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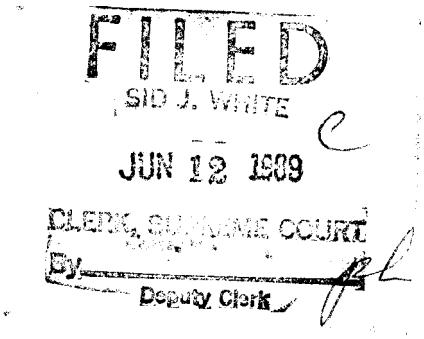
IN THE SUPREME COURT OF FLORIDA

CASE NUMBER 73,651



ENTERPRISE LEASING COMPANY,
a corporation,

Petitioner,

vs.

SHEDRICK ALMON,

Respondent.

ON PETITION FOR CERTIORARI FROM
THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

PETITIONER'S INITIAL BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

In February of 1986, Petitioner, Enterprise Leasing Company, leased a motor vehicle to Olivia Adams pursuant to a contract which contained a provision that no one else could use the vehicle without Petitioner's consent.[1] On March 1, 1986, without obtaining such consent, Ms. Adams loaned the car to Steve Almon, Respondent's brother, and Steve Almon took possession of and control over the vehicle. (Deposition of Steve Almon pp. 14-15). Later that same evening, Respondent's brother allowed Respondent to use the car. (Deposition of Steve Almon p. 16; Deposition of Respondent pp. 36-38). Respondent wanted to go out that evening, but Respondent did not have an automobile. (Deposition of Respondent pp. 33-38) Respondent's brother loaned him the car upon the condition that he return it. (Deposition of Steve Almon p. 16) After taking possession of the car, Respondent drove to the Jacksonville Riverwalk, stopping on the way to pick up Bill

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[1] A copy of the lease was attached to the answer of Enterprise Leasing (Record on Appeal p. 5). The specific provision in question provides as follows at paragraph 14:

> Renter's or other operators' rights to use or operate the vehicle described, and their rights under paragraph 5 and 6 shall terminate forthwith and be null and void if said vehicle is used, operated, or driven . . . by any person other than renter who signed the rental agreement without the written consent of owner or owner's representative endorsed hereon.

In Almon's reply to the affirmative defense of Enterprise Leasing, Almon states at paragraph 3 that Almon admits that the rental contract purported to prohibit the use of the vehicle by third parties, but Almon denied the legal effect of that contractual provision as it applied to his lawsuit against Enterprise Leasing. (Record on Appeal p. 23)

Wise. (Deposition of Respondent pp. **39** and **42).** When they left the Riverwalk sometime later that night, Respondent permitted Bill Wise to drive the car. (Deposition of Respondent p. **46).** After visiting two private clubs or nightspots, Bill Wise and Respondent proceeded to return home in the car. (Deposition of Respondent pp. **47-49; 50-54).** Respondent continued to allow Bill Wise to drive the vehicle. (Deposition of Respondent p. **54)** Shortly thereafter, with Wise driving and Respondent in the front passenger seat, a one car accident occurred and Respondent was injured. (Deposition of Respondent pp. **55-58)**

Respondent sued Bill Wise alleging that the negligence of Bill Wise caused the accident and Respondent's resulting injuries. Respondent joined Enterprise Leasing in the lawsuit based solely upon Enterprise Leasing's vicarious liability because of its status as owner of the automobile. (Record on Appeal pp. 1-2) The trial court granted summary judgment in favor of Petitioner on the grounds that Respondent was not legally entitled to recover against the owner of the vehicle because Respondent was a sub-bailee of the motor vehicle who entrusted the vehicle to the very person whose negligence caused the accident. (Summary Final Judgment pp. **1-2)** The First District Court of Appeal reversed finding that the circumstances presented a jury question as to whether Respondent had terminated his status as a bailee and had become solely a passenger at the

time of the accident.[2] Petitioner timely filed a notice seeking review in the Supreme Court of Florida on the grounds that the First District's opinion conflicted with an opinion of another district court of appeal or a prior opinion of the Supreme Court of Florida. Art. V, §3(b)(3), Fla. Con. After both Petitioner and Respondent filed briefs on jurisdiction, this Court ordered the parties to submit briefs on the merits and set oral argument for September 11, 1989.

SUMMARY OF THE ARGUMENT

As a matter of law, Respondent cannot recover from Petitioner for injuries caused by the negligent operation of the motor vehicle driven by Bill Wise. Petitioner leased the automobile to Olivia Adams under the terms of a lease wherein she was prohibited from allowing others to use the car. Notwithstanding this contractual provision, under Florida's "dangerous instrumentality" doctrine, Petitioner remained liable for injuries to third parties as a result of the negligent operation of the vehicle. However, Respondent does not fall within the umbrella protection of "third parties" as used in applying Florida's dangerous instrumentality doctrine to automobiles. The Supreme Court of Florida in Ravdel, Ltd. v. Medcalfe, 178 So.2d 569 (Fla. 1965), and the Third District Court of Appeal in State Farm Mut. Auto. Ins. Co. v. Clauson, 511 So.2d

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[2]The First District Court's opinion is reported at Almon v. Enterprise Leasing Co., 537 So.2d 1046 (Fla. 1st DCA 1989), and a copy of the court's opinion is contained in the Appendix to Petitioner's Brief on Jurisdiction.

1085 (Fla. 3d DCA 1987), have specifically held, as a matter of law, that a bailee or sub-bailee of a vehicle who permits a third party to drive the vehicle cannot recover against the owner for injuries sustained as a result of the negligence of the very person the bailee or sub-bailee placed in control of the vehicle. The rationale for holding that the owner is not liable under such circumstances is that the bailee or sub-bailee had possession and control of the vehicle and was in the best position to insure that the vehicle was used in a safe manner.

The decision of the First District Court below expressly and directly conflicts with both Ravdel and Clauson. Under controlling facts not materially different than Ravdel and Clauson, the First District found that a jury question is created as to whether the bailee or sub-bailee regains his status as a passenger once he turns the vehicle over to the negligent driver. Under the undisputed facts set forth in the First District's opinion, the question of Respondent's status was a question of law and not a jury question. More importantly, the First District incorrectly phrased the question to be decided. The question was not whether Respondent had terminated his status as a bailee and regained his status as a passenger; rather, under Ravdel and Clauson, the question was whether Respondent had possession and control of the vehicle and then turned the vehicle over to the driver whose ultimate negligence caused the injuries. There is no dispute that Respondent fell into this latter category and, therefore, as a matter of law, is not legally

entitled to recover from Petitioner based solely upon Petitioner's status as the owner of the automobile.

ARGUMENT

A SUB-BAILEE, WHO HAS BEEN GIVEN POSSESSION AND CONTROL OF A VEHICLE AND WHO IN TURN ENTRUSTS THE VEHICLE TO ANOTHER, CANNOT RECOVER AGAINST THE OWNER FOR INJURIES SUSTAINED AS A PASSENGER DUE TO THE NEGLIGENT DRIVING OF THE VERY PERSON HE PLACED IN CONTROL OF THE VEHICLE.

The "Dangerous Instrumentality" Doctrine

Respondent seeks to hold Petitioner liable in this case under Florida's dangerous instrumentality doctrine based solely on Petitioner's ownership of the automobile in question. At common law, liability for damage caused by the negligent operation of a motor vehicle by another could not normally be predicated against an owner merely by virtue of his ownership. *Am.* Jur.2d Automobiles and Highway Traffic §571 and cases cited at footnote 3, infra. In Anderson v. Southern Cotton Oil Co., 73 Fla. 856, 74 So. 975 (Fla. 1917) and Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920), the Supreme Court of Florida was one of the first jurisdictions to carve out an exception to this common law principle. The court based its decision on the "dangerous instrumentality" doctrine as that doctrine had been previously applied in cases involving such traditionally dangerous instrumentalities as poisons, loaded firearms, explosives and locomotives. Id. 86 So. 631. After examining statistics relating to injuries and death caused by motor vehicles, the Supreme Court concluded that an automobile as

it is normally used on the public highways is an inherently dangerous instrumentality. Under the dangerous instrumentality doctrine, therefore, the court held that an owner of an automobile is vicariously liable for damage caused by another using it with his express or implied permission.[3]

The rationale underlying the dangerous instrumentality doctrine is that the owner has the ability to ensure that the motor vehicle is operated properly. The Florida Supreme Court expressed this rationale in the first of the Southern Cotton Oil Co. cases:

> The liability grows out of the obligation of the owner (of the motor vehicle) to have the vehicle . . . properly operated when it is by his authority on the public highway.

Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 975, 978 (Fla. 1917). The rationale has been underscored by the courts many times since. For example, in Union Air Conditioning, Inc.

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[3] In the Southern Cotton Oil Co. cases, the Supreme Court of Florida applied "an old and well settled principle" (the "dangerous instrumentality" doctrine) to "new conditions" (automobiles) 86 So. 631, and became one of the few jurisdictions to judicially extend the dangerous instrumentality doctrine to include motor vehicles. Most courts, absent statute, have declined to extend the dangerous instrumentality doctrine to include motor vehicles. See 74 ARL 3d 739, 744; Neubrand v. Craft, 151 N.W. 455 (Iowa 1915); Fisher v. Fletcher, 133 N.E. 834 (Ind. 1922); Ekloff v. Waterston, 285 P. 201 (Or. 1930); Orose v. Hodge Drive it Yourself Co., Inc., 9 N.E. 2d 671 (Ohio 1937); Hertz Driv-Ur-Self System of Colorado v. Hendrickson, 121 P.2d 483 (Colo. 1942); Jahn v. O'Neill and VIP Car Rental. Inc., 475 A.2d 837 (Pa. Super. 1984); Wolford v. Scott Nickels Bus. Co., 257 S.W. 2d 594 (Ky. 1953); and Kline v. Wheels by Kinney, Inc., 464 F.2d 184 (4th Cir. 1972). While the above cited cases and authority are not meant to be an exhaustive treatise on the subject, it seems from a review of these cases that Florida is in the minority in judicially extending liability to owners of automobiles based purely upon the fact of ownership.

v. Troxtell, 445 So.2d 1057 (Fla. 3d DCA 1984), the court stated that the dangerous instrumentality doctrine puts the burden of liability on the owner of the automobile for injuries to third parties because the owner has the "capacity to protect the safety of the public by not relinquishing control of the vehicle to another." Id. at 1058 (emphasis supplied).

The Raydel Exception --
A Bailee of a Vehicle who
Permits a Third Party to Drive it
Cannot Recover Against the Owner for Injuries
Sustained while the Bailee is a Passenger in the Vehicle

Under the dangerous instrumentality doctrine, the vicarious liability of the owner only extends to third parties injured by the negligent operation of the vehicle. The dangerous instrumentality doctrine does **not** allow the driver of an automobile who is operating it with the owner's consent to hold the owner liable for injuries sustained by the driver because of his own negligent operation of the automobile. Florida Power and Light Co. v. Price, 170 So.2d 293, 294 (Fla. 1964). Similarly the Supreme Court of Florida has held that a bailee cannot hold an owner liable for injuries sustained by the bailee while he is a passenger in the owner's automobile. Raydel, Ltd. v. Medcalfe, 178 So.2d 569 (Fla. 1965).

In Raydel the owners of the automobile entrusted the vehicle to Mr. and Mrs. Medcalfe jointly. Mr. Medcalfe negligently operated the car causing an accident which injured Mrs. Medcalfe who at the time was riding in the car as a passenger. The Supreme Court of Florida held that Mrs. Medcalfe could not

recover from the owners under the dangerous instrumentality doctrine:

> It is well recognized that an owner of an automobile is not liable under the dangerous instrumentality doctrine for injuries sustained by the driver of the automobile to whom he entrusted it because of the driver's negligent operation of it.
>
> * * *
>
> The same rule applies where a bailee instead of driving the automobile himself permits a third party to drive it for him and is injured by the driver's negligence while a passenger in the car.

Id. at 572 (emphasis supplied). When a bailee permits someone to drive the motor vehicle and the bailee is injured because of the driver's negligence, the bailee is prohibited from recovering against the owner.

It is this principle announced in Ravdel, and expressed by the Third District in State Farm Mut. Auto. Ins. Co. v. Clauson, 511 So.2d 1085 (Fla. 3d DCA 1987), that forms the legal basis for the trial court's order granting summary judgment. Applying the Ravdel rule to the facts presently before this Court: an owner of an automobile is not liable under the dangerous instrumentality doctrine "where a bailee (Shedrick Almon) instead of driving the automobile himself permits a third party (Bill Wise) to drive it for him and is injured by the driver's negligence while a passenger in the car." Ravdel. Ltd. v.

Medcalfe, 178 So.2d 569, 572 (Fla. 1965).[4] See State Farm Mut. Auto. Ins. Co. v. Clauson, 511 So.2d 1085, 1086 (Fla. 3d DCA 1987).

The Rationale Underlying the Ravdel Exception is that a Bailee who has Control over the Vehicle is Himself Responsible, and thus Liable, for the Negligent Operation of the Vehicle and Therefore cannot Recover Against the Owner

The Ravdel exception rests upon two related principles: (1) the concept that an automobile is a dangerous instrumentality and, as a matter of public policy, anyone having possession and control over the vehicle should be held responsible for the manner in which the car is used by anyone with his knowledge or consent, see Southern Cotton Oil v. Anderson, 80 Fla. 441, 86 So. 629 (1920); (2) concomitantly, when injury occurs to a person who has been given possession and control over the vehicle, and thus legal responsibility for its use, that person cannot hold the owner liable for his injuries. The first principle was explained by the court in Ravdel as follows:

> As is readily apparent from a careful analysis of the foregoing decisions, the

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[4]The same result was reached by the court in Devlin v. Florida Rent-A-Car, Inc., 454 So.2d 787 (Fla. 5th DCA 1984). James Devlin rented an automobile from Florida Rent-A-Car. While in route to Miami, Devlin allowed his passenger Thomas Palmer to drive the car, and, because of Palmer's alleged negligent operation, the automobile left the road, struck a tree and Devlin was injured. Devlin attempted to hold the owner of the vehicle, Florida Rent-A-Car, vicariously liable for the negligent operation of the vehicle. The Fifth District Court of Appeal recognized the exception to the dangerous instrumentality doctrine set forth in Ravdel and held that "where, as here, the bailee is injured by the negligence of another to whom the bailee has entrusted the driving of the automobile" the injured bailee cannot recover from the owner of the vehicle. Id. at 788.

> question of liability of a bailee for the negligent operation of a motor vehicle in its possession and under its dominion and control, even though by a person to whom possession had been entrusted by the bailee, is not dependent upon ownership nor the particular legal relationship with exists between the possessor and the owner. **The** rationale for each of the foregoing decisions adopts as a criteria for determining liability whether or not the person charsed had possession of and dominion and control over the vehicle at the time negligent operation caused the damases forming the subject matter of the suit. If so, liability is imposed even though the negligent operation of the vehicle was by some third person to whom it was temporarily entrusted.

Id. at 571 (emphasis supplied) (citations omitted). When the owner of a car loans it to someone, and that person in turn lets someone else drive the car, if the driver negligently causes an accident injuring a third party, not only is the owner of the vehicle liable but the bailee who exercised dominion and control over the vehicle (and allowed someone else to drive it) is also liable--the driver's negligence is imputed to the bailee as well as the owner.

Concomitantly, if the bailee is himself injured by the negligent driving of someone whom he permitted to drive the car, the bailee cannot recover from the owner because the bailee is prevented from imputing the negligence of the driver to the owner since the bailee, who himself had dominion and control over the vehicle, was the very person who permitted the negligent driver to drive the car. Raydel stated this principle as follows:

> Mr. Medcalfe cannot impute to petitioners, the owners of the car, the negligent operation of it by her husband, since with

> her husband she had been jointly entrusted with the car. Unless the negligent driving can be imputed in law to an owner there can be no recovery from the owner. Not only was Mrs. Medcalfe jointly entrusted with the car by the owners, but at the time of the accident it is quite apparent that as one so entrusted with the possession of the car she in turn was consentins to its being driven for her personal benefit by her husband.

Id. at **571, 572** (emphasis supplied).

The Rule that a Bailee cannot Recover Against the Owner Applies even though the Injured Bailee is a Sub-bailee who Obtained the Car from Intervening Bailees

There is no substantive difference between the situation in Raydel and the situation where the injured party is a sub-bailee who obtained possession of the car from an intervening bailee. In State Farm Mut. Auto. Insurance Co. v. Clauson, **511** So.2d **1085** (Fla. 3d DCA **1987),** Mrs. Clauson's employer leased an automobile from We Try Harder. The employer then loaned the automobile to her as part of Mrs. Clauson's compensation for her full-time, unrestricted use. While returning from a social event, Mrs. Clauson was riding as a passenger in the vehicle which she had allowed her husband to drive. He did so negligently and she was injured. Under the dangerous instrumentality doctrine Mrs. Clauson attempted to hold State Farm liable for uninsured motorist coverage based on the asserted liability of the vehicle's owner, We Try Harder. The court held that Mrs. Clauson was not legally entitled to collect from We Try Harder. Relying upon Ravdel and Devlin, the court stated that "it is clearly established that an injured bailee of a vehicle cannot recover

from the owner of the vehicle for injuries caused by the negligent operation of her own sub-bailee." Id. at 1086. The court explained the reason for this principle of law:

> To the same extent as the owner, a bailee (or sub-bailee) of a motor vehicle is liable to third persons under the dangerous instrumentality doctrine for the negligence of one to whom he has entrusted it. . . . Thus, if Mr. Clauson had injured a pedestrian or another driver, not only We Try Harder but Mrs. Clauson (and her employer as well) would be vicariously responsible for his negligence. In the present instance, however, in which the bailee, Mrs. Clauson, has, in effect, sued We Try Harder for Mr. Clauson's neslisence, she is barred by the fact that his neslisence is imputed directly to her and is, as it were, stopped on its attempted way up the chain of responsibility before it reaches the owner. Looking at it another way, the husband's negligent driving is imputed to both the plaintiff and the owner-defendant. She is as much--if not, as the immediate bailee, more--responsible for his conduct as the "defendant" We Try Harder. Two Florida cases directly apply these principles and hold, as we do in following them, that the bailee cannot succeed in such a situation. Ravdel, Ltd. v. Medcalfe, 178 So.2d at 572; Devlin v. Florida Rent-A-Car, Inc., 454 So.2d at 787.

Id. at 1086 (emphasis supplied). The court specifically considered and rejected the argument that there should be a different result because Mrs. Clauson, the injured bailee, was herself a sub-bailee who obtained the car from an intervening lessee-bailee, her employer: "Finally, we reject the plaintiff's claim that this rule does not apply because, unlike Ravdel and Devlin, the injured bailee secured the car from an intervening lessee-bailee, her employer, rather than directly from the owner.

Applying the principles discussed already, this fact cannot make any legal difference." Id. at 1087.

The facts in the Clauson case parallel the controlling facts in the instant case:

	Enterprise		Clauson
1.	Appellee leased car to Olivia Adams	1.	We Try Harder leased car to Ad Agency
2.	Adams allowed Respondent's brother to use car with no restrictions	2.	Ad Agency allowed Mrs. Clauson to use car with no restrictions
3.	Respondent's brother allowed Respondent to drive the car without restriction		
4.	While returning from a social event Respondent permitted Bill Wise to drive the car while he was a passenger.	3.	While returning from a social event Mrs. Clauson permitted her husband to drive the vehicle while she was a passenger

This series of transfers is not disputed by Respondent.[5] Just as Mrs. Clauson, a sub-bailee, could not recover against the owner of the vehicle, neither can Respondent, a sub-bailee, recover from Enterprise Leasing, the owner of the vehicle. To paraphrase the Clauson court, the following analysis applies:

> In the present instance, however, the sub-bailee Respondent, has sued Enterprise Leasing for the negligence of Bill Wise and Respondent is barred by the fact that the driver's negligence is imputed directly to

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[5]The series of transfers from Petitioner to Respondent was admitted by Respondent in his reply to Petitioner's affirmative defenses: "Ms. Adams leased the vehicle and thereafter allowed Steve Almon, the plaintiff's brother, to operate it; in turn, Steve Almon allowed the plaintiff to operate it and, plaintiff allowed Mr. Bill Wise to operate the vehicle at the time of the accident." (Paragraph 4 of Respondent's reply to Petitioner's affirmative defenses, Record on Appeal pp. 23-24).

> him and is, as it were, stopped on its attempted way up the chain of responsibility before it reaches the owner. Looking at it another way, Bill Wise's negligent driving is imputed to both Respondent and Enterprise Leasing. Respondent is as much--if not, as the immediate bailee, more--responsible for the driver's conduct as the Petitioner Enterprise Leasing.

Under the undisputed facts of the present case, it is impossible to reconcile the First District's holding in the case below with the Third District's holding in Clauson.

The First District's Opinion also Conflicts with the Supreme Court of Florida's Opinion in Ravdel

The court's decision in Clauson is grounded upon the law set forth by the Supreme Court of Florida in Ravdel. Therefore, not only does the First District's opinion in the court below conflict with Clauson, the First District's decision also conflicts with Ravdel. As stated above, the Supreme Court of Florida in Ravdel laid down the following two principles of law: (1) "An owner of an automobile is not liable under the dangerous instrumentality doctrine for injuries sustained by the driver of the automobile to whom he entrusted it because of the driver's negligent operation of it" Id. at **572,** and **(2)** the same rule applies "where a bailee instead of driving the automobile himself permits a third party to drive it for him and is injured by the driver's negligence while a passenger in the car." Id. at **572.** The material facts in the present case are not substantially different than the facts in Ravdel: Respondent, Shedrick Almon, who had possession and control of the car, instead of driving the

automobile, permitted a third party to drive it for him and he was injured by that driver's negligence while a passenger in the car. Applying the principles of law set forth in Raydel to the facts and circumstances of the instant case, Petitioner, as a matter of law, is not liable to Respondent.

The Undisputed Facts Show that Respondent was a Sub-bailee of the Automobile and therefore not Entitled to Recover Against the Owner

The appellate court below acknowledged the undisputed facts in its opinion:[6]

> Appellee leased a vehicle to Olivia Adams, pursuant to a contract which contained a provision that no one else should use the vehicle without appellee's consent. Without obtaining such consent Adams allowed appellant's brother to use the vehicle. Adams did not expressly restrict the scope of this use and later that evening appellant's brother allowed appellant to use the vehicle, also without restriction. Appellant drove the car to the residence of an individual named Bill Wise, and appellant and Wise then used the vehicle to visit several clubs. During the course of the night appellant became tired and asked Wise to drive. Appellant indicated that at times during the night he remained in the car sleeping while Wise was within various business establishments. After departing one of the

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[6]The test for reviewing the propriety of a summary judgment is whether or not there remain genuine issues of material fact. If issues of fact exist and the slightest doubt remains, a summary judgment cannot be granted and all doubts as to the existence of a genuine issue of material facts must be resolved against the moving party. Fletcher v. Petman Enterprises, Inc., 324 So.2d 135 (Fla. 3d DCA 1975); Hewes v. Professional Ins. Corp., 140 So.2d 340 (Fla. 1st DCA 1961) cert denied 146 So.2d 377. Petitioner has met every requirement imposed upon it by the above-cited case law in establishing that summary judgment was both factually and legally appropriate. Indeed, Petitioner, Respondent, and the First District all appear in agreement as to the material facts.

> clubs in the early morning hours, with Wise driving and appellant in the front passenger seat, an accident occurred and appellant was severely injured.

Almon v. Enterprise Leasing Co., 537 So.2d 1046, 1047 (Fla. 1st DCA 1989). The First District in the court below reversed the trial court's order granting summary judgment because the First District concluded that the case involved "conflicting inferences and the circumstances present a jury question as to whether appellant (Respondent) had terminated his status as a bailee and become solely a passenger." Almon v. Enterprise Leasing Co, 537 So.2d 1046, 1048 (Fla. 1st DCA 1989). However, the court does not state what "conflicting inferences" and what "circumstances" create a jury question. Within the four corners of the First District's opinion, as well as within the four corners of the record, there does not appear to be any conflicting inferences or circumstances to resolve.

In examining the First District's opinion to decide the issue before this Court, this Court need not become mired in a legal analysis of the term **"bailment."**[7] "Bailment" is not the

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[7]Under the undisputed facts present in this case, it does appear that Respondent was a bailee of the vehicle as a matter of law. Bailment consists of the delivery of personalty for a particular purpose upon a contract, express or implied, that after the purpose has been fulfilled the property shall be returned to the person who delivered it, or otherwise dealt with according to his or her direction, or kept until he or she reclaims it. Dunham v. State, 140 Fla. 754, 192 So. 324, 326 (1939). The "bailee" is the person who receives the possession or custody of the property, and the "bailor" is the person from whom the property is received. There are bailments for the mutual benefit of the bailor and bailee, whereby the bailor, for compensation, lets the bailee use its property such as when a rental car company leases a car to a customer. **See** Devlin v.

key term --the important concept for the purposes of deciding the vicarious liability of the owner is whether Respondent had been given custody and control of the motor vehicle and whether he in turn allowed someone else to drive it. There is no dispute that he had and he did. The First District stated that "later that evening appellant's (Respondent's) brother allowed appellant (Respondent) to use the vehicle . . ." The First District then stated that later that night "appellant (Respondent) became tired and asked Wise to drive." This is confirmed by the record which was before the court. (Deposition of Steve Almon p. **16;** Deposition of Respondent pp. **46-47** and p. **54)** Under the facts recited in the First District's opinion, as well as the facts in the record, Respondent was the one placed in possession and control of the car, and it was Respondent who allowed Bill Wise to drive the car. The First District acknowledges that on the evening of the accident Respondent was a bailee of the automobile since the court stated that the question to be decided was whether Respondent had "terminated his status as a bailee and become solely a passenger." The First District, however, has framed the question incorrectly. The question is whether Respondent was in possession and control of the automobile and

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Florida Rent-A-Car, Inc., **454** So.2d **787** (Fla. 5th DCA **1984).** There are also bailments for the sole benefit of the bailee such as the loan of property without any compensation to the bailor. Peters v. Thompson, **42** So.2d **91, 92** (Fla. **1949).** In the present case, Olivia Adams was the lessee/bailee of the vehicle. When she loaned it to Steve Almon he became a sub-bailee. Respondent then became a sub-bailee when he borrowed the car from Steve Almon, agreeing to return it to Almon after he finished with it.

then turned the automobile over to the negligent driver. If so, Respondent, as a matter of law, is precluded from recovering from Petitioner based solely upon Petitioner's ownership of the car.

The rationale for the Ravdel and Clauson courts' rulings is grounded in the "chain of command" between the owner of the vehicle and the injured party: since the injured sub-bailee, who had possession and control of the car, placed the negligent driver in control of the car, the sub-bailee is not only responsible for negligent acts committed by the negligent driver, the sub-bailee is barred from suing the owner because he is as much--if not, as the immediate sub-bailee, more--responsible for placing the negligent driver in control of the car than the owner. Under the undisputed facts and circumstances of this case, by leaving it to the jury whether a sub-bailee who has been given possession and control of the vehicle can still recover against the owner when the sub-bailee is injured due to the negligence of the very person the sub-bailee placed in control of the car, without any intervening action on the part of the owner, the First District's holding breaks the "chain of command" rationale set forth in Clauson and Ravdel, creates an inconsistency with the underlying rationale in Clauson and Ravdel, and conflicts with the holdings in both cases.

In Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960), the Supreme Court of Florida outlined the two principle situations justifying the invocation of the Supreme Court's

jurisdiction to review decisions of courts of appeal because of alleged conflicts:

> (1) The announcement of a rule of law which conflicts with a rule previously announced by this Court, or
>
> (2) The application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a prior case disposed of by this Court.

Id. at 734 (emphasis in original). The First District in its opinion below appears to agree with the rule of law announced by Raydel and Clauson so the first situation does not appear to apply. However, in the case sub judice the First District has applied the rule of law to produce a different result than Raydel and Clauson--a result that undermines the rationale of both cases--under circumstances involving substantially the same controlling facts. As a result, a classic conflict has been created, and the First District's decision conflicts with a decision of another district court of appeal and a prior decision of this Court.[8]

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[8]The primary purpose of conflict jurisdiction is to avoid confusion and to maintain unity in the case law of the state so as to forestall any uncertainty that might derive from situations where conflicting decisions develop. Foley v. Weaver Druss, Inc., 177 So.2d 221 (Fla. 1958); Hastings v. Osius, 104 So.2d 21 (Fla. 1958). As argued in Petitioner's brief on jurisdiction, the Clauson court has expressed the possibility that its decision conflicts with the First District's opinion in Toner v. G & C Ford Co., 249 So.2d 703 (Fla. 1st DCA 1971), cert dismissed, 263 So.2d 214 (Fla. 1972), the predecessor to the First District's opinion in Almon v. Enterprise Leasing. The Third District in Clauson stated that if they were wrong about their attempted distinction of Toner, then they disagreed with Toner. 511 So.2d at 1084 n.4. The First District in its decision in the instant case acknowledged that the Third District in Clauson "expressed

As a Matter of Public Policy This Court Should Resolve the Conflict in Favor of Clauson and Raydel

As set forth above at footnote 3, and the accompanying text, owner vicarious liability under the dangerous instrumentality doctrine is an exception to the common law and not necessarily the prevailing rule throughout the United States. It is based upon the policy determination that an individual who has possession and control of an automobile should be held responsible to third parties for the negligent operation of that automobile since, according to the Supreme Court of Florida, an automobile is a dangerous instrumentality and the owner is in the best position to see that it is properly used on the streets and highways. Petitioner acted responsibly in attempting to limit the use of its automobile by providing a provision in the lease prohibiting use of the automobile to anyone other than the lessee. Although Florida law clearly has held that such a provision does not relieve the owner of liability to third parties, under the facts and circumstances it is inconsistent with the rationale of the dangerous instrumentality doctrine to hold that Petitioner is liable to someone such as Respondent who had possession and control of the automobile (and thus the

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some potential disagreement" with Toner. Additionally, the Fifth District Court of Appeal in Devlin v. Florida Rent-A-Car, Inc., 454 So.2d 787 (Fla. 5th DCA 1984), stated that Toner at first blush appeared to conflict with its decision and with Raydel. Under the clear facts set forth in the First District's opinion in the case sub judice, there is no longer any doubt that the aforementioned opinions conflict and cannot be logically reconciled.

ability to control its use) and who turned the automobile over to the very person whose negligence caused the accident.

CONCLUSION

Based upon the argument and citations of authority set forth above, Petitioner urges this Court to quash the decision below and remand this cause with instructions to reinstate the summary judgment entered in favor of Petitioner.

TAYLOR, DAY & RIO

CHARLES M. JOHNSTON
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Robert S. Willis, Esquire and Stephen J. Weinbaum, Esquire, Attorneys for Respondent, 503 East Monroe Street, Jacksonville, Florida 32202, by U.S. mail, this 9th day of June, 1989.

Attorney