Alan R. Clough Mill Ltd v Martin

Reminder: mention conversion/definition if it arises.

— Contracts for the sale of goods: ss 20 and 22 SGA. “Delivers a part with possession of the goods, he/ she purports on title without title). Until title passes for the goods. Such a clause usually provides that risk passes to B upon delivery.” The goods changed.

— Possession remains with buyer while title is with the seller until title passes. Until title passes, the goods remain “our property” until ALL debts owed to us on any legal or equitable grounds are paid. (this one retains ownership until the price of goods is paid)

— Unless court rejects the claim of proceeds of sale first, no one else can (but you still have an interest in the money. Interest: 

— Consensual or not result is the same. Co-ownership = general solution when it loses its identity (look at alloys)

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— Intermixed – “confusion liquidus” = liquids or “commixtion” = dry goods. By consent:

— Mixed simply into one indistinguishable whole. (As oil mixed with B’s oil). The resultant product is presumed to be owned by A and B as “contributing owners” in common in proportion to the value of their materials (by weight)

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The Acquisition of Ownership

NEMO DAT QUOD NON HABET

“NEMO DAT QUOD NON HABET” (in Latin), which translates to “One cannot give what he does not have.”

Case study in legal ownership:

0.  Is there a Retention Clause? State s20

1. What kind of clause is it?

2. What category do the goods fit into?

(1) Simple Romalpa Clause – Possession and property remain, usually risk passes to the buyer (i.e. ownership) remains in A until the price is paid in full. (This one retains title until the price of goods is paid)

(2) All monies retention-of-title clause – a retains title until ALL outstanding debts are paid. (This one retains title until the proceeds of sale are paid)

(3) Extended retention-of-title clause: A retains title even after B has used the goods in the manufacturing process; or A asserts title to funds received by B after selling the goods to a third party (Retention interest in proceeds of re-sale)

The Acquisition of Ownership

Is there Ownership?

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The transfer of ownership involves the transfer of property or intangible possession. It can be a transfer of title or a transfer of possession.

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The results of the police executing a search warrant over the land = the loader stole packages containing the goods in the airline arm property.

The state = the workers found bank notes in a safe.

The finder has better control but is not a bailiff.

The finder legalises the property (in executive lounge).

The most important step is...
**Possession vested in interest but not in fact:**

- A right to take actual possession, which right may be "immediate" or "qualified" (i.e., a future or renewable holding interest).

**Defeat** (tort): Refusal to comply with a reversion of goods.

3 criteria:
- Bailor request the return of the good and must be entitled to the request (legitimately depositing).
- Bailor has to actually refuse to return the goods.
- Must have an unreasonable refusal. A bailor of a right is not enough.

(B) **Constructive:**
- "Implied," "symbolic" possession: no actual physical possession but I have the means of possession.
- Possession is effected by delivery of the means of control (e.g., the key to a safe deposit box).
- Making Gifts (Intervivos):
  - Simply made by expression by intention to make gifts or delivery of the gift.
  - Ex: grand piano - gifted it - once it passes over gift. How do I give you my piano if I can't pick it up? = this has to with symbolism.

**Lock v Heath**

Husband gave gift to wife - wifeTesla and stuff to kids - but sheriff came to take them away. But he couldn’t because it was under the wife and not the husband because he passed it on to the wife as a gift and not as a bailee. So it was the daughter’s furniture as it was in the wife’s will (this always happens). Delivery of one to the instrument (which) X - this is - the court didn’t believe this.

**Bailment**

**Answer structure:**

**Step 1: What is the bailor required to do?**

**Step 2: What is the baillee's duty?**

**Step 3: What is the standard of care owed to the bailor?**

**Step 4: What defence is available?**

**Type of Bailment (Fits into Shipbuilder Test)**

3. Debt: Relationship of debtor and creditor, i.e., a personal obligation for the repayment of a fixed sum of money.
4. Trust: "Bailment on trust."

**Step 1: Shippers Ltd v Benson Test**

**Are the Bailment Steps from Shippers Ltd v Benson Satisfied?**

- Did D have actual possession of the goods?
- Did D meet that standard of care and discharge it?
- Was there an exclusion clause?
- Is there an alarm system?
- Did D provide the attendant with keys? Did D have a contract with the attendant?
- Did D unilaterally remove the boat without paying a fee?

**Shared Occupation:**

Court said: where both parties are present time to time - it requires a subtle approach for a standard of proof (onus of proof). Here bailor was frequently on the premises and had duties himself. Court said have to be careful giving too high a burden on P.

**Facts:**

While boat was stored fire broke out and the launch was destroyed. P sued D for breach of responsibilities of bailor. Usually it’s unambiguous if goods have been delivered. Here both parties had access to the ship so it was a Shared Occupation of Premises + unambiguous.

**Step 2: What is the standard of care owed to the bailor?**

1. Determine the standard of care owed to the bailor.
2. This is working out what kind of bailment this is (gratuitous/rewarded/interest).
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**Standard of care** - owed by the bailor to the tenant.

**Historically it mattered a lot how a reward or gratuitous bailment affected standard of care, because of negligence issues and modern approach has been to deem negligence as a defense and to favor a general negligence-style duty based on the particular circumstances. So consider each case on its individual facts and merits.

**Negligence:**

- Case by case general negligence standard test.

(A) **Bailors for Reward:**

- Exercise of care for the safety of the chattel in the circumstances.

(B) **Gratious:**

- Care that a reasonable person would use in looking after his or her own chattels of the same kind and in the same circumstances.

**Southland Hospital v Perkins**

Conway v Cockram Motors - this is the modern tendencies: The obligations of a gratuitous bailee and reward are so nearly identical that it is unnecessary to identify to see where the respondent fell. But in turn Justice Hill and Millett J said that the bailor had an obligation to take reasonable care. The obligations of a gratuitous bailee and reward are the same.

**End:**

1. Pitt Son (a Bankrupt) - no active delivery no change of possession.
2. Chapman Vros v Verco Bros & Co: Farmers lost because not identifiable so you can’t get it back and it is not a bailment but it wasn’t)
3. Chapman brothers (looks like a bailment but it wasn’t).
4. The obligation of a gratuitous bailee and reward are the same. If you are in a position to offer a reward or a gratuity then you have to be accountable for the safety of the chattel in the circumstances.

**Southland Hospital v Perkins**

**Shipbuilder Test**

- Bailey assumes sufficient control over the goods.
- There was consent by the Bailor.
- Bailey car park facility - sufficient control of the car to constitute a bailor. The plaintiff paid a fee to leave car at the facility. The car was stolen due to the negligence of the employee who gave it to them.

**Ex:**

- Taking a car to garage for work - storing the car is incidental because your paying for the car to be looked after and not the fact that it becomes stored.
- Here it was apart of the service.

**Note:**

- A contractual bailment would arise when it’s stated in contract.
- Taking a car to garage for work - storing the car is incidental because your paying for the car to be looked after and not the fact that it becomes stored.
- Here it was apart of the service.

**No active delivery no change of possession.**

- P comes back and looks at the car. He says the car was stolen because he didn’t have keys to lock the car if not pick it up.

**Previous Case:**

- Pitt Son (a Bankrupt) - no active delivery no change of possession.
- Chapman Vros v Verco Bros & Co: Farmers lost because not identifiable so you can’t get it back and it is not a bailment but it wasn’t.
- Chapman brothers (looks like a bailment but it wasn’t).

**Note:**

- There is a practice amongst farmers that wheat would be taken to markets and they would sell the wheat. Wheat was just stored there. Problem was that it wasn’t being stored in an i