

### 1. State in brief the rights and liabilities of a Bailor and Bailee.

**Ans-** Bailment consists in delivery of goods, i.e., movable property, by one person, who is generally the owner thereof, to another person for some purpose. The goods are to be returned to their owner after the purpose is accomplished, or they are to be disposed of according to the directions of the person delivering them. For example, when you take a fan on hire, or give your suit for dry-cleaning, or give a watch for repairs, or give a parcel to a carrier for being transported to some place, there is bailment in each case.

In a contract of bailment, the person who delivers the goods is called the "bailor", and the person to whom the goods are delivered is called the "bailee".

**Section 148** of the Indian Contract Act, 1872, defines bailment as under :

**'Bailment', 'bailor' and 'bailee' defined.** 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 the person delivering them. The person delivering the goods is called the "bailor", the person to whom they are delivered is called the "bailee"

**Bailor's duty when goods bailed are defective :**

#### 1) Bailor's duty of disclosure

**Section 150** mentions the following duty of a bailor in of the goods bailed by him.

(1) The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for the damage arising to the bailee directly from such faults.

(2) If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such fault in the goods bailed.

#### 2) Gratuitous bailment

Section 150 imposes a duty on the bailor of defective goods which interfere with the use of them, or expose the bailee to extraordinary risks. He is bound to disclose those faults in the goods which create the risk and of which he is aware. If he fails to make such disclosure, he

is responsible for damage arising to the bailee directly from such fault. This duty is of gratuitous bailor or the bailor without reward, because when the bailor bails the goods for reward, he is liable for the damage caused by the defective goods even though he is not aware of the defect in them.

For example, A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for the damage sustained.<sup>1</sup>

### **3) Bailment for reward**

Section 150 deals with bailment of goods for hire. According to this provision, when the goods are bailed for hire, the bailor is liable for the damage caused to the bailee by the defective goods, whether the bailor is aware of the existence of faults in the goods or not.

For example, A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.<sup>1</sup>

**In Hyman v. Nye & Sons**, the plaintiff hired a carriage and horses from the defendant for a particular journey. The carriage being defective, it was upset and the plaintiff was injured thereby. The defendant was held liable for the injury to the plaintiff.

### **DUTIES OF BAILEE :**

A bailee has to observe the following duties :

#### **1. Duty to take reasonable care of the goods bailed (Secs. 151-152).**

##### **Bailee should act as a prudent man**

According to Section 151, the bailee should take such care of the goods as a man of ordinary prudence would take of his own goods. If the bailee has not acted like an ordinary prudent man, cannot be excused by pleading that he had taken similar care of his own goods also, and his goods, have also been lost or damaged along with those of the bailor, or that the bailor had the knowledge that his goods were being kept in a negligent manner.

### **Bailee not liable when he takes due care**

Section 151 describes the amount of care which a bailee is supposed to take. If he has taken due care, he will not be liable for any loss which may be caused to the goods bailed to him. If due care has not been taken and there is damage to the goods as a consequence of his negligence, he will be answerable for the same. When he is negligent, he cannot avoid the liability by pleading that his own goods have also been damaged along with the goods bailed or the bailor was aware that the goods bailed were being kept in a negligent manner.<sup>1</sup>

Bailee is required to take care of goods bailed to him as a man of ordinary prudence. Therefore, the bailee is not liable for the loss due to destruction of goods in accidental fire.

### **2. Duty not to make unauthorized use of the goods bailed Secs. 153 & 154)**

When the goods have been bailed for a particular purpose, the bailee is supposed to use them only for that purpose and none else. If he makes unauthorized use of the goods bailed, there are two remedies available to the bailor :

- (i) The bailor may terminate the bailment. (Section 153)
- (ii) The bailor may recover compensation for the loss caused due to unauthorized use of goods. (Section 154).

### **3. Duty not to mix bailor's goods with his own goods (Secs. 155-157)**

#### **(i) When the mixed goods can be separated**

When the goods mixed can be separated, the bailor and the bailee remain the owners in accordance with their respective shares. The bailee is responsible to bear the expense of separation or division of the goods and also for any damage arising from the mixture. Section 156, which contains a provision in this regard.

**(ii) When the mixed goods cannot be separated** In case, the nature of the goods is such that the bailor's goods cannot be separated from those of the bailee, it is deemed to be the loss of goods and the bailor can recover compensation for the same from the bailee.

### **4. Duty to return the goods on the fulfilment of the purpose Secs. 160 & 161, 165-167)**

#### **According to Section 160 :**

"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."

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Since the bailment of the goods is either for a certain purpose or a certain period, the bailee is bound to return the goods to the bailor as soon as the time for which they were bailed has expired, or the purpose of bailment has been accomplished.

According to Section 161 :

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

If a bailee is not in a position to deliver back the goods, for instance, when they are lost due to the fault of his servants, the responsibility for such loss is that of the bailee.

### **5. Duty to deliver to the bailor increase or profit on the goods bailed (Section 163).**

According to Section 163, "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 instance, 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.

According to Section 163, accretions in respect of the goods bailed are part of the bailed goods and hence such accretions do not belong to the bailee, and, therefore, they have to be handed over to the bailor when the goods bailed are returned.

### **Rights of bailee**

The bailee of the goods has the following rights under the Act:

#### **1. Right to recover necessary expenses incurred on bailment (Section 158).**

When under a contract of bailment, some remuneration is to be paid to the bailee for services he renders in respect of them, he has a right to recover the same, or to exercise the right of lien in respect of such goods until he receives the necessary payment.

Even when the bailment is gratuitous, i.e., the bailee is to receive no remuneration for the service rendered by him, he is nonetheless entitled to recover from the bailor necessary expenses incurred by him for the purpose of the bailment.

#### **2. Right to recover compensation from the bailor (Section 164).**

Sometimes the bailor may not be entitled to make the bailment, or to receive back the goods. This may result in some loss to the bailee. The bailee is entitled to recover from the bailor such loss as may be caused due to the above stated reason. The provision in this regard is contained in Section 164, which reads as under :

**"164. Bailor's responsibility to bailee.** The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

**3. Right of lien on the goods bailed (Secs. 170 and 171)** Lien is the right of the bailee under which the bailee can retain the goods of the bailor, and refuse to deliver them to the bailor, until his due remuneration for services in respect of the goods bailed, or the amount due is paid.

The Act recognizes two kinds of lien

- (1) Particular lien, and
- (2) General lien.

The right of 'particular lien' entitles the bailee to retain those very goods for the services regarding which the remuneration is due. The 'general lien' entitles the bailee to retain the goods of the bailor for a general balance of account.

#### **4. Right of suit against a wrongdoer (Section 180)**

When the goods have been bailed, if a third person wrongfully deprives the bailee of their use or possession, or causes an injury to the goods, the bailee can sue such third person for wrong to the goods. It may be noted that not only the bailee but the bailor also can bring an action against such third party. The provision in this regard is contained in Section 180.

If a person fraudulently or forcibly takes away the goods from the bailee, the bailee has a right to recover the same. In *Purushottam Das Banarasi Das v. Union of India*, A obtained delivery of certain goods from the railway on a forged railway receipt. A pledged the goods to B. It was held that the railway authorities had a right to recover those goods from B.

## **2. What is Pledge? What is difference between pledge and bailment?**

**Ans-** According to **Section 172:**

"The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called 'pawnor'. The bailee is called the 'pawnee'."

'Pledge' or 'Pawn' is a kind of bailment of goods with a special purpose. The goods pledged or pawned serve as security for the payment of a debt or performance of a promise. The person

pledging the goods is known as the 'Pawnor' and the person with whom the goods are pledged is known as the 'Pawnee' or 'Pledgee'.

### **Nature of Pledge**

According to Halsbury's Laws of England, "pawn" has been described as: a security whereby contract, a deposit of goods is made a security for a debt and the right to the property vests in the pledgee so far as is necessary to secure the debt; in this sense it is intermediate between a simple lien and a mortgage which wholly passed the property in the things conveyed.

The pawnee has a special property or special interest in the thing pledged, while the general property therein continues in the owner. That special property or interest exists so that, the pawnee can compel payment of the debt or can sell the goods when the right to do so arises.

This special property or interest is to be distinguished from the mere right of detention which the holder of a lien possesses, in that it is transferable in the sense that a pawnee may assign or pledge his special property or interest in the goods.

Where judgment has been obtained against the pawnor of goods and execution has issued thereon, the sheriff cannot seize the goods pawned unless he satisfied the claim of the pawnee.

On the bankruptcy of the pawnor, the pawnee is a secured creditor in the bankruptcy with respect to things pledged before the date of the receiving order and within notice of the prior available act of bankruptcy.

### **Essentials of pledge**

In order to constitute a valid pledge, the following requirements must be satisfied:

- (1) There should be bailment of goods, ie, the delivery of goods from one person to another.
- (2) The purpose of such bailment is to make the goods bailed serve as security for the payment of performance of a promise.

### **Who can pledge**

Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. If a servant has the custody of the goods, or a tenant gets the possession of a furnished house, the servant cannot pledge the goods, nor can a tenant pledge the furnishing materials in his possession. A person obtaining the goods fraudulently does not have any right to pledge them. In **Purshottam Das v. Union of India**, A obtained the possession of certain

goods from the railway on the basis of a forged railway receipt and then pledged the goods to B. It was held that the pledge by A was not valid, and B did not get any rights in the goods as a pledgee, and hence the railway authorities could recover the goods from B.

In the following exceptional cases, a person who is neither the owner, nor having the authority from the owner for pledging the goods, but having possession with the owner's consent can make a pledge and confer rights on the pledgee.

The exceptions recognized are as follows:

- (1) Pledge by a mercantile agent. (Section 178).
- (2) Pledge by person in possession under voidable contract. (Section 178A).
- (3) Pledge by a person with a limited interest. (Section 179).
- (4) Pledge by seller in possession after sale. [Section 30 (1), Sale of Goods Act.]
- (5) Pledge by buyer in possession after sale. [Section 30 (2), Sale of Goods Act.]

### **Rights of Pledge or Pawnee (Secs. 173 to 176)**

A pawnee has the following rights under the Act:

- (1) Right to retain the goods pledged. (Secs. 173 and 174).
- (2) Right to recover extraordinary expenses incurred by him. (Section 175).
- (3) Rights of suit to procure the debt, etc., and sale of the pledged goods. (Section 176).
- (4) Pawnor's right to redeem (Section 177)

### **Bailment and Pledge distinguished**

1. Bailment is a wider term. It includes pledge. Pledge is a kind of bailment, where the goods are delivered by one person to another as security for payment of a debt or performance of a promise. It means that if the goods serve as security, it is pledge, whereas when the goods are given for some other purpose, for example, a watch is given for repairs, it is bailment (other than pledge).
2. In case of bailment, if the bailor does not pay the lawful charges due to the bailee in respect of services, etc. rendered by the bailee, the bailee can exercise lien over the goods bailed, i.e., he can retain them until the necessary payment is made to him. In case of pledge, the pledgee has not only a right to retain the goods pledged until the repayment of debt or performance of the promise, etc., but in the event of default by the pawnor in payment of the debt, or performance of the promise at the stipulated time, he may even sell the goods, after giving a due notice of sale to the pawnor.