

The Indian Contract Act, 1872

Unit-8:- Bailment & Pledge

Bailment (Sec. 148-171)

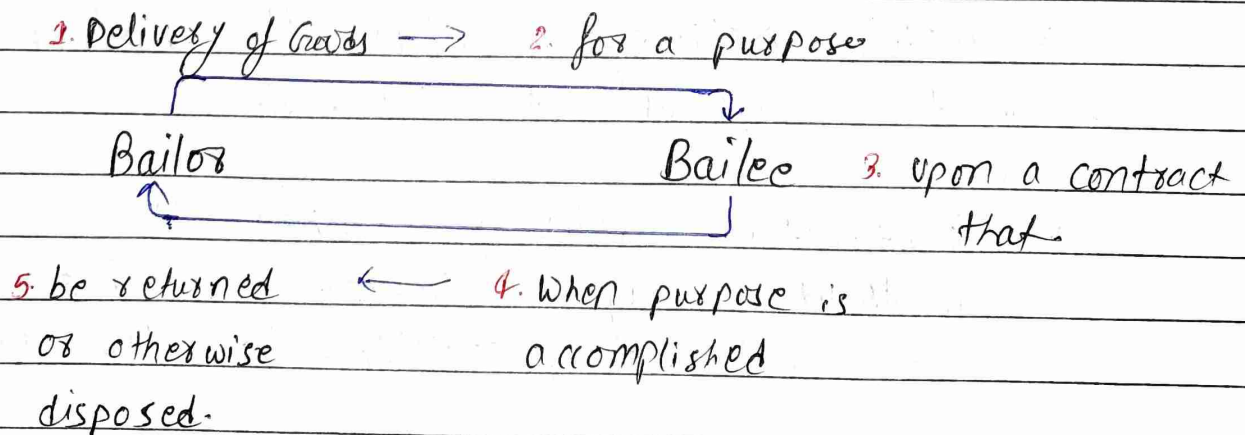
Sec. 148-181 ->

Pledge (Sec. 172-181)

* Bailment :-

Meaning and Definition (Sec. 148)

- ⇒ 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
- ⇒ according to the directions of the person delivering them.



• Examples of Bailment:-

- (i) Giving cloth to tailor to be stitched.
- (ii) Giving bike on rent.
- (iii) Giving watch for repair.
- (iv) Giving book to friend for reading.

* Essential Elements for Bailment:-

1. **Agreement:-** Agreement between Bailor and Bailee - express or implied.

Example 1:- If one person finds the goods belonging to other person. Here there is implied bailment between finder and the owner.

2. **Delivery:-** Transfer of Possession of goods by Bailor to Bailee.

• Types of Delivery:-

- **Actual Delivery:-** Physically handing over the goods to Bailee.
- **Constructive delivery:-** When it is effected without any change in the custody or actual possession of the thing.

Example 2:- 'A' holding goods on behalf of 'B', agrees to hold them on ~~on~~ behalf of 'C'

▷ Symbolic delivery:- Where goods are bulky and incapable of actual delivery.

Example 3:- Delivery of railway receipt.

3. Delivery of Goods for some purpose:-

⇒ If goods are delivered by mistake to a person, there is no bailment.

Example 4:- 'X' gives his book to 'Y' to be delivered to 'Z' but mistakenly 'Y' give it to 'M'. This is not bailment of book from 'X' to 'M'.

4. Return of goods:- Return of goods or disposed off according to direction of Bailor after the purpose is accomplished or period of bailment is expired.

5. Change of Possession:- In bailment, possession of goods changes. Bailor continues to be ~~than~~ the owner of goods. Where a person is in custody without

possession he does not become a bailee.

Example 5:- 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.

Example 6:- Examine whether the following constitute a contract of 'bailment'?

(i) 'V' parks his car at parking lot, locks it, and keeps the key with himself.

Ans. No, mere custody of goods does not mean possession of goods. There must be transfer of possession from Bailor to Bailee.

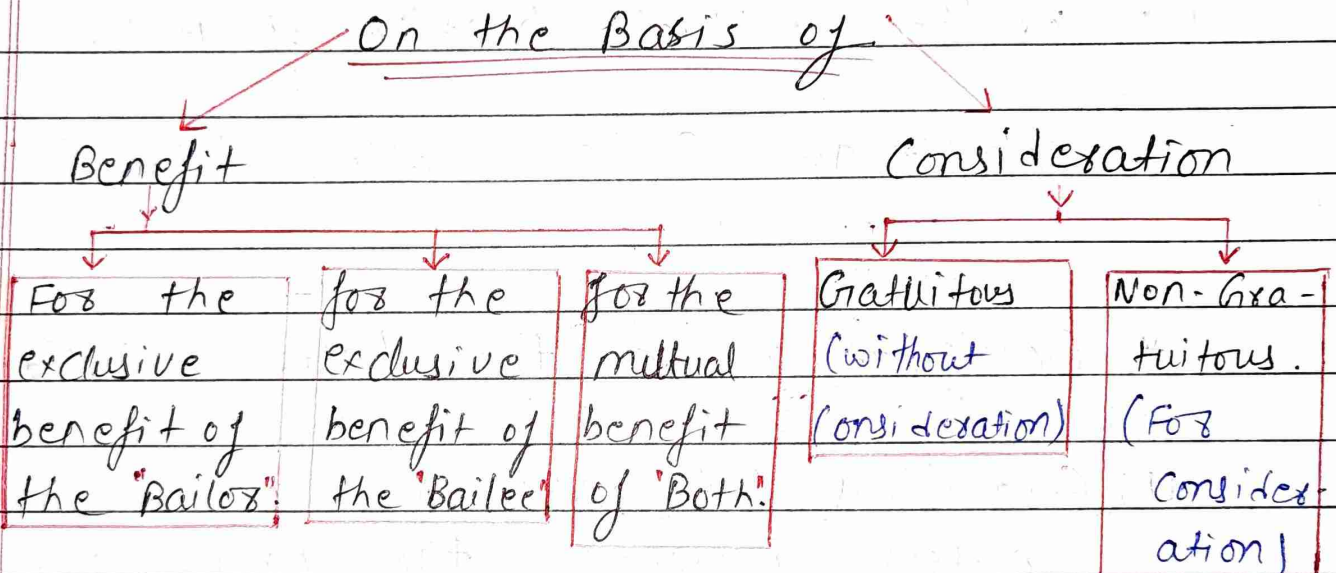
(ii) Seizure of goods by customs authorities.

Ans. Yes, the possession of the goods is transferred to the custom authorities. Therefore bailment exists and section 148 is applicable.

(iii) Having Bank locker.

Ans. No, there is transfer of possession.

* Classification of Bailment :-



* Classification on the Basis of Benefit :-

(1) For the exclusive benefit of the Bailor. :-

Example 7 :- The delivery of some valuables to a neighbour for safe custody, without charge.

Example 8:- lending of a bicycle to a friend for his use, without charge.

Example 9:-

(2) For the exclusive benefit of the Bailee.

Example 8:- lending of a bicycle to a friend for his use, without charge.

(3) For the Mutual benefit of Both.

Example 9:- Giving cloths clothe for ironing

* Classification on the basis of Consideration:-

(1) Gratuitous bailment:- No Consideration passes between the Bailor and Bailee.

Example 10:- lending of a bicycle to a friend for his use, without charge.

(2) Non-Gratuitous bailment:- or bailment for reward:- Consideration passes between Bailor and Bailee

Example 11:- Giving watch to repair.

* Duties and Rights of Bailor and Bailee:Bailor.Duties

- > Disclose known faults.
- > Indemnify bailee.
- > Bear expenses.
- > Receive back goods.

Rights.

- > Terminate bailment.
- > Demand return of goods any time.
- > Claim accretion.
- > Right against the third party.
- > To sue the bailee.
- > Right to Compensation.

BaileeDuties

- > To take care of the goods bailed.
- > No unauthorized use of goods.
- > Not mix goods with own goods.
- > Return the goods.
- > Return accretion to the goods.
- > Not to set up adverse title

Rights.

- > Right to compensation.
- > Claim Charges.
- > Action for wrongful deprivation of goods
- > Deliver goods to any of the joint bailors.
- > Right of lien.

* Duties of Bailor :-

(1) To disclose known faults in the goods (Section-150) :-

(a) Gratuitous Bailment :- Bailor has to disclose all the faults known to him, which-

⇒ are material for use of goods; or.

⇒ may be put Bailee to extraordinary risk.

Effect of non-disclosure - Bailor shall be liable for damages for any loss caused to Bailee.

Example 12 :- A gives his bike to his friend 'B'. A knows that the ~~brakes~~ brakes of bike are not working properly but he does not inform to 'B'. 'B' meets in an accident. A is liable to pay damages.

Example 13 :- If in the above example, 'A' is unaware of fault of bike then 'A' is not liable to pay damages.

(c) Non-Gratuitous Bailment:- Bailor has to disclose all the faults whether known to him or not.

Effect of non-disclosure:- Bailor shall be liable for damages for any loss caused to Bailee whether or not bailor was aware of faults.

Example 14:- 'A' gives his bike to 'B' on hire. The brakes of bike are not working properly. 'B' meets in an accident. 'A' is liable to pay damages whether the fault of bike known to him or not.

2. In demnify Bailee:-

(a) for the defective title of goods. (Sec. 164):-

Example 15:- 'X' gives his neighbour's car to 'Y' for use without the neighbour's permission. The neighbour sues 'Y' and gets compensation. 'X' is bound to indemnify 'Y' for the loss.

(b) For premature termination. (Sec. 159):-

↳ Only for Gratuitous

Example 16:- 'X' lends his old car to 'Y' gratuitously for 4 months. 'Y' incurs Rs. 1000 for repairs. If after 1 month 'X' asks to return the old car, he has to compensate 'Y' for expenses incurred in excess of benefit derived.

(3) To Bear Expenses. (Sec. 158):-

(a) Gratuitous Bailment:- Both necessary and extra-ordinary expenses are to be borne by the bailor.

(b) Non-gratuitous Bailment:- Only extra-ordinary expenses are to be borne by the bailor.

Example 17:- 'A' gives his bike to his friend 'B' gratuitously. It runs out of petrol. 'B' can recover petrol charges from 'A'. Let say, if bike suffers a break down and 'B' has to repair charges. These charges can also be recovered from 'A'.

Example 18:- In the above example 'A' gives his bike to his friend 'B' on hire, 'B' can recover only repair charges.

(4.) Receive back goods. (Sec. 164):-

⇒ If Bailor, refuses to take the goods back, the bailee can claim compensation for all necessary and incidental expenses, which the bailee undertakes to keep and protect the goods.

Example 19:- 'x' delivered his car to 'y' for five days for safe keeping. However, 'x' did not take back the car for one month. In this case, 'y' can claim the necessary expenses incurred by him for the custody of the car.

* Rights of Bailor:-

(1) Terminate the bailment:-

⇒ If the Bailee does,

- with respect to the goods bailed,
- any act which is inconsistent with terms of bailment,
- the bailment is voidable at the option of Bailor.

Example 20:- 'Kulbhushan' sent his car to 'Harsh' for repair. 'Harsh' gives that car

to his friend 'Govinda' for his personal use. Now 'Kulbhusan' can terminate the bailment.

(2) Demand return of goods any time (Sec. 159):-

- ⇒ If the bailment is gratuitous and for a specified time.
- ⇒ Bailor may demand return of goods before specified time.
- ⇒ But the Bailor shall have to indemnify the Bailee for any loss suffered by Bailee.

Example 21:- 'A' lent his book to 'B' for examination. Before examination, 'A' demanded his book back, 'B' has to pay extra Rs. 100 for book. 'B' can recover this amount from 'A'.

(3) Claim accretion (Sec. 163):-

- ⇒ Right to claim accretion or increase of profit from the goods bailed.

Example 22:- A pledges certain shares with B. Company issues bonus shares against the same. 'B' must not only return original shares but also bonus shares.

Example 23:- 'X' gives his cow to 'Y' for safe custody for 1 month. During this time, cow gives birth to a calf. Now 'Y' is liable to return calf with cow.

(4) Right against the third party (wrong doer):-

- ⇒ If a third person wrongfully prevent the Bailee
- ⇒ of the use of possession of the goods bailed,
- ⇒ or does them any injury,
- ⇒ the Bailor or the Bailee
- ⇒ may bring a suit against the third person for such loss or injury.

Example 24:- 'X' delivered his car to 'Y' for 5 days for safe custody. 'Z', a neighbour broke the glass of car. Now 'X' or 'Y' can claim the damages from 'Z'.

(5) Right to sue the Bailee :-

- ⇒ The bailor has a right to sue the

bailee for enforcing all the liabilities and duties of him.

(6) 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.

Example 25:- Mudit sends 100 packets of MP wheat flour to his friend Rajat to be delivered to Naman. Unfortunately, staff of Rajat mix those packets in godown with packets of other brands flour packets. Now, Rajat is liable to pay the expenses for separating the packets.

* Duties of Bailee :-

(1) To take reasonable care of the goods bailed :-

=> As a man of ordinary prudence

would, under similar circumstances, take of his own goods.

Example 26:- 'A' lends his car to 'B'. 'B' does not park the car at a proper parking. The car was stolen. 'B' is liable to compensate.

Example 27:- If in the above case, 'B' parks the car at proper parking. Even the car was stolen. 'B' is not liable to compensate.

(2) Not to make any unauthorized use of goods :-

⇒ If the Bailee makes any ~~at~~ unauthorized use of goods, then :-

- Bailment becomes voidable at the option of Bailor (Sec. 153) &
- Bailee is liable for any loss or damage even if such loss is caused due to an act of God (Sec. 154).

Example 28:- A gives his watch to 'B' to be used by 'B' only. Afterwards,

'B' gives that watch to his brother 'C' without informing to 'A'. Even taking due care, the watch was stolen. 'B' will be ~~not~~ liable to compensate 'A'.

(3) Not to mix the goods with own goods:-

(a) Mixing with Consent:- In such a case, both shall have an interest in proportion to their $\&$ respective shares in the mixture thus produced. (Sec. 155)

(b) Mixing without Consent:-

⇒ Separable Goods:- Bailee is bound to bear the expenses of separation and also any damage from such unauthorized mixing. (Sec. 156).

⇒ Inseparable Goods:- It is considered to be lost. The Bailee must compensate the Bailor for the loss of goods. (Sec. 157)

Example 29:- Mudit sends 100 packets of MP flour wheat flour to his

friend Rajat to be delivered to Naman. Unfortunately, staff of Rajat mix those packets in godown with packets of other brands flour packets. Now, Rajat is liable to pay the expenses for separating the packets.

Example 30:- Rahul sends 100 kgs of MP wheat to his friend Deepak to be delivered to Kishan. Unfortunately, staff of Deepak mix that wheat with other quality wheat. Wheat can not be separated. Now, Deepak is liable to compensate Rahul for loss of wheat.

(4) Return the Goods:-

⇒ It is the duty of Bailee to return or to deliver the goods according to the direction of the Bailor, without demand.

(a) On the expiry of the time fixed or.
(b) When the purpose is accomplished.

e) If he fails to do so, he is responsible to the Bailor for any loss notwithstanding the exercise of reasonable care on his part.

Example 31:- 'A' took the book from his friend 'B' for three days. After three days 'A' does not return the Book to 'B'. Even taking the due care of the book by 'A' after end of the period, the book is picked and torn by a monkey. Now 'A' will be liable to compensate 'B'.

(5.) Return accretions to the goods (Sec. 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 32:- 'A' pledges certain share with 'B'. Company issues bonus shares against the same. 'B' must not only return original shares but also bonus shares.

Example 33:- 'X' gives his cow to 'Y' for safe custody for 1 month. During this time, cow gives birth to a calf. Now 'Y' is liable to return calf with cow.

(6.) ~~to~~ Not to set up adverse title:-

⇒ The Bailee is under a duty not to do any act which is inconsistent with the title of Bailor.

⇒ He should not set up his own title or the title of a third party on the goods bailed to him.

Example 34:- 'Ramu' sent his car to 'Harish' for repairs. 'Harish' gives that car to his friend 'Sam' for his personal use. Now 'Ramu' can terminate bailment.

* Right of Bailee:-

(1) Right to deliver goods to any of the joint bailors. (Sec. 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.

Example 35:- 'A', 'B' and 'C' are the joint

owners of a car. They delivered it on hire to 'D' for one month.

After the expiry of one month, 'D' may return the car to any one of the joint owners namely, 'A', 'B' and 'C'.

(2) Right to Indemnity (Sec. 166):-

=> The bailee has right to be indemnified by bailor if:-

- the bailor has no title to the good;
- as a consequence, the suffers some loss.

Example 36:- 'X' gives his neighbour 'Y' neighbour's car to 'Y' for use without the neighbour's permission. The neighbour sues 'Y' and gets compensation. 'X' is bound to indemnify 'Y' for the losses.

(3) Right to compensation in case of faulty goods (Sec. 150):-

=> A bailee is entitled to receive compensation:-

- due to the failure of the bailor to disclose any faults in this 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.

Example 37:- 'A' gives his bike to his friend 'B'. 'A' knows that the brakes of bike are not working properly but he does not inform to 'B'. 'B' meets in an accident 'A' is liable to pay damages.

Example 38:- If in the above example, 'A' is unaware of fault of bike then 'A' is not liable to pay damages.

Example 39:- 'A' gives his bike to 'B' on hire. The brakes of bike are not working properly. 'B' meets in an accident. 'A' is liable to pay damages whether the fault of bike known to him or not.

(4) Right to claim charges (sec. 158):-

⇒ Where the bailment is non-gratuitous,

- extra-ordinary expenses are to be borne by the bailor.

⇒ In case of Gratuitous bailment,

- even the necessary expenses are to be borne by the bailor.

Example 40:- 'A' gives his bike to his friend 'B' gratuitously. It runs out of petrol. 'B' can recover petrol charges from 'A'. Let say, if bike suffers a break-down and 'B' has to repair charges. These charges can also be recovered from 'A'.

Example 41:- If in the above example, 'A' gives his bike to his friend 'B' on hire, 'B' can recover only repair charges.

(5) Right against the third party (sec. 180):-

⇒ If a third person wrongfully prevent the Bailee.

⇒ of the use of possession of the goods bailed,

⇒ or does them any injury,

⇒ the Bailor or the Bailee

⇒ may bring a suit against the third person for such loss or injury.

Example 42:- 'X' delivered his car to 'Y' for five days for safe keeping. → a neighbour broke the glass of car. Now 'X' ~~and~~ ^{or} 'Y' can claim the damages from 'Z'.

⑤ Right to Apply to Court to Decide the Title of to the goods (Sec. 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.

Example 43: 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 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.

(7.) Right of lien (sec. 170 & 171) :-

⇒ The Bailee has a right to retain the goods delivered to him until the charges due to him are paid by Bailor.

* Lien :-

→ meaning :- 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.

* Types of lien:-

- General lien (Sec. 171)
- Particular lien (Sec. 170)

* General lien (Sec. 171):-

- ⇒) 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)
- ⇒) The right is available to Bankers, factors, policy brokers, etc.

Example 44:- Harshad has taken a loan Rs. 1,00,000 from bank without any security. Thereafter, he taken another loan from same bank for Rs. 3,00,000 on a security of Jewellery given to bank. Harshad repays second loan but not first loan. Now bank can retain the jewellery towards first loan.

* Particular lien (sec. 171):-

=> Right of to retain only particular goods in respect of which the claim is due.

Example 45:- 'A' gives cloth to 'B', a tailor, to make into a coat. 'B' is entitled to retain the coat until he is paid.

Example 46:- In the above examples, 'B' takes 15 days time to make the coat, right of lien will be applicable after 15 days.

* General lien V/s Particular lien.

Basis	General lien	Particular lien
Who has the right	Bankers, factors, Policy Brokers, etc.	Any bailee.
Nature of lien.	Right to retain the goods belonging to another for a general balance of account.	Right to retain only the particular goods in respect of which the claim is due.
Condition	Bailee is unpaid and Bailee need not have worked upon the goods bailed.	Bailee has worked upon the goods and remuneration is unpaid.

* Modes of Termination of Bailment:-

1. On expiry of stipulated period.

Example 47:- X gives his cycle to Y for a month. The bailment terminates after 1 month.

2. Accomplishment of specified purpose.

Example 48:- X hires certain tents and Crockery on marriage of his daughter. The bailment terminates after marriage.

3. Bailee does anything inconsistent with conditions.

Example 49:- A gives horse to B for his own riding. B gives horse to his brother for riding. A can terminate the bailment.

4. Gratuitous Bailment can be terminated by the Bailor at any time by giving a notice to the bailee.

However, if due to premature termination, there is loss to Bailee in excess

of the benefit derived by him, the Bailor must compensate the Bailee for such a loss.

5. By Death:- A gratuitous bailment terminates upon the death of either the Bailor or the Bailee.

6. Destruction of subject-matter.

Example 50:- X gives his cycle to Y on hire. Cycle damaged beyond repairs. Bailment ends.

* Finder of lost Goods:-

Meaning:- Finder of lost goods is a person who finds goods belonging to another and takes them into his custody. He is subject to the same responsibilities as a Bailee.

* Duties of Finder of lost goods:-

⇒ To take ~~care~~ reasonable care of the goods.

⇒ Not to mix the goods with his own goods.

- 1) Must try to find the true owner.
- 2) Not to use the goods for his own purposes.
- 3) To return any increase in goods.

* Right of Finder of Lost Goods:-

- Right to lien (sec. 168):-

⇒ The finder of lost goods.

→ can retain the goods against the owner

→ Until he receives compensation

→ for trouble and expense voluntarily incurred.

→ by him to preserve the goods

However, he has no right to sue the true owner.

- Right to sue for reward (sec. 168):-

⇒ Where the owner has offered a specific reward for the return of goods lost,

> the finder may sue for such reward,

> and ~~any~~ may retain the goods until he receives it.

- Right to sale of Goods (sec. 169):-

⇒ Where the true owner

> cannot with reasonable diligence be found, or

> found but refuses to pay the lawful charges to the finder.

⇒ The finder may sell it-

> When the goods is in danger of perishing or of losing the greater part of its value, or

> When the lawful charges to the

index, in respect of the goods found, amount to $\frac{2}{3}$ rd of its value.

* Pledge :-

Meaning (sec. 172) :-

- ⇒ The bailment of goods.
- ⇒ as a security for payment of
- ⇒ a debt or performance of a promise.

Parties (sec. 172) :-

- ⇒ Bailor in this case is called the "Pawnor" and
- ⇒ Bailee is called the "Pawnee".

* Right of Pawnee :-

(1) Retain the Pledged Goods (sec. 173) :-

- ⇒ Pawnee may retain the goods pledged:-
 - for payment of the debt,
 - for the interest of the debt, and

- all necessary expenses for the preservation of the goods.

(2) Retention for Subsequent Debts (Sec. 174):-

⇒ Pawnee may retain the goods pledged:

- for payment of the subsequent debt.
- Only when it has been provided for in a contract.

(3) Recover Extraordinary Expenses (Sec. 175):-

⇒ Pawnee can sue the pawnor for such expenses.

However, he can not retain goods.

(4) Right on Default by Pawnor (Sec. 176):-

⇒ If the pawnor makes default in payment of the debt within specified time, the pawnee may:

- bring a suit against the pawnor upon the debt and retain the goods pledged as a collateral security;

- 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, the pawnor is still liable to pay the balance.
- greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

* Rights of Pawnor :-

- Same as that of Bailor :-

⇒ Terminate bailment.

⇒ Demand return of goods any time.

⇒ Claim accretion

⇒ Right against third party.

- To Redeem the Goods before sale (Sec. 177) :-

⇒ When Pawnor makes default in the payment of debt or performance of promise, he still has a right to redeem the goods pledged at any subsequent time before the pawnee sells them. But he has to pay such additional expenses to the pawnee that arose due to his default.

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

* Duties :-

Pawnee

(same as Bailee for Non-Gratuitous Bailment)

- ⇒ Take care of goods bailed.
- ⇒ No unauthorized use of goods.
- ⇒ Not mix goods with own goods.
- ⇒ Return the goods.
- ⇒ Return accretions to the goods.
- ⇒ Not to set up adverse title.

Pawnor

(same as Bailor for Non-Gratuitous Bailment)

- ⇒ Pay debt.
- ⇒ Disclose all the faults.
- ⇒ Indemnify Pawnee.
- ⇒ Pay extra ordinary expenses.
- ⇒ Pay deficit if pawnee sells goods due to default by pawnor.

* Pledge by Non-owner:-

• Pledge by ~~Merch~~ mercantile Agent (Sec. 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.

⇒ Had no notice that pawnor has no authority to pledge.

• Pledge by person in possession under voidable contract (Sec. 178A)

⇒ When the pawnor has obtained possession of the goods under a voidable contract,

the pledge created by him will be valid provided;

➤ the contract has not been rescinded before the contract of pledge, and.

➤ the pawnee acts in good faith and without notice of the pawnor's defect of title.

- Pledge where pawnor has only a limited interest (sec. 179):-

⇒ When the pawnor has obtained possession of the goods

⇒ Where a person pledges goods in which he ~~has~~ has only a limited interest, the pledge is valid to the extent of that interest.

Example 51:- 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.

• 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 take a valid pledge of the goods in his possession.

• Pledge by seller or ~~by~~ buyer in possession:-

⇒ A seller, in whose possession, the goods have been left after ~~sale~~ 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 the title of the pawnee.

Example 52:- A buys a cycle from B. But leaves the cycle with B (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.

* Distinction Between Bailment & Pledge :-

Basis	Bailment	Pledge.
Meaning.	Transfer of goods by one person to another for some specific purpose.	Transfer of goods from one person to another as security for repayment of debt.
Parties	Bailor & Bailee	Pawnee & Pawnee.
Purpose.	Bailment may be made for any purpose.	Only as security for payment of a debt.
Consideration	May be with or without consideration.	Only with consideration.
Right to sell the goods.	No right to sell the goods.	Right to sell the goods if the pawnee fails to redeem the goods.
Right to use of goods.	only for a purpose specified in the contract of bailment.	Cannot use the goods pledged.