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# **CONTRACT OF BAILMENT: UNDERSTANDING ITS APPLICABILITY IN THE HOSPITALITY INDUSTRY**

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## **ABSTRACT**

The convenience of valet parking is a popular service offered by many restaurants and hotels, aimed at extending their hospitality to customers. However, when customers hand over their cars to valets, it creates an implied contract of bailment between the hotel and the customer. This research paper seeks to explore the implications of such a relationship within the framework of the Indian Contract Act, focusing on case laws to understand the standpoint of Indian courts. One of the key questions that arises is how a bailment relationship is formed between the hotel and the customer, particularly when hotels explicitly mention the phrase "at owner's risk." This raises concerns about the extent of liability for the hotels in case of any damage or loss. Additionally, since valet parking is typically not a paid service, the consideration in the contract becomes a significant aspect to examine. To shed light on these issues, the paper will delve into case laws that have shaped the interpretation of the contract of bailment in the hospitality industry since the enactment of the Indian Contract Act. By analyzing precedents and court decisions, it will be possible to gain insights into the legal framework surrounding valet parking services. It is worth emphasizing that the scope of this research paper is limited to the formation of a bailment contract specifically in the context of valet parking at hotels and restaurants. Other types of bailment contracts within the hospitality sector, such as luggage storage or safekeeping of valuables, are beyond the scope of this study. By examining the applicability of the contract of bailment through the lens of valet parking, this research paper aims to contribute to a better understanding of the legal obligations and responsibilities of both hotels and customers. Furthermore, it will explore the burden of proof in cases where disputes arise regarding damages or losses, providing valuable insights for both legal practitioners and hospitality industry professionals.

## **Introduction**

The haphazard situation of parking in India has presented numerous challenges for individuals seeking secure and convenient parking spaces. In response to this problem, hotels and restaurants have introduced valet parking services as a valuable addition to the guest experience, offering greater convenience for customers. However, providing such services raises important questions regarding the legal relationship between the service provider and the customer. Specifically, it brings into focus the concept of a bailment contract, wherein the assumption is that hotels or restaurants, by offering valet parking, assume responsibility for the vehicles parked by their valets.

This research paper aims to delve into the intricacies of this relationship and explore the implications of the bailment contract in the context of valet parking services.

## **How is a contract of bailment formed in such cases**

Section 148 of the Indian Contract Act defines a contract of bailment as the delivery of goods by one person to another for a specific purpose, with an agreement that the goods will be returned or disposed of as directed by the person delivering them. In the case of valet parking services provided by hotels and restaurants, the customer acts as the bailor, delivering their vehicle to the establishment, while the hotel or restaurant becomes the bailee.

An important question that arises in such cases is what forms the consideration for the bailment contract, especially when separate payment for parking is not made. In previous cases, such as *Bombay Brazzerie vs. Mulchand Agarwal*<sup>1</sup>, courts have held that unless a specific payment is made by the customer for the safe parking of their vehicle, a contract of bailment does not come into existence. The courts emphasized that any amount spent on services inside the hotel, such as food, cannot be considered as consideration for the bailment contract.

However, the Supreme Court, in a recent judgment<sup>2</sup>, has challenged this viewpoint and provided a different perspective. The court stated that even though valet parking services may be offered without a separate charge, they are not truly free. The court acknowledged that the costs associated with valet parking, along with other services provided by 5-star hotels, are covered by the high rates charged for room rentals, food, lounge access, and other amenities.

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<sup>1</sup> (2002) NCDRC 42

<sup>2</sup> *Taj Mahal Hotel v. United India Insurance Co. Ltd.*, (2020) 2 SCC 224

Therefore, valet parking, even if seemingly complimentary, benefits the hotel by enhancing the guest experience and attracting more visitors.

The Supreme Court further noted that luxury hotels are often situated in congested urban areas, where parking can be difficult and chaotic. Valet parking services are crucial in protecting guests from the hassle of finding parking spots and the associated risks of haphazard parking. By providing valet parking, hotels offer guests convenience and safeguard their vehicles from potential damage or theft. In this sense, valet parking services provide a value addition to the overall guest experience.

Based on these considerations, the court concluded that there is an implicit consideration for the bailment contract established through the provision of valet parking. While a separate payment may not be made explicitly for the parking service itself, the overall charges for the hotel services encompass the cost and value of providing valet parking.

This interpretation expands the understanding of consideration in the bailment contract related to valet parking services. It recognizes the economic reality that hotels indirectly recover the costs associated with valet parking through their overall pricing structure. Therefore, even if customers do not make a separate payment for parking, the consideration for the bailment contract is deemed to be present.

In conclusion, the recent judgment by the Supreme Court challenges the notion that a separate payment for valet parking is required for the formation of a bailment contract. The court recognizes the implicit consideration in the overall charges for hotel services, which cover the cost and value of providing valet parking. This interpretation aligns with the economic dynamics of the hospitality industry and acknowledges the benefits that valet parking services offer to hotels and their guests.

### **Liability if damage is caused to vehicles**

In India, the courts have adopted two distinct approaches when determining the liability of hotels in valet parking cases. The first approach is the common law rule, where the hotel is treated as an insurer, making them fully responsible for any damage that occurs to the vehicle. Under this rule, the burden of proof lies with the hotel to demonstrate that they were not at fault for the damage. In other words, the hotel is presumed liable for any harm or loss suffered by the vehicle.

The second approach is the prima facie negligence rule, which places the initial burden of proof on the hotel. According to this rule, there is a presumption of the hotel's negligence, unless they can establish that they were not at fault or negligent in safeguarding the vehicle. In cases where damage or loss occurs, the burden is on the hotel to provide evidence to refute the presumption of negligence.

However, the legal landscape underwent a significant change following the judgment of the Supreme Court in the case of the Taj Mahal Hotel vs. United India Insurance Co. Ltd<sup>3</sup>. In this case, the Supreme Court imposed the common law rule, thereby establishing a higher level of responsibility for hotels providing valet parking services. The Supreme Court held that the hotel, as a bailee, would be liable for any damage to the vehicle and is obligated to return it in the same condition as it was delivered by the customer. This judgment emphasizes the duty of care that hotels owe to their customers' vehicles and places the responsibility on the hotel to ensure the safekeeping and protection of the vehicles during the parking period.

By imposing the common law rule, the Supreme Court sought to provide greater protection to vehicle owners and reinforce the accountability of hotels in valet parking scenarios. This ruling serves as a benchmark in determining the liability of hotels in bailment contracts created through valet parking services. While the prima facie negligence rule initially placed the burden of proof on hotels, the Supreme Court's judgment shifted the emphasis to the common law rule, treating hotels as insurers and holding them responsible for returning vehicles in the condition in which they were delivered.

### **Cases of exclusion of liability by notice to owner**

In cases where hotels attach a notice stating "parking at owner's risk, " there is a question of whether such a notice can effectively exclude or limit the liability of the hotel. The case of Sheik Mahamad Ravuther v. The British Indian Steam Navigation<sup>4</sup> sheds light on this issue.

In this case, goods were entrusted to the bailee (the British Indian Steam Navigation) for safekeeping. However, due to negligence on the part of the bailee, the goods were damaged. The court held that the bailee cannot contractually exclude or exempt themselves from the minimum standard of liability through an exemption clause or notice. The rationale behind this

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<sup>3</sup> (2020) 2 SCC 224

<sup>4</sup> (1909) ILR 32 Mad 95

decision is that a bailee cannot evade their basic duty of care by simply including an exemption clause in the contract. By allowing such exclusion of liability, the standard of care would be reduced, and customers would be left without any remedy in cases of negligence.

The principles established in the Sheik Mahamad Ravuther case were subsequently applied in the context of valet parking services in the landmark case of the Taj Mahal Hotel<sup>5</sup>. The Supreme Court reiterated that if a hotel is allowed to exclude its liability for negligence through a contractual provision or notice, it would significantly diminish the standard of care expected from them. Consequently, customers would be deprived of a legal remedy in case of any damage or loss to their vehicles.

However, it is important to note that if the hotel takes sufficient care and follows the requisite standard of care in providing valet parking services, they may not be held liable. The hotel's liability would arise only in cases where negligence can be proven. In such instances, the hotel cannot rely on a notice or clause to absolve themselves of their responsibility.

The primary concern of the courts in these cases is to ensure that customers are protected and that the hotel cannot escape liability by including disclaimers or notices. The hotel's duty of care as a bailee cannot be compromised or diminished by contractual provisions that attempt to exclude or limit their liability for negligence.

In conclusion, the case of Sheik Mahamad Ravuther and its application in the Taj Mahal Hotel case highlights that hotels cannot contractually exclude or limit their liability for negligence through notices or exemption clauses. The minimum standard of care expected from the hotel cannot be circumvented by such contractual provisions. Customers have a right to seek legal remedies in cases of negligence, and hotels can only escape liability if they can demonstrate that they have taken sufficient care and met the required standard of care in providing valet parking services.

### **Liability for 5-star hotels**

According to the argument presented in the Taj Mahal case<sup>6</sup>, the cases of Klaus Mittelbachert<sup>7</sup>

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<sup>5</sup> (2020) 2 SCC 224

<sup>6</sup> (2020) 2 SCC 224

<sup>7</sup> AIR 1997 Del 201.

and Hotel Hyatt Regency<sup>8</sup> were cited to support the notion that 5-star hotels should be held to a high standard of liability, similar to insurers under common law. While it was acknowledged that Klaus Mittelbachert dealt with personal injury cases rather than vehicle liability, the idea put forth was that luxury hotels, with their elevated prices, should provide a superior level of care. This view aligned with the National Commission's emphasis on the heightened duty of care for parked vehicles at 5-star hotels.

The argument proposed that merely assigning attendants or security guards to handle parking and keeping the car keys was insufficient. Additional measures were deemed necessary to prevent vehicle loss or damage, such as securing car keys, parking vehicles in safe locations, maintaining well-guarded parking spaces, and utilizing CCTV cameras for surveillance. These measures were considered illustrative rather than exhaustive.

It was contended that 5-star hotels, given their upscale nature and premium pricing, should bear a higher responsibility for the security and well-being of guests' vehicles. The adoption of a strict liability standard, akin to insurers, was advocated as a means to enhance the duty of care. This approach aimed to instill guest confidence in the protection of their valuable assets, aligning with the expectations of discerning customers and emphasizing the hotels' commitment to an exceptional guest experience.

## **Conclusion**

In conclusion, the analysis of relevant case laws and legal principles highlights that a contract of bailment is formed between the hotel and the customer in the context of valet parking services. Even if these services are provided on a complimentary basis, the hotel remains liable for any loss, damage, or negligence that may occur during the parking period. Courts have consistently held that hotels cannot exempt themselves from liability through the use of exemption clauses or notices such as "parking at owner's risk." The duty of care expected from hotels as bailees cannot be circumvented or diminished by contractual provisions. The hotel's liability extends to returning the vehicle in the same condition in which it was delivered by the customer.

Therefore, hotels must exercise a sufficient standard of care in providing valet parking services. It is not enough for hotels to simply appoint attendants or security guards; additional measures

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<sup>8</sup> III (2008) CPJ 281 (NC)

should be taken to ensure the safekeeping of vehicles. These measures may include safeguarding car keys, parking vehicles in secure locations, maintaining well-guarded parking spaces, and utilizing surveillance systems.

The obligation of hotels to exercise a reasonable degree of care stems from the nature of their services and the premium prices charged. Customers rightfully expect higher quality and safety in the services offered by luxury establishments. Hence, hotels have a heightened duty of care to protect the vehicles entrusted to them. By upholding the principles of bailment and imposing a sufficient standard of care, the legal framework ensures that hotels fulfill their responsibilities and provide a secure environment for guests' vehicles. This approach aims to safeguard the interests of customers, maintain high service standards, and uphold the reputation of the hospitality industry as a whole.