession of and control over the property to the bailee.
3. The bailee knowingly accepts the property with the understanding that he owes a duty to return the property as directed by the bailor.

Creation of a Bailment

A bailment is created by an express or implied contract. Whether the elements of a bailment have been fulfilled is determined by examining all the facts and circumstances of the particular situation. For example, a patron goes into a restaurant and hangs his hat and coat on an unattended rack. It is unlikely that this created a bailment, because the restaurant owner never assumed exclusive control over the hat and coat. However, if there is a checkroom and the hat and coat are checked with the attendant, a bailment will arise.

If a customer parks her car in a parking lot, keeps the keys, and may drive the car out herself whenever she wishes, a bailment has not been created. The courts treat this situation as a lease of space. Suppose, however, that she takes her car to a parking garage where an attendant, after giving her a claim check, parks the car. There is a bailment of the car because the parking garage has accepted delivery and possession of the car. However, a distinction is made between the car and packages locked in the trunk. If the parking garage was not aware of the packages, it probably would not be a bailee of them as it did not knowingly accept possession of them. The creation of a bailment is illustrated in Figure 1. The conclusion that a bailment was created proved to be critical to the outcome in the *King* case, which follows.

King v. Trustees of Boston University *647 N.E. 2d 1196 (Mass. Sup. Jud. Ct. 1995)*

Approximately four years prior to his death, Dr. Martin Luther King, Jr., provided Boston University with possession of some of his correspondence, manuscripts, and other papers. He did so pursuant to a letter, which read as follows:

On this 16th day of July, 1964, I name the Boston University Library the Repository of my correspondence, manuscripts, and other papers, along with a few of my awards and other materials which may come to be of interest in historical or other research.

In accordance with this action I have authorized the removal of most of the above-mentioned papers and other objects to Boston University, including most correspondence through 1961, at once. It is my intention that after the end of each calendar year, similar files of materials for an additional year should be sent to Boston University.

All papers and other objects which thus pass into the custody of Boston University remain my legal property until otherwise indicated, according to the statements below. However, if, despite scrupulous care, any such materials are damaged or lost while in custody of Boston University, I absolve Boston University of responsibility to me for such damage or loss.

I intend each year to indicate a portion of the materials deposited with Boston University to become the absolute property of Boston University as an outright gift from me, until all shall have been thus given to the University. In the event of my death, all such materials deposited with the University shall become from that date the absolute property of Boston University.

Sincerely yours,
Martin Luther King, Jr.

Acting in her capacity as administrator of Dr. King's estate, his widow, Coretta Scott King, sued Boston University for conversion. (Conversion is discussed in "Intentional Torts.") The plaintiff alleged that the King estate, and not BU, held title to the papers that had been housed in the BU library's special collection since the 1964 delivery of them. BU contended that it owned the deposited papers because Dr. King had made an enforceable charitable pledge to give them to BU. The case was tried before a jury, which ruled in BU's favor. In response to questions posed by the trial judge on a special verdict form, the jury determined that in his July 16, 1964, letter, Dr. King had made a promise to give BU title to his papers and that this promise was an enforceable charitable pledge supported by consideration or reliance. (See "Consideration" for a discussion of the concepts of consideration and reliance.) When the trial judge denied her motion for judgment notwithstanding the verdict or for a new trial, the plaintiff appealed.

Abrams, Justice [T]he jury found that BU had acquired rightful ownership of the papers via a charitable pledge. [T]here is scant Massachusetts case law in the area of charitable pledges and subscriptions. A charitable subscription is an oral or written promise to do certain acts or to give real or personal property to a charity or for a charitable purpose. To enforce a charitable subscription in Massachusetts, a party must establish that there was a promise to give some property to a charitable institution and that the promise was supported by consideration or reliance.

The plaintiff argues that the terms of the letter promising "to indicate a portion of the material deposited with [BU] to become the absolute property of [BU] as an outright gift . . . until all shall have been thus given to [BU]," could not as a matter of basic contract law constitute a promise sufficient to establish an inter vivos charitable pledge because there is no indication of a bargained for exchange which would have bound Dr. King to his promise. The plaintiff asserts that the above-quoted excerpt (hereinafter "first statement") from the letter merely described an unenforceable unilateral and gratuitous mechanism by which he might make a gift of the papers in the future. In support of her position that Dr. King did not intend to bind himself to his statement of intent to make a gift of the papers he deposited with BU, the plaintiff points to the [letter's statement] that "[a]ll papers and other objects which thus pass into the custody of [BU] remain my legal property until otherwise indicated, according to the statements below." According to the plaintiff, because of Dr. King's initial retention of legal ownership, BU could not reasonably rely on the letter's statements of intent to make a gift of the papers. We do not agree.

The letter contains two sentences which might reasonably be construed as a promise to give personal property to a charity or for a charitable purpose. The first statement, quoted above, is that Dr. King intended in subsequent installments to transfer title to portions of the papers in BU's custody until all the papers in its custody became its property. The second statement immediately follows the first, expressing an intent that "[i]n the event of [Dr. King's] death, all . . . materials deposited with [BU] shall become from that date the absolute property of [BU]" (hereinafter "second statement"). BU claims that these two sentences should be read together as a