



The Spirit of the Law

From the time you were born, you possessed personal property. Your first toys and clothing were all items of personal property. Later your personal property became more sophisticated. Books, games, and personally selected clothing were added to the collection. Still later, you may have opened a bank account, received your first check, and, perhaps, were covered by some kind of insurance—all items of personal property. At some early stage in your life, you probably also started borrowing and loaning things. Still later, you may have rented a video cassette, left your car at an auto-repair shop to be repaired, or dropped some clothes off at the cleaners. In these situations, you entered into a legal relationship, called a bailment, giving rise to specific rights and duties.

Legal Issues:

1. How is a gift of personal property completed?
2. Do consumers have a duty to pick up items they leave with merchants (such as film to be developed) within a certain time?
3. Is a parking garage owner responsible for damage done to a customer's car?
4. Does the finder of property on a store counter have the legal right to hold the property until the true owner is found?

Personal Property

Personal property is anything that can be owned other than real estate. There are two kinds of personal property, tangible and intangible. **Tangible personal property** is property that has substance and can be touched. Such things as clothing, books, automobiles, and food on the table are examples of tangible personal property. The law of sales, discussed in Chapter 15, governs the sale of goods, which are tangible personal property. In contrast, **intangible personal property** is property that has no substance and cannot be touched. If someone owes you money, for example, the right to receive the money is intangible personal property.

Example 1. Naomi Briggs got a \$32 check for babysitting. The actual paper on which the check was written was tangible because it could be touched, yet it had no value. However, the words written on the check were valuable—they ordered the bank to pay Naomi the money. The right that Naomi had to receive the money was intangible personal property.

Gifts of Personal Property

When people make gifts of personal property, the gift is completed and cannot be taken back after three requirements have been met. The requirements of a completed gift are: (1) the **donor** (the one making the gift) must intend to make the gift; (2) the gift must be delivered; and (3) the **donee** (the one receiving the gift) must accept the gift.

Reducing Legal Risks

If you and a friend decide to buy property together, you become co-owners. Before making the purchase, carefully define in writing each other's interests, responsibilities, and rights to use the property.

Example 2. Harriet Nadeau told her niece, Carol, that she wanted to give her the set of English bone china that was in her china closet. Harriet said that Carol could consider the set hers, but that Harriet would keep it in her china closet for the time being. Because the china was not delivered to Carol, the gift was not complete, and Carol did not yet own the china.

Lost Property

The finder of lost property has a legal duty to return the property to the owner if that person can be found. If the owner cannot be found, the person who found the property may keep it.

Local Laws

Suppose that while you are walking down the street, you find a watch lying on the sidewalk. You pick the watch up and take it home with you. You have a duty to try to find the true owner, but you can use the watch as your own until the true owner is found.

It is wise to ask whether your state or your city has any special laws concerning lost property. Some states and cities provide for the special handling of lost articles. These laws differ considerably, but their general purpose is to help restore the lost article to its true owner. Local laws may, for example, require you to advertise for the true owner or to deposit the article with a certain public official. Persons who have lost things would then have to go to that official.

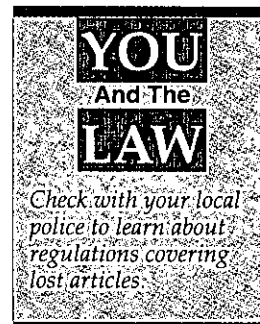
Rewards and Reimbursement

Finders of lost property are entitled to any reward offered if they knew about the reward when they surrender the property to its owner. However, if they learn about the reward after returning the lost article, they may not legally enforce the payment of the reward. If a reward has not been offered, the finder is nevertheless entitled to be reimbursed for any expenses incurred in returning the property to its rightful owner.

Misplaced Property

There is an exception to the rule that the finder holds the property until the true owner can be found. If the lost property is found on the counter of a store, or on a table in a restaurant or hotel, or on a chair in a washroom, or in some similar public or semipublic place, it is considered not to be lost but to have been misplaced. It is reasonable to suppose that the owner will recall where it was left and will return for it. For this reason the finder may not keep the article in his or her possession but must leave it with the proprietor or manager to hold for the owner. The proprietor must not knowingly allow misplaced property to be taken by anyone but the rightful owner. If the property is found in a corridor or in any other place that would indicate that it was not placed there intentionally, the finder may keep the article. It is not likely that the owner would recall where it was lost.

Example 3. Alice Luster, a customer, found a purse in a fitting room of the Fashion Dress Shop. She gave the purse to the owner of the store. Later, when she learned that it had not been claimed, she asked the store for its return.



Luster was not entitled to the purse. It was found in an area used only by customers of the shop. The proprietor owed the customers a duty to hold the property that was left there. The proprietor was therefore entitled to retain possession of the purse until it was claimed by the true owner.

FYI

The U.S. Patent and Trademark Office receives over 100,000 patent applications each year. Processing takes about two years.

Manufacturers who want to begin production immediately mark new products "Patent Pending" or "Patent Applied For." These marks have no legal value, but they discourage imitation.

Intellectual Property

Intellectual property is an original work fixed in a tangible medium of expression. It includes patents, copyrights, and trademarks. Many developments have taken place in the law relating to intellectual property in recent years.

Patents

A *patent* is an exclusive right granted by the federal government to make, use, or sell an invention. Patents are obtained by inventors and manufacturers to prevent their original machines or processes from being copied and manufactured by someone else. The owner of a patent has exclusive rights to the invention for a period of 17 years.

To be patented, a device must consist of some new principle or idea not known before. In addition, it must be useful and not obvious to people with ordinary skill in the field. The device may consist of a process, an article of manufacture, or a composition of matter, such as human-made bacterium. Patents are issued by the U.S. Patent and Trademark Office in Washington, D.C.

Copyrights

A *copyright* is a right granted to an author, composer, photographer, or artist to exclusively publish and sell an artistic or literary work. Such items as books, magazines, newspapers, sheet music, videotapes, audiocassettes and computer programs are protected by copyright laws. (See Figure 19-1 below.) Copyrighted works are protected for the life of the author plus 50 years.

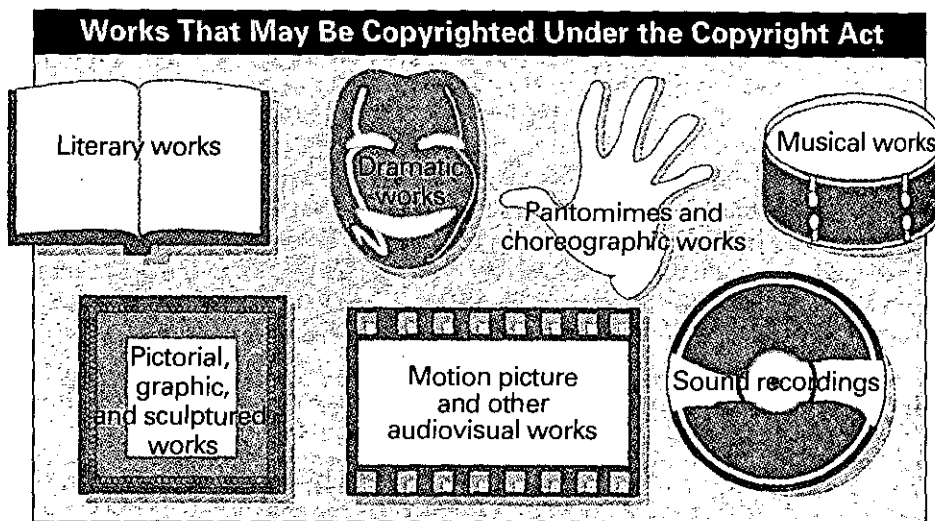


Figure 19-1 Works of art and literature and works whose purpose is to convey ideas or information are protected by the copyright law. Can the owner of a copyright sell it?

A copyright may be registered with the U.S. Copyright Office in Washington, D.C. In the past, it was necessary to put the notice ©, or the word "copyright," followed by the date and the name of the owner on the work. Look at the copyright page of this textbook to see a typical copyright notice. In 1989, the use of the copyright notice was made optional. Generally, copyrighted material may not be reproduced without the express written permission of the holder of the copyright.

Under what is called the fair use doctrine, copyrighted material may be reproduced without permission in certain cases. The amount and use of the material must be reasonable and not harmful to the copyright owner. Copying items for such purposes as literary criticism, comment, news reporting, teaching, scholarship, and research is allowed.

Trademarks

A *trademark* is a distinctive mark, symbol, or slogan used by a business to identify goods and to distinguish them from products sold by others. It may consist of a word, name, symbol, or other device. Owners of trademarks have the exclusive right to use the particular word, name, or symbol that they have adopted as their trademark. Once a trademark is established, others cannot use it. Figure 19-2 below shows examples of well-known trademarks.

Trademarks may be established by usage, by state trademark laws, and by being registered with the U.S. Patent and Trademark Office. A trademark that is registered with the U.S. Patent and Trademark Office continues for 10 years and may be renewed for additional 10-year periods. The ® symbol indicates that a trademark is registered.

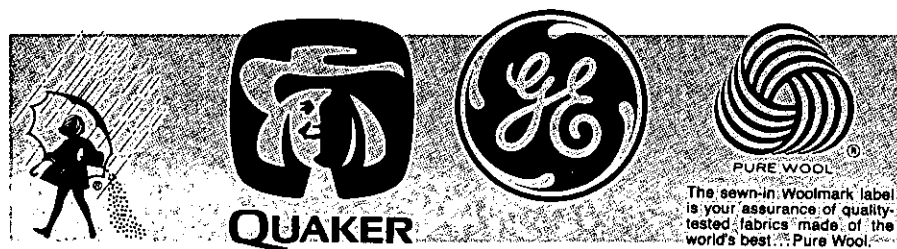


Figure 19-2 Trademarks registered with the U.S. Patent and Trademark Office remain in force for 10 years and may be renewed for additional 10-year periods. How is a trademark different from a patent?

Bailments of Personal Property

People often place their property in the possession of others: a camera is left in a shop for repairs; an automobile is parked in a parking garage; a tool is loaned or rented. These situations describe a type of agreement known as a bailment. A **bailment** is an agreement created by the delivery of personal property by the owner to someone who is not the owner for a specific purpose. You may be a bailee or a bailor at this very minute. If you have in your possession something that belongs to someone else, you are a **bailee**. If someone else has some of your belongings in his or her possession, you are a **bailor**. A bailment exists any time personal

property is in the possession of and under the control of someone who is not the owner. The law of bailments defines the rights and duties related to property not in the control of the owner. Generally, the law protects the rights of the owner without placing undue burdens on the person holding the property.

Example 4. Robert Acker had a term paper to write for his English class. Acker's teacher required that the paper be typewritten. However, Acker did not own a typewriter. Harold Barr, a good friend of Acker's, had just purchased a new word processor. Acker borrowed his friend's word processor. Was this a bailment?

Yes, it was a bailment. Acker was the bailee and Barr was the bailor. Even in this simple transaction, basic legal rights and duties exist.

A bailment is one of the most common business and personal transactions. It may be the simple act of borrowing a neighbor's vacuum cleaner or borrowing a book from the school or public library, or depositing \$1 million in bonds with a bank for safekeeping.

Principal Types of Bailments

Most bailments in business transactions are based on contracts, but many bailments in personal relationships are not based on contracts. If the bailment agreement is supported by consideration, then a contract probably exists. However, if no consideration is present, then you know from your study of the laws of contracts that there can be no contract.

Example 5. Barbara Bailey placed her winter coat in storage for the summer with Cleveland Dry Cleaners. Bailey promised to pay the \$15 service charge for cleaning and storage. Cleveland Dry Cleaners agreed to clean and store the winter coat safely and return it to Bailey early in the fall. What would you call this transaction?

It would be a bailment, because Cleveland Dry Cleaners has Bailey's coat in its possession. It would also be a contract because of the presence of consideration—Bailey's promise to pay the service fee of \$15 in exchange for Cleveland's service.

Example 6. George Popson offered the use of his motorcycle to his friend, Andrea Harvilla. This was a friendly gesture on Popson's part with no thought to repayment. Harvilla accepted Popson's offer and borrowed the motorcycle to ride to a neighboring town.

This would be a bailment, and no contract would be involved. However, Harvilla made an implied promise to use the motorcycle with great care.

Sometimes there may be a bailment even when there is no agreement at all.

Example 7. John Tracy found a watch lying on the sidewalk. He picked it up and put it in his pocket. He later advertised in the local paper to find the true owner. Was this a bailment?

Yes, it was a bailment. Tracy was the bailee because he had in his possession a watch that belonged to someone else. There was no contract. He had made no agreement with anyone.

LAW & Ethics

You find a wallet in the parking lot after school. It contains \$20, but no identification. Should you give the wallet to school officials? With or without the money in it? If no one claims it, should you be allowed to keep it?

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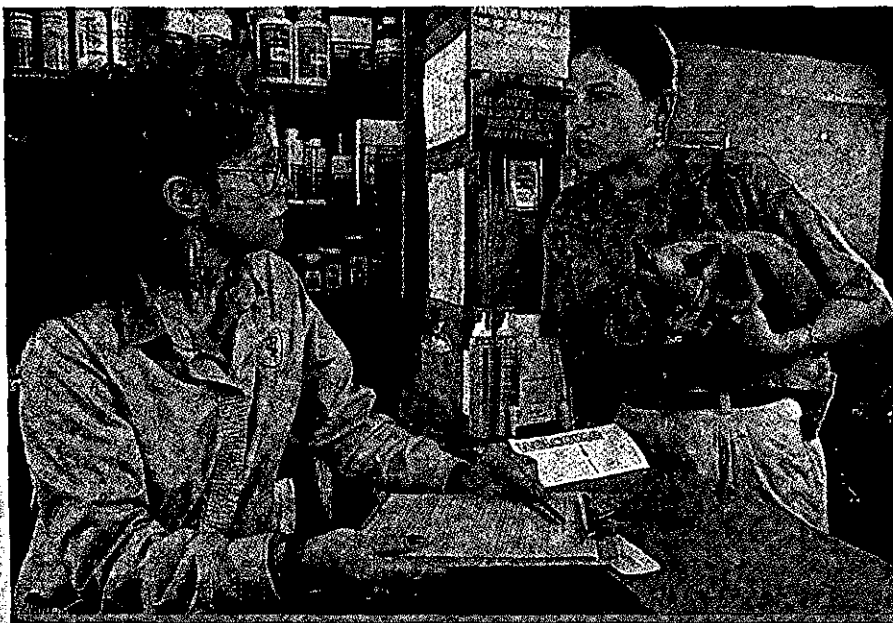
Mutual-Benefit Bailments

A mutual-benefit bailment is one in which both the bailor and the bailee receive some benefit. It is the result of a contract in which each party receives and gives some consideration. Some of the more common mutual-benefit bailments occur when people leave items with others (1) to be serviced or repaired, (2) to be stored, (3) as security for a loan, (4) out of necessity, and (5) because of a rental or lease agreement.

Service or Repair

Whenever someone leaves an item of personal property with another person to be repaired or serviced, a mutual-benefit bailment takes place. This type of bailment takes place whenever you take clothes to the cleaners, leave a car at a garage to be serviced, or leave any item with someone else to be repaired.

Example 8. You take your VCR to a shop to be repaired. By implication you will be promising to pay the shop for its service. The shop will be promising to repair your videocassette recorder satisfactorily. Your leaving the VCR with the shop will be a bailment for the mutual benefit of you and the shop.



◀ People often leave their pets in the care of professional boarding kennels. Who is the bailor in such an instance? Who is the bailee? What are the responsibilities of each?

Storage

Sometimes people place things that they own in storage—that is, they leave their property with someone else who holds it for them until they want it back. Storage warehouses are designed for this purpose.

Example 9. James and Janet Follain sold their house in Pennsylvania and moved to California. They were not sure exactly where they wanted to live and wanted to take their time in selecting a house. After placing their furniture in a storage warehouse, they lived in an apartment temporarily.

In this example, the warehouse company became the bailee of the Follains' furniture. It was the duty of the warehouse to store the furniture as required by the agreement made with the Follains. It was also the duty of the warehouse to exercise reasonable care in protecting the furniture against loss and damage, and to return the goods to the Follains (the bailors) on demand. In turn the Follains were required to pay all storage costs and to otherwise meet their obligations under their agreement with the warehouse.

Very short-term storage may also create a bailment. For example, when a customer delivers a coat to the checkroom attendant of a hotel or restaurant, a bailment takes place. In contrast, when a customer hangs a coat on a hook in a shop or restaurant, a bailment does not usually come about because the shop or restaurant owner has no control over the property.

Parking a Car in a Parking Lot

Occasionally, people who park their cars in parking garages or lots find that the cars have been damaged or stolen when they return. In a situation of this type, it is important to establish whether the transaction was a bailment or simply an agreement to rent a parking space. If the transaction was a bailment, the burden is on the bailee to prove that he or she was not negligent. On the other hand, if the transaction was merely the rental of a parking space, the burden is on the owner of the car to prove negligence on the part of the parking lot owner to recover for a loss. See Figure 19-3 below for an example in which parking a car did not create a bailment.

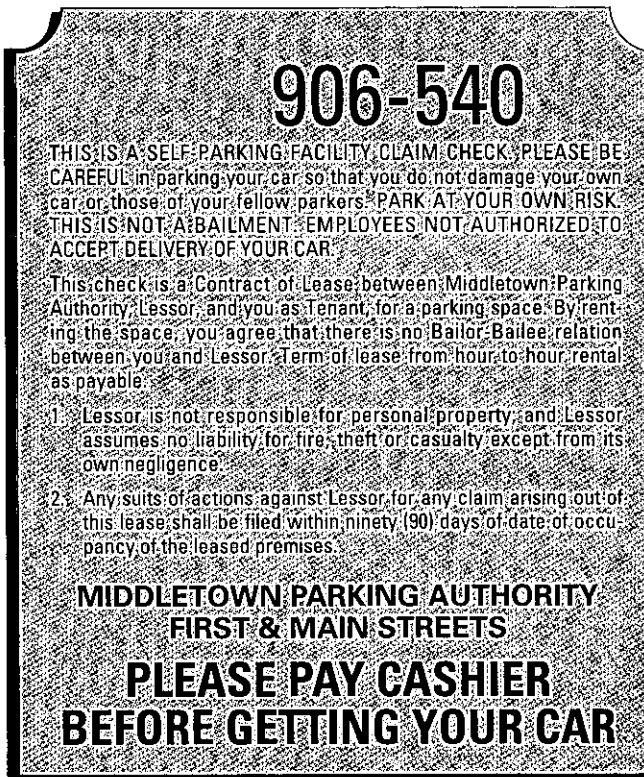


Figure 19-3 The small print on this parking garage ticket states that it is not a bailment. What kind of agreement is it?

The courts have held that a bailment takes place when a car owner surrenders the car keys to a parking lot attendant. Some courts have also held that a bailment occurs if the car owner must pass through a gate where an attendant stops and checks all cars leaving the premises. A bailment does *not* occur, however, if the owner of the parking lot has no control over the automobile that is parked there.

Security For a Loan

Many times, a bailment is coupled with the loan of money. The goods of the borrower in such a bailment are turned over to the lender to hold as security for the loan. This is a bailment for the mutual benefit of both parties.

The property left as security is called the *pledge*, or *pawn*. The borrower is the *pledgor*, or bailor. The lender is the *pledgee*, or bailee. The pledgee may be a bank, a loan company, a credit union, a pawnbroker, or another person.

Example 10. Nancy Seferis needed to buy a car. She had \$3,000 in the bank that she had been saving to finance her college education. She felt that if she took \$3,000 out of the bank to buy a car, she would never put it back. So she went to the bank and borrowed \$3,000. The bank held her passbook as security for the loan. She had to pay interest on the loan, but her savings continued to earn interest while the bank held the passbook. The net cost of her loan was about 3 percent of \$3,000 and her savings remained intact.

The passbook was the pledge. Seferis was the pledgor, and the bank was the pledgee in this transaction. Both Seferis and the bank benefitted—Seferis achieved her goal, and the bank earned interest on the money that it loaned to her.

Renting Goods From Others

Today it is common practice to rent goods that are needed only for a limited time. If you made a survey in your locality, you would probably find the following (and many other) items for rent by the day or by the week: videocassettes, floor sanders, power tools, lawn mowers, trucks, and power shovels. Paying for the use of another's goods is another type of mutual-benefit bailment.

Example 11. Jacob Sorenson agreed to pay Martin Levy \$800 if Levy would paint Sorenson's house. Levy agreed to do the job and decided that he could save time if he used a paint sprayer. He rented a paint sprayer from a local equipment rental company and completed the job in a very short time.

In the above transaction, Levy was the bailee of a good belonging to the rental company—that is, he was the bailee of the paint sprayer. He was obligated to pay for the use of the sprayer and to return it to the company in as good a condition as it was in when he received it. The rental company was the bailor and was obligated to give Levy a sprayer that was free of defects that might cause him injury. At the same time, a mutual-benefit bailment existed between these two parties because both of them benefitted from the deal. The rental company received its rental fee and Levy received the right to use the sprayer temporarily without having to make a permanent investment in it.

Reducing Legal Risks

Carefully inspect goods you intend to rent before taking possession. Be sure goods you intend to rent to someone are in good condition. When a friend lends you something, use it with care, and only within the terms of the agreement. When you lend something to a friend, warn the friend of any defects or dangers.

Bailments by Necessity

A common type of mutual bailment, implied by law, is the bailment by necessity. This type of bailment occurs when a customer must give up possession of property for the benefit of both parties. This occurs, for example, when someone purchases a suit or dress and leaves his or her own clothing in a changing booth temporarily while being fitted. It also occurs when someone goes to a barber shop or hair shop and gives up possession of a hat or other item of apparel so that the services can be performed. In such cases, the bailee is required to accept the other's property and to protect it with reasonable care.

Gratuitous Bailments

A **gratuitous bailment** is one that is free of charge. There are two types. The first is one in which the bailor lends the goods to the bailee for use without charge. This is known as a bailment for the sole benefit of the bailee.

Example 12. If your friend John Chiang loaned you his sailboat for a week, expecting nothing from you in return, the bailment would be for the sole benefit of the bailee (you). Chiang, in this case, would be the bailor.

The second type of gratuitous bailment is one in which the bailee takes possession of the goods for the bailor and keeps them safely without charge. This is known as a bailment for the sole benefit of the bailor.

Example 13. If your friend Andrea Como, who was going away for a week, asked you to look after her dog as a personal favor while she was away, then a bailment for the sole benefit of the bailor would be created, provided that you agreed and took possession of the dog.

Right and Duties in Bailments

Generally, the rights and duties of the bailor are closely related to, and in a sense the opposite of, those of the bailee. If the bailor, under the terms of a contract, has the right to receive service or money, the bailee has the duty to provide that service or money. Likewise, if the bailor has the right to have the goods protected from harm by the use of reasonable care, the bailee has the duty to protect those goods by using reasonable care.

Rights and Duties of a Bailor

When a bailment takes place, the bailor has the right (1) to receive the services or money that was contracted for, (2) to have the goods protected from harm by the use of reasonable care, and (3) to have the goods returned when the job is done and payment is tendered. What is considered to be reasonable care varies in accordance with the goods involved. For example, the care required to store a fur coat would be different from that required to store a piece of maple furniture or a live animal.

The bailor's duties are (1) to pay for services or storage costs, (2) to warn the bailee of any possible danger involved in handling the goods, (3) to give notice of any special care required, and (4) to pick up the goods within a reasonable time after they are ready unless they are to be delivered. A bailor who fails to do this assumes the risk of the loss of the goods.

