

## UNIT 8: Bailment and Pledge

sec 148: Bailment means when goods are delivered by one person to another for some purpose and goods shall be returned on accomplishment of purpose or disposed as per direction of Bailor.

Parties :



### Essential Element

① contract - Express / Implied  
- NO consideration is necessary

② Delivery of goods : Delivery of goods from one person to another

- movable goods ✓
- Immovable / money ⊗

Delivery < Actual constructive

③ Purpose - Implied / Express

④ Possession -

- Possession is changed from bailor to bailee
- Ownership is not changed

⑤ Return of goods -

once time is elapsed or purpose is accomplished bailee should return the goods

## Duty of Bailor

①. Bailor's duty to disclose Fault in goods Bailed



② Damage + Extra ordinary Damage } Bailor liable } Extra ordinary Damage

### ③. Duty to Indemnify for premature termination

Bailor must compensate bailee for loss suffered due to premature termination that is in Exem of Benefit Received where he had given goods gratuitously.

### ④ Bailor Responsibility towards Bailee



Indemnify loss

Bailee suffers due to

① Bailor Not Entitled to Bailment

② Failed Instruction

Duty of Bailor to Return Back goods when bailor gives In case Failed  
↓

liable for compensat<sup>n</sup> towards safe - custody

## Duties of Bailor

① To take reasonable care of goods

① As a man of ordinary prudence would take in same circumstances

② Exception:

If he has taken reasonable care then Bailor is not liable for any loss

② Not to make inconsistent use of goods

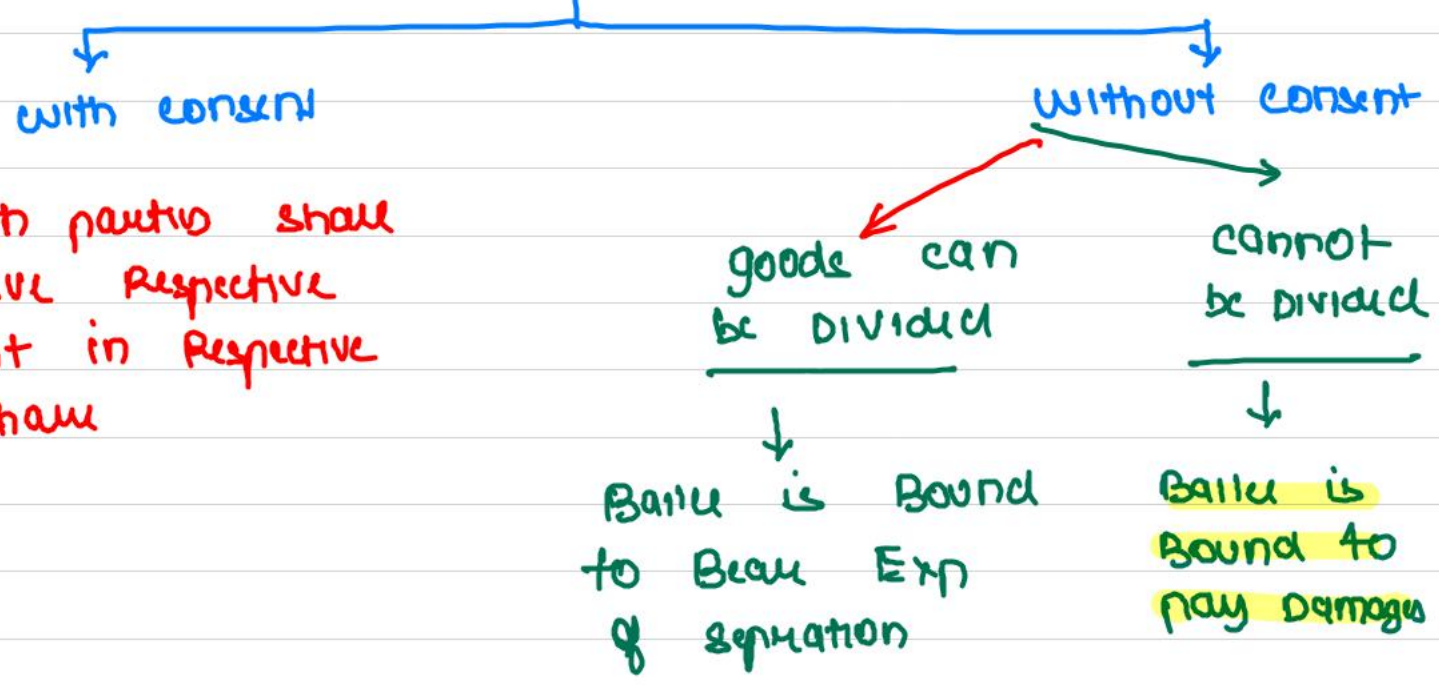
If Bailor makes inconsistent use

liable for compensation

voidable contract on part of Bailor.

③ Not to mix goods

If Bailor mixes



Both parties shall have respective Int in respective share

goods can be divided

cannot be divided

Bailor is Bound to Bear Exp of separation

Bailor is Bound to pay damages

④ Return of goods

It is duty of Bailor to return goods on delivery as per Bailor's instruction

⑤ Return an accusation on goods :

- Bailor is Bound to return goods and its increase to Bailor.

⑥ NOT to set up adverse title for Bailor.

## Rights of Bailor

①. Right to terminate Bailment

- contract is voidable at option of Bailor when bailor makes inconsistent use of goods

②. Right to Demand Back goods

- In case of gratuitous bailment bailor can demand goods at any time even if before expiry of period.

- In case of any loss which is suffered by bailor which is more than benefit obtained from Bailor is liable

③ Right to File suit Against wrong doer:

- Bailor has Right to sue bailor for all liabilities and duties of him and
- Any person who does any wrongful Act

④. Right to sue Bailor  
- liability / duties of him

⑤ Right to compensation:

- Increase when bailor mixes goods with that of other

## Rights of Bailor

①. Right to deliver goods to any one of joint Bailor:

unless contract to contrary,  
bailor can give goods to any of  
Bailor

## ② Right to Indemnity :

Bailor has Right to claim any loss from Bailee arising out of

- a) Bailor not made Bailment
- b) Receive back goods
- c) Failed to give direction

If bailor is not owner of goods and bailor delivers goods as per Instruction of bailor then he is not liable to true owner

## ③ Right to claim compensation in case of Faulty goods

- Bailor can claim compensation for the loss suffered by him in case of Faulty goods
- In case of Non Q Bailment, he can claim compensation Even if he was not aware.

#### ④ Right to claim Necessary

- Gratuitous B - N + Extra ordinary
- Non G. Bailment - Extra ordinary

#### ⑤. Right to Apply to court to decide title

- If some other person claims on goods bailed then he may apply to court to decide title

#### ⑥ Right of Particular - lien

#### ⑦ Right of general lien

### # Rights of Bailor & Bailu Against wrong Doer

If any third person wrongfully deprives the bailu from using the goods bailed or does him Injury then bailu is entitled to such remedio when he may possess as a owner.

## # Appraisalment of Relief / Compensation obtained by suit

- Bailor and Bailee may appraisal as per respective Interest

## # Termination of Bailment

① on Expiry of stipulated period :

If goods bailed for specified term then it shall be terminated after Expiry of period.

② On Fulfillment of Purpose :

Once purpose is fulfilled then contract of Bailment is terminated

③ By Notice :

① where Bailee acts Inconsistent with terms of Bailment then bailor can give notice to terminate bailment

② In case of Gratuitous Bailment Bailor can at any time terminate

contract of Bailment and he will be liable towards Bailor for any loss which over and above benefit received.

④ By death:

In case of QB contract gets terminated on death of either Bailor or Bailor

⑤ Destruction of subject matter

contract gets terminated in case subject matter of contract is destroyed

Finder of lost goods

- Duty to find true owner and surrender goods
- NO right to sue: for compensation of trouble or Exp voluntarily incurred
- But he has right to retain goods on above grounds

- Increase of any Award declared:  
see and Retain goods

# When Finder of goods can see them?

Pushing nature  
+ lose-greater part of value

lawful charge  
 $\geq 2/3$  value of goods

Right of lien: It is right of a person to retain goods belonging to another until claim is satisfied

Particular lien

General lien

- Retain only particular goods on which some sort of work and labour is done
- such Right is available until and unless remuneration is received

Right to retain goods not only for demand arising out of that goods but on general account balance

# Pledge

Bailment of goods as security for payment of debt or promise - Pledge



## Essential of contract of Pledge

- ① Bailment for security against debt
- ② subject matter - goods
- ③ goods - Existence
- ④ delivery of goods - Pledgee → Pledge

## Rights of Pledgee / Pawnee :

### ①. Retain goods

- until payment of debt or performance of promise and also Interest and Necessary Expenses

### ② Right to Retain of any subsequent debts:

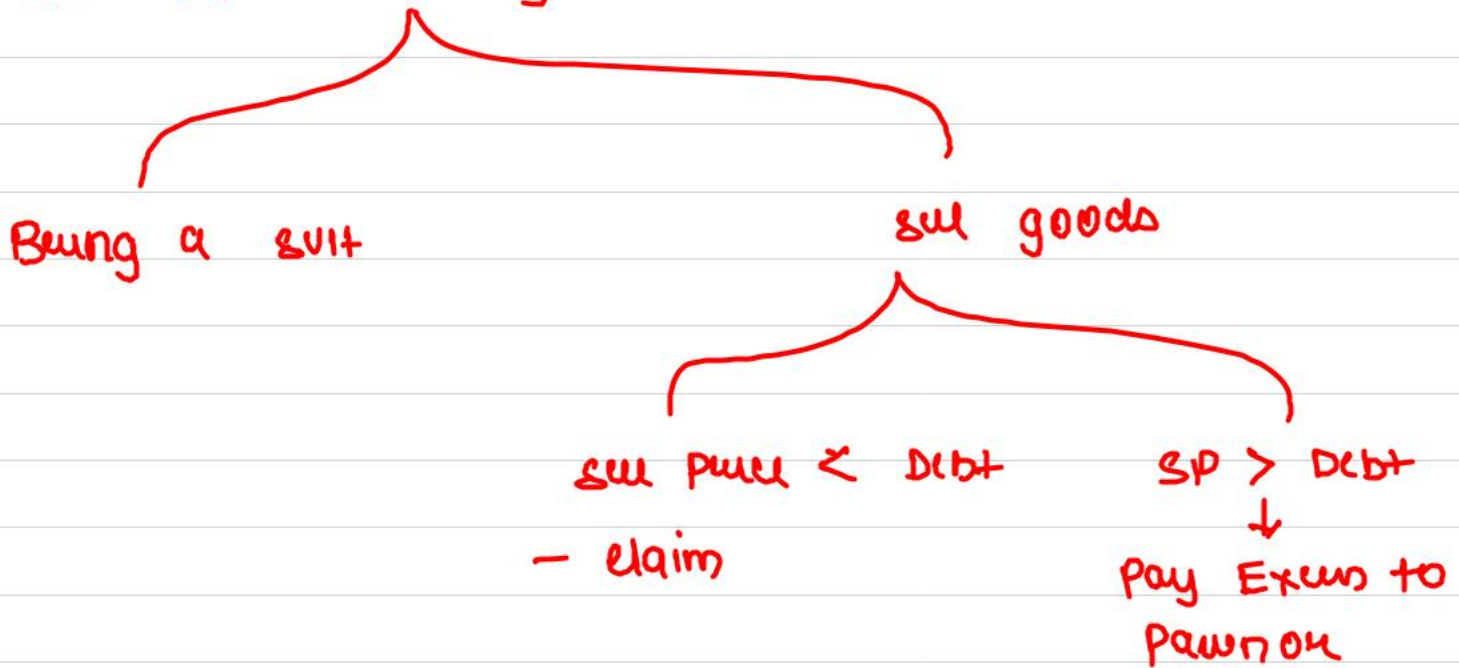
- when contract so specific, goods can be retained for any subsequent debts other than for which they were pledged

### ③ Pawnee Right for Extra ordinary Expenses

- He cannot retain goods but can sue for Extra ordinary Expenses

### ④ Pawnee's Right when pawnee makes Default

If pawnor makes any default on payment of debt or performance of promise then following rights can be exercised by pawnee



# Rights of Pawnee = Rights of Bailor.

# Right to Redeem (see 177)

If pawnor makes any default in payment of debt / promise then he may Redeem goods at any time before actual sale but he must pay additional Expenses which may have arisen due to his default

### Duties of the Pawnee

Pawnee has the following duties:

- a. Duty to take reasonable care of the pledged goods.
- b. Duty not to make unauthorized use of pledged goods.
- c. Duty to return the goods when the debt has been repaid or the promise has been performed.
- d. Duty not to mix his own goods with goods pledged.
- e. Duty not to do any act which is inconsistent with the terms of the pledge.
- f. Duty to return accretion to the goods, if any.

### Duties of a Pawnor

Pawnor has the following duties:

- a. The pawnor is liable to pay the debt or perform the promise as the case may be.
- b. It is the duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.
- c. It is the duty of the pawnor to disclose all the faults which may put the pawnee under extraordinary risks.
- d. If loss occurs to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.
- e. If the pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.

## Pledge by NON OWNERS

### ①. Pledge by mercantile Agent :

- mercantile Agent who is in possession of goods with consent of owner
- can Pledge them if it is in ordinary course of Business
- It shall be valid as if it is made by owner of goods

### ② Pledge by Person - under voidable contract

- If any person obtains possession in voidable contract [ CUFM ]
- And before contract is avoided
- Pawnee gets good title in case of goods pledged
- provided Pawnor acted in good Faith

③ Pledge where pawnor has only limited Interest

→ where person pledges goods in which he has limited Interest - pawnor is not absolute owner & Pledge is valid upto that Interest

④ Pledge by co owner in possession

If any co owner is in possession of goods with permission of other co owner then he can Pledge goods and Pledge get good title

⑤ Pledge by seller or Buyer in possession

- where any buyer who is in possession of goods b4 property pass to him can Pledge goods

- where seller who sold goods has possession of that goods can Pledge them

- In both cases he gets good title