

# BUSINESS LAW

UNIT 3:Introduction to Special Contracts

TOPIC- Contracts of Bailment and Pledge

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# BAILMENT ( SEC.148-SEC.181)

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 directions of the person delivering them. The person delivering the goods is called bailor and the person to whom goods are delivered is called bailee and the transaction is known as bailment.

**EXAMPLES-** hiring of goods/furniture/cycle, delivering cloth to a tailor for stitching a dress, giving watch/car/scooter to mechanic for repair, giving clothes for drycleaning, depositing goods for safe custody etc.

**NOTE-**

- ✓ deposit of money in a bank is not bailment as the money returned by bank would not be the identical currency notes deposited by the customer.
- ✓ But depositing ornaments in a bank locker is not bailment because as the keys are with the owner, the possession of ornaments is deemed to be with the owner.

## Essentials of bailment-

- There must be delivery of movable goods by one person to another
  - actual- handing over to the bailee the physical possession of goods like giving watch to repairer
  - Constructive/ symbolic- handing over to the bailee the means of obtaining physical possession of goods like giving keys of car to mechanic, goods stored in godown can be delivered by handing over the keys of the godown etc.
- The goods must be delivered for some purpose- if goods are delivered by mistake without any purpose, there is no bailment.
- When the purpose is accomplished, the goods are to be returned in specie or disposed of as per the directions of the bailor either in original form or in altered form.

# KINDS OF BAILMENT

- **From 'benefit' point of view**

1. Bailment for exclusive benefit of the bailor- eg. X gives box of ornaments to Y, neighbour for safe custody when X goes out of town .
2. Bailment for exclusive benefit of the bailee- eg. X borrows pen from Y
3. Bailment for mutual benefit of bailor and bailee-eg. contracts of repair, hire, etc., where bailee gets charges for service rendered and bailor gets the benefit of service.

- **From 'reward' point of view**

1. Non-gratuitous bailment- here either bailor or bailee is entitled to a remuneration eg. giving goods for repair, giving cloth to tailor for stitching etc.
2. Gratuitous bailment- neither bailor nor bailee gets any remuneration eg. loan of book to friend, depositing of goods for safe custody without any charge.

**Consideration in case of gratuitous bailment/bailment for exclusive benefit of bailor/ bailee- here direct remuneration is not visible but the detriment suffered by the bailor in parting with the goods is sufficient consideration to support the promise of the bailee to return the goods.**

# Duties of bailee

- Duty to take reasonable care of goods delivered-
  - ✓ to take as much care as one would take care of his own goods and not be negligent towards goods
  - ✓ in spite of reasonable care if goods are lost/ destroyed/deteriorated, bailee is not liable
  - ✓ bailee is also not liable for loss caused by State enemies or by an act of god eg. riots, flood
- Duty not to make unauthorized use of goods bailed-
  - ✓ to use goods strictly as per terms of bailment otherwise bailor can terminate the bailment
  - ✓ bailee is liable to compensate to bailor for loss arising from unauthorized use of goods
  - ✓ In case of unauthorized use, he is liable even if loss was due to inevitable accident/act of god
- Duty not to mix goods bailed with his own goods without bailor's consent
  - ✓ if goods mixed with bailor's consent then there is no breach of duty and both will have interest in the mixture in proportion to their respective shares
  - ✓ where goods mixed can be separated, the property in goods remains in the parties respectively but bailee is bound to bear- expenses of separation + loss arising from mixing
  - ✓ where goods mixed cannot be separated, the bailee must compensate the bailor for his loss
- Duty to return the goods
  - ✓ bailee must return goods, without demand, on expiry of time/on accomplishment of purpose of bailment
  - ✓ if he fails to return on time, he is liable for any loss/deterioration in goods from that time onwards
  - ✓ In such case, bailee will be liable even if loss is not attributable to his neglect or is due to act of god
- Duty to return any accretion to the goods
  - ✓ bailee to return any natural increase/ profit accruing from goods bailed, to the bailor
  - ✓ Eg. If cow was bailed and in the meantime she delivers a calf, then cow+calf must be returned to the bailor

# Duties of Bailor

- **Duty to disclose faults /dangerous nature of goods bailed to the bailee**
  - ✓ A gratuitous bailor is responsible for **only those defects which he is aware of** but did not disclose to bailee who suffers loss due to such faults.
  - ✓ A bailor for reward is responsible for **all defects in the goods** bailed whether he is aware of the defects or not, if he fails to disclose them to bailee who suffers loss due to such faults
- **Duty to repay necessary expenses in case of gratuitous bailment**
  - ✓ where the bailee is not to receive any remuneration , it is the duty of bailor to repay all necessary expenses incurred by the bailee for the purpose of bailment.
  - ✓ eg. If a horse is bailed without reward for safe custody, bailor is to reimburse bailee both usual expenses (feeding/cleaning expenses)+extraordinary expenses(medical expenses etc)
- **Duty to pay extraordinary expenses incase of non-gratuitous bailment**
  - ✓ where bailee is to receive remuneration for his services, the bailor is required to bear all extraordinary expenses( but not usual/ ordinary expenses) incurred on the things bailed.
  - ✓ eg. If a horse is bailed for reward for safe custody, bailor is not liable to pay ordinary expenses of feeding the horse but if horse falls ill, the bailor must repay the medical expenses incurred on its treatment, being extraordinary expenses
- **Duty to indemnify bailee**
  - ✓ if bailee suffers any loss due to defective title of the bailor , bailor must indemnify him
  - ✓ Incase of gratuitous bailment, the bailor can terminate the contract at any time and so if premature termination causes loss to bailee more than benefit derived, bailor must indemnify bailee for the loss
- **Duty to receive the goods**
  - ✓ bailor must accept goods when returned by bailee on expiry of period of bailment/accomplishment of purpose
  - ✓ If bailor refuses to receive goods when returned, he is liable to reimburse bailee all expenses incurred by him for custody of goods

# Rights of bailee

- **Enforcement of bailors duties** eg . bailee can ,by suit, claim from bailor
  - ✓ damages for loss arising from undisclosed faults in goods bailed,
  - ✓ Reimbursement of all expenses, ordinary as well as extraordinary, incase of gratuitous bailment
  - ✓ reimbursement of extraordinary expenses incase of non-gratuitous bailment
  - ✓ indemnification of loss due to premature termination( incase of gratuitous bailment) /bad title of goods bailed
  - ✓ Recover damages incase of bailor's refusal to receive back the goods on completion of bailment
- **Right to deliver goods to one of several joint bailors**-if the bailee had received goods from several joint holders, he may restore them to any one of them.
- **Right to deliver goods, in good faith, to bailor without title**, without incurring any liability towards the true owner
- **Right of particular lien**-if the bailee, has *rendered any service involving exercise of labour or skill* on bailed goods ,which *confers an additional value* in them, then bailee can *retain those goods until he receives his due* charges on them.eg. **A delivers a rough diamond to B, a jeweler, to be cut and polished, which is accordingly done. B's labour and services enhanced the value of stone. B is entitled to retain the diamond till he is paid for the services he rendered.**
- **Right of general lien**- certain special bailors (like bankers, factors, solicitors, policy brokers , wharfingers etc.) can retain **any goods** belonging to another for amount due to them whether in respect of those goods or other goods.eg-**if two loans have been taken against two securities from a banker and the borrower repays one of these loans, the banker may detain both securities until his other loan is paid.**

# Rights of bailor

- **Enforcement of bailee's duties** eg. bailor can, by suit, recover from bailee
  - ✓ damages for loss caused to goods due to bailee's negligence
  - ✓ compensation for damage in bailed goods due to unauthorized use by bailee
  - ✓ claim compensation for loss caused due to unauthorized mixing by bailee of bailed goods with his own goods
  - ✓ right to demand return of goods on expiry of period of bailment or accomplishment of purpose of bailment
  - ✓ Right to claim any natural accretion to the goods bailed.
- **Right to terminate bailment if the bailee uses the goods wrongfully** – if bailee does, in respect of goods bailed, anything which is inconsistent with terms of bailment, the bailor can terminate the bailment even if period of bailment has not expired or purpose of bailment is not yet accomplished.
- **Right to demand return of goods at any time incase of gratuitous bailment-** when goods are lent without reward, bailor can ask for their premature –return even though bailee is not guilty of wrongful use. But bailor in such case must indemnify bailee for the loss occasioned from such premature return.

# Termination of bailment

A contract of bailment terminates under the following circumstances-

- If bailment is for 'specified period', bailment terminates on expiry of that period
- If bailment is for 'specific purpose', bailment terminates on fulfillment of purpose
- If bailee makes unauthorized use of bailed goods or does any act which is consistent with terms of bailment, the bailor can terminate the contract even if specified period hasn't expired/specific purpose has not been accomplished.
- A gratuitous bailment can be terminated by the bailor at any time, even before the specified time or specific purpose is achieved. If premature termination causes to bailee loss in excess of benefit derived, bailor must indemnify bailee
- A gratuitous bailment is terminated by the death of the bailor or the bailee.

## FINDER OF LOST GOODS

If a person finds some lost articles and takes them in his custody, he becomes responsible like a bailee in a gratuitous bailment and has certain rights and duties. Refer ppt slide on quasi contract for this. (sec. 71 of Indian Contract Act, 1872)

BAILMENT	SALE
The parties involved are called bailor and bailee	The parties involved are called buyer and seller
Possession of goods is transferred from bailor to bailee	Ownership of goods is transferred from seller to buyer
Bailee has to return the goods in specie in original/altered form	Buyer not to return goods; can do with them whatever he want
BAILMENT	LICENCE
Here there is delivery of goods from bailor to bailee	There is no delivery of goods to the licensor. Licensor merely permits the licensee to use licensor's place for keeping licensee's goods
Bailee is responsible for safety of goods bailed.	Licensor is not responsible for safety of licensee's goods.
BAILMENT	PLEDGE
SIMILARITIES- Pledge is special kind of bailment where goods are bailed as security for payment of debt/performance of promise. The bailor in this case is called pawnor and the bailee is called pawnee.	
Like bailment, a pledge also involves only transfer of possession of goods from one person (pawnor) to another (pawnee). Ownership remains with the transferor( bailor or pawnor)	
Like bailment, pledge is concerned with movable goods only .	
DISTINCTION- Bailment may be made for any purpose as specified in the contract eg. could be repairs, safe custody etc.	Purpose of pledge is to bail goods as security for payment of debt or fulfilment of an obligation
Bailee cannot sell the bailed goods i.e. can either retain them (lien) or sue the bailor for non-payment of dues.	Pledgee has a right of sale of goods pledged on default after giving notice to the pledger( pawnor)
Bailee may use the goods if nature of transaction so requires	Pledgee has no right to use the goods pledged

# PLEDGE

Pledge is special kind of bailment where goods are bailed as security for payment of a debt or performance of a promise. The bailor in this case is called pawnor and the bailee is called pawnee.

- Rights of pawnee
  - ✓ To retain the pledged goods until all dues –loan, interest, preservation charges etc are paid
  - ✓ To recover extraordinary expenses incurred in respect of pledged goods
  - ✓ To file a suit in case of default by pawnor in paying the due amount.
  - ✓ To sell goods incase of default by pawnor after giving reasonable notice of sale
- Duties of pawnee
  - ✓ To take reasonable care of goods
  - ✓ Duty not to make unauthorized use of goods
  - ✓ Duty not to mix goods pledged with his own goods
  - ✓ Duty to return goods along with accretion if any, to pawnor on payment of dues.
- Rights of pawnor
  - ✓ Enforcement of pawnee's duties like to get back the pledged goods along with accretion if any, on paying the dues of bailee, to sue the pawnee if he makes unauthorised use/mixing/ sale of goods
  - ✓ To redeem the goods pledged at any time subsequent to the due date of payment but before actual sale after paying all the dues upto the date of payment.
- Duties of pawnor
  - ✓ Duty to repay the loan
  - ✓ Duty to pay **extraordinary expenses incurred by pawnee for preservation of pledged goods**

**PLEDGE BY NON-OWNERS – DO FROM BOOK SIMILAR TO SALE BY NON OWNERS COVERED IN SALE OF GOODS ACT**