

CA Foundation Contract law **UNIT – 8** BAILMENT & PLEDGE

Q.1. Nov 2018 Marks 3

What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872. (3 Marks)

As per the provisions of section 168 and 169 of the Indian Contract Act, 1872,

- (i) The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner. But 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found. Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.
- (ii) The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:
- (a) when the article is in danger of perishing and losing the greater part of the value or
 - (b) when the lawful charges of the finder amounts to two-third or more of the value of the article found.

Q.2. May 2017 Marks 4

Ram, the bailor, pledges a cinema projector and other accessories with Movie Association Co-operative Bank Limited, the bailee, for a loan. Ram requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between Ram, the bailor and Bank, the bailee? (4 Marks)

The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 149. The Section provides that the delivery of the goods to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Delivery may be actual or constructive or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.

In the given problem the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by Ram, the bailor is construed as possession by bailee (pawnee), the Bank. A constructive pledge comes into existence as soon as the pawnor, without actually delivering the goods, promises to deliver them on demand. The transaction was, therefore, a valid pledge.

Q.3. NOV 2018 Marks 3

Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ₹ 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar?

According to section 157 of the Contract Act, 1872, 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 deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Q.4. NOV 2019 Marks 2

Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, 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. Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

Q.5. JAN 2021 Marks 4

Radheshyam borrowed a sum of ₹ 50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ₹ 20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ₹ 50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872 ?

(4 Marks)

General lien of bankers: According to section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged. Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹ 50,000/-, which has already been fully repaid by Radheshyam. Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹ 20,000/- (which is the second loan) is not valid.

Q.6. July 2021 Marks 4

Mr. Stefen owns a chicken firm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Flemming also owns a similar firm near Gurgaon, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his firm to Mr. Stefen for one year and received a deposit of ₹ 25 lakhs and went away. At that point of time, stock of live birds were 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his firm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case.

(4 Marks)

According to section 163 of the Indian Contract Act, 1872, 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.

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor), any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e the live birds and eggs).

Right of Mr. Flemming: Mr. Flemming is entitled to recover from Pawnee any increase in goods so pledged .

Q.7. May 2022 Marks 4

Mr. Truth deposited 100 bags of groundnut in the factory of Mr. False for safe keeping. Mr. False mixed the groundnut bags with the other groundnut bags in the factory with the consent of Mr. Truth and consumed it to produce edible oil.

- (i) Whether Mr. Truth is entitled to claim his share in the edible oil produced under the provisions of the Indian Contract Act, 1872?*
- (ii) What will be the consequences in case the groundnut bags were mixed without the consent of Mr. Truth under the above said Act? **(4 Marks)***

The given question is based on section 155, 156 & 157 of the Indian Contract Act, 1872.

- (i) W.r.t. this part of the question, Mr. Truth deposited his ground nut bags for safe keeping in the factory of the Mr. False. He mixed the ground nut bags of Mr. Truth with the other ground nut bags lying in the factory with the consent of Mr. Truth and consumed the same for producing edible oils.

According to section 155 of the Indian Contract Act, 1872, 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.

Accordingly, Mr. Truth is entitled to claim his share in the edible oil produced.

- (ii) According to section 156 & 157 of the Indian Contract Act, 1872, where 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.

In the given case, the goods were mixed without consent of Mr. Truth, and if such mixture can be separated, then Mr. False will bear the expense of separation and the damage, if any, arising from mixture.

However, in the light of given facts, as mixture of goods were consumed to produce oil, and so it cannot be separated and therefore Mr. False shall be liable to compensate Mr. Truth.

Q.8. Nov 2022 Marks 4

Kartik took his AC to Pratik, an electrician, for repair. Even after numerous follow ups by Kartik, Pratik didn't return the AC in reasonable time even after repair. In the meantime, Pratik's electric shop caught fire because of short circuit and AC was destroyed. Decide, whether Pratik will be held liable under the provisions of the Indian Contract Act, 1872.

(4 Marks)

The legal provisions which dealt with the return of goods under the Indian Contract Act, 1872 (the Act) is covered in Sections 160 and 161 of the Act, whereby, 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.

Further, Section 161 of the Act clearly says that where a bailee fails to return the goods as per term given under Section 160, within the agreed time, he shall be responsible to

- (ii) As per the provisions of section 133 of the Indian Contract Act, 1872, any variance, made without the surety's consent, in the terms of the contract between the principal [debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

In the given instance, the actual transaction was not in terms of the guarantee given by Mr. A. The loan amount as well as the securities were reduced without the knowledge of the surety.

So, accordingly, Mr. A is not liable as a surety in case Y failed to repay the loan.

Q.9. Nov 2019 Marks 4

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. Do you think bonafide pledge can be made by non-owners? If yes, explain the circumstances with reference to provisions of the Indian Contract Act, 1872.

(4 Marks)

Pledge by Non-Owners: 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.

- a. **Pledge by mercantile agent [Section 178 of the Indian Contract Act, 1872]:** A mercantile agent acting in the ordinary course of business, with the consent of the owner, is entitled to pledge the goods.
- 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 voidable contract and which has not been rescinded at the time of the pledge, can be pledged.
- c. **Pledge where pawnor has only a limited interest [Section 179]:** Where a person pledges goods in which he has only a limited interest and 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, a co-owner may make a valid pledge of the goods in his possession.
- 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.

Q.10. Study Mat

Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872: (i) V parks his car at a parking lot, locks it, and keeps the keys with himself. (ii) Seizure of goods by customs authorities.

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. For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods. (i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with V, Section 148, of the Indian Contract Act, 1872 shall not be applicable. (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

Q.11. Study Mat

A hires a carriage from B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that 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. Accordingly, applying the above provisions in the given case, B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Q.12. Study Mat

A bails his jewellery with B on the condition to safeguard it in a bank's safe locker. However, B kept it in safe locker at his residence, where he usually keeps his own jewellery. After a month all jewellery was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed.

According to section 152 of the Indian Contract Act, 1872, 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. Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence (i.e. B's residence). Thus, B is liable to compensate A for his negligence to keep jewellery at his (B's) residence.

Q.13. Study Mat

R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bears the loss and why?

M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Q.14. Study Mat

Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ₹ 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar?

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Q.15. Study Mat

Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

Section 148 of Indian Contract Act 1872 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 direction of the person delivering them. According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment. Thus, the mere keeping of the box at Y's shop, when A herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

Q.16. Study Mat

Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

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