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# Duty of Reasonable Care by the Bailee under Bailment

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## **ABSTRACT**

*In this paper, the author has explained the definition of Bailment as defined under S. 148 of Indian Contract act,1872. The author also explains various ingredients necessary to form a contract of Bailment and important precedents surrounding it have also been examined.*

*In this chapter, the authors discuss the nature of bailment, duties of the bailee, classification of bailment, rights and liabilities of a bailee, spiritual aspects of the bailee and finally they put concluding remarks. In this chapter descriptive and analytical research methodology has been applied to critically analyse the concept of the law of bailment.*

*As the paper proceeds, the paper specifically focused on Ss. 151 & 152 that forms the duty of reasonable care by the bailee towards the bailor. The paper dwells into the intricacies of above-mentioned sections and analyses it along with judicial precedents and gives a perspective of how the meaning of same lines have been interpreted differently along the years.*

## **I. INTRODUCTION**

In this paper, the authors discuss the ***nature of bailment, duties of the bailee*** and more specifically, the paper will focus on one particular duty i.e. ***duty of reasonable care by the bailee***. Various ***case laws*** are examined to understand the ***chronological development*** of these sections. In this chapter ***descriptive and analytical*** research methodology has been applied to critically analyse the concept of the law of bailment. Last but not the least, the paper ends with a set of ***conclusion and suggestions***.

The ***law of bailment*** is a very crucial topic under the law of contract. The term “bailment” is derived from the ***French word “bailler”*** which means ***“to deliver or handover”***. Basically, bailment will be a contract when there are ***two parties***, such as the ***bailor*** and the ***bailee***. The ***person who delivers*** the goods to another person under contract or for some other reasons is

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called the “*Bailor*” and the *person whom the goods are delivered* is called the “*Bailee*”.<sup>2</sup>

Bailment is another type of *special contract*. Since it is a ‘contract’, naturally, all **basic requirements** of contract are applicable. Bailment means act of delivering goods (by the bailor) for a specified purpose (to the bailee). The goods are to be *returned* after the purpose is accomplished or to be *disposed of* according to the directions of bailor.<sup>3</sup> In bailment, *possession* of goods is *transferred*, but property i.e. *ownership* is *not transferred*. Bailment is limited to *tangible goods only* and *does not apply to immovable property* such as freehold land, building, lake, factory building etc.

The delivery of goods should be made for *some purpose*<sup>4</sup> and upon a contract that when the purpose of delivery is fulfilled the goods shall be returned to the bailor or be disposed of accordingly. When a person’s goods go to another *without* any purpose/*without* the intention to *restore* the goods, there is no bailment.<sup>5</sup>

Section 148 of Indian Contract act, 1872 defines Bailment as;

*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”.*

## II. ANALYSIS

### (A) Judicial and legal interpretation of S. 148 & 149

The definition of Bailment has two key terms, possession and ownership. As stated above, in bailment only possession of goods is transferred to the bailee; the ownership of the goods is not transferred to the bailee. As a result, after transferring the possession of the goods still the bailor retains the ownership right. The essence of bailment is the transfer of possession of goods. If possession of goods does not pass to the bailee, there is no bailment.<sup>6</sup>

The bailor still remains as the owner of the goods even after transferring the possession of the goods to the bailee. The difference between sale of goods contract and bailment is that in sale of goods the ownership as well as the possession of the goods are transferred to the buyer but

<sup>2</sup> S. 148, Indian Contract act,1872.

<sup>3</sup> S. 160-161, Indian Contract act,1872.

<sup>4</sup> Ram Gulam v State of U.P.

<sup>5</sup> Secy State v Sheo Singh Rai, (1875-80) 2 all 756.

<sup>6</sup> Ashby v Tolhurst [1937] 2 All ER 837.

in case of bailment the ownership is not transferred to the bailee.<sup>7</sup>

When the Bailor hands over the to the bailee physical possession of goods, it is called “actual delivery”. “Constructive delivery” takes place when there is no change of physical possession but something is done which has the effecting of putting them in the possession of the bailee.<sup>8</sup> Delivery of a railway receipt would amount to delivery of the goods.<sup>9</sup>

#### **(B) Introduction to rights and duties of bailor and bailee**

The contract of Bailment gives certain rights as well as duties to the parties. However, these rights and duties of bailor and bailee in a contract of bailment are not absolute. Therefore, they are clearly defined under the Indian Contract act,1872. Rights of one party forms the Duty of another and vice versa.

#### **Duties of Bailee:**

1. Duty of Reasonable care. (Ss. 151-152)
2. Duty not to make unauthorised use. (S. 154)
3. Duty not to mix. (Ss. 155-157)
4. Duty to return goods. (Ss. 160-161)
5. Duty to return the increase. (S. 163)

#### **Rights of Bailee:**

1. Right to compensation. (S. 164)
2. Right to remuneration. (S. 158)
3. Right to Lien. (Ss. 170-171)
4. Right to Sue. (Ss. 180-181)

As seen above, there are various rights and duties to be performed under the contract of bailment. However, *this paper will focus on Duty of reasonable care by the bailee i.e. S. 151 & 152* and explain the *legal interpretation* and *judicial developments* in a chronological order.

#### **(C) Understanding S. 151 of Indian Contract Act, 1872.**

#### **Duty of reasonable care (Ss. 151-152):**

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<sup>7</sup> Krishnan Arjunan et al, *supra*, at p. 589; See also P.C. Markanda, *The Law of contract: (with special emphasis on law relating to guarantee, agency, bailment, government contracts, general conditions of contract, tenders and blacklisting,* (New Delhi: Wadhwa and Company, 2nd edition, 2008)

<sup>8</sup> S. 149, Indian Contract act,1872.

<sup>9</sup> Morvi Mercantile Bank Ltd v Union of India, AIR 1965 SC 1954: (1965) 3 SCR 254.

S.151 reads as follows;

***"In all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed".***

✓ Uniform standard of care

Section 151 lays down "Uniform standard of care" in cases of bailment. Therefore, even in cases of gratuitous or involuntary bailment, the standard of care and precaution to be taken by the bailee is the same.

However, this stand hasn't always been the same. Initially, under English law, the liability of bailee was absolute.<sup>10</sup> This law had put bailee in a disadvantageous position because there would be no remedy available even if reasonable duty of care was taken to preserve the goods. The first consideration was given to a gratuitous bailee. the court laid down that "if money be given to one to keep generally without consideration and if the person be robbed, he is discharged."<sup>11</sup>

With the advent of time, English law divided bailees into two kinds only, namely, gratuitous bailee and bailee for reward. A gratuitous bailee is liable for loss of, or damage to, goods only if he is guilty of gross negligence. "There is a certain degree of negligence to which everyone attaches great blame", and that may be called "gross negligence."<sup>12</sup>

In a leading English case,

A house belonging to the plaintiff was requisitioned by the War Office. The plaintiff was allowed to store certain articles in a strong-room in the house, which he locked. Of the troops stationed there, who were not kept under proper control, some broke into the room and stole a quantity of silver plates. The War Office was held liable.

The court held that:

*"There was a voluntary bailment of the goods to the defendants in the way of deposit and the stand of care required of them was reasonable care which a man would take of his own property. It is hard to believe that any reasonable man, who had valuable property of his own stored in those circumstances, would leave it to the tender mercies of seventy or eighty displaced persons of that type without taking any precaution. The Ministry was negligent."*<sup>13</sup>

<sup>10</sup> C.V. Davidge, Bailment, (1925) 41 LQR 433, 436.

<sup>11</sup> R. v Viscount Hertford (1681) Shower 172: 39 ER 870.

<sup>12</sup> Thomas Giblin v John Franklin McMullen, (1869) LR2 PC317

<sup>13</sup> Blount v War Office (1953) IWLR 736.

Similar division between Gratuitous and Bailee for reward can be seen under Indian Contract act. However, the difference arises when it comes to duty of care by a gratuitous bailee and a bailee for hire.<sup>14</sup> It is important to understand why the section talks about ***goods of same bulk, quantity and value.*** It is obvious because standard measure of care would differ with change in the quantity and other features of the goods. Under similar circumstances, a man cannot be expected take equal care between 10 kilograms of rice and 70 kilograms of rice.

Section 151 prescribes a uniform standard of care in all cases of bailment, that is, a degree of care which a man of ordinary prudence would take of his own goods of the same type and under similar circumstances. If the care devoted by the bailee falls below this standard, he will be liable for loss of or damage to the goods. This ***standard of care*** is the ***differentiating factor*** between ***the English law and Indian law.***

#### **(D) Understanding S. 152 Of Indian Contract Act, 1872.**

S. 152 reads as follows;

***"The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151."***

Section 152 provides protection for a bailee in all cases of bailment who has taken all the measures which a reasonable man would take, under similar circumstances, of his own goods of same bulk, quantity and value. This is the reason why the section describes the duty of care explained in S. 151 as the bar for reasonable care.

However, there cannot be a set bar of reasonable care in all the cases of bailment. Therefore, it depends on a case to case basis and this argument has also been held up by the courts time to time.

In a leading case, the Court held that:

***"No cast-iron standard can be laid down for the measure of care due from a bailee and the nature and amount of care must vary with the posture of each case."<sup>15</sup>***

Thus, where a part of the food grains stored at a bailee's go down were dam aged by floods unprecedented in the history of the place<sup>16</sup>, where a man hired a wooden shop and it was burnt by mobs during communal riots in the city,<sup>17</sup> the bailee in each case was held not liable

<sup>14</sup> S. 150, Indian Contract act,1872.

<sup>15</sup> Shanti Lal v Tara Chand Madah Gopal, AIR 1933 All 158.

<sup>16</sup> Union of India v Udha Ram & Sons, AIR 1963 SC 422: (1963) 2 SCR 702.

<sup>17</sup> Sunder Lai v Ram Swarup, AIR 1952 All 205.

as the loss was due to events beyond his control.

To what extent can this defence be claimed by the bailee? This section can be misused by the bailee to cover their negligent acts too. Therefore, it is paramount to understand the interpretation of courts with respect to “standard of care” on a case to case basis. Let's understand specific cases where some act or omission will attract liability on the end of bailee.

✓ *Loss by Theft*

It has been a long-standing opinion of courts that where the Bailors goods are stolen from the custody of bailee, he will be liable if there was any negligence on his part. Therefore, in a case where the bailee kept bailors' ornament in a safe and kept the key in a cash-box in the same room. The room was situated on the ground floor and, being locked from outside, was easily accessible to burglars by removing the latch. The ornaments having been stolen, the bailee was held liable.<sup>18</sup>

In the leading case of **UCO Bank v Hem Chandra Sarkar**, the Supreme Court held that:

*"The banker-bailee, gratuitous or for reward, is bound to take the same care of the property entrusted to him as a reasonably prudent person and careful man may fairly be expected to take of his own property of the like description. In fact, a paid bailee must use the greatest possible care and is expected to employ all precautions in respect of the goods deposited with him. If the property is not delivered to the true owner, the banker cannot avoid his liability in conversion."*

In this case, the banker was rendering the service of receiving goods on behalf of its account-holder and to hold them for the purpose of delivering them to the customers of the account-holder against payment. The banker lost the goods and thereby failed to deliver the goods.<sup>19</sup>

✓ *Burden of Proof*

In these situations, the burden of proof lies on the bailee to show that there was reasonable care taken on his end and if he provides evidence before the court that reasonable exercise of care was done, the bailee is absolved of his liability.<sup>20</sup> In this case, the port authority was held liable because they weren't able to show as much care of goods as mentioned under S. 151 of Indian Contract act, 1872.

Applying the explained principles above, where a jewellery box with declared contents was

<sup>18</sup> Rampal Ramchandani Agarwal v Gourishankar Hanuman Prasad, AIR 1952 Nag 8

<sup>19</sup> (1990) 3 SCC 389, 396: AIR 1990 SC 1329.

<sup>20</sup> Kuttappa v State of Kerala, (1988) 2KLT 54.

handed over to a bank under the clause which provided, "The articles in safe custody will be kept in the strong room under joint custody of the manager or an officer duly authorised by the Head Office and the cashier"

it was held that the bank was liable to account for the missing articles of jewellery and became liable because it failed to give any sufficient explanation for the loss.<sup>21</sup>

✓ *Loss due to unauthorised acts of bailee's servant*

It is well established now that Bailee will be liable for any loss or damage to the bailor which arises due to the negligence or lack of reasonable care of the goods bailed. However, an important question that does arise is that whether or not the bailee should be liable when the goods are damaged by his/her servant.

This question was answered by **Mr. Andrew Collins in Cheshire v Collins**<sup>22</sup>;

He said:

*"The bailee is bound to bring reasonable care to the execution of every part of the duty accepted. He may perform that duty by servant or personally, and if he employs servants he is as much responsible for all acts done by them within the scope of their employment."*

The principle laid down in this case was further used to explain the judgment given in **Sanderson v Collins**.<sup>23</sup>

The defendant sent his carriage to the plaintiff for repairs and the latter lent his own carriage to the defendant while the repairs were going on. The defendant's coachman, without his knowledge, took away the carriage for his own purpose and damaged it.

The defendant was held not liable as the coachman at the time when the injury was done to the carriage was not acting within the "course of his employment."

### III. CONCLUSION

In this paper, the author has explained the definition of Bailment as defined under S. 148 of Indian Contract act, 1872. The author also explains **various ingredients** necessary to form a contract of Bailment and **important precedents** surrounding it have also been examined.

As the paper proceeds, the paper specifically focused on Ss. 151 & 152 that forms the duty of reasonable care by the bailee towards the bailor. The paper dwells into the **intricacies** of above-mentioned sections and analyses it along with **judicial precedents** and gives a

<sup>21</sup> Jagdish Chandra Trikha v Punjab National Bank, AIR 1998 Del 266.

<sup>22</sup> (1905) 1 KB 237 (CA).

<sup>23</sup> (1904) 1 KB 628 (CA).

perspective of how the meaning of same lines have been interpreted differently along the years.

After studying the bare act, various articles, reference books and case laws, it can only be concluded that contract of Bailment forms a very ***crucial part*** of India Contact act and its development with the advent of time has been vital since bailment is something people enter into on a day to day basis, ***even without realising*** so. Therefore, the laws should be ***dynamic*** in nature but should also be ***stringent*** at the same time.

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