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## UNIT - 8

# Bailment & Pledge

Derived from French word

"Bailier"

- handling over
- Change of possession.

As per Section 148 of the Act, bailment is the delivery of goods by one person to another for some purpose.

When the purpose is accomplished,

01

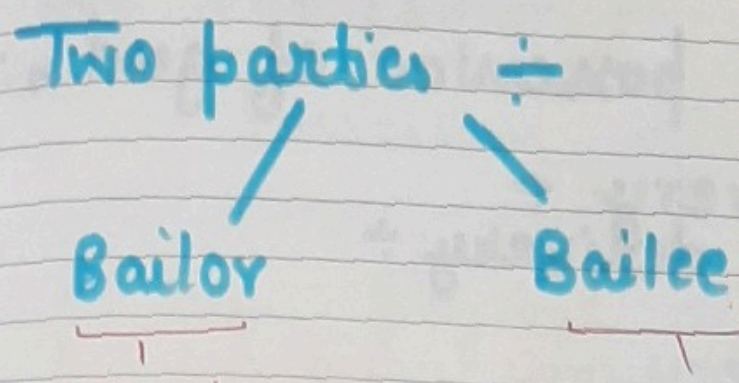
SUNDAY

be returned

or

otherwise disposed of according to the directions of the person delivering them.

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The person delivering the goods

The person to whom the goods are delivered

## ESSENTIAL ELEMENTS :-

### 1. Contract :-

Express Implied

No consideration is necessary to create a valid contract of bailment.

### 2. Delivery of goods :-

From one person to another for some purpose

- Bailment is only for
- movable goods
  - Not for immovable goods.

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Delivery of the possession of good is:

- (a) Actual delivery ÷  
 (b) Constructive delivery ÷

Actual delivery

Physically handed over to the bailee by bailor.

Constructive delivery

Where delivery is made by doing anything that has the effect of putting goods in the possession of the bailee or of any person authorized to hold them on his behalf.

(c) Purpose :

Goods are delivered for some purpose

Purpose may be

Express

Implied

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### (d) Possession :

Possession of goods changes.

- by physical delivery
- or by any action which has the effect of placing the goods in the possession of bailee.

Change of possession } does not lead to change of ownership.

Bailor continues to be the owner of goods where a person is in custody without possession he does not become a bailee.

### (e) Return of goods :

Bailee is obligated to return the goods physically to the bailor.

The goods should be returned in the same form as given or may be altered as per bailor's direction.

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- Bailee cannot deliver some <sup>other</sup> goods not those of higher value

## Types of Bailment:-

- On the basis of benefit.
- For exclusive benefit of bailor
  - For exclusive benefit of bailee.
  - For exclusive benefit of bailor & bailee.

On the basis of reward:-

### (a) Gratuitous Bailment:

Free of charge

Either for exclusive benefits of bailor or bailee.

### (b) Non-gratuitous bailment:

Both will get some benefit

for both bailor & bailee

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# Duties of a bailor ÷

[Sec 150, 158, 159, 164]

- Disclose known facts
- Bear necessary expenses
- Indemnify bailee
- Bound to accept the goods

## (i) Bailor's duty to disclose faults in goods bailed

Gratuitous bailment

Non-gratuitous bailment

Bailor is bound to disclose faults in the goods bailed to bailee of which bailor is aware.

If the goods are bailed for hire, the bailor is responsible for such damage

He is responsible for damage arising to the bailee directly from such faults.

Whether he was or was not aware.

07

SATURDAY

JULY

2018

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JUN 2018	3	4	5	6	7	8
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## (ii) Duty to pay expenses

Gratuitous bailment

Non-gratuitous bailment

[ No remuneration - to bailee ]

But bailor shall pay necessary expenses incurred by him & extraordinary expenses incurred by him for bailment purpose.

The bailor is liable to pay the

Extraordinary expenses.

## (iii) Duty to indemnify the bailee for pre-mature termination

08

SUNDAY

समयपूर्व समाप्ति

Bailor decides to terminate the bailment before the expiry of the period of bailment

Bailee suffered loss that is in excess of the benefit received gratuitously

The bailor must compensate the bailee

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## (iv) Bailor's responsibility to bailee.

Indemnify for any loss

To receive back the goods.

which the bailee may sustain by reason

Can claim for all necessary expenses incurred for the safe custody

- Bailor not entitled to make bailment
- To receive back the goods
- To give directions, respecting them

## Duties of a bailee :-

(1) To take reasonable care of goods :-

Bailee has to take care of them as he has done for his own goods under same circumstances

Goods will be of [Same bulk, quantity, value] as bailed



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JUN 2018	3	4	5	6	7	8	9
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## Exception :

Bailee when not liable for loss etc of thing bailed.

In the absence of any special contract.

## 2. Not to make inconsistent use of goods :

Bailee Does not makes any use of the goods bailed, otherwise he is liable

to pay / compensate

- for any loss
- compensation for destruction of goods

As per Sec 153 :-

A (contract) becomes  
(of bailment)

Voidable at the option of the bailor, if the bailee does not use the goods acc. to the terms and conditions of bailment

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AUG 2018

WK 28 - 192-173

2018 WEDNESDAY JULY

11

### 3. Not to mix the goods :-

If bailee mix the goods with the consent of bailor.

If bailee mix the goods which can be separated without the consent of bailor.

If bailee mixes the good can't be separated without the consent of bailor.

Bailee shall have an interest in proportion to their respective shares.

Bailee is bound to bear the exp. of separation or any damage arising from mixture.

The bailee has to compensate the bailor for loss of the goods.

### 4. Return the goods :

If by default not able to return

Responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

12

THURSDAY  
JULY 2018

Growth (वृद्धि)

	S	M	T	W	T	F	S
JUN 2018	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
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## 5. Return an accretion from the goods:

Any increase or profit which may have accrued from the goods bailed

The bailee is bound to deliver that too  
(सह अपने दाल)

## 6. Not to setup adverse title :-

- Bailee must not set up a title adverse to that of the bailor.
- Hold the goods on behalf of the bailor.
- Cannot deny the title of the bailor.

## Rights of a bailor :-

### 1. Right to terminate bailment :-

Contract of bailment is Voidable

- If bailee does any act with regards to good bailed, inconsistent with the conditions of bailment.

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AUG  
2018

WK 26 - 194-171

2018 | FRIDAY  
JULY

13

## 2. Right to demand back the goods.

Any time

- Before the period fixed is not expired
- Or after achievement of objective

## 3. Right to file a suit against a wrong doer ÷

performer (कर्ता)

[Detailed]

## 4. Right to sue the bailee ÷

For enforcing all the liabilities and duties.

## 5. Right to compensation ÷

- If any damage is caused by
  - ① Unauthorized use
  - ② Unauthorized mixing
 ] Bailor can claim compensation

14

SATURDAY

JULY

2018

	S	M	T	W	T	F	S
JUN 2018	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
	17	18	19	20	21	22	23
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# Rights of a bailee :-

1. Rights to deliver the goods to any one of the joint bailors.

2. Right to indemnity :-

Bailee is entitled to indemnified by bailor for

- any loss
- to receive back the goods.
- to give directions in respect to them.

If Bailor has no title to the goods

Bailee in good faith

15 SUNDAY delivers them back to or according to the directions of the bailor, the bailee shall not be responsible to owner.

Bailee can also claim all necessary expenses [ (unadvised bailment) ]

3. Right to claim compensation in case of faulty goods.
4. Right to claim necessary expenses
5. Right to apply to court to decide the title of the goods.

Bailed Goods claimed by the other person than the bailor

The bailee may apply to the court to stop its delivery and to decide the title to the goods.

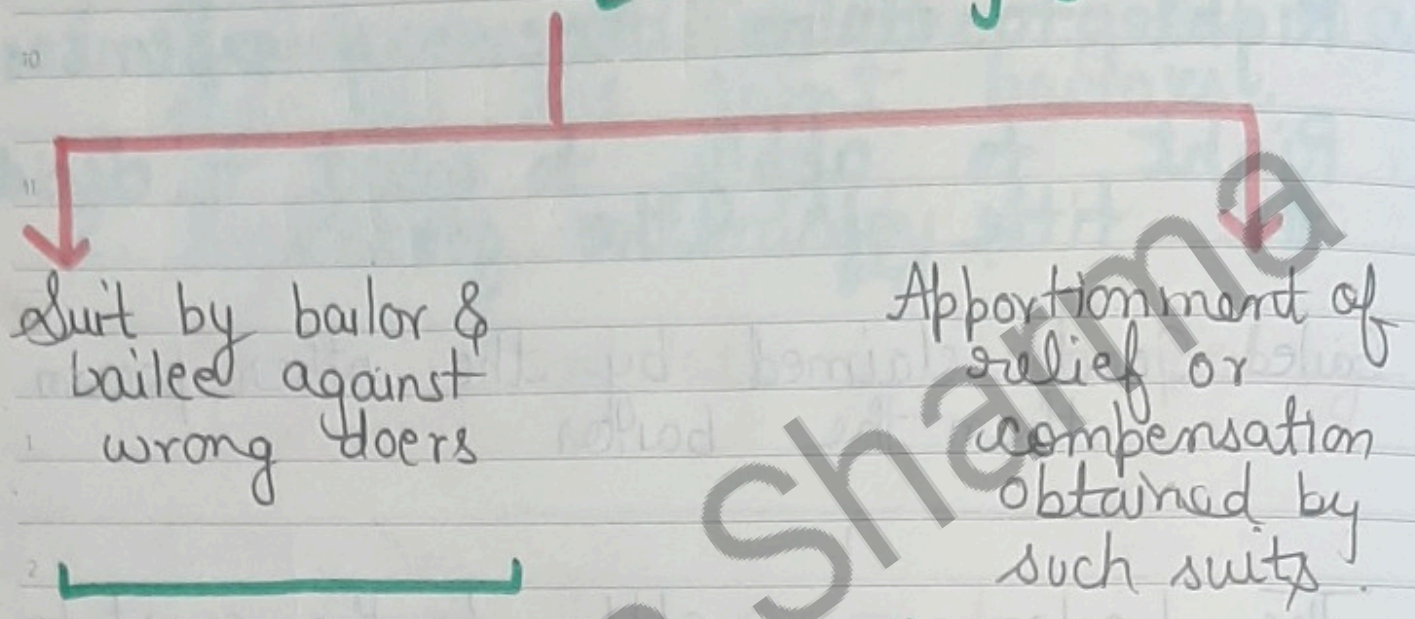
Ownership } Court will decide.

That whose property is this.

6. Rights of particular lien for payment of services.
7. Rights of general lien.

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# Rights of a bailor and bailee against any wrong doer [3rd Party]



3rd person wrongfully deprives the bailee for use or possession of the goods bailed, does them any injury

Apportionment of relief or compensation obtained by such suits.

Whatever is obtained by way of relief or compensation in any such suit shall, as between bailor and bailee

The bailee is entitled to do such remedies as the owner might have used in case of no bailment had been made

② Either bailee or the bailor may bring against a 3rd person.

Acc. to their respective interests.

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AUG  
2018

WK 29 • 199-166

2018

WEDNESDAY  
JULY

18

# Termination of bailment

## 1. On the expiry of stipulated period.

Bailment shall terminate after expiry of such period

## 2. On fulfillment of purpose +

## 3. By notice :-

- (a) A purpose (x)  
B purpose (✓)

So here bailor can terminate the contract of bailment

A gratuitous bailment can be terminated by bailor any time

By giving a notice to the bailee.

## 4. By Death :-

of either bailor or bailee.



	S	M	T	W	T	F	S
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# 5. Destruction of subject matter :-

Makes it impossible to be used for the purpose of bailment

- Destroyed
- Change in nature of goods

# FINDER OF LOST GOODS :-

Right of finder of lost goods -  
May sue for specific reward offered

When finder of thing commonly on sale may sell it.

① Finder has right to retain the goods against owner until he receives compensation

② Where owner has offered specific reward on the lost goods, the finder may sue the owner for such reward or retain goods also

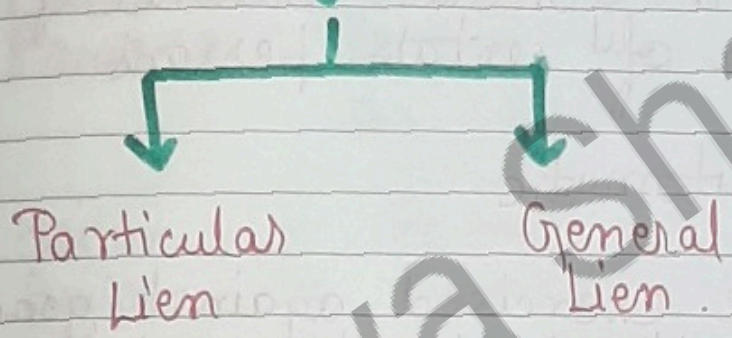
- Thing is in danger of perishing or losing greater value
- Lawful charges of the finder in respect of the thing found amount to two-third of value.

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# Right of Lien :-

- to retain the goods belonging to another
- Until his claim is satisfied.
- Some debt due to him is repaid

## Types



## Particular Lien :-

- Section 170 of ICA, 1872
- Implies a right of the bailee to retain specific goods bailed for non-payment of amount
- Automatic
- Comes into play when some labor or skill is involved has been expended on the goods resulting in an increase in value of goods.
- [ Bailee, finder of goods, pledgee, unpaid seller ] → Particular Lien

21

SATURDAY  
JULY

2018

	S	M	T	W	T	F	S
JUN 2018	3	4	5	6	7	8	9
	10	11	12	13	14	15	16
	17	18	19	20	21	22	23
	24	25	26	27	28	29	30

## • General Lien ÷

• Sec 171 of ICA, 1872

• 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.

• Not automatic

• Can be exercised against goods even without involvement of labor or skill

• Only such persons

Bonkers	;	policy brokers
Factors/ Agents	;	advocates
Wharfingers	;	etc.

22

SUNDAY

Are entitled to general lien.

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AUG  
2018

WK 30 • 2018-161

2018 | MONDAY  
JULY

23

# PLEDGE :-

Bailment of goods as security for payment of a debt or performance of a promise

## Parties

- **Pawnor** : Person who pledges goods as security
- **Pawnee** : Person who receives the goods as security

Bailor - Pawnor  
Bailee - Pawnee

## ESSENTIALS :-

All essentials of bailment are also the essentials of the pledge - Apart from that :-

- Bailment for security against payment or performance of the promise.
- Subject matter of pledge ] - Goods ] • Should be in existence.
- Delivery of goods from pledger to pledgee

24

TUESDAY  
JULY

2018

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JUN 2018	3	4	5	6	7	8	9
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# Rights of a pawnee / pledgee:

## • Right to retain goods [pledged]

Pawnee may retain

- payment of the debt or performance of promise
- Int for the debt
- All necessary expenses

Incurred by him in respect of the possession or for the preservation of the goods pledged

## • Rights to retention of subsequent debts.

- Right to retain goods for subsequent debts can be exercised.

## • Rights for extra ordinary expenses:

He cannot retain goods but can sue for extra ordinary expenses.

• Pawnee's right where pawnor makes default.

If pawnor makes default

Bring a suit

Sell goods

SP < Debt then  
- claim

SP > Debt  
↓  
Pay excess to the pawnor.

Rights of a pawnor : ] Same as bailor.

• Right to redeem ( Sec 177 )

If pawnor makes any default in payment of debt / promise then he may redeem goods at any time before actual sale but he must pay additional expenses which may have arisen due to his default.

26

THURSDAY  
JULY

2018

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# Duties of a Pawnee :-

1. To take reasonable care of pledged goods.

2. Not to make unauthorized use of pledged goods.

3. To return the goods

- when debt has been repaid

- the promise is performed.

4. Not to mix his own goods.

5. Not to do any act which is inconsistent

In terms of  
pledge.

6. Duty to return accretion to the goods, if any

To give  
extra  
benefit  
occurred.

## Duties of a pawnor :-

1. Pawnor is liable to pay the debt or perform as the case may be.

2. Duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred.

3. To disclose all the faults

which pawnee may put for any extraordinary expenses.

4. Loss occurs to the pawnee due defect in pawnor's title to the goods.

5. The pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.



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# PLEDGE BY NON-OWNERS

## 1. Pledge by mercantile agent:

Business

To buy  
To sell  
To pledge.

- Mercantile agent who is in possession of goods with consent of owner
- Can pledge them if it is in ordinary course of business
- It shall be valid as if it is made by owner of goods.

## 29 2. Pledge by person in possession under (which) voidable contract.

- If any person obtains possession in voidable contract

- And before contract is avoided
- Pawnee gets good title in case of goods pledged.



31

TUESDAY

JULY

2018

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## 5. Pledge by seller or buyer in possession

- When any buyer who is in possession of goods before property passes to him can pledge goods.

- Where seller who sold goods has possession of that goods can pledge them.

[ In both cases he gets good title ]