

TYPES OF PROPERTY

- **Property:** Legally protected rights and interests in anything with an ascertainable value that is subject to ownership.
- **Real Property (or Realty):** Land and everything of value attached to it, growing on it, running through it, or found under it.
- **Personal Property:** Movable property – sometimes referred to as *chattel* or *personalty*.
 - **Tangible Personalty:** Personal property that has physical substance (*e.g.*, a television set or car).
 - **Intangible Personalty:** Personal property the value of which does not depend on physical existence (*e.g.*, stocks, bonds, patents, and copyrights).
- **Converting Realty to Personalty:** Sometimes real property (other than land) can be detached from the land and converted to personal property (*e.g.*, trees cut for lumber; extracted oil and gas; a house or other structure removed from its foundation and transported to a new location).

FIXTURES

- **Fixture:** A building or other improvement, *other than a **trade fixture***, attached to real property
 - (1) in accordance with the attaching party's **intent**;
 - (2) such that the fixture **cannot be removed** without causing substantial damage to the real property, or
 - (3) such that the fixture **assumes the characteristics of the real property** and become part of that real property.
- **Trade Fixture:** Personal property installed on realty (or improvements to realty) for a tenant's commercial purpose
 - (1) that remains the **property of the tenant**,
 - (2) entitling the tenant to **remove** the trade fixture at the end of the lease (subject to the tenant's duty to pay for repairs to the realty or improvement caused by removing the trade fixture),
 - (3) unless removing the trade fixture would **irreparably damage** the realty on, or the improvement in, which the trade fixture is installed.

ACQUIRING OWNERSHIP: NON-GIFTS

- A person may acquire rights in personal property by
 - **purchasing** it with money (or exchanging it for other valuable consideration);
 - **possessing** unclaimed, lost, or abandoned property;
 - creating or **producing** the property;
 - expending labor or materials to add value to someone else's property (*accession*);
 - An improvement does not typically change who owns the property; however, the owner must compensate the improver for any authorized improvement.
 - **Exception:** If the accession substantially increases the property's value or changes its identity, the improver may take ownership, subject to a duty to compensate the prior owner.
- commingling her personal property with another's so that the once separately-owned goods are no longer distinct (*confusion*).

ACQUIRING OWNERSHIP: GIFTS

- **Gift:** Any voluntary transfer of property made without consideration. A gift requires:
 - (1) **Donative Intent:** The *donor* (the person giving the gift) must intend for the transfer to be a gift;
 - (2) **Delivery:** The gift must be delivered to the *donee* (the person for whom the gift is intended), who, as a result of the gift, must be free to exercise *dominion* (ownership rights) over the property in question; and
 - Certain types of gifts can be delivered *constructively* (*i.e.*, without physical delivery) or by an **agent** acting on the donor's behalf.
 - (3) **Acceptance:** The donee must accept the gift.
- **Inter Vivos Gift:** A gift made during the donor's lifetime and not in contemplation of imminent death.
- **Causa Mortis Gift:** A gift made in contemplation of the donor's death. The donee must survive the donor in order to accept the gift. If the donor does not die as expected, he may revoke the gift.

MISLAID, LOST, OR ABANDONED PROPERTY

- **Mislaid Property:** Property with which the owner has voluntarily parted and then cannot find or recover. A finder does not obtain title to the mislaid property, but rather holds it in trust for the true owner.
- **Lost Property:** Property with which the owner has involuntarily parted and then cannot find or recover. A finder can claim title to the property superior to that of anyone *except the true owner*.
- **Conversion:** Retaining property, without the true owner's assent, despite knowing to whom it belongs.
- **Estray Statute:** A statute permitting a finder to become the owner of lost property when its true owner is unknown and no one timely claims the property after the finder reports discovering it.
- **Abandoned Property:** Property with which the owner has voluntarily parted with no intention of recovering it. A finder can claim title that is superior to that of any other person including the true owner.

BAILMENTS

- **Bailment:** Entrusting one person's (the *bailor*'s) personal property to the another person's (the *bailee*'s) care, obliging the bailee to **return** the bailed property to the bailor (or to a third party the bailor designates) or **dispose** of it as the bailor directs.
- Bailments involve only **personal property**.
- **Delivery:** The bailor must **actually** (the bailor transfers possession) or **constructively** (the bailor transfers the right to possess) deliver the bailed property to the bailee
 - (1) giving the bailee **exclusive possession and control** over the property (subject to the bailor's superior rights), and
 - (2) such that the bailee **knowingly accepts** the personal property delivered by the bailor.
- A **bailment agreement** may be either **express** or **implied**.
- **Involuntary Bailment:** In rare cases, the law will impose a bailment despite the bailor's lack of consent and the bailee's lack of knowledge.

ORDINARY BAILMENTS

- **Bailment for the Bailor's Sole Benefit:** A gratuitous bailment made for the bailor's convenience and benefit.
- **Bailment for the Bailee's Sole Benefit:** A gratuitous bailment made for the bailee's convenience and benefit.
- **Bailment for the Bailor's and Bailee's Mutual Benefit:** This most common kind of bailment involves the bailor compensating the bailee for services the bailee renders.

BAILEES: RIGHTS AND DUTIES

■ **Bailee's Rights:** Absent a contrary agreement, a bailee may

- (1) **control and possess** the bailed property during the term of the bailment agreement;
- (2) in some cases, **use** the bailed property,
- (3) except in a *gratuitous bailments*, **compensation**;
- (4) place a *possessory lien* on the bailed property until he or fully compensated, and
- (5) **limit its liability** for damage to the bailed property, as long as (a) the bailor's was aware of the limitation and (b) it is not contrary to public policy.

■ **Bailee's Duties:** Absent a contrary agreement, a bailee must

- (1) take **reasonable care** of the bailed property, and
- (2) **surrender** the bailed property to the bailor **or dispose** of it in accordance with the bailor's instructions.

- A bailee may be **excused** from this latter duty if the bailment was destroyed, lost, or stolen through **no fault** of the bailee.

BAILORS: RIGHTS AND DUTIES

- **Bailor's Rights:** Absent a contrary agreement, a bailor has the right to expect that the bailee

- (1) will **protect** the bailor's property with **reasonable care** while in the bailee's possession;
- (2) will **use** the property **as agreed**;
- (3) will **relinquish or dispose** of the property as directed;
- (4) will **not convert** the goods unless agreed;
- (5) will see that any **repairs or service** to the property are done in a workmanlike manner; and that
- (6) the **bailee's liability will not be limited** except as the bailor agreed and the law permits.

- **Bailor's Duties:** Absent a contrary agreement, a bailor must

- (1) **compensate** the bailee as agreed and
- (2) **notify** the bailee before or when the bailment arises of all **known or reasonably discoverable defects**.

SPECIAL BAILMENTS

- **Common Carrier:** Someone who provides publicly-available transportation services for a fee and is **strictly liable** for any loss of or damage to the bailed property after taking delivery or the bailed property.

- **Exceptions to Strict Liability:** A common carrier is not strictly liable for any loss of or damage to the bailed property resulting from (1) an act of God, (2) a public enemy's act, (3) the bailor's act, (4) a governmental order, or (5) the bailed property's inherent nature.

- **Warehouser:** Someone who provides storage for a fee and is liable only for loss of or damage to the bailed property that results from **its negligence**.

- As a professional bailee, the warehouser owes a **higher degree of care** than an ordinary bailee.

- **Innkeeper:** Someone who, for a fee, provides public lodging as a regular business and is **strictly liable** for any loss of or damage to a *guest's* property.

- An innkeeper (1) is strictly liable, if at all, only to guests, not *lodgers*; and (2) may avoid strict liability by providing a safe for the guests' use, whether or not the guest uses the safe.