

Quadrant II – Transcript and Additional materials

Programme	: Bachelor of Commerce
Subject	: Commerce
Paper Code	: CLS 101
Paper Title	: Business Law (SEC I)
Unit	: Unit 1 – The Indian Contract Act, 1872
Module Name	: Contract of Bailment
Module No	: 12
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Transcript of the video

Hello everyone. This is Ms. Sonia Kamat from Rosary College of Commerce and Arts, Navelim Goa. Today we shall discuss about Module no 12 from Unit I on the Indian Contract Act, 1872 for SYBcom semester III for the subject Business Law (SEC I). The topic for discussion is the Contract of Bailment.

In this module, we shall discuss about Definition of Contract of Bailment, Parties, Essentials of Contract of Bailment, Types of Bailment and Rights and Duties of Bailor and Bailee. Upon completion of this module, student shall be able to understand and analyze the concept of Bailment.

Contract of Bailment is delivery of goods by one person to another for some purpose, upon a contract that they shall be returned when the purpose is accomplished.

There are two parties in the Contract of Bailment.

1. Bailor
2. Bailee

Bailor is the person delivering the goods and Bailee is the person to whom the goods are delivered.

There are three essentials of the Contract of Bailment namely

1. Delivery of goods
2. Purpose
3. Return of goods.

Delivery of Goods.

In contract of Bailment, it is very important that the goods are delivered to the Bailee. Delivery of goods can be either actual delivery or symbolic delivery. Actual delivery means physical delivery of goods. On the other hand, symbolic delivery means doing something by which possession of goods passes to the Bailee without physical delivery. Eg. If goods are stored in a godown and the keys of the godown are handed over to the Bailee, it is termed as Symbolic delivery of goods. The Subject matter of Bailment is only movable goods. As such if house is given on rent, we do not call it bailment, it is called as Mortgage.

Purpose

The Indian Contract Act, 1872 does not specify any purpose. Bailment can be done for any purpose. Eg either goods may be given for repair of car or stitching of clothes.

Return of goods

In contract of Bailment, it is very important to return the goods back to the Bailor who is the real owner of the goods. This is what distinguishes bailment from Contract of Sale of Goods. In contract of Sale of goods, ownership over the goods is transferred. However, in Bailment only possession of the goods is delivered to the Bailee.

There are two types of Bailment.

1. Gratuitous Bailment
2. Non Gratuitous Bailment

Gratuitous Bailment is Bailment without any monetary consideration whereas Non Gratuitous Bailment is for consideration.

We shall discuss an illustration now.

In this case, A gives his mobile to B for repair for Rs. 100/- Since there is consideration it is Non Gratuitous Bailment. In this case A has delivered goods so he is called Bailor and since B has received goods, he is called Bailee.

In another illustration, Ram lends his bike to his friend Ashley for an emergency and does not charge any amount. Since there is no consideration it is Gratuitous Bailment. In this case Ram has delivered goods so he is called Bailor and since Ashley has received goods, he is called Bailee.

Duties of Bailee

Bailee has certain duties against the Bailor since he is in possession of Bailor's goods.

1. Duty to take reasonable care of goods

Bailee should take care of Bailor's goods in the same manner he would take care of his own goods.

2. Duty not to make unauthorized use

Bailment is done for a specific purpose. If bailee uses goods for any other purpose, it amounts to unauthorized use and amounts to breach of contract by Bailee.

3. Duty not to mix

Bailee should not mix the goods of Bailor with any other goods. If he does so, he should separate it and if it is not possible to separate it, he should pay damages to the Bailor.

4. Duty to return goods

Once the purpose is achieved, Bailee should return back the goods to the Bailor

5. Duty to return accretion to the goods

Accretion means addition. If any addition is made to the goods during the time when Bailee is in possession of the goods, he shall return such addition as well.

Rights of Bailee

Bailee enjoys certain rights against Bailor

1. Right of Lien

Lien means keeping the custody of the goods. Bailee has right to retain Bailor's goods, in the event his charges are not paid by the Bailor.

2. Right to deliver goods in good faith

Bailee has right to deliver goods in good faith. He is not required to conduct any inquiry pertaining to the ownership of the goods held by him

3. Enforcement of Bailor's duties

Bailee can enforce bailor's duties.

Duties of Bailor

1. Duty to disclose faults in goods

Bailor has duty to disclose faults in the goods. Now this duty depends upon whether it is gratuitous or non-gratuitous Bailment. In Gratuitous Bailment, Bailor should disclose only those faults in goods which he is aware of. Whereas in Non-Gratuitous Bailment, Bailor is liable for any faults in goods, whether he is aware or not.

2. Duty to repay necessary expenses

Bailor is required to repay all the expenses incurred by Bailee.

3. Duty to receive back goods

Bailor should receive the goods back once the purpose is achieved.

Rights of Bailor

1. Right to terminate Bailment for unauthorised use

Bailor can terminate the Bailment in the event if any unauthorized use is made by the Bailee.

2. Right to demand return of goods in case of gratuitous Bailment

Bailor can demand his goods anytime from Bailee even before the purpose is achieved in case of Gratuitous Bailment

3. Enforcement of Bailee's duties

Bailee has right to enforce Bailee's duties.

To conclude, The Contract of Bailment is a specific contract which outlines the rights and duties of Bailor and Bailee. It is a type of contract which is more frequently used in our day to day lives and as such acquires greater significance.

Kindly refer to the References.

Thank you.

Glossary (as per Black's Law dictionary, 8th Edition)

BAILMENT bailment. 1. A delivery of personal property by one person (the bailor) to another (the bailee) who holds the property for a certain purpose under an express or implied-in-fact contract. • Unlike a sale or gift of personal property, a bailment involves a change in possession but not in title.

Gratuitous bailment.A bailment for which the bailee receives no compensation, as when one borrows a friend's car. • A gratuitous bailee is liable for loss of the property only if the loss is caused by the bailee's gross negligence. — Also termed naked bailment; depositum; naked deposit; gratuitous deposit; deposit; bailment for sole benefit of bailor.

LIEN lien. A legal right or interest that a creditor has in another's property, lasting usu. until a debt or duty that it secures is satisfied. • Typically, the creditor does not take possession of the property on which the lien has been obtained.

ENFORCE 1. To give force or effect to (a law, etc.); to compel obedience to. 2. Loosely, to compel a person to pay damages for not complying with (a contract).

REASONABLE reasonable,adj.1. Fair, proper, or moderate under the circumstances < reasonable pay>.2. According to reason . “It is extremely difficult to state what lawyers mean when they speak of ‘reasonableness.’ In part the expression refers to ordinary ideas of natural law or natural justice, in part to logical thought, working upon the basis of the rules of law.” John Salmond, Jurisprudence 183 n.(u) (Glanville L. Williams ed., 10th ed. 1947).

BREACH OF CONTRACT breach of contract. Violation of a contractual obligation by failing to perform one's own promise, by repudiating it, or by interfering with another party's performance.

DAMAGE damage,adj. Of or relating to monetary compensation for loss or injury to a person or property . — Also termed damages . Cf. DAMAGES.

Illustrations and case laws

1. In *Hyman v Nye & Sons*, the plaintiff took a carriage on hire from the defendant but the carriage was not fit for the journey and subsequently, the plaintiff suffered injuries. The court held that even though the defendant was aware of such defect or not he shall be liable.
2. 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.
3. A lends his car to B to be taken to Goa to Mumbai. However instead of going to Mumbai he goes to Kerala. This amounts to unauthorized use.