

ESSENTIALS *of* BUSINESS LAW



Chapter 23

Bailments

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Bailments

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- **Bailment:** A transaction in which the owner of tangible personal property transfers the property to another party while still retaining ownership of such.
 - It is a special kind of contract that is widely used in business and in personal affairs.
 - *Example:* Taking clothes to a dry cleaner transfers possession, but not ownership (or title), of the clothes.

Characteristics of Bailments

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- A bailment allows the owner of personal property to transfer possession of it to another individual for any one of the following purposes:
 - **Sale:** A manufacturer ships goods to a retailer to either sell them or return them to the manufacturer (this transaction is known as a **consignment**).
 - **Transportation:** A business hires a transporter of goods, a truck line or rail or air carrier, to ship such goods.
 - **Repair or service:** A motorist leaves an automobile at a service station for an oil change.

Characteristics of Bailments (cont.)

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- A bailment allows the owner of personal property to transfer possession of it to another individual for any one of the following purposes (cont.):
 - **Rental:** A traveler rents an automobile from a car rental company or skis from a lodge.
 - **Storage:** A company stores goods in a warehouse, a diner places a coat in a checkroom, or a driver leaves a car in a parking lot.
 - **Security for a loan:** A borrower leaves valuable goods with a lender until his or her loan is paid.

Bailment Created by a Possession of Goods

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- Actual ownership of goods is not necessary to create a bailment.
 - Anyone in possession of goods can create the bailment relationship and become a **bailor**—a borrower, a finder, even a thief.
 - *Example:* Castro rented a car when he was on a business trip. He parked the car in a parking garage while making a sales call. The parking attendant surrendered the car to someone else by mistake. The parking garage was responsible for the car and its contents. Although Castro was not the owner, he was a bailor.

Bailee and Goods

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- **Bailee Must Intend to Possess Goods**
 - The transfer of goods from bailor to bailee must actually take place.
 - Unless there is some other understanding, the bailee must actually accept the goods.
- **Bailee Must Return Identical Goods**
 - Except for a bailment that requires alteration, such as a suit left for cleaning and alterations, or when fungible goods, such as grain or fuel oil, are stored, the identical goods must be returned.

Kinds of Bailments and Care during Custody

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- The law concerning bailments provides for certain rights and duties of both bailor and bailee, depending on the kind of bailment.
- Bailments are often classified into four categories:
 - Bailments for the **sole benefit of the bailee**: When one borrows an article, such as a calculator, from a friend.
 - Bailments for the **sole benefit of the bailor**: When one agrees to store a friend's car in his or her garage while the friend is out of town.
 - Bailments for the **benefit of both the bailee and the bailor**: When one leaves his or her car with an attendant in a parking garage (also called *mutual-benefit bailment*).
 - **Constructive bailments**: When goods, such as an umbrella, are thrust upon you by a person who unintentionally leaves property behind in your home.

Bailments for the Sole Benefit of the Bailee

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- Usually results in a borrowing/lending transaction.
- The person who borrows an article (the bailee) gets the only benefit.
 - However, the owner (the bailor) must warn the bailee of any defects or hazards that might exist.
- Because the bailee is getting something for nothing, the law generally expects the bailee to exercise great or extraordinary care while in possession of the article.
 - *Example:* Fordyce loaned his car to a friend, Dyani, to use while taking a short trip. Fordyce knew but failed to mention that the brakes were worn and in need of repair. Dyani was injured when the brakes failed and the car crashed into a tree. Fordyce would be held liable for failure to warn Dyani of the unsafe brakes.

Bailments for the Sole Benefit of the Bailor

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- Exists when the owner (the bailor) entrusts an article to another person (the bailee) for storage or safekeeping without being charged.
 - Since the bailee is doing a favor for the bailor, the law requires that he or she exercise only slight care in taking care of the article.
 - *Example:* Berens was traveling for several months and asked a friend, Moreno, to care for a valuable painting. Moreno left the painting leaning against the wall in a spare room. While he was out for an evening, the painting was stolen. Moreno would not be liable, because he was required to provide only slight care.

Example: Bailee Must Intend to Possess Goods

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- Neal had his car serviced regularly at Spruce Auto Services, and he knew the owner well. One day, Neal parked his car on the station property after seeking the owner's permission. When he returned, the car had been stolen. When Neal asked if the owner knew anything about the crime, the owner denied responsibility. In this scenario, the auto services owner is wrong in his argument because there was transfer of the car from Neal (bailor) to the owner (bailee). The auto services owner had accepted possession of the car, and allowed Neal to park on the station's property.

Mutual-Benefit Bailments

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- The most common bailment is the kind in which consideration is present.
 - Consideration is the exchange of promises by the parties to an agreement to each give up something of value they have a right to keep, or to do something they are not otherwise required to do.
- A mutual-benefit bailment is one in which both the bailee and bailor derive some benefit, where each has rights and duties.
 - The bailor has the duty to warn the bailee of any defects in the property that could cause harm.
 - The bailee has the duty to exercise reasonable or ordinary care in the use of the property.
 - Each party has the right to expect the other party to fulfill the duty imposed on him or her.

Mutual-Benefit Bailments (cont.)

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- **Bailment for Storage**
 - Individuals and businesses sometimes need to place articles in storage.
 - The person or firm that provides storage facilities is known as a **warehouser**.
 - When goods are turned over to a warehouse for storage, the warehouser will provide a receipt for the goods and will accept the responsibility for loss of, or damage to, the goods caused by a lack of care that a reasonable person would exercise under similar circumstances.

Mutual-Benefit Bailments (cont.)

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- **Parking-Lot Bailment**
 - Parking a car in a parking lot or parking garage is a common transaction.
 - It is important to remember, however, that a bailment is created only if the parking-lot attendant actually takes control of the vehicle.
 - If a customer parks his or her own automobile, locks it, and retains the key, a bailment does not exist—only a license to use the parking space.

Mutual-Benefit Bailments (cont.)

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- **Bailment for Work and Services**
 - Whenever one person turns over property to another with the understanding that certain work is to be performed on the property, a bailment for work and services is created.
 - In transactions of this kind, there are actually two legal relationships.
 - The bailor-bailee relationship is concerned with the care of the property.
 - The contractual relationship is concerned with the kind and the quality of work done and the payment for services performed.
 - The bailee in a bailment for work and services is entitled to hold and, if necessary, sell the property if the bailor does not pay for the services or work done.
 - This provision of the law is known as a **bailee's lien**. (A lien is a claim against the property of another as security for a debt.)

Mutual-Benefit Bailments (cont.)

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- **Hotel Bailments**
 - A bailment relationship exists between a guest (as bailor) and a hotelkeeper (as bailee) with regard to the guest's property that is specifically placed in the care of the hotelkeeper.
 - A hotelkeeper (innkeeper) is in the business of offering lodgings or temporary shelter to transients.
 - A transient is a guest whose stay is relatively uncertain—a day, a week, a month, or more.
 - The hotelkeeper's liability for the property of guests was near absolute, but state statutes today limit a hotel's liability to that of an ordinary bailee or limit liability to the amount listed in a posted notice in the room.

Mutual-Benefit Bailments (cont.)

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- **Common-Carrier Bailments**
 - **Common carrier:** An individual or firm in the business of transporting goods between certain points as allowed by the various state commissions that regulate the carriers.
 - When a shipper (**consignor**) turns goods over to a common carrier, a mutual-benefit bailment is created that is terminated only when the common carrier delivers the goods to the party designated by the shipper, known as the **consignee**.
 - The mutual-benefit bailment gives the carrier (the bailee) certain rights and duties:
 - The right to determine and enforce reasonable rules and requirements concerning the operation of its services.
 - The right to payment for services provided.
 - The right to payment from either the consignor or consignee.

Constructive Bailments

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- There are instances in which goods are thrust upon a bailee who does not have any choice about whether or not he or she wishes to serve as bailee.
 - *Example:* A package addressed to your neighbor is accidentally delivered to you.
- The courts have been unwilling to dismiss the idea of bailment altogether.
 - As a result, the idea of involuntary, or constructive, bailment has come about.

Example: Constructive Bailment

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- Kaitlin went to Maya's house to attend her birthday party. After dinner in the dining room, the party attendees moved to the backyard. Kaitlin accidentally left her purse at the dining room table, and the caterer stole it. When Kaitlin realized that her purse was missing the next morning, she called Maya. Maya was unable to locate the purse, and Kaitlin held that Maya be responsible for the lost purse and its contents. Maya argued that she was not responsible under any circumstances, as there was no legal obligation to take care of the purse. However, Maya is wrong in her argument because there is a legal obligation to exercise reasonable care under involuntary or constructive bailment.