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Bailment and Pledge

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Bailment (derived from French word 'bailer') : Delivering
under a contract for return at a specified time or speci
conditions.

✓ e.g. giving a TV to a mechanic for repair (a contract of
bailment)

Pledge: Delivering of goods as security for a loan or fulfil
of an obligation

- Special types of contracts and Sections 148 to 181 dea
- Contract Act does not deal with all types of bailment a
pledge – It only deals with general principles
- There are separate Acts for special bailments and pled

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Bailment

In which the personal property of one person, temporari
into the possession of another person for some
purpose.

Ownership with : one person who delivers

Possession with: another person who receives for a purp

So, change of possession only

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Definition u/s 148

" A bailment is the delivery of goods by one person to
for some purpose, upon a contract that they shall, w
purpose is accomplished, be returned or otherwise d
of according to the directions of the person delivering

Two parties:

Bailor: who delivers

Bailee: To whom the goods are delivered

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Essential features:

1. The delivery of possession

Delivery may be of two types:

a. Actual delivery: Handing over physical possession of goods

b. Constructive delivery: Only effect of putting the goo the bailee's possession

Note: Delivery of possession and custody of goods

Bank and a customer

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2. The delivery should be on the basis of some contract.

The contract may be express or implied

The bailment may also arise sometimes even without a c
(Finder of the goods) – accepted by SC in

(State of Gujarat v. Memon Mohd. -1967)

3. The delivery should be for some purpose

Not necessary that the purpose should be expressly state

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4. The delivery should be upon a condition to return – may be returned in its original form or in its altered fo

Note: The bailment can be made only of movable goods.

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Duties of a bailor

1. Duty to disclose faults in the goods bailed

a. Duty of a gratuitous bailor : known and which are m
– Otherwise liable for damages

b. Duty of a non-gratuitous bailor: see that reasonably
liable whether known or not known

2. Duty to bear extraordinary expenses

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3. Duty of indemnifying the bailee

- Arises when bailor has no title to the goods

Bailor title may be defective:

✓ At the time of bailment

✓ At the time of receiving back the goods from the baile

✓ At the time of giving directions in respect of the goods

- Premature termination of gratuitous bailment

4. Duty to receive back the goods

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Duties of a bailee:

1. Duty to take reasonable care of the goods bailed

- ✓ If required degree of care is taken then not liable for l
- ✓ Standard of care is same in all types
- ✓ Measure of care depends on nature, quality, quant value of the goods
- ✓ Bailee not liable, if events are beyond the control of b
- ✓ If stolen, reasonable steps otherwise liable
- ✓ Burden of proof on bailee
- ✓ Loss due to the negligence of the servant

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2. Duty not to make unauthorized use of the goods bailed

If unauthorized use : can be voidable and terminated

liable for all losses even after utmost care

3. Duty not to mix the goods bailed with his own goods

a. Mixing the goods with bailor's consent

b. Mixing the goods without the bailor's consent a goods are separable

c. Mixing the goods without the bailor's consent a goods are not separable

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4. Duty to return the goods : without waiting for dema
the bailor – if failed, bailee is responsible for the *any* l

- ✓ Need not be returned, if the bailee loses the posses
operation of law
- ✓ If joint bailors

5. Duty to return the increase in the goods bailed

6. Duty not to set up an adverse title (denial of the title)
the bailor : Bailee cannot say to the bailor that at the
the baliment, he had no authority to bail

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Rights of the bailor

Duties of the bailee = Rights of the bailor

Additional rights:

1. Right to terminate the bailment
2. Right to demand back the goods lent gratuitously at time: However, if loss by bailee
3. Right to file a suit against any wrong-doer
4. Right to file a suit for the enforcement of the duties imposed upon a bailee

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Rights of a bailee

Additional rights:

1. Right to compensation : Due to defective title
2. Right to return the goods to anyone of the joint bail
3. Right to recover agreed charges : if not agreed, then
4. Right to file a suit to decide the title of goods bailed called interpleader suit)
5. Right to file a suit against the wrong-doer
6. Right of lien : Right to retain the possession until cha are paid – Two types: Particular and General

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Particular lien:

- ✓ Right to retain only those particular goods in respect o the charges are due.
- ✓ Generally, bailee has this lien only
- ✓ Condtions: (assignment)
- ✓ Bailee loses the lien, if possession is lost

General lien:

- ✓ Right to retain any goods bailed for any amount due

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Right of general lien is a privilege and is given only to cer
kinds of bailees:

a. Bankers
b. Factors
c. Wharfingers
d. Attorneys of a High Court
e. Policy brokers

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Factors: An agent entrusted with the possession of goods
purpose of selling on behalf of his principal.

If goods are delivered for some other purpose, no GL

Wharfingers: A person who owns or keeps a wharf.

Wharf: Place, adjoining to water, used for loading and ur
goods from ships – not to store

Attorneys (solicitor) of a HC : A person who acts leg
another – lien on all the papers and documents of th
provided they are delivered in professional capacity

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Finder of goods:

A person who finds the goods belonging to some other p
and takes them in his position.

A person finding goods not bound to take – but if picks u
takes its possession, he becomes bailee

Duties and rights

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Pledge

- ✓ A special kind of bailment
- ✓ Goods are delivered as a security for a loan or fulfillment of an obligation

- ✓ Defined u/s 172
- ✓ "The bailment of goods as security for payment of a for performance of a promise, is called pledge. The b this case is called the pawnor (pledger). The bailee i the pawnee (pledgee)".

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Essential features of a valid pledge

1. Delivery of possession
2. Delivery should be upon a contract : when
3. Delivery should be for the purpose of security
4. Delivery should be upon a condition to return
5. Only of movable goods

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DIFFERENCE BETWEEN BAILMENT PLEDGE

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