

**1. BAILMENT AND PLEDGE****QUESTION - WISE ANALYSIS OF PREVIOUS EXAMINATIONS**

No.	M-11	N-11 To M-12	N-12	M-13 To M-14	N-14	M- 15	N- 15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M - 19 (O)	M - 19 (N)
THEORY QUESTIONS																	
T1	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-
T2	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-
T6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	2
T7	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-
T10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	-
T16	-	-	-	-	-	-	-	-	-	-	-	4	4	-	-	-	-
PRACTICAL QUESTIONS FOR CLASS ROOM DISCUSSION																	
P6	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	-	-
P13	-	-	-	-	-	-	-	-	-	-	-	4	-	-	-	-	-

*Contract of Bailment and Pledge are special types of contracts given under Sec 148 to 181 of the Indian Contract Act, 1872.*

- a) Concept of Bailment is covered from Sec 148 to 171 &
- b) Concept of Pledge is covered from Sec 172 to 181.

**CONTRACT OF BAILMENT (SEC 148 TO 171)**

**Q.No.1. Define contract of Bailment? (C) (NEW SM, OLD SM, OLD PM, M11 - 1M, M15 - 1M)**

**MEANING OF CONTRACT OF BAILMENT:**

- a) Bailment means handing over or change of possession.
- b) As per Section 148 of the Act, 'Bailment' is
  - The delivery of goods by one person to another person
  - For some purpose,
  - Upon a contract that the goods shall be returned or otherwise disposed off
  - When the purpose is accomplished,
  - According to the directions of the person delivering them.
- c) The person delivering the goods is called 'Bailor'.
- d) The person to whom goods are delivered is called 'Bailee'
- e) And the transaction is known as 'Bailment'.
- f) The property which is bailed (delivered) is called "Bailed property".

**Examples of Bailment transactions:**

- a) Goods given to a friend for his own use without any charge.
- b) Providing goods on rent.
- c) Delivering goods to a creditor as a security for loan.
- d) Delivering goods for repair with or without remuneration.
- e) Delivering goods for carriage.

## Q.No.2. Essential characteristics of Bailment (Or) Distinguishing features of Bailment contract. (B)

**First write the definition of Bailment.**

**ESSENTIAL CHARACTERISTICS OF BAILMENT (SEC.148):**

- a) **Contract:** In Bailment, delivery of goods is based upon a contract. Contract can be either express or implied.
- b) **Property must be movable:** Bailment will apply for movable goods only but not for immovable goods or money.
- c) **Delivery of Goods for some specific purpose:** The principle of Bailment is "delivery of goods by one person to another person" for some specific purpose.
- d) **Change of possession and custody of Goods but not ownership:**
  - In case of Bailment, possession of goods changes. It may be done by physical delivery or symbolic delivery or constructive delivery.
  - In Bailment, Bailor continues to be the owner of goods as there is no change of ownership.
  - If a person is in custody of goods without possession, it does not become bailment.
- e) **Obligation to return or dispose of goods:** When the purpose of delivery is accomplished, the goods must be either
  - i) Returned to the Bailor physically (in its original or altered form, as said by the bailor) or
  - ii) Disposed of according to the directions of the Bailor.
  - iii) Bailee cannot deliver some other goods, even if such other goods have higher value.

**SIMILAR QUESTIONS:**

1. Examine whether the following transactions constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872:
  - a) V parks his car at a parking lot, locks it, and keeps the keys with himself.
  - b) Seizure of goods by customs authorities

**ANS:**

- a) Mere custody of goods does not mean possession. For a Bailment to exist Bailor must give possession of Bailed goods to Bailee and he must accept it. In the given case car is not considered to be delivered as the car keys are still lying with V. Hence the transaction is not Bailment. Of course, it is still a valid contract as per Indian Contract Act.
- b) In this case the possession of goods is transferred to the Customs authorities and hence it is treated as valid delivery of goods as per the provisions of Bailment. Hence, Bailment exists. (State of Gujarat Vs Menon Mohammad)

2. Does depositing of ornaments in a Bank locker considered as Bailment?

**ANS:** In this case bank is not getting complete possession of goods from the customer. Even after depositing the ornaments, customer still has control on the same as he possesses the keys of the locker. Since delivery of goods is not complete, this transaction cannot be treated as Bailment. Of course, it is a valid contract as per the provisions of the Indian Contract Act. But the provisions of Bailment will not apply to this case.

3. 'X' has given money to 'Y'. You are required to state the following.

Can this transaction be considered as Bailment?

Will your answer be different in case X has given boat to Y rather than cash?

**ANS:** No. Bailment does not apply to money and immovable property.

If Boat is given for a specific purpose upon condition that it has to be returned after fulfilment of purpose then it is considered as Bailment.

4. Mr. Ahuja has delivered gold ring to Mr. Bose on a condition to return it after 5 days. Later, Mr. Boss said that he will deliver a diamond ring, which is more costly compared with gold ring to Mr. Ahuja. Can he do so?

**ANS:** No. The bailee cannot deliver the goods other than the goods bailed to him, even if such other goods have a higher value.

5. Mr. Ahuja has delivered diamond to Mr. Bose. Ahuja said that the diamond is to be sold after 15 days to Mr. Kaul. Mr. Ahuja argues that this transaction is not Bailment as he is not getting back the diamond. What is your opinion?

**ANS:** The given transaction is considered as Bailment even if goods are not returned back to Bailor. It is sufficient for Bailee to dispose of the goods as per the instructions of the Bailor. Hence the argument of Ahuja is not correct.

6. A has taken a mobile phone from Big M mobile showroom. It was agreed that an amount of Rs. 1,000 shall be paid monthly for 24 months. A has paid without any dues for all 24 months. Big M argued that it is bailment contract. You are required to state the essential characteristics of bailment contract and comment on Big M argument.

ANS: Write the essential elements of bailment and conclude that Big M is not correct in their approach as ownership is transferred after payment of last instalment.

7. The purpose of bailment has been fulfilled. What should the bailee do with the goods of bailor?

ANS: Write Point e alone in the above question.

### Q.No.3. Different types / Different modes of Delivery. (C)

In case of contract of Bailment delivery can be done in any of the following ways:

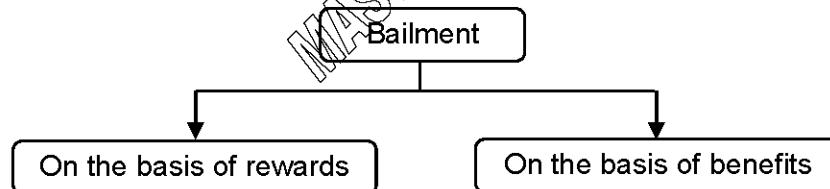
- Physical / Actual delivery:** Transfer of physical possession of goods by one person to another.  
*Example: Delivery of car to a mechanic for repair.*
- Symbolic Delivery:** In this case, physical possession of goods is not transferred but some act is done resulting in the transfer of possession.  
*Example: Transfer of car keys, Railway receipt, etc.*
- Constructive Delivery:** In this case the third party who is in possession of goods acknowledges that he holds the goods on behalf of buyer.  
*Example: Hypothecation agreement between a banker and borrower.*

#### SIMILAR QUESTIONS:

1. Mr. X has directed Mr. Y to deliver the goods at Chennai. Mr. Y, residing at New Delhi has sent the goods by rail. He handed over the receipt of goods sent on rail given by Railways to Mr. X. Mr. X contended that the receipt of the goods shall not tantamount to delivery of goods. Comment.

ANS: No. Symbolic delivery is also valid mode of delivery

### Q.No.4. Different types of Contract of Bailment. (C)



#### 1. Bailment on the Basis of Rewards:

- Gratuitous bailment:** It is a contract of Bailment where no consideration passes between the Bailor and the Bailee.  
*Ex: X lends a horse to Y for his riding without any charge*
- Non-gratuitous bailment:** It is a contract of Bailment where some consideration passes between the Bailor and the Bailee.  
*Ex: Y hires a horse from X.*

#### 2. Bailment on the Basis of Benefits:

- For the exclusive benefit of Bailor:** B agrees to look after A's pet while he is out.
- For the exclusive benefit of Bailee:** A gives his book to B to study.
- For mutual benefit of Bailor & Bailee:** A hires car from B on payment of charges.

**SIMILAR QUESTIONS:**

1. Mr. X and Mr. Y are friends since childhood. Mr. X recently purchased a car. He has given it to Mr. Y for the purpose of attending his personal work.

- a) Is there a contract of bailment? If yes, you are required to state the type of contract of bailment.
- b) Will your answer be different, in case Mr. X recovers an amount of Rs. 800/- per day from Mr. Y for using the car?

**ANS:**

- a) Yes, it is a contract of bailment. It is a gratuitous bailment for the benefit of Bailee (Mr. Y).
- b) No. Answer is same. But it becomes a non gratuitous bailment for the benefit of both Bailor (Mr. X) and Bailee (Mr. Y).

**Q.No.5. Duties of Bailor (A)**

(NEW SM, M08 - 5M)

*(First write about Contract of Bailment and Bailor)*

Following are the duties of Bailor:

a) **Bailor's duty to disclose faults in goods bailed [Sec 150] :**

i) **In case of gratuitous Bailment:** Bailor is liable to disclose all the faults known to him.

If the bailor fails to disclose such defects and Bailee suffers some loss then the bailor is liable to indemnify bailee against such loss.

ii) **In case of non- gratuitous bailment:** Bailor is liable to disclose all the faults whether known to him or not.

If the bailor fails to disclose such defects and Bailee suffers some loss then the bailor is liable to indemnify bailee against such loss, whether he knows those defects or not.

b) **Bailor shall pay necessary expenses [Sec 158]:**

i) **In case of gratuitous bailment:** Bailor shall repay to the Bailee all necessary (i.e. ordinary and extraordinary) expenses incurred by him for the purpose of Bailment.

ii) **In case of non-gratuitous bailment:** It is sufficient for Bailor to repay extraordinary expenses incurred by Bailee, for the purpose of Bailment.

c) **Reimbursement of expenses:** Bailee may incur some expenses or suffer some loss in the process of returning the goods or complying with other directions for returning the goods. Bailor shall reimburse the same.

d) **Indemnify the loss for premature termination (Sec 159):**

i) **In case of gratuitous Bailment:** Bailor may prematurely terminate the bailment.

Due to premature termination, if the loss caused to Bailee is more than the benefit obtained by Bailee then Bailor shall indemnify Bailee for such excess loss.

ii) **In case of non-gratuitous bailment:** It amounts to breach of contract and general provisions of breach of contract will apply.

e) **Receive back the goods (sec 164):**

i) It is the duty of Bailor to receive back the goods, when returned by Bailee.

ii) If the Bailor wrongfully refuses to receive back the goods, he shall be liable to pay ordinary expenses incurred by the Bailee for keeping the goods safely.

f) **Bailor's responsibility to Bailee [Sec 164]:** Bailor shall indemnify the loss caused to Bailee due to defective title of goods bailed.

**Note:** Duties of Bailor = Rights of Bailee

SIMILAR QUESTIONS:

1. A hires a vehicle from B. The vehicle is unsafe and B is not aware of the same. A is injured. Is B responsible for the injury? Will your answer be different in case the vehicle is taken at free of cost?  
 B is liable to A. In case of Non-Gratuitous Bailment, Bailor is liable whether he knows or does not know about the defects.  
 B is not liable to A. In case of Gratuitous Bailment Bailor is liable only when he is aware of defects and has not communicated?
2. A hires a vehicle from B. The vehicle is unsafe which B is aware of. A is injured. Is B responsible to A for the injury? Will your answer be different in case the vehicle is taken at free of cost?  
 B is liable to A. In case of Non-Gratuitous Bailment, Bailor is liable whether he knows or does not know about the defects.  
 B is liable to A. In case of Gratuitous Bailment Bailor is liable when he is aware of defects and has not communicated.
3. A gives his car to B, for repairing work, on 01.02.2019 and made a condition to get the repair done by 10.02.2019. B completed the repair work by 08.02.2019. However, A was out of station for a month and received car only on 12.03.2019. For keeping the car in a safe condition, B charged an amount of Rs. 1,500 to A. Is A bound to give the amount charged by B for safeguarding the Car for a month?  
ANS: Yes. If the Bailor fails to receive the goods, then he shall pay ordinary expenses to Bailee to protect those goods.

4. A gives his car to his friend B on 01.02.2019 and said that it shall be returned on 18.05.2019. On 10.04.2019, A wants his car back. Can A get the car before 18.05.2019. Will your answer be different in case hire charges of Rs. 1,500 per day has been charged by A from B?

Yes. In case of gratuitous bailment, bailor can terminate the contract.

In case of non gratuitous bailment, Bailor can't take back the goods and the general provisions of breach of contract will apply.

5. A gives his car for repair to B on 01.06.2019 and made a condition to get the repair done by 10.06.2019. A claimed the car on 08.06.2019. B incurred extra expenses of Rs. 500 to complete the work by 08.06.2019. Can B recover the extra expenses of Rs. 500 from A?

Yes. Due to premature completion of contract, if bailee incurs any expenses, the same shall be reimbursed by bailor.

**(IMMEDIATELY REFER PRACTICAL QUESTIONS FOR CRD: 1)**

**Q.No.6. Rights of Bailor? (A)**

**(NEW SM, OLD PM, M 98 - 5M, M19-4M)**

*(First write the meaning of Contract of Bailment and Bailor)*

**RIGHTS OF BAILOR:**

1. **Right to terminate the contract in case of unauthorized use of goods bailed [Sec 153]:** If the Bailee does not use the bailed goods according to the conditions of the Bailment, then Bailor has a right to terminate the contract i.e. contract becomes voidable at the option of Bailor.
2. **Right to claim compensation in case of unauthorized use of goods bailed [Sec 154]:** In the above case Bailor can even claim compensation from Bailee for any loss arising there from.
3. **Right to claim damages arising out of mixing the goods of the Bailor with his own goods (155 to 157):**
  - a) **Goods are mixed with Bailor's consent [Sec 155]:** Bailor and Bailee shall have a proportionate interest in such mixture.
  - b) **Goods are mixed without Bailor's consent but the goods are separable [Sec 156]:**
    - The Bailor has a right to claim goods.
    - The Bailee shall pay the expenses of separation.
    - The Bailee shall pay damages incurred by Bailor, if any.
  - c) **Goods are mixed without Bailor's consent and goods are not separable [Sec 157]:** The Bailor has a right to claim compensation from Bailee for the loss of goods.
4. **Right to demand return of Goods [Sec 160]:** Bailor has a right to demand return of goods after fulfillment of the purpose or after expiry of the period of bailment.

5. **Right to demand accretion to goods [Sec 163]:** In the absence of any contract to the contrary, Bailor has a right to claim the increase or profit which may have accrued from the goods bailed.

**Note:** Rights of Bailor = Duties of Bailee.

**SIMILAR QUESTIONS:**

1. A lends a car to B for his own riding only. B allows C, an experienced driver, to ride the car. C rides with care, but the car accidentally hit the poll and the car gets damaged. B argued that since the car ride is done by experienced driver and with care, he need not pay damages to A. Is B correct in his argument?

No. Since Bailee (B) has violated the terms of bailment and the loss has been suffered by Bailor (A), B must reimburse the loss suffered to A.

2. A hires a car in Calcutta from B, expressly to go to Delhi. A rides with due care, but to Chennai instead of Delhi. The Car accidentally hit the poll and is damaged.

a) Is A liable to make compensation to B for the damages done to Car.

b) Can B get back his car?

**ANS:**

a) Yes, since B has violated the terms of bailment, he shall pay compensation.

b) Yes. If the terms of contract are violated, contract becomes voidable at the option of Bailor.

3. 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 wants to have his 100 bales of cotton. You are required to state the rights of A.

**ANS:** Yes, since B has mixed the cotton, A can terminate the contract.

4. A bails a barrel of wheat flour worth Rs. 125 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 95 a barrel. Can A claim the loss from B?

Yes. A can claim compensation for loss.

5. A lets to B, for hire, a car for his own riding. B drives the car for hire. Can A terminate the contract with B? Will your answer differ if it is given at free of cost.

Yes, since the terms of bailment have been violated, bailor can terminate the contract.

The answer will not differ even if it is gratuitous bailment.

**Q.No.7. Duties of Bailee. (A)**

(NEW SM, OLD SM)

*(First write about Contract of Bailment and Bailee)*

**DUTIES OF A BAILEE:**

1. **Take care of goods bailed [Sec 151]:**

a) Bailee is bound to take care of goods bailed to him as a man of ordinary prudence takes care of his own goods, in the same bulk, quantity and value.

b) In the absence of special contract, he is not responsible for any special loss or destruction or deterioration of the goods bailed.

2. **No unauthorized use of goods:** Bailee must use the goods as per the terms of the bailment. If Bailee does not use the goods according to the conditions of Bailment then,

a) Bailee is liable for any loss or destruction of goods even if he was not negligent and

b) Bailor may terminate the contract of Bailment. In other words, contract of Bailment becomes voidable at the option of the Bailor.

3. **No right to mix the goods bailed:** Without the consent of Bailor, Bailee cannot mix the goods bailed.

4. **Return of goods bailed [Sec 160 &161]:**

a) In the following cases Bailee must return the goods, without waiting for demand from Bailor:

- The time specified in the contract has expired or
- The purpose specified in the contract is accomplished.

If the goods are not so returned, then

- The goods shall be at risk of the Bailee.
- The Bailee shall be liable for any loss or damage, even if such loss is caused without any fault or negligence of the Bailee or due to an act of God or other unavoidable reasons.

b) **In case of Bailment by several joint owners:** In the absence of any contract to contrary, Bailee is responsible to deliver the goods to any one of the joint owners.

5. **Return Accretions to the goods [Sec 163]:** In the absence of any contract to contrary, Bailee is bound to return any extra profit accrued from goods bailed.

6. **Not to set up an adverse title:** Bailee has no right to contend that the Bailor had no authority to bail the goods.

**SIMILAR QUESTIONS:**

1. What is the liability of Bailee making unauthorized use of goods bailed?  
Hint: In point No: 2, write a, b
2. Mr. A has purchased a car from Range rover dealer. Subsequently it was given for repairs and service to the said dealer. After completion of service, what are the duties of the said dealer?  
ANS: Write Point No: 4
3. X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments. All the ornaments are stolen in a riot.
  - a) Is Y responsible to X?
  - b) Will your answer be different in case X specifically instructs Y to keep the ornaments at Bank Locker?
4. A bails his cow to 'B' on 10.10.2018. On 20.12.2018, cow gives birth to a calf. Should 'B' return both the cow and the calf to 'A' after 21.12.2018? Yes
5. Mr. A and Mrs. A are the joint owners of a diamond. Both have given the same to D for 15 days. After 15 days, D returned the diamond to Mrs. A. Mr. A argued that the diamond shall be given to him only but not Mrs. A.
  - a) Is Mr. A right in his approach?
  - b) Will your answer be different if the diamond is given to Mr. A instead of Mrs. A?

ANS:

- a) No. As bailee acted similar to a man of ordinary prudence who takes care of his own goods.
- b) Yes. As the bailee has not followed the conditions of bailment, any loss incurred by the bailor shall be compensated by bailee.

**(IMMEDIATELY REFER PRACTICAL QUESTION FOR CRD: 2, 3)**

**Q.No.8. Rights of Bailee. (A)**

**(NEW SM, OLD SM)**

**(First write about Contract of Bailment and Bailee)**

Following are the Rights of Bailee:

- i) To claim compensation for any loss arising from non-disclosure of known defects in the goods.
- ii) To claim indemnification for any loss or damage as a result of defective title.
- iii) To deliver goods to any one of the Joint Bailors (according to the agreement or directions).
- iv) If the Bailor's title is defective and Bailee returns the goods in good faith either
  - a) To Bailor or
  - b) According to Bailor's directions

Then he is not responsible to the owner in respect of such delivery.

v) **Right of Lien:** The right of lien is right to retain the goods and is exercisable where charges due in respect of goods retained have not been paid.

This right of Lien is particular lien. So, Bailee can retain only those goods for which Bailee has to receive his fees / remuneration. However, bailee cannot sue the bailor.

**Exception:** If, as per the terms of bailment, charges are to be paid at later date then bailee cannot refuse the delivery. However, he can sue the bailor for remuneration, if not paid after the due date.

vi) **Suit by Bailor & Bailee against wrong doers [Sec 180]:** Bailee has the right to sue a third party who:

- Causes any damages to goods; or
- Prevents the Bailee from using the goods

vii) **Apportionment of relief or compensation obtained by such suits [Sec 181]:** Any amount obtained by way of relief or compensation in any such suit shall be shared by Bailor and Bailee according to their respective interests.

viii) **Right to be indemnified:** Bailor may prematurely terminate the gratuitous bailment.

Due to premature termination, if the loss caused to Bailee is more than the benefit obtained by Bailee then Bailor shall indemnify Bailee for such excess loss.

**Q.No.09. Write about Bailee's Right of Lien? (Or) Write about General Lien and Particular Lien? (A)** (NEW SM, OLD SM, M98, M01 - 5M)

**LIEN RIGHT:** 'Right of lien' may be defined as the right of a person to retain the possession of any property of some other person until the charges / remuneration due to the person in possession is paid.

#### **TYPES OF LIEN:**

1. **Particular lien [Sec 170]:** A particular lien is a right to retain only those goods in respect of which some charges are due. This right is available only if all the following conditions are satisfied:

- i) Bailee has rendered some services involving the exercise of skill or labour in respect of the goods Bailed. He is entitled to remuneration for such services only.
- ii) The labour and skill must create an additional value to the article.
- iii) Bailee has rendered the services in accordance with the purpose of the Bailment.
- iv) Goods must be in the possession of Bailee
- v) Bailee has already completed his work upon the goods and remuneration remains unpaid.

**Note:** Right of lien may be excluded by an agreement to the contrary (*i.e. contract for payment of price in future*).

2. **General Lien [Sec 171]:**

- i) A general lien is the right to retain the property of another for a general balance of account.
- ii) Bankers, factors, wharfingers, policy brokers and attorneys of law have general lien in respect of goods which come into their possession during the course of their profession. For remaining persons General Lien is available only when there is an express contract to that effect.
- iii) Under the right of general lien, goods cannot be sold but can only be retained for dues.

#### **SIMILAR QUESTIONS:**

1. A delivers a rough diamond to B, a jeweler, to be cut and polished. B completed the work as per the instructions of A. B remains unpaid for the services rendered to A. Can B exercise lien right on the diamonds? If so, what are the conditions to be satisfied in order to exercise lien right?

Hint: Refer above answer - Particular Lien

2. 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.

- Is B entitled to retain the coat until he is paid?
- Can the tailor sue Mr. A, if he is not paid after 3 months?

**ANS:**

- No, since the credit is allowed, the goods must be returned immediately after completion of work.
- Yes, the right of sue is available to bailee if he is not paid after the credit period.

3. 'A' borrows Rs. 5,000/- from the bank without security and subsequently again borrows another Rs. 10,000/- but with security of certain jewellery. 'A' has repaid Rs. 10,000/- towards the second loan.

- Can the banker retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid?
- Will your answer be different if A borrows from B, keeping the same jewellery as security for 2<sup>nd</sup> loan?

**ANS:**

- Yes, the banker can exercise the general lien.
- Yes, banker gets general lien.

**(IMMEDIATELY REFER PRACTICAL QUESTION FOR CRD: 4, 5)**

**Q.No.10. Rights & Duties of Finder of lost Goods. (A)**

**(NEW SM, OLD SM, M03)**

**FINDER OF LOST GOODS:** A finder of lost goods is the person who finds some goods which do not belong to him. A finder of lost goods has the same rights and duties as that of Bailee. In addition to that, he has the following rights:

- Right of Lien (sec 168):** 'Finder of lost goods' has a right to retain the found goods until he recovers expenses incurred by him to:
  - Preserve the goods and
  - Find out the true owner.

It may be noted that finder of goods has no right to sue the owner for such compensation. But he can exercise lien right over the found goods (Particular lien but not general lien)
- Right to sue for Reward (sec 168):** Further, where the real owner has announced any reward, the finder is entitled to receive the reward and may retain the goods until he receives it.
- Right of sale (sec 169):** A finder of goods has a right to sell the found goods under the following circumstances:
  - If the real owner cannot be found with reasonable efforts; or
  - If the owner is found and he refuses to pay the lawful expenses incurred; or
  - If the goods are about to perish or
  - If the goods are about to lose the greater part of their value; or
  - If the lawful charges of the finder in respect of goods found, amount to 2/3<sup>rd</sup> or more of its value.

**Note:** Duties of finder of lost goods = Duties of Bailee.

**SIMILAR QUESTIONS:**

- What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract act, 1872?
- Mr. X found a 500 MB external hard disk (password protected) belonging to Mr. Y. The cost of the hard disk is Rs. 3,500. In order to trace the true owner of the hard disk, password shall be cracked. For this an expert is required. The expert charged Rs. 2,000 to do this job. In this scenario, you are required to state
  - Can Mr. X sue Mr. Y, if he is not willing to pay.
  - Will your answer be different if the expert charges Rs. 2,500? If Mr. Y recovers, Rs. 4,000 from sale of the hard disk, state his duty?

ANS:

a) X cannot sue. But can retain the hard disk till he is paid.

b) X may sell the hard disk as the expenses exceeded  $\frac{2}{3}$ rd of value of hard disk. The balance of Rs.1,500 shall be returned to Mr. Y.

3. Mr. X has lost gold ring. He announced a reward of Rs.1,500 for the person who finds and returns it. The said gold ring was found by Mr. R. To trace the address of Mr. X, expenses of Rs. 500/- have been incurred. Mr. X granted a reward of Rs. 1,500 and rejected the claim of expenses to Mr. R. Mr. R retained the gold ring and said that it is his right to receive Rs. 500/-. You are required to state the following.

a) Is Mr. R correct in his approach?

b) Will your answer be different, if Rs.500/- has been paid by Mr. X and a reward of 1500/- has not been paid. You are also required to state the remedies available to Mr. R?

ANS:

a) Yes. Mr. R is correct in his approach. He can retain the gold ring but cannot sue Mr. X for such expenses.

b) Mr. R can sue Mr. X for the reward.

4. Mr. X has found milk packets on 10.06.2019 and their cost is Rs. 500. On 11.06.2019, fearing that milk will get spoiled, X sold the same for Rs. 400. State the rights of Mr. X

ANS: As milk is a perishable good, X can sell them. He must return the proceeds to the true owner after deducting the expenses incurred by him to find the true owner, if any.

**(IMMEDIATELY REFER PRACTICAL QUESTION FOR CRD: 6)**

**Q.No.11. When Bailment gets terminated? (Or) When Bailment comes to an end? (C) (N00 - 5M)**

**CONTRACT OF BAILMENT COMES TO AN END IN THE FOLLOWING CIRCUMSTANCES:**

- Expiry of specific period:** When goods are bailed for a specific period, Bailment gets terminated on the expiry of such specific period.
- Achievement of the object:** When goods are bailed for a specified purpose, Bailment gets terminated on the fulfillment of such purpose.
- Inconsistent use of goods:**
  - A Bailment may be terminated, if Bailee does not use the goods, according to the conditions of the Bailment.
  - The contract of Bailment becomes voidable at the option of Bailor and he may terminate it at his choice [Sec.153].
- Destruction of the subject matter:** Contract of Bailment is terminated if the subject matter of the Bailment is destroyed.
- Death of the Bailor or Bailee (Sec.162):**
  - A gratuitous bailment is terminated by death of Bailor or Bailee.
  - In case of Non-gratuitous bailment, death of Bailor or Bailee does not affect the contract. The Legal heirs are still liable to the contract.
- Termination by Bailor:** A gratuitous bailment can be terminated by the Bailor at any time even if the purpose or period of Bailment is not completed. Due to premature termination, if the loss caused to Bailee is more than the benefit obtained by Bailee then Bailor shall indemnify Bailee for such excess loss.

**SIMILAR QUESTIONS:**

- A has given his car to B on 10.04.2019 for his learning purpose, for a period of 30 days. On 18.04.2019, A died. You are required to state the following:
  - What will be the effect of contract of A and B?
  - Will your answer be different if A charges Rs.500/- per day from B?

ANS:

- In case of gratuitous bailment, Contract ends upon death of bailor or bailee.
- In case of non-gratuitous bailment, the contract continues and the legal heirs of A are responsible for the same.

## CONTRACT OF PLEDGE (Sec 172 to 181)

**Q.No.12. What is meant by Pledge or Pawn? What are the essential features of Pledge? (B)  
(NEW SM, OLD SM, N98 - 10M)**

### **PLEDGE:**

- a) Sec.172 of the Indian Contract Act, 1872, provides that, "the Bailment of goods as security for payment of a debt or performance of a promise" is called 'Pledge'.
- b) The person who pledges or bails is known as Pledgor or Pawnor and the Bailee is known as Pledgee or Pawnee.
- c) In pledge there is no change in ownership of the property.
- d) Pledge is a special kind of Bailment. All essential elements of Bailment must be present in case of contract of pledge also.

### **ESSENTIAL FEATURES OF PLEDGE:**

- i) **Delivery:** There must be delivery of goods from Pawnor to the Pawnee
- ii) **As security:** There must be delivery of goods as security for payment of debt / performance of a promise.
- iii) **Subject matter:** Goods must be the subject matter of the contract of Pledge.
- iv) **Must be in existence:** The goods pledged must be in existence.

Thus, every contract of Pledge is Bailment but every contract of Bailment need not be Pledge.

### **SIMILAR QUESTIONS:**

1. Discuss whether pledge is a special type of contract of Bailment.

A. Hint: First write the above answer.

Conclusion: Yes, pledge is a special type of Bailment. All the essential elements of Bailment must be present in the contract of Pledge also. In case of Pledge, possession of goods is transferred from Pledgor to the Pledgee for the purpose of security to the loan amount borrowed. Once the loan amount is repaid then automatically the possession of goods will come back to Pledgor. Just like Bailment, pledge can be made for movable goods only. The essential elements of pledge are similar to that of Bailment.

**(IMMEDIATELY REFER PRACTICAL QUESTION 7)**

**Q.No.13. State the rights of Pawnor and Pawnee? (A)**

**(NEW SM, OLD SM, CMA J11- 2M)**

*(First write about Pledge and Pawnor)*

### **RIGHTS OF A PAWNOR:**

1. **Redeem goods pledged [Sec 177]:** Pawnor has a right to redeem his goods on payment of debt and other charges. Right to redeem means right to get back his goods.
2. **Right to receive increase or profits from the goods:** Pawnor is entitled to receive the increase or profits from the goods pledged if there is any increase or profit relating to it during the pledged period.
3. **Right to receive notice of sale:**
  - In case of default by Pawnor, to pay the debt or perform his promise, Pawnee has the right to sell the goods after giving a reasonable notice to the Pawnor.
  - If the Pawnee fails to give notice then Pawnor has right to recover the loss incurred by him.

### **RIGHTS OF PAWNEE:**

**1. Rights of retainer [Sec 173]:**

- a) Pawnee has a right to retain the goods pledged till his payments are made.
- b) He may retain the goods for the
  - i) Payment of the debt,
  - ii) Interest on debt and
  - iii) Any other expenses incurred by him in respect of the possession or for the preservation of goods pledged.

*Ex: Where 'M' pledges stock of goods for certain loan from a bank, the bank has a right to retain the stock not only for adjustment of the loan but also for payment of interest.*

**2. Right to retention of subsequent debts [Sec 174]:** Pawnee has a right to retain the goods pledged towards subsequent debts also. But he can exercise such right only when it is specifically mentioned in the contract.

**3. Pawnee's right as to extraordinary expenses incurred [Sec 175]:** Pawnee is entitled to receive extraordinary expenses incurred by him for preservation of goods pledged.

**4. Pawnee's right where pawnor makes default [Sec 176]:**

- i) **Notice:** If the Pawnor makes default, Pawnee has a right to sell the goods after giving notice.
- ii) **Retention/ sale of goods:** Pawnee may –
  - a) Retain the goods pledged as collateral security, or
  - b) Sell the goods pledged, by giving a reasonable notice to the Pawnor.
- iii) **Surplus/ Deficit on sale:** When there is a surplus on sale, Pawnee shall pay the excess to the Pawnor. In case of deficit, Pawnor shall pay the same.
- iv) **Suit:** On default by Pawnor, Pawnee has right to file a suit for recovery of
  - a) Money due
  - b) Interest due on money lent
  - c) Necessary expenses and extraordinary expenses

**5. Pledge by person in possession (under voidable contract [Sec 178A]):**

- i) Where the Pawnor has acquired possession of pledged goods, under a voidable contract, but that contract has not been cancelled at the time of pledge,
- ii) Then Pawnee acquires good title to the goods, against the true owner if he satisfies following conditions - (a) he had no notice of Pawnor's defect in title, and (b) Pawnee acts in good faith.

**SIMILAR QUESTIONS:**

1. Pawnor makes a default in the payment of debt, or performance of duty, as agreed. Discuss the rights that are available to Pawnee on default committed by Pawnor?  
Hint: Refer point a, d in above answer
2. Mr. X has taken a loan of Rs. 1,25,000 from Mr. Y on 10.4.2018 by giving his gold ornaments as security. It was mutually agreed that the debt will be paid within 1 year. On 18.6.2019, Mr. X is ready to pay the loan amount to Mr. Y. But Mr. Y said that time period of contract has expired on 10.04.2019 and he has retained the gold ornaments given by Mr. X as security. Mr. X sued Mr. Y that he cannot retain the gold ornaments as he is ready to pay the debt.
  - a) Will Mr. X succeed, assuming Mr. Y has given a notice to Mr. X on 10.04.2019?
  - b) Will your answer be different if the notice is not served by Mr. Y?

**ANS:**

- a) Yes, since the notice is served, Mr. Y can sell the gold ornaments.
- b) As the notice is not served, Mr. Y cannot sell the gold ornaments.

3. Mr. X has taken a loan of Rs. 5,25,000 from Mr. Y on 10.4.2018 by giving his gold ornaments as security. It was mutually agreed that the debt will be paid within 6 months. Mr. X failed to pay within the time. On 18.04.2019, the gold ornament was sold by Mr. Y for Rs. 4,20,000.
  - a) Can Mr. Y sue Mr. X for the balance amount?
  - b) What will be your answer, if Mr. Y sells the same for Rs. 6,50,000?

**ANS:**

- a) Yes, for the balance of debt, Mr. Y can sue Mr. X.
- b) Mr. Y is bound to return the excess amount of Rs. 1,25,000 to Mr. X.

**(IMMEDIATELY REFER PRACTICAL QUESTION 8, 9)**

**Q.No.14. State the provisions relating to Pledge by Non-Owners? (C) (NEW SM, OLD SM)**

Generally Pledge is created by Owner of the Goods but in the following cases it is valid even though it is created by Non-Owners:

**PLEDGE BY MERCANTILE AGENT [Sec.178]:**

- a) A Mercantile agent can pledge the goods if he satisfies all the conditions stated below
  - i) Must possess either goods or document of title to goods
  - ii) With the consent of the owner of the goods,
  - iii) Such pledge is done in the ordinary course of business,
  - iv) Pawnee acts in good faith and
  - v) At the time of Pledge, Pawnee has no notice that Pawnor has no authority to pledge
- b) In this case mercantile agent can pledge the goods by pledging the documents like
  - i) Bill of Lading or
  - ii) Railway Receipt, etc.

**PLEDGE WHERE PAWNOR HAS LIMITED INTEREST [SEC 179]:** Where a person pledges goods in which he has only limited interest, then pledge is valid to the extent of that interest.

**(IMMEDIATELY REFER PRACTICAL QUESTION 10)**

**SIMILAR QUESTIONS:**

1. State whether the following statement is correct or not: A pledge of document of title of goods by a mercantile agent is a valid pledge.  
Hint: Correct, A pledge by mercantile agent is valid if the agent is in possession of goods or documents of title of goods and if such possession is with the option or consent of the owner.

**Q.No.15. Define the term Mortgage? (C)**

(NEW SM)

- a) Mortgage is defined under the Transfer of Property Act, 1882.
- b) It is a legal agreement by which a bank, building society, etc. lends money at interest in exchange for taking title of the debtor's property, with the condition that the conveyance of title (deed or lease) becomes void upon the payment of the debt.
- c) Mortgage is very much similar to Pledge. But Pledge applies in case of Movable Property and Mortgage applies in case of Immovable Property.

*Ex: Company provided Land and Building as security for getting a Bank loan.*

**Q.No.16. Distinguish between Bailment and Pledge. (B)**

(NEW & OLD SM)

DIFFERENCE	BAILMENT	PLEDGE
<b>Purpose</b>	A bailment can be for any purpose	A pledge is made for a specific purpose i.e. security against payment of debt or performance of a promise.
<b>Right of sale</b>	Bailee has no right of sale	Pawnee can sell the pledged goods if Pawnor fails to pay or perform, after giving a notice to the Pawnor.
<b>Right to use</b>	Bailee may use the goods bailed as per the terms of the contract.	Pawnee does not have a right to use the goods pledged.

Possession	Remains with the Bailee till the purpose of Bailment is achieved.	Sometimes, goods remain with the Pledgor for some special purpose (Example: Loan taken on Inventory)
Consideration	In Bailment there may or may not be consideration.	Consideration will always be there in case of Pledge.
Discharge	Bailment is discharged when the purpose is fulfilled or after a specified time.	Pledge is discharged on the payment of debt or performance of promise.
Return of Goods	<b>Gratuitous bailment:</b> Bailee is bound to return the goods on demand by bailor.	Till the debt is repaid, pledgee is not bound to return the goods given as security.

**SIMILAR QUESTIONS:**1. Give four differences between Bailment and Pledge

M18(N) – 4M, TYK

**Q.No.17. Distinguish between Gratuitous Bailment and Non - Gratuitous Bailment? (B)**

DIFFERENCE	GRATUITOUS BAILMENT	NON-GRATUITOUS BAILMENT
Meaning	Bailment without reward or consideration	Bailment in which Consideration passes between Bailor and Bailee
Example	A Person lends a book to his friend for reading.	G hires a book from a lending library. Here consideration is the membership fee or rent being charged by the library on each book.
Consideration	No consideration passes between the Bailor and the Bailee	Some consideration passes between the Bailor and the Bailee
Benefit	It is for the exclusive benefit of either Bailor or Bailee.	It is for the mutual benefit of the Bailor and the Bailee
Liability of Bailor for unknown defects	Bailor is not liable to Bailee for loss due to defects in the goods if he does not know the defects.	Bailor is liable to Bailee for loss due to defects in goods whether he knows those defects or not.
Bailor's duty to bear expenses	It is presumed that all expenses are to be borne by the Bailor.	Unless otherwise agreed, only extraordinary expenses shall be borne by Bailor.
Termination of Bailment	Bailor may prematurely terminate the bailment. Due to premature termination, if the loss caused to Bailee is more than the benefit obtained by Bailee then Bailor shall indemnify Bailee for such excess loss.	Bailment can be terminated only on expiry of the specified period or fulfillment of the specified purpose.
Effect of death of Bailor / Bailee	Bailment is terminated by the death of Bailor or Bailee.	Bailment is not terminated by the death of Bailor or Bailee.

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**Q No.18. Differences between General and Particular Lien. (B)**

(NEW SM)

DIFFERENCE	GENERAL LIEN	PARTICULAR LIEN
Meaning	It is a right to retain any property of the bailor for general balance of account outstanding	It is a right to retain the goods only for a charge for labour employed or expenses incurred upon the goods.
Automatic	A general lien is not automatic. It arises only when there is a specific provision in the agreement.	It is automatic.
Availability	General Lien may be exercised even though no labour or skill has been rendered.	It is available only when some service involving the exercise of labour or skill has been rendered
Persons entitled	Bankers, Factors, Wharfingers, Policy Brokers etc. are entitled to general lien	Bailee, Finder of lost goods, Pledgee, Unpaid seller, Agent, Partner, etc are entitled for Particular Lien.

### PRACTICAL QUESTIONS FOR CLASS ROOM DISCUSSION

**Q.No.1.** A hires a horse from B. During the bailment period, the horse falls ill without any negligence on A's part. Incurred medical Expenses in Connection with the treatment of the horse A claim reimbursement of medical expenses incurred by him B refuses to pay. Discuss the Liability of B.

**Provision:** As per Sec 158 of the Indian Contract act 1872, Bailor shall repay to the Bailee all necessary (i.e. ordinary and extraordinary) expenses incurred by him for the purpose of Bailment in case of gratuitous bailment

In case of non-gratuitous bailment, it is sufficient for Bailor to repay extraordinary expenses incurred by Bailee, for the purpose of Bailment.

**Analysis:** In the present case, A hires a horse from B. A (bailee) receives custody charges from B (bailor). Since it is a non-gratuitous Bailment, Bailor is not liable to repay the bailee the ordinary expenses of feeding the horse. During the Bailment period, the horse falls ill without any negligence on his part. A incurred medical expenses in connection with the treatment of the horse.

**Conclusion:** On the above analysis and provision of law, B (Bailor) must repay the A (Bailee) the medical expenses incurred in connection with the treatment of the horse, these being extraordinary expenses.

**Q.No.2.** A, a watch repairer, repaired B's watch for a total charge of Rs.250. Before B took delivery of the watch, the shop caught fire through no fault of A, and B's watch was destroyed. Is B entitled to compensation for the loss of watch? Is A entitled to remuneration for the work done?

**Provision:** As per Sec 151 of the Indian Contract Act 1872, Bailee is bound to take care of goods bailed to him as a man of ordinary prudence. In the absence of special contract, he is not responsible for any special loss or destruction or deterioration of the goods bailed.

**Analysis:** In the present case, A (Bailee) is not responsible for any special loss, since the goods are destroyed without bailee's fault. A is entitled to remuneration for services performed on the goods destroyed.

**Conclusion:** In the given instance 'A' is entitled to get his repair charges for the work he performed prior to fire. B is not entitled to compensation for the loss of watch

**Q.No.3.** M lends a sum of Rs.5,000 to B, on the security of 2 shares of a Limited Company on 1st April 2007. On 15th June 2007, the company issued 2 bonus shares. B repays the loan amount of

Rs.5,000 along with interest but M returns only 2 shares which were pledged and refuses to give the 2 bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.

(OLD PM, RTP M17, N08 - 5M)

(Or)

Certain shares in a limited company were pledged by the debtor with a bank as a security for loan advanced by the bank to him. Subsequently, the company declared dividend on the shares and also issued Bonus shares. The Bank claimed that it was entitled to retain the amount of dividend and also bonus shares issued by the company. Discuss the claim of the bank.

**Provision:** As per Sec. 163 of the Indian contract Act 1872 says that the Bailor is entitled to increase of 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.

**Analysis:** (Applicability of the Law) – The Bailee is bound to return the natural increase or profits accruing to the goods to the Bailor, during the period of Bailment.

**Conclusion:** On the above analysis and provision of Law, when there is an increase to the shares lent to M during the Bailment then it is the duty of the Bailee (M) to return the increase to the Bailor (B). In simple words, B is entitled to get bonus shares from M.

**Q.No.4.** Mr. Dhannaseth delivers a rough blue sapphire to a jeweller, to be cut and polished. The jeweller carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweller denies the delivery of goods without payment. Examine whether the jeweler can hold blue sapphire. Give your answer as per the provisions of the Contract Act, 1872.

MTP M18 (N)

**Provision:** As per Sec 170 of The Indian Contract Act 1872 lays down that where the bailee has rendered any service involving the exercise of labour/ skill in respect of the goods bailed, there he has a right to retain such goods in his possession until he receives due remuneration for the services, he has rendered in respect of them. This right of bailee is termed as particular lien. This right can be exercised when the services have been performed entirely and the remuneration has become due. Bailee's particular lien in of service may be lost if he does not complete the work within the agreed time or reasonable time.

**Analysis:** In the present case, the jeweler has rendered services involving the exercise of labour /skill in respect of the blue sapphire. Jeweler has a right to retain such goods in his possession until he receives remuneration for the services rendered.

**Conclusion:** Thus, the jeweler is entitled to retain the bailed property.

**Q.No.5.** Mr. G delivered a shopkeeper to repair a watch on the payment of Rs. 100. Subsequently the shopkeeper refused to repair it for the Rs. 100 and also claimed to retain the watch until he is paid for the work done. Decide the right of G by examining the provision of the Indian Contract Act, 1872.

(RTP N13)

**Provision:** Sec. 170 of The Indian Contract Act 1872 lays down that where the bailee has rendered any service involving the exercise of labour /skill in respect of the goods bailed, there he has a right to retain such goods in his possession until he receives due remuneration for the services, he has rendered in respect of them. This right of bailee is termed as particular lien. This right can be exercised when the services have been performed entirely and the remuneration has become due. Bailee's particular lien in of service may be lost if he does not complete the work within the agreed time or reasonable time.

**Analysis:** Accordingly in the given case, it is clearly expressed by the shopkeeper to repair the watch on the payment of Rs. 100. However later his refusal to repair the watch, does not complete the work for which he has promised and therefore he losses his right to exercise particular lien and nothing could be claimed under it.

**Conclusion:** Thus, the shopkeeper was not entitled to retain the watch.

**Q.No.6.** A, finds a horse which carries a reward of Rs.200 to the finder offered by B, the owner. A telegraphically informs B about the horse and spends Rs.15 thereon. B comes to take the horse after two days and during the intervening period A spent Rs.80 on feeding the horse. A returns the horse insisting prepayment of his lawful charges of Rs.95 and the amount of reward. Subsequently B refuses to pay. Files a suit against B for the recovery of Rs.295. Will he succeed?

**Provision:** As per Sec 168 of the Indian Contract Act 1872, 'Finder of lost goods' has a right to retain the found goods until he recovers expenses incurred by him to preserve the goods and to find out the true owner. It may be noted that finder of goods has no right to sue the owner for such compensation. But he can exercise lien right over the found goods (Particular lien but not general lien). Further where the real owner has announced any reward, the finder is entitled to receive the reward and may retain the goods until he receives it.

**Analysis and Conclusion:** In the present case, B, while offering the reward made a general offer which A accepted by returning the horse. A will succeed only for the recovery of reward amount i.e., Rs. 200 as there is a contract between A and B. A cannot file a suit for recovery of the expenses i.e., Rs.95 in the absence of privity of contract. Also A cannot exercise the right of lien, as possession has been lost.

**Q.No.7.** A the Pledgor, pledges a cinema projector and other accessories with Cine Association Co –operative Bank Limited, the Pledgee, for a loan. A requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the Pledgee and further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between A, the Pledgor and Bank, the Pledgee?

(OLD PM, RTP N15, M16, J 09, M17 - 4M)

**Provision:** Sec. 149 of the Act provides that the delivery of the goods to the Pledgee may be made by actual or constructive delivery. Constructive delivery means doing of any act which has the effect of putting the goods in the possession of a person who agrees to hold them as a Bailee for some other person although transfer of possession of goods does not actually take place.

**Analysis:** In the present case, the delivery of the goods is constructive i.e. delivery by attornment to the Pledgee and the possession of the goods by A, the Pledgor is treated as possession by Pledgee, the Bank. A constructive pledge comes into existence as soon as the Pledgor, without actually delivering the goods, promises to deliver them on demand.

**Conclusion:** Therefore the above stated transaction is a valid pledge.

**Q.No.8.** Ravi sent a consignment of goods worth Rs.60,000 by railway and got railway receipt. He obtained an advance of Rs.30,000 from the bank and endorsed the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for Rs.60,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

(Or)

X sent a consignment of mobile phones worth Rs. 60,000 to Y and obtained a railway receipt therefore. Later, he borrowed a loan of Rs. 40,000 from Star Bank and endorsed the railway receipt in favour of the Bank as security. In transit the consignment of mobile phones was lost. The Bank files a suit against the railway for a claim of Rs. 60,000, the value of the consignment. The railway contended that the Bank is entitled to recover the amount of loan i.e. Rs. 40,000 only. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of the railway is valid.

(OLD PM, M 08) (SIMILAR: N10, 14)

**Provision:** MORVI MERCANTILE BANK LTD. vs. UNION OF INDIA

The Supreme Court has held that the Bank (Pledgee) was entitled to recover not only to the extent of the amount of advance due to it, but the full value of consignment. However, the amount over and above his interest is to be held by him in trust for the Pledgor.

**Analysis:** When Ravi deposited the Railway receipt, which is document of title to goods, in the bill as a security and obtained an advance of Rs.30,000, it amounted to pledge. The bank as a Pledgee has got all rights against the goods as if he is the true owner. When the railway Co. failed to deliver the goods, the Bank, as a pledgee can sue the Railway Co. not only for his interest in the goods pledged, but for all such remedies that the owner of the goods would have against them. If the amount exceeds over and above his interest it is to be held by him in trust for the Pledgor.

**Conclusion:** In the given case, the bank is entitled to recover not only the amount of advance due to it, but full value of the consignment. The excess amount if any will be held by the Banker in trust for the Pledgor i.e. Ravi.

**Q.No.9.** X, a Doctor by the exercise of undue influence persuades Y, his patient to sell a valuable gold watch him for Rs.500. X, obtained the possession of the watch, and pledges it with Z, who does not know about the defective title of X. Is this a valid pledge?

**Provision:** As per Sec 178A of the Indian Contract Act 1872, where the Pawnor has acquired possession of pledged goods, under a voidable contract, but that contract has not been cancelled at the time of pledge, then Pawnee acquires good title to the goods, against the true owner if he satisfies following conditions - (a) he had no notice of Pawnor's defect in the title, and (b) Pawnee acts in good faith.

**Analysis:** A Pledge by a person in possession of goods, under a Voidable contract is valid as the contract has not been rescinded before the contract of pledge and X has acted in good faith, without the notice of the Y's defect of Title.

**Conclusion:** In given case pledge created by Y is valid.

**Q.No.10.** B handed her jewelry to M to value it and tell her what advance he could make on them, it being agreed that M was to keep the jewelry as security if he made the advance. On the same day M pledged the jewelry with A, a pawnbroker, who advanced Rs.1,000 in good faith. Four days later M advanced Rs.500 to B on the security of her jewelry. Subsequently on coming to know of transaction between M and A, B paid the amount she had borrowed and sued A for the recovery of her jewelry contending that when M advanced the money, no valid pledge could arise as there was no delivery of goods in pursuance of the contract of pledge and M had already parted with the possession of the goods by pledging them with A. Will B succeed?

**Provision:**

- Sec. 179 of the Contract Act, 1872, provides that, where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.
- Delivery of possession and advance need not be simultaneous and a pledge may be perfected by delivery before or after the advance is made.

**Analysis and Conclusion:** In the present case, Delivery made four days before was a good delivery for the purpose of creating a pledge. M pledges goods in which he has only a limited interest. Pledge is valid to the extent of that interest.

No, B will not succeed as the pledge is valid. B would have succeeded had she made the payment of Rs.500 along with the interest to A instead of M because the pledge between M and A was valid only to the extent of M's interest in the jewelry, namely, Rs.500 (amount of Advance to B). Of course, on making the payment to M, B has a right to sue M for the redemption of her jewelry.

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### PRACTICAL QUESTIONS FOR STUDENTS SELF STUDY

**Q.No.1.** A delivers a carrier with some explosives in a case, to B without disclosing this fact to B. B does not take any extraordinary care required for such type of goods. The case exploded. As a result, a porter is injured and some other goods got damaged. Discuss the liability of A in the light of the provisions of the Indian Contract act, 1872.

**Provision:** Section 150 of the Indian Contract Act, 1872

**Analysis:** A delivers a carrier with some explosives in a case to B without disclosing the same. As per section 150 of the Indian contract act, 1872, it is the duty of Bailor (A) to disclose the fact known to him.

**Conclusion:** A (Bailor) is liable to B (Bailee) for the injury caused to the porter and damage caused to other goods.

**Q.No.2.** A gives his neighbour scooter to B for use without neighbor's permission. The neighbour sued B and received compensation. B Claims reimbursement of compensation paid by him from A. A refuses to pay. Discuss the liability of A.

**Provision:** Section 164 of Indian Contract Act, 1872

**Analysis:** A (Bailor) gives his neighbour's scooter to B (Bailee) for use without the neighbour's permission. The neighbour sues B (Bailee) and receives compensation.

**Conclusion:** A (Bailor) is bound to indemnify B (Bailee) for the loss occurred.

**Q.No.3.** A lends an old discarded bicycle to B gratuitously for 3 months. B incurs Rs 120 on its repairs. A asks for the return of the bicycle after 1 month. Is A Liable to B for termination of bailment?

**Provisions:** Section 159 of the Indian Contract Act, 1872

**Analysis:** A (Bailor) lends an old discarded bicycle to B (Bailee) gratuitously for a period of three months. B incurs Rs.120 on its repairs. If A (Bailor) asks for the return of the bicycle after one month then he (Bailor) will have to compensate B (Bailee) for expenses incurred by B in excess of the benefit derived by him.

**Conclusion:** A is liable to B for termination of Bailment if expenses incurred by B are in excess of the benefit derived by him.

**Q.No.4.** X delivered some cattle to Y for feeding grass in Y's farm against some payment. Without any negligence on Y's part, cattle were stolen. Y did not inform the same to the owner or the police or make any efforts to recover the cattle because he thought it would be useless to do so. Who is liable and why?

**Provisions:** Section 151 of the Indian contract Act, 1872

**Analysis:** Bailee (Y) has not taken any steps to recover the cattle or he has not taken care of the goods

**Conclusion:** Bailee (Y) is liable to compensate the loss occurred to the Bailor(X).

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**Q.No.5.i.** A lends his Motor car to B for a drive on a condition that only B should drive the motor car. B allowed 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? (CMA J12 - 2M)

**Q.No.5.ii.** Amit lends a horse to Bimal for his own riding only. However, Bimal allows Chinku, a member of his family to ride the horse. Chinku rides the horse with care, but the horse falls and is injured. As per the provisions of the Indian Contract Act, 1872, analyze the liability of Bimal in the given situation. (MTP N18)

**Provisions:** Sec.154 - Liability of the Bailee making unauthorized use of the goods Bailed.

**Analysis:** If Bailee does not use the goods according to the conditions of Bailment then Bailee is liable for any loss or destruction of goods even if he was not negligent.

**Conclusion:**

- i. B is liable to A for the damage caused to the car.
- ii. Bimal is liable to make compensation to Amit for the injury done to the horse.

**Q.No.6.** A finds a lost horse. After a diligent search the true owner and offers to return the horse to him, on condition that the true owner pays A's lawful expenses amounting to Rs.150. Discuss the liability of true owner. Does A file a suit for the recovery of the expenses.

**Provision:** Section 168 of the Indian Contract Act 1872

**Analysis:** A finds a lost horse. After a diligent search the true owner and offers to return the horse to him, on condition that the true owner pays A's lawful expenses amounting to Rs.150. The True owner refuses to pay. A cannot file a suit for recovery of the expenses in the absence of privity of contract

**Conclusion:** A cannot file a suit for recovery of the expenses in the absence of privity of contract. However A can exercise the lien right over the horse.

**Q.No.7.** Ram hired the wooden shop from Sundar for selling beetles. The wooden shop was destroyed due to earthquake. Sundar claims compensation for the loss of wooden shop. Ram refuses to pay. Discuss the liability of Ram.

**Provisions:** Section 151 & 152 of the Indian Contract Act, 1872

**Analysis:** The wooden shop was destroyed due to earthquake. The destruction of wooden shop is not happened due to the fault of Ram.

**Conclusion:** Ram is not liable to pay compensation to Sundar.

**Q.No.8.** Mrs. X delivered her old gold jewellery to Mr. Y, a goldsmith, for the purpose of making new jewellery out of it. Every evening she used to receive the unfinished jewellery to put it into a box kept at Mr. Y's shop. She kept the key of that box with herself. One night, the jewellery was stolen from the box. What is the nature of this Contract?

**Provision:** Sec 148 & Sec 149 of the contract Act 1872

**Analysis:** Delivery is necessary to constitute a valid contract of Bailment. Mere keeping of the box at Y's shop, when X herself took away the key cannot amount to delivery as per the meaning of the provision in Sec 149.

**Conclusion:** In this case there is no contract of Bailment because Mrs. X has not delivered the complete possession of goods as the key is kept with her every evening.

**Q.No.9.** A hires a car from B and agrees to pay Rs.5,000 as hire charges. The car is not safe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay.

(a). Discuss the liability of B.

(b). What would be your answer, if car was hired gratuitously?

[MTP M18(N&O)]

**Provision:** Sec. 150 of the Indian Contract Act, 1872

**Analysis:** The duty of the Bailor for consideration is much greater. He is making profit from his profession and, therefore, it is his duty to see that the goods which he delivers are reasonably safe for the purpose of Bailment. He can't say that he was not aware of the defect.

**Conclusion:**

(a). It is the duty of Bailor's (B) to see that the carriage is safe for the purpose for which it was bailed. Hence, the Bailor (B) is liable to compensate the loss to Bailee (A).

(b). B (Bailor) is not liable to compensate the loss to A (Bailee)

**Q.No.10.** Amar bailed 50Kg of high quality sugar to Srijith, who owned a kirana shop, promising to give Rs. 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came into light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar? (N18 (N) - 3M)

**Provision:** Sec 157 of the Indian contract Act 1872,

**Analysis:** In the present case Srijith's employee mixed 50kg of sugar belonging to Amar with the sugar in the shop without the consent of Amar. Since the goods are inseparable Amar has a right to claim compensation from Bailee for the loss of goods.

**Conclusion:** Srijith is liable to compensate Amar for any loss caused to him.

**Q.No.11.** A Bails his jewelry with B on the condition to safeguard in Bank's safe Locker. However, B kept it in safe locker at his residence, where he usually keeps his own jewelry. After a month all jewelry was lost in a riot. A filed a suit against B for recovery. Referring to the provisions of Indian Contract Act, 1872 state whether A will succeed or not. (MTP N18)

**Provision:** Sec.151 & Sec 152 of the Indian Contract Act, 1872.

**Analysis:** In the present case, A and B agreed to keep the jewelry at the banks safe locker. However, B kept it in safe locker at his residence. After a month all jewelry was lost in a riot. Here, B does not act according to the instructions of A (Bailor).

**Conclusion:** B is liable to compensate A for his negligence to keep jewelry at his residence.

**Q.No.12.** Sunil delivered his car to Mahesh for repair. Mahesh completed the work but did not return the car to Sunil within reasonable time, though Sunil reminded Mahesh for the return of car. In the mean time a big fire occurred in the neighbourhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.

(OLD PM, N10, N03 - 6M)

**Provision:** Sec.160 & 161

**Analysis:** It is the duty of the Bailee to return or deliver the Bailed goods according to the Bailor's directions. If he fails to do so, he is responsible to the Bailor for any loss, notwithstanding the exercise of reasonable care on his part.

**Conclusion:** Mahesh neglected to return the goods even after the expiry of reasonable time. Therefore, Mahesh is liable for the loss.

Q.No.13. R gives his umbrella to M during raining season to be used for two days during Examinations. M keeps the umbrella for a week. While going to R's house to return the umbrella, M accidentally slips and the umbrella is badly damaged. Who bear the loss and why?

(OLD PM, MTP M18 (N))

**Provision:** Section 161 of the Indian Contract Act, 1872.

**Analysis & Conclusion:** In the given case, M shall have to bear the loss since he failed to return the umbrella within the stipulated time and Sec 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

## **IMPORTANT SECTION NUMBERS**

CONCEPT	SECTION NO.
Bailor's duty to disclose faults in goods bailed	150
Bailee when not liable for loss, etc., of thing bailed.	152
Termination of bailment by bailee's act inconsistent with conditions.	153
Liability of bailee making unauthorized use of goods bailed.	154
Effect of mixture, with bailor's consent, of his goods with bailee's.	155
Effect of mixture, without bailor's consent, when the good can be separated.	156
Effect of mixture, without bailor's consent, when the goods cannot be separated.	157
Repayment, by bailor, of necessary expenses.	158
Restoration of goods lent gratuitously.	159
Return of goods bailed, on expiration of time or accomplishment of purpose.	161
Bailee's responsibility when goods are not duly returned.	162
Termination of gratuitous bailment by death.	163
Bailor's responsibility to bailee.	164
Bailment by several joint owners.	165
Bailee not responsible on re-delivery to bailor without title.	166
Right of third person claiming goods bailed.	167
Right of finder of goods. May sue for specific reward offered.	168
When finder of thing commonly on sale may sell it.	169
Bailee's particular lien.	170
General lien of bankers, factors, wharfingers, attorneys and policy-brokers.	171
Pawnee's right of retainer.	173
Pawnee not to retain for debt or promise other than that for which goods pledged.	174
Presumption in case of subsequent advances.	
Pawnee's right as to extraordinary expenses incurred.	175
Pawnee's right where Pawnor makes default.	176
Defaulting Pawnor's right to redeem.	177
Pledge by mercantile agent.	178
Pledge by person in possession under voidable contract.	178A
Pledge where pawnor has only a limited interest.	179
Suit by bailor or bailee against wrong-doer.	180
Apportionment of relief or compensation obtained by such suits	181

**TEST YOUR KNOWLEDGE**

1. A takes a mobile by fraud from owner. Before owner avoids the contract, A pledges the mobile with C, who takes it in good faith. Can owner recover the mobile from C? Hint: No.
2. M had taken the car from N for use for three days. M keeps it for seven days. Then inspite of his utmost care, the car is damaged. Is M liable for damages to N? Hint: Yes, M is liable for same.
3. X delivered some books to Y for the purpose of binding. Y neglected to return them even after the expiry of reasonable time. One night a fire broke out in Y's shop without the negligence on Y's part and the books were destroyed. Who are liable and Why? Hint: Y is liable
4. A, a film producer, borrowed Rs. 5,00,000 from B, a financial distributor, and agreed to deliver the final prints of the film when ready. Was the agreement a pledge? Hint: No
5. Mrs. X delivered her old gold jewllery to her husband Mr X a goldsmith for the purpose of making new one out of it. Is there a contract of Bailment? Hint: Yes
6. A gives his old jewellery to a jeweler for making a new jewellery. He defaults in paying the service charges to jeweler. Can jeweler exercise lien for this? Hint: Yes
7. X finds a defective watch lying on road. He gets it repaired for Rs. 100 and pledges with Y for Rs. 300. Later on when Z the true owner, came to know about this, he sued Y to recover his watch. Can z recover his watch? Hint: No

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**THE END**