**Alternate Case Problems**

*Chapter 23*

**Personal Property,**

**Bailments, and Insurance**

**23-1. Duties of the Bailee.** Wanda Perry, who had an account with Farmers Bank of Greenwood, wanted to rent a safe-deposit box from the bank. The boxes were available only to bank customers, and no rent was charged. When renting the box, Wanda was asked to sign a signature card that stated the following: “The undersigned customer holds the Farmers Bank harmless for loss of currency or coin left in the box.” A little over four years later, the bank was burglarized, and most of the safe-deposit boxes were broken into. Wanda’s box was among those burglarized, and she lost all the currency and coins contained in it. At trial, evidence showed that the bank had been negligent in failing to restore a burglar alarm system that had been inoperative for more than a week prior to (and including) the day the bank was burglarized. Wanda sued the bank to recover the currency and coins, alleging negligence on the part of the bank. Discuss fully whether the bank should be held liable for the loss. [*Farmers Bank of Greenwood v. Perry*, 301 Ark. 547, 787 S.W.2d 645 (1990)]

**23-2. Insurer’s Defenses.** Kirk Johnson applied for life insurance with New York Life Insurance Co. on October 7, 1986. In answer to a question about smoking habits, Johnson stated that he had not smoked in the past twelve months and that he had never smoked cigarettes. In fact, Johnson had smoked for thirteen years, and during the month prior to the insurance application, he was smoking approximately ten cigarettes per day. Johnson died on July 17, 1988, for reasons unrelated to smoking. Johnson’s father, Lawrence Johnson, who was the beneficiary of the policy, filed a claim for the insurance proceeds. While investigating the claim, New York Life discovered Kirk Johnson’s misrepresentation and denied the claim. The company canceled the policy and sent Lawrence Johnson a check for the premiums that had been paid. Lawrence Johnson refused to accept the check, and New York Life brought an action for a declaratory judgment (a court determination of a plaintiff’s rights). What should the court decide? Discuss fully. [*New York Life Insurance Co. v. Johnson,* 923 F.2d 279 (3d Cir. 1991)]

**23-3. Gifts.** James Wilson learned that he had terminal cancer in 1983 or 1984. At about that time, he arranged for a friend, Harold Buell, to have joint access to Wilson’s safe-de­posit box. Wilson gave Buell a key. The box contained, among other things, a copy of a promissory note for $65,000 from Michael Cronan. Wilson told Buell that the debt repre­sented by the note was to be forgiven when he died and that on Wilson’s death, Buell was to deliver the copy of the note to Cronan. In 1984, Cronan learned of Wilson’s illness, and Wilson told Cronan on at least two occasions that Cronan’s debt was to be forgiven on Wilson’s death. In the meantime, Cronan continued to make payments on the note. Wilson died in July 1987. On the day after Wilson died, Buell delivered the copy of the note to Cronan, as directed. Wilson’s personal representative (a person appointed to look after the deceased’s affairs), Carol Kesterson, sought to recover from Cronan the balance ow­ing on the $65,000 note, the original of which was found among Wilson’s personal effects after his death. Cronan claimed that the debt had been forgiven, as a gift to Cronan. Were the requirements of a gift satisfied? How should this case be resolved? Discuss fully. [*Kesterson v. Cronan*, 105 Or.App. 551, 806 P.2d 123 (1991)]

**23-4. Interpretation of Insurance Contract Terms.** Martha Frances purchased insur­ance coverage from Nationwide Mutual Insurance Co. prior to going on a cruise. The policy covered “accidental bodily injury occurring anywhere in the world which arises solely from accident” and “is not contributed to by sickness, disease or bodily or mental in­firmity.” The policy also stated that if the injury resulted in the loss of life “within 180 days after the date of the accident,” the company would pay the beneficiary $75,000. While on the cruise, Frances fell and broke her hip. She was immediately taken to a Florida hospital for surgery, during which she had a fatal heart attack. The death certificate de­scribed the cause of death as “terminal cardiac arrest due to or as a consequence of arte­riosclerotic cardiovascular disease due to or as a consequence of previous [heart prob­lems].” Audrey Allison, Frances’s beneficiary, sought payment under the policy, but Nationwide refused to pay because Frances’s death was caused in part by her preexisting heart condition. Allison then sued Nationwide to collect the death benefit. Assuming that Frances would not have died (at least, at that time) from her heart problems had it not been for the surgery, how should the court decide? Discuss fully. [*Allison v. Nationwide Mutual Insurance Co.*, 964 F.2d 291 (3d Cir. 1992)]

**23-5. Gifts.** Before her marriage to Herman Blettell in 1951, Mary Blettell owned a resi­dence. Darlene Snider was Mary’s daughter by a previous marriage. In 1965, Herman and Mary moved into the residence. Herman’s name was never added to the title. In 1974, Mary executed a deed to the property to Darlene but did not deliver or record it. In 1978, Mary informed Darlene about the deed and told her that it was located in Mary and Darlene’s joint safe-deposit box. In August 1987, Mary’s health was declining, and she told Darlene to get the deed from their safe-deposit box, rent a safe-deposit box in Darlene’s name only, and put the deed in it so “nobody can get [it] but you.” Darlene re­moved the deed from the joint safe-deposit box and placed it in her own box. Herman was not aware of these events until shortly before Mary’s death in 1989. On the day after Mary died, Darlene recorded the deed. Herman, as Mary’s personal representative (the person appointed in Mary’s will to look after her affairs after her death), contended that Mary’s transfer of the deed to Darlene was not a valid gift *inter vivos* because the deed was never effectively delivered to Darlene. Darlene argued that there was a valid delivery in 1987, when Mary instructed Darlene to place the deed in her own safe-deposit box. What should the court decide? Explain. [*Estate of Blettell v. Snider,* 114 Or.App. 162, 823 P.2d 505 (1992)]

**23-6. Found Property.** Using a metal detector, Billy Ray Shivers found metal tokens at the site of an abandoned sawmill that once belonged to Aldridge Lumber Co. The mill used the tokens fifty to a hundred years ago as payment for its workers. Because the site was in Angelina National Forest, the federal government claimed ownership of the to­kens and seized them. Shivers filed a motion in a federal district court against the gov­ernment, seeking to have the tokens returned. Should the court grant the motion? Why or why not? [*United States v. Shivers,* 96 F.3d 120 (5th Cir. 1996)]

**23–7. Gifts.** Hugh Chalmers issued a promissory note to his father in the amount of $50,000, plus interest. The note was secured by a deed of trust on certain real estate and was payable on demand or within sixty days of the father's death. More than seventeen years later, the father assigned the deed of trust to his wife, Nina. The existence of the note was mentioned in the assignment, which was recorded in the appropriate state office with the deed of trust. After the father died, Nina found the note in a safe-deposit box. On the back of the note, the father had indorsed the note to Nina. When Chalmers refused to pay the amount due, Nina filed a lawsuit in an Arkansas state court against him. Chalmers argued that the note had not been effectively delivered. What should the court hold? Discuss*. [Chalmers v. Chalmers,* 937 S.W.2d 171 (Ark. 1997)]

**23-8. Gifts *Inter Vivos.*** Thomas Stafford owned four promissory notes. Payments on the notes were deposited into a bank account in the names of Stafford and his daughter, June Zink, “as joint tenants with right of survivorship.” Stafford kept control of the notes and would not allow Zink to spend any of the proceeds. He also kept the interest on the account. On one note, Stafford indorsed “Pay to the order of Thomas J. Stafford or June S. Zink, or the survivor.” The payee on each of the other notes was “Thomas J. Stafford and June S. Zink, or the survivor.” When Stafford died, Zink took possession of the notes, claiming that she had been a joint tenant of the notes with her father. Stafford’s son, also Thomas, filed a suit in a Virginia state court against Zink, claiming that the notes were partly his. Thomas argued that their father had not made a valid gift *inter vivos* of the notes to Zink. In whose favor will the court rule? Why? [*Zink v. Stafford,* 509 S.E.2d 833 (Va. 1999)]

**23–9. Found Property.** A. D. Lock owned Lock Hospitality, Inc., which in turn owned the Best Western Motel in Conway, Arkansas. Joe Terry and David Stocks were preparing the motel for renovation. As they were removing the ceiling tiles in room 118, with Lock present in the room, they noticed a dusty cardboard box near the heating and air-supply vent where it had apparently been concealed. Terry climbed a ladder to reach the box, opened it, and handed it to Stocks. The box was filled with more than $38,000 in old currency. Lock took possession of the box and its contents. Terry and Stocks filed a suit in an Arkansas state court against Lock and his corporation to obtain the currency. Should the cash be characterized as lost, mislaid, or abandoned property? To whom should the court award it? Explain. [*Terry v. Lock,* 233 Ark. 452, 37 S.W.3d 202 (2001)]

**23–10**. **Bad Faith Actions.** Leo and Mary Deters owned Deters Tower Service, Inc., in Iowa. Deters Tower serviced television and radio towers and antennas in a multistate area. The firm obtained a commercial general liability policy issued by USF Insurance Co. to provide coverage for its officers, including Leo. One afternoon, Leo and two Deters Tower employees were working on a TV tower in Council Bluffs when they fell from the tower to their deaths. The workers’ families filed a negligence suit against Leo’s estate. USF refused to defend the Deters estate against the suit and pay any resulting claim and did not provide a reason for this response. Is USF liable to the Deters estate for this refusal? If so, on what basis might the Deters estate recover, and how much? [*Deters v. USF Insurance Co.,* 797 N.W.2d 621 (Iowa App. 2011)]