

## Bailment

### I) Introduction

- The word 'bailment' is derived from the French word '*baillier*' which means 'to deliver'.
- According to **Section 148**, bailment is defined as, '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 off according to the directions of the person delivering them'.
- The person delivering the goods is called the 'bailor'. The person to whom the goods are delivered is called the 'bailee'.

X <u>delivers watch for repairing</u> → Y	<b>Example 1:</b> 'X' delivers his watch for repair to 'Y', 'X' is the bailor and 'Y' is the bailee.
X <u>delivers piece of cloth for stitching</u> → Tailor	<b>Example 2:</b> X delivers a piece of cloth to Y, a tailor, to be stitched into a suit. It is contract for bailment.

### II) Essential Elements of a Bailment

#### 1) Contract

- Delivery of goods is upon a contract that, when the purpose is accomplished, they shall be returned.
- Contract may be expressed, implied or implied by law.

**Examples:** Delivery of car keys to a mechanic, Bailment between the finder of goods and owner of goods.

#### 2) Consideration is not necessary in contract of bailment

- In case of bailment for mutual benefit of the bailor and bailee, there is consideration for both the parties.
- In case of bailment either for the benefit of the bailor or bailee alone, detriment suffered by the bailor in parting with the possession of goods is considered as a sufficient consideration to support the promise on the part of the bailee to return the goods.

#### 3) Delivery of goods

- It involves the delivery of goods from one person to another for some purposes.
- Bailment is only for moveable goods and never for immovable goods or money.
- The delivery of the possession of goods is of the following kinds:
  - i. **Actual Delivery:** When goods are physically handed over to the bailee by the bailor.  
Example: Delivery of a car for repair to workshop.
  - ii. **Constructive Delivery:** To do something that has the effect of putting goods in the possession of the other person  
Example: Delivery of the key of a car to a workshop dealer for repair of the car.

#### 4) Purpose

- Delivery of goods must be for some intended purpose which is generally temporary.  
Example: X delivered goods to Y (a common carrier) for the purpose of carriage to the buyer.
- Wrong delivery of goods does not create bailment  
Example: X wrongly delivered goods to BB Roadways instead of PP Roadways

#### 5) Return of Specific Goods

- After the accomplishment of purpose or after the expiry of period of bailment, the goods must be returned to the bailor or otherwise disposed off according to the directions of the bailor
- Same goods must be returned in their original form or desired form (if any required by the bailor)
- Goods must be returned in specie (same) though they may undergo a change of form.

**Examples:**

- 1) Delivery of old jewellery to a goldsmith for melting and making new jewellery creates bailment since same gold is used though there is change in form.
- 2) Where money is deposited in a savings bank account or any other account, it is not a transaction of bailment because the bank is not going to return the same currency notes but will return only an equivalent amount.

**6) Possession and Custody**

- In bailment, possession of goods changes.
- Change of possession can happen by physical delivery or by any action which has the effect of placing the goods in the possession of bailee.
- The change of possession does not lead to change of ownership.
- In bailment, bailor continues to be the owner of goods as there is no change of ownership. Where a person is in custody without possession he does not become a bailee.

**Examples:**

- 1) Depositing ornaments in a bank locker is not bailment, because the keys of the locker remain with the owner and not with the bank. Ornaments are in the possession of the owner though kept in a locker at the bank.
- 2) A servant in the household or a guest may be using or handling goods of the owner of household. This will not create bailment because such a person has only the custody of goods but not the possession

**Q1) Mrs. S delivered her old gold jewellery to Mr. X, a goldsmith for the purpose of making new one out of it. Every evening she used to receive the unfinished jewellery which she would put into a box kept at Mr.X's shop. She kept the key of that box with herself. One night, the jewellery was stolen from the box. Was there a contract of bailment?**

*Hint: There was no contract of bailment.*

*The goldsmith (bailee) has redelivered the jewellery bailed to the lady (bailor)*

**Q2) Mr. X delivered a piece of cloth to Mr.Y a tailor for stitching it into a suit. Does it amount to bailment?**

*Hint: It is a contract of bailment. All the essential elements of bailment such as agreement, delivery of goods, purpose etc are present. The goods are required to be returned in specie (same), they may undergo a change in form*

**Q3) Do the following constitute bailment?**

*(PE-II, May 2007)*

**a) V parks his car at a parking lot, locks it, and keeps the keys with himself**

*Hint: Mere custody of goods does not mean possession. For a bailment to exist the bailor must give possession of the bailed property and the bailee must accept it. Hence, when V parks his car but keeps the key with himself, it is not bailment.*

**b) Seizure of goods by customs authorities**

*Hint: Seizure of goods by customs authorities amounts to bailment since the possession of the goods is transferred to the customs authorities.*

**Q4) State if the following statement is correct or incorrect:**

**'Depositing ornaments in the bank locker is a bailment'**

*(IPCC, May 2015)*

*Hint: This statement is incorrect. Depositing ornaments in a bank locker is not bailment, because the keys of the locker remain with the owner and not with the bank. Ornaments are in the possession of the owner though kept in a locker at the bank*



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