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1. Bailment and Agency

1.1. What is a Bailment?

Bailee= takes possession

Bailor = gives possession

Depositing money in a bank account is not a temporary transfer of property from one party to another with the expectation it will be returned. Money is a fungible which means the exact same notes aren't expected to be returned.

'A bailment comes into existence upon delivery of goods of one person, the bailor, into the possession of another person, the bailee, upon a promise, express or implied, that they will be re-delivered to the bailor or dealt with in a stipulated way.': **Hobbs v Petersham Transport Co Pty Ltd (1971) 124 CLR 220, 238 (Windeyer J).**

The **voluntary** assumption of possession is key; there must be knowledge of the goods and the bailee's consent to hold them: **WD & HO Wills (Aust) v State Rail Authority of New South Wales(1998) 43 NSWLE 336, 353 4.**

Under a sale of goods where title to property does not pass with transfer of possession, such as where there is a Romalpa clause and title will not pass until payment made in full – bailment arrangement: **Hospital Products Ltd v United States Surgical Corp (1985) 156 CLR 41, 105. Purchaser a bailee until payment**

1.2. Essential Elements of Bailment

Carlton International plc v Crayform Freight Services Ltd (1998) 162 ALR 119

- Goods must be delivered to the bailee or possession transferred in some other way
- Bailee must voluntarily accept responsibility (question of fact, by implied actions)
- Bailee must be under an obligation to return or deliver the goods
- Bailee must exercise due care and skill in handling the goods

No bailment where goods may be substituted: **Chapman Brothers v Verco Brothers**

Goods may be transformed **Pangeallo Estate Pty Ltd v Killara**

2. Bailment Vs License Cases

A. Greenwood v Waverley Council (1928) 28 SR (NSW) 219

Facts: Mr. Greenwood was a patron at a public swimming baths operated by the Waverley Municipal Council. While at the baths, he used a locker provided by the Council to store his belongings. He subsequently reported the loss of some of his

property from the locker and brought a claim against the Council, arguing that it was liable for the loss.

Judgment: The court ruled in favor of Waverley Municipal Council, determining that it was not liable for the loss. Key considerations included:

1. **Bailment Relationship:** court found that no bailment relationship was established between Greenwood and the Council regarding the property stored in the locker. For a bailment relationship to arise, there must be a transfer of possession and acceptance of responsibility for the goods by the bailee (in this case, the Council). Here, the Council merely provided a locker for use but did not take possession of the contents.
2. **Duty of Care:** The court held that the Council did not owe a heightened duty of care for the safety of items Greenwood stored in the locker. By merely providing the facility for patrons' convenience, the Council did not assume responsibility for the security of the items.
3. **Control over the Locker:** Greenwood maintained control over the locker by using a key, indicating that he retained possession and responsibility for the items stored within.

providing a storage facility, such as a locker, does not automatically create a bailment relationship or impose liability on the provider for loss or damage to the contents. It highlights the importance of possession and control in determining the existence of a bailment relationship and corresponding liability.

B. *Ultzen v Nicols [1894] 1 QB 92*

Facts: Mr. Ultzen visited a restaurant owned by Mr. Nicols. Upon entering, a waiter requested to take Mr. Ultzen's coat and selected a place to store it for safekeeping without Mr. Ultzen's specific request or instructions. Later, the coat went missing. Mr. Ultzen sued Mr. Nicols, arguing that the restaurant was liable for the loss of the coat under the law of bailment.

Judgment: The court held in favor of **Mr. Ultzen**, ruling that the restaurant was liable for the loss.

1. Creation of a Bailment Relationship:

- The court found that a bailment relationship was created when the waiter took possession of Mr. Ultzen's coat at the restaurant.
- Importantly, the bailment relationship arose because the waiter took active steps to request and take possession of the coat for safekeeping, rather than leaving it to the patron's discretion.

when a business or its employee takes possession of a customer's belongings, it assumes responsibility for their safekeeping and may be held liable for any loss or damage due to negligence.

C. *Ashby v Tolhurst* [1937] 2 All ER 837

Facts: Mr. Ashby parked his car in a car park operated by Mr. Tolhurst. He paid a fee to park and received a ticket containing terms and conditions, which included a clause disclaiming liability for loss or damage. While Mr. Ashby left the car parked, it was stolen. He sued Mr. Tolhurst, arguing that the car park owner was liable under the law of bailment for failing to ensure the car's safekeeping.

Judgment: The court ruled in favor of Mr. Tolhurst, finding that there was no bailment relationship between the parties.

1. No Delivery of Possession:

- The court held that when Mr. Ashby parked his car in the car park, he did not deliver possession of the car to Mr. Tolhurst or his agents. Mr. Ashby retained control of the car and its keys throughout.
- The arrangement was determined to be a **mere licence** to park the car on the premises, not a transfer of possession that would create a bailment relationship.

2. Exclusion of Liability:

- Even if a bailment relationship had existed, the terms printed on the ticket effectively excluded liability for loss or damage, which Mr. Ashby was deemed to have accepted by using the car park.

3. Distinction from Bailment:

- The court emphasized the distinction between cases where possession is clearly handed over (as in a valet parking scenario) and cases where the car owner retains custody and control (as in this case). Without a transfer of possession, there is no bailment, and the car park owner has no duty to safeguard the vehicle.

This decision also illustrates how exclusion clauses in contracts, if properly communicated, can shield service providers from liability for loss or damage, even in situations involving potential negligence.

D. *Sydney Corporation v West* (1965) 114 CLR 481

Facts: Mr. West parked his car in a car park operated by Sydney Corporation. The car park used a ticketing system where patrons received a ticket upon entry. The ticket outlined the terms and conditions, which included an exclusion clause attempting to limit the operator's liability. When Mr. West returned to collect his car, he discovered it

had been fraudulently removed by an unauthorized person after being improperly released by the car park attendant.

Parking was at the direction of the attendant – the attendant controlled who could access the vehicle: control therefore obligation to take reasonable care

Mr. West sued Sydney Corporation, alleging that the car park was liable under the law of bailment for failing to safeguard his car.

Judgment: The High Court of Australia ruled in favour of **Mr. West**, finding that Sydney Corporation was liable for the loss of the car.

1. **Existence of Bailment:**

- The court held that a bailment relationship was created when Mr. West parked his car and received a ticket. The car park operator took possession of the car and exercised control over its safekeeping, which amounted to a transfer of possession required for bailment.
- The parking arrangement was not a mere licence to use the car park; rather, it involved a mutual understanding that the car park operator would safeguard the vehicle.

2. **Breach of Duty:**

- As bailee, Sydney Corporation had a duty to take reasonable care of the car. By negligently allowing the car to be removed by an unauthorized person, the car park operator breached this duty.

3. **Exclusion Clause:**

- The court found that the exclusion clause on the ticket did not effectively limit Sydney Corporation's liability. The terms were not brought to Mr. West's attention in a sufficiently clear manner to be enforceable, particularly as the loss resulted from the operator's negligence.

a **bailment relationship** exists when possession and control of a vehicle are transferred to a car park operator, even when the arrangement involves a ticketing system.

2.1.2. Duties of Bailor

- Not interfere with bailee's possession (depends on term of bailment. Bailor may be liable for trespass, conversion and breach of contract Duties of Bailor
- Inform bailee of dangers they are aware of. Where the bailee accepts possession of the goods after being sufficiently warned of their dangerous qualities, the bailor will not be liable for subsequent loss or damage suffered by the bailee (See ***Pivovarov v Chernabaeff (1978) 21 SASR 1***)

- Comply with terms of bailment (e.g. payment of agreed fee). Bailee has lien over goods to secure payment

2.1.3. Duties of a Bailee

1. Duty to take reasonable care of the goods – note that the bailee is not an insurer, only has to take reasonable care of the goods
 - a. Would consider the skills of the bailee
2. Duty to deliver the goods or deal with them as directed (unless unable where inability is not due to want of reasonable care.)
3. Not to depart from the terms of the bailment
4. To not dispute the bailor's title to goods

2.1.4. Obligation to Re-Deliver

- If the bailee is not obliged to return the goods, then no bailment has been created and no obligation to take reasonable care
- Goods may be delivered to someone other than the bailor. Obligation to re-deliver
- No bailment where different goods may be substituted: **Chapman Bros v Verco Bros & Co (1933) 49 CLR 406**
- However, goods may be altered and redelivered in a changed state: **Caltex Oil (Australia) Pty Ltd v The Dredge 'Willemstad' (1976) 136 CLR 539 ; Pangallo Estate Pty Ltd v Killara 10 Pty Ltd [2007] NSWSC 1528**

Goods may be re-delivered in a different form **Caltex Oil (Australia) Pty Ltd v The Dredge 'Willemstad' (1976) 136 CLR 539, Pangallo Estate Pty Ltd & ors v Killara 10 Pty Ltd [2007] NSWSC 1528**

2.1.5. Sub-Bailment

- Occurs where bailee transfers possession of goods to a third party for a particular purpose. Bailee is a sub-bailor to third party as sub-bailee.
- Sub-bailee must be aware they are bailee.
- May be permitted or prohibited by head/original bailment
- Sub-bailee owes same bailment duties to bailor as owed by the head bailee (subject to contract)
- Rights may be varied by contract between head bailee and sub-bailee (but subject to express or implied consent by bailor to the making of the sub-bailment on those terms, and not otherwise).