

Unit 8

Indian Contract Act, 1872

BAILMENT AND PLEDGE

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What is Bailment?

Bailment is the delivery of goods by one person to another for some purpose, upon a contract, that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Parties to Bailment:-

- a) Bailor:- The person delivering the goods.
- b) Bailee:- The person to whom the goods are delivered.

Essential elements:-

The essential elements of a contract of bailment are:-

- a) Contract:- Bailment is based upon a contract. The contract may be express or implied. No consideration is necessary to create a valid contract of bailment.
- b) Delivery of goods:- It involves the delivery of goods from one person to another for some purposes.

The delivery of the possession of goods is of the following kinds:-

Actual Delivery

Constructive delivery

i) Actual Delivery:-

When goods are physically handed over to the bailee by the bailor.

ii) Constructive Delivery:-

Where delivery is made by doing anything that has the effect of putting goods in the possession of the bailee of any person authorized to hold them on his behalf.

c) Purpose:- The goods are delivered for some purposes. The purpose may be express or implied.

d) Possession:- In Bailment, possession of goods changes.

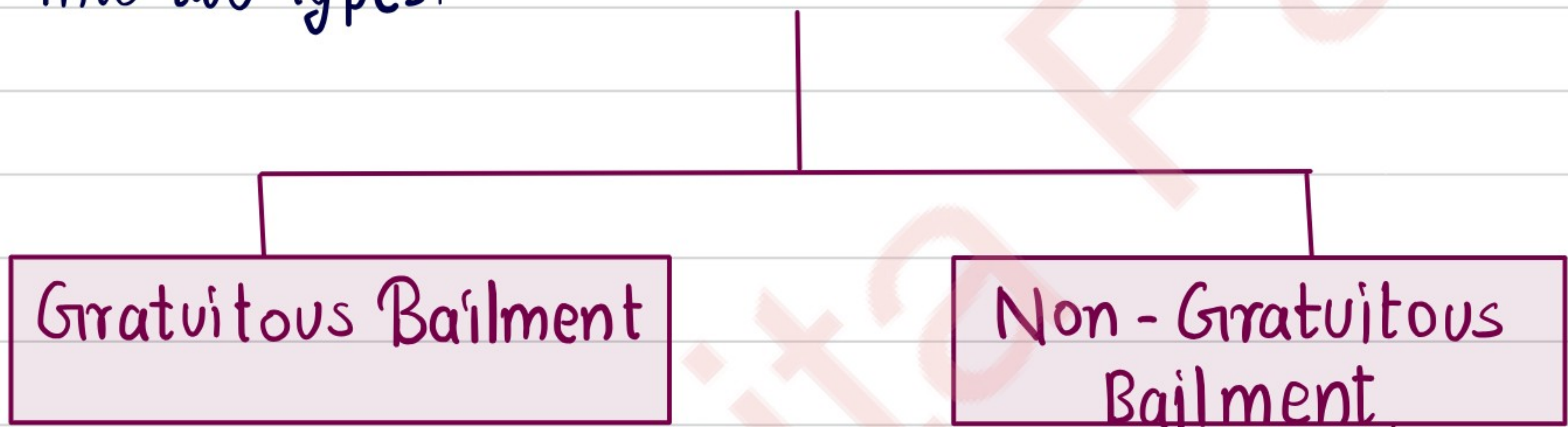
e) Return of goods:- Bailee is obliged to return the goods physically to the bailor.

Types of Bailment :-

1. On the basis of benefit, bailment can be classified into three types. :-

- for the exclusive benefit of bailor.
- for the exclusive benefit of bailee
- for mutual benefit of bailor and bailee.

2. On the basis of reward, bailment can be classified into two types:-



a) Gratuitous Bailment:-

The word gratuitous means free of charge.

b) Non-Gratuitous Bailment:-

Non-gratuitous bailment means where both the parties get some benefit i.e., Bailment for the benefit of both bailor & bailee.

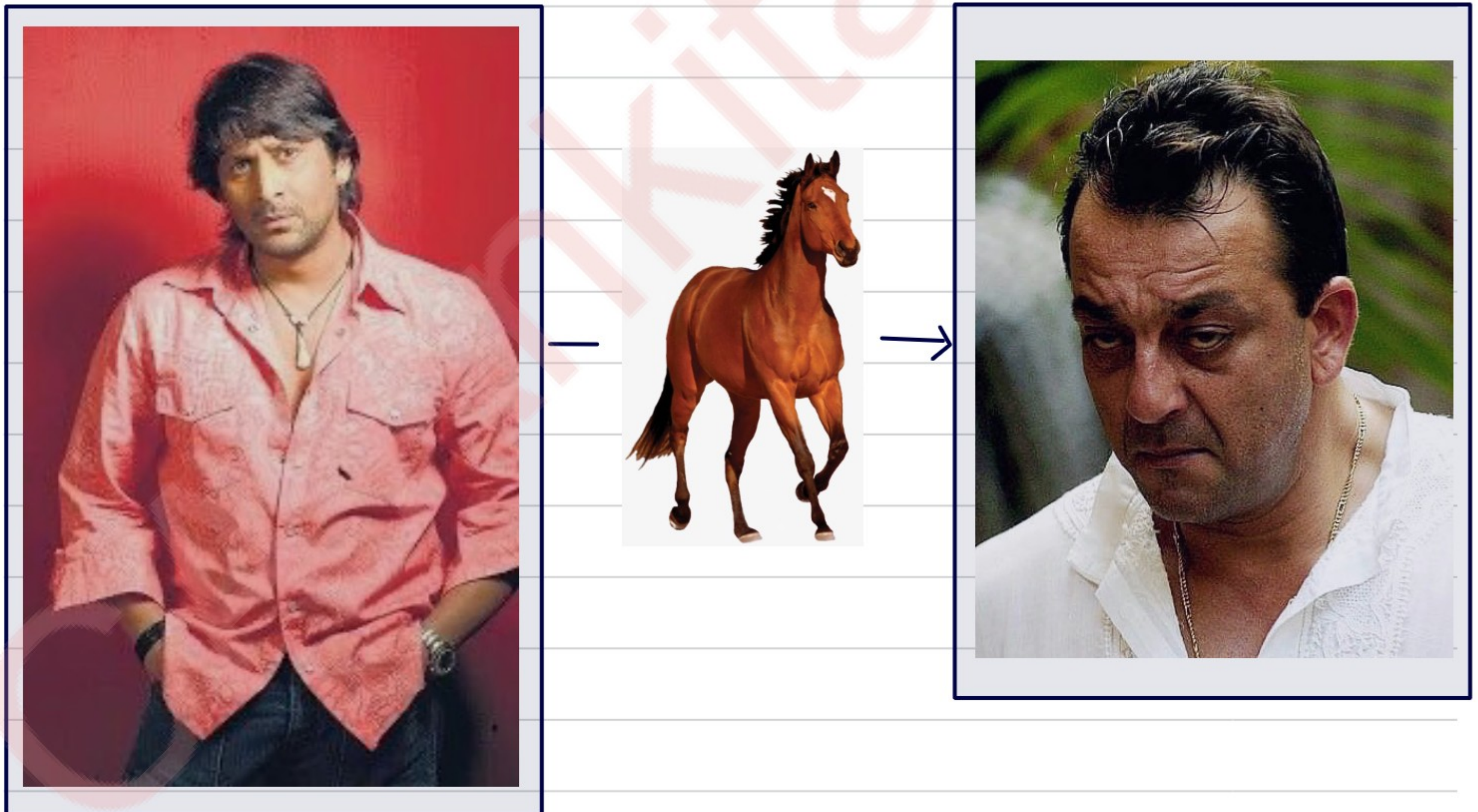
Duties of a Bailor:-

i) Bailor's duty to disclose faults in goods bailed (section 150):-

a) In Case of gratuitous Bailment:-

The Bailor is bound to disclose to the bailee faults in the goods bailed, and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

Example:-



Ghanta Singh lends a horse to Kabir Nayak, which he knows to be vicious. He does not disclose the fact of the horse is vicious. The horse runs away.

Kabir nayak is thrown and injured. Ghanta Singh is responsible to kabir nayak for damage sustained.

b) In case of non-gratuitous Bailment:-

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

ii) Duty to pay necessary expenses (section 158):-

a) In case of Gratuitous Bailment:-

The Bailor shall repay to the bailee the necessary expenses incurred by him and any extra-ordinary expenses incurred by him for the purpose of the Bailment.

b) In Case of Non - Gratuitous Bailment:-

The Bailor is liable to pay the extra ordinary expenses incurred by the bailee.

iii] Duty to indemnify the Bailee for premature termination (section 159) :-

The Bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of Bailment.

iv] Bailor's responsibility to Bailee (section 164) :-

The Bailor is responsible to the bailee for the following:-

a) Indemnify 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.

b) It is the duty of the bailor to receive back the goods when the bailee return them after the time of Bailment has expired or the purpose of bailment has been accomplished.

Duties of a Bailee:-

1) Take reasonable care of the goods (section 151 & 152):-

The Bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take care of his own goods.

Exception:- Bailee when not liable for loss, etc of thing bailed (section 152):-

The Bailee, is not responsible for the loss destruction or deterioration of the thing bailed, if he has not taken reasonable care as required.

2) Not to make inconsistent use of goods:-
(section 153 & 154):-

If the Bailee make any use of the goods bailed, which is not according to the terms and conditions of the bailment, he is liable to compensate the bailor for any loss or destruction of goods.

A Contract of Bailment is voidable at the option of the Bailor, if the Bailee does not use the goods according to the terms and conditions of bailment.

Example :



Sachin Tendulkar gives his Ferrari for washing & maintenance purpose to Sharmen Joshi.

Sharmen Joshi drives the car as his son wants the ride of the car. Later, the car gets stolen.

Sharmen Joshi is liable to make compensation to Sachin Tendulkar for the recovery of the amount.

3) Not to mix the goods:-

i) If the Bailee, mixes the goods bailed with his own goods, with the consent of the bailor, both the parties shall have an interest in proportion of their respective shares in the mixture thus produced.

ii) If the Bailee, without the consent of the bailor, mixes the goods bailed with his own goods can be separated. ; But the bailee is bound to bear the expenses of separation or division and any damage arising from the mixture.

iii) 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, The Bailor is entitled to be compensated by the bailee for the loss of goods.

4) Return the goods:-

It is the duty of bailee to return 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.

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

5) Return an accretion from the Goods:-

In the absence, 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.

6) Not to setup Adverse Title:-

Bailee must not setup a title adverse to that of the bailor. He must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor.

Rights of a Bailor:-

i) Rights to terminate the Bailment:-

A Contract of bailment is voidable 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.

ii) Right to demand back the goods:-

When the goods are lent gratuitously the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.

iii) Right to file a suit against a wrong doer.

iv) Right to sue the bailor:-

The Bailor has a right to sue the bailee for the enforcing all the liabilities and duties at him.

v) Right to compensation:-

If any damage is caused to the goods bailed because of the unauthorized use of the goods or unauthorized mixing of the goods, The bailor has a right to claim compensation for the same.

Rights of a Bailee:-

1) Right to deliver the goods to any one of the joint bailors:-

If several joint owners bailed the goods, the bailee has a right to deliver them to any one of the joint owners unless there was a contract to the contrary.

2) Right to indemnity:-

Bailee is entitled to be indemnified by the bailor, for any loss arising to him by reasons that the bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them.

Bailee can also claim all the necessary, incurred by him for the purpose of gratuitous bailment.

4) Right to claim necessary expenses:-

In Case of gratuitous Bailment, the bailor shall repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment.

5) Right to Apply to Court to decide the Title of the goods:-

If the goods bailed are claimed by the person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.

6) Right of particular lien for payment of services:-

7) Right of general lien.

Rights of Bailor and Bailee against any wrong doer (Third Party):-

If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Termination of Bailment:-

1) On expiry of stipulated period:-

If the goods were given for a stipulated period, the contract of Bailment shall terminate after the expiry of such period.

2) On fulfilment of the purpose:-

If the goods were delivered for a specific purpose a bailment shall terminate on the fulfillment of that purpose.

3) By Notice:-

a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, The bailor can always terminate the contract of bailment by giving a notice to the bailee.

b) A gratuitous bailment can be terminated by the bailor at any time by giving the notice to bailee.

4) By Death:-

A gratuitous bailment terminates upon the death of either the bailor or the bailee.

5) Destruction of the subject matter:-

A Bailment is terminated if the subject matter of the bailment is destroyed or there is a change in the nature of goods which makes it impossible to be used for the purpose of Bailment.

Finder of the lost goods:-

Right of finder of lost goods. may sue for specific reward offered

A person who finds some goods which do not belong to him, is called the finder of the goods.

It is the duty of the finder of goods to find the true owner and surrender the goods to him.

The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation and where the owner has offered a specific reward on the lost goods, the finder may sue the owner for such reward, and may retain the goods until then

When finder of thing commonly on sale may sell it.

1] when the thing is in danger of perishing or of losing the greater part of its value.

2] When the lawful charges of the finder in respect of the thing found amount to two thirds of its value.

Right of lien:-

Lien is the right of a person.

- i) To retain the goods belonging to another.
- ii) Until his claim is satisfied.
- iii) Some debt due to him is repaid.

Types of lien



a) Particular lien:-

It is a right to retain only the particular goods in respect of which the claim is due.

Where the bailee has, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has a right to retain such goods until he receives due remuneration for the services

he had rendered in respect of them.

b) General lien:-

It is a right to retain the goods not only for the demands arising out of the goods retained but for a general balance of account in favour of certain persons.

Difference between Bailee's General lien and Particular lien.

General lien	Particular lien
Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.	Section 170 of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien.
General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
A general lien is not automatic but is recognized through an agreement. It is exercised by the bailee only by name.	It is automatic.
It can be exercised against goods even without involvement of labor or skill.	It comes into play only when some labor or skill is involved has been expended on the goods, resulting in an increase in value of goods.
Only such persons as are specified under section 171, e.g., Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled to particular lien.

Pledge :-

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

The Bailor is in the case called the pawnor.

The Bailee is called the pawnee.

Essentials of Contract of Pledge

There shall be a bailment for security against payment or performance of the promise,

The subject matter of pledge is goods,

Goods pledged for shall be in existence,

There shall be the delivery of goods from pledger to pledgee

Rights of a Pawnee / Pledgee:-

a) Right to retain the pledged goods:-

The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

b) Right to retention of subsequent debts:-

The pawnee can retain the goods pledged for any debt or promise.

c) Pawnee's right to extraordinary expenses incurred:-

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

d) Pawnee's right where pawnor makes default:-

The pawnee may bring a suit against the pawnor upon the debt or promise and retain the goods pledged as a collateral security.

- He may sell the thing pledged on giving the pawnor reasonable notice for the sale.

Rights of a Pawnor :-

As the bailor of goods, pawnor has all the rights of the bailor. Along with that he also has the right of the redemption to the pledged goods.

Right to redeem:-

If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time., he may redeem the goods pledged at any subsequent time before the actual sale of them.

Duties of the Pawnee:-

- 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 the 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:-

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

Pledge by Non-owners:-

a) Pledge by mercantile agent (section 178):-

A mercantile agent, who is in the possession of goods with the consent of owner, can pledge with them while acting in the ordinary course of business as a mercantile agent.

b) Pledge by a person in possession under voidable contract:-

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

c) Pledge where pawnor has only a limited interest:-

Where a person pledges goods in which he has only a limited interest i.e. pawnor is not the absolute owner of goods, the pledge is valid to the extent of that interest.

d) Pledge by a co-owner in possession:-

Where the goods are owned by many persons and with the consent of other owners, the goods are left in the possession of one of the co-owners.

Such a co-owner may make a valid pledge of the goods in his possession.

e] Pledge by seller or buyer in possession:-

A buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge provided the pawnee acts in a good faith and he has no knowledge of the defect in title of the pawnor

Difference between Bailment and Pledge:-

Basis of Distinction	Bailment	Pledge
Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Parties	The person delivering the goods under a contract of bailment is called as "Bailor". The person to whom the goods are delivered under a contract of bailment is called as "Bailee".	The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee".
Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods).	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.
Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
Right to sell the goods	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed.	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.