

DIFFERENCE BETWEEN BAILMENT AND PLEDGE

ANSHUMAN CHOUDHARY

ALLIANCE UNIVERSITY, BANGALORE

Abstract:

Bailment represents a legal relationship wherein the physical possession of a chattel or personal estate is transferred from one individual to a different individual who will subsequently get the property's possession but not the whole ownership. Pledge may be a thing that's given as security for the fulfilment of a contract or the payment of a debt and is liable to forfeiture within the event of failure. the main difference between pledge and bailment lies within the use of products, that's the utilization of products is prohibited in pledge, whereas within the case of bailment the party to whom the goods are being handed over can use them.

Introduction

In simple terms, Bailment refers to hand over or assignment the goods, which involves change in possession but not in the ownership of goods. It is the transfer of the goods from one party to another party for some specific purpose. It is not as same as pledge, which is just a variant of bailment. Pledge implies a contract, in which an object is delivered or say deposited with the money lender, as security for repayment of a debt owed by him or performance of promise. The main difference between pledge and bailment lies in the use of goods, that is the use of goods is prohibited in pledge, where as in the case of bailment the party to whom the goods are being handed over can use them.

Research Problem

- What is the major difference between Bailment and Pledge?
- How liabilities of bailor and Bailee are different from pledger and pledgee?
- Who can pledge and who can bail the goods?

Literature Review

As the Bailment and Pledge is a vital topic in the field of law, there has been a lot of research and case study in this field. As a result, this paper is not the first paper done a study in liabilities of, Bailor, Bailee and Pledger Pledgee. Some of the articles have shown different areas of the liabilities of Bailor, Bailee and Pledger Pledgee. The paper showed the duties of Bailor, Pledger and their liabilities towards the others as well. This paper tried to explore solemnly the relationship in Bailment and Pledge.

Scope and Objective

The scope of this project is to study the Bailment and pledge thoroughly and the case laws related to that to find if there are any further chances of improvements of any loop holes.

In Bailment and Pledge many liabilities are there. In this project I figure out the behaviour and liabilities in bailment and pledge.

Methodology

I have followed the doctrinal methods of research. In this paper only secondary data source is used. The data such as case laws, sections mentioned in law or bare act, statistics and already done work by different authors or researchers. Many books like Contract and Specific relief by Avatar Singh and Dutta's contract and Mulla's contract are also used for this research paper.

Bailment

“Bailment is defined in section 148 of Indian contract act. A Bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplishment, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the “bailor”. The person to whom they are delivered is called the “Bailee”.

Essential Features

- Delivery of possession [Section 149]
- Delivery should be upon contract
- Delivery should be upon some purpose

1. Delivery of Possession-

The first importance characteristic of bailment is “the delivery of possession” by one person to another. “Delivery of possession” for this purpose should be distinguished from a mere “custody”. “one who has custody without possession, like a servant, or a guest using his host’s goods is not a Bailee”. The goods must be handed over to the Bailee for whatever is the purpose of bailment. Once this is done, a bailment arises, irrespective of the manner in which this happens.¹

Delivery to Bailee How Made:

The delivery to the the 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 authorised to hold them on his behalf.

An explanation to section 148 provides that “if a person already in possession of the goods of another contracts to hold them as Bailee, he thereby becomes Bailee and the owner becomes the bailor although they may not have been delivered by way of bailment.

The Delivery of the possession is of two kinds; they are-

- Actual delivery
- Constructive delivery

When the bailor hands over to the Bailee physical possession of the goods, that is called “actual delivery”. “constructive delivery” takes place when there is no change of physical possession, goods remaining where they are, but something is done which has the effect of putting them in the possession of the Bailee.

Delivery of the Goods for Some Purpose-

- If the owner maintains control over the goods, there is no bailment.
- There can be bailment without contract.

Case Law [There can be Bailment without Contract]: L.M Cooperative Bank v. Prabhu Das

FACTS- The defendant pledged the goods to the plaintiff bank. The goods lying in defendant’s godown. The godown was locked and the key handed over to the bank. Defendant failed to clear the income tax dues and the income tax officers order the attachment of the property of defendant. The goods were attached by the

¹ Singh Avatar (Dr.) “Indian Contract Act” Edition 9th , (2005), AND Law of Contract & Specific Relief” edition 11th, (2013) Eastern Book Company, Lucknow

collector and they took the possession of the godown, because of the rainfall the roof of the godown leak and the goods got damaged. Bank filed a suit against defendant to recover the goods.

JUDGEMENT- Court held that even though there is no contract of bailment. The Government stood in position of the Bailee and they failed to take care of goods and liable for the damages.

Case Law [Delivery of the Goods for Some Purpose]: Jagdish Chandra v. Punjab National Bank-

FACTS- Plaintiff's father 5600 drums of gold ornament and jewellery to the defendant bank from Pakistan to Delhi. A proper receipt containing the details of the content of the box was given by the plaintiff. First the box came to Lahore branch and thereafter to Delhi. It was found that when the jewellery box delivered to the plaintiff in Delhi, it was not the same condition was delivered from the Pakistan. The Lahore branch had put their own wrapper to the box and it was not locked as.

The plaintiff claimed the ornaments which was deposited to the bank and court gave the same order to the defendant.

2. Delivery Should Be Upon Contract

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. When a person's goods go into the possession of another without any contract. There is no bailment within the meaning of its definition in section 148. A well-known illustration is the decision of the Allahabad High court in *Ram Gulam v. Govt of Uttar Pradesh*.

The plaintiff's ornaments, having been stolen, were recovered by the police and, while in police custody, were stolen again. The plaintiff's action against the state for the loss was dismissed.

SETH J said; "the obligation of a Bailee is a contractual obligation and springs only from the contract of bailment. It cannot arise independently of a contract. In this case the ornaments therefore, never occupied the position of the Bailee and is not liable as such to indemnify the plaintiffs."

English law recognises bailment without contract. In the words of Cheshire and Fifoot: “At the present day, no doubt, in most instances where goods are lent or hired or deposited for safe custody, or as security for a debt, the delivery will be result of a contract. But this ingredient, through usual, is not essential.”²

The Bombay high court in its decision in *Lasalgaon merchant coop bank Ltd vs Prabhudas Hathibhai* has taken the lead in imposing the obligation of a Bailee without a contract. In the opinion of the court, as expressed through Naik J, where certain goods belonging to an individual are seized by the Government the latter becomes the Bailee thereof even if there is no suggestion of a contract between the Government and individual. The facts started briefly were as follows:

Certain packages of tobacco lying in the godown of a partnership firm were pledged to the plaintiff bank. Some of the partners, having failed to clear their income tax dues, the Income tax officer ordered seizure of the handed over the key to the police. Then came heavy rains. The roof of the godown leaked and the tobacco was damaged.

The court said; “Heavy rains do not amount to an act of God. It was the duty of Government officers to take such care as every prudent manager would take of his own goods. The Government stood in the position of bailers and it was for them to prove that they had taken as much care as was possible for them and that the damage was due to reason beyond their control.”

This view was accepted by the Supreme court in “State of Gujrat vs Memon Mohammad Haji Hassan.”

3. Delivery Should Be Upon Some Purpose-

Bailment of anything 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. If the person to whom the goods are delivered is not bound to restore them to the person delivering them or to deal with them according to his directions, their relationship will not be that of bailor and Bailee.

Duty of Bailor

According to the section 150 bailors are of two kinds. They are:

² Singh Avatar (Dr.) “Indian Contract Act” Edition 9th , (2005), AND Law of Contract & Specific Relief” edition 11th, (2013) Eastern Book Company, Lucknow

1. Gratuitous bailor
2. Bailor for reward

A person who lend his articles or goods without any charges, is called “gratuitous bailor”. His duty is naturally much less than that of a bailor for hire of consideration.

Duty of Gratuitous Bailor

Section 150 says the duty of gratuitous bailor.

- Bailor’s duty to disclose faults in goods bailed-

The bailor is bound to disclose to the Bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the Bailee to extraordinary risks; and if he does not make such disclose, he is responsible for damage arising to the Bailee directly from such faults.

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.

Duty of Bailor for Reward

The duty of a 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. It is no defence for him to say that he was not aware of the defect. Section 150 clearly says that “if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or not aware of such faults in the goods bailed”. He has to examine the goods and remove such defects as reasonable examination would have disclosed.

Example:

Hyman and wife vs Nye and sons:

FACTS:

The plaintiff hired a carriage from the defendant for a specific journey, a pair of horses and a driver. During the journey a bolt in the underpart of the carriage broke, the splinter bar became displaced, the carriage and the plaintiff injured.

JUDGEMENT:

The defendant held liable and Justice Lindley said: “A person who lets out carriage is not responsible for all the defects discoverable or not; he is not an insurer against all defects. But he is an insurer against all defects which care and skill can guard against. His duty is to supply a carriage as fit for the purpose for which it is hired as care and skill can render it.”

Where a bailor delivers goods to another for carriage or for some other purpose, and if the goods are of dangerous nature, the fact should be disclosed to the Bailee.

Duty of Bailee

According to the section 151 which deals with the duty of Bailee, they are:

1. Duty of Reasonable Care [sec 151-152]

151. CARE TO BE TAKEN BY BAILEE-

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.

Uniform standard of care

The section lays down a uniform standard of care for “all cases of bailment”. Originally in English law “liability in bailment was absolute. It was no excuse for the Bailee to say that the damage or failure to return was due to no fault of his own, he was liable in any case”. Thus, where goods were delivered to a Bailee for safe custody and he was robbed of them, the court held him liable, saying, “it is a delivery which charged him to keep at his peril”. The first concession was given to a gratuitous Bailee.

152. BAILEE WHEN NOT LIABLE FOR LOSS, OF THING BAILED-

The Bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

- LOSS BY THEFT-

Where the bailor's goods are stolen from the custody of the Bailee, he will be liable if there has been negligence on his part.

- BURDEN OF PROOF-

The burden of proof is on the Bailee to show that he was exercising reasonable care and if he can prove this he will not be liable. If the Bailee places before the court evidence to show that he had taken reasonable care to avoid damage which was reasonably foreseeable or had taken all reasonable precaution to avoid risks which were reasonably apprehended, he would be absolved of his liability.

- LOSS DUE TO ACT OF BAILEE'S SERVANT-

Where the loss has been due to the act of the Bailee's servant, he would be liable if the servant's act is within the scope of his employment.

- CONTRACT TO CONTRARY-

If one co-surety failed to perform his liability towards creditor, then other co-sureties and creditor himself can file a suit for his damage or goods against that co-surety. It is called contract to contrary.

2. Duty Not to Make Unauthorised Use [SEC. 154]

154. LIABILITY OF BAILEE MAKING UNAUTHORISED USE OF GOODS BAILED-

If the Bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

153. TERMINATION OF BAILMENT BY BAILEE'S ACT INCONSISTENT WITH CONDITIONS-

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 conditions of the bailment.

3. Duty Not To Mix [SEC. 155-157]

The Bailee should maintain the separate identity of the bailor's goods. He should not mix his own goods with those of the bailor and without his consent. If the goods are mixed with the consent of the bailor, both will have a proportionate interest in the mixture of thus produced. If the mixture is made without bailor's consent, and if the goods can be separated, or divided, the Bailee is bound to bear the expenses of separation as well as any damage happened to the mixture. But if the mixture is beyond separation, the Bailee must compensate the bailor for his loss.³

4. Duty to Return [SEC 160-161]- Section 160 provides for the duty to return.

Rights of Bailee

1. RIGHT TO COMPENSATION- [SEC. 164]-

• BAILOR'S RESPONSIBILITY TO BAILEE-

The bailor is responsible to the Bailee for any loss which the Bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods.

2. RIGHT TO EXPENCES OR REMUNERATION [SEC.158]-

• REPAYMENT BY BAILOR OF NECESSARY EXPENCES-

Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the Bailee for the bailor, and the Bailee is to receive no remuneration, the bailor shall repay to the Bailee the necessary expenses incurred by him for the purpose of the bailment.

3. RIGHT OF LIEN [SEC.170-171]-

If the Bailee's lawful charges are not paid, he may retain the goods. The right to retain any property until the charges due in respect of that property are paid, is called the right of lien. Liens are of two types:

³ Bangia, R.K (Dr.), contracts-2, Allahabad law agency, 9th edition, reprint 2010,2011

- PARTICULAR LIEN
- GENERAL LIEN

PARTICULAR LIEN [SEC.170]

As a general rule a Bailee is entitled only to particular lien, which means the right to retain only that particular property in respect of which the charge is due. This right is provided for in section 170 of the Act.

BAILEE'S PARTICULAR LIEN-

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.

GENERAL LIEN [SEC.171]-

The right of "general lien", as provided for in section 171, means the right to hold the goods bailed as security for a general balance of account. The right of particular lien entitles a Bailee to detain only that particular property in respect of which charges are due. But general lien entitled the Bailee to detain any goods bailed to him for bailed to him for any amount due to him whether in respect of those goods or any other goods.⁴

TYPES OF LIEN COVERED BY THE ACT

There are 4 types of liens. They are:

- Lien of finder of goods [sec.168]
- Bailee's lien:
 - a. Particular
 - b. General

⁴ Pullock & Mulla, "Indian Contract and Specific Relief Act: With a commentary, critical and exemplary" edition 9th, (1972) By Jivan Lal Kapoor and N.M Tripathy Bombay

- Lien of pledgee or Pawnee [sec.173-174]
- Lien of agents [sec.221]

4. RIGHT TO SUE

So this above is the brief about what is bailment and its different element.

PLEDGE-Section 172 of Indian Contract Act define the meaning of pledge. The delivery of goods as security for payment of debt is called pledge. Pledge is a kind of bailment with the special purpose.

The person pledging the goods known as pledger.

The person to whom the goods pledged is known as pledgee or Pawnee.

Characteristics of a Pledge

1. Delivery of possession-

Delivery of the chattel pledge is a necessary element in the making of pledge. The property pledged should be delivered to the pledgee.

There is a case related to this:

MORVI MERCANTILE BANK LTD. VS UNION OF INDIA-

FACTS-

In this case certain goods delivered to the plaintiff through the railway transport from Mumbai to Delhi. The plaintiff receives the authority to get the delivery of the goods that is in favour of bank. The railway receipt constitutes the security for the loan borrowed by the plaintiff. The goods were lost in transit. The bank brought the action against the railway authority for the pledged goods. Question arises the court of law whether the delivery of the receipt constitute a pledge.

JUDGEMENT-

Court held that delivery of the title of delivery of the rights through the receipt constitute a pledge. It is a valid pledge and plaintiff bank have the rights to claim the compensation from railway authority.

2. In pursuance of contract-

Pledge is a conveyance pursuant to a contract and it is essential to a valid pledge that delivery of the chattel shall be made by the pledger to the pledgee in pursuance of the contract of pledge.

• WHO CAN PLEDGE AND EXCEPTIONS-

It is the rule that owner of the goods or any person authorised by him that behalf can pledge the goods but some exceptional cases person who is neither the owner can nor having authority to pledge.

EXCEPTIONS-

- Pledge by mercantile agent [sec. 178]
- Pledge by person in possession under a voidable contract [sec 178 'A']
- Pledge by a person with limited interest [sec.179]
- Pledge by seller in possession after sale
- Pledge by buyer in possession before sale.

Rights of the pledger

1. The pledger has a right to claim back the security pledged on repayment of the debt with interest and other charges.
2. The pledger has a right to receive a reasonable notice in case the pledgee intends to sell the goods and in case he does not receive the notice he has a right to claim any damages that may result.
3. In case of sale, the pledger is entitled to receive from the pledgee any surplus that may remain with him after the debt is completely paid off.
4. The pledger has a right to claim any accruals to the goods pledged.
5. If any loss is caused to the goods because of mishandling or negligence on the part of the pledgee, the pledger has a right to claim the same.

Duties of pledger

1. A pledger must disclose to the pledgee any material faults or extraordinary risks in the goods to which the pledgee may be exposed.
2. A pledger is responsible to meet any extraordinary expenditure incurred by the pledgee for the preservation of the goods.
3. Where the pledgee has exercised his right of sale of goods, any shortfall has to be made good by the pledger.
4. The pledger is liable for any loss caused to the pledgee because of defects in his (pledger's) title the goods.⁵

Rights of pledgee [sec.173-176]:

1. Receipt of payment: Pledgee can retain the goods pledged until his dues are paid.
2. Retain for other debts: Pledgee has also right to retain the pledged goods for other debts taken.
3. Recover other charges: Pledgee has also right to recover the other charges like preservation of pledged goods.
4. Sell the goods: If pledger failed to make payment, then pledgee can sell the pledged goods after issuing the reasonable notice.

Duties of pledgee

1. Return of the goods: On the receipt of his dues he should return the goods.
2. Reasonable care: He must do the reasonable care of the pledged goods.
3. No misuse or unauthorised use: He should not make unauthorised use the pledged goods.
4. No mixing that pledged goods with his own goods: He should not mix the pledged goods with his own goods.

Major Difference between Bailment and Pledge

In the above research I found some major difference between bailment and pledge. They are:

1. When the goods are temporarily handed over from one person to another person for a purpose is called bailment whereas pledge is the security against the debt owed by one person to another person.
2. Bailment is defined by section 148 of Indian contract act, 1872 but section 172 of ICA, 1872 defined what is pledge.

⁵ <https://www.scribd.com/doc/44051629/Rights-Duties-of-a-Pledgor-Pledgee>

3. In bailment there is bailor and Bailee but in pledge there is pledger and pledgee.
4. In bailment consideration may or may not be needed but in pledge consideration should be always present.
5. In bailment to whom the goods are bailed can use that goods for some special purpose but in pledge the party to whom the goods are being delivered has no right to use the goods.
6. The purpose for bailment is safe keeping or repair etc. but in pledge it use as security against payment or debt.

So these above are some major differences in bailment and pledge which I have conclude.

CONCLUSION: So after all the research I would like to conclude that bailment and pledge are two very different things which is provided by Indian Contract Act, 1872. Bailment is used for some specific purpose but pledged used as the security against anything.

Bibliography

1. Singh Avatar (Dr.) “Indian Contract Act” Edition 9th , (2005), AND Law of Contract & Specific Relief” edition 11th, (2013) Eastern Book Company, Lucknow
2. Pullock & Mulla, “Indian Contract and Specific Relief Act: With a commentary, critical and exemplary” edition 9th, (1972) By Jivan Lal Kapoor and N.M Tripathy Bombay
3. Bangia, R.K (Dr.), contracts-2, Allahabad law agency, 9th edition, reprint 2010,2011
4. <https://www.scribd.com/doc/44051629/Rights-Duties-of-a-Pledgor-Pledgee>