

Business law- B.Com II semester

Topic-

Contract of bailment and pledge

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Contract of Bailment And Pledge

Meaning of bailment- The word 'Bailment' is derived from French word 'baillier' which means to deliver. According to sec 14, a "Bailment" is the delivery of goods by one person to another for some purpose, with a condition to return the goods when the purpose is over or otherwise disposed off according to the direction of the person delivering them.

Parties in bailment contract

Bailor- The person delivering the goods is called the bailor.

Bailee- The person to whom the goods are delivered is called the bailee.

Example: -

1. Mr. X who is going out of station delivers a dog to Mr. Y for proper care.
2. Mr. A hires a horse for riding.
3. Mr. A deliver watch for repair.
4. Mr. A gives a cloth to his tailor for stitching.

Essential Elements of a valid bailment

- Agreement between bailor and bailee
- Delivery of goods
- Ownership not change
- Only movable goods
- Delivery for some purpose
- Change in forms
- Return of goods

- There must be an **agreement** between the bailor and bailee. This agreement may be express or implied. However, a bailment may be implied by law as it happens in the case of finder of lost goods.
- In bailment, it is necessary that the goods should be **delivered** to the bailee. It is the essence of the contract of bailment. It is further necessary that the possession of the goods should be voluntarily transferred and is in the accordance with the contract. Delivery may be of two types: 1-Actual delivery, 2- constructive delivery.

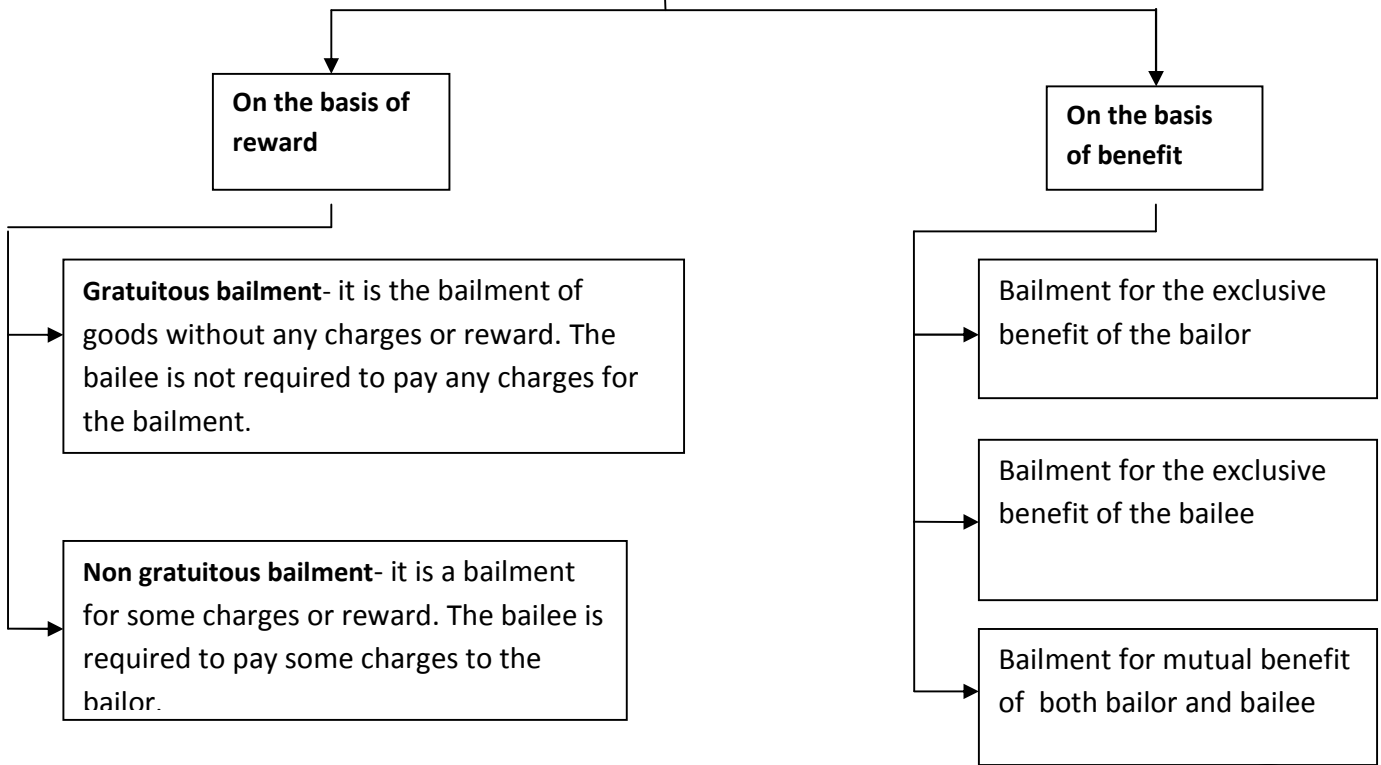
Example-

1. Delivery of a car for repair to a workshop dealer is an actual delivery.
2. Delivery of the key of a car to a workshop dealer for the repair of car is a constructive delivery.

- In a bailment the **ownership** remains with the bailor and is not transferred to the bailee or anyone as because if the ownership is transferred then it is not a bailment contract. It becomes a contract of sale.
- Bailment is only for **movable** goods and not for immovable goods.
- The goods must be delivered to the bailee for some **purpose**. The purpose could be the safe custody, use of the goods, transportation of the goods, repair of the goods etc.
- If the goods which are bailed are **changed** like a cloth is converted into a shirt than still the contract remains a bailment.
- The goods shall be **returned** to the bailor or disposed off according to his direction .

Example – The amount deposited by a person in various accounts like saving, current account etc. is not treated as bailment because the bank is not bound to return the same identical coins or currency notes which are deposited. This has been stated in the various decisions given by the judges in different cases from time to time. But if a person keeps of his valuable items like jewelry or money etc. in the bank locker for safe custody, it is treated as a case of bailment contract.

KINDS OF BAILMENT



Duties of Bailor

- **Duty to disclose all known defects-(sec 150)**
- **Duty to bear necessary and extraordinary expenses (Sec 158)**
- **Duty to indemnify loss for premature termination of bailment-Sec(159)**
- **Duty to indemnify the bailee against the defective title of the bailor-(Sec164)**
- **Duty to receive back the goods-(Sec 164)**
- **Duty to bear a loss (Sec162)**

DUTIES OF BAILOR—

1. It is the duty of the bailor to **disclose the known defects** in the goods. If the bailor fails to disclose such defects and as a result, if the bailee suffers from any loss. The bailor should compensate the bailee for such loss.

In case of gratuitous Bailment

If the bailor fails to disclose such defect then the bailor is liable to indemnify bailee for such loss.

In case of non gratuitous bailment. If the bailee suffers any loss

Due to any defect in the goods, the bailor is liable to indemnify

Bailee for such loss whether he knows those defect or not.

- 2- The bailor must repay to the bailee all the **necessary expenses** which the bailee has already incurred for the purpose of bailment in the case of gratuitous bailment. But in case of non gratuitous bailment, the bailor is liable to repay the **extra-ordinary expenses** incurred by the bailee.

EXAMPLE

Mr. X delivers a dog to Mr. Y. Y incurred Rs 100 as feeding expenses and Rs 200 as medical expenses when the dog become sick. State the legal position (a) if nothing was charged by either party. (b) If Mr. X charged Rs 500 from Y.

Solution: (a) It is a case of gratuitous bailment where x (the bailor) must repay Rs Mr. X delivered a Dog to Mr. Y incurred Rs 100 as feeding expenses 300 to Mr. Y (the bailee) because the bailor is

bound to bear all expenses incurred by the bailee for the purpose of bailment.

(b) It is the case of non gratuitous bailment where Mr. X (the bailor) must repay Rs 200 to Y (the bailee) because the bailor is Bound to bear all extraordinary expenses (and not ordinary expenses) incurred by the bailee for the purpose of bailment.

2. If the loss caused to the bailee due to **premature termination** is more than the benefit obtained by the bailee, it is the duty of the bailor to compensate the bailee for such an excess loss.
3. If the bailor does not have any **title to deliver** the goods to the bailee, he would be liable to indemnify to the bailee for any loss which the bailee has paid to the original owner.

EXAMPLE- A asks his friend B to give him cycle for one hour. B instead of his own cycle gives C's cycle to A. While A was riding, the main owner of the cycle catches A and surrenders him to police custody. A is entitled to recover from B all costs, which A had to pay in getting out of this situation

4. If the bailor wrongfully **refuse to receive back the goods**, he shall be liable to pay necessary expenses incurred by the bailee for keeping this goods safely.

Example: - Mr. X lent a dog to Mr. Y for ten days. On the expiry of ten days, Mr. X refused to receive back the dog but after five days, he received back the dog. During these five days, Mr. Y incurred Rs 500 as feeding expenses. Mr. X must repay Rs 500 to Mr. Y.

- 6- It is the duty of bailor to **bear the risk of loss**, deterioration and destruction, of the things bailed, provided that bailee has taken reasonable care to protect the goods from loss.

EXAMPLE: Mr. X lent a dog to Mr. Y for five days. On third day, the dog become sick and was hospitalized but died. Mr. Y is not liable to Mr. X for this loss.

Rights of a bailor:

- **Right to claim damages in case of negligence [section 152]**
- **Right to terminate the contract in case of unauthorized use of goods [section 153]**
- **Right of claim compensation in case of unauthorized use of goods [section 154]**
- **Right to claim the separation of goods in case of unauthorized mixture of goods[section 156]**
- **Right to claim compensation in case of unauthorized mixture of goods which cannot be separated [section 157]**
- **Right to demand return of goods [section160]**
- **Right to claim compensation in case of unauthorized retention of goods(section 161)**
- **Right to demand accretion to goods [section 163]**

Rights of a bailor-

- 1-** If the bailee has not taken reasonable care(in the absence of any special contract or special care) the bailor has a **right to claim damages** for the loss, destruction, or deterioration of the goods bailed.
- 2-** If the bailee uses the goods in an unauthorized manner, the bailor can **terminate the contract of bailment** before the completion of the bailment. A contract of bailment is regarded as a voidable contract in such an event the bailee cannot sue the bailor for a breach of contract.

- 3- If the bailee does not use the goods bailed according to the terms and conditions of the bailment contract, the bailor has a **right to claim compensation** from bailee for any damages arising to the goods from or during such use of them.
- 4- If the bailee, without the consent of the bailor **mixes bailors goods** with his own goods and the goods can be separated, the bailor has a right to claim his goods after separation.
- 5- If the bailee without the consent of the bailor mixes bailors goods with his own goods and the goods cannot be separated, the bailor has a right to **claim compensation** from bailee for the loss of the goods.
- 6- The bailor has a right to demand **return of goods** after the completion of the purpose or after the expiry of period of bailment.
- 7- If the bailee **does not return** or deliver the goods according to the bailor's directions, after the accomplishment of purpose or after the expiry of period of bailment, the bailor has a right to claim compensation for any loss, destruction and deterioration of goods from that time.
- 8- In the absence of contract to the contrary, the bailor has a right to demand any increase or profit which may have occurred from the goods bailed.

Example:- Mr. A leaves a cow in the custody of Mr. B to be taken care of. The cow has a calf then Mr. B is bound to deliver the calf as well as the cow to Mr. A.

Duties of Bailee

- **Duty to take care of the good**
- **Duty not to make any unauthorized use of goods [section 154]**
- **Duty not mix bailors goods with his own goods[section 155 to 157]**
- **duty to return the goods[section 160&161]**
- **Duty to return accretions to the goods [section 163]**
- **Duty not to set up any adverse title**

Duties of bailee

- 1- The bailee should **take reasonable care** of the goods which are in his possession. The degree of care required by the bailee is similar to that of a man of ordinary prudence would take of his own goods under the similar circumstances. If he has taken such care, he is not liable, even if the goods are lost or damaged. He is also not liable for the destruction or the loss of goods due to an act of god.
- 2- The bailee should not use the goods for an **unauthorized purpose** . He can use the goods as per the terms and condition of the bailment. If the bailee makes any unauthorized use of goods he shall be liable for any loss on any unauthorized use of goods. The bailor may terminate the contract of bailment. In other words the contract of bailment becomes voidable.
- 3- **(a)** If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall

have an interest, in proportion to their respective shares, in the mixture thus produced

(b) If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damages arising from the mixture .

(c) If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back. It was held that the bailor was entitled to refuse to take delivery and claim compensation for loss or damage.

4- The Bailee must return the goods without waiting for demand from bailor:

- the time specified in the contract has expired or the purpose specified in the contract is accomplished,
- if the goods are not returned, then:
 - the goods shall be at risk of the bailee,
 - the bailee shall be liable for any loss or damage, even if such loss is caused without any fault or negligence of the bailee or due to an act of god or other unavoidable reasons.

5- In the absence of any contract to contrary, the bailee is bound to return any extra profit occurred from goods bailed.

6- The bailee must not do any act which is inconsistent with the title of the bailor. He must not set up his own title or a third parties title on the goods bailed to him.

Rights of a bailee:

- Right to claim damages [section 150]
- Right to claim reimbursement of expenses [section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [section 159]
- Right to recover loss in case of bailors defective title [section 164]
- Right to recover loss in case of bailors refusal to take the goods back [section 164]
- Right to deliver goods to any of the joint bailors [section 165]
- Right to deliver goods to bailor in case of bailors defective title [section 166]

Finder of goods-

The person who finds the goods belonging to some other person and takes them in his possession is known as the finder of goods. The finder of goods is in a position of the bailee and therefore, all the duties of the bailee are equally applicable to the finder of goods.

Duties of the finder of goods-

1. The finder of goods must take the reasonable care of goods.
2. The finder of goods must return the goods to the owner.
3. The finder of goods must not use the goods for his own purpose.
4. The goods must not mix with own goods.
5. The goods must return any increase in goods along with the goods.
6. The finder of goods must make a reasonable effort to find the owner.

Right of finder of goods-

1. The finder of goods has a right to retain the goods until he receives the compensation for trouble and expenses .
2. Where the owner has offered a specific reward for the return of goods lost, the finder has a right to sue the owner for such reward and to retain the goods until he receive it.
3. A finder of goods has a right to sell the goods found under the following circumstances-
 - If the owner cannot with reasonable diligence be found; or
 - If the owner when found refuses to pay the lawful charge of the finder; or
 - If the goods are in danger of perishing or of losing the greater part of their value; or
 - If the lawful charges of the finder in respect of goods found amount to two third of its value.

Termination of bailment

1. On the expiry of fixed period
2. On fulfillment of the purpose
3. Inconsistent use of goods
4. Destruction of the subject matter of bailment
5. Death of any party
6. Termination by a bailor

Lien- Lien is the right of any person to retain the possession of goods belonging to someone else until the claims/ charges due to the person in possession of goods are paid. The lien of goods can be either a particular lien or a general lien.

Types of lien:

1- **Particular lien**[section 170]- Where the bailee has, in accordance with the purpose of the bailment, rendered any services involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receive the due remuneration for the services he has rendered in respect of them.

Example- X gives a piece of cloth to Y, a tailor to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allowed one month's credit for the payment).

2- **General lien**[section 171]- A general lien is a right to retain all the goods as security for the general balance of amount until the full satisfaction of the claims due whether in respect of those goods or other goods. In the absence of a contract to the contrary, general lien is available only to bankers, factors, wharfinger, attorneys of a high court and policy brokers. The general lien is available to other persons only when there is an express contract to that effect.

Example- X deposited US 64 units and shares of Reliance Industries Ltd. as security with Citi Banks and took a loan against the shares of Reliance Industries Ltd. Citi Bank may retain both the securities until its claims are fully satisfied.

Pledge[Section 172]

A pledge is a special kind of bailment. Here the goods are delivered as a security for the payment of debt or for the performance of a promise.

Pledger- The person who delivers the goods as a security for payment of a debt or performance of a promise is known as pledger(pawnor).

Pledgee-The person to whom the goods are delivered as security for payment of a debt or performance of a promise is known as pledgee (pawnee). In the pledge there is no change in the ownership of the property.

EXAMPLE- Mr. A took a loan from the bank against a security of gold. In this case, Mr. A is a pledger, the bank is a pledgee and gold is the pledged as a security.

Rights of a pawnee-

- 1- Right of a retainer[section 173&174]-** The pawnee can retain the goods pledged with him until he is paid money in advance, necessary expenses, interest paid on debt by him in respect of the possession or for the preservation of the goods pledged.
- 2- Right to claim reimbursement of extraordinary expenses related to the goods from the pawnor for the preservation of goods pledged by him[section 175]**
- 3- Right to sue pawnor [section 176]-** If the pawnor makes default in the payment of the debt or performance of the promise the pawnee has a right to sue the pawnor for the recovery of the amount due or for the performance of the promise and to retain the goods pledged as a collateral security.
- 4- Right to sale[section 176]-** If the pawnor makes default in payment of the debt or performance of the promise, the pawnee has a right to sell the goods pledged after giving a reasonable notice of the intended sale to the pawnor.

Duties of a pawnee:

- 1- Duty to take reasonable care of the goods pledged
- 2- Duty not to make unauthorized use of goods
- 3- Duty not to mix goods pledged with his own goods
- 4- Duty to return goods
- 5- Duty to return accretions to the goods.

Duties of a Pawnor:

- 1-**It is the duty of the pawnor to follow all the terms and conditions related to the goods pawned like repaying the loan amount within a stipulated period of time.

2-Moreover, the pawnor has the duty to pay the extra cash expenses incurred upon the pawnee for preserving the goods pawned.

Rights of the Pawnor:

- 1- Right to redeem- Under section 177 of the Indian Contract Act 1872 the pawnor can redeem the goods pawned by him to the pawnee anytime, whenever there is a default in the repayment of the loan but in addition to it he must pay the extra expenses which have been incurred because of his
- 2- Right to claim damages- The pawnor can claim the damages for the goods pawned if the Pawnee mixes the goods pledged with his own goods without the consent of the pawnor.

