

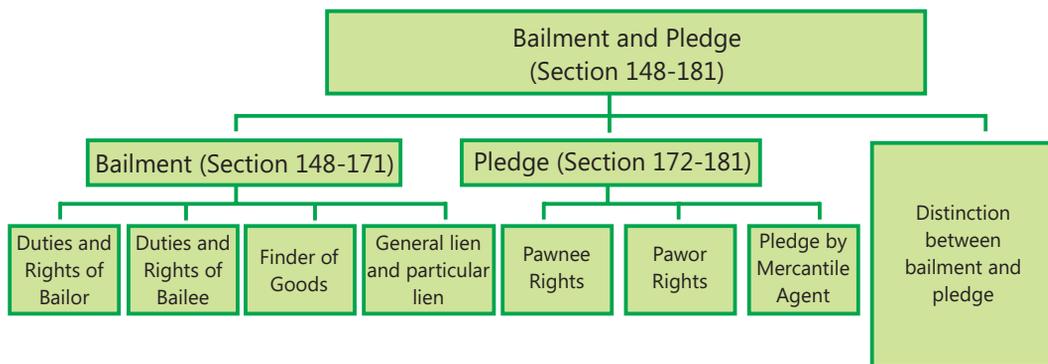
UNIT-2 : BAILMENT AND PLEDGE

LEARNING OUTCOMES

After studying this unit, you would be able to :

- ❑ Understand the general principles underlying contracts of bailment and pledge.
- ❑ Know duties and rights of the parties to the contracts.

UNIT OVERVIEW



1. WHAT IS BAILMENT ?

Bailment etymologically means 'handing over' or 'change of possession'. As per **Section 148** of the Act, **bailment** is the delivery of goods by one person to another for some purpose, upon a contract, that the goods 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**".

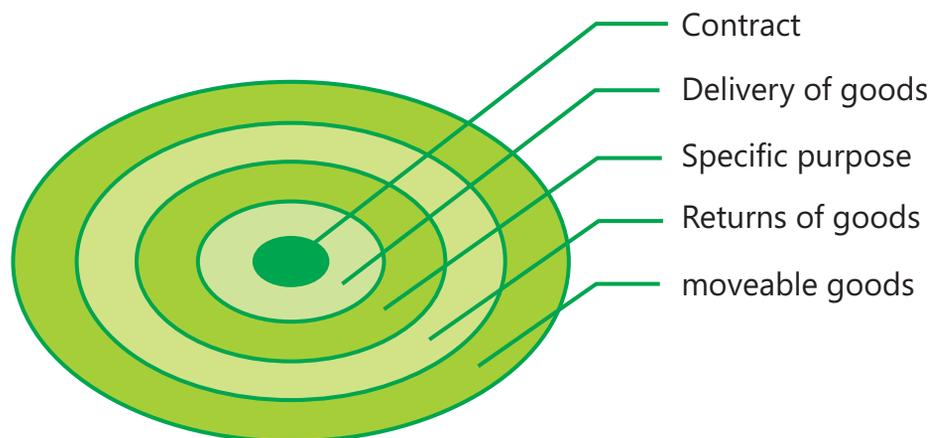
Example : Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.

Analysis :

The essential characteristics of bailment are—

- (a) Bailment is based upon a contract. Sometimes it could be implied by law as it happens in the case of finder of lost goods.
- (b) It involves the delivery of goods from one person to another for some purposes.
- (c) Delivery involves change of possession from one person to another, and not change of ownership. In bailment, bailor continues to be the owner of goods as there is no change of ownership.
- (d) Bailment is only for moveable goods and never for immovable goods or money.
- (e) In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.
- (f) Bailee is obliged to return the goods physically to the bailor. The bailee cannot deliver some other goods, even not those of higher value.

Essentials of Bailment



In bailment, both custody and possession must change but not the ownership. But where a person is in custody without possession he does not become a bailee. For example servants of a master who are in custody of goods of the master do not become bailees.

Possession and custody do not however mean physical delivery of goods. Constructive delivery could also create a bailor and bailee relationship. This arises in situations where the bailee is already in possession of goods but agrees to be a bailee through a contract.

Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.

Similarly depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of the owner though kept in a locker at the bank.

Different forms of Bailment : Following are the popular forms of bailment

- (1) Delivery of goods by one person to another to be held for the bailor's use.
- (2) Goods given to a friend for his own use without any charge.
- (3) Hiring of goods.
- (4) Delivering goods to a creditor to serve as security for a loan.
- (5) Delivering goods for repair with or without remuneration.
- (6) Delivering goods for carriage.



2. BAILOR'S DUTIES AND RIGHTS

Duties of Bailor : The duties of bailor are spelt out in a number of Sections. These are categorized under the following headings :

Duties of Bailor

- Disclose known facts
- Bear necessary expenses
- Indemnify bailee
- Bound to accept the goods

These are enumerated hereunder :

(i) Bailor's duty to disclose faults in goods bailed [Section 150] :

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.

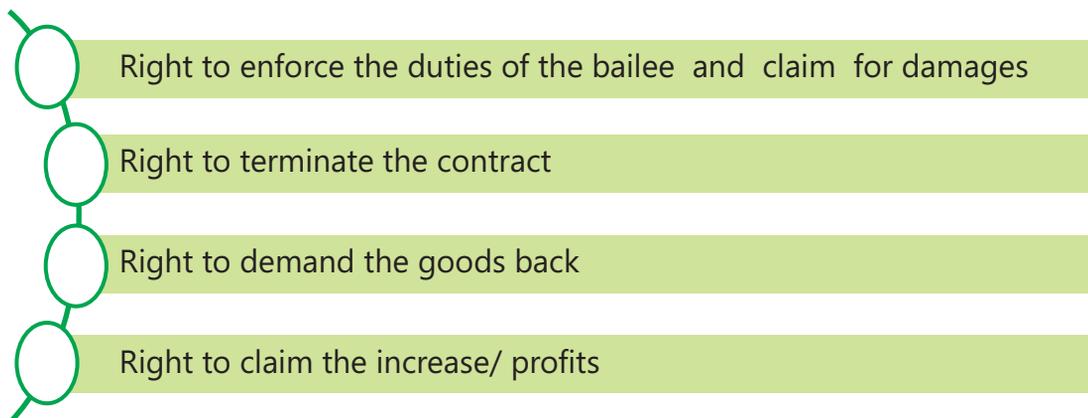
Example 1 : A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and

injured. A is responsible to B for damage sustained.

Example 2 : 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.

- (ii) **Repayment by bailor of necessary expenses [Section 158] :** 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.
- (iii) **Bailor's responsibility to bailee [Section 164] :** 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.
- (iv) where the bailment is gratuitous, the bailor must reimburse the bailee for any expenditure incurred in keeping the goods.
- (v) the bailor should reimburse any expense which the bailee may incur by way of loss in the process of returning the goods or complying with other directions for returning the goods.
- (vi) the bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.
- (vii) the bailor is bound to accept the goods after the purpose is accomplished. If bailor fails, he is responsible for any loss or damage to the goods and has to reimburse for expenses incurred by the bailee for keeping the goods safely.

Rights of Bailor : Broadly rights of bailor can be categorized as under :



The following are the rights of bailor :

- (i) **Liability of bailee making unauthorised use of goods bailed [Section 154]:** 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.

Example 1 : A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

Example 2 : A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

- (ii) **Effect of mixture, with bailor's consent, of his goods with bailee's [Section 155] :** 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.

- (iii) **Effect of mixture, without bailor's consent, when the goods can be separated [Section 156] :** 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 expenses of separation or division, and any damage arising from the mixture.

Example : 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 expenses incurred in the separation of the bales, and any other incidental damage.

- (iv) **Effect of mixture, without bailor's consent, when the goods cannot be separated [Section 157] :** 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.

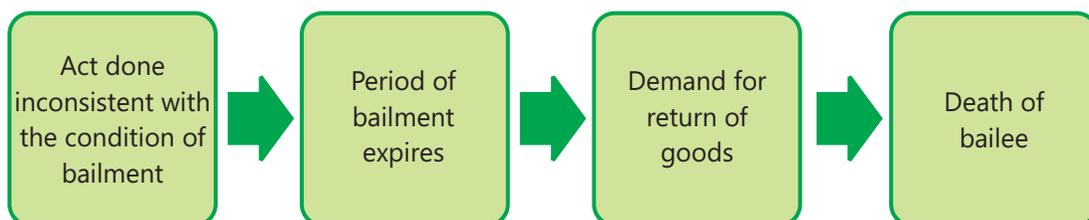
Example : A bails a barrel of Cape flour worth ₹ 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only ₹ 25 a barrel. B must compensate A for the loss of his flour.

(v) Termination of bailment by bailee's act inconsistent with conditions

[Section 153] : A contract of bailment is voidable 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.

Example : 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.

Termination of bailment may take place in the following circumstances :



(vi) Bailor entitled to increase or profit from goods bailed [Section 163] : 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.

Example : 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.

(vii) Gratuitous bailment : Bailor in the case of gratuitous bailment has a right to demand the goods back even before the expiry of the period of bailment. If in the process, loss is caused to the bailee, bailor is bound to compensate.



3. CARE TO BE TAKEN BY BAILEE

Care to be taken by bailee [Section 151] : 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.

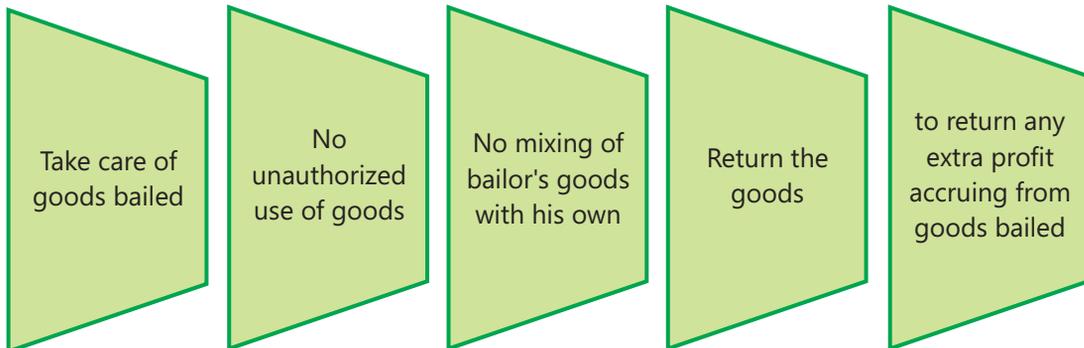
Example : If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss [caused on account of riot].

Bailee when not liable for loss, etc., of thing bailed [Section 152] : 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.



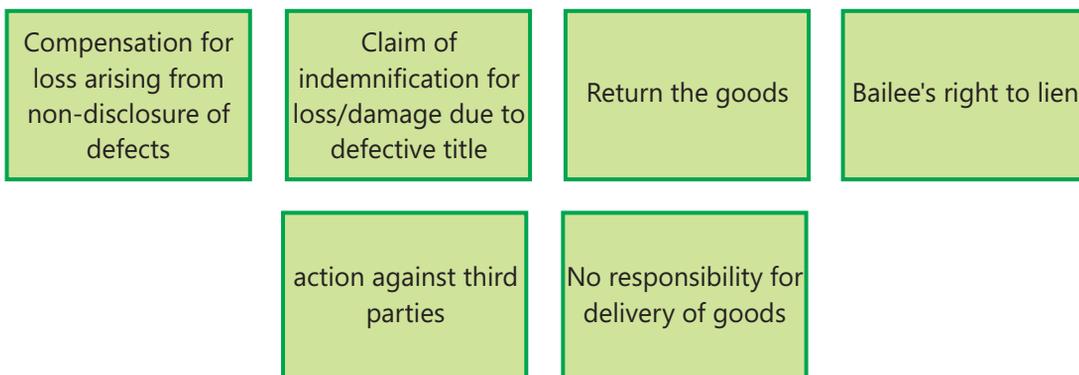
4. DUTIES AND RIGHTS OF A BAILEE

In addition to the two important duties of having to take care of the goods bailed and being responsible for loss or injury or damage to goods, bailee has other following duties under the Act.



- (i) **No unauthorized use of goods** : Bailee has no right to make unauthorized use of goods bailed.
- (ii) **No right to mix the goods bailed** : Bailee has no right to mix the goods bailed with his own goods without the consent of the bailor.
- (iii) **Return of goods bailed on expiration of time or accomplishment of purpose [Section 160]** : It is the duty of 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.
- (iv) **Bailee's responsibility when goods are not duly returned [Section 161]** : 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.
- (v) **Bailment by several joint owners [Section 165]** : If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.
- (vi) Bailee has a duty to return any extra profit accruing from goods bailed. Where A bails his cow to 'B' and if the cow gives birth to a calf, 'B' must return both the cow and the calf to 'A'

Rights of bailee : The bailee has the following rights [These rights are also the duties of the bailor]—



- (i) to claim compensation for any loss arising from non-disclosure of known defects in the goods.
- (ii) to claim indemnification for any loss or damage as a result of defective title.
- (iii) to deliver back the goods to joint bailors according to the agreement or directions.
- (iv) 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 delivery. (Section 166)
- (v) to exercise his 'right of lien'. This right of lien is a right to retain the goods and is exercisable where charges due in respect of goods retained have not been paid. The right of lien is a particular lien for the reason that the bailee can retain only these goods for which the bailee has to receive his fees/remuneration.
- (vi) to take action against third parties if that party wrongfully denies the bailee of his right to use the goods

Suit by bailor & bailee against wrong doers [Section 180] : 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 had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits [Section 181]: Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.



5. RIGHT OF THIRD PERSON CLAIMING GOODS BAILED [SECTION 167]

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.



6. FINDER OF LOST GOODS

Right of finder of lost goods; may sue for specific reward offered [Section 168]:

The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Analysis : The 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods but also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

Further where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

When finder of thing commonly on sale may sell it [Section 169] : When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

- (1) when the thing is in danger of perishing or of losing the greater part of its value,
or
- (2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

Analysis : The finder though has no right to sell the goods found in the normal course, he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:

- (a) when the article is in danger of perishing and losing the greater part of the value
or
- (b) when the lawful charges of the finder amounts to two-third or more of the value of the article found.



7. GENERAL LIEN AND PARTICULAR LIEN

Bailee's particular lien [Section 170] : 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.

Example 1 : 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.

Example 2 : 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.

Analysis : In accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor. In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

General lien of bankers, factors, wharfingers, attorneys and policy brokers

[Section 171] : 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 the effect.

Analysis : Bankers, factors, wharfingers, policy brokers and attorneys of law have a general lien in respect of goods which come into their possession during the course of their profession.

For instance a banker enjoys the right of a general lien on cash, cheques, bills of exchange and securities deposited with him for any amounts due to him. For instance 'A' borrows ₹500/- from the bank without security and subsequently again borrows another ₹1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned ₹1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.

Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.

Differences between General and Particular Lien

General lien	Particular lien
It is a right to detain/retain any goods of the bailor for general balance of account outstanding	It is a right exercisable only on such goods in respect of which charges are due.

A general lien is not automatic but is recognized through an agreement. It is exercised by the bailee only by name	It is automatic
It can be exercised against goods even without involvement of labour or skill.	It comes into play only when some labour or skill is involved
Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien



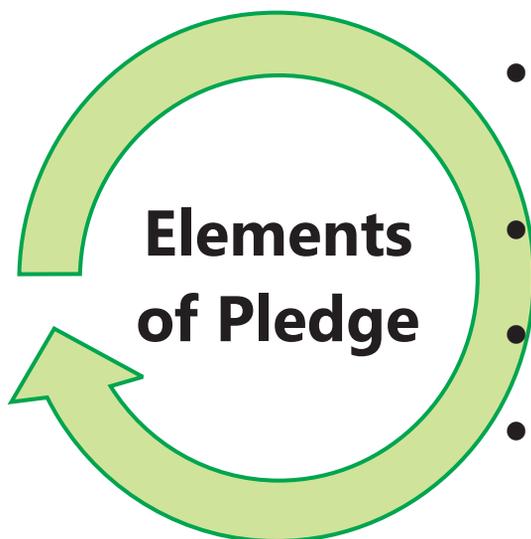
8. PLEDGE

“Pledge”, “pawnor” and “pawnee” defined [Section 172] : 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”**.

Analysis : Pledge is a variety or specie of bailment. It is bailment of goods as security for payment of debt or performance of a promise. The person who pledges[or bails] is known as pledgor or also as pawnor, the bailee is known as pledgee or also as pawnee. In pledge, there is no change in ownership of the property. Under exceptional circumstances, the pledgee has a right to sell the property pledged. Section 172 to 182 of the Indian Contract Act, 1872 deal specifically with the bailment of pledge.

Example : A lends money to B against the security of jewellery deposited by B with him i.e. A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and the A is a pawnee.

Essentials of contract of pledge :



- There must be bailment for security for payment of debt/ performance of a promise
- Goods must be the subject matter of the contract of pledge.
- The goods pledged must be in existence
- There must be a delivery of goods from pawnor to pawnee

Pawnee's rights : Rights of Pawnee can be classified as under the following headings :

(a) Right of retainer [Section 173] : 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.

Example : Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.

(b) Right to retention of subsequent debts [Section 174] : Pawnee has a right to retain the goods pledged towards subsequent advances as well, however subject to such right being specifically contemplated in the contract.

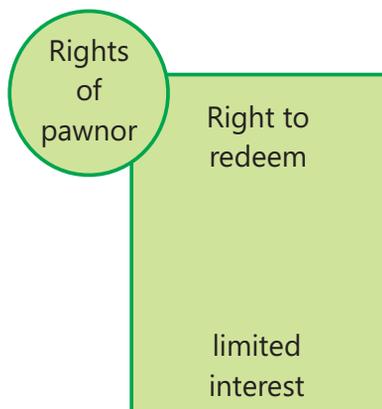
(c) Pawnee's right as to extraordinary expenses Incurred [Section 175] : The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

(d) Pawnee's right where pawnor makes default [Section 176] : 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 pawn or 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.

(e) Pledge by person in possession under voidable contract [Section 178A] : When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

Rights of a pawnor



- (a) Right to redeem [Section 177]** : 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.
- (b) Pledge where pawnor has only a limited interest [Section 179]** : Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.



9. PLEDGE BY MERCANTILE AGENTS [SECTION 178]

Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents 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 no authority to pledge.

Explanation: In this section, the expressions 'mercantile agent and documents of title' shall have the meanings assigned to them in the Sale of Goods Act, 1930.

Analysis : Though generally only a owner of goods can pledge, the Act recognizes the right of certain mercantile agents to pledge provided it is done with the consent of the owner of the goods. Such a pledge done in the ordinary course of business is valid. Pledge in this case can be effected through pledge of documents like a bill of lading or a railway receipt etc.



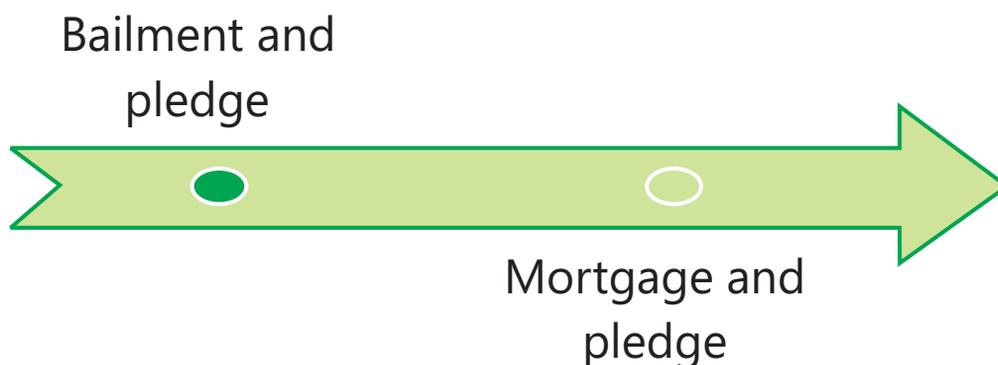
10. DISTINCTION BETWEEN BAILMENT AND PLEDGE

There are five distinctions between bailment and pledge. These are

- (a) As to purpose :** Pledge is a kind of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment, goods are bailed for purposes other than the two referred above. The bailee takes them for repairs, safe custody etc.
- (b) As to right of sale :** The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment, the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
- (c) As to right of using goods :** Pledgee has a right to use goods. A bailee can, if the terms so provide, use the goods.

- (d) **Consideration** : In pledge there is always a consideration whereas in bailment there may or may not be consideration.
- (e) **Discharge of contract** : Pledge is discharged on the payment of debt or performance of promise, whereas bailment is discharged when the purpose is accomplished or after a specified time.
- (f) **Return of goods on demand** : In case of gratuitous bailment, the bailee is bound to return the goods on demand by the bailor. On the other hand, pledgee is not bound to return the goods delivered as security on demand by bailor unless and until the debt is repaid or promise is performed.

Distinctions



However, the term also varies from the word Mortgage. It is a legal agreement by which a bank, building society, etc. lends money at interest in exchange for taking title of the debtor's property, with the condition that the conveyance of title becomes void upon the payment of the debt.

Mortgage is defined under the Transfer of Property Act, 1882.



SUMMARY

- Bailment-Delivery of goods by one person to another for some purpose upon a contract that they shall be returned after the purpose is over or disposed off according to the directions of the person delivering them.
- Bailor- Person who delivers goods for bailment.
- Bailee- Person to whom goods are delivered under the contract of bailment.
- Depositing currency notes in a bank- It is not a bailment as currency notes or moneys are not goods as per the definition of goods given under the Sale of Goods Act,1930 and also no same notes is returned to the depositor by the bank.

- Keeping of ornaments/valuables in a bank locker- It's not a bailment as there is no transfer of possession of ornaments or valuables.
- Gratuitous bailment- No consideration passes between the bailor and the bailee and the bailor is not responsible for the damages in respect of the faults which were not known to him.
- Pledge- Bailment of goods as security for payment of a debt/performance of a promise.
- Pawnor- Person who pledges goods as security.
- Pawnee- Person who receives the goods as security.
- Some non-owners may also create a valid pledge of goods, such as- Mercantile agents, co-owner, by person having a limited interest, by person having a possession of goods under voidable contract.
- Basic distinction between bailment and pledge- All the pledges are bailments but all the bailments are not a pledges.

TEST YOUR KNOWLEDGE

Multiple Choice Questions

1. A bailee has
 - (a) a right of particular lien over the goods bailed
 - (b) a right of generation
 - (c) a right of both particular and general lien
 - (d) no lien at all over the goods bailed.
2. The delivery of goods by one person to another as security for the payment of a debt is called
 - (a) Bailment
 - (b) Pledge
 - (c) Mortgage
 - (d) Hypothecation
3. The position of a finder of lost goods is that of a
 - (a) bailor
 - (b) bailee
 - (c) surety
 - (d) principal debtor

4. The delivery of goods by one person to another for some specific purpose and time is known as:
- (a) Mortgage
 - (b) Pledge
 - (c) Bailment
 - (d) Charge

Answer to MCQs

1. (c)	2. (b)	3. (b)	4. (c)
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Question and Answer

Question 1

Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872 :

- (i) V parks his car at a parking lot, locks it, and keeps the keys with himself.
- (ii) Seizure of goods by customs authorities.

Answer

- (i) No. Mere custody of goods does not mean possession. For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it, Section 148, of the Indian Contract Act, 1872 is not applicable.
- (ii) Yes, the possession of the goods is transferred to the custom authorities. Therefore bailment exists and section 148 is applicable.

Question 2

A hires a carriage of B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

Answer

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that 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. Accordingly, applying the above provisions in the given case B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Question 3

A bails his jewelry with B on the condition to safeguard in bank's safe locker. However, B kept in safe locker at his residents, where he usually keeps his own jewelry. After a month all jewelry was lost in a religious riot. A filed a suit against B for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether A will succeed.

Answer

Referring to the Section 152 of the Indian Contract Act, 1872, B is liable to compensate A for his negligence to keep jewelry at his resident. Here, A and B agreed to keep the jewelry at the Bank's safe locker and not at the latter's residence.

Question 4

R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bear the loss and why ?

Answer

M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Question 5

State the essential elements of a contract of bailment. Distinguish between the 'contract of bailment' and 'contract of pledge'.

Answer

Essential elements of a contract of bailment: Section 148 of the Indian Contract Act, 1872 defines the term 'Bailment'. 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 essential elements of the contract of the bailment are :

1. Delivery of goods—The essence of bailment is delivery of goods by one person to another.
2. Bailment is a contract—In bailment, the delivery of goods is upon a contract that when the purpose is accomplished, the goods shall be returned to the bailor.
3. Return of goods in specific—The goods are delivered for some purpose and it is agreed that the specific goods shall be returned.
4. Ownership of goods—In a bailment, it is only the possession of goods which is transferred and the bailor continues to be the owner of the goods.
5. Property must be movable—Bailment is only for movable goods and never for immovable goods or money.

Difference between contract of bailment and contract of pledge :

1. Right of sale—In case of pledge, the pawnee (pledgee) can sell the goods and recover his debt, if pawnor (pledger) does not pay while in bailment the bailee can retain the goods and sue for damages, but he has no authority to sell the goods.
2. Purpose—Pledge is specifically for securing a debt, while bailment may be for any purpose e.g. for repairs, safe custody etc.
3. Right to use the goods—In case of pledge, pawnee cannot use the goods pledged but bailee can use the bailed goods if contract so provides.

