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BAILMENTS vs. SPACE LEASES: A Traditional Model and a Choice for Some Industries

John H. Shannon
&
Richard J. Hunter, Jr.
Stillman School of Business
Seton Hall University

Abstract

The coin-operated amusement industry is composed of 3,588 companies and employs an estimated 300,153 individuals. Locations operate coin-operated amusement devices such as juke boxes, pinball machines, mechanical games, slot machines (where legal), and other similar types of amusement equipment. Amusement arcades and parlors and video game arcades are included in the industry. A vendor in the amusement, music, or vending machine industry traditionally leases equipment to a location or vendee and typically shares revenues under a formula agreed upon by both parties. A second model, however, involves the owner of the equipment leasing a space from the site owner in which the vendor places its equipment and enters into an agreement relating to maintenance and allocation of revenues.

Questions of liability arise should a piece of equipment be damaged at the location or should a piece of equipment prove to be defective or injure a user at a location. This paper will discuss these issues in light of traditional bailment law and will also discuss questions relating to liability in terms of rules developed concerning space leases by referencing various professional and academic sources, as well as important case law precedents.

Key words: bailment, Act of God, warehousing, common carriers, exculpatory clause, space lease

1. Introduction:

The coin-operated amusement industry generated $913.92 in revenues in 2020, a figure which is expected to grown to more than $1.166 billion by 2026. The industry is composed of 3,588 companies and employs an estimated 300,153 individuals (NAICS, 2021). Locations operate coin-operated amusement devices such as juke boxes, pinball machines, mechanical games, slot machines (where legal), and other similar types of amusement games and equipment. Amusement arcades and parlors and video game arcades are included in the industry (Kocurek, 2015). A vendor in the amusement, music, or vending machine industry traditionally *leases equipment* to a location or vendee and typically shares revenues under a formula agreed upon by both parties. A second model, however, involves the owner of the equipment *leasing a space* from the site owner in which the vendor places its equipment and enters into an agreement relating to the allocation of revenues and maintenance of the equipment.

There are, however, choices to be made in determining the optimal strategy that will impact on questions of liability should a piece of equipment be damaged at the location or should a piece of equipment prove to be defective or injure a user at the location. The paper will discuss these issues in light of traditional bailment law (Fox, Munday, Soyer, Tettenborn, & Turner, 2020). The article will also discuss questions of liability in terms of rules developed concerning space leases in contrast to traditional bailment rules.

1.1. Scenarios Provide the Context

Consider these three scenarios. Zenith Amusements places its equipment (juke boxes, pin ball machines, and pool tables, etc.) in various locations on the basis of *lease arrangements* where the location and Zenith share any revenues produced on a 50/50 basis.

On a regular service call, Zenith notices that one of its pool tables has been damaged and Zenith demands that the location bear the cost of the repair and also to compensate Zenith for the loss of revenues while the equipment was out of service under terms of a "liquidated damage clause" contained in its contract with the location. In scenario two, Zenith had entered into a *space lease* with the location instead of an equipment lease arrangement. Now, the equipment is damaged and must be taken out of service. Under what circumstances is the location responsible for the damages? Finally, Zenith is informed that one of the patrons of one of the locations has been injured when a piece of glass from a pin-ball machine shatters and strikes the instep of one of the players, severing a tendon. What is the standard of care required of the parties under each of these separate these scenarios?

2. What is a Bailment?

A bailment involves a temporary surrender of an item of personal property with a provision for is return. *Black's Law Dictionary* (2021) notes that "A bailment is defined as [a] delivery of goods or personal property, by one person to another, in trust for the execution of a special object upon or in relation to such goods, beneficial either to the bailor or bailee or both, and upon a contract, express or implied, to perform the trust and carry out such object, and thereupon either to redeliver the goods to the bailor or otherwise dispose of the same in conformity with the purpose of the trust." A bailment is a common form of contract (Kumar, 2019) relating to the rights and duties of parties to the arrangement (Turner, 2020). The person who owns, has rights to, or has title to the property is called the bailor. The person who assumes temporary control over the property is the bailee. [The bailor may also be known as the vendor and the bailee may be known as the vendee in certain industries such as the coin-operated amusement industry.] At the conclusion of the bailment, the bailee is obligated to return the bailed property to the bailor or to a third party or to dispose of the property as directed in the bailment contract. The common law has a well-developed set of rules or principles relating to the bailment relationship. The law of bailments is a mixture of contract law (created by an agreement, either express or implied, between the parties) and tort law (involving a duty of care on the part of the bailee, or in certain cases, by the bailor) (see see *Haynes v. Bekins Van & Storage Co.*, 1970).

In referencing the traditional rule, the law firm of BrienRoche Law (2021) noted:

"In bailments, there are alternative theories of recovery: contract or tort. Under contract theory, bailor makes out prima facie case when he shows delivery of article to bailee and latter's failure to return it on demand or as agreed upon. In this situation, bailee may escape liability by showing that his failure to redeliver was because property was lost or destroyed without his fault, but this is affirmative defense which he must prove. Where bailor alleges or proves that loss of property while in custody of bailee has been caused by means that would ordinarily seem to be unavoidable, burden still remains on bailor to prove negligence by preponderance of evidence. There is no burden of going forward imposed on bailee to show absence of negligence" (citing *Revenue Aero Club v. Alexandria Airport*, 1952).

In order to create a bailment, delivery of the property by the bailor to the bailee must be accomplished (either actual or constructive) and the bailee must knowingly accept the item of personal property.

Constructive delivery occurs where the bailor follows the instructions laid down by the bailee and places the item of personal property in a place and in the manner prescribed by the bailee (see *Mulvey v. Trabka*, 2021). For example, a car owner leaves his or her car in the parking lot of an "early-bird" repair shop, depositing the keys to the car in the garage door key slot, according to the instructions of the shop owner. This action amounts to a constructive delivery of the car, creating a bailment relationship.

If delivery of the property is not accomplished, a *space lease* may be created (see *83 Willow Ave. Apts., LLC v. 83 Willow, LLC*, 2020). For example, if a person visits a casino in Atlantic City, a bailment would be created if the driver leaves his car with a parking attendant. However, a space lease would be created if the driver used the "self park." The degree of care will depend upon whether a bailment (reasonable care) or a space lease (slight care) was created (see *Rainey v. S.C. Dep't of Social Services*, 2021). In recent years, however, the legal distinction between a bailment and a space lease has been blurred by various state statutes which impose a duty of reasonable care in either case—especially if the space lease requires a payment, for example, for the privilege of parking in the "self-park" lot.

2.1. The Prima Facie Elements of Proof

The prima facie or required elements of proof in the event that a dispute arises in a bailment relationship are:

a. Proof of delivery (actual or constructive) of the property by the bailor to the bailee and acceptance by the bailee (*Morris v. Hamilton*, 1983);
b. Proof of non-return or damages (*Petrus v. Robbins*, 1954), including proof of value of the bailed item.

Once the plaintiff/bailor has met his or her burden of proof in demonstrating delivery and either non-return or damage, the burden of going forward will shift to the defendant/bailee to explain his or her conduct—in essence, to show why they should not be held liable.

3. The Types of Bailments

There are three types of ordinary bailments. Depending on the type of bailment created, courts will require a certain duty of care on the part of the bailee, and in some cases, on the part of the bailor.

3.1. Bailment for the Benefit of the Bailor

A bailment for the benefit of the bailor is also called a gratuitous ailment (Merrill, 2020, note 18). This type of bailment occurs where the bailor or owner of property leaves property with a bailee and the bailee is not compensated. For example, a student asks one of her professors if she might leave a trunk in the professor's garage over the summer. The professor will not be compensated. The trunk and its contents are damaged when an unexpected severe rain storm penetrates the roof of the garage. Is the professor liable for the damage to the trunk?

In the case of a bailment for the benefit of the bailor, the bailee (the professor) is required to exercise *slight care* for the property (*Rainey v. S.C. Dep't of Social Services,* 2021). The bailee would only be liable for the loss or damage if the bailee could be shown to be *grossly negligent*— that is the actions of the bailee involves willful, wanton, intentional, or reckless conduct. In *Morris v. Hamilton* (1983, p. 53) the Virginia Supreme Court noted: "A bailee who acts gratuitously is not held to the same standard of care as one who enters upon the same undertaking for pay. The latter owes a duty of reasonable or ordinary care, while a gratuitous bailee owes only a duty of slight care. Thus, in order for a bailor to recover from a gratuitous bailee, he must prove the bailee was guilty of gross negligence."

Ordinary negligence or failing to exercise reasonable care will not suffice to impose liability on the bailor in a bailment for the benefit of the bailor. In this case, while the professor is required to exercise slight care, for example, moving the trunk to a dry spot if the professor knew that rain was a threat to the student's property, there would probably be no liability caused by the storm itself.

3.2. Bailment for the Benefit of the Bailee

A bailment for the benefit of the bailee occurs where a bailee "borrows" an item of personal property from the bailor or owner of the property. In the case of a bailment for the benefit of a bailee, the bailee must show *extraordinary or great care* for the property (see *River Place at Port Royal Condo. Ass'n v. Sapp*, 2021). The standard of extraordinary or great care approaches the level of care involving strict or absolute liability— liability without fault—which is also the standard of care required in modern products liability law (see *Greenman v. Yuba Power Products*, Inc., 1963). For example, Mary borrows her roommate's car to pick up a friend at the airport. Mary parks the car in the short term parking lot and waits at the baggage carrousel. When Mary returns to the parking lot, she notices a large dent on the right panel of the car. Mary's liability would be predicated on the concept of absolute or strict liability – essentially liability without showing any fault or unreasonable conduct on her part. However, a defense available to Mary would be that the damage to her roommate's car was caused by an "Act of God" (Berman, 2020), as seen in the seminal case of *Missouri Pacific Railroad Company v. Elmore & Stahl* (1964), discussed below.

3.3. Mutual Benefit Bailment

The most typical type of bailment is a mutual benefit bailment. A mutual benefit bailment is also termed as a "bailment for hire" in several jurisdictions (see, e.g., *Saribekyan v. Bank of Am., N.A.*, 2020). A mutual benefit bailment usually involves some form of compensation (or some legal consideration) paid by the bailor to the bailee. For example, Bally's charges patrons $5.00 to park in their attended parking garage. A mutual benefit bailment is created when Freddy relinquishes his keys to the parking attendant at the casino. However, the payment of a fee is not a strict requirement of proof in a mutual benefit bailment. For example, a restaurant offers attended cloakroom facilities to patrons but does not charge a fee for this service.

In this case, even though the restaurant provides this service "free of charge," the restaurant received a benefit by assuring that the premises are free from clutter, and a mutual benefit bailment would be created when a patron of the restaurant used the cloakroom facilities. The use of an unattended cloakroom in a restaurant would not create a bailment and would impose a duty of slight care under these circumstances (*Augustine v. Marriott Hotel*, 1986; generally Seaquist, 1993), unless a state statute imposes an independent duty of due or reasonable care on the restaurant owner.

The duty of care in a mutual benefit bailment is that of *reasonable, ordinary, or due care*. A bailee will only incur liability if he or she has been negligent. Negligence is defined as the "failure to exercise reasonable care under the circumstances" (see *Elam v. O'Connor & Nakos, Ltd.*, 2019). Once the prima facie elements of the bailment relationship are shown (delivery and either non-return or damage), the burden of proof is shifted to the bailee to show by a preponderance of the evidence that he or she exercised reasonable care (*Miller v. Tomlinson*, 1952; *Volvo Mite Truck Corp. v. Vineyard*, 1990). It must be understood, however, that the bailee is not a guarantor; that is, the bailee does not guarantee, promise, or warrant that the item will not be damaged under *all* circumstances. The bailee is, however, obligated to exercise ordinary (due) or reasonable care while the item in question is within his or her care or custody. The issue of whether the defendant exercised due or reasonable care is normally a question of fact for the jury.

4. Rights of the Bailor

The owner of the property or bailor has certain rights and expectations such as:

- The property will be protected and preserved while it is in the care and custody of the bailee;
- The bailee will use the property as stipulated in the bailment contract or in a manner that might be reasonable under the circumstances. However, in a storage situation, or where the bailee has accepted the goods without compensation (bailment for the benefit of the bailor), the bailee may not be permitted to use the property at all;
- The bailee will relinquish the property to the bailor or to a designated third party at the conclusion of the bailment;
- The bailee will not convert the goods to his own purposes or alter them in any matter except as agreed to by the parties;
- The bailor will not be bound by a imitation of liability or exculpatory clause offered by a public institution or a quasi-public institution under circumstances discussed below (Dickerson, 1988); and
- If the bailment involves a service contract, the bailee is entitled to the performance of a service or a repair to the bailed property in a reasonable manner, free from negligence or defective workmanship (see *1707 Realty v. Architecture*, 2020).

5. Duties of a Bailor

In a mutual benefit bailment, the bailor must notify the bailee of all known defects in the property that is the subject matter of the bailment and would also be responsible for damages caused by any hidden defects that the bailor *could have discovered* with the exercise of reasonable diligence and proper inspection (Allen, 1992). In a bailment for the benefit of the bailee (where the bailee borrows an item of personal property), the bailor is obligated to notify the bailee of any defects of which he or she had *actual knowledge*.

For example, the bailee leases a truck from the Lease-All Company. Lease-All was not aware that the brakes on the truck were dangerously worn down. However, Lease-All had failed to properly inspect the braking system when the prior lessee returned it. While the bailee was driving the truck, the brakes failed, injuring the bailee and his two passengers. Under these circumstances, Lease-All might be liable to the bailee and potentially to the bailee's passengers, as well if they were deemed to be potentially foreseeable plaintiffs (generally Geistfeld, 2021).

However, if the bailee had borrowed the truck from his next-door neighbor and was injured when the brakes failed, the owner of the truck would only be liable to the bailee if the bailor actually knew about this dangerous condition. The owner was under no legal obligation to carry out the inspection under these circumstances.

6. Duties of the Bailee in a Mutual Benefit Bailment

In a mutual benefit bailment, a bailee has two important responsibilities or duties: 1) to take reasonable care of the property which is the subject matter of the bailment; and 2) to surrender the property to the bailor or dispose of the property at the end of the bailment relationship according to the terms of the bailment contract.

An interesting situation occurred when a bailee (even an involuntary one) delivers property to the wrong party at the termination of the bailment relationship. In *Capezzaro v. Winfry* (1977), a now classic case which originated in the courts of the State of New Jersey, the court refused to classify the police department as a gratuitous bailee only requiring slight care and instead judged its conduct under the standard of care required in a mutual benefit bailment—that of reasonable care.

7. Bailee's Right to Compensation

A bailee is entitled to compensation as provided in the bailment contract. In addition, the bailee may also entitled to reimbursement for certain expenses incurred in the care and custody of the bailed property based on a concept of *quantum meruit* (Hafeez-Maig & English, 2017). In many bailment contracts, for example, a typical rental car agreement, the amount of compensation will be expressed in the contract itself.

8. Right to Limit Liability

A major issue in bailment litigation revolves around the legality of so-called exculpatory or limitation of liability clauses (Stolle & Slain, 1998). Generally, courts will permit a private party (normally the bailor or owner of the property or the party providing the service in a mutual benefit bailment) to limit its liability under a so-called *exculpatory clause, provided that such a limitation has been called to the attention of the other party.* In *Carr v. Hoosier Photo Supplies, Inc.* (1982, p. 444), the Indiana court observed that "a professional bailee is not permitted to enforce a limitation of his liability due to his negligence in losing or damaging bailed goods merely by posting a notice of such limitation or printing it on a receipt or claim check." The Court then continued: "A notice or statement of terms, such as the one here in issue, is at most only a proposal. It does not bind a bailor delivering property to a bailee unless the former assents to the terms proposed. In this case there was no assent."

For example, if a party has attempted to exculpate or limit its liability through the use of a sign, a court would consider the size of the sign or the notice of limitation, including its placement, its clarity, and other considerations relating to notice. As the Indiana Supreme Court noted in *Weaver v. American Oil Co.* (1971, p. 464):

"When a party can show that the contract, which is sought to be enforced, was in fact an unconscionable one, *due to a prodigious amount of bargaining power on behalf of the stronger party* [emphasis added], which is used to the stronger party's advantage and unknown to the lesser party, causing a great hardship and risk on the lesser party, the contract provision, or the contract as a whole, if the provision is not separable, should not be enforceable on the grounds that the provision is contrary to public policy. The party seeking to enforce such a contract has the burden of showing that the provision was explained to the other party and *came to his knowledge* and there was in fact *a real and voluntary meeting of the minds and not merely an objective meeting* [emphasis in original]."

If the limitation is found on the face or back of a ticket stub or a receipt (for example, a valet parking claim check for a parked car, a claim check for a coat or other item that has been checked, or for property that has been cleaned or repaired), many courts require some additional form of notice, since it is recognized that few parties actually read the receipt or consider it as identification, rather than as an attempt to limit liability.

Depending on the jurisdiction, a public institution (defined as owned or operated by the government or an agency of the government) may not exculpate itself from liability for its own negligence. [However, in some jurisdictions a public institution may be protected from the imposition of liability by the application of the doctrine of *sovereign immunity* (see Baude, 2017).] In addition, there are some institutions or parties, called "quasi-public" institutions that are also precluded from enforcing limitation of liability or exculpatory clauses (see generally Brown-Nagin, 2000; *Action Apt. Ass'n v. Santa Monica Rent Control Bd.*, 2001). A quasi-public institution is one that deals with a "necessary and vital service, or one which invites the public on to its premises in large numbers."

In *Hy-Grade Oil v. N.J. National Bank* (1975),*where a bank was* deemed by the court as a quasi-public institution, the court rejected the attempt by the bank to limit its liability in the use of its night depository banking facility on the basis of "public policy" considerations (see Anzivino, 2019).

As the court noted:

"We find the public need for professional and competent banking services too great and the legitimate and justifiable reliance upon the integrity and safety of financial institutions too strong to permit a bank to contract away its liability for its failure to provide the service and protections its customers justifiably expect, that is, for its failure to exercise due care and good faith" (*Hy-Grade Oil v. N.J. National Bank*, 1975, p. 116).

Issues relating to limitations of liability are generally decided under state law, cases, precedents, or administrative regulations and are subject to close scrutiny by courts.

9. Special Types of Bailments

9.1. Common Carriers

A common carrier is publicly licensed to provide transportation or carriage services to the general public for a fee (see Redfield, 2010). The services of a common carrier are termed as a mutual benefit bailment (see *Calvin Klein Ltd. v. Taylor Trucking Corp.*, 1989). Common carriers are normally subject to either state or federal law. The delivery of goods to the common carrier (such as UPS, Air Cargo, etc.) creates a bailment relationship between the party shipping the goods (bailor) and the common carrier (bailee).

Normally, the degree of care required of the common carrier would be that of reasonable or ordinary care. However, a common carrier is generally held to a standard of *strict or absolute liability* rather than ordinary care (see, e.g., Kaczorowski, 1990). In effect, a common carrier is absolutely liable for damage or loss to the property, except for damage or loss caused by one of the five recognized common law exceptions:

- An "Act of God" (Berman, 2021) (such as an earthquake, a flash food, lightening, etc.);
- An act of a public enemy (see, e.g., Jonassen, 2009);
- An order issued by a public authority;
- An act of the shipper, and not the common carrier; or
- The inherent nature of the goods themselves.

However, a common carrier may, under certain circumstances, be able to limit its liability to a specific dollar amount, with an option by the bailor to purchase additional insurance.

In a 1972 case, *Southern Pacific Company v. Loden* (1972), the United States Supreme Court discussed the application of the "Act of God" defense:

"The only acts of God that excuse common carriers from liability for loss or injury to goods in transit are those operations of the forces of nature that could not have been anticipated and provided against and that by their super human force unexpectedly injure or destroy goods in the custody or control of the carrier. Extreme weather conditions which operate to foil human obligations of duty are regarded as acts of God. However, every strong wind, snowstorm, or rainstorm cannot be termed an act of God merely because it is of unusual or more than average intensity. Ordinary, expectable, and gradual weather conditions are not regarded as acts of God even though they may have produced a disaster, because man had the opportunity to control their effects."

In *Loden*, the Court upheld the judgment of the Texas Supreme Court, which had previously affirmed the judgment of two lower courts for damages against the carrier. Even if a common carrier exercises reasonable care, it is liable for spoilage in transit unless it can prove that the cause of the spoilage was due to the "natural tendency" of the commodities to deteriorate or some other "Act of God."

9.2. Warehousing Companies

Warehousing is a business providing storage of property for compensation. A warehousing company owes a duty of reasonable care to the owner of the property and is liable for any loss or damage to any property under its care and custody resulting from its negligence (Buckman, 2020). Generally, a warehousing company is able to limit the dollar amount of liability, but must give the bailor or owner of the property the option of paying an additional fee for an increase in its liability limit.

Under Section 704 of the Uniform Commercial Code, which deals with warehousing:

"(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.
(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.
(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.
(d) This section does not impair or repeal any statute that imposes a higher responsibility upon the warehouse or invalidates contractual limitations that would be permissible under this Article."

9.3. Innkeepers: Responsibility for Personal Property

When a guest checks into a hotel and places his or her luggage in their room, the guest may reasonably assume that their property will remain safe. However, it may happen that belongings may be stolen or damaged while at a hotel. Under the common law, an innkeeper, a hotel operator, or the operator of a guest house (generally, known by the term "innkeeper") was held to the same standard of strict liability as is a common carrier for damage or loss to property brought into a room by any of its guests. Today, however, the majority rule holds that an innkeeper has no liability in the absence of negligence.

As noted by *Legal Match.com* (2021)*:*

"Success in filing a suit against a hotel often hinges on proving the operator's negligence, which is their failure to take proper care in performing their duties owed to their guests. Examples of possible negligent behavior include inadequate security for the building, defective locks or hotel safes, and failing to secure guest property left in their care.

The actions of others can also rise to negligent behavior as long as the hotel had the duty to prevent such things. These include staff stealing from their guests, or being aware of possible criminal actions on their premises and not taking proper steps to prevent it.

In addition, the hotel can be held liable under the doctrine of *negligence per se*, which means that their actions are held negligent automatically by violating a statute. So checking the laws in that specific state is often important, as it might make proving the hotel liable a lot easier."

To avoid the imposition of liability, an innkeeper may either attempt to exculpate itself from liability or substantially limit its liability for loss or damage to valuables kept in hotels rooms. An innkeeper may post a *conspicuous notice* declaring that valuables worth more than a certain amount of money must be stored in the hotel safe in order to be covered for loss. These policies generally have a limit of $1,000 per guest, unless the loss is caused by an "act of nature" (such as a hurricane, storm, or tornado), civil unrest, or the guest's actions. In some states, an attempt to completely exculpate itself from liability on the part of an innkeeper has been held to be unconscionable, and thus not enforceable.

An innkeeper is generally not liable for loss of luggage or other personal items belonging to guests of the hotel in areas other than the guest's private room or a baggage storage area, unless the hotel or its employees are negligent.

It would be wise to consult specific state statutes concerning the issue of innkeeper liability.

10. Discussion and Analysis

In the first scenario, the vendor/lessor/bailor has placed a piece of equipment in the care and custody of the vendee/bailee under an equipment lease. This arrangement tracks a *traditional mutual benefit bailment*. The vendee/lessee/bailee (location) is obligated to exercise reasonable care for the property of the vendor/bailor and will be liable for any damages to the property that arises because of its negligence in such areas as maintenance, supervision, etc. unless the bailor has assumed responsibility for maintenance.

The bailor or vendor would be responsible to inform the bailee/vendee of any defects that it could have discovered with the exercise of reasonable diligence and proper inspection. As to the issue of "lost revenue," such a contingency may be reflected in what is known as a "liquidated damage clause" which would be found in the bailment contract. A court will uphold a liquidated damage clause if the clause results from a reasonable estimate of the expected damages and is not seen as a penalty (see Pressman, 2013; *Quincy Comm. v. Patrick*, 2021). Basing the amount of any liquidated damages on proof of prior or usual revenues would satisfy the requirements for awarding reasonable liquidated damages.

The second scenario is not a bailment since the vendor/bailor has not turned over control of the property to the location. In the second scenario, the creation of a *space lease* under which the vendor is leasing a portion of the premises (or perhaps the entire premises) of the location on which it will place its equipment (and for which the vendor normally assumes responsibility for maintenance and the collection of revenues) moves the discussion to the platform under a standard "slight care" on the part the vendee/location. In order to provide for additional protection to the vendor or owner of the equipment under these circumstances, the contract should specifically *increase* the obligation of the vendee/location to that of "reasonable care."

In terms of a piece of equipment causing injury to a third party, under scenario one (*traditional bailment)*, unless the vendor/lessor/bailor is responsible for maintenance of the equipment or unless the item itself was defective in terms of manufacturing, design, or marketing (inadequate warnings and labels) (Weycer, 2019), in which a court might apply strict liability against a manufacturer or other party in the marketing chain (see Hunter, Shannon, & Amoroso, 2012), the location would bear the liability for the injury (subject to any defenses against the person who claimed injury such as contributory negligence, comparative negligence, or assumption of the risk (Diamond, 1991; Field, 2018)), because the location bore the responsibility of reasonable care. In scenario number two, the vendor/lessee would bear the responsibility for any injury caused by the equipment itself unless the lessor had somehow caused the injury, for example, by negligent maintenance of the premises or through gross negligence on its part.

Finally, since in many cases individual pieces of equipment may be placed in bars, clubs, or restaurants, traditional rules relating to premises liability to patrons (Driscoll, 2006; Weissenberger & McFarland, 2021) would apply. The owner of premises owes a duty of due or reasonable care to patrons to protect them from harm. The law firm of McMonagle Perri (2021) provides a summary:

> If you've been injured… [in a premise that offers coin-operated amusements] you may be able to seek compensation from the business for your losses, bills and pain and suffering. There are different theories of liability and different elements that you need to prove depending on the circumstances of how you were injured.
>
> If you were injured in a slip/trip and fall, you can sue the business under the theory of Premises Liability for the business' negligence in creating and/or allowing a dangerous condition to exist and remain on their property, without proper warning of the danger, which in turn led to your injury.
>
> If you were injured by another patron…, there are multiple theories that your attorney will investigate to hold the business responsible for your injuries. If alcohol played a part in the assault, a business has a legal responsibility not to serve patrons who are already visibly intoxicated. If the employees do sell or somehow give alcohol to a patron who is already visibly intoxicated, the business may be held responsible for injuries caused by that intoxicated patron. A business may also be held responsible for your injuries if they were negligent in providing proper or adequate security, given the nature of the establishment. Businesses… have a responsibility to provide a safe environment for their patrons and if the nature of the establishment or past incidents make it foreseeable that someone could be injured by another patron, the business must provide adequate security for patrons' safety.
>
> If you were injured by the overzealous or violent actions of… a security guard, the business may be responsible for that guard's violent actions and, in turn, your injuries. If the guard injured you while working in the scope of his/her employment, the business may be vicariously liable for that guard's actions (see Restatement (Second) of Agency, Section 219). If the guard was acting outside the scope of his/her employment, the employer/business can still be held responsible through a theory of Negligent Hiring and/or Negligent Security.

If investigation reveals that the employer did not do proper background checks of the security guards or bouncers who were hired to ensure the safety of the patrons, the employer may be held responsible for the actions of a guard who has prior criminal convictions and should never have been hired to protect others. Further, if there were prior violent incidents with the security guard who injured you, which would make future incidents foreseeable, the employer can be held responsible for your injuries.

11. Concluding Comment

The choice of an appropriate strategy for an individual business in the coin-operated amusement industry must be carefully evaluated in order to provide both maximum protection and flexibility. The choices will certainly impact on issues relating to liability of the parties and to provide maximum protection to both the equipment owner and to the location. A thorough review of both bailment and leasing must be undertaken.

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