



CONTRACT OF BAILMENT IN NIGERIA: AN APPRAISAL

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Abstract

The contract of bailment, a fundamental aspect of Nigerian contract law, serves as a legal framework governing the relationship between a bailor and a bailee concerning the temporary transfer of possession of goods or assets. This paper provides a comprehensive appraisal of the contract of bailment within the context of Nigerian legal jurisprudence. The paper adopts the doctrinal research method and employs the use of legal and critical analysis in its delve into the foundational principles underpinning bailment contracts in Nigeria, examining the rights, duties, and liabilities of both parties involved. It explores the legal requirements for establishing a valid bailment agreement, including the essential elements such as delivery, acceptance, and the purpose of the bailment. Furthermore, the study critically evaluates the statutory provisions, case laws, and judicial interpretations shaping the landscape of bailment contracts in Nigeria. It highlights the importance of clear terms and conditions in bailment agreements to mitigate disputes and ambiguities that may arise during the bailment period. The paper also addresses contemporary issues and challenges facing the bailment contract in Nigeria, such as the impact of technological advancements, the role of insurance, and the enforcement of bailment rights in the face of breach or negligence by either party. The paper concludes that contracts of bailment play a pivotal role in Nigerian commerce. It facilitates transactions, safeguards the interests of both parties, and ensures the lawful and efficient transfer of goods. To further strengthen this vital legal framework, the paper advocates for a clearer legislative framework and increased stakeholder awareness. By doing so, we can enhance the effectiveness and fairness of bailment contracts in Nigeria.

Keywords: Contract, Bailment, Bailor, Bailee, Appraisal

Introduction

The word Bailment has its origin from a French word ‘baillier’ which means ‘to deliver’.¹ 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.²

A bailment, as defined by Lord Holt in *Coggs v. Bernard*,³ is “delivery of a chattel in trust, upon a contract expressed or implied, that the trust shall be reposed in the bailee, and the chattel redelivered by him to the bailor, according to the purpose of the trust.”

This definition has stood the test of time and extensive judicial scrutiny, but it has been criticized numerous times because of its obscurity, age, and the fact that it is a circular definition. Despite these criticisms, Lord Holt's definition still remains the

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¹ Harlem, ‘An Appraisal of the Concept and Scope of Agency Relationship under the Nigerian Commercial Law’ <<https://www.harlemsolicitors.com/2023/08/13/an-appraisal-of-the-concept-and-scope-of-agency-relationship-under-the-nigerian-commercial-law/>> accessed 25 March 2024.

² Ibid

³ (1703) 2 Ld Raym 909.

best way to introduce the concept of bailment. It reduces the complex nature of bailment to its essential components: that there must be a delivery of a thing, a trust reposed upon the bailee, and a subsequent redelivery of the thing to the bailor according to the purpose of the trust.⁴

Bailment plays a pivotal role in commercial transactions, for example, business dealings. 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.⁵ The person delivering the goods is called the ‘bailor.’⁶ 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.⁷

In Nigeria, the nature of bailment contracts is governed by a combination of common law principles and relevant statutory provisions, such as the Sale of Goods Act,⁸ the Nigerian Carriage of Goods by Road Act, and the Pawnbrokers Act. 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.

⁴ Ibid.

⁵Sunita Srivastava, ‘Contract of Bailment and Pledge’ <https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004221613338913sunita_com_bailment.pdf> accessed 25 March 2024. See also: “Essentials of A Valid Contract of Bailment” <<https://prolawctor.com/contract-of-bailment-contract>> Accessed 14 December, 2023

⁶Ibid.

⁷Ibid.

⁸Sale of Goods Act 1979 <https://www.legislation.gov.uk/ukpga/1979/54/pdfs/ukpga_19790054_en.pdf> accessed 4 April 2024

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).⁹ 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.¹⁰

Bailment is a concept that transcends the law of torts and contract and has become an integral part of contemporary business transactions in Nigeria.¹¹

This paper thus appraises the concept of contract of bailment under the Nigerian legal system and shall briefly examine the rights, duties and liabilities of the parties involved in a contract of bailment, the legal requirements for establishing a valid bailment agreement; it shall also address the issues and challenges facing the bailment contract in Nigeria, conclude and proffer recommendations on the way forward.

Legal Framework on Contract of Bailment in Nigeria

In Nigeria, the legal framework governing the contract of bailment is primarily derived from common law principles, judicial decisions, and statutory provisions.

While there isn't a specific legislation exclusively dedicated to bailment, several

⁹ Adam Hayes, Cierra Murry, Suzanne Kvilhaug, "Bailment: Definition, How It Works, Types, and When It Ends" <<https://www.investopedia.com/terms/b/bailment.asp>> accessed 4 April 2024

¹⁰ Damilola Salawu, Martina Aguocho and Olaniwun Ajayi, 'Supply of Goods in Nigeria: An Overview' <[https://uk.practicallaw.thomsonreuters.com/w-016-4249?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-016-4249?transitionType=Default&contextData=(sc.Default)&firstPage=true)> accessed 25 March 2024.

¹¹ Job Odion, "The Liability of Bailees in Contracts of Bailment" <https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

statutes and case laws provide guidance on the rights, duties, and liabilities of the parties involved in a bailment agreement. Here's an overview of the key elements of the legal framework on the contract of bailment in Nigeria¹²:

1. **Common Law Principles:** This serves as the foundational basis for bailment contracts in Nigeria. These principles, developed through judicial decisions and precedents, define the essential elements, requirements, and standards governing bailment agreements. These include the duty of care, the requirement of delivery and acceptance, the purpose of the bailment, the right to possession, and the obligations of the parties involved.¹³
2. **Sale of Goods Act:** The Sale of Goods Act, although primarily concerned with the sale of goods, contains provisions that are relevant to bailment agreements, especially concerning the delivery, possession, and transfer of goods. Sections dealing with transfer of possession, implied conditions and warranties, and rights of unpaid sellers can be applied *mutatis mutandis* (with necessary modifications) to bailment contracts.¹⁴
3. **Judicial Decisions:** Case laws play a significant role in shaping and interpreting the legal principles and requirements of bailment contracts in Nigeria. Landmark judgments by Nigerian courts, especially the Supreme Court and the Court of Appeal,

¹² Avatar Singh, *Contract and Specific Relief*, (13th Edition, Eastern Book Company, 2022)

¹³ Richard H. Helmholz, 'Bailment Theories and the Liability of Bailees: The Elusive Uniform Standard of Reasonable Care' <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=8476&context=journal_articles> accessed 4 April 2024

¹⁴ Sale of Goods Act 1979 <https://www.legislation.gov.uk/ukpga/1979/54/pdfs/ukpga_19790054_en.pdf> accessed 4 April 2024

provide authoritative interpretations and clarifications on various aspects of bailment, including duties of care, liabilities for negligence, and rights of parties.¹⁵

4. Customary and Islamic Laws: Customary laws and Islamic laws (in the northern regions of Nigeria) also influence the practice and interpretation of bailment agreements, particularly in rural and traditional communities. Customary and Islamic laws may provide alternative or supplementary principles and practices concerning bailment, which can be considered alongside common law principles, depending on the jurisdiction and cultural context.¹⁶
5. Consumer Protection Regulations: The Consumer Protection Council (CPC) Act and other consumer protection regulations may also have implications for bailment agreements, especially concerning consumer rights, remedies for breaches of contract, and unfair trade practices. These regulations aim to safeguard the interests of consumers and ensure fair, transparent, and equitable bailment practices, thereby enhancing consumer confidence and trust.¹⁷

Elements of a Contract of Bailment:

¹⁵ I.C.C. Metals, Inc. v. Municipal Warehouse Co. 409 N.E.2d 849 (N.Y. 1980); In LC.C. Metals, a trader delivered three lots of industrial metal to the defendant warehouseman for storage. When the trader demanded its return three years later, the metal could not be found. The defendant argued that it must have been stolen, though this was in fact no more than a reasonable speculation on the defendant's part. Litigation ensued because the warehouse receipt limited defendant's liability to \$50. The defendant was quite willing to admit negligence because, under New York law and the U.C.C., its liability for negligence would have been limited to the nominal \$50. The New York Court of Appeals, however, held that the plaintiff was entitled to summary judgment and recovery to the full extent of the loss. The court concluded that, unless the bailee could produce "adequate evidentiary proof in admissible form to support its suggested explanation" for the loss, the law would conclusively presume that it had converted the metal.'

¹⁶ Sunita Srivastava, 'Contract of Bailment and Pledge' <https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004221613338913sunita_com_bailment.pdf> accessed 25 March 2024. See also: 'Essentials of A Valid Contract of Bailment' <<https://prolawctor.com/contract-of-bailment-contract>> accessed 4 April 2024

¹⁷ Consumer Protection Council (CPC) Act <<https://lawsofnigeria.placng.org/view2.php?sn=81>> accessed 4 April 2024

Establishing a valid bailment agreement requires meeting specific legal requirements to ensure clarity, enforceability, and protection of the rights and interests of both the bailor and the bailee. While the exact legal requirements may vary by jurisdiction, generally, the following elements are essential for forming a valid bailment agreement:

- a. Intention to Create a Contract of Bailment: Both parties must have a clear and mutual intention to enter into a bailment agreement.¹⁸ The purpose of the agreement should be explicitly stated, whether it's for safekeeping, transportation, repair, or any other specified purpose related to the temporary transfer of possession of goods.¹⁹

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.²⁰ 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

¹⁸Sunita Srivastava, “Contract of Bailment and Pledge” <https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004221613338913sunita_com_bailment.pdf> accessed 25 March 2024. See also: “Essentials of A Valid Contract of Bailment” <<https://prolawctor.com/contract-of-bailment-contract>> accessed 4 April 2024

¹⁹ Ibid

²⁰ Job Odion (n. 9)

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.²¹

- b. **Delivery of Possession:** There must be an actual or constructive delivery of the bailed goods from the bailor to the bailee. This means that the bailor transfers physical possession of the goods to the bailee, or the bailee gains control or access to the goods in some way, with the consent of the bailor. 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.²²
- 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 which must be legal.²³ The purpose of the bailment must be lawful. The bailed goods must not be used for any illegal, immoral, or prohibited activities. The terms and conditions of the bailment agreement should comply with applicable laws and regulations.

²¹ Ibid.

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

²³ Ibid.

- 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.²⁴
- 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.²⁵
- f. **Legal Capacity of Parties:** Both the bailor and the bailee must have the legal capacity to enter into a contract. This means they must be of sound mind, of legal age, and not under any legal disability or incapacity that would prevent them from understanding the terms and obligations of the bailment agreement.
- g. **Clear Terms and Conditions:** The bailment agreement should contain clear and unambiguous terms and conditions outlining the rights, duties, and responsibilities of both the bailor and the bailee. This includes details regarding the care, use, storage, and return of the bailed goods, as well as any limitations of liability, insurance requirements, and dispute resolution mechanisms.
- h. **Documentation:** While not always a strict legal requirement, it is highly recommended to have the bailment agreement in writing to avoid misunderstandings and disputes. Written documentation provides evidence of the parties' intentions, the terms of the agreement, and can be crucial in resolving any legal issues that may arise.

²⁴ Adam Hayes, 'Bailment: Definition, How it Works, Types and When it Ends' <https://www.investopedia.com/terms/bailment.asp> accessed 22 December 2023

²⁵ Ibid.

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 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 location.²⁶ 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"²⁷. 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

²⁶ Adam Hayes, 'Bailment: Definition, How It Works, Types, and When It Ends' (2023) <<https://www.investopedia.com/terms/b/bailment.asp>> accessed 25 March 2024.

²⁷LegalMatch, 'Types of Bailments' <<https://www.legalmatch.com/law-library/article/bailment-lawyers.html>> accessed 25 March 2024.

any payment. The bailee may face liability in a situation where the bailed item is damaged or have been grossly neglected in bad faith while safeguarding the asset.²⁸

- 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.²⁹ 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.³⁰

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 bailments, this category requires the highest standard of care.³¹ 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

²⁸ Ibid.

²⁹ Ishita Jain, 'Rights and Duties of Bailor and Bailee' (2023) <<https://legalvidhiya.com/rights-and-duties-of-bailor-and-bailee/>> accessed 25 March 2024.

³⁰ Ibid.

³¹ Lalit Kishore Srivastava, 'Bailmen'" <https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004032240236514Lalit_Kishore_Srivastava_law_bailment.pdf> accessed 22 December, 2023.

exercise liens in the event that the bailor breaches the agreement. It is the nature of the bailment arrangement that determines the rights applicable.³²

Common bailment examples include but may not be limited to:

- a. Storage: An individual stores their belongings in a rented storage unit or deposits their clothes at a dry cleaner;
- b. Repair or service: A vehicle owner leaves their vehicle at a repair shop, or an individual leaves their watch at a shop for repair;
- c. Rental or lease: Renting equipment or tools or borrowing a book from a library;
- d. Parking or valet: Leaving a vehicle in a parking garage or with valet service;
- e. Consignment: An artist consigns their artwork to a gallery for exhibition and sale; and
- f. Shipping or transportation: An individual sends a package through a delivery service, or a shipping company transports goods for a client.³³

The court in *Coggs v. Bernard*³⁴ identified transactions that underlie as a bailment, 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

³² Ibid.

³³ LegalMatch, 'Types of Bailments' <<https://www.legalmatch.com/law-library/article/bailment-lawyers.html>> accessed 25 March 2024.

³⁴ *Coggs v. Bernard*, (1703) 2 Ld Raym 909. Cited in Job Odion, 'The Liability of Bailees in Contracts of Bailment' <https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

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.³⁵

In the case of *Martchem industries Nig. Ltd v M.F Kent West Africa*,³⁶ the Supreme Court held the following to be categories of Bailment:

- a) Depositum: On the deposit of a chattel with the bailee who is simply to keep it for the bailor without reward.
- b) Mandatum: where the bailee has without reward, agreed to do something for the bailor or with the chattel bailed.
- c) Comodatum: Where the bailor without recompenses, lends a chattel to the bailee for him to use.
- d) Pignus: Sometimes called vadium or pawn, where the bailee holds the chattel confided to him as security for a loan or deed.³⁷

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.³⁸

In *Killish v Meyer Hotel Co*,³⁹ a guest gave his automobile to the doorman and received a claim check issued by an independent parking garage. The automobile was

³⁵ Ibid.

³⁶ *Martchem industries Nig. Ltd v M.F Kent West Africa* (2005) JELR 51452 (SC). Cited in Job Odion, 'The Liability of Bailees in Contracts of Bailment' <https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

³⁷ Ibid.

³⁸ *Hill station Hotel Ltd v Adeniyi* (1994) 4 NWLR (Pt. 442) 294. Cited in Job Odion, "The Liability of Bailees in Contracts of Bailment" <https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

³⁹ *Killish v Meyer Hotel Co* [1994] 184 SW 2d 904. Cited in Job Odion, 'The Liability of Bailees in Contracts of Bailment'

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*,⁴⁰ bellboy complied with a guest's request to park his automobile on an unattended outdoor hotel lot with free ingress and egresses 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- duty an act quite analogous to mis delivery took place imposing absolute liability upon the bailee for the loss of damage occasioned thereby.⁴¹ 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

<https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

⁴⁰ *Dispeker v New Southern Hotel Company* [1963] 373 SW 2d 897. Cited in Job Odion, 'The Liability of Bailees in Contracts of Bailment' <https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

⁴¹ *Dispeker v New Southern Hotel Company* [1963] 373 SW 2d 897. Cited in Job Odion, 'The Liability of Bailees in Contracts of Bailment' <https://www.academia.edu/3986974/THE_LIABILITY_OF_BAILEES_IN_CONTRACTS_OF_BAILMENT> accessed 25 March 2024.

can succeed so long as the totality of the facts therein pleaded discusses a prima facie case of negligence against the defendant.

Parties to a Contract of Bailment:

A contract of bailment involves three primary parties: the bailor, the bailee, and the third party (if applicable). Each party has specific rights, duties, and liabilities, which are crucial for understanding the dynamics of a bailment agreement. Here's an overview of the rights, duties, and liabilities of each person involved in a contract of bailment⁴²:

1. Bailor:

This is the owner of the goods that is the subject of the bailment. In a contract of bailment, the bailor is endowed with certain rights that he can claim against the bailee. They are as follows:

- a. **Right to Demand Return:** The bailor has the right to demand the return of the bailed goods once the purpose of the bailment has been fulfilled, or in the circumstance, the bailor can claim compensation for the non-delivery of the goods from the bailee.
- b. **Right to Compensation:** If the goods are damaged or lost due to the bailee's negligence or breach of contract, the bailor has the right to claim compensation.
- c. **Right to Terminate Bailment:** The bailor can terminate the bailment agreement if the bailee fails to adhere to the terms and conditions of the contract.

⁴² See Generally, Gordon J. Borrie & Aubrey L. Diamond, *The Consumer, Society and the Law* (3rd Edition, Penguin Books, 1968) pp. 13-14.

- d. Claim of Damages for unauthorized use: If the goods bailed are used for some purpose other than for which they were bailed, due to which the goods get damaged, the bailor can claim compensation for the same. For instance, A (bailor) rents his car to B (bailee). However, the car is used by C and during that unauthorized use an accident takes place due to which the car gets damaged. Here, A can claim compensation for the damage from B.⁴³
- e. Termination of contract: By virtue of Section 153 of the Indian Contract Act, the bailor has a right to terminate the contract if the bailee indulges in some malpractice or doesn't fulfil the conditions of the contract.⁴⁴
- f. Claim any gain on the goods bailed: The bailor of the goods has the right to claim any profit or increase which may arise while the goods are bailed to the bailee. For instance, A transfers the possession of the farm to B for a certain time period. So, if the farm animals produce any offspring, they would belong to A.⁴⁵

The bailor is also saddled with the following duties:

- a. Duty to Disclose Defects: The bailor must disclose any known defects or special characteristics of the goods to the bailee to ensure proper care and handling. Section 150 of the Indian Contract Act states that, the bailor has a duty towards the bailee to disclose the defects in the goods bailed. In a case of gratuitous bailment or bailment without reward, it is the bailor's duty to disclose the defects which are known to him and which can expose the bailee to some risk. If the bailor fails or is unable to disclose such facts due to which some damage occurs to the bailee, the bailor would be held

⁴³ Ishita Jain, 'Rights and Duties of Bailor and Bailee' (2023) <<https://legalvidhiya.com/rights-and-duties-of-bailor-and-bailee/>> accessed 25 March 2024.

⁴⁴ Ibid.

⁴⁵ Shita Jain, 'Rights and Duties of Bailor and Bailee' (2023) <<https://legalvidhiya.com/rights-and-duties-of-bailor-and-bailee/>> accessed 25 March 2024.

liable to compensate for the same.⁴⁶ In a case of non-gratuitous bailment i.e., bailment for reward, like that of hire, the bailor is held responsible for compensating the bailee for any loss that he may have suffered, due to any defect in the bailed goods, whether the bailor is aware of such defects/faults or not.⁴⁷

- b. To compensate the bailee for expenses incurred: In a contract of bailment, the bailee does something for the bailor upon his instructions. The expenses that the bailee incurs while performing his part are to be compensated by the bailor. It is the bailor's duty to pay the due remuneration to the bailee for rendering his services.
- c. Compensation in case of extraordinary expenses: It is the duty of the bailor to compensate the bailee for any loss or damage that he may suffer due to the bailor's conduct. In cases where the bailor asks for the return of goods even before the time of expiry, if due to this the bailee suffers from any loss, it is the duty of the bailor to compensate the bailee for the same.⁴⁸
- d. Duty to Indemnify: The bailor may be required to indemnify the bailee against any third-party claims arising out of the use or possession of the bailed goods, unless the bailee is at fault.⁴⁹

A bailor is liable for:

- a. Liability for Concealed Defects: The bailor is liable for any concealed defects in the goods that may cause harm to the bailee or third parties.⁵⁰

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ishita Jain, 'Rights and Duties of Bailor and Bailee' (2023) <<https://legalvidhiya.com/rights-and-duties-of-bailor-and-bailee/>> accessed 25 March 2024.

⁴⁹ Ibid.

⁵⁰ Ugbejeh Ernest Ogwashi, "Law of Commercial Transactions" <<https://nou.edu.ng/coursewarecontent/LAW%20331.pdf>> accessed 26 March 2024.

- b. Liability for Breach of Contract: If the bailor breaches any terms of the bailment agreement, they may be held liable for damages or losses suffered by the bailee.⁵¹

2. Bailee:

Bailee is the one to whom the goods are transferred for some particular purpose. A

Bailee has the following rights:

- a. Right to Possession: The bailee has the right to possess and use the bailed goods for the specified purpose as agreed upon in the contract.⁵²
- b. Right to Compensation: The bailee is entitled to compensation for any expenses incurred while taking care of the bailed goods, provided such expenses were necessary and reasonable.⁵³
- c. Right to Lien: In some cases, the bailee may have a right to retain possession of the bailed goods until payment for services rendered or expenses incurred is received.⁵⁴

A bailee has the following duties:

- a. Duty of Care: The bailee must exercise reasonable care and diligence in handling, storing, and protecting the bailed goods.⁵⁵
- b. Duty to Return: Upon completion of the bailment period or fulfillment of the bailment purpose, the bailee is duty-bound to return the bailed goods to the bailor in the same condition as received, barring normal wear and tear.⁵⁶

⁵¹ Ibid.

⁵² Borrie et al (n. 31)

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ugbejeh Ernest Ogwashi, 'Law of Commercial Transactions' <<https://nou.edu.ng/coursewarecontent/LAW%20331.pdf>> accessed 26 Marvh 2024.

⁵⁶ Ibid.

- c. Duty to Account: The bailee must keep accurate records of the bailed goods and their condition, especially if the goods are of a perishable nature or of high value.⁵⁷

Liabilities of a Bailee:

- a. Liability for Negligence: The bailee may be held liable for any damage, loss, or depreciation of the bailed goods resulting from their negligence, improper use, or breach of duty.⁵⁸
- b. Liability for Unauthorized Use: If the bailee uses the bailed goods for a purpose other than what was agreed upon in the contract, they may be held liable for any resulting damages or losses.⁵⁹

3. Third Party (If Applicable)

A third party may have the right to claim compensation for any damages or injuries caused by the bailed goods, especially if such damages were due to the bailee's negligence or misconduct. He has a duty to respect the bailee's possession of the bailed goods and refrain from interfering with the bailment agreement between the bailor and the bailee. A bailee is liable if the third party unlawfully interferes with the bailee's possession or use of the bailed goods, they may be held liable for any resulting damages or losses. A third party may also be held liable for any harm caused by the bailed goods if they knowingly or negligently contributed to such harm.

Termination of Bailment

⁵⁷ Ugbejeh Ernest Ogwashi, 'Law of Commercial Transactions' <<https://nou.edu.ng/coursewarecontent/LAW%20331.pdf>> accessed 26 Marvh 2024.

⁵⁸ Ibid.

⁵⁹ Ibid.

Termination of bailment refers to the end of the legal relationship between the bailor and the bailee.⁶⁰ 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 bailee's 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.⁶¹

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.⁶² 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.⁶³

⁶⁰ Darby Dickerson, 'Bailor Beware: Limitations and Excursions of Liability in Commercial Bailments' *Vanderbilt Law Review*, (1988) 41(4), 32 -41

⁶¹ Bailment; Vishal Garg, <<https://www.wallstreetmojo.com/bailment/>> accessed 22 December, 2023

⁶² William King LaidLaw 'Principles of Bailment' *Cornell Law Review* (1998)

⁶³ Darby Dickerson, 'Bailor Beware: Limitations and Excursions of Liability in Commercial Bailments' *Vanderbilt Law Review*, (1988) 41(4), 32 -41

Issues and Challenges Facing Contract of Bailment in Nigeria

The contract of bailment in Nigeria, like in many jurisdictions, faces various issues and challenges that impact its effectiveness, enforceability, and overall application in commercial and personal transactions.⁶⁴ Some of the prominent issues and challenges facing the contract of bailment in Nigeria include:

1. **Lack of Awareness and Understanding:** Many individuals and businesses in Nigeria are not fully aware of the legal principles and requirements governing bailment agreements, leading to misunderstandings, misconceptions, and potential disputes. The lack of awareness and understanding can result in parties entering into bailment agreements without proper consideration of their rights, duties, and liabilities, thereby increasing the risk of legal complications and disputes.
2. **Inadequate Legal Framework:** The existing legal framework governing bailment in Nigeria may be outdated, fragmented, or insufficiently detailed, making it challenging to address modern-day complexities and evolving business practices. The absence of a comprehensive and clear legal framework can create ambiguity, inconsistencies, and uncertainties in bailment contracts, hindering their enforceability and effectiveness.
3. **Technological Advancements:** The increasing use of technology, such as digital platforms and electronic transactions, has raised new questions and challenges concerning the application and enforcement of traditional bailment principles in Nigeria. Adapting bailment laws and practices to accommodate technological advancements and digital transformations requires innovative approaches, regulatory

⁶⁴ 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*, 80 -101

clarity, and judicial interpretation to ensure the protection of parties' rights and interests.

4. **Enforcement and Remedies:** Inconsistent enforcement of bailment agreements and inadequate legal remedies for breaches, negligence, and disputes can undermine the confidence of parties in the Nigerian legal system. Strengthening enforcement mechanisms, enhancing access to legal remedies, and promoting alternative dispute resolution mechanisms are essential to address the enforcement challenges and improve the efficacy of bailment contracts in Nigeria.
5. **Cultural and Traditional Practices:** Cultural and traditional practices in Nigeria may influence the perception, interpretation, and application of bailment principles, leading to divergent understandings and expectations among parties. Balancing the respect for cultural norms and traditions with the need for legal clarity, consistency, and predictability in bailment agreements requires sensitivity, dialogue, and education to foster mutual understanding and compliance.
6. **Economic Factors and Market Dynamics:** Economic fluctuations, market dynamics, and business uncertainties in Nigeria can impact the terms, conditions, and performance of bailment contracts, posing challenges for parties in managing risks and fulfilling their obligations. Developing flexible, adaptive, and resilient bailment agreements that can accommodate changing economic conditions, market trends, and business requirements is essential to enhance the resilience and sustainability of bailment contracts in Nigeria.

Recommendations

Here are some recommendations on the way forward to enhance the contract of bailment in Nigeria:

1. **Legislative Reform:** Review and update existing laws as well as introduce specific and comprehensive legislation dedicated to bailment, incorporating modern principles, practices, and provisions to address the complexities and challenges of contemporary business and technological environments in line with current legal, economic, and social realities.
2. **Enhance Legal Awareness and Education:** Conduct awareness campaigns, workshops, seminars, and training programs to educate businesses, legal practitioners, consumers, and the general public about the rights, duties, and liabilities associated with bailment agreements; as well as create and disseminate educational materials, guidelines, and resources, including brochures, handbooks, and online platforms, to facilitate understanding, compliance, and best practices in bailment contracts.
3. **Strengthen Enforcement Mechanisms:** Enhance the capacity, expertise, and efficiency of the judicial system, including courts, tribunals, and alternative dispute resolution mechanisms (such as mediation, arbitration, and conciliation), to effectively adjudicate bailment disputes, enforce contracts, and provide timely remedies and redress to parties.
4. **Facilitate Technological Integration and Innovation:** Develop and implement regulations and guidelines that accommodate technological advancements, digital platforms, such as electronic contracts, digital signatures, blockchain technology, and online tracking systems, to streamline, automate, and enhance the efficiency, accountability, and traceability of bailment transactions.
5. **Foster Collaboration and Stakeholder Engagement:** Foster collaboration, dialogue, and engagement among government agencies, legal institutions, industry

associations, consumer organizations, and other stakeholders to identify challenges, share insights, develop solutions, and promote best practices in bailment contracts. Specialized advisory bodies, committees, or task forces comprising legal experts, industry professionals, academics, and consumer advocates to provide guidance, recommendations, and support in enhancing the legal framework and practices related to bailment in Nigeria should be established.

6. Promote Ethical Practices and Corporate Responsibility: Ethical conduct, integrity, transparency, and corporate responsibility among businesses, service providers, and professionals involved in bailment transactions to build trust, credibility, and reputation in the marketplace should be promoted.
7. Implement Quality Standards and Best Practices: Adopt and adhere to quality standards, best practices, and codes of conduct in bailment operations, services, and interactions to ensure the highest levels of professionalism, reliability, and customer satisfaction.

Conclusion:

This paper comprehensively appraised the nature and scope of contract of bailment in Nigeria. It reviewed the legal framework, the essential elements for a valid contract of bailment, the rights, duties and liabilities owed to both parties in a contract of bailment. It also examined the circumstance in which a contract of bailment can be said to be terminated, the issues and challenges a contract of bailment faces in the Nigerian jurisprudence and proffers recommendations on the way forward.

These recommendations require concerted efforts, collaboration, and commitment from policymakers, legal professionals, businesses, consumers, and other stakeholders to reform, modernize, and optimize the contract of bailment in Nigeria.

By addressing legislative gaps, enhancing legal awareness, strengthening enforcement mechanisms, facilitating technological integration, fostering stakeholder engagement, promoting ethical practices, and implementing quality standards, Nigeria can create a conducive, transparent, and equitable environment for the effective and sustainable application of bailment principles and practices in the 21st century.