

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

No.	M-10 To N-10	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)
THEORY QUESTIONS																
T1	-	1	-	-	-	-	1	-	-	-	-	-	-	-	-	-
T2	-	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-
T3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T7	-	-	-	-	-	1	-	-	-	-	-	-	-	-	-	-
T8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
T11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T13	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T16	-	-	-	-	-	-	-	-	-	-	-	-	4	4	-	-
T17	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
T18	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PRACTICAL QUESTIONS FOR CLASS ROOM DISCUSSION																
P1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3
P7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P9	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P10	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P11	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P12	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P13	-	-	-	-	-	-	-	-	-	-	-	-	4	-	-	-
P14	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P15	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P16	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
PRACTICAL QUESTIONS FOR STUDENT SELF PRACTICE																
P1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P5	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P7	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
P8	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

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 the Contract of Bailment? (C) (NEW SM, OLD SM, OLD PM, M11 - 1M, M15 - 1M)

### MEANING OF CONTRACT OF BAILMENT:

- a) The word 'Bailment' is derived from the French word 'Ballier' which means 'to deliver'<sup>1</sup>.
- 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. (B)

### First write the definition of Bailment.

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

- a) **Contract:** In Bailment, the delivery of goods is based upon a contract. The contract may be expressed or implied<sup>2</sup>.
- b) **Delivery of Goods:** The principle of Bailment is "delivery of goods by one person to another person". Of course, Possession and custody do not mean physical delivery of goods.<sup>3</sup>
- c) **Property must be movable:** Bailment will apply for movable goods only but not for immovable goods or money.
- d) **Change of possession of Goods:** In case of Bailment, possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of Bailee. (Refer Q. No: 3)

<sup>1</sup> Bailment etymologically means 'handling over' or 'change of possession of goods'.

<sup>2</sup> Example for implied contract of Bailment – Finder of Lost Goods

<sup>3</sup> Parking a vehicle in a parking lot, depositing ornaments in bank locker, etc.

**e) Goods must be delivered for a purpose:**

- i) Goods must be delivered for some specific purpose (It could be safe custody of goods or transportation of goods).
- ii) The purpose can be conveyed either expressly or impliedly.

**f) No change in ownership:** In Bailment, Bailor continues to be the owner of goods as there is no change of ownership.**g) Return or disposal of goods:** When the purpose of delivery is accomplished, the goods must be

- Either returned to the Bailor (in its original or altered form<sup>4</sup>) or
- Disposed off according to the directions of the Bailor.

**SIMILAR QUESTIONS<sup>5</sup>:****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. (OLD PM, M-05,07, RTP M13)

**A.**

- 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?**

- A. 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.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 1)****Q.No.3. Different Modes / Types of Delivery. (C)****Change of possession may happen by (Different modes of delivery):**

- i) **Physical / Actual delivery:** Transfer of physical possession of goods by one person to another.

*Example: Delivery of car to a mechanic for repair.*

- ii) **Symbolic Delivery:** In this case, physical possession of goods is not transferred but some act is done resulting in the transfer of possession.

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<sup>4</sup> Cloth is delivered to a Tailor for stitching it into a shirt<sup>5</sup> **GENERAL ISSUES:**

- a) The recipient must knowingly accept the property.
- b) Mere custody without possession does not amount to Bailment

Example: Depositing ornaments in a bank locker is not Bailment, because ornaments are kept in a locker whose key are still with the owner and not with the bank. The ornaments are in possession of the owner, though kept in a locker at the bank. (M15 - 1M)

- c) Money deposits in Banks: Deposit of money in a bank is not Bailment since the money returned by the bank would not be identical currency notes. (CMA J 14 - 2M)

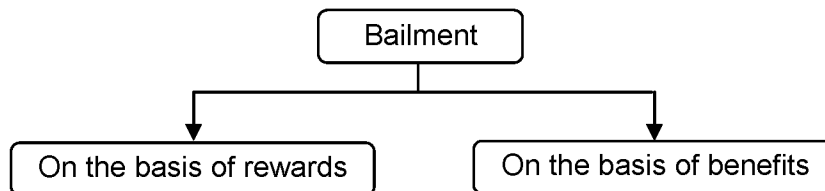
- d) Deposit of ornaments in bank locker: It is not a bailment since the bank does not get the possession of the ornaments. As per Sec 148, "mere custody without possession of goods does not constitute bailment"

*Example: Transfer of car keys, Railway receipt, etc.*

- iii) **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: Sale and lease back transaction.*

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



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

- a) **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*

- b) **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:

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

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

(NEW SM, OLD PM, M98 - 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 for 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 for such loss, whether he knows those defects or not<sup>6</sup>.

##### 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.

<sup>6</sup> Example: X hires a motor launch from Y for holiday on a river. The launch caught fire and X was unable to extinguish it as the fire fighting equipment was out of order which Y did not know. As a result, X was injured and suffered loss. Y is liable to X for loss (In case of non-gratuitous bailment, the Bailor is responsible for all defects in the goods which he knows or not).

- 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):**
- 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 benefits obtained by him then Bailor shall indemnify Bailee for such excess loss.
- e) **Receive back the goods (sec 164):**
- It is the duty of Bailor to receive back the goods, when returned by Bailee.
  - 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

*(IMMEDIATELY REFER PRACTICAL QUESTION CRD 2, 4; SELF PRACTICE 1, 2, 3, 4)*

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

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

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

#### **RIGHTS OF BAILOR:**

1. **Right to claim compensation in case of unauthorized use of goods bailed [Sec 154]:** If the Bailee does not use the goods bailed according to the conditions of the Bailment then Bailor has a right to claim compensation from Bailee for any loss arising there from.
2. **Right to terminate the contract in case of unauthorized use of goods bailed [Sec 153]:** If the Bailee does not use the goods bailed according to the conditions of the Bailment, the Bailor has a right to terminate the contract.
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<sup>7</sup>.
  - 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<sup>8</sup>.
4. **Right to demand return of Goods [Sec 160]:** The Bailor has a right to demand return of goods after the fulfillment of the purpose or after the expiry of 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.

*(IMMEDIATELY REFER PRACTICAL QUESTION CRD 6)*

<sup>7</sup> 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 damage.

<sup>8</sup> Example: A bails a barrel of Cape flour worth Rs.45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs.25 a barrel. B must compensate A for the loss of his flour.

## 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:**

- a) Bailee is bound to take care of goods bailed to him as a man of ordinary prudence.
- b) In the absence of special contract, he is not responsible for any special loss or destruction or deterioration of the goods bailed<sup>9</sup>.

**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:** (Refer point 3 in Q.No.6)**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, the 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.***(IMMEDIATELY REFER PRACTICAL QUESTION CRD 3, 5, 7, 8, 10, SELF PRACTICE 5, 6, 8)***

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

(NEW SM, OLD SM)

*(First write about Contract of Bailment and Bailee)***Following are the Rights of the 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.

<sup>9</sup> destruction of the loss of goods due to Act of god

v) **Right of Lien:** The right of lien is a 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 a particular lien. So, Bailee can retain only those goods for which the Bailee has to receive his fees / remuneration.

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 (sec180)

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.

**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:** 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 the Bailee<sup>10</sup>.
- 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*)<sup>11</sup>.

2. **General Lien:**

- 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 QUESTION:

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

A. Refer above answer - Particular Lien

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 9, 12)**

<sup>10</sup> Where the Bailee delivers the goods without receiving the remuneration, he has a right to sue the Bailor. In such a case the particular lien may be waived.

<sup>11</sup> Example: A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat since he has given a credit period of 3 months to A, for payment of price.

## Q.No.10. Rights &amp; 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:

- i) **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)

- ii) **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.

- iii) **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.

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**SIMILAR QUESTION:**

1. What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract act, 1872? (N18 (N) - 3M)

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 11, SELF PRACTICE 7)

## 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.
6. **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.

## 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:

- 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'.
- The person who pledges or bails is known as Pledgor or Pawnor and the Bailee is known as Pledgee or Pawnee.
- In pledge there is no change in ownership of the property.
- Pledge is a special kind of Bailment. All essential elements of Bailment must be present in case of contract of pledge also.<sup>12</sup>

### ESSENTIAL FEATURES OF PLEDGE:

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

Thus, all the contracts of Pledge are Bailments but all the contracts of Bailments are not Pledge.

### SIMILAR QUESTION:

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

A. 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.

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:

- Redeem goods pledged [Sec 177]:** Pawnor has a right to redeem his goods on payment of debt and other charges. Right to redeem means get back his goods.
- Right to receive increase or profits from the goods:** The 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.

<sup>12</sup> A lends money to B against the security of jewellery deposited by B with him i.e. A. This bailment of jewellery is a pledge as security for lending the money. B is a pawnor and the A is a pawnee.

**3. Right to receive notice of sale:**

- In case of default by the Pawnor to pay the debt or perform his promise, the pawnee has the right to sell the goods after giving a reasonable notice to the pawnor
- If the Pawnee, fails to give notice, the Pawnor has right to recover the loss incurred by him

**RIGHTS OF PAWNEE:**

**Pawnee's rights:** Rights of Pawnee can be classified as under the following headings:

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

- a) The 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.

**Example:** 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.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 13, 14, 15)**

**SIMILAR QUESTION:****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?**

A. Refer point a, d in above answer.

**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 a limited interest, then pledge is valid to the extent of that interest.

**(IMMEDIATELY REFER PRACTICAL QUESTION CRD 16)**

**SIMILAR QUESTION:**

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. (M08 - 1M)
- A. Statement is 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 opinion 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.

*Example: 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.
<b>Possession</b>	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)

<b>Consideration</b>	In Bailment there may or may not be consideration.	Consideration will always be there in case of Pledge.
<b>Discharge</b>	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.

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

**GRATUITOUS BAILMENT vs NON-GRATUITOUS BAILMENT:**

DIFFERENCE	GRATUITOUS BAILMENT	NON-GRATUITOUS BAILMENT
<b>Meaning</b>	Bailment without reward or consideration	Bailment in which Consideration passes between Bailor and Bailee
<b>Example</b>	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.
<b>Consideration</b>	No consideration passes between the Bailor and the Bailee	Some consideration passes between the Bailor and the Bailee
<b>Benefit</b>	It is for the exclusive benefit of either Bailor or Bailee.	It is for the mutual benefit of the Bailor and the Bailee
<b>Liability of Bailor for unknown defects</b>	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.
<b>Bailor's duty to bear expenses</b>	It is presumed that all expenses are to be borne by the Bailor.	Unless otherwise agreed, only extraordinary expenses shall be borne by Bailor.
<b>Termination of Bailment</b>	Bailment can be terminated at any point of time even though the Bailment was for a specified period or for a specific purpose.	Bailment can be terminated only on expiry of the specified period or fulfillment of the specified purpose.
<b>Effect of death of Bailor / Bailee</b>	Bailment is terminated by the death of Bailor or Bailee.	Bailment is not terminated by the death of Bailor or Bailee.

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

**(NEW SM)**

DIFFERENCE	GENERAL LIEN	PARTICULAR LIEN
<b>Meaning</b>	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.
<b>Automatic</b>	A general lien is not automatic. It arises only when there is a specific provision in the agreement.	It is automatic.
<b>Availability</b>	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
<b>Persons entitled</b>	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 CLASSROOM DISCUSSION

**Q.No.1.** 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. Was there a contract of Bailment? (A)

**Facts of the case:** 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 will receive the unfinished jewellery to put it into a box kept at Mr.Y's shop and kept the key with her. One night, the jewellery was stolen from the box.

**Provision:** Sec 148 of the contract Act 1872 - Bailment means 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 off according to the directions of the person delivering them.

Sec 149 says that the delivery to the Bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended Bailee or of any person authorized to hold them on his behalf. In simple words, delivery can be either actual or constructive.

**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:** The first important characteristic of contract of Bailment is delivery of possession of goods. In this case there is no contract of Bailment because Mrs.X has not delivered the complete possession of goods by keeping the key with her every evening.

**Q.No.2.** 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. Discuss the liability of B. What would be your answer, if car was hired gratuitously? (A)

(OLD PM, M05, MTP N18)

**Facts of the case:** A hires a car from B for Rs.5,000 as hire charges. The car is unsafe, though B is unaware of it. A is injured and claims compensation, but B refuses to pay.

**Provision:** Sec. 150 of the Indian Contract Act, 1872 states that in case of Non Gratuitous Bailment, Bailor is responsible for such damage whether he was aware or not of the existence of such faults in the goods Bailed.

In case of gratuitous bailment, Bailor is responsible to disclose all faults know to him. If the bailor fails to disclose such defects and Bailee suffers some loss then the bailor is liable to indemnify bailee for such loss.

**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:**

1. 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).
2. B (Bailor) is not liable to compensate the loss to A (Bailee)

**Q.No.3.** 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? (B)

**Facts of case:** 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.

**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.4.** A hires a horse from B. During the bailment period, the horse falls ill without any negligence on A's part. A 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. **(B)**

**Facts of the case:** A hires a horse from B. During the bailment period, the horse falls ill without any negligence on A's part. A incurred medical Expenses in Connection with the treatment of the horse A claim reimbursement of medical expenses incurred by him B refuses to pay.

**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.5.** 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. **(A)**

**(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.

**Facts of the case:** M lends a sum of Rs.5,000 to B, on the security of 2 shares. Later on, the company issued 2 bonus shares. B repays the loan amount of Rs.5,000 along with interest. But M returns only 2 shares to B and refuses to return the 2 bonus shares.

**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.6.** 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. (A) (N18 (N) - 3M)

**Facts of the case:** 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.

**Provision:** As per Sec 157 of the Indian contract Act 1872, if Goods are mixed without Bailor's consent and goods are not separable then Bailor has a right to claim compensation from Bailee for the loss of goods.

**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.7.** 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. (A) (MTP N18)

**Facts of the Case:** 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.

**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.

As per sec.152 of the Indian Contract Act, 1872, in the absence of special contract, he is not responsible for any special loss or destruction or deterioration of the goods bailed, if he has taken the amount of care of it described in section 151.

**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.8.** 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 meantime 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. (A) (OLD PM, N10, N03 - 6M)

**Facts of the case:** Sunil delivered his car to Mahesh for repair work. After completion of work, Mahesh didn't deliver the car to Sunil, though Sunil has reminded Mahesh repeatedly. A fire occurred in the neighborhood and the car was destroyed.

**Provision:** Sec.160. It is the duty of the Bailee to return or deliver the goods Bailed, according to the Bailor's directions, without demand, as soon as the time for which they were Bailed was expired, or the purpose for which they were delivered has been accomplished.

Sec.161 - If due to the default of the Bailee, the goods are not returned, delivered or tendered at proper time then he is responsible to the Bailor for any loss or deterioration of the goods from that time.

**Analysis:** According to sec. 160 and 161 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, not withstanding the exercise of reasonable care on his part.

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

**Q.No.9.** 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. (A) (MTP M18 (N))

**Facts of the case:** 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.

**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.10.** 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? (B) (OLD PM, MTP M18 (N))

**Provision:** According to section 161 of the Indian Contract Act, 1872, if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time

**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.

**Q.No.11.** 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. A files a suit against B for the recovery of Rs.295. Will he succeed? (A)



**Facts of case:** 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.

**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.12.** 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. (A) (RTP N13)

**Facts of the case:** 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.

**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.13.** 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? (A) (OLD PM, RTP N15, M16, J 09, M17 - 4M)

**Facts of the Case:** A pledges a cinema projector and other accessories for a loan and requested 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.

**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.14.** 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. (A) (OLD PM, M 08) (SIMILAR: N10, 14)

**Facts of the case:** Ravi sent goods on consignment worth Rs. 60,000 by Railway and received a receipt from them. Later, he obtained advance from bank for Rs.30,000 and endorsed the receipt as a security. But railways failed to deliver the goods. Whether the bank would succeed in the suit and get Rs. 60,000/- from the Railway Co

**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.15.** 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? (A)

**Facts of the case:** 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, whether it is 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.

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**Q.No.16.** 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? **(A)**

**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.

**PRACTICAL QUESTIONS FOR STUDENTS SELF PRACTISE**

**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. **(A)**

Applicable Section 150 of the Indian Contract Act, 1872

**Hint:** A is liable to B for the injury caused to the porter and damage caused to other goods.

**Reason:** A delivers a carrier with some explosives in a case, to B without disclosing this fact to B. It is the duty of A to disclose the fact known to him.

**Q.No.2.** i. X delivered a horse to Y for his own riding without any charge. The horse runs away. Y is thrown and injured. State the legal position in each of the following alternative case:

- If X did not know that the horse was vicious.
- If X disclosed the fact that the horse was vicious.
- If X did not disclose the fact the horse was vicious

ii. If in above case, X charge Rs 100 from Y, will your answer be same? **(B)**

Applicable Section 150 of the Indian Contract Act, 1872

**Hint and Reason:**

i)

- A. X is not liable to Y for loss because he did not know the defect.
- B. X is not liable to Y for such loss because he disclosed the known defect.
- C. X is liable to Y for such loss because he did not disclose the known defect.

ii) Then it becomes a case of non- gratuitous bailment and hence the legal position will be changed as under:

In all cases, X is liable to Y for such loss because bailor is liable to bailee for any loss arising due to all defects whether he knows or not.

**Q.No.3.** A gives his neighbour scooter to B for use without neighbour's permission, the neighbour sue B and receives compensation, B Claims compensation paid by him. A refuses to pay. Discuss the liability of A. **(B)**

Applicable Section 164 of Indian Contract Act, 1872

**Hint:** A is bound to indemnity B for his losses.

**Reason:** A gives his neighbour's scooter to B for use without the neighbour's permission. The neighbour sues B and receives compensation.

**Q.No.4.** 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? **(B)**

Applicable Section 159 of the Indian Contract Act, 1872

**Hint and Reason:** 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.

**Q.No.5.** 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? **(B)**

Applicable Section 151 of the Indian contract Act, 1872

**Hint:** Bailee is liable to compensate the loss occurred to the Bailor.

**Reason:** Bailee has not taken any steps to recover the cattle or he has not taken care of the goods

**Q.No.6.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.6.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. **(A)** **(MTP N18)**

Applicable Sec.154 - Liability of the Bailee making unauthorized use of the goods Bailed.

**Hint:** i. Bailee is liable 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.7.** 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. **(A)**

Applicable Section 168 of the Indian Contract Act 1872

**Hint:** 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.

**Reason:** 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

**Q.No.8.** 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. **(B)**

Applicable Section 151 & 152 of the Indian Contract Act, 1872

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

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

### **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 goods 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

### **IMPORTANT SECTION NUMBERS**

CONCEPT	SECTION NO.
Pawnee's right of retainer.	173
Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.	174
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. Is depositing of money in a bank a Bailment? And why or why not? **Hint:** No
4. Is depositing of ornaments in a bank locker a Bailment? **Hint:** No
5. In Bailment the Bailee cannot sell the goods, he can either retain the goods or sue for non-payment of dues. Comment. What is the position in the case of pledge?
6. 'X' bails his ornament to 'Y' and 'Y' keeps this ornament in his own locker at his house along with his own ornaments and if all the ornament are lost, whether 'Y' is responsible for the loss to 'X'?
7. X entered into a restaurant for dinner. His coat was taken by a waiter who hung it on a hook behind X. When X rose to leave, the coat was not on the hook. Who is responsible and Why?
8. 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
9. 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
10. Mrs. X delivered her old gold jewellery 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
11. 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
12. 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**