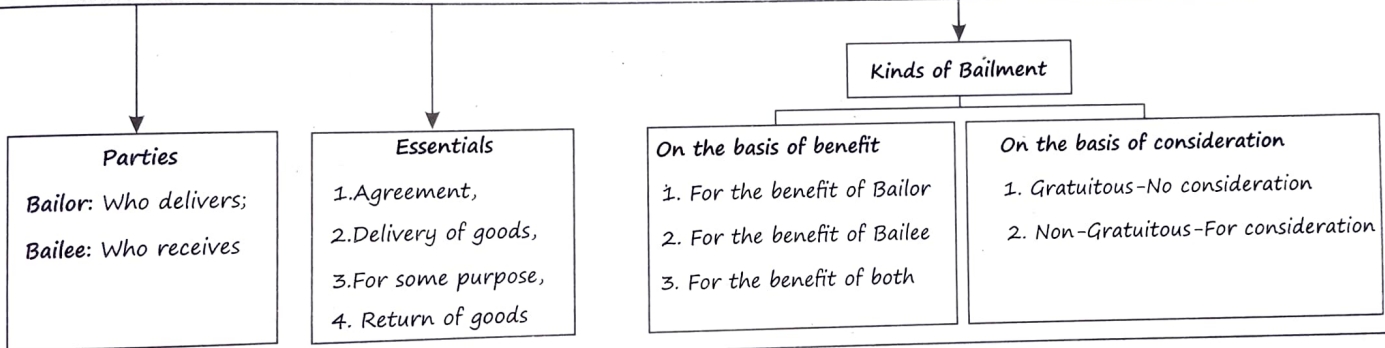


Contract of Bailment and Pledge

PART-A

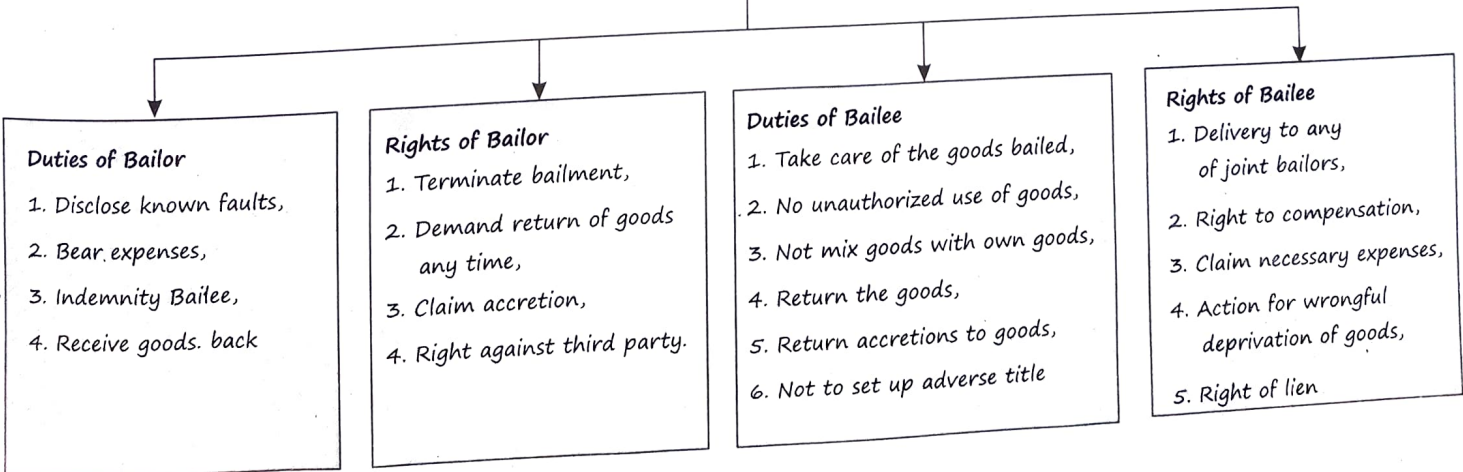
BAILMENT (SECTION 148-171)

Meaning: 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.



Gratuitous Bailment: without Consideration, Bailor is liable for known faults Only. All expenses born by Bailor.
Non-Gratuitous Bailment: With Consideration, Bailor is liable for all faults, Extra Ordinary expenses born by Bailor

Duties & Rights

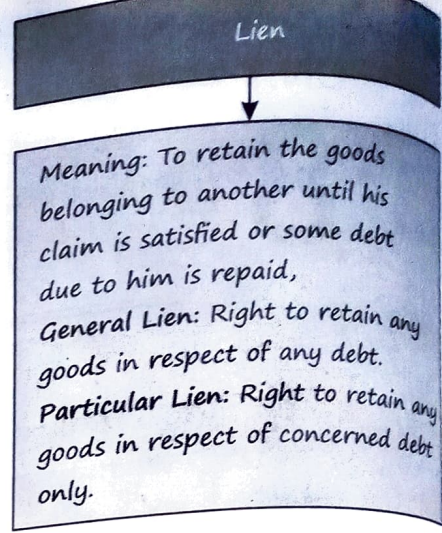
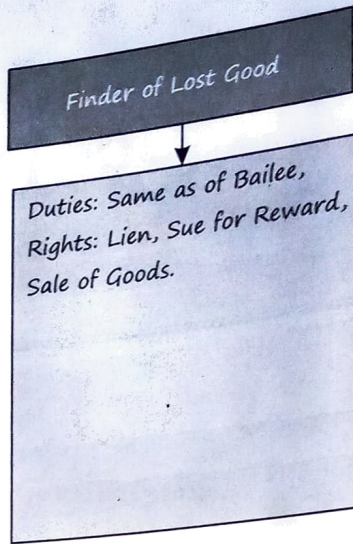
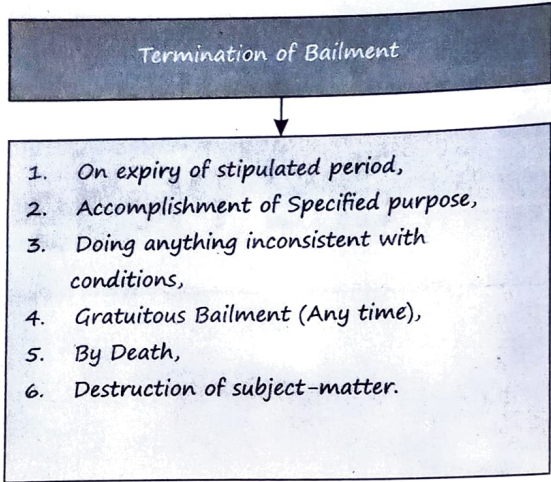


- Duties of Bailor**
1. Disclose known faults,
 2. Bear expenses,
 3. Indemnity Bailee,
 4. Receive goods. back

- Rights of Bailor**
1. Terminate bailment,
 2. Demand return of goods any time,
 3. Claim accretion,
 4. Right against third party.

- Duties of Bailee**
1. Take care of the goods bailed,
 2. No unauthorized use of goods,
 3. Not mix goods with own goods,
 4. Return the goods,
 5. Return accretions to goods,
 6. Not to set up adverse title

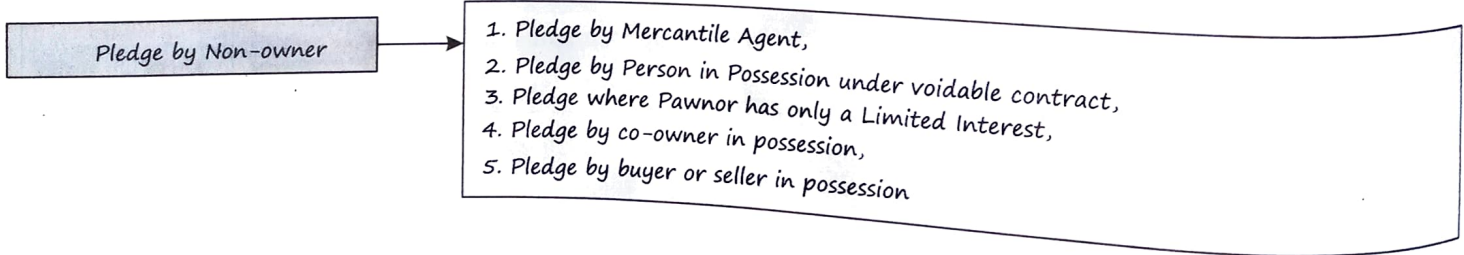
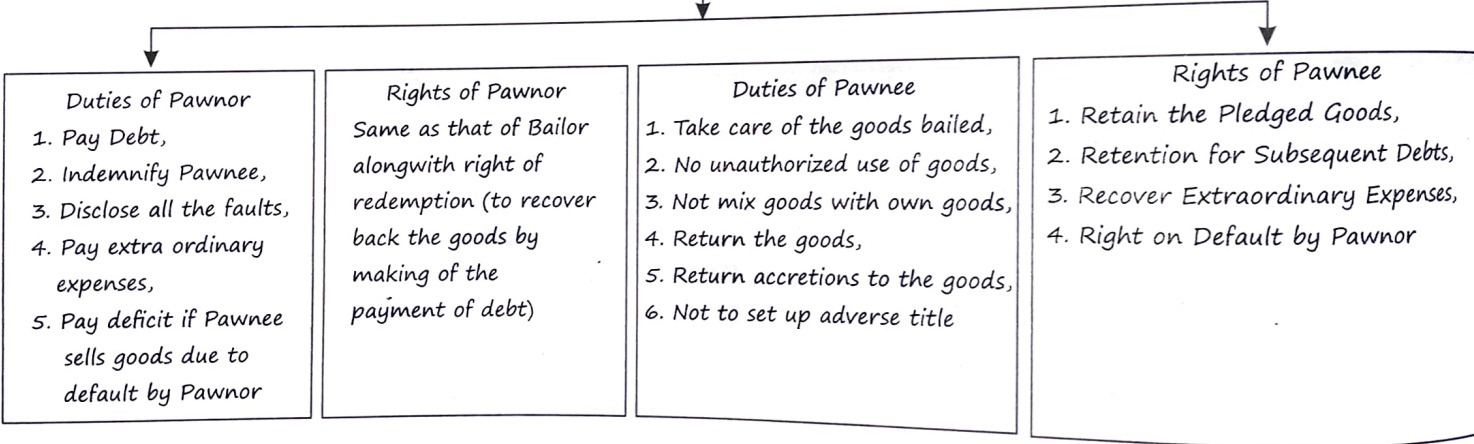
- Rights of Bailee**
1. Delivery to any of joint bailors,
 2. Right to compensation,
 3. Claim necessary expenses,
 4. Action for wrongful deprivation of goods,
 5. Right of lien



PLEDGE (SECTION 171-181)

Meaning: Bailment of goods as security for payment of a debt or performance of a promise.
Parties: Bailor-Pawnor, Bailee-Pawnee

Rights and Duties



PART-B

Q1. State the essential elements of a contract of bailment.

Sol. **Essential elements of a contract of bailment:** Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

The essential elements of the contract of the bailment are:

1. **Delivery of goods:** The essence of bailment is delivery of goods by one person to another.
2. **Bailment is a contract:** In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
3. **Return of goods in specific:** The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
4. **Ownership of goods:** In a bailment, it is only the possession of goods which is transferred and the bailor continues to be the owner of the goods.
5. **Property must be movable:** Bailment is only for movable goods and never for immovable goods or money.

Q2. Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:

- (i) V parks his car at a parking lot, locks it, and keeps the keys with himself.
- (ii) Seizure of goods by customs authorities.

Sol.

Provision

As per Section 148 of the Act, 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.

For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. There must be a transfer in ownership of the goods.

Analysis and conclusion

- (i) No. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with V, Section 148, of the Indian Contract Act, 1872 shall not be applicable.
- (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

Q3. Mrs. Shivani delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making anklet out of it. Every evening she used to receive the unfinished good (anklet) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the anklet was stolen from that box. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not? Give your answer as per the provisions of the Indian Contract Act, 1872.

Sol.

Provision

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the 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 of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Analysis and conclusion

Thus, the mere keeping of the box at Y's shop, when Mrs. Shivani herself took away the key cannot amount to delivery as per the meaning of delivery given in the provision in section 149.

Therefore, in this case there is no contract of bailment as Mrs. Shivani did not deliver the complete possession of the good by keeping the keys with herself.

Q4. Mrs. A delivered her old silver jewellery to Mr. Y a Goldsmith, for the purpose of making new a silver bowl out of it. Every evening she used to receive the unfinished good (silver bowl) to put it into box kept at Mr. Y's Shop. She kept the key of that box with herself. One night, the silver bowl was stolen from that box. Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

Sol.

Provision

Section 148 of Indian Contract Act 1872 defines 'Bailment' as the 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 of according to the direction of the person delivering them.

According to Section 149 of the Indian Contract Act, 1872, the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Analysis and conclusion

Thus, the mere keeping of the box at Y's shop when Mrs. A herself took away the keys cannot amount to delivery as per the meaning of delivery given in the provision of section 149. Therefore, in this case there is no contract of bailment as Mrs. A did not deliver the complete possession of the good by keeping the keys with herself.

Q5. On the basis of reward, what are various categories of bailment?

Sol. On the basis of reward, bailment can be classified into two types:

(i) Gratuitous Bailment: The word gratuitous means free of charge. So, a gratuitous bailment is one when the provider of service does it gratuitously i.e. free of charge. Such bailment would be either for the exclusive benefits of bailor or bailee.

(ii) Non-Gratuitous Bailment: Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

Q6. Ramesh hires a carriage of Suresh and agrees to pay ₹1500, as hire charges. The carriage is unsafe, though Suresh is unaware of it. Ramesh is injured and claims compensation for injuries suffered by him. Suresh refuses to pay. Discuss the liability of Suresh.

Sol.

Provision

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150.

The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Analysis and conclusion

Accordingly, applying the above provisions in the given case Suresh is responsible to compensate Ramesh for the injuries sustained even if he was not aware of the defect in the carriage.

Q7. Ashley bails his jewelry with Barn on the condition to safeguard in bank's safe locker. However, Barn kept it in safe locker at his residence, where he usually keeps his own jewelry. After a month all jewelry was lost in a religious riot. Ashley filed a suit against Barn for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether Ashley will succeed.

Sol.

Provision

According to section 151 of the Indian Contract Act, 1872, in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

According to section 152 of the Indian Contract Act, 1872, 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.

Analysis and conclusion

Thus, Barn is liable to compensate Ashley for his negligence to keep jewelry at his residence. Here, Ashley and Barn agreed to keep the jewelry at the Bank's safe locker and not at the latter's residence.

Q8. Amit lends a horse to Bimal for his own riding only. However, Bimal allows Chinku, a member of his family to ride the horse. Chinku rides the horse with care, but the horse falls and is injured.

As per the provisions of the Indian Contract Act, 1872, analyse the liability of Bimal in the given situation.

Sol.

Provision

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Analysis and conclusion

Hence, Bimal is liable to make compensation to Amit for the injury done to the horse.

Q9. Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give ₹200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar under the Indian Contract Act, 1872?

Sol.

Provision

According to Section 157 of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Analysis and conclusion

In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugar when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Q10. What is the liability of a bailee making unauthorized use of goods bailed: According to section 159 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Q11. Mr. Dhannaseth delivers a rough blue sapphire to a jeweler, to be cut and polished. The jeweler carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweler denies the delivery of goods without payment. Examine -

Sol.

Provision

According to section 170 of the Indian Contract Act, 1872, where one bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor.

Analysis and conclusion

In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

Hence, in the given situation the jeweller is entitled to retain the stone till he is paid for the services he has rendered.

Q12. Raj gives his umbrella to Manoj during raining season to be used for two days during Examinations. Manoj keeps the umbrella for a week. While going to Raj's house to return the umbrella, Manoj accidentally slips and the umbrella is badly damaged. Taking into account the provisions of the Indian Contract Act, 1872, who will bear the loss and why?

Sol.

Provision

It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired or the purpose for which they were bailed has been accomplished. [Section 160 of the Indian Contract Act, 1872]

Q10. What is the liability of a bailee making unauthorized use of goods bailed?
Sol. Liability of bailee making unauthorised use of goods bailed: According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Q11. Mr. Dhannaseth delivers a rough blue sapphire to a jeweler, to be cut and polished. The jeweler carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweler denies the delivery of goods without payment. Examine.

Sol.

Provision

According to section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

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Sol.

Provision

It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. [Section 160 of the Indian Contract Act, 1872]

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to bailor for any loss, destruction or deterioration of goods from that time. [Section 161]

Analysis and conclusion

In the instant case, Manoj shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Q13. Megha lends a sum of ₹20,000 to Bhim, on the security of two shares of a Prema Limited on 1st April 2019. On 15th June, 2019, the company issued two bonus shares. Bhim returns the loan amount of ₹20,000 with interest but Megha returns only two shares which were pledged and refuses to give the two bonus shares. Advise Bhim in the light of the provisions of the Indian Contract Act, 1872.

Sol.

Provision

Bailee's Duties and Liabilities: The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed."

Analysis and conclusion

In the given question, Megha received 2 bonus shares on the 2 pledged shares of Prema Limited. Applying the provisions of the Indian Contract Act, 1872, to the given case, the bonus shares are an increase on the shares pledged by Bhim to Megha. So, Megha is liable to return the shares along with the bonus shares.

Hence Bhim the bailor, is entitled to receive the original shares as well as bonus shares (after he has repaid the loan amount).

Q14. What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872.

Sol. As per the provisions of section 168 and 169 of the Indian Contract Act, 1872, the finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner.

But 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:

- (i) when the article is in danger of perishing and losing the greater part of the value
- or
- (ii) when the lawful charges of the finder amounts to two-third or more of the value of the article found.

Q15. Mr. Stefen owns a chicken firm near Gurgaon, where he breeds them and sells eggs and live chicken to retail shops in Gurgaon. Mr. Flemming also owns a similar firm near Gurgaon, doing the same business. Mr. Flemming had to go back to his native place in Australia for one year. He needed money for travel so he had pledged his firm to Mr. Stefen for one year and received a deposit of ₹25 lakhs and went away. At that point of time, stock of live birds were 100,000 and eggs 10,000. The condition was that when Flemming returns, he will repay the deposit and take possession of his firm with live birds and eggs.

After one year Flemming came back and returned the deposit. At that time there were 109,000 live birds (increase is due to hatching of eggs out of 10,000 eggs he had left), and 15,000 eggs.

Mr. Stefen agreed to return 100,000 live birds and 10,000 eggs only.

State the duties of Mr. Stefen as Pawnee and advise Mr. Flemming about his rights in the given case.

Provision

According to section 163 of the Indian Contract Act, 1872, 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.

Analysis and conclusion

In the given question, when Mr. Flemming returned from Australia there were 1,09,000 live birds and 15,000 eggs (1,00,000 birds and 10,000 eggs were originally deposited by Mr. Flemming). Mr. Stefen agreed to return 1,00,000 live birds and 10,000 eggs only and not the increased number of live birds and eggs.

In the light of the provision of law and facts of the question, following are the answers:

Duties of Mr. Stefen: Mr. Stefen (pawnee) is bound to deliver to Mr. Flemming (pawnor) any increase or profit (9,000 live birds and 5,000 eggs) which has occurred from the goods bailed (i.e the live birds and eggs).

Right of Mr. Flemming: Mr. Flemming is entitled to recover

Q16. Radheshyam borrowed a sum of ₹50,000 from a Bank on the security of gold on 1.07.2019 under an agreement which contains a clause that the bank shall have a right of particular lien on the gold pledged with it. Radheshyam thereafter took an unsecured loan of ₹20,000 from the same bank on 1.08.2019 for three months. On 30.09.2019 he repaid entire secured loan of ₹50,000 and requested the bank to release the gold pledged with it. The Bank decided to continue the lien on the gold until the unsecured loan is fully repaid by Radheshyam. Decide whether the decision of the Bank is valid within the provisions of the Indian Contract Act, 1872 ?

Sol.

Provision

General lien of bankers: According to section 171 of the Indian Contract Act, 1872, bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Section 171 empowers the banker with general right of lien in absence of a contract whereby it is entitled to retain the goods belonging to another party, until all the dues are discharged.

Analysis and conclusion

Here, in the first instance, the banker under an agreement has a right of particular lien on the gold pledged with it against the first secured loan of ₹50,000/-, which has already been fully repaid by Radheshyam.

Accordingly, Bank's decision to continue the lien on the gold until the unsecured loan of ₹20,000/- (which is the second loan) is not valid.

Q17. Mr. Avinash wanted a loan for expanding his business, from ABC Bank. Mr. Avinash has pledged the stock of his business to obtain the loan from bank. However, the expansion of business did not reap the desired results and Mr. Avinash was not able to repay the loan. Now, ABC bank wants to retain the stock for adjustment of their loan. Advise, ABC Bank whether they can retain the stock for the adjustment of their loan and also for payment of interest. Give your answer as per the provisions of the Contract Act, 1872?

Sol.

Provision

According to section 173 of the Indian Contract Act, 1872, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Analysis and conclusion

Hence, ABC Bank can retain the stock of business of Mr. Avinash, not only for adjustment of the loan but also for payment of interest.

Q18. Give four differences between Bailment and Pledge

Sol. Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

1. **As to purpose:** Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.
2. **As to right of sale:** The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
3. **As to right of using goods:** Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.
4. **Consideration:** In pledge there is always a consideration whereas in a bailment there may or may not be consideration.
5. **Discharge of contract:** Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

Q19. (i) Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?

(ii) Whether a Pawnee has a right to retain the goods pledged.

Sol.

Provision

- (i) **Pledge by person in possession under voidable contract [Section 178A of the Indian Contract Act, 1872]:** 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.**

Analysis and conclusion

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

- (ii) **Right of retainer [Section 173 of the Indian Contract Act, 1872]:** Yes, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession **or for the preservation of the goods pledged.**

Q20. As per the Indian Contract Act, 1872, answer the following:

- (i) Definition of Pledge, pawnor and pawnee
- (ii) Essential characteristics of contract of pledge

Sol.

- (i) "Pledge", "pawnor" and "pawnee" defined [Section 172]:

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

- (ii) Since Pledge is a special kind of bailment, all the essential of bailment are also essentials of Pledge. Apart from that, the characteristics of the pledge are:
 - (a) There shall be a bailment of security against payment or performance of the promise.
 - (b) The subject matter of pledge is goods.
 - (c) Goods pledged for shall be in existence
 - (d) There shall be delivery of goods from pledger to pledgee.

□□□