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Author:

Kumar Ritwik

Symbiosis Law School, Noida

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DIFFERENCE BETWEEN BAILMENT AND PLEDGE UNDER INDIAN CONTRACT ACT**ABSTRACT**

In basic terms, bailment refers to surrendering or assigning the merchandise, which includes only change in possession and not the change in ownership. It is the exchange of goods starting with one party then onto the next party for some particular reason. It isn't same as pledge, which is only a variation of bailment. Pledge infers an agreement, wherein an article is conveyed or stays deposited with the money lender, as security for reimbursement of debt owed by him/her or execution of promise.

The principal contrast among Pledge and bailment lies in the utilization of products, for example the utilization of goods is denied in pledge, while in the case of bailment the party to whom the merchandise is being given over can utilize them. The article below comprehends the distinction between the two.

INTRODUCTION

Bailment and Pledge are determined as different types of contracts under the Indian Contract Act of 1872. Bailments and pledge are considered as 'substantial' contracts or semi agreements (where the founder of goods is treated as bailee). There is no essential condition to go into a legally binding agreement to establish bailment as such. In State of Gujarat v. Memon Mahomed¹ the Apex court

¹ State of Gujrat v Memon Mahomed, 1967 AIR 1885, 1967 SCR (3) 938

emphasized that there can be bailment even without an agreement. In other words, exclusive possession is a *sine qua non* of bailment. Acquiring a book from a companion to peruse, for instance, may not include consideration but it is a bailment.

In our day-to-day issues, we willfully enter into different types of bailments, however not by a legally binding course of action. For instance, while dropping a watch for fixing, while conveying garments for pressing or washing to the washermen, while giving a book from a library and so on. Similarly, we enter into agreements which expect us to pledge our products, for instance, we in general pledge movable property like jewelry as security to get a loan. Subsequently, bailment is a subject of public significance.

Both Pledge and Bailment are appropriate to movable property only. Pledge alludes to the conveyance of goods as security for the payment of an obligation or the fulfillment of promise, while Bailment alludes to the exchange of things from one individual to another for a particular reason. All pledge can be thought to be bailments, however not all bailments are pledges. Bailment is a more extensive term, which incorporates pledge. A pledge is hence a special kind of bailment. This is on the grounds that, in an agreement of pledge, commodities are 'bailed' as a security for the payment of an obligation or the performance of promise.

Before moving further, we should take note of the contrast between possession and ownership/title over movable property. Possession is to a greater degree an actual authority over a thing, though ownership involves absolute rights and legal claims to an article. Aside from the owner, the possessor has a more grounded claim to the article's title than any other person. Both bailment and Pledge mean to present a type of temporary possession over merchandise conveyed or pledged for a specific reason. The things are provided under bailment for a determined reason and should be returned after that reason is finished. In a pledge contract the use of commodity is limited.²

BAILMENT

Section 148³ of the Indian Contract Act, 1872, characterizes bailment as under:

² Surbhi S, Difference between Bailment and Pledge, key differences (August 8,2021,8:30 PM)
<https://keydifferences.com/difference-between-bailment-and-pledge.html>

³ Indian Contract Act 1872, §148, no.9, Acts of Parliament ,1872(India)

"A 'bailment' is the conveyance of merchandise by one individual to another for some reason, upon an agreement that they will, when the purpose is accomplished, be returned or in any case discarded by the bearings of the individual conveying them."

In simple words, 'bailment' is a circumstance when some movable goods of the 'bailor' (the individual taking care of business) are given over to the 'bailee' (the individual to whom they are delivered) on lease for a particular reason, and are required to be restored to the owner, or otherwise discarded compliant with the bailor's directions after the satisfaction of such reason. Bailment, consequently includes the transfer of possession of merchandise to, who holds the goods either for or at the direction of their owner, to whom they will be returned.

Bailment was secured under the tort of detinue in English precedent-based law before its development as a general contractual remedy. In any case, an action against a bailee can be initiated sui generis and not really as an action in tort law or contract law, i.e., emerging out the possession had by the bailee of the products.

The principal arrangements relating to bailment are covered in Chapter IX (Sections 148–181) of the Indian Contract Act, 1872. In any case, the laws don't cover all parts of bailment. Different Acts, for example, the Carriers Act of 1865, the Railways Act of 1890, and the Carriage of Goods via Sea Act of 1925, deals with different types of bailments.

FUNDAMENTALS OF BAILMENT

Following are the two primary basics to establish a bailment:

1. Delivery of goods for some reason – The things should be conveyed actually or symbolically as a transfer of possession from the bailor to the bailee. The expression "possession " here refers to more than simply custody; it additionally refers to a temporary exchange of control over the things (not ownership). Such custody can also be accepted. Thus, simple possession of goods doesn't set up a bailor-bailee relationship.

In *Kaliaporumal Pillai v. Visalakshmi*⁴, a woman took her old jewels for being melted into new jewels to a goldsmith. She kept a container wherein she would put the new jewels that she got and locked the crate, having the only key, inside the premises of the goldsmith. The jewels were stolen

⁴ *Kaliaporumal Pillai v. Visalakshmi*, AIR 1938 Mad 32

one evening. It was held that the goldsmith can't be made obligated as the 'possession' of the jewels was not given over to him. In like manner, when some valuable jewels are kept in storage spaces with the bank, where the vault can't be accessed without the owner's key, there wouldn't be any bailment.

Delivery can be actual or constructive. Anything which gives "possession" upon the bailor is treated as 'delivery'. In *Morvi Mercantile Bank Ltd. v. Association of India*⁵, the court thought that 'giving over the key of a go down in which the goods are lying, or the transfer of document of title, similar to a rail line receipt, which addresses specific goods adds up to the delivery of merchandise.'

2. Return of the goods after the purpose is accomplished, or their disposal as indicated by the bailor's directions - The bailment of goods is just for a particular reason, for instance, for repair, safe custody etc. When the reason stands fulfilled, the goods are needed to be returned back in its original or changed structure or disposed according to the directions of the bailor. This fundamental element separates bailment from sale and gift deeds.

PLEDGE

Pledge has been characterized in Section 172⁶ of the Indian Contract act about as under:

"The bailment of merchandise as security for the payment of an obligation or performance of a promise is called Pledge "

It can be inferred from this definition that pledge is a sort of bailment of movable merchandise, the motivation behind which is to fill in as security for the payment of an obligation or performance of a promise. In the arrangement of a pledge, also called 'pawn', the bailor is referred to as the 'pawnor', and the bailee as 'pawnee'.

In pledge, the pawnee owes an exceptional right over the products, some place in the middle of lien and mortgage, which permits the pawnee to hold the merchandise to compel the pawnor for repayment, request phenomenal costs (caused for the conservation of goods, or to sell the goods on default of payment).

⁵ *Morvi Mercantile Bank Ltd. V. Association of India*, 1965 AIR 1954, 1965 SCR (3) 254

⁶ Indian Contract Act 1872, §172, no.9, Acts of Parliament ,1872(India)

Pledge can be perceived as mean a to security advanced to get a loan from a creditor. For this situation, the pawnee has the privilege to hold the goods till the reimbursement is made. In addition, in case of default by the pawnor in the payment of the debt at the predetermined time, the goods can be legitimately sold by the pawnee to recuperate the sum, after giving a due notice of sale to the pawnor.

FUNDAMENTALS OF PLEDGE

Following are the two primary prerequisites to comprise a legitimate pledge, which are practically equivalent to that of Bailment:

1. There ought to be a bailment of products, i.e., the delivery of merchandise from one individual to another.
2. The reason for such bailment is to make the goods bailed serve as security for the installment of debt, or performance of promise.
3. There is no transfer of ownership⁷

CONCLUSION

To conclude, Following are the significant contrasts among Bailment and Pledge

A Bailment is an agreement where goods are transferred from one party to another for a brief period for a particular goal. Pledge is a sort of Bailment wherein goods are pledged as protection from installment of debt. A Bailment is characterized under section 148 while Pledge is characterized under section 172 of the Indian Contract Act, 1872. In bailment, the consideration may or may not be available, however on account of a pledge, consideration is consistently present. The aim of bailment is to safe custody or fix the goods delivered. The sole motive behind getting it done is to get protection from the debt. The receiver has no option to sell the goods in the event of bailment while if Pawnor doesn't reclaim the merchandise within the stipulated time, the Pawnee can offer the goods for sale after giving him the notice. In bailment, the merchandise is utilized by

⁷ Sakshi Agarwal, Contract of Bailment and Pledge, Law times journal (Aug 9,2021, 3:54 PM)
<https://lawtimesjournal.in/contract-of-bailment-and-pledge/>

the bailee just for the said reason. On the other hand, in pledge, Pawnee has no privilege to utilize the merchandise. In a nutshell, every pledge is a bailment, but not every bailment is a pledge. Pledge is a special kind of Bailment, having its own characteristic features as discussed. As a result, both of them are extremely significant in their respective fields.



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