

What is a bailment?

Bailment relationship defines obligations and standards of care

“A bailment is created when one person, the bailee, is voluntarily in possession of property belonging to another, the bailor. It is the duty of a bailee to take such due and proper care of the goods as a prudent owner may reasonably be expected to take of his or her own goods. If the goods are lost or damaged while they are in possession of the bailee, the burden is on the bailee to show that the damage occurred without any neglect on the part of the bailee or its employees.”

—Halsbury's Laws of England



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In the transportation and distribution sectors, there are many business arrangements that involve a bailment—the transfer of possession of property—including (but not limited to):

- The storage of goods or equipment in a warehouse, boat or fuel storage facility, grain elevator, or even a parking lot (where the keys are given to the parking lot operator in return for a receipt/ticket containing the terms of the bailment).
- The carriage of goods by a common or private carrier.
- The pledge of valuables or securities as collateral for a loan.
- Where goods are left with computer, electronic appliance, and/or motor vehicle repair facilities.

A bailment consists of the following:

- Delivery of the goods by the bailor (usually the owner) to the bailee (the person who takes possession);
- Possession of the goods by the bailee for a specific purpose;
- Subsequent return of the goods to the bailor in accordance with the bailor's instructions.

The two main types of bailment are:

- A gratuitous bailment where there is no charge made by the bailee.
- A bailment for reward where the bailee receives a fee for storing, repairing, transporting, handling, or holding the goods.

The liability of each of these particular bailees will vary according to the nature of the specific bailment relationships that exist between the parties, and any statutory provisions applicable to the circumstances.

Canadian Courts have consistently held that the standard of care and diligence imposed on a gratuitous bailee is lower than that required of a bailee for reward. A number of Canadian Courts have held a gratuitous bailee is liable only if gross negligence is proven. A bailee for reward, however, must exercise due care for the safety of the article entrusted to him or her by taking such care of the goods as would a prudent person of his or her own possessions.

If the bailor can prove the goods were damaged or

lost while in the possession of the bailee, the bailee must prove either he or she took appropriate care of them or his or her failure to do so did not contribute to the loss. To escape liability, the bailee must demonstrate the loss was sustained without any fault on his or her part.

If the bailee is unable to establish a reasonable explanation for the loss, or cannot show the damage was not a result of his or her negligence, then the liability for the loss will likely be imposed on the bailee, subject to a valid and enforceable exemption clause in the bailment agreement, limiting or extinguishing the bailee's liability.

Therefore, when a bailment is at issue, two questions are critically important: First, is it a gratuitous bailment or a bailment for reward? Second, was the bailee negligent (either grossly or ordinarily)?

Of course, each bailment relationship depends on its own specific facts and circumstances, including the terms and conditions, expressed or implied, of the contract of bailment, which may or may not contain an exemption clause in which the bailee might attempt to limit liability in the event of loss. Furthermore, certain bailees may have a statutory duty of care for the goods of the bailor and an obligation to transport or store the goods of the bailor in a particular fashion on a standard of care which is tantamount to being virtually an insurer of the goods.

It is critically important for the business relationship to be defined at the outset with clarity and certainty of terms so the parties understand the nature of the bailment and their respective rights and obligations. Then, if the goods are lost or damaged while they are in possession of the bailee, he or she may better be able to show the damage occurred without any neglect on his or her part or their employee. The bailor will also be in a better position to protect itself from actual and potential loss or damage arising from the transfer of possession of its property to the bailee. MM&D

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