UNIT – II

Bailment • Finder of Goods & Pledge

Sections 148–181 • Rights & Duties of Bailor & Bailee • Pledge

OVERVIEW

Unit Structure

01

Contract of Bailment

S. 148 – Definition, essentials, kinds of bailment

02

Rights & Duties of Bailor and Bailee

Ss. 150–171 – care, return, compensation

03

Finder of Goods

S. 168–169 – rights of finder as bailee

04

Pledge (Pawn)

Ss. 172–179 – definition, comparison with bailment, rights of pawnee

Contract of Bailment – Definition

Section 148: 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”.

Essentials:
- Delivery of goods (actual or constructive)
- For some purpose
- Upon a contract that the goods shall be returned or disposed of as directed
- Movable goods only (not immovable property)

Kinds of Bailment

Gratuitous Bailment

Bailment without any consideration – e.g., lending a book to a friend.

Bailment for Reward / Hire

Bailment for consideration – e.g., hiring a car, giving clothes for dry-cleaning.

Bailment for Safe Custody

Goods deposited for safe keeping – bank locker, warehouse.

Bailment for Repair / Work

Goods given to be worked upon – tailoring, repair of machinery.

Duties of the Bailee

- Duty of care (S. 151): The bailee is bound to take as much care of the goods as a man of ordinary prudence would take of his own goods of the same bulk, quality and value.

- Duty not to make unauthorised use (S. 154): If the bailee makes unauthorised use, he is liable for any loss or damage.

- Duty not to mix goods (S. 155–157): If the bailee mixes the goods with his own, he must separate them or compensate.

- Duty to return the goods (S. 160): On the accomplishment of the purpose or on the expiry of the time, the bailee must return or deliver according to the bailor’s directions.

- Duty to return increase (S. 163): The bailee must deliver any increase or profit that has accrued from the goods.

Rights of the Bailee

• Right to necessary expenses (S. 158): Where the bailee has incurred necessary expenses for the purpose of the bailment, the bailor must repay them (in gratuitous bailment the bailee is entitled to expenses).

• Right to compensation for damage caused by bailor's fault (S. 164).

• Right of particular lien (S. 170): Where the bailee has rendered any service involving the exercise of labour or skill in respect of the goods, he has a right to retain the goods until he receives due remuneration.

• General lien of bankers, factors, wharfingers, attorneys and policy-brokers (S. 171): They may retain goods as security for a general balance of account.

Duties of the Bailor

- Duty to disclose faults (S. 150): The bailor is bound to disclose to the bailee faults in the goods of which the bailor is aware and which materially interfere with the use of them or expose the bailee to extraordinary risk. If he does not, he is responsible for damage arising from such faults.

- In case of gratuitous bailment the bailor must repay necessary expenses (S. 158).

- Duty to indemnify the bailee for loss caused by the bailor's defective title or by the bailor's instructions (S. 164).

- Duty to receive back the goods.

Rights of Finder of Goods

A finder of goods is treated as a bailee.

Section 168: The finder may sue for specific reward offered, and may retain the goods until he receives it; but he cannot sue for compensation for trouble and expense voluntarily incurred.

Section 169: When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it:

- when the thing is in danger of perishing or losing the greater part of its value, or
- when the lawful charges of the finder amount to two-thirds of its value.

The finder has a particular lien for the reward or expenses.

Pledge (Pawn) – Definition

Section 172: The bailment of goods as security for payment of a debt or performance of a promise is called “pledge”. The bailor in this case is called the “pawnor”. The bailee is called the “pawnee”.

Essentials of pledge:
- Delivery of goods (actual or constructive)
- As security for a debt or promise
- The goods must be movable

Pledge is a special kind of bailment. The main purpose is to secure a debt or obligation.

Rights of the Pawnee

• Right to retain the goods (S. 173): The pawnee may retain the goods pledged not only for payment of the debt or performance of the promise, but also for interest and all necessary expenses.

• Right to extraordinary expenses (S. 175).

• Right to sue and sell (S. 176): On default, the pawnee may bring a suit against the pawnor, and retain the goods as collateral security, or he may sell the goods after giving the pawnor reasonable notice of the sale. If the proceeds are less than the amount due, the pawnor remains liable for the balance; if more, the surplus must be returned.

Bailment vs Pledge – Comparison

Point	Bailment	Pledge
Purpose	Any purpose (safe custody, repair, etc.)	Security for debt or promise
Right to sell	Generally no	Yes, on default after notice
Particular lien	For remuneration of services	For the debt and interest
Sections	Ss. 148–171	Ss. 172–179

Landmark Judgments

Kaliaperumal Pillai v. Visalakshmi (1938)

On delivery of possession as an essential of bailment.

Bank of Bihar v. State of Bihar (1971)

On the rights of a pledgee and the effect of government taking possession.

Lallan Prasad v. Rahmat Ali (1967)

Supreme Court – on the rights of the pawnee and the requirement of notice before sale.

State Bank of Saurashtra v. Chitranjan Ranganath (1980)

On the duty of care of the bailee/pawnee and the burden of proof.

SUMMARY

Key Takeaways – Unit II

- Bailment requires delivery of goods for a purpose with a contract to return or dispose as directed.
- The bailee must take ordinary prudent care (S. 151) and is liable for unauthorised use.
- A finder of goods is a bailee and has limited rights of retention and sale under Ss. 168–169.
- Pledge is bailment of goods as security for a debt; the pawnee has a right to sell on default after notice.
- Bankers and certain others have a general lien under S. 171.
- Particular lien arises when labour or skill has been exercised on the goods (S. 170).

AT A GLANCE

Quick Reference – Important Sections

Definition of Bailment	S. 148
Care to be taken by Bailee	S. 151
Unauthorised use by Bailee	S. 154
Return of Goods	S. 160
Particular Lien	S. 170
General Lien	S. 171
Definition of Pledge	S. 172
Pawnee’s Right to Retain & Sell	Ss. 173, 176
Finder of Goods	Ss. 168–169

End of Unit – II

Bailment • Finder of Goods • Pledge
Sections 148–181 of the Indian Contract Act, 1872

Proceed to Unit-III: Agency