

## Bailment and Pledge

Bailment (derived from French word 'bailer') : Delivering under a contract for return at a specified time or specified 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 fulfilment of an obligation

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

## Bailment

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

Ownership with : one person who delivers

Possession with: another person who receives for a purpose

So, change of possession only

## Definition u/s 148

“ 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.”

Two parties:

Bailor: who delivers

Bailee: To whom the goods are delivered

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 goods into the bailee's possession

Note: Delivery of possession and custody of goods  
Bank and a customer

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 contract

( 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 stated

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

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

## 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

### 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 bailee
- ✓ At the time of giving directions in respect of the goods
- Premature termination of gratuitous bailment

### 4. Duty to receive back the goods



## 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 loss
- ✓ Standard of care is same in all types
- ✓ Measure of care depends on nature, quality, quantity and value of the goods
- ✓ Bailee not liable, if events are beyond the control of bailee
- ✓ If stolen, reasonable steps otherwise liable
- ✓ Burden of proof on bailee
- ✓ Loss due to the negligence of the servant

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

4. Duty to return the goods : without waiting for demand from the bailor – if failed, bailee is responsible for the any loss  
✓ Need not be returned, if the bailee loses the possession in the 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 time of the bailment, he had no authority to bail

## 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

## 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 bailor
3. Right to recover agreed charges : if not agreed, then reasonable charges
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 charges are paid – Two types: Particular and General

### Particular lien:

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

### General lien:

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

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

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

Factors: An agent entrusted with the possession of goods for the 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 unloading of goods from ships – not to store

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



Finder of goods:

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

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

Duties and rights

## 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 debt or for performance of a promise, is called pledge. The bailor in this case is called the pawnor (pledger). The bailee is called the pawnee (pledgee)”.

## 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

# DIFFERENCE BETWEEN BAILMENT PLEDGE