

B.Com Hons. (Part 2 Paper-4)
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Topic:--Bailment

Bailment

- Delivery of goods by one person to another
- For some purpose
- Upon a contract that they shall be returned or disposed off according to the directions of the person delivering them

Bailment

- Delivery of possession (not mere custody)
 - Actual delivery
 - Reaves V Capper (1838)
 - Coat taken by waiter without being asked
 - Kalliaperumal Pillai V Visalakshmi (1938)
 - Melting of jewels-half made jewels handed over to lady every evening-kept in box in the goldsmiths room-key of box in possession of lady-jewels stolen one night.
 - Constructive delivery
 - N R Srinivas Iyer V New India Insurance Company (1983)
 - Car involved in accident-delivered on behalf of insurers to garage for repairs-Insurance company is bailee and garage is sub-bailee-both held responsible for the loss of car in a fire on the premises.

Bailment

- Delivery upon contract
 - In the Indian context, delivery of goods should be made for some purpose and upon a contract that when the purpose is accomplished the goods shall be returned to the bailor.
 - It follows that if a person's goods go into the possession of another without contract, there is no bailment
 - Ram Gulam V Government of UP (1950)
 - Theft-recovery of ornaments by police – disappearance from police custody- State not responsible
 - English law recognises bailment without contract
 - This view has been accepted by the Supreme Court
 - Basava K D Patil V State of Mysore (1977)
 - Theft-recovery of ornaments by police – disappearance from police custody- State held responsible

Bailment

- Goods to be returned to the bailor (or a third party if bailor so directs)
 - Bailment of goods is always made for some purpose and is subject to the condition that when the purpose is accomplished the goods will be returned to the bailor or disposed of according to his mandate.

Duties of Bailor

- Duty of Gratuitous Bailor
 - The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware.
- Duty of Bailor for reward
 - The bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.
 - Reed V Dean (1949)
 - Plaintiff hired motor-launch from defendant for picnic on the river Thames-caught fire-fire fighting equipment on board was out of order-defendant held liable for injury and loss.

Duties of Bailee

- Duty of reasonable care*:
 - In all cases of bailment**, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances take, of his own goods of the same bulk, quality and value as the goods bailed.
 - *Care which the nature and quality of the articles requires
 - **Whether gratuitous or for reward

Duty of reasonable care

- R. S. Deboo v M. V. Hindlekar, 1995.
 - Clothes sent for dry cleaning-liability in case of loss: 20 times laundering charges or half of the value of unreturned articles-expensive clothes destroyed in fire-Questions: a. whether terms & conditions on the reverse of a receipt form part of the contract ? b. whether non return of the article entrusted is prima facie proof of negligence? – bailee is merely a trustee for the insurance amount obtained in respect of goods belonging to bailor.

Duty of reasonable care

- N R Srinivas Iyer V New India Insurance Company (1983)
 - Questions: Whether garage was repairing car on behalf of Iyer & Insurance company was reimbursing on behalf of Iyer? If not, was the garage sub bailee? As a bailee for reward, garage owners duty of reasonable care.

Duty of reasonable care

- Non Contractual Cases:
 - State of Gujarat v Memon Mahomed Haji Hasan 1965:
 - Seizing of trucks by customs-trucks left in open space-parts of truck,tyres & wheels pilfered-customs raise contention that as seizure was lawful there could be no liabilities on law enforcement agency-bailment only under contract-Whether owner had the right to demand the property siezed or its value?

Duty of reasonable care

- Non Contractual Cases:
 - Trustee of the Port of Bombay v Premier Automobiles Ltd 1981:
 - Imported machinery-port trust employees negligent while landing & transferring to warehouse-machine falls of trolley & is damaged-Port Trust Act had given immunity to the Board & its employees from liability in torts-Board contented that it had no contract with PAL; Board was performing a function vested in it by law-can bailment arise out of possession?

Duties of Bailee

- Duty not to make unauthorised use:
 - If the bailee makes any use of the goods bailed which is not according to the conditions of bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them
 - A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the condition of the bailment.

Duties of Bailee

- Duty not to mix:
 - Bailee should maintain the separate identity of the bailor's goods.
- Duty to return:
 - Return or deliver the goods according to the bailor's direction, without demand, as soon as the term for which they were bailed has expired, or the purpose for which they are bailed has been accomplished.

Duties of Bailee

- Duty not to set up the defence of *jus tertii*:
 - *That is to say, that the goods belong to a third person.*
 - (Even if there is a person who has a better title than that of the bailor)
 - The third person may apply to the court to prevent the bailee from returning the goods to the bailor & to have the question of title decided.

Duties of Bailee

- Duty not to set up the defence of *jus tertii*:
 - Exception:
 - Juggilal Kamalapat Oil Mills V Union of India (1976)
 - Oil consigned with Railways Kanpur to Calcutta- Reaches Calcutta intact-Sender instructs railways to bring it back to Kanpur-Before formalities are completed oil seized by Food Inspector-found adulterated-destroyed under orders of High Court-Bailee not liable where subject matter is taken away from him by authority of law.

Duties of Bailee

- Duty to return increase:
 - Bailee is bound to return to the bailor the natural increases or profits accruing to the goods during the period of bailment.

Finder of Goods:

- Finder may sue for specific reward offered.
 - *Finder may retain the goods until he receives the reward*
- Finder has no right to sue the owner for compensation of trouble and expense voluntarily incurred by him to preserve the goods & to find the owner.
 - *But he may retain the goods against the owner until he receives such compensation*

Finder of Goods:

- Finder of thing commonly on sale may sell it:
 - If the owner cannot with reasonable diligence be found,
 - Or if he refuses, upon demand, to pay the lawful charges of the finder:
 - *When the thing is in danger of perishing or of losing a greater part of its value*
 - *When the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value*

Rights of Bailee:

- **Right to compensation:**
 - If the bailor has no right to bail the goods, or to receive them back or to give directions respecting them and the bailee is exposed to some loss
- **Right to necessary expenses or remuneration**
- **Right of lien:**
 - Particular Lien
 - General Lien (exercised by Bankers, Factors, Wharfingers, Attorneys of High Court, Policy Brokers)
- **Right to sue**
 - If a third person wrongfully deprives the bailee of the use or possession of the

PLEDGE

The bailment of goods as security for payment of debt or performance of a promise.

Pledge is a special kind of bailment

- The chief basis of distinction is the object of the contract
 - Bailment is to provide a security for a loan or for the fulfillment of an obligation
- Bailor is called the pawnor
- Bailee is called the pawnee

Delivery of Possession

- Delivery of possession is a necessary element in the making of a pawn
- Delivery may be actual or constructive
 - Delivery of documents of title is equally effective to create a pledge
 - Morvi Mercantile Bank V Union of India (1965)
 - Goods consigned with railways-consignor endorsed railway receipts to bank against advance of 20000-goods lost in transit-bank sues railways for actual worth 35500-trial court rejects-High Court allows 20000-Supreme court held that endorsing railway receipt is a pledge-Pledgee will have the same remedies as the owner of goods

Delivery of Possession

- Pledge by hypothecation
 - Bank of Chittor V Narasimbulu (1966)
 - Cinema projector & accessories pledged with bank-bank allowed property to remain with pledgers since they formed the equipment of a running cinema-pledgers sold the machinery-held there was constructive delivery.

Pledge is a conveyance pursuant to a contract

- Delivery and advance need not be simultaneous
- Pledge may be perfected by delivery after the advance is made
- Delivery may be made before or in contemplation of an advance

Rights of the Pawnee

- Right of retainer:
 - Until dues are paid (interest & expenses)
- Right to extraordinary expenses:
 - Expenses incurred for the preservation of the goods
 - No right of retainer, he can only sue to recover
- Right of sale when pawnor defaults:
 - After giving pawnor reasonable notice of sale
 - If proceeds are less than the amount due, pawnor is still liable to pay the balance & if proceeds are greater than the amount due, the pawnee shall pay over the surplus to the pawnor

Thank you