

# Bailment

by Sophia



## WHAT'S COVERED

In this lesson, you will learn about the concept of bailment as it relates to personal property. Specifically, this lesson will cover:

## 1. The Purpose of Bailment

Sometimes it is necessary to intentionally leave personal property with someone else.

➞ **EXAMPLE** Imagine that you own a cat. If your cat, which is considered to be chattel, needs to have surgery, you will need to leave her at the veterinary hospital. Clearly, taking your cat to a veterinary hospital does not constitute abandonment. Likewise, you have not lost or mislaid your cat. And, precious though she may be, your cat is not subject to the concept of a treasure trove. Instead, in this situation, you will be known as a **bailor**, and you will be seeking a **bailment** with your veterinarian.

A bailor is someone in the rightful possession of personal property who gives the property to someone else to hold. A bailment is the arrangement in which this property is given.

The holding party, known as the **bailee**, agrees to accept the property and has the duty to return it. Again, the bailee is someone who is in possession of someone else's property.

➞ **EXAMPLE** To return to the previous scenario, you rightfully have possession of your cat because she is your personal property. You give your cat to the veterinarian to hold, who has agreed to accept the cat. You also rightfully expect that the cat will be returned to you on demand. Indeed, the veterinarian has a duty, by virtue of the bailment, to return the cat to you.



## TERMS TO KNOW

### Bailment

Delivery of personal property by a bailor to a bailee for the benefit of one or both that includes a contract, express or implied, to perform some benefit or service and redeliver the property to the bailor. Example: Parking a car in a gated parking garage constitutes delivery by the bailor of the car to the parking authority (bailee) who keeps it stored (bailment) and, upon receipt of payment, allows the return of the car to the bailor.

### Bailor

The person who delivers bailed property to another in a contract of bailment.

## Bailee

The person to whom bailed property is delivered in a contract of bailment.

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## 2. Duties of the Bailee

The bailee has certain duties to the bailor. For one, the bailee has a duty to take reasonable care of the property while the property is in his or her possession. This means different things for different types of bailment.

If the bailee is the only party who benefits from the bailment, then the bailee must take **extraordinary care** with the personal property. A common example of a bailee being the only party who benefits is when the owner of the property loans the property to someone for his or her use.

➞ **EXAMPLE** if you loan your neighbor a snow shovel without asking for something in return, then your neighbor receives the sole benefit of the bailment. His or her duty of care is that he or she must take extraordinary care with the snow shovel. However, when both parties receive benefit from the bailment, such as when you rent a snowblower from the local Rent-a-Center, only the duty of ordinary care is imposed on the bailee. The bailee receives the snowblower and Rent-a-Center receives a rental fee.

When the bailment exists for the sole benefit of the bailor, then only a **minimum duty of care** is required.

**Gross negligence** will give rise to liability, but there is no great duty for the bailee to be as careful as he or she would be if he or she were receiving some benefit.

➞ **EXAMPLE** If someone asks you to hold his or her books while he or she jumps into a swimming pool, you would have a minimum duty of care. If you lost the books, then you would not be liable. However, if you intentionally threw the books into the pool, then you would be grossly negligent and liable for damages.



### TERMS TO KNOW

#### Extraordinary Care

The standard of care by which a bailee must act if the bailment is solely for the benefit of the bailee, as in a loan of a book from a public library.

#### Minimum Duty of Care

The duty of care expected to be applied by a bailee who receives a bailment that is for the sole benefit of the bailor, as when someone asks you to hold something while they jump into a swimming pool.

#### Gross Negligence

The degree of negligence that creates liability on the part of a bailee when the bailment is for the sole benefit of the bailor. It is a conscious and voluntary act, or failure to act, that is likely to result in grave danger to persons or property.

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## 3. Types of Bailment

An **involuntary bailment** is created when someone finds lost or mislaid property. The finder may not destroy

the property, though the duties that he or she owes regarding the property may vary from state to state.

A **voluntary bailment** is created when intention exists to create the bailment, as described in the previous section.

As you can imagine, bailment is common in business. Common examples of bailment in business include:

- Placing packages or goods with common carriers for delivery
- Warehousing goods with a third party prior to sale or delivery
- Taking clients' or customers' automobiles in a valet service

Consider whether a business should be able to disclaim bailment (and the duties that go along with bailment).

➔ **EXAMPLE** If a hotel required its guests to sign a “no bailment created” clause on check-in, should that excuse the hotel from liability if the guests' personal property is damaged while the property is left in the hotel?



#### TERMS TO KNOW

##### **Involuntary Bailment**

A bailment created by the accidental leaving of property in the possession of another without negligence by the owner.

##### **Voluntary Bailment**

A bailment created intentionally.



#### SUMMARY

In this lesson, you learned that bailments are legal arrangements in which the rightful possessor of personal property leaves the property with someone else who agrees to hold it and return it on demand. The **purpose of bailments** is to create legal duties between parties when personal property is temporarily left with someone who does not own the property. A bailor is the property owner, and a bailee is the person who agrees to accept the property. The **duties of the bailee** differ according to the circumstances of the bailment, and range from a minimum duty of care to an extraordinary duty. In any case, a bailee must avoid gross negligence. The two **types of bailment** are voluntary and involuntary.

Best of luck in your learning!

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**Minimum Duty of Care**

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**Voluntary Bailment**

A bailment created intentionally.