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Author:

Shauriya Bandhu

Symbiosis Law School, Noida

2nd Year, BA LL.B.

CRITICAL OVERVIEW ON BAILMENT LAWS UNDER THE INDIAN CONTRACT ACT, 1872**Abstract:**

In our day-to-day life, we intentionally or unintentionally enter into different agreements with the people around us. Such agreements can either be of minor or major nature. For example, looking after your friend's car when he is out of town or agreeing to buy a house from a seller. Our lives are always accompanied by such agreements.

This paper is going to deal with the primary understanding of contracts in general and the contract of bailment in specific, under the Indian Contract Act, 1872. In this paper, we will mainly discuss about the meaning, essentials, different kinds of bailment contracts as well as rights and duties of the bailor and bailee.

Introduction:

To begin with, let us first understand what constitute a contract under the Indian Contract Act, 1872 (ICA). To put in simple words, a contract is a mutual assent or agreement (expressed or written) between two parties thus forming a bilateral relation. This agreement can be formed on the promise to do or to refrain from doing something and thus creates obligations for the contracting parties. This agreement becomes **a contract** when it gains the **enforceability of Law**. The rights and duties arising from such a contract are entitled only to the contracting parties and violation of the same is permitted to attract legal actions.

Contracts in India are governed by the provisions laid down under the **Indian Contract Act, 1872**. The Contract Act contains and provides various legal formalities and general rules for the regulation of contracts.

Contract of bailment:

A relationship of bailment forms between two persons when one transfers or delivers the property or goods to another person for a specific purpose. In this case, there is a change in the possession of the property/goods i.e., the ownership lies with one person whereas the right of possession lies with another person.

Meaning:

The word bailment roots out from the French word “*ballier*” which means “*to deliver*”. The contracts of bailment are dealt under section 148 to 171 of the Indian Contract Act and fall under the category of special class of contract.

Section 148 of the Contract Act defines “bailment” as a contract in which one person delivers his/her goods to another for some purpose with an understanding that when the purpose is accomplished, the goods are to be returned to the owner accordingly. The delivery of the possession is made without intending to give up the title of the goods. The person who delivers the goods is called “*bailor*” while the person to whom the goods are entrusted is called “*bailee*”.

Examples of contract of bailment: delivering a watch for repair, delivering garments to a dry-cleaner, leaving a car at a stand, etc.

Essentials of a valid Bailment:

1. Two partied contract - A contract of bailment should be two partied i.e., it should be formed by two persons namely the bailor and the bailee.
2. Delivery of possession of goods – The delivery of possession of goods from one person to another for accomplishing a specific purpose is the central essential of bailment contracts.
3. Delivery should be upon contract – The delivery of goods under a contract of bailment should take place upon a contract. This contract can either be express or implied.
4. Delivery should be for some purpose – When bailor entrusts the goods with the bailee, it should be for some purpose. For example: when you deliver your watch to a repair shop, the purpose of this bailment is to get the watch repaired.
5. Return of goods – The contract of bailment completes with the return of the goods, which were delivered by the bailor to the bailee, after accomplishing the purpose for which they were bailed.

Types of delivery of possession of goods:

“The delivery of the goods may be made by doing something which consequentially puts the goods in the possession of the intended bailee or any other authorized person on his behalf.”¹

The delivery of possession of goods can happen in two modes:

1. Actual delivery – when the bailor physically hands over the goods to the bailee i.e., when there is delivery of physical possession of the goods, it constitutes an actual delivery.
2. Constructive delivery – constructive delivery happens when the bailor does not hand over the physical possession of the goods to the bailee. In this case, the goods remain at the place where they are but something is done to make it clear that they are in the possession of the bailee.

Types of bailment contracts:

A contract of bailment can be classified into different categories based on two criteria-

1. On the basis of reward.
2. On the basis of benefits.

On the basis of reward: a bailment contract can be divided into two types on the basis of rewards. These are:

1. Gratuitous bailment – when the goods are bailed to the bailee without any charges or reward. In this case, the bailor is not required to pay any charges for the bailment.

For example – when you ask your friend to look after your goods for few days. In such a case, the possession of the goods is delivered to your friend and there is a contract of bailment. In this situation, you don't have to pay any charges to your friend for the said bailment.

2. Non-Gratuitous bailment – when the goods are bailed to the bailee for some charges or reward. In this case, the bailor is required to pay some charges for the bailment.

For example – delivering clothes to the dry-cleaners. Here, the possession of the goods is entrusted with the dry-cleaner, thus forming a contract of bailment. In this case, you have to pay some charges to the dry-cleaner for the said bailment.

¹ Section 149 of the Indian Contract Act, 1872.

On the basis of benefits: a bailment contract can be classified into three types on the bases of benefits. These are:

1. Bailment for the exclusive benefit of the bailor.
2. Bailment for the exclusive benefit of the bailee.
3. Bailment for mutual benefit of both bailor and the bailee.

Duty of Bailor:

Section 150 talks about the duty of bailor and also mentions the two types of bailors. These are:

1. Gratuitous bailor – bailor who lends his articles without any charge in exchange.
2. Bailor for reward – bailor who lends his articles in exchange of some reward or charge.

Duty of gratuitous bailor:

Section 150 – “Bailor’s duty to disclose faults in goods bailed” – if there are any faults in the goods which are to be bailed and the bailor is aware about the same, then it is the duty of the bailor to disclose such faults to the bailee. Failing to disclose about such faults, the bailor becomes responsible for damage arising to bailee due to the faults in the goods.

Illustration:

“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

Duty of bailor for reward:

Section 150 also clearly states that when goods are bailed for hire, the bailor becomes responsible for the damage caused to bailee because of the faults present in the bailed goods. In this situation, the fact that whether the bailor was aware about the faults or not isn't important.

Illustration:

² Indian Contract Act, 1872

“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.”³

Duty of Bailee:

Section 151 – “Care to be taken by bailee” – in all cases of bailment, the bailee has the duty to take reasonable care of the goods bailed. This means that the bailee is bound to take care of the goods as any person of ordinary prudence would have taken care of such goods if they were his own under the same circumstances, and of the same quality and quantity.

Section 152 – “Bailee when not liable for loss, etc., of things bailed” – in absence of any special contract, if the bailee has taken all the necessary precautions and reasonable care of the goods bailed as described by section 151, then the bailee is not liable for any loss, destruction or deterioration of the goods bailed.

“No cast-iron standard can be laid down for the measurement of care due from a bailee and the nature and amount of care must vary with the posture of each case.”⁴

Burden of proof: “if the bailee places before the court, evidence to show that he had taken reasonable care to avoid damage which was reasonably foreseeable or had taken all reasonable precautions to obviate risks which were reasonably apprehended, he would be absolved of his liability.”⁵

Section 153 – “Termination of bailment by bailee’s act inconsistent with conditions” – if any of the bailee’s act with regard to the goods bailed, is in contradiction or is inconsistent to the conditions of the bailment, then the bailment is voidable at the option of the bailor.

Illustration:

“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.”⁶

Section 154 – “Liability of bailee making unauthorized use of goods bailed” – the bailee is duty bound to not make any unauthorized use of bailed goods. If the bailee makes any use of the goods bailed in contradiction to the conditions of the bailment, then his liability arises to

³ Indian Contract Act, 1872

⁴ Shanti Lal v Tara Chand Madan Gopal, AIR 1933 All 158.

⁵ Kuttappa v State of Kerala, (1988) 2 KLT 54.

⁶ Indian Contract Act, 1872.

compensate any loss or damage caused to the bailor because of such unauthorized use of the bailed goods.

Illustration:

“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.”⁷

Bailee’s duty not to mix:

The bailee should maintain the goods bailed separately based on their identity. Bailee is under the duty to not mix the goods of his own with the goods of the bailor. Section 155 to section 157 of the Indian Contract Act, 1872 deals with this duty in detail.

Section 155 – “Effect of mixture, with bailor’s consent, of his goods with bailee’s” – when, as per the consent of the bailor, bailee mixes the goods of the bailor with his own, then in the mixture produced, both bailor and bailee shall have an interest, in proportion of their respective shares.

Section 156 – “Effect of mixture, without bailor’s consent when the goods can be separated” – in the absence of the bailor’s consent, if the bailee mixes the goods of the bailor with his own, in such a manner that the goods can be separated or divided when needed, then the bailee is responsible to bear the expense of the separation and any loss arising from such mixture.

Illustration:

“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.”⁸

Section 157 – “Effect of mixture, without bailor’s consent, when the goods cannot be separated” – in the absence of bailor’s consent, if the bailee mixes the goods of the bailor with his own, in such a manner that the goods cannot be separated from the mixtures and cannot be delivered back to the bailor, then bailee is entitled to compensate the bailor for the loss suffered due to such mixture.

⁷ Indian Contract Act, 1872.

⁸ Indian Contract Act, 1872.

Illustration:

“A bails a barrel of Cape flour worth Rs 45 to B. B, without A’s consent, mixes the flour with country flour of his own, worth only Rs 25 a barrel. B must compensate A for the loss of his flour.”⁹

Section 158 – “Repayment by bailor of necessary expenses” – this can be understood as bailee’s right to expenses or remuneration. When the goods of the bailor are to be kept, carried or to have work done upon them by the bailee as per the conditions of the bailment, then the bailor is bound to repay the necessary expenses incurred by bailee for the purpose of the bailment.

Section 159 – “Restoration of goods lent gratuitously” – the bailor, under gratuitous bailment, has the right to demand the return of the goods bailed to bailee at any time, even before the expiration of the period or the fulfillment of the purpose of such bailment.

However, if the bailee suffers any loss due to such demand of the bailor, then the bailor is responsible to compensate the bailee.

Duty to return:

Bailee’s duty to return the bailed goods to the bailor on the fulfillment of the purpose of the bailment is dealt under section 160 of the Contract Act and section 161 talks about the responsibility of the bailee when the goods are not returned.

Section 160 – “Return of goods bailed, on expiration of time or accomplishment of purpose” – as soon as the period of bailment expires or the purpose for which the bailment was made is accomplished, the bailee becomes duty bound to return the bailed goods to the bailor or deliver them according to the directions of the bailor.

Section 161 – “Bailee’s responsibility when goods are not duly returned” – if the goods are not returned or delivered to the bailor at the proper time because of the default of the bailee, then bailee is liable to compensate the bailor for any loss, deterioration or destruction of the bailed goods from that time.

“When the purpose of bailment is accomplished or the time for which the goods were bailed has expired, the bailee should return the goods to the bailor without demand.”¹⁰ “If he fails to

⁹ Indian Contract Act, 1872.

¹⁰ Dhian Singh Sobha Singh v Union of India, AIR 1958 SC 274.

do so, he will keep the goods at his risk and will be responsible for any loss of or damage to the goods arising howsoever.”¹¹

Section 162 – “Termination of gratuitous bailment by death” – on the death of either of the bailor or the bailee, the gratuitous bailment is considered terminated.

Section 163 – “Bailor entitled to increase or profit from goods bailed” – “in the absence of any agreement to contrary, the bailee is bound to return to the bailor natural increases or profits accruing to the goods during the period of bailment.”¹²

Illustration:

“A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.”¹³

Section 164 – “Bailor’s responsibility to bailee” – this section deals with the bailee’s right to compensation. When the bailor is not entrusted with the right to bail the goods, receive them back or to give directions with respect to such goods, but he still enters into a contract of bailment and consequently, bailee suffers some loss, then the bailor is responsible to compensate the bailee.

Section 165 – “Bailment by several joint owners” – in absence of any agreement to the contrary, if the bailed goods are owned by several joint owners, then, the bailee may return them back to, or according to the directions of one joint owner without obtaining the consent of all the joint owners.

Section 166 – “Bailee not responsible on re-delivery to bailor without title” – if the title of the goods is not vested with the bailor, but the bailee, in good faith, delivers the goods back to the bailor according to his directions, then the bailee is not responsible to the owner of the goods in respect of such delivery.

“But the person who claims the ownership may apply to the court to prevent the bailee from returning the goods to the bailor and to have the question of title decided.”¹⁴

¹¹ Shaw & Co v Symmons & Sons (1917) 1 KB 799.

¹² Motilal Hirabhai v Bai Mani (1924-25) 52 IA 137

¹³ Indian Contract Act, 1872.

¹⁴ Rogers Sons & Co v Lambert & Co, (1891) 1 QB 318.

Section 167 – “Right of third person claiming goods bailed” – a person, other than the bailor, claiming the title of the bailed goods, may apply to the court to stop the bailee from delivering the goods back to the bailor. He may also reach the court to decide the title of the goods bailed.

“Further, if the bailee has already delivered the goods to the person having a better title, and yet the bailor sues him, he may prove that such person had a better right to receive the goods as against the bailor.”¹⁵

Finder of lost goods:

“A finder of goods is a bailee thereof and as such bound by the duty of reasonable care.”¹⁶

Section 168 – “Right of finder of goods: may sue for specific reward offered” – the finder of lost goods obtains the position similar to that of a bailee. He cannot sue the owner for compensation for the troubles and expenses incurred by him voluntarily to take care of the goods and to find the rightful owner.

But the finder has the right to retain the goods against the owner until he receives the compensation for the expenses incurred by him. In case where the owner offers specific reward for the return of the lost goods, then the finder may sue the owner for such reward and may retain the goods until he receives the said reward.

Section 169 – “When finder of thing commonly on sale may sell it” – if the owner, of the lost goods which are commonly the subject of sale, cannot be found with reasonable diligence or he refuses to pay for the lawful expenses incurred by the finder, then the finder may sell the goods under the following conditions:

- When the thing is in danger of perishing or of losing the greater part of its value, or
- When the lawful charges of the finder, in respect to the thing found, amount to two thirds of its value.

Right of lien:

“If the bailee’s lawful charges are not paid he may retain the goods. The right to retain any property until the charges due in respect of the property are paid, is called the right of lien.”¹⁷

There are two kinds of lien, namely: 1. Particular lien, and 2. General lien.

¹⁵ Explanation (2) to S. 117 of the Indian Evidence Act, 1872.

¹⁶ Isaack v Clark, (1615) 2 Bulstr 306.

¹⁷ Syndicate Bank v Vijay Kumar, (1992) 2 SCC 330

Section 170 – “Bailee’s particular lien” – when, in accordance with the purpose of the bailment, the bailee renders any service which involves the exercise of labor or skills in respect of the bailed goods, then, in absence of any agreement to contrary, the bailee is entitled with the right to retain the goods until he receives due remuneration for the services rendered by him.

Illustration:

“A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the diamond till he is paid for the services he has rendered.”¹⁸

Section 171 – “General lien of bankers, factors, wharfingers, attorneys and policy brokers” – bankers, factors, wharfingers, attorneys and policy brokers, in absence of any contract to contrary, have the right to retain the bailed goods as security for a general balance of account.

“For example, if two securities are given to a banker but a loan has been taken only against one of them, the banker may detain both securities until his dues are paid.”¹⁹

Right to sue:

Section 180 – “Suit by bailor or bailee against wrongdoer” – if the bailee is deprived of the use or possession of the bailed goods by a third person or if a third person injures the bailed goods, then the bailee is entitled to the remedies as the owner of the goods might have been entitled to. A suit can be filled against the third person for the deprivation or injury, either by the bailor or bailee.

Section 181 – “Apportionment of relief or compensation obtained by such suits” – when a suit is filed against the third party, then whatever is received as compensation or relief in such suit, shall be dealt with the respective shares of interests between the bailor and the bailee.

Conclusion:

Contract of bailment is formed when there is transfer of possession of goods from bailor to the bailee for accomplishing a specific purpose. Both the bailor and the bailee are vested with several rights to enjoy as well as duties to abide by. One thing to keep in mind is that for any bailment contract to be valid, all the essentials of bailment are to be fulfilled. Moreover, the

¹⁸ Indian Contract Act, 1872.

¹⁹ Contract & Specific Relief by Avtar Singh, Twelfth Edition.

most important highlight of contract of bailment is that it focuses on the aspect of possession rather than ownership of the goods.



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