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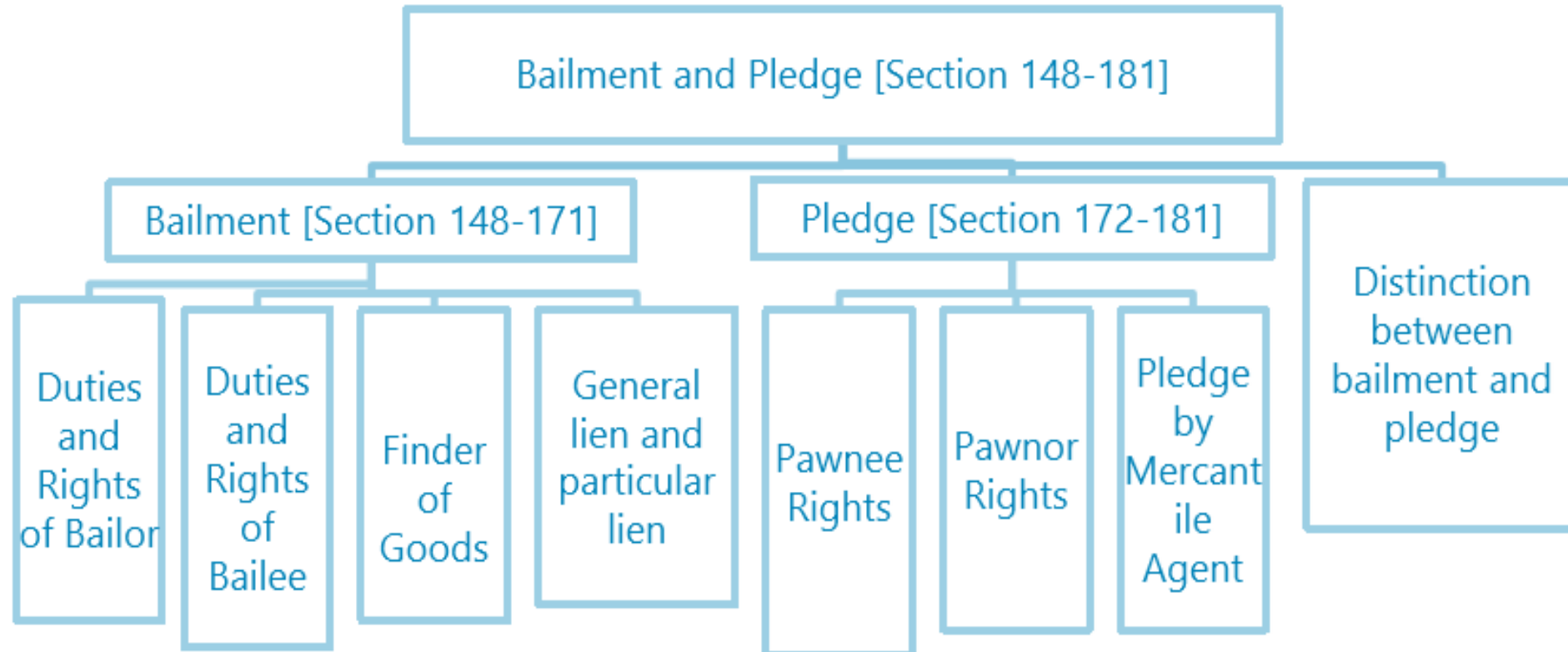
**VIRTUAL COACHING CLASSES  
ORGANISED BY BOS, ICAI**

**INTERMEDIATE LEVEL  
PAPER 2: CORPORATE AND OTHER LAWS**

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# OVERVIEW





# WHAT IS BAILMENT?

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The word Bailment is derived from the French word “ballier” which means “to deliver”.

Etymologically means ‘handing over’ or ‘change of possession’

As per Section 148 of the Act, bailment is the *“delivery of goods by one person to another for some purpose, upon a contract, that the goods shall when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them”*.

The person delivering the goods is called the **“bailor”**.

The person to whom they are delivered is called the **“bailee”**.



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Example: Where 'X' delivers his car for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.

Example: X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is contract for bailment



# ESSENTIAL ELEMENTS OF CONTRACT OF BAILMENT





# ESSENTIAL ELEMENTS OF CONTRACT OF BAILMENT

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**(a) Contract:** Bailment is based upon a contract. The contract may be express or implied. No consideration is necessary to create a valid contract of bailment.

**(b) Delivery of goods:** It involves the delivery of goods from one person to another for some purposes. Bailment is only for moveable goods and never for immovable goods or money. The delivery of the possession of goods is of the following kinds:

- **i. Actual Delivery:** When goods are physically handed over to the bailee by the bailor. Eg: delivery of a car for repair to workshop
- **ii. Constructive Delivery:** Where delivery is made by doing anything that has the effect of putting goods in the possession of the bailee or of any person authorized to hold them on his behalf. Eg: Delivery of the key of a car to a workshop dealer for repair of the car.



# ESSENTIAL ELEMENTS OF CONTRACT OF BAILMENT

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**(c) Purpose:** The goods are delivered for some purpose. The purpose may be express or implied.

**(d) Possession:** In bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee. The change of possession does not lead to change of ownership. In bailment, bailor continues to be the owner of goods as there is no change of ownership. Where a person is in custody without possession he does not become a bailee.

For example, servants of a master who are in custody of goods of the master do not become bailee.

Similarly, depositing ornaments in a bank locker is not bailment, because ornaments are kept in a locker whose key is still with the owner and not with the bank. The ornaments are in possession of the owner though kept in a locker at the bank.



# ESSENTIAL ELEMENTS OF CONTRACT OF BAILMENT

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**(e) Return of goods:** Bailee is obliged to return the goods physically to the bailor. The goods should be returned in the same form as given or may be altered as per bailor's direction. It should be noted that exchange of goods should not be allowed. The bailee cannot deliver some other goods, even not those of higher value.

Deposit of money in a bank is not bailment since the money returned by the bank would not be identical currency notes.





# DIFFERENT FORMS OF BAILMENT

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- (1) Delivery of goods by one person to another to be held for the bailor's use.
- (2) Goods given to a friend for his own use without any charge.
- (3) Hiring of goods.
- (4) Delivering goods to a creditor to serve as security for a loan.
- (5) Delivering goods for repair with or without remuneration.
- (6) Delivering goods for carriage.



# DIFFERENT FORMS OF BAILMENT

On the basis of reward, bailment can be classified into two types:





# DUTIES OF A BAILOR [S.150, 158, 159, 164]

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## Duties of Bailor

- Disclose known facts
- Bear necessary expenses
- Indemnify bailee
- Bound to accept the goods

# DUTIES OF A BAILOR

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## **(i) Bailor's duty to disclose faults in goods bailed [Section 150]:**

- The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.
- If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.



# DUTIES OF A BAILOR

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Example 1: A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

Example 2: A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.



# DUTIES OF A BAILOR

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## The condition for the liability of the bailor are:

- a. The bailor should have the knowledge of the defect and the bailee should not be aware
- b. The defect in the goods must be such as exposes the bailee to extraordinary risks or materially interferes with the use of goods.
- In *Hyman & Wife v. Nye & Sons (1881)*, A hired from B a carriage along with a pair of horses and a driver for a specific journey. During the journey a bolt in the under-part of the carriage broke away. As a result of this, the carriage became upset and A was injured. It was held that B was liable to pay damages to A for the injury sustained by him. The court observed that it was the bailor's duty to supply a carriage fit for the purpose for which it was hired. Sometimes, the goods bailed are of dangerous nature (e.g., explosives). In such cases it is the duty of the bailor to disclose the nature of goods. [Great Northern Ry'.case (1932)]



# DUTIES OF A BAILOR

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**(ii) Duty to pay necessary expenses [Section 158]:** Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration (gratuitous bailment), the bailor shall repay to the bailee the necessary expenses incurred by him and any extraordinary expenses incurred by him for the purpose of the bailment. However, in case of non-gratuitous bailment the bailor is liable to pay the extraordinary expenses.

Example: A hired a taxi from B for the purpose of going to Gurgaon from Noida, during the journey, a major defect occurred in the engine. A had to pay ` 5000 as repair charges. These are the extraordinary expenses and it is the bailor's duty to bear such expenses. However, the usual and ordinary expenses for petrol, toll tax etc are to be borne by the bailee itself.



# DUTIES OF A BAILOR

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**(iii) Duty to indemnify the Bailee for premature termination [ Section 159]:** The bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.

For example, 'A' lends an old discarded bicycle to 'B' gratuitously for three months, 'B' incurs Rs. 120/- on its repairs. If 'A' asks for the return of bicycle after one month, he will have to compensate 'B' for expenses incurred by 'B' in excess of the benefit derived by him.





# DUTIES OF A BAILOR

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**(iv) Bailor's responsibility to bailee [Section 164]:** The bailor is responsible to the bailee for the following:

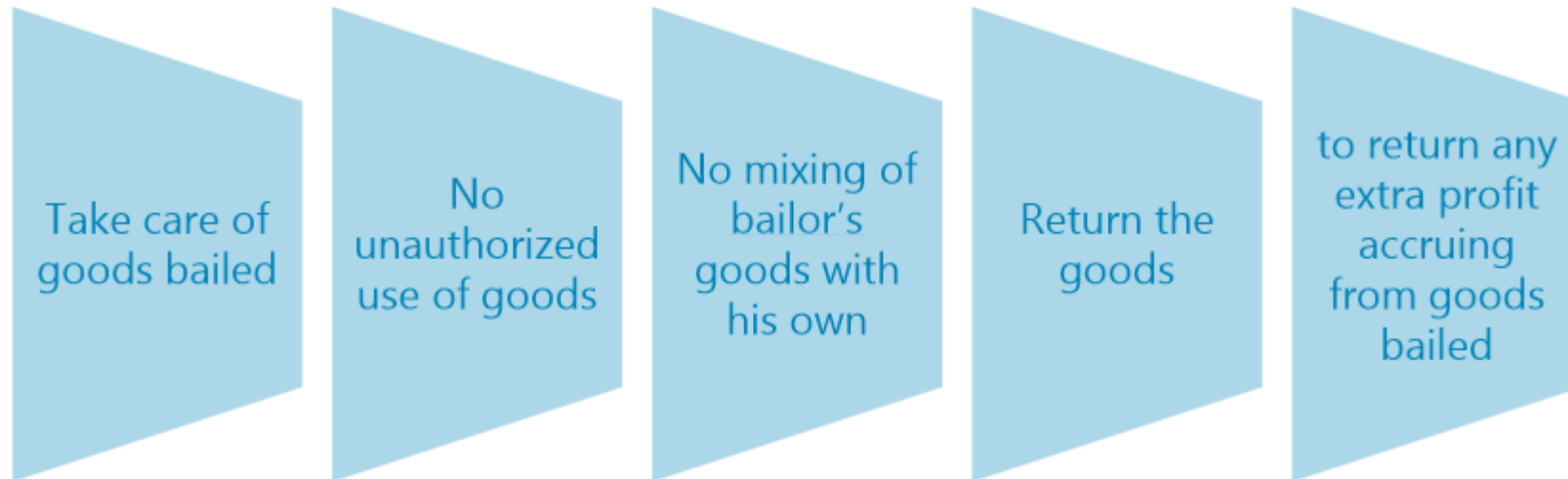
- a. Indemnify for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions, respecting them (defective title in goods).
- b. It is the duty of the bailor to receive back the goods when the bailee returns them after the time of bailment has expired or the purpose of bailment has been accomplished. If the bailor refuses to take delivery of goods when it is offered at the proper time the bailee can claim compensation for all necessary expenses incurred for the safe custody.

Example: X delivered his car to S for five days for safe keeping. However, X did not take back the car for one month. In this case, S can claim the necessary expenses incurred by him for the custody of the car.



# DUTIES OF A BAILEE

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# DUTIES OF A BAILEE

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**1. Take reasonable Care of the goods (Section 151 & 152):** In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as **a man of ordinary prudence** would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Example 1: If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss [caused on account of riot].



# DUTIES OF A BAILEE

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**2. Not to make inconsistent use of goods (section 153 & 154):** As per Section 154, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

**Example 1:** A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.



# DUTIES OF A BAILEE

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**Example 2:** 'A' hires a horse in Kolkata from B expressly to march to Varanasi. 'A' rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. 'A' is liable to make compensation to B for the injury to the horse.

As per **Section 153**, a contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Example: A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment



# DUTIES OF A BAILEE

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**3. Not to mix the goods (Section 155, 156 and 157):** Bailee is not entitled to mix up the goods bailed with his own goods except with the consent of the bailor. If he, with the consent of the bailor, mixes the goods bailed with his own goods, both the parties shall have an interest in proportion to their respective shares in the mixture thus produced (Sec. 155).

If the bailee, without the consent of the bailor, **mixes the goods** bailed with his own goods and the **goods can be separated** or divided, the property in the goods remains in the parties respectively and **bailee is bound to bear the expenses of separation** and division and any damage arising from the mixture (Sec. 156).



# DUTIES OF A BAILEE

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Example: A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

If the **bailee, without the consent of the bailor mixes the goods** of the bailor with his own goods in such a manner that it is **impossible to separate** the goods bailed from the other goods and to deliver them back, the bailor is entitled to compensation by the bailee for loss of the goods (**Sec. 157**).

Example: A bails a barrel of Cape flour worth ` 4500 to B. B, without A's consent, mixes the flour with country flour of his own, worth only ` 2500 a barrel. B must compensate A for the loss of his flour.



# DUTIES OF A BAILEE

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**4. Return the goods (Section 160 & 161):** It is the duty of bailee to return, or deliver according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed, has expired, or the purpose for which they were bailed has been accomplished. **[Section 160]**

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. **[Section 161]**

Example – X delivered books to Y to be bound. Y promised to return the books within a reasonable time. X pressed for the return of the book. But Y, failed to deliver them back even after the expiry of reasonable time. Subsequently the books were burnt in an accidental fire at the premises of Y. In this case Y was held liable for the loss.





# DUTIES OF A BAILEE

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**5. Return an accretion from the Goods [Section 163]:** In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Example: A leaves a cow in the custody of B. The cow gives birth a calf. B is bound to deliver the calf as well as the cow to A.

**6. Not to setup Adverse Title:** Bailee must not set up a title adverse to that of the bailor. He must hold the goods on behalf of and for the bailor. He cannot deny the title of the bailor.



# RIGHTS OF A BAILOR

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- Right to terminate the bailment
- Right to demand back the goods at any time
- Right to file a suit against any wrong doer
- Right to file a suit for enforcement of duties imposed upon a bailee.



# RIGHTS OF A BAILOR

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**(i) Right to terminate the bailment [Section 153]:** A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Example: A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment

**(ii) Premature Termination (Section 159):** When the goods are lent gratuitously, the bailor can demand back the goods at any time even before the expiry of the time fixed or the achievement of the object.



# RIGHTS OF A BAILOR

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Example: A, while going out of station delivered his ornaments to B for safe custody for one month. But A returned to station after one week. He may demand the return of his ornaments even though the time of one month has not expired.

However, due to the premature return of the goods, if the bailee suffers any loss, which is more than the benefit actually obtained by him from the use of the goods bailed, the bailor has to compensate the bailee.



# RIGHTS OF A BAILOR

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## **(iii) Right to file a suit against a wrong doer [Section 180 and section 181]**

**Suit by bailor & bailee against wrong doers [Section 180]:** If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

**Apportionment of relief or compensation obtained by such suits [Section 181]:** Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests



# RIGHTS OF A BAILOR

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**(iv) Right to sue the bailee:** The bailor has a right to sue the bailee for enforcing all the liabilities and duties of him.

It includes:

- a. Right to claim compensation for loss caused to the goods by the negligence of the bailee.
- b. Right to claim compensation for unauthorized mixing of goods
- c. Right to claim damages for unauthorized use of the goods
- d. Right to demand back goods.
- e. Right to any accretion to the goods bailed



# RIGHTS OF A BAILEE

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As a matter of fact, **all the duties of the bailor** are the **rights of the bailee**. In addition to that, the bailee has the following other rights also.

- **1. Right to Deliver the Goods to any one of the Joint Bailors [Section 165]** If several joint owners bailed the goods, the bailee has a right to deliver them to any one of the joint owners unless there was a contract to the contrary.
- Example: A, B and C are the joint owners of a harvesting combine. They delivered it on hire to D for one month. After the expiry of one month, D may return the “combine” to any one of the joint owners namely, A, B or C.



# RIGHTS OF A BAILEE

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- **2. Right to indemnity (Sec. 166):** Bailee is entitled to be indemnified by the bailor for any loss arising to him by reasons that the **bailor was not entitled to make the bailment or to receive back the goods or to give directions in respect to them.**
- If the bailor has no title to the goods, and the bailee in good faith, delivers them back to, or according to the directions of the bailor, the bailee shall not be responsible to the owner in respect of such delivery. Bailee can also claim all the necessary expenses incurred by him for the purpose of gratuitous bailment





# RIGHTS OF A BAILEE

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**3. Right to claim compensation in case of faulty goods (Sec. 150):** A bailee is entitled to receive compensation from the bailor or any loss caused to him due to the failure of the bailor to disclose any faults in the goods known to him. If the bailment is for hire, the bailor will be liable to compensate even though he was not aware of the existence of such faults.

**4. Right to claim extraordinary expenses (Sec. 158):** A bailee is expected to take reasonable care of the goods bailed. In case he is required to incur any extraordinary expenses, he can hold the bailor liable for such expenses.

**5. Right to Apply to Court to Decide the Title to the Goods [Section 167]:** If the goods bailed are claimed by the person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.



# RIGHTS OF A BAILEE

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- **Example:** A, a dealer in T.V. delivered a T.V. to B for using in summer vacation. Subsequently, C claimed that the T.V. belonged to him as it was delivered only for repairs, to A and thus, B should deliver it to him. In this case, B may apply to the Court to decide the question of ownership of the T.V. so that he may deliver it to the right owner.
- **6. Right of particular lien for payment of services [Section 170]:** Where the bailee has (a) in accordance with the purpose of bailment, (b) rendered any service involving the exercise of labour of skill, (c) in respect of the goods, he shall have (d) in the absence of a contract to the contrary, right to retain such goods, until he receives due remuneration for the services he has rendered in respect of them.



# RIGHTS OF A BAILEE

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- Bailee has, however, only a right to retain the article and not to sell it. The service must have entirely been formed within the time agreed or a reasonable time and the remuneration must have become due.
- This right of particular lien shall be available only against the property in respect of which skill and labour has been used.

*Hatton V. Car Maintenance Company, Limited*, the owner of the car and the company entered into an agreement where the condition was supposed to maintain the car, repair it and supply adequate petrol. The owner was supposed to pay Rs. 8000 to the owner of the company, but the company was not paid the above-stated amount. Then, the company exercised the lien over the car.

The learned Judge Sargeant J noted that whenever a particular article is repaired, the repairer is bound to get a lien on the article for the number of his charges. However, he said that he certainly can't find the authorities which are cited which will depict if the contractor does not improve the article but just to maintain its former condition, that whether he gets lien for the amount spent for the maintenance.



# RIGHTS OF A BAILEE

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- **7. Right of general lien (Sec. 171):** Bankers, factors, wharfingers, attorneys of a High Court and policy brokers will be entitled to retain, as a security for a general balance of amount, any goods bailed to them in the absence of a contract to the contrary. By agreement other types of bailees excepting the above given five (Bankers, factors, wharfingers, attorneys of a High Court and policy brokers) may also be given this right of general lien.

**Example:** When a certain type of gold ornaments was pledged with a particular Bank as a bailee because the lien extends on the borrower and the borrower then paid back the loan amount.

The same bank kept something for the security because the loan of another type was taken by the same borrower. In this case, the bank reserves a right to be held entitled to do so that they are having satisfaction for the other loan also



# TERMINATION OF BAILMENT

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A contract of bailment shall terminate in the following circumstances:

- **1. On expiry of stipulated period:** If the goods were given for a stipulated period, the contract of bailment shall terminate after the expiry of such period.
- **2. On fulfilment of the purpose:** If the goods were delivered for a specific purpose, a bailment shall terminate on the fulfilment of that purpose.



# TERMINATION OF BAILMENT

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## 3. By Notice:

- (a) Where the bailee acts in a manner which is inconsistent with the terms of the bailment, the bailor can always terminate the contract of bailment by giving a notice to the bailee.
  - (b) A gratuitous bailment can be terminated by the bailor at any time by giving a notice to the bailee. However, the termination should not cause loss to the bailee in excess of the benefit derived by him. In case the loss exceeds the benefit derived by the bailee, the bailor must compensate the bailee for such a loss (Sec. 159)
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- **4. By death:** A gratuitous bailment terminates upon the death of either the bailor or the bailee.



# TERMINATION OF BAILMENT

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- **5. Destruction of the subject matter:** If the original condition of the bailed goods does not exist or is destroyed, the contract of bailment is automatically terminated, because the purpose will not be fulfilled or the performance of the contract is impossible.



# FINDER OF LOST GOODS

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**Right of finder of lost goods; may sue for specific reward offered [Section 168]:**

The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.





# FINDER OF LOST GOODS

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**When finder of thing commonly on sale may sell it [Section 169]:** When a thing which is commonly the subject of sale if lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or

(2) when the lawful charges of the finder in respect of the thing found amount to two-thirds of its value.

# WHAT IS LIEN?

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The Honorable Supreme Court explained the nature of the Right of Lien by stating that “Lien in its elementary sense is a right of a person to retain the possession of goods until the demands of the possessor are satisfied. Therefore, the Right of Lien is a right granted by law and is merely not granted by a contract.

The major difference between a pledge and a Lien is that in a lien the person in possession only reserves a right to retain the possession of the goods. He reserves no right to sell the property that is in his possession. Lien is a right while the pledge is a contract between the parties.





# GENERAL LIEN AND PARTICULAR LIEN

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**Bailee's particular lien [Section 170]:** Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Example 1: A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

Example 2: A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.



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## **General lien of bankers, factors, wharfingers, attorneys and policy brokers**

**[Section 171]:** Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.

Example: 'A' borrows ` 500/- from the bank without security and subsequently again borrows another ` 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned ` 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.

Under the right of general lien the goods cannot be sold but can only be retained for dues. The right of lien can be waived through a contract.



# DIFFERENCE BETWEEN BAILEE'S GENERAL AND PARTICULAR LIEN

General lien	Particular lien
Section <b>171</b> of the Indian Contract Act, 1872 confer on Bailee the right of General Lien.	Section <b>170</b> of the Indian Contract Act, 1872 confers on the Bailee, the right of particular lien.
General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to <b>retain specific goods</b> bailed for non-payment of amount.
A general lien is not automatic but is recognized through on agreement. It is exercised by the bailee only by name	It is <b>automatic</b>
It can be exercised against goods even without involvement of labour or skill.	It comes into play only when some <b>labour or skill is involved</b> has been expended on the goods, resulting in an increase in value of goods.
<b>Only</b> such persons as are specified under <b>section 171</b> , eg, Bankers, factors, wharfingers, policy brokers etc. are entitled to general lien	Bailee, finder of goods, pledgee, unpaid seller, agent, partner etc are entitled to particular lien



# PLEDGE

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**“Pledge”, “pawnor” and “pawnee”** defined [Section 172]: *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”.*

**It is a special kind of bailment**

**Example:** A lends money to B against the security of jewellery deposited by B with him i.e. A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and A is a pawnee.



# ESSENTIALS OF PLEDGE

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All the essentials of bailment are also the essentials of the pledge.

Other essentials of the pledge include:

- a. There shall be a bailment for security against payment or performance of the promise,
- b. The subject matter of pledge is goods,
- c. Goods pledged for shall be in existence,
- d. There shall be the delivery of goods from pledger to pledgee,



# PAWNEE'S RIGHTS

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(a) **Right to retain the pledged goods [Section 173]:** The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Example: Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.





# PAWNEE'S RIGHTS

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**(b) Right to retention of subsequent debts [Section 174]:** The Pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the Pawnee.

**c) Pawnee's right to extraordinary expenses Incurred [Section 175]:** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. For such expenses, however, he does not have the right to retain the goods.



# PAWNEE'S RIGHTS

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**(d) Pawnee's right where pawnor makes default [Section 176]:** If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.



# RIGHTS OF A PAWNOR

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As the bailor of goods pawnor has all the rights of the bailor. Along with that he also has the right of redemption to the pledged goods which is enumerated under Section 177 of the Act.

**Right to redeem [Section 177]:** If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.



# DUTIES OF THE PAWNEE

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- a. Duty to take reasonable care of the pledged goods
- b. Duty not to make unauthorized use of pledged goods
- c. Duty to return the goods when the debt has been repaid or the promise has been performed
- d. Duty not to mix his own goods with goods pledged
- e. Duty not to do any act which is inconsistent with the terms of the pledge
- f. Duty to return accretion to the goods, if any



# DUTIES OF THE PAWNOR

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- a. The pawnor is liable to pay the debt or perform the promise as the case may be.
- b. It is the duty of the pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.
- c. It is the duty of the pawnor to disclose all the faults which may put the pawnee under extraordinary risks.
- d. If loss occurs to the pawnee due to defect in pawnors title to the goods, the pawnor must indemnify the pawnee.
- e. If the pawnee sells the good due to default by the pawnor, the pawnor must pay the deficit.



# PLEDGE BY NON-OWNERS

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Ordinarily, it is the owner of the goods, or any person authorized by him in that behalf, who can pledge the goods. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left

- a. **Pledge by mercantile agent [ Section 178]:** Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge.



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Explanation: In this section, the expressions ‘mercantile agent and documents of title’ shall have the meanings assigned to them in the Sale of Goods Act, 1930

- “document of title to goods” includes a bill of lading, dock-warrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, 1[multimodal transport document,] warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;
- “mercantile agent” means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;



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The necessary conditions of validity under the section 178 are as follows:

- (i) The person pledging the goods must be a mercantile agent,
- (ii) Mercantile agent must be in possession either of the goods or the documents of title to goods,
- (iii) Such possession must be with the consent of the owner. If possession has been obtained dishonestly or by a trick, a valid pledge cannot be effected,
- (iv) Pledge must have been made by the mercantile agent, when acting in the ordinary course of business of a mercantile agent,
- (v) The pledgee must act in good faith;
- (vi) The pledgee should have no notice of the pledger's defect of title. If the pledgee knows that the pledger has a defective title, the pledge will not be valid.





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- b. Pledge by person in possession under voidable contract [Section 178A]:** When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.
- c. Pledge where pawnor has only a limited interest [Section 179]:** Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.
- d. Pledge by a co-owner in possession:** Where the goods are owned by many person and with the consent of other owners, the goods are left in the possession of one of the co-owners. Such a co-owner may make a valid pledge of the goods in his possession.



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**Pledge by seller or buyer in possession:** A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the pawnee acts in good faith and he has no knowledge of the defect in title of the pawnor.



# BAILMENT v/s PLEDGE

S.no	Basis of Distinction	Bailment	Pledge
1	<i>Meaning</i>	Transfer of goods by one person to another for some specific purpose is known as bailment	Transfer of goods from one person to another as security for repayment of debt is known as the pledge.
2	<i>Terms Applicable</i>	The person delivering the goods under a contract of bailment is called as "Bailor". The person to whom the goods are delivered under a contract of bailment is called as "Bailee"	The person who delivers the good as security is called the "Pawnor". The person to whom the goods are delivered as security is called the "pawnee"
3	<i>Purpose</i>	Bailment may be made for any purpose (as specified in the contract of bailment, eg: for safe custody, for repairs, for processing of goods)	Pledge is made for the purpose of delivering the goods as security for payment of a debt, or performance of a promise.
4	<i>Consideration</i>	The bailment may be made for consideration or without consideration	Pledge is always made for a consideration.



# BAILMENT v/s PLEDGE

5	<i>Right to sell the goods</i>	The bailee has no right to sell the goods even if the charges of bailment are not paid to him. The bailee's rights are limited to suing the bailor for his dues or to exercise lien on the goods bailed	The pawnee has right to sell the goods if the pawnor fails to redeem the goods.
6.	<i>Right to use of goods</i>	Bailee can use the goods only for a purpose specified in the contract of bailment and not otherwise.	Pledgee or Pawnee cannot use the goods pledged.



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# THANK YOU