

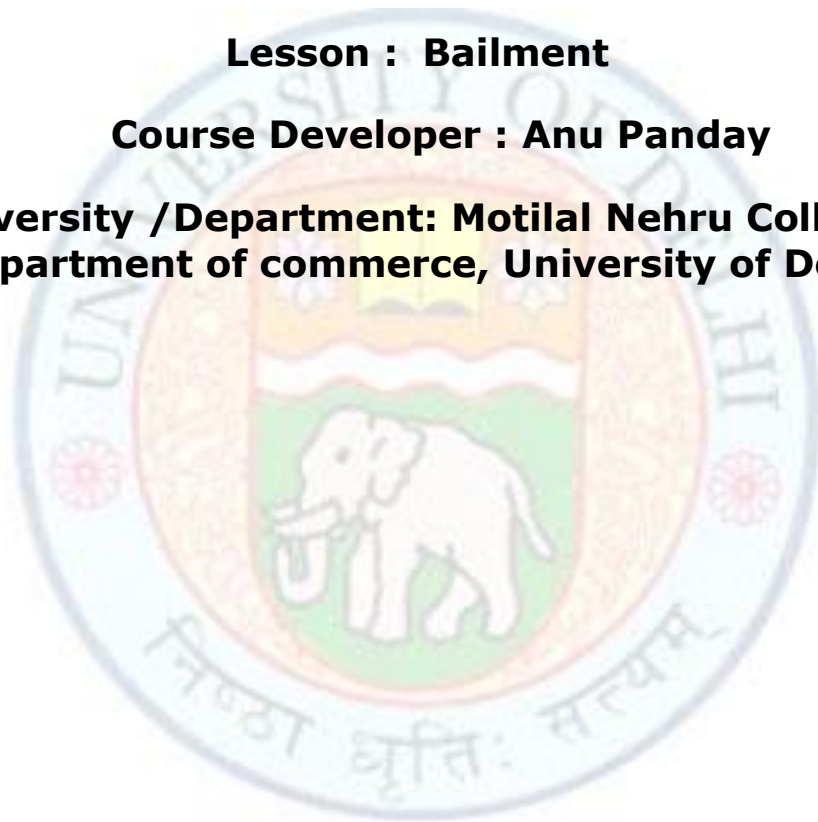
1 (L) Bailment

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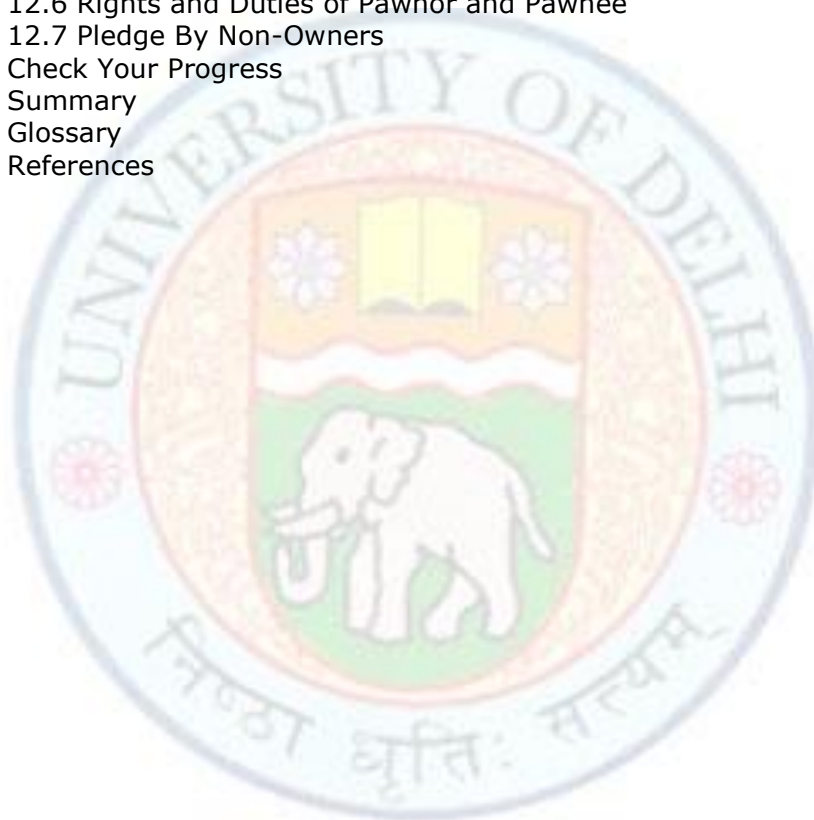
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1 (L) Bailment

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1 (L) Bailment

The scope of the Unit is given below:

- 12.1 Definition
- 12.2 Rights and Duties of Bailor and Bailee
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Contracts of Bailment and Pledge are special contracts, which are dealt with in chapter IX (section 148 to section 181) of the Indian Contract Act 1872. Sometimes a property, whose ownership belongs to a certain person temporarily, goes into the possession of another person. Such a relationship between two persons is called bailment. The essence of bailment is possession and it can happen in numerous circumstances.



1 (L) Bailment

12.1 Definition

According to Section 148 of the Contract Act, "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". Some of the examples of bailment are- Cloth given to a tailor for stitching, a watch given to a shop for repairing, a friend lending his bicycle to another friend for riding it and jewelry taken on rent for wearing it to party.



Figure12.1 Bailment

The person delivering the goods is called the 'Bailor' and the person to whom the goods are delivered is called the 'Bailee'²⁵.

Illustration

Ram sends his car to the garage for repair. In this case Ram is the bailor and the garage owner is the bailee. The garage owner (bailee) has to repair the car and then hand it over to Ram (bailor).

Illustration

Jacky leaves his suit for dry cleaning with Martha a dry cleaner. Jacky is the bailor and Martha is the bailee who has to return the suit to Jacky after dry-cleaning it.

Illustration

Rajni went from Delhi to Shimla by train. On reaching Shimla she deposited her luggage in the cloakroom. Rajni is the bailor and the person who is in charge of the cloakroom is the bailee.

The following are the essential features of Bailment:

- **Movable Goods:** Goods in bailment are goods as defined in section 2 (7) of the Sale of Goods Act, 1930, which means every kind of movable property other than money and actionable claims. Immovable property like land and buildings are not considered as goods.

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Figure12.2 Movable Goods

Illustration

Ranbir agreed to lend his car to Jeetendra for a week for rupees 3500. This is a case of bailment where Ranbir is a bailor and Jeetendra is a bailee. Jeetendra is liable to pay Ranbir rupees 3500 and also return the car after a week.

Illustration

Ghanshyam lent his house on rent to Shambhu for six months at rupees 10,000 per month. This is a valid contract but not a contract of bailment because the property in this case is an immovable property and immovable properties like land and building are not considered as goods under bailment. Hence this is not a case of bailment.

- **Delivery of Goods:** Section 149 of the Indian Contract Act, 1872 explains the mode of delivery of goods. It states that there may be two modes of delivery: Actual delivery and Constructive Delivery. In actual delivery the bailor hands over physical possession of goods to the bailee and in constructive delivery the bailor does not hand over physical possession of goods but does something which has the same effect of putting the goods in possession of the bailee.

Illustration

Sita gives a piece of cloth to her tailor for stitching a dress. This is a case of actual delivery where the bailor has physically delivered the cloth to the bailee for the purpose of stitching and once the purpose has been fulfilled the bailee returns the stitched cloth to the bailor.

Illustration

Jhankar had some problem with her car. She went to a mechanic and handed him the car keys. This is a case of constructive delivery because here the car (good) is not handed over physically to the bailee, but by delivering the car keys to the mechanic, she (bailor) has given the possession of the car (good) to the mechanic (bailee).

1. **Some Purpose:** The delivery of goods from bailor to bailee is done to accomplish some purpose. If goods are delivered by mistake without any purpose then there is no bailment.

Illustration

Mr Rastogi went to the presswala (dhobi) to give his clothes for ironing. This is a case of bailment where Mr Rastogi is the bailor and presswala is the bailee and the purpose here is to get the clothes ironed.

Illustration

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Naina went to her friend Sunaina's house. While leaving the house she forgot to pick up her purse. After coming home she realized that she had left her purse on the sofa in Sunaina's house. This is not bailment because the purse was left behind in Sunaina's house by mistake.

Check your Progress

Essential features of Bailment

Click the flash cards to know more about features of Bailment.

- **Return of Goods:** After the purpose for which the goods were bailed to the bailee has been fulfilled the goods have to be returned to the bailor.

Illustration

Som had given his shoes for repair to a cobbler. After the shoes were repaired the cobbler was liable to return the shoes to Som. Similarly Som too was liable to pay the shoe repairing charges to the cobbler.

Illustration

Som went to a shoe shop and bought a pair of shoes for himself. This is not a case of bailment and Som is not liable to return the shoes to the shoe owner because here Som is a buyer and not a bailee and the shoe owner is a seller and not a bailor.

Kinds of Bailment

Bailment may be classified according to the benefit derived by the parties. These are as follows:

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- 1. For the benefit of the bailor:** When the delivery of goods by the bailor to the bailee is done for the exclusive benefit of the bailor and the bailee gets nothing in return, that is consideration does not pass between the bailor and the bailee.

Illustration

Rumu gave a piece of cloth to her friend Geeta, who was a fashion designer, to stitch a shirt. Geeta after stitching the shirt gave it back to Rumu. In this case Rumu is the bailor and Geeta is the bailee and Geeta stitches the shirt without taking anything from Geeta.

- 2. For the benefit of the bailee:** When the delivery of goods by the bailor to the bailee is done for the exclusive benefit of the bailee and the bailor gets nothing in return. Hence consideration does not pass between bailor and the bailee.

Illustration

Rumu lent her saree to her friend Geeta for a wedding party. In this case Rumu is the bailor and Geeta is the bailee and Geeta has to return the saree to Rumu after the function is over.

- 3. For the mutual benefit of both the bailor and the bailee:** When the delivery of goods by the bailor to the bailee is done for the mutual benefit of both the parties. In this case consideration passes between the bailor and the bailee.



Figure 12.3 Mutual Benefit

Illustration

Rumu gave a piece of cloth to a tailor for stitching a shirt for rupees two hundred. In this case Rumu is the bailor and the tailor is the bailee and consideration of rupees two hundred passes between the bailor and the bailee.

Bailment may also be classified as Gratuitous and Non-Gratuitous Bailment.

- 1 Gratuitous Bailment:** In this case no consideration passes between the bailor and the bailee. The bailment for the benefit of the bailor and the bailment for the benefit of the bailee mentioned above are gratuitous bailment.

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Illustration

Lucky was going out of station for two days. She had a dog Romeo whom she gave to Satish her neighbour for safekeeping. This is a case of gratuitous bailment.

2 Non-Gratuitous Bailment: In this case consideration passes between the bailor and the bailee. The bailment for the mutual benefit of the bailor and the bailee is a non-gratuitous bailment.

Illustration

Shyama took a necklace on a rent of rupees two hundred from a jeweler for wearing it to a party. This is a case of non-gratuitous bailment.

12.2 Rights and Duties of Bailor and Bailee

12.2.1 Duties of a Bailor

(1) To disclose known facts: The bailor should disclose the known faults about the goods, which he/she has bailed to the bailee. If the bailor does not disclose the defects then he/she is liable for any damage caused to the bailee due to such defects in the goods.

Illustration

Sangeet went for a horse riding. He took a horse from the stable that was mad. The horse owner was aware of the horse's madness but he did not inform Sangeet about it. Sangeet sat on the horse and the horse threw him off as a result Sangeet hurt himself. In this case it was the duty of the horse owner to inform Sangeet about the madness and therefore the owner is liable to compensate Sangeet for the injury sustained by him.

(2) To bear extraordinary expenses of bailment: The bailee is responsible to bear ordinary and reasonable expenses of the bailment but for any extraordinary expenses it is the bailor who is responsible.

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Figure12.4 Extraordinary Expenses

Illustration

Rajni use to leave her daughter in a crèche for rupees 100 a day. One day her daughter became sick and was taken to the hospital by the crèche owner and the owner paid the medical bills. As this is an extraordinary expense therefore it is the duty of Rajni to reimburse the crèche owner all the medical expenses.

Check your Progress

Bailor & Bailee

The person delivering the goods is called the and the person to whom the goods are delivered is called the

Submit

Click the down arrow to view the dropdown list options and select the appropriate one.

1 (L) Bailment

Check your Progress

Rights and duties of bailor and bailee

Accretion to the goods

To return the goods

Not to mix goods

Unauthorized use of goods

Reasonable care of the goods

To indemnify the bailor

To receive back the goods

Extraordinary expenses of bailment

To disclose known facts

Click your mouse each Layer to view associated description.

12.1

(3) To indemnify bailee for loss in case of premature termination of gratuitous bailment: If a gratuitous bailment is terminated by the bailor before the specified time then any loss the bailee incurs due to such termination shall not be born by the bailor. However if the loss suffered by the bailee exceeds the benefit he/she has derived from bailment then in such a case the bailor shall indemnify the bailee.

Illustration

Deepak's relatives had come to Delhi on vacation. He had no vehicle so he borrowed his friend's car for two days. He filled up the petrol tank for rupees two thousand. The very next day his friend came to take the car back. Hence the friend was liable to pay the petrol cost to Deepak as he later incurred a loss of rupees two thousand due to the premature termination of the contract of bailment.

(4) To receive back the goods: Once the purpose for which the goods were bailed out has been fulfilled, it becomes the duty of the bailor to receive back his/her goods from the bailee. He cannot refuse to take back the goods. However if the bailor refuses to take back the goods then the bailee is entitled to receive compensation for the expenses he/she incurs in keeping the goods in his/her custody.

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Illustration

Reena had left her cat at her neighbour's place for two days as she was going out of town. Once she came back it was her duty to fetch her cat back from her neighbour's place.

(5) To indemnify the bailee: If the title of the good is defective and due to that the bailee suffers a loss then the bailor is responsible to the bailee for the loss suffered by him/her.

Illustration

Krishna found a watch on the road and picked it up. He sold it to Rani for a hundred rupees. The watch was not in working condition so Rani got it repaired for rupees fifty. Later the real owner of the watch came and claimed back his watch from Rani. Rani was entitled to be reimbursed for the loss suffered by her in purchasing and using the watch from Krishna (the bailor).

12.2.2 Duties of a Bailee

(1) To take reasonable care of the goods: It is the duty of the bailee to take reasonable care of the goods bailed to him/her by the bailor. According to section 151 of the Indian Contract Act 1872 "the bailee is to take care of the goods as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quality and value as the goods bailed". Section 152 states that if, in spite of taking all reasonable care, the goods are damaged or destroyed in any way, then the bailee is not liable for the loss, destruction or the deterioration of the goods bailed.

Illustration

Roopwati gave her mobile phone for repair to Nikhil at his repair shop. Nikhil forgot to keep the phone in the drawer and the phone kept lying on the table. Someone came to the shop and stole the mobile. Later Nikhil found that the mobile had been stolen. In this case Nikhil is liable to compensate Roopwati, for the loss as the loss was due to his negligence.

Illustration

Roopwati gave her mobile phone for repair to Nikhil at his repair shop. Nikhil kept it safely in the drawer. Late at night after the shop was closed there was a short circuit in the streetlights and this led to a fire. The shop too caught fire. Roopwati's mobile got burnt in the shop. In this case Nikhil (the bailee) took all reasonable care to protect the good from damage, therefore he is not liable for the loss to Roopwati (the bailor).

Case Law 1

Coldman vs. Hill (1919) 1 K.B. 443

In this case some cattle belonging to A were given to B for feeding them grass against payment. Without any negligence on the part of B the cattle were stolen. B did not inform the owner or the police or make any effort to recover the cattle, because he thought it would be useless to do so. It was held by the Court that B was liable for the loss to A.

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Check your Progress

Bailment

In case of no consideration passes between the bailor and the bailee. While in the case of , consideration passes between the bailor and the bailee.

Submit

Click the down arrow to view the dropdown list options and select the appropriate one.

(2) Not to make any unauthorized use of goods: The bailee is not to use the goods in a manner, which is inconsistent with the terms of the contract. If he/she uses the goods in an inconsistent manner then he/she is liable for loss of or any damage to the goods bailed.

Illustration

Ragini gave a piece of cloth to her tailor for stitching a kurti. After two days Ragini went to a friend's wedding and there she saw her tailor wearing her stitched kurti. This is not within the terms of the contract of bailment therefore the tailor has to compensate Ragini for using the kurti for her own personal purpose.

(3) Not to mix goods bailed with his/her own goods: The bailee is to keep the goods bailed to him/her separately from his/her own goods.

If the bailee mixes the goods with his/her goods-

(a) *With the Bailor's consent*- in such a case both the bailor and the bailee shall have a proportionate interest in the mixture produced due to the mixing of the goods.

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Figure12.5 Mixing Goods

Illustration

Ramvir bought a hundred kilograms of rice but due to scarcity of space he requested Shyam to keep the rice in his storehouse. Shyam's storehouse was already filled with rice. When Ramvir's rice was kept in the storehouse it got mixed with Shyam's rice. Whenever Ramvir wants the rice back he will get his share of twenty kilos from the whole bulk.

(b) Without the bailor's consent the goods can be separated: In this case the bailee is liable to bear the expenses of separation as well as the damage caused to the bailed goods due to such a mixture.

Illustration

Ramvir bought a hundred kilograms of wheat but due to scarcity of space he requested Shyam to keep the wheat in his storehouse. Shyam's storehouse was already filled with rice. When Ramvir's wheat was kept in the storehouse the wheat got mixed with Shyam's rice. Whenever Ramvir wants to get his wheat back, Shyam has to separate the wheat from the rice and the expense incurred for separating the two will be born by Shyam.

(c) Without the bailor's consent and the goods cannot be separated: In this case the mixture cannot be separated therefore the bailee is liable to compensate the bailor for the loss of goods.

Illustration

Ramvir bought a hundred kilograms of basmati rice but due to scarcity of space he requested Shyam to keep the rice in his storehouse. Shyam's storehouse was already filled with rice of another variety. When Ramvir's rice was kept in the storehouse the rice got mixed with Shyam's rice. It was not possible to separate Ramvir's rice from Shyam's rice. Therefore Shyam would be liable to compensate Ramvir for the loss of his basmati rice.

(4) To return the goods: The bailee is bound to return the bailed goods to the bailor once the purpose for which the goods were bailed has been fulfilled.

Illustration

Shilpa had given her car to her friend Sikandar to go to Agra from Delhi. Sikandar took the car to Agra and came back to Delhi the next day. Hence Sikandar is bound to return the car to Shilpa.

Case Law 2

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Shaw & Co. vs. Symmons & Sons
(1917) 1 K.B. 799

A delivered some books to B for binding. He pressed for their return, but B neglected to return them although more than a reasonable time had elapsed. A fire accidentally broke out on B's premises, and the books were destroyed. Held, B was liable for the loss, although he was not negligent, because of his failure to deliver the books within a reasonable time.

(5) To return any accretion to the goods: If during the period of bailment any profit or addition in value has accrued from the goods bailed then it is the duty of the bailee to return such profit or increase in value to the bailor.

Illustration

Mr Sharma's family was going for a vacation to Goa so they left their dog Sherly at their neighbor Mr Hussain's house. During that time Sherly gave birth to six puppies. It was Mr Hussain's duty to return Sherly and her puppies to Mr Sharma once his family came back from Goa.

12.2.3 Rights of Bailor

(1) Duties of a Bailee: The duties of a bailee are the rights of a bailor. The bailor can enforce by suit all the duties of the bailee as his/her rights²⁶.

(2) Right to terminate the contract: According to section 153 of the Indian Contract Act "the bailor can at anytime terminate the contract of bailment if he/she finds that the bailee has done an act which is inconsistent with the terms of the contract of bailment".

Illustration

Mrs Nagpal had given her cooking gas cylinder to her neighbor Mrs Saxena who had recently shifted to the neighborhood and did not have gas for cooking. Later Mrs Nagpal found that Mrs Saxena was using the gas for commercial purposes. She was making sweets and various delicacies and serving the dishes to a restaurant. Hence Mrs Nagpal had the right to terminate the contract.

(3) Right to demand return of goods at any time in case of gratuitous bailment: According to section 159 of the Indian Contract Act in case the bailor has lent the goods gratuitously to the bailee the bailor has a right to terminate the contract anytime before the expiry of the period. However if the termination causes loss to the bailee and the loss is in excess of the benefit derived by him/her then the bailor has to indemnify the bailee's loss.

Illustration

Anshita was a poor girl and did not have money to buy law book. Her classmate Mangla had two law books. She lent one to her friend Anshita for preparing for the exam. As the book was old and worn out Anshita got the book bound for rupees Twenty. Later Mangla lost her law book and asked Anshita to return the law book. However Mangla was liable to pay Anshita rupees twenty for the binding of the book.

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(4) Compensation from a wrongdoer: According to section 180 of the Indian Contract Act if a third person wrongfully deprives the bailee from the rightful use or possession of bailed goods or does them any injury or damage then the bailor or the bailee can bring a suit against that person for such deprivation or injury.

Illustration

Keshav had visitors at his house so he took ten blankets for one night on rent from a shop. Keshav's cousin put the blankets in a bucket of water. The blankets got wet and so could not be used in the night. The cousin thus prevented Keshav from using the blanket and so had to compensate Keshav for the loss.

12.2.4 Rights of Bailee

1 Duties of a Bailor: The duties of a bailor are the rights of a bailee. The bailee can enforce by suit all the duties of the bailor as his/her rights²⁷.

2 Right to deliver goods to one of several joint bailors: According to section 165 of the Indian Contract Act "if the goods have been bailed by several joint owners, the bailee has a right to deliver them to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary".



Figure12.6 Joint Bailors

Illustration

Dinesh took a costume on rent for playing the part of Ravana in a Ramlila from a shop which was owned by three brothers Rinku, Pinku and Tinku. Rinku had given the costume to Dinesh but after the Ramlila was over Dinesh went to the shop and returned the costume to Pinku.

3 Right to deliver goods, in good faith, to bailor without title: According to section 166 of the Indian Contract Act the bailee has a right to deliver the goods, in good faith, to the bailor without title, without incurring any liability towards the true owner.

Illustration

Sunita took a cloth piece belonging to her mother to a tailor and asked him to stitch a cushion cover. Later Sunita's mother visited the tailor and asked him to return the stitched cushion cover to her. The tailor refused to hand over the cushion cover to her and instead returned the cover to Sunita. Although the mother was the owner of the cloth the tailor had the right to deliver it only to Sunita (the bailor).

4 Right of lien: Lien means the right to retain possession of a property or goods which belong to another person until that person pays all dues or claims. The bailee can

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exercise the right to lien only till the goods are in his/her custody. As soon as the bailee loses the possession of goods he/she loses the right to lien. Liens are of two types:

(a) *Particular lien*- According to section 170 of the Indian Contract Act where a bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of goods bailed, he/she has, in the absence of a contract to the contrary, a right to retain such goods until he/she receives due remuneration for the services he/she has rendered in respect of them.

Illustration

Rumpa gave her car to a car service centre for servicing. If Rumpa does not pay the servicing charges then the service center can exercise the right of particular lien. They can retain the car and keep it in their possession till the servicing charges are paid by Rumpa.

There are three conditions, which have to be fulfilled to get the right of particular lien:

- 1 The bailee should have rendered some service to the bailor for the goods bailed and therefore be entitled for some remuneration for it.
- 2 The service rendered by the bailee must be one involving the exercise of labour or skill in respect of the goods bailed, so as to confer an additional value on the article.
- 3 The services must have been performed in full in accordance with the directions of the bailor, within the agreed time or a reasonable time.

General Lien-According to section 171 of the Indian Contract Act, General Lien is a right to retain the goods of another as a security for a general balance of account. The bailee can retain the goods bailed to him/her for any amount due to him/her whether in respect of those goods or any other goods. The bailees who have a right of general lien are bankers, factors²⁸, attorneys of High Courts and policy brokers (they can retain the policy of fire or marine insurance for their brokerage).

Illustration

Ghanshyam had taken a loan of rupees five lakh from Kantilal by mortgaging his wife's jewelry with him. Ghanshyam paid back ninety percent of the loan amount but due to some emergency he had to take a further loan of rupees two lakh. Though the jewelry was kept as a security for the first loan, Kantilal retained the jewelry as a security for the subsequent loan.

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12.3 Finder of Goods

According to section 71 of the Indian Contract Act "a person who finds goods belonging to another and takes them into his/her custody is subject to the same responsibility as that of a bailee".

The rights of a finder of goods are as follows:

- (1) Right of lien:** The finder of goods has a right of lien over the goods for his/her expenses. He /she can retain the goods against the owner until he/she receives the compensation or expenses but the finder cannot sue the owner for such compensation or expenses because he/she incurred those expenses voluntarily.

Illustration

Rita found a small puppy that was injured. She took him to a vet and got his injuries treated. She kept the puppy in her house and after a week the owner of the puppy came to her house and asked her to return the puppy. Rita claimed compensation for the expenses she had incurred on the puppy's medical treatment, food and bedding. The owner refused to compensate Rita for the expenses incurred by her so Rita exercised the right of lien on the puppy.

- (2) Right to sue for reward:** The finder can sue for a reward, which the owner has offered for the return of goods and the finder can also exercise the right of lien till he/she gets the reward from the owner.

Illustration

Rita found a small puppy but in spite of all her efforts failed to find the owner of the puppy. Later she found an advertisement in the paper that said that a puppy was lost and anybody who finds the puppy will be rewarded with a cash prize of rupees five thousand. Rita contacted the owner and told him about the puppy. The owner came and found that it was his puppy but he refused to give the promised reward to Rita. Hence Rita could exercise the right of lien on the puppy.

- (3) Right of sale:** The finder also has a right to sell the goods²⁹

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12.4 Termination of Bailment

Termination means the end of a contract or a discharge of a contract. The contract of bailment can be discharged in the following ways:

(1) On the expiry of the period: When the bailment of good is made for a specific period and that period expires then the bailment also comes to an end.



Figure12.7 Task Completed

Illustration

Mr Gujral took a bike from his neighbor Shrinath for two days as his bike had gone for repair. He used the bike for two days and then returned the bike to Shrinath. Thus the contract of bailment came to an end.

(2) On the completion of the task or the achievement of the objective: When bailment of goods is made for a particular purpose and that purpose gets accomplished then the bailment comes to an end.

Illustration

Jaggu takes Manoj's mobile to make a call. Once the call has been made the bailment comes to an end and Jaggu has to return the mobile to Manoj.

(3) Inconsistent uses of goods by the bailee: When bailment is made and the bailee does an act which is inconsistent with the terms of contract then the bailor can terminate the contract.

Illustration

Rustam borrowed Kavi's Car to go to Dehradun but instead he took the car to Kanpur. Hence Kavi terminates the contract because of inconsistent usage of the good borrowed.

(4) Destruction of the subject matter: When the subject matter of the contract gets destroyed or becomes incapable of being used for the purpose of bailment then the bailment ends.

Illustration

Mr Arora gave his shirts and trousers for dry-cleaning at the dry cleaning shop. The same night there was fire in the shop and the shirt and trousers of Mr Arora. Hence the contract of bailment came to an end.

1 (L) Bailment

(5) Gratuitous Bailment: It can be terminated anytime subject to conditions laid down in section 159 (please see page 8 for more on Gratuitous Bailment in this lesson above)

(6) Death of the bailor/bailee: In case any of the parties to the contract of bailment expires the contract terminates.

Illustration

Geeta had given her saree to Sangita for doing some embroidery work on the border of the saree. Sangita met with an accident and died the next day. Hence the contract of bailment came to an end.

12.5 Pledge

According to section 172 of the Indian Contract Act when bailment of goods is done as security for payment of a debt or performance of a promise it is called a pledge. In case of a contract of pledge the bailor is called the pledger or pawnor and the bailee is called the pledgee or pawnee.

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from a moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for the payment of the debt. In this case Ramnath is the pledger, the moneylender is the pledgee and the cow is the good that has been pledged for the performance of the promise.

Table 12.5.1 shows the difference between Bailment and Pledge

TABLE 12.5.1

Basis of difference	Bailment	Pledge
Purpose	Goods are given for some purpose to be accomplished	Goods are given as a security for the payment of a debt or for the performance of a promise.
Parties	Bailor is the person who delivers the goods and Bailee is the person who keeps the goods	Pawnor / Pledger is the person who delivers the goods as a security and Pawnee / Pledgee is the person who keeps the goods in his/ her custody till the debt is repaid or the promise is performed.
Rights	In case the Bailor fails to make the payment to the Bailee for the work done, the Bailee can either retain the goods or sue the Bailor for his/her charges.	In case the Pawnor fails to repay the debt, the Pawnee has the right to sell the goods pledged with him/her.

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Usage	The Bailee has a right to use the goods if the terms of bailment so provide.	The Pawnee/ Pledgee has no right to use the goods pledged with him/her.
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Check your Progress

Differences between Bailment and Pledge

Bailment	Pledge
<ul style="list-style-type: none"> ● Goods are given for some purpose to be accomplished 	<ul style="list-style-type: none"> ● Goods are given as a security for the payment of a debt or for the performance of a promise.
<ul style="list-style-type: none"> ● Bailor is the person who delivers the goods and Bailee is the person who keeps the goods 	<ul style="list-style-type: none"> ● Pawnor / Pledger is the person who delivers the goods as a security and Pawnee / Pledgee is the person who keeps the goods in his/ her custody till the debt is repaid or the promise is performed.
<ul style="list-style-type: none"> ● In case the Bailor fails to make the payment to the Bailee for the work done, the Bailee can either retain the goods or sue the Bailor for his/her charges. 	<ul style="list-style-type: none"> ● In case the Pawnor fails to repay the debt, the Pawnee has the right to sell the goods pledged with him/her.
<ul style="list-style-type: none"> ● The Bailee has a right to use the goods if the terms of bailment so provide. 	<ul style="list-style-type: none"> ● The Pawnee/ Pledgee has no right to use the goods pledged with him/her.

Bailment and Other Similar Relations: A Comparison

An agent who has collected money on his principal's behalf is not a bailee of the money. In *United Commercial Bank Vs. Hem Chandra Sarkar*³⁰, The Honourable Justice Setty made an observation in this respect whereby he clarified the distinction between bailment and agency. He said, "One important distinguishing feature between agency and bailment is that the bailee does not represent the bailor. He merely exercises, with the consent of the bailor (under contract or otherwise) certain powers of the bailor in respect of his property. Secondly, the bailee has no power to make contracts on the bailor's behalf, nor can he make the bailor liable, simply as bailee, for any acts he does."

A bailment is also different from sale, exchange or barter. In these transactions what is transferred is not mere possession but also ownership and, therefore, the person buying is under no obligation to return.

1 (L) Bailment

12.6 Rights and Duties of Pawnor and Pawnee

Rights of a Pawnee/ Pledger

The rights of a Pawnee are as follows:

(1) Right of retainer: According to section 173 of the Indian Contract Act the Pawnee has the right to retain the goods pledged with him /her if the Pawnor / Pledger does not repay the dues or does not perform the promise. The Pawnee may also retain the goods till the Pawnor pays the interest due on the debt.

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from the moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt. Ramnath failed to return the money on time; as a result the moneylender had a right to retain the cow with him till Ramnath paid back the loan amount.

(2) Right of retainer for subsequent advances: According to section 174 of the Indian Contract Act if the pawnee lends money to the same pawnor after the date of the pledge then the pawnee's right of retention of goods extends to subsequent advances.

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from a moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt for one year. After a year Ramnath paid back all the money he had taken to the money- lender and also took a fresh loan of rupees twenty thousand from him. The moneylender retained the cow as a security for the subsequent loan.

(3) Right to extraordinary expenses: According to section 175 the Pawnee is entitled to receive from the pawnor the reimbursement of extraordinary expenses incurred by him for the safe keeping of the goods pledged with him. Though he has no right to retain the goods for non-payment of such expenses, yet he/she can sue the Pawnor for the recovery of such expenses.



Figure12.8 Extraordinary Expenses

1 (L) Bailment

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from the moneylender for his daughter's wedding and he kept his cow with the moneylender. The cow fell sick and the moneylender had to bear the expenses on her medical treatment. Hence the moneylender had a right to be compensated by Ramnath for the medical expenses. Though the moneylender did not have the right to retain the cow for recovery of such expenses, he had the right to sue Ramnath (the pledger) for recovery of the expenses.

(4) Right against true owner, when the Pawnor's title is defective: According to section 178-A, "if the Pawnor has got the possession of goods which he /she has pledged with the Pawnee under a voidable contract (by fraud, misrepresentation, undue influence and coercion)³¹ and the contract has not been rescinded at the time of the pledge, the Pawnee acquires a good title to the goods. The Pawnee gets a good title only when he acts in good faith and does not have the knowledge of the Pawnor's defect of title".

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from the moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt. Actually the cow belonged to Ramnath's elder brother Shyamnath. The moneylender was ignorant about this. Hence Shyamnath did not have the right to take the cow back from the moneylender during the period of the pledge.

(5) Right to recover from the Pawnor any deficiency arising on the sale of the goods and liability to the Pawnor to return any surplus, if any, realized on the sale of goods: In this case if the pawnor fails to repay within the due date then the pawnee has a right to sell the goods pawned and recover the money from it. In case the sale proceeds are more than the loan amount then the pawnee is liable to return the surplus to the pawnor, and if the sale proceeds are less than the loan amount then the pawnee can recover the deficient amount from the pawnor.

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from a moneylender for his daughter's wedding and he left his cow with the moneylender as a security for payment of the debt for a year. A year lapsed and Ramnath could not pay back the debt. Hence the moneylender sold the cow to recover his money. After selling the cow he got rupees ten thousand which was less than the loan money. Hence the deficient money could be recovered from Ramnath.

Illustration

Ramnath a farmer took a loan of rupees ten thousand from a moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt for a year. A year lapsed and Ramnath could not pay back the debt. The moneylender sold the cow to recover his money. After selling the cow he got rupees fifteen thousand which was more than the loan amount. Hence the excess money had to be returned to Ramnath.

1 (L) Bailment

Rights of a Pawnor / Pledger

The rights of a Pawnor are as follows:

(1) Right to get goods back: After returning the debt or after performing the promise the pawnor is entitled to get his goods back.

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from a moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt for a year. After a year Ramnath returned the money to the moneylender and took his cow back.

(2) Right to redeem debt: In case the pledger fails to repay the debt or does not perform the promise within the stipulated time, then he/she may still redeem the goods pledged at any subsequent time before the actual sale of the goods take place. However the pawnor has to pay any expenses which have arisen due to his / her default.



Figure12.9 Right to Redeem Debt

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from a moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt for a year. After a year Ramnath could not pay the loan money. As a result the moneylender decided to sell the cow before the day when the cow was to be sold. Ramnath arranged the money and gave it to the moneylender. However he had to pay extra money for the additional days after the expiry of the loan period.

(3) Right for preservation and maintenance of goods: The Pawnor has a right to see that his/ her goods are kept safely with the Pawnee, that is that the Pawnee preserves the goods and properly maintains them.

Illustration

Ramnath a farmer took a loan of rupees fifty thousand from a moneylender for his daughter's wedding and he kept his cow with the moneylender as a security for payment of the debt for a year. Ramnath had a right to see that his cow was kept properly by the moneylender.

(4) Rights of an ordinary debtor: The Pawnor apart from having all the rights mentioned above also has the rights of a debtor³².

1 (L) Bailment

12.7 Pledge By Non-Owners

Generally it is only the owner of goods who has the power and authority to pledge the goods, but in some cases even the non-owners can pledge the goods. The cases where the non-owners can pledge the goods are the following:

1 Mercantile Agents: In this case the agent has a right to pledge the goods in the ordinary course of business with the consent of the owner.



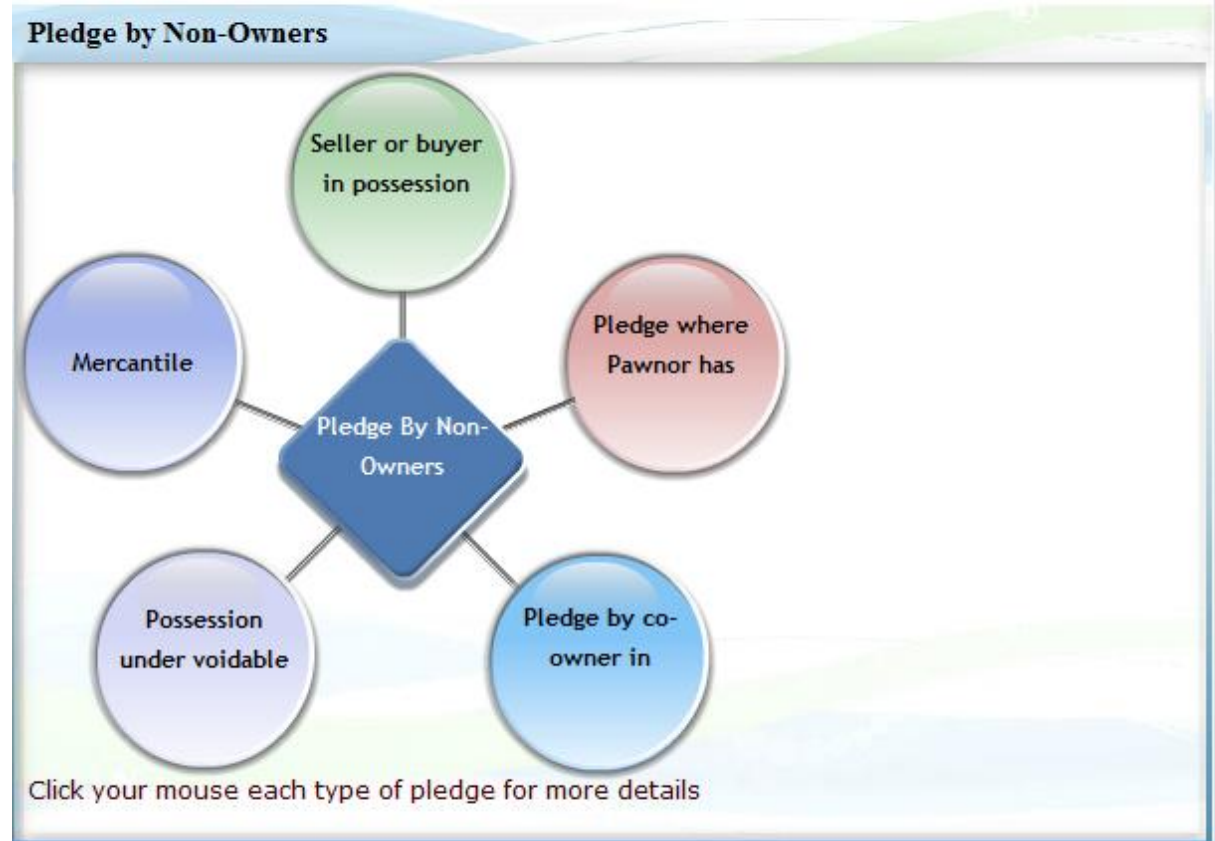
Figure12.10 Non-Owners Pledge

Illustration

Sudhir was an agent of Yogendra who was a manufacturer of readymade garments. Yogendra had a shortage of working capital due to bad debts therefore Sudhir took a loan of rupees fifty thousand from Devendra and kept as security a hundred suits worth rupees thousand each with Devendra for a period of six months.

1 (L) Bailment

Check your Progress



2 Pledge by seller or buyer in possession after sale: There are two situations in this. In the first situation the seller is left with possession of goods after sale has been made. In the second situation the buyer obtains possession of goods with the consent of the seller before the sale has been made. According to section 30 of the Sale of Goods Act 1930, in both the situations the respective possessors of goods have the right to pledge the goods provided the Pawnee or the Pledgee acts in good faith and has no notice of the previous sale of goods to the buyer or of the lien of the seller over the goods.

Illustration

Simran bought (paid full money) a television set from a shop but did not take it with her as she was shifting to a new house and so wanted the seller to send the set after two days into her new house. Later that day the seller took money on loan from his friend and pledged the sold television set to him.

Illustration

Simran wanted to buy a television set on easy installments. She took the television set home and promised the seller to pay the balance in twenty monthly installments. The very next day Simran took money on loan and pledged the television set to the creditor.

1 (L) Bailment

3 Pledge where Pawnor has limited interest: According to section 179 of the Indian Contract Act, "where a person pledges goods in which he / she has limited interest, the pledge is valid to the extent of that interest. A person having a lien over the goods or a finder of goods may pledge them to the extent of his /her interest".

Illustration

Margaret found a wristwatch lying on the road and could not find the owner of the watch. She took the watch home and because it was not working, she got it repaired for rupees two hundred. After a couple of days she took some money from a friend on loan and pledged the watch with her. The pledge was valid to the extent of Margaret's interest in the watch, namely rupees two hundred.

Cas Law 3

Thakurdas vs. Mathura Prasad
(1985) A.I.R. All. 66.

A delivers a suit length to B, the tailor, for making a suit and agrees to pay Rs. 1500 as sewing charges. After stitching the suit, B pledges it to C for Rs. 3000. The pledge is valid to the extent of B's interest in the suit, namely Rs. 1500. A can recover the suit only by paying Rs. 1500 to C, the pledgee.

4 Pledge by co-owner in possession: Where the goods belong to more than one owner, one of the several co-owners of goods who is in possession of the goods with the consent of the other owners has a right to create a valid pledge of the goods.

Illustration

Two sisters Reena and Susmita were gifted a car by their father. Reena was in need of money so she went to a moneylender and took a loan of five lakh and pledged the car to the creditor with the consent of her sister.

5 Pledge by person in possession under voidable contract: According to section 178-A, "if a person obtains possession of goods under a voidable contract, the pledge created by him / her is valid provided:

- (1) The contract has not been rescinded before the contract of pledge
- (2) The Pawnee acts in good faith and has no knowledge about the defective title of the Pawnor".

Illustration

Sita purchased a necklace worth rupees one lakh from a jeweler and paid cash. Later the jeweler found that the cash consisted of fake notes. Meanwhile Sita went to a moneylender and took a loan of rupees two lakh and pledged the necklace to him. As the jeweler had not rescinded the contract before the contract of pledge was entered into and also as the moneylender was unaware of the fraud and took the necklace as a security in good faith, the contract of pledge was a valid contract.

1 (L) Bailment

Summary

Bailment

Definition
Essential features of Bailment
Kinds of Bailment

Rights and Duties of a Bailor and a Bailee

Duties of a Bailor
Duties of a Bailee
Rights of Bailor
Rights of Bailee
Mistake or Coercion

Finder of Goods

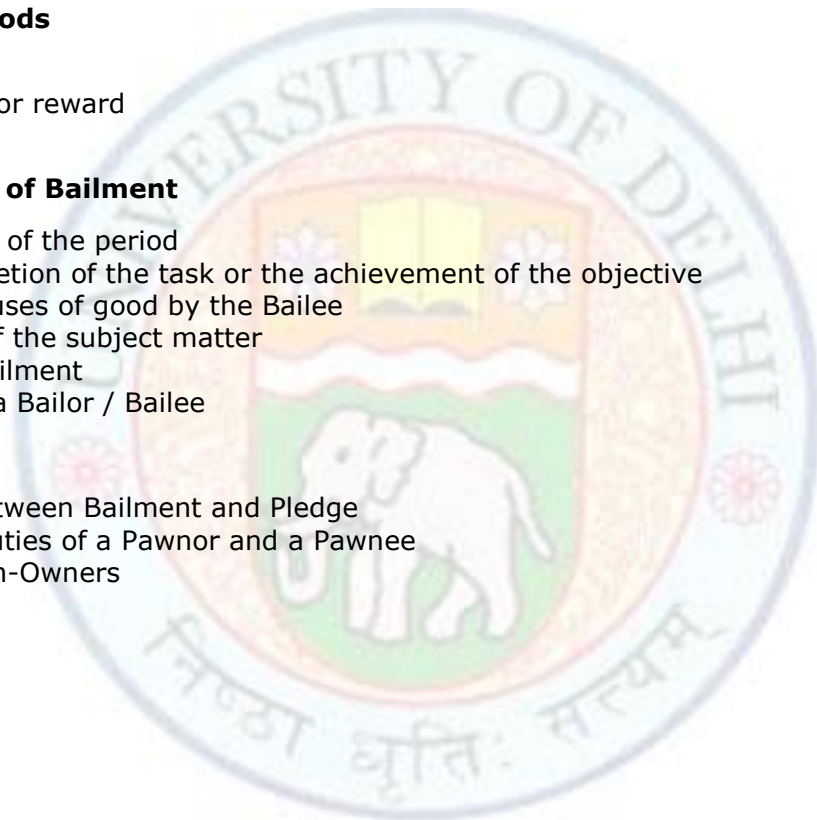
Right of Lien
Right to sue for reward
Right of sale

Termination of Bailment

On the expiry of the period
On the completion of the task or the achievement of the objective
Inconsistent uses of good by the Bailee
Destruction of the subject matter
Gratuitous Bailment
Death of the a Bailor / Bailee

Pledge

Difference between Bailment and Pledge
Rights and Duties of a Pawnor and a Pawnee
Pledge by Non-Owners



1 (L) Bailment

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