



KNOWING THE LAWS AND REGULATIONS THAT MAY AFFECT YOU

by Lars Kirmser

This portion of the text will deal with some of the laws and regulations that are likely to affect the owner/manager of a musical instrument repair shop. It is, by no means, meant to be anything other than a primer. It should not be considered complete in and of itself, or to be utilized wholly as the basis for your future legal decisions. In an instance where legal advice is required, I strongly recommend that you seek out the professional services of a licensed expert. Furthermore, it is important to know that the laws pertaining to business and consumer affairs will vary slightly from one state to another, even though 49 of our 50 states base their law on the same Uniform Commercial Code.

BAILMENTS

The word "bailment" comes from the French word "bailler" meaning to have charge. In business, a bailment is created when the owner of personal property (or his legal representative), hereafter known as the BAILOR, delivers the possession of the property to you, hereafter known as the BAILEE, who in turn is legally obligated to return the property as per agreement (the repair ticket). A bailment is created by contract either EXPRESSED or IMPLIED. If the agreement is the result of written or spoken words, the bailment is expressed. If the agreement is indicated by the conduct of the parties concerned, the bailment is then implied. By "conduct" we mean, by the mere fact that you run a musical instrument repair shop and advertise a service, and further pose as a qualified expert does, you are legally responsible for your actions relating to your profession.

Three essential elements must exist before a bailment may be considered as legal:

- (1) The title to the property, that is, the legal right to possession must belong to the bailor (your customer).
- (2) The bailee (you), must have lawful possession (without title) such as a SIGNED authorization for repair.
- (3) The bailee must return the property to the bailor as agreed according to the terms and conditions expressed on the repair ticket. At this point, it is easy to understand why the design and implementation of your repair ticket will be so important!

RIGHTS AND LIABILITIES OF PARTIES

Bailments have been divided into three classes: (1) mutual benefit bailments, (2) bailments for the sole benefit of the bailor, and (3) bailments for the sole benefit of the bailee. In our discussion we will

be concerned only with mutual benefit bailments, as all commercial bailments tend to fall into this class.

According to law a mutual benefit bailee owes a responsibility of reasonable care, and may be liable for damage to, or loss of the property of the bailor. This liability is restricted to those conditions that exist as the result of negligence on the part of the bailee. This liability may be either increased or decreased by the contract of the parties. In other words, the extent to which you may limit yourself from liability will depend in part upon the expressed and/or implied conditions with which you agreed to take possession of your customer's property. More importantly, however, you are held accountable for your actions as per the so-called *Law of Contracts*. In general, the courts will enforce provisions in contracts of bailment (conditions stated on the repair ticket), where the bailee relieves himself from specific perils, however, negligence is not included as one of them. This is why it is mandatory for the owner/manager of a repair shop to secure adequate Bailee Care Custody and Control Insurance to protect himself and his business.

BAILEE'S DUTY TO RETURN THE PROPERTY

Generally, the bailor is the legal owner of the property bailed, however, ownership is not necessarily required for a bailment to exist. For example, a bailor could feasibly be a son, a daughter, an instrument teacher, or even a thief!

Remember a bailment transfers possession, not ownership. As you begin to see, the conditions of bailment can be very sticky.

Legally, the bailee is responsible to see that the property is returned to the bailor in a condition reflective of the bailment agreement. But then, what do you do if the right of possession is not so easily determined? For example, what if a third person claims to have a right of possession superior to that of the person who brought the instrument in for service...what does one do? You run into a real dilemma because, if you refuse to deliver the property to the third person, and they are in fact entitled to possession, you will be liable to your customer, the bailor. Usually conflicting claims, such as this, can be determined through legal channels, where the bailee is able to indemnify himself by initiating a legal action called a "Bill of Interpleader". A Bill of Interpleader is essentially a document stating that the legal right of ownership is not clearly evident, and requests that a legal judgement be made by the proper authority.

As a general rule, though, by accepting the property as bailee, you are legally prevented from denying your customer the collection of his property as originally agreed. In such an instance the third person will lose out. In any case, each situation must be judged on its own merit

making it necessary that you confer with an attorney before making any decision to determine just which statutes prevail in your specific jurisdiction.

In a situation where the property of the bailor is taken from the bailee through a legal process by someone other than the bailor (i.e. as by a sheriff under a Writ of Execution), it is the responsibility of the bailee to notify his customer before he surrenders the property, and must further take whatever legal actions are necessary to protect the bailor's interest.

BAILEE'S RIGHT TO COMPENSATION

As the bailee, your rights regarding compensation will depend primarily upon the agreement of understanding made via the initial and subsequent conversations regarding the conditions of the bailment, in addition to those conditions outlined on your repair ticket. If there was no prior agreement as to compensation, the bailee will be entitled to receive reasonable fees for the services rendered. To help avoid inevitable confusion and possible bad feelings, I suggest that an estimate of charges be provided for ALL repair work expected to exceed \$25 total (labor and materials). And, in the event you discover that you expect to exceed your original estimate by more than 10%, you should contact your customer directly with a revised estimate and explanation for your revised estimate so that you can get permission before proceeding. Many states require that any service transaction expected to exceed a specific dollar amount (usually in the range of \$75 to \$100) must be written up on a job order. In addition, if you exceed the original estimate by more than a specific percentage (usually around 10%) you cannot legally proceed without verbal or written permission from the customer. Furthermore, the customer has the legal right to request that all replaced parts be provided for his inspection. Be sure to check on the statutes governing your particular area.

In addition to the precautions mentioned above, might I further suggest that each time an instrument is taken in, an inventory of all accessories accompanying the instrument is taken and listed on the repair ticket. Any accessories or material not necessary to the completion of the repair service should be sent home with the customer.

As the bailee, you have a legal right to be paid for your services. In many situations, if the customer refuses legal compensation, the bailee may execute a lien on the bailed property for a reasonable value in lieu of services rendered; this is known as a *BAILEE'S LIEN*. Furthermore, you have the right to keep possession of the property as security until payment is made. Some states will allow the bailee to sell the property for recovery of costs, however, the bailee is required to notify the bailor of his intent to sell the property, and may only keep the amount of money to which he is entitled (including, of course, any expenses associated with the sale of the property). All additional monies must be returned to the legal owner of the property sold.

If the bailee delivers the completed goods to the customer prior to being paid, he does not necessarily lose the right to a lien upon those goods. Instead, the lien may continue for a specified period after redelivery. To perfect this type of lien, the bailee is required to record a legal

paper claiming such with the proper authorities. This must usually take place within six months of the redelivery. If payment is not received within a specified time, the property may be legally seized and sold for the service charges.

In a case where the bailee fails to complete the work or services agreed upon according to the bailment agreement (such as only completing part of a complete overhaul), the prevailing view is that the bailee is not entitled to payment for the partial work performed; the contract must be fulfilled in its entirety before any compensation may be expected.

WARRANTIES

In the repair of musical instruments, most competent shops will offer their customers a warranty or guarantee on the work performed. This warranty is usually expressed on the claim stub of the repair ticket, and in effect outlines the limits that the musical instrument repair shop will be responsible for their work.

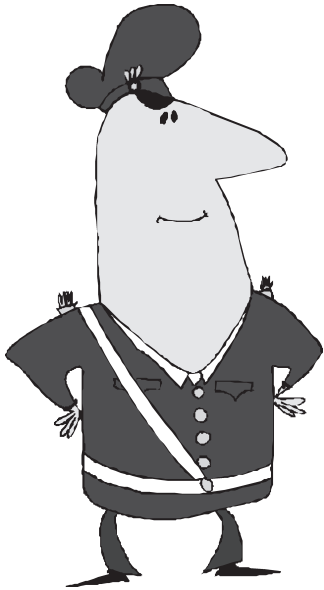
From a legal standpoint, warranties will fall into two categories: **EXPRESSED** warranties and **IMPLIED** warranties. An expressed warranty may be a written or oral statement of fact made to your customer relating to the work performed on their instrument. An implied warranty is not necessarily the result of a promise made by the seller (written or verbally), but instead, one which is implied by virtue of the law. Both these terms were discussed earlier with respect to the bailment agreement and may be interpreted to connote identical meanings.

In dealing with service warranties we must be relatively careful about the limits of responsibility that we are willing to take, in that, unless the service performed is of a more complete nature (i.e. complete overhauls or repads), we cannot take responsibility for those aspects of an instrument that we do not affect, and this should be expressed on the claim stub. The following warranty is one that I have used in the past:

We Guaranty only that the parts installed by us will perform satisfactorily under conditions of normal usage for a period of ninety days after the date of repair. Except as expressly provided above, there is no warranty or guaranty of merchantability or fitness for a particular purpose, or of any kind, express or implied with respect to the services performed or parts furnished by us, and we do not, of course, make any guaranty with respect to any other parts. If repairs become necessary at a later date due to other defective parts or maladjustments, they will be charged separately. We are not responsible for completed merchandise left over 30 days.

FEDERAL WAGE AND HOUR LAW

The Federal Wage and Hour Law regulates wages, hours, and working conditions. This regulation, formally known as the Fair Labor Standards Act of 1938, provided for minimum wages, maximum hours, overtime pay, record keeping to indicate compliance, and child labor limitations. If your company falls into any of the following categories, you will be affected by this act.



- Companies engaged in producing goods for interstate commerce
- Retail or service enterprises with annual gross sales of at least \$1 million and a \$250,000 annual inflow of goods
- Local transit firms grossing a minimum of at least \$2 million a year
- Construction firms grossing a minimum of at least \$350,000 annually
- Other businesses with individually covered employees in enterprises with gross sales of at least \$350,000 annually

Obviously, unless you have a relatively large operation, you will not be directly affected by this act; however, most small businesses will voluntarily comply with minimum standards, regardless of their size. If you are covered under this act, then you are required to comply with certain criteria. You must pay your employees the minimum wage established by law, and you must pay time and one half for all hours worked over 40 in a week. The law restricts the employment of children under the age of sixteen, and further restricts those under the age of eighteen in hazardous jobs or in helping the driver of a motor vehicle. The law does not require extra pay for Saturdays, Sundays, or holidays and does not require vacation, severance pay, or a discharge notice. Furthermore, it does not limit the number of hours of work for persons sixteen years of age or older.

FEDERAL TRADE COMMISSION

The following is a list of practices, which are regulated by the Federal Trade Commission under the Federal Trade Commission under the Federal Antitrust Laws. It is by no means complete; however, it does highlight some of the more important practices that violate the trade regulation laws:

• PRICE FIXING

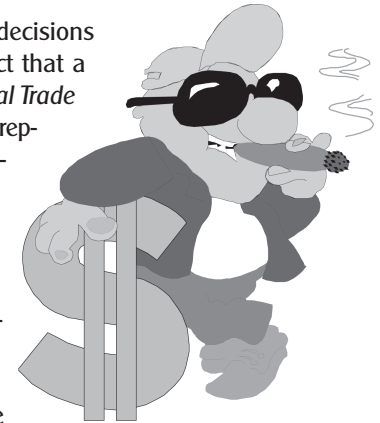
A pricing agreement among competitors is illegal under both the *Sherman Act* and the *Federal Trade Commission Act*. In a 1940 decision, the U.S. Supreme Court said, "Under the Sherman Act a combination formed for the purpose, and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se."

• EXCLUSIVE DEALS

The *Clayton Act* declares it illegal for a seller to make sales conditional upon a buyer's promise not to make purchases from the seller's competitors, if this type of sale may result in substantial lessening of competition. The law also prohibits a seller from making a buyer promise that he will purchase all his requirements of similar commodities from the seller when it has the same effect on competition.

• FALSE AND DECEPTIVE ADVERTISING

A wide range of court decisions have underlined the fact that a seller violates the *Federal Trade Commission Act* if he misrepresents his product or service in a material respect or fails to disclose pertinent information, where such practice has the tendency or capacity to mislead and deceive purchasers or prospective purchasers, or to injure competition.



• PRICE DISCRIMINATION

The *Clayton Act* as amended by the *Robinson-Patman Act* prohibits price discrimination that may result in a substantial lessening of, or injury to competition. This means not only injury to the competitors of a seller, but also injury to purchasers who are damaged because their competitors receive unjustifiably low prices or unjustifiably large discounts.

- **PAYMENTS OF BROKERAGE TO BUYERS**

The *Robinson-Patman Act* forbids a seller to pay brokerage to a buyer. This is true regardless of whether payments are made directly or through third parties that eventually hand the money over to the purchaser.

The following are the Federal Trade Commission's guides against the nine major types of fictitious pricing. Even though they direct themselves largely to retail-type businesses, we may apply them to service-oriented business as well.

- **SAVINGS CLAIMS**

Sellers must not imply that they are offering a lower price than other merchants are unless that price applies to a specific article and not just similar or comparable merchandise. Furthermore, any savings claims must be based on a reduction either from the usual retail price of the article in the trading area where the statement is made or from the advertiser's regular price.

- **PRICING PROBLEM**

Merchandise must not be advertised as "reduced in price" if the former higher price is based on an artificial markup or on previous infrequent sales. The former price quoted also must be the one that immediately preceded the new bargain price in the recent regular course of business; if it is not, this fact must be clearly disclosed.

- **COMPARABLE MERCHANDISE**

Comparative prices for comparable merchandise may be used only if the claim makes clear that the advertiser is talking only about comparable merchandise and not the former or regular price of the article he is selling. Also, the comparable merchandise must be obtainable at the comparative price in the same trade area.

- **SPECIAL SALE PRICES**

Prices of special sale merchandise must not be advertised unless they represent a bona fide price reduction from the seller's customary retail price or a savings from the regular course of his business, or is the usual price in the trade area.

- **"TWO-FOR-ONE" SALES**

No claims of so-called "two-for-one" sales may be made unless the sales price for the two articles is the seller's usual price for the single article in the recent regular course of his business, or is the usual price in the trade area.

- **SPECIAL SALES CLAIMS**

So called "half-price" or "50%-off" or "1-cent" sales must be factually true and, if conditioned upon the purchase of additional merchandise, this fact must be conspicuously disclosed. Moreover, the advertised price reduction must be commensurate with the seller's customary or most recent price.

- **"FACTORY" AND "WHOLESALE" ADS**

Products must not be advertised as being sold to the consuming public at so-called "factory" or "wholesale" prices unless they are in fact being offered at the same price that retailers regularly pay to their suppliers.

- **FICTITIOUS PRE-TICKETING**

No article should be "pre-ticketed" with any price figure that exceeds the price at which the article is usually sold in the trade area where the product is offered for sale. Those who furnish the fictitiously high price tags are equally culpable with the merchants who use them. The same prohibition applies to material such as display placards on which is printed a fictitiously high price for the product offered for sale.

- **COMPARATIVE PRICES**

These are taboo in the sale of articles described as "imperfect", "irregular", or as "seconds" unless the higher comparative price actually was, and is conspicuously shown to be for the same article in new and perfect condition. Also the comparative price should not be used unless it is the same at which the advertiser usually sells the product without defects, or is the regular price in the trading area for the merchandise when perfect.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Under this law, employers have the duty to furnish each of their employees with a place of employment that is free from hazards that are likely to cause death, serious injury, or physical harm in any form. Although all responsible employers have long accepted this as a basic part of running their businesses, the act does, from a legal standpoint, place very specific responsibilities on each employer and subjects them to heavy penalties if they fail to comply with them.

