

Bus & P C §17550.13(a). The seller of travel must provide either the travel services or a reimbursement of the money advanced according to a certain schedule set out in Bus & P C §17550.14. Bus & P C §17550.14(a). There is an exception when the funds have already been disbursed. See Bus & P C §17550.14(b).

If the seller of travel is a participant in the Travel Consumer Restitution Fund and the passenger or person making payment was located in California at the time of the travel or transportation services, the travel seller must provide notice of the right to make a claim on that fund. Bus & P C §17550.13(a)(7). For claim requirements, see Bus & P C §§17550.37 and 17550.46.

## **XVII. [§5.145] PARKING LOTS; OTHER BAILMENTS**

A garagekeeper, parking lot operator, or vehicle repairer to whom a vehicle is delivered has the usual duty of ordinary care and liability of a bailee for hire. CC §1852. The burden of proof is on the bailee to show freedom from fault (*Downey v Martin Aircraft Serv.* (1950) 96 CA2d 94, 214 P2d 581), except when the damage or destruction is by fire (Com C §7403(1)(b)). The bailee's liability for negligence is limited in CC §1840 to the amount which he or she is informed by the bailor, or has reason to suppose, the bailment is worth.

In *Gardner v Downtown Porsche Audi* (1986) 180 CA3d 713, 225 CR 757, the court expressly disapproved *U Drive & Tour v System Auto Parks* (1937) 28 CA2d Supp 782, 71 P2d 354, and held that an automobile repair garage may not limit its liability for negligent care of the vehicles entrusted to it by having customers sign a written disclaimer; contractual clauses that purport to exculpate repair garages for liability for negligence violate CC §1668 and are invalid as contrary to public policy. The court stated that the same principle should apply to parking lots. The court in *Gardner* primarily relied on *Tunkl v Regents of Univ. of Cal.* (1963) 60 C2d 92, 32 CR 33, in which the Supreme Court struck down exculpatory clauses in hospital admission forms, held that a party cannot exempt itself from liability even for ordinary negligence if the service it provides implicates the public interest, and set forth six characteristics typical of contracts affecting the public interest. *Tunkl* emphasized that a contract could involve the public interest even if it did not meet all six criteria, but *Gardner* found that auto repair contracts do exhibit all six characteristics. The decision in *Gardner* may apply to contractual liability disclaimers beyond auto repair garages and parking lots; the court itself stated that its holding would apply whether the auto repair contract was a bailment or purported to create some other legal

relationship. See also *Pelletier v Alameda Yacht Harbor* (1986) 188 CA3d 1551, 230 CR 253 (contractual provision in berth lease between yacht harbor and boat owner purporting to exculpate harbor from tort liability to the owner involved public interest under *Tunkl* guidelines and is thus void under CC §1668).

Civil Code §1630 imposes strict notice requirements on vehicle parking lot bailees for a contractual limitation of liability to be binding on the bailor. A contractual limitation of liability for theft of the vehicle does not exempt the bailee from liability when the bailee requires the bailor to leave the vehicle's keys. CC §1630.5. Cities are authorized to enact ordinances that are more restrictive. CC §1630.

### **XVIII. [§5.146] SUITS INVOLVING PUBLIC UTILITIES**

Although utilities are regulated by the California Public Utilities Commission, the PUC does not have the jurisdiction to award monetary damages to customers for failure to provide proper services. *Chromcraft Corp. v Davies Warehouse Co.* (1960) 57 Cal PUC 519. Therefore, customers may bring such claims directly to small claims court.

The most common claims for failure to provide proper service arise when a customer has had service discontinued, has ordered service that fails to arrive when promised, has billing problems, or has had erroneous or omitted information in the telephone directory. In order for a utility to properly discontinue service, specific rules must be strictly followed. These rules are found in the utility's Schedule of Tariffs and are a part of the contract for service between the utility and the customer. *Masonite Corp. v PG&E* (1976) 65 CA3d 1, 135 CR 170.

Such limitations are valid if they are reasonable, and the question of reasonableness should first be directed to the PUC, not to the courts. *Waters v Pacific Tel. Co.* (1974) 12 C3d 1, 114 CR 753 (enforcing tariff provision that limited customer deprived of service to credit allowance in amount of service charges for period involved). See also *Stern v General Tel. Co.* (1975) 50 CA3d 538, 123 CR 373 (court enforced tariff provision that limited customer deprived of service to credit allowance in amount of service charges for period involved and construed provision to apply to gross as well as ordinary negligence).

The following are some of the key provisions of the tariffs:

- The utility may discontinue a customer's service when a bill has not been paid within a specific period of time, usually 19 days from the date of mailing, but service cannot be shut off until any deposit has been fully absorbed.