

## Section 148 of the Indian Contract Act, 1872

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### Abstract

There are many instances in our life where we give our clothes for laundry when we use valet parking for our cars. So in the above examples there exist two persons i.e. 'Bailor' & 'Bailee'. Bailor in simple words means who gives his goods to someone and bailee means a person who gets the goods. In this article, I will explain about 'BAILMENT' also the responsibility of bailor and bailee.

### Introduction

As per Section 148 of Indian Contract Act, 1872 "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that when the purpose is accomplished goods must be delivered back to the main owner of the goods i.e. bailee. If a person who is already in possession of the goods of another, contracts to hold them as bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment

Example-

### Bailment

Under the Indian Contract Act, 1872 bailment is defined as the delivery of possession of goods from one person to another person upon a contract, when the purpose is over than goods need to be returned to the original owner of the goods.

The important elements of bailment are "Delivery of possession" by one person to another. For delivery to occur, the bailee must be given exclusive possession and control over the goods, and the bailee must accept the goods. The second important element is that transfer of possession should be for some "purpose" and the third one is that it must be "upon a contract" that when the purpose is accomplished the goods shall be returned to the bailor.

### Responsibility of Bailor

Section 150 of the Indian Contract Act, 1872 states the responsibility of bailor towards bailee. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware and which materiality interfere with the use of them or expose the bailee to extraordinary risk, if he does not make such disclosures than he responsible for the damage arising to the bailee directly from such faults.

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<sup>1</sup>Section 150 of Indian Contract Act, 1872.

## Right of Bailor

- To enforce the bailor's duties and claim damages.
- To terminate the contract
- To claim accretion to the goods
- To demand the goods back.

## Responsibility of a Bailee

### 1) Duties to take reasonable care

Section 151 of the Indian Contract Act, 1872<sup>2</sup> states that the bailee needs to take care of the goods of bailor as an ordinarily prudent man. In *Goblin v/s McMullen*<sup>3</sup> "a gratuitous bailee is bound to take the same care of property entrusted to him as a reasonable, prudent and careful man may fairly be expected to take his property of the similar description" Hence, the bailee is bound to take utmost care of the property which he got from the bailor. In *Sheikh Mohamed v/s the British Indian Steam Navigation Co. Ltd*<sup>4</sup> this case pointed out that a bailee's liability cannot be reduced by any provision which is under limit's provided under section 151

### 2) Duty not to make unauthorized use:

Section 154 of the Indian Contract Act, 1872<sup>5</sup> imposes liability on bailee if goods are not used in an unauthorized way. Using goods beyond the conditions of a contract would make the bailee liable to bailor if due to such unauthorized access the bailor has suffered loss or if goods are damaged.

### 3) Duty not to mix or part with the goods:

Another responsibility of the bailee is that duty not to mix the bailor's goods with his own or part of the goods. According to Section 155 of Indian Contract Act, 1872<sup>6</sup> states that if the bailee mix the goods with his goods and while doing so he had the prior consent of the bailor then the bailor will have interest over the goods in proportion to

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<sup>2</sup>Section 151 of Indian Contract Act, 1872.

<sup>3</sup>*Giblin v. McMullen*, (1703) 2 LdRaym 909.

<sup>4</sup>*Sheikh Mohamed v. The British Indian Steam Navigation Co. Ltd.*, (1908) 32 Mad. 95.

<sup>5</sup>Section 154 of Indian Contract Act, 1872.

<sup>6</sup>Section 155 of Indian Contract Act, 1872.

the goods he had bailed' this section specifically states that bailee had the consent of bailor.

#### 4) Duty to return goods:

One of the essentials of a contract of bailment is that once the purpose for which goods are bailed is accomplished, the bailee has to return the goods to the bailor or dispose of them as per the direction of the bailor. **Section 159** of Indian Contract Act, 1872 states that the bailor may ask for the return of the loan at any point of time if the loan is provided gratuitously to him. And the bailee is under obligation to return so. However, he can claim compensation if he has suffered any loss from such an act of bailor.

#### **Rights of Bailee**

- Demand compensation for loss caused due to non-disclosure of defects in the goods bailed.
- Claim indemnification, if there is any loss due to the defective title.
- Exercise right to a lien, i.e. to retain the goods, where the charges concerning the goods retained are not paid.
- Take action against third parties, when the party unlawfully disagrees with the bailee of his right to use the goods.
- In case if the bailor has no title to the goods bailed and the bailee returns it to the bailor in good faith, as per his directions, the bailee has no responsibility for any such delivery.

#### **Termination of Bailment**

Section 153 of the Indian Contract Act, 1872 says about the termination of bailment. Bailment is terminated when the bailee, makes unauthorized use of the goods or dispose of them wrongfully, the bailor may decide the bailment. Further, when the bailment period expires, or when the purpose of bailment is fulfilled, then also the contract comes to an end and the goods are to be returned to the bailor.

Bailment contract is also terminated when the goods are destroyed or due to any reason for a change in its nature, they cannot be used for bailment.

#### **Conclusion**

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<sup>7</sup> Section 159 of Indian Contract Act, 1872.

<sup>8</sup> Section 153 of Indian Contract Act, 1872.

The bailee must take utmost care of goods which is expected from the bailor who has given goods to him. If it is found that if bailee has failed to take care of goods he will be liable to pay the amount for the damaged goods. However, bailee can reduce liability by making a contract with the bailor. Bailee should also be given the right to select the articles. The contract must be executed between bailor and bailee so that there is no misunderstanding in the future between bailor and bailee. The bailee's responsibility towards the goods bailed can be increased by way of providing provisions in that regard but it cannot be lowered down, i.e., he cannot repudiate his responsibility.



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