LPAB08_Commercial Transactions case notes

Case	Facts	Rule
Transfer of possession		
Transfer of possession refers to the act of transferring physical control or occupation of a property from one party to another		
What is bailment		
Bailment is the delivery of goods by one person (the bailor) to another (the bailee) for a specific purpose, under a contract that the goods will be returned or otherwise disposed of according to the bailor's directions once the purpose is accomplished.		
Ashby v Tolhurst [1937] 2 KB 242	In this case, the court held that a car park operator was not liable for the theft of a car because the operator did not take possession of the car; the relationship was one of license, not bailment. **Facts:** A car was left in a parking lot, and it was stolen. **Issue:** bailment relationship? **Decision**: The court found that the contract was one of bailment for reward based on the terms contained in the receipt. The defendant's negligence in handing over the car to a stranger without production of the ticket constituted a conversion by misdelivery. The words "owner's risk" did not fully exempt the defendants from liability.	
Council of the City of Sydney v West (1966) 114 CLR 481 Mere licence	The High Court of Australia held that the council was liable for the theft of a car from its parking station because it had taken possession of the car, creating a bailment relationship. **Facts:** A car was stolen from a parking station. **Decision:** The court held that this was not a bailment but a mere license. The absence of an attendant, exchange of keys, or security measures indicated that the defendant's use of the parking space was not a true bailment. The clause on the ticket reinforced this conclusion.	
Walton Stores v Sydney City Council (1968) 88 WN (Pt 2)(NSW) 153; (1968) LGRA 317 Onus of proof Mere license	**Facts:** An employee of the plaintiff parked his company car in the Goulburn Street Parking Station. A parking fee was charged, and a ticket was issued. **Issue:** Bailment or mere license **Decision:** Upheld Council v West above. Mere license. The absence of an attendant, exchange of keys, or security measures indicated that the defendant's use of the parking space was not a true bailment. Onus of proof is on bailor to prove bailment relationship existed and bailee must prove that reasonable care was taken by them proving the loss was not caused by any lack of care in their part and that the type of damage caused was too remote.	
WD and HO Wills (Australia) Limited v State Rail Authority of NSW; SRA v TNT CA [1998]	The court examined the liability of the State Rail Authority for damage to goods during transit, focusing on the terms of the contract and the extent of the bailee's duty of care. **Facts:** Goods were damaged during transportation by rail.	

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Bailment duties	**Decision:** The court found that the defendant had breached its duty of care as a bailee. The defendant was liable for the damage to the goods during transit
Matthew Short & Assoc P/L v Riviera Marine (International) P/L [2001] NSWCA 281	This case dealt with the issue of whether a bailee had breached its duty of care in relation to the storage and maintenance of a boat. **Facts:** The plaintiff's boat was damaged while in the defendant's possession for repairs. **Issue:** Liability? **Decision:** The court held that the defendant, as a bailee, had breached its duty of care. The defendant was responsible for the damage to the boat during the repair process.
Westpac Banking Corporation v Royal Tongan Airlines [1996] NSWSC 409	The court considered the liability of a bailee for the loss of goods and the application of exclusion clauses in the contract of bailment. **Facts:** The plaintiff's cargo was lost during air transportation by the defendant. **Issue:** Whether the defendant's actions constituted a breach of bailment duties. **Decision:** The court found that the defendant, as a bailee, had breached its duty of care. The defendant was liable for the loss of the cargo during transportation
Bailee Duty	
A bailee has a duty to take reasonable care of the goods and return them in the same condition as they were received, subject to any agreed terms	
Mitchell v Ealing London Borough Council [1979] QB 1 Take reasonable care	**Facts:** The council stored the plaintiff's goods after evicting her. **Issue:** Whether the council was liable in conversion for the stored goods. **Legal Principle:** The court considered the duty of care of a bailee. The council's storage of the goods, even though free of charge, created a bailment relationship. As a bailee, the council had a duty to take reasonable care of the goods. If the goods were later stolen, the council could be held liable for breach of this duty.
Houghland v RR Low (Luxury Coaches) [1962] 1 QB 694 Reasonable care	**Facts:** The plaintiff left his suitcase on a coach. The coach company stored the suitcase in their office. **Issue:** Whether the coach company was liable for the loss of the suitcase. **Legal Principle:** The court held that the coach company was liable as a bailee. Even though the company stored the suitcase in their office, they still had a duty to take reasonable care of it. The loss of the suitcase constituted a breach of this duty
Onus of proof	
In bailment cases, the bailee has the onus of proving that they took reasonable care of the goods and that any loss or damage was not due to their negligence.	
Hobbs v Petersham Transport Co (1971) 124 CLR 220	**Facts:** plaintiff (Hobbs) engaged the defendant (Petersham Transport Co) to transport a truckload of goods. During transit, the truck's axle fractured, leading to non-delivery of the goods. The plaintiff claimed that the defendant was negligent in handling the goods. **Issue:** The central issue was whether the defendant (the bailee) had breached its duty of care as a carrier. **Legal Principle:**

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	• Remedying damage caused by defective bailed goods
Pivovaroff v Chernabaeff (1978) 21 SASR 1	**Facts:** loaned onion sorting machine (without safety guard) and told them to keep kids away. Child was seriously injured. **Legal Principle:** • The bailor's duty includes ensuring that bailed goods are safe and fit for use. • Additionally, the bailor must warn of hazards associated with the goods. • In this case, Schirillo's failure to maintain safety precautions made him liable for the injury caused by the defective machine.
Sub Bailments	
A sub-bailment occurs when the bailee transfers possession of the goods to a third party, creating a new bailment relationship.	
Gilchrist Watt and Sanderson Pty Ltd v York Products Pty Ltd (1970) 44 ALJR 269 Legal grounding – can sue sub-bailee	**Facts:** The defendants were stevedores who had lost two cases of clocks. They received the clocks as sub-bailees of the shipowners. The shipowners owed a duty to deliver the clocks to the plaintiffs under the bills of lading **Held:** The court held that the original bailor could sue the sub-bailee for loss or damage to the goods. The defendants were held liable for the loss of the clocks as sub-bailees.
Pioneer Container KH Enterprise (cargo owners) v Pioneer Container (owners) [1994] 2 ALL ER 250	**Facts:** The plaintiffs were owners of goods laden on the defendant's Taiwanese container ship, the KH Enterprise. • The KH Enterprise sank off the coast of Taiwan following a collision with another ship, the Oriental Faith. • The sub-bailment-on-terms issue arose in relation to two groups of plaintiffs. • One group (the "Hanjin plaintiffs") had goods shipped from the USA to Hong Kong via Taiwan. • The other group (the "Scandutch plaintiffs") had goods shipped from Taiwan to ports in Europe and the Middle East via Hong Kong. • The defendant issued feeder bills of lading to the original carriers (Hanjin and Scandutch). **Held:** The court found that the sub-bailee was liable to the original bailor for loss of goods, even though the sub-bailment was unauthorized. • When the defendant voluntarily took possession of the plaintiffs' goods, it assumed an obligation to take due care for them as a bailee. • Sub-bailees owe the owners of the goods the duties of a bailee. • The decision in this case clarified sub-bailment-on-terms principles.
Cambridge v Anastasopoulos [2012] NSWCA 405 Consent by bailor	**Facts:** The case involved negligence and bailment. Concurrent wrongdoers were sued for negligence and breach of duty as bailees. **Held:** • Consent from the bailor is necessary for bailment. • Some modern courts and commentators, however, deny that bailor's consent is required. • Bailees must voluntarily assume possession of the goods. • Concealed items inside other items may affect consent (e.g., receiving unsolicited goods).

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Australian Consumer law	
McBride v Christie's Australia Pty Ltd [2014] NSWSC 1729	**Facts:** dispute over sale of painting. Potential forgery. Auction house was silent about fogery concerns. **Held:** the court examined the authenticity of the painting and the responsibilities of the parties involved in its sale. Christie's was found liable for misleading or deceptive conduct under the Australian Consumer Law. The case underscores the importance of accurate representations in art sales and the obligations of sellers to provide truthful information to consumers.
Misleading or deceptive conduct	
Conduct that misleads or deceives, or is likely to mislead or deceive, is prohibited under Australian law.	
Trade and commerce	Misleading or deceptive conduct must occur in trade or commerce to be actionable under Australian law.
Concrete Constructions (NSW) Pty Ltd v Nelson (1990)	**Facts:** Nelson worked for Concrete Constructions. His foreman made false representations about how air-conditioning shafts were affixed on a building site. Nelson was injured when he fell down an air conditioning shaft that was not affixed as described. **Held:** The case involved the scope of the "in trade or commerce" element for misleading and deceptive conduct under section 52 of the Trade Practices Act (now section 18 of the Australian Consumer Law). Clarified that "trade or commerce" refers to conduct that occurs within activities or transactions bearing a trading or commercial character. Conduct divorced from any relevant trading or commercial relationship does not constitute conduct "in trade or commerce" .
E v The Australian Red Cross Society (1991) 27 FCR 310 Charity no	**Facts:** The Australian Red Cross Society refused to accept blood donations from E due to his sexual orientation. **Legal Principle:** The court held that the Red Cross's conduct was not in trade or commerce. The provision did not apply to non-commercial, charitable activities like blood donation services.
Pears v Balzer (1996) 137 ALR 180	**Facts:** Pears purchased a car from Balzer. The car had undisclosed defects. **Legal Principle:** The court found that Balzer's conduct occurred in trade or commerce because it related to the sale of goods. The Australian Consumer Law applied, and Balzer was liable for misleading conduct.
Walker v Sell (2016) 245 FCR 308; [2016] FCA 1259 Private one-off sale not included.	**Facts:** Lyle Walker entered into a contract with Glen Sell to buy a car for $135,000. The car was believed to be a genuine 1970 GTHO model Ford Falcon Sedan. After taking possession, Walker discovered that the car was not genuine. **Held:** private one-off sale so not trade and commerce as it was not done in the course of a business activity or arising in a business context
Williams v Pisano (2015) 90 NSWLR 342; [2015] NSWSC 177	**Facts:** Williams purchased a property from Pisano. Pisano failed to disclose significant defects. **Legal Principle:** The court held that Pisano's conduct occurred in trade or commerce (property sale), and the Australian Consumer Law applied. Pisano was liable for misleading conduct
Silence can be conduct	**Silence can be misleading or deceptive if there is a "reasonable expectation" that disclosure should occur. In other words, when parties are situated in circumstances where silence should be broken, failure to disclose relevant information can be legally problematic.**

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