

## The Nature of Bailment

**bailment.** 1. A delivery of personal property by one person (the *bailor*) to another (the *bailee*) who holds the property for a certain purpose under an express or implied-in-fact contract. ● Unlike a sale or gift of personal property, a bailment involves a change in possession but not in title.

**bailor.** 1. A person who delivers personal property to another as a bailment. – Also spelled *bailer*. 2. One who provides bail as a surety for a criminal defendant's release.

**bailee.** 1. A person who receives personal property from another as a bailment.

**Bailment** (Law Encyclopedia):

The temporary placement of control over, or possession of, personal property by one person, the bailor, into the hands of another, the bailee, for a designated purpose upon which the parties have agreed.

The term bailment is derived from the French *bailler*, "to deliver." It is generally considered to be a contractual relationship since the bailor and bailee, either expressly or impliedly, bind themselves to act according to particular terms. The bailee receives only control or possession of the property while the bailor retains the ownership interests in it. During the specific period a bailment exists, the bailee's interest in the property is superior to that of all others, including the bailor, unless the bailee violates some term of the agreement. Once the purpose for which the property has been delivered has been accomplished, the property will be returned to the bailor or otherwise disposed of pursuant to the bailor's directions.

A bailment is not the same as a sale, which is an intentional transfer of ownership of personal property in exchange for something of value. A bailment involves only a transfer of possession or custody, not of ownership. A rental or lease of personal property might be a bailment, depending upon the agreement of the parties. A bailment is created when a parking garage attendant, the bailee, is given the keys to a motor vehicle by its owner, the bailor. The owner, in addition to renting the space, has transferred possession and control of the vehicle by relinquishing its keys to the attendant. If the keys were not made available and the vehicle was locked, the arrangement would be strictly a rental or lease, since there was no transfer of possession.

A gratuitous loan and the delivery of property for repair or safekeeping are also typical situations in which a bailment is created.

### Categories

There are three types of bailments: (1) for the benefit of the bailor and bailee; (2) for the sole benefit of the bailor; and (3) for the sole benefit of the bailee.

A bailment for the mutual benefit of the parties is created when there is an exchange of performances between the parties. A bailment for the repair of an item is a bailment for mutual benefit when the bailee receives a fee in exchange for his or her work.

A bailor receives the sole benefit from a bailment when a bailee acts gratuitously — for example, if a restaurant, a bailee, provides an attended coatroom free of charge to its customers, the bailors. By virtue of the terms of the bailment, the bailee agrees to act without any expectation of compensation.

A bailment is created for the sole benefit of the bailee when both parties agree the property temporarily in the bailee's custody is to be used to his or her own advantage without giving anything to the bailor in return. The loan of a book from a library is a bailment for the sole benefit of the bailee.

### Elements

Three elements are generally necessary for the existence of a bailment: delivery, acceptance, and consideration.

Actual possession of or control over property must be delivered to a bailee in order to create a bailment. The delivery of actual possession of an item allows the bailee to accomplish his or her duties toward the property without the interference of others. Control over property is not necessarily the same as physical custody of it but, rather, is a type of constructive delivery. The bailor gives the bailee the means of access to taking custody of it, without its actual delivery. The law construes such action as the equivalent of the physical transfer of the item. The delivery of the keys to a safe-deposit box is constructive delivery of its contents.

A requisite to the creation of a bailment is the express or implied acceptance of possession of or control over the property by the bailee. A person cannot unwittingly become a bailee. Because a bailment is a contract, knowledge and acceptance of its terms are essential to its enforcement.

Consideration, the exchange of something of value, must be present for a bailment to exist. Unlike the consideration required for most contracts, as long as one party gives up something of value, such action is regarded as good consideration. It is sufficient that the bailor suffer loss of use of the property by relinquishing its control to the bailee; the bailor has given up something of value — the immediate right to control the property.

### **Rights and Liabilities**

The bailment contract embodying general principles of the law of bailments governs the rights and duties of the bailor and bailee. The duty of care that must be exercised by a bailee varies, depending on the type of bailment.

In a bailment for mutual benefit, the bailee must take reasonable care of the bailed property. A bailee who fails to do so may be held liable for any damages incurred from his or her negligence. When a bailor receives the sole benefit from the bailment, the bailee has a lesser duty to care for the property and is financially responsible only if he or she has been grossly negligent or has acted in bad faith in taking care of the property. In contrast, a bailee for whose sole benefit property has been bailed must exercise extraordinary care for the property. **The bailee can use the property only in the manner authorized by the terms of the bailment.** The bailee is liable for any injuries to the property from failure to properly care for or use it.

Once the purpose of the bailment has been completed, the bailee usually must return the property to the bailor, or account for it, depending upon the terms of the contract. If, through no fault of his or her own, the return of the property is delayed or becomes impossible — for example, when it is lost during the course of the bailment — the bailee will not be held liable for nondelivery on demand. In all other situations, however, the bailee will be responsible for the tort of conversion for unjustifiable failure to redeliver the property as well as its unauthorized use.

The provisions of the bailment contract may restrict the liability of a bailee for negligent care or unauthorized use of the property. Such terms may not, however, absolve the bailee from all liability for the consequences of his or her own fraud or negligence. The bailor must have notice of all such limitations on liability. The restrictions will be enforced in any action brought for damages as long as the contract does not violate the law or public policy. Similarly, a bailee may extend his or her liability to the bailor by contract provision.

### **Termination**

A bailment is ended when its purpose has been achieved, when the parties agree that it is terminated, or when the bailed property is destroyed. A bailment created for an indefinite period is terminable at will by either party, as long as the other party receives due notice of the intended termination. Once a bailment ends, the bailee must return the property to the bailor or possibly be liable for conversion.