

# Indic Legal Law Journal

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Author Name: Apurwa

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## **CONTRACT ON BAILMENT**

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### **Introduction**

Chapter IX of Indian Contract Act, 1872 deals with contract of Bailment.

BAILMENT infers such a relationship in which the personal goods of one person temporarily goes into the possession of another upon a contract of bailment for some specific purpose, only possession of the goods is transfer not the ownership of the good. Conveying a car, pen or some other thing for repairing, or leaving a bike or bicycle at a stand, are all situations in which there is a creation of contract of Bailment.

In this very article, the author has dealt with the Contract of Bailment briefly, its essential ingredients, the rights and duties of the parties involved as defined under the provisions of the Indian Contract Act, 1882 and the conditions of termination of the contract.

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**Bailment is defined in section 148 of the Indian Contract Act<sup>1</sup>.**

A 'Bailment' is the conveyance of merchandise by one individual to another for some reason, upon an agreement that they will, when the object is practiced, be returned or in any case discarded by the bearings of the individual conveying them. The individual passing on the items is known as the 'bailor'. The person to whom they are passed on is known as the 'bailee'.

**Explanation.-** If a few merchandise or items is heretofore possessing an individual and that individual holds an agreement with the proprietor of the individual to save it for some reason so as to restore them to the proprietor back, at that point however the products have not been conveyed by method of bailment, the individual in whom ownership the products turns into the bailee, and the proprietor of the merchandise is called as bailor.

A 'bailment' is a contract based on trust, express or implied, in which delivery of any product is assigned to bailee for some specific purpose. A bailment defined as, is a delivery of personal goods, usually on a contract, express or implied, that the trust shall be duly executed, and the goods or article return in either their original or dispose according to the direction of the bailor, as soon as the time or use for, or condition on, which they were bailed shall have elapsed or been performed. Over the developments of precedents and law, a bailment arises whenever one person (the bailee) is in possession of goods if is taken on his own accord belonging to another person (the bailor).

'Bailment' is a term of the contract law, though it might mean any kind of handing over. It involves change of possession. But, there are some persons like a servant, or a guest using his host's goods, who have custody but does not have possession are not included under the meaning of a bailee. Be that as it may, valuable conveyance will make the connection of bailor and bailee just as genuine belonging as expressed in the clarification.

In Bailment there two parties one is **Bailor**, the person who deliver the goods, and the other is **Bailee**, the person to whom the good have been delivered.

**Essential elements of bailment: -**

- There ought to be ownership of products,
- One individual to Another,

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<sup>1</sup>Section 148 of the Indian Contract Act, 1872

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- There ought to be a reason,
- There ought to be an agreement,
- Person should restore the merchandise or discarded by the headings of the individual conveying them after the intention is satisfied.

## **Delivery of Possession**

Delivery of Possession from one to another person is the most important element of bailment<sup>2</sup>.

In the case *Ultzen v. Nicols*<sup>3</sup>, an old men went into a restaurant for having dining there. When he went inside, a waiter without any permission took his coat, and hung it on a hook inscribed on the wall behind him. When the customer got up to leave, the coat was missing.

What the server did may be close to a demonstration of deliberate great way towards the client, yet the eatery attendant was held obligated as a bailee. The server by bringing the coat into his ownership has been assuaged the offended party of its consideration and had accepted the accountability of a bailee. It was the server, who set the coat on the snare. In the event that the client had trained the server to where and how he should put the coat, at that point the outcome, would have been something else.

In Kaliaperumal Pillai v. Visalakshmi<sup>4</sup> case Madras High Court decided - A woman gave over her gems to a goldsmith to make new gems. Each night as the goldsmith's work for the day was finish, the woman come and gather half-made gems from the goldsmith and put them in the container in the gold smith's room and keeps the key with her ownership. The gems were lost one night. The woman sue the goldsmith however the woman's activity against the goldsmith fizzled, the court saying: "Any bailment that could be assembled from the realities must be ended when the dissolved gold was placed in offended party's ownership.

## **Bank Lockers**

Bank Lockers aren't having the same principle of bailment. The things kept in bank's locker are during how of hired portion of the premises of bank and not entrusted to the bank. In *Atul Mehra v. Bank of Maharashtra*<sup>4</sup>, court found that there were no evidence of the facts that at the time of robbery the customer had items of gold or jewellery within the locker. The court

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<sup>2</sup> New India Assurance Co Ltd v. DDA, A.I.R. 1991 Delhi 298.

<sup>3</sup> (1894) 1 QB 92.

<sup>4</sup> A.I.R. 2003 P.H. 11.

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also said that it couldn't be inferred without proof that the lockers weren't built with specifications. The customer unable to claim any damages. The court additionally said that so on establish bailment inside the significance of bailment under segment 148 of the Indian agreement act, 1872. It is vital that the genuine and selective ownership of the property was given to the bank by the client.

Section 149 of ICA<sup>5</sup> defines, **Delivery to Bailee how made.**

The conveyance to the Bailee could even be made by doing anything which has the impact of putting the items inside the ownership of the planned Bailee or of an individual approved to hold them for his benefit.

A clarification to Section 148 gives that "if an individual as of now possessing the results of another, agreements to hold them as a Bailee, at that point in spite of the fact that the items might not have been conveyed by method of bailment he turns into the Bailee and the proprietor turns into the bailor".

There are two sorts of Delivery of Possession.

1. Actual Delivery
2. Constructive Delivery

**Actual Delivery-** When the bailor delivers the physical possession of the products to the Bailee.

***Jagdish Singh Trikha v. Punjab National Bank***<sup>6</sup>: A respondent bank in Peshawar had been blessed the adornments worth Rs. 3,72,000 or 480 tolas by the offended party's dad. During the hour of parcel, he recovered his case of gems, the gems had gone to the bank of Delhi through the bank of Lahore right back from Peshawar. Yet, when the container was gotten at Delhi, it included not been found inside a comparable condition since it was dispatched from the bank at Peshawar, appropriately fixed and bolted. At the point when the crate was opened, it was discovered that the bank's own rapper kept on the container. In this manner, remuneration was requested because of loss of gems estimated Rs. 3,72,000.

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<sup>5</sup> Indian Contract Act, 1872.

<sup>6</sup> A.I.R. 1998 Delhi 266.

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**Constructive Delivery-** Where the good remain at the place they were initially kept and there is no transformation of the place of physical possession, but something has been done which has the effect of putting them within the possession of the Bailee.

For instance, If X forgets his wallet in the house of Y his friend, and Y knows that the wallet belongs to X. Bound by moral duty, Y picks up the wallet and keeps it with himself with an intention to return the wallet to X. Despite being unaware of the agreement, but X&Y have agreed into a bailee- bailor relationship.

*In Fazal v. Salamat Rai*<sup>7</sup>, Under the execution of a declaration, it was the litigant who was holding the horse of offended party. The offended party fulfilled the pronouncement and subsequently the court requested re-conveyance of the horse to the offended party. The respondent, in any case, would not embrace and soundless that his support charges were likewise paid. The horse was taken from his care. The court held him at risk and said that after the conveyance request had been passed, the connection of bailor and bailee was built up by uprightness of the method of reasoning under area 148 of the Indian Contract Act, 1872.

## **Delivery should be upon a Contract**

There must be a delivery of products for a couple of specific purpose and upon a contract that when the aim is fulfilled or accomplished the products shall be given back to the bailor. When the person delivers the products to any other without any contract then there is no bailment inside the significance of the part 148 of Indian Contract Act, 1872.

In Case of *Ram Gulam v. Govt. of UP*<sup>8</sup>, Allahabad High Court- The plaintiff's ornaments, were stolen, and police found the ornaments, but were stolen again in the custody of police. The plaintiff's action against the state for the loss was dismissed by the court.

In this case Justice clearly said: “... *the duty of a bailee is a contractual obligation and comes only from the contract of bailment. It cannot arise independently of a contract. During this case the ornaments weren't remodeled to the Government under any contract whatsoever*

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<sup>7</sup> (1928) 120 IC 421.

<sup>8</sup> A.I.R. 1950 All 206.

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*The Government, therefore, never occupied the position of bailee and is not liable intrinsically to indemnify the plaintiffs.”<sup>9</sup>*

## **Contract, express or implied**

***Port of Bombay v. Sriyanesh Knitters*<sup>10</sup>** - The contract can be expressed or implied. Thus, where with the consent of the station-master goods were stored on a railway company's platform, wagons being not available, the company was held liable when they were injured by fire caused by an ignition transmitted by a passing engine.

## **Delivery should be upon some purpose**

Bailment of products should be made for a couple of purpose and subject to the condition that when the aim is fulfilled or accomplished the products are getting to be returned to the bailor or disposed of consistent with the directions of the bailor.

***In Secy of State v. Sheo Singh Rai*<sup>11</sup>**, the offended party conveyed to the Treasury Officer at Meerut, 9 Govt. Promissory Notes for abrogation and solidification into one note of Rs 48,000. The defendant's servants misappropriated the notes. The plaintiff sued the State to carry them responsible as bailees. But his action failed. There is often no bailment unless there is a delivery of products and a promise to return. The Government wasn't bound to return the same notes, nor was it bound to eliminate the surrendered notes in accordance with the plaintiff's directions.

In ***CIT v. P.M. Rathod & Co.*<sup>12</sup>** the court stated that, the position of post office in reference to VPP articles, Post Office could also be a Bailee of the articles of the sender.

## **Rights of Bailor**

- If Bailee doesn't watch out and decimation of items happens, bailor can guarantee remuneration.
- If bailee utilizes the items for unapproved purposes, bailor has the privilege to pay guarantee.

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<sup>9</sup> To the same effect is *Mohd. Murad Ibrahim Khan v Govt of U.P.*, A.I.R. 1956 All 75, property deposited in court under orders, no bailment because there was no contract. In *Pollock and Mulla*, Indian Contract and Specific Relief Acts (8th Edn., 1957) 562, this assumption has been described as unjustifiable.

<sup>10</sup> (1998) 1 SCC 142.

<sup>11</sup> (1880) I.L.R. 2 All 756.

<sup>12</sup> A.I.R. 1959 S.C. 1394.

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- Bailer has legitimate capacity to state to restore the items.
- Bailer has a privilege to state for conveyed merchandise as well as increment in benefits on products assuming any.
- Where the items have been blended by the bailee and they're of divisible nature, bailer can guarantee worth of partition from bailee.
- In situation where the products are of indistinguishable nature, bailer has option to guarantee remuneration.
- Bailer has option to renounce the contract of bailment whenever in any case, that disavowal may cause the bailor to repay when made any sufferings the bailee.

## **Duties of Bailor**

- **Duty to uncover flaws:** Bailer ought to unveil shortcomings present in products at the hour of making conveyance. There are two kinds of shortcomings to be specific; Known flaws and Unknown flaws. Contrastingly, the bailments additionally are of two sorts specifically Gratuitous bailment and Non-Gratuitous bailment. Just in the event of gratuitous bailment, bailer is vulnerable to repay bailee for wounds emerging out of known deficiencies. In Gratuitous bailment, bailer isn't answerable for obscure shortcomings, while in an occurrence of an event of Non-Gratuitous bailment, bailer is liable for both known flaws and Unknown flaws.
- **Duty to contribute for costs:** The costs caused by the bailee ought to be contributed by the bailor. In the event of Gratuitous bailment, bailer needn't contribute for normal costs and he should contribute for additional customary costs to be contributed by bailer, and if there should arise an occurrence of Non-Gratuitous bailment, both common and extra-standard costs ought to be contributed by bailor.
- **Duty as to damaged title:** in the event that where the items has been conveyed with inadequate title by the bailor, the bailee may come across experiencing the side of genuine proprietor in view of bailer's deficient title. In such cases, the bailee must be repaid by the bailor over deficient title.
- **Duty to Indemnify:** Contract of reimbursement works between the bailor and bailee where bailer becomes inferred indemnifier and bailee becomes suggested repayment holder. So, both bailor and bailee can be made responsible under this standard of reimbursement.

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- **Duty to bring back the Products:** After satisfaction of direction Bailee restores the items to bailer. At that point bailer should take them back. On the off chance that bailer won't bring the items back, bailer has to remunerate Bailee.

## **Rights of Bailee**

- Bailee has option to request repayment for harm emerging out of flaws present in products, if its gratuitous bailment, Bailee can make bailer liable with respect to only known blames and not for obscure issues. While, if there should be an occurrence of Non-gratuitous bailment bailee can make bailer liable for both known and obscure flaws.
- Bailee has right to claim expenses, for contribution. If it's Gratuitous bailment, Bailee can claim only extraordinary expenses. While in the event of Non-Gratuitous bailment, bailee can claim both ordinary and in-ordinary expenses.
- Bailee has option to guarantee remuneration, if there should arise an occurrence of blemished title given by bailor and because of which sufferings has been caused.
- Bailee has right of indemnity, so bailee is liable to the bailor.
- Bailee has right of lien. It's just specific lien which implies he can practice right of lien against those merchandise just on that sum which is expected.
- Bailee can return the products to anybody of the joint owners.
- Bailee has the right to approach the Court of law whenever he is in need of.

## **Duties of Bailee**

- Bailee should take due care of the products.
- Bailee shouldn't use the products for an unauthorised purpose.
- Bailee shouldn't setup adverse title.
- Bailee should return the products after fulfilment of purpose.
- Bailee should return not only transfer products back, but also supplements.
- Bailee shouldn't mix up the products with his own or others products. If bailee has mixed the products and the goods are of separable nature, Bailee possesses to face the worth of separation. If the goods are of inseparable nature, Bailee possess to compensate bailer.



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## **Termination of Bailment**

- An act conflicting with the details of the bailment [S.153]
- In instances of gratuitous bailment, the yearning of the bailor can prompt end of the agreement. [S.159]
- On expiry of period [S.160]
- On achievement of matter/article [S.160]
- On record of death of the bailor or bailee [S.162]

## **Conclusion**

As we have seen from the aforementioned aspects that bailment is a legal contract between the bailor and the bailee. In this the bailor delivers the possession of the products to bailee with a direction so as to return back the property. Bailment is used in our everyday lives and so, it is necessary to know the concept of bailment, the rights and duties which the bailee and the bailor possess and the process by which bailment is terminated. The parties have to work in accordance with the provisions as enshrined in the Indian Contract Act, 1872.