

A gives his bicycle to B for repair, or when A gives his car to B on hire. Such consideration in money form, however, is not necessary to support the promise on the part of the bailee to return the goods. The detriment suffered by the bailor, in parting with possession of the goods, is a sufficient consideration to support the contract of bailment.

#### CLASSIFICATION OF BAILMENTS

Bailments may be classified according to the benefit derived by the parties. Thus a bailment may be—

- (1) for the exclusive benefit of the bailor, as the delivery of some valuables to a neighbour for safe custody, without charge.
- (2) for the exclusive benefit of the bailee, as the lending of a bicycle to a friend for his use, without charge.
- (3) for the mutual benefit of the bailor and the bailee, as the hiring of a bicycle or giving of a watch for repair. In these cases, consideration passes between the bailor and the bailee.

Bailments may also be classified into :

- (1) *Gratuitous bailment*. It is a bailment where no consideration passes between the bailor and the bailee, e.g., where A lends a book to his friend B.
- (2) *Non-gratuitous bailment or bailment for reward*. It is a bailment where consideration passes between the bailor and the bailee, e.g., where certain goods are kept in a godown for hire, or where A hires a bicycle from B.

#### DUTIES AND RIGHTS OF BAILOR AND BAILEE

##### Duties of bailor

1. *To disclose known faults*. It is the first and foremost duty of the bailor to disclose the known faults about the goods bailed to the bailee. If he does not make such disclosure, he is responsible for any damage caused to the bailee directly from such faults (Sec. 150, para 1).

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

In case the goods are bailed for hire, the duty of the bailor is still greater. He is responsible even for those faults which are not known to him (Sec. 150, para 2).

*Examples*. (a) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and is injured. B is responsible to A for the injury.

(b) A hires a motor launch from B for holiday on the river Thames. The launch caught fire and A was unable to extinguish it as the fire-fighting equipment was out of order. As such he was injured and suffered loss. *Held*, B was liable [Read v. Dean, (1949) 1 K.B. 188].

In a gratuitous bailment, however, the bailor is responsible only for those faults which are known to him and which are not disclosed [Coughlin v. Gillison, (1899) 1 Q.B. 145].

2. *To bear extraordinary expenses of bailment*. The bailee is bound to bear ordinary and reasonable expenses of the bailment but for any extraordinary expenses the bailor is responsible.

*Example*. A lends his horse to B, a friend, for two days. The feeding charges are to be paid by B. But if the horse meets with an accident, A will have to repay B medical expense, incurred by B.

Where in case of a gratuitous bailment, the goods are to be kept or to be carried, or some work is to be done upon the goods by the bailee for the bailor, the bailor must repay to the bailee all the necessary expenses incurred by him for the purpose of the bailment (Sec. 158).

*Example*. A leaves his car with B, a friend, for safe custody for two months, B has to pay Rs. 100 per month to the night watchman for keeping a watch over the car. It is the duty of A to pay B the necessary expenses incurred by B.

3. *To indemnify bailee for loss in case of premature termination of gratuitous bailment*. A gratuitous bailment can be terminated by the bailor at any time even though the bailment was for a specified time or purpose. But in such a case, the loss accruing to the bailee from such premature termination should not exceed the benefit he has derived out of the bailment. If the loss exceeds the benefit, the bailor shall have to indemnify the bailee (Sec. 159).

*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 the bicycle after one month, he will have to compensate B for expenses incurred by B in excess of the benefit derived by him.

4. *To receive back the goods*. It is the duty of the bailor to receive back the goods when the bailee returns them after the expiry of the term of the bailment or when the purpose for which bailment was created has been accomplished. If the bailor refuses to receive back the goods, the bailee is entitled to receive compensation from the bailor for the necessary expenses of custody.

5. *To indemnify the bailee*. Where the title of the bailor to the goods is defective and the bailee suffers as a consequence, 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 bailment, or to receive back the goods, or to give directions respecting them (Sec. 164).

##### Duties of bailee

1. *To take reasonable care of the goods bailed*. 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 (Sec. 151). The onus of proof is on the bailee to show that there has been no negligence, when he fails to return the goods or returns them in a damaged condition, and that the loss or damage occurred in spite of the fact that he took reasonable care of them. If, in spite of the bailee's reasonable care, goods are damaged or destroyed in any way, the bailee is not liable for the loss, destruction or deterioration of the thing bailed (Sec. 152).

*Examples*. (a) Some cattle belonging to A were agisted (given for feeding grass against payment) with B. Without any negligence on B's part the cattle were stolen. B did not inform the owner or the police or make any effort to recover them, because he thought it would be useless to do so, *Held*, B was liable for the loss [Coldman v. Hill, (1919) 1 K.B. 443].

(b) M was admitted to a hospital where her jewellery was handed over to the hospital officials for safe custody. The jewellery was stolen. *Held*, the hospital officials were bailees for reward and were liable for the loss as they had failed to exercise a care which the nature and quality of the article required [*Martin v. London County Council*, (1947) K.B. 628].

(c) A entered a restaurant for dining. His coat was taken by a waiter who hung it on a hook behind A. When A rose to leave, the coat was gone. *Held*, the proprietor of the restaurant was liable for the loss [*Uitzen v. Nicols*, (1894) 1 Q.B. 92].

(d) Certain goods of A were bailed with B. B omitted to lock up the goods bailed, locking up similar goods of his own. *Held*, he was liable [*Clarke v. Earnshaw*, (1818) Gow. 30].

2. *Not to make any unauthorised use of goods.* If the bailee uses the goods bailed in a manner which is inconsistent with the terms of the contract, he shall be liable for any loss even though he is not guilty of negligence, and even if the damage is the result of an accident (Sec. 154).

*Examples.* (a) A lends a horse to B for his 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 caused to the horse.

(b) A hires a horse in Calcutta 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 compensate B for the injury to the horse.

3. *Not to mix the goods bailed with his own goods.* The bailee must not mix the goods of the bailor with his own goods, but must keep them separate from his own goods. If he mixes the bailor's goods with his own goods—

(a) *with the bailor's consent*, both shall have a proportionate interest in the mixture thus produced (Sec. 155);

(b) *without the bailor's consent*, and if the goods can be separated or divided, the bailee is bound to bear the expenses of separation or division, as well as damage arising from the mixture (Sec. 156);

*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 charges.

(c) *without the bailor's consent*, so that the mixture is beyond separation, the bailor is entitled to be compensated by the bailee for the loss of the goods (Sec. 157).

*Example.* A bails a bag of Farm wheat worth Rs. 550 to B. B, without A's consent, mixes the wheat with imported wheat of his own, worth only Rs. 250 a bag. B must compensate A for the loss of his wheat.

If the goods of the bailor get mixed up with the like goods of the bailee, by inadvertence of the bailee or accident or by an act of God or by the act of an unauthorised third party, the mixture belongs to the bailor and the bailee in proportion to their shares but the cost of separation will have to be borne by the bailee.

4. *Not to set up an adverse title* (Sec. 117 of the Indian Evidence Act, 1872). The bailee must hold the goods on behalf of and for the bailor. He cannot deny the right of the bailor to bail the goods and receive them back. If he delivers the goods bailed to a person other than the bailor, he may prove that such person had a right to them as against the bailor.

5. *To return any accretion to the goods.* 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).

*Example.* 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.

6. *To return the 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). If he fails to do so, he is responsible to the bailor for any loss (Sec. 161) notwithstanding the exercise of reasonable care on his part.

*Example.* A delivered some books to B to be bound. He pressed for their return, but B neglected to return them although more than a reasonable time had elapsed. A fire accidentally broke out on B's premises, and the books were burnt. *Held*, B was liable for the loss, although he was not negligent, because of his failure to deliver the books within a reasonable time [*Shaw & Co. v. Symmons & Sons*, (1917) 1 K.B. 799].

#### Rights of bailor

1. *Enforcement of rights.* The bailor can enforce by suit all the liabilities or duties of the bailee, as his rights.

2. *Avoidance of contract.* The bailor can terminate the bailment if the bailee does, with regard to the goods bailed, any act which is inconsistent with the terms of the bailment (Sec. 153).

*Example.* A lets a horse to B for his own riding only. B uses the horse with a carriage. A can terminate the bailment.

3. *Return of goods lent gratuitously.* When the goods are lent gratuitously, the bailor can demand their return whenever he pleases even though he lent them for a specified time or purpose. But if the bailee suffers any loss exceeding the benefit actually derived by him from the use of such goods because of premature return of goods, the bailor shall have to indemnify the bailee (Sec. 159).

4. *Compensation from a 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 bailor or the bailee may bring a suit against the third person for such deprivation or injury (Sec. 180).

#### Rights of bailee

The duties of the bailor are the rights of the bailee. As such, the bailee can, by suit, enforce the duties of the bailor. The other rights of the bailee are as follows:

1. *Delivery of goods to one of several joint bailors of goods.* 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 (Sec. 165).

2. *Delivery of goods 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 (Sec. 166).

3. *Right to apply to Court to stop delivery.* If a person, other than the bailor, claims goods bailed, the bailee may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods (Sec. 167).

4. *Right of action against trespassers.* If a third person wrongfully deprives the bailee of the use or possession of the goods bailed to him, he has the right to bring an action against that party. The bailor can also bring a suit in respect of the goods bailed (Sec. 180).

5. *Bailee's lien.* Where the lawful charges of the bailee in respect of the goods bailed are not paid, he may retain the goods. This right of the bailee to retain the goods is known as 'particular lien'.

#### LAW RELATING TO LIEN

'Lien' means the right of a person to retain possession of some goods belonging to another until some debt or claim of the person in possession is satisfied. It appertains to the person who has possession of the goods which belong to another, entitling him to retain them until the debt due to him has been paid.

Possession is essential for exercising the right of lien, and in order to create a lien the possession must be (a) rightful, (b) not for a particular purpose, and (c) continuous.

*Example.* A company agreed to garage the motor-car of H for three years, for an annual charge. H was entitled to take the car out of the company's garage as and when she liked. The annual payment being in arrear the company detained the car at the garage and claimed a lien. Held, as H was entitled to take the car away as and when she pleased, the company had no lien [*Hatton v. Car Maintenance Co. Ltd.*, (1915) 1 Ch. 621].

Right of lien may arise (a) by Statute, or (b) by express or implied contract, or (c) by a general course of dealing between the parties in a particular trade.

A lien be (1) a particular lien, or (2) a general lien.

1. **Particular lien.** A particular lien is one which is available to the bailee against *only* those goods in respect of which he has rendered some service involving the exercise of labour or skill.

*Examples.* (a) A delivers a rough diamond to B, a jeweller, to be cut and polished. This is accordingly done. B is entitled to retain the finished diamond till he is paid for services he has rendered.

(b) A gives a piece of cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished. B is entitled to retain the coat till he is paid for.

Sec. 170 explains 'particular lien' as follows: "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."

Simply stated, *particular lien* is available to a bailee only against those goods on which some skill and labour have been expended by him. But if the bailee does not complete the work within the agreed time, or a reasonable time, he cannot exercise his right of lien. Also, if he voluntarily permits the bailor to regain possession of the goods without payment of the charges, he cannot exercise the right of lien. Same is the case when he allows credit to the bailor.

*Example.* A gives a piece of cloth to B, a tailor, to sew it 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. If, through no fault of the bailee, the goods are destroyed or stolen, the bailee is entitled to be paid for services performed upon the goods before they were destroyed or stolen.

*Example.* A, a watch-repairer, repaired B's watch for a total charge of Rs. 20. Before B took delivery of the watch, the shop caught fire through no fault of A, and B's watch was destroyed. A is entitled to get his repair charges for the work he performed prior to fire.

2. **General lien.** A general lien is a right to retain *all* the goods or any property (which is in possession of the holder) of another until all the claims of the holder are satisfied. This is a right to retain the property of another for a general balance of account. For example, if two securities are given to a banker but a loan is taken only against one of the securities, the banker may retain both the securities until his claim is satisfied.

General lien, according to Sec. 171, is available to bankers, factors, wharfingers (those who have the care of, or own, a structure built especially along the shore, for loading or unloading vessels), attorneys of High Court and policy brokers. These persons are entitled, in the absence of a contract to the contrary, to retain possession of the goods bailed to them as security until their claims are fully satisfied.

#### Distinction between particular lien and general lien

Particular lien	General lien
1. This is a right available to a bailee against only those goods in respect of which skill and labour have been expended by him.	1. This is a right to retain any property belonging to the other party in respect of any payment lawfully due, provided the property is in the possession of the person exercising the right.
2. This is a right to retain the goods only for a charge for labour employed or expenses incurred upon the goods.	2. This is a right to retain any property belonging to the other party for a general balance of account.

**Extinguishment of lien.** A lien is extinguished or lost by (a) abandonment; (b) payment or tender of the amount due; or (c) loss or surrender of possession of the goods.

#### Rights of bailor and bailee against wrong-doer

1. **Suit against wrong-doer.** Sometimes a third person may wrongfully deprive the bailee of the use or possession of the goods bailed or may cause injury to the goods. In such a case, the bailee may use such remedies as the owner might have used and either the bailor or the bailee

may bring a suit against the third person for such deprivation or injury (Sec. 180).

2. *Apportionment of relief.* Whatever is obtained by way of relief or compensation in any such suit in the above case shall, as between the bailor and the bailee, be dealt with according to their respective interests (Sec. 181).

#### FINDER OF GOODS

A person who comes by an article is not obliged to pick it up or take charge of it. But if he does pick it up, he becomes a bailee. Sec. 71 clearly lays down that "a person, who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee."

##### Rights of finder of goods

1. *Right of lien.* The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expense incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation as the trouble and expense were incurred by him voluntarily (Sec. 168).

2. *Right to sue for reward.* The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward (Sec. 168).

3. *Right of sale.* A finder of goods may sell the goods found—

(a) if the owner cannot with reasonable diligence be found, or

(b) if found, he refuses to pay the lawful charges of the finder, or

(c) if the goods are in the danger of perishing or of losing the greater part of their value, or

(d) if the lawful charges of the finder, in respect of the goods found, amount to two-thirds of their value (Sec. 169).

##### Obligations of finder of goods

1. He must take reasonable care of the goods and if, in spite of this, the goods are destroyed, he is not responsible for any loss.

2. He must not use the goods for his own purpose.

3. He must not mix the goods with his own goods.

4. He must try to find out the owner of the goods. If he does not do that, he will be liable as a trespasser (one who interferes with another's property).

##### LIABILITY OF HOTEL-KEEPERS, INN-KEEPERS, COMMON CARRIERS

The liability of a hotel-keeper or an inn-keeper in respect of goods belonging to a guest is that of bailee of goods. It is determined by Sec. 151. A hotel-keeper should as such take as much care of the goods as a prudent man would take of his own goods under similar circumstances. The liability of a hotel-keeper in India to his guests is regulated by the Contract Act, and not by the Common Law rule of England in force against inn-keepers, and in the absence of any specific agreement in a given case, the rules laid down in Ch. IX (which deals with 'Bailment') of the Contract Act are applicable [*Jain & Son v. Cameron*, (1922) All. 375].

It is the duty of a hotel-keeper to keep his premises in such a condition of safety as would reasonably prevent theft and take such care of the property of his guests as a man of ordinary prudence would, under

similar circumstances, take of his own goods. Where he fails in such a duty, he is, in case of a theft of the property of a guest, liable for its value.

As regards the liabilities of a common carrier in India, there are separate Acts which deal with this point.

#### TERMINATION OF BAILMENT

A contract of bailment is terminated in the following cases :

1. *On the expiry of the period.* When the bailment is for a specific period, it terminates on the expiry of that period.

2. *On the achievement of the object.* When the bailment is for a specific purpose, it terminates as soon as the purpose is achieved.

3. *Inconsistent use of goods.* When the bailee uses the goods in a manner inconsistent with the terms of the contract, the bailment terminates (Sec. 154).

4. *Destruction of the subject-matter.* A bailment is terminated when the subject-matter of the bailment (a) is destroyed, or (b) by reason of a change in its nature becomes incapable of use for the purpose of the bailment.

5. *Gratuitous bailment.* It can be terminated any time subject to condition laid down in Sec. 159 (discussed earlier in this Chapter).

6. *Death of the bailor or bailee.* A gratuitous bailment is terminated by the death either of the bailor or of the bailee (Sec. 162).

#### PLEDGE

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 'pledger' or 'pawnor' and the bailee is called the 'pledgee' or 'pawnee' (Sec. 172).

A pledge is a bailment for security. It is a special kind of bailment. If A borrows Rs. 200 from B and keeps his watch as security for payment of the debt, the bailment of watch is a pledge. Any kind of movable property, i.e., goods, documents, or valuables may be pledged. Even a Savings Bank Pass Book may be pledged [*J. & K. Bank v. Tek Chand*, A.I.R. (1959) J. & K. 67]. But delivery is necessary to complete a pledge. The delivery may be actual or constructive. If, because of the bulk of the property or for some other reason, actual delivery is impracticable, a symbolic delivery will suffice (as for example delivery of the keys to a safe deposit box).

*Example.* The producer of a film borrowed a sum of money from a financier-distributor and agreed to deliver the final prints of the film when ready. Held, the agreement was not a pledge, there being no actual transfer of possession [*Revenue Authority v. Sudarshan Pictures*, A.I.R. (1968) Mad. 319].

##### Difference between pledge and bailment

1. Pledge is the bailment of goods as a security for the performance of a specific promise, i.e., the payment of a debt or performance of a promise. Bailment, on the other hand, is for a purpose of any kind.

2. In case of default by the pawnor to repay the debt, the pawnee may, after giving notice to the pawnor, sell the goods pledged with him. The bailee may either retain the goods or sue for his charges.

3. In case of pledge, the pawnee has no right to use the goods pledged with him. In case of bailment, the bailee may do so if the terms of bailment so provide.

#### RIGHTS AND DUTIES OF PAWNOR AND PAWNEE

The rights and duties of pawnor and pawnee are almost similar to those of bailor and bailee. But the rights of the pawnee and pawnor need a special mention.

##### Rights of pawnee

1. *Right of retainer.* The pawnee may retain the goods pledged until his dues are paid. He may retain them not only for the payment of the debt or the performance of the promise, but for (a) the interest due on the debt, and (b) all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged (Sec. 173). He can however exercise only a particular lien over the goods.

2. *Right of retainer for subsequent advances.* When the pawnee lends money to the same pawnor after the date of the pledge, it is presumed that the right of retainer over the pledged goods extends to subsequent advances also. This presumption can be rebutted only by a contract to the contrary (Sec. 174).

3. *Right to extraordinary expenses.* The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged (Sec. 175). For such expenses, he has no right to retain the goods; he can only sue to recover them.

4. *Right against true owner, when the pawnor's title is defective.* When the pawnor has obtained possession of the goods pledged by him under a voidable contract (i.e., by fraud, undue influence, coercion, etc.) 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 (Sec. 178-A).

5. *Pawnee's rights where pawnor makes default* (Sec. 176). Where the pawnor fails to redeem his pledge, the pawnee can exercise the following rights:

(1) He may file a suit against the pawnor upon the debt or promise and may retain the goods pledged as a collateral security.

(2) He may sell the goods pledged after giving the pawnor a reasonable notice of the sale. Of these two rights, while the right to retain or sell the pawned goods are not concurrent, the right to sue and sell are concurrent rights, i.e., the pawnee may sue and at the same time retain the goods as concurrent security or sell them after giving reasonable notice of the sale to the pawnor [*Haridas Mundra v. National & Grindlays Bank Ltd.*, A.I.R. (1963) Cal. 132].

(3) He can recover from the pawnor any deficiency arising on the sale of the goods by him. But he shall have to hand over the surplus, if any, realised on the sale of the goods to the pawnor.

##### Rights of pawnor

1. *Right to get back goods.* On the performance of promise or repayment of loan and interest, if any, the pawnor is entitled to get back the goods pledged.

2. *Right to redeem debt.* Quite often a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made. In such a case if the pawnor makes default in payment of the

debt or performance of the promise at the stipulated time, he may still 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 (Sec. 177).

3. *Preservation and maintenance of the goods.* The pawnor has a right to see that the pawnee, like bailee, preserves the goods pledged and properly maintains them.

4. *Rights of an ordinary debtor.* The pawnor has, in addition to the above rights, the rights of an ordinary debtor which are conferred on him by various Statutes meant for the protection of debtors.

#### PLEDGE BY NON-OWNERS

The general rule is that it is the owner who can ordinarily create a valid pledge. But in the following cases even a non-owner can create a valid pledge:

1. *Pledge by mercantile agent.* 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, is as valid as if he were expressly authorised by the owner of the goods to make the same. But the pledge is valid only if the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not the authority to pledge (Sec. 178).

The term 'mercantile agent' is defined in Sec. 2 (9) of the Sale of Goods Act, 1930, thus: "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."

2. *Pledge by seller or buyer in possession after sale.* A seller left in possession of goods after sale and a buyer who obtains possession of goods with the consent of the seller before sale, can create a valid pledge provided the pawnee acts in good faith and has no notice of the previous sale of goods to the buyer or of the lien of the seller over the goods (Sec. 30 of the Sale of Goods Act, 1930).

*Example.* S sells 100 bags of wheat to B, delivery and payment of price to be made in the next three months. Before the goods are delivered to B, S pledges the goods with P who acts *bona fide* and has no notice of the prior sale. The pledge is valid.

3. *Pledge where pawnor has 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 (Sec. 179). A person having a lien over the goods or a finder of goods may pledge them to the extent of his interest.

*Example.* F finds a pen on a road and pledges it with P for Rs. 20. F had, however, incurred Rs. 10 in getting the pen repaired. The owner can get the pen by paying Rs. 10 to P, the pledgee.

4. *Pledge by co-owner in possession.* One of the several co-owners of goods in possession thereof with the assent of the other co-owners may create a valid pledge of the goods.

5. *Pledge by person in possession under a voidable contract.* Where a person obtains possession of goods under a voidable contract, the pledge created by him is valid provided (1) the contract has not been rescinded before the contract of pledge, and (2) the pawnee acts in good faith and without notice of the pawnor's defect of title (Sec. 178-A).

### SUMMARY 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' and the person to whom they are delivered is called the 'bailee' (Sec. 148).

**Requisites of bailment.** 1. Contract. 2. Delivery of possession of goods for some purpose. 3. Return of goods when the purpose is accomplished.

**Classification of bailments.** Bailments may be for the (1) exclusive benefit of the bailor, or (2) exclusive benefit of the bailee, or (3) mutual benefit of the bailor and the bailee. Bailments may also be classified into (1) gratuitous bailment, and (2) non-gratuitous bailment or bailment for reward.

**Duties of bailee.** 1. To take care of the goods bailed. 2. Not to make any unauthorised use of the goods. 3. Not to mix the goods bailed with his own goods. 4. Not to set up an adverse title. 5. To return any accretion to the goods. 6. To return the goods.

**Duties of bailor.** 1. To disclose known faults. 2. To bear extraordinary expenses of bailment. 3. To receive back the goods. 4. To indemnify bailee.

**Law relating to lien.** Lien means the right of a person to retain possession of goods of another until some debt or claim of the person in possession is settled. A lien may be (a) a particular lien, or (b) a general lien. A *particular lien* is one which is available to the bailee against only those goods in respect of which he has rendered any service involving the exercise of labour or skill. A *general lien* means the right to retain all the goods or any property of the bailor which is in possession of the bailee until all the claims of the bailee are satisfied. This is a right to retain the property of another for a general balance of account.

**Termination of bailment.** A contract of bailment is terminated — 1. On the expiry of the period. 2. On the achievement of the object. 3. On the inconsistent use of goods bailed. A gratuitous bailment can be terminated by the bailor at any time even though the bailment was for a specified time or purpose provided the loss accruing to the bailee from such premature termination does not exceed the benefit he has derived out of the bailment.

### PLEDGE

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' or 'pledger' and the bailee is called the 'pawnee' or 'pledgee' (Sec. 172).

**Rights of pawnee.** (1) Right to retain goods for debt, interest and expenses, and for subsequent advances. (2) Right to extraordinary expenses. (3) Right against true owner when the pawnor's title is defective. (4) Rights where pawnor makes default — (a) Suit against the pawnor. (b) Retention of the goods as a collateral security. (c) Suit for the sale of the goods pledged. (d) Right of sale. (e) Right to recover deficiency on sale.

**Pledge by non-owners.** The general rule is that it is the owner who can ordinarily create a valid pledge. But in the following cases pledge even by a non-owner is valid : (1) Pledge by mercantile agent. (2) Pledge by seller or buyer in possession after sale. (3) Pledge by a person having limited interest. (4) Pledge by a co-owner in possession. (5) Pledge by a person in possession under a voidable contract.

### TEST QUESTIONS

1. Define bailment. Discuss the rights and responsibilities of a paid and a gratuitous bailee. How does a bailment differ from a pledge?
2. Explain how a bailment may result without the owner actually delivering the goods to the bailee.
3. What are the rights and duties of a bailor and a bailee in a bailment for hire and in a bailment by way of pledge.
4. To what extent is a bailee responsible for loss arising from defective title of the bailor?
5. In bailments, which factors are considered in determining whether or not the bailee took reasonable care of the goods bailed?
6. What are the rights and obligations of a finder of goods? What is the nature of the lien he has over the goods?

7. "The position of a finder of goods is exactly that of a bailee in the case of a deposit." Comment and discuss.

8. Distinguish between 'general lien' and 'particular lien'. In what category would you place the bailee's lien? Who are entitled to general lien?

9. When does a bailment come to an end?

10. Define pledge. What are the respective rights and duties of pawnor and pawnee?

11. When is a pledge created by non-owners valid?

12. When a pledger fails to redeem his pledge, what right does the pledgee have in the pledge?

### PRACTICAL PROBLEMS

**Attempt the following problems, giving reasons :**

1. A gives silk to B, a tailor, to be stitched into a coat. B promises A to deliver the coat as soon as it is made and to give A three months' credit for the charges. Is B entitled to retain the coat until the charges are paid?

[Hint: No (Sec. 170)].

2. A gives an electric kettle to B, an electric repairer, on condition that the kettle must be returned completely repaired within a fixed period. When A asks for the return of the kettle, B claims to retain the kettle until he is paid due remuneration for the work done by him. Is B's claim tenable?

[Hint: Yes (Sec. 170)].

3. A lends his motor car to B for a drive by him only. B allows his daughter C, who is an expert car driver, to drive the vehicle. C drives the car carefully but its axle suddenly breaks and the car is damaged. Is B liable for the damage?

[Hint: Yes (Sec. 154)].

4. P who wanted to attend a cinema left his car in D's grounds after having paid a rupee and obtained a "car park/ticket". He returned from the cinema and found that the car had been stolen by someone. P sues D as bailee for negligence. Decide.

[Hint: D is liable to make good P's loss (Secs. 151 and 152)].

5. A asked B, an expert driver, to drive his car in order to show off for sale. B drove it unskillfully and collided it with a tree. Is B liable for the loss?

[Hint: Yes (Secs. 151 and 152)].

6. A gave a piece of cloth to B, a tailor, to be stitched into a suit. B retained the cloth for a period longer than was necessary and neglected to return it or the suit, even on A's persistent demand. Subsequently a fire broke out in B's shop and the cloth was destroyed. Is B liable for the loss?

[Hint: Yes (Sec. 161; *Shaw & Co. v. Symmons & Sons*)].

7. A's coat, while he was dining in a restaurant, was taken by a waiter and hung on a hook behind A. The coat was stolen. (a) Can A recover the loss? (b) if so, from whom?

[Hint: (a) Yes (*Utzon v. Nicols*). (b) From the proprietor].

8. A guest, arriving late for dinner at a hotel, saw a number of ladies' coats left in an ante-room which was previously used as supervised cloak-room. At that time, however, there was no attendant in the room. Nevertheless, she left her mink coat with the other coats. Whilst she was dining, the coat was stolen. Is the hotel owner liable for the loss?

[Hint: Yes (*Jain & Son v. Cameron*, Secs 151 and 152)].

9. A lends a book to B and B promises to return it one week before the University examination which both A and B are to take. B does not return the book in spite of A's repeated demands till the examination is over. A sues B for breach of contract and claims damages for the inconvenience caused to him. B pleads absence of consideration for his promise to return the book to A. Decide.

[Hint: B's plea is not valid. He is also liable to compensate A].

10. A gives some cloth to a tailor for making a suit of it. The tailor's charges are settled at Rs. 150. After the suit is ready A tenders Rs. 150 for the charges but the tailor refuses to deliver the suit till A pays an old debt of Rs. 30. Is the tailor entitled to do so?

[Hint: No (Sec. 170)]

11. A, a doctor, by the exercise of undue influence, persuades his patient B to sell a valuable diamond to him at a very low price. A obtains possession of the diamond and pledges it with C. Is this a valid pledge?

[Hint : Yes, provided C acts in good faith and without notice of A's defect of title].

12. A borrows Rs. 100 from B on 1st March, and pledges his wrist watch to secure the advance. Subsequently on 1st June A borrows another sum of Rs. 100 from B. A repays the first debt in full. Can B retain the wrist watch against his claim for the repayment of the second loan?

[Hint : Yes (Sec. 174)].

13. A white tiger was entrusted by B to the railway for carriage. The cage broke by the jolts received during the journey and the tiger escaped. It killed a bullock belonging to C and was almost immediately crushed by the engine. Discuss the liability of the railway administration to B and C.

[Hint : The liability of the railway administration in India is that of an ordinary bailee. If the case is broken by the jolts during the journey, it is the fault of B. The railway administration is, therefore, not liable to B. It is also not liable to C as there is no fault on its part].

14. A delivers to B, a carrier, some explosives in a case without disclosing this fact to B. B does not take any extraordinary care required for such type of goods. The case explodes. As a result, a porter is injured and some other goods are damaged. Discuss the liability of A.

[Hint : A is liable to B for the injury caused to the porter and the damage caused to other goods (Sec. 151)].

15. To try a coat that is offered for sale a customer in a store takes off her own coat and in the presence of the proprietor lays it on the counter. The coat is stolen. Is the proprietor responsible for the loss as a bailee?

[Hint : Yes. The law creates a bailment under the circumstances].

16. A young couple invite a select gathering of relatives and friends for a party at a hotel to celebrate the first anniversary of their marriage. The attendant receives the umbrellas, walking sticks, etc., of the guests and keeps them in a room. One of the guests finds, when about to depart, his overcoat and his wife's fancy umbrella missing. Advise him as to his loss.

[Hint : The guest can hold the hotel management liable for the loss (Secs. 151 and 152)].

17. Z entrusts his watch to Y, a watch-repairer, with a stipulation that the repairs should be completed within a week. Meanwhile Y was busy with his daughter's marriage and could not complete the repairs in time. Z wanted the watch back though the repairs were not completed. Y refused to hand over the watch unless his charges were paid. Discuss the rights of Z and Y.

[Hint : Y cannot retain the watch. Z is entitled to have his watch back and claim compensation from Y for the breach of the contract (Sec. 170)].

18. 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 and B is thrown and injured. Explain the legal relationship between A and B and advise B as to his rights.

[Hint : A is responsible for damage sustained by B (Sec. 150)].

19. Some cattle belonging to A were agisted with B. Without any negligence on B's part the cattle were stolen. B did not inform the owner or the police immediately, or make any efforts to recover them because he thought that it would be useless to do so. Is B liable to A for the loss?

[Hint : Yes. (Coldman v. Hill; Secs. 151 and 152)].

20. A delivers diamonds to B on sale or return, and B delivers them to C on like terms. While they are in C's custody, they are lost. A sues B for the price of the diamonds. Will he succeed?

[Hint : Yes (Sec. 154)].

21. A lady employed a goldsmith for the purpose of melting old jewellery and making new one. Every evening she used to receive the half-made jewellery from the goldsmith and put it into a box which was left in a room in the goldsmith's house of which she retained the key. One night the box was stolen. Is the goldsmith liable to make good the loss?

[Hint : No (Kaliaperumal v. Visalakshmi)].

## Contract of Agency

The complexities of modern business are such that it is not possible for any man to transact all his business by himself. He cannot personally attend to all matters in which it is necessary for him to be brought into legal relations with other people. Of necessity he has to depend on the services of other persons in order to run his day-to-day business affairs. Such other persons are called *agents*.

At times all of us act as principals and as agents. If I ask my friend to buy a ticket for me for a cricket match, I am acting as a principal and my friend is my agent. If your father asks you to deposit a sum of money against an electricity bill, you are acting as his agent. Similarly a businessman transacts most of his business through agents.

The law relating to agency is contained in Chapter X (Secs. 182 to 238) of the Indian Contract Act, 1872.

### DEFINITION OF AGENT AND PRINCIPAL

A person who has capacity to contract may enter into a contract with another (i) either by himself, or (ii) through another person. When he adopts the latter course, he is said to be acting through an 'agent'. An 'agent' is a person employed to do *any act for another*, or to represent another in dealings with third persons (Sec. 182). The person for whom such act is done, or who is so represented, is called the '*principal*'. The function of an agent is to bring his *principal into contractual relations with third persons*. This means that an agent is merely a *connecting link* between the principal and third parties.

### Essentials of relationship of agency

There are two essentials of the relationship of agency:

1. *Agreement between the principal and the agent.* Agency depends on agreement but not necessarily on contract. As between the principal and third persons any person may become an agent (Sec. 184). As such, even a minor or a person of unsound mind may be an agent. The principal is, however, liable for the acts of such an agent.

Again, no consideration is necessary to create an agency (Sec. 185). The fact that the principal has agreed to be represented by the agent is sufficient 'detriment' to the principal to support the contract of agency.

2. *Intention of the agent to act on behalf of the principal.* Whether a person does intend to act on behalf of another is a question of fact. Where a person does intend to act on behalf of another, agency may arise although the contract between the parties provides that there is no such relationship.

**P, A and T.** Unless otherwise indicated, P stands for principal, A for agent and T for third party, in this Chapter.

### Rules of agency

There are two important rules of agency :

1. *Whatever a person can do personally, he can do through an agent.* This rule is of course subject to certain well-known exceptions as when

the act to be performed is personal in character (e.g., marriage) or is annexed to a public office (e.g., that of a magistrate).

2. He who does an act through another does it by himself (*qui facit per alium facit per se*). This, in other words, means that the acts of an agent, subject to certain conditions, are acts of the principal. Sec. 226 clearly provides that an agent's acts and contracts will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

*Examples.* (a) T buys goods from A, knowing that he is an agent for their sale, but not knowing who the principal is. A's principal is the person entitled to claim from T the price of goods. T cannot in a suit by the principal set off against that claim a debt to himself from A.

(b) A being P's agent, with authority to receive money on his behalf, receives from T a sum of money due to P. T is discharged of his obligation to pay the sum in question to P.

#### Who can employ an agent ?

Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent (Sec. 183). As such a lunatic or a minor or a drunken person cannot employ an agent.

#### Who may be an agent ?

Any person who is authorised to act as such may be an agent. As the agent does not make contracts on his own behalf, it is not necessary that he should have contractual capacity. Even a minor may be an agent. If a person who is not competent to contract is appointed an agent, the principal is liable to the third party for the acts of the agent. Thus as between the principal and a third person any person may become an agent. But no person who is not of the age of majority and of sound mind is responsible to his principal (Sec. 184). It is therefore in the interest of the principal that the agent should have contractual capacity.

#### Agent and servant

1. An agent is employed to bring the principal into legal relations with third persons or to represent him in dealings with third persons. A servant does not ordinarily create legal relations between the employer and third persons [*Lakshminarayan Ram Gopal & Sons v. Hyderabad Government*, A.I.R. (1954) S.C. 364].

2. An agent is bound to follow all the lawful instructions of the principal but he is not subject to the direct control and supervision of the principal. He has often a large discretion. A servant acts under the direct control and supervision of his employer and is bound to follow all reasonable orders given to him in the course of his employment [*Ram Pershad v. Commr. of Income-tax*, A.I.R. (1973) S.C. 637].

3. An agent may work for several principals at the same time ; but a servant usually serves only one master.

4. A principal is liable for the wrongs of his agent done within the scope of his authority. A master is liable for the wrongs of the servant if they are committed in the course of his employment.

#### Agent and independent contractor

An independent contractor is employed to act for another but he does the work independently of the employer's control or interference. An

agent, on the other hand, is bound to act within the scope of his express or implied authority.

An independent contractor is personally liable for all acts done by him. An agent only represents his principal in dealings with third persons and is not personally liable for acts done by him within the scope of his authority.

#### Test of agency

The test for determining whether a person is or is not an agent is this : Has that person the capacity to bind the principal and make him answerable to a third person by bringing him (the principal) into legal relations with the third person and thus establish a privity of contract between that person and the principal ? If yes, he is an agent, otherwise not. This relationship of agency may be created either by express agreement or by implication.

#### CREATION OF AGENCY

The relationship of principal and agent may arise —

1. by express agreement, or
2. by implied agreement, or
3. by ratification, or
4. by operation of law.

#### 1. Agency by express agreement

The authority of an agent may be expressed or implied (Sec. 186).

Normally, the authority given by a principal to his agent is an express authority which enables the agent to bind the principal by acts done within the scope of his authority. The agent may, in such a case, be appointed either by word of mouth or by an agreement in writing (Sec. 187). The usual form of a written contract of agency is the power of attorney (a formal instrument by which one person empowers another to represent him, or act in his stead, for certain purposes) on a stamped paper.

#### 2. Agency by implied agreement

Implied agency arises from the conduct, situation or relationship of parties. It may be inferred from the circumstances of the case, and things spoken or written or the ordinary course of dealing, may be accounted as circumstances of the case (Sec. 187).

*Examples.* (a) A and P are brothers. A lives in Delhi while P lives in Meerut. A with the knowledge of P leases P's lands in Delhi. He realises the rent and remits it to P. A is the agent of P, though not expressly appointed as such.

(b) P owns a shop in Serampur being himself in Calcutta, and visiting the shop occasionally. The shop is managed by A and he is in the habit of ordering goods from T in the name of P for the purposes of the shop, and for paying for them out of P's funds with P's knowledge. A has an implied authority from P to order goods from T in the name of P for the purposes of the shop.

(c) A woman allowed her son to drive a car for her, she paying all the expenses of maintenance and operation. The son caused an accident injuring his wife. Held, the wife could sue the mother as the son was an implied agent of the mother [*Smith v. Moss*, (1940) 1 K.B. 424].



Implied agency arises when the principal conducts himself towards the person alleged to be the agent or the third parties in such a manner, as if the principal had conceded to the appointment of that person as agent. It includes :

(1) *Agency by estoppel.* The doctrine of estoppel may be stated thus : Where a person by his conduct, or by words spoken or written, leads wilfully another person to believe that a certain state of affairs exists and induces him to act on that belief so as to alter his previous position, he is precluded from denying subsequently the fact of that state of affairs [Pickard v. Sears, (1837) 6 A. & E. 474].

*Example.* A tells T within the hearing of P that he (A) is P's agent. P does not object to this statement of A. Later T supplies certain goods to A, who pretends to act as an agent of P. P is liable to pay the price to T. By keeping quiet, he (P) had led T to believe that A is really his agent.

Sec. 237 deals with agency by estoppel. According to it, when an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

*Examples.* (a) P consigns goods to A for sale, and gives him instruction not to sell under a fixed price. T, being ignorant of P's instruction to A, enters into a contract with A to buy the goods at a lower than the reserved price. P is bound by the contract.

(b) P entrusts A with negotiable instruments indorsed in blank. A sells them to T in violation of private orders from P. The sale is good. Agency by estoppel arises when a person is held out as an agent—

- (i) even though he is actually not an agent, or
- (ii) after he ceased to be an agent.

*Example.* The services of A who was P's agent were terminated. No notice to this effect was given by P. A subsequently purchased in the name of P some goods on credit from T. Held, P was liable to pay the price [Truman v. Loder, (1840) 9 L.J. Q.B. 165].

(2) *Agency by holding out.* Agency by holding out is a branch of the agency by estoppel. In this case, a prior positive or affirmative act on the part of the principal is required to establish agency subsequently.

*Example.* P allows his servant habitually to purchase goods for him on credit from T, and pays for them. On one occasion, he pays his servant cash to purchase the goods. The servant misappropriates the money and purchases goods on credit from T. T can recover the price from P as he had held out his servant as his agent on prior occasions.

(3) *Agency by necessity.* In certain urgent circumstances the law confers an authority on a person to act as an agent for the benefit of another, there being no opportunity of communicating with that other. Such agency is called an 'agency of necessity'. It arises in the following cases :

(i) *Agent exceeding his authority in an emergency* (Sec. 189). When an agent exceeds his authority in an emergency, there arises agency of necessity provided the agent (i) was not in a position to communicate with the principal, (b) had taken all reasonable and necessary steps to protect

the interests of the principal, and (c) had acted *bona fide*. In such a case the principal is liable for the acts of the agent.

*Example.* P consigns provisions to A at Calcutta, with directions to send them immediately to T at Cuttack. A may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

(i) *A person entrusted with another's property.* An agency of necessity also arises when a person is entrusted with some property of another which he has to protect or preserve. In such a case, although the person who is entrusted with the property has no express authority to do the act necessary to preserve it, yet because of the necessity such an authority is implied. Thus the master of a ship or the carrier of goods becomes the agent of necessity of the shipowner or cargo owners if it is necessary for him to take steps for the safety or protection of the ship or the cargo.

*Examples.* (a) A horse was sent by a train. When it arrived at the station of destination, nobody took its delivery. The railway company, therefore, had to feed the horse. Held, the railway company was an agent of necessity and could recover the amount spent on feeding the horse [Great Northern Rail. v. Swaffield, (1874) L.R. 9 Ex. 132].

(b) P consigned a quantity of butter through a railway company. Owing to a strike some delay took place in transit. The railway company sold the butter. Held, the sale was binding on P as goods were perishable [Stms & Co. v. Midland Rail. Co., (1913) 1 K.B. 103].

(c) A master of a ship found that the cargo of the ship was perishing rapidly. Held, he was entitled to put into the nearest port and sell the goods for the best price obtainable [Couturier v. Hastie, (1856) 5 H.L.C. 675]. Where it is necessary for the further prosecution of the voyage, the master of a ship has authority to borrow on the shipowner's credit, to hypothecate the ship, cargo and freight, or the cargo alone, and to sell a part of the cargo.

(iii) *Husband and wife.* A husband is bound to maintain (i.e., to supply necessaries of life) his wife ; and if he makes no adequate provision for her maintenance, she is entitled to pledge his credit for necessaries. 'Necessaries' do not mean bare necessaries but such goods and services as are commensurate with the couple's joint style of living. Where the husband and wife are living together, the wife is presumed to have implied authority to pledge the husband's credit for necessaries. But the husband may escape liability if he can prove that (i) he has expressly forbidden his wife to pledge his credit, or (ii) the goods purchased are not necessaries, or (iii) he has allowed sufficient funds for purchasing the articles she needed to the knowledge of the tradesman, or (iv) the tradesman has been expressly told not to give credit to the wife.

*Where the wife lives apart.* A wife, who is deserted by her husband for no fault of her, has authority to pledge her husband's credit for necessaries. The husband cannot escape liability by telling his wife not to pledge his credit nor even by telling the tradesman not to supply necessaries on credit. The wife enjoys this right only if her husband does not provide for her maintenance. But where she lives apart of her own will, and without any justification, she is not the agent of her husband