

**BBA II Semester**

**Subject- BUSINESS LAW**

**TOPIC- BAILMENT AND PLEDGE**

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# BAILMENT AND PLEDGE

## CONTRACT OF BAILMENT

### MEANING AND DEFINITION:

The term bailment is derived from a French word “bailor” which means to deliver. It denotes a contract resulting from delivery. It involves change of possession of goods from one person to another and not transfers of ownership.

According to Section 148, “a bailment is the delivery of goods by one persons to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed off according to the direction of the person delivering them.”

A bailment arises when one person transfers possession of goods to another person on condition that he will return them after the accomplishment of purpose.

### PARTIES

There are two parties to a contract of bailment:

**BAILOR:** The person delivering the goods is called the bailor.

**BAILEE:** The person to whom the goods are delivered is called the bailee.

### EXAMPLES

- (a) A delivers a piece of cloth to B to make a suit. There is a contract of bailment between A and B.
- (b) A lends a book to B for examination. There is contract of bailment between A and B.
- (c) A delivers a watch to B for repair. There is a contract of bailment.
- (d) A sells certain goods to B, who leaves them in the possession of A. A becomes the bailee and B becomes bailor.

### ESSENTIAL FEATURES

The following are the essential features of a bailment.

1. CONTRACT

A bailment is based on a contract between bailor and bailee. The delivery of goods should be made for some purpose under a contract that when the purpose is accomplished, the goods shall be returned to the bailor. If the goods are delivered without any contract i.e. by mistake, there is no bailment. It should also possess all the essentials of a valid contract. The contract may be express or implied.

EXAMPLES

- (a) A gives a piece of cloth to T, a tailor for making a suit. There is a contract of bailment between A and T.
- (b) B's ornaments, have been stolen, and recovered by the police, and disappeared from police custody. Held the state was liable.

2. SPECIFIC PURPOSE

The bailment of goods is always made for some purpose and is subject to the condition that when the purpose is accomplished the goods will be returned to the bailor or disposed of according to the directions of the bailor. If the person to whom the goods are delivered is not bound to return them to the person delivering them, there is no bailment.

EXAMPLES

A gives his watch to B for repair. There is a bailment.

3. DELIVERY OF GOODS

The most important feature of bailment is the delivery of moveable goods from one person to another. Mere custody does not create relationship of bailor and bailee. A servant who receives goods from his master to take to a third person has only custody. The possession remains with master, so the servant cannot be called bailee.

EXAMPLES:

- (a) A buys a T.V. from B. The T.V. is ready for immediate delivery. A ask B to keep it with him for one hour so that A may buy other things from the market. B is now holding the T.V. as bailee.
- (b) U entered a restaurant for dinning; H the waiter took his coat and hung it on a hook behind it. When U rose to leave, the coat was gone. Held, the owner of the restaurant was liable for loss.

#### 4. NO CHANGE OF OWNERSHIP

Under bailment, it is only the possession that passes from the owner to the other and not the ownership; Mere custody without possession is not bailment, e.g. (a servant holding his master's goods). If there is a change of ownership the transaction may be a sale or exchange but is not a bailment.

#### EXAMPLE

A delivers his car to B for repair. The possession of car transfers from A to B but ownership remains with A.

#### 5. RETURN OF SAME GOODS

It is essential for bailment that when the purpose is accomplished, the goods must be returned in original form or in changed form or disposed of according to the directions of bailor. If the bailee has an option of paying money or of returning different property, there is no bailment.

#### EXAMPLES

A lends his cycle to B for 2 days. B is liable to return the same cycle.

#### CLASSIFICATION OF BAILMENT

Bailment may be classified as follows:

- (1) According to benefit.
- (2) According to reward.

#### 1. BENEFIT

According to benefit, bailment can be grouped into three classes.

(a) FOR THE BENEFIT OF THE BAILOR

Where the goods are delivered for safe custody to a neighbor, relative, or friend without any compensation to be paid.

(b) FOR THE BENEFIT OF THE BAILEE

Where goods are delivered to the bailee to be used by him without any compensation to be charged from him. For EXAMPLE, A borrows B's pen to use in the examination hall, the bailment is for the sole benefit of A, the bailee.

(c) FOR THE BENEFIT OF THE BAILOR AND BAILEE

Where the goods are delivered for the benefit of both the bailor and bailee. For EXAMPLE, bailment for repair, hire, etc.

2. REWARD:

Bailment may also be classified into two classes according to reward.

(a) BAILMENT WITHOUT REWARD

It is bailment in which neither the bailor nor the bailee is entitled to any remuneration. It is also called gratuitous bailment. For EXAMPLE, lending of a book to a friend, depositing of goods for safe custody without any charges.

(b) BAILMENT FOR REWARD

It is a bailment where the bailor or the bailee is entitled to remuneration. It is also called non-gratuitous bailment. For EXAMPLE, motorcar let out for hire, cloth given for tailoring on charges.

DUTIES OF BAILOR

A bailor is the person who delivers the goods. His duties are as under:

1. DUTY TO DISCLOSE FAULTS

According to section 150, a gratuitous bailor is bound to disclose to the bailee all those faults in the goods bailed which are known to him and if he fails to do so, he will be liable to pay such damages to the bailee arising from such faults.

A bailor for reward is responsible for all defects in the goods bailed whether he is aware of the defects or not. If he does not disclose them to the bailee, he will be liable for damages, which may arise due to those faults.

#### EXAMPLES:

- (a) 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 and B is thrown and injured. A is responsible for damages sustained.
- (b) 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.

#### 2. DUTY TO REPAY NECESSARY EXPENSES

In case of gratuitous bailment, where goods are to be kept or to be carried by the bailee for the bailor, it is the duty of the bailor to repay all the necessary expenses incurred by the bailee for the purpose of the bailment.

#### EXAMPLE

A delivers a horse to B for safe custody. The horse becomes sick and B spends Rs.50 on medical and Rs.20 on feeding. A is liable to pay B Rs.70.

#### 3. DUTY TO REPAY EXTRA-ORDINARY EXPENSES

In case of any kind of bailment, it is the duty of the bailor to bear extraordinary expenses, if any, incurred by the bailee regarding the goods bailed.

#### EXAMPLE:

B hires A's horse for his carriage. The horse becomes sick and B spends Rs.50 on medical and Rs.20 on feeding. A is liable to pay to B Rs.50 the extraordinary expenses only.

#### 4. DUTY TO INDEMNIFY FOR DEFECTIVE TITLE

Where the title of the bailor to the goods is defective and as a result the bailee suffers a loss. The bailor is responsible to indemnify the bailee for such loss.

#### EXAMPLE

A gives his neighbor's scooter to B for use without the neighbor's permission. The neighbor uses B and receives compensation. A is bound to indemnify B for losses.

#### 5. DUTY TO RECEIVE BACK THE GOODS

It is the duty of the bailor to receive back the goods when the bailee returns them after the accomplishment of the purpose of bailment. If the bailor refuses to take delivery of goods at proper time, "the bailee can claim compensation for all necessary expenses incurred in connection of safe custody.

#### EXAMPLE

A bails his cow to B for feeding for 2 months. A does not take his cow back after 2 months. B has to spend more on feeding. A is liable to compensate B.

#### DUTIES OF BAILEEE

A bailee is the person to whom the goods are delivered. His duties are as follows:

##### 1. DUTY TO TAKE REASONABLE CARE

"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."

If the bailee does not take such a care of the goods bailed and the goods are damaged by his negligence, he would be responsible for the loss.

#### EXAMPLE

- (a) A sends some ornaments to B, a goldsmith. B keeps it locked. The ornaments are stolen. B is not liable for loss.
- (b) A bails car to B. B omits to lock up the car. The car is stolen. B is liable for car.

##### 2. DUTY NOT TO MAKE UNAUTHORIZED USE

**It is the duty of the bailee to use the goods strictly according to the terms of the bailment. If the bailee makes an unauthorized use of the goods bailed, he is liable to make compensation to the bailor for any damage arising to the goods due to such use.**

### EXAMPLE

- (a) **A, hires a car from B to visit Multan. A allows his son to use the car for learning driving. B is entitled to terminate the bailment.**
- (b) **A goldsmith accompanied by his wife went to village to attend a marriage. He took some ornaments entrusted to him by customers. The object was to enable his wife to wear the ornaments at the marriage. On the way, robbers snatched ornaments. The goldsmith was held liable to the customers for loss.**

### **3. DUTY NOT TO MIX THE GOODS**

**It is also the duty of a bailee that he should not mix his own goods with those of the bailor, without the bailor's consent.**

### EXAMPLE

**A, bails a bag of superior flour worth Rs.45 to B. B, without A's consent, mixes the flour with inferior flour of his own, worth only Rs.25 per bag. B must compensate A for the loss of his flour.**

### **4. DUTY TO RETURN THE GOODS**

**It is the duty of the 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.**

### EXAMPLE

**A, hires a horse from B for one week. But A does not return the horse on the due date. The horse dies one day after the expiry of the period of bailment without any fault on A's part. A is liable for the price of the horse to B.**

### **5. DUTY TO RETURN INCREASE**

**In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor any natural increase or profit which may have accrued from the goods bailed.**

### EXAMPLE

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as the cow to A.

## RIGHTS OF BAILEE

The duties of the bailor are the rights of the bailee. These rights are as under:

### 1. RIGHT TO CLAIM DAMAGES:

In case of bailment without reward the bailee is entitled to know the faults in the goods bailed to him of which the bailor is aware. A bailee has a right to claim compensation from the bailor for any loss or damaged arising directly from such faults in the goods bailed.

However, in case of bailment for reward the bailee is entitled to claim compensation for even those faults of which bailor was not aware.

### EXAMPLE

A lends a horse to B which he knows to be vicious; He does not disclose the fact that the horse is vicious. The horse while B is on his back runs away. B is thrown and injured. A is responsible to B for damages sustained.

### 2. RIGHT TO RECOVER EXPENSES:

The bailee can recover all necessary expenses incurred by him for the purpose of the bailment, from the bailor.

### EXAMPLE

A delivers his horse to B for safe custody. The horse becomes sick and B's spends Rs.200 on medical expenses. B is entitled to recover such expenses from A.

### 3. RIGHT TO DELIVER GOODS:

Where goods have been bailed by several joint owners, the bailee has a right to deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

### EXAMPLE

A, B & C jointly bail a car to X for 5 days. X can return the car to any one of them.

4. RIGHT TO COMPENSATION:

If the bailor has no right to bail the goods or to receive them back or to give directions regarding them and as a result the bailee suffers a loss, the bailee is entitled to receive such loss from bailor.

EXAMPLE

A bails his friend, C's scooter to B with his permission. B has right to return the scooter to A. He is not liable to C.

5. RIGHT TO STOP DELIVERY:

If a person other than the bailor claims goods bailed, the bailee may apply to the court to stop delivery of the goods to the bailor and to decide the title to the goods.

EXAMPLE

A bails the goods to B. X claims that he is the owners of those goods and demands from B. B can stop the delivery of goods to A and request the court to decide about the ownership of goods.

6. RIGHT TO USE:

If a third person wrongfully deprives the bailee of the use or possession of the goods bailed or causes the injury to the goods, bailee is entitled to use such person.

The bailor can also bring an action against such third person in respect of such goods bailed.

EXAMPLE

A gives a piece of cloth to T, a tailor to make a suit. M forcefully takes the coat from T. A or T can file a suit against M.

7. RIGHT OF LIEN:

**Lien means the right to retain possession of the property or goods belonging to another until some debt or claim is paid.**

**Bailee has the right to retain that particular property in respect of which he has rendered some services and his charges are due.**

### EXAMPLE

**A delivers rough diamond to B, a jeweler, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he rendered.**

### RIGHTS OF THE BAILOR

**The duties of the bailee are the rights of the bailor. The rights of the bailor are as under:**

#### **1. RIGHT TO CLAIM DAMAGES:**

**The bailor can recover damages from the bailee if any caused to the goods bailed due to the bailee's negligence.**

### EXAMPLE

**A bailed some goods to B. B did not kept the goods locked. The goods were stolen. A can recover loss from B.**

#### **2. RIGHT TO DEMAND RETURN OF GOODS:**

**The bailor is entitled to demand the return for the goods bailed as soon as the purpose of bailment is accomplished. If the bailee makes default in returning the goods at the proper time and place, the bailor is entitled to compensation arising from such situation.**

### EXAMPLE

**A gives a car to B on rent for 5 days. A can demand the return of car after 5 days. If B does not return the car after 5 days. A can claim damages.**

#### **3. RIGHT TO CLAIM INCREASE:**

He is entitled to claim any increase or profit, which may have accrued from the goods bailed.

#### EXAMPLE

A bailed a cow to B for safe custody. The cow gave a birth to a child. A can demand cow along with child.

#### 4. RIGHT TO TERMINATE BAILMENT:

The bailor has a right to terminate the bailment if the bailee does any act, which is against the terms of the contract though the term of bailment has not expired or the purpose of bailment has not been accomplished.

#### EXAMPLE

A gives on hire to B a horse for his own riding. B drives the horse in carriage. A can terminate the contract.

#### 5. RIGHT TO USE:

The bailor may use the bailee for breach of contract if the goods are not returned or disposed of as directed by the bailor.

#### EXAMPLE

- (a) A gives his T.V. to B for repairs X gets the possession of T.V. from B. A can sue X.
- (b) A gives a piece of wood to B, a carpenter to make some tables. B does not take care of that wood. The fire breaks out and destroys a wood. A can sue B for loss.

#### TERMINATION OF BAILMENT

A contract of bailment terminates under the following circumstances:

1. EXPIRY OF TIME:

When the contract of bailment is for a specified period, the bailment terminates after the expiry of specified period.

EXAMPLE

A stores some oranges in the cold storage of B for one month. After one month, the bailment terminates.

2. ACCOMPLISHMENT OF PURPOSE:

If the bailment is for a specific purpose, the bailment terminates as soon as the purpose is accomplished.

EXAMPLE

M gives his radio to N for repairs N repairs and returns the radio, the bailment is over.

3. UNAUTHORIZED USE:

If the bailee does any act, which is inconsistent with the terms of the bailment, the bailment may be terminated by the bailor even though the term of bailment has not expired or the purpose of bailment has not been accomplished.

EXAMPLE:

A bails a car to B for 5 days for his personal use. B allows his friend, X to use the car. A can terminate bailment before 5 days.

4. ON DEATH:

A gratuitous bailment is terminated by the death of either the bailor or the bailee.

EXAMPLE

M borrows a book from his friend, N for 10 days. M dies. The bailment terminates.

5. TERMIANTION BY BAILOR:

A gratuitous bailment can be terminated by the bailor at any time, even before the stated time if the termination causes no loss to the bailee. In case the bailee suffers a loss due to termination, the bailor is liable to make good the loss.

EXAMPLE:

S lends a book to T for one month x can demand return of book before the expiry of bailment period.

6. DESTRUCTION OF SUBEJCT MATTER:

A bailment is terminated when the subject matter of the bailment is destroyed or due to change in its natural becomes incapable of use for the purpose of bailment.

EXAMPLE:

S lends a book to T for one month. X can demand return of book before the expiry of bailment period.

## CONTRACT OF PLEDGE

### PLEDGE OR PAWN

#### DEFINITION

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

A pledge or Pawn is a special kind of bailment. Under Pledge one person transfers possession of some goods to another to secure the payment of debt or the performance of a promise. In case of pledge the goods are deposited as security go get a loan. If there is no transfer of possession of goods, there is no pledge.

EXAMPLE:

A borrows Rs.1000 from B and keeps his watch as security for payment of the debt. The bailment of watch is called a pledge.

## DIFFERENCE BETWEEN PLEDGE AND BAILMENT

The following are the points of different the two:

PLEDGE	BAILMENT
<b>1. PURPOSE</b> In case of pledge, the goods are delivered to provide a security for a loan or for the performance of the promise.	In case of bailment, the goods are delivered for a purpose other than the above two purposes, e.g., for repair and safe custody etc.
<b>2. RIGHTS</b> In case of pledge, the pledge has a right of sale of the pledged goods on default after giving a notice to the pledgor.	In case of bailment, the bailee has not such right of sale. He can remain the goods or use for the dues.
<b>3. USE OF GOODS</b> In case of pledge, the pledge has no right of using the goods pledged.	In case of bailment, there is no such restriction if the nature of transaction so requires.
<b>4. RETURN OF GOODS</b> In case of pledge the pledge is not bound to return the goods delivered under pledge by the pledgor unless the debt is repaid or promise performed.	In case of bailment without reward the bailee is bound to return the goods on demand by the bailor.
<b>5. LIEN</b> In pledge, lien can be exercised even for non-payment of interest.	In bailment, lien can be exercised only for the labour and skill spend.