

# BAILMENT

**Bailment (A change of possession of goods and not the change of ownership):** A bailment is the delivery of goods by one person to another for some purpose under a contract that they (goods) shall [when the purpose is accomplished] be returned, or otherwise disposed of according to the directions of the person delivering them.

## **Parties:**

- 1) The person delivering the goods is called “Bailor”.
- 2) The person to whom they are delivered is called the “Bailee”.

## **Kinds of Bailment:**

- 1) **Gratuitous Bailment:** It is made without exchange of any consideration.  
Safe custody: Bailee is to simply keep the goods for the bailor.  
Services: Bailee is to do something without reward with the goods.  
It is one in which neither the bailor nor the bailee is entitled to any remuneration for e.g. loan of a book to a friend.
- 2) **Non-Gratuitous Bailment (Bailment for hire):** It is also called a “bailment for reward”. Here either the bailor or the bailee is entitled to a remuneration for e.g. motor car let out for hire
- 3) **Pledge**
- 4) **Sub-bailment:** For e.g. A post office may engage an airline to carry its mail.

## **Essentials of Bailment:**

- 1) **Transfer of Possession (Delivery of goods):** 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.
  - Actual delivery: When the bailor hands over to the bailee physical possession of goods
  - Constructive Delivery: does not involve handing over the physical possession, but something done which has the effect of putting the goods in the possession of bailee. For e.g. goods in transit can be delivered by handing over bill of lading.
- 2) **Purpose:** When the goods are delivered by mistake without any purpose, there is no bailment within the meaning of its definition. Goods should be delivered for some purpose.
- 3) **Condition:** The goods are delivered subject to the condition that when the purpose is accomplished the goods are to be returned in specie or disposed of according to the direction of the bailor, either in their original form or in an altered form.
- 4) **Specific Movable Property**

## Duty of Bailor:

**Duty of Disclosure:** The bailor is bound to disclose of 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 extra ordinary risks, and if he does not make such disclosure he is responsible for damage arising to the bailee directly from such faults.

The kinds of bailment	Knowledge of Faults	Liability of Bailor
Gratuitous Bailment	No	No
	Yes	Yes
Bailment for Hire	No	Yes
	Yes	Yes

## Duties of bailee:

- 1) **Duty of care:** The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence. The bailee in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the things if said amount of the care has been taken.
- 2) **Duty not to make unauthorized use:** A contract of bailment is avoidable at the option of the bailor, if the bailee does not act with regard to the goods bailed in consistent with the conditions of the bailment.

If the bailee makes any use of the goods bailed, which is not according to the condition of bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

- 3) **Duty not to mix:** 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 prosperity in the goods remains in the parties respectively, but the bailee is bound to bear the expenses of separation or division and any damage arising from the mixture.

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.

- 4) **Duty not to setup adverse title:** The bailee must hold the goods on behalf and for the bailor. He cannot deny the right of the bailor to bail the goods and receive them back. If he delivers the goods bailed to a person other than the bailor, he may prove that such a person had a right to them as against the bailor.
- 5) **Duty to return:** It is the duty of the bailee to return or deliver the goods bailed according to the bailor's direction, 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.

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.

- 6) **Duty to return increase:** 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.

#### **Right of Bailee (Duty of Bailor):**

- 1) **Right to necessary expenses:** Where by the condition 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. (Bailee cannot retain goods but sue the bailor).
- 2) **Right to compensation:** 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 direction, suspecting them.
- 3) **Right to sue wrong-doer:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment has been made, and either the bailor or the bailee may bring suit against a 3<sup>rd</sup> person for such deprivation or injury.

Whatever is obtained by way of relict or compensation in any suit shall as between the bailor and the bailee, be dealt with according to their respective interests.

#### 4) **Right of Lien:**

##### Kinds of Lien:

- a) **Particular Lien:** Where the bailee has in accordance with the purpose of the bailment, rendered and 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. (A Bailee may be deprived of particular lien under a special contract).
- b) **General Lien:** Bankers, factors, wharfingers, attorneys of a High Court and Policy brokers, may in the absence of any contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them, but no other person have a right to retain as a security for such balance, goods bailed to them, when there is an express contract to that effect.

#### **Termination of Bailment:**

- 1) **Automatic Termination:** It is the duty of the bailee to return or deliver the goods bailed according to the bailor's direction, 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.

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.

- 2) **Notice:**

- 3) **Death:** A gratuitous bailment is terminated by the death wither of the bailor or of the bailee.
- 4) **Inconsistent Use:** A Contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed in consistent with the conditions of the bailment.

**Rights of Finder of goods:**

- 1) **Right to Retain:** The finder of goods may retain the goods against the owner for compensation, for trouble and expense voluntarily incurred by him,
  - to preserve the goods
  - to find out the owner
 However the finder of goods has no right to sue the owner for such compensation.
- 2) **Right to sue for specific reward:** Where the owner has offered a specific reward for the return of goods lost, the finder may,
  - sue for such reward
  - retain the goods until he receives it.
- 3) **Right to sell:** The finder of the goods may sell the goods found, if:
  - a) the thing is commonly the subject of sale
  - b) the owner cannot be found with reasonable diligence.
  - c) if found he refuses to pay the lawful charges of the finder and either
  - d) the goods are in danger of perishing or losing their value
  - e) the lawful charges of the finder amount to 2/3<sup>rd</sup> of their value

<b>Bailee</b>	<b>Finder</b>
There is a contract of bailment between bailee and owner.	There is a quasi contract between finder and owner.
Bailee can use the goods according to the terms and condition of bailment.	Finder's obligation is not to use the goods for his own purpose.
Bailee can file a suit to recover necessary expenses.	Finder can not sue to the owner of the goods.
Bailee cannot retain the goods to recover expenses.	Finder can retain the goods to recover and offered by the owner for the goods lost and for expenses.
Bailee cannot sell the goods.	Finder can sell the goods.

**Pledge (Pawn):** A pledge is a bailment of goods made as security for

- payment of a debt
- performance of a promise

A pledge is a special kind of bailment with its special objectives.

**Parties:**

- 1) Pawner (Pledgor)
- 2) Pawnee (Pledgee)

## **Rights of Pawnee:**

- 1) **Right of Retainer:** The pawnee has the right to retain the goods pledge for:
  - the payment of debt
  - the performance of the promise
  - the interest of debt
  - all necessary expenses incurred by him in respect of,
    - \* possession
    - \* for the preservation of the goods pledge

In the absence of any special contract, the pawnee's right of retainer is presumed to extend to subsequent advances made by him.
- 2) **Right to extra Ordinary Expenses:** The pawnee is entitled to receive from pawnor any extra ordinary expenses incurred by him for the preservation of goods pledge.
- 3) **Right incase of Pawnee's default:** If the pawnor makes default in payment of debt or performance at the stipulated time, the pawnee has full rights.
- 4) **Right to sue:** The pawnee may
  - bring a suit against the pawnor upon the debt or promise
  - retain the goods pledge as a collateral security
- 5) **Right to sell:** The pawnee may sell the goods pledged or giving the pawnor reasonable notice of sell.

If the proceeds of the sale are less than the amount in respect of the debt or promise, the pawnee is entitled to claim the balance from the pawnor.

## **Defaulting Pawnor's Rights:**

- 1) **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.

## **Pledge by Non-Owner:**

- 1) **By Person in possession under voidable contract:** When the pawnor has obtained possession of the goods pledge by him under a voidable contract but the contract has not been rescinded at the time of pledge, the pawnee requires a good title to the goods provided he acts in good faith and without notice of the pawnor's defect in title.
- 2) **By Mercantile – Agent:** Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title of 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 authorized by the owner of the goods to make the same, provided that pawnee acts in good faith and not at the time of the pledge notice that pawnor has not authority to pledge.

3) **By Person having limited interest:** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

**Difference between Bailment and Pledge:** (From KH. 88)

**Pledge – Lien – Mortgage:** (Not important)

<b>Lien</b>	<b>Mortgage</b>	<b>Pledge</b>
<p>In the case of a lien there is no transfer of any interest, the person exercising the lien has only a right to retain the subject matter of the lien until he is paid.</p>	<p>In the case of mortgage, the property passes to the mortgagee, he has an absolute interest in the property subject to a right of redemption by the mortgagor.</p>	<p>In the case of a pledge, through the deposit of goods is made security for payment of a debt or performance of a promise, the pledgee has only a special property in the pledge, while the general property there in remains in the pledgor and wholly reverts to him on the discharge of the debt or the performance of the promise. On the contrary, the pledgee can sell the goods after notice if the pledgee fails to discharge the debt on the stipulated date.</p>