

Bailment and pledge

Bailment:

The word 'bailment' is derived from the French word the 'baillier' which means 'to deliver Etymologically, it means any kind of handling over'.

In legal sense, it involves change of possession of goods from one person to another for some specific purpose.

Definition of Bailment:

Sec. 184 defines Bailment as 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' and the person to whom they are delivered is called the 'bailee'.

Examples : (a) A delivers a piece of cloth to B, a bailor, to be stitched into a suit. There is a contract or bailment between A and B.

(b) A sells certain goods to B who leaves them in the possession of A. The relationship between B and A is that of bailor and bailee.

Consideration in a contract of bailment:

In a contract of bailment, the consideration is generally in the form money payment either by the bailor or the bailee, as for example, when A gives his bicycle to B for repair, or when A gives his car to B on hire.

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Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return to goods. The detrainment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

DUTIES OF A BAILOR

- Duty to disclose defects [Section 151]
- Duty to bear expenses [Section 158]
- Duty to indemnify the bailee in case of premature termination of gratuitous bailment [Section 159]
- Duty to indemnify the bailee against the defective title of bailor [Section 164]
- Duty to receive back the goods [Section 164]
- Duty to bear the risk of loss [Section 152]

DUTIES OF A BAILEE

- Duty to take care of the goods bailed [Section 151&152]
- Duty not to make any unauthorized use of goods [Section 154]
- Duty not to mix bailor's goods with his own goods [Section 155 to 157]
- Duty to return the goods [Section 160 & 161]
- Duty to return accretion to the goods [Section 163]

RIGHTS OF A BAILOR

- Right to claim damage in case of negligence [Section 152]
- Right to terminate the contract in case of unauthorized use [Section 153]
- Right to claim compensation in case of unauthorized use [Section 154]
- Right to claim the separation of goods in case of unauthorized mixture of goods which cannot be separated [Section 157]
- Right to demand return of goods [Section 160]
- Right to claim compensation in case of unauthorized retention of goods [Section 161]
- Right to demand accretions to goods [Section 163]

RIGHTS OF A BAILEE

- Right to claim damage [Section 150]
- Right to claim reimbursement of expenses [Section 158]
- Right to be indemnified in case of premature termination of gratuitous bailment [Section 159]
- Right to recover loss in case of bailor's defective title [Section 164]
- Right to recover loss in case of bailor's refusal to take the goods back [Section 164]
- Right to deliver goods to any one of the joint bailors [Section 165]
- Right to deliver goods to bailor in case of bailor's defective title [Section 166]
- Right to particular lien [Section 170]

RIGHTS OF BAILOR AND BAILEE AGAINST WRONGDOERS

Rights of Bailor and Bailee against Wrongdoer [Section 180] If a third party wrongfully deprives a Bailee of the use or possession of the goods bailed, or does them any injury, the Bailee is entitled to 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.

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.

Example:

X delivered a TV to Y for repairs. Z forcefully takes possession of TV from Y's shop. In this case, either X or Y may sue Z. If Y files the suit, he shall hand over the amount received after deducting his repairs charges to X.

TERMINATION OF BAILMENT

I. Termination of every Contract of Bailment (whether Gratuitous or not): Every contract of bailment comes to end under the following circumstances:

(a) On the Expiry of Fixed Period

(b) On fulfillment of the Purpose

(c) Inconsistent Use of Goods (d) Destruction of the subject Matter of Bailment

II. Termination of Gratuitous Bailment: A contract of gratuitous bailment is terminated in the following circumstances also.

(a) Before the Expiry of fixed Period

(b) On Death of Bailor/Bailee Meaning of Lien Lien means the right of a person having possession of goods belonging to another to retain those goods until the satisfaction of sum claimed by the person in possession of the goods. It may be noted that the possession of goods must be lawful and continuous.

For example, X took Y's godown on rent of Rs.5,000 p.m on an agreement that X can at any time deposit or take out his goods from the godown. After six months, X stopped paying the rent. Y auctioned X's goods and claimed lien. Y cannot claim lien because it was agreed that X can take out his goods whenever he wanted.

Type of Lien

(a) **Particular Lien [Section 170]:** A particular lien is right to retain only those goods in respect of which some charges are due.

Example:- X gives a piece of cloth to Y, a tailor, to make a coat. Y promises X to deliver the coat as soon as it is finished. Y is entitled to retain the coat till he is paid for (if he has not allowed any credit period) but is not entitled to retain the coat (if he has allow one month's credit for the payment.)

(b) **General Lien [Section 171]:** A general lien is a right to retain all the goods as a security for the general balance of account until the full satisfaction of the claims due whether in respect of those goods or other goods. The general lien is available to other person only when there is an express contract to that effect.

Example: - X deposited US 64 units and shares of Reliance Industries Ltd. as security with Citi Bank and took a loan against the shares of Reliance Industries Ltd. Citi Bank may retain both the securities until its claim are fully satisfied.

FINDER OF GOODS

Finder of goods is the person whom finds some goods which do not belong to him.

Example:

If X finds a purse or a diamond ring or a watch, which does not belong to him, he will be called as a finder of goods.

Rights of a Finder of Goods

- Right to lien [Section 168]
- Right to sue for reward [Section 168]

- Right to sell [Section 169] Duties of a Finder of Goods [Section 171] Finder of goods is subject to the same responsibility as a bailee.

The duties of a finder of goods are as follows:-

- Duty to take reasonable care
- Duty not use for personal purpose
- Duty not to mix with his own goods
- Duty to find the owner

PLEDGE

Meaning of pledge (or pawn) [Section 172]:

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

Example: X borrows of Rs. 1,00,000 from Citi Bank and keeps his shares as security for payment of a debt. It is a contract of pledge.

Meaning of A pawner (or pledgor) [Section 172]:

The person who delivers the goods as security for payment of a debt or performance of promise is called the pawnor or pledgor. In aforesaid example X is pawnor.

Meaning of Pawnee (or pledge) [Section 172]:

The person to whom the goods are delivered as security for payment of a debt or performance of promise is called the Pawnee or Pledgee. In the aforesaid example. Citi Bank is the Pawnee.

Rights of Pawnee

- Right of retainer [Section 173]
- Right to claim reimbursement of extraordinary expenses [Section 173]

- Right to sue pawnor [Section 176]
- Right to sell [Section 176]
- Right against true owner

Rights of a Pawnee

- Duty to take reasonable care of the goods pledged
- Duty not to make unauthorized use of goods
- Duty not to mix pawnor's goods with his own goods
- Duty to return goods • Duty to return accretion to the goods Rights of Pawnor
- Right to get pawnee's duties duly enforced
- Right to redeem [Section 177] Duties of Pawnor • Duty to comply with the terms of pledge
- Duty to compensate the Pawnee for extraordinary expenses [Section 185]