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law outlines

Property
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Ninth Edition

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Wolters Kluwer

BAILMENTS

A. Bailments: A bailment is the rightful possession of goods by one who is not their owner.

B. Duty during custody: During the time that the bailee (the person holding the goods) has the object in his possession, he is not an insurer of it. He is liable only for lack of care, but the precise standard depends on who is benefitted:

1. Mutual benefit: If the bailment is beneficial to both parties, the bailee must use ordinary diligence to protect the bailed object from damage or loss.

Example: A hotel which takes guests' possessions and keeps them in its safe is liable for lack of ordinary care, such as where it fails to use reasonable anti-theft measures.

2. Sole benefit of bailor: If the benefit is solely for the bailor's benefit, the bailee is liable only for gross negligence.

3. Sole benefit of bailee: If the bailment is solely for the benefit of the bailee (i.e., the bailor lends the object to the bailee for the latter's use), the bailee is required to use extraordinary care in protecting the goods from loss or damage (but he is still not an insurer, and is liable only if some degree of fault is shown).

4. Contractual limitation: The modern trend is that the parties may change these rules by contractual provisions. But even by contract, the bailee generally may not relieve himself from liability for gross negligence.

a. Acceptance: Also, for such a provision to be binding, the bailor must know of it and "accept" it.

Example: P puts his car into a commercial garage run by D. The claim check asserts that D has no liability for negligence. The provision will be binding only if D can prove that P knew of and accepted this provision — D probably cannot make this showing, since P can argue that he regarded the claim check as merely a receipt.

BAILMENTS CONTINUED

A. What constitutes a bailment: A bailment can be defined as the rightful possession of goods by one who is not their owner. The bailee (the person holding the goods), by virtue of his possession, owes a duty of care to the bailor (the owner). This duty, which varies depending on the circumstances.

B. Creation of bailment: Some cases state that a bailment only arises where the parties make a valid contract for it to exist. However, most courts agree that no formal contract is actually necessary; for instance, consideration is not a requirement. Nonetheless, there are two requirements which must be met before a bailment arises: (1) the bailee must have actual physical control over the object; and (2) he must intend to assume custody and control over it.

1. Physical control: The bailee must come into actual physical control of the bailed property.

a. Parking lot cases: The issue of actual control arises frequently in parking lot cases. If the parking is done by the parking-lot attendant, and the car owner turns over the key, actual control will almost always be found. But in a “park-and-lock” lot, where the car owner parks himself and keeps his own key, most courts have found that the lot never obtains actual control of the car.

i. Presence of attendants: But even in the park-and-lock case, if the lot provides substantial attendant presence, and makes implied or express assurances that security will be maintained, the court may conclude that control has passed to the lot.

C. Rights and duties of bailee: The precise duties owed by the bailee depend upon a number of factors, including who is benefitted by the bailment, how the damage to the bailed property arises, and the presence of any contractual limitations.

1. Duty during custody: During the time that the bailee has the object in his possession, he is not an insurer of it. He is liable for loss or damage occurring to the object only if he is shown to have exercised some lack of care. The precise degree of carelessness which will be required before the bailee is liable, however, traditionally has turned upon who is benefitted by the bailment.

a. Mutual benefit: If the bailment is mutually beneficial to both parties, the bailee must use ordinary diligence to protect the bailed object from damage or loss.

i. What is “mutual benefit”: There is usually not much question about whether the bailment is for the bailor's benefit. As to the benefit to the bailee, such benefit of course exists when the bailee makes a charge for the bailment itself. But even beyond this, courts have been quick to find benefit to the bailee if the bailment is done as part of other services being rendered to the bailor, for which the bailor is paying (e.g., a hotel that stores jewelry for hotel guests).

b. Sole benefit of bailor: If the benefit is found to be solely for the bailor's benefit, the bailee is generally held to be liable only for gross negligence.

c. Sole benefit of bailee: Conversely, if the bailment is solely for the benefit of the bailee (i.e., the bailor lends the object to the bailee for the latter's use), the bailee is required to use extraordinary care in protecting the goods from loss or damage. (But even in this situation, the bailee is not an insurer, and some degree of fault must be shown before he will be liable.)

2. Contractual limitations on liability: Bailees, particularly those operating in a commercial context, frequently attempt to modify their duty of care, or the extent of their liability, by contractual provision.

a. Modification of duty of care: Many courts have refused to allow a bailee to contract to exempt himself from liability for his own negligence. But other courts, and the Restatement 2d of Contracts § 195, allow such agreements as long as they do not relieve the bailee from liability for “gross negligence” or “willful and wanton” carelessness.

b. Limitation of liability: Virtually all courts allow the parties to place a contractual limit on the extent of the bailee's financial liability if he does violate the relevant standard of care. However the limitation must be reasonable under the circumstances, and, again, it must not protect the bailee from liability for his willful or gross negligence.

c. What constitutes a contract: Both modification of the standard of care and limitation of liability can only be accomplished by a contract, which of course requires the mutual assent of bailor and bailee. This means that the bailee cannot accomplish either of these goals merely by posting a sign limiting his liability; he must show that the bailor saw and accepted the terms of the sign.

i. Ticket or claim check: Frequently, the bailee prints terms limiting his liability on the claim check, receipt or ticket which is given to the bailor. If the bailee can show that the bailor either was, or reasonably should have been, aware of the terms on the document, the printed terms will be binding. However, it is generally difficult for the bailee to show actual knowledge on the bailor's part, and most American courts have held that one in the bailor's position might reasonably have regarded the document as a mere token for identification purposes, not as a contract. In that event, the terms are not binding, and usual principles of liability apply.