

14. BAILMENT AND PLEDGE

QUESTION - WISE ANALYSIS OF PREVIOUS EXAMINATIONS

No.	ABC	M-09	N-09	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
1.	B	-	-	-	1	-	-	-	-	1	-	-	-	-	-
2.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-
3.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-
4.	A	-	-	-	-	-	-	-	1	-	-	-	-	-	-
5.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-
6.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-
7.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-
8.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-
9.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-
10.	A	-	-	-	-	-	-	-	-	-	-	-	-	-	-
11.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-
12.	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-
13.	B	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Q.No.1. What is meant by Contract of Bailment? What are the essential elements of Bailment and forms of Bailment?
(SM) (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'.
- b) Bailment etymologically means 'handling over' or 'change of possession of goods'.
- c) According to Sec-148 'Bailment' is the delivery of goods by one person to another for some purpose,
 - i) upon a contract that they shall,
 - ii) when the purpose is accomplished, be returned or otherwise disposed off according to the directions of the person delivering them."
- d) The person delivering the goods is called 'Bailor'.
- e) The person to whom they are Bailed (delivered) is called 'Bailee' and the transaction is called 'Bailment'. The property which is Bailed is called "Bailed property"
- f) For example where 'X' delivers his car for repair to 'Y', 'X' is the Bailor and 'Y' is the Bailee.

ESSENTIAL CHARACTERISTICS OF BAILMENT (SEC.148):

- a) **Contract:** Bailment is based upon a contract. Sometimes it could be implied by law as it happens in the case of finder of lost goods.
- b) **Movable Goods:** Bailment is only for moveable goods and never for immovable goods or money.
- c) **Change of possession of Goods:** In Bailment possession of goods changes. Change of possession can happen by:
 - i) physical delivery or
 - ii) Constructive delivery i.e. by any action which has the effect of placing the goods in the possession of Bailee

- d) **No change in ownership:** In Bailment, Bailor continues to be the owner of goods as there is no change of ownership.
- e) **Goods shall be returned back:** Bailee is obliged to return the goods physically to the Bailor. The Bailee cannot deliver some other goods, even not those of higher value.

GENERAL ISSUES:

- a) The recipient must knowingly accept the property.
- b) **No change in ownership:** In Bailment both custody and possession must change but not the ownership.
- c) **Custody without possession:** But where a person is in custody without possession then he does not become a Bailee.

For 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)

- d) **Constructive Delivery:** Possession and custody do not however mean physical delivery of goods. Constructive delivery could also create a Bailor and Bailee relationship. This arises in situations where the Bailee is already in possession of goods but agrees to be a Bailee through a contract.
- e) **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)
- f) **The recipient must knowingly accept the property.**

DIFFERENT FORMS OF BAILMENT: Following are the popular forms of Bailment

- a) *Delivery of goods by one person to another to be held for the Bailor's use.*
- b) *Goods given to a friend for his own use without any charge*
- c) *Hiring of goods.*
- d) *Delivering goods to a creditor to serve as security for a loan.*
- e) *Delivering goods for repair with or without remuneration.*
- f) *Delivering goods for carriage.*

Note: On the basis of reward, Bailment can be classified into two type's viz., Gratuitous and Non-Gratuitous Bailment. In case of Gratuitous Bailment no consideration passes between the Bailor and the Bailee. In case of Non-Gratuitous Bailment consideration passes between the Bailor and the Bailee.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.1)

SIMILAR QUESTIONS:

1. Define 1) Bailment 2) Bailor and 3) Bailee.
2. What are the essential elements of Bailment?
3. Examine whether the following 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. (PM) (M05,07) (RTP- M13)

Ans:

- a) No. Mere custody of goods does not mean possession. For a Bailment to exist the Bailor must give possession of the Bailed property and the Bailee must accept it, Section 148, of the Indian Contract Act, 1872 is not applicable.
- b) Yes, the possession of the goods is transferred to the custom authorities. Therefore Bailment exists and section 148 is applicable. (State of Gujarat Vs Menon Mohammad)

Q.No.2. Briefly state the rights of Bailor?

(PM) (M 98 - 5M)

RIGHTS OF BAILOR: Rights of Bailor = Duties of Bailee.

1. Bailor has a right to enforce the duties of the Bailee such as –
 - a) right to claim damages for loss caused to the goods by the negligence of Bailee;
 - b) right to claim compensation for loss caused by an unauthorized use of the goods Bailed;
 - c) right to claim damages arising out of mixing the goods of the Bailor with his own goods.
2. **Termination of contract:** Bailor has a right to terminate the contract if the Bailee does anything which is inconsistent with the conditions of Bailment.
For example 'A' lets on hire his horse to 'B' for his own riding but 'B' uses the horse for driving his carriage. 'A' has a right to terminate the contract of Bailment.
3. **Right to receive back the Goods:** Bailor in the case of gratuitous Bailment has a right to demand the goods back even before the expiry of the period of Bailment. If in the process, loss is caused to the Bailee, Bailor is bound to compensate.
4. **Can Claim Increase or Profits From goods :** Bailor has a right to claim the increase or profit from the goods Bailed which may have occurred from the goods value.
For example where 'A' Bails his cow to 'B' and if the cow gives birth to a calf, 'B' is bound to return the cow and the calf to 'A'.

Q.No.3. Briefly state the Duties of Bailor?

(PM) (M 98 - 5M)

DUTIES OF BAILOR: The duties of Bailor are spelt out in number of Sections. These are enumerated hereunder:

- i) **Disclosure of Defects:** Bailor must disclose all defects/faults in the goods Bailed. If the Bailor does not disclose, he would be responsible for any loss or damage suffered by the Bailee while keeping the goods in his custody. The Bailor is particularly responsible for defects in goods hired to Bailee whether Bailor was aware of such defects or not (i.e, in case of non gratuitous Bailment).
- ii) **Reimbursement of Expenditure:** where the Bailment is gratuitous, the Bailor must reimburse the Bailee for any expenditure incurred in keeping the goods.
- iii) The Bailor should reimburse any expense which the Bailee may incur by way of loss in the process of returning the goods or complying with other directions for returning the goods.
- iv) **Compensation to the Bailee:** The Bailor must compensate the Bailee for the loss or damage suffered by the Bailee that is in excess of the benefit received, where he had lent the goods gratuitously and decides to terminate the Bailment before the expiry of the period of Bailment
- v) **Bound to accept the goods:** The Bailor is bound to accept the goods after the purpose is accomplished. If Bailor fails, he is responsible for any loss or damage to the goods and has to reimburse for expenses incurred by the Bailee for keeping the goods safely.
- vi) **Duty to indemnify the bailee for his loss due to defective title of Bailor.**
- vii) **Duty to bear Normal risks.**

(IMMEDIATELY REFER PRACTICAL QUESTION NO.2)

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Q.No.4. Briefly discuss the Rights of Bailee?

RIGHTS OF BAILEE: The Bailee has the following rights [These rights are also the duties of the Bailor]-

- i) **To Terminate Contract:** The Bailee has the right to terminate a contract of Bailment, if the Bailor does any thing inconsistent with Bailment conditions.
- ii) **To Claim Compensation:** Right to claim compensation for any loss arising from non - disclosure of known defects in the goods.
- iii) Right to claim indemnification for any loss or damage as a result of defective title.
- iv) **Deliver the Goods Back:** Right to deliver back the goods to joint Bailors according to the agreement or directions.
- v) Right to deliver the goods back to the Bailor whether or not the Bailor has the right to the goods
- vi) **Lien:** Right to exercise his 'right of lien'. This 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.
The right of lien is a particular lien for the reason that the Bailee can retain only these goods for which the Bailee has to receive his fees/remuneration.
- vii) **Action against third Parties:** Right to take action against third parties if that party wrongfully denies the Bailee of his right to use the goods.
- viii) To file a suit to decide the title of goods bailed, when a person other than Bailor claims the goods from the Bailee.

Q.No.5. Briefly discuss the Duties of Bailee?

DUTIES OF A BAILEE:

1. **Take Care of Goods:** The Bailee is bound to take as much care of the goods Bailed to him as a man of ordinary prudence with regards to quantity, bulk and value would take. In such a case he will not be responsible, in the absence of special contract, for any special loss or destruction or deterioration of the goods Bailed, since he has taken as much care as a man of ordinary prudence.

For example if X Bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss [caused on account of riot].

2. Bailee has no right to make unauthorized use of goods Bailed
3. Bailee has no right to mix the goods Bailed with his own goods without the consent of the Bailor. (N14 1M)
4. Bailee has to return the goods on expiration of period of Bailment
5. **Return extra Profits:** Bailee has a duty to return any extra profit accruing from goods Bailed.

Ex: Where A Bails his cow to 'B' and if the cow gives birth to a calf, 'B' must return both the cow and the calf to 'A'.

6. Bailee has duty not to do anything inconsistent with the condition of Bailment.

SUIT BY BAILOR & BAILEE AGAINST WRONG DOERS:

- a) Both Bailor and Bailee have right to sue a third party who has deprived the Bailee to the use or possession of goods Bailed. (Sec.180)
- b) Any relief obtained against such deprivation or injury can be shared between the Bailor and Bailee according to their respective interest. (Sec.181)

(IMMEDIATELY REFER PRACTICAL QUESTION NO. 3, 4, 5, 6)

SIMILAR QUESTIONS:

1. A Bails his jewellery with B on the condition to safeguard in Bank's safe Locker. However, B kept in safe locker at his residence, where he usually keeps his own jewellery. After a month all jewellery was lost in religious 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.

Ans: Referring to Sec. 152 of the Indian Contract Act, 1872 B is liable to compensate A as they both agreed to keep the jewellery in the Bank's safe locker and not at the residence of B.

2. Bailee has no right to mix the goods Bailed with his own goods without the consent of the Bailor. (N14 – 1M)

Ans: Refer Point (iii) above under the duties of Bailee.

Q.No.6. Briefly discuss the Rights and Duties of Finder of lost Goods as a Bailee?**(FOR STUDENTS SELF STUDY)**

MEANING: A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility of a Bailee.

RIGHTS & DUTIES:

i) **Same As Bailee:** The duties of 'finder of lost goods' are that of the Bailee. Such a 'finder of lost goods' is as good as a Bailee and he enjoys all the rights and carries all the responsibilities of a Bailee.

The finder is bound to take as much care of the goods as a man of ordinary prudence would take care of his own goods.

ii) The property in goods shall vest in the finder and he is entitled to retain it against the whole world, except the true owner.

iii) Can ask for reimbursement of expenses: the 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods but also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

In other words, the finder can exercise lien right on goods for expenses incurred by him in preserving the goods and finding the true owner. However he cannot sue the real owner.

iv) **Collect Reward:** Further where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

v) **No right to sell the Goods:** The finder though has no right to sell the goods found in the normal course, he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:

- When the article is in danger of perishing and losing the greater part of the value or
- When the lawful charges of the finder amounts to two-third or more of the value of the article found.

SIMILAR QUESTION:

1. What is the status of 'finder of goods' under the Indian contract Act, 1872? What are his rights? (M - 03)

Q.No.7. Write about Bailee's Right of Lien? (Or) Write about General Lien and Particular Lien? (M 98, M 01 - 5M)**INTRODUCTION:**

a) The 'right of lien' may be defined as the right of a person

- To retain the possession of any property of some other person until

- ii) The charges/remuneration due to the person in possession are paid.
- b) It is a possessory right because possession is must for retention of any property.
- c) As soon as the possession is lost, right of lien is also lost.

LIEN MAY BE OF TWO TYPES:

General Lien:

- i) A general lien is the right to retain the property of another for a general balance of account.
- ii) In contrast the particular lien is the right to retain the particular goods Bailed for non-payment of charges / remuneration.
- iii) Bankers, factors, wharfingers, policy brokers and attorneys of law have a general lien in respect of goods which come into their possession during the course of their profession.

For instance a banker enjoys the right of a general lien on cash, cheques, bills of exchange and securities deposited with him for any amounts due to him.

For instance 'A' borrows 500/- from the bank without security and subsequently again borrows another Rs. 1000/- but with security of say certain jewellery. In this illustration, even where 'A' has returned Rs. 1000/- being the second loan, the banker can retain the jewellery given as security to the second loan towards the first loan which is yet to be repaid.

- iv) Under the right of general lien the goods cannot be sold but can only be retained for dues.
- v) The right of lien can be waived through a contract.
- vi) Interestingly, Chartered Accountants have a general lien against the books of their clients which come into their possession against professional fees not paid to them by those clients.

Particular lien:

- i) In accordance with the purpose of Bailment if the Bailee by his skill or labour improves the goods Bailed, he is entitled for remuneration for such services.
- ii) Towards such remuneration, the Bailee can retain the goods Bailed if the Bailor refuses to pay the remuneration.
- iii) Such a right to retain the goods Bailed is the right of particular lien. He however does not have the right to sue.
- iv) Where the Bailee delivers the goods without receiving his remuneration, he has a right to sue the Bailor. In such a case the particular lien may be waived. The particular lien is also lost if the Bailee does not complete the work within the time agreed.
- v) Right of lien may be excluded by an agreement to the contrary.

Q.No.8. When Bailment gets terminated? (Or) When Bailment comes to an end.

(N 00 - 5M)

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

1. Expiry of the specified period:

- a) If bailment is made for specified period, then
 - i) It automatically terminates on the expiry of such period.

For example, bailment in case of a car, bailed to a friend, for one month terminates on expiry of one month.

2. Achievement of the object: If bailment is made for a specific purpose, it terminates as soon as the purpose is achieved.

3. Inconsistent use of goods:

- a) If Bailee does some act to bailed goods which is inconsistent with the terms of bailment,

- b) The contract of bailment becomes voidable at the option of Bailor and he can terminate it at his choice [Sec. 153].

4. **Death of the Bailor or Bailee:** A gratuitous bailment is terminated by death of Bailor or Bailee [Sec.162].

5. **Termination by Bailor:** A gratuitous bailment may be terminated by the Bailor at any time even if the purpose or period of bailment is not over.

6. **Destruction of the subject matter:** A bailment is terminated when the subject matter of the bailment

- a) Is destroyed, or
- b) By reason of a change in its nature becomes incapable of use for the purpose of the bailment

Q.No.9.What is meant by Pledge or Pawn? What are the essential features of Pledge?

(N 98 - 10M)

INTRODUCTION:

- a) Pledge is a variety or specie of bailment.
- b) When in a contract of Bailment, goods are delivered as a security for repayment of money or for performance of an obligation, resulting transaction is known as 'Pledge'.
- c) Sec.172 to 182 of the ICA,1872 deals specifically with the bailment of pledge.
- d) Sec.172 of the Indian Contract Act, 1872, provides that, "the Bailment of goods as a security for payment of a debt or performance of a promise" is called 'pledge'.
- e) The person who pledges or bails is known as pledgor or also as pawnor, the bailee is known as pledgee or also as Pawnee.
- f) In pledge there is no change in ownership of the property.
- g) Under exceptional circumstances, the pledgee has a right to sell the property pledged.

E.g.: Ram took a loan of Rs.1 Lac from Shyam and delivered his car to him as a security for the loan. This is a transaction of pledge where Ram is a pawnor, Shyam is a pawnee and car is the pawned property.

As 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) There must be Bailment for security for payment of debt/ performance of a promise.
- ii) Goods must be the subject matter of the contract of pledge.
- iii) The goods pledged must be in existence.
- iv) There must be a delivery of goods from pawnor to pawnee

Thus, all the pledges are bailments but all the bailments are not pledges.

(IMMEDIATELY REFER PRACTICAL QUESTION NO.7, 10)

SIMILAR QUESTION:

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

Ans: 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. Like Bailment, pledge can be made for movable goods only. The essential elements of pledge are similar to that of Bailment.

Refer Essential features of Pledge of above question for further discussion.

Q.No.10. State the rights of Pawnor and Pawnee.?

(SM) (CMA J11- 2M)

RIGHTS OF A PAWNOR: (Also known as duties of Pawnee)

- Right to redeem:** Pawnor has a basic right to redeem the goods pledged by performing his promise.
- Right to sue:** Pawnor has a right to sue, but within a period of 3 years in view of provision of Limitation Act only in the event of pawnee refusing to return the goods even after payment of debt etc.
- Right to take care of the goods:** Pawnor has a right to demand a pawnee to take all reasonable care and preservation of the goods pledged.
- Right to receive increase or profit from the goods:** Pawnor is entitled to receive the increase or profit from the goods if there is any increase/profit relating to it during the pledged period

PAWNEE'S RIGHTS: (Also known as duties of Pawnor)

- Right of retainer:** Pawnee has right to retain the goods pledged not only for payment of debt or performance of a promise but also for recovery of debts and all expenses incurred for 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.

- Right to retention to subsequent debts:** Pawnee has a right to retain the goods pledged towards subsequent advances as well, however subject to such right being specifically contemplated in the contract.
- Right to seek reimbursement of extraordinary expenses:** Pawnee has a right to seek reimbursement of extraordinary expenses incurred. However his right to retain the goods shall not extend to such extraordinary expenses but restricted to ordinary expenses.
- Right to sue:** In the event of pawnor failing to redeem the debt or perform the promise, the pawnee has a right to sue the goods which he has retained. He can in the alternative, under certain circumstances, sell the goods after giving a reasonable notice, to the pledgor. The two rights namely the right to sue and the right to sell are alternative rights and not cumulative rights.

(IMMEDIATELY REFER PRACTICAL QUESTION NO 8,9)

Q.No.11. State the instances relating to Pledge by Non-owners?

1. Pledge by Mercantile Agent (Refer Question No.12)
2. Pledge by seller who left with possession after sale.
3. Pledge by buyer who obtains possession of goods before sale.
4. Pledge where pawnor has limited interest. Eg. Finder of lost goods.
5. Pledge by one of the co-owners with the consent of other co-owners.
6. Pledge by person who obtains possession of goods under voidable contract.

Q.No.12. State the provisions relating to Pledge by Mercantile Agents?

PLEDGE BY MERCANTILE AGENT:

- a) Though generally only a owner of goods can pledge, the Act recognizes the right of certain mercantile agents to pledge provided it is done with the consent of the owner of the goods. Such a pledge done in the ordinary course of business is valid.
- b) Pledge in this case can be effected through pledge of documents like a bill of lading or a railway receipt etc.

Q.NO.13. Distinguish between Bailment and Pledge.

Basis	Bailment	Pledge
1. Purpose	For some purpose but not as security.	As security for a loan or for the fulfillment of obligation.
2. Right of sale	No right of sale	Has right to sell, on default by the pledger, after giving notice.
3. Right to use	No restriction for a Bailee.	No right of using the goods pledged.
4. Possession	Remain with the Bailee till the purpose of bailment is achieved.	Sometimes, goods remain with the pledgor for some special purpose

PRACTICAL QUESTIONS

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? Whether the possession of the goods (Actual or Constructive) delivered, constitute contract of Bailment or not?

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 Bailor 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 Bailment. The 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 the goods. In this case there is no contract of Bailment because Mrs.X has not delivered the complete possession of the 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. (PM) (M05)

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. Whether 'B' is liable to pay compensation.

Provision: Sec. 150 of the Indian Contract Act, 1872 states that if the goods are Bailed for hire, the Bailor is responsible for such damage whether he was or was not aware of the existence of such faults in the goods Bailed.

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. There is no use in saying that he was not aware of the defects.

Conclusion: 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).

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 alongwith 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.

(PM, RTP M 17, N 08 - 5M) (For students self study)

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. Whether B is entitled to get bonus shares from M or not?

Provision:

- 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. 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 made any efforts to recover the cattle because he thought it would be useless to do so. Who is liable and why?

Facts of the case: X delivered cattle to Y for feeding grass in Y's farm for some payment. Cattle were stolen without any negligence on the part of Y. Y did not inform to the owner or the police or made any effort to recover the cattle. Whether Bailee (Y) is liable for the loss of cattle?

Provision: Sec.151 of the Indian contract Act, 1872 states that in all the cases of Bailment, the Bailee is bound to take as much care of the goods Bailed to him as a man of ordinary prudence would, under similar circumstances, takes care of his own goods of the same bulk, quality and value as the goods Bailed.

Analysis: The most important duty of the Bailee is to take care of the goods Bailed with him by the Bailor. In this case Bailee should have used reasonable care to recover the lost cattle.

Conclusion: As the Bailee has not taken any steps to recover the cattle or he has not taken care of the goods as mentioned in Sec. 151, Bailee is liable to compensate the loss occurred to the Bailor. (Coldman Vs Hill).

Q.No.5. 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 J 12 - 2M)(For students self study)

Facts of the case: A lends his car to B with a condition that only B should drive the motor car. But B allowed his daughter to drive it who is an expert in driving. Suddenly the axle breaks and the car gets damaged. Whether 'B' is liable for damages?

Provision: Sec.154 – Liability of the Bailee making unauthorized use of the goods Bailed.

If the Bailee makes any use of the goods Bailed, which is not according to the conditions of the Bailment then he is liable to compensate the loss to the Bailor, for any damage arising to the goods from unauthorized use of such goods Bailed.

Analysis: Goods must be used by the Bailee, strictly for the purpose for which they have been Bailed to him. Any unauthorised use of the goods would make the Bailee absolutely liable for any loss or damage occurred to such goods.

Conclusion: In this case the conditions of Bailment are that "Bailee alone should drive the car. By allowing his daughter to drive the car the Bailee has used the car unauthorisedly". For the reason mentioned above, the Bailee is liable for the damage caused to the car.

Q.No.6. 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. (PM) (N 03 - 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, notwithstanding 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.7. 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)

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 contracts 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.8. 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? (J - 09) (PM) (RTP-Nov 15, M16, M 17 – 4M) (MTP – 8M)

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 and Case Law: Section 149 - Delivery to Bailee how made
Bank of Chittor Ltd. Vs. P.Narsimhula Naidu and others

Analysis:

- a) Sec. 149 of the Act provides that the delivery of the goods to the Pledgee may be made by actual or constructive delivery or delivery by attornment to the bank.
- b) In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody.
- c) Though the Pledgor continues to be in possession of the goods, it is deemed be in the possession of the Pledgee.

In the given problem 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: Therefor the above stated transaction is a valid pledge.

Q.No.9. 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. 40,000only. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of the railway is valid. (M 08)(PM) (Similar N – 10, 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.10. X took Y's motorcar garage for 2 years on a monthly rent of Rs 1,000. X was entitled to take the car out of garage when he wanted. After 6 months, X stopped the payment of rent. Y retained the car at the garage until payment of arrears of rent. Advise the liability of X.

Facts of the case: X took Y's garage for rent for 2 years on a monthly rent of Rs.1000 and also entitled to take the car out of garage whenever he wanted. After 6 months, X stopped the payment of rent. Y retained the car at the garage until payment of arrears of rent.

State whether 'Y' (Bailee) has any lien right on the car. In other words, whether 'X' is liable to pay arrears of rent for taking back his car?

Provision: Sec.170 of the contract Act. Where the Bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Analysis: Sec. 170 of the Act provides lien right to Bailee, i.e. he can retain the goods until the charges due are paid. To exercise the right of lien, Bailee must have the possession of the goods. The lien never arises unless the Bailee has a right to continuing possession of the goods. In other words, if the Bailor has the right to remove the goods from time to time then there is no continuing possession of the goods with Bailee. Hence Bailee can't exercise lien right over such goods.

Conclusion: In the problem, 'X' the Bailor, was entitled to take the car out of garage whenever he wanted. Therefore, 'Y' has no continuous possession of the goods which is essential to exercise right of lien. So, 'Y' has no right of lien.

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?
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?
3. Is depositing of money in a bank is a Bailment? And why or why not?
4. Is depositing of ornaments in a bank locker is a Bailment?
5. In Bailment the Bailee cannot sell the goods, he can either retain the goods or sue for non-payment of dues. Comment.
6. What is the position in the case of pledge?
7. 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?
8. 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 X the true owner, came to know about this, he sued Y to recover his watch. Can X recover his watch?

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To **MASTER MINDS**, Guntur

THE END