

An Appraisal of the Nature and Scope of Contracts of Bailments in Nigeria

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Abstract: *The principle and nature of contracts of bailments in Nigeria have been the subject of legal analysis and debate. In Nigeria, contracts of bailment are an essential component in business dealings. Bailment refers to the transfer of property from a bailor to a bailee, who gives up temporary possession but retains ownership of the asset. This article provides a comprehensive examination of the nature and scope of contracts of bailments in Nigeria by providing a thorough analysis of the practical implications surrounding this essential aspect of law. The concept of contract of bailment is essentially to regulate the relationship between bailors and bailees, which impacts a wide range of transactions and interactions across various sectors. This research explores the provisions of bailment laws in Nigeria, it provides an understanding on the legal concept of bailment, its application, and implications and it makes recommendation within the Nigerian legal framework.*

Keywords: Contract, Bailment, Bailor, Bailee

Introduction

Bailment is a legal concept that plays a crucial role in commercial transactions that is vital to business dealings. Its significance cannot be overstated in contract law in Nigeria. A “bailment” is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor.”¹ If a person already in possession of the goods of others contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.²

The word Bailment has its origin from a French word ‘bailer’ which means ‘to deliver’. It is a transaction under which goods are delivered by one party (the bailor) to another (the bailee), on certain specified terms, which generally provide that the bailee is to have possession of the goods and subsequently redeliver them to the bailor in accordance with his instructions. However, the goods are not intended to, and does not pass on delivery, in fact, it remains with the bailor, though it may sometimes be the intention of the parties that it should pass in due course, as in the case of an ordinary hire purchase contract "A contract of bailment" is the term used to describe the agreement between those two parties. In a bailment agreement, only the bailee gains possession of the goods under the terms of the bailment contract; the Bailor retains ownership of the goods.

Nature of Bailment Contracts in Nigeria

In Nigeria, the nature of bailment contracts is governed by common law principles and the relevant statutory provisions. Bailment contracts are inherently fiduciary in nature, thus establishing a legal relationship based on trust and responsibility. The relationship between the bailor and the bailee is based on trust and good faith.

The Nigerian legal framework recognizes the importance of safeguarding the interests of both bailor (the party delivering the goods) and bailee (the party receiving the goods). The nature of bailment contracts in Nigeria is characterized by a legal relationship built on trust, responsibility, and the transfer of possession of goods from one party to another for a specific purpose.

Contracts of bailment in Nigeria are created by contractual agreements between the parties, and they are subject to the legal framework governing the supply of goods.³ Bailment is a concept that transcends the law of torts and contract and has become an integral part of contemporary business transactions in Nigeria.⁴ The liability of bailees in contracts of bailment has been subject to judicial examination, with a focus on the duties and obligations of the parties involved. There is an ongoing interrogation of the

¹ Essentials of A Valid Contract of Bailment; <https://prolawctor.com/contract-of-bailment-contract>. Accessed 14th December, 2023.

² Harlem solicitors ‘An Appraisal of the Concept and Scope of Agency Relationship Under the Nigerian Commercial Law’ Published by Harlem, August 2023, P.48

³ Damilola Salawu & Martina Aguocha, “Supply of Goods in Nigeria: An Overview” Thomson Reuters Practical Law

⁴ Job Odion, “The Liability of Bailees in Contracts of Bailment”

traditional limitations of the concept of bailment at common law, particularly in relation to intellectual property. This raises the possibility of recognizing a bailment relationship even in the absence of physical control and possession, pending legislative intervention⁵. In summary, the nature of contracts of bailment in Nigeria involves contractual agreements between parties, judicial examination of the duties and obligations of the parties, and an ongoing interrogation of the traditional limitations of the concept of bailment, particularly in relation to intellectual property

Elements of a Bailment:

The basic essential elements of a contract of bailment includes:

- a. **Contract:** The relationship between a bailor and a bailee brings about the creation of a contract in which assets or property are transferred from the bailor to the bailee. In this regard, the essential components of a legally binding contract must be present which includes acceptance and consideration. The bailee's express or implied acceptance of possession and control over the property is a major requirement for the formation of a bailment contract. Since a bailment is a contract, its enforcement depends on the parties having an understanding and then agreeing to its provisions. Consideration involves the exchange of something valuable for there to be a valid contract. Thus, since a bailment is a contract, its enforcement depends on the parties understanding and agreeing to its provisions. In contrast to the consideration mandated by most contracts, this constitutes a good consideration provided one party forfeits something of value. It suffices that the bailor relinquishes the use of the property after giving the bailee control over it ; the bailor has therefore forfeited something valuable which is the immediate right to use the property.⁶
- b. **Delivery of Possession:** The most important element of a contract of bailment is the delivery of goods from one person to another. The delivery of the goods can be either constructive or actual. Actual delivery entails the physical delivery of the items by the bailor to the bailee. While in a constructive delivery, the items are not expressly delivered to the bailee, but steps are taken which may imply that the bailee is given possession of the goods rather than it being outrightly delivered. E.g., the delivery of a title document, delivery of a key of a car.⁷
- c. **Purpose:** In a bailment contract, the property is transferred from the bailor to a bailee for a specific purpose, without the actual transfer of ownership. There must be an agreement expressly outlining their obligations and responsibilities and the bailment must have a specific purpose.⁸ The bailee is obliged to return the property to the bailor after the purpose has been achieved and the contract agreed upon comes to an end. When the goods are delivered by mistake without any purpose, there is no bailment.⁹
- d. **Non-Transfer of Ownership:** In a contract of bailment, the bailee has the right to possess ownership of the property, but not to use or transfer it to others. The bailor still retains legal ownership of the property while it is in the bailee's possession.¹⁰
- e. **Return or Disposal of Goods:** The goods transferred by the bailor to the bailee are transferred based on the condition that they will be returned back in their original form or in an altered form or disposed in accordance with the directions of the bailor.¹¹

Types of Bailments

There are various types of bailments, each characterized by different circumstances and duties owed by the parties involved. Some of the common types of bailments are:

- a. **Bailments that Benefit Both Parties**

This type of bailment is often referred to as a 'mutual-benefit bailments. It is a type of bailment arrangements that is advantageous to both parties. In this kind of bailment, the arrangement is advantageous to both the bailor and the bailee. The parties to this type of

⁵ Nicholas C. Eze, "Bailment of Intellectual Property in Nigeria: A Conceptual Possibility" published by Cambridge University Press: 6th February, 2023, Pp. 45 -58

⁶ *Ibid.*

⁷ Smirti, "Essential Elements of Bailment – 5 Essential Elements" <<https://www.managementnote.com/essential-elements-of-bailment/>> accessed 22 November 2023.

⁸ www.encyclopedia.com

⁹ *Ibid.*

¹⁰ Adam Hayes, "Bailment: Definition, How it Works, Types and When it Ends" <https://www.investopedia.com/terms/bailment.asp> accessed 22 December 2023

¹¹ Legalstudymaterial.com

bailment usually have a contract or agreement outlining the terms and conditions of the bailment, and both the bailor and the bailee benefits in some way from the arrangement. For example, using a paid parking lot to park your vehicle is advantageous to both the park owner who gets paid for his services and the bailor can park his car in a safe location¹². In a mutual-benefit bailments, both parties assume some risk and responsibility, and the bailee is liable for any damage that results to the bailed items if they are negligent in their duties.

b. Bailments That Only Benefits the Bailor

A bailment that only benefits the bailor is often referred to as a "gratuitous bailment or a "bailment for the benefit of the bailor"¹³. In this type of bailment, the bailor receives the sole benefit, and the bailee does not receive any compensation for holding the property. An example of this is a free valet service, where the valet parks the individual's vehicle without receiving any payment. The bailee may face liability in a situation where the bailed item is damaged or have been grossly neglected acted in bad faith while safeguarding the asset.¹⁴

c. Bailments That Only Benefits the Bailee

Bailments that only benefit the bailee are known as bailments for the sole benefit of the bailee. In this type of bailment, the bailee receives the sole benefit, and the bailor does not receive any compensation for the bailment.¹⁵ In this kind of situation, the bailor willingly transfers possession of their property to the bailee without receiving direct compensation. For example, A friend asks to borrow a specific tool, book, or item from the bailor for personal use without offering any compensation.¹⁶

In a bailment for the sole benefit of the bailee, the bailee owes a duty of care, which means they must not be slightly negligent in caring for the bailed goods. In this kind of bailment, the bailee is liable for practically any damage done to the property that was bailed. And of the three types of bailment, this category requires the highest standard of care.¹⁷

Where a bailee is unable to produce the asset or property by the end of the arrangement, the bailor has the right to terminate the agreement and initiate legal action, which may include compensating for damages. On the other hand, bailees have the right to demand payment for their services, pursue legal action against any third parties that causes damage to the property or asset, or he can exercise liens in the event that the bailor breaches the agreement. It is the nature of the bailment arrangement that determines the rights applicable.¹⁸

Termination of Bailment

Termination of bailment refers to the end of the legal relationship between the bailor and the bailee.¹⁹ There are several ways in which a bailment can be terminated, and the specific circumstances may depend on the terms of the agreement between the parties. A contract of bailment terminates or comes to an end in the following circumstances:

- i. On the expiry of specific times period,
- ii. On the accomplishment of specific purpose,
- iii. Where the bailees actions are inconsistent with the terms and conditions of the bailment, the bailor can terminate the bailment.
- iv. Bailments may be terminated by written agreement between the parties
- v. A contract involving gratuitous bailment of a personal nature may be dissolved in the event that either party passes away.
- vi. If the bailee abandons the property or refuses to fulfill their duties without justification, the bailor may consider the bailment terminated, and legal actions may be taken to reclaim the property.²⁰

¹² <https://www.investopedia.com/terms/b/bailment.asp>

¹³ <https://www.legalmatch.com/law-library/article/bailment-lawyers.html>

¹⁴ *Ibid.*

¹⁵ Ishita Jain "Rights and Duties of Bailor and Bailee" 15th Edition, *University Institute of Legal Studies, Panjab University*, PP. 62 -75

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¹⁷ Lalit Kishore Srivastava, "Bailment"

<https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004032240236514Lalit_Kishore_Srivastava_law_bailment.pdf> accessed 22 December, 2023.

¹⁸ *Ibid.*

¹⁹ Bailment and Termination of Bailment: Shrey Apatil; Legal Service India.com 2000

²⁰ Bailment; Vishal Garg, <https://www.wallstreetmojo.com/bailment/> accessed 22 December, 2023

When a bailment is terminated, the bailor has the right to expect that his property will be returned to its original state. If this is not possible, the bailee must account for any actions that led to the damage or loss.²¹ Likewise, a bailor can also expect to get his property back in its original state when the agreement ends, and if this isn't possible, the bailee must account for any actions that led to the damage or loss.²²

Transactions identified as contracts of bailment

Transactions identified as contracts of bailment typically involve the transfer of possession of personal property from one party to another party for a specific purpose or under certain conditions. The transactions that underlie as a bailment are of various types as decided by the court in *Coggs v. Bernard*,²³ they include:

- a) A depositum, i.e. where a possessor looks after the owners goods with or without charge
- b) A gratuitous loan
- c) A hire, where the possessor pays for the use of goods as in a hire-purchase contract or equipment leasing
- d) A wide class where goods are in the possessors' hands for carriage from one place to another or for work or repairs to be done to the goods, in return for some kind of payment.²⁴

In the case of *Martchem industries Nig. Ltd v M.F Kent West Africa*,²⁵ the supreme court held the following to be categories of Bailment:

- Depositum: On the deposit of a chattel with the bailee who is simply to keep it for the bailor without reward.
- Mandatum: where the bailee has without reward, agreed to do something for the bailor or with the chattel bailed.
- Comodatium: Where the bailor without recompenses, lends a chattel to the bailee for him to use.
- Pignus: Sometimes called vadium or pawn, where the bailee holds the chattel confided to him as security for a loan or deed.²⁶

From the above two cases, it is obvious that the court considered the first condition which is "a depositum" to hold that an innkeeper is liable for the guest's property deposited in his premises under a contract of bailment.²⁷

In *Killish v Meyer Hotel Co*,²⁸ a guest gave his automobile to the doorman and received a claim check issued by an independent parking garage. The automobile was delivered to the wrong person through negligence of the garage. The court held as follows:

The hotel held itself out to its prospective guest as having storage facilities for cars, charges for such storage were carried on the guest's bill with the hotel. The hotel designated its doorman as agent to handle the details of storage for guest and then made contact with the garage as agent of the hotel to store the cars of its guests. So far as the guest's claim against the hotel is concerned, it is obvious that it was dependent on whether the contract between the hotel and the garage was profitable. Since the guest paid the hotel to assume the responsibility of a bailee for hire.

Also, in *Dispeker v New Southern Hotel Company*,²⁹ bellboy complied with a guest's request to park his automobile on an unattended outdoor hotel lot with free ingress and egress provided for guest to park and remove their automobiles at will. When the bellboy returned the key to the owner, the owner informed the bellboy that the automobile could start without the key, the bellboy returned, took the car and wrecked it. The court held that when the employee received the automobile for parking, a bailment was created. The court further held that:

It was only through the defendant's unfortunate choice of employee that the automobile was damaged. Thus, when the automobile was turned over to Govan (bellboy) then off-

²¹ William King LaidLaw "Principles of Bailment" *Cornell Law Review* 1998

²² Darby Dickerson "Bailor Beware: Limitations and Excursions of Liability in Commercial Bailments" *Vanderbilt Law Review*, Vol 41, issue 4, PP 32 -41

²³ (1703) 2 Ld Raym 909.

²⁴ *Ibid.*

²⁵ (2005) JELR 51452 (SC)

²⁶ *Ibid.*

²⁷ Hill station Hotel Ltd v Adeniyi (1994) 4 NWLR (Pt. 442) 294

²⁸ [1994] 184 SW 2d 904

²⁹ [1963] 373 SW 2d 897

duty an act quite analogous to mis delivery took place imposing absolute liability upon the bailee for the loss of damage occasioned thereby.

In bailment cases, it is not mandatory on the part of a plaintiff specifically to plead negligence and the particulars therefore in his statement of claim before his action can succeed so long as the totality of the facts therein pleaded discusses a prima facie case of negligence against the defendant.

Liability of the Bailee

The liability of a bailee refers to the legal responsibility that a person or entity (the bailee) assumes when they have temporary possession or control over another person's property (the bailor). The bailee is expected to practice ordinary diligence while the property is in his possession and can be held responsible for any gross negligence that occurs. The duties and liabilities of a bailee have been summarized by the Court of Appeal in *Comet S. A. (Nig) Ltd v Babbit (Nig) Ltd*³⁰ as follows:

The duty of a bailee in respect of the bailment is no more than to take reasonable care to protect the chattel against imminent danger. He must take all proper measure to protect the bailor's interest when the chattel is stolen or when claims, adverse to the bailor's are made to the chattel. The bailee is not an insurer and he will not be held liable where the loss or damage occurred without negligence on his part. The onus of proof is on the bailee to show that it was not caused by his failure to take reasonable care.

The court further buttressed the strict liability standard for a bailee who fails to return goods entrusted in his care. In the case of *Leventis Motors Ltd v Nuineh*,³¹ Here, the respondent who had left his Mercedes Benz with the defendant for repairs sued for the recovery of the car, when it was discovered that the respondent had sold same in an auction sale. The court stated as follows:

The bailee is under an obligation to return the bailed chattel to the bailor at the end of the period of bailment, unless he can show good cause for not returning it. In the instant case, the appellant as bailee of the respondent's car for reward owed a duty of care to the respondent to ensure that his car was returned to him after such repair for which the car was deposited had been carried out.

Contract of Bailment and Consumer Law

The bailee has a duty to safeguard and return the property once the purpose is accomplished or the agreement ends.³² The law of bailment is an important aspect of consumer law, as it governs the rights and obligations of parties involved in the temporary transfer of property.³³ The idea of effective consumer law is linked with the idea of having an effective and well-informed pool of consumers.³⁴

The Bailee has rights under the Consumer Law to seek appropriate remedies. Some of such remedies available to the bailee include:

- i. Right to compensation
- ii. Right to sue for conversion
- iii. Right to possess and reclaim
- iv. Right to limit the bailee's use
- v. Right to claim necessary expenses.³⁵

Whereas, the Bailor shall be entitled to the following rights:

³⁰ 2001] 7 NWLR (Pt.712) 442

³¹ [1999] 13 NWLR (Pt. 634) 235

³² <https://www.legalmatch.com/law-library/article/what-is-a-bailment.html> accessed 30 December, 2023.

³³ Danielle D. Onfro "The New Bailment", *Washington Law Review*, Volume 97, 2022 Pp. 45 -57

³⁴ Rishab Khare, "India: Role of Special Clauses In Consumer Law" <<https://www.mondaq.com/india/dodd-frank-consumer-protection-act/905950/role-of-special-clauses-in-consumer-law>> accessed 30 December, 2023.

³⁵ *ibid.*

1. Right to Receive the Property in the Same Condition.
2. Right to Terminate the Bailment.³⁶
3. Right to Possession
4. Right to Compensation for Damages:
5. Right to Reimbursement for Necessary Expenses
6. Right to Redelivery
7. Right to Determine the Purpose

Recommendations

The topic nature and scope of contracts of bailment in Nigeria have been the subject of legal analysis. Cases involving contracts of bailment in Nigeria are often juxtaposed alongside the concept of tort of negligence to the detriment of the consumers and the following recommendations have been made . For example, consumers rights with regard to cars parked at owners' risk are adequately protected at common law which imposes strict liability on the innkeeper for loss or damage done to the property of the guest in hotel premises. To this extent, it is recommended that since the Constitution of the Federal Republic of Nigeria, 1999 (as amended) gives the House of Assembly the legislative competence over hotel proprietorship, a specific legislation should be enacted to protect consumers from the incessant disclaimer of cars parked at owners' risk. It is thus our recommendation that:

1. A comprehensive review of judicial decisions relating to the liability of bailees in contracts of bailment in Nigeria in order to provide valuable insights into the legal framework and practical application of bailment laws in Nigeria.
2. A comparative analysis of the concept and scope of bailment in Nigeria with practices in other jurisdictions. This could provide a broader perspective and enable us identify the best practices that can be adopted in the Nigeria.
3. That before a consumer enters into contractual relationship with another, he should seek the professional services of a lawyer to guide him and draft the contract in a way that it reflects and guarantee his interests.
4. That consumers be informed of their rights and obligations before entering into any contract of bailment.³⁷

In conclusion, the appraisal of contracts of bailment in Nigeria underscores their significance in facilitating transactions, fostering trust between parties, and contributing to the overall efficiency of commercial activities. a comprehensive understanding of the legal nature and scope of these contracts is vital for stakeholders to engage in mutually beneficial arrangements while ensuring the protection of their rights and interests within the bounds of Nigerian law³⁸

³⁶ *Ibid.*

³⁷ *Ibid*

³⁸ C. T. Emejuru and Emmanuel M. Wosu, "The Consumer, Innkeeper and Cars Parked at Owners' Risk Disclaimer: Any Remedy For Loss or Damage to Property?" *Rivers State University Journal of Public Law*, Pp. 80 -101