



Bailment

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Bailment involves the transfer of possession of goods from one party to another. Ownership of the goods is unaffected and does not change with the transfer of possession.

A bailor is the party who owns or has legal right to goods or property and entrusts the property into the safekeeping of another party. The person entrusted with the property is the bailee.

There are two types of bailee: a gratuitous bailee and a bailee for reward.

Gratuitous bailee

A gratuitous bailee is someone looking after another's property without payment e.g. someone who is looking after, or borrowing property, belonging to a friend.

Although the gratuitous bailee may have some legal liability to the bailor for the safekeeping of the property, that liability is not onerous and may be absolved if they can show that they have taken reasonable care to prevent loss or damage to the item. The bailee must take the same care of the bailed property in their possession as they would their own.

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Bailee for reward

A bailee for reward is usually paid for their service e.g. a watch being repaired or serviced by a jeweller, the jeweller is a bailee for reward. Similarly, the proprietor of a laundry is a bailee for reward in respect of the garments that he/she holds on behalf of customers for cleaning, or the owner of a motor garage servicing a customer's vehicle.

The bailee for reward owes the bailor a duty of care to return the property, and this duty is more onerous than that of a gratuitous bailee. If the bailee does not return the property in proper condition the bailee will be liable to the bailor unless they can show that the bailee was not a fault for the loss of or damage to the bailed property. In most circumstances the bailee will be responsible for the customers' goods unless they can demonstrate that they have not been negligent or any specific contract terms apply. The onus of proof will rest with the bailee to prove that they have not been negligent.

A higher standard of care will be imposed where the bailee for reward is looking after fragile or high value property on behalf of the bailor (*Saunders (Mayfair) Furs v Davies 1965*).

A bailee for reward can attempt to limit or restrict their liability to the bailor under contract (such as hire conditions). The wording of any contract needs to be carefully checked, and it is also important to verify that the policyholder brought the contract terms and any restriction to the notice of the customer at the time of the contract. Under the Consumer Rights Act 2015 it may not be possible to restrict monetary liability for an item to less than its actual value, where there is a contract between a business and a private individual.

It may be suggested that a policyholder has a liability for a customer's goods by Custom of Trade, but in reality such Custom of Trade seldom exists. It may be the practice in certain trades to include certain conditions into contracts or agreements, but that does not make the practice a Custom of Trade. A Custom of Trade will be over-ruled by Statute or by the specific terms of any contract.

Hoteliers have a common law liability for the safety of their guests' property, the only exceptions being in respect of loss or damage caused by an Act of God, act of the Queen's enemies, or negligence on the part of the guest who owns the property. Under the Hotel Proprietors Act 1956 the hotelier may be able to limit his liability to £100 for the property of any one guest, and £50 for any single item, provided that certain conditions are met, and there is no negligence on the part of the hotelier or his staff.





Insurance

It is clearly prudent for the bailee to insure any goods held in trust for which they are responsible.

There will be no cover under the policyholders' public liability policy in respect of the property belonging to the customer. The liability section will exclude *'goods or property in the custody and control of the insured'*. As such, any claim for a customer's goods will need to be considered under the material damage cover.

Policy wordings in respect of goods in trust do differ, and it is important to check the specific definitions of the policy under which the claim is made.

The policy cover may be in respect of *'property in the custody and control of the insured'* or for *'goods in trust'*. In such cases, under the material damage cover the policyholder (bailee) can recover in respect of the bailors' property irrespective of whether they have been negligent. This effectively means that the bailee is arranging insurance on the goods in their care. Under this wording any claim from the bailor in respect of loss or damage should be considered under the bailee's cover, only taking account of any specific contract terms or restrictions. (*Hepburn v A Tomlinson (Hauliers) Ltd 1966*)

The value of the customers' goods must be taken into account by the policyholder when setting the sum insured. In the event of under insurance Average may apply to reduce the amount payable.

There may also be a more restrictive cover in respect of *'property in the custody and control of the insured for which he is responsible'* or *'goods in trust for which he is responsible'*. This type of wording effectively makes the cover a legal liability cover, even though the claim is being considered under a material damage policy.

Under the *'for which he is responsible'* wording the cover would only apply in respect of the bailors property where the policyholder (bailee) is liable for the loss or damage to the goods in negligence or in contract. (*Ramco (UK) Ltd v International Insurance of Hanover 2004*)

Where the policyholder accepts liability for customers' goods under contract, but liability would not otherwise have applied, there may be an issue of non-disclosure of a material fact to be discussed with insurers before cover is confirmed.

Where there is no cover under the bailees policy in respect of customers' goods, the bailor should claim from their own insurer (if arranged).





There will not usually be Contribution between any separate insurance covers arranged by the bailor and bailee. For Contribution to arise, both policies must cover the same subject matter, the same peril, and the same insured in respect of the same interest. Policies arranged by the bailor and bailee cover different interests (one as bailor, the other as bailee) and as such there would be no contribution between the policies.

The exception to this is where the cover is specifically arranged by the bailee to cover the customers (bailors) goods and the bailor also has cover in place. In this circumstance contribution may apply as both policies cover the same rights and interests (the bailee).

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