

d. When lawful charges on the thing become two-thirds of the value of goods.

PLEDGE OR PAWN

Meaning and Definition

A pledge is a special kind of bailment. In this case, the goods are delivered as a security for payment of debt or for the performance of promise.

Sec. 172 defines pledge as, "The bailment of goods as security for payment of a debt or for performance of a promise, is called pledge."

The person who delivers the goods is called pawnor or pledger. The person who receives the goods is called pawnee or pledgee. Under a pledge, one person transfers the possession of goods to another in order to secure the payment of debt or performance of a promise. If there is no transfer of possession of goods, there is no pledge.

EXAMPLE

A borrows Rs. 1000 from B and gives his watch as security for payment of the debt. The bailment of watch is called a pledge.

Essentials of Pledge

The essentials of a pledge are as under:

1. Movable Property

A pledge only involves the movable property. This includes different goods, valuables, documents for title e.g. railway receipt, bills of lading etc.

EXAMPLE

A gives his car to B as a security and borrows Rs. 1 Lac as loan. This is a

*Hypothecation
involves
movable*

*Property.
Goods*

*are in
security of
bank of
pled on
loan*

*Movable
set as
security
Property*

pledge between A & B.

2. Limited Interest

When a person pledges goods in which he has only limited interest, the pledge is valid to the extent of that interest only.

EXAMPLE

A gives his T.V to B for repair. A does not pay Rs. 500 as repair charges. B pledges the T.V with X to borrow Rs. 900. A pledge with X is valid up to Rs. 500.

3. Transfer of Possession

Under a pledge, only the possession of goods is transferred by the pawnor to the pawnee.

EXAMPLE

C pledges ornaments with B and gets a loan of Rs. 1 Lac. The possession of ornaments transfers from C to B.

4. No Transfer of Ownership

Under a pledge, the ownership of goods remains with the pawnor. Only the possession of goods is transferred and not the title thereto.

EXAMPLE

M pledges his car with N and gets a loan of Rs. 2 Lac. The ownership of car remains with M.

5. Not Mere Custody

The person having the custody of goods cannot pledge them. For example, a servant in control of his master's goods cannot make a valid pledge of them.

EXAMPLE

T puts some goods in the custody of his servant, S. S pledges the goods with B. It is not a valid pledge.

Rights of Pledgee

The rights of pledgee are as follows:

1. Right to Retain

(Right of Lien)

The pledgee can retain the goods pledged until his dues are paid. He can retain them for payment of debt or performance of promise for interest due on the debt and all necessary expenses incurred by him for the preservation of goods.
[Sec. 173]

EXAMPLE

A borrows Rs. 2 Lac from B and pledges his diamond ring. If A does not return the loan, B can retain the ring.

2. Right to Retain for Other Debts

When the pledgee lends advances to the same pledgor after the date of the pledge, it shall be presumed that the right to retain over the pledged goods extends even to the subsequent advances. This presumption can be disproved by a contract to the contrary. [Sec. 174]

EXAMPLE

M borrows Rs. 4 Lac from N on 1st March and pledges his car. On 1st June, M borrows another sum of Rs. 3 Lac from N. M repays the first debt in full. N can retain the car against his claim for second loan.

3. Right to Extraordinary Expenses

The pledgee has the right to recover from the pledgor, extra-ordinary expenses incurred by him for preservation of the goods pledged. But he cannot retain the goods if such expenses are not paid. He only has the right to sue the pledgor for recovery of such extra-ordinary expenses. [Sec. 175]

EXAMPLE

S pledges his horse with T. The horse falls sick and T spends some expenses on his treatment. T can sue S to recover expenses.

4. Right to Sue and Sell

If the pledgor makes default in the payment of the debt or performance of the promise, the pledgee may sell the goods pledged after giving to the pledgor, a reasonable notice of his intention to sell. The following points must be noted:

- The reasonable notice is necessary. A sale of goods without notice is void.
- The pledgee cannot sell the goods to himself. If he does so, such sale is void. The pledgor can recover the goods on payment.
- If the proceeds of sale are less than the amount due, he can recover the balance from the pledgor but if there is surplus, he must return it. [Sec. 176]

EXAMPLE

A lends Rs. 5 Lac for 6 months to B and B pledges his car with A. B fails to pay. A can sell B's car to recover his loan after giving a reasonable notice.

Duties of Pledgee

The duties of pledgee are as follows:

- To take reasonable care of the goods pledged.
- Not to make any unauthorized use of the goods pledged.
- Not to mix the goods pledged with his own goods.
- Not to do any act inconsistent with the terms of contract.
- To return the goods pledged on receipt of his full dues.
- To deliver any accretion to the goods pledged.

⇒ Natural increase

Rights of Pledgor

The rights of pledgor are as under:

1. Right to Redeem

If the pledgee makes an unauthorized sale, e.g. without giving reasonable notice, the pledgor can file a suit for redemption of goods, treating the sale as void after depositing the dues with the court. [Sec. 177]

2. Right to Claim Damages

If the pledgee mixes the goods pledged with his own goods or converts them into other forms, the pledgor has the right to claim damages.

3. Right to Claim Increase

The pledgor has the right to receive the pledged goods back along with accretion, if any, on making the full payment on stipulated date.

4. Right to Redeem the Debt

A pledgor, who makes default in payment of debt at the stipulated date, has a right to redeem the debt at any subsequent time before the actual sale of goods pledged. [Sec. 177]

Duties of Pledgor

The duties of pledgor are as follows:

1. Duty to Compensate

It is the duty of pledgor to compensate the pledgee for the extra-ordinary expenses incurred by him. [Sec. 175]

2. Duty to Complete

It is the duty of pledgor to meet his obligation on stipulated date and comply with the terms of contract.

DIFFERENCE BETWEEN PLEDGE AND BAILMENT

The following are points of different between pledge and bailment:

PLEDGE	BAILMENT
<p>1. Purpose The goods are delivered as a security for loan or for performance of the promise.</p>	<p>The goods are delivered for repair and safe custody etc.</p>
<p>2. Rights The pledgee has a right of sale of the pledged goods on default after giving a notice to the pledgor.</p>	<p>The bailee has no such right of sale. He can retain the goods or sue for the dues.</p>
<p>3. Use of Goods The pledgee has no right of using the goods pledged.</p>	<p>There is no such restriction if the nature of transaction is such that the goods are to be used.</p>

4. Return of goods

The pledgee is not bound to return the goods delivered unless the debit is repaid or promise performed

In bailment without reward the bailee is bound to return the goods on demand by the bailor.

5. Lien

Lien can be exercised even for non-payment of interest.

Lien can be exercised only for the labour and skill spent.

Hypothecation

The term hypothecation is defined as the creation of security on movable goods of the buyer for securing the repayment of loan. In this case, the possession of the goods remains with the borrower but payment of debt is secured by such goods. The borrower is required to send the details of these goods to the creditor. If there is default on the debt, the creditor may file a suit against the debtor for recovery of the loan, and for sale of hypothecated goods.

EXAMPLE

X, a textile firm, takes a loan from the bank. X gives the security of its inventory lying in its godown to secure the repayment of loan. It is hypothecation because the inventory remained with the borrower X.

Mortgage

The term mortgage may be defined as the creation of security on the immovable property of the buyer for securing the repayment of loan. The transfer of interest in the immovable property for the purpose of securing the loan is called mortgage. The transferor of interest is called the mortgagor and the transferee is called the mortgagee.

EXAMPLE

A borrowed Rs. 10 million from a bank. A transferred the title deeds of his plot of land for securing the loan and interest. This is called a mortgage.

Pledge by Non-Owners

The owners of goods can make a valid pledge but a pledge made by non-owners is also valid in the following cases:

1. Mercantile Agent

A mercantile agent is a person who is authorized by the owner to buy or sell goods or to raise money on the security of goods. The pledge made by a mercantile agent is valid if the following conditions are satisfied: [Sec. 178]

- a. A mercantile agent must be in possession of the goods or documents of title to goods, e.g. railway receipt.
- b. Possession of goods must be with the consent of real owner.
- c. A mercantile agent must make the pledge in the ordinary course of his business as mercantile agent.

d. The pawnee acts in good faith and does not have any notice that the pawnor has no authority to pledge.

EXAMPLE

A French company sent to their London agents certain pictures for exhibition only but the agents pledged them. The pledge was held to be valid. (Moddi vs. Pall Mall Deposit & Forwarding Co.)

2. Possession under Voidable Contract

A person having possession of goods under a voidable contract can make a valid pledge of the goods, provided the contract has not been rescinded before the contract of pledge and he has acted in good faith and without notice of the pledgor's defect of title. [Sec. 178-A]

EXAMPLE

A purchased a ring from P and gave a fake cheque. Before discovery of fraud, the ring was pledged with B. The pledge was held to be valid. (Phillips vs. Brooks Ltd.)

3. Pledgor with Limited Interest

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of the limited interest. [Sec. 179]

EXAMPLE

A delivers cloth to B to make a suit and agrees to pay Rs. 150 as sewing charges. B pledges the suit with C for Rs. 300. The pledge is valid up to Rs. 150. A can recover the suit on payment of Rs. 150 to C.

4. Seller in Possession after Sale

A seller, in possession after sale, is no more the owner of the goods but a pledge made by him will be valid, provided the pawnee acts in good faith and without notice of previous sale. The original buyer can obtain damages from the seller. [Sec. 30(1) Sale of Goods Act]

EXAMPLE

B buys goods from A and makes payment, but leaves them in the possession of A. A pledges the goods with C who is not aware of the sale. The pledge is valid.

5. Buyer in Possession before Sale

Where a buyer, who has agreed to buy, obtains the possession of goods with the seller's consent before payment of price, pledges these goods to a pawnee who takes them in good faith and without notice of the seller's right of lien, the pledge is valid. [Sec. 30(2) Sale of Goods Act]

EXAMPLE

A agrees to buy a car from B if his mechanic approves. A obtains

possession of the car and pledges it with X. The pledge is valid.

6. Pledge by Co-Owners

When there are several joint owners of goods, one of the co-owners who has sole possession of goods with consent of the others can make a valid pledge.

EXAMPLE

A and B jointly own a car. A keeps the car with himself with B's consent. A pledges it with X. B never gave his consent for such pledge. The pledge is valid.