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## Law of Contract

### Topic: Bailment: Definition, essentials and difference from pledge

The word "Bailment" is derived from the French word "Ballier" which means to deliver or handing over. In legal sense, it involves change of possession of good from one person to another for some specific purpose

#### Definition:

As per Section 148 of Indian Contract act,1872 - "Bailment as a 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 person delivering them"

#### Parties Of Bailment:

- 1- **Bailor**- The person delivering the goods is known as Bailor.
- 2- **Bailee**- The person to whom the goods are delivered is known as Bailee.

The relation between both the Bailor and the Bailee is known as Bailment.

#### Example-

---A delivers a piece of cloth to B( a tailor) to be stitched into a suit. Thus there is a contract of bailment between A and B. Here A is the Bailor and B is the Bailee.

---A Lents a book to B to be returned after the examination there is a contract of Bailment between A and B.

#### Essentials-

**1-Delivery of possession:** A Bailment necessarily involves delivery of possession of goods by the Bailor to Bailee. Mere custody of goods does not create relationship of Bailor and Bailee.

Example- A servant who receives certain goods from his master to take to a third party has mere custody of the goods; possession remains with the master and servant does not become a bailee.

Section 149 provides that the Delivery of Possession of the goods to the Bailee may be

- a) Actual
- b) Constructive

There will be actual delivery when the bailor handover to the bailee physical possession of the goods. Thus if a person takes the custody of another person's goods even without any formal agreement this is sufficient to constitute Bailment.

**In *Ultizen v. Nichols*** , The Plaintiff went to the defendant's restaurant for the purpose of dining there. When the plaintiff entered in the restaurant a waiter took the plaintiff's coat from him without being requested to do so, and hung it on a hook behind the Plaintiff. The coat got lost. It was held that owner of the restaurant was liable for his waiter's default.

Constructive- where there is no change of physical possession goods remaining where they are, but something is done which has the effect of putting them in the possession of the bailee, there will be a case of constructive delivery.

Handing of the key of the godown, delivery of the railway rescript are the case of the constructive delivery.

There may be a case where the goods are in physical custody of a person yet the constructive possession is with some other person in such a case the person having physical possession is not said to be a bailee.

In *Kalia perumalpillai v. Visa Lakshmi* , a lady employed a goldsmith for melting her old jewelry and making new one out of it. Every evening she received the half made jewelry and put it into a box kept at the goldsmith's premises. She kept the key of the box with herself. One night the jewelry was stolen from the box. It was held there was no Bailment.

- 2- Delivery should be under a contract:** A Bailment is usually created by agreement between the Bailor and the Bailee. The agreement may be express or implied however they may be Bailment even without a contract. For example : When a person finds the goods belonging to another, a relationship of Bailee and Bailor is automatically created between the finder and the owner. In *K.D. Patil v. State of Mysore(1977)* A's ornaments having been stolen and recovered by the police disappeared from police custody. The State was held liable.
- 3- Delivery should be for some purpose:** The delivery of the goods from Bailor to Bailee must be for some purpose. For example: Car or Bike has been given for repairing to mechanic. If goods are delivered by mistake to a person there is no Bailment.
- 4- Delivery should be on the condition of return of specific goods:** It is agreed between the Bailor and the Bailee that as soon as the purpose is achieved the goods shall be returned or disposed off according to the directions of the Bailor. If the goods are not to be specifically returned there is no Bailment but there is a Bailment even if the goods bailed are returned in altered form. For example: When a piece of cloth is stitched into a coat. Currency deposited in a bank is not Bailment because same currency notes are not returned by the bank.

### **Distinction between Bailment and Pledge**

#### **1. Purpose**

In a Bailment the goods are delivered for some purpose. For example: Repairing or safe keeping whereas in a Pledge the goods are delivered for the security against the debt.

**2. Relating to definition of Section**

Bailment is defined in Section 14s whereas Pledge is defined in Section 172.

**3. Name of Parties**

In a Bailment there are two parties Bailor and Bailee whereas in Pledge parties are Pawnor and Pawnee.

**4. Consideration**

In a Bailment consideration may or may not be present whereas in Pledge consideration is always present.

**5. Right to sell the goods.**

In a Bailment Bailee has no right to sell the goods whereas in a Pledge the Pawnee has right to sell the goods if Pawnor fails to pay the debt.

**6. Use of goods.**

In a Bailment Bailee can use the goods only for the specified purpose whereas in a Pledge the Pawnee has no right to use the goods.

**7. Every Pledge is a Bailment but every Bailment is not a Pledge.**