The Law of Bailment in Sudan: Comparative insights from English law and proposals for reform

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Abstract

Bailment is an important legal relationship that facilitates the temporary transfer of movable property possession. The transfer can be for different reasons, while ownership in all cases remains with the bailor. This paper examines the concept of bailment in both English and Sudanese law, with particular emphasis on its definition, legal nature, and practical applications. This study further investigates the main types of bailment, the duties imposed on bailees, and the varying standards of care required in different categories of bailment. Special attention is given to commercial bailees whose activities involve the possession or transportation of goods, including common carriers, warehouse companies and innkeepers. We also discuss the controversial situation of banks providing safe deposit box services. This paper compares the degree of liability imposed on bailees and explores the policy considerations underlying the stricter standards applied to certain categories, especially common carriers.

Through a comparative analysis of English and Sudanese legal principles, this study identifies several gaps and practical challenges affecting the regulation of bailment in Sudan.

The paper concludes by proposing a number of recommendations aimed at modernizing and strengthening the law of bailment in Sudan. These include legislative reforms, clearer rules governing commercial bailees, and the adoption of more comprehensive provisions related to warehouse operators, common carriers, and bank safe deposit box services. Such reforms would enhance legal certainty, improve property interest protection, and promote confidence in commercial transactions involving bailment.

Keywords: *Bailment, Bailor, Bailee, Standard of Care, Common Carriers, Sudanese Law.*

1.Introduction

The law of bailment is an integral part of the broader framework of personal property and contract laws. It plays a fundamental role in both commercial and non-commercial transactions.

Despite its practical importance, bailment has received relatively limited scholarly attention in Sudan. The Sudanese Civil Transactions Act of 1984 contains comparatively brief provisions on bailment and leaves several important issues to judicial interpretation and legal doctrine. It does not cope with the contemporary commercial developments of bailment. On the other hand, English law has benefited from centuries of judicial decisions in establishing comprehensive principles on the creation of bailment, the rights and duties of the parties, the standard of care expected from different categories of bailees, and the allocation of the burden of proof where loss or damage occurs.

This paper presents a comparative study in the law of bailment in English and Sudanese law. It begins by examining the definition, essential characteristics, and legal classification of bailment. It then analyzes the main categories of bailment, with particular emphasis on commercial bailments involving common carriers, warehouse companies, and bank safe deposit box facilities. The paper further examines the duties of bailees, paying special attention to the standard of care required in different forms of bailment (Sheehan, 2019, pp. 239–251).

Finally, the paper identifies a number of legislative and practical shortcomings affecting the regulation of bailment in Sudan. It argues that greater legislative clarity is required, especially in relation to professional bailees who have possession of goods. This paper concludes by proposing reforms designed to strengthen the Sudanese legal framework, clarify the obligations and standards of care expected of commercial bailees, and provide more effective protection for both bailors and bailees in contemporary commercial transactions.

2. What is bailment?

The bailment relationship plays an important role in the daily normal life of individuals in society and in commercial transactions[1]. Bailment comes under civil law or commercial law depending on the context and nature of a particular transaction. It can be without any commercial or financial qualities when it is used in a social or gratuitous context, thus coming under civil law. On the other hand, it can be a commercial relationship when used in a commercial context. This section discusses the definition of bailment under common law and Sudanese law.

2.1 Under common law

Bailment is a relationship that involves a contractual transfer of possession of certain movable property from the owner (bailor) to another person (bailee)(*Ashby v Tolhurst* [1937] 2 KB 242 (CA)). The relationship is entered into for a particular purpose, such as the bailment of a car with a repair shop for repair or the pledge of an item as security for payment of a debt. In the latter case, the pledgor is considered a bailor, and the pledgee is the bailee. Another example is handing over a jacket to a dry-cleaning shop for cleaning (Lin, 2014, pp. 192–193).

The fact of transfer of possession is very essential. It is the basic duty of the bailor to enable the bailee to have exclusive control, a sort of possession, over the bailed asset (Lin, 2014, p. 250). The bailor, however, as the owner, remains in constructive possession of the asset[2].

[1] In most of the countries that have a unified civil code, bailment is defined in general terms, whereas the commercial regulation and implications of bailment come under the commercial law.

[2] This means that the bailor can claim possession back at any time as long as ownership is still in him.

In the case of **Morris v C.W. Martin & Sons Ltd** ([1966] 1 QB 716, see also Ashby v Tolhurst [1937] 2 KB 242), Lord Denning described bailment as arising whenever:

"One person voluntarily takes possession of goods belonging to another"

The transfer of possession in bailment is temporary. Once the purpose of the transfer is accomplished or the term of the bailment expires, possession returns to the bailor.

We have a term bailment and a bailment at will. Term bailment is limited to a particular period of time and must last for the duration of its term (Bridge, 2002, p. 33). Early termination by the bailor may entitle the bailee to an award of damages. There can be early termination of a term bailment by agreement of both the bailor and the bailee.

A bailment at will, on the other hand, can be terminated by the bailor at any time. There can be an agreement on a notice to be given for a certain period prior to termination.

As for title to the bailed assets, both the bailor and the bailee have title. The bailor, as the owner, has a superior title, whereas the bailee has a lesser title (Lin, 2014, pp. 192–193).

It should be noted that only movable assets are subject to bailment, as they can be freely moved from one place to another [1].

2.2 Under Sudanese law

The Civil Transactions Act, 1984 (CTA, 1984) provides for the bailment relationship. It is referred to as "Al Wadia'h". This is also the name under Islamic Sharia[2].

Article 445(1) of the CTA, 1984, defines Al Wadia'h as "a contract whereby the owner authorizes another to safeguard his property, and the other complies with safeguarding the said property and to return it in kind"; Subsection (2) does state, however, that Al Wadia'h is the property given to a trustee to safeguard it.

Sudanese law focuses on the aspect of safeguarding property. The fundamental feature of bailment under Sudanese law is the trust reposed by the bailor in the bailee. The CTA, 1984, looks at the sole factor of "entrustment" apart from the purpose for which the property is entrusted. The purpose may be to merely keep the asset and return it, or to have possession of the asset to do certain tasks, such as to have possession of a car for doing certain repairs[3]. Under Sudanese law, the purpose of doing repairs, in this example, is separate and is identified in isolation of the bailment.

According to Article 446 of the CTA, 1984, Al Wadia'h can only be in items capable of being actually possessed. This excludes immovable property, such as land and things permanently attached to it. Under Article 449, Al Wadia'h is a trust in the hands of the bailee, and the bailee must compensate the bailor for any damages or losses that occur to the assets while under his possession.

3. Types of Bailment

Bailment can be classified in different ways according to the reference or criteria used for the classification. The broad classification divides bailment into general and special (commercial) bailment. There is another classification into gratuitous and paid bailment, and contractual and quasi-contractual bailment, to name a few. The standard of care required from the bailee in keeping the bailed assets differs according to the type of bailment. For the sake of our discussion, however, we will focus on classifying bailment as general bailment or special (commercial) bailment. We will also distinguish between commercial and gratuitous bailment.

[1] Although e g dematerialized securities may be subject to a similar regime (Beaves, 1998, p. 117).
[2] See Article 445 to 461 of the Sudanese Civil Transactions Act, 1984.
[3] See Mustafa Abbashar v Um Elhassan Khatir, SLJR, (1966) at 123

3.1 General bailment

3.1.1 Bailment for the sole benefit of the bailor

This type of bailment occurs when only the bailor benefits from the transaction (Agrawal, 2005, p. 3). No benefit is received by the bailee. In this case, the bailee is required to exercise only a slight degree of care, and the bailor bears all expenses related to the custody and maintenance of the goods. For example, leaving a pet with a neighbour while the owner is away. Here, the pet owner is the bailor who benefits from the bailment, and the neighbour is the bailee who gets no benefit.

3.1.2 Bailment for the sole benefit of the bailee

An appropriate example is when someone borrows an asset from another party (Agrawal, 2005, p. 4). In such a case, the borrower is a bailee for whom the bailment works. The bailee owes a duty of utmost or great care to protect the bailed property.

3.1.3 Bailment for the mutual benefits of the bailor and the bailee

This is a bailment for the benefit of both the bailor and the bailee (Cheeseman, 2004, pp. 958-959). In this case, the bailee owes the duty of reasonable care, or the care that he exerts to protect his own assets, to protect the bailed assets. He will be liable for the assets that are lost, damaged, or destroyed because of his own negligence.

The mutual benefit of the bailor and bailee is the standard situation that arises in commercial bailment. Of course, the commercial nature of the transaction makes it a non-gratuitous bailment. In these arrangements, the bailor gets the benefit of having his assets safely kept, and the bailee will have the benefit of being paid for that.

3.2 Special bailment

This includes a variety of commercial bailments (Cheeseman, 2004, p. 957), such as common carriers, warehouse companies, and innkeepers. They follow most of the rules applicable to ordinary bailments.

3.2.1 Common carriers

They offer transportation services to the general public. These include commercial airlines, railroads, and public trucking companies. This is a bailment for the mutual benefit of the bailor and the bailee. The person shipping the goods is the bailor or consignor, the transporter is the bailee, and the person to whom the goods are shipped is the consignee.

Common carriers are held to a duty of strict liability. If the goods are lost, damaged, or stolen, the commercial carrier is liable, even if he was not at fault[1]. This is a distinctive liability applicable to common carriers and differs from the standard applicable to other types of commercial bailment. In most types of commercial bailment, as we will see, the bailee is subject to the ordinary standard of care; i.e, he will not be liable unless he is negligent or did an intentional act.

Common carriers are not liable if the loss, damage, or destruction of goods is caused by an act of God, e.g floods, an act of public enemy, an order of the government (statute, court decision, government regulations), an act of the shipper (improper packing), and if the inherent nature of the goods is that they are perishable. In the landmark case of **Coggs v Bernard[2]**, Bernard agreed to carry several barrels of brandy belonging to Coggs. During unloading, one barrel was damaged, and a large quantity of brandy was lost due to Bernard's negligence[3].

[1] See China Pacific SA v Food Corporation of India [1982] AC 939 (HL).
[2] 2 (1703) Ld Raym 909; 92
[3] Edwards v Newland & Co. [1950] 2 KB 534.

The judgment in this case was famous because it systematically explained the law of bailment and contrasted the duties of various bailees, including common carriers. The case has become the basic authority for the principle that a common carrier bears an exceptionally high responsibility for goods entrusted to him. The level of liability announced in the case is that a common carrier is generally liable for loss or damage to goods, almost as an insurer, except where the loss is caused by an act of God (natural events that could not be prevented) or public enemies[1].

Common carriers can limit their liability to a stated amount in the bailment agreement.

3.2.2 Warehouse companies

These are the companies which are into the business of keeping the moveable property of individuals and businesses for payment of agreed fees. A relationship of a bailor and bailee arises once there is an agreement between the two parties; the owner of the goods is the bailor, and the warehouse company is the bailee[2]. The agreement need not be in a specific formality but should reflect the mutual understanding of the parties to avoid any future disputes. It is advisable, for goods in large quantities or high value, and if storage is required for a long period, that the agreement be in writing. Warehouses are subject to the rights, duties, and liabilities of ordinary bailees. They owe a duty of reasonable care to protect the bailed assets. They are liable only for loss or damage to the assets caused by their own negligence or actions[3]. They are not liable for any loss or damage caused by the conduct or negligence of a third party.

3.2.3 Hotels and restaurants (innkeepers)

Under common law, they are subject to a high liability standard for loss caused to the personal property of guests[4]. They can avoid liability if a safe is provided in which valuable property may be kept, and the guests are aware of the existence of the safe. In the case of **Marvin v. Comfort Inn,** Marvin was a jewelry trader. He had in his possession a jewelry sample case that contained approximately $150,000 worth of gems and jewels. Marvin requested the desk clerk to place the case in the safe provided by the inn, stating that the case was very valuable. The clerk didn't give Marvin a receipt for the case. The hotel is liable to keep only a worth of $500 value for any guest who requests such a service. The innkeeper should give a receipt that plainly states this limitation of liability. Innkeepers have no liability for valuables that are not given to them for safekeeping. Moreover, innkeepers are required to post in every room and in the office, a printed copy of this and of all regulations relating to the conduct of guests. The hotel did not post this notice. When Marvin called for his case, it could not be located and was never recovered. He sued for damages. The question was: whether the hotel's was liability limited to $500? The court decided, because no receipt was given to Marvin, he was unaware of the limitation; also no notice was displayed in the office. Therefore, the court decided that the hotel liability is not limited to $500.

Article 459(1) of the CTA, 1984, states that innkeepers are responsible for all losses to the belongings of guests delivered to them for safekeeping. However, para 2 states that if the bailed things consist of valuables, money, or commercial papers, the innkeepers are not liable for their loss unless they are negligent, or they accepted to keep them with knowledge of their value, or refused to keep them without justification, or they caused the loss by means of grave fault from them or any of their employees[5].

The Sudanese CTA, 1984, renders the innkeepers (restaurants and hotels) liable for any loss of items delivered for safekeeping. This refers to non-valuable items. The rule applied to valuable items delivered

[1] This includes all acts resulting from public enemy including the consequences of such acts. Examples, the act of war itself, any decisions issued by the authorities preventing trade with the enemy or prohibiting certain behaviors in time of war.
[2] Again, the agreement can be written or oral express or implied. Written agreement is always preferred.
[3] Ashby v Tolhurst [1937] 2 KB 242 (CA).
[4] See Armistead v. Wilde (1851) 17 QB 261.
[5] This generally means that, if a safe for valuables is available in the hotel, the customer will be responsible for any loss resulting from not using the safe.

for safekeeping is that the innkeeper is responsible for their loss only if he accepts to keep them with knowledge of their value.

The innkeeper may not be liable if he is not aware that there are valuables among the items accepted for safekeeping. If the innkeeper refuses to accept the valuables for safekeeping without justification, he would be liable for their loss if the owner proved that he was ready to give the valuables for safekeeping,but the hotel or restaurant did not accept.

3.3 commercial (non-gratuitous) bailment

Commercial bailment is a bailment connected with a business or commercial transaction[1]. Actually, its scope is much wider. It arises when the bailee receives a reward or consideration for safeguarding the goods or assets. It is basically characterised by monetary payment, or any other type of benefit to the bailee. The three types of bailment commercial transporters, warehouse companies, and innkeepers are therefore commercial bailments. The main attribute of this type of bailment is that a higher standard of care is expected from the bailee, which is reasonable care[2]. However, in some cases, a high standard of care may be required. The bailor is entitled to indemnity for expenses incurred because of the wrongful act of the bailee related to the goods or assets. An example is hiring a car for a trip where the owner is paid money as compensation for the use of the car. This is considered a commercial bailment. The bailee must take reasonable care of the car (the care that he exercises in keeping his own assets) and return the car in the agreed condition. This means that he will be liable if the loss or damage is caused by his negligence. Other examples include storage in a warehouse where goods are stored in a warehouse for a storage fee, repair of a vehicle by a garage, where a garage is paid by the customer to repair the car and keep it to give it back in the agreed condition, or a dry cleaning service.

In the leading Sudanese case of **Mustafa Abbashar v. Um Elhassan Khatir[3],** a goldsmith who was entrusted with gold ornaments for the purpose of remolding them in consideration of payment for work and labor. On demand for delivery of the ornaments by the Respondent, he alleged that they were stolen. The Respondent sued for the value of the ornaments and obtained a decree from the District Court. The application for revision to the Province Judge was dismissed, and an application was raised against the decision of the Province Judge.

The grounds for the appeal were that the applicant (the goldsmith) was not negligent in keeping the ornaments, and the decision was contrary to the law of bailment.

The court upheld the lower court's decision. The case was of bailment for works to be performed on the bailed article. The Court went on:

> *"A custodian for reward is bound to use due care and diligence in keeping and preserving the article entrusted to him by the bailor. The standard of care and diligence imposed on him is higher than that required of a gratuitous depository, and must be that care and diligence which a careful and vigilant man would exercise in his own chattel of a similar description and character in similar circumstances"*

It was established by witnesses that door of the shop was not tightly closed, and that applicant kept the ornaments in a locally made safe which could easily be opened by a false key. In these circumstances, the court was correct to infer negligence on the part of the applicant and to conclude that he failed to use the high standard of care and diligence imposed upon him by the law in his capacity as a bailee for work and labor on the article bailed[4].

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[1] Most probably there subsists another relationship beside the bare bailment relationship.
[2] Houghland v PR Low Ltd. [1962] 1 QB 694 (CA).
[3] See Mustafa Abbashar v Um Elhassan Khatir, SLJR, (1966) at 126
[4] See also, Mitchell v Ealing LBC, [1979] 1 QB 1.

The Court referred to the obligations of a bailee for work and labor as stated by Paton, Bailment in the Common Law, p 338. According to Paton, the bailee is to take all reasonable precautions to safeguard the thing that is in his custody. He has to re-deliver it after work is done in the same condition, unless it is damaged without fault of the bailee, the duty of the bailee is only to take reasonable care.

The court decided that the applicant failed to take reasonable care to safeguard the article, and as such, he is liable to make good the loss which was caused to the bailor as a result of this wrongful act.

The higher duty of care in commercial bailment arises from the simple fact that the bailee is paid or receives a commercial benefit from the transaction. We have to bear in mind that, in commercial bailment both parties' benefit. Therefore, it is a type of mutual-benefit bailment. We referred to this type of bailment earlier when we considered general bailment from the perspective of benefit to the bailor, the bailee, or both.

3.4 Gratuitous bailment

This occurs when the bailor delivers goods to the bailee without any expectation of payment or any form of a reward[1]. This is a type of social cooperation out of goodwill, in which the bailee offers his services without expecting any monetary benefit[2]. An example is a friend agreeing to keep the laptop of his friend while he is traveling free of charge.

The distinction between commercial and gratuitous bailment is important because courts tend to apply a higher standard of care and liability in case of commercial bailment. Since commercial bailees receive payment or business benefit, they are expected to take greater precautions to protect the goods entrusted to them.

4. The standard of care and responsibility in commercial bailment

Commercial bailment plays a pivotal role in the development of trade and commerce. As we have seen, it helps to move goods and assets from one place to another, including quite long distances, store goods for certain purposes and periods, and provide confidence for owners who entrust their assets for repair or enhancement in any way. The Sudanese CTA, 1984, correctly refers to bailment (Al Wadia'h) as a relationship in which the bailee is a trustee for the assets under his possession.

The law treats the trust embodied in a bailment relationship as a trust of varying degrees. Consequently, the degree of care expected of a bailee differs from one bailment to another.

If we draw a comparison between the different types of bailment, we will see that common transportation companies or commercial carriers are burdened with the heaviest duty of care and responsibility for any loss or damage to the bailed property.

If we compare commercial transporters with warehouse companies and innkeepers, we will find that commercial carriers have a higher standard of care and responsibility.

In the case of **Forward v Pittard**[3], the court reaffirmed the traditional common law rule that a common carrier is liable for the goods at all events, except where the loss results from an act of God or public enemies. The carrier remained liable even though he was free from negligence[4]. There are many justifications for this situation. First, they hold themselves out as capable of transporting goods from one place to another, which is by itself a great responsibility. Second, there is a greater risk of loss, damage, or theft for goods and assets when they are moving rather than when they are in a static condition in one place. Third, the goods become completely out of the owner's observation when they are being moved to a

[1] This is broadly governed by customary practices and usages of personal and social relations, but these do not guarantee that a dispute may not arise for a reason or another.
[2] Bailment for the sole benefit of the baiee, however, may provide a heavier social burden on the bailee.
[3]1 (1785) T.R. 27. 99 E.R, 953 (King's Bench).
[4] A common carrier is not merely required to exercise reasonable care but he is subject to a form of strict liability. The case is particularly useful when comparing common carriers with other bailees such as warehouse operators and innkeepers.

different place. The owner bailor is usually absent during transportation and can not observe what happens to the property. Fourth, international trade, which relies heavily on reliable transportation, has a significant share in the development of commerce. It is of paramount importance to promote confidence and trust in the transportation of goods and assets.

For these reasons, commercial carriers are said to have a very high standard of care that is almost similar to strict liability. At the same time, innkeepers are subject to a degree of high care for their guests' property, but generally not to the same level as commercial carriers. As we have explained, innkeepers' degree of liability depends on the circumstances, knowledge, and agreement of the parties. For example, the liability of innkeepers for valuables depends on their knowledge of the existence of these valuables, that is, the customer has drawn the attention of the innkeeper to their existence or delivered them for safekeeping. There are no similar limitations or qualifications on the liability of commercial carriers.

Conversely, warehouse companies are subject to the standard of ordinary reasonable care in safeguarding the assets of owners' bailors. They will be liable only if they are negligent or commit an intentional act that causes the loss.

5. The situation of bank safe deposit boxes

It is a known practice that customers deal with banks to provide a safe environment to their belongings. This is usually done through taking a safe deposit box in a bank. The debate continues on the nature of the legal relationship between a bank and a customer when the latter agree with the bank to have a safe deposit box. The main question here is that, does a bailment relationship arise in this situation?

. The answer to this question depends on the type of arrangement between the bank and customer and the interpretation of any written agreement signed between them. No doubt the relationship between the bank and the customer in this case is contractual (Lord, 1983, p. 263). The bank usually has a standard form agreement to be signed by the customer. If the customer rents a safe deposit box from the bank and keeps a key, a court may be reluctant to consider it as a bailment. For a bailment to arise there should be a complete transfer of possession with exclusive control to the bailee. The bailee should be the only person who have possession and control of the assets during the bailment. As the customer still have the possession and control (through having the key), no bailment arises. The situation will be considered as a rent or lease of a space by the customer from the bank.

In a safe deposit box, the bank usually doesn't know what is inside the box, and doesn't have exclusive control over the contents. Also the customer opens the box by himself and deposit whatever he wants to save in it without delivery to the bank. This is a strong evidence that the relationship is not a bailment relationship, as it lacks a very basic characteristic of bailment.

It should be noted, however, that a bank usually controls how the relationship is described, and avoids to mention specifically that it is bailment. It will tend to reduce its liability (Lord, 1983, p. 267).

On the other hand, bailment may arise in a situation when a customer delivers valuables or documents directly to the bank for safekeeping and the bank keeps custody of them. In this situation the bank becomes a bailee and owes a duty of care regarding the assets of the customer.

If we compare the practice in different jurisdictions, under English law courts examine the degree of possession and control by the bank. If the customer alone has access to the box and the bank only provides secure space, the relationship is a lease of space not a bailment. On the other hand, if the bank retains control on the access and custody of the contents, a bailment may arise. Therefore, it depends on the contractual arrangements and the extent of the bank' control to decide whether the transaction is a bailment or not.

In this regard, courts in the United States have more tendancy to describe the relationship as bailment. They refuse the lessor -lessee description as they consider the bank to be in possession of the box. Maybe they act under an undeclared policy of considering the customer as the weaker party, and thus burdening the bank with defying the negligence liability. In the final analysis, however, there is a split of opinions in the United States on the nature of a safe deposit box arrangement between the bank and its customer[1].

In Sudan, as we mentioned, the situation is governed by the provisions of Al Wadia'h under the CTA, 1084. Under which a person receives property from another and undertake to preserve and return it[2]. Again, if the customer merely rents a safe and retains control over its contents, the relationship is more of renting a secure space. We have to bear in mind that the bank still has a duty regarding the security of the facility. This fact, however, doesn't change the description of the relationship in the absence of delivery and control of the contents of the box.

As for the liability, it makes a substantial difference between considering a bank as a lessor of a space or a bailee. This may be relevant from a theoretical analysis point of view, without a major effect on the ultimate result.

If the bank is regarded only leasing a space to the customer, the bank mainly provides the safe deposit box and maintain access to it. The bank doesn't take possession and usually doesn't even know the contents of the items inside the box. In this case, the bank is not responsible for the loss or damage to the contents. The burden of proof is on the customer to prove that the loss resulted from the banks' negligence, such as inappropriate security measures or the lock can be easily broken because it is defective. Liability of the bank in this case is therefore limited.

If the bank is regarded as a bailee, it will be entrusted with the customer's assets. A duty of care will arise for the bank to exercise a reasonable degree of care in keeping the customer's property. The bank will be required to explain the loss or damage once the goods were delivered and were in the possession of the bank. The standard of care is higher that the lease case because in bailment the bank is showing that it is providing a secure custody.

The basic issue in the difference between liability in case of lease of space by the bank and bailment is the burden of proof when there is a damage or loss. The basic question is who bears the burden of proof. Under a lease situation the burden of proof is on the customer not the bank. The customer has to prove the fact of the loss, the loss resulted from the bank's negligence, and that negligence caused the loss. It is not enough that the customer only shows that the property is damaged or lost.

Under a bailment situation, the burden of proof is shifted to be on the bank. The customer only needs to show that, the property was entrusted to the bank, and was not returned or was returned with some damages. The burden remains on the bank to explain what happened, and show that it exercised due care, and the loss didn't happen as a result of its negligence. Of course, if the loss happens a result of act of God, such as floods, or other events beyond the control of the bank, the bank will not be liable.

The real situation in most jurisdictions is that, the bank doesn't know the contents of the box. For this reason, many courts are reluctant to apply the full bailment rules. Nevertheless, because the bank controls the premises, security systems, and access procedures, courts frequently require the bank to explain how an unauthorized access or loss could have occurred.

Therefore, even where the relationship is characterized as a lease, once the customer proves that property was lost under suspicious circumstances, the bank will usually need to produce evidence of its security measures and lack of negligence. The practical difference is that, under bailment this obligation arises more readily and often as a matter of legal presumption, whereas under lease the customer generally bears the primary burden of proving negligence.

In summary, the bank may end up defending itself in either case, but bailment makes it easier for the customer by shifting the burden of proof.

[1] Jewelers Mutual Ins. Co. v. Firstar Bank of 1ll., 792 N.E.2d 1 (Ct. App. 2003)
[2] See Article 445(1) of the CTA, 1984.

6. Conclusion

In Sudan, the civil Transactions Act, 1984, provides the broad rules governing bailment (Al Wadia'h). The provisions embodied in these rules are not satisfactory from a commercial point of view. They only cover the civil law aspect which falls short of satisfying the demands of the commercial transactions. Therefore, a need arises for a special statutory regime for bailment either separately or as part of a comprehensive commercial transactions law. This will provide clarity through a unified reference and avoids the reliance on different sources such as the general rules governing bailment, contractual obligations, civil liability rules and banking practices. Moreover, it will ensure consistency in treating different cases involving the rights of bailors and bailees.

The law will also provide for special forms of bailment such as warehousing, transportation, innkeepers, in addition to resolving the ambiguity surrounding the safe deposit box service.

It is of great importance to give more attention to documentation of bailment relationships. Informal bailments based on trust are often difficult to prove. When disputes arise, it may be difficult to prove whether the goods were actually delivered, the condition of the goods at delivery, the agreed purpose of bailment, and whether payment was agreed.

Therefore, documentation should be encouraged as it enables to write down all the relevant facts and the points of agreement between the parties and their expectations.

A debated issue is whether the relationship between a bank and a customer renting a safe- deposit box constitutes bailment. Since the bank often does not know the contents of the box and may not have possession of them, courts and legal writers may analyze the relationship differently from ordinary bailment. On the other side, we have the customers who relied on the bank as a safe environment and reposed a trust on it to safeguard their valuables. Situations like this make it necessary to enact a more detailed legislation.

There needs be a wider use of insurance by bailees such as warehouses, transport companies, and storage facilities to obtain insurance against loss, theft and damage. The parties should agree contractually on insurance responsibilities and reach a consent on the relevant risk allocation.

Faster court procedure, establishment of specialized courts, and encouragement of alternative dispute resolution mechanisms such as mediation and arbitration would be a substantial addition to the efforts of enhancement. A fair and timely resolution of disputes plays an important role in the development of commerce in general and in bailment especially.

These measures, taken together, would increase legal certainty, reduce disputes, and improve confidence in bailment.

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