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### **What Is Bailment?**

The term bailment refers to a legal relationship between two parties in common law, where assets or property are transferred from a bailor to a bailee. In this relationship, the bailor transfers physical possession of a piece of personal property to the bailee for a certain period of time but retains ownership. There are three different types of bailment, which benefit the bailor, bailee, or both.

Bailments are common in our everyday lives, including in the relationships we have with our banks. Bailments are also common in finance, where the owner of securities transfers them to another party for short selling. Since they are contractual agreements, failure to live up to the terms and conditions of a bailment can lead to legal disputes.

### **KEY TAKEAWAYS**

A bailment involves the contractual transfer of assets or property from a bailor, who temporarily relinquishes possession but not ownership, to a bailee.

The bailee must intend to and actually physically possess the bailable chattel or asset.

There are three types of bailments—those that benefit both parties, those that benefit only the bailor, and those that only benefit the bailee.

Although the burden depends on the type of bailment, the bailee must always treat the bailor's property with a reasonable amount of care.

Damage or loss to property due to negligence of duty in a bailment can result in legal disputes.

### **How Bailment Works**

A bailment is an agreement in common law that comes into effect when someone entrusts an asset to someone else for safekeeping.<sup>1</sup> As previously noted, the bailor is the owner of the asset and temporarily relinquishes it to the bailee. Although the bailor gives possession to the bailee, the bailor retains legal ownership of the asset. Bailments only start once the property is in the hands of the bailee.<sup>2</sup>

The bailor is generally not entitled to use the property while the bailee holds it. Leaving your car with a valet is a common form of bailment, while parking in an unattended garage is a lease or the license of a parking space, as the garage cannot show intent to possess the car.



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Bailment is distinct from leasing, where ownership remains with the lessor but the lessee is allowed to use the property.

Bailments are legal courses of action independent of contract or tort. To create a bailment, the bailee must both intend to possess, and actually physically possess, the bailable chattel.<sup>1</sup> The bailor typically receives a written contract, a receipt, or a chit, which is what you get when you drop your coat off at a coat check. By taking possession of the property, the bailee agrees to guard it using reasonable care. Legal disputes can arise if anything happens to the asset while in the bailee's possession.

As mentioned above, bailments also take place in finance. Bailors have the option to legitimately transfer their securities, such as shares of stock, to others to conduct short sales. The short seller borrows shares on margin to sell them even though the short seller does not own those borrowed shares.<sup>4</sup> Other financial applications for bailment include:

Designating bailees to temporarily supervise investment portfolios

Holding collateral against secured loans

Warehousing

Self-storage

The shipping of goods<sup>56</sup>

## Types of Bailment

There are three different types of bailments—those that benefit both parties, those that benefit only the bailor, and those that only benefit the bailee. We've outlined some of the most important details about each below.

### Bailments That Benefit Both the Bailor and Bailee

This type of bailment is referred to as a service agreement bailment. For instance, parking your car in a paid parking lot benefits both parties because the bailor is able to park their car in a secure lot while the lot owner is paid for the service. In service bailments, a bailee is liable for any damage that results to the bailed items if they are negligent in their duties.<sup>3</sup>

### Bailments That Only Benefits the Bailor

This is referred to as a gratuitous (free) bailment.<sup>3</sup> Free valet service would be an example of this because the valet service (in this case, the bailee) doesn't receive compensation for parking your car. A bailee can face liability for damaging the bailed items if they are grossly negligent or act in bad faith while safeguarding the asset.

### Bailments That Only Benefits the Bailee



These bailments are called constructive bailments.<sup>3</sup> Checking a book out of the library is a common example. When you check the book out, you become the bailee while the library is the bailor, who gets no benefit from the relationship. It does, however still expect that you return the book at the end of the rental period.

In this type of bailment, the bailee faces liability for basically any damage to the bailed item. This is the highest standard of care required out of the three categories.<sup>7</sup>

