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BAILMENT AND DEPOSIT IN LOUISIANA*

Louisiana jurisprudence has long confused the concepts of bailment and deposit. Deposit is a unique civil law concept; bailment is a common law potpourri of various relationships involving the exchange of possession of movables. This comment will examine the historical origins of each concept, differentiate deposit from bailment and other legal concepts, and analyze the obligations and burdens of proof imposed upon depositors and depositaries.¹

Because the jurisprudence has treated the law of deposit so imprecisely, there are no research materials that provide easy access to all the pertinent cases for particular types of deposit situations. Therefore, appendices that classify all the Louisiana deposit cases in selected areas are attached.

BAILMENT

At common law, bailment is a contractual relationship resulting from the delivery of personal chattels by the owner, called the bailor, to a second person, called the bailee. The bailment is undertaken for a specific purpose; when this purpose is accomplished, the chattels must be dealt with according to the owner's direction.² The English law of bailment evolved from Roman law,³ which classified contracts involving movables into six categories. These were: *depositum*, the gratuitous deposit of a movable, source of the civil law concept of deposit; *mandatum*, the delivery of goods for the purpose of having some service performed gratuitously on or with them by the bailee; *commodatum*, the gratuitous loan for use; *pignus*, the pledge or pawn of a movable as security for a debt; *locatio*, the hiring for reward; and *mutuum*, the delivery of goods to be restored by other goods of the same kind.⁴

* This article is based on the author's prize student essay in the 1974-1975 Civil Law Award program of the Institute of Civil Law Studies of the Louisiana State University Law School.

1. The scope of this comment is limited to voluntary deposits.

2. E. GODDARD, *OUTLINES OF THE LAW OF BAILMENTS AND CARRIERS* 1 (1904) [hereinafter cited as GODDARD]. The term "bailment" is derived from the Norman-French word *bailler*, to deliver. The French now use *bail*, derived from *bailler*, to refer only to a lease of immovables. 2 PLANIOL, *CIVIL LAW TREATISE* pt. 2, no. 1667 at 13 (11th ed. La. St. L. Inst. transl. 1959) [hereinafter cited as PLANIOL].

3. *Coggs v. Bernard*, 2 Ld. Raymond 909, 92 Eng. Rep. 107 (1703). For an historical analysis of early Anglo-Saxon, Anglo-Norman, and Germanic sources on the liability of a bailee, see Murray, *The Liability of the Bailee and Pledgee in the Ancient Germanic Laws: A Comparative Study*, 41 TUL. L. REV. 851 (1967).

4. *Mutuum* was the only relationship that did not require the return of the thing

There emerged from the common law cases differing standards of care to be exacted from the bailee depending upon who received the benefit of the bailment.⁵ Story reclassified the six Roman categories into the modern tripartite arrangement by relating the Roman classifications to three standards of care.⁶ In bailments for the sole benefit of the bailor (*depositum* and *mandatum*), the bailee is liable only for gross negligence. In bailments for the mutual benefit of the bailor and bailee (*pignus*, *locatio*, and *mutuum*⁷), the bailee is liable for ordinary negligence. Finally, in bailments for the sole benefit of the bailee (*commodatum*), liability is imposed even for the bailee's slight negligence. While Story's categorizations provided the common law with a simplified framework for discussing the bailee's duty, the three standards of care are not easily defined, and treatise writers⁸ and the courts have had difficulty differentiating adequately among them. Nevertheless, these concepts are still applied in contemporary common law.

To support an enforceable contract, the common law requires consideration. It is now well settled that there is consideration to support even a gratuitous contract of bailment. The consideration is said to be the detriment encountered by the bailor rather than any benefit accruing to the bailee. Thus, in a bailment for the sole benefit of the bailor, the detriment found is the fact that the bailee, by undertaking the service, prevents the bailor from securing another to

delivered. As *mutuum* is more like a sale or exchange than the other categories of bailment, it is frequently not even classified as a bailment. See W. HALE, HANDBOOK ON THE LAW OF BAILMENTS AND CARRIERS 11 (1896) [hereinafter cited as HALE]; J. KENT, COMMENTARIES ON AMERICAN LAW 558 (6th ed. 1848) [hereinafter cited as KENT]. However, it is now accepted that redelivery of the original movable is not a necessary aspect of a bailment. 2 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 911 (Lewis ed. 1898) [hereinafter cited as BLACKSTONE]; GODDARD at 1; HALE at 11; J. SCHOULER, A TREATISE ON THE LAW OF BAILMENTS 1 (3d ed. 1897) [hereinafter cited as SCHOULER].

5. J. STORY, COMMENTARIES ON THE LAW OF BAILMENTS (4th ed. 1846) [hereinafter cited as STORY]. These standards are based upon Roman law. The Romans had three standards of care that applied to both delictual and contractual relationships; *culpa lata*, gross fault or the failure to exercise any reasonable care; *culpa levis in abstracto*, the failure to exercise reasonable care; and *culpa levis in concreto*, the failure to exercise the same diligence that one normally did in one's own affairs. The standard of care applicable to the transaction determined the legal presumptions to be applied. Breach of the standard was presumed in *culpa levis in abstracto* and *culpa levis in concreto*, but not in *culpa lata*. W. BUCKLAND, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN 467-68 (2d ed. 1950) [hereinafter cited as BUCKLAND]. Cf. BUCKLAND at 556; KENT at 563; 1 S. SCOTT, THE CIVIL LAW 62 & 181 (1932).

6. STORY *passim*.

7. This is true for *mutuum* only if it is included as a bailment. See note 4, *supra*.

8. See, e.g., HALE at 24; SCHOULER at 18, STORY § 11.

perform it.⁹

In defining bailment as a contract while at the same time stating the degrees of care incumbent upon the bailee in terms of "negligence," the common law blurs the line between contract and tort. A suit for breach of the bailee's duty thus becomes an amalgamation of contractual and delictual concepts. In an action to recover damages for the loss of or injury to the bailed goods, the bailor must prove both the existence of the contract of bailment and the failure to return the goods bailed or their return in a damaged condition. Up to this point, the action proceeds according to orthodox contractual theory. However, once the prima facie case is established and the bailee asserts defenses, common law courts begin to speak in tort terms. Since the bailee is obliged to carry out the instructions of the bailor in a manner free from negligence, the bailee must show that he is free of the type of negligence (slight, ordinary, or gross) that corresponds to the standard established for the kind of bailment at issue. The presumption of negligence that arises when the bailor makes out a prima facie case has been termed a "shifting burden of proof," for it is up to the bailee, as defendant, to prove his freedom from negligence.¹⁰ However, even though the burden of disproving his negligence is shifted to the bailee, if he shows that the property was stolen or injured by *vis major*, the burden of proceeding "shifts" back to the bailor who must then prove that the bailee was negligent in exposing the property to risk of harm or in failing to avoid the danger after it was known.¹¹

THE LOUISIANA LAW OF DEPOSIT

The civil law of deposit, like common law bailment, originated in Roman law and applies only to movables. The Roman concept of depositum envisioned a gratuitous relationship between the parties,¹² and Civil Code article 2929 refers to deposit as "essentially gratuitous." The article declares that "If the person with whom the deposit

9. GODDARD at 10.

10. Some commentators dislike the use of the term "shifting burden of proof," preferring to label what occurs as the establishment by the plaintiff of a prima facie case of negligence by the presumption that, if the goods are not returned as delivered, the bailee must have been negligent. See GODDARD at 17. However, while some cases have distinguished "burden of proof" from "burden of evidence," the vast majority use the term "burden of proof." Compare cases cited at 29 AM. JUR. 2D *Evidence* §§ 123-24, 126; 31A C.J.S. *Evidence* § 103-04, 110-11, 113 with cases cited at 8 AM. JUR. 2D *Bailments* §§ 306-22 and 8 C.J.S. *Bailments* § 50A.

11. HALE at 30-31.

12. BUCKLAND at 467.

is made receive a compensation, it is no longer a deposit but a hiring." Because a hiring is a form of lease,¹³ a literal reading of the Code would appear to indicate that the articles on lease rather than those on deposit should apply whenever a depositary is compensated. The French, however, have not confined the deposit articles to gratuitous contracts,¹⁴ and neither has the Louisiana jurisprudence.¹⁵ This result accords with Louisiana Civil Code article 2938(2), which seems to demand that the deposit articles be applied to compensated depositaries.

Formation and Termination of a Deposit

Civil Code article 2926 defines deposit as "an act by which a person receives the property of another, binding himself to preserve it and return it in kind."¹⁶ Deposit therefore is a contractual relationship¹⁷ created by the parties' mutual consent, whether actual or implied.¹⁸

The depositor's consent may be implied when he places his property in the possession and control of another, when he asserts that a deposit existed, or when another party takes possession and control of the goods under circumstances where it is to the owner's advantage to conclude that a deposit has occurred. For example, in *Lewallen v. Board of Levee Commissioners of Orleans Levee District*,¹⁹ the plaintiff leased a tie-down space at an airport. Airport employees moved the plane and tied it down in another location where it was subsequently damaged by a storm. The court found the act of moving the plane to a new location caused the defendant to become a depositary

13. LA. CIV. CODE arts. 2669, 2673.

14. 2 PLANIOL Pt. 2 no. 2205 at 274. See also Note, 25 TUL. L. REV. 268, 271 (1951).

15. See, e.g., *United States Fidelity & Guaranty Co. v. Dixie Parking Serv., Inc.*, 262 La. 45, 262 So. 2d 356 (1972).

16. See, e.g., *Clements v. Luby Oil Co.*, 130 So. 851 (La. App. 2d Cir. 1930). The court found that a contract to build a derrick was not a "bailment" (deposit) of lumber because the materials were not to be returned "in kind" as lumber. The parties contemplated the return of a derrick.

17. See LA. CIV. CODE arts. 1761, 1778, 2932. See also *Plummer v. Motors Ins. Corp.*, 233 La. 340, 96 So. 2d 605 (1957). Cf. 2 PLANIOL Pt. 2 no. 2205 at 274, no. 2211 at 276. The contract need not be in writing. LA. CIV. CODE art. 2932. Since the deposit relationship is contractual, prescription on a depositor's cause of action is ten years. LA. CIV. CODE art. 3544. See *Douglas v. Haro*, 214 La. 1099, 39 So. 2d 744 (1949); *Bérard v. Boagni*, 30 La. Ann. 1125 (1878); *Woodard v. St. Cyr*, 201 So. 2d 205 (La. App. 4th Cir. 1967); *Olinde Hdwe & Supply Co. v. Ramsey*, 98 So. 2d 835 (La. App. 1st Cir. 1957).

18. LA. CIV. CODE arts. 2932 and 2933. See also *Coe Oil Serv., Inc. v. Hair*, 283 So. 2d 734, 738 (La. 1973).

19. 166 So. 2d 566 (La. App. 4th Cir. 1964).

and imposed upon it the standards fixed by the articles on deposit rather than the less onerous duties of a lessor.²⁰ Although the plaintiff had not expressly authorized the airport to move the plane, the court apparently implied the depositor's consent from the fact that his suit was founded on a theory of deposit.

The other prerequisite for the formation of a contract of deposit is delivery of the property.²¹ Delivery necessarily implies a transfer of both possession and control, and the transfer may be real or constructive.²² Real delivery occurs when one leaves clothes at a cleaner²³ or drives a car to a parking lot;²⁴ constructive delivery is apparent when a driver leaves the keys to his car with the depositary, even though the car is not on the depositary's property.²⁵

More difficult questions arise, however, when each party retains partial control or possession. Because consent and delivery are often interrelated, the presence of either requisite of deposit may evidence the existence of the other; for instance, the depositary's acceptance of delivery may imply his consent.²⁶ Likewise, it is possible that a partial surrender of possession and control may constitute a delivery if the necessary consent or intent to create a deposit is found.²⁷ Thus, a deposit was found in *Coe Oil Service, Inc. v. Hair*²⁸ although complete possession and control had not passed. Plaintiff's plane was left at an airport tie-down overnight, but plaintiff's president retained the keys to the aircraft. The Louisiana supreme court held that whether delivery has been made does not depend entirely upon whether the depositary has only partial control and possession of a locked object,²⁹ noting that Civil Code article 2943 contemplates the

20. *Id.* at 567-68.

21. LA. CIV. CODE art. 2930.

22. LA. CIV. CODE art. 2930 states that a delivery may be real or fictitious. Fictitious delivery apparently was meant as a reference to the Roman concept of *constitutum possessorium*, a change in the title by which one holds goods already in one's possession. BUCKLAND at 227. For example, X, an owner and occupant of a house sells it to Y, but remains in the house as a lessee. The Louisiana jurisprudence apparently uses the term to refer both to constructive delivery, the giving of partial control sufficient to complete a contract of deposit, and to the true fictitious delivery of civil law, a change in the legal status of one who already has possession.

23. See Appendix C.

24. See Appendix D.

25. See, e.g., *Williams v. Zeringue & Son Auto Repair*, 278 So. 2d 825 (La. App. 4th Cir. 1973); *General Accident Fire & Life Assur. Co. v. J.F.D.L., Inc.*, 148 So. 2d 857 (La. App. 4th Cir. 1963).

26. LA. CIV. CODE art. 2933.

27. See *Coe Oil Serv., Inc. v. Hair*, 283 So. 2d 734 (La. 1973).

28. *Id.*

29. Thus, this case casts serious doubt on the validity of the rationale employed

deposit of a locked object.³⁰ That a depositor retains the keys may or may not indicate whether a deposit was intended, but it does not alter the fact of delivery. Since consent to create a deposit was present in *Coe Oil*, a deposit was found although complete possession and control had not passed.

However, the fact that the depositor believes he has consented to a deposit and delivered the property is not, by itself, sufficient.³¹ In *Zurich Insurance Co. v. Doussan*,³² no deposit was found when the plaintiff drove his car into a service station and remained in the front seat while fuses under the steering wheel were being changed. The court thought that the plaintiff's remaining in the car negated the possibility that a delivery had occurred.³³

The contract of deposit is terminated when the depositary returns the property after having preserved it.³⁴ Although the Code does not further define the conditions for termination, it seems reasonable to assume that termination, like formation, requires mutual consent. Although a redelivery may be a criterion of termination,³⁵ it should not be essential if consent to terminate the deposit is proven.

The two cases that have considered the necessity for a redelivery at the end of a contract of deposit both involved parking lots. Both found that the deposit ended when the parking lot closed, thus relieving the parking lot proprietor of any liability for later damage to or theft of the car.³⁶ Although one of the cases used the term "construc-

in *St. Paul Fire & Marine Ins. Co. v. Zurich Ins. Co.*, 250 So. 2d 451 (La. App. 4th Cir. 1971), which found, *incorrectly* according to the supreme court in *Coe Oil*, that a factor in determining whether leaving a car on a long-term parking lot is a lease or a deposit is whether the motorist retained the keys. See *Coe Oil Serv., Inc. v. Hair*, 283 So. 2d 734, 738 n.2 (La. 1973).

30. 283 So. 2d at 738. See LA. CIV. CODE arts. 2943, 2965.

31. *Aetna Life and Cas. Co. v. Finley's Sporting Goods, Inc.*, 306 So. 2d 383 (La. App. 3d Cir. 1975).

32. 242 So. 2d 101 (La. App. 4th Cir. 1970).

33. *But see Smith v. Indiana Lumbermens Mut. Ins. Co.*, 175 So. 2d 414 (La. App. 2d Cir. 1965), *cert. denied*, 247 La. 1089, 176 So. 2d 146 (1965).

34. LA. CIV. CODE art. 2926.

35. Redelivery must be to the owner. LA. CIV. CODE art. 2934. A return of the goods to one who is not the depositor or owner does not terminate the deposit, and the depositary is therefore liable for misdelivery. *Lee v. New Orleans Roosevelt Corp.*, 106 So. 2d 855 (La. App. Orl. Cir. 1958). Furthermore, a depositary cannot withhold the goods "on pretense of a debt due on an account distinct from the deposit." LA. CIV. CODE art. 2956. *L. Grunewald Co. Ltd. v. Evans*, 11 Orl. App. 352 (La. App. 1914).

36. *Morse v. Jones*, 223 La. 212, 65 So. 2d 317 (1953); *Continental Ins. Co. v. Humbert*, 37 So. 2d 605 (La. App. Orl. Cir. 1948). *But see Jacques v. City Parking Serv., Inc.*, 97 So. 2d 78 (La. App. Orl. Cir. 1957) holding that if the depositor can prove or raise the presumption that the damage or theft occurred before the lot closed, the depositary will be liable, for the contract of deposit was in existence at the time of the loss.

tive delivery" in finding that the deposit had ended when the lot closed,³⁷ it is obvious that *no* delivery, real or constructive, occurred.³⁸ The deposit terminated not because of any delivery, but rather because of the implied consent of both parties that the deposit cease after a specified period of time.

CONFUSION OF BAILMENT AND DEPOSIT WITH OTHER CONCEPTS

Distinguishing between the contractual nature of deposit and delictual concepts is but one difficulty encountered in the jurisprudence. The courts have also been troubled with differentiating deposit from lease, loan for use, consignment, agency, and the master-servant relationship.³⁹ The root of the difficulty is the inclination to look too much to the common law theory of bailment. Bailment is a much broader concept than deposit and embraces not only deposit but also lease and loan for use. There appears to be a tendency on the part of many Louisiana courts to apply uncritically both the term "bailment" and the common law rules regulating that relationship to areas that are treated separately in the civil law.⁴⁰ Apparently, the implicit assumption is that if bailment is the "same as" or similar to deposit, *all* the rules of bailment should apply with equal force in Louisiana. To end confusion, Louisiana courts should not only speak directly in terms of deposit, but should also refrain from using the term "bailment" to define the relationship between a depositor and a depositary.

Lease

While the common law groups both deposit and the lease of movables under the generic term "bailment," the civil law makes a clear distinction between the two. It is important to distinguish between them, for the obligations of a lessor differ significantly from the obligations of a depositary. For instance, suppose that A's car, parked

37. *Continental Ins. Co. v. Himbert*, 37 So. 2d 605 (La. App. Orl. Cir. 1948).

38. This is an example of pure "fictitious delivery" from the depositary to the depositor, for the status of the depositary changed although the physical aspects of his possession did not. See discussion at note 22, *supra*.

39. See also *New Orleans Public Serv. Comm'n v. Stewart*, 119 So. 435 (La. App. Orl. Cir. 1928) (differentiating sale from deposit; placement of electrical transformers on land held not a deposit but a sale of electricity through mechanical devices).

40. The Louisiana Civil Code separately treats the areas of Roman law which the common law groups under the generic term "bailment." LA. CIV. CODE arts. 2926-71 (deposit: *depositum*); *Id.* arts. 2985-3034 (mandate: *mandatum*); *Id.* arts. 2893-2909 (loan for use: *commodatum*); *Id.* art. 2910-22 (loan for consumption: *mutuum*); *Id.* arts. 3133-75 (pledge and pawn: *pignus*).

on the third story of *B*'s parking garage, is damaged when the building collapses because of inherent structural defects. If *B* is the lessor of the parking space, he will be absolutely liable, despite any purported waiver of liability;⁴¹ but if *B* is a depositary, he will at least have a chance to present evidence that he has fulfilled his statutory obligations.⁴²

Although deposit and lease are similar in that both comprehend an owner giving possession and control of property to another,⁴³ in a lease, the one who obtains possession pays the owner; if a deposit is compensated, the owner pays the one who is put into possession of the property. Furthermore, while a lease necessarily involves compensation, a deposit may be gratuitous.⁴⁴

The distinction between lease and deposit has been particularly important in parking lot cases. Civil Code article 2670 sets forth the three requirements for a valid lease: "The thing to be leased, the price, and the consent of the parties." Assuming price and consent, the determinative issue is whether a "thing" has been leased or merely deposited. If the automobile owner is paying for the storage of his vehicle, there is a deposit, but if he has rented a *particular* space, the contract is a lease. If it cannot be determined that the contract was for the use of a particular, defined space to be used *only* by the automobile owner, there is no "thing" being leased, and the contract should be found to be a deposit.⁴⁵ The term of the contract should be irrelevant, and no presumption of a lease should arise merely because it is possible for an automobile owner to park his car for a long period of time.⁴⁶

41. LA. CIV. CODE art. 2695; *Darnell v. Taylor*, 236 So. 2d 57 (La. App. 3d Cir. 1970). See also *Standard Office Supply Co. v. Stonewall Inv. Co.*, 267 So. 2d 768 (La. App. 2d Cir. 1972).

42. LA. CIV. CODE art. 2937. See discussion *infra* at notes 81-85.

43. See LA. CIV. CODE arts. 2669, 2674, 2676, 2678, 2681, 2692-93.

44. LA. CIV. CODE arts. 2926, 2929, 2938, 2670-71.

45. *Levy v. Kirwin*, 6 La. App. 93 (La. App. Orl. Cir. 1927). Cf. *Lewallen v. Board of Levee Comm'rs*, 166 So. 2d 566 (La. App. 4th Cir. 1964); *Marine Ins. Co. v. Rehm*, 177 So. 79 (La. App. Orl. Cir. 1937). But see *Norwegian Gov't Seamen's Serv. v. Himbert*, 228 So. 2d 757 (La. App. 4th Cir. 1969). Although the court found a parking contract made on a monthly basis to be one of deposit, the facts clearly demonstrate that the contract was a lease since the party was assigned a particular area in the lot. 228 So. 2d at 758.

46. Cf. *Coe Oil Serv., Inc. v. Hair*, 283 So. 2d 734, 738 n.2 (La. 1973), stating that *St. Paul Fire & Marine Ins. Co. v. Zurich Ins. Co.*, 250 So. 2d 451 (La. App. 4th Cir. 1971) had "incorrectly" classified an airport long-term parking lot contract as a lease rather than a deposit. While the court's criticism of *St. Paul* was based primarily on other grounds (see note 29, *supra*), *St. Paul* is also open to attack on the ground that there was no evidence that a particular place was assigned to the motorist.

Another area that seems to have caused some difficulty is the lease of movables and the lessee's responsibility to third persons injured by the movable. Several courts have classified the lease of a movable as a bailment and have applied the common law rules of liability.⁴⁷ While it is perfect common law usage to call a lease of a movable a bailment, employing such terminology in Louisiana may obscure rather than clarify the relationship between the parties. In most of these cases, the plaintiff is not a party to the contractual relationship but is, rather, an injured third party suing in tort. In apportioning liability between the lessor and lessee of movables, the courts should not look to common law concepts; liability can be readily allocated according to the Civil Code articles on lease or the terms of the contract itself.

Loan For Use

While both a loan for use and a deposit contemplate the giving and return of a movable,⁴⁸ loan necessarily involves an agreement that the borrower may use the movable while deposit does not.⁴⁹ Therefore, if a contract of deposit expressly gives the depositary permission to use the movable, the contract should be governed by the Civil Code articles on loan for use.⁵⁰

Since the borrower is using the object, he must not only preserve it but must preserve it in working condition.⁵¹ The consequences of

47. *Jenkins v. Dixie Rental Tools & Casing Crews, Inc.*, 283 So. 2d 271 (La. App. 1st Cir. 1973), *cert. denied*, 285 So. 2d 542 (La. 1973) (leased elevator fell, injuring plaintiff); *White v. Hudspeth*, 147 So. 2d 874 (La. App. 3d Cir. 1962), *cert. denied*, 243 La. 1018, 149 So. 2d 768 (1963) (accident involving truck equipped with leased liquid ammonia tank). *Cf. Jahncke Serv., Inc. v. City of New Orleans*, 126 So. 2d 15 (La. App. 4th Cir. 1961) (leased scaffolding destroyed). *Crescent Forwarding & Transporting Co. v. New Orleans Box Mfg. Co.*, 6 Orl. App. 412 (La. App. 1909) (leased mule falls down well). *Also cf. Lyons v. Jahncke Serv., Inc.*, 125 So. 2d 619 (La. App. 1st Cir. 1960) (leased elevator falls injuring plaintiff).

48. Compare LA. CIV. CODE arts. 2891, 2893, 2896, with arts. 2926, 2949, 2955.

49. Compare LA. CIV. CODE art. 2893 with art. 2940.

50. LA. CIV. CODE art. 2940 may imply that the deposit articles can be applied when the depositary is given permission to make use of the thing deposited. However, article 2941 expressly states that, if permission is given and the movable is consumed by use, "the contract is no longer a deposit, but a loan for consumption, and becomes subject to the rules which govern that contract." By analogy, although there are no cases on point, a strong argument can be made that, when permission has been given and the obligations of the depositary and borrower may differ, the rules on loan for use should apply.

51. LA. CIV. CODE art. 2898 states that the duty of the borrower is to preserve the thing lent "in the best possible order." This phrase is incorrectly translated from the French text of the article and should read "as a prudent administrator." Nonetheless,

the distinction between deposit and loan for use are illustrated by the situation in which *C* delivers machinery to *D*. If *D* is a depository, he will not be responsible if, through no fault of his own, the machine does not work when *C* reclaims it. However, if *D* is a borrower, he has an obligation to keep the machine in good working order unless it is worsened by use alone and without any fault on *D*'s part.⁵² Furthermore, while a deposit may be gratuitous or compensated, a loan for use must be gratuitous.⁵³ If the lender is compensated, the contract is one of lease, not loan.⁵⁴

Consignment and Agency

Although consignment is a form of agency, it shares many of the aspects of deposit. A consignment contract typically contemplates that the consignee will hold, care for, attempt to sell the goods, and return those that remain unsold to the consignor. With respect to the returned goods, the obligations of the consignee are analogous to those of the depository; however, the primary obligation of the consignee is to act as the consignor's agent, not merely to store the goods. Thus, while it *may* be possible for a consignee also to be a depository,⁵⁵ there is a serious question whether a consignee *should* ever be considered as a depository. The essence of a contract of deposit is delivery,⁵⁶ the relinquishment of possession and control. As the consignee is the agent of the consignor, it may be argued that the principal retains control at all times, thus precluding a delivery. However, whether or not theoretically a consignee can be a depository may be unimportant. Since there are no statutes on the obligations of a consignee, the deposit articles, by analogy, should provide guidance in fixing the obligations of the consignee, absent contractual stipulations to the contrary.

since use is contemplated, the borrower must do more than simply store the thing safely. In most cases, the deposit articles can be used by analogy to define the obligations of the parties. *Cf. Reehlman v. Calamari*, 94 So. 2d 31 (La. App. Orl. Cir. 1957). However, there is a difference between a borrower and a depository, and a court should make it clear that it is using the deposit articles *only* by analogy and is not overlooking the articles on loan.

52. LA. CIV. CODE art. 2902.

53. LA. CIV. CODE art. 2894.

54. *Id.* See also 2 PLANIOL Pt. 2 no. 2054 at 205.

55. The following cases have assumed without question that one can be simultaneously a depository and a consignee: *Sentry Ins. v. Arkla Tex Auto Auction, Inc.*, 303 So. 2d 516 (La. App. 2d Cir. 1974); *Ward Chain Saw Supply Co. v. Deville*, 242 So. 2d 41 (La. App. 3d Cir. 1970), *cert. denied*, 257 La. 614, 243 So. 2d 276 (1971). *Cf. Kember & George v. Southern Express Co.*, 22 La. Ann. 158 (1870); *Lochte v. Maggiore*, 139 So. 750 (La. App. Orl. Cir. 1932).

56. LA. CIV. CODE art. 2930.

Employer—Employee; Master—Servant

It is clear that an employee in the scope of his employment cannot be a depositary of his employer's goods⁵⁷ because there is neither consent to create a deposit relationship nor delivery. Likewise, a deposit does not arise merely because of a master-servant or principal-agent relationship.⁵⁸

OBLIGATIONS OF THE PARTIES TO THE CONTRACT OF DEPOSIT

Obligations of the Depositary

Article 2937 states that "the depositary is bound to use the same diligence in preserving the deposit that he uses in preserving his own property."⁵⁹ The depositary is not an insurer⁶⁰ and need not guard against every type of harm; the jurisprudence is emphatic that the depositary must act only as a prudent administrator.⁶¹ Therefore,

57. See *Dail v. Bergeron*, 293 So. 2d 894 (La. App. 1st Cir. 1974).

58. The distinction between the liability of a principal for the torts of his agent and the liability of a master for the torts of his servant has often been blurred in the Louisiana jurisprudence. It was not until 1968 in *Blanchard v. Ogima*, 253 La. 34, 215 So. 2d 902 (1968), that this area was finally clarified. See LA. CIV. CODE art. 2320. Cf. Comment, 33 LA. L. REV. 110 (1972). The tendency of some to mix bailment into this frequently chaotic area (see, e.g., *Smith v. Indiana Lumbermens Mut. Ins. Co.*, 175 So. 2d 414 (La. App. 2d Cir. 1965); *Graham v. American Employer's Ins. Co.*, 171 So. 471 (La. App. 2d Cir. 1937)), should be avoided, for it hinders rather than aids analysis of the problem.

59. Of course, the fact that the depositary is careless with his own property does not mean he may be careless with the property of the depositor. *Home Ins. Co. v. Southern Specialty Sales Co.*, 225 So. 2d 776 (La. App. 4th Cir. 1969); *Lumbermens Mut. Cas. Co. v. Wallace*, 138 So. 2d 247 (La. App. 4th Cir. 1962); *Kaiser v. Poche*, 194 So. 464 (La. App. Orl. Cir. 1940); *Meine v. Mossler Auto Exch., Inc.*, 120 So. 533 (La. App. Orl. Cir. 1929).

60. See, e.g., *Segura v. United States Aircraft Ins. Group*, 246 So. 2d 880 (La. App. 3d Cir. 1971), cert. denied, 258 La. 704, 247 So. 2d 584 (1971); *Royal Ins. Co. v. Collard Motors*, 179 So. 108 (La. App. Orl. Cir. 1938).

61. The courts have stated that a depositary's obligations under LA. CIV. CODE art. 2937 are similar or identical to those for a prudent administrator under article 1908. See *Brown & Blackwood v. Ricou-Brewster Bldg. Co.*, 239 La. 1037, 121 So. 2d 70 (1960); *Leatherman v. Miller's Mut. Fire Ins. Co.*, 297 So. 2d 540 (La. App. 3d Cir. 1974); *Insured Lloyds v. Liberty Mut. Ins. Co.*, 295 So. 2d 206 (La. App. 3d Cir. 1974). See also 2 *PLANIOL* Pt. 2 no. 2211 at 276. The standard of article 2937 obviously stems from *culpa levis in concreto*, the standard the Romans imposed upon gratuitous depositaries. See note 12, *supra*; *BUCKLAND* at 556. To the Romans, it was a subjective standard based upon the depositary's own conduct as long as he was not grossly deficient in his duty. However, the Louisiana jurisprudence, without discussion, has read out the subjective test and instead imposed an objective duty of acting as a prudent administrator.

each case requires a factual determination of whether the depositary conformed to this standard; once the depositary shows that he acted prudently under the circumstances, he is relieved of liability.

There is a danger involved in employing the term "prudent administrator" to describe the obligation of the depositary, for it is easy to slip and use the term "prudent man" instead.⁶² Such imprecise usage may inject into deposit cases overtones of the ubiquitous "reasonable" or "prudent" man from the field of tort,⁶³ thereby opening the door to improper application of tort concepts. Cases that speak of the obligation of the depositary as being a "standard" of ordinary care, due care, freedom from fault, or lack of negligence obscure the contractual nature of deposit, blur the obligations of the parties, and confuse the burden of proof in a suit for breach of contract.

The adoption of delictual language in the contractual field of deposit apparently stems from dependence upon common law, which treats bailment as a contract, but which explicitly speaks of the bailee's standard of care in terms of freedom from negligence.⁶⁴ Deposit and bailment are not synonymous, and common law rules should not be used to measure the obligation of the depositary.

Although the basic obligation of the depositary is to act as a prudent administrator, Civil Code article 2938 requires this obligation to be more "rigorously enforced"⁶⁵ in four instances: "(1) Where the deposit has been made by the request of the depositary. (2) If it has been agreed that he shall have a reward for preserving the deposit. (3) If the deposit was made solely for his advantage. (4) If it has been expressly agreed that the depositary should be answerable for all neglects."

Since the issue of rigorous enforcement most frequently arises in cases involving compensated depositaries, it is essential to define when one is to be considered a depositary for reward. It is obvious that if the depositary requires payment for his services, the contract is not gratuitous; thus, a parking lot owner,⁶⁶ an automobile repair-

62. *Lumbermens Mut. Cas. Co. v. Wallace*, 138 So. 2d 247 (La. App. 4th Cir. 1962).

63. See W. PROSSER, *HANDBOOK OF THE LAW OF TORTS*, § 32 at 149-66 (4th ed. 1971) [hereinafter cited as PROSSER].

64. See text at note 6, *supra*.

65. LA. CIV. CODE art. 2938. Note that the English translation of the French text of LA. CIV. CODE art. 2938 omits the word "more" before "rigorously." The article should read: "The provision of the preceding article is to be *more* rigorously enforced . . ." (emphasis added). See also *Reehlman v. Calamari*, 94 So. 2d 311, 312-13 (La. App. Or. Cir. 1957).

66. See Appendix D.

man,⁶⁷ or a dry cleaner⁶⁸ is a compensated depository. Whether the deposit is to be classified as compensated is determined at the time the deposit is made. Therefore, if the parties anticipate that a payment is to be made for the services, the deposit is not gratuitous even though the depositor does not pay.⁶⁹ Likewise, the deposit is considered compensated even though the amount of compensation is small⁷⁰ or involves the exchange of property rather than money.⁷¹ Even an implied promise of future benefits has been held to be compensation, as in the case of a businessman who performs a service "free" for a regular customer because he seeks to retain the customer's business and good will. Because the businessman expects that, by performing work without charge, he will retain the customer's business, "the deposit cannot be considered gratuitous."⁷²

Whether the depository is compensated should be determined by his relationship with the depositor, not by the depository's relationship with third parties. If the depository is reimbursed by funds that are in no way traceable to the depositor, as between the parties to the contract, the deposit should be classified as gratuitous. The courts, however, have not accepted this classification,⁷³ perhaps because it is believed necessary to find a compensated depository before applying the more rigorous standard of article 2938. However, a compensated depository is not the only criterion of the more rigorous duty imposed by article 2938. If the depository anticipates that he will receive a benefit from persons other than the depositor, it is possible that the deposit was made at the request of the depository, thus triggering article 2938(1). For example, if a consignee is a depository, he ought to be held to the rigorous standard of article 2938, not because he is compensated but rather because the deposit was at his request.

67. See, e.g., *Miller v. Hammond Motors, Inc.*, 40 So. 2d 29 (La. App. 1st Cir. 1949).

68. See Appendix C.

69. *Sentry Ins. v. Arkla Tex Auto Auction, Inc.*, 303 So. 2d 516 (La. App. 2d Cir. 1974); *Home Ins. Co. v. Southern Specialty Sales Co.*, 225 So. 2d 776 (La. App. 4th Cir. 1969).

70. See *Sentry Ins. v. Arkla Tex Auto Auction, Inc.*, 303 So. 2d 516 (La. App. 2d Cir. 1974); *Chrysler Credit Corp. v. Caulfield*, 252 So. 2d 461 (La. App. 4th Cir. 1971), *cert. denied*, 259 La. 956, 253 So. 2d 794 (1971); *Elephant, Inc. v. Hartford Accident & Indem. Co.*, 239 So. 2d 692 (La. App. 1st Cir. 1970).

71. *Davis v. Poelman*, 178 So. 2d 306 (La. App. 4th Cir. 1965).

72. *Lumbermens Mut. Cas. Co. v. Wallace*, 138 So. 2d 247, 249 (La. App. 4th Cir. 1962). *Accord*, *Coe Oil Serv., Inc. v. Hair*, 283 So. 2d 734, 737 (La. 1973). *But see* *Pearl Assur. Co. v. DeCuir*, 157 So. 2d 314 (La. App. 4th Cir. 1963). *Cf.* *Michigan Millers Mut. Ins. Co. v. Lawson*, 161 So. 2d 342 (La. App. 4th Cir. 1964); *Williams v. Zeringue & Son Auto Repair*, 278 So. 2d 825 (La. App. 4th Cir. 1973).

73. See, e.g., *Caskey v. Travelers Ins. Co.*, 278 So. 2d 825 (La. App. 4th Cir. 1973).

Contracts That Alter the Depositary's Obligations

The Civil Code articles on deposit are merely suppletive⁷⁴ and may be altered by agreement between the parties.⁷⁵ Although the courts have not banned unilaterally imposed exoneration clauses as contracts of adhesion, the jurisprudence has required that limitations on the depositary's obligations be clearly expressed and adequately brought to the attention of the depositor. Most contracts of deposit are oral, and the courts have refused to enforce a depositary's limitation of his liability when accomplished by printed forms that are not required to be read or signed by the depositor. It is well established that a commercial depositary, such as a parking lot owner, must do more than merely have the limitation printed on signs in his premises or published on ticket stubs;⁷⁶ to limit liability effectively, *actual* notice of the limitation must be given to the depositor.⁷⁷ The requirement of actual notice is reasonable, for unless notice is proved, it may be presumed that mutual consent to the limitation of liability was wanting and that the suppletive code articles have not been effectively abrogated.

The obligations imposed upon the depositary by the Code may

74. Cf. LA. CIV. CODE arts. 11, 1777-78. For a discussion of suppletive and imperative law, see *E.L. Burns Co. v. Cashio*, 302 So. 2d 297 (La. 1974).

75. See, e.g., *Plummer v. Motors Ins. Corp.*, 233 La. 340, 96 So. 2d 605 (1957); *Southern Farm Bureau Cas. Ins. Co. v. Florane*, 173 So. 2d 545 (La. App. 3d Cir. 1965); *General Accident Fire & Life Assur. Co. v. J.F.D.L., Inc.*, 148 So. 2d 857 (La. App. 4th Cir. 1963).

76. The ticket stub is not a special contract at all but merely a receipt which does not alter the Louisiana Civil Code provisions. *Marine Ins. Co. v. Rehm*, 177 So. 79 (La. App. Orl. Cir. 1937).

77. *Colgin v. Security Storage & Van Co.*, 208 La. 173, 23 So. 2d 36 (1945) (warehouse receipt); *Federal Ins. Co. v. C. & W. Transfer & Storage Co.*, 282 So. 2d 563 (La. App. 4th Cir. 1973) (cleaning receipt); *Mintz v. Audubon Ins. Co.*, 140 So. 2d 809 (La. App. 4th Cir. 1962) (auto repair receipt); *Jacques v. City Parking Serv.*, 97 So. 2d 78 (La. App. Orl. Cir. 1957) (parking lot sign); *Fidelity & Deposit Co. v. Rednour*, 44 So. 2d 215 (La. App. Orl. Cir. 1950) (warehouse receipt); *Pacific Fire Ins. Co. v. Eunice Motor Car Co.*, 30 So. 2d 441 (La. App. 1st Cir. 1947) (garage invoice); *Marine Ins. Co. v. Rehm*, 177 So. 79 (La. App. Orl. Cir. 1937) (parking lot case); *Gulf & S.I.R. Co. v. Sutter Motor Co.*, 126 So. 458 (La. App. Orl. Cir. 1930) (parking lot case). Cf. *Kemper & George v. Southern Express Co.*, 22 La. Ann. 158 (1870); *Baldwin v. Collins*, 9 Rob. 468 (La. 1845). If all depositaries start bringing actual notice of limitation clauses to all depositors, it is probable that the courts would find a method of disallowing such waivers. This could be done either by ignoring the waiver as was done in *Mintz v. Audubon Ins. Co.*, *supra*, or by outlawing such clauses by terming them contracts of adhesion.

be expanded as well as contracted. This most frequently occurs when a car containing articles is the object of a deposit. The cases consistently hold that a depositary will be liable for the loss of articles inside the car if he has knowledge of them and does not either refuse the deposit or expressly bring notice to the depositor that he assumes no liability.⁷⁸ This rule is supported by the assumption that, if the depositary has actual knowledge that objects are in the car, he has both consented to the deposit of the articles and has accepted delivery of them.

Damages Caused by a Breach of the Depositor's Obligations

Civil Code article 2960 states that the depositor "is to indemnify the depositary for the losses which the thing deposited may have occasioned him." The use of the word "indemnify" may imply that the depositary has an absolute right against the depositor. No cases have interpreted article 2960, but, considering that a depositary is not an insurer,⁷⁹ it would seem more equitable to hold that absolute liability should not be imposed upon the depositor. The cases that have dealt with claims by the depositary for damages caused by the deposited property have refused to hold the depositor liable unless he knew or should have known of the dangerous propensities of the property and failed to warn the depositary.⁸⁰

BURDEN OF PROOF

Burden of Proof and Res Ipsa Loquitur

If the depositor seeks legal redress for deposited goods that have been lost or damaged, he must prove both the existence of the contract of deposit and that the deposited articles were not returned or

78. See, e.g., *United States Fidelity & Guaranty Co. v. Dixie Parking Serv., Inc.*, 262 La. 45, 262 So. 2d 365 (1972); *United States Fidelity & Guaranty Co. v. Allright Shreveport, Inc.*, 256 So. 2d 479 (La. App. 2d Cir. 1972); *Travelers Ins. Co. v. General Auto Serv., Inc.*, 220 So. 2d 738 (La. App. 4th Cir. 1969); *Mintz v. Audubon Ins. Co.*, 140 So. 2d 809 (La. App. 4th Cir. 1962); *Lee v. New Orleans Roosevelt Corp.*, 106 So. 2d 855 (La. App. Orl. Cir. 1958). Cf. *General Accident Fire & Life Assur. Co. v. J.F.D.L., Inc.*, 148 So. 2d 857 (La. App. 4th Cir. 1963).

79. See cases cited at note 60, *supra*.

80. The rule stated in the text emerges from a careful reading of *Coker v. Continental Ins. Co.*, 265 So. 2d 327 (La. App. 3d Cir. 1972), *Fredieu v. City of Winnfield*, 180 So. 2d 48 (La. App. 2d Cir. 1965), and *Estille Hanover Ins. Co.*, 29 So. 2d 542 (La. App. 2d Cir. 1948). The rule is sound and accords with the common law position. *White v. Hudspeth*, 147 So. 2d 874, 879 (La. App. 3d Cir. 1962), *cert. denied*, 243 La. 1018, 149 So. 2d 768 (1963). However, it should be noted that the Louisiana cases from which this rule can be derived may be based more on tort concepts than on deposit.

were returned in a damaged condition.⁸¹ Proof of these facts raises the presumption that the depositary has not fulfilled his obligation to act as a prudent administrator. It is frequently stated in the Louisiana jurisprudence that, at this point, the burden of proof "shifts" to the depositary to demonstrate that he used the same diligence in preserving the deposit that he would use in preserving his own property. However, there is no authority, other than accumulated layers of dicta, for the proposition that the burden of proof engages in any kinetic activity. The depositor at all times retains the burden of proving that the depositary breached his obligation. The plaintiff is merely aided in his task by the *presumption* that such a breach occurred if the movable is not returned intact upon demand, the presumption relieving the depositor of demonstrating any specific act of the depositary that would constitute nonfeasance or misfeasance.

Although in most cases the distinction between a burden of proof and a presumption makes little practical difference, it is preferable to avoid speaking in terms of "shifting" burdens, for in certain situations, the depositor has a burden of proving more than merely the existence of the contract and the non-return of the deposit. For example, Civil Code article 2939 states: "The depositary is not answerable, in any case, for accidents produced by overpowering force, unless he has delayed improperly to restore the deposit." Thus, in addition to proving the existence of the contract of deposit and the non-return of the goods, the depositor must also show, in cases of loss due to *vis major*, that the loss would not have occurred had the depositary acted as a prudent administrator. Only then does the presumption arise that the depositary has breached his obligation. Therefore, contrary to some jurisprudential assertions, it is not an oscillating burden of proof that operates in deposit cases, but an inference of contractual breach. As in any action in contract where a party who has failed to perform seeks exoneration, the depositary's excuse for non-performance is an affirmative defense which must be pleaded and proved.⁸²

The depositor is usually not in a position to know exactly how

81. See, e.g., *Bond v. Helmer*, 215 So. 2d 355, 357 (La. App. 4th Cir. 1968); *Olinde Hdwe & Supply Co. v. Ramsey*, 98 So. 2d 835, 840 (La. App. 1st Cir. 1957). See also LA. CIV. CODE arts. 2926, 2937, 2944-46, 2949, 2953-54. LA. CIV. CODE art. 2955 provides that the deposit must be returned upon the demand of the depositor "even though the contract may have specified the time for its being restored . . ." However, LA. CIV. CODE art. 2960 compels the depositor to reimburse the depositary the money advanced for safe keeping. Thus pursuant to LA. CIV. CODE art. 2956, the depositary "may retain the deposit until his advances are paid."

82. LA. CIV. CODE art. 1005.

the loss or damage occurred. It would seem that, under such circumstances, the allocation of the burden of proof in deposit cases serves much the same function as the use of *res ipsa loquitur* in tort law.⁸³ Indeed, many courts have stated that *res ipsa* applies in deposit cases.⁸⁴ There is a striking similarity between *res ipsa* and the depositor's burden of proof; both enable the trier of fact to draw an inference of liability.⁸⁵ However, merely because there is a great similarity between the inferences that may be drawn in favor of both tort plaintiffs and depositors, and between the burdens on the defendants in tort and deposit cases, does not mean that there is no need to distinguish the two areas. A depository's obligations are greater than a tortfeasor's standard of care.⁸⁶ A tort defendant must satisfy a universal duty of acting reasonably under the circumstances, a duty that all men share alike. On the other hand, a depository has a specific duty to a particular person; he has a contractual obligation to the depositor and must act as a prudent administrator.

The outcome of a deposit case may be exactly the same whether tort or deposit terminology is employed; the danger, however, is that the distinctive contractual nature of deposit is eroded by the employment of tort concepts, leading to the importation of alien and unacceptable alterations in an area of contractual relationships. For example, some deposit cases have seriously discussed whether the de-

83. If neither party can prove the cause of the destruction, whether the depository will escape liability may depend on whether there is a presumption of fault on his part which must be overcome, or whether the depositor has to prove, despite the overpowering force, that the loss would not have occurred had the defendant acted as a prudent administrator.

84. See, e.g., *Bond v. Helmer*, 215 So. 2d 355 (La. App. 4th Cir. 1968); *Johnson v. Supreme Truck & Trailer Serv.*, 119 So. 2d 660 (La. App. 2d Cir. 1960); *Leigh v. Johnson-Evans Motors, Inc.*, 75 So. 2d 710 (La. App. 2d Cir. 1954); *Pacific Fire Ins. Co. v. Eunice Motor Car Co.*, 46 So. 2d 363 (La. App. 1st Cir. 1950).

85. *Castille v. Houston Fire & Cas. Ins. Co.*, 92 So. 2d 137, 139 (La. App. 1st Cir. 1957). "The plaintiffs plead 'res ipsa loquitur.' This doctrine is not a rule of pleading or of substantive law, but is a rule of evidence, and whether or not it applies must be determined at the conclusion of the trial." *Accord*, *Bertrand v. Aetna Cas. & Sur. Co.*, 306 So. 2d 343, 347 (La. App. 3d Cir. 1975). For the primary doctrinal work on the area of *res ipsa loquitur* and the burden of proof in Louisiana, see Malone, *Res Ipsa Loquitur and Proof by Inference, A Discussion of the Louisiana Cases*, 4 LA. L. REV. 70 (1941) [hereinafter cited as *Malone*]. Indeed, the shared roots of bailment and tort terminology at common law are exemplified by the fact that *Vaughan v. Menlove*, 3 Bing. N.C. 468, 132 Eng. Rep. 490 (1837), the first tort case to use the term "prudent man," relied on Lord Holt's opinion in *Coggs v. Bernard*. See 3 Bing. N.C. 468, 475, 132 Eng. Rep. 490, 493 (1837).

86. *Segura v. United States Aircraft Ins. Group*, 246 So. 2d 880, 886 (La. App. 3d Cir. 1971), cert. denied, 258 La. 704, 247 So. 2d 584 (1971).

positor was guilty of contributory negligence,⁸⁷ a concept foreign to an action for breach of contract.⁸⁸

Despite the statement by at least one court that *res ipsa* has been "clearly differentiated" from the depositor's burden of proof,⁸⁹ no such clear demarcation has yet been drawn, nor, considering the similarity between the two concepts, is it likely that a sharp distinction can be made. It would be preferable simply to recognize that, while the two are analogous,⁹⁰ they are not identical. Possible confusion⁹¹ could be avoided by shunning tort terminology.

Vis Major Damages

In terms of burden of proof, cases involving *vis major* are the most difficult because the outcome will often depend upon how the court views the burden of persuasion. Difficulties arise in cases in which the storage area itself is damaged or destroyed by fire because it must be determined who should bear the burden of proof as to the cause of the fire, and what effect such proof has on a finding of liability. If it can be shown that the fire "originates entirely within the depository's premises and is confined to the subject matter of the deposit,"⁹² the depository must prove that, even though he otherwise acted as a prudent administrator, he could not have prevented the

87. *Lewallen v. Board of Levee Comm'rs*, 166 So. 2d 566 (La. App. 4th Cir. 1964); *Great American Indem. Co. v. Dixie Auto Parking & Serv. Corp.*, 84 So. 2d 233 (La. App. Or. Cir. 1956). Cf. *Miller Car Washes, Inc. v. Crowe*, 245 So. 2d 485 (La. App. 2d Cir. 1971).

88. In fact, two depositors have gone so far as to seek damages for "humiliation." See *Mitchell v. Shreveport Laundries Co.*, 61 So. 2d 539 (La. App. 2d Cir. 1952); *Gugert v. New Orleans Independent Laundries*, 181 So. 653 (La. App. Or. Cir. 1938). Damages for humiliation were awarded in the first case. Such damages may be recoverable in tort, but are seldom thought to be recoverable in contract; however, Louisiana courts have allowed them. See, e.g., *Vogel v. Saenger Theaters Co.*, 207 La. 835, 22 So. 2d 189 (1945); *Lewis v. Holmes*, 109 La. 1030, 34 So. 66 (1903).

89. *Insured Lloyds v. Liberty Mut. Ins. Co.*, 295 So. 2d 206 (La. App. 3d Cir. 1974).

90. *Brown & Blackwood v. Ricou-Brewster Bldg. Co.*, 239 La. 1037, 121 So. 2d 70 (1960); *Jeter v. Lachle*, 106 So. 2d 808 (La. App. 2d Cir. 1958); *Holder v. Lockwood*, 92 So. 2d 768 (La. App. 2d Cir. 1957).

91. A good deal of the confusion occurs in the fire cases. See text at notes 92-95 *infra*. The inclination of many courts is to state that *res ipsa* "applies" in cases in which the fire is confined to the object of the deposit or the depository's premises, but does "not apply" in cases of general conflagrations of unknown origins. The issue should be not whether *res ipsa* should apply, but rather how much proof the depositor must present to raise the presumption that the depository breached his obligations. For a criticism on this over-emphasis on *res ipsa* terminology, see *Malone* at 73-84.

92. *Rancatore v. Evans*, 182 So. 2d 102, 104 (La. App. 4th Cir. 1966).

fire or the loss.⁹³ While he need not show the cause of the fire, he must still overcome the presumption that the damage occurred because he breached his fiduciary obligations.

However, where there is a general conflagration that totally destroys the storage area, the depositor must shoulder a heavier burden of proof. A presumption of the depositary's liability does not arise merely by proof that the loss occurred because a fire consumed the defendant's premises. Although the depositary is "in exclusive possession and control of both the premises and the goods . . . the peril of fire from almost unlimited sources is too omnipresent to permit"⁹⁴ the presumption that the cause of the fire was due to the breach of the depositary's obligation. Therefore, unlike in cases of localized fires, the depositor has the burden of establishing not only that the depositary could have prevented the damage had he acted as a prudent administrator, but also that the cause of the fire or its spread was due to a breach of obligation.⁹⁵

CONCLUSION

Bailment and deposit are not synonymous. Bailment is a generic term which refers to many differing relationships involving the exchange of possession of movables; deposit is confined to storage and

93. *Insured Lloyds v. Liberty Mut. Ins. Co.*, 295 So. 2d 206 (La. App. 3d Cir. 1974); *Bond v. Helmer*, 215 So. 2d 355 (La. App. 4th Cir. 1968); *Baker v. Employer's Fire Ins. Co.*, 201 So. 2d 349 (La. App. 2d Cir. 1967); *Rancatore v. Evans*, 182 So. 2d 102 (La. App. 4th Cir. 1966); *Calvert Fire Ins. Co. v. Grotts*, 136 So. 2d 836 (La. App. 4th Cir. 1962); *Johnson v. Supreme Truck & Trailer Serv.*, 119 So. 2d 660 (La. App. 2d Cir. 1960); *Leigh v. Johnson-Evans Motors, Inc.*, 75 So. 2d 710 (La. App. 2d Cir. 1954); *Wood v. Becker Welding Shop*, 34 So. 2d 924 (La. App. 1st Cir. 1948); *Pacific Fire Ins. Co. v. Eunice Motor Car Co.*, 30 So. 2d 441 (La. App. 1st Cir. 1947); *Gulf Ins. Co. v. Temple*, 187 So. 814 (La. App. 2d Cir. 1939); *Royal Ins. Co. v. Collard Motors*, 179 So. 108 (La. App. Orl. Cir. 1938). *Cf.* *Great American Indem. Co. v. Ford*, 122 So. 2d 111 (La. App. 2d Cir. 1960); *Dupuy v. Graeme Spring & Brake Serv. Co.*, 19 So. 2d 657 (La. App. Orl. Cir. 1944); *Royal Ins. Co. v. Romain Motor Co.*, 120 So. 261, 10 La. App. 1 (La. App. Orl. Cir. 1929); *Marine & Motor Ins. Co. v. Cathey*, 8 La. App. 240 (Orl. Cir. 1927).

94. *Malone* at 81, quoted with approval in *Fireman's Fund Indemn. Co. v. Sigard*, 129 So. 2d 258, 262 (La. App. 4th Cir. 1961) and *Niagra Fire Ins. Co. v. Shuff*, 93 So. 2d 324, 326 (La. App. 1st Cir. 1957).

95. *Austin v. Heath*, 168 La. 605, 122 So. 865 (1929); *Fireman's Fund Indem. Co. v. Sigard*, 129 So. 2d 258 (La. App. 4th Cir. 1961); *Niagra Fire Ins. Co. v. Shuff*, 93 So. 2d 325 (La. App. 1st Cir. 1957); *Luke v. Security Storage & Van Co.*, 24 So. 2d 692 (La. App. Orl. Cir. 1946); *McCullom v. Porter, Thomas & Foley*, 17 La. Ann. 89 (1865). *Cf.* *Wagner v. T.S.C. Motor Freight Lines*, 181 So. 625 (La. App. Orl. Cir. 1938); *Levy v. Bergeron*, 20 La. Ann. 290 (1868). For example, in *Luke* the fact that the depositary did not have a sprinkler system in its warehouse did not support a presumption that it had breached its obligation as a depositary.

care. Deposit is a purely civil law concept; bailment, although derived from the civil law, has distinct common law aspects that are inappropriate for use in Louisiana.

Louisiana courts should avoid the use of the word "bailment" to characterize a deposit relationship, not because of any purist avoidance of a non-civilian term or because the term employed will necessarily vary the result of a particular case, but rather because once common law terminology is adopted, common law concepts tend to infiltrate and engraft theories that are discordant with the Louisiana codal articles on deposit.

Thus, while Louisiana cases that employ the term "bailment" may be cited for their results, the methods of analysis set forth in the opinions should be carefully scrutinized to be certain that the rationales are consonant with civilian theory.⁹⁶

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96. Further, special caution should be exercised in relying on any case involving an insurance company, for the determination of liability may have been altered by the presence of a party whose entire function is to bear risks.

APPENDICES

APPENDIX A: MISSING OR STOLEN MERCHANDISE

APPENDIX B: DAMAGED OR DESTROYED MERCHANDISE

APPENDIX C: DEPOSITS AT CLEANING ESTABLISHMENTS

APPENDIX D: PARKING LOTS AND PARKING GARAGES

APPENDIX E: STOLEN AUTOMOBILES

APPENDIX F: DAMAGED AUTOMOBILES

APPENDIX A: MISSING OR STOLEN MERCHANDISE

United States Fidelity & Guaranty Co. v. Dixie Parking Serv., Inc., 262 La. 45, 262 So. 2d 365 (1972) (clothes stolen from car left in parking garage); Colgin v. Security Storage & Van Co., 208 La. 173, 23 So. 2d 36 (1945) (contents of cedar chest lost by defendant); Livaudais v. Lee She Tung, 197 La. 844, 2 So. 2d 232 (1941) (clothes missing from cleaners); Alex W. Rothschild & Co. v. Lynch, 157 La. 849, 103 So. 188 (1925) (hotel accepted and lost postal package of jewelry after guest had checked out); Carol v. Monteleone, 139 La. 541, 71 So. 798 (1916) (trunk left at hotel to be sent for later cannot be located; innkeeper held not liable); Thomas v. Darden, 22 La. Ann. 413 (1870) (cotton missing from storage warehouse); Kember & George v. Southern Express Co., 22 La. Ann. 158 (1870) (gold shipment missing); Schwartz, Kauffman & Co. v. Baer, 21 La. Ann. 601 (1869) (cotton in storage seized during Civil War); C. Yale Jr. & Co. v. Oliver & Drake, 21 La. Ann. 454 (1869) (cotton ruined by weather); Wilcox & Fearn v. Steam-Boat Philadelphia, 9 La. 80 (1836) (sealed letters with money inside stolen from steamboat chest).

Aetna Life & Cas. Co. v. Finley's Sporting Goods, Inc., 306 So. 2d 383 (La. App. 3d Cir. 1975) (boat stolen from repair shop); Travelers Ins. Co. v. Coleman E. Adler, Inc., 285 So. 2d 381 (La. App. 4th Cir. 1973) (customer's jewelry left in store for appraisal and repair stolen along with store merchandise in nighttime robbery); Federal Ins. Co. v. C. & W. Transfer & Storage Co., Inc., 282 So. 2d 563 (La. App. 4th Cir. 1973) (rug stolen from cleaners); United States Fidelity & Guaranty Co. v. Allright Shreveport, Inc., 25 So. 2d 479 (La. App. 2d Cir. 1972) (clothes stolen from back seat of car left in parking garage); Smith v. Carrollton Refrigeration & Home Appliances, 243 So. 2d 356 (La. App. 4th Cir. 1971) (air conditioner sent in for repairs lost); Palmisano v. Downey, 233 So. 2d 697 (La. App. 4th Cir. 1970) (items missing from car after car towed from situs of wreck, repaired and then delivered to owner); Norwegian Gov't Seamen's Serv. v. Himbert, 228 So. 2d 757 (La. App. 4th Cir. 1969) (car stolen from parking lot recovered but personal items missing); Home Ins. Co. v. Southern Specialty Sales, Co., 225 So. 2d 776 (La. App. 4th Cir. 1969) (boat stolen from repair shop grounds); Travelers Ins. Co. v. General Auto Serv., Inc., 220 So. 2d 738 (La. App. 4th Cir. 1969) (car stolen from in front of repair shop recovered but contents missing); Lacour v. Merchants Trust & Sav. Bank, 153 So. 2d 599 (La. App. 4th Cir. 1963) (bag of cash and mortgage notes left in bank "night depository" could not be found); General Accident Fire & Life Assur. Co. v. J.F.D.L., Inc., 148 So. 2d 857 (La. App. 4th Cir. 1963) (articles missing from car entrusted to hotel garage); Mintz v. Audubon Ins. Co., 140 So. 2d 809 (La. App. 4th Cir. 1962) (articles missing from car left for repairs with one of the defendants); Lumbermens Mutual Cas. Co. v. Wallace, 138 So. 2d 247 (La. App. 4th Cir. 1962) (boat, trailer and outboard motor left for repairs disappears from defendant's grounds); Lee v. New Orleans Roosevelt Corp., 106 So. 2d 855 (La. App. Orl. Cir. 1958) (goods missing from trunk of car when car recovered

after being mistakenly delivered to wrong person); *Olinde Hdwe & Supply Co. v. Ramsey*, 98 So. 2d 835 (La. App. 1st Cir. 1957) (store loses air conditioner before delivery); *Holder v. Lockwood*, 92 So. 2d 768 (La. App. 2d Cir. 1957) (clothes missing from cleaners); *Grush v. Boudreaux*, 67 So. 2d 752 (La. App. Orl. Cir. 1953) (clothes missing from cleaners); *Bradford v. Rapid Transfer & Storage Co.*, 46 So. 2d 765 (La. App. 2d Cir. 1950) (liquor stolen from warehouse); *Savoy v. Shreveport Laundries*, 45 So. 2d 213 (La. App. 2d Cir. 1950) (laundry lost by cleaners); *Fidelity & Deposit Co. v. Rednour*, 44 So. 2d 215 (La. App. Orl. Cir. 1950) (chest lost from warehouse); *Koerner v. Firestone Tire & Rubber Co.*, 17 So. 2d 839 (La. App. 2d Cir. 1944) (tires missing from retread shop); *Munson v. Blaise*, 12 So. 2d 623 (La. App. Orl. Cir. 1943) (clothes allegedly stolen from car); *Paterno v. Kennedy The Cleaner*, 138 So. 531 (La. App. Orl. Cir. 1931) (clothes missing from cleaners); *Sherburne v. Hotel Grunewald Caterers*, 9 La. App. 748 (La. App. Orl. Cir. 1929) (trunk sent to hotel in advance of arrival missing); *Clesi v. Grishman*, 3 La. App. 67 (La. App. Orl. Cir. 1925) (fur sent to redresser cannot be located); *New Orleans Soda Water Co. v. Leonard*, 9 Orl. App. 220 (La. App. Orl. Cir. 1912) (mule escapes from pasture). *Cf. Plummer v. Motors Ins. Corp.*, 233 La. 340, 96 So. 2d 605 (1957) (insurance company unable to return truck which it took for purposes of repairing because it allowed chattel mortgagee to illegally repossess the vehicle).

APPENDIX B: DAMAGED OR DESTROYED MERCHANDISE

Coe Oil Serv. v. Hair, 283 So. 2d 734 (La. 1973) (plane left at tie-down space found wrecked); *Brown & Blackwood v. Ricou-Brewster Building Co.*, 239 La. 1037, 121 So. 2d 70 (1960) (painting destroyed by fire); *Austin v. Heath*, 168 La. 605, 122 So. 865 (1929) (cotton burned in warehouse fire); *Smith v. Richland Compress & Warehouse Co.*, 153 La. 820, 96 So. 668 (1923) (cotton ruined by wet weather when left on open platform and in leaky sheds); *Scott v. Sample*, 148 La. 627, 87 So. 478 (1921) (cotton burned on railroad platform); *Marks v. New Orleans Cold Storage Co.*, 107 La. 172, 31 So. 671 (1901) (peas left in cold storage infested with weevils).

Axelrod v. Wardrobe Cleaners, Inc., 289 So. 2d 847 (La. App. 4th Cir. 1974) (draperies damaged by cleaners); *Lumbermens Mut. Cas. Co. v. Starr*, 258 So. 2d 385 (La. App. 4th Cir. 1972) (boat stolen from repair shop and recovered in damaged condition); *Segura v. United States Aircraft Ins. Group*, 246 So. 2d 880 (La. App. 3d Cir. 1971) (aircraft standing outside hanger damaged when hit by car); *Elephant, Inc. v. Hartford Accident and Indem. Co.*, 239 So. 2d 692 (La. App. 1st Cir. 1970) (caged elephant dies from poison); *Stewart v. Florane*, 218 So. 2d 358 (La. App. 2d Cir. 1969) (house damaged by rain while being moved); *Cary v. State Dep't of Hwys.*, 217 So. 2d 456 (La. App. 1st Cir. 1968) (house vandalized while under contract to be moved); *Bickham Motors, Inc. v. Crain*, 185 So. 2d 271 (La. App. 1st Cir. 1966) (truck seized for deficiency judgment deteriorates while in seller's care); *Rancatore v. Evans*, 182 So. 2d 102 (La. App. 4th Cir. 1966) (boat burned at repair shop); *Davis v. Poelman*, 178 So. 2d 306 (La. App. 4th Cir. 1965) (airplane damaged by wind and vandalism); *Southern Farm Bureau Cas. Ins. Co. v. Florane*, 173 So. 2d 545 (La. App. 3d Cir. 1965) (house burned while being moved); *Lewallen v. Board of Levee Comm'rs*, 166 So. 2d 566 (La. App. 4th Cir. 1964) (wind damage to plane improperly tied down); *Michigan Millers Mut. Ins. Co. v. Lawson*, 161 So. 2d 342 (La. App. 4th Cir. 1964) (boat and outboard motor damaged on "test drive" of trailer); *Hardey v. Sims*, 126 So. 2d 839 (La. App. 2d Cir. 1961) (damaged rice, but plaintiff failed to meet burden of proof); *Jeter v. Lachle*, 106 So. 2d 808 (La. App. 2d Cir. 1958) (trousers shrunk and discolored by cleaners); *Gray v. Security Storage & Van Co.*, 26 So. 2d 399 (La. App. Orl. Cir. 1946) (household goods destroyed in warehouse fire); *Dugan v. Central Storage &*

Transfer Co., 23 So. 2d 634 (La. App. 2d Cir. 1945) (household goods destroyed in storage); McDonald v. Badie, 198 So. 545 (La. App. Orl. Cir. 1940) (piano damaged at warehouse); Webb v. Crescent City Laundries, 187 So. 323 (La. App. Orl. Cir. 1939) (curtains damaged by cleaners); Gugert v. New Orleans Independent Laundries, 181 So. 653 (La. App. Orl. Cir. 1938) (draperies damaged by cleaners); Wagner v. T.S.C. Motor Freight Lines, 181 So. 625 (La. App. Orl. Cir. 1938) (baking machine damaged by carrier and warehouse fire); Woodward v. Royal Carpet Cleaning Co., 134 So. 443 (La. App. Orl. Cir. 1931) (moths eat rugs left at cleaners); Cassidy v. Kennedy Cleaning Co., Inc., 7 La. App. 270 (La. App. Orl. Cir. 1927) (coat shrunk by cleaners); Crescent Forwarding & Transp. Co. v. New Orleans Box Mfg. Co., 6 Orl. App. 412 (La. App. Orl. Cir. 1912) (mule left in defendant's care dies after falling into well). *Cf.* Walding v. Harris, 193 So. 492 (La. App. 2d Cir. 1940) (cabbage left in cold storage deteriorates).

APPENDIX C: DEPOSITS AT CLEANING ESTABLISHMENTS

Livaudais v. Lee She Tung, 197 La. 844, 2 So. 2d 232 (1941); Axelrod v. Wardrobe Cleaners, Inc., 289 So. 2d 847 (La. App. 4th Cir. 1974); Federal Ins. Co. v. C. & W. Transfer & Storage Co., Inc., 282 So. 2d 563 (La. App. 4th Cir. 1973); Bond v. Helmer, 215 So. 2d 355 (La. App. 4th Cir. 1968); Jeter v. Lachle, 106 So. 2d 808 (La. App. 2d Cir. 1958); Holder v. Lockwood, 92 So. 2d 768 (La. App. 2d Cir. 1957); Yarborough v. Bogalusa Steam Laundry, 74 So. 2d 344 (La. App. 1st Cir. 1954); Grush v. Boudreaux, 67 So. 2d 752 (La. App. Orl. Cir. 1953); Mitchell v. Shreveport Laundries, 6 So. 2d 539 (La. App. 2d Cir. 1952); Tabor v. Shreveport Laundries, 53 So. 2d 461 (La. App. 2d Cir. 1951); Savoy v. Shreveport Laundries, 45 So. 2d 213 (La. App. 2d Cir. 1950); Webb v. Crescent City Laundries, 187 So. 323 (La. App. Orl. Cir. 1939); Gugert v. New Orleans Independent Cleaners, 181 So. 653 (La. App. Orl. Cir. 1938); Paterno v. Kennedy The Cleaner, 138 So. 531, 18 La. App. 649 (La. App. Orl. Cir. 1931); Woodward v. Royal Carpet Cleaners, 134 So. 443, 16 La. App. 555 (La. App. Orl. Cir. 1931); Cassidy v. Kennedy Cleaning Co., Inc., 7 La. App. 270 (La. App. Orl. Cir. 1927).

APPENDIX D: PARKING LOTS AND PARKING GARAGES

United States Fidelity & Guaranty Co. v. Dixie Parking Serv., Inc., 262 La. 45, 262 So. 2d 365 (1972) (clothes stolen from back seat of car left in parking garage); Morse v. Jones, 223 La. 212, 65 So. 2d 317 (1953) (car damaged in collision when driven by defendant's employee after parking lot closed); United States Fidelity & Guaranty Co. v. Allright Shreveport, Inc., 256 So. 2d 479 (La. App. 2d Cir. 1972) (clothes stolen from back seat of car left in parking garage); Norwegian Gov't Seamen's Serv. v. Himbert, 228 So. 2d 757 (La. App. 4th Cir. 1969) (stolen car recovered but contents missing); Eglin's Univ. Garage Corp. v. Rougelot, 198 So. 2d 547 (La. App. 4th Cir. 1967) (car damaged while being driven down parking lot ramp); Neely v. Tamburello, 187 So. 2d 526 (La. App. 4th Cir. 1966) (car stolen from parking lot and later recovered in damaged condition); Michaels v. Gravier Improvement Co., 158 So. 2d 260 (La. App. 4th Cir. 1963) (car engine damaged when left in parking garage); General Accident Fire & Life Assur. Co. v. J.F.D.L., Inc., 148 So. 2d 857 (La. App. 4th Cir. 1963) (car entrusted to hotel for placement in its garage stolen from street, later recovered but articles left in car missing); United Public Ins. Co. v. Employers Liab. Assur. Corp., 144 So. 2d 300 (La. App. 4th Cir. 1962) (car damaged by parking attendant driving another car); Emmco Ins. Co. v. Bagnerise, 124 So. 2d 316 (La. App. 4th Cir. 1960) (car stolen from parking lot); Stroup v. Farrar, 116 So. 2d 50 (La. App. 1st Cir. 1959) (car allegedly stolen from parking lot); Lee v. New Orleans Roosevelt Corp., 106 So. 2d 855 (La. App. Orl. Cir. 1958) (goods missing from trunk of car when car re-

covered after being mistakenly delivered to wrong person); *Jacques v. City Parking Serv.*, 97 So. 2d 78 (La. App. Or. Cir. 1957) (car stolen from parking lot); *Great American Indem. Co. v. Dixie Auto Park and Shop Corp.*, 84 So. 2d 233 (La. App. Or. Cir. 1956) (car damaged by collision when parking attendant failed to notice that accelerator was to the left of brakes); *Indiana Lumbermens Mut. Ins. Co. v. Darcental*, 70 So. 2d 460 (La. App. Or. Cir. 1954) (car allegedly stolen from parking lot); *Guiteau v. Southern Parking Co.*, 49 So. 2d 880 (La. App. Or. Cir. 1951) (car damaged in collision when driven off ramp by defendant's employee); *Tamburello v. Hurwitz-Mintz Furn. Co.*, 38 So. 2d 688 (La. App. Or. Cir. 1949) (parking lot owner granted recovery in quantum meruit for allowing defendant's unusable truck to be left on lot for eleven months); *Continental Ins. Co. v. Himbert*, 37 So. 2d 605 (La. App. Or. Cir. 1948) (car stolen from parking lot but lot owner held not liable); *Munson v. Blaise*, 12 So. 2d 623 (La. App. Or. Cir. 1943) (clothes allegedly stolen from car); *Kaiser v. Poche*, 194 So. 464 (La. App. Or. Cir. 1940) (car stolen from parking lot); *Marine Ins. Co. v. Rehm*, 177 So. 79 (La. App. Or. Cir. 1937) (car stolen from parking lot); *Union Indem. Co. v. Blaise Downtown Storage Co., Inc.*, 138 So. 226 (La. App. 1st Cir. 1931) (car damaged by faulty elevator on parking lot); *Gulf & S.I.R. Co. v. Sutter Motor Co.*, 126 So. 458 (La. App. Or. Cir. 1930) (car damaged when defendant's employee removed car from lot for a ride); *Levy v. Kerwin*, 6 La. App. 93 (La. App. Or. Cir. 1927) (car stolen from parking garage); *Hartford Fire Ins. Co. v. Doll*, 5 La. App. 226 (La. App. 2d Cir. 1926) (car stolen from parking garage).

APPENDIX E: STOLEN AUTOMOBILES

Sentry Ins. v. Arkla Tex Auto Auction, Inc., 303 So. 2d 516 (La. App. 2d Cir. 1974); *Leatherman v. Millers Mut. Fire Ins. Co. of Texas*, 297 So. 2d 540 (La. App. 3d Cir. 1974); *Williams v. Zeringue & Son Auto Repair*, 278 So. 2d 825 (La. App. 4th Cir. 1973); *Verdin v. Quality Chevrolet Co.*, 255 So. 2d 458 (La. App. 1st Cir. 1971); *Caskey v. Travelers Ins. Co.*, 236 So. 2d 614 (La. App. 2d Cir. 1970); *Neely v. Tamburello*, 187 So. 2d 526 (La. App. 4th Cir. 1966); *Pearl Assur. Co. v. DeCuir*, 157 So. 2d 314 (La. App. 4th Cir. 1963); *Emmco Ins. Co. v. Bagnerise*, 124 So. 2d 316 (La. App. 4th Cir. 1960); *Jacques v. City Parking Serv.*, 97 So. 2d 78 (La. App. Or. Cir. 1957); *Indiana Lumbermens Mut. Ins. Co. v. Darcental*, 70 So. 2d 460 (La. App. Or. Cir. 1954); *Miller v. Hammond Motors*, 40 So. 2d 29 (La. App. 1st Cir. 1949); *Continental Ins. Co. v. Himbert*, 37 So. 2d 605 (La. App. Or. Cir. 1948); *Kaiser v. Poche*, 194 So. 464 (La. App. Or. Cir. 1940); *Sambola v. Fandison*, 178 So. 276 (La. App. Or. Cir. 1938); *Marine Ins. Co. v. Rehm*, 177 So. 79 (La. App. Or. Cir. 1937); *Meine v. Mossler Auto Exch., Inc.*, 120 So. 533 (La. App. Or. Cir. 1929); *Levy v. Kerwin*, 6 La. App. 93 (La. App. Or. Cir. 1927); *Hartford Fire Ins. Co. v. Doll*, 5 La. App. 226 (La. App. 2d Cir. 1926). *Cf. St. Paul Fire & Marine Ins. Co. v. Zurich Ins. Co.*, 250 So. 2d 451 (La. App. 4th Cir. 1971); *Zesiger v. Dean*, 247 So. 2d 222 (La. App. 4th Cir. 1971).

APPENDIX F: DAMAGED AUTOMOBILES

Plummer v. Motors Ins. Corp., 233 La. 340, 96 So. 2d 605 (1957) (insurance company which promised to fix damaged truck allowed it to be repossessed by chattel mortgagee); *Morse v. Jones*, 223 La. 212, 65 So. 2d 317 (1953) (car damaged in collision when driven by defendant's employee after parking lot closed); *Insured Lloyds v. Liberty Mut. Ins. Co.*, 295 So. 2d 206 (La. App. 3d Cir. 1974) (car damaged by fire while in shop for repairs); *Zurich Ins. Co. v. Daigle Pontiac Buick*, 292 So. 2d 282 (La. App. 1st Cir. 1974) (tires stolen from car left for repair work); *Verdin v. Quality Chevrolet Co.*, 255 So. 2d 458 (La. App. 1st Cir. 1971) (car stolen from repair shop and wrecked); *Chrysler Credit Corp. v. Caulfield*, 252 So. 2d 461 (La. App. 4th Cir. 1971)

(interior of car stripped while car left for repair work); *St. Paul Fire & Marine Ins. Co. v. Zurich Ins. Co.*, 250 So. 2d 451 (La. App. 4th Cir. 1971) (car stolen from long term parking lot and later recovered in damaged condition); *Miller Car Washes, Inc. v. Crowe*, 245 So. 2d 485 (La. App. 2d Cir. 1971) (truck carrying butane tank destroyed when tank exploded in car wash); *Taylor v. Haik*, 208 So. 2d 433 (La. App. 4th Cir. 1968) (car driven by garage employee involved in accident); *Baker v. Employers Fire Ins. Co.*, 201 So. 2d 349 (La. App. 2d Cir. 1967) (car catches fire while being repaired); *Woodard v. St. Cyr*, 201 So. 2d 205 (La. App. 4th Cir. 1967) (mechanic fails to make repairs on car left with him for 48 months, leaves car on street as derelict, car towed away by police); *Eglin's Univ. Garage Corp. v. Rougelot*, 198 So. 2d 547 (La. App. 4th Cir. 1967) (car damaged while being brought down parking garage ramp); *Neely v. Tamburello*, 187 So. 2d 526 (La. App. 4th Cir. 1966) (car stolen from parking lot and later recovered in damaged condition); *McConnell v. Travelers Indem. Co.*, 172 So. 2d 341 (La. App. 4th Cir. 1965) (car damaged while being driven by president of automobile company for private use); *Indiana Lumbermens Mut. Ins. Co. v. Humble Oil & Refining Co.*, 170 So. 2d 264 (La. App. 2d Cir. 1964) (car damaged while being returned from service station); *Michaels v. Gravier Improvement Co.*, 158 So. 2d 260 (La. App. 4th Cir. 1963) (car engine damaged when left in parking garage); *Liberty Mut. Ins. Co. v. Woolman & Allen*, 155 So. 2d 758 (La. App. 3d Cir. 1963) (tractor-trailer damaged while being removed from ditch); *United Public Ins. Co. v. Employers' Liab. Assur. Corp.*, 144 So. 2d 300 (La. App. 4th Cir. 1962) (car damaged in parking lot by parking attendant driving another car); *Calvert Fire Ins. Co. v. Grotts*, 136 So. 2d 836 (La. App. 4th Cir. 1962) (gas tank set afire when defendant attempted to weld a trailer hitch to car); *Fireman's Fund Indem. Co. v. Sigard*, 129 So. 2d 258 (La. App. 4th Cir. 1961) (car destroyed in garage fire); *Great American Indem. Co. v. Ford*, 122 So. 2d 111 (La. App. 2d Cir. 1960) (car burned in repair shop fire); *Johnson v. Supreme Truck and Trailer Serv.*, 119 So. 2d 660 (La. App. 2d Cir. 1960) (truck destroyed by fire on test drive by mechanic); *White v. Pitts*, 111 So. 2d 808 (La. App. 2d Cir. 1959) (transmission ruined when car improperly towed); *Standard Motor Car Co. v. State Farm Mut. Auto. Ins. Co.*, 97 So. 2d 435 (La. App. 1st Cir. 1957) (car damaged on road test); *Reehlman v. Calamari*, 94 So. 2d 311 (La. App. Orl. Cir. 1957) (borrowed car wrecked by borrower); *Great American Indem. Co. v. Dixie Auto Park & Shop Corp.*, 84 So. 2d 233 (La. App. Orl. Cir. 1956) (car damaged when parking lot attendant failed to notice that accelerator was to the left of brakes); *Texas Mut. Ins. Co. v. Stutes*, 84 So. 2d 621 (La. App. 1st Cir. 1955) (borrowed car involved in accident); *Hazel v. Williams*, 80 So. 2d 133 (La. App. 2d Cir. 1955) (car engine block cracks because service station attendant did not drain radiator soon enough before freeze); *Leigh v. Johnson-Evans Motors, Inc.*, 75 So. 2d 710 (La. App. 2d Cir. 1954) (car damaged by fire in repair garage); *Stell v. Briggs*, 69 So. 2d 82 (La. App. 2d Cir. 1953) (transmission damaged when car improperly towed); *Guiteau v. Southern Parking Co.*, 49 So. 2d 880 (La. App. Orl. Cir. 1951) (car damaged in collision when driven off lot by defendant's employee); *Pacific Fire Ins. Co. v. Eunice Motor Car Co.*, 46 So. 2d 363 (La. App. 1st Cir. 1950), *rehearing den.*, 47 So. 2d 403 (La. App. 1st Cir. 1950) (truck damaged by fire when defendant's employees removed gas tank); *Louisiana Fire Ins. Co. v. R.W. Hodge & Sons Garage*, 42 So. 2d 560 (La. App. 2d Cir. 1949) (truck damaged on test drive by defendant's employee); *Wood v. Becker Welding Shop*, 34 So. 2d 924 (La. App. 1st Cir. 1948) (car catches fire because defendant's employee makes improper weld); *Dupuy v. Graeme Spring & Brake Serv.*, 19 So. 2d 657 (La. App. Orl. Cir. 1944) (car damaged in repair shop fire); *Gulf Ins. Co. v. Temple*, 187 So. 814 (La. App. 2d Cir. 1939) (truck catches fire during blow-torch repair); *Royal Ins. Co. v. Collard Motors, Inc.*, 179 So. 108 (La. App. Orl. Cir. 1938) (car catches fire because of careless use of gasoline by defendant's employees); *Gulf & S.I.R. Co. v. Sutter Motor Co.*, 126 So. 458 (La. App.

Orl. Cir. 1938) (car damaged when defendant's employee takes it for a ride); *Union Indem. Co. v. Blaise Downtown Storage Co., Inc.*, 138 So. 226 (La. App. 1st Cir. 1931) (faulty elevator on parking lot damages car); *Royal Ins. Co. v. Romain Motor Co.*, 120 So. 261 (La. App. Orl. Cir. 1929) (car catches fire while being cleaned with gasoline); *Marine & Motor Ins. Co. v. Cathey*, 8 La. App. 240 (La. App. Orl. Cir. 1927) (car interior burned in repair shop). *Cf.* *Kern v. Bumpas*, 102 So. 2d 263 (La. App. 2d Cir. 1958) (car damaged because defendant failed to properly replace drain plug after changing the oil; incorrect use of deposit in a purely tort action); *Hardware Mut. Cas. Co. v. Ber*, 96 So. 2d 96 (La. App. Orl. Cir. 1957) (car upholstery damaged by defendant's employees).