

Bailment & Pledge, Agency

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Bailment

148. “Bailment” “bailor” and “bailee” defined

- 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. The person delivering the goods is called the “bailor”. The person to whom they are delivered is called, the “bailee”.
- Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Essentials

- 149. Delivery to bailee how made.—The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.
- Delivery of Possession (S.149)
 - Actual or constructive delivery
- Delivery should be upon contract
- Delivery should be upon some purpose

Duty of Bailor (S.150)

- **150.Bailor's duty to disclose faults in goods bailed.**—The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults. If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.
- **Illustrations** (a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained. (b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.
- Gratuitous bailor
- Bailor for reward

Duties of Bailee

- **Duty of reasonable care**
- 151. Care to be taken by bailee.—In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.
- 152. Bailee when not liable for loss, etc., of thing bailed.—The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151

Duty not to make unauthorised use

- **153. Termination of bailment by bailee's act inconsistent with conditions.**—A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.
- **Illustration:** A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the 'option of A, a termination of the bailment.
- **154. Liability of bailee making unauthorized use of goods bailed.**—If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them

Duty not to mix

- **155. Effect of mixture, with bailor's consent, of his goods with bailee's.**—If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.
- **156. Effect of mixture without bailor's consent, when the goods can be separated.**—If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and 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 expense of separation or division, and any damage arising from the mixture.
- **Illustration** A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage

Duty not to mix

- **157. Effect of mixture, without bailor's consent, when the goods cannot be separated.**—If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods, and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.
- Illustration
- A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Duty to return

- **160. Return of goods bailed, on expiration of time or accomplishment of purpose.**—It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.
- **161. Bailee's responsibility when goods are not duly returned.**—If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Duty not to set up

- **166.Bailee not responsible on re-delivery to bailor without title.—**If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery¹ .
- **167.Right of third person claiming goods bailed.—**If a person, other than the bailor, claims goods bailed he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Duty to return increase

- **163. Bailor entitled to increase or profit from goods bailed.**—In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.
- Illustration
- A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Rights of Bailee

Right to compensation

- **164. Bailor's responsibility to bailee.**—The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.
- **Right to expense or remuneration**
- **158. Repayment, by bailor, of necessary expenses.**—Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Right of Particular Lien

- **170. Bailee's particular lien.**—Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.
- **Illustrations**
- (a) 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) A gives, cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

Right of General Lien

- **171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.**—Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect

Pledge

172. “Pledge” “pawnor”, and “pawnee” defined.—

- The bailment of goods as security for payment of a debt or performance of a promise is called “pledge”. The bailor is in this case called the “pawnor”. The bailee is called the “pawnee”.
- **Essentials**
 - **Delivery of possession**
 - **In pursuance of contract**

Rights of Pawnee

Rights of retainer

- **173.Pawnee's right of retainer.**—The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.
- **174.Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.**—The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee

Right as to extraordinary expenses

- **175. Pawnee's right as to extraordinary expenses incurred.**—The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Right to sell

- **176. Pawnee's right where pawnor makes default.**—If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.
- If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Right of Pawnor

Right to Redeem

- **177. Defaulting pawner's right to redeem.**—If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them ; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Who can pledge

- **178. Pledge by mercantile agent.**—Where a mercantile agent is, with the consent of the owner, in possession of goods or the document of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.
- **Explanation.**—In this section, the expressions “mercantile agent” and “documents of title” shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (3 of 1930).

Agency

Agency

- **182. “Agent” and “principal” defined.**—An “agent” is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the “principal”.
- **183. Who may employ agent.**—Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.
- **184. Who may be an agent.**—As between the principal and third persons, any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.
- **185. Consideration not necessary.**—No consideration is necessary to create an agency.
- **186. Agent’s authority may be expressed or implied.**—The authority of an agent may be expressed or implied.

Duties of Agent

- Duty to follow instructions or customs(211)
- Duty of reasonable care and skills(212)
- Duty to render proper accounts (213)
- Duty to communicate with the principal (214)
- Duty to avoid conflict of interest (215)
- Duty not make secret profits (216)
- Duty to remit sums (218)
- Duty not to delegate (190, 191, 193, 192, 194, 195)

Rights of Agent

- Right to remuneration (219)
- Right to retainer (217)
- Right to lien (221)
- Right to indemnity (222-223)
- Right to compensation (225)

Determination of Agency

- By revocation (203)
- By renunciation (206)
- Competition of business (201)
- Death of insanity (201)
- On expiry of time (201)