

## **PLEDGE : MEANING ESSENTIALS**

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### **PLEDGE : MEANING and ESSENTIALS**

**Meaning [S.172]:-** All pledges are bailment but all bailments are not pledge. Therefore, only those bailments are pledge where one party has delivered the possession of goods to another party as a security for a loan or for fulfilment of a promise. As S.172 provides the bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Thus, valid pledge come into existence only when:

- (i) One person (Pawnor) has delivered the possession of the goods to other person (Pawnee);
- (ii) Such possession of the goods has been delivered upon a contract.
- (iii) Possession of the goods has been delivered as a security for
  - (a) a payment of a debt; or
  - (b) fulfilment of the promise.
- (iv) Delivery has been made on the condition that the security shall be returned when:
  - (a) loan is repaid or
  - (b) on the fulfilment of the promise.

#### **Parties of the Pledge:**

- (i) Pawnor or pledger (Bailor)- The person who delivers the possession of the goods.
- (ii) Pawnee or Pledged (Bailee)- The person to whom the possession of the goods are delivered as security.

The relation between pawnor and pawnee is called pledge.

**Example-**Gauri borrowed Rs. 10,000 from Rajni and delivered her golden Chain as security for repayment. In this case

Pawnor or pledger=Gauri

Pawnee or Pledgee=Rajni

Relation between Gauri and Rajni is of Pledge.

### **Essentials of Valid Pledge**

**1. Pawnor has delivered the possession of the goods to pawnee:-**For valid pledge it is necessary that pawnor has delivered the possession of the goods to the pawnee. It is point to be noted that only possession of goods bassess from pawnor to pawnee and not ownership. Where pawnor has not delivered the possession of the goods there can not be valid pledge. The case of Revenue Authority v.Sudarshan Pictures (1968) is best example on this point.

In this case a producer of film took loan from a financier distributor and promised to deliver the final prints of the film when it is ready. It was held that there was no valid pledge because there was not delivery of possession for the pawnor to pawnee.

Pledge is kind of Bailment therefore like a bailment delivery of possession may be of two kinds :-

- (i) Actual delivery;
- (ii) (ii) Constructive delivery.

Delivery of document of little and delivery of key of store is example of constructive delivery.

In Morvi Mercantile Bank Ltd. v. Union of India (1965) the Supreme Court held that the Railway receipts for goods was the same thing as delivery of goods and delivery of railway receipts amounts to delivery of goods.

Similarly the case of Bank of Chittor v. Narsimbulu (1968) is a best example of constructive delivery.

In this case the loan was taken by owner of cinema from the Bank. Cinema projector and accessories were pledged with the Bank as security. The Bank allowed the pledge goods to remain with the cinema owner. Owner of the cinema sold the Cinema Projector. It was held that projector was under constructive delivery of the bank.

**2- Possession has been delivered upon a contract:-** It is also essential elements of valid pledge that Pawnor has delivered the possession of goods in pursuance of contract of pledge. Delivery of possession may be-

- (i) Simultaneous with advance; or
- (ii) after getting advance; or
- (iii) Before or in contemplation of Advance.

In *Blundell leigh v. Attenborough*. (1921) A gave B a diamond ring for the purpose of valuation and to let her know and to what credit can she secure on their value. On the same day B pledged the ring with C for 1000 pound on the next day B gave A 500 pounds. It was held that pledge was valid.

**3. Possession of the goods has been delivered as Security-** for valid pledge it is necessary that Pawnee has delivered some goods the Pawnee for:

- (i) Repayment of a debt; or
- (ii) Fulfilment of the promise

**4. The pawnor has delivered the goods to pawnee on condition to return-** For valid pledge it is necessary that pawn or has delivered the possession of the goods to pawnee on the condition that when loan is repaid or promised is fulfilled delivered goods as a security be return to Pawnor.

**5. All essential of valid bailment must be present:** - Pledge is kind of bailment therefore All essentials of bailment must be present in the valid pledge. Pledge can me made for only movable goods.