

DUTIES OF BAILEE UNDER CONTRACT OF BAILMENT

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Introduction~ In the contract of Bailment, the person holding the title for his goods, delivers those goods under the possession of some other person for some purpose. Here, the ownership of the goods or article does not change, only the possession is transferred temporarily.¹ Also to whom the possession of the goods is given has to return or dispose the goods within time or when the purpose of the contract is achieved. The contract of Bailment has been placed in Indian Contract Act 1872 from section 148 to section 171, covering all the frames and possible aspects of the bailment.

Bailment is defined under section 148. It clarifies that the bailment can be only for the goods that are movable property.

The very topic of the research article is the "**Duties of Bailee**". To have a full understanding of the topic the basic concept of bailment must be very clear in our mind.

The Definitions: Section 148²— Section 148 of the Indian Contract Act defines "Bailment", "bailor", and "bailee". **Bailment** is simply the delivery of goods from one person to the other for some objective. As per this Section, the person who holds the actual title of the goods and delivers them to the other person is known as the "bailor" and the person who receives the delivery of goods is called the "Bailee". The goods are delivered for some specific purpose and it is assumed that when that purpose will be accomplished the goods will also be returned to the true owner.

When the goods are bailed as security for either as security for a loan or as a security for the performance of any obligation, such bailment is known as the pledge.³

Delivery~ in section 148, there comes an interesting word that is the delivery which is further defined under section 149. It simply means the transfer of possession.⁴ The delivery under the Contract of Bailment can be either **Actual Delivery** or **Constructive Delivery**.

Actual Delivery~ Under the Actual delivery the physical possession of goods is directly handover to the bailee.⁵ for example, A gives his mobile phone in hands of B under the contract of Bailment, this is an actual delivery.

Constructive Delivery~ In the case of Constructive Delivery, the physical possession of the goods remains unchanged but some implied act is done to put the goods under the possession of the bailee. Likewise, A gives the keys to his car to B under bailment.

There are certain cases in which the bailee has already possession of the Goods and no delivery of goods is therefore needed. In such cases, his status of bailee remains unchanged.⁶

The Bailee and his duties~ By section 148 it is very clear that the person who is given the possession of the goods by the bailor is known as the bailee. The possession may be either actual or implied. No person will bail his/her goods if there will be no assurance of the safety of goods. A prudent man will never act to have losses. This is a general understanding that the person who is delivering goods to the bailee has the title over goods and that is why he has certain rights which are to be secured. These rights of the titleholder that is the bailor, give birth to certain responsibilities to the bailee. These responsibilities turn into the duties of the bailee and the bailee is bound to act accordingly.

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¹ AVTAR SINGH, CONTRACT & SPECIFIC RELIEF 671-672 (twelfth edition 2017 (reprint 2021), EBC Publishing 2021).

² Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 148.

³ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 172.

⁴ SINGH, *Supra* note 1, at 671.

⁵ SINGH, *Supra* note 1, at 673. Also see Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 149.

⁶ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 148.

The Duties of the Bailee~

A bailee has certain duties to perform.

1. A bailee has to take care of goods as a man of general prudence will do to his goods.
2. A bailee has to use the goods as per the contract and not to use otherwise. He cannot go beyond conditions of bailment.
3. Bailee must keep the bailed item separate from his goods. If he mixes, then he has to bear the expenses of separation. If separation is not possible then he must compensate the bailor.
4. Bailee has also the duty to return the same goods to the bailor within the stipulated time. Non-performance of which may lead him to compensate.
5. Bailee is bound to return all the profits and additions to the goods naturally. If a cow gives a calf, he has to return both the cow and calf.
6. If the bailor's title was defective e. g. he has bailed the stolen goods then the bailee is not responsible for the true owner of goods for delivery.

Relevant Provisions~ These duties of bailee are well mentioned under section 151, 152, 153, 154, 155, 156, 157, 160, 161, 163, 165, 166, and 167 of the Indian Contract Act 1872.

Section 151⁷~ Section 151 talks about the necessary care which is required to be taken from the side of a bailee. This care must be reasonable and as to a man of common understanding and general sense must take under same circumstances of his goods of the same nature and amount.

Example~ A bails his mobile phone to B. As the rain started, B didn't cover it with any cover and took it out with him. This made the water get inside the mobile phone. B didn't take reasonable care here.

Section 152⁸ ~ If the bailee takes due reasonable care and works accordingly, he will not be liable for damages. This section is complementary to section 151. But if there is any contract for extra care then he must take extra care as per contract.

Example~ A bails ice cream boxes to B and asks to put them under a temperature less than 4 degrees centigrade. Here, B is bound to take extra care as per the contract.

Section 153⁹~ If the bailee does any wrongful act or acts not mentioned in the contract of bailment becomes voidable on the option of the bailor. This is in the crux of section 153 which goes in this way,

Example~ A delivers his bicycle to B under the contract of Bailment to transport his goods. B starts using the bicycle for his personal use. A can terminate the contract.

Section 154¹⁰~ This section, talks of the liability of bailee if he does any act inconsistent with conditions of the contract. He is liable for any damages which can arise from the use of goods during inconsistent use of those goods. Here, there is an absolute liability and no question of reasonable care arises. Damage can be from the use of goods or during the use of such goods.

Example~ A bails his bike to B for delivery of goods. B gives it to his brother for driving and he met with an accident. Bike gets damaged. B is responsible for the damages.

⁷ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 151.

⁸ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 152.

⁹ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 153.

¹⁰ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 154.

Section 155¹¹~ The Bailee has to keep the bailed item separate from his goods. If he mixes then the bailor has a proportional interest in that share of the mixture. The mixing can be with consent [Sec 155] or without the consent of the bailor [Sec 156 and 157].

Example~ A bails 1 kg of Toor dal to B, a departmental store owner for sale. B takes the consent of A and mixes dal with his 1 kg dal. B has half shared in the mixture thus formed.

Section 156¹²~ if bailee mixes goods without the consent of bailor and the mixture thus formed is separable, the bailee has to bear the expenses of separation.

Example~ A bails to B, 15 red-colored marbles for sale. B without his consent mixes with his mixed colored marbles. If there will be separation then B will bear expenses.

Section 157¹³~ If the goods mixed without the consent of the bailor cannot be separated, then the bailee has to compensate the bailor for the losses. As said in section 157.

Example~ A gives to B, 1 kg flour under the contract of bailment, and B without his consent mixes that flour with his 1 kg flour of poor quality which degrades the quality of the whole mixture. B is liable to compensate A for the loss of goods.

Section 160¹⁴~ This section covers the responsibility of the bailee to return the goods to the bailor after expiration of the time limit or completion of the purpose. The bailee has to work as per the bailor's direction and he must do his task by goods within the time given.¹⁵

Example~ B was given a car by A, in Lucknow, under the contract of bailment and asked B to return the car to his other house which is in Raebareli in 30 days. B has to return the car to the house at Raebareli within 30 days.

Section 161¹⁶~ If the bailee fails to return the goods within proper time and the quality of goods is compromised, then the bailee must compensate the bailor for such deterioration.

Example~ X bails to Y, 1kg of quick lime (CaO, Calcium Oxide) to hold into possession for one month. Y didn't deliver quick lime back to X. After one month due to negligence of Y, the quick lime (CaO) moisturised, and due to the presence of water (H₂O), it formed slaked lime that is calcium hydroxide (Ca(OH)₂). Y is liable to compensate for such deterioration.

Section 163¹⁷~ It is the responsibility of the bailee to return all the increases to the goods during his custody. The bailee has to return all the profits gained from the goods. The section reads as follows,

¹¹ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 155.

¹² Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 156.

¹³ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 157.

¹⁴ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 160.

¹⁵ SINGH, *Supra* note 2, at 691. Also see Indian Contract Act 1872, Act no. 9 of 1872, Section 160.

¹⁶ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 161.

¹⁷ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 163.

Example~ X and Y were two friends. X gave his hen to Y under bailment and asked to take it for 30 days. Hen laid eggs. Y sold them. When X came to know he asked for his hen along-with eggs. Here, Y is bound to return all the goods otherwise he will compensate.

Section 165¹⁸~ If there are several joint owners of the goods bailed then the bailee has to deliver as per the directions of the contract. If there are no directions, then the bailee can deliver to any of the owners.

Example~ A and B were two brothers. They had a bat having joint ownership. A bailed that bat to C and asked to return it to B after one month. C is bound to return the bat to B.

Section 166¹⁹~ There are also certain conditions where the bailor has no title over the goods and he bails the same. There, the actual owner of the goods bailed can ask the bailee to return them to him. In such cases, the bailee is not bound to return the goods to the actual owner as he is not responsible to him. He can deliver the goods back to the bailor. If the actual owner has to claim his title over such goods, he can for sure ask the courts.²⁰

Example~ A delivers to B, a book, under the contract of bailment. B found that A is not the actual owner of the book. Then came C and expressed his title over the book. B, here, can return the book to A as A is the bailor for him and not C.

Cases on the duties of a Bailee~

The duties of the bailee can be better understood in certain cases. The lucid interpretation of bailment cases can be far helping.

Shaw and co. Vs Symmons and Sons²¹

In this case, the bailor has bailed some books to the bailee. Those books were not returned to the bailor within a reasonable time. Suddenly, one day, all the books got burnt in an accidental fire. The court held bailee liable for the damage and destruction caused by fire and he was made to compensate the bailor.

The Union of India Vs Amar Singh²²

In this case, certain goods were coming from Pakistan to India in New Delhi. In between, the goods were moved from Pakistan railways to Indian railways. After being moved the goods were lost. Sec 72 of the Indian Railways Act had provisions regarding the liability of the lost goods bailed to the railway is that of a bailee under sec 151, 152, 161 of Indian Contract Act 1872. In this case, Hon'ble Supreme Court held that Indian railways are guilty of negligence as they did not take good care of the goods as an ordinary man could have taken under the same circumstances.

Union Of India vs West Punjab Factories Ltd²³

There was a fire broke down at a railway station in which certain goods were destroyed which were ported. A notice had been given to the consignee that the consignment had arrived on February 23, 1943. The consignee did not come to take the goods till March 8, 1943, when the fire broke out. It

¹⁸ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 165.

¹⁹ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 166.

²⁰ Indian Contract Act 1872, Act no. 9, Acts of Parliament, 1872 (India), Section 167.

²¹ (1917) 1 KB 799.

²² MANU/SC/0004/1959: AIR 1960 SC 233 (India).

²³ MANU/SC/0039/1965: AIR 1966 SC 395 (India).

was contended by the railway administration that its liability came to an end after that reasonable time and it is not responsible for the damages due to fire.

The Hon'ble court denied this contention saying that, although the responsibility of the railways as a carrier ceased to exist its responsibility as a warehouseman is still prevailing which is also a bailee. There had been negligence within the meaning of Sec. 151 and 152 of the Indian Contract Act, 1872, and the railway were made to be liable to bear the losses thus caused.

Juggilal Kamlapat Oil Mills Vs UOI²⁴

In this case, Mustard oil was in transportation from Kanpur to Calcutta. The sender of the oil had instructed the Railways to bring the oil back to Kanpur. When it reached Calcutta it was seized by the food Inspector for adulteration. Later after the test, it was found adulterated and Police destroyed it. The owner sued railways for the breach. The supreme court by giving its reasons held that it was the statutory obligation on the police and it was lawful. Therefore, the railway was not held liable for breach of contract of bailment. The railways were acting as a bailee but for the successful formation of a contract of bailment the goods bailed must be lawful.

Conclusion~

Now, at this stage, we have come to the conclusion of this research. When we talk about Bailment, we must have clarity in our mind that, bailment is done when the physical possession of any goods is delivered to some other person by the actual owner of that goods. There must be a purpose behind any such delivery.²⁵ And that purpose is to be accomplished by the person holding the possession of such goods. Now, the accomplishment of such purpose requires due care and diligence from the part of the person holding possession of other's goods. This care brings certain duties and these duties are required for a contract of Bailment. Therefore, the contract of bailment needs to be understood along with these duties and the types of deliveries for a better understanding of the concept.

²⁴Juggilal Kamlapat Oil Mills vs. Union of India (UOI) and Ors. (03.12.1975 - SC): MANU/SC/0018/1975: AIR 1976 SC 227.

²⁵ SINGH, *Supra* note 2, at 673.