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# CONTRACTUAL LIMITATION OF BAILEE'S LIABILITY IN ILLINOIS

EDWARD BRODKEY

*Omnia balia divisa est in partes.\**

## I

**T**ODAY, tomorrow and the next day, people will continue to deliver millions of dollars' worth of their goods into the hands of other persons for various purposes<sup>1</sup> and, inevitably, important disputes will continue to arise as to liability for loss or damage thereto. This will be so even if the teaching of Bailments, *qua bailments*, is abolished in every law school curriculum<sup>2</sup> and on every bar examination<sup>3</sup> in the land. It is clear that you cannot abolish the factual situations or the need to resolve the problems involved, one of the most oft-recurring of these being contractual limitation of bailees' liability.<sup>4</sup> We have labored too long under the delusion that the law on that subject is incapable of clarification<sup>5</sup> or that no good or useful purpose is served by recognition of definite rules and standards to apply in

\* With apologies to both Caesar and Judge Story.

<sup>1</sup> The legal possession of goods by one who is not their owner is one of the best accepted concepts of bailment. See Williston on Contracts § 1032 where the author rejects the old definitions of bailment as a contractual relationship in favor of the definition of a bailment as "a rightful possession of goods by one who is not the owner."

<sup>2</sup> If, indeed, that has not already been accomplished.

<sup>3</sup> It is interesting to note that the following question, apropos this article, appeared on an Illinois bar examination: "A is in the business of processing and packaging frozen foods. As an accommodation to his friends he frequently permits them to store frozen meats and vegetables in his 'cold room,' without charge. In some cases he makes a charge for the storage services. He now consults you, inquiring as to his liability with respect to the property left in his possession. He also wishes to know whether a sign in his place of business, reading 'Not responsible for loss by fire or theft,' would protect him from any loss occasioned by such means. Advise him. Explain."

<sup>4</sup> *Ins. Co. of North America v. Elgin, J.&E. R. Co.*, 229 F.2d 705 (C.A. 7th, 1956); *U.S. Fire Ins. Co. v. Paramount Fur Service*, 145 N.E.2d 844 (Ohio, 1957).

<sup>5</sup> 175 A.L.R. 117 (1948).

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repetitive situations. One court<sup>6</sup> has even stated that "treatise writers display a marked tendency to generalize about bailments and their ideas are apt to reproduce themselves for application in indiscriminating factual situations." Be that as it may, it is high time someone had the courage to try to help out Lord Holt, who said, more than 250 years ago, "I have said thus much in this case, because it is of great consequence, that the law should be settled in this point, but I don't know whether I may have settled it, or may not rather have unsettled it. But however that happen, I have stirred these points, which wiser heads in time may settle. . . ."<sup>7</sup>

## II

At the outset, it will help to state the problem: There seems to be a marked difference of opinion among bench, bar, doctor and student as to whether or not a bailee may contract to exempt himself from all liability for care of his bailor's goods against their loss, theft or damage due to the bailee's negligence.<sup>8</sup> The precise question has never been settled in Illinois,<sup>9</sup> but the position which the Illinois courts would probably take were the issue squarely presented to them for determination seems apparent from the cases thus far decided,<sup>10</sup> and certainly there is little doubt as to what their decision ought to be.

Much confusion has arisen from the tendency of many courts to predicate their attempts to decide the point on a determination of whether or not the means employed to accomplish the end, in the particular case, were sufficient to do so,<sup>11</sup> which is a contracts question, rather than on whether or not the law permits such limitations or exemptions. Further, it is common to find courts holding that a

<sup>6</sup> The United States Court of Appeals for the Seventh Circuit, speaking through Finnegan, J., in *St. Paul Fire & M. Ins. Co. v. Chicago Union Station Co.*, 253 F.2d 441, 443 (C.A. 7th, 1958).

<sup>7</sup> *Coggs v. Bernard*, 2 Ld. Raym. 909 (K.B., 1703).

<sup>8</sup> *Noyes v. Hines*, 220 Ill. App. 409 (1920); *Millers Mut'l Fire Ins. Assn. v. Parker*, 234 N.C. 20, 65 S.E. 2d 341 (1951); *Brown on Personal Property* § 84.

<sup>9</sup> *Schoen v. Wallace*, 334 Ill. App. 294, 78 N.E. 2d 801 (1948).

<sup>10</sup> *French Republic v. World's Columbian Exposition*, 83 Fed. 109 (N.D. Ill., 1897), rev'd 91 Fed. 64 (C.A. 7th, 1898); *Schoen v. Wallace*, 334 Ill. App. 294, 78 N.E. 2d 801 (1948); *Krupp v. National Fur Dressing & Dyeing Co.*, 250 Ill. App. 282 (1928); *Jacobs v. Grossman*, 310 Ill. 247, 141 N.E. 714 (1923); *Shayne v. Krebs*, 55 Ill. App. 238 (1894).

<sup>11</sup> *Ohge v. La Salle-Randolph Garage*, 328 Ill. App. 665, 66 N.E. 2d 725 (1946); *Noyes v. Hines*, 220 Ill. App. 409 (1920); *Wiley v. Childs Co.*, 211 Ill. App. 496 (1918); *Healy v. New York Central & H. River R. Co.*, 153 App. Div. 516, 138 N.Y. Supp. 287 (1912); *Vogelsang v. Fredkyn*, 133 Ill. App. 356 (1907).

bailee may limit his liability, but not as against his negligence, asserting that to do so would contravene public policy.<sup>12</sup> Again, one finds decisions indicating that while a bailee may limit his said liability by contract, providing the limitation and notice thereof are reasonable,<sup>13</sup> he may not completely exempt himself from such liability.<sup>14</sup>

It seems obvious that if the law is that an *ordinary* bailee is liable for his care of the bailor's goods only if he is negligent, as was held in *Coggs v. Bernard*,<sup>15</sup> and if the courts are prepared to say that he may limit his liability at all, such limitation can be only as against his negligence. Only in cases of the extraordinary bailments, such as common carriers and innkeepers, is the bailee held liable whether or not he is negligent.<sup>16</sup> In these latter cases, it is logical to say that there is something besides his negligence against which a bailee may contract, but such is not the case where the only basis for impressing liability upon the bailee is his negligence.<sup>17</sup>

Similarly, it is difficult to appreciate why or how every attempt by a bailee to limit his liability in advance opposes public policy. As to the bailor himself, the maxim applicable in torts *volenti non fit injuria* is well known and widely applied.<sup>18</sup> As to the public, "public policy" is a relative term. All private acts of individuals may somehow indirectly affect everyone else, but for present purposes we should be influenced only by the probability of a fairly certain and direct reaction on such matters as public finance, manpower, corruption in office, health, morals or the like. To suggest that recognition of a bailee's right so to limit his liability would, without more, tend to encourage bailees to be careless is unrealistic and so highly conjectural and remote as to pose no real problem. After all, a bailor generally has freedom of choice to seek out and traffic with the most diligent bailee. On the other hand, such recognition would foster freedom of con-

<sup>12</sup> *Sporssem v. First Nat'l Bank*, 133 Wash. 199, 233 Pac. 641 (1925); *Thompson v. Mobile Light & Ry. Co.*, 211 Ala. 525, 101 So. 177 (1924); *Denver Union Terminal Co. v. Cullinan*, 72 Colo. 248, 210 Pac. 602 (1922); *Healy v. New York Central & H. River R. Co.*, 153 App. Div. 516, 138 N.Y. Supp. 287 (1912).

<sup>13</sup> *Noyes v. Hines*, 220 Ill. App. 409 (1920).

<sup>14</sup> *Silvestri v. South Orange Storage Corp.*, 14 N.J. Super. 205, 81 A.2d 502, 504 (1951).

<sup>15</sup> 2 Ld. Raym. 909 (K.B., 1703).

<sup>16</sup> *Ibid.*, at 918.

<sup>17</sup> *Wells v. The Steam Navigation Co.*, 8 N.Y. 204 (1846).

<sup>18</sup> See *Willis, The Right of Bailees to Contract Against Liability for Negligence*, 20 Harv. L. Rev. 297, 302 (1906).

tract.<sup>19</sup> And in those instances where public policy is directly and appreciably involved, the law has *already* specially classified such bailments, imposed extraordinary liability on the bailees in certain cases and in most instances has subjected them to regulation.<sup>20</sup> Historically, the courts have stated only that a bailee may not limit his liability by contract against his "gross negligence," which is something akin to wilfulness, wantonness or affirmative act and essentially different from "negligence" as such.<sup>21</sup>

Those decisions that hold that a bailee may limit his liability by contract but may not completely relieve or exempt himself from that liability lose sight of the fact that in so doing they permit the bailee to contract to be careless up to a certain point but not beyond. It is submitted that if it is immoral or otherwise opposed to public policy to allow a bailee to contract in advance for a condition that will permit him to be careless, it is scarcely less so to permit him so to contract within limitations as to amount, nature of casualty or other special circumstance. Beyond this we ask: "What is a reasonable limitation<sup>22</sup> or how close to complete exemption may such bailee be allowed to contract?" The difference between limitation and exemption is only one of degree.

In those cases where the courts have held that a bailee may limit his liability but not as against his negligence, they have mistakenly and blindly followed supposed authority.<sup>23</sup> In many if not most instances they accidentally came to the right conclusion, but for the wrong reasons. The cases in question were predominantly ones involving common carriers or other bailees affected with a public interest.<sup>24</sup> It would have been just as easy for the courts to have correctly announced the applicable rule as prohibiting a bailee from contracting to limit his liability as against his negligence *where* public policy is involved.

<sup>19</sup> *Ibid.*, at 299.

<sup>20</sup> *Davies v. Warehouse Co. v. Bowles*, 321 U.S. 144 (1943); *Tyson v. Banton*, 273 U.S. 418 (1926).

<sup>21</sup> 3 R.C.L. 106, § 30 n 2 and cases there cited; *Interstate Compress Co. v. Agnew*, 276 Fed. 882 (C.A. 8th, 1921); also see Willis, *The Right of Bailees to Contract Against Liability for Negligence*, 20 *Harv. L. Rev.* 297 (1907).

<sup>22</sup> *Noyes v. Hines*, 220 Ill. App. 409, 421 (1920).

<sup>23</sup> *Denver Union Terminal Ry. Co. v. Cullinan*, 72 Colo. 248, 210 Pac. 602 (1922).

<sup>24</sup> *Lebkeucher v. Penn. R. Co.*, 97 N.J.L. 112, 116 Atl. 323 (1922); *Gesford v. Star Van & Storage Co.*, 104 Neb. 453, 177 N.W. 794 (1920); *Hotels Statler Co. v. Safier*, 103 Ohio St. 638, 134 N.E. 460 (1921); *Dodge v. Nashville, C. & St. L. Ry. Co.*, 142 Tenn. 20, 215 S.W. 274 (1919).

## III

In Illinois, there are no decided cases directly in point.<sup>25</sup> The decision most often used to illustrate the principle involved is *French Republic v. World's Columbian Exposition*.<sup>26</sup> There the Republic of France sued the 1893 world's fair association in the United States Circuit (District) Court for the loss of valuable paintings exhibited at the exposition and destroyed by fire after its close. The rule book issued by the fair authorities and seen by the exhibitor provided for exemption from bailee's liability. In his opinion, Judge Grosscup said:

The first question is what effect is to be given to these immunity clauses? *Were the Exposition a common carrier or warehouseman*, such an effort to exempt itself from liability would not, under the best line of adjudications, be extended to injuries resulting from its own positive negligence. Public policy forbids giving effect to stipulations against liability for injuries resulting from want of ordinary care. Cooley, Torts, paragraph 685, and cases cited in note.<sup>27</sup>

Then the learned Judge went on, for two pages of his reported opinion,<sup>28</sup> to point out that the relation in this case was in many respects different from the ordinary private transactions that constitute the usual bailment. He proceeded to paint a picture of the extent to which the public interest was affected by the loss of the painting, and concluded:

I hold, therefore, as the law of this case, that the management of the Exposition was under legal obligations to safeguard, by the *highest intelligence* and protection compatible with the ephemeral character of the buildings, the exhibits of the plaintiffs, the French Republic and the French citizens, and *that such obligation is not escaped by the exempting clauses* contained in the regulations promulgated by the director general.<sup>29</sup>

The Circuit Court of Appeals reversed the trial court<sup>30</sup> and held that the world's fair was not "an insurer of the exhibit," nor was it negligent under the facts of the case. Accordingly, Mr. Justice Woods, in a special concurring opinion, said:

*Regardless of "the exempting clauses* contained in the regulations promulgated by the director general," I think it cannot be true, as declared in the opinion below, that "nothing short of exhaustive carefulness, all the circum-

<sup>25</sup> Schoen v. Wallace, 334 Ill. App. 294, 78 N.E.2d 801 (1948).

<sup>26</sup> 83 Fed. 109 (N.D. Ill., 1897).

<sup>27</sup> *Ibid.*, at 112.

<sup>28</sup> *Ibid.*, at 112, 113.

<sup>29</sup> *Ibid.*, at 113.

<sup>30</sup> 91 Fed. 64 (C.A. 7th, 1898).

stances considered," could "fully meet the moral and legal obligations imposed," or that it is "the law of this case that the management of the exposition was under legal obligations to safeguard, by the highest intelligence and protection compatible with the ephemeral character of the buildings, the exhibits of the plaintiff." At most, the plaintiff in error was bound, I think, to exercise ordinary care. . . .<sup>31</sup>

As the Court of Appeals rejected the finding of the trial judge that this bailment was so affected with public interest that extraordinary liability should be imposed upon the bailee and failed to find the bailee negligent, there was no occasion for it to pass upon the effect of the immunity clauses, and it accordingly did not do so. Moreover, this was a Federal case, and although it was decided in the Northern District of Illinois, it is not Illinois law.<sup>32</sup> One should bear in mind only that the trial judge, in effect, found it necessary to distinguish between ordinary bailments and those affected with a public interest. Only with respect to the latter sort, such as a "common carrier or warehouseman" was the court constrained to say that the immunity clauses could not exempt the bailee from liability and then only against "its own positive negligence" under the "best line of adjudications."<sup>33</sup>

In *Schoen v. Wallace*, which was a suit by the bailor of a mink fur coat against the bailee furrier who lost it, the furrier having limited his liability to \$100 by contract with the customer, the court said:

The basic question presented for determination is the validity of the agreement between the parties limiting defendant bailee's liability to \$100. *The precise question here involved has not been passed upon by our Supreme Court.* Plaintiff maintains that a contract between a bailor and bailee to relieve the bailee of liability for his own negligence or fraud is contrary to public policy. . . . In *Jacobs v. Grossman*, 310 Ill. 247, 250, the court said: "Whatever may be the rights of the parties in bailment for the mutual benefit of the bailor and bailee, it is unquestionably the law that the parties may increase or diminish these rights by stipulations contained in the contract of bailment." . . .

Plaintiff argues that if the validity of the agreement in the present case is sustained furriers would be encouraged either to convert garments in their custody to their own use or would be induced to exercise minimum care. Plaintiff did business with the defendant over the years because she "felt he

<sup>31</sup> *Ibid.*, at 77.

<sup>32</sup> It is interesting to note that the Illinois Bar Examiners included a question on a recent bar examination covering the loss of a handmade bedspread exhibited at a county fair which may have been guilty of negligence in guarding same, but relied on a similar immunity clause. This would seem to have been based on the decision in *Kay County Free Fair Ass'n v. Martin*, 190 Okl. 106, 122 P.2d 393 (1942), in which the court held that the defendant was required to use ordinary care regardless of any rule of non-liability prescribed in its catalog. See 139 A.L.R. 928, 935. How should the question have been answered?

<sup>33</sup> 83 Fed. 109, 112 (N.D. Ill., 1897).

was reliable." *She was free to buy a mink coat from any furrier in the city but she chose to do business with the defendant. It was a private transaction in which the public was in no way concerned. Nor is it a matter of public interest whether the loss shall be borne by the plaintiff's insurer or by the defendant. . . .* While the facts in the cases last cited are dissimilar to those in the case at bar we think the principle emerging from these cases is applicable here, which permits the parties in a bailment to *relieve* or *limit* the bailee's liability *for his own negligence*.<sup>34</sup>

It will thus be seen from the foregoing that the Illinois Appellate Court for the First District has recognized the principle that where the bailment is essentially a private transaction and not a matter of public interest, a bailee may by contract either "relieve" or "limit" his liability "for his own negligence." Whether the court, by the use of the term "relieve," meant something different from "limit," namely to "exempt," is not clear. The word "relieve" is a relative term<sup>35</sup> and one of many connotations depending upon the sense in which used and all the surrounding circumstances.

#### IV

Yet it is clearly of no assistance to a complete understanding of the law applicable to prophesy that the Illinois courts would probably follow the rule which permits a bailee to excuse himself from all liability as against his negligence unless the bailment is affected with a public interest. As has been so often noted, it is not the recognition of the rule which presents the difficulty, but its application.<sup>36</sup> It is not enough to quote the rule unless we know what the Illinois courts are likely to regard as bailments affected with such public interest.

As pointed out by David R. Levin in a recent monograph published in the *Chicago-Kent Law Review*,<sup>37</sup> off-street automobile parking facilities could easily qualify as public utilities. Various courts, without attempting to classify them as public utilities, have stated that they affect public interest.<sup>38</sup> On the other hand the Supreme Court of the United States has held that the public interest in a business is not to be determined solely by the number of people it serves.<sup>39</sup> Among other factors to be taken into account are the monopolistic character-

<sup>34</sup> 334 Ill. App. 294, 296, 297 and 298, 78 N.E.2d 801, 802, 803 (1948).

<sup>35</sup> Cf. *D.D.D. Corp. v. Federal Trade Commission*, 125 F.2d 679 (C.A. 7th, 1942).

<sup>36</sup> *McNicholas v. New England T. & T. Co.*, 196 Mass. 138, 81 N.E. 889 (1907).

<sup>37</sup> Levin, *Parking Facilities as Public Utilities*, 29 *Chicago-Kent L. R.* 295 (1951).

<sup>38</sup> *Miller's Mut'l. Fire Ins. Ass'n v. Parker*, 234 N.C. 20, 65 S.E. 2d 341 (1951).

<sup>39</sup> *Tyson v. Banton*, 273 U.S. 418, 430 (1926).



istics of the business in question,<sup>40</sup> and particularly the comparative bargaining power of the parties.<sup>41</sup> Accordingly, it has been held proper to regulate not only the storage of grain in Chicago, as decided in *Munn v. Illinois*,<sup>42</sup> but also the rates and charges made by insurance companies,<sup>43</sup> since the court felt that these operations were affected with a public interest. On the other hand, the Supreme Court refused to consider the rates charged by theater ticket speculators a matter of public concern.<sup>44</sup> And with respect to the effect of the distribution of insurance losses on the public, the Illinois court, in *Schoen v. Wallace*, supra, did not hesitate to observe that it is not "a matter of public interest whether the loss shall be borne by the plaintiff's insurer or by the defendant."<sup>45</sup>

Again, with respect to parcel check rooms which issue claim checks to owners leaving their baggage, it would appear that these establishments are at least as much affected with a public interest on account of their widespread need and use, monopolistic tendencies and inequality of bargaining power of bailor and bailee as is the case with respect to automobile parking lots. If both the operators of parking facilities and parcel check rooms are to be classified for this purpose as public type bailees (an extremely unlikely position), neither of them, under this view, should be able to contract against their liability. Yet, despite the fact that both a Connecticut court<sup>46</sup> and a Texas court<sup>47</sup> have reasoned that neither a claim check nor a sign disclaiming bailee's liability (nor even their combination) will operate to exonerate the bailee, the Illinois court in *Noyes v. Himes*<sup>48</sup> held that the combination of a conspicuous sign directing the bailor's attention to the contract set out on his claim check will effect the limitation in question. The Texas court said:

We do not undertake to suggest what the method [of limiting liability] should be except that information as to the hour of closing and the time of

<sup>40</sup> *Davies Warehouse Co. v. Brown*, 137 F.2d 201 (U.S. Emergency Ct. of Appeals, 1943).

<sup>41</sup> *St. Paul Fire & M. Ins. Co. v. Chicago Union Station Co.*, 253 F.2d 441 (C.A. 7th, 1958); *Miller's Mut'l. Fire Ins. Ass'n v. Parker*, 234 N.C. 20, 65 S.E.2d 341 (1951).

<sup>42</sup> 94 U.S. 113 (1876).

<sup>43</sup> *German Alliance Ins. Co. v. Kansas*, 233 U.S. 389 (1913).

<sup>44</sup> *Tyson v. Banton*, 273 U.S. 418 (1926).

<sup>45</sup> 334 Ill. App. 294, 78 N.E.2d 801 (1948).

<sup>46</sup> *Malone v. Santora, Johnson v. Santora*, 135 Conn. 286, 64 A.2d 51 (1949).

<sup>47</sup> *McAshan v. Cavitt*, 149 Tex. 147, 229 S.W.2d 1016 (1950).

<sup>48</sup> 220 Ill. App. 409 (1920).

the ending of responsibility for care of the automobile should be clearly and specifically brought to the attention of the bailor [car owner].<sup>49</sup>

The Illinois court reasoned:

What more could or ought the defendant to have done in order to put plaintiff upon notice? Large placards, so situated that one exercising any degree of care could scarcely fail to see them, announced to the plaintiff these limitations. The ticket which was handed to him specifically pointed them out. What more could defendant have done, or what more ought we require it to do? Should the defendant be required to instruct every one of its servants to personally notify each one of its customers by word of mouth, of that which it had already notified him in writing? We do not think so.<sup>50</sup>

If the question put by the Illinois court above be not entirely rhetorical, it might well admit of an affirmative rather than a negative answer, within the bounds of reason. More important, this Illinois decision would seem to indicate a more liberal tendency in Illinois than in certain other states with respect to allowing a bailee to limit his liability by contract in the easiest and most practicable manner. And while we fully recognize that the court's immediate concern was with the means employed to bring about the consensual relation and the contract, it is arguable that courts would not waste their time in an effort to determine whether or not the contract of limitation were effected unless they also believed it might accomplish a permissible limitation. In any event, it seems fairly certain that the Illinois courts do not mean to intimate that bailees such as parking lots and check rooms cannot limit their liability by contract.

## V

One thing seems certain: "Omnia baillia divisa est in partes duos." There are two classes of bailments. One class of bailees are generally allowed to limit their liability for negligence and a second class are not. If the bailment is essentially private in nature, so that no other than the bailor and bailee are directly and materially affected by the limitation, it is permitted. On the other hand, if third parties are immediately affected, such a limitation is regarded as against public policy and void. So far there is substantial agreement. It has been suggested, however, that all bailees are divisible for this purpose into "ordinary" bailees and "professional" bailees,<sup>51</sup> the former group of

<sup>49</sup> *McAshan v. Cavitt*, 149 Tex. 147, 229 S.W.2d 1016 (1950).

<sup>50</sup> *Noyes v. Hines*, 220 Ill. App. 409, 422 (1920).

<sup>51</sup> *Ins. Co. of N. America v. E. J. & E. Ry. Co.*, 220 F.2d 705 (C.A. 7th, 1956).

which may, while the latter group may not, limit their liability by contract. Although one cannot deny to any man the right to make his own definitions and his own classifications, the writer finds little or no basis for the classification last suggested. The United States Court of Appeals for the 7th Circuit adopted the "ordinary" as opposed to "professional" classification simply because the generalizing "treatise writers" of the A.L.R. article cited in the opinion had made that classification.

If by the term "professional" bailees we are to understand that bailees who make bailment their business may not relieve themselves from liability by contract, it cannot be denied that both a railroad and a furrier are professionals, and such Illinois cases as we have here cited are against that position.<sup>52</sup> They seemingly distinguish between "private" and "public" type bailees, rather than between "ordinary" and "professional." If "ordinary" bailees must be contrasted with any other type, we think the Illinois courts were thinking of "extraordinary" bailments, such as common carriers, innkeepers and perhaps warehousemen,<sup>53</sup> who must take all comers. It would seem that any bailee who need not accept the bailment at all, may generally condition his acceptance on any terms he chooses. The only time there is true disparity of bargaining power between bailor and bailee is when either the bailor or bailee has no real choice. It is submitted that a bailor is not deprived of a choice just because his bailee is a business man. And it is noteworthy that Illinois, like many other states, even permits certain extraordinary bailees to limit their liability by contract, in the absence of prohibiting statute. Frequently, the only inquiries are whether there was real assent to the arrangement and consideration for the reduction in liability.<sup>54</sup>

## VI

The small number of decided cases in Illinois makes it difficult to prognosticate with any degree of certainty as to what the Illinois courts would hold should new situations arise. Nevertheless, it is believed that the following positions would be taken:

<sup>52</sup> Both the furrier in *Schoen v. Wallace*, 334 Ill. App. 294, 78 N.E. 2d 801 (1948), and the check room proprietor in *Noyes v. Hines*, 220 Ill. App. 409 (1920) were "professionals" in that sense.

<sup>53</sup> Cf. *French Republic v. World's Columbian Exposition*, 83 Fed. 109 (N.D. Ill., 1897), rev'd 91 Fed. 64 (C.A. 7th, 1898).

<sup>54</sup> *Noyes v. Hines*, 220 Ill. App. 409 (1920).

(1) They would not hold that an ordinary bailee may not contract against his negligence, but would permit him to do so (*a*) within reasonable limitations, with reasonable notice, or perhaps (*b*) entirely, if it appear that the bailor knew and assented to the exemption.

(2) They would prohibit a bailee in a bailment affected with public interest from contracting against his negligence, but would not regard all attempts of bailees to limit by contract their liability as against their negligence *ipso facto* against public policy. It would depend on the individual situation.

(3) In classifying certain bailments as so affected with public policy as to preclude a bailee's contract against his negligence, they would require clear, direct, and certain evidence of the public rather than the private nature of bailee's business in order to rebut a presumption that, without more, bailees are engaged in private enterprise, and would tend liberally to construe the requirement to allow the utmost freedom of contract.

(4) In determining the efficacy of the means employed to effect the contractual arrangement, they would not require the unusual, the unnatural or the impossible.