

LEGAL ASPECTS OF BUSINESS

Concepts

- Contract of Indemnity
- Contract of Guarantee
- Contract of Bailment
- Contract of Pledge

Contract of Indemnity (Sec. 124)

According to Sec. 124, a contract of indemnity is 'A contract by which one party promises to save the other from the loss caused to him by the conduct of the promisor himself or by the conduct of any other person.'

The person who promises to indemnify or make good the loss is called indemnifier. The promisee or whose loss is made good is called the indemnified or indemnity holder.

Essential Elements:

- 1) Include all essential elements of valid contract.
- 2) It may be express or implied.
- 3) Loss may be caused by promisor or any other person or accidents.
- 4) The promisee has the right to recover from the promisor the actual cost of indemnity contract.

Rights of indemnity-holder or indemnified

He has following rights against the indemnifier i.e. Promisor:

- 1) Right to recover damages: All damages he may be supposed to pay in any suit to which the indemnity applies.

2) Recovery of cost: All costs which he may be made to pay in defending the suit of indemnity.

3) Recovery of all sums paid: All sums he has paid in terms of any compromise of any suit.

Rights of Indemnifier

1) Right of subrogation: After paying the amount of claim, indemnifier gets all the rights of indemnified against a third party. i.e. to sue & claim for damages & all sums paid against third party.

2) Right to refuse claim or indemnity: If loss caused is out of the scope of the contract or indemnified has not acted prudently, then indemnifier can refuse claim.

Contract of Guarantee (Sec. 124)

A contract of guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called surety. The person against which the guarantee is given is called the principal debtor. The person to whom the guarantee is given is called the creditor. A guarantee may be given not only for a debt, but also where party wants to buy goods on credit & also for good conduct of another person(Fidelity Guarantee).

Essential Elements:

1)It may be written or oral.

2)3 contracts are there;

- Between creditor & debtor
- Between surety & creditor
- Implied contract between surety & debtor.

- 3) Capacity to contract: The principal debtor may be a minor or a person incapable of entering into a contract. In such cases, surety shall be regarded as principal debtor & will be liable to pay.
- 4) Consideration: The consideration received by the principal debtor must be sufficient consideration to the surety for giving guarantee.
- 5) Surety is personally liable for default of principal debtor.
- 6) Guarantee is given on the request of principal debtor (implied or express).
- 7) Guarantee contract is not a contract of 'Uberrimae Fidei': A contract uberrimae fidei is one which imposes duty on creditor to disclose all material facts to the surety. A creditor is required to disclose only those material facts, which he knows & are likely to affect the degree of responsibility of surety.
- 8) Surety's liability arises from the date the principal debtor commits default & not from the date of guarantee.

Rights of surety:

After performing or discharging the liability of the principal debtor, a surety gets various rights against creditor, principal debtor and co-sureties.

Right against Creditor

- 1) Right of exoneration (declare free from blame): When debt has become due, surety is called to pay, he may ask the creditor to sue principal debtor. In case of fidelity guarantee, surety may call creditor to dismiss the employee whose honesty he has guaranteed (if dishonesty is proved).
- 2) Rights on Securities: After paying the creditor, surety can ask him to give all the securities which he has, against principal debtor.
- 3) Rights of Subrogation: After paying creditor, surety get all the rights of creditor against principal debtor.

4) Rights to Set-off: Set-off means a right of counter-claim or right of deduction from the amount of debt. This is when creditor sues surety. He can counter-claim against any possession with creditor.

Right against Principal Debtor

1) Right of subrogation: After paying creditor, he gets all the rights of creditor against principal debtor.

2) Right of Indemnity: There is implied promise by principal debtor to indemnify the surety & surety can demand all payments from him.

Right against Co-Sureties

1) Right to Contribute Equally: When he has paid more than his share, he has the right of contribution from co-sureties.

2) Contribution when co-sureties bound to contribute equally subject to the limit of their obligations.

Contract of Bailment

Section 148 of the Indian Contract Act deals with the concept of Bailment, Bailor and Bailee.

A bailment is a contract in which one person transfers goods to another person with a contract that he will return the goods after completion of the purpose for which contract takes place.

The person who delivers goods to another person is known as Bailor and the person to whom bailor delivered goods, is known as Bailee.

The contract of bailment is different from the contract of sale of a property. In the contract of sale of a property, after the completion of sale the ownership of the property gets transferred to the buyer. But, in bailment, only the possession of the property is transferred to the bailee and not the ownership and the possession of the property is transferred only for the period up to the

completion of the purpose. In order for bailment, the bailee must have the intention to possess the property, i.e. actual possession of the property. The bailor intends to transfer the property to the bailee for the specific period of time and after the fulfilment of the purpose, the property should be returned to the actual owner.

Kinds of Bailment

Gratuitous Bailment

Under this Bailment, anyone, either the bailor or the bailee gets the sole benefit.

For sole benefit of Bailor

In this concept, the bailor transfer the goods to the bailee for some specific purpose which result in the benefit of bailor only i.e. bailee has no expectation in return.

Illustration

A and B are the neighbours. One fine day A gave his jewellery to B to keep it safe because A is going out of town for some days. B return A's jewellery to A when he came back. Here there is no benefit of B in keeping those goods i.e. B does not get anything in return.

For sole benefit of Bailee

In this concept, the bailor transfers the goods to the bailee for some specific purpose which result in the benefit of bailee only i.e. bailor does not get anything in return. The bailor only gets his goods back after completion of the purpose.

Illustration

A gave his bike to B for 3 hours, because B wants to go to his parents home. Here A does not get anything in return by giving his bike to B, but he will get his bike back to him after the fulfilment of the purpose.

Non Gratuitous Bailment

Under this concept, both the bailor and the bailee get some rewards in return i.e. mutual benefit of both.

When bailor transfers his goods to the bailee for some specific purpose. After the completion of that specific purpose, the bailee returns the goods back to the bailor and in return gets the payment for his services.

Illustration

If A gives his car to B for repairing purpose. After the complete repair, B returns A's car to him and A will pay B for his service.

Essentials of Valid Bailment

1. Agreement
2. Delivery of Goods
3. Purpose
4. Return of Goods

Agreement

For a valid contract of bailment, both the bailor as well as bailee have to enter into an agreement that the bailor will transfer goods to the bailee for a specific purpose and after the completion of the purpose bailee will return the goods to the bailor and bailor will pay to the bailee for his services.

Illustration

If A and B want to enter into the contract of bailment with the purpose that B will repair A's car, they have to enter into an agreement, which includes all the instruction and orders of A regarding the repairs and usage of his property etc.

Delivery of Goods

For a valid bailment, it is necessary that the bailor will transfer i.e. deliver his goods to the bailee so that bailee can act towards completion of the purpose. The possession should be voluntary i.e. not by force, coercion, undue influence etc.

Delivery of possession of goods can be actual or constructive

Actual delivery means when the bailor transfer the goods to the bailee that transfer should be in physical nature.

Illustration

If A wants B to repair his car, so A has to transfer the physical possession of the car to B, because without the physical possession B is unable to complete the purpose for which bailment took place.

Constructive delivery is the opposite of actual delivery. In constructive delivery, the document which shows the title of goods gets transferred, due to which indirectly the possession gets transferred.

Illustration

If A has a railways receipt i.e. document of title to goods, transfers the receipt to B, here B indirectly has the possession of goods, as he has the document of title to goods.

Purpose

Bailment takes place when the bailor transfers constructive to the bailee, the main reason why bailor transfer his goods is the performance of a specific purpose. And when that purpose gets completed the bailor return the goods to the bailee.

Illustration

If A and B want to enter into the contract of bailment, A should transfer his goods and provide some purpose to B, so that B can act to complete that purpose.

Return of Goods

The contract of bailment comes to an end when the bailee after fulfilment of the purpose return the goods to the bailor or disposed of as per the direction of the bailor.

Illustration

If Ram transfers his gold to Shaam so that Shaam can make a ring from that gold. Shaam has to return the gold ring to Ram after the purpose for which they enter into an agreement gets accomplished.

Duties and Rights of Bailor

Duties of Bailor

Duty to disclose any defect

Section 150 of the Indian Contract Act states that, when the bailor transfers the possession of his goods to the bailee, he has to disclose the defect in goods while transferring them to the bailee. There are two conditions regarding the bailor's

Duty to disclose the defect:

In the case of Gratuitous Bailment

In the case of gratuitous bailment, it is the duty of the bailor to disclose the defect which he knows about the goods to bailee while delivering the goods. If he fails to disclose the defect to the bailee and bailee suffered an injury due to that failure makes bailor liable. But if bailor was also unaware of the defect, in that situation he will not be held liable.

Illustration

- If A, the owner of the scooter allows B to use his scooter. A knows that brakes of the scooter are not working, he does not disclose the information to B. B met with an accident, A is liable to compensate B for the injury he suffered.
- If A was also unaware of the defect in the scooter that he gave to B, in this case, A is not liable for the injury B suffered.

In case of Non-Gratuitous Bailment

This concept deals with the goods given on hire. Under this concept when the bailor gives his goods on hire to the bailee and if he fails to disclose the defect in the goods to the bailee. The bailor will be held liable, even if the bailor is also unaware of the defect. It is the duty of the bailor to keep his goods fit and ready to use.

Illustration

If A hires a car from B, the gearbox of the car is not in good condition and suddenly the gear gets stuck. Due to that, A met with an accident. Here, even though B also does not know about it, he is liable.

In [Hyman and wife v. Nye and sons](#)

In this case, the plaintiff is the bailee and the defendant is the bailor. Plaintiff took the carriage cart on hire from the bailor. While the journey the carriage met with an accident because the carriage is not ready or fit for that journey. Here the defendant is held liable because it is his duty to keep his good fit and should disclose the defect in the goods to the bailee i.e. plaintiff.

Duty to bear expenses

In the case of Gratuitous Bailment

It is the duty of the bailor to repay the amount which bailee incurred and paid in carrying and keeping the goods safe.

Illustration

If A gives his horse to B for two days. A should pay to B all the expenses, like the expenses incurred in feeding horse or any other expenses.

In case of non-gratuitous bailment

In the case of non-gratuitous bailment, the ordinary expenses incurred on goods should be paid by the bailee only. But, the extraordinary expenses have to be paid by bailor

Illustration

If A hires a car from B. the expenses incurred in refuelling the tank of the car should be paid by A only. But, If A paid any expenses like the fine if car's papers are not there, or any expenses paid like for repairs, B has to repay that amount to A.

Duty to indemnify bailee

If the bailee has suffered any loss because of the goods bailed by the bailor. It is the duty of the bailor to indemnify bailee against that loss.

Illustration

If A, a friend of B asked B to give his cycle. Instead of giving his cycle, B gave C's cycle to A. while riding, C caught A and handovers A to police. A has to pay fine. Here B has to indemnify i.e. to pay A against the loss incurred.

Rights of Bailor

Right to claim Damages

When the bailor transfers the possession of his goods to the bailee and if bailee fails to protect the goods of the bailor, the bailor has the right to claim damages against bailee.

Illustration

If A gave his book to B for binding. If due to the fault of B, the book got damages i.e. some pages were missing. Here B is liable and A has a right to claim damages.

In [*Sri Narasimhaswami, Namagiri Amman v. Muthukrishna Iyengar*](#)

In this case, the plaintiff has delivered valuable gold for decorating goddess to the defendant. Due to the negligence of the defendant, the ornaments were lost. Here the plaintiff demanded the compensation from the defendant. The court allowed the petition and as per section 151 of ICA, held the defendant liable.

Right to terminate the bailment

According to Section 153 of the Indian Contract Act, when the bailor transfers his goods to the bailee for some specific purpose and if bailee does any act which is against the terms and conditions on which bailor transfer his goods, the bailor has a right to terminate the contract of bailment.

Illustration

If A gave his car to B for personal use. B started using it as a taxi. Here, A has a right to terminate the bailment.

Right to get back the possession of the Goods

The bailor transfers his goods to the bailee for some specific purpose, when bailee complete that purpose, the bailor has a right to get the possession of goods back from the bailee.

Illustration

If A went to a hotel and gave his key to the guard for valet parking. Here A has a right to demand his car back when he wants to leave.

Duties and Rights of Bailee

Duties of Bailee

Duty to take reasonable care

According to Section 151 of the Indian Contract Act, when the bailor transfers his goods to the bailee for some specific purpose. It is the duty of the bailee to keep those goods safe and protected. He has to ensure to take standard care as a prudent man. If the bailee fails to keep the goods safe and protected he is liable to pay compensation to the bailor.

Illustration

If A bailed his gold to B, B has a duty to take proper care and protect the gold of A, like his own gold. If B fails to protect the gold or any damage occurred, B has to pay/ compensate A.

Pitt son and Badgery Ltd. v Proulefc

A broker after the sale of wools retained it in his store with the consent of the buyer. The store was wooden and surrounded by the fence having large gaps between them. An intruder enters the shop through the gaps i.e. from between the fence, put fire in the store, all the wools gets destroyed. Here, the broker as a bailee having the possession of goods of the bailor is liable to pay compensation to the bailor because he fails to keep the goods safe.

Duty to not to make unauthorized use of goods

As per according to section 154 of the Indian Contract Act, 1872, when the bailor transfer the possession of the goods to the bailee for some specific purpose, it is the duty of the bailee to not to make unauthorized use of goods of bailor without his consent. If the bailee makes unauthorized use of the goods, he will be held liable to pay compensation to the bailor and as per section 153 of the contract act, the bailor can terminate the contract of bailment.

Illustration

If A gave his scooter to B for the purpose of repairing. B use that scooter for personal use. Here B is liable for unauthorized use of the good. A is entitled to get compensation and has a right to terminate the bailment contract.

Duty to not mix the goods

It is the duty of a bailee to not mix the bailor's goods with his goods.

As per Section 155 of the Indian Contract Act, 1872, when the bailee mixes the goods of the bailor with his goods with the consent of the bailor, then the interest in mixed goods shall be shared in proportion.

Illustration

If A bails his goods to B. B with A's consent mixed A's goods with his goods. Here B will not be liable, as he has A's consent.

Section 156 and 157 of the Indian Contract Act, 1872, deal with the condition when bailee mixes the goods without bailor's consent.

There are two situations:

When goods can be separated (Section 156)

If goods mixed by the bailee can be separated, then the bailee has to bear the cost of separation.

Illustration

If A bails 100 packets of Lays chips to B. B without consent of A, mixed it with his 50 Diamond chips packets. Here B will be held liable for the cost incurred in separating the goods.

When goods cannot be separated (Section 157)

If goods mixed by bailee cannot be separated, then the bailee has to compensate to the bailor.

Illustration

If A bails 2lts. of petrol to D. D without consent of A mixed petrol with oil. Here, it is impossible to separate petrol from oil. B has to compensate A.

Duty to Return the goods

According to Section 160 of the Indian Contract Act, when the bailor transfers his goods to the bailee for some specific purpose, after completion of that purpose, it is the duty of the bailee to return goods to the bailor.

Illustration

If A gave his book to B for Binding. It is the duty of B as a bailee to return the book after binding. If B fails to fulfil his duty, he will be held liable.

Duty to deliver the bailor increase or profit if any on the goods bailed

According to Section 163 of the Indian Contract Act, when the bailor transfer the goods to the bailee for some specific purpose and during the bailee possession,

any increment happens to goods, it is the duty of the bailee to return that increment to the bailor.

Illustration

A leaves a cow in the custody of B and cow gives birth to a calf. Then B is duty bound to hand over the bailed goods along with accretion to the bailor.

Rights of bailee

Right to claim damages

When the bailor transfers the possession of his goods to the bailee, he has to disclose the defect in goods while transferring them to the bailee. If the bailor fails to disclose the defect to the bailee and if bailee suffered an injury then the bailee has the right to claim damages from the bailor.

Illustration

If A bails his car to B without disclosing the information that the brakes of the car are not working well. B met with an accident. Here B has a right to claim damages from A.

J.N. Reed v Dean G. Parrack (1949) 1 KB 188

In this case, the plaintiff enjoying his holidays hire a motor launcher to enjoy the riverside from the defendant. The motor launcher was not fit to use and caught fire, the plaintiff suffered an injury. Here the defendant was held liable.

Right to claim Reimbursement

According to Section 158 of the Indian Contract Act, if the bailee suffered any expenses to keep the goods of the bailor safe and protected, the bailee has a right to demand reimbursement from the bailor.

Illustration

If A bails his horse to B for some time. B suffers some expenses like food, shelter etc to keep the horse safe. Here B has a right to get reimbursed for all the expenses from A, which he suffered to keep the horse safe.

Right to particular lien

According to Section 170 of Indian Contract Act, when bailor fails to pay lawful payment to the bailee for his services, the bailee has a right to lien/retain the goods until the time he receives his payment.

Illustration

A bails a piece of cloth to B, a tailor, to make a coat for him. B as per the conditions makes a coat, but A fails to pay B for his service, here B has a right to lien/retain A's coat.

Right of bailor and bailee against the wrongdoer

According to Section 180 of Indian Contract Act, when the goods of the bailor are in the possession of the bailee and any third person wrongfully deprive the bailee of using the goods, then the bailee has a right it uses remedies as the bailor might have used.

Illustration

If A bails his T.V. to B for repairs. C forcefully takes the possession of T.V. from B. here B is entitled to the remedies as similar to that of A.

Concept of Finder of Goods

When a person found some goods which do not belong to him, that person is known as the finder of goods. It is the duty of the finder of goods to not to make unauthorised use of the goods and to find the real owner and surrender him the goods. He is lawfully entitled to get reimbursement of the expenses which he incurred by him in the process of finding the owner.

Rights of Finder of Goods

Right to lien

According to Section 168 of the Indian Contract Act, 1872, the finder of goods has a right to get reimbursement of the amount which he incurred during the process of finding the owner of the goods. But if the owner denied to reimburse him, he cannot sue the owner but he can retain goods till he gets paid for the expenses incurred by him.

Illustration

If A finds a wallet of B, he incurred Rs 70 as an expense to reach B's address to return his wallet. A has the right to get paid his Rs 70. If B fails to pay him, A can retain his wallet.

Right to Sell

A finder of goods has a right to sell the goods found by him under the following circumstances

The goods are of perishing nature

Illustration

If A finds some tomatoes which belong to B. A tried hard to find B but was unable to find him. A can legally sell those tomatoes, as tomatoes are of perishing nature and the price he gets by the sale should be returned to B.

When the owner does not pay lawful charges incurred by the finder

Illustration

If A finds B's Watch on the road. A, to find B's address, incurred 80 Rs. if B denied paying, A has a right to sell the watch of B and retain his payment and if he gets the extra amount, it should be returned to B.

Duties of Finder of Goods

- It is the duty of the finder of the goods to keep goods safe.

Illustration

If A finds B's Jacket. It is his duty to keep that jacket safe.

- It is the duty of the finder of the goods to not to use the goods for his personal use

Illustration

If A finds B's cycle. He has to keep that cycle safe and should not use it for his personal use.

- It is the duty of finder of goods to find the real owner

Illustration

- If A finds a gold ring in a party, it is his duty to find the real owner of the ring.

Concept of Pledge

In the pledge, the pawnor transfer/bailed his goods to the Pawnee as security against the amount he takes from the Pawnee. The pawnor has a duty to pay the amount back to the Pawnee and the Pawnee has a duty to return the goods after pawnor pays the amount. The Pawnee should not make unauthorized use of the goods bailed to him if he does he will be liable to pay compensation to the pawnor. The Pawnee has a right to sell the goods after giving prior notice to the pawnor if he fails to pay the amount back.

Illustration

A borrowed Rs.100 from B and gave his cycle as a security for the repayment of the amount, in the condition that if A pays back to B he will get his cycle back. it is called the contract of Pledge.

Rights and Duties of Pawnor

Rights of Pawnor

Right to redeem goods

It is the right of the pawnor to redeem his goods i.e. to get back from the Pawnee after he paid the amount to the pawnee.

Illustration

If A bailed his watch as security and took Rs.800 as a loan from N. A return the money to N. Here, A has a right to get his watch back.

Right to claim damages or compensation

It is the right of the pawnor to get the compensation if the Pawnee makes any unauthorised use of the goods or fails to keep the goods safe.

Illustration

If A bailed his Car as security and took Rs.1,30,000 as a loan from C on the terms that C will not use that car in any manner. C uses it as a taxi. Here A can claim damages as C made unauthorized use of the goods.

Duties of Pawnor

Duty to pay the loan

It is the duty of the pawnor to pay the amount back to the pawnee so that he will get his goods back.

Illustration

If A bails his gold chain as security to B for a loan of Rs.3000 Here, A has a duty to pay back the amount of loan to B.

Duty to pay extraordinary expenses incurred by Pawnee.

It is the duty of the pawnor to pay the extraordinary expenses to the pawnee, which the Pawnee incurred in keeping the goods safe.

Illustration

If A bails his cow to B for Rs.8000. B paid all the expenses like food for cow, shelter etc. Here A has a duty to pay the expenses back to B.

Duty to pay claims and damages or compensation to Pawnee

The pawnor has a duty to pay the compensation or damages to the Pawnee if the Pawnee suffered any type of legal damages due to pawnor's goods.

Illustration

If A bails his bike as security to B for the loan of Rs.50000 with the term that B can use his bike. A, however, didn't disclose the fact to B that the breaks of the bike are not working well. B met with an accident and suffered damage. Here it is the duty of A to compensate B for the damage he has suffered due to A's goods.

Rights and Duties of Pawnee

Rights of Pawnee

Right to retain Goods

As per Section 173 of the Indian Contract Act, if the pawnor fails to pay the amount to the Pawnee, so the Pawnee has a right to retain the goods of the pawnor.

Illustration

If A bails his watch as security to B for the loan amount of Rs.500. If A fails to pay the amount or pays the amount after the time as per the terms and conditions, B has a right to retain the watch.

Right to get compensation

In the case, where pawnee suffered because of the goods of the pawnor, the Pawnee has a right to get the compensation against that damage from the pawnor.

Illustration

If A bails his bike as security to B for the loan of Rs.50000 with the terms that B can use his bike. A, however, didn't disclose the fact to B that the brakes of the

bike were not working well. B met with an accident and suffered damage. Here, B has a right to claim compensation from A.

Right to Sell

As per section 176 of the Indian Contract Act, if the pawnor fails to pay the amount back to the Pawnee, the Pawnee has a right to sell the goods and reimburse his amount.

Illustration

If A bails his gold ring to B as a security for the loan amount of Rs.7000 if A fails to pay the amount back to B. B has a right to sale the ring and get his amount back.

To get extraordinary expenses incurred by him

As per section 175 of the Indian Contract Act, if the pawnee has suffered any extraordinary expenses with respect to pawnor's goods then he has a right to get paid back by the pawnor.

Illustration

If A bails his cow to B as security for Rs.18000 as a loan. B incurred expenses like food expenses, shelter expense etc. B has a right to get all the amount back from A.

Duties of Pawnee

Duty to take reasonable care

It is the duty of Pawnee to take reasonable care of the goods of pawnor, like his own goods.

Illustration

If A bails his gold to B for the amount of Rs.80, 000 as loan security. B has a duty to keep the gold of A safe and should take reasonable care.

[State Bank of Saurashtra v. Chitranjan Rangnath Raja and Anr.](#)

In this case, the bank was the Pawnee and the defendant was the pawnor, the pawnor bails his 5000 tins of groundnut oil as security against the amount of Rs. 75000. The defendant died. The bailed goods of the defendant were lost from the possession of the bank. Later, after the given time limit bank files a case against the defendant as ask for the repayment of the amount. The bank states that, as the bank is the Pawnee, they have the right to get their money back, but because they lost the goods of the plaintiff whose market value is Rs. 75000, that makes them not able to get their payment back, thus the petition got dismissed

Duty to give back the goods after repayment of the loan

When the pawnor pays back the amount to the Pawnee, the Pawnee has a duty to give back the goods back to the pawnor.

Illustration

If A bails his watch to B as security for Rs.2000 as a loan. It is the duty of B to give back the watch to A when A repay Rs.200

Duty not to make unauthorized use of goods

It is the duty of the Pawnee to not to make any unauthorized use of pawnor's goods. If the Pawnee makes unauthorized use of goods he will be liable to pay compensation to the pawnor.

Illustration

If A bails his car to B as a security against loan amount of Rs.90000. If B uses the car as a taxi without A's Consent. Here, B will be liable for unauthorized use of the car.

Duty to give back the owner any increment in the goods

It is the duty of the Pawnee to give to the pawnor any increment in the goods during his possession.

Illustration

If A bails his cow to B as a security against loan amount of Rs.80000. During B's possession cow gives birth to a calf. If A repays the amount, It is the duty of B to give that calf and the cow back to A.

Duty not to mix the goods

It is the duty of the Pawnee to not to mix the pawnor's goods with his own goods.

Illustration

If A bails 100lt. of petrol to B against the loan of Rs.13000. It is the duty of the B to not mix the goods of A with his goods.

Pledge by Non Owner

Pledge by Mercantile agent

Section 178 of the Indian Contract Act states that the pledge between the mercantile agent and Pawnee can be valid if the agent has the possession of the goods with the consent of the owner and the Pawnee acted good faith and does not know about the original title of the goods.

Illustration

If A is a mercantile agent of B bails the bike of B which is in his possession to D. D in good faith and does not know about the title of the bike accept as security. Here the pledge is considered as valid. But if B knows about title, then the pledge will not be held valid.

Pledge by the person in possession under voidable contract

As per section 178 'A' of the Indian Contract Act, the pledge between the pawnor having the possession of the goods under voidable contract and pawnee can be valid, provided that during the pledge the contract has not been revoked and the pawnee acted in good faith and does not have any idea about the title of the goods.

Illustration

If A has possession of the watch under voidable contract, bails the watch to B. B in good faith and does not know about the title of the watch, accepts it. That pledge is considered as valid. But if B knows about the title, then that pledge is not considered as valid.

Pledge where pledger has only a limited interest

As per Section 179 of the Indian Contract Act, the pledge between the pawnor having limited interest and Pawnee can be valid, if during the pledge the pawnee acted in good faith and does not know about the title of the goods.

Illustration

If A finds a defective watch and spent Rs.50 in repairing that watch. Here A can have a limited interest on watch i.e. he can bail the watch in pledge for Rs.50 or less.

Pledge by a co-owner in possession

The pledge between a co-owner and Pawnee can be valid if he has the consent of other co-owner. But when the co-owner without the consent of other co-owner enters the contract of pledge, that contract can be valid if the Pawnee acted in good faith and does not know about the title of the goods.

Illustration

Situation 1: If A and B jointly owned a car. The car is in the possession of A. One day A wants to bail the car for the purpose of the pledge, he has to take the consent of B.

Situation 2: if A enters into the pledge with C and bails the car to C, without the consent of B. That pledge is considered as valid only if C acts in good faith and does not know anything about the title of the car.

Pledge by seller or buyer in possession

A seller, after selling his goods has the possession of the goods with the consent of the buyer or the buyer before completion of the sale has the possession of goods with the consent of the seller can enter into the valid pledge. But if the party enter into a contract without the consent of the other party, that contract can be valid, if the Pawnee acted in good faith and does not know about the title of the goods.

Illustration

If A buys a cycle from B. A after purchase left the cycle in the possession of B. B bails the cycle in a pledge with C. C act in good faith and does not know about the title of the cycle. This is a valid pledge.

Relation Between Pledge and Bailment

Similarities

1. In Both, Pledge and Bailment only movable property delivered to the Pawnee/bailee.
2. In both cases, both the party enters into an agreement.
3. In both cases, bailee/pawnee has to return the goods to bailor/pawnor.
4. In both cases, bailor/pawnor has to pay any extraordinary expenses if incurred by bailee/pawnee.
5. In both cases, the bailee/pawnee has to compensate bailor/pawnor for any damage to goods or unauthorized use of goods.

Web links

<http://egyankosh.ac.in/bitstream/123456789/13397/1/Unit-10.pdf>

http://mastermindsindia.com/newfiles/newsyllobus/new41/Chapter%201_Bailment%20and%20Pledge_41e.pdf