Unit - 8 Bailment & Pledge

Delivery (→ Possession) of Goods ← Bailment → that once the purpose is accomplished

By one person [Bailor] — To another [Bailee]

For some Purpose upon a contract

Goods must be returned (or) disposed of according to direction of Bailor.

* Essentials Elements

1. Delivery of Possession — Actual / Constructive.
2. Delivery should be upon contract.
3. Ownership is not transferred.
4. Deposit of money in Bank is not Bailment.
5. Purpose — Implied / Express
6. Return of Goods
   - must be returned in the same form or altered form as per Bailor's direction
   - Exchange not allowed
   - Bailee cannot deliver goods of Higher value

Possession V/S Custody

True Test "Owner's Intention."

- To give full control over the property to another. [Possession] → Bailment Created
- No Intention to Give Exclusive control to other person over property. [Custody] → No Bailment.

Things delivered by one person to another for some act like repairs

- For which another is paid → ACT FOR REWARD [Non-Gratitious Bailment] → For the benefit of Both
- For which another is not paid → ACT WITHOUT REWARD [Gratitious Bailment] → Benefit { Bailor / Bailee

* Duties of Bailor *

(1) Disclose Known Facts

① Gratitious Bailment
→ Bailor is bound to disclose faults

- which the Bailor is aware & which may expose the Bailee to extra ordinary risk. If not Disclosed → Bailor Responsible for damage to Bailee.
- what if Bailor is not aware of the facts? → Bailor not liable.

(b) Non- Gratitious Bailment
→ Bailor is liable whether he was or was not aware of facts.

(2) Duty to pay necessary expenses

@ Gratitious Bailment
- Things delivered to another for some act without reward.
- Bailor shall repay to Bailee.
  → Necessary Expenses
  → Extra - ordinary Expenses
  incurred by Bailee.

(b) Non Gratitious Bailment
- Bailor is liable to pay Extraordinary expenses to Bailee

(3). Indemnify Bailee for Premature Termination
For the loss or damage suffered by Bailee in excess of Benefit received.
↳ Where the Bailor lents goods gratitiously and terminates before expiry of Period of Bailment.

(4) Bailors responsibility to Bailee.
- Indemnify For any loss
→ By reason that Bailor was not entitled to make Bailment
- To Receive Back the Goods.
→ When Bailee returns after the time of Bailment.
Else Bailee can claim necessary Expense.

* Rights of a Bailor *

(1) To Terminate the Bailment
→ If the Bailee does any act with Goods, inconsistent with the conditions of Bailment.

Circumtances of Terminations.

- Right to Demand Back the goods lent gratitiously at any time
  - without Compensation
  - with compensation
    ↓
    if Bailee suffers loss due to premature return.
- Right to Sue the Bailee
- Right to Compensation
  ↓
  If any damage is caused to goods bailed by anauthorised use or mixing of goods.

* Duties of A Bailee *

(1) Take reasonable care of the goods bailed to him as a man of ordinary prudence.

(2) Not to make inconsistent use of Goods
→ otherwise liable to compensate bailor for any loss or destruction of goods.
↓

→ Bailment is voidable at the option of Bailor if Bailee makes inconsistent use of Goods

(3) Not to mix the goods

If bailee mixes the goods with his own goods.

With the Consent of Bailor
↓
Both parties shall have an interest in proportion to their respective shares.

Without consent

Goods can be separate
↓
ownership remains in party respectively
↳ Bailor is bound to bear expense of seperation.

Impossible to separate
↓
Bailor is entitled to compensation to Bailee

(4) Return the Goods bailed without demand when time expired or purpose accompleished.

→ If Default made - Bailee for Loss, destruction etc of goods.

(5) To pay the increase or profit to the Bailor.

→ Unless otherwise agreed, Bailee is bound to deliver, the Bailor any increase or profit accured froms goods Bailed.

(6) No to setup adverse tittle. He cannot deny the title of Bailor

* Rights of Bailee *

(1) To deliver goods to any one of the Joint Bailors.

(2) Right to Indemnify

(3) Claim compensation in case of faulty goods.

(4) Right to apply to court to decide title of Goods bailed to him & claimed By person other than Bailor.

(5) Right of Particular & General Lien

(6) Right to claim necessary expenses.

* Termination of Bailment *

(1) On Expiry of Stipulated Time

(2) On fulfillment of Purpose

(3) By NOTICE

When Bailee acts inconsistently

Premature Bailment of Gratitous Bailment.

(4) By Death of Either Bailor or Bailee

(5) Destruction of Subject Matter.

* Finder of Lost Goods * [Sec 168]

Meaning

→ Who find some goods which do not belong to him.

Duties

- Find the True owner
- Surrender the Goods to Him

Finder of Lost Goods

Can sue the owner

Where the owner has offered a specific reward

- Sue for Reward
- May Retain the goods until then

Cannot sue

Owner does not offered a reward.

Finder of Lost Goods may retain the goods until compensated.

When Finder of thing commonly on sale may sell it [Sec 169]

- Owner Cannot be found after Reasonable Diligence.

OR

- Owner Refuses upon demand to pay the Lawful charges.

→ Finder May sell it

- If the thing is in danger of Perishing & Losing the Greater Part of Value
- Lawful Charges of Finder amounts to $\frac{2}{3}$rd or more of Goods found.

Lien

Meaning

Right to retain Goods in possession belonging to the other person until demand [Payment for the work & labour] of the person in possession is fulfilled

Restrictions

- Lien gives only a right to retain goods in possession
- No Right to sell it

* Particular Lien * [Sec 170]

Where bailee rendered any service involving the excercise of labour & skill in respect of Goods bailed, he has, unless otherwise agreed, a right to retain such goods until he receives remuneration for service Rendered.

Conclusion

① When there is no contract to the contrary

② Bailee rendered some service or labour or skill to the Goods.

* General Lien *

Bankers, Wharfingers, Factors, Policy Brokers, Attorneys of Law

→ May, unless otherwise agreed, retain as a security For General Balance of Account any goods Bailed to them

* Pledge * [Sec 172]

Bailment of Goods by way of security

For

Payment of Debt or Performance of Promise

Bailor → Pawnor

Bailee → Pawnee

* Essential Elements of Pledge *

1. Bailment for security against debt or performance of Promise
2. Goods movable
3. Goods → Existence
4. Deliver of Goods → Pledger to Pledgee

* Rights of Pawnee / ~~Pawnee~~ Pledgee

(a) Right to Retain the Pledged Goods by Pawnee [173]

Not only for payment of Debt or performance of Profit.

But also for interest of Debt + all necessary expense for Possession or presentation of Goods.

(b) Right to Retention of Subsequent Debts [Section 174]

But he can do so only when it has been provided in contract.

(c) Pawnee's right to receive extraordinary expense from Pawnor For Preservation of Goods Pledged. [175]

Pawnee cannot retain Goods

But he can sue the Pawnor for such Expense

(d) Pawnee's Right where pawnor makes default [Sec 176]

or

Bring suit against the pawnor

and

Retain the goods as security

Sell Goods after giving reasonable notice to pawnor

After sale proceeds.

Less than the amount due as debt

↓

Pawnor still liable to pay

Greater than the amount due

↓

Pawnee shall pay over the surplus to the pawnor.

* Right To Redeem * [Sec 177]

If Pawnor makes default in payment of Debt or performance of Promise at stipulated time.

He may still redeem the goods Pledged at any subsequent time before the actual sale

But he must in that case pay in addition any expenses arisen from his default.

Duties of The Pawnee

Not To

→ Make unauthorise use of goods

→ Mix his own goods with goods pledged

→ Any consistent act

To

→ Take reasonable care

→ Return the goods after payment of Debt or Performance of Promise

→ Return the increase in goods, if any.

Duties of a Pawnor.

1- Liable to pay debt or perform the promise

2. Disclose all the faults which may put pawnee under extraordinary risk.

3- Indemnify the Pawnee due to defective title.

4. After sale, pay the deficit if any.

5- Compensate pawnee for extra ordinary expenses for Preservation of Goods.

* Pledge By Non- Owners *

(a) Pledge By Mercantile Agent [Section 178]
↳ Dalaal

→ In passession of goods or document of title of goods

→ Acting in ordinary course of Business

→ Pawnee acts in good faith and has no notice of acthority of Pawnor i.e Pawnor has no autharity to Pledge.

→ With the concent of owner.

↳ If fulfills above conditions, Pledge made him valid.

(b) Pledge by person in passession of under vaidable contract [Sec 178 A]

By Fraud | Coercion | Misrepresentation | Undue influence

But contract has not been rescinded at the time of Pledge.

↓

Pawnee

- Acquires Good Title to the goods
- If he acts in good faith for value and without notice of defective title.

(c) Pledge where Pawnor has a only Limited Interest [Sec 179]

- Pawnor is not the absolute owner of Goods
- Pledge is valid to the extent of that interest

(d) Pledge by co-owner in possession

(e) Pledge by seller or buyer in possession

* Distinction B/w Bailment & Pledge

Basis	Bailment	Pledge
Terms	Bailor Bailee	Pawnor or Pawnee
Purpose	safe custody, repair, process of goods	Security for repayment of Debt or performance of Promise
Consideration	with or without	Always
Right to sell	No Right	If Default, Resell