

Unit-8 - Bailment and Pledge

* Bailment [Sec. 148]

- French word 'baillieu' → to deliver, 'Handing over' or 'change of possession'.
- 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.

• Parties to Bailment :-

- (i) Bailor → Person delivering goods
- (ii) Bailee → Person to whom goods are delivered

• Types of Bailment :-

1) On the basis of Benefit

- (a) For the exclusive benefit of Bailor
- (b) For the exclusive benefit of Bailee
- (c) For mutual benefit of Bailor and Bailee

2) On the basis of Reward :-

- (a) Gratuitous Bailment - when the provider of the service does it free of charge
- (b) Non-Gratuitous Bailment - where both the parties get some benefit.

• Essential Elements of Contract of Bailment :-

- (i) Contract - presence of contract → express, consideration not necessary
↳ implied
- (ii) Delivery of goods - Delivery of goods for some purpose. Bailment only for Movable goods and never for immovable goods or money.

→ Delivery of possession of goods is of two types:

(i) Actual Delivery - goods are physically handed over to Bailee by Bailor.

(ii) Constructive Delivery - delivery is made by doing anything that has effect putting goods in possession of other person.

(iii) Purpose - Goods are delivered with some purpose.

(iv) Change in possession of goods.

(v) Return of goods - in same form as given or altered as per bailor's direction.

* Duties of Bailor :-

(i) Disclose faults in goods bailed [Sec. 150]

(a) In case of gratuitous bailment → bound to disclose any fault in goods known by him

(b) In case of non-gratuitous bailment → Bailor is responsible for damage whether he was aware or unaware of faults in the goods.

(ii) Pay necessary expenses [Sec. 158]

(a) In gratuitous bailment → Bailor is liable to pay necessary and extraordinary expenses.

(b) In non-gratuitous bailment → liability to pay extraordinary expenses

(iii) Indemnify Bailee for premature termination [Sec. 159]

→ must compensate bailee for loss/damage suffered by him.

(iv) Responsibility to Bailee [Sec. 164]

(a) Indemnity for loss sustained by bailee

(b) Responsibility to receive back the goods

* Duties of Bailee :-

(i) Take reasonable care of goods

(a) Bailee is bound to take as much care of goods bailed to him as a man of ordinary prudence would take care. [Sec. 151]

(b) Exception - In absence of special contract, Bailee is not liable for loss, destruction of things bailed, if he has taken full care required [Sec. 152]

(ii) Not to make inconsistent use of goods

→ If bailee makes use of goods, not as per the terms & conditions of contract → He's liable for the loss or damage. [Sec. 154]

→ Contract of Bailment is voidable at option of Bailor → If Bailee does not use goods according to terms & conditions [Sec. 153]

(iii) Not to mix the goods

(a) If bailee mix bailed goods with own goods → with consent of bailor, Both parties shall have interest in proportion of their respective share in mixture so produced. [Sec. 155]

(b) If bailee mix bailed goods without consent of Bailor & goods can be separated → Bailee is bound to bear the expense of Separation or any damage arising from mixture. [Sec. 156]

(c) If bailee mix bailed goods without consent of Bailor & separation of goods is impossible → Bailor is to be compensated by Bailee for loss of goods [Sec. 157]

(iv) Return of goods

(a) Duty of Bailee to return goods, as soon as time for which they were bailed, has expired. [Sec. 160]

(b) If by default of Bailee, goods not returned, he is responsible to bailor for any loss, destruction of goods from that time. [Sec. 161]

(vi) Return accretion from goods [Sec. 163]

→ In absence of contract to contrary → Bailee is bound to deliver to Bailor, any increase or profit accrued from bailed goods.

(vii) Not to setup Adverse Title

→ Bailee must hold the goods of and for the Bailor. He cannot deny the title of Bailor.
on behalf

* Rights of a Bailor :-

(i) Right to terminate bailment [Sec. 153]

→ Contract of Bailment is avoidable at option of the bailor → if bailee does any act inconsistent with the conditions of Bailment.

(ii) Right to demand back the goods [Sec. 159]

→ When goods are lent gratuitously, Bailor can demand back good at any time even before expiry of time fixed.

→ However, due to premature return of goods → if bailee suffers any loss which is more than benefit actually obtained, Bailor has to compensate the Bailee.

(iii) Right to file a suit against a wrong doer

(iv) Right to sue the Bailee - Bailor has the right to sue the Bailee for enforcing all the liabilities and duties on him.

(v) Right to Compensation - If any damage is caused due to unauthorised use or mixing of goods, Bailor has right to claim compensation.

* Rights of a Bailee :-

(i) Right to deliver goods to any one of the joint Bailors [Sec. 165]

→ If several joint Bailors bailed the goods, Bailee has right to deliver goods to any one of the joint Bailors; Unless there is a contract to the contrary.

(ii) Right to Indemnity [Sec. 166]

→ Bailee is entitled to be indemnified by Bailor for any loss arising by reason that Bailor was not entitled to make the Bailment.

→ Bailee can also claim all necessary expenses incurred by him for the purpose of gratuitous bailment.

(iii) Right to claim compensation in case of faulty goods [Sec. 150]

→ Bailee is entitled to receive compensation from Bailor for any loss caused to him due to the failure of the Bailor to disclose any fault which was known to him.

(iv) Right to claim necessary expenses [Sec. 158]

→ In case of gratuitous Bailment, Bailor shall pay Bailee necessary expenses incurred by him & any extraordinary expenses incurred for purpose of Bailment.

(v) Right to apply to court to decide the title of 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 decide the title of the goods.

(vi) Right of Particular lien for payment of services [Sec. 170]

(vii) Right of General Lien [Sec. 171]

* Termination of Bailment :-

- (i) On expiry of stipulated period.
- (ii) on fulfillment of the purpose.
- (iii) By Notice → If bailee acts in manner inconsistent in terms of Bailment
→ Gratuitous Bailment
- (iv) By death of either Bailor / Bailee
- (v) Destruction of the subject matter

* Right of Lien

→ 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.

• Particular Lien [Sec. 170]

- It is a right to retain only a particular goods in respect of which the claim is due.
- Where Bailee has rendered any service involving exercise of labour or skill in respect of goods bailed, he has right to retain such goods.

• General Lien [Sec. 171]

- It is a 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.

* Finder of Lost goods

- > Person who finds some goods which do not belong to him is called the finder of the goods.
- > DUTY: to find the true owner and surrender the goods to him.
- > the finder of goods has no right to sue the owner for compensation for trouble and expenses voluntarily incurred by him but has a right to retain the goods against owner until he receives such compensation.
- > Where owner has offered a specific reward on the lost goods, the finder may sue the owner for such reward or may retain the goods until then.
- > When finder of thing commonly on sale may sell it: -
 - (i) when thing is in danger of perishing or losing the greater part of its value.
 - (ii) when the lawful charges of the finder in respect of the thing found amount two-thirds of its value.

* Pledge [Sec. 172]

- > The bailment of goods as security for payment of a debt or performance of a promise is called Pledge.
- > Bailor in this case is known as 'Pawnee'
- > Bailee in this case is known as 'Pawnee'

• Essentials of a Contract of Pledge

- (i) All the essentials of Bailment.
- (ii) There shall be a bailment for security against payment or performance of promise.
- (iii) The subject matter of pledge is goods.
- (iv) Goods pledged for shall be in existence.
- (v) There shall be the delivery of goods from pledger to pledgee.

• Duties of Pawnor :-

- (i) pay debt
- (ii) Indemnify pawnee
- (iii) Disclose all the faults
- (iv) Pay extra ordinary expenses
- (v) Pay deficit if pawnee sells goods due to default by pawnor.

• Duties of Pawnee \Rightarrow Same as Bailee

• Rights of Pawnee :-

(i) Right to retain pledged goods [Sec. 173]

\rightarrow pawnee may retain goods not only for non-payment of debt but also for interest and expenses.

(ii) Right to retain of subsequent debts [Sec. 174]

\rightarrow Pawnee can retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged only when there is a contract to this effect.

(iii) Right to Extraordinary expenses [Sec. 175]

\rightarrow does not have right to retain but can sue pawnor for such expenses.

(iv) Right where Pawnor makes default [Sec. 176]

\rightarrow He may bring a suit against pawnor and retain goods pledged or he may sell the thing on reasonable notice to Pawnor.

• Rights of Pawnor :-

(i) Same rights as Bailor

(ii) Rights to redeem goods pledged after payment of the debt or performance of promise. [Sec. 177]

* Pledge by Non-Owners :-

(i) Pledge by Mercantile agent [Sec. 178]

→ A Mercantile agent, who is in possession of goods or document of title, with the consent of owner, can pledge them while acting in the ordinary course of Business.

(ii) Pledge by person in possession under voidable contract [Sec. 178A]

→ When pawnor has obtained possession of goods pledged by him under a contract voidable under section 19 or section 19A, but contract has not been rescinded at the time of the pledge.

(iii) Pledge where pawnor has only a limited interest [Sec. 179]

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

(iv) 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 possession of one of co-owners.

Such co-owner may make valid pledge of goods in his possession.

(v) Pledge by Buyer or Seller in Possession

→ A seller in whose possession, the goods have been left after sale, or a buyer who with the consent of seller, obtains possession of goods before sale → can make a pledge, provided that pawnee acts in good faith & he has no knowledge of the defect in title of the pawnor.