

## Unit - IV

### Introduction:

#### 4.1-Bailment

The word bailment is derived from the French word "ballier" which means to deliver. Bailment means to deliver a thing to another person under a contract for a return at a specified time or after the purpose is accomplished.

The person delivering the goods is called bailor. The person to whom it is delivered is called bailee.

#### Example:

- i) A lends his book to B
- ii) A delivers a watch to B for repairs
- iii) A sells a horse to B who leaves the horse in the possession of B
- iv) A lends a horse to B for his riding only without charge

#### 4.2 Definitions:

Section 148 of the Contract Act defines bailment as "the delivery of goods by one person to another for some purpose upon a contract, that they shall be retained or otherwise disposed of according to the directions of the persons delivering them."

#### 4.3 Essential elements or features of a valid bailment:-

##### a) Contract

A bailment is usually created by agreement between the bailer and bailee. For example, bailment between a finder of goods and owner of goods.

Example: A gives his scooter to B, the owner of a workshop. It is an express contract of bailment.

##### b) Delivery of Goods

The possession of the goods or article transferred from one person to another is known as delivery of goods. A delivery is said to be actual where the goods are physically handed over by one person to another.

Example: A lends his book to B

##### Case Law: Ashly Vs Tolhurst

In this case, the owner left his car on a private parking ground after getting a parking ticket. The car was stolen. It was held that there was no bailment as there was no delivery.

### c) Some purpose

The delivery must be for some purpose. It is agreed that when the purpose is accomplished, the goods are to be returned or otherwise disposed of according to the direction of the bailor.

#### Example:

A leaves a piece of cloth with B without mentioning any purpose. There is no bailment between A and B.

### d) No Transfer of Ownership

In bailment, possession of goods is transferred from one person to another, but ownership of goods remain with the bailor. If ownership is transferred to other person, then it is a sale and not bailment.

#### Case law: kalia perumal Vs visalakshi

In this case, a lady employed a goldsmith for the purpose of melting old jewellery and to make new one out of it. Every evening she used to receive the half made jewels from the goldsmith and put them into a box, which was left in a room in the goldsmith's house and she retained its key.

On one night the jewels were stolen.  
In the suit for damages the court held  
that there was re-delivery of the jewels  
to the lady and they were not in the  
possession of the goldsmith when it was  
stolen, (though it was kept in his house)  
hence there was no bailment and goldsmith  
was not liable.

#### e) Return of Specific goods

If the goods are not  
specifically returned, there is no bailment.  
Bailment is concerned only with goods. If the  
goods are not specifically returned, there is  
no bailment. Bailment is concerned only  
with goods.

#### f) Movable goods

Bailment is concerned with movable  
goods. There can be no bailment of immovable  
property.

#### g) Need for Consideration

Consideration is an essential element  
for a valid bailment. But it is not a must  
in all cases of bailment. A bailment can be  
created even without consideration.

#### 4.4 Classification of Bailment

##### A] On the basis of benefit

It is divided into three types

###### a) For the benefit of the bailor

In some cases, the bailor delivers his goods to a bailee for its safe custody and without any reward to the bailee.

Example: A, while going out of station, hands over some ornaments to B, his neighbour for safe custody. This is a bailment for the exclusive benefit of the bailor.

###### b) For the benefit of the bailee

The bailor delivers goods to a bailee for his use without any remuneration.

Example: A lends his book to B for temporary use without any charge. It is a contract of bailment for the exclusive benefit of the bailee.

###### c) For the benefit of both bailor and bailee

In some case, Good are delivered to the bailee for consideration. In this case both the bailor and bailee derive benefit under the bailment.

Example: A gives his car for repair to a mechanic. It is a bailment for the benefit of both. That is A gets the repair done on the car and the mechanic gets money for his work.

### B] On the basis of Reward

It is classified into two types.

#### a) Gratuitous bailment

Gratuitous bailment is one which neither the bailee nor bailor receives any benefits.

Example: A lend his cycle to B for safe custody.

#### b) Non gratuitous bailment

It is one in which both the bailor and bailee get some consideration or reward or benefits.

Example:- Lending a scooter to a work shop for services.

## 4.5 Difference between a sale and a bailment

Sale	Bailment
1) Both movable and immovable goods are considered	1) Only movable goods are considered
2) Ownership and Possession are transferred from one person to another	2) Possession alone is transferred from one person to another.
3) It is for consideration only	3) Sometimes, consideration may not be received.
4) Goods need not be returned	4) Goods must be returned after the purpose is accomplished.

## 4.6 Duties of Bailor

### a) Duty to disclose known defects (Sec 150)

Duties of a bailor to disclose faults in the goods are different for gratuitous and non gratuitous bailors. The bailor is bound to disclose to the bailee all known defects in the goods. If the bailment is for hire then the bailor is liable for even unknown defects in the goods. If the bailment

is not for hire, then the bailor is liable for only known defects. If he fails to disclose, he is responsible for damages caused to the bailee from such faults.

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

Case law: Coughlin vs Gillison

In a gratuitous bailment, the bailor is responsible only for those faults which are known to him and which are not disclosed.

### b) To meet expenses

The bailor must meet all the extra ordinary expense incurred for the purpose of bailment. In the case of gratuitous bailment, the bailor has to pay repay to the bailee all the necessary expenses incurred by him for the purpose of bailment.

#### Expenses

Example:- Medical expenses for a sick horse.

c) To indemnify the bailee (Section 164):

A Bailor is responsible to the bailee for any loss due to his imperfect title in the goods bailed.

d) To receive the goods back:

It is the duty of the bailor to receive back the goods after the expiry of the time or after the completion of the purpose. If the bailor refuses to receive back the goods, then he is liable to pay compensation to the bailee for keeping the goods after the time limit.

4.7. Rights of bailor:-

a) Right to claim back the goods:-

The bailor can demand back the goods bailed as soon as the bailment period is over, or the purpose of bailment is completed.

b) Right of Termination:- (section 153)

The bailment if the bailee does any act which is inconsistent with the condition of the bailment.

c) Accretion to goods:-

In the absence of a contract to the contrary the bailor entitled to any increase or profit which may have accrued.

from the goods bailed.

Example: A leaves a cow to be taken care of the custody of B. At B's house the cow gives birth to a calf. B will have to return both to A.

#### d) Enforcement of Rights

The bailor can enforce by suit all the liabilities or duties of the bailee, as his rights.

#### e) Enforcement To claim compensation for damages caused to goods.

The bailor has the right to claim compensation if damages are caused to the goods by the mistake of the bailee.

### 4.8 Duties of the Bailee:

#### a) Duty of reasonable care (section 15):

The first and foremost duty of the bailee is that he must take all reasonable care of the goods bailed with him.

## Case Law: Martin vs London County Council

In this case, the plaintiff was admitted in a hospital. She handed over her jewels to the hospital staff, the jewels were stolen. In the suit for damages the hospital authorities were held liable for the loss of the jewels as they have failed to take the reasonable care as bailee.

In this case it was held that the hospital authority is liable for the loss of the jewels as they have failed to take the reasonable care as bailee.

- b) Not to make any unauthorized use of goods

The bailee should not make any unauthorized use of the goods bailed without the bailor's consent. He is liable to make compensation for any damage caused to the goods from or during any inconsistent use.

Example: 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. A is liable to make compensation to B for the

injury to the horse.

c) To return the goods bailed

Section 160 imposes a duty on the bailee to return, or deliver the goods bailed, without demand from the bailor on the expiry of the time fixed. If he does not return the goods according to the directions of the bailor, he becomes liable for any loss or destruction of goods.

Case Law :- Rampal Vs Gourishankar

The bailee is liable for the loss of the goods due to theft as the bailee refused to return the goods on the expiry of the time fixed.

d) To return any accretion

The bailor is entitled to any profit accrued from the goods bailed.

e) Not to mix the goods

The bailee should not mix the goods of the bailor with his own goods without

the consent of the bailor.

Example: A bails a bag of farm wheat worth Rs 12000 to B. B without A's consent, mixes the wheat with imported wheat of his own valued only Rs 8,000. B must compensate A for the loss of his wheat.

#### 4.9 Rights of bailee

##### a) Right of lien (section 171):

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

Example: 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) Expenses to be reimbursed (section 158)

A bailee is entitled to be reimbursed all expenses reasonably incurred maintaining the goods.

c) Right to indemnify (section 166)

Bailee is entitled to be indemnified by the bailor for any loss arising to him by reason that the bailor was not entitled to make the bailment or to receive back the goods or to give directions respecting them.

If the bailor has no title to the goods and the bailee has incurred any loss then the bailor has to indemnify the loss.

d) Right to return the goods

The bailee has the right to return the goods to the bailor after specified period is over or after the purpose is over. If there are two or more joint bailors the bailee is discharged from his liability when he returns the goods to one of them.

e) Right to get compensation when bailment is wrongfully terminated

A gratuitous bailment exclusively for the benefit of the bailee can be terminated even before the expiry of the

agreed time.

#### 4.10 Termination of bailment

- a) On the expiry of the period
- b) On the achievement of the purpose
- c) Inconsistent use of goods
- d) Gratuitous bailment
- e) Death of the bailor or bailee.

#### 4.11 Finder of lost goods.

Section 71 of the Contract Act lays down that "a person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as the bailee."

#### 4.12 Rights of finder of goods:

##### a) Right of lien

The finder of goods is entitled to retain the goods against the true owner until he receives compensation for his trouble and expenses incurred in preserving the goods and finding out true owner.

## b) Right to sue for reward

The finder of goods can sue the real owner for the reward. He may also retain the possession of goods until he receives the reward with all other necessary costs.

## c) Right of sale.

The finder has no right to sell the goods found. But in the following circumstances the finder of goods can sell them.

\* When the true owner of the goods cannot be found out after reasonable search

\* Where the owner refuses to pay the lawful charges of the finder

\* When the goods are in the danger of perishing.

#### 4.13 Obligation or Duties of finder of goods

- \* He must take all reasonable care of the goods found
- \* He must not use the goods for his own purpose
- \* He must not mix the goods with his own goods
- \* He must also return all accretion to the goods
- \* He must try to find out the true owner of the goods with a reasonable care and diligence
- \* The ~~true~~ finder of goods must find the owner of the goods found and return those goods to him.

#### 4.14 Pledge

An pledge is a special kind of bailment.

- \* as a security
- \* for the payment of debt
- \* for the performance of a promise

The bailor is called pledger or the pawnor  
The bailee is called pledgee or the pawnee.

#### 4.15 Essential elements of pledge

As per section 172, a pledge should contain the following elements

- \* There must be delivery of goods from pledger to pledgee
- \* The delivery of goods should be by way of security.
- \* The security being for the payment of a debtor or the performance of a promise
- \* Only movable property can be pledged
- \* The goods pledged must be returned to the pawnee on the payment of the debt or performance of the promise

#### 4.16 Rights of Pawnee

- \* Rights of retainer (sec 174)

A pawnee has a right to retain the goods till the debt is paid or till the performance is completed.

- \* Rights to retain against subsequent advances (sec 173)

The pawnee cannot exercise the lien for any other debt or promise. But if he makes any subsequent advances, it is presumed that the goods are a security for the subsequent advance also.

- \* Rights in the event of pawnor's default
  - a) He can file a suit against the pawnor for the debt
  - b) He can retain the goods pledged as a collateral security
  - c) He may sell the goods pledged after giving reasonable notice of the sale.

- \* Rights to ordinary expenses

Pawnee is entitled to receive extra-ordinary expenses incurred for preservation of goods pledged. For such expenses he has no right to retain the goods, but he can only sue to recover them.

#### 4.17 Duties of Pawnee:

- \* Duty of reasonable care
- \* Not to make any unauthorised use of goods
- \* To return the goods when the debt is repaid
- \* To return any accretion or profit

- \* Not to mix the goods

#### 4.18 Duties of a Pawner

- \* Duty to repay loan

The pawner should repay the loan and take back the delivery of his property from the Pawnee within stipulated time.

If he fails to repay the loan, the Pawnee has a lien over the goods or a right to sell the goods or can take legal action.

- \* Duty to receive the increase!

In case there is any increase in the goods, the pawner is entitled to such increase.

#### 4.19 Rights of the Pawner

- \* Right to claim back the goods
- \* Right to redeem the debt
- \* Right to receive the accretion to goods
- \* Right to claim compensation for damage caused to the goods pledged.

## 4.20 Differences between bailment and pledge

Bailment	Pledge
<ul style="list-style-type: none"><li>1) It is for the purpose of any kind</li><li>2) The bailee has the right to use the goods pledged with them</li><li>3) In case of default in repaying the debt, the bailee may either retain the goods or sue for his charges</li><li>4) The right of possession of goods passes to the bailee</li></ul>	<ul style="list-style-type: none"><li>1) It is the bailment of goods as a security for the performance of a specific promise</li><li>2) The pawnee has no right to use the goods pledged with him</li><li>3) In case of default in repaying the debt the pawnee after giving due notice to the owner, may sell the goods pledged with him</li><li>4) The pledge obtains some special property in the goods pledged</li></ul>

#### 4.21 Law of Agency

The contract between the principal and an agent is known as agency contract.

According to sec 182 of the Indian Contract Act 1872 "an agent is a person employed to do any act for another or to represent another in dealing with third persons."

Example: A authorises B to sell his house for a fixed price. B negotiated with C and sold it to C. The sale is binding on A. Here A is the principal and B is the agent. An act done through an agent has the same effect as if it has been done by the principal.

#### 4.22 Essentials of agency contract

- \* There should be an agreement between the principal and agent.
- \* Agency depends on agreement. Any person may be appointed as an agent.
- \* The agreement may be express or implied.
- \* Agency is not a mere employment. The agent is merely a contracting link.

- \* The agent must be given full freedom to act within his authority.
- \* The agent must act in the representative capacity. He must act on behalf of his principal and creates legal relationship between the principal and the third persons.

#### 4.23 Difference between an agent and a servant

Agent	Servant
1) Contractual relations with third persons are created.	1) No contractual relations with third persons are created.
2) It is based on mutual good faith	2) It is not so
3) An agent enjoys express and implied authority	3) A servant has no such authority
4) An agent may work as agent for <del>many</del> may principals	4) A servant can serve to only one master
5) Salary or commission or both may be paid as remuneration to an agent	5) Salary is paid as remuneration to a servant

#### 4.24. kinds of Agency

a) By express authority (section 187):

An agency created by oral or written agreements between the principal and agent is called as agency by express authority. It is the most common method of creation of agency.

Case law: Financing Vs Stimson

A clause in a hire purchase agreement relating to a car that the dealer was not the agent of the Finance company was held not binding, if in fact he was an agent.

b) By implied authority

Agency agreement may be implied under certain circumstances from the conduct of the parties or relationship between them.

Example: A and B are brothers. A lives in Delhi while B lives in Chennai

A with the knowledge of B, leaves B's lands in Delhi. A realises the rent and remits it to B. A is the agent of B, though not expressly appointed as such.

Various kinds of Implied agency -

- i) Agency by estoppel
- ii) Agency by holding out
- iii) Agency by necessity

c) By Ratification

The term ratification means to accept or to confirm the act already done without his knowledge. Ratification means the subsequent adoption or affirmation by a person of an authorised act done by another without an authority.

Example :- A lends B's money without his authority to C. A accepts the interests for the loan from C. This conduct of A implies the ratification of the loan by B to C.

Case law: Bolton and partners v. Lambert

A, a managing director of a company, purporting to act as the agent of the company but without authority, accepted an offer from B. B subsequently revoked his offer but the company ratified the contract. Held B was liable under the contract.

#### 4.25 Rights of an agent

##### a) Right to receive remuneration

The agent is entitled to receive his remuneration or commission from the principal. If there is no agreement as to remuneration, then the agent has a right to receive a reasonable sum as his remuneration.

##### b) Right to lien

Right of lien is a right to retain the possession of goods belonging to another till the remuneration and valid expenses are fully paid.

##### c) Right to retain money

An agent has a right to retain all sum received by him on account of his principal until all the claims against the principal are satisfied.

##### d) Right to be indemnified (section 222)

An agent has a right to be indemnified for any loss suffered by him in the course of agency business. The right of

agent to be indemnified does not extend to acts which are known to the agent to be unlawful.

### Case Law: Collins V. Evans

A judgement creditor, who requires an offer of the law to attach goods on the decree, points out certain specific goods as belonging to the debtor. The officer in good faith takes the goods. The officer is indemnified by the creditor, if it turns out the goods belong to somebody else.

#### e) Right of compensation (Section 225)

The agent has a right to be compensated for injuries sustained by him by neglect of the principal.

#### f) Right of an agent to sue a third party

An agent may sue, in his own name for the recovery of money paid on his principal's behalf under a mistake of factors in respect of a consideration that fails or otherwise under circumstances rendering the payee liable to pay the money.

#### 4.26. Duties of an agent

- a) Duty to conduct business according to directions.

The agent is bound to conduct the business of his principal according to the directions given by the principal. If the agent fails to act according to instructions and thereby any loss occurs, he is liable to compensate the principal for the loss.

Case law: Lilleys Vs Doubleday

In this case, an agent instructed to warehouse the goods, warehouse a portion of them in a different place, where they are destroyed. He must compensate the loss.

- b) Duty to follow trade customs in the absence of instructions

If the principal has not given any express instructions, the agent must act according to trade customs.

- c) Duty to carry out work with care and skill

The agent must act with reasonable care, skill and diligence which is expected from a person engaged in similar business.

If the principal suffers any loss on account of the want of skill of the agent, the agent is liable for the loss.

Case law: Bank of Bihar v. Tata Scob dealers  
A bank was employed to collect a sum and to remit to the customer. The bank collected it and sent it by draft in an ordinary post. The draft was lost in the transit. The bank was held to be negligent in sending the amount in that manner.

d) Duty to render accounts to the principal  
It is the duty of the agent to render proper accounts to his principal on demand. He must explain those accounts to the principal and produce the vouchers in support.

e) Duty to communicate with the principal  
It is the duty of the agent to have communication with the principal in case of difficulty and obtain instructions

f) To pay sums received for the principal  
It is the duty of the principal to pay to his principal all sums received on his account. He may deduct all such amounts or expenses paid by him in conducting such business.

## 4.27 Kinds of Agent

### I - On the basis of Extent of Authority

#### a) Special agent

A special agent is one who is appointed to perform a special act or to represent his principal in some particular transactions such as for selling or buying the goods or a car etc.

Example A appoints B as his agent to sell his car. B is a special agent. He can perform only the sale of the car.

#### b) General agent

A general agent is one who has been appointed to do all acts relating to a particular business for which he has been appointed.

#### c) Universal agent

A universal agent is one whose extent of authority to act for the principal is unlimited. He is appointed to do all the various business of his principal.

II - On the basis of nature of work performed agent may be classified into two kinds

### A - Mercantile agent

They are also known as commercial agents. Section 2 (a) of the Sales of Goods Act, 1930 defines the mercantile agent as a agent having in the customary course of business authority either to sell goods or to consign goods for the purpose of sale or buy goods or to raise money on the security of goods.

#### Types of mercantile agent

- i) Factor
- ii) Auctioneers
- iii) Broker
- iv) Commission agent
- v) Delcredere agent

### B - Non Mercantile agent

These agents are appointed to do non commercial activities. These agents perform such acts which are not performed by mercantile agents.

Examples:- i) Insurance agents

ii) Attorneys

iii) Solicitors

iv) Clearing and forwarding agents

c - According to the manner of their appointment, agents are classified into two groups.

a) Sub agent

Section 191 defines a sub agent as "a person employed by and acting under the control of the original agent in the business of the agency".

b) Substituted agent or co-agent

A substituted agent is a person appointed by the agent according to the express or implied authority of the principal, to act on behalf of the principal in the business of agency. He is an agent of the principal and responsible to him and not his sub agent.

#### 4.28 Rights of principal

- i) Right to give directions to the agent
- ii) Right to receive accounts from the agent
- iii) Right to get the secret profit earned by the agent
- iv) Right to communicate the agent
- v) Right to delegate his authority
- vi) Right to receive information from

the agent to sue the agent

vii) Right to sue the agent

#### 4.29 Duties of Principal

- i) Duty to give remuneration to the agent
- ii) Duty to reimburse expenses to the agent
- iii) Duty to indemnify the agent
- iv) Duty to compensate the agent for any loss incurred by the agent due to the neglect of the principal.

#### 4.30 Circumstances under which an agent is personally liable

An agent is appointed to bring the principal into contractual relationship with third parties.

Hence an agent is not personally liable for the acts done by him on behalf of the principal.

The principal alone is liable to the third parties for the agent's contracts and the agent is not personally liable to the third parties.

- a) Express agreement
- b) Contracting for a foreign principal
- c) Contracting for an undisclosed principal
- d) Principal can not be sued
- e) Principal not in existence
- f) Agent signs negotiable instrument in his own name.

- g) Guilty of misrepresentation or fraud
- h) Agency is coupled with interest
- i) Pretended agent
- j) Unauthorised acts
- k) Under some customs or usage of trade
- l) The agent acting for an incompetent principal.

#### 4.31 Termination of Agency (sec 201)

The termination of agency means the end of the relationship between a principal and an agent. The D.

##### 1. Termination of Agency by act of parties

- a) By Agreement
- b) Revocation by the principal
- c) Renunciation by the agent

##### 2. Termination Agency by operation of law.

- a) By performance
- b) By Expiry of time
- c) Death of principal or agent
- d) Insanity of principal or agent

- e) Insolvency of the principal
- f) Agency becomes unlawful
- g) Principal and agency becoming alien enemy
- h) Destruction of the subject matter
- i) Dissolution of a company

#### 432-Nature and Extent of Agent's authority

An agent having an authority to do an act has authority to do every lawful thing.

An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose.

##### 1) Actual authority

It means authority conferred by the principal on his agent. The authority of an agent may be express or implied.

##### 2) Ostensible authority

It is also called apparent authority. It means an authority to do all incidental and necessary acts to carry out the main purpose of the agency business.