

UNIT 2 : BAILMENT AND PLEDGE

BAILMENT

- **Meaning and Characteristics of Bailment**
 - **Meaning:** Bailment is defined under **Section 148** as "A contract whereby goods are delivered by one person to another for some purpose, that the goods shall, when the purpose is over be returned or disposed off according to directions of the person delivering the goods."
 - The person delivering the goods is called the "**bailor**". The person to whom they are delivered is called the "**bailee**".
 - **Essential elements of bailment:**
 - (1) **Contract:** Bailment is based upon a contract and therefore absolutely enforceable, in the court of law. The Contract may be expressed or implied. No consideration is necessary to create valid contract of bailment.
 - (2) **Movable property:** Contract of bailment pertains to goods only.
 - (3) **Ownership:** In a contract of bailment, ownership of the goods always remains with the bailor and is never transferred to the bailee.
 - (4) **Possession:** In bailment both custody and possession must change but not the ownership. But where a person is in custody without possession he does not become a bailee. Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes. 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.
 - (5) **Same goods:** The goods under bailment must be returned in specie i.e. the same goods must be delivered and not similar goods.
- **FORMS OF BAILMENT**
 - (1) Delivery of goods by one person to another to be held for the bailor's purpose.
 - (2) Gratuitous bailment: Where neither the bailor nor the bailee gets any remuneration. For example A lends his book to his friend.
 - (3) Hiring of goods.
 - (4) Delivering goods to a creditor to serve as security for a loan.
 - (5) Delivering goods for repair with or without remuneration.
 - (6) Delivering goods for carriage.
 - (7) Finder of Goods.

• DUTIES AND RIGHTS OF BAILOR**Duties of Bailor:**

- 1) To disclose the faults [**Section 150**]
- 2) To bear extra-ordinary expenses [**Section 158**]
- 3) The bailor is responsible to the bailee for any loss which the bailee may sustain [**Section 164**]
- 4) Where the bailment is gratuitous, the bailor must reimburse the bailee for any expenditure incurred in keeping the goods.
- 5) The bailor should reimburse any expense which the bailee may incur by way of loss in the process of returning the goods or complying with other directions for returning the goods.
- 6) 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.
- 7) The bailor is bound to accept the goods after the purpose is accomplished.

Rights of Bailor:

- 1) **Liability of bailee making unauthorised use of goods bailed** [**Section 154**].
- 2) If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall share the mixture produced, in proportion to their respective shares [**Section 155**]
- 3) **Effect of mixture, without bailor's consent, when the goods can be separated** [**Section 156**]: The property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or
- 4) **Effect of mixture, without bailor's consent, when the goods cannot be separated** [**Section 157**]: Bailee has to compensate the bailor.
- 5) 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 [**Section 153**]
- 6) In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any accretions to the goods bailed [**Section 163**]
- 7) **Gratuitous bailment:** Bailor in the case of gratuitous bailment has a right to demand the goods back even before the expiry of the period of bailment. If in the process, loss is caused to the bailee, bailor is bound to compensate.

• DUTIES AND RIGHTS OF BAILEE**Duties of Bailee:**

- 1) Care to be taken by bailee [**Section 151**]
- 2) 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 the amount of care of it described in section 151 [**Section 152**]
- 3) Duty to not make unauthorized use of goods.
- 4) Duty to make sure goods do not mix with the goods bailed :
- 5) Return of goods bailed on expiration of time or accomplishment of purpose [**Section 160**]
- 6) Bailee's responsibility when goods are not duly returned [**Section 161**]
- 7) If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent

Rights of a Bailee

- 1) To claim compensation for any loss arising from non-disclosure of known defects in the goods.
- 2) To claim indemnification for any loss or damage as a result of defective title.
- 3) To deliver back the goods to joint bailors according to the agreement or directions.
- 4) 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 is not responsible to the owner in respect of such delivery. (**Section 166**)
- 5) **To exercise his 'right of lien'**. Where charges due in respect of goods retained have not been paid. The right of lien is a particular lien for the reason that the bailee can retain only these goods for which the bailee has to receive his fees/remuneration.
- 6) To take action against third parties if that party wrongfully denies the bailee of his right to use the goods.
- 7) 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 [**Section 180**]
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 [**Section 181**].
- 8) If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods [**Section 167**].

• **FINDER OF GOODS**

- The term 'finder of goods' means a person who has found some goods belonging to another. When a person comes across some article he is under no duty to pick them up, but if he picks them up, he becomes a finder of goods and is subject to the same responsibility as a bailee.
- **The obligations of a finder of goods:**
 - 1) He must take reasonable care of the goods:
 - 2) He must not use the goods for his own purpose.
 - 3) He must not mix them with his own goods.
 - 4) He must make appropriate efforts to find the true owner of the goods.
- **Rights of finder of goods**
 - 1) **Right to retain goods:** The finder can retain the goods against the true owner until he receives compensation for trouble and expenses incurred by him in preserving the goods and finding out the owner. This right is known as the finder's lien on the goods
 - 2) **Right to sue for reward (Section 168)**
 - 3) **Right to claim expenses incurred**
 - 4) **Right of sale: Section 169** permits the finder to sell the goods in the following cases:
 - a. If the owner cannot be found after reasonable search; or
 - b) If found, the owner refuses to pay the lawful charges to the finder; or
 - c) If the thing is in danger of perishing or losing the greater part of their value; or
 - d) If the lawful charges of the finder amount to two - thirds of their value.

A finder of goods has a right to keep the goods with him against the whole world except the true owner.

• **TYPES OF LIEN**

General lien (Section 171)		Particular lien(Section 170)	
1.	It is a right to detain/retain any goods of the bailor for general balance of account outstanding	1.	It is a right exercisable only on such goods in respect of which charges are due
2.	A general lien is not automatic but recognized through on agreement or law exercised by the bailee only by name	2.	It is automatic
3.	It can be exercised against goods even without involvement of labour or skill.	3.	It comes into play only when some labour or skill is involved
4.	Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien	4.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien.

PLEDGE

• **MEANING AND CHARACTERISTICS OF PLEDGE**

- **Meaning:** Pledge is defined under **Section 172** as the bailment of goods as security for a payment of a debt or performance of a promise is called **pledge/pawn**.
- The person who makes such a bailment is called a pledger or **pawnor** and the bailee is known as **pawnee**
- **Essentials of a valid pledge:**
 - 1) Delivery of goods: Delivery of the goods may be actual or constructive or symbolic.
 - 2) Goods must be the subject matter of the contract of pledge. The goods pledged must be in existence
 - 3) Purpose of pledge is security for payment of debt.
 - 4) Pledge is specie of bailment.

• **RIGHTS OF PAWNEE AND PAWNOR**

Rights of pawnee

- 1) Right of retain the goods pledged **[Section 173]**
- 2) Right to retention of pledged goods for subsequent debts **[Section 174]**
- 3) Pawnee's right as to extraordinary expenses Incurred **[Section 175]**
- 4) Pawnee's right where pawnor makes default **[Section 176]**: If the pawnor makes default in payment of the debt, or performance, pawnee may retain the goods or sell the goods. 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.

Rights of pawnor:

- 1) Right to redeem **[Section 177]**
- 2) Pledge where pawnor has only a limited interest **[Section 179]** : Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

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, 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.

- **PLEDGE BY MERCANTILE AGENTS [SECTION 178]**

- Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the Pawnor has no authority to pledge.
- In this section, the expressions 'mercantile agent and documents of title' shall have the meanings assigned to them in the Sale of Goods Act, 1930.
- Pledge in this case can be effected through pledge of documents like a bill of lading or a railway receipt etc.

DISTINCTION BETWEEN BAILMENT AND PLEDGE

Aspects	Pledge	Bailment
Purpose	A pledge is made for a specific purpose as security for payment of debt or performance of a promise.	A bailment can be for any purpose.
Use of Goods	A pawnee does not have the right to use the goods.	The bailee may use the goods bailed as per the terms of the contract.
Lien	Lien can be exercised even for non- payment of interest.	A bailee can exercise lien on the goods bailed only for his labour and skill employed
Sale of Goods	The pawnee can sell the goods after due notice to the pawnor.	The bailee has no right of sale.
Nature of Interest in Property	The pledgee gets a special property in the goods. The general property remains with the pawnor.	The bailee has no right of possession of the goods bailed.