



LET'S LEARN LAW

The Indian Contract Act, 1872
Unit-08

Learn Module Keywords



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PURPOSE

CHANKYA NITI SERIES – UNDERSTANDING CONCEPT

LET'S LEARN LAW SERIES – LEARNING KEYWORDS

NOTE :- WATCH THIS SERIES AFTER UNDERSTANDING ALL THE CONCEPTS. AS THE PURPOSE OF THIS SERIES IS TO HELP STUDENTS LEARN KEYWORDS



Topic : What is bailment?

Pg. No. 2.176

The word “Bailment” has been derived from the French word “ballier” which means “to deliver”. Bailment etymologically (origin) means ‘handing over’ or ‘change of possession’.



Topic : What is bailment?

Pg. No. 2.176

As per Section 148 of the Act,
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.



Topic : What is bailment?

Pg. No. 2.177

- Example 1: Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.
- Example 2: X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is contract for bailment.
- Example 3: Goods given to a friend for his own use, without any charge.
- Example 4: X delivers goods to blue dart for carriage.



Topic : What is bailment?

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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.



Topic : What is bailment?

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(b) Delivery of goods:

It involves the delivery of goods from one person to another for some purposes.

Bailment is only for moveable goods and never for immovable goods or money.



Topic : What is bailment?

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

- (i) **Actual Delivery:** When goods are physically handed over to the bailee by the bailor. Eg: delivery of a car for repair to workshop



Topic : What is bailment?

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(ii) Constructive Delivery:

Where delivery is made by doing anything
that has the effect of putting goods
in the possession of the bailee

or of any person authorized to hold them on his behalf. Eg: Delivery of the key of car to a workshop dealer for repair of the car.



Topic : What is bailment?

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(c) Purpose:

The goods are delivered for some purpose.

The purpose may be express or implied.



Topic : What is bailment?

Pg. No. 2.177

- (d) **Possession:** In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee. The change of possession does not lead to change of ownership. In bailment, bailor continues to be the owner of goods. Where a person is in custody without possession he does not become a bailee.



Topic : What is bailment?

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For example, servant of a master who is in custody of goods of the master does not become a bailee.

Similarly, depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of the owner though kept in a locker at the bank.



Topic : What is bailment?

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- (e) **Return of goods:** Bailee is obliged to return the goods physically to the bailor. The goods should be returned in the same form as given or may be altered as per bailor's direction. It should be noted that exchange of goods should not be allowed. The bailee cannot deliver some other goods, even not those of higher value.

Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.



Topic : Types of Bailment?

Pg. No. 2.178

(1) **On the basis of benefit**, bailment can be classified into three types:

(a) **For the exclusive benefit of bailor:**

Example 5: The delivery of some valuables to a neighbour for safe custody, without charge.

(b) **For the exclusive benefit of bailee:**

Example 6: The lending of a bicycle to a friend for his use, without charge.



Topic : What is bailment?

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(c) **For mutual benefit of bailor and bailee:**

Example 7: Giving of a watch for repair.



Topic : What is bailment?

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- (2) **On the basis of reward**, bailment can be classified into two types:
- (a) **Gratuitous Bailment:** The word gratuitous means free of charge. So, **a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge.** Such bailment would be either for the exclusive benefits of bailor or bailee.



Topic : What is bailment?

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(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



Topic : Duties Of A Bailor

Pg. No. 2.178

Duties of Bailor: The duties of bailor are spelt out in a number of Sections [Section 150, 158, 159, 164]. These are categorized under the following headings:

Duties of
Bailor

- Disclose known facts
- Bear necessary expenses
- Indemnify bailee
- Bound to accept the goods



Topic : Duties Of A Bailor

Pg. No. 2.179

(i) Bailor's duty to disclose faults in goods bailed [Section 150]:

In case of gratuitous bailment:

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 damage arising to the bailee directly from such faults.



Topic : Duties Of A Bailor

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Example 8: 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 damage sustained.



Topic : Duties Of A Bailor

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(b) In case of non- gratuitous bailment:

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 faults in the goods bailed.



Topic : Duties Of A Bailor

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Example 9: 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.

In *Hyman & Wife v. Nye & Sons* (1881), A hired from B a carriage along with a pair of horses and a driver for a specific journey. During the journey a bolt in the under-part of the carriage broke away. As a result of this, the carriage became upset and A was injured. It was held that B was liable to pay damages to A for the injury sustained by him. The court observed that it was the bailor's duty to supply a carriage fit for the purpose for which it was hired.



Topic : Duties Of A Bailor

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Sometimes, the goods bailed are of dangerous nature (e.g., explosives). In such cases it is the duty of the bailor to disclose the nature of goods. [Great Northern Ry' case (1932)]



Topic : Duties Of A Bailor

Pg. No. 2.179

- (ii) Duty to pay necessary expenses [Section 158]:
 - (a) In case of Gratuitous bailment: **Where**, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the **bailee is to receive no remuneration (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.



Topic : Duties Of A Bailor

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- (b) In case of non-gratuitous bailment the bailor is liable to pay the extraordinary expenses incurred by the bailee.

Example 10: A hired a taxi from B for the purpose of going to Gurgaon from Noida. During the journey, a major defect occurred in the engine. A had to pay Rs. 5000 as repair charges. These are the extraordinary expenses and it is the bailor's duty to bear such expenses. However, the usual and ordinary expenses for petrol, toll tax etc. are to be borne by the bailee itself.



Topic : Duties Of A Bailor

Pg. No. 2.180

(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.



Topic : Duties Of A Bailor

Pg. No. 2.180

- (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 (defective title in goods).



Topic : Duties Of A Bailor

Pg. No. 2.180

- (b) It is the duty of the bailor to receive back the goods when the bailee returns them after the time of bailment has expired or the purpose of bailment has been accomplished. **If the bailor refuses to take delivery of goods when it is offered at the proper time the bailee can claim compensation for all necessary expenses incurred for the safe custody.**

Example 11: X delivered his car to S for five days for safe keeping. However, X did not take back the car for one month. In this case, S can claim the necessary expenses incurred by him for the custody of the car.



Topic : Duties of a Bailee

Pg. No. 2.180

Take
reasonable
care of goods
bailed

No
unauthorized
use of goods

No mixing
of bailor's
goods with
his own

Return the
goods

To return
any extra
profit
accruing
from goods
bailed.



Topic : Duties of a Bailee

Pg. No. 2.180

- (1) **Take reasonable care of the goods (Section 151 & 152):** In all cases of bailment, 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 of the same bulk, quality and value, as the goods bailed.



Topic : Duties of a Bailee

Pg. No. 2.180

Example 12: If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss caused on account of riot.



Topic : Duties of a Bailee

Pg. No. 2.181

Example 13: A deposited his goods in B's warehouse. On account of unprecedented floods, a part of the goods were damaged. It was held that, B is not liable for the loss (Shanti Lal V. Takechand).

Exception: Bailee when not liable for loss, etc., of thing bailed [Section 152]: The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken reasonable care as required under section 151.



Topic : Duties of a Bailee

Pg. No. 2.181

Example 14: A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.



Topic : Duties of a Bailee

Pg. No. 2.181

Example 15: 'A' hires a horse in Kolkata from B expressly to march to Varanasi. 'A' rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'A' is liable to make compensation to B for the injury to the horse.



Topic : Duties of a Bailee

Pg. No. 2.181

As per Section 153, 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 16: A lends to B, a horse for his own riding. B gives the horse to C for riding. This contract is voidable at the option of A, bailor.



Topic : Duties of a Bailee

Pg. No. 2.181

- (3) Not to mix the goods (Section 155, 156 and 157):
 - (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 to their respective shares in the mixture thus produced (Section 155).



Topic : Duties of a Bailee

Pg. No. 2.181

- (ii) If the bailee, without the consent of the bailor, mixes the goods bailed with his own goods and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division and any damage arising from the mixture (Section 156).



Topic : Duties of a Bailee

Pg. No. 2.182

Example 17: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.





Topic : Duties of a Bailee

Pg. No. 2.182

- (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 from the other goods and to deliver them back, the bailor is entitled to be compensated by the bailee for loss of the goods (Section 157).

Example 18: A bails a barrel of Cape flour worth Rs. 4500 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 2500 a barrel. B must compensate A for the loss of his flour.



Topic : Duties of a Bailee

Pg. No. 2.182

(4) Return the goods (Section 160 & 161): It is the duty of 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. [Section 160]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. [Section 161]



Topic : Duties of a Bailee

Pg. No. 2.182

Example 19: X delivered books to Y to be bound. Y promised to return the books within a reasonable time. X pressed for the return of the book. But Y, failed to deliver them back even after the expiry of reasonable time. Subsequently the books were burnt in an accidental fire at the premises of Y. In this case Y was held liable for the loss.



Topic : Duties of a Bailee

Pg. No. 2.182

- (5) **Return an accretion from the Goods [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.**

Example 20: A leaves a cow in the custody of B. The cow gives birth to a calf. B is bound to deliver the calf along with the cow, to A.





Topic : Duties of a Bailee

Pg. No. 2.182

- (6) **Not to setup Adverse Title:** Bailee must not set up 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.



Topic : Rights Of A Bailor

Pg. No. 2.183

Rights of Bailor: The following are the rights of bailor:-

- Right to terminate the bailment
- Right to demand back the goods at any time
- Right to file a suit against any wrong doer
- Right to file a suit for enforcement of duties imposed upon a bailee.
- Right to claim compensation



Topic : Rights Of A Bailor

Pg. No. 2.183

- (i) **Right to terminate the bailment [Section 153]:** 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.**

Termination of bailment has been discussed in next pages.



Topic : Rights Of A Bailor

Pg. No. 2.183

(ii) Right to demand back the goods (Section 159): 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.

Example 21: A, while going out of station delivered his ornaments to B for safe custody for one month. But A returned to station after one week. He may demand the return of his ornaments even though the time of one month has not expired.

However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.



Topic : Rights Of A Bailor

Pg. No. 2.183

- (iii) Right to file a suit against a wrong doer [Section 180 and section 181]
(discussed in next pages)

Topic : Rights of bailor and bailee against any wrong doer (third party)



Pg. No. 2.185

Suit by bailor & bailee against wrong doers [Section 180]:

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.

Topic : Rights of bailor and bailee against any wrong doer (third party)



Pg. No. 2.185

Apportionment of relief or compensation obtained by such suits [Section 181]: Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.



Topic : Rights Of A Bailor

Pg. No. 2.183

- (iv) Right to sue the bailee: The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.



Topic : Rights Of A Bailor

Pg. No. 2.183

- (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.



Topic : Rights Of A Bailee

Pg. No. 2.184

Rights of bailee: The following are the rights of the bailee:-

(1) Right to Deliver the Goods to any one of the joint bailors [Section 165]

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.



Topic : Rights Of A Bailee

Pg. No. 2.184

Example 22: A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the “combine” to any one of the joint owners namely, A, B or C.



Topic : Rights Of A Bailee

Pg. No. 2.184

(2) Right to indemnity (Section 166):

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.

If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of the bailor, the bailee shall not be responsible to the owner in respect of such delivery.

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



Topic : Rights Of A Bailee

Pg. No. 2.184

(3) Right to claim compensation in case of faulty goods (Section 150): A bailee is entitled to receive compensation from the bailor or any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him.

If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.



Topic : Rights Of A Bailee

Pg. No. 2.184

- (4) **Right to claim necessary expenses (Section 158):** 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.



Topic : Rights Of A Bailee

Pg. No. 2.184

- (5) Right to Apply to Court to Decide the Title to the Goods [Section 167]:**
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.



Topic : Rights Of A Bailee

Pg. No. 2.184

Example 23: A, a dealer in T.V. delivered a T.V. to B for using in summer vacation. Subsequently, C claimed that the T.V. belonged to him as it was delivered only for repairs, to A and thus, B should deliver it to him. In this case, B may apply to the Court to decide the question of ownership of the T.V. so that he may deliver it to the right owner.



Topic : Rights Of A Bailee

Pg. No. 2.184

- (6) **Right of particular lien** for payment of services [Section 170]:
(Discussed in next pages)
- (7) **Right of general lien** (Sec. 171): (Discussed in next pages)



Topic : Right Of Lien

Pg. No. 2.186

RIGHT OF LIEN

Lien is the right of a person

- to retain the goods belonging to another
- until his claim is satisfied or
- some debt due to him is repaid.



Topic : Right Of Lien

Pg. No. 2.186

Types of Lien: Lien may be of two types:

- (a) Particular Lien
- (b) General Lien



Topic : Right Of Lien

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

Section 170 provides, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.



Topic : Right Of Lien

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Example 27: 'A' gives cloth to 'B', a tailor, to make into a coat. 'B' is entitled to retain the coat until he is paid.

Example 28: If in the above example, 'B' takes 15 days time to make the coat, right of lien will be applicable after 15 days.



Topic : Right Of Lien

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Example 29: A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.



Topic : Right Of Lien

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General Lien: It is a right to retain the goods not only for demands arising out of the goods retained but for a general balance of account in favour of certain persons (in the absence of a contract to the contrary). Section 171 provides this right is available to Bankers, factors, wharfingers, policy brokers and attorneys of law.



Topic : Right Of Lien

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Example 30: 'A' borrows Rs. 500/- from the bank without security and subsequently again borrows another Rs. 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned Rs. 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.



Topic : Right Of Lien

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Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.



Topic : Right Of Lien

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Difference between Bailee's General 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 on 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.



Topic : Termination Of Bailment

Pg. No. 2.185

A contract of bailment shall terminate in the following circumstances:

- (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.

Example 24: X gives his motorcycle to Y for a month. The bailment terminates after 1 month.



Topic : Termination Of Bailment

Pg. No. 2.185

- (2) On fulfillment of the purpose: **If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfillment of that purpose.**

Example 25: X hires certain tents and crockery on marriage of his daughter. The bailment terminates after marriage.



Topic : Termination Of Bailment

Pg. No. 2.185

(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 a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159).



Topic : Termination Of Bailment

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- (4) By death: A gratuitous bailment terminates upon the death of either the bailor or the bailee.

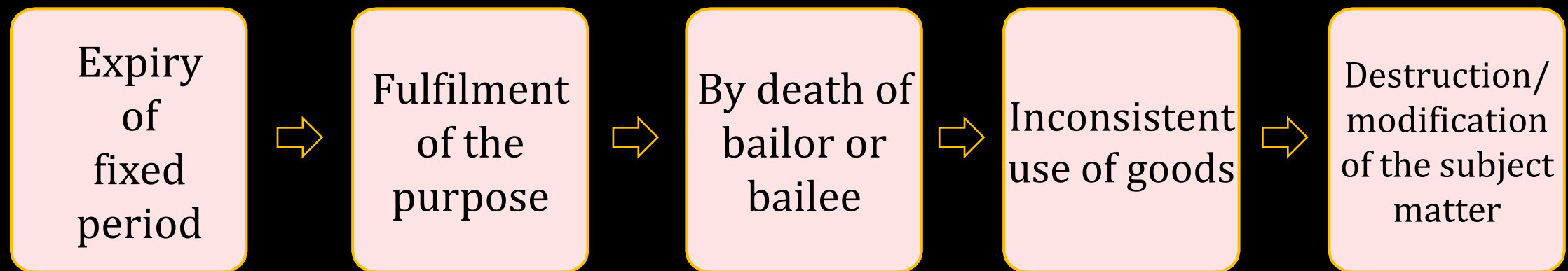


Topic : Termination Of Bailment

Pg. No. 2.186

- (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.

Example 26: X gives his cycle to Y on hire. Cycle damaged beyond repairs. Bailment ends.





Topic : Finder of lost goods

Pg. No. 2.186

Right of finder of lost goods- may sue for specific reward offered [Section 168]: 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. However, 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.



Topic : Finder of lost goods

Pg. No. 2.186

When finder of thing commonly on sale may sell it [Section 169]: When a thing which is commonly the subject of **sale** is lost, if **the owner cannot with reasonable diligence be found**, or if **he refuses**, upon demand, **to pay the lawful charges** of the finder, the finder may sell it—

- (1) when the thing is in **danger of perishing or of losing the greater part of its value**, or
- (2) when the **lawful charges of the finder** in respect of the thing **found amount to two- thirds of its value**.



Topic : Pledge

Pg. No. 2.188

“Pledge”, “pawnor” and “pawnee” defined [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 the “pawnor”. The bailee is called the “pawnee”.

Section 172 to 182 of the Indian Contract Act, 1872 deal with the contract of pledge.



Topic : Pledge

Pg. No. 2.188

Example 31: A lends money to B against the security of jewellery deposited by B with him. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor/ pledger and A is a pawnee/ pledgee.



Topic : Pledge

Pg. No. 2.188

ESSENTIALS OF CONTRACT OF PLEDGE: Since pledge is a special kind of bailment, therefore all the essentials of bailment are also the essentials of the pledge. Apart from that, the other essentials of the pledge are:

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



Topic : Pledge

Pg. No. 2.189

RIGHTS OF A PAWNEE/ PLEDGEE: Rights of Pawnee can be classified as under the following headings:

- (a) **Right to retain the pledged goods [Section 173]:** 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.

Example 32: Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.



Topic : Pledge

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- (c) **Pawnee's right to extraordinary expenses incurred [Section 175]:** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. For such expenses, however, he does not have the right to retain the goods, but he can sue the pawnor for such expenses.



Topic : Pledge

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- (b) **Right to retention of subsequent debts [Section 174]:** The Pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged. But he can exercise this right only when there is a contract to this effect. i.e. **a right to retain goods for subsequent debts can be exercised only when it has been provided for in a contract to this effect.**



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- (d) Pawnee's right where pawnor makes default [Section 176]: If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee has the following rights:
- (i) the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or
 - (ii) he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.



Topic : Pledge

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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 redemption to the pledged goods which is enumerated under section 177 of the Act.

Right to redeem [Section 177]: 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; but he must, in that case, pay, in addition, any expenses which have arisen from his default.**

Note: Redemption means to recover back the goods by making of the payment of debt or performance of promise.

Topic : Pledge



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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.

Topic : Pledge



Pg. No. 2.190

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.



Topic : Pledge By Non-owners

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Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left.



Topic : Pledge By Non-owners

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(a) Pledge by mercantile agent [Section 178]:

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

Such Pledge shall be valid as if were made with the authority of the owner of goods. Provided, Pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.



Topic : Pledge By Non-owners

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- (b) **Pledge by person in possession under voidable contract [Section 178A]:** When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.



Topic : Pledge By Non-owners

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(c) Pledge where pawnor has only a limited interest [Section 179]: **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.**

Example 33: Mr. X finds a defective mobile phone lying on the road. He picks it up, gets it repaired for Rs. 5000. He later pledges the mobile phone for Rs. 2,000. The true owner can recover the mobile phone only on paying Rs. 5,000.

Example 34: 'A' pledges his jewellery worth Rs. 1,00,000 with 'B' for an advance of Rs. 70,000. 'B' pledges the same for Rs. 90,000 with 'C'. Now this pledge is valid upto Rs. 70,000 plus interest due thereon.



Topic : Pledge By Non-owners

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- (d) **Pledge by a co-owner in possession:** Where the goods are owned by many person 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.**



Topic : Pledge By Non-owners

Pg. No. 2.191

- (e) **Pledge by seller or buyer in possession:** A seller, in whose possession, the goods have been left after sale or 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 good faith and he has no knowledge of the defect in title of the pawnor.

Example 35: A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with C, who does not know of sale to A, and acted in good faith. This is valid pledge.

Topic : Distinction between bailment and pledge



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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.

Topic : Distinction between bailment and pledge



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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.



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you