

TEXT

Introduction

A contract, in general, is an agreement which is enforceable by law. Such enforceability is possible only if that agreement is formed after fulfilling general conditions such as offer and acceptance, age of majority, sound mind, free consent and lawful consideration and object. On the other hand, there are certain contracts, which are specific in nature due to their purpose and scope such as contract of indemnity, guarantee, bailment, pledge, agency etc. Apart from basic conditions, these specific contracts are formed after fulfilling various additional conditions. For example, in case of bailment, there must also be delivery of goods for some purpose, which is to be returned or otherwise disposed of after accomplishment of such purpose. Similarly, goods are delivered as security for payment of a loan in case of pledge. The Indian Contract Act, 1872 has recognized these specific contracts of bailment and pledge under the provisions contained under Sections 148-171 and Sections 172-179 respectively.

Bailment and Pledge: Meaning

The basic discussion about the meaning, essentials and types of bailment and pledge may take place under the following heads:

Meaning of Bailment: The term 'bailment' has been derived from French word bailer which means 'to deliver'. Section 148 of the Indian Contract Act, 1872 defines bailment as a delivery of goods by one person to another for some purpose upon contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them. The person delivering them is called the 'bailor' and the person to whom they are delivered is called the 'bailee'.

Therefore, bailment is a contractual relationship where one person called bailor, deliver the goods for a temporary period to another person called bailee, for a specific purpose upon which they have agreed, either expressly or impliedly. There are several incidents in our daily life where goods are delivered ‘for some purpose’ such as giving a fan for repair, dress for dry-cleaning, parcel to a courier service to be transported etc. which are examples of bailment.

Essentials of Bailment: Besides the basic essentials of a contract, the specific form of contract of bailment needs to fulfil the following conditions altogether:

- a. **Delivery of goods:** For bailment, the delivery of goods is necessary which means that there must be a transfer of possession of the goods from one person to another. The delivery of goods is sine qua non of bailment. Section 149 recognises that delivery can be actual, constructive or symbolic and it can 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.
- b. **Some Purpose:** The delivery of goods under the contract of bailment should be made for some purpose. For example, parking a car at authorised parking facility, depositing a safe with a friend, handing over the parcel to the courier services, giving clothes for stitching, washing etc.
- c. **Return of goods:** After the accomplishment of purpose of bailment, the bailee is bound to return the goods or otherwise dispose of them according to the directions of the bailor. This feature distinguishes the bailment from contracts of sale, gifts, transfer of property etc. During the period of bailment, the bailee keeps the control or possession over such goods, whereas the right to ownership remains with bailor himself.

Types of Bailment: There are six types of bailments:

- a. **Depositum:** The 'naked bailment' where the bailee, also called depository, keeps the goods for use of the bailor, but without the bailor's control over them.
- b. **Commodatum:** The 'gratuitous loan' as recognised under first para of section 150 is the delivery of goods to the bailee which are to be returned undamaged to the bailor.
- c. **Locatio et conductio:** Goods are hired by the bailee for his own use for a fee.
- d. **Locatio operis faciendi:** Goods are delivered for transportation or to carry out some work on them for a fee.
- e. **Mandatum:** Goods are delivered for transportation or to carry out some work on them, but without any fee.
- f. **Vadium (Pledge or Pawn):** Goods are delivered as a security for payment of a debt.

Meaning of Pledge: The last-mentioned type of bailment i.e. Pledge, which is also known as contract of Pawn, has been recognised categorically under section 172 of the Indian Contract Act, 1872 which defines it as the bailment of goods as security for payment of a debt or performance of a promise. The bailor in the case of pledge is called 'Pawnor' and the bailee is called the 'Pawnee'. Therefore, pledge is a type of contract of bailment for a specific purpose i.e. the purpose of securing the payment of a debt or performance of a promise. The remarkable feature of contract of pledge is that the pawnee becomes a secured creditor and has a prior claim over the goods pledged than other creditors. The contract of pledge is different from contract of hypothecation in the sense that in the former there is delivery of goods whereas in the latter the possession of movable property remains with the owner.

Essentials of Pledge: The contract of pledge is a type of bailment and like all other bailments; there must be delivery and return of goods. The condition, which makes

it different from other bailments, is that in case of pledge the delivery of goods must be made for the purpose of securing the payment of loan or performance of a promise. Pledge is also different from its counterpart i.e. mortgage in the case of immovable properties, in the sense that whereas in the latter there is always a 'transfer of interest' to the mortgagee, in the former such is not the case. The pledge simply creates special property in the goods in favor of pawnee to which he is entitled to hold and dispose for the realisation of debt for which the goods were delivered as security.

Persons authorised to pledge: Generally, it is the owner or the person authorised in this behalf by him can pledge the goods, but there are certain provisions under which persons, other than owner or authorised person, having the possession with the owner's consent can pledge. These persons are recognised as follows:

a. **Mercantile Agent:** Section 178 provides that a mercantile agent having the possession of goods or the document of title of goods with the consent of the owner can pledge even if he was not expressly authorised to do it. It is necessary that the pawnee should have acted in good faith and have no notice that the Pawnor has no authority to pledge.

b. **Person in possession under voidable contract:** Section 178A adds another exception to the general rule and provides that a person who has obtained possession of the goods under a voidable contract under section 19 or 19A, a pledge by him before such contract has been rescinded, shall be considered valid provided that the pawnee acts in good faith and without notice of the pawnor's defect of title.

c. **Person with a limited interest:** According to section 179, a pledge made by a person having a limited interest shall be valid upto the extent of his interest.

d. **Seller in possession after sale:** In accordance with sec 30 (1) of Sales of Goods Act, 1930, if the seller remains in possession after sale of goods, then any sale or pledge or other disposition shall be termed as good in the eyes of law provided that the transferee acts in good faith and without any notice of the previous sale.

e. **Buyer in possession after sale:** The above provision is made equally applicable under section 30 (2) of Sales of Goods Act, 1930 in case of buyer in possession after sale.

Bailment and Pledge: Distinction

It is easy to understand the distinction between bailment and pledge after going through their meaning and essentials, which can be summed up under following heads:

a. **Scope:** Bailment has a wider ambit and within its sphere includes pledge as one of its types. Therefore, bailment is the genus and pledge is the species.

b. **Statutory definition:** Section 148 and section 172 of the Indian Contract Act, 1872 deal with bailment and pledge respectively.

c. **Purpose:** Bailment is delivery of goods for some purpose, which is to be returned upon accomplishment, whereas pledge is delivery of goods as security for payment of debt or performance of a promise.

d. **Parties:** Parties in bailment are bailor and bailee, whereas in pledge they are specifically known as pawnor and pawnee.

e. **Use of goods:** In bailment, the bailee can use the goods so delivered, but in pledge the pawnee has no right to use them.

f. **Consideration:** There may or may not be any consideration in the case of bailment such as 'gratuitous bailment'. On the other hand, consideration is always present in pledge.

g. **Discharge of contract:** The contract of bailment is said to be discharged when the purpose for which it was made has been accomplished, whereas pledge is discharged on the payment of debt or performance of promise.

h. **Consequences on breach:** If the bailment was made for services or works upon goods for payment and such payment has not been made, the bailee can exercise lien over the goods bailed. On the other hand, the pawnee shall have right, in case of breach, to exercise lien as well as to sell the goods, after giving due notice to the pawnor.

Rights and Duties of Bailor and Bailee

The rights and duties of bailor and bailee can be discussed under following points:

I. Rights of bailor: The bailor has following set of rights under a contract of bailment:

a. Bailor has the right to claim damages from the bailee if he fails to take care of the goods in accordance with provision of section 151.

b. The bailment is voidable at the instance of bailor as per section 153, if the bailee does any act inconsistent with conditions of bailment.

c. Bailor can claim compensation under section 154, 156 and 157 for unauthorized use of goods bailed or where the bailee mixes bailed goods with his and it becomes impossible to separate those mixed goods, as the case may be.

d. Bailor may require the return of goods if the loan was gratuitous under section 159.

e. Section 163 provides that the bailor is entitled to any increase or profit which may have accrued from the goods bailed.

II. Duties of bailor: The bailor has following set of duties under a contract of bailment:

- a. In accordance with provision mentioned under section 150, it is the duty of bailor to disclose the faults in the goods of which he is aware.
- b. It is the duty of bailor to make the payment of services or works for which bailment has been made. If such bailment is gratuitous and the bailee incurs-some charges for keeping, carrying or maintaining those goods, even then the bailor is bound to repay the necessary expenses incurred by bailee for the purpose of bailment. [Section 158].
- c. Section 159 states that the bailor will indemnify the borrower of goods for a specified time or purpose, if he asks for return of goods before accomplishment of such time or purpose and the same has resulted into excess loss to the borrower.
- d. The bailor is responsible for any loss to the bailee, which he might have sustained due to bailor's lack of title or non-entitlement to receive back goods [Section 164].
- e. After the expiry of bailment, the bailor is bound to receive back the goods.

III. Rights of bailee: The bailee has following set of rights under a contract of bailment:

- a. Bailee has the right to claim damages, if he has suffered a loss due to non-disclosure of defects by the bailor. [Section 150]
- b. Bailee can claim necessary expenses incurred under section 158.
- c. He is entitled to be indemnified by bailor if he demands goods before time or fulfillment of purpose and due to that bailee has suffered an excess loss [Section 159].
- d. Bailee has right to exercise lien under Sections 171 and 172.

IV. Duties of bailee: The bailee has following set of duties under a contract of bailment:

- a. It is the duty of bailee to take reasonable care of the goods bailed [Section 151-152].
- b. Bailee shall not make any unauthorized use of the goods bailed [Section 153-154].
- c. He is bound to not mix bailor's goods with his own goods and to make every possible attempt to keep them separate. [Sections 155-157].
- d. Once the purpose of the bailment gets fulfilled, the bailee shall return the goods to the bailor [Section 160].
- e. In accordance with provision of Section 163, the bailee has the duty to pay the bailor any increase or profit, which may have accrued from the goods bailed.

Rights and Duties of Pawnor and Pawnee

As pledge is a type of bailment, the rights and duties of pawnor and pawnee are somewhat similar in nature to that of bailor and bailee. Besides those above-mentioned provisions, there are certain rights and duties, which are peculiar to pawnor and pawnee and can be discussed under following points:

I. Rights of pawnor: The pawnor has following set of rights under a contract of pledge:

- a. A pawnor has the right to redeem back the goods upon the payment of debt or performance of promise. The right remains with him even if he has become defaulter. After default, he can redeem the goods before actual sale by making additional payment, which has arisen from his default. [Section 177].
- b. He can ask for compensation if the pawnee makes any use of his goods as he holds the goods only as a security.

II. Duties of pawnor: The pawnor has following duty under a contract of pledge:

a. It is the duty of pawnor to make the payment of debt or performance of a promise according to the stipulated conditions.

III. Rights of pawnee: The pawnor has following set of rights under a contract of pledge:

a. A pawnee is entitled to retain the goods pledged not only for the payment of the debt or performance of the promise, but also 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. He cannot do so in respect of any other debt or promise, other than for which it has been made. [Sections 173 and 174].

b. He is authorised to recover extraordinary expenses incurred by him for the preservation of the goods pledged [Section 175].

c. Pawnee can file a suit to recover the debt and retain the goods as collateral security or he may sell the goods pledged after giving reasonable notice of the sale to the pawnor. [Section 176]

IV. Duties of pawnee: The pawnee has following set of duties under a contract of pledge:

a. Pawnee is bound not to use the pledged goods as those were delivered only as a security.

b. He is bound to return the goods once debt is paid or promise has been performed, as the case may be.

Lien

Out of many rights available to a bailee, the right of lien entitles him to retain the goods of the bailor until his remuneration, fee or reward for services in respect of goods bailed or the amount due is not paid. For example, if A gives his watch for repair to B for a certain amount and asks B to deliver his watch after such repairs

without making the payment, then in such case, B becomes entitled to not only refuse the delivery of A's watch but he can retain it till he made the payment levied and agreed for such repairs. This entitlement of B i.e. bailee in this case against the unpaid bailor is called as right to lien. The basis of the right is the non-payment and it ceases to exist if the bailor is willing to pay the price. There are two types of lien recognised under sections 170 and 171 of the Indian Contract Act, 1872 as:

a. **Particular lien:** Section 170 deals with particular lien which means the right to retain those goods for which the bailee has in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill and has not received any remuneration for such service from the bailor. He can exercise the right until he receives due remuneration and if there is no contract to the contrary. It is also necessary that the bailee must have the possession of such goods with him.

b. **General lien:** This right of general lien is available to a particular class of bailees such as bankers, factors, wharfingers, attorneys and policy brokers. It is different from particular lien in its scope as the particular lien can be exercised in respect of those goods for which the bailee renders services, whereas it entitles the above-mentioned bailees to retain goods of the bailor for a general balance of account. Therefore, these bailees can retain not only those goods in respect of which some particular services are rendered, but also bailor's other goods that are in the possession of the bailee. For example, a banker shall have lien on all securities of bailor in case he fails to pay the bank's loan.

Termination of Bailment

A contract of bailment terminates in the following circumstances:

a. It is terminated on the expiry of the stipulated time or upon the accomplishment of the purpose for which it was made.

- b. The unauthorized use of goods by bailee results into the termination of the bailment.
- c. If the subject matter of bailment gets destructed or becomes illegal, then in such case the bailment stands terminated.
- d. It can be terminated by the will of bailor in accordance with section 159 of the Act.
- e. The death of bailor or bailee terminates the gratuitous bailment.