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## Bailments and Carriers

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*Bailee is not an insurer*  
 1. A sends 100 bushels of wheat to a miller to be ground into flour. The miller receives the wheat and grinds the same, but before he sends A the flour, the mill is destroyed by fire by spark from a passing engine. Upon whom does the loss fall as between A and the miller, and why?

Since the bailee was not at fault the loss falls on the owner of the property. Reason is that the bailee is not an insurer, and he has violated no duty which he owed the owner.

*Bailment for mutual benefit of B or Bee - degree of care owed*

2. You hire a horse from a liveryman. What degree of care is owing by you with reference to the treatment of the animal?

This is a bailment for the mutual benefit of bailor and bailee. In such cases the degree of care is ordinary care, i.e. that amount of care which a reasonable, prudent man would ordinarily use under such circumstances.

3. What is the difference, if any, as to the common law liability of an inn-keeper and a sleeping car company with reference to the loss of baggage by a guest or passenger?

At common law innkeepers by the weight of authority were liable as insurers with the same exceptions applicable to common carriers. Sleeping car companies at common law are neither carriers nor innkeepers, and their liability is based on negligence. See G#181,361. Most cases hold that an innkeeper's liability is not limited to baggage. 32 C.J.549.

*Bailment for mutual benefit - must exercise ordinary diligence or care*

4. Jones pledges a valuable diamond with Smith as security for a loan. It is taken from Smith by superior force. Whose loss is it? Why?

This is a bailment for the mutual benefit of both parties. Hence, if the bailee has exercised ordinary diligence, he has violated no duty and the loss would fall on the bailor who has the legal title, and beneficial ownership.

*Bailment or sale?*

5. A delivers to B, a miller, one hundred bushels of wheat, the flour and bran made therefrom less legal toll to be delivered to A; is this a bailment or sale?

Since the identical property is to be returned, though changed in form, it is a bailment.

*Bailment or sale?*

6. A delivers to B, a miller, one hundred bushels of wheat for which B is to deliver to A twenty-one barrels of flour made from any wheat he has; is this a bailment or sale?

This is a sale. The miller can do with the wheat as he pleases, so title to the wheat has passed. Note that neither the particular wheat, nor even wheat of the same quality are to be returned.

*Measure of care owed by Hotel proprietor to guest -*

7. The goods of a commercial traveler are stolen from a sample room of a hotel where he is stopping as a guest. What is the measure of care required of the proprietor in such a case?

Goddard states the rule as follows, "--it is enough if he (the guest) has the property as agent, servant or bailee of the owner." G152. According to the majority rule the innkeeper would be liable as an insurer. V35-14 modifies the common law rule to a certain extent, "In the case of loss by fire or overwhelming disaster the keeper of any hotel--shall be answerable to his guests or boarders for ordinary and reasonable care in the custody of their baggage or other property, but in no case shall the extent of his liability exceed two hundred and fifty dollars to any guest or boarder, unless it shall clearly appear that the said fire or disaster was caused by the act, neglect, or default of said keeper, or his servants."

*Proper action? Tort or K*

8. A stage driver, without compensation, agrees to deliver to a railroad station a barrel packed with valuable chinaware. As a result of careless driving the contents of the barrel were so broken as to be of no value. What would be the proper action to test the driver's liability, and would the facts stated warrant recovery?



A tort action--trespass on the case. Since there was no consideration an action ex contractu would not lie. Since this was a bailment for the sole benefit of the bailor only slight care was required of the bailee. If he knew the barrel contained very valuable china and he was grossly negligent there would be a recovery; otherwise not.

*Bailment for mutual benefit - Livery Stable Keeper*

9. A livery stable keeper, having charge of a horse belonging to B, tied it in the usual and customary manner, but the horse got loose in the night and was injured by being kicked by another horse. Is the livery stable keeper liable to B for the injury to the horse? Give reason for your answer?

No. This is a bailment for the mutual benefit of both bailor and bailee, and hence only ordinary care is required of the bailee.

*Care owed by RR to employed infant*

CARRIERS

1. A, an infant, 19 years of age, obtained employment as fireman with the N.&W.Ry.Co. by falsely representing that he was over 21 years of age, the company having a rule forbidding the employment of infants in train service. A was injured by negligence of the company under circumstances which, had he been over 21 years of age, would have entitled him to recover damages. What relation existed between A and the railway company, and what degree of care did the railway company owe him?

In 107 Va.515 recovery was denied. The infant was a trespasser, and while he had apparent consent to be where he was his fraud avoided the consent. Hence the only duty of the company was to refrain from injuring him purposely. Other states have held that the contract of service was merely voidable, and until avoided, the relation of master and servant existed. See note p.607, Woodruff (3rd Ed.) Cases on Domestic Relations. Also 39 C.J. 110 of RES.

*Liability of common carrier to: 1) passengers 2) goods*

2. State the measure of liability of a common carrier; (a) As to passengers, (b) As to goods; and why is there a difference?

A common carrier owes passengers the "highest degree of practical care" or "extraordinary care." It is an insurer of goods with five exceptions (1) Act of God (2) Act of public enemy (3) Authority of law (4) Inherent nature of the goods (5) Negligence of shipper. The reason for the greater liability in the case of freight is (1) That the shipper cannot go along with it and hence, if the rule was different the door for fraud would be thrown open (2) the passenger has a certain amount of control over himself whereas the goods are at the mercy of the carrier.

*Owner's measure of damages due to carrier's injury to goods*

3. A, at Roanoke, ships a Ford automobile to B, at Richmond, via N.&W.Ry.Co. When the machine arrives at Richmond, it is discovered that the two front wheels have been broken and knocked off in transit, while in the carrier's control. B declines to accept shipment, and sues the railway company for the value of the machine. What is the rule as to his right to do this?

10 C.J. 396 states that where the goods are injured through causes for which the carrier is responsible, the owner of the goods is entitled to recover the difference between the value of the goods at the time and place of delivery in an uninjured condition, and their value in the depreciated condition, less freight charges if they have not already been paid. Note that injury to goods does not amount to conversion, and hence the owner cannot treat the carrier as a new owner and sue for the whole value.

*Rule of Damages - Hadley v. Baxendale - those which pty reasonably had in mind*

4. A, a carpenter at Hopewell, ordered a box of tools to be shipped to him via the Southern Express Company, by the Jones Hardware Company at Richmond, Va. The Jones Hardware Company immediately shipped the box of tools, but in some manner they were delayed in transit, and did not reach A until sixty days later. At the time of ordering the tools, and at the time they were delivered to the Express Company, A had entered into a contract of employment at Hopewell, by which he was to receive \$20 per day, as a very high-grade carpenter; but as he was unable to obtain other tools in Hopewell, he was unable to fill his contract, and, in fact, unable to get any work at all until the box of tools arrived. When the tools did



arrive, he thereupon entered suit against the Express Company for \$1200 representing the sixty days' lost time at \$20 per day. Can A recover the damages as claimed? Give reason.

Following the rule of damages laid down in the famous English case of Hadley v. Baxendale the carrier would not be liable for those special damages unless he had notice that its delay would cause such damages. The damages recovered must be those which the parties reasonably had in mind at time the contract was made if the contract should be broken.

*Proof necessary for passenger to make out prima facie case — Res Ipsa Loquitur*

5. A is a passenger upon a street car of the Roanoke Ry. and Electric Co. As the car is crossing a bridge over a creek, the bridge collapses, and A is injured. He brings suit against the company to recover damages. What must A prove in order to make out a prima facie case?

Under the doctrine of res ipsa loquitur he need only prove (1) That he was a passenger (to establish a duty) (2) that the bridge collapsed (3) that he was injured (4) as a result of the collapse. Negligence would be inferred from the above. Of course this inference might be rebutted by the company.

*Duty Carrier owes passenger in Alighting*

6. Discuss briefly the duty, if any, that a carrier of passengers owes to a passenger with reference to assisting the passenger to alight from the car or vehicle.

See 10 C.J. 931 et seq. — In the absence of circumstances showing that a passenger requires assistance, there is no duty to assist. But if assistance is given the carrier is liable for failure to use reasonable care. Infirm persons who are accepted as passengers with notice of infirmity are entitled to assistance.

*Legal Effect of Bill of Lading — on carrier's liability*

7. Messrs. Copp & Arty are shippers of live stock, and they deliver to the Southern Ry. Co., at Edinburg, Va. a load of cattle consigned to themselves at Baltimore, Md. They verbally instruct the agent to route the cattle via B. & O. Ry. Co. The agent, however, routes them differently, and sets forth the latter routing in the bill of lading, which is duly signed by all parties. There was a delay in the arrival of the cattle, which would not have occurred had the cattle been routed as the agent was verbally instructed. Discuss briefly the liability of the company.

A bill of lading is both a contract and a receipt. In so far as it is a contract the parol evidence rule applies, and unless there was fraud or mutual mistake oral evidence would not be received to vary the terms of the written bill of lading. If the delay is not due to the negligence of the company there can be no recovery. Note — Where a carrier sends the goods on a different route than the agreed one he becomes absolutely liable for loss or injury to the goods. Even act of God is no defense unless perhaps proof is conclusive that goods would have been lost anyway.

*Waiver of Rules or Regs. by Master*

8. Amos Johnson, an engineer, is killed as the result of his failure to observe a reasonable rule of the railway company which had been promulgated for his safety. At the trial of the case, his administrator contends that this rule had been frequently and habitually violated to such an extent as to constitute a waiver on the part of the company. What elements are necessary to be proved before the company will be deemed to have waived the observance of the rule?

39 C.J. 477. "Where the rules and regulations established by the master are habitually disobeyed with the knowledge or express consent of the master, or have been disregarded without his express consent in such a manner and for such length of time as to raise the presumption that he must have become aware of such habitual disregard and approved the same, or a practice has been established by the master inconsistent with such rules and regulations, such rules and regulations will be regarded as waived, and the master cannot rely upon them to defeat an action by an injured employee."

Citing 118 Va. 161.

*Rules re: Carrier exempting self from liability by contract — Va + Fed.*

9. A railroad bill of lading for goods shipped from Richmond to Baltimore provides that, in consideration of the reduced freight rate given on shipments of that character, it is agreed that the railroad company shall not be liable for loss or



damage to said goods to a greater amount than the value of said goods as stated by the shipper in the bill of lading. The shipper values the goods in the bill of lading at \$100, whereas their real value is \$800. The goods are totally lost through the negligence of the railroad company, and suit is brought for their full value. Can the railroad company successfully avail itself of the said provision of the bill of lading? Art. 11 provides, "No contract, receipt, rule, or regulation shall exempt any such common carrier railroad, or transportation company from the liability of a common carrier which would exist had no contract been made or entered into." But note that the shipment in question is an interstate one. According to the great weight of authority and the Federal law (applicable to this case) such an agreement is valid provided the shipper had an opportunity to ship as at common law, and is fair, open and reasonable, and made for the purpose of furnishing the basis for the liability assumed. The consideration is the reduced rate. See 100 J.165 et seq. Since the agreed valuation is regarded as a liquidation of the damages it is immaterial that the loss resulted from the carrier's negligence. Note: Contracts exempting a carrier from its own negligence are now invalid throughout the U.S. Even in Virginia if a carrier has one rate for a value of \$1,000 and over, and another rate for less than \$1,000 and the difference in the rates is reasonable and a shipper values the goods at \$900 when they are worth \$3,000 in order to get the lower rate he can collect only \$900 if the carrier reasonably and honestly supposed that \$900 was all the goods were worth.

*Care owed by RR to its repairmen & to strangers on tracks*

10. What care, if any, is due by a railroad company in running of its trains, (a) to one of its own employees engaged in repairing its tracks? (b) to a stranger walking, without permission, on its right of way? *Ans: See p. 18*

(a) Reasonable care under the circumstances, i.e. that amount of care which an ordinary prudent man would use under the circumstances. This is a question of fact for the jury, (b) he & the company only owes a duty not intentionally, wantonly or recklessly to injure the trespasser.

*Ticket is conclusive between conductor & passenger*

11. A asks and pays for a ticket to Lynchburg, but the ticket agent by mistake gives him a ticket good only to Bedford. After they pass Bedford the conductor demands fare to Lynchburg, and despite A's explanations puts him off on his refusal to pay. What are A's rights and remedies?

There is a sharp conflict of authority upon this point. According to one line of cases (and this is the rule in Virginia - 105 Va. 729) the passenger should pay the extra amount or get off, and if he does not he cannot recover damages growing out of the ejection, though of course he can hold the company liable for the negligence of the agent and later get his excess back. The conductor cannot be expected to believe everything told him. Moreover the safety and comfort of others demand this line of conduct. As between conductor and passenger the ticket is said to be conclusive. According to another line of cases a man can stand strictly on his rights, and if through the fault of an agent he gets the wrong ticket and he notified the conductor of that fact the railroad acts at its peril in ejecting him.

*Validity of stipulation that RR not liable unless claim made w/in 30 days*

12. A railroad bill of lading for goods shipped from Lynchburg to N.Y. provides that the railroad shall not be liable for loss or injury to the goods unless claim therefor is made in writing in thirty days. Is this stipulation valid? Why?

Carriers may make reasonable rules and regulations. A 30 day limitation is on the border line. If this means 30 days from issue of bill of lading it would probably be held invalid for a portion of time will be consumed in carrying the goods. If it means within 30 days of receipt of goods a number of Virginia cases indicate that such a rule is a reasonable one since, considering the magnitude of the carrier's transactions, a short time is necessary for its protection, and such time would not ordinarily work any unreasonable hardship on shippers. See 10 C.J. 331.

*Care owed by RR to one accompanying passenger for assistance in boarding*

13. What care, if any, is due by a common carrier to a person accompanying an in-



CARRIERS (continued)

tending passenger to a train in order to assist her in getting aboard?

Such a person is a licensee, and a carrier owes a duty of using ordinary care to avoid injuring him. 114 Va. 173. Note: The relationship of passenger and carrier is generally regarded as having commenced at the moment the passenger enters the carrier's premises for the purpose of purchasing a ticket for the journey provided he does so within a reasonable time before the journey is to start.

*Contributory negligence as bar - also proximate cause*

14. A passenger boards the wrong train through the negligence of an employee in misdirecting him. After the train starts he discovers his mistake, tries to jump off and is injured. Can he recover? Why?

No. His contributory negligence would be a bar. It is also doubtful if the agent's misdirection could be considered a proximate cause of his injury.

*Break of duty of carrier to deliver goods in good condition*

15. At what place does the break of duty of a common carrier to deliver goods in good condition take place?

One may always sue the carrier on whose line the goods were damaged. By the Carmack amendment the initial carrier is made liable. This amendment applies only to interstate commerce. There is also a presumption that the loss occurred on the terminal line, but this presumption is rebuttable.

*Validity of carriers & limiting liability*

16. Is a contract with a common carrier limiting its liability to a sum less than the actual value of the article shipped, in consideration of a reduced rate, a valid and binding contract?

Not in Virginia in intra-state commerce. See answer to Q.9.

*When does RR's liability as a carrier become that of a warehouseman*

17. When does a railroad company's responsibility for goods shipped cease as a carrier and the company become liable as a warehouseman?

After the consignee has been notified and he has had a reasonable time within which to claim his goods. This is the so-called Michigan rule and is in force in Virginia. See 109 Va. 184, 189. According to the Massachusetts rule the carrier's liability ceases as soon as goods are put in a suitable place for delivery. See G263 et seq. and 10 C.J. 234.

*Rt. of action of traveler on a free pass*

18. A traveler on a free pass is injured by the negligence of the carrier (1) What is the current of authority as to his right of action? (2) Is Virginia in accord with the current of authority or not?

10 C.J. 873. "One who is accepted for transportation as a passenger without any compensation is nevertheless entitled to the same degree of care--for his safety and protection as the carrier owes to paying passengers, unless--he is riding upon a special agreement by which he assumes the risk of injury from the negligence of the carrier." 456-119. "No agreement made by a transportation company for exemption from liability for injury or loss occasioned by its own neglect or misconduct as a common carrier shall be valid." This has been held to prevent a carrier from defending on the ground of agreement even in case of a free pass. See 136 Va. 626 and 104 Va. 654, 647. All jurisdictions hold that one cannot exempt oneself from liability for gross negligence.