

## 3 Feb 2022 - Shilpa Ma'am

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### Chapter IX of Indian Contract Act

Bailment (उपनिधान) (**very important**)

In sales the ownership will be transferred.

In bailment the possession will be transfer for a time being.

Bailment is applicable only on movable property.

Bailment is a special contract.

Bailment can be gratuitous and non-gratuitous contract

Essential of Bailment:

1. Two parties
2. Goods (movable property)
3. Possession transfer (परिदान करता है)
  - Actual transfer - e.g. asking for pen from a friend; this is actual transfer.
  - Constructive Transfer - asking for bike; friend is giving the key of bike; it's a constructive transfer.

#### **Ultzen v Nicols [1894] 1 QB 92**

- The plaintiff went to eat in the defendant's restaurant. He gave over his coat to the waiter, who hung it on a hook. It was stolen.
- **Held:** The defendant was liable as a bailee for reward. He was guilty of negligence in the care of the coat.
- यह एक constructive possession का formation माना गया था।

#### Kaliaperumal vs visalakshmi AIR 1938 Mad 32

- In bank locker, bailment formation is not considered.
- In this case a lady has to make some jewellery and she took some gold to a jeweller;
- She sits there at jeweller's shop while jeweller works on her jewellery.
- At the evening she collect the gold and keeps it in the cupboard at jeweller's shop and she locks it and took the key with her everyday.
- So here in this case the possession is not transferred to the jeweller; so it is not a formation of bailment.

4. Purpose

5. Contract

Ram Gulam And Anr. vs Government Of U.P.

Basavva KD vs State Of Mysore AIR 1977 SC 1749

Bailment contract से arise हो ये ज़रूरी नहीं है ये a duty से भी arise हो सकता है।

Bailment is basically a French word

Bailer - process

There are two person Bailor (उपनिधता) and Bailee (उपनिधिती)

ये बिना consideration के भी हो सकता है।

It is different form the gift in gift we do not return the gift back but in bailment we return the good to the owner.

In sale ownership will be transfer and without consideration sale can't be happen.

For TP- Gift it should be writing and registration then it is contract.

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Bailment with consideration is considered as gratuitous bailment

Bailment without consideration is considered as non-gratuitous bailment.

**Duties of Bailor:**

- Fault discloser  
Compulsory when it is gratuitous bailment  
Only compulsory to disclose as per the knowledge of bailor; when it is non gratuitous bailment.
- Pay necessary expenses
- Duty to compensate (only applicable on non gratuitous bailment)

**Rights of Bailor & Duties of Bailee:**

- Termination (Can terminate at any time)
- Increase (increase in value of good)
- Compensation (duty of bailee to not mix the bailor's good with others)
- Reasonable care  
Rampal vs Gaurishankar
- Unauthorised (should be used for the purpose only, anything other than the purpose is unauthorised)

**Rights of Bailee:**

- Right to lien (धारणा (धारण) करने का अधिकार) (For remuneration)
  - General lien [Bankers, insurance, attorneys etc; loan against the paper of vehicle, the paper is in the possession of the bailee]
  - Particular lien (विशिष्ट) [it should be for the same good on which bailee has applied his skills or labour to improve it]