

Indian Contract Act, 1872

Chapter 9 - Of Bailment

A bailment is the delivery of goods by one person to another for some purpose, upon a contract that they 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.

Explanation. If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

Section 149 - Delivery to bailee how made

The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Section 150 - Bailors duty to disclose faults in goods bailed

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 such 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.

Illustrations

(a) 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.

(b) 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.

Section 151 - Care to be taken by bailee

1 151. Care to be taken by bailee

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.²

1. The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act, 1905 (Madras Act 2 of 1905), in regard to goods has been declared to be that of a bailee under

these sections, without the qualifying words "in the absence of any special contract" in section 152, see section 40(1) of the Act.

2. As to railway contracts see the Indian Railways Act, 1890 (9 of 1890), section 72. [Ed. The Indian Railways Act, 1890 (9 of 1890) has been repealed by the Railways Act, 1989 (24 of 1989), section 200.] As to the liability of common carriers, see the Carriers Act, 1865 (3 of 1865), section 8.

Section 152 - Bailee when not liable for loss, etc. , of thing bailed

1 152. Bailee when not liable for loss, etc. , of thing bailed

The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

1. The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act, 1905 (Madras Act 2 of 1905), in regard to goods has been declared to be that of a bailee under these sections, without the qualifying words "in the absence of any special contract" in section 152, see section 40(1) of the Act.

Section 153 - Termination of bailment by bailees act inconsistent with conditions

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.

Illustrations

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.

Section 154 - Liability of bailee making unauthorized use of goods bailed

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.

Illustrations

(a) 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.

(b) A hires a horse in Calcutta from B expressly to march to Benares. 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.

Section 155 - Effect of mixture, with bailors consent, of his goods with bailees

If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Section 156 - Effect of mixture without bailors consent, when the goods can be separated

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

Illustrations

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 expense incurred in the separation of the bales, and any other incidental damage.

Section 157 - Effect of mixture, without bailors consent, when the goods cannot be separated

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.

Illustrations

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.

Section 158 - Repayment, by bailor, of necessary expenses

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, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Section 159 - Restoration of goods lent gratuitously

The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But, if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Section 160 - Return of goods bailed, on expiration of time or accomplishment of purpose

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.

Section 161 - Bailees responsibility when goods are not duly returned

1 161. Bailee's responsibility when goods are not duly returned

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.[2](#)

-
1. Section 161 has been declared to apply to the responsibility of the Trustees of the Port of Madras as to goods in their possession, see the Madras Port Trust Act, 1905 (Madras Act 2 of 1905).
 2. As to Railway contracts, see the Indian Railways Act, 1890 (9 of 1890), section 72 [Ed. The Indian Railways Act, 1890 (9 of 1980) has been repealed by the Railways Act, 1989 (24 of 1989), sec. 200.]

Section 162 - Termination of gratuitous bailment by death

A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Section 163 - Bailor entitled to increase or profit from goods bailed

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.

Illustrations

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.

Section 164 - Bailors responsibility to 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 directions, respecting them.

Section 165 - Bailment by several joint owners

If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Section 166 - Bailee not responsible on redelivery to bailor without title

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 is not responsible to the owner in respect of such delivery.[1](#)

-
- 1 . See the Indian Evidence Act, 1872 (1 of 1872), section 117.

Section 167 - Right of third person claiming goods bailed

If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Section 168 - Right of finder of goods, may sue for specific reward offered

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.

Section 169 - When finder of thing commonly on sale may sell it

When a thing which is commonly the subject of sale is 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.

Section 170 - Bailees particular lien

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.

Illustrations

- (a) 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.
- (b) 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.

Section 171 - General lien of bankers, factors, wharfingers, attorneys and policy-brokers

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 that effect.[1](#)

1. As to lien of an agent, see section 221 infra. As to lien of a Railway Administration, see the Indian Railways Act 1890 (9 of 1890), section 55. [Ed. The Indian Railways Act, 1990 (9 of 1890) has been repealed by the Railways Act, 1989 (24 of 1989) Sec. 200. Now see the Railways Act 1989 (24 of 1989, section 83.)]

Section 172 - Pledge, pawnor and pawnee defined

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.

Section 173 - Pawnees right of retainer

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.

Section 174 - Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances

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.

Section 175 - Pawnees right as to extraordinary expenses incurred

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Section 176 - Pawnees right where pawnor makes default

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.

Section 177 - Defaulting pawnors right to redeem

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 ¹but he must, in that case, pay, in addition, any expenses which have arisen from his default.

1. For limitation, see the Limitation Act, 1963 (36 of 1963), Schedule 1.

Section 178 - Pledge by mercantile agent

1 [178. Pledge by mercantile agent

Where a mercantile agent is, with the consent of the owner, in possession of goods or the document 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 not authority to pledge.

Explanation.-In this section, the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (3 of 1930).

1. Section 178 and 178A Substituted by Act 4 of 1930, section 2, for the original section 178.

Section 178A - Pledge by person in possession under voidable contract

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.]

Section 179 - Pledge where pawnor has only a limited interest

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Section 180 - Suit by bailor or bailee against wrong-doer

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.

Section 181 - Apportionment of relief or compensation obtained by such suits

Whatever is obtained by way of relief or compensation in such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.
