AVOIDING PROPERTY LOSS CLAIMS BY EXITING FACULTY

INTRODUCTION:

Colleges and universities often have to manage the departure of faculty from their campuses. The reasons for these departures vary, but include resignation, termination, suspension, retirement, and sabbatical or other extended leave. Colleges and universities faced with the task of reclaiming office, laboratory, or other space sometimes find that departing faculty members have left property behind.

If such remaining property is damaged, destroyed, or lost, exiting faculty members may assert substantial damage claims against their institutions. [1] Disputes of this nature often arise when the separation of the faculty member from the institution has not been amicable and the parties are already in conflict.

In one recent case decided in January 2009, the University of the District of Columbia ("UDC") was held liable to pay an exiting faculty member $1.65 million in damages for property that was damaged, destroyed, or lost when his office was cleaned out. This property consisted of the exiting professor's damaged or destroyed lecture notes and course materials ($525,000 in damages, or $25,000 per course), unpublished research data ($500,000 in damages, or $50,000 in damages for each project), scientific instruments he had built ($287,000 in damages for nineteen lost instruments), and equipment he had purchased from commercial vendors. Trustees of the Univ. of the District of Columbia v. Vossoughi, 963 A.2d 1162, 1169 (D.C. 2009).

In Vossoughi, the materials were lost, damaged, or destroyed when the university decided to move the contents of the professor’s biomedical research laboratory to a storage facility while the professor (who was embroiled in a tenure dispute with the university) was away at a conference. Instead of being stored safely, most of his materials were lost, some items were placed in a trash dumpster by a contractor, and experimental materials were found broken and dismantled in a trash bin. No inventory was taken of his materials before the move. The university administrator in charge of the process was not present at all times when the contractor was at work, and did not check whether the materials were boxed up appropriately before being removed from the laboratory.

Claims of this nature can involve yet larger sums. In one case, a suspended faculty member claimed that when his university placed his office materials in storage, it destroyed technical data that he planned to use to apply for a patent. He alleged that the patent would have been worth $400 million, and that he would have been entitled to a large share of that amount under the university’s intellectual property policy. The faculty member ultimately lost his case, but it vividly illustrates the sheer magnitude and variety of possible claims by absent faculty members.

This Note describes (a) some of the legal theories that may be used by departing faculty to sue colleges and universities for lost or destroyed property, (b) the associated damage issues, and (c) suggested procedures for avoiding or minimizing liability. The same procedures may be useful guides when dealing with (a) departing graduate students, post-doctoral fellows, and others, and (b) continuing faculty, staff, or students whose work space and property is affected by building renovations, demolitions, intra-campus relocation
DISCUSSION:

I. Possible Legal Theories

There are several legal theories that departing faculty members may seek to assert against an institution for lost, damaged, or destroyed property. These include theories of (1) bailment, (2) conversion, and (3) negligence. Since the controlling legal principles may vary from state to state, it is important to consult with counsel to determine any state-specific variations from the general principles described below.

Bailment. A bailment is the rightful possession of goods by one who is not an owner. A bailment may arise, for example, when an individual delivers his clothing to a dry cleaner, or allows a valet service to park a car.

In the university context, a bailment contract is created when a faculty member (the bailor) delivers his personal property to a bailee (an institution) for a specific purpose, including storage, with the intent that such property be returned to the bailor at the fulfillment of the contract. Bailment contracts can be established expressly by agreement of the university's representative (such as a dean) to care for the property. A bailment relationship can also “be implied by law whenever the personal property of one person is acquired by another and held under circumstances in which principles of justice require the recipient to keep the property safely and return it to the owner.” Some courts may find that an implied bailment arises even if a faculty member does not make a physical delivery of property to the university, but rather leaves it there.

If a bailment is created, a university may be held liable if it does not return the property to the faculty member in undamaged condition at the termination of the bailment, unless the university is able to prove that it used the required level of care. For “gratuitous” bailments in which the university gains no benefit from holding the property, a university can generally be held liable only if it was grossly negligent in its care of the property. “Gross negligence” is a fact-specific standard involving an “extreme departure from the ordinary standard of care,” and it is a difficult standard for plaintiffs to meet. However, if the bailment is for “mutual benefit” -- in that the university receives some benefit in return for holding the faculty member's property -- the university is required to exercise ordinary and reasonable care.

Conversion. When a faculty member’s property is lost, damaged, destroyed, or taken, a university may also find itself sued for committing the tort of conversion. Conversion is defined as “an intentional exercise of dominion or control over [an item of property] which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the [property].” Conversion arises, for example, when a person takes possession of a house, finds furniture in it, and removes the furniture to a distant warehouse which the owner can only retrieve at great inconvenience and expense.

Depending on the facts, there are several possible defenses to a conversion claim. A university could argue that it never exercised control over the faculty member's property if he or she was free to reclaim it at any time, or that the university lacked knowledge that the property was left on its premises.

Negligence. In order to establish a claim for negligence, a departing faculty member must prove that a university had a legal duty to take reasonable care of the property, that the university failed to exercise reasonable care, and that such failure was the legal cause of the loss. One court has ruled that a university had a duty of care in arranging for the packing of a professor’s property. Other courts may similarly recognize a duty of care, depending on the facts of the specific case. Depending on the jurisdiction, a university might defend itself by arguing that the departing faculty member actions contributed to the negligence or failure to mitigate his damages.

II. Damage Issues
Suits brought by departing faculty members for lost, destroyed, or damaged property pose special damage problems. Often, there is no determinable market value for the property. [15]

Generally, damages for lost or destroyed property are calculated on the basis of the property’s “fair market value.” [16] However, where there is no “market” for the property, damages can be calculated on the basis of the “special value” to the plaintiff of the property, or on the basis of replacement cost. [17] In Vossoughi, the court affirmed the award of $1.65 million in damages based on the value of plaintiff’s time needed to replace his course materials, research data, and customized equipment.

III. Preventive Measures

Colleges and universities should consider the following measures to avoid, or if necessary defend, property-loss claims by exiting faculty members.

Publish Your Policy.

Publish in your faculty handbook (or equivalent) a notification that the institution has no responsibility for personal property left by faculty members in their offices, laboratories, or on computers, after their appointment expires or while they are on suspension or away for other reasons. The notification should also state that (a) faculty members are solely responsible for making appropriate arrangements for the protection of their property when they are separated or away from the university, (b) the institution has the right to remove and discard any property that is left behind, and (c) that any such property will be considered abandoned.

Advance Written Notice.

In addition to the general notice described above, institutions should give each departing faculty member individual advance written notice that he or she is responsible for removing all personal property by a specific deadline, with an accompanying warning that the institution may remove and discard the property thereafter. The institution should specifically give written notice that it bears no responsibility for the materials after the deadline expires. The institution should take steps to confirm that the faculty member has received the written notice. If the faculty member does not remove his or her property by the deadline, the university should, out of an abundance of caution, give a second written notice with a more emphatic deadline and warning.

Notwithstanding such a warning and/or any disclaimer in the faculty handbook, great caution should be taken before destroying or discarding faculty property. All reasonable steps should be taken to encourage the faculty member to remove his or her property from the institution’s premises. Such caution is warranted because faculty may claim that:

- they did not receive written notice of the policy,
- individualized promises or commitments of safekeeping were made by university administrators, or
- the disclaimers of liability should not be enforced because of allegedly willful or malicious conduct by the university to harm them, or for other legal reasons.

Remember, once property is discarded or destroyed, it cannot be returned to the faculty member if the court declines to enforce the university’s liability disclaimer.

Determine Insurance Coverage.

Check the university’s insurance policies to determine the extent of coverage for continuing and exiting faculty members’ property-loss claims based on negligence or gross negligence. This step will help determine the risk exposure presented by such circumstances, and may lead the institution to seek adjustments in its policy coverage.
Train Staff.

Administrators and staff should be advised to avoid making casual commitments to safely store a departing faculty member’s property. Such commitments, even if made orally, may create a binding bailment. If there is good reason to make such a commitment, procedures should be adopted through the institution’s chain of authority to ensure the property is properly safeguarded.

Take an Inventory.

A detailed inventory of everything in the faculty member’s office or laboratory should be prepared before anything is removed.

- **Photographs:** Taking photographs of the property can provide excellent evidence of the property’s condition. It can also in defend against false or exaggerated claims of property loss.

Packing and Storage:

- **Supervision:** A responsible, neutral party should supervise the packing and storage. The university should appoint a responsible person to supervise the packing and storage of faculty property. Since disputes over lost or damaged property often originate from faculty members who are in a contentious relationship with the institution, the person selected should be someone who has no involvement in the parties’ conflict.

- **Storage in a secure place.** When a university does undertake to store faculty property, or refrains from discarding property on account of the possible risks associated with doing so, any faculty property that is removed from an office or laboratory should be stored in a secure and safe area, with access limited as much as possible. Care should be taken that there are no conditions (such as water leakage, heat, or humidity) that are incompatible with the safe storage of the faculty property. A university will often have a legitimate claim that it should be reimbursed by the exiting faculty member for any storage costs. However, a university’s demand for reimbursement of such costs will seldom justify the expense involved in actually litigating the reimbursement issue with the faculty member.

Use Extra Care Dismantling or Removing Experimental Equipment or Materials.

Obtain the faculty member’s input and guidance before dismantling or removing delicate experimental equipment or materials. In all cases, the institution should seek expert guidance when doing so. The person selected to supervise the removal of such equipment or materials should have a good understanding of the special needs relating to such property. Extra care should be taken because reliance on a university’s published disclaimer may be insufficient.

Retaining Computer Records.

Obtain competent technical assistance to preserve the contents of such computers before discarding or reassigning them to others. Faculty members often maintain research results, manuscripts, experimental data, valuable intellectual property, and other important materials on computers provided to them by their institutions. When facing an uncooperative departing faculty member, it is therefore extremely important for institutions to preserve such data.

CONCLUSION:

The recent Vossoughi case should serve as a warning to institutions. If not done carefully, the removal of faculty members’ property when their on-campus presence ends can lead to damage claims that dwarf the
potential liability on any pending employment-related disputes. The foregoing suggestions will hopefully help institutions avoid such claims and liabilities.

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RESOURCES:

Cases:

Other Resources:
- 8A Am. Jur. 2d Bailments §§ 259, 260
- Restatement (Second) of Torts §§ 222, 281, 283, 285

FOOTNOTES:

FN1. E.g., Wells v. State, 78 S.W.3d 302 (Tenn. Ct. App. 2001) (no university liability for property removed from faculty office after the professor was terminated); Waugh v. Univ. of Haw., 621 P.2d 957, 968-70 (Haw. 1980) (there was no bailment of a professor’s property while on sabbatical because the university never agreed to not disturb his office). See also Berglund v. Roosevelt Univ., 310 N.E.2d 773, 775 (Ill. App. Ct. 1974) (there was no bailment of a student’s property at a university facility when the university did not know the property was there).

FN2. Berglund, 310 N.E.2d at 775. See, e.g., In re Julien Co., 44 F.3d 426, 429 (6th Cir. 1995) (the standard elements of a bailment are delivery of goods for a purpose, and that upon completion of that purpose the goods are to be redelivered to the person who delivered them); Whitcombe v. Stevedoring Servs. of Am., 2 F.3d 312 (9th Cir. 1993) (“California law generally defines a bailment as the delivery of a thing in trust for a purpose upon an implied or express contract.”); 8A Am. Jur. 2d Bailments § 1, at 520 (2009).

FN3. See n. 1, supra.

FN4. 8A Am. Jur. 2d Bailments § 1, at 521. See also Hartford Fire Ins. Co. v. Empresa Ecuatoriana de Aviacion, 945 F. Supp. 51, 56 (S.D.N.Y. 1996) (“In the absence of a mutual contract of bailment, an implied bailment arises when a party comes into lawful possession of the personal property of another.”).

FN6.  Am. Enka Co. v. Wicaco Mach. Corp., 686 F.2d 1050 (3d Cir. 1982) (“If the bailment is for the bailor’s sole benefit, Pennsylvania law requires only slight diligence on the part of the bailee and correspondingly imposes liability only for gross neglect.”); Bernstein v. Noble, 487 A.2d 231, 234 (D.C. 1985) (“If the bailment is gratuitous, the liability would be limited to acts of gross negligence, willful acts, or fraud”). See 8A Am. Jur. 2d Bailments § 110, at 635.


FN11.  Restatement (Second) of Torts, § 222A, at 434.

FN12.  For less serious interferences with property (such as removal of property for only a short duration), a faculty member might assert a claim of “trespass of chattels.” Restatement (Second) of Torts, §§ 216-222. The elements of trespass to chattels are largely the same as those of the tort of conversion. “The difference is that conversion entails a more serious deprivation of the owner’s rights such that an award of the full value of the property is appropriate.” Creative Dimensions in Mgmt., Inc. v. Thomas Group, Inc., No. 96-6318,1999 WL 225887, at *3, n.2 (E.D. Pa. April 16, 1999). See Grosch v. Tunica County, Miss., 569 F. Supp. 2d 676, 677-78 (N.D. Miss. 2008).


FN14.  See Waugh v. Univ. of Haw., 621 P.2d at 970 (finding that university reasonably relied on a "competent stockroom supervisor and an experienced glassblower to handle the dismantling of appellant’s laboratory and vacuum rack").

FN15.  An extreme example occurred recently in the United Kingdom. A Ph.D. student at Leeds University returned from performing fieldwork in the Philippines to find that seven years of research had been thrown away. The property in question was a 77-pound bag of excrement from an extremely rare Butaan lizard. The collection had been incinerated after his research area was cleared out to make room for another student. In that case, what would be a large bag of waste to many people was seven years of fieldwork and research to that Ph.D. candidate.  

FN16.  Vossoughi, 963 A.2d at 1175. See Radiomarine Corp. v. Gulf N. Co., Inc., 394 F. Supp. 381, 383 (E.D. Mo. 1975) (“The general rule of law concerning lease contracts . . . is that upon destruction of the subject matter property the bailee shall be liable to the bailor for the fair market value of the bailed property, absent a valid contractual agreement to the contrary.”); 8A Am. Jur. 2d Bailments § 254, at 775.

FN18. Waugh, 621 P.2d at 971 (finding that chemistry department stockroom supervisor was competent and reasonable person to help dismantle professor’s laboratory).

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