

always for
moveable Property

BAILMENT AND PLEDGE

unaccomplished
disposed of, return

CONTRACT OF BAILMENT

Meaning and Definition

The term bailment is derived from the French word 'bailler' which means to deliver a thing under a contract for return at a specified time or under specified condition.

According to Section 148, "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."

A bailment is transfer of the possession of goods by the owner to another person under a contract. The other person shall hold, return or deliver the goods according to the order of the owner. A bailment arises when one person transfers possession of goods to another person on condition that he will return them after accomplishment of purpose. If a person already in possession of the goods of another person, contracts to hold them, he becomes the bailee and owner becomes the bailor. The person who delivers the goods is called the bailor. The person who receives the goods is called the bailee. The transaction is called bailment.

EXAMPLES

- A delivers a piece of cloth to B to make a suit. This is a contract of bailment between A and B.
- A sells goods to B who leaves them in the possession of A. A becomes the bailee and B becomes the bailor.

Essentials

The following are essentials of a bailment:

1. Contract

A bailment is based on a contract between the bailor and bailee. The delivery of goods must be made for some purpose on the basis of a contract. There is no bailment if goods are delivered without any contract i.e. by mistake. The contract may be expressed or implied. It may be oral or in writing.

EXAMPLES

- S gives a piece of cloth to T, a tailor, to make a suit. This is a contract of bailment between S and T.

Bailment and Pledge

- b. B's ornaments were stolen. Police recovered the ornaments and took them in custody. Later, the ornaments were stolen from police custody. Held, there was implied contract between B and police, and police was liable. (Basava vs. State of Mysore)

2. Specific Purpose

The bailment of goods must be made for a specific purpose. When the goods are delivered without any purpose, there is no bailment. When the purpose is accomplished, the bailee is bound to return the goods to the bailor or dispose off according to the directions of the bailor.

EXAMPLE

C gives his watch to B for repair. This is a bailment.

3. Delivery of Goods

The bailment is the delivery of moveable goods from one person to another. Mere custody of goods does not create a relationship of bailor and bailee. A servant who receives the goods from his master to take them to a third person only gets the custody. The possession of goods remains with the master so the servant cannot be called a bailee.

EXAMPLES

for bailor Person should be

- a. A buys a T.V. from B. A asks B to keep the T.V. with him for an hour, so that A may buy other goods from the market. B is now holding the T.V. as a bailee.
- b. U entered a restaurant for dinner. H, the waiter, took his coat and hung it on a hook. Later, the coat was missing. The owner of the restaurant was held liable. (Ultzen vs. Nicols)

4. No Change of Ownership

Under bailment, only the possession of goods passes from the owner to other person and not the ownership. Mere custody of goods without possession is not bailment, e.g. servant holding his master's goods. If there is a change of ownership, the transaction may be a sale or exchange but not bailment.

EXAMPLE

A delivers his car to B for repair. The possession of car transfers from A to B but ownership remains with A.

5. Return of Same Goods

Bailment is made for some purpose. When the purpose is accomplished, the goods must be returned to the bailor in the original form or in altered form. The deposit of money in a bank is not a bailment because there is no obligation to return the same money. However, depositing of notes or goods in a bank locker is a bailment.

EXAMPLES

- a. A lends his cycle to B for a week. B is liable to return the same cycle.
- b. X gives the goods to Daewoo Transport to carry them from Lahore to Multan.
This is a bailment.

Kinds of Bailment

Bailment is classified according to benefit and reward as under:

1. Benefit

According to benefit, bailment can be grouped into three classes:

a. For Benefit of Bailor

It is a bailment in which goods are delivered by the bailor to the bailee only for exclusive benefit of the bailor himself, e.g. A delivered ornaments for safe custody to B, his neighbor, without any charges. It is a bailment for the benefit of bailor only.

b. For Benefit of Bailee

It is a bailment where goods are delivered to the bailee to be used without any compensation, e.g. A borrows B's pen to use in examination hall. The bailment is for the sole benefit of A, the bailee.

c. For Benefit of Bailor and Bailee

It is a bailment where the goods are delivered for mutual benefit of both the bailor and bailee, e.g. A delivers his car to B, a mechanic for repair. It is for the benefit of both bailor and bailee.

2. Reward

Bailment is classified into two classes according to reward:

a. Bailment without Reward

It is bailment in which neither the bailor nor the bailee is entitled to any remuneration. It is also called gratuitous bailment, e.g. lending book to a friend, depositing goods for safe custody without any charges etc. *Free gift*

b. Bailment for Reward

It is a bailment where either the bailor or bailee is entitled to remuneration. It is also called non-gratuitous bailment, e.g. car lent for hire, cloth given for tailoring on charges etc. *with consideration*

Duties of Bailor

The duties of a bailor are as follows:

1. Duty to Disclose Faults

A gratuitous bailor lends goods to the bailee without charges. A gratuitous bailor is bound to disclose to the bailee all faults in the goods which are known to him. If bailor fails to disclose such faults, he will be liable to pay damages to the bailee arising from such faults. [Sec. 150]

A non-gratuitous bailor delivers goods to the bailee for some charges. A non-gratuitous bailor is responsible for all faults in the goods whether he is aware of the faults or not. If he does not disclose the faults to the bailee, he will be liable for damages arising due to those faults.

EXAMPLES

- a. A lends a horse to B. A knows that horse is vicious but does not disclose this fact to B. Horse runs away and B is thrown off and injured. A is responsible for damages.
- b. A hires a carriage from B. The carriage is unsafe and B is not aware of it. A gets injured. B is responsible to A for the injury.
- c. R hired a motorboat from D for a holiday on river Thames. The boat caught fire and R could not put out the fire, as the fire-fighting equipment was out of order. R was injured. Held, D was liable. (Read vs. Dean)

2. Duty to Bear Ordinary Expenses

In case of gratuitous bailment, it is duty of the bailor to bear all the ordinary expenses incurred by the bailee for the purpose of bailment. But in case of non-gratuitous bailment, the bailor is not liable to bear the ordinary expenses incurred by the bailee. [Sec. 158]

EXAMPLE

A delivers a horse to B for safe custody without charges. B spends Rs. 200 on feeding the horse. A is liable to pay Rs. 200 to B.

3. Duty to Bear Extra-Ordinary Expenses

In all kinds of bailment, the bailor must bear the extra-ordinary expenses, if any, incurred by the bailee regarding the goods. [Sec. 158]

EXAMPLE

B hires a taxi from A. Major defect occurred in the engine. B spent Rs. 5000 on its repair. A is liable to pay to B, Rs. 5000 being extra-ordinary expenses.

4. Duty to Indemnify for Terminating Bailment

In case of bailment without reward, the bailor can terminate the bailment even before the specified time. As a result of termination of bailment, if the bailee suffers a loss which exceeds the benefit enjoyed by him, the bailor is liable to indemnify bailee for such loss. [Sec. 159]

EXAMPLE

A gives a cycle to B gratuitously for 3 months. B spends Rs. 200 on its repair. If A asks for return of the cycle after 1 month, he is liable to compensate B for expenses incurred by him in excess of the benefit enjoyed by B.

5. Duty to Indemnify for Defective Title

When the bailor is not entitled to deliver the goods under bailment, and as a result, the bailee suffers a loss, the bailor is responsible to indemnify the bailee for such loss. [Sec. 164]

EXAMPLE

A gives his neighbor's scooter to B for use without the neighbor's permission. The neighbor sues B and receives compensation. A is bound to indemnify B for loss.

6. Duty to Receive Back Goods

It is duty of the bailor to receive back the goods when the bailee returns them after accomplishment of the purpose of bailment. If the bailor refuses to receive the goods at proper time, the bailee can claim compensation for all necessary expenses incurred for safe custody of goods. [Sec. 160]

EXAMPLE

A bails his cow to B for feeding for 2 months. A does not take his cow back after 2 months. B has to spend more money on feeding the cow. A is liable to compensate B.

Rights of Bailee

The rights of bailee are as under:

1. Right to Claim Damages

In case of bailment without reward, the bailee is entitled to know the faults in the goods which are known to the bailor. A bailee has a right to claim compensation from the bailor for any damages arising from such faults. However, in case of bailment for reward, the bailee is entitled to claim compensation for all faults which are known or unknown to the bailor. [Sec. 150]

EXAMPLE

A lends a horse to B. A knows that horse is vicious but does not disclose this fact to B. Horse runs away and B is thrown off and gets injured. A is responsible to B for the injuries.

2. Right to Recover Expenses

The bailee can recover all necessary expenses incurred by him for the purpose of bailment from the bailor. It includes compensation for any loss caused due to any defect in the bailor's title and lawful charges for providing services. The bailee has a right to claim expenses incurred for safe custody of the goods if bailor has wrongfully refused to take delivery after term of bailment. [Sec. 158]

EXAMPLE

A delivers his horse to B for safe custody. The horse becomes sick and B's spends Rs. 200 on medical care. B can recover Rs. 200 from A.

3. Right to Deliver Goods

When the goods are bailed by several joint bailors, the bailee has a right to return the goods to any one of the joint bailors without the consent of all unless there is an agreement to the contrary. [Sec. 165]

EXAMPLE

A B & C jointly bail a car to X for 5 days. X can return the car to any one of them.

4. Right to Compensation

If the bailor has no right to bail the goods or to receive them back or to give directions regarding them and, as a result, the bailee suffers a loss, the bailee is entitled to receive such loss from bailor. [Sec. 164]

EXAMPLE

A bails X's scooter to B without his permission. X sues B and receives compensation. B can recover such compensation from A.

5. Right to Stop Delivery

If a person other than the bailor claims the goods bailed, the bailee may apply to the court to decide the title of the goods so that he may deliver the goods to the true owner. [Sec. 167]

EXAMPLE

A bails goods to B. X claims that he is the owner of those goods and demands from B. B can stop the delivery of goods to A and request the court to decide about the ownership of goods.

6. Right to Sue

If a third person wrongfully deprives the bailee of the use or possession of the goods, or causes injury to the goods, the bailee is entitled to sue such third person. The bailor can also bring a suit against such third person in respect of such goods. [Sec. 180]

EXAMPLE

A gave a piece of cloth to T, a tailor, to make a suit. M forcefully took the coat from T. A or T can file a suit against M.

7. Right of Lien

Lien means the right to retain the possession of property or goods belonging to another until some debt or claim are paid. A bailee has the right to retain that particular property in respect of which he has rendered some services and his charges are due but if the bailee does not complete the work within the agreed time or reasonable time, he will not be entitled to any lien. [Sec. 170]

EXAMPLES

- a. A delivers a rough diamond to B, a jeweler, for cutting and polishing. B retains the diamond till he is paid for the services.
- b. A gives his watch to B for repair. B promises A to deliver the watch next day but takes more time to repair. B cannot retain the watch.

Duties of Bailee

The duties of bailee are as follows:

1. Duty to take Reasonable Care

The bailee is bound to take care of the goods bailed to him. He must take care of the goods as ordinary sensible person takes care of his own goods. If the bailee does not take care of the goods and the goods are damaged by his negligence, he is responsible for the loss.

In the absence of any special contract, the bailee is not responsible for the loss or destruction of the goods if he has taken care of them. The bailee is bound to take reasonable steps to recover the goods if they get stolen. [Sec. 152]

EXAMPLES

- a. A sends some ornaments to B, a goldsmith. B keeps them in a locked safe. The ornaments are stolen. B is not liable for loss.
- b. A bails car to B. B forgets to lock up the car. The car is stolen. B is liable.
- c. C bails some cattle to H. Cattle were stolen from H's custody without his fault. H did not inform the owner or the police to recover them. H was held liable. (Coldman vs. Hill)

2. Duty not to make Unauthorized Use

The bailee must use the goods according to the terms of bailment. If the bailee makes unauthorized use of the goods, he is liable to compensate to the bailor for any damage arising to the goods [Sec. 154]

EXAMPLES

- a. A lends a horse to B for his own riding only. B allows C to ride the horse. C rides with care but horse falls and C gets injured. B is liable to compensate A.
- b. A lent his car to B for private use only. B used the car as taxi. The bailment is voidable at the option of A.

3. Duty not to Mix Goods

If goods are mixed with the consent of the bailor, the bailor and bailee shall have an interest in the goods according to their respective shares in the mixture thus produced. The bailee should not mix the bailor's goods with his own goods. [Sec. 155]

If the bailee, without consent of the bailor, mixes his own goods with the bailor's goods and goods are separable, the bailee is bound to bear the

expenses of separation. But if the goods cannot be separated, the bailee must compensate the bailor for his loss. [Sec. 156-157]

EXAMPLES

- a. A bails 100 bales of cotton to B bearing a particular mark. Without A's consent, B mixes the bales with his own bales which bear a different mark. A can get his bales back and B is bound to bear the expenses of separation.
- b. A bails high quality flour to B. Without A's consent, B mixes the flour with low quality flour of his own. B must compensate A for the loss.

4. Duty to Return Goods

It is duty of the bailee to return the goods, according to the bailor's directions, after the time for which they were bailed has expired or the purpose for which they were bailed has been accomplished. When the bailee fails to return the goods at the proper time, he is responsible to the bailor for any loss of the goods from that time. [Sec. 160-161]

EXAMPLES

- a. A hires a horse from B for a month. A does not return the horse on the due date. The horse dies after the period of bailment without any fault on A's part. A is liable for the loss.
- b. S & Co. delivered books to S & S for binding. They asked to return the books in a week but S&S failed to return within the specified period. A fire broke out and the books were burnt. Held, S & S were liable. (Shaw & Co. vs. Symmons & Sons)

5. Duty to Return Increase

In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor any natural increase or profit which may have accrued from the goods. [Sec. 163]

EXAMPLE

A leaves a cow in custody of B for care. The cow gives birth to a calf. B is bound to deliver the calf as well as the cow to A.

Rights of Bailor

The rights of the bailor are as under:

1. Right to Claim Damages

The bailor can recover damages from the bailee if any damage to the goods is caused due to the bailee's negligence. [Sec. 151]

The bailor can claim compensation for any damage arising due to unauthorized use of the goods. He can also claim compensation for any loss which may arise due to unauthorized mixing of goods with the bailee's own goods. [Sec. 154]

A bailed some goods to B. B did not keep the goods under the lock. The goods were stolen. A can recover the loss from B.

2. Right to Demand Return of Goods

The bailor can demand the return of the goods when the purpose of bailment is accomplished. If the bailee makes default in returning the goods at proper time and place, the bailor is entitled to compensation arising from such situation. [Sec. 160]

When goods are lent gratuitously, the bailor can demand the return of the goods at any time even before the specified period. [Sec. 159]

EXAMPLE

A gives a car to B on rent for 5 days. A can demand the return of car after 5 days. If B does not return the car after 5 days, A can claim damages.

3. Right to Claim Increase

The bailor is entitled to claim any increase or profit which may have accrued from the goods. [Sec. 163]

EXAMPLE

A bailed a cow to B for safe custody. The cow gave birth to a calf. A can demand the cow along with the calf.

4. Right to Terminate Bailment

The bailor has a right to terminate the bailment if the bailee does any act which is against the terms of the contract though the term of bailment has not expired or purpose of bailment has not been accomplished. [Sec. 153]

EXAMPLE

A gives a horse to B for his own riding. B drives the horse in carriage. A can terminate the contract.

5. Right to Sue

The bailor may sue the bailee for breach of contract if goods are not returned or disposed off as directed by the bailor. The bailor can take action for negligence when the bailee is guilty of such conduct. The bailor may also sue the third party who damaged or took the goods from the bailee's possession. [Sec. 180]

EXAMPLES

- a. A gives his T.V. to B for repair. X gets the possession of T.V. from B. A can sue X.
- b. A gave a piece of wood to B, a carpenter, to make tables. B did not take proper care. A fire broke out and destroyed the wood. A can sue B for loss.



Termination of Bailment

A contract of bailment terminates under the following circumstances:

1. Expiry of Time

When the contract of bailment is made for a specified period of time, the bailment terminates after the expiry of that specified time period.

EXAMPLE

A stores B's oranges in the cold storage for a month. After 1 month, the bailment terminates.

2. Accomplishment of Purpose

If the contract of bailment is made for a specific purpose, the bailment terminates as soon as the purpose is accomplished.

EXAMPLE

M gives his radio to N for repair. N repairs and returns the radio. The bailment is over.

3. Unauthorized Use

If the bailee does any act which is against the terms of bailment, the bailment may be terminated by the bailor even though the term of bailment has not expired or the purpose of bailment has not been accomplished. [Sec. 153]

EXAMPLE

A bails a car to B for 5 days for his personal use. B allows his friend X to use the car. A can terminate bailment before 5 days.

4. On Death

A gratuitous bailment is terminated by death of either the bailor or the bailee. In case of death in non-gratuitous bailment, the termination depends upon the nature and terms of contract. [Sec. 162]

EXAMPLE

M borrows a book from his friend, N for 10 days. M dies. The bailment terminates.

5. Termination by Bailor

A bailor can terminate the gratuitous bailment before the specified time, even if it was for a specific purpose or a specified time. [Sec. 159]

EXAMPLE

S lends a book to T for one month. S can demand return of book before the expiry of bailment period.

6. Destruction of Subject matter

A bailment is terminated when subject matter of the bailment is destroyed or due to change in its nature, it becomes incapable of use for the purpose of

bailment.

EXAMPLE

A delivered a horse to B for safe custody for 2 months. After 1 month, the horse died. The bailment is terminated.

Finder of Lost Goods

A person, who finds goods belonging to another and takes them into his own custody, is subject to the same responsibility as a bailee.

The finder of lost goods is not liable to take possession of such goods. But when he takes the possession of the lost goods, he becomes responsible for the goods like a bailee in a gratuitous bailment. The finder of lost goods has a right to retain the goods against all except the real owner. [Sec. 71]

Duties of Finder

The duties of a finder of lost goods are as under

1. Duty to Find Owner

It is duty of the finder to undertake reasonable efforts to find out the real owner of the goods. If goods are of high value, he should give an advertisement in a newspaper. If the finder fails to perform his duty of finding the real owner, he will be held liable.

2. Duty to Take Reasonable Care

A finder must take reasonable care of the goods as a man of ordinary prudence, under similar circumstances, takes care of his own goods of the same description. If, in spite of reasonable care, the goods are lost or destroyed, he is not liable for any loss.

3. Duty not to Use Goods

The finder must not use the goods found for his own purpose. If he uses the goods for his own purpose, he is liable for any loss or damage.

4. Duty not to Mix Goods

The finder must not mix the goods found with his own goods. If he mixes the goods, he is liable for any loss or damage.

Rights of Finder

The rights of finder of lost goods are as under:

1. Right to Retain

A finder has the right to retain possession of the goods against everyone except the real owner. The finder never becomes the owner of the goods. The ownership will always remain with the real owner and the finder only enjoys the right to retain possession of goods.

2. Right of Lien

A finder can retain the goods for compensation for effort and expense

incurred by him to preserve the goods and to find out the real owner. But he has no right to sue the real owner to recover such expenses because he incurred these expenses voluntarily and not at the request of the real owner. [Sec. 168]

Right to Sue Third Person

The finder can sue any third person who deprives him of the right to retain possession of the goods.

Right to Sue for Reward

If real owner has offered some reward for the return of lost goods, the finder can sue the real owner for such a reward. The finder has the right to retain the lost goods for reward offered by the owner for return of the goods. [Sec 168]

Immovable Property as a security

Right of Sale

- The finder can sell the goods in the following cases: [Sec. 169]
- When finder fails to find out the true owner with reasonable diligence.
- When the real owner refuses to pay the lawful charges to the finder.
- When goods are perishing or losing greater part of its value.
- When lawful charges of the finder become two-thirds of the value of goods.