

CA Foundation

Paper 2 - Business Law

Chapter 2 - ICA

The Indian Contract Act, 1872

Notes by - CA Chaitanya Jain

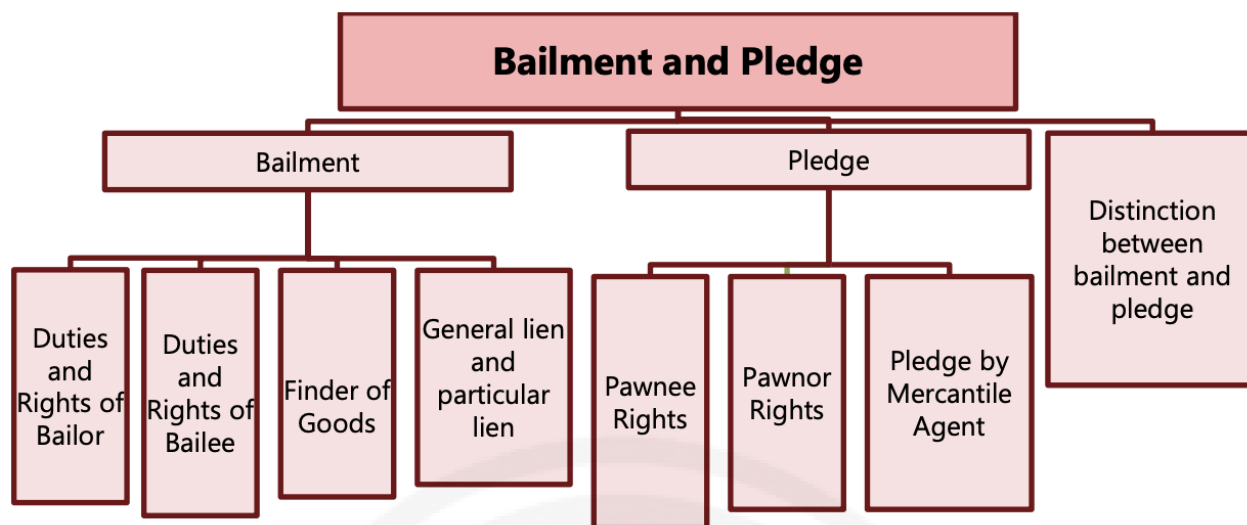
The Indian Contract Act, 1872

Unit 8 - Bailment & Pledge

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Unit 8 - Bailment & Pledge



WHAT IS BAILMENT ?

- The word “Bailment” has been derived from the French word “ballier” which means “to deliver”.
- Bailment etymologically means ‘handing over’ or ‘change of possession’.

As per Section 148 of the Act -

Delivery	Contract	Purpose	After the purpose is accomplished	Return or Dispose	As per the instruction
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- 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 :

- **Bailor**: The person delivering the goods.

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- **Bailee:** The person to whom the goods are delivered.

Example 1: Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.

Example 2: X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is a contract for bailment.

Example 3: Goods given to a friend for his own use, without any charge.

Example 4: X delivers goods to the blue dart for carriage.

ESSENTIAL ELEMENTS

The essential elements of a contract of bailment are -

- a. **Contract:** Bailment is based upon a contract. The contract may be **express or implied**.

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

- b. **Delivery of goods:** It involves the **delivery of goods from one person to another for some purposes**.

Bailment is only for moveable goods and never for immovable goods or money.

- c. The delivery of the possession of goods is of the following kinds -

- i. **Actual Delivery:** When goods are **physically handed** over to the bailee by the bailor.

Eg: delivery of a car for repair to workshop

- ii. **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.
-
- Eg: Delivery of the key of the car to a workshop dealer for repair of the car.

d. **Purpose** : The goods are delivered for some purpose. The purpose may be express or implied.

e. **Possession** :

- In bailment, possession of goods changes.
- Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee. (Means Actual or Constructive)
- The change of possession does not lead to change of ownership.
- In bailment, the bailor continues to be the owner of goods.
- Where a person is in custody without possession he does not become a bailee.

For example, -

- 1. Servant of a master who is in custody of goods of the master does not become a bailee.*
- 2. 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.

f. **Return of goods**:

SAME FORM	SAME GOODS	No exchange	ANY OTHER GOOD - OF HIGHER VALUE NO
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- Bailee is obliged 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.
- It should be noted that exchange of goods should not be allowed.

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- The bailee **cannot deliver some other goods**, even not those of higher value.

Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.

TYPES OF BAILMENT

TYPES OF BAILMENT			
Type of Bailment	Definition	Benefit	Example
Gratuitous Bailment	Bailment where the service is provided free of charge, i.e., no payment or reward is involved.	Benefit is either for bailor or bailee (not both).	A friend lends his car to another friend for personal use without expecting any payment. In this case, the benefit is solely for the bailee (the friend borrowing the car).
Non-Gratuitous Bailment	Bailment where both the bailor and bailee gain some benefit.	Benefit is for both bailor and bailee.	A person gives their car to a mechanic for repairs. The bailor (car owner) benefits by getting the car fixed, and the bailee (mechanic) gets paid for the service.
Gratuitous Bailment	Bailment where the service is provided free of charge, i.e., no payment or reward is involved.	Benefit is either for bailor or bailee (not both).	A friend lends his car to another friend for personal use without expecting any payment. In this case, the benefit is solely for the bailee (the friend borrowing the car).

- On the basis of benefit,
Bailment can be classified into three types:

- For the exclusive benefit of **bailor**:

Example 5: The delivery of some valuables to a neighbour for safe custody without charge.

b. For the exclusive benefit of **bailee**:

Example 6: The lending of a bicycle to a friend for his use, without charge.

c. For mutual benefit of **bailor and bailee**:

Example 7: Giving of a watch for repair.

2. On the basis of reward,

Bailment can be classified into two types:

a. 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.

b. Non-Gratuitous Bailment :

- Where **both the parties get some benefit**
- i.e. bailment for the benefit of both bailor & bailee

DUTIES OF A BAILOR

DUTIES OF A BAILOR		
Section	Duty	Description
Section 150	Duty to disclose faults in goods bailed	Bailor must inform the bailee of known faults in the goods; failure to do so makes him liable.
Section 158	Duty to pay necessary expenses	Bailor is responsible for reimbursing reasonable expenses incurred by the bailee for maintenance.
Section 159	Duty to indemnify for premature	If the bailor terminates the bailment early, he must compensate the bailee for any loss

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DUTIES OF A BAILOR		
Section	Duty	Description
	termination	caused.
Section 164	Bailor's responsibility to bailee	Bailor must compensate bailee for any loss caused by defective title of the goods bailed and duty to take delivery of the good when returned

1. Bailor's duty to disclose faults in goods bailed [Section 150]:

a. In case of gratuitous bailment:

- The bailor is **bound to disclose to the bailee**
- **faults in the goods bailed**, of which the bailor is aware, and
- which materially interfere with the use of them, or
- expose the bailee to extraordinary risks; and
- **if he does not make such disclosure,**
- **he is responsible for damage arising to the bailee directly from such faults.**

Example 8: A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

b. In case of non- gratuitous bailment :

- 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.

Example 9: A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

1. Hyman & Wife v. Nye & Sons (1881)

Key Facts:

A hired a carriage, a pair of horses, and a driver from B for a specific journey.

During the journey, a bolt in the under-part of the carriage broke, causing the carriage to overturn.

A was injured as a result of the accident.

Judgment:

The court ruled that B (the bailor) was liable for A's injuries.

It was established that the bailor's duty is to provide goods that are fit for the purpose they were hired for.

Since the carriage was defective, B was responsible for the damages.

2. Great Northern Railway Case (1932)

Key Facts:

The case involved the bailment of dangerous goods (such as explosives).

The bailor failed to disclose the dangerous nature of the goods to the bailee.

This omission led to a dangerous situation.

Judgment:

The court ruled that it is the duty of the bailor to inform the bailee about the dangerous nature of the goods.

If the bailor fails to disclose this, they are held liable for any damage or injury caused.

In this case, the bailor was found responsible due to the failure to warn about the danger

2. Duty to pay necessary expenses [Section 158]:

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a. In case of Gratuitous bailment :

- Where, by the conditions of the bailment,
- the goods are to be **kept** or to be **carried**, or
- to **have work done** upon them by the **bailee** for the bailor, and
- the bailee is to **receive no** remuneration (**gratuitous bailment**), .
- the bailor shall **repay** to the bailee
- the **necessary expenses** incurred by him and
- any **extraordinary expenses** incurred by him for the **purpose** of the bailment.

b. In case of **non-gratuitous bailment**

- the **bailor is liable to pay the extraordinary expenses**
- incurred by the bailee.

Example 10: A hired a taxi from B for the purpose of going to Gurgaon from Noida. During the journey, a major defect occurred in the engine. A had to pay Rs. 5000 as repair charges. These are the extraordinary expenses and it is the bailor's duty to bear such expenses. However, the usual and ordinary expenses for petrol, toll tax etc. are to be borne by the bailee itself.

3. Duty to indemnify the Bailee for premature termination [Section 159]:

- 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.**

4. Bailor's responsibility to bailee [Section 164]:

The bailor is responsible to the bailee for the following:

- a. **Indemnify for any loss which the bailee may sustain - by reason that the bailor was not entitled -**

- i. to make the bailment, or
- ii. to receive back the goods or
- iii. to give directions, respecting them (defective title in goods).

b. It is the duty of the **bailor** -

- i. to receive back the goods
- ii. when the bailee returns
- iii. after the time of bailment has expired or
- iv. the purpose of bailment has been accomplished.
- v. If the bailor refuses to take delivery of goods when it is offered at the proper time
- vi. the bailee can claim compensation for
- vii. all necessary expenses incurred for the safe custody.

Example 11: X delivered his car to S for five days for safe keeping. However, X did not take back the car for one month. In this case, S can claim the necessary expenses incurred by him for the custody of the car.

DUTIES OF A BAILEE

DUTIES OF A BAILEE		
Section	Duty	Description
Section 151 & 152	Take reasonable care of the goods	Bailee must take care of the goods as a reasonable person would.
Section 153 & 154	Not to make inconsistent use of goods	Bailee should use the goods as agreed upon; any misuse will make him liable for damages.
Section 155, 156, 157	Not to mix goods	Bailee must not mix the bailor's goods with his own; if mixed, they should be separated at bailee's expense.
Section 160 & 161	Return the goods	Bailee must return the goods when the bailment term ends, failing which, he is liable for any loss.
Section 163	Return accretion from the goods	Any increase or profit from the bailed goods must be returned along with the goods.

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DUTIES OF A BAILEE		
Section	Duty	Description
Common Law	Not to set up adverse title	Bailee should not deny the bailor's ownership of the goods during the bailment period.

1. Take reasonable care of the goods (Section 151 & 152):

- 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 care of his own goods
- of the same bulk, quality and value, as the goods bailed.

Example 12: If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss caused on account of riot.

Example 13: A deposited his goods in B's warehouse. On account of unprecedented floods, a part of the goods were damaged. It was held that B is not liable for the loss (Shanti Lal V. Takechand).

Exception:

- Bailee when not liable for loss, etc., of thing bailed [Section 152]:
 - 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 reasonable care as required under section 151.

2. Not to make inconsistent use of goods (section 153 & 154):

- As per Section 154,
- if the bailee makes any use of the goods bailed,
- which is not according to the terms and conditions of the bailment,
- he is liable to compensate the bailor for any loss or destruction of goods.

Example 14: A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

Example 15: 'A' hires a horse in Kolkata from B expressly to march to Varanasi. 'A' rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'A' is liable to make compensation to B for the injury to the horse. As per Section 153, a contract of bailment is voidable at the option of the bailor, if the bailee does not use the goods according to the terms and conditions of bailment.

Example 16: A lends to B, a horse for his own riding. B gives the horse to C for riding. This contract is voidable at the option of A, bailor.

3. Not to mix the goods (Section 155, 156 and 157):

a. Section 155 - (WITH CONSENT)

- i. If the Bailee mixes the goods bailed with his own goods,
- ii. with the consent of the bailor,
- iii. both the parties shall have an interest
- iv. in proportion to their respective shares
- v. in the mixture thus produced

b. Section 156 - (WITHOUT THE CONSENT & SEPERABLE)

- i. If the bailee, without the consent of the bailor,
- ii. mixes the goods bailed with his own goods and
- iii. the goods can be separated or divided,
- iv. the property in the goods remains in the parties respectively; but
- v. the bailee is bound to bear the expense of separation or division and

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any damage arising from the mixture

Example 17: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

c. Section 156 - (WITHOUT THE CONSENT & NOT SEPERABLE)

- i. If the bailee, without the consent of the bailor
- ii. mixes the goods of the bailor with his own goods in such a manner that
- iii. it is impossible to separate the goods bailed from the other goods and
- iv. to deliver them back,
- v. the bailor is entitled to be compensated by the bailee for loss of the goods

Example 18: A bails a barrel of Cape flour worth Rs. 4500 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 2500 a barrel. B must compensate A for the loss of his flour.

4. Return the goods (Section 160 & 161):

○ Section 160 -

- i. It is the duty of bailee to return, or deliver
- ii. according to the bailor's directions,
- iii. the goods bailed without demand,
- iv. as soon as the time for which they were bailed, has expired, or
- v. the purpose for which they were bailed has been accomplished.

○ Section 161 -

- i. If, by the default of the bailee,
- ii. the goods are not returned, delivered or tendered at the proper time,
- iii. he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Example 19: X delivered books to Y to be bound. Y promised to return the book within a reasonable time. X pressed for the return of the book. But Y, failed to deliver them back even after the expiry of reasonable time. Subsequently the books were burnt in an accidental fire at the premises of Y. In this case Y was held liable for the loss.

5. Return an accretion from the Goods [Section 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 20: A leaves a cow in the custody of B. The cow gives birth to a calf. B is bound to deliver the calf along with the cow, to A.

6. Not to set up Adverse Title:

- Bailee must not set up a title
- adverse to that of the bailor.
- He must hold the goods on behalf of and for the bailor.
- He cannot deny the title of the bailor.

RIGHTS OF A BAILOR

Rights of Bailor: The following are the rights of bailor:

RIGHTS OF A BAILOR		
Section	RIGHTS	Description
Section 153	Right to terminate the bailment	Bailor can terminate the bailment if the bailee misuses the goods.
Section 159	Right to demand back the goods	Bailor has the right to demand the goods back at any time unless it's a gratuitous bailment.
Section 180 & 181	Right to file a suit against a wrongdoer	If a third party wrongfully takes the goods, the bailor can sue them directly.
Commo	Right to sue the bailee	Bailor can sue the bailee if the bailee

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RIGHTS OF A BAILOR		
Section	RIGHTS	Description
n Law		violates the terms of bailment or fails in their duty.
Common Law	Right to compensation	Bailor can claim compensation for any loss caused by the bailee's negligence or breach of duty.

- Right to terminate the bailment
- Right to demand back the goods at any time
- Right to file a suit against any wrong doer
- Right to file a suit for enforcement of duties imposed upon a bailee.
- Right to claim compensation

1. Right to terminate the bailment [Section 153] :

- 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.
- Termination of bailment has been discussed in the next pages.

2. Right to demand back the goods (Section 159):

- When the goods are lent gratuitously,
- the bailor can demand back the goods at any time
- even before the expiry of the time fixed or
- the achievement of the object.

Example 21: A, while going out of station delivered his ornaments to B for safe custody for one month. But A returned to station after one week. He

may demand the return of his ornaments even though the time of one month has not expired. However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.

3. Right to file a suit against a wrongdoer [Section 180 and section 181]
(discussed in next pages)

4. Right to sue the bailee:

The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.

5. Right to compensation:

- If any damage is caused to the goods bailed
- because of the unauthorised use of the goods or
- unauthorised mixing of the goods,
- the bailor has a right to claim compensation for the same.

RIGHTS OF A BAILEE

Rights of bailee: The following are the rights of the bailee:-

RIGHTS OF A BAILEE		
Section	RIGHTS	Description
Section 165	Right to deliver to any one of joint bailors	Bailee can deliver the goods to any of the joint bailors unless otherwise instructed.
Section 166	Right to indemnity	Bailee is entitled to compensation for losses suffered due to bailor's defective title.
Section 150	Right to claim compensation for faulty goods	Bailee can seek damages if the goods were faulty and not disclosed by the bailor.
Section 158	Right to claim necessary expenses	Bailee can recover expenses incurred in preserving or maintaining the goods.
Section	Right to apply to court	Bailee can approach the court to determine

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RIGHTS OF A BAILEE		
Section	RIGHTS	Description
167	for title decision	the rightful owner of the goods if there's a dispute.
Section 170	Right of particular lien	Bailee can retain goods until the payment for services related to those goods is made.
Section 171	Right of general lien	Bailee can retain any goods until all claims (unpaid debts or services) are satisfied.

1. Right to Deliver the Goods to any one of the joint bailors [Section 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 22: A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the "combine" to any one of the joint owners namely, A, B or C.

2. Right to indemnity (Section 166):

- **Bailee is entitled to be indemnified by the bailor**
- for any loss arising to him
- by reasons that the bailor **was not entitled to make the bailment or**
- **to receive back the goods or to give directions in respect to them.**
- **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 shall not be responsible to the owner**
- **in respect of such delivery.**

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

3. Right to claim compensation in case of faulty goods (Section 150):

- A bailee is **entitled to receive compensation from the bailor** or
- any loss **caused to him**
- **due to the failure of the bailor**
- **to disclose any faults in the 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.

4. Right to claim necessary expenses (Section 158):

- In case of gratuitous bailment,
- the **bailor shall repay to the bailee**
- **the necessary expenses incurred by him** and
- any extraordinary expenses incurred by him
- for the purpose of the bailment.

5. Right to Apply to Court to Decide the Title to the Goods [Section 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 23: 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 it 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.

6. Right of particular lien for payment of services [Section 170]:

(Discussed in next pages)

7. Right of general lien (Sec. 171):

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(Discussed in next pages)

RIGHTS OF BAILOR AND BAILEE AGAINST ANY WRONG DOER (THIRD PARTY)

Suit by bailor & bailee against wrong doers [Section 180]:

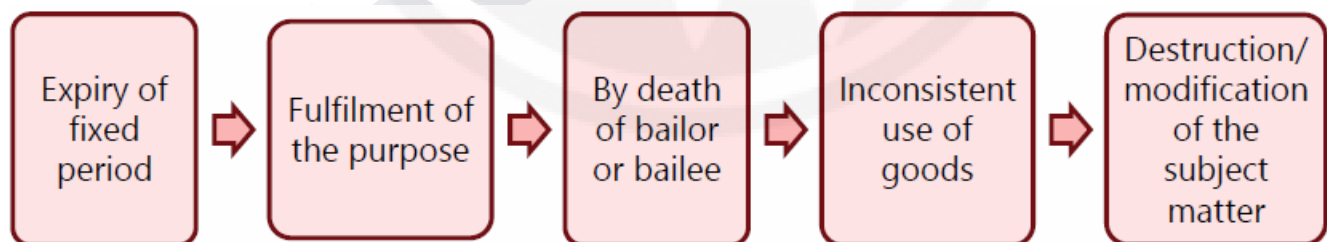
- If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or
- does them any injury,
- the bailee is entitled to use such remedies
- as the owner might have used in the like case if no bailment had been made; and
- either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits [Section 181]:

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.

TERMINATION OF BAILMENT

A contract of bailment shall terminate in the following circumstances :-



E - P Expire ho uske pahale	F - P Purpose ko fullfill kar le	Death - OR/EE Ka bharosa nahi hai	I - USE Isiliye I Use	D/M - SM Dim Sums (MOMOS) As stress burster
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1. **On expiry of stipulated period:** If the goods were given for a stipulated period, the contract of bailment shall terminate **after the expiry of such period.**

Example 24: X gives his motorcycle to Y for a month. The bailment terminates after 1 month.

2. **On fulfilment of the purpose:** If the goods were delivered for a specific purpose, a bailment shall terminate on the **fulfilment of that purpose.**

Example 25: X hires certain tents and crockery on marriage of his daughter. The bailment terminates after marriage.

3. By Notice:

- a. Where the bailee **acts in a manner which is inconsistent with the terms of the bailment, -**

- the bailor can always terminate the contract of bailment by giving a **notice to the bailee.**

- b. A gratuitous bailment can be terminated by the bailor

- **at any time by giving a notice to the bailee.**
- However, the termination should not cause loss to the bailee in excess of the benefit derived by him.
- In case the loss exceeds the benefit derived by the bailee,
- the bailor must compensate the bailee for such a loss (Sec. 159).

4. **By death :** A gratuitous bailment terminates **upon the death of either the bailor or the bailee.**

5. Destruction of the subject matter:

- a. A bailment is terminated if the **subject matter of the bailment**
- b. **is destroyed or**
- c. **there is a change in the nature of goods**
- d. **which makes it impossible to be used for the purpose of bailment.**

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Example 26: X gives his cycle to Y on hire. Cycle damaged beyond repairs. Bailment ends.

FINDER OF LOST GOODS

Right of finder of lost goods- may sue for specific reward offered [Section 168]:

- A person who finds some goods which do not belong to him, is called the finder of the goods.
- It is the duty of the finder of goods to find the true owner and surrender the goods to him.
- However, the finder of goods has no right to sue the owner for compensation
- for trouble and expense voluntarily incurred by him in finding the owner and preserving the goods found.
- But he has a right to retain the goods against the owner
- until he receives such compensation; and,
- where the owner has offered a specific reward on the lost goods,
- the finder may sue the owner for such reward, and
- may retain the goods until then.

When finder of thing commonly on sale may sell it [Section 169]:

- When a thing which is commonly the subject of sale
- if lost,
- if the owner cannot with reasonable diligence be found, or
- if he refuses, upon demand,
- to pay the lawful charges of the finder,
- the finder may sell it—
 - a. when the thing is in danger of perishing or of losing the greater part of its value, or
 - b. when the lawful charges of the finder in respect of the thing found amount to two thirds of its value.

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.

Types of Lien: Lien may be of two types:

- a. Particular Lien
- b. General Lien

A. Particular Lien : Section 170 -

- It is a right to retain only the particular goods in respect of which the claim is due.
- 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.

Example 27: 'A' gives cloth to 'B', a tailor, to make into a coat. 'B' is entitled to retain the coat until he is paid.

Example 28: If in the above example, 'B' takes 15 days time to make the coat, the right of lien will be applicable after 15 days.

Example 29: A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

B. General Lien : Section 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 (in the absence of a contract to the contrary).
- This right is available to Bankers, factors, wharfingers, policy brokers and

2.8 ► Bailment & Pledge

attorneys of law.

Example 30: 'A' borrows ` 500/- from the bank without security and subsequently again borrows another ` 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned ` 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid. Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.

General lien	Particular lien
Section 171 of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.	Section 170 of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien.
General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name.	It is automatic.
It can be exercised against goods even without involvement of labor or skill.	It comes into play only when some labor or skill is involved has been expended on the goods, resulting in an increase in value of goods.
Only such persons as are specified under section 171, e.g., Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien.	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc. are entitled to particular lien.

PLEDGE

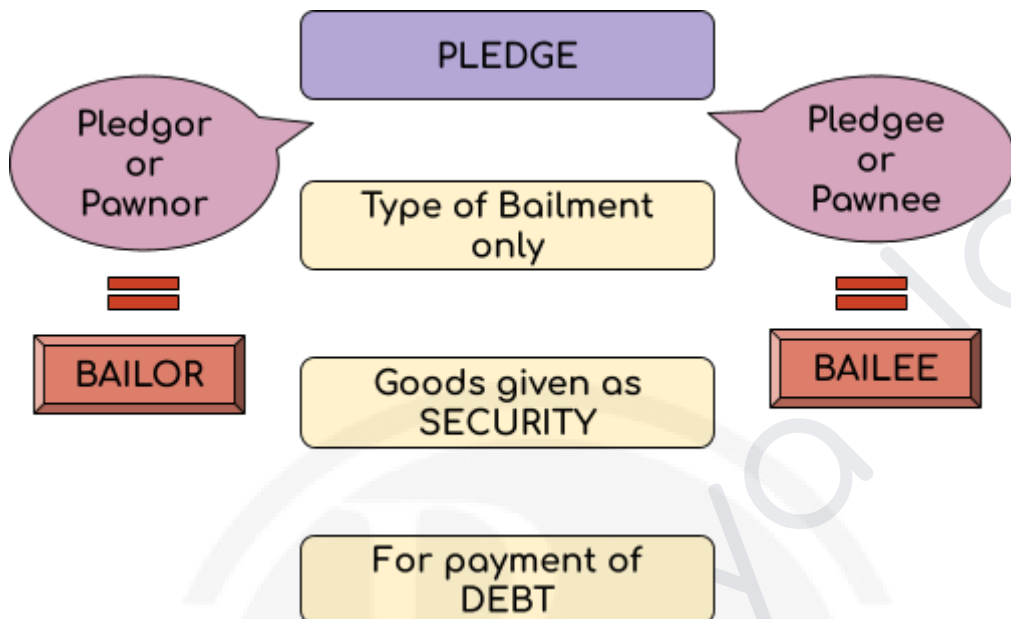
“Pledge”, “pawnor” and “pawnee” defined [Section 172] :-

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”.

Section 172 to 182 of the Indian Contract Act, 1872 deal with the contract of pledge.

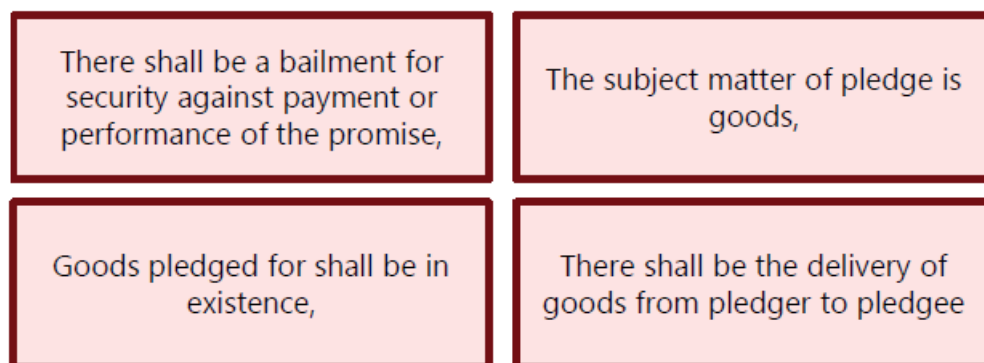


Example 31: A lends money to B against the security of jewellery deposited by B with Him. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor/pledger and A is a pawnee/pledgee.

ESSENTIALS OF CONTRACT OF PLEDGE:

- Since pledge is a special kind of bailment,
- therefore all the essentials of bailment are also the essentials of the pledge.

Apart from that, the other essentials of the pledge are:



2.8 ► Bailment & Pledge

RIGHTS OF A PAWNEE/ PLEDGEE:

Rights of Pawnee can be classified as under the following headings:

RIGHTS OF A PAWNEE / PLEDGEE			
Sec.	RIGHTS	Description	Example
173	Right to Retain Pledged Goods	The pawnee can retain the goods for - - Payment of the debt, - Performance of the promise - Interest, and - Necessary expenses incurred for possession or preservation of the goods.	Bank retains pledged stock for loan + interest.
174	Right to Retain for Subsequent Debts	Pawnee can retain goods for debts other than the original one only if there's a contract allowing this.	Retention allowed if a contract permits it.
175	Right to Extraordinary Expenses	Pawnee can claim reimbursement for extraordinary expenses (e.g., preservation of goods), but can't retain goods for these expenses—can sue instead.	Pawnee sues for repair or preservation costs.
176	Right in Case of Pawnor's Default	If the pawnor defaults, the pawnee may: 1. Retain the goods as collateral security and sue the pawnor, 2. Sell the goods after giving notice. 3. Proceeds from such sale - Less then pawnor liable for the balance and if More then pay surplus to the pawnor	Bank sells pledged stock if loan isn't repaid.

RIGHTS OF A PAWNOR

As the bailor of goods, **pawnor has all the rights of the bailor.**

Along with that he also has the **right of redemption to the pledged goods** which is enumerated under section 177 of the Act.

Right to redeem [Section 177]:

(Redemption means to recover back the goods by making the payment of debt or performance of promise)

- If a time is stipulated for the payment of the debt, or performance of the promise,
- for which the pledge is made, and
- the pawnor makes default in payment of the debt or performance of the promise at the stipulated time,
- he may redeem the goods pledged at any subsequent time before the actual sale of them;
- but he must, in that case, pay, in addition, any expenses which have arisen from his default.

DUTIES OF THE PAWNEE

Pawnee has the following duties:

Take reasonable care	Not to make unauthorised use	Return the goods when the debt has been repaid
Not to mix his own goods	Not to do any act which is inconsistent with the terms	Return accretion to the goods,

DUTIES OF A PAWNOR

Pawnor has the following duties:

Liable to pay the debt or perform the promise	Compensate the pawnee for any extraordinary expenses	Disclose all the faults which may put the pawnee under extraordinary risks.
Pawnor must indemnify the pawnee. (LOSS DUE TO DEFECT IN THE PAWNOR'S TITLE)	Due to default by the pawnor's DEFAULT - If Pawnee sells the goods - Pawnor must pay the deficit	

2.8 ► Bailment & Pledge

PLEDGE BY NON-OWNERS

Connect the topic to - Section 27 to 30 - Sale by NON Owners from SOGA, 1930.

Ordinarily, it is the owner of the goods, or any person authorised by him on that behalf, who can pledge the goods.

- But in order to facilitate mercantile transactions, -
- the law has recognised certain exceptions.
- These exceptions are for bonafide pledges
- made by those persons
- who are not the actual owners of the goods,
- but in whose possession the goods have been left.

A. Pledge by mercantile agent [Section 178]:

- A mercantile agent,
- who is in the possession of goods or document of title,
- with the consent of the owner,
- can pledge them while acting in the ordinary course of business as a Mercantile Agent.
- Such Pledge shall be valid as if it were made with the authority of the owner of goods
- Provided, pawnee acted in good faith and had no notice that Pawnor has no authority to pledge.

B. 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 (contracts where consent has been obtained by fraud, coercion, misrepresentation, undue influence),
- 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.

C. Pledge where pawnor has only a limited interest [Section 179]:

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

Example 33: Mr. X finds a defective mobile phone lying on the road. He picks it up, gets it repaired for Rs. 5000. He later pledges the mobile phone for Rs. 2,000. The true owner can recover the mobile phone only on paying Rs. 5,000.

Example 34: '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.

D. 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 make a valid pledge of the goods in his possession.**

E. Pledge by seller or buyer in possession:

- A seller,
- in whose possession,
- the goods have been left **after 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 title of the pawnor.**

Example 35: A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with C, who does not know of sale to A, and acted in good faith. This is a valid pledge.

2.8 ► Bailment & Pledge

DISTINCTION BETWEEN BAILMENT AND PLEDGE

Basis of Distinction	Bailment	Pledge
Meaning	Transfer of goods by one person to another for some specific purpose is known as bailment.	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
Parties	The person delivering the goods under a contract of bailment is called as "Bailor". The person to whom the goods are delivered under a contract of bailment is called as "Bailee".	The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee".
Purpose	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods).	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.
Consideration	The bailment may be made for consideration or without consideration.	Pledge is always made for a consideration.
Right to sell the goods	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed.	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
Right to use of goods	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.

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“ PROBLEM KYA HAI ? - Unit 8 ”

Question Bank ICA

*This section is complied with questions and suggested answers
for the chapter - ICA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

State the essential elements of a contract of bailment.

(Module)

Answer 1

Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. A 'bailment' is 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 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.

Question 2

Give differences between Bailment and Pledge.

(Module)

Answer 2

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.

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

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.

Question 3

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

1. V parks his car at a parking lot, locks it, and keeps the keys with himself.
2. Seizure of goods by customs authorities.

(Module)

Answer 3

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.

1. 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.
2. Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

Question 4

A hires a carriage from B and agrees to pay Rs. 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

(Module)

Answer 4

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

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

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.

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

Question 5

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

(Module)

Answer 5

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 reasonable care as required under section 151.

Here, A and B agreed to keep the jewellery at the Bank's safe locker and not at the latter's residence (i.e. B's residence). Thus, B is liable to compensate A for his negligence to keep jewellery at his (B's) residence.

Question 6

R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bears the loss and why?

(Module)

Answer 6

M 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.

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

Question 7

Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give Rs. 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?

(Module)

Answer 7

According to section 157 of the 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. In the given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars 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.

Question 8

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. Was there a contract of bailment? Whether the possession of the goods (actual or constructive) delivered, constitute contract of bailment or not?

(Module)

Answer 8

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

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

possession of the intended bailee or of any person authorised to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

Thus, the mere keeping of the box at Y's shop, when A 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. A did not deliver the complete possession of the good by keeping the keys with herself.

Question 9

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?

(Module)

Answer 9

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

RTP, MTP & PYP Questions

Question 1

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

1. Vikas parks his car at a parking lot, locks it, and keeps the keys with himself.
2. Seizure of goods by customs authorities.

(RTP Jun'24)

Answer 1

As per Section 148 of the Indian Contract Act, 1872, 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.

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

For a bailment to exist, the bailor must give possession of the bailed property and the bailee must accept it.

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

Question 2

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.

(4 Marks March 21, May'20, Nov'21, March' 21)(SM)

Answer 2

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 authorized to hold them on his behalf. Thus, delivery is necessary to constitute bailment.

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.

Question 3

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

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

1. Definition of Pledge, pawnor and pawnee
2. Essential characteristics of contract of pledge

(4 Marks April 21)

Answer 3

1. "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".
2. 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.

Question 4

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

(4 Marks Oct 21)

Answer 4

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

1. **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.
2. **Non-Gratuitous Bailment:** Non gratuitous bailment means where both the parties get some benefit i.e. bailment for the benefit of both bailor & bailee

Question 5

As per the provisions of the Indian Contract Act, 1872, what is the meaning of:

1. Continuing guarantee
2. Gratuitous Bailment

(4 Marks)(Sep'22)

Answer 5

Question Bank —> Chap 2 (Unit 8) - ICA, 1872

1. **Continuing guarantee:** A guarantee which extends to a series of transaction is called a continuing guarantee. A surety's liability continues until the revocation of the guarantee.

The essence of continuing guarantee is that it applies not to a specific number of transactions but to any number of transactions and makes the surety liable for the unpaid balance at the end of the guarantee.

2. **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.

Question 6

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

1. Golu parks his car at a parking lot, locks it, and keeps the keys with himself.
2. Seizure of goods by customs authorities.

(4 Marks March '23)

Answer 6

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.

1. Mere custody of goods does not mean possession. In the given case, since the keys of the car are with Golu, section 148, of the Indian Contract Act, 1872 shall not applicable. Hence, it is not bailment.
2. Yes, the possession of the goods is transferred to the custom authorities. Therefore, bailment exists and section 148 is applicable.

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