

Bailment

Contract for Bailment it is a form of specific contract section 148 to 181 of this act referred to provisions. It must be noted at this point that pledge is a specific kind of bailment and Chief basis of distinction is the object of the contract. Thus provision relating to the convenience of the study may be divided into two parts

No.1 is sec. 148 To 171

No.2 is sec. 172 To 181

So, let us consider the question what is the contract of bailment and its essential.

Meaning of Bailment :

Delivery of goods without to be returned according to the direction of the person giving such goods in other words bailment means any kind of handing over something for example A deliver a piece of cloth to B, a tailor for stitched or delivering a cycle, watch or any other article for repair etc.

So bailment is a subject of considerable public importance.

Let us first consider the question what is the contract of bailment and what are its essential elements ?

Bailment is defined under section 148 of the Indian Contract Act:

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 direction of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

EXPLANATION :--

If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes a bailor of such goods although they may not have been delivered by way of bailment.(refer to the flowchart).

DELIVERY

--of possession
--upon contract
--conditional

No.1--:of possession

1--actual

2--consturctive

No.2--:upon contract

1-- Ram Gulam vs govt. of UP

2-- Prabhu Das hatibahi

3-- st. of Gujarat vs Memon Mohammed

No.3 Conditional

Subject matter ---- bailment can be only of goods as per section 2(7) of the Sale of goods Act goods mean every kinds of movable property other than money and actionable claim.

1- Delivery of possession ---

The first important essentials of bailment is delivery of possession by one person to another delivery of possession for this purpose should be distinguished from mere custody.

The chief characteristics of a bailment is that the delivery contemplated is for a temporary purpose there can be no bailment if the whole properties transfer and the thing delivered is not to be specifically returned are accounted for, nor where the delivery of property is for an equivalent in money or other for example sale , exchange. In case of Ultzen VS Nicolls Court observed that goods must be handed over to the bailee for whatever is the purpose of bailment. once this is done a bailment arises irrespective of the manner in which this happens delivery of possession may be divided into two type No.1 is actual delivery No. 2 is constructive delivery .

When the bailior hands over to the bailee physical possession of the goods that is called actual delivery and then despite that constructive delivery takes place when there is no change or physical possession and goods remaining where they are but something is done which has the effect of putting them in position of the bailee. At this point the leading case Fazal vs Salamat Rai.

2-Delivery should be upon a contract--

For valid bailment the delivery must be done upon contract.

The goods will be returned when the purpose is accomplished the important question of law is arises at this point is whether the bailment can be exist without any contract or not? In other words when a person's goods go into the possession of another without any contract what will be happen?

This question can be answered with the help of following cases--

No.1 case -- Ram Gulam vs state of UP --:

The court held that there can be no bailment without any contract.

No.2 case -- Prabhudas Hathibahi --:

The Court while adopting a progressive approach made it crystal clear that bailment can also occur without any contract and this ideology has been adopted by the Honorable Supreme Court in a state of Gujarat vs Memon Mohammad case.

3-Conditional delivery--:

bailment of goods is always made for some purpose and is subject to the condition that when the purpose is accomplished the goods will be returned to the bailor or are to be disposed of according to his mandate. Here an important question arises that the person to whom the goods have been provided if he is not obliged to return the same goods or is not obliged to give them back according to his direction?

Therefore, the relationship that arises under these circumstances will not belong to Bailor and Bailee. There may be some other type of relationship such as a sale, gift, exchange, agency, trust, etc.

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