

CONTRACT OF BAILMENT

Contract of bailment means delivery of goods i.e. moveable property by one person who is generally the owner thereof, to another person for some purpose. The goods are to be returned to the owner after accomplished the purpose to take further action as per directions of the owner of the goods. **A.T.Trust Ltd., v/s Trippunhura Devaswomi-1954.**

DEFINITION:- Section 148 of the Indian Contract Act, A bailment is the delivery of goods by one person to another for upon a contract that they shall when purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them. In a contract of bailment, the person who delivers the goods called the “**Bailor**” and to whom the goods are delivered is called as “**Bailee**”

Ex. 1. A delivers a piece of cloth to B, a tailor, to be stitched into a suit. There is a contract of bailment between A and B.

2. A lends a book to B to be returned after the examination. There is a contract of bailment between A and B.
3. A enters into an agreement with B to deliver his bicycle to him on the condition that it shall be redelivered to A after two days. It will be a contract of bailment.

ESSENTIAL ELEMENTS**CONTRACT OF BAILMENT:-**

1. CONTRACT

The first condition is that there must be a contract between the two parties for the delivery of goods. Such contract may be express or implied, written or oral.

2. DELIVERY OF GOODS

This contract is for the delivery of some movable goods from one person (bailor) to another person (bailee) or to his authorized agent. If the goods are immovable the contract will not be a contract of bailment.

3. CHANGE OF POSSESSION

The possession of goods must be affected by such contract. Mere custody without possession is not a contract of bailment. Ex. 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 the servant does not become a bailee.

4. PURPOSE OF DELIVERY

The delivery of the goods is for temporary purposes. It may be for safe-custody, repair, carriage or for gratuitous use by the bailee.

5. NUMBER OF PARTIES

There are two parties under such contract e.g., the bailor and bailee. The person delivering the goods is called the bailor and the person to whom the goods are bailed is called the bailee.

6. RIGHT OF OWNERSHIP

In a contract of bailment, the right of ownership remains with an owner (bailor) and is not changed. If the ownership is transferred, the contract will be a contract of sale and is not of bailment.

CHANGE OF FORM

If the goods bailed are altered in form by the bailee, such as cloth is converted into a shirt still, the contract is one of bailment.

7. REDELIVERY OF GOODS

Under such contract, the goods are redelivered to the bailor or according to his directions upon the fulfillment of the purpose by the bailee.

8. RIGHT OF REWARD

In a contract of bailment, both the parties bailor and the bailee can get a reward but it depends on the nature of the transaction.

KINDS OF BAILMENT

1. BAILMENT FOR SAFE-CUSTODY

When the bailor delivers his goods to the bailee only for keeping it in his safe-custody, the bailment is said to be bailment for safe-custody.

Illustration; A delivers his camera to B to keep it in his safe-custody for six months. This will be the bailment for safe-custody.

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Illustration; A delivers his camera to B to keep it in his safe-custody for six months. This will be the bailment for safe-custody.

3. BAILMENT FOR USE

If the bailor delivers, the goods to the bailee to use it. The bailment will be the bailment for use.

Illustration; A delivers his bicycle to B to use it for two days. This will be the example of bailment for use.

4. BAILMENT FOR REWARD OR NON-GRATUITOUS BAILMENT

Where the bailment is for use or for safe-custody and the bailee or bailor can charge for his services, then it will be the case of bailment for

Illustration: A delivers his bicycle to B to use it for two days for Rs.50 daily. This will be the bailment for a reward because Bailor (A) will get a reward for the use of a bicycle.

5. GRATUITOUS BAILMENT

Where the bailment is for safe-custody or for use and bailee does not charge anything, the bailment is a bailment for gratuitous.

Illustration: A delivers his bicycle to his friend B to use it for two days without reward. It will be the case of gratuitous bailment.

6. BAILMENT FOR LOST GOODS

When a person finds out the lost goods of another has the same responsibilities as the bailee has against the goods the bailor. Such implied bailment will be the case of bailment of lost goods. Under such conditions, the bailee is entitled to retain the goods until he receives compensation for the trouble and expenses he has to bear in order to find but the owner of the lost goods.

Ex. A found the lost horse B and redelivered it to B. It will be the bailment for lost goods.

7. BAILMENT FOR PLEDGE

When any moveable goods are given as security for the debt, to creditor by the debtor, it will be bailment for pledge until the repayment.

Ex. A gets loan from B and hands over his jewels to B as security until the repayment of the loan. It will be the bailment for pledge.

RIGHTS OF THE BAILOR

1. RIGHT TO GET BACK THE GOODS

The bailor has a right to get back the goods bailed by him as soon as the purpose of bailment is accomplished. If the bailee fails to do so, he is entitled to get reasonable compensation from the bailee.

2. RIGHT TO TERMINATE THE CONTRACT

The bailor has a right to terminate the contract of bailment if the bailee does any act with the goods bailed to him. which is inconsistent with the terms of the contract. For example-bailor gives his Tonga to bailee for his personal use, but he uses it for carrying passengers.

3. EXPENSES OF SEPARATION

If the bailee has mixed the goods of bailor with someone other goods not belonging to bailor without the consent of the bailor, the bailor has a right to get from bailee the expenses which he has to bear for the separation of his goods from others.

4. COMPENSATION FOR GOODS

If the bailee has mixed the goods of the bailor with someone other goods not belonging to bailor without the consent of the bailor and bailor's goods cannot be separated from the other goods, the bailor has a right to get reasonable compensation from bailee for his goods.

5. COMPENSATION FOR UNAUTHORISED USE

If the bailee makes any use of the goods bailed, which is not in accordance to the conditions of the bailment, the bailor has a right to get Compensation from the bailee for any damage arising to the goods from or during such unauthorized use of the goods.

6. COMPENSATION FOR DELAY IN TIME

According to The Contract Act, the bailee is responsible to return, deliver or to tender the goods to the bailor at a proper time. If he fails to do so the bailor has a right to get compensation from bailee for any loss, destruction or deterioration of the goods due to such delay in time.

7. RIGHT TO SHARE PROFIT

The bailor has a right to share with bailee any profit earned from the goods bailed if it is so provided by the contract.

DUTIES OF THE BAILOR

1. TO DISCLOSE FAULTS

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 Sec. 150.

Ex. 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.

2. TO REPAY NECESSARY EXPENSES

Where under the contract of bailment, the goods have been carried by the bailee or he has done some work upon them for the bailor and the bailee has received no remuneration, the bailor must repay to the bailee necessary expenses incurred by him for the purpose of bailment.

Ex. A is a friend of B and repairs B's television set free of cost. On this repair, he bears Rs. 500 actual Expenses due to a replacement of parts. B is bound by law to pay Rs. 500, the actual cost of repair to A.

3. TO REPAY EXTRA-ORDINARY EXPENSES

When the contract of bailment is for reward but bailee does some work for the benefits of the bailor and bears extraordinary expenses, the bailor is bound to repay these extraordinary expenses in excess of the original reward.

Ex. A keeps his bicycle for safe custody with B for reward the bicycle gets punctured without the negligence of B and B repairs it. Now A is bound to pay these repair expenses to B in excess of the original amount.

4. TO INDEMNIFY BAILEE

The bailor is responsible to the bailee 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 direction respecting.

Ex. A gives B's car for use to C without the permission of B. Later on, B gets compensation from C. Now C' has legal right to be indemnified by A.

RIGHTS OF BAILEE

1. TO RECOVER DAMAGES

The bailee is entitled to recover all the damages and losses suffered by the bailee due to the defects in the goods bailed to him with the knowledge of the bailor.

2. RECOVERY OF EXPENSES

The bailee is also entitled to recover all the expenses incurred for the purpose of bailment and for providing services to the bailor. Ex. A leaves his horse with the neighbour for safe custody for a week. B is entitled to recover the expenses incurred by him in feeding the horse.

3. RECOVERY OF COMPENSATION

The bailee can also recover compensation from the bailor for any loss caused to him due to any defect in the bailor's title.

4. RIGHT OF ACTION AGAINST THE THIRD PARTY

The bailee has a right to take legal action as an owner of the goods, against the third party who wrongfully deprives the bailee of the use of goods bailed or does them any injury. The compensation received from such claims must be dealt between the bailor and bailee in accordance with their respective interests.

5. RIGHT OF LIEN

When the bailee has 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. Sec 170.

DUTIES AND LIABILITIES OF THE BAILEE

1. TO TAKE CARE OF GOODS

According to section 151, the bailee is bound to take as much care of the goods bailed to him as a common person takes off his own goods.

2. EXPENSES OF SEPARATION

If the bailee without the consent of the bailor mixes the goods of the bailor with his own goods, and goods can be separated or divided, the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture. Sec 156.

3. UNAUTHORISED USE OF GOODS

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. Sec 154.

4. INCONSISTENT ACT

A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard, to the goods bailee inconsistent with the conditions of the bailment. Sec 153.

5. COMPENSATION

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 deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods. Sec 157.

6. RETURN OF GOODS

It is the duty of the 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; Sec. 160.

7. RETURN OF GOODS AT PROPER TIME

The bailee is responsible to return, deliver or tender the goods to the bailor at a proper time. If he fails to do so, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time. Sec 161.

8. RETURN OF PROFIT

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 Sec 163.

POSITION OF FINDER OF GOODS

A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee as provided **in sec.71**. Since the position of the finder of goods is that of a bailee. He is supposed to take the same amount of care with regard to the goods as is expected of a bailee under **section 151**. He is also subject to all duties of a bailee including a duty to return the goods after the true owner is found.

Section 168 and 169 confer certain rights on the finder of goods which are as under:

1. May sue for specific reward offered: The finder of goods has no right to sue the owner for compensation or trouble and expenses voluntarily incurred by him to preserve the goods, but he may retain the goods until he receives such compensation and a specific reward offered by the owner for return of the goods. Refer sec. 168 of the Act.
2. If true owner is diligence not found or he refuses to pay the lawful charges of the finder of the goods, the finder may sell it on the following conditions:-
 - i) When the thing is in danger of perishing or losing part of its value.
 - ii) When the lawful charges of the finder, in respect of the found goods amount to two-third of its value.
 - iii) Right of Lien: He can retain the Lien on the found goods until his expenses on find goods are paid.
 - iv) Right to sell the goods found:- Finder of the goods has the right to sell the goods found by him under certain circumstances provided in section 169 of the act with a reasonable notice mentioning the intention to sale the goods found.

TERMINATION OF BAILMENT

1. ACCOMPLISHMENT OF PURPOSE

When the purpose for which goods were bailed" has been accomplished, the contract of bailment is terminated and goods are returned to the bailor.

2. EXPIRY OF TIME

When the goods are bailed for a fixed time, the contract of bailment is terminated at the expiry of the time fixed.

3. DEATH OF THE PARTY

A gratuitous bailment is terminated by the death either of the bailor Sec. 162.

4. BAILEE'S INCONSISTENT ACT

A contract of bailment 'is voidable (terminated) at the option of the bailee does any act with regard to the goods bailed' with the conditions of the bailment.