

## TOPIC 5: Bailment

### STEP 1. What is the situation?

- X gave Y a [chattel for the purpose of doing [z]

### STEP 2. What are the issues?

- Can [X] sue [Y] for breach of bailment?
  - o Is there more than one issue?
    - X can sue Y and Z.

### STEP 3.

Who is the bailor and bailee?

### STEP 4.

#### Types of bailment *Coggs v Bernard*

1. A bare naked bailment of goods, delivered by one man to another to keep for the use of the bailor
  - Taking care of another person's car while they are on holiday
2. When goods or chattels that are useful, are lent to a friend gratis, to be used by him
  - This is a free loan
  - A driver of a car borrowed it from his friend
3. When goods are left with the bailee to be used by him for hire
  - A car is hired from a car company
4. When goods or chattels are delivered to another as a pawn, to be a security to him for money borrowed of him by the bailor
  - This type of bailment is topic 6 (personal securities)
5. When goods or chattels are delivered to be carried, or something is to be done about them for a reward to be paid by the person who delivers them to the bailee, who is to do the thing about them.
  - Any services
  - Safekeeping a car for a reward can arguably be in this category or number 5 as it was forgotten in *Coggs*
  - There has clearly been a transfer of actual possession from A to B for the purpose of B doing repair work. A is the bailor. B is the bailee for a reward.
    - o A does not have a right to possession of the chattel until payment for the repair has been made because B has a common law repairer's lien until that time.
6. When there is a delivery of chattels to somebody, who is to carry or do something about them without any rewards for such his work or carriage.
  - A person repairing a car is doing it in favour for someone else for free

**STEP 5****Elements**

Bailment involves the temporary transfer of possession from bailor to bailee, with the bailee voluntarily accepting the transfer.

**1. Is there a transfer of possession?**

If there is no transfer of possession, there is no bailment *Ashby v Tolhurst 1937*

**2. Was the transfer of possession temporary?**

- Return date does not need to be specified
- A bailment can exist even if the bailor does not expect to ever recover possession

**3. Did the putative bailee voluntarily accept the transfer of possession?**

- The putative bailee must have voluntarily accepted the transfer of possession  
*Rolfe v Investec Bank 2014*
- *Rolfe v Investec Bank (Australia) Ltd*
- Lease regarding shipping containment business. Rolfe had a license to leave the containers on the premises. Rolfe's investment had given him permission to keep the containments on the premises until he found a suitable way to get them removed. There was no bailment. Even if the investee had become bailees of the containments, there were not bailees of its contents (3 porches) because it is not likely to be a character of a normal situation where possession would be transferred.

**Example**

A carpark requires you to hand over both the car and keys so that the person who is taking care of the car can park it where they want but you have the ticket that allows you to have the car back.

**STEP 6.**

**Termination of bailment?**

**Breach of duties as a bailor or bailee?**

**Jus tertii defence?**

## STEP 6A

### Termination of Bailment

The nature of the bailment depends on how it can be ended.

1. Upon **expiry** of term
  - (if fixed term bailment) or after a reasonable time if none is fixed
2. On **demand** (if bailment at will)
  - For example, if someone lent you a book and said you can have it until they wanted it back, the bailment will end when they placed a demand
3. **Pursuant to contract** (if contractual bailment)
  - the contract governs the basis of the contract.
  - A contract makes a termination of the bailment conditional such as the bailee getting paid for the service that they have done.
  - The common law may give the bailee a reward such as keeping possession of an item until the payment or "condition" has been made/met.
4. Upon **destruction** of goods bailed
5. Upon bailee **acting in a manner repugnant** to the existence of a bailment
  - *Penfolds Wines Pty Ltd v Elliott*
    - o This means a use or misuse of the goods which amounts to the goods acting as if it were the bailee's own goods and effectively denying the rights of the bailor
    - o Selling the goods
    - o Bailee could be sued by the bailor for conversion

*Anderson Group Pty Ltd v Tynan Motors Pty Ltd* [2006]<sup>1</sup>



- Usually if the bailee sells the bailed goods, they are acting contrary to the bailment.
- As long as the appellant's breach was not 'so serious as to amount to a disclaimer of the bailment', the bailment still stands, giving them immediate right to possession and to sue.
- Anderson had entitlement to sue

<sup>1</sup> NSWCA 22; S&N CB [2.27]

**STEP 6B.****Relationship between Bailor and Bailee**

## Contracts

- Where there is a contract between bailor and bailee, terms of the contract will prevail (unless the contract is in terms of a legislation).
- Contractual terms will govern the rights and obligations of bailee and bailor

## Legislations

- Legislation may modify the CL position in relation to particular bailment situations and sometimes prevail over contractual provisions to the contrary.

**Common Law Duties of Bailor**

1. Duty to **warn of dangers** associated with the goods  
*see Pivovarovff v Chernabaeff (1978)*
2. Duty **not to interfere** with the bailee's lawful possession of the goods  
*eg City Motors (1933) Pty Ltd v Southern Aerial Super Service Pty Ltd (1961)*

P, Southern Aerial, purchased a truck from D City Motors. P traded an old truck as part payment and financed the remainder. D took possession of Ps old truck and delivered the new truck. Ps old truck broke down. D retook possession of the new truck and returned the cheque. D was sued for detinue.

- P had an exclusive possessory right to the truck, which could not be terminated except on the default of the plaintiff
- The bailee was sufficient to bring an action for detinue against City Motors

**Common Law Duties of Bailee<sup>2</sup>**

1. Duty to **take care** of the goods

*See Challenge Charter Pty Ltd v Curtain Bros*

- The bailor only needs to establish that the bailee was in possession of the goods at the time of the loss or damaged.
- It is then up to the bailee to establish, if he or she can, that they were not at fault.

*Rationale: Since the goods are physically in possession of the bailee, it is easier for them to show what happened.*

2. Duty **not to use or misuse** the goods outside the terms of the bailment.

- Misuse also includes a breach of a duty of care.
- If the bailee acts in a manner that is repungent, the bailment will terminate.
- The bailor can sue the bailee for conversion.

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<sup>2</sup> Davenport & Parker [21.170]-[21.320] (chapter digitised in reading list)

### 3. Duty to **retain possession** of the goods *Edwards v Newland & Co*

- Exception
  - unless authorised by the bailor to transfer possession to someone else
    - Examples
      - the small print in the contract allows for subcontracting where, for any reason, the sub-bailor is unable to provide the service itself. This means that they can sub-contract out and hand over the possession of the chattel to the sub-bailee.
- Is a common law repairer's lien applicable?
  - A bailee may have a common law lien over the goods which allows the bailee to hang on to the goods until his or her services are paid for.
    - E.g. contractual or legislative provisions allowing them to retain possession, because a bailee refuses to deliver or redeliver goods.
    - If this is not available, the bailee is liable in conversion and detinue.
- Is a third party claims a better right to possession than the bailor?

Under common law, a bailee has a duty to retain possession of the goods. If the bailee transfer possession to anyone other than the bailor without the bailor's authorization, the bailee is in breach of that duty to retain possession and remains responsible to the bailor for any resulting loss (*Edwards v newland co*). [Application of facts].

Or the bailee's safest course of action is/was to interplead

### 4. Duty to **redeliver goods** to the bailor **or** deliver them to a **third party** as directed by the bailor at the end of the bailment.

- Since x transferred possession of the chattel to y without authorization it is also in breach of its duty to reliver the goods at the end of the bailment. The head bailor can sue for conversion and detinue
- the head-bailee is responsible for any loss or damage that happens to the goods when they are/were in the hands of the sub-bailee.

**STEP 6C.****Jus Terii**

A bailee is estopped from a *jus tertii* defence unless evicted by title paramount or the bailee is defending with the authority of the true owner ***Biddle v Bond***

Onus is on [X] to prove that [Y] is the true owner

**If the third party does have a better right –**

- If a third party claims a better right to possession than the bailor, but the bailee does not hand over the chattel, the bailor can sue for detinue/conversion.
- If the bailee is absolutely sure that the third party does have a better title, the bailee can transfer possession to the third party and defend an action brought by the head bailor by pleading eviction of title paramount

**If the third party does not have a better right –**

- If the bailee is unsure, the bailee should commence an interplead action to force the bailor and the third party to resolve the dispute between themselves

**STEP 7:**

Conclude.

**Sub-Bailment**

Head Bailor



Bailment

Head Bailee/Sub-Bailor



Sub-Bailment

Sub-Bailee

*Morris v C W Martin &*

Mink stole owner



Furrier



Fur cleaner



*Morris v C W Martin & Sons Ltd* [1966]

Case brief

Ms Morris (head bailor) asked a furrier (head bailee) to clean her minx stole. The furrier said that they do not clean furs but he could get the job done by an expert fur cleaner C W Martin (sub-bailee). Ms Morris agreed. C W knew that the fur coat did not belong to the furrier but to one of their customers. The minx stole was stolen by a dishonest employee of C W martin. Ms Morris (owner of the coat) sued C W for damages. She succeeded on the basis that C W was in breach of its duty as bailee to her as bailor. On the facts of this case, C W was not in a contractual relationship with Ms Morris. The furrier contacted C W. C W acted as a principle not as an agent for Ms Morris. Ms Morris was able to sue because of the bailment relationship that existed between them.