

# Corporate Laws

BBA(FIA)

Lecture 13

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# Bailment Definition



According to section 148 of the Contract Act:

“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.”

# Parties to the Contract



- The person delivering the goods is called the ‘bailor’
- The person to whom they are delivered is called the ‘bailee’
- The transaction is called the ‘bailment’

# Essential Features



1. It is a **delivery** of movable goods by one person to another person.
2. **Movable** goods only. Money is not movable goods. Safe custody is movable goods is required.
3. Movable goods: railway receipt, bill of lading, pass book.
4. Delivery may be **actual, symbolic or constructive**: sec 149.
5. The goods are delivered for some **purpose**.
6. Delivery with a **contract**.
7. The goods delivered are subject to the condition that when the purpose is accomplished the **goods are to be returned in specie or disposed of** according to the directions of the bailor, either in original form or in an altered form.

# What may not be Bailment



1. A deposit of money with a banker.
2. Delivery of goods to a person under sale or gift or donation.
3. Deposit of valuables in a bank locker.
4. Parking a vehicle at an authorised parking place.

# Types of Bailment



## a) **Bailment from benefit point of view**

1. For the benefit of bailor only
2. For the benefit of bailee only
3. For the benefit of bailor and bailee both.

## b) **Bailment from reward point of view**

1. Gratuitous bailment
2. Non-gratuitous bailment

# Gratuitous vs. Non-Gratuitous Bailment



Gratuitous Bailment	Non-gratuitous Bailment
The provider of service gets no reward.	The provider of service gets reward.
Bailor is liable for loss to bailee caused by undisclosed faults in goods known to him.	Bailor is liable for loss to bailee caused by undisclosed faults in goods known or unknown to him.
Bailor is liable to repay necessary expenses to bailee incurred for the purpose of bailment. However, extraordinary expenses are repayable by bailor in all cases.	Bailor is not liable to repay necessary expenses because such expenses would be covered in the reward for the bailee.
Bailor can terminate bailment even before expiry of time or completion purpose.	Bailor can terminate bailment only after expiry of time or completion purpose.
Bailment terminates on death of either party.	Bailment does not terminate on death of either party.

# Consideration in Gratuitous Bailment



The detriment suffered by the bailor in parting with the possession of the goods is sufficient consideration to support the promise on the part of the bailee to return the goods.



# Duties of Bailee



1. Duty to take reasonable care of goods delivered .
  - a. Ordinary prudence man
  - b. Not liable for loss without negligence
  - c. Obligations can be altered
  - d. Not liable for loss by State enemies, act of God, riots
  - e. Steps to recover goods if stolen
  
2. Duty not to make unauthorised use of goods entrusted to him.
  - a. Negligence or without negligence loss: liable
  - b. Act of God or accident: liable

# Duties of Bailee contd.



3. Duty not to mix goods bailed with his own goods.
  - a. Where the goods can be separated or divided, the property in the goods remains in the parties respectively, but the bailee is bound to bear the expenses of separation as well as any damage arising from the mixture.
  - b. Where the goods mixed cannot be separated, the bailee must compensate the bailor for his loss.
4. Duty to return the goods.
  - a. Can return to any one of the joint owners
  - b. Responsible for all the loss after lapse of time
  - c. After lapse of time liable for loss without negligence: act of God
5. Duty to deliver any accretion to the goods.

# Duties of Bailor



1. Duty to disclose faults in goods bailed.
  - I. Gratuitous Bailor:
    - a. Faults of which he is aware
    - b. Liable for loss out of known defects
    - c. Not liable for unknown defects
  - II. Non Gratuitous Bailor: liable for all defects
2. Duty to repay necessary expenses in case of gratuitous bailment.
3. Duty to repay any 'extraordinary' expenses in case of non-gratuitous bailment.
4. Duty to indemnify bailee for defective title.
5. Duty to receive back the goods.

# Rights of Bailee



1. Enforcement of bailor's duties: The duties of the bailor are the rights of the bailee.
  - a. Right to claim damages for loss arising from the unauthorised faults in the goods bailed.
  - b. Right to claim reimbursement for extraordinary expenses incurred in relation to the thing bailed.
  - c. Right to indemnify for any loss suffered by him by reason of defective title of the bailor to the goods bailed.
  - d. Right to claim compensation for expenses incurred for the safe custody of the goods if the bailor has wrongfully refused to take delivery of them after the term of bailment is over.
2. Right to deliver goods to one of several joint bailors.
3. Right to deliver goods, in good faith, to bailor without title.
4. Right of lien.
  - Particular lien
  - General lien

# Particular Lien



- Particular Lien
  - Bailee must have rendered some service in relation to the things bailed
  - Must be entitled to some remuneration which must not have been paid.
  - Service must exercise labour or skill so as to confer additional value on the article.
  - Service fully performed within reasonable or agreed time.
  - No agreement to perform the service on credit.
  - Goods must be in possession of the bailee.
  - No contrary contract.
- Bailee cannot charge for retaining article
- For extra ordinary expenses bailee can sue.

# General Lien



- General Lien: in absence of contract to the contrary
  - Bankers
  - Factors
  - Wharfingers
  - Attorneys of High court
  - Policy brokers: fire or marine
  - Any person if express contract

# Rights of Bailor



1. Enforcement of bailee's duties. The duties of the bailee are the rights of the bailor.
  - i. Right to claim damage for loss caused to the goods bailed by bailee's negligence.
  - ii. Right to claim compensation for any damage arising from or during unauthorised use of the goods bailed.
  - iii. Right to claim compensation for any loss caused by the unauthorised mixing of goods bailed with his own goods.
  - iv. Right to demand return of goods as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.
  - v. Right to claim any natural accretion to the goods bailed.
2. Right to terminate bailment if the bailee uses the goods wrongfully.
3. Right to demand return of goods at any time in case of gratuitous bailment: indemnify loss if benefit is less than loss.

# **Rights of Bailors and Bailee against Wrong Doers**



- Bailor or Bailee can sue.



# Termination of Bailment



1. If the bailment is for a 'specified period', the bailment terminates as soon as the stipulated period expires.
2. If the bailment is for a 'specific purpose', the bailment terminates as soon as the purpose is fulfilled.
3. If the bailee does any act with regard to the goods bailed, which is inconsistent with the terms of bailment, the bailment may be terminated by the bailor even though the term has not expired or the purpose has not been accomplished.
4. A gratuitous bailment can be terminated by bailor even before expiry of time or completion of purpose. But, he will have liability for compensation to bailee.
5. A gratuitous bailment is terminated by the death of either of the parties. The goods would be returnable immediately.

# Responsibility of Finder of Goods Sec.71



## **Duties of finder of goods:**

1. He must try to find the real owner of the goods
2. Must not use the property for their own use.
3. If real owner is traced, he must restored the goods to him on demand.
4. Take care of the goods as his own, sec.151
  - If he does not so he will be guilty of criminal mis-appropriation of the property under section 403 of Indian penal code.

## **Right of finder of goods:**

1. Till the true owner is found out, he can retain possession of the goods against everybody in the world.
2. He is entitled to receive from the true owner, all expenses incurred by him to find the owner.
3. He has a lien on the goods for the money that spent i.e., he can refuse to return the goods until these moneys are paid.
4. He is not entitled to file a suit for the recovery of such sums, but he can file suit against the owner for any rewards.

# Entitlement to Sell The Goods by Finder of Goods



The finder of the goods is entitled to sell the goods if:

- 1.The true owner cannot be found out or
- 2.He refuses to pay the lawful charges to the finder.

In the following two situations only:

- 1.If the goods is of **perishable nature** or losing the greater part of the value.
- 2.When the lawful charges of the finder, amount to at least two third of the value of the goods found.

The true owner is entitled to get the balance of the sale proceeds, if there is a surplus after meeting the lawful charges.

No one except the owner of the goods can claim the possession of the goods from the finder.

# Pledge or Pawn



“The bailment of goods as security for payment of a debt or performance of a promise is called ‘pledge’

- Pledge is a special kind of bailment.
- Only movable goods: railway receipt, bill of lading, pass book.
- Bailor is called pawnor
- Bailee is called pawnee

Eg. A borrows Rs. 1000 from B and keeps his watch as security for payment of the debt. The bailment of watch is called pledge.

# Distinction



Basis	Pledge	Bailment
Purpose	Specific purpose: security for loan, fulfillment of obligation	Purpose: repairs, safe custody
Property	Bailee gets possession of the goods bailed ownership remains with the bailor	Pledgee acquires special property in goods bailed, general property on ownership remains with pledger.
As to right of sale	Pledgee has right to sale on default after giving notice	No right to sale but can retain or sue bailor
As to right of using the goods	No right of using the goods by pledgee	No such restriction exists if the nature of transaction requires so.

# Rights of Pawnee



- Right to retain pledged goods until dues are paid
  - Debt, interest, expenses- particular lien
- Right to retain for subsequent advances
- Right to extra ordinary expenses
  - Cannot retain but only sue
- Right to sue the pawnor or sell the goods on default
  - Sue and retain goods as collateral
  - Sell after giving reasonable notice

# Duties of Pawnee



1. To take reasonable care of goods pledged.
2. Not to make unauthorised use of goods pledged.
3. Not to mix goods bailed with his own goods.
4. Duty to return the goods.
5. Duty to deliver any accretion to the goods.
6. Not to do any act in violation of contract

# Rights of Pawnor



- Enforcement of pawnee's duties
- Defaulting pawnor's right to redeem



# Duties of Pawnor



- To compensate pawnee for any extraordinary expenses incurred by him
- To meet his obligation on stipulated date and comply with the terms of contract

# Pledge by Non-owners of goods



- Mercantile agents
- Person in possession under voidable contract
- Pledger having limited interest
- Seller in possession of goods after sale
- Buyer in possession of goods under an “agreement to sell”
- Co-owner in possession



THANK YOU