

A Rule Adumbrated: Bailment on Terms

Authors : David Gibbs-Kneller

Abstract : Only parties to a contract can enforce it. This is the privity of the contract. Carriage contracts frequently involve intermediated relationships. While the carrier and cargo-owner will agree on a contract for carriage, there is no privity or consideration between the cargo-owner and third parties. To overcome this, the contract utilizes 'bailment on terms' or the rule in Morris. Morris v C W Martin & Sons Ltd is authority for the following: A sub-bailee and bailor may rely on terms of a bailment where the bailor has consented to sub-bailment "on terms". Bailment on terms can play a significant part in making litigation decisions and determining liability. It is used in standard form contracts and courts have also strived to find consent to bailment on terms in agreements so as to avoid the consequences of privity of contract. However, what this paper exposes is the false legal basis for this model. Lord Denning gave an account adumbrated of the law of bailments to justify the rule in Morris. What Lord Denning was really doing was objecting to the doctrine of privity. To do so, he wrongly asserted there was a lacuna in law that meant third parties could not avail themselves upon terms of a contract. Next, he provided a false analogy between purely contractual rights and possessory liens. Finally, he gave accounts of authorities to say they supported the rule in Morris when they did not. Surprisingly, subsequent case law on the point has not properly engaged with this reasoning. The Pioneer Container held that since the rule in Morris lay in bailments, the decision is not dependent on the doctrine of privity. Yet the basis for this statement was Morris. Once these reasons have been discounted, all bailment on terms rests on is the claim that the law of bailments is an independent source of law. Bailment on terms should not be retained, for it is contrary to established principles in the law of property, tort, and contract. That undermines the certainty of those principles by risking their collapse because there is nothing that keeps bailment on terms within the confines of bailments only. As such, bailment on terms is not good law and should not be used in standard form contracts or by the courts as a means of determining liability. If bailment on terms is a pragmatic rule to retain, it is recommended that rules governing carriage contracts should be amended.

Keywords : bailment, carriage of goods, contract law, privity

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