




BAILMENT & PLEDGE

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BAILMENT

- Bailment is another type of special contract. Since it is a 'contract', naturally all basic requirements of contract are applicable.
- Chapter IX section 148 to 181 of the act deals with bailment.
- There are separate acts for dealing some kinds of bailment i.e. The Carriers Act, The Railways Act, the carriage of goods by sea act.
- The word bailment derived from french word, "*Baillier*" which means "*to deliver*", which means "*handing over*". In legal sense it means change of possession of goods from one person to another for some specific purpose.

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- 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 directions 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*” [section 148].
 - Bailment means act of delivering goods for a specified purpose on trust. The goods are to be returned after the purpose is over.
 - In bailment, possession of goods is transferred, but property i.e. ownership is not transferred.
 - Bailment can be only of ‘goods’. As per section 2(7) of Sale of Goods Act, ‘goods’ means every kind of movable property other than money and actionable claim. Thus, keeping money in bank account is not ‘bailment’.



PARTIES INVOLVED

- Bailor: “the party who gives up possession, but not title, of property in a bailment”
- Bailee: “the party who acquires possession but not title of personal property in a bailment”

ESSENTIALS AND LEGAL RULES AS TO BAILMENT:

- **Contract:** A bailment is usually created by agreement b/w the bailor & bailee.
- **Delivery of Goods:** In bailment, the possession of goods must be delivered by the bailor to the bailee.
- **No Transfer of Ownership:** In bailment, possession is transferred from one person to another but ownership of goods remains with the bailor.
- **Delivery of Goods for Some Purpose:** The delivery of goods must be for some specific performance.
- **Return of Specific Goods:** Goods are delivered to the bailee with the condition that the same goods will be returned to the bailor after the accomplishment of purpose.
- **Movable Goods:** In bailment, the goods bailed must be movable.
- **Deposit of Money Into Bank:** Deposit of money into bank by a customer is not a contract of bailment because the money deposited is not returned in identical coins and notes deposits.

CLASSIFICATION OF BAILMENT:

➤ On the basis of benefit

- Bailment exclusive for Bailor's benefit.
- Bailment exclusive for Bailee's benefit
- Bailment for mutual benefit.

➤ On the basis of willingness

- **Voluntary Bailment** : Express contract between the parties.
- **Involuntary bailment**: Arises as per the operation of law.

➤ On the basis of Rewards:

- **Gratuitous Bailment** : Where neither the bailor nor the bailee get any remuneration, then, it gratuitous.
- **Non-Gratuitous Bailment** : When either the bailor or bailee get remuneration, then it is known as non-gratuitous bailment.

RIGHTS OF BAILOR

- **Right of Termination:** bailor has right to terminate the contract of bailment, if the bailee does any inconsistent act with regards to goods.
- **Right to Demand Return of Goods:** Any time in case of gratuitous bailment. The bailor can demand back goods bailed at any time even if he had lend it for a specific goods.
- **Right to file a suit against a wrong doer.**
- **Enforcement of Rights:** The duties of bailee are the rights of bailor & bailor can enforce those rights by filing a suit against bailee.
- **Avoidance of Contract:-** Commission of an act inconsistent with the terms of bailment.
- **Compensation from a wrong – doer:-** The bailor or bailee may bring a suit against third person.

DUTIES OF BAILOR:

- **Duty to disclose known defects:** A bailor is bound to disclose all the defects relating to goods of which he is known.
- **Duty to Bear Extraordinary expenses:** Where the bailment is gratuitous & the bailee is not to receive any remuneration, the bailor shall pay bailee all the necessary expenses.
- **Bear Risk for Loss:** bailor is to bear risk of loss or destruction of the thing bailed if the bailee had taken prudent care of the goods.
- **Duty to indemnify bailee:** bailor has to indemnify bailee for any loss due to imperfect title in the goods bailed.
- **Duty to receive back the goods:** on the expiry of the term of bailment.

RIGHTS OF BAILEE:

- **Right to Interplead:** If the person other than bailor claims the goods, bailee may apply to court to stop the delivery.
- **Right Against third Party:** If a third person wrongfully deprive bailee to use the goods or cause any injury, then bailee is entitled to such remedies which are available to real owner.
- **Right of Particular Lien:** When the bailee has rendered some services or skills on the good he had right of particular lien unless he is paid.
- **Right of General Lien:** Banker, factors, attorney of High Court, policy broker will be entitled to retain as a security for a general balance of account any goods bailed to them.
- **Right to Claim Compensation in Case of faulty Goods.**
- **Right to claim necessary expenses.**
- **Right to return the goods to any of the joint bailor.**

DUTIES OF BAILEE:

- ▶ To take care of the goods bailed-Sec.151
- ▶ Not to make unauthorized use of goods-Sec.154
- ▶ Not to mix Bailors goods with his own-Sec.155-157
- ▶ To return the goods bailed-Sec.160-161
- ▶ To return any accretion to the goods bailed-Sec.163

FINDER OF GOODS:

A person who comes by an article is not obliged to pick it up, but if he does so or take charge of it becomes a bailee. Such person is called finder of goods. Finder of goods is in position of bailee & enjoys all the rights & duties of bailee.

► Rights of Finder of Goods:

- Right of Lien.
- Right of sue of reward.
- Right to Sale. (When the goods are perishable in nature. Where the lawful charges exceeds $\frac{2}{3}$ rd of the value of goods).

► Duties of Finder of Goods:

- To take due care of the goods.
- To find the true owner.
- Must not use the goods of his personal purpose.
- He should not mix the goods with his own goods.
- Must return the goods to the real owner if he is found.



Termination of Bailment :

- On the expiry of the stipulated period
- On the accomplishment of the specified purpose
- By bailees act inconsistent with conditions-Sec.153
- Termination of Gratuitous bailment-Sec.159

PLEDGE

- Pledge is a kind of bailment. Pledge is also known as Pawn. It is defined under section 172 of the Indian Contract Act, 1872. By pledge, we mean bailment of goods as a security for the repayment of debt or loan advanced or performance of an obligation or promise. The person who pledges the goods as security is known as Pledger or Pawnor and the person in whose favour the goods are pledged is known as Pledgee or Pawnee.
- For example, if you borrow rupees one hundred from B and keep your cycle with him as security for repayment, it is a contract of pledge. The person taking the loan is called the pledger or pawnor and the person with whom goods are pledged is called the pawnee. Ownership of the pledged goods does not pass to the pledgee.

Pledge or Pawn

➤ The bailment of goods as security for payment of a debt or performance of a promise is called pledge.

➤ ESSENTIALS OF PLEDGE:

- **Delivery of Goods:** The delivery of goods to pledgee is necessary to constitute a pledge.
- **Delivery of goods should be by way of security.** The security being for the payment of debt or the performance of a promise.
- **Goods must be movable.** An implied condition to return the goods.



➤ **PARTIES:**

➤ Pawnor or Pledger:

➤ He who delivers goods for security is pawnor or pledgee

➤ Pawnee or Pledgee

➤ He who accepts security is pawnee or pledgee

➤ **RIGHTS AND DUTIES OF PAWNEE**

➤ Right of retainer

➤ Right of particular lien

➤ Right to extraordinary expenses

➤ Right in case of default of the pawnor

➤ **RIGHTS AND DUTIES OF PAWNOR**

➤ Right of redemption

➤ Right to take back the goods.

➤ Preservation and maintenance of goods

➤ Rights of an ordinary debtor

Duties of a Pawnor(Sec.175)

- **Pay the debt:** The pawnor is liable to pay the debt or perform his promise as the case may be.
- **Pay deficit on sale:** If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.
- **Pay extra – ordinary expenses:** The pawnor is liable to pay to the pawnee any extraordinary expenses incurred by the pawnee for preservation of goods.
- **Disclose faults in goods:** The pawnor is liable to disclose all the faults which
 - (a) Are material for use of the goods; or
 - (b) May put the pawnee to extraordinary risks.
- **Indemnify the pawnee:** If loss is caused to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.

DUTIES OF A PAWNEE

Not to use the goods: The pawnee has no right to use the goods. However, he may use the goods, if he has been so authorised by the pawnor. Duty not to make unauthorised use of goods pledged.

Return the goods: The pawnee must return the goods if the pawnor pays the debt or performs his promise. Duty to return the goods when the debt has been repaid or the promise has been performed.

Take reasonable care: The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods. Duty to take reasonable care of the pledged goods.

Not to mix goods: The pawnee must not mix his own goods with the goods pledged. Duty not to mix his own goods with the goods pledged.

Return increase in goods: The pawnee must return to the pawnor any accretion to the goods pledged with him. Duty to deliver increase (if any), to the goods pledged.

Duty not to do any act which is inconsistent with the terms of pledge.

➤ PLEDGE BY NON OWNERS

➤ **Pledge by mercantile agent**

Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.

➤ **Pledge by person in possession under voidable contract**

When the pawnor has obtained possession of the other goods pledged by him under a contract voidable under section 19 of section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquired a goods title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

➤ **Pledge where pawnor has only a limited interest**

Where person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

➤ **Pledge by co-owner in possession**

Where the goods are in possession of one of the co-owners with the consent of the other co-owners, such co-owner may create a valid pledge of goods.

➤ **Pledge by seller or buyer in possession after sale**

Pledge by seller or buyer in possession after sale is valid pledge provided it is in good faith.

Basis	Bailment	Pledge
Meaning	Transfer of goods from one person to another for a specific purpose is known as the bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Defined In	It is defined under section 148 of the Indian Contract Act, 1872.	It is defined under section 172 of the Indian Contract Act, 1872.
Parties	The person who delivers the bailed goods is known as Bailor and the person receiving such goods is known as Bailee.	The person who delivers the pledged goods is known as Pledger or Pawnor and the person receiving such goods is known as Pledgee or Pawnee.
Consideration	The consideration may or may not be present.	Consideration is always there.
Right to Sell	Bailee has no right to sell the goods bailed.	Pledgee or Pawnee has the right to sell the goods.
Use of Goods	Bailee can use the goods only for a specific purpose only and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.
Purpose	The purpose of bailed goods is for safekeeping or repairs etc.	The purpose of pledged goods is to act as security for repayment of debt or performance of the promise.