

# Unit - 8 : Bailment and Pledge

Bailment :- Refers to a situation where a bailor transfers certain specific goods to bailee for a specific task or purpose and goods are to be returned back or disposed off by the bailee at the instructions of bailor.

## Bailment

Bailor



The person delivering the goods

Bailee



The person to whom the goods are delivered

## Essential Elements :

1) Contract :- Contract may be express or implied. No consideration is necessary to create a valid contract.

2) Delivery of goods :- Bailment is only for movable goods.

3) Actual :- When goods are physically handed over to the bailee.

4) Constructive :- Delivery that takes place without change in actual possession. (It is deemed that delivery has done)

- ③ Purpose :- Goods are delivered for some purpose.
- ④ Possession :- Possession of goods changes, change of possession does not lead to change of ownership.
- ⑤ Return of goods :- Bailee is obliged to return the goods to the bailor in the same form.

## Types of Bailment / Duties of a Bailor

### Bailment

#### Gratuitous

Free of Cost  
(No Consideration)

Faults → Known

Ordinary Exp → Bailor  
Extra ordinary → Bailor  
expense

To Indemnify

(to make good the losses)

#### Non-Gratuitous

• Consideration is present

① Fault → Known + Unknown

② Ordinary Exp - Bailee  
Extra ordinary - Bailor  
Exp

## Premature Termination

↓  
Bailee has suffered loss

↓  
Bailor must compensate the bailee for the losses.

## Defective Title

↓  
If the bailor is not the true owner of the goods because of which the bailee suffers loss then, the bailor will have to make good the losses the bailee.

## Duties of a Bailee

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

→ Bailee is bound to take care of goods

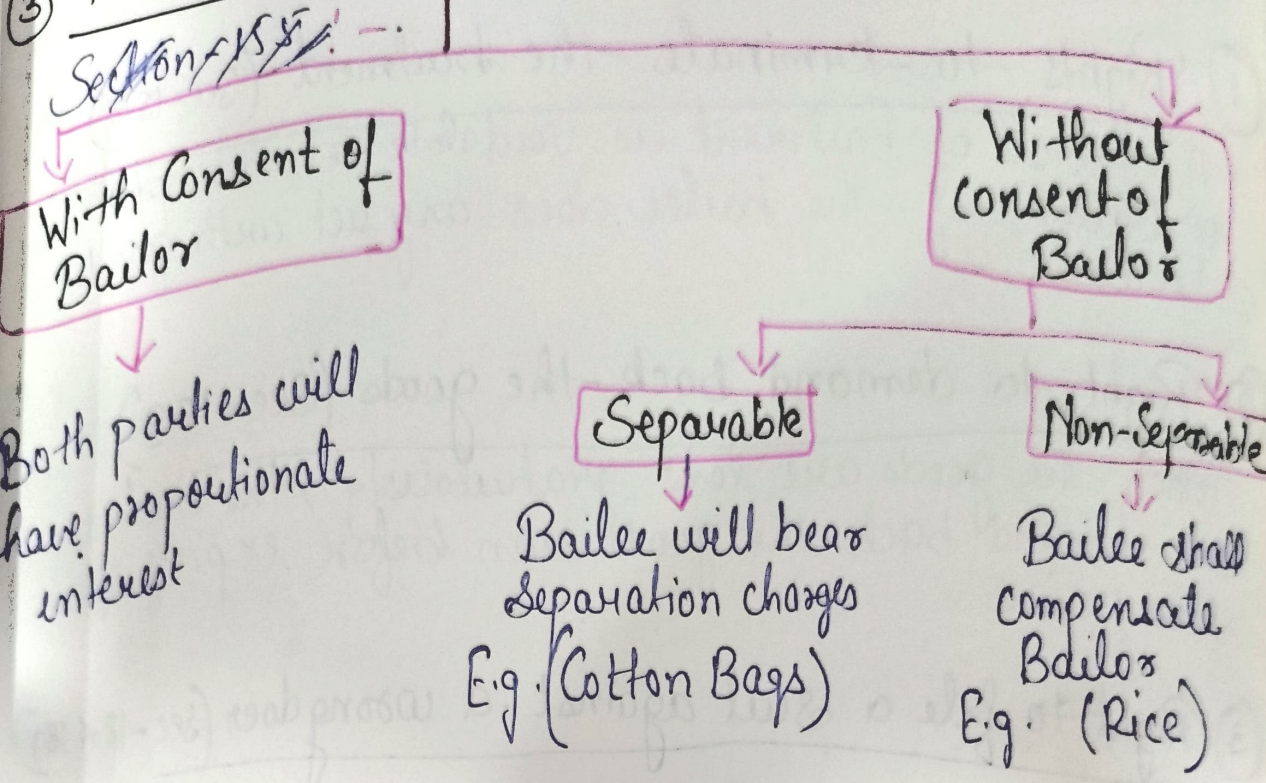
② Exception :- Bailee when not liable for loss etc of things bailed (Sec-152)

③ Not to make inconsistent use of goods (Sec 153 & 154)

④ Section 154 :- if bailee makes any use of the goods, he is liable to compensate the bailor for any loss or destruction of goods.

Section 153 :- A contract is voidable at the option of the bailor, if the bailee does not use the goods according to the terms & condition.

### ③ Not to mix the goods (Section - 155, 156 and 157)



### Return the goods (Section 160 & 161)

Duty of bailee to return the goods as soon as time for which they bailed expired or purpose complete.

By the default of the bailee, the goods are not returned, he is responsible to the bailor for any loss.

### Return an accretion from the goods (Section 163) :-

Bailee is bound to deliver, any increase or profit which may have accrued from the goods bailed.  
E.g. (Cow & Calf)

### Not to Setup adverse title :- - Bailee must hold goods on behalf of bailor.

He cannot deny the title of the bailor.

# Rights of a Bailor

- ① Rights to terminate the bailment (Sec-153)  
A contract of bailment is voidable at the option of bailor, if the bailee does any act with goods bailed.
- ② Right to demand back the goods (Sec-159)  
When the goods are lent gratuitously, the bailor can demand back the goods even before expiry of time period.
- ③ Right to file a suit against a wrong doer (Sec-180)
- ④ Right to sue the bailee - The bailor has right to sue the bailee for enforcing all the liabilities & duties of him.
- ⑤ Right to Compensation :- If any damage is caused to the goods bailed, the bailor has right to claim compensation for the same.

## Rights of Bailor and Bailee against any wrong doer (Section - 180 & 181)

### Suit by bailor & bailee against wrong doers (Section 180)

If a third person wrongfully deprives the bailee of the use or possession of goods bailed, or does any injury. Then, bailee is entitled to use such remedies as the owner might have used in like case.

Appportionment of relief or compensation obtained by such bailee (Section - 181) - Whatever is obtained by way of relief or compensation as between the bailor & bailee, be death with according to their interest.

## Rights of a Bailee

- ① Rights to deliver the goods to any one of the joint owners (Sec-165) :- In any several joint owners, the bailee has right to deliver the goods to any one of the joint owners unless, there was a contract of contrary. Bailors
- ② Rights to indemnity (Sec-166) :- Bailee is not entitled to be indemnified by the bailor for any loss arising to him by reason that the bailor was not entitled to make the bailment or receive back the goods. Bailee can claim all the necessary expenses incurred by him.
- ③ Right to claim compensation in case of faulty goods (Sec-157)  
A bailee is entitled to receive compensation from the bailor due to the failure of the bailor to disclose any faults in the goods. (Sec-158)
- ④ Right to claim necessary expenses :- In case of gratuitous bailment, the bailor shall repay to the bailee the necessary expenses incurred by him.
- ⑤ Right to apply to court to decide the title of goods (Sec-159)  
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 decide the title of goods.

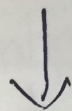
# Termination of Bailment

- ① On expiry of stipulated period
- ② On fulfillment of the purpose
- ③ By Notice

Bailor acts in  
manner of inconsistent  
↓

Bailor can always  
terminate the contract  
by giving notice

Gratuitous bailment



Anytime can terminate the  
contract but it should  
not cause loss to the  
bailee

④ By Death

⑤ Destruction of the Subject matter

Finder of Lost Goods

To retain the goods possession of the goods belonging to someone else till the time the debt due is satisfied.

## Types of lien

### Particular lien

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

E.g. A gives clothes to B to make into a coat. B is entitled to retain the coat until he is paid

Bailee, finder of lost goods, unpaid seller etc.

### General lien

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

E.g. Borrow from bank

(Bankers, policy brokers etc.)

## Duties of Finder of Lost goods

1) Finder = Bailee  
↑ ↓  
Responsibilities

2) To take reasonable care of goods

3) To find the original owner of the goods

4) Not to use the goods for his personal purpose

5) Duty not to mix the goods

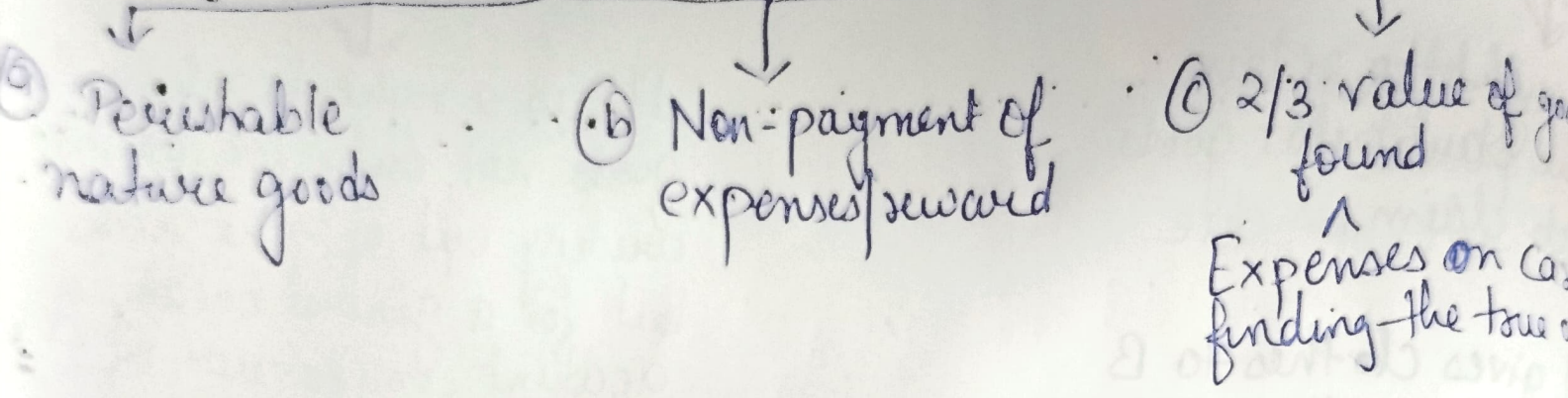


# Rights of Finder of Lost goods

① Rights of Lien   
 (i) Non-payment of reasonable expenses   
 (ii) Non-payment of reward

② Rights to file a suit → Non-payment of reward

③ Right to sell the goods found



④ When owner was not found after reasonable search

## Pledge

Pledge (Sec-172) :- The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor in this case known as "Pawner" & "Pawnee".

### Essential of Contract of Pledge

- ① Delivery of goods
- ② Ownership in goods

## Rights of a Pawnee / Pledgee

- (a) Rights to retain the pledge goods [Sec-173] :- The pawnee may retain the goods not only for the payment of the debt but also for the interest of debt, and all necessary expenses incurred by him.
- (b) Rights to retention of subsequent debts [Sec-174] :- The pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged.
- (c) Pawnee's right to extraordinary expenses incurred [Sec-175]  
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 [Sec-176]  
If the pawnor makes default in payment of the debt, at stipulated time, the Pawnee has following rights :-

- (a) Pawnee may bring suit against pawnor upon the debt.
- (b) He may sell the things pledged on giving the pawnor reasonable notice of sale.

## Rights of a Pawnor

Pawnor has all the rights of the bailor. He also has the right of redemption to the pledged goods.

## Duties of the Pawnee

- (a) Duty to take reasonable care of pledged goods.
- (b) Duty to not to mix the goods.
- (c) Duty to return the goods when debt has been repaid.
- (d) Duty to return accretion to the goods if any.
- (e) Duty not to do any act which is inconsistent with the terms of pledge.

## Duties of the Pawnor

- (a) Pawnor is liable to pay the debt.
- (b) Duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred by him.
- (c) Duty of the pawnor to disclose all the faults.
- (d) Duty of the pawnor to indemnify the pawnee for the loss occurs to the pawnee due to defect in pawnor's title of the goods.
- (e) If pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.

(a) Pledge by Mercantile agent [Section-178]

A mercantile agent, who is in the possession of the goods, with the consent of the owner, can pledge the goods while acting in ordinary course of business. Such pledge shall be valid.

(b) Pledge by person in possession under voidable Contract [Sec-178A]:-

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

(c) Pledge where pawnor has only a limited interest [Sec-179]

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

(d) Pledge by 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.

(e) Pledge by seller or buyer in possession :-

A seller, in whose possession the goods left after sale or a buyer who with the consent of the seller, obtain possession of the goods, before sale, can make a valid pledge.