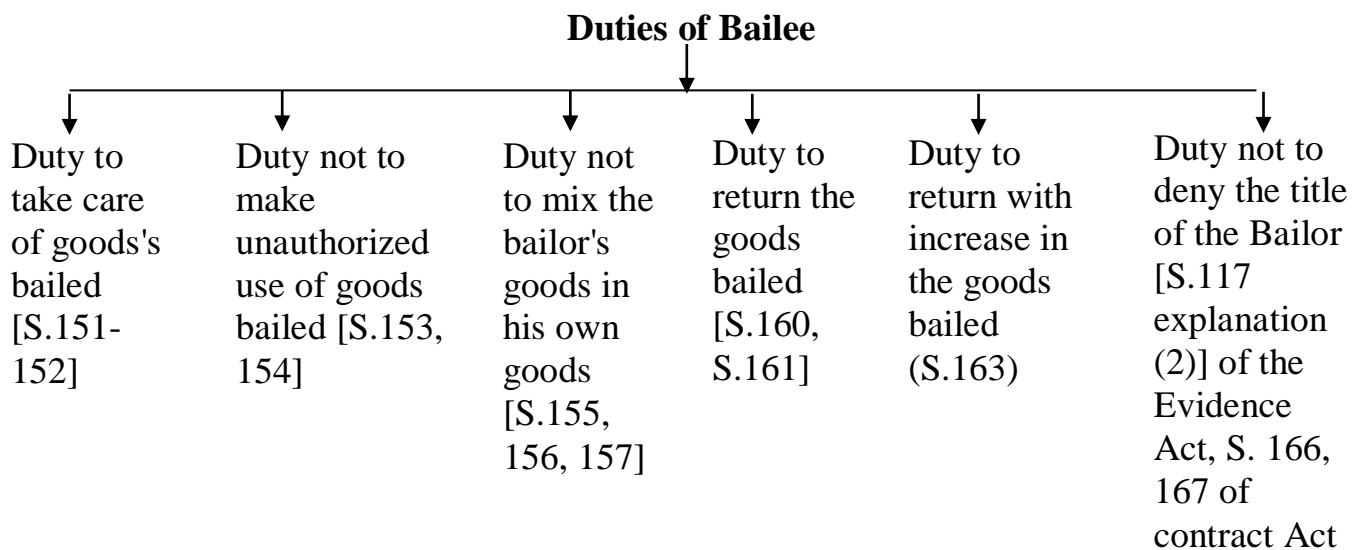


DUTIES OF BAILEE
[S.151 to 157, 160, 161, 163, 165]

Professor C.P.Singh
Head & Dean
Faculty of Law
Lucknow University
Lucknow

Duties of Bailee

Duties of Bailee may be understood easily with the help of following chart:



1. Duty to take care of goods bailed [S.151 and 152]:-Regarding this duty of bailee S.151 provides that In all cases of bailment the bailee is bound to take as such care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.[S.152]

Thus, Bailee is to-

- (i) Bound to take reasonable care of the goods bailed to him.
- (ii) Degree of care required by bailee is similar to the man of ordinary prudence.

(iii) Standard of care to be taken by bailee similar in all cases of bailment whether bailment is gratuitous or non gratuitous.

(iv) The measure of the care will depend upon quantity quality and value of the goods bailed.

As S.152 states that the bailee shall not liable for the loss, destruction or deterioration of the goods bailed if he had taken the required degree of care.

In Martin v. London County Council (1947)

The plaintiff admitted in the paid hospital. At the time of the admission she gave some jewellery to the hospital officials for safe custody. Jewellery was kept by Hospital official in the Drugs room, from where it was stolen It was held that hospital officials were liable for loss of jewellery.

However, bailee will be not liable for damages if the goods are destroyed due to following: -(i) war (ii) heavy floods (iii) communal riots

(2) Duty not to make unauthorised use of goods bailed[S.153, S.154]:-

This duty of bailee is mentioned in S.153 and 154 of contract Act. S.153 provides a contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment thus, where the bailee breaches the conditions of bailment, bailor has right to terminate the bailment. If unauthorised use of goods by bailee any loss or damage caused the goods, bailee will be liable to compensate the bailor even of loss or damage caused due to the act of Good. S.154 provides if the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Examples:

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls

and is injured. B is liable to make compensation to A for the injury done to the horse.

- (b) A hires a horse in Calcutta from B expressly to march to Varanasi. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

3. Duty not to mix the bailor's goods in his own goods [S.155, 156, 157]

]- It is the duty of bailee not to mix the bailor's goods in his own goods. If he mixes the bailor's goods in his own goods the effect of such mixture will be as follows:-

- (A) **Effect of mixture, with bailor's consent, of his goods with bailee's-**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.

[S.155]

- (B) **Effect of mixture, without bailor's consent, when the goods can be separated-**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 expenses of separation or division, and any damage arising from the mixture.[156]

Example: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

- (C) **Effect of mixture, without bailor's consent, when the goods cannot be separated-**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, the bailor is entitled to be compensated by the bailee for the loss of the goods.[S.157]

Example: A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

4. Duty to Return the goods bailed [S.160, 161]:-It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.[S.160]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.[S.161]

It is point to be noted here that if bailee does not return the goods within time to bailor. Bailor will be liable even if he is not negligent or loss was caused due to act of God. However, where the possession of goods from bailee has been taken away by some authority of law, bailee will be not liable to return the goods to bailor. In Case of Juglal Kamalpati oil Mills v. Union of India (1976) is best example for it:

In this case some edible oil was sent by a resident of Kanpur to Calcutta through railway. When oil wagon reached destination oil was seized by the food inspector under the Calcutta Municipal Act. Oil was found to be adulterated therefore it was destroyed by the order of the High Court.

It was held that Railway was not liable to return oil because oil was destroyed by the order of the competent authority.

5. Duty to return with increase in the goods bailed [S.163]:- Regarding this duty of bailee S.163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

For Example:

A leaves a cow in the custody of B to be taken care of the cow has a calf. B is bound to deliver the calf as well as the cow to A.

6. Duty not to deny the title of the bailor [S.166, 167 of contract Act and S.117 and exp.(2) of S.117 of Evidence Act]:-According to 117 of Evidence Act that the bailee cannot deny the title of the Bailers or he cannot say that at the time the bailment bailor has no title to bail the goods.

If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of the bailor, the bailee is not responsible to the owner in respect of such delivery. [S.166]

If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

According to Explanation (2) of 117 of evidence Act that if a bailee delivers the goods bailed to a person other than the bailer he may prove that such person had a right to the goods as against the bailor.