

PROPERTY PRACTICE QUESTIONS

ANSWER 3A

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Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Jill v. Barb (conversion)

- The act of Jill giving Sammy to Barb is **bailment**
 - Barb *rightfully possessed* Sammy (she did not steal him)
 - Sammy is considered *personal property*
 - Barb was *clearly not the true owner*
- **Type of bailment - for the benefit of the bailor**
 - Jill received the sole benefit. Barb did not get anything in return
 - **Duty of care - low** - at common law liable only for gross negligence
 - **Exception - Misdelivery by the bailee** gives rise to strict or **absolute liability**
- **Conclusion:** because Barb misdelivered Sammy to Roger, she is strictly liable to Jill for conversion

Jill v. Roger

- **Bona fide purchaser defense by Roger – must meet the elements**
 - *True owner has to entrust*
 - Jill entrusted Sammy to Barb
 - *Bailee must be a merchant*
 - Barb is a merchant because she has been selling labs for 15 years

- *Merchant must deal with goods of the kind*
 - Barb the merchant dealt with goods of the kind because she has been selling labs and Sammy is a lab
 - *Purchaser must be a buyer in the ordinary course of business*
 - *Honesty in fact (subjective standard)*
 - Roger did not intend to steal Sammy from Barb
 - *Observe reasonable commercial standards – be without knowledge that the sale violates the ownership rights of the bailor (objective standard)*
 - Roger did not know that he violated Jill’s rights when he took Sammy
 - *Purchaser must pay value*
 - Roger did not pay for Sammy
 - Roger is not a BFP because he did not meet the last element – value
- **Adverse possession defense by Roger – must meet the elements**
- Statute of limitations in TX – 2 years
 - Roger had Sammy for only 2 months
 - No need to list the rest of the elements for adverse possession because since the first one is not satisfied, it does not matter if the rest of them are met
 - Lack of due diligence on Jill’s part
 - The fact that Jill did not exercise due diligence in looking for Sammy would only be relevant had there been an issue of whether or not the statute of limitations had run - discovery rule
 - In this situation the statute of limitations has not run; Thus Jill’s lack of due diligence in looking for Sammy does not matter
- **Conclusion**
- Because Roger’s defenses of BFP and adverse possession are not likely to succeed, Jill gets to take Sammy back