

Bailment over data: Global developments

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Essential elements of bailment

- Delivery of the exclusive right of possession
- Voluntary assumption of possession
- Assumption of responsibility to keep the goods safe
- Obligation to return the goods



Claims against technology professionals



Contract



Negligence



**Consumer
law**



Bailment

Essential elements of bailment

- Client delivers exclusive right of possession of the data to the technology professional
- Voluntary assumption of possession the data
- Assumption of responsibility to keep the data safe
- Obligation to return the data to the client



New Zealand

- Nothing specifically on bailment.



Australia

- Nothing specifically on bailment.



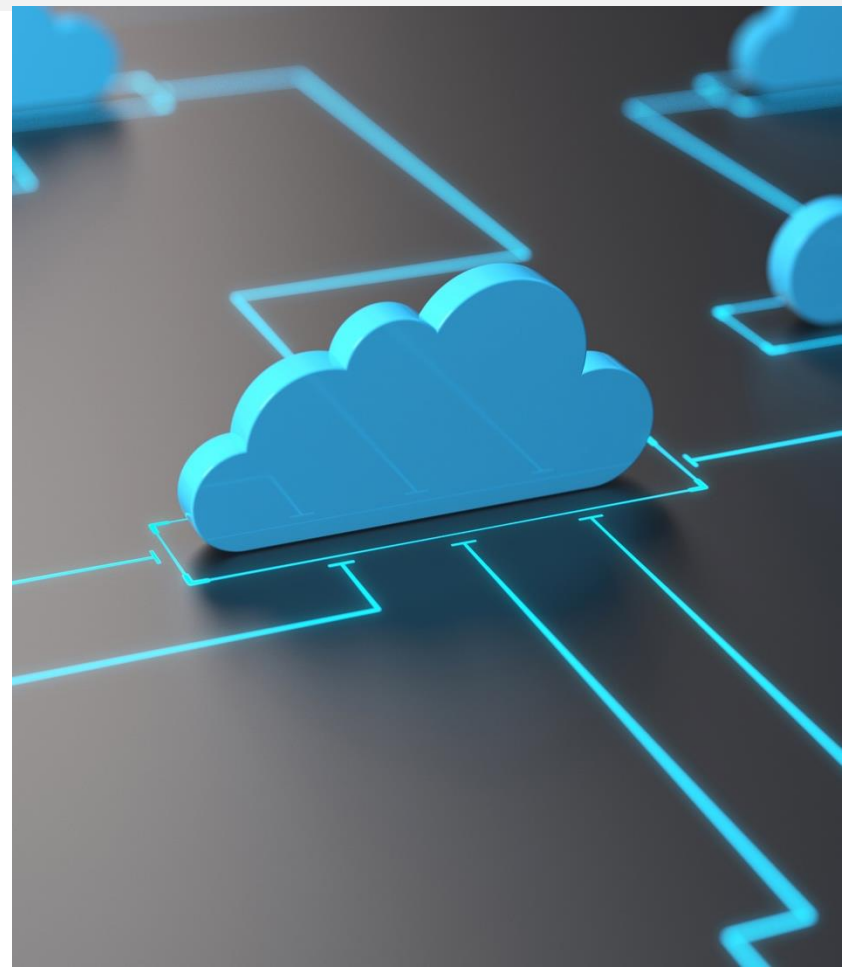
USA

- Mostly denied.
- *Krupa v TIC International Corp.*, 2023



Your Response Ltd v Datateam **[2014] EWCA Civ 281**

- Database cannot be subject of a lien:
 - Bound by House of Lords decision in *OBG Ltd v Allan* [2007] UKHL 21.
 - Information itself not tangible object capable of possession.
 - Parties should have contracted on terms that better reflected intentions.
 - Any acknowledgement of property rights in data should be by Parliament.



UK Law Commission 30 July 2024 Supplementary Report:

“...the concept that a thing must be “rivalrous”...usefully distinguish[es] this type of digital asset from other digital things such as digital files that are not (as currently designed) capable of attracting personal property rights as a matter of law.”

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Bailment

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