
Bailments: Hotel Liability For a Guest's Lost, Stolen or Damaged Property

An irate Mrs. Smith stands before your front desk manager, questioning the whereabouts of her diamond necklace which she claims to have left in her room just hours ago. Mr. Thorn is upset because the valet has returned his cherished Porsche convertible with a new scratch on the driver's door. Are you liable for these and similar mishaps?

The law of innkeeper liability stems back centuries. As a general rule, the innkeeper has been deemed responsible for the protection of his/her guests and their personal property. However, in this article, we will examine a particular type of relationship called a "bailment" and how this relationship dictates the liability standards.

Generally in a bailment, one party gives personal property to another for safekeeping or some specific purpose. Simple examples include coat checks, valet service, and a bellman picking up a guest's luggage.

The following are three basic categories of bailments and the types of liability prescribed to each.

1) **Bailments for the benefit of the bailor:** This relationship only benefits the person depositing the property. For example, a guest checking out at 11:00 am would like to leave his luggage with the bellman while he sightsees prior to his flight that evening. The hotel agrees and now must exercise a high degree of care for the safety of the luggage. If the hotel is unwilling to take on the liability, it can simply refuse to accept possession.

2) **Bailments for the benefit of the bailee:** This situation benefits the party accepting possession, such as when a hotel rents or borrows linens for an event hosted at the hotel. This relationship may be gratuitous or for a fee. In either case, possession is transferred from one party to the next along with a duty of care for safekeeping.

3) **Bailments for the benefit of both parties:** This relationship benefits both sides. The valet service is the perfect and most common example: the guests are inconvenienced by having their cars parked for them, while the restaurant benefits by increased business. Again, responsibility for safekeeping is transferred along with possession.

The key to all three situations is that possession must be clearly and knowingly transferred from one party to another. The simple rule of thumb in terms of responsibility and liability in all three relationships is that the bailee should exercise as much care for the property as one would for their own. If you cannot or do not want to do that, do not accept the bailment relationship.

Since one of the keys to liability under the bailment relationship is transfer of possession, let us examine the two scenarios described in the opening paragraph. In the first scenario, Mrs. Smith left her jewelry in her room, unbeknownst to the hotel staff. In other words, no transfer of possession to the hotel occurred since the hotel did not accept possession. Some states require the hotel to provide a safe for guests' valuables, limiting the liability for certain personal property like jewelry or money to the contents of the safe.

In the second scenario, when Mr. Thorn handed his keys to the valet attendant, this constituted a clear transfer of possession, making the hotel responsible for the well being of the Porsche. However, let's say Mr. Thorn is upset not because of the dent, but rather because his wife's mink coat is missing from the trunk. The argument is not as clear and the hotel probably will not be liable: when the valet accepted the keys, he knowingly accepted responsibility for the car, not the fur. Therefore, no bailment relationship was established for the fur.

It is important to note that in some states a hospitality operator may still be liable for any loss or damage even if a bailment relationship has not been established. Thus, it is critical to exercise a high degree of care with guests' personal property in order to avoid risk of suit. In most states, a hospitality operator's liability will be limited if the operator can prove that it exercised the standard of care required by the law.

Furthermore, some states allow a hospitality operator to limit their liability, provided the limitation does not violate an existing law. Examples of setting such limitations are through use of signage, secure safes, proper locks on doors and windows, limits on replacement value of luggage, limits on the value of required possession, or written statements for a hotel guest to sign upon check-in.

Finally, one last word about cars—the most common source of risk and liability. We have covered the valet scenario. However, what happens when a hospitality operation contracts with an independent parking lot? Since the lot may be construed as an agent of the operator, the operator may still be held liable. What about a free-to-use parking lot offered by some hospitality operators? The law varies by state: some hold that since the guest takes his/her keys, no bailment relationship is knowingly established, thus the operator is not liable. Other states consider this a gratuitous bailment, holding the hospitality operator liable. In a case where the parking lot requires a fee, the courts may consider that the fee creates the bailment, regardless of whether the keys are kept by the guest.

As you can see, the laws of liability for personal property vary state to state. It is best to seek professional, local legal advice on the best avenues to limit liability and prevent the risk of being sued.

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