
UNIT 10 BAILMENT AND PLEDGE

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10.0 OBJECTIVES

After studying this unit, you should be able to

- define bailment and distinguish it from other types of contracts
- describe various kinds of bailments
- explain rights and duties of bailor and bailee
- describe the rights and duties of finder of goods
- define pledge
- explain rights and duties of pawnor and pawnee
- distinguish pledge from other types of contracts.

10.1 INTRODUCTION

Bailment and Pledge are examples of specific contracts. Indian Contract Act 1872 is not a comprehensive Act, dealing with all types of specific contracts. There are various other Acts which deal with specific contracts e.g., The Railways Act 1890, Carriers Act 1865 etc. The word **bailment** is derived from **French word** 'bailer' which means "to deliver"

In law we use the term bailment in its technical sense which means change of possession of goods from one person to another. Pledge, on the other hand, is a kind of bailment for some special purpose such as where the goods are transferred from one person to another as security for payment of debt or performance of a promise. Pledge is different from bailment. In this unit you will learn the meaning of bailment its kinds, rights and duties of both bailor and bailee. You will also learn the meaning of pledge, its difference with bailment, and rights and duties of pawnor and pawnee.

10.2 MEANING OF BAILMENT

Section 148 of the Indian Contract Act reads: 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 accomplished, 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". For example, you deliver some gold to a jeweller B to make bangles for your sister. In this case you are bailor and B is bailee and by delivering gold to B, a relationship of bailment is created between you and the jeweller.

Essentials of Valid Bailment

If you analyse the definition of bailment you will find that for creating a relationship of bailment the following features must be present:

- i) Agreement
- ii) Delivery of goods
- iii) Purpose
- iv) Return of the specific goods.

i) **Agreement:** For creating a bailment the first essential requirement is the existence of an agreement between the bailor and the bailee. As you have read just now bailor is the person who bails the goods and bailee is the person to whom the goods are bailed. The agreement between the bailor and bailee, may be either express or implied.

ii) **Delivery of goods:** For bailment, it is necessary that the goods should be delivered to the bailee. It is the essence of the contract of bailment. It follows that bailment can be of movable goods only. It is further necessary that the possession of the goods should be voluntarily transferred and is in accordance with the contract. For example, A, a thief enters a house and by showing the revolver, orders the owner of the house to surrender all ornaments in the house to him. The owner of the house surrenders the ornaments. In this case although, the possession of goods has been **transferred** but it does not create bailment because the delivery of goods is not voluntary.

Delivery of possession may be actual or constructive. Actual delivery means actual physical transfer of goods from one person to another. For example, when a person gives his scooter for repair to workshop, it is actual delivery. When physical possession of goods is not actually given but some such act is done which has the effect of putting the goods in the possession of bailee, or putting the goods in the possession of any other person authorised by the bailee to hold them on his behalf, it amounts to constructive delivery. Sometimes the other person may already be in possession of the goods of the bailor, and subsequently a contract of bailment is entered into, whereby the other person promises to keep the goods as bailee. This also amounts to constructive delivery of the goods. A railway receipt is a document of title to goods, a transfer of the railway receipt effects a constructive delivery of the goods.

iii) **Purpose:** In a bailment, the goods are delivered for some purpose. The purpose for which the goods are delivered is usually in the contemplation of both the bailor and the bailee.

iv) **Return of the goods:** It is important that the goods which form the subject matter of the bailment should be returned to the bailor or disposed of according to the directions of bailor, after the accomplishment of purpose or after the **expiry of** period of bailment.

Where **goods** are **transferred** by the owner to another, in **consideration** of price, it is a sale. Similarly, where the goods are not to be delivered back in specie but their price is paid, it is **not** a bailment. Again, where **money** is deposited by a **customer** with a bank in a current, savings or fixed deposit account, and, therefore, there is no obligation to return the identical **money** but an equivalent of it, it is no bailment. But what is thus created is a **relationship of creditor and debtor.** But if valuables or even coins or notes in a box are deposited for safe custody there is a contract of bailment, for these are to be **returned** as they are, and not their monetary **value.**

Other common examples of a contract of **bailment** are where a watch is given for repairs, or diamonds are given for being set in a gold ring. In both these cases, the same watch or the same diamonds, should be returned after the purpose for which they were given, has been fulfilled. A pledge of a jewel on the security of which money is borrowed, gold jewels delivered to a bank for safe custody, goods delivered to a railway company for being carried and delivered to the consignee, are all examples of bailment.

10.3 KINDS OF BAILMENT

Bailment may be classified on two bases, i.e., reward and benefit.

On the Basis of Reward

Bailment can be classified as gratuitous and non-gratuitous bailment on the basis of whether the parties are getting or not getting **some** value out of the contract of bailment. When there is no consideration involved in the contract of bailment it is called a gratuitous bailment. For example, when you lend your cycle to your friend so that he can have a ride or when you borrow his books to read, it is a case of gratuitous bailment because no **exchange** of money or any other consideration is involved. Neither you nor your friend would be entitled to any remuneration here.

A contract of bailment which involves some consideration passing between bailor and bailee, is called a non-gratuitous bailment. For **example**, if your friend hired a cycle from a cycle shop or you borrowed a book from a **bookshop** on hire, this would be a case of non-gratuitous bailment.

On the Basis of Benefit

On the basis of the benefits accruing to the parties, the contract of bailment may be divided into the following types:

- i) Bailment for the exclusive benefit of the **bailor**: This is the case where a contract of bailment is executed only for the benefit of the bailor, and the bailee does not derive any **benefit** from it. For example, if you are going out of station and leave your valuable goods with your neighbour for safety, it is you as bailor, who alone is being benefited by this contract.
- ii) Bailment for the exclusive benefit of the bailee: This is the case where the contract of bailment is executed only for the benefit of the bailee and the bailor does not derive any benefit from the contract. For example, if you lend your books to a friend, without charge, so that he can study for his exams, it is your friend as the bailee, who alone is going to be benefited by this contract.
- iii) Bailment for the mutual benefit of bailor and bailee: In this case both the bailor and the bailee derive some benefit from the contract of bailment. For example, if you give your shirt to be **stitched** by the tailor, both of you are going to be benefited by this contract, while you get a stitched shirt, the tailor gets the stitching charges.

Check Your Progress A

1) Write any two essentials of bailment.

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2) To create a valid bailment is it essential that the goods must be transferred physically from the bailor to the bailee?

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3) Which of the following statements are True or False.

- i) Bailment and Pledge are examples of specific contracts. []
- ii) No bailment can be created without an agreement. []
- iii) In bailment, the purpose for which the goods **are** delivered is usually in the contemplation of both the bailor and **bailee**. []

- iv) When there is no consideration involved in the contract of bailment, it is called a non-gratuitous bailment. []
- v) In bailment, the person delivering the goods is called the bailee. []

10.4 DUTIES OF BAILOR

A bailor has the following duties

- 1) **Duty to disclose defects:** The law of bailment imposes a duty on bailor to disclose the defects in the goods bailed. Bailor is under an obligation to inform those defects in the goods which would interfere with the use of the goods for which the goods being bailed or would expose the bailee to some risk. **Bailment** of goods may be either gratuitous (in which neither bailor nor the bailee gets any reward) or non-gratuitous (bailment for reward). In case of gratuitous bailment, the law imposes a duty on the bailor to reveal all the defects known to him, which would interfere with the use of goods bailed. If the bailor does not disclose the defects and the bailee in consequence suffers some loss, the bailor would be liable to compensate the bailee for the losses so suffered. For example, A the owner of a scooter allows B, his friend, to take his scooter for a joy ride. A knows that the brakes of the scooter were not working well. A does not disclose this fact to B. Consequently, B meets with an accident. A is liable to compensate B for damages.

In case of Non-gratuitous bailment, i.e., bailment for reward, the bailor has a duty to keep the goods in a fit condition. The goods should be fit to be used, for the purpose, they are meant. In such a case the bailor is responsible for all defects in the goods whether he knows the defects or not is immaterial, and if the bailee suffers any loss, the bailee has to bear it. For example, A hires a tractor from B, for ploughing his field. The shaft of the tractor is broken but B is not aware of the defect. While A was ploughing his field because of the defect, the tractor overturns and A is injured. B is liable for A's losses.

You should note that in case of gratuitous bailment the bailor is responsible only for those defects which he is aware of and did not disclose to the bailee.

Duty to reveal is all the more important, where the goods bailed are of dangerous nature, otherwise the bailor would be liable for the resulting consequences. For example, A delivers to B, certain chemicals, to be carried to Bombay. These chemicals have a tendency to burst, if not kept below a certain temperature. A does not tell B to take this precaution. While carrying the chemicals, the chemicals burst and injure B. A is liable for all the damages.

- 2) **Duty to bear expenses:** The general rule in those bailments where the bailee is not to receive any remuneration is that the bailor should bear the usual expenses in keeping the goods or in carrying the goods or to have work done upon them by the bailee for the bailor. The bailor must repay to the bailee all the necessary expenses which the bailee has already incurred for the purpose of bailment. For example-if A, a farmer gives some gold to his friend B, who is a goldsmith, to make a gold ring. B is not to receive any remuneration for the job. But A has a duty to repay to B any expenses incurred by him in making the ring.

In cases of non-gratuitous bailments (where the bailee is to receive remuneration). bailor has a duty to bear extraordinary expenses, borne by the bailee. for the purposes of bailment. However, the bailor is not to bear ordinary or usual expenses. For example, if a horse is lent for a journey, the expenses for feeding the horse would be payable by the bailee. But, if the horse becomes sick and expenses have to be incurred, or if the horse is stolen and expenses are incurred for recovery. the bailor should pay those expenses.

- 3) **Duty to indemnify the bailee:** It is the duty of the bailor to indemnify the bailee, for any loss which the bailee may suffer because of the bailor's title being defective. The reason for this is that the bailor was not entitled to make the bailment or to receive back the goods bailed or to give directions regarding the goods bailed. For example, A asks his friend B to give him cycle for one hour. B instead of his own cycle gives C's cycle to A. While A was riding, the true owner of the cycle catches A and surrenders him to police custody. A is entitled to recover from B all costs, which A had to pay in getting out of this situation

- 4) **Duty to bear risks:** It is the duty of bailor to bear the risk of loss, deterioration and destruction, of the things bailed, provided the bailee has taken reasonable care to protect the goods from loss etc.
- 5) **Duty to receive back the goods:** It is the duty of the bailor that when the bailee, in accordance with the terms of bailment, returns the goods to him, the bailor should receive them. If the bailor, without any reasonable reason, refuses to take the goods back, when they are offered at a proper time and at a proper place, the bailee can claim compensation from the bailor for all necessary and incidental expenses, which the bailee undertakes to keep and protect the goods.

10.5 DUTIES OF BAILEE

A bailee has the following duties:

- 1) **Duty to take reasonable care of the goods bailed:** Section 151 of the Indian Contract Act lays down the degree of care, which a bailee should take, in respect of goods bailed to him. 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. The standard of care is same whether the bailment is gratuitous or for reward. So a bailee is liable when the goods suffer loss due to the negligence on the part of bailee.

However, under Section 152 of the Act, the standard of care of ordinary prudent man can be increased by entering into a contract, between the bailor and the bailee. In that situation the bailee, in order to save himself from any liability, would be bound to take as much care, as provided by the terms of contract. In the absence of any such contract, if the bailee has taken care as an ordinary prudent man of the goods bailed, he is not responsible for the loss, destruction or deterioration of the goods bailed. To take an example, if a diamond ring is kept by its owner A for safe custody with another person B and B is not to receive any reward for it, the bailee should keep it locked in an iron safe, or some other safe place but not keep it in his lumber room, simply because the bailment is gratuitous. Similarly, if a cow is delivered for safe custody it is sufficient if it is kept in the backyard properly enclosed and even if it is for reward, no one would expect it to be kept in the drawing room. If the goods get stolen, lost or otherwise destroyed, even after the bailee has taken reasonably good care, the bailee would not be liable for this loss. The bailor, would have to bear this loss.

- 2) **Not to make any unauthorised use of goods:** The bailee is under a duty to use the bailed goods in accordance with the terms of bailment. If bailee does any act with regard to the goods bailed, which is not in accordance with the terms of bailment, the contract is voidable at the option of the bailor. Besides it, the bailee is liable to compensate the bailor for any damage caused to the goods, by an inconsistent use of the goods bailed. If he makes unauthorised use of goods, bailee would not be saved from his liability even if he has taken reasonable care of the ordinary prudent man. For example, A lends his car to B to be taken to Delhi from Hyderabad. The car was to be driven by B himself. B takes along with him a friend C, who has been driving his car for the last 10 years. B instead of going to Delhi, goes to Calcutta. The contract becomes voidable at the option of the bailor. On way to Calcutta, B allows C to drive the car. In spite of the fact that C, in accordance with the directions of B, drives the car at a very slow speed, an accident takes place and the car is damaged. A is entitled to be compensated for the loss.
- 3) **Duty not to mix bailor's goods with his own goods:** Next duty of the bailee is to keep the goods of the bailor separate from his own. Sections 155 to 157 of the Act lays down this duty in the following ways:
 - i) If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced (Section 155).
 - ii) If the bailee, without the consent of the bailor, mixes the goods of the bailor with his goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear

the expense of separation or division, and any damages arising from the mixture (Section 156). For example, A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes these 100 bales with other bales of his own, bearing a different mark, A is entitled to have his 100 bales returned, and B is bound to bear all expenses incurred in the separation of the bales, and any other incidental damage.

- iii) If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods (Section 157).

A bails a barrel of cape flour worth Rs. 50 to B. B without A's consent mixes the flour with country flour of his own, worth Rs. 20 a barrel. B must compensate A for the loss of his flour.

Where a bailee mixed his own goods with those of the bailor and when ordered to return the goods of the bailor he offered to return the goods without sorting them out. It was held that the bailor was entitled to refuse to take delivery in toto and claim compensation for loss or damage.

- 4) Duty **not** to set up **adverse** title: The bailee is duty bound not to do any act which is inconsistent with the title of the bailor. He should not set up his own title or the title of a third party on the goods bailed to him.
- 5) Duty to return the goods: It is the duty of the bailee to return or to deliver the goods according to the directions of bailor, without demand, on the expiry of the time fixed or when the purpose is accomplished. If he does not return or deliver as directed by the bailor, or tender the goods at the proper time, he becomes liable to the bailor for any loss, destruction or deterioration of the goods from that time. He is liable even without his negligence. For example, a book-binder kept books beyond the time allowed to him for binding, and they were lost in an accidental fire, the binder is liable. If however, the bailment is gratuitous, then the bailee will have to return the goods loaned, at any time on demand by the bailor, even though the goods were lent for a specified time or purpose. But if on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.
- 6) Duty to return accretions to the goods: In the absence of any contract to the contrary, the **bailee must** deliver to the bailor, or according to his directions, any increase or profit which have accrued from the goods bailed. For **example**, A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

10.6 RIGHTS OF BAILOR

A bailor has the following rights.

- 1) **Enforcement** of bailee's duties: You have just now read the duties of the bailee. Duties of the bailee are the rights of the bailor. For example, when the bailee returns the goods bailed, he should also return all natural accretions to the goods. This is a duty of the bailee and it is the right of the bailor to receive all natural accretions in the goods bailed, when the goods are returned to him.
- 2) Right to claim damages: It is an inherent right of the bailor to claim damages for any loss that might have been caused to the goods bailed, due to the bailee's negligence (Section 151).
- 3) Right to avoid the contract: If the bailee does any act, in respect of the goods bailed, which is inconsistent with the terms of bailment, the bailor has a right to avoid the contract. For **example**, A lends his car to B for B's personal use. B starts using **the** car as a taxi. A can avoid the contract (Section 153).
- 4) Right to claim compensation: If any damage is caused to **the** goods bailed because of the unauthorised use of the goods, the bailor has a right to claim compensation

from the bailee. In the same way the bailor has a right to claim compensation, if some loss is caused to the goods bailed, due to unauthorised mixing by bailee, of bailee's own goods with the goods of the bailor (Sections 154, 155 and 156).

- 5) Right to **demand** return of goods: It is a right of the bailor to compel the bailee, to return the goods bailed, when the time of bailment has expired or when that purpose for which the goods were bailed has been accomplished.

You have just now read that in the case of a gratuitous bailment, even if the goods have been bailed for a fixed time or for a fixed purpose, the bailor has a right to compel the bailee to return them, before the agreed time.

10.7 RIGHTS OF BAILEE

The duties of bailor are the rights of bailee and bailee can enforce his rights against the bailor by suing him in case of a default. The rights of bailee are as follows.

- 1) Right to claim damages: If the bailor has bailed the goods, without disclosing the defects in the goods, and the bailee has suffered some loss, the bailee has a right to sue the bailor for damages. A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury (Section 150).
- 2) Right to claim reimbursement: In case of non-gratuitous bailment the bailee has a right to recover from the bailor, all necessary expenses, which the bailee had incurred for achieving the purpose of bailment. In case of a gratuitous bailment, bailee has a right to recover from the bailor, all extraordinary expenses, borne by the bailee for the purposes of bailment (Section 158).
- 3) Right to recover losses: It is a right of bailee to recover from the bailor, all losses suffered by him by reason of the fact that the bailor was not entitled to make the bailment of the goods or to receive back the goods, or to give directions regarding them (Section 164).
- 4) Right to deliver goods to any one of the joint bailors: If the goods are owned and bailed by more than one person, the bailee has a right, in the absence of a contrary contract, to deliver back the goods to any one of the joint owners, or may deliver the goods back according to the directions of, one joint owner, without the consent of all. (Section 165).
- 5) Right to deliver the goods to bailor even if his title is defective: If the title of bailor is defective and the bailee, in good faith returns the goods to the bailor or according to the directions of bailor, the bailee is not liable to the true owner in respect of such delivery (Section 166).
- 6) Right to lien: When the bailee, in accordance with the purpose of agreement has rendered any service involving the exercise of labour or skill, to the goods bailed, and his lawful payments are not made by the bailor, the bailee has a right to retain unless there is a contract to the contrary, the goods bailed, until he received his remuneration for the services rendered by him. This right to retain goods is known as bailee's lien (Section 170).

The bailee has a right of lien in respect of charges due to him for work of labour done in respect of goods bailed. As you have already read, the right of lien is a right to detain goods belonging to another, by a person in possession, until the sum claimed or other demand of the person in possession is satisfied. The Indian Contract Act has dealt with the following kinds of lien: (i) lien of a finder of goods (Section 168); (ii) particular lien of bailee (Section 170); (iii) general lien of bankers, factors, wharfingers, attorneys and policy brokers (Section 171); (iv) lien of pawnees (Sections 173; 174); and (v) lien of agents (Section 221), and the lien of a pawnees is dealt separately in this unit. The item, lien of agents is discussed in the separate unit, "Contract of Agency".

Possession of goods is necessary to claim the right of lien. The possession must be rightful, not for a particular purpose and lastly it should be continuous. For example, A, a trader took on lease, B's warehouse for 5 years. It was also agreed between A and B that A can at any time deposit or take out his goods from the warehouse. After six months A stopped paying the lease rent. B detained A's goods and claimed lien.

B cannot claim lien because it was agreed that A can take out his goods whenever he wanted.

A lien may be either a particular lien or a general lien.

Particular Lien: A lien which can be exercised only on goods in respect of which some payment is due is called particular lien. Where **the** bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercises 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 received due remuneration for the services he has rendered in respect of them (Section 170). For example, A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the service he has rendered. Again, A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat.

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. The right is available subject to certain important conditions. The foremost among them is that the bailee must have rendered some service involving the exercise of labour or skill or expenses incurred in respect of the goods bailed. Further, a **bailee's** right of lien arises only where "Labour and skill" have been used so as to confer an additional value on the article. So, a person who takes an animal for feeding has no lien, but a veterinary surgeon who has treated the animals has right of lien. Further conditions are that the contract has been fully **performed** in accordance with the contract, and goods, as you already know, are still in possession of the bailee and there exists no contract for payment of price in future.

General Lien: 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. Whereas right of particular lien entitles a bailee to detain only that particular property in respect of which charges are due. Right of general lien entitles the bailee to detain any goods bailed to him for any amount due to him whether in respect of **those** goods or any other goods. The right of general lien is privilege and is specially conferred by Section 171 on certain kinds of bailees only. They are bankers, factors, wharfingers, attorneys of a high court, and policy brokers.

10.8 RIGHT OF BAILOR AND BAILEE AGAINST WRONGDOER

If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as **the** owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury. Section 180 of the Act enables a bailee to sue any person who has wrongfully deprived him of the use or possession of the goods bailed or has done them an injury. It says: *If a third person wrongfully deprives the bailee of the use of possession of the goods bailed, or does them any injury, **the** bailee is entitled to use such remedies as **the** owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.*

Section 181 provides for apportionment of the relief obtained by the bailee and reads: *Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.* For example, A, forcefully takes possession of a colour **T.V** from **B's** repair shop. Now either the owner of the **T.V** or B may sue **A**. If B files the suit, he shall hand over the amount received, after deducting his repair charges, to the owner of the **T.V**.

Check Your Progress B

I) Describe any three duties of a bailor.

2) Fill in the blanks:

- i) The law of bailment imposes a duty on the bailor to the defects in the goods bailed.
- ii) In case of a Non-gratuitous bailment, the bailee has a duty to keep the goods in a condition.
- iii) The bailee is bound to take as much care of the goods bailed, as a man of ordinary would under similar circumstance, take of his own goods of the same bulk and value, as the goods bailed.
- iv) In the absence of any contrary contract, the bailee must deliver to the bailor any in the goods bailed.
- v) Possession of goods is necessary to claim the right of
- vi) Bailor has a right to claim from the bailee for any loss caused to the goods bailed.

3) Describe any four rights of a bailee.

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10.9 FINDER 'OF GOODS

A person who finds some goods, which do not belong to him, is called, finder of goods. It is his duty to find out the actual owner and surrender the goods to him. He has no right to sue the owner for compensation for trouble and expenses voluntarily incurred by him, in finding the owner and in preserving the goods found. But he has a right to retain the goods against the owner until he receives such compensation from the owner. If the owner has offered some specific award on the lost goods, the finder may sue the owner for the award and till then can exercise his right to lien over the goods.

As against every one save the true owner, the ownership of goods found in a public place, vests in the finder. Thus, a person who picks upon the floor of a shop, a packet of bank notes accidentally dropped by a stranger, is entitled to the notes, as against the whole world except the true owner.

10.9.1 Rights of a Finder of Goods

Rights of a finder of goods are as follows:

- 1) **Right of lien:** A finder of goods has the right to keep the goods in his possession till he is paid his expenses. He can exercise the right of lien against the goods found. This right is available against the true owner until the finder of goods receives compensation for expenses and trouble incurred by him in finding out the true owner and in preserving the goods found. However, he has no right to sue the real owner for such compensation.
- 2) **Right to sue for reward:** If the true owner of goods has declared some award for the return of lost goods, the finder can sue the owner for such award. He will have the right of lien, over the goods till he receives the award.
- 3) **Right of sale:** A finder of goods has a right to sell the goods found by him under the following circumstances:

- i) where the owner cannot, with reasonable diligence, be found and if found, refuses to pay the lawful charges of finder of goods, or
- ii) the goods found are such as is commonly the subject of sale, or
- iii) the thing is in danger of perishing or of losing the greater part of their value, or
- iv) when the lawful charges of the finder for preservation and finding out the owner, amount to two-thirds of the value of the thing.

10.9.2 Duties of a Finder of Goods

Under Section 71 of the Contract Act, a finder of goods has same duties with regards the goods found, as that of a bailee. Hence,

- 1) The finder should take reasonable care of the goods found.
- 2) He should not put the goods for his personal use.
- 3) He should not mix the goods found with his own goods.
- 4) It is the duty of the finder of goods to find the real owner of the goods and then to entrust the goods to him. For example, if at a birthday party, a guest finds a gold ring and he tells the host and few other guests about it, he has performed his duty to find the owner. If he is not able to find the owner he can keep the ring as bailee. Refer to Block 2, Unit (8).

10.10 TERMINATION OF BAILMENT

A contract of bailment comes to an end under the following cases:

- 1) **On** the expiry of fixed period: If the goods are bailed for a fixed time, the bailment is terminated at the end of that period.
- 2) **On** the fulfilment of the object: If the goods are bailed for some specific purpose or purposes, the bailment is terminated on fulfilling the object.
- 3) **Inconsistent use of goods bailed:** If the bailee uses the goods in **contravention** of the terms of bailment, the bailor may terminate the bailment even before the term of bailment.
- 4) **Destruction of the subject matter:** A bailment is terminated if the subject matter of the bailment is destroyed or because of some change in the nature of goods bailed if the goods become incapable of being used for bailment.
- 5) **Termination of gratuitous bailment:** As you have already read, a gratuitous bailment can be **terminated** by the bailor at any time even though the bailment was for a fixed period or purpose. But in such a case, the loss to be suffered by the bailee from such premature termination should not exceed the benefit he had derived from the bailment. If the loss exceeds the benefit, the bailor shall indemnify the bailee.
- 6) **Death:** A gratuitous bailment is terminated by the death of either the bailor or the bailee.

Check Your Progress C

- 1) Fill in the blanks:
 - i) A person who finds some goods belonging to some other person is called of good.
 - ii) A finder, of goods cannot recover the voluntarily incurred by him, in finding the owner.
 - iii) If the **owner** of lost goods has declared some award for the return of lost goods, the **finder** can the owner for such award.
 - iv) A bailment is **terminated** when because of some change in the of goods bailed, the goods become incapable of being used for bailment.
 - v) A gratuitous bailment is terminated by the of either the bailor or the bailee.
- 2) Which of the following statements are True or False.
 - i) A finder of goods has a right to retain the goods until he is paid his expenses by the owner, [

- ii) A finder of goods has a right to sell the goods found, if the lawful charges for preserving the goods amount to $\frac{3}{5}$ of the value of the things. []
- iii) If the goods are bailed for a fixed period, the bailment does not necessarily terminate at the end of that period. []
- iv) A bailment is terminated if the subject matter of the bailment is destroyed. []
- v) A gratuitous bailment cannot be terminated by the bailor before the expiry of the time for which the goods were bailed. []

1011 MEANING OF PAWN OR PLEDGE

Pawn or Pledge is a special kind of bailment where a movable thing is bailed as security for the repayment of a debt or for the performance of a promise. For example, if you borrow rupees one hundred from B and keep your cycle with him as security for repayment, it is a contract of pledge. The person taking the loan is called the pledger or pawnor and the person with whom goods are pledged is called the pawnee. Ownership of the pledged goods does not pass to the pledgee. The general property remains with the pledger but a "special property" in it passes to the pledgee. The special property is a right to the possession of the articles along with the power of sale on default. Delivery of the goods pawned is a necessary element in the making of a pawn. The property pledged should be delivered to the pawnee. Thus, where the producer of a film borrowed a sum of money from a financier-distributor and agreed to deliver the final prints of the film when ready, the agreement was held not to amount to a pledge, there being no actual transfer of possession. Delivery of possession may be actual or constructive. Delivery of the key of the godown where the goods are stored is an example of constructive delivery. Where the goods are in the possession of a third person, who, on the directions of the pledger, consents to hold them on the pledgee's behalf, that is enough delivery. A railway receipt is a document of title of the goods and a pledge of the receipt operates as a pledge of the goods.

10.12 WHO MAY PLEDGE

Any of the following persons may make a valid pledge:

- i) The owner, or his authorised agent, or
- ii) One of the several co-owners, who is in the sole possession of goods, with the consent of other owners, or
- iii) A mercantile agent, who is in possession of the goods with the consent of real owner, or
- iv) A person in possession under a voidable contract, before the contract is rescinded, or
- v) A seller, who is in possession of goods after sale or a buyer who has obtained possession of the goods before sale, or
- vi) A person who has a limited interest in the property. In such a case the pawn is valid only to the extent of such interest.

10.13 PLEDGE AND BAILMENT

Pawn and bailment have many similarities. In both the cases only the movable goods are delivered with the condition that the goods shall be delivered back after the purpose of contract is over or after the expiry of stipulated time. Both pawn and bailment contracts are created by agreement between the parties,

However, pawn differs from bailment in the sense that pawn is bailment of goods for a specific purpose i.e., repayment of a debt or performance of a duty. Whereas, the bailment is for a purpose of any kind. Secondly, the pawnee cannot use the goods pawned, but in bailment the bailee use the goods bailed if the terms of bailment so

provide. Thirdly, pawnee has a right to sell the goods, pledged with him after giving notice to pawnor, in case of default by the pawnor to repay the debt, whereas bailee may either retain the goods or sue bailor for his dues.

10.14 PLEDGE AND HYPOTHECATION

Both pledge and hypothecation are created by an agreement between the parties. In both, movable property is delivered as a security for repayment of loan or for the performance of a promise. The difference in hypothecation and pledge is that, that in hypothecation the debtor continues to enjoy the possession of goods. The debtor has a right to deal in the goods but only subject to the terms of contract. He has to send to the creditor, details of property hypothecated. The creditor, in hypothecation, has a right to inspect the goods, at his convenience, whereas, in case of pledge, the pawnor loses the possession of the property as well as his rights to deal in the property pledged.

10.15 RIGHTS OF PAWNEE

As you already know pledge is an extension of bailment, therefore the pawnor and pawnee have almost the same rights and duties as those of the bailor and bailee. Their rights may be studied as follows:

- 1) **Right of retainer:** The pawnee has right to retain the pledged goods till his payments are made (Sections 173 and 174).

He can retain the goods for the following payments:

- a) for the payment of the debt or performance of the promise,
 - b) interest on the debt, and
 - c) for all necessary expenses incurred by him in respect of the possession or for the preservation of the pledged goods. This right of the pawnee to retain the pledged goods till he is paid, is known as pawnee's right of particular lien. In the absence of a contrary contract, the pawnee cannot retain the goods pledged for any debt or promise other than the debt or promise for which the goods are pledged. However, in the absence of any thing to the contrary, such a contract shall be presumed when subsequent advances are made without any further security. If fresh security is provided for the fresh advance, this presumption will not apply.
- 2) **Right to Extraordinary Expenses (Sec. 175):** The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. This right does not entitle the pawnee to retain the goods for recovery of such expenses, however, he can sue the pawnor to pay such amount.
 - 3) **Right to Sale (Sec. 176):** Upon a default being made by the pawnor in the payment of the debt or performance of the promise, the pawnee gets two distinct rights. Firstly, the pawnee may bring a suit against the pawnor for the recovery of the due amount or for the performance of the promised duty and in addition to it he may retain the goods as a collateral security. Secondly, he may sell the goods pledged but only after giving reasonable notice of the intended sale, to the pawnor.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus, to the pawnor.

Further the pawnee cannot sell the goods to himself. If he does so the sale is void and the pawnor can take back the goods after paying the amount due.

- 4) **Right against the true owner of goods (Sec. 178 A):** When the pawnor has acquired, possession of pledged goods, under a voidable contract, but the contract has not been rescinded, at the time of pledge, the pawnee acquires a good title to the goods, even against the true owner, provide! the pawnee had no notice of the pawnor's defect in title and he acts in good faith.

10.16 DUTIES OF PAWNEE

A pawnee has the following duties:

- 1) Duty to take reasonable care of the pledged goods.
- 2) Duty not to make unauthorised use of goods pledged.
- 3) Duty to return the goods when the debt has been repaid or the promise has been performed.
- 4) Duty not to mix his own goods with the goods pledged.
- 5) Duty not to do any act which is inconsistent with the terms of pledge.
- 6) Duty to deliver increase (if any), to the goods pledged.

10.17 RIGHTS AND DUTIES OF PAWNOR

10.17.1 Rights of Pawnor

If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before their actual sale; but he must, in that case, pay in addition, any expenses which have arisen from his default. Besides this, all the duties of a pawnee are the rights of a pawnor and so he has the right to get pawnee's duties duly enforced.

10.17.2 Duties of Pawnor

Following are the important duties of a pawnor:

- 1) It is the duty of pawnor to comply with the terms of pledge and repay the debt on the stipulated date or to perform the promise at the stipulated time.
- 2) It is the duty of pawnor to compensate the pawnee for any extraordinary expenses incurred by him for preserving the goods pawned.

10.18 PLEDGE BY NON-OWNERS

As you know that normally only the owner of goods can pledge them and that no one can pass a better title to the goods than what he himself has. But in order to facilitate mercantile transactions, the law has recognised certain exceptions. These exceptions are for bonafide pledges made by those persons who are not the actual owners of the goods, but in whose possession the goods have been left. You will now read those situations in which a non-owner too can make a valid pledge of the goods.

- 1) Pledge by a mercantile agent: Where a mercantile agent is, with the consent of the owner, in possession of goods or, the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be valid, provided that the pawnee acts in good faith and has, at the time of pledge, no notice of the fact that the agent has no authority to pledge. The necessary conditions of validity under the section are as follows:
 - i) The person pledging the goods must be a mercantile agent,
 - ii) Mercantile agent must be in possession either of the goods or the documents of title to goods,
 - iii) Such possession must be with the consent of the owner. If possession has been obtained dishonestly or by a trick, a valid pledge cannot be effected,
 - iv) Pledge must have been made by the mercantile agent, when acting in the ordinary course of business of a mercantile agent,
 - v) The pledgee must act in good faith; and
 - vi) The pledgee should have no notice of the pledger's defect of title. If the pledgee knows that the pledger has a defective title, the pledge will not be valid.

- 2) Pledge **by** person in possession under voidable **contract**: You have already read under earlier units that for the formation of a contract, **the** consent of parties should be free, i.e., the consent must not have been caused because of coercion, misrepresentation, fraud, undue influence or mistake or because of any of them. If the consent is caused because of any of them, such contract is voidable under Section 19 or 19 A of the Indian Contract Act, at the option of person, where consent was so obtained. Section 178 A of the Contract Act provides that where goods are pledged by a person who has obtained their possession under **a** voidable contract, the pledge is valid, provided that the contract has not been rescinded at the time of the pledge and the pledgee has acted in good faith and without notice of the pledger's defect of title.
- 3) Pledge where pledger has only a limited interest: Where the pawner is not the absolute owner of the goods, but has only a limited interest and he pawns it, **the** pledge is valid to the extent of that interest. A finder of goods, a mortgagee or a person who has lien over the goods, may make a valid pledge of such goods, to the extent of his interest in the goods. For example, A finds a defective watch lying on the road. He picks it up, gets it repaired and pays Rs. 50 for the repairs. Later on he pledges the watch for Rs. 25. The true owner can recover the watch only on paying Rs. 50 to the pledgee.
- 4) Pledge by a co-owner in possession: Where the goods are owned by many **persons** and with the consent of other owners, the goods are left in the possession of one of the co-owners. Such a **co-owner** may make a valid pledge of the goods in his possession.
- 5) Pledge by seller or buyer in possession: A seller, in whose possession, the goods have been left after sale or a buyer who with the consent of the seller, obtains possession of the goods, before sale, can make a valid pledge, provided the **pawnee** acts in good faith and he has no knowledge of the defect in title of the pawnor. For example, A buys a cycle from B. But leaves the cycle with the seller. B then pledges the cycle with **C**, who does not know of sale to B, and acted in good faith. This is valid pledge.

Check Your Progress D

- 1) Describe the right of retainer of a pawnee.

.....

- 2) Which of the following statements are True or False:

i) Pledge is a special kind of bailment .	[]
ii) In pledge, the ownership of the goods pledged does not pass to the pledgee.	[]
iii) A pledge can be created both of movable as well as of immovable property.	[3
iv) In hypothecation the debtor loses the right to enjoy the goods.	[]
v) It is the duty of a pawnor to compensate the pawnee for all extraordinary expenses incurred by him for preserving the goods pawned.	[]
vi) A person who has obtained the possession of goods under a voidable contract cannot create a valid pledge of such goods.	[]
vii) In a contract of pledge, even after the expiry of stipulated period, the pawnor can recover the goods pawned.	[]

10.19 LET US SUM UP

Bailment is delivery of goods by one person to another for some purpose upon the condition that the goods shall, when the purpose is accomplished be returned to the bailor or to any other person, according to the directions of bailor.

Bailment is classified into three categories i.e., for the exclusive benefit of bailor, for the exclusive benefit of bailee and for mutual benefit of bailor and bailee. On the basis of reward a bailment may be classified as gratuitous or non-gratuitous bailment.

Lien means bailee's right to keep the goods in his possession till he is not paid his dues. A lien may be either a Particular lien or a General lien. A particular lien is available only against the goods in respect of which the bailee has rendered any service, labour or skill. While general lien signifies the bailee's right to retain, the goods bailed as well as any other property of the bailor, until the claims of bailee are satisfied.

Bailment comes to an end on the expiry of fixed period on the fulfillment of the object of bailment, by doing some act which is inconsistent with the terms of bailment, with respect to the goods bailed and on the destruction of subject matter. A gratuitous bailment can be terminated even before the expiry of the term of bailment but then bailor is liable to compensate the bailee for the losses suffered by him.

Pledge on the other hand is a special kind of bailment, where a thing is delivered as security for the repayment of a debt or for the performance of a promise. By and large the pawnor and pawnee have the same rights and duties as that of bailor and bailee. However, if the pawnor defaults in the payment of the debt or performance of duty, the pawnee can sell the goods after giving a notice to the pawnor, and satisfy his debt. If the proceeds of such sale are insufficient, the pawnor is still liable to pay the balance. But if the proceeds of such sale are greater than the amount due, the pawnee should refund the excess amount of the pawnor. Pawnee cannot sell the goods to himself.

Although the general rule is that no person can pass a better title to the goods than he himself has. It implies that only the true owner can pledge the goods. But under certain conditions pledge by a mercantile agent, pledge by person in possession of goods under a voidable contract, pledge by a person who has only a limited interest in the goods, pledge by a co-owner in possession, pledge by seller or buyer in possession, have also been recognised to create a valid pledge.

10.20 KEY WORDS

Bailment: A 'bailment' is the delivery of goods by some person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.

Bailor: The person delivering the goods is called the bailor.

Bailee: The person to whom the goods are delivered is called the bailee.

Factors: The word 'factor' in India, as in England, means an agent entrusted with possession of goods for the purpose of selling them for his principal.

General Lien.: Bankers, factors, wharfingers, attorneys of a High Court, and Policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Mercantile agent: It means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to buy goods, or to raise money on the security of goods.

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.

Pawn or Pledge: This is a kind of bailment where a thing is delivered as security for the repayment of a debt.

Wharfingers: Wharfingers means a place contiguous to water, used for the purpose of loading and unloading goods, and over which the goods pass in loading and unloading. Wharfinger is he that owns or keeps a wharf, or hath the oversight or the management of it.

10.20 ANSWERS TO CHECK YOUR PROGRESS

- A 1) Refer to 10.3 of this unit.
 2) No
 3) i) True ii) True iii) True iv) False v) False
- B 1) Refer to 10.5 of this unit
 2) i) disclose ii) fit iii) prudence iv) increase v) lien vi) damages
 3) Refer to 10.8 of this unit.
- C 1) i) Finder ii) expenses iii) sue iv) nature v) death.
 2) i) True ii) False iii) False iv) True v) False
- D 1) Refer to 10.16 of this unit.
 2) i) True ii) True iii) False iv) False v) True vi) False.

10.21 TERMINAL QUESTIONS

- 1) Discuss the essentials of a contract of bailment and state the rights and duties of a bailee.
- 2) Examine the duties and rights of a bailor.
- 3) State the respective rights and responsibilities of pledger and pledgee.
- 4) What do you understand by lien? Describe particular lien and general lien of bailee.
- 5) What is meant by pledge? Describe its essential features.
- 6) Narrate the circumstances under which a person other than the owner can make a valid pledge.
- 7) Explain the rights and duties of a finder of goods.
- 8) Write a note on pledge by mercantile agent.

Note: These questions will help you to understand the unit **better**. Try to write answers for them. But do not submit your answers to the University. These are for your practice only.