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Study of Contract of Bailment: Rights and Duties of the Parties Thereto

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ABSTRACT

S.148 of the Indian Contract Act, 1872 deals with the contract of bailment. This paper highlights the various essential of a contract of bailment along with the important precedents related to the same.

Complete elaboration on the rights and duties of the bailor and the bailee is done. In this paper analytical methodology have been applied to critically examine the concept of contract of bailment and the extent of liabilities of the parties thereto. The article thoroughly discusses the issue of whether the bailor or the bailee must take reasonable care of the goods and the liabilities that result from failing to do so. It further talks about the recent development in the laws relating to the contract of bailment.

This paper aims at providing an analysis of the relationship of liabilities and duties that arises between the bailor and the bailee from the contract. It further helps understand and comprehend the intensity of the liabilities of the parties that may arise due to lack of taking reasonable care or negligence. Not only is the Bailee held liable for the lack of taking reasonable care but also the Bailor is emplaced in the same position. This paper aims to elaborately deal with many such rights and duties failure in performance of which the contract may be revoked by the discretion of the aggrieved party.

Keywords: *Bailment, reasonable care, possession, Indian Contracts Act, rights and duties.*

I. INTRODUCTION

This paper mainly throws light upon the nature of contract of bailment and the liabilities and duties of the parties thereto. In this paper analytical and descriptive research methodology has been used for the critical analysis of the contract of bailment. Section 148 of the Indian Contract Act, 1872² 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

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² The Indian Contract Act, 1872, Section 148, No. 9 Act of Parliament, 1872(India)

called the “bailor”. The person to whom they are delivered is called the “bailee”.³

The term bailment is derived from the French word “bailer” which means “to handover or deliver”. Basically, there are two parties to a contract of bailment, namely the bailor and bailee. The person who delivers the good to another party under the contract of bailment for some specific purpose is called the bailor and the person to whom the good are delivered for any performance is the bailee.

Bailment is a type of special contract. It is a contract, so all basic requirements of a contract are applicable for the same. Bailment basically is an act of transfer of goods from the bailor to the bailee for a specific purpose. The goods must be returned to the owner or the bailor after the specific performance or to be disposed of as per the permission of bailor.⁴

In contract of bailment the possession goods can be transferred but the ownership cannot be transferred. Bailment is only applicable for movable goods/ property and not immovable property such as building or land.

The goods delivered shall be made for a specific purpose⁵ and upon the fulfilment of such act or purpose the delivered goods must be returned back to bailor or be disposed of.

(A) Literature review

a. Articles:

- **Andrew Tettenborn, Contract, Bailment and third parties. Again, The Cambridge Law Journal, 1994⁶**
 - Throws light on the rights of the third party and the cause and effect of the a third party intervention.
 - Gives a clear description about the rights and duties that the bailor and the bailee owe to each other.
- **Richard H. Helmholz, Bailment Theories and the liabilities of the bailees: Elusive Uniform Standard of Reasonable care, University of Kanas law review, 1992⁷**
 - Highlights two main assertions about the law of bailment and describes bailment

³ Supra 1

⁴ The Indian Contract Act, 1872, Section 161-162, No. 9 Act of Parliament, 1872(India)

⁵ Ram Gulam v. Govt of Uttar Pradesh, AIR 1950 AII 206

⁶ Andrew Tettenborn, Contract, Bailment and third parties. Again, The Cambridge Law Journal, vol. 53, issue. 3, 1994, pp. 440-43, JSTOR, available at (<https://www.jstor.org/stable/4507977>)

⁷ Richard H. Helmholz, Bailment Theories and the liabilities of the bailees: Elusive Uniform Standard of Reasonable care, ISSN 2582 8878, 1992, University of Kanas law review, available at (https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=8476&context=journal_articles)

as inherently contractual in nature.

- Goes on to define the liability of the bailee on the events on loss of goods from their possession and measure the standard of ordinary care and the allocation of the burden of proof.
- **Avnish Pandey, A review of bailee obligation for lost goods, International Journal of current research, 2021⁸**
 - It mainly talks about the essentials of the contract of bailment and the transfer of possession of goods by the various means of transports. With of help of relevant illustrations and judicial precepts, the concept of bailee's rights have been explained in detail.
- **Raghuveer Meena, A critique of Responsibilities of bailee for lost goods, international journal for legal developments and allied issues, 2015⁹**
 - They have provided the remedies that the bailor can avail in case of breach of any clause or part of the contract.
 - They also provide critique description of the recent developments that has been brought about in some of the provision of the Act.

b. Books:

- **Law of contracts and specific relief, Avatar Singh¹⁰**
 - Throws light on the essentials of a contract of bailment in depth with the various underlying duties and liabilities of the bailor and the bailee, and their rights upon the goods.
 - Describes the extent of ownership and possession of the goods by the bailor and bailee.
- **Treaties on law of Contracts, T.S. Venkatesh Iyer¹¹**
 - Talks about the contract of bailment, its formation and the extent of liabilities of the parties.

⁸ Avnish Pandey, A review of bailee obligation for lost goods, International Journal of current research, vol 13, issue.12, 2021, ISSN: 0975-833X, available at (https://journalcra.com/sites/default/files/issue-pdf/42768_0.pdf)

⁹ Raghuveer Meena, A critique of Responsibilities of bailee for lost goods, vol 1, issue 4, ISSN 10599436, 2015, International journal for legal developments and allied issues, available at (thelawbrigade.com<https://thelawbrigade.com> > ...PDFa critique of responsibilities of bailee for lost goods - The Law Brigade Publishers)

¹⁰ Avatar Singh, Law of contracts and specific relief, 660, 10th ed., eastern book co., ISBN 9839388206044,2010

¹¹ T.S. Venkatesh Iyer, Treaties on law of Contracts, 330, 6th ed., ISBN 9788180388965, 2008

- Further highlights the rights of both the parties with the help of judicial precedents.
 - **Chitty on Contracts, Professor Hugh Beale, Sweet and Maxwell**
 - Recognizes the difference between ownership and possession of goods bailed as a fundamental principle as to why the goods bailed must be returned back.
 - Under the contract of bailment only the possession of the goods is transferred and not the ownership, which basically means that the bailee cannot keep the good even after the expiration of the contract.
 - **Indian Contracts and Specific Relief Acts, Pollock and Mulla¹²**
 - It enumerates the various provisions under the Indian contract Act relating to the contract of bailment. It goes on to explain the limit of liability of the parties with the help of judicial precedents.
 - **Anson's Law of Contracts, Sir William Reynell¹³**
 - It provides a detailed coverage of all the topic under the contract of bailment and highlights the various liabilities of both the parties therein.
 - It however gives only a brief summary of the duties of the bailor and the bailee.
- c. Reports:**
- **The 20th law commission report, the law of hire purchase, June 1961.¹⁴**
 - Defined that a hire-purchase agreement is a form of bailment.
 - It enunciates the rule that a breach of an expressed condition is committed by the hirer providing for the termination of the agreement because of its breach, the owner can then terminate the agreement.
 - Widens the scope of Section 148 of the Indian Contract Act.
 - **The 13th Law commission report, 1958.¹⁵**
 - Taken cognizance in the view of liability of the bailee.
 - Section 151 of the Act was amended, thus reducing the liability of bailee.

¹² Pollock and Mulla: Indian Contracts and Specific Relief Acts, Vol. 2, N.M. Tripathi, ISBN 9780198829973, 1982 (R.G. Padia ed, 13th edn., 2006)

¹³ Anson's Law of Contracts, 189, ISBN 9780198829973, (J. Beatson ed., 29th ed., 2010)

¹⁴ Law commission report no. 20th, the law of hire purchase, June 1961, available at (https://lawcommissionofindia.nic.in/reports/report_no.245.pdf)

¹⁵ Law commission of India no. 13th, 1958, available at (<https://lawcommissionofindia.nic.in/1-50/Report13.pdf>)

- Recommended amendment by adding the word “in the absence of any special contract”.

(B) Statement of problem

Contract of bailment is a contract between the bailor and bailee in which transfer of possession of goods move from the owner of the goods (bailor) to the bailee for specific purpose and a certain period of time. According to the Indian Contracts Act, 1872 both the parties in the entire process are conferred with certain rights, duties and liabilities. The intention of this paper is comprehend the rights and duties of the parties and their liabilities arising from the same. Also to give a clear picture of the instances when the Bailee acts against the will of the Bailor.

(C) Rationale of study

This paper mainly focuses on the rights and duties of the parties against each other under the contract of bailment, these rights are often debated to be beneficial to one party at the cost of the other rather than being used to cover one's losses. Thus the main aim of this paper is to create a clear picture by comprehending these rights and duties to remove ambiguity revolving around the same.

(D) Research Questions

1. Is it a duty of the bailor to disclose faults and duty of care by the bailee?
2. Whether or not can the bailee be held liable even after taking reasonable care?
3. What are the duties of bailor and bailee with respect to returning of goods?
4. What is the condition where the bailee acts against the will of the bailor?
 - a. In case the goods are mixed by the bailee?
 - b. In case when the bailee makes an unauthorized use of the goods bailed?

(E) Research Objectives

- To understand the rights and duties of the bailor and the bailee.
- To interpret the liability of the bailee with respect to taking reasonable care of the goods.
- To determine the liability of the bailor and the bailee with respect to returning of goods.
- To evaluate the recent trends in the law related to bailment.

(F) Research methodology

The methodology used in this paper was Doctrinal, analytical and Comparative research. The primary source of data in this paper was the Indian Contracts Act, 1872, Books, Committee

reports, Judicial Precedents. The secondary sources of data comprise of published books, journals, articles, online journals, research reports and articles from leading firms.

II. MEANING, NATURE AND SCOPE

Bailment necessarily is dealt with the contract Act, as far as it is a kind of contract but there can also be other bailment and there can be relationship between the bailor and bailee in respect of a particular property even in the absence of an enforceable contract.¹⁶ It is not correct to say that there cannot be a contract of bailment in the absence of an enforceable contract, just because the contract of bailment is dealt with the Contracts Act.

The legal relationship of bailee and bailor is created by voluntary possession of any good which belongs to the other party, as in the case of sub bailment or by bailment of finding. A founder of a good is not the bailee and cannot keep the goods in his/her possession, but if he takes it he is then bounded by the same responsibility as that of a bailee.¹⁷ Bailment contract can either be voluntary or involuntary depending on the circumstances.

(A) Essentials of Bailment

To constitute a contract of bailment, the constructive or actual possession of any specific property must be delivered by its owner or bailor, or his/her agent who is authorized or has the authority to bail it in the favor of another person (bailee) so that the bailee must perform such act for which the transfer of actual or constructive possession is necessary, subsequently returning the possession in its altered or original form. The main question here arises is that whether a mere transaction is a bailment or sale is both a question of law as well as a question of fact. So, its nature must be determined by the parties of the contract.¹⁸

a. Specific movable property

In contract of bailment the possession of a specific movable property is given or transferred to a second party. To constitute bailment a change in possession is necessary, from the bailor or the agent to the bailee.¹⁹

b. Delivery of possession

Possession is the main ingredient of bailment it involves transfer of the possession of the goods

¹⁶ *Trustee of port of Bombay v. Premier Automobiles Ltd*, AIR 1981 SC 1982; *Ram Gulam v. Govt of Uttar Pradesh*, AIR 1950 AII 206 at 207 (an assumption that contract of bailment could not arise independently as an enforceable contract); *Oma Prashad v. Secy of State*, (1937) 18 572, 172 IC 567

¹⁷ *Kanya Lal Sain v. Registrar Examination R.H.C*, 2016 (2) RLW 1370

¹⁸ *State of Maharashtra v. Britannia biscuit Co. Ltd.* (1995) 2 Supp SCC 72

¹⁹ *Asaram v. Hyderabad Government*, AIR 1952 HYD 78; *Canara Industrial and Banking Syndicate Bank Ltd. v. V. Romachandra Ganopalhy Prabhu*, AIR 1968 Mys 133

bailed by the bailor to the bailee, which puts the bailee under the obligation and entitles him to take remedies against any third party or even the bailor for that matter²⁰

(B) Rights and Duties of the bailor and the bailee

It is rightly said that “A bailor’s duty is a bailee’s right and a bailee’s duty is bailor’s right”.

a) Bailee’s duty (bailor’s rights)

i. Duty to take responsible care of the bailed goods. (s. 151-152)²¹

Section 151 defines that a bailee is bound to take as much care of the good as any ordinary prudence man, under similar circumstance would. This section also lays down uniform duty of care that is to be taken by the bailee in every type of bailment whether it is a gratuitous or non-gratuitous bailment.

There are a number of cases where the bailee failed to take reasonable care of the goods and then was held liable.

- **Union of India v. Udhoo Ram & sons, 1963²²**

Fact – Certain goods were shipped from Kolkata to Delhi by rail by M/s Radha Ram Sohan Lal. Some items of this cargo stolen in transit were not delivered to the plaintiff, who sued for compensation for the same amount. The court found that when the train left Howrah at 1:30 am, the carriages loaded with goods had been properly riveted and sealed, but that the doors of the carriages had been slammed on arrival at Chandanpur station. It turned out that one seal and rivet had been opened. in two hours. The theft occurred at the halfway point where the car stopped for about 15 minutes until the home signal at 2:05 am. It turned out that a railway security guard was also in the guard's car. It turned out that the railway did not conduct due diligence. First, they do not prove on record that the railway security police escorting trains had sufficient power. Wagons were not monitored when they stopped. Prevents theft of goods. Defendants were therefore held liable.

- **Ultzen v. Nicholas, 1894²³**

Facts- Plaintiff went to eat at Defendant's restaurant. When the plaintiff entered the restaurant, the waiter unsolicitedly took the plaintiff's jacket and hung it on a hook behind the plaintiff. As the plaintiff was leaving, he noticed that the coat was missing.

²⁰ The Indian Contract Act, 1872, Section 180-182, No. 9 Act of Parliament, 1872(India)

²¹ Supra 20

²² Union of India v. Udhoo Ram & sons, 1963, AIR 422 SCR (2) 702

²³ Ultzen v. Nicholas, (1894) 1 Q.B. 92

Held- It turns out that the defendant was the owner of the cloak and therefore responsible for his negligent loss, as the servant was in possession of the cloak.

- **Calcutta credit corporation ltd v. Prince peter of Greece, 1963²⁴**

Fact – A car received for repair from an auto repair shop was damaged in a fire. The garage was a Pucca building surrounded by wooden planks. In the garage, not only cars with gasoline but also combustible materials such as thinner and paint were placed. The garage was separated by wooden walls, part of which could be used for cooking. Fire-fighting measures were inadequate. The room in which the plaintiff's car was located could not be opened for fifteen minutes after he became aware of the fire because the room key did not work.

Held - Defendant failed to exercise due diligence and was held liable. In this case the defendant, i.e. The bailee treated his own property with similar care, or his own property was lost or damaged along with the depositor's property, or the depositor held his property negligently You cannot absolve yourself by claiming that you knew of The court ruled that the bailiff must exercise caution or reasonable care.

Section 152 – As per this section If the bailee has exercised the care referred to in section 151, the bailee is entitled to special Except as otherwise provided by contract, he cannot be held responsible for loss, destruction or deterioration of deposited items.

Instances when the bailee was not held liable due to taking reasonable care of the goods bailed.

- **Atul Mehra v. Bank of Maharashtra (2003)²⁵**

The case was filed by the petitioner on the basis that he had deposited jewellery in the locker of the defendant's bank worth Rs. 4,26,160, which was later allegedly stolen as the his locker including 43 other lockers were broken.

The court in this case held that exclusive possession of any good is sine qua non for bailment. Therefore just the mere hiring of a locker does not constitute to a contract of bailment under Section 148 of the Indian Contract Act. The question of reasonable care only arises if the actual possession of the goods are transferred from the bailor to the bailee. Since the bank was not actually aware of the content in the locker, so it is impossible for the bank to know what were the goods stole. The relationship between the bank and the petitioner was that of a landlord and the hirer and not bailor and bailee. Thus it was held that there was no exclusive possession with the bank hence no compensation could be allowed to the plaintiff.

²⁴ Calcutta credit corporation ltd v. Prince peter of Greece, 1963, CAL 374, 68,CWN 554

²⁵ Atul Mehra v. Bank of Maharashtra AIR (2003) P&H 11

- **Sundar Lal v. Ram Swarup, 1950²⁶**

Under a written agreement a wooden shop was hired and said that the shop will be returned in the same condition. It was said that the hirer would be held liable in case of any loss or damage. During a communal riot, the shop was burnt down by the mob.

The court in this case held that since the destruction did not occur due to the negligence on the part of the bailee. Therefore, he cannot be held liable.

- ii. **Duty not to make unauthorized use of the goods bailed. (section 153-154).**

If the goods are bailed for a specific purpose, the custodian may use them only for that purpose and not for any other purpose. Unauthorized use of deposited goods If so, the depositor has two legal remedies:

- The bailment may be terminated by the bailor:

Section 153 says, if the bailee uses the goods without authorization or not in accordance with the conditions of custody, the custodian has the option of revoking the deposit and recovering the goods. Example: A rented a car for herself from her B. Company B leases a car to Company C for commercial purposes. A can cancel the deposit.

- Due to unauthorized use of goods he may recover compensation for the loss of goods:

Under section 154, if the bailee uses the goods in a manner inconsistent with the terms of custody and damage to the goods occurs as a result of such misuse, the custodian is obligated to indemnify the custodian for such damage. I owe.

Illustration – A he rented a car from B and went to Delhi but went to Mumbai instead. The car was in an accident. A is obliged to compensate B for damages.

- iii. **Duty not to mix bailor's good with his own (S.155-157)**

Section 155- The Bailee may, with the consent of the Bailor, mix the property of the steward with his own property, in which case both parties shall share the mixture made in proportion to their respective proportions. To do.

If the bailor mixes the bailee's Goods with his own Goods without the bailor's consent, there are two possibilities.

Section 156 – Where the goods can be separated.

²⁶ Sunder lal v. Ram Swarup, AIR 1952 ALL 205

When a mixed good is separated, both owners remain according to their shares. The bailee must bear the cost of separating the goods and any damage caused by the commingling.

Section 157 - If the goods cannot be separated.

If the item is of such a nature that it cannot be separated from the bailor's item, the item is considered lost and the bailor may seek compensation for the same.

iv. Duty to return goods upon accomplishment of the purpose (S. 160 & 161)

According to this section, "The duty of the bailee is to return or deliver the goods, in accordance with the instructions of the bailor, to have the period of bailment expired or the purpose of the bailment has been accomplished. It is the unclaimed return and delivery of the purchased goods, which have been stored, expired, and released upon fulfilment of bail."

Article 161- "If the goods have not been returned, delivered or handed over in due time due to the fault of the bailee, the bailee shall be liable from that point on for the loss, destruction or deterioration of the goods." If the bailee is unable to return the deposited goods, for example if they are lost due to the negligence of a servant or another person, the bailee shall be liable for this loss.

v. Duty to return the bailor the profits or any increase on the goods bailed (S. 163)

As per this section in the absence of any contract of contrary the bailee is obligated to deliver to the bailor, or as per his instructions any increase or any profit which may have arisen from the goods bailed.

Example: A leaves the cat in her B's care. The cat gives birth to 5 kittens. B must give the kitten and cat to A.

b) Bailee' rights (Bailor's duty)

The Bailee of the goods has the right to:

i. Right to compensation for necessary costs incurred by the deposit. (S. 158)

Section 158 – In respect of the services provided in connection with them, the controller shall be required to pay a certain security deposit and the controller shall not use it in connection with these goods until the necessary payment has been received. You have the right to withdraw or exercise your right of retention.

For example, A leaves her horse safely with her neighbour, B, for a week. B is entitled to reimbursement for the cost of feeding the horse.

ii. Right to compensation from the bailor. (S.164)

“The bailor shall be liable to the bailee for any loss suffered by the act or as a result of bailor failure to make bailment, collect goods or give instructions thereto.”

iii. Right of lien on the bailed goods. (S.170-171)

A lien is a bailee's right to retain the bailor's goods and refuse to deliver them until consideration or payment has been made. The law allows him two types of liens.

- special lien
- general Lien

A special lien entitles the bailee to hold goods for services for which fees are due. We give you the right to reserve.

iv. Duty to disclose relevant facts. (S.150)

Section 150 of the Indian contracts Act, 1872 highlights the bailor's duty to disclose all the relevant facts and faults in the good bailed under bailment to the bailee. It is necessary that such faults should come to the notice of the bailee, as failure to do so might put the goods bailed at extraordinary risk and might also lead to interference in the usage of the goods. In case where the bailor fails to disclose all the relevant facts of the goods bailed then he would be directly liable to the bailee for any losses incurred by him.

III. RECENT DEVELOPMENTS OF RESPONSIBILITIES OF BAILEE

In **Indian Airlines Ltd. v. Prakrithi Shetty**²⁷, the plaintiff was travelling from Bangalore to Bombay. On the Bombay airport she found that her two bags were missing and not received. After the concerned authorities found her bags, she found that so many articles from her bag is missing. The authorities claimed that nothing was missing. The most significant development in this case was that the case was filed in the District Forum under COPRA and not under the Indian contract Act, 1872 in the civil court. It was later found by the district forum that it was a negligent act on the part of the airlines so the plaintiff was awarded with compensation for the loss of her items. But the airlines did not accept they were negligent and the case is still pending before the state commission. It was established by this case that the aggrieved bailor that is the airlines in this case also file a complaint under the Consumer Protection Act.

²⁷ Indian Airlines Ltd v. Prakrithi Shetty, IV (2007) CPJ 154 NC

Later, in **Surya Pharmaceutical Limited v Air India Limited**²⁸, the appellant M/s Surya Pharmaceuticals Limited, together with the pending legal action and future profits from the defendant Air India Limited, he sued to get his money back. 7 drams out of a total 40 drams shipment of Amoxicillin Compacted BP 98. The shipment was flown by the defendant, Air India, for transport from Delhi to Hong Kong. However, Air India's argument was that the liability of the airline under Section 152 of the Indian Contracts Act was limited to US\$20 for a loss of 1kg.

The court reached a different opinion, holding that a separate agreement limiting a carrier's liability for failure to comply with the provisions of the Air Carriage Act 1972 was void as contrary to public policy. Plaintiff's appeal was granted and damages were paid.

In the case of **Board of Trustees of the Port of Bombay v Union of India and Others**²⁹ the main issue arisen was that is the port liable for the duty on the pilfered goods while in their possession? The court held that as the port's trust is the bailee in this case and the negligence on their part is dealt under Section 151 and 152 of the Contracts Act, they would be liable if anything is lost from their custody.

IV. LEGISLATIVE FRAMEWORK WITH RESPECT TO CONTRACT OF BAILMENT

(A) Indian Contracts Act, 1872³⁰

Section 148- defines the term Bailment as the delivery of goods by one party to the other and the two parties thereto namely the bailor and bailee.

Section 149- defines the delivery of goods by the bailor to the bailee. i.e. delivery of possession.

Section 151- the bailee must take reasonable care of the goods bailed to him from any loss as an ordinary prudent man.

Section 155-157- the bailee's duty not to mix bailor's good with his own

Section 160 &161- Bailee's responsibility to return the goods after the expiration of time of bailment of accomplishment of the purpose of bailment.

Section 170- defines right of particular lien by the bailee.

Section 171- defines right of general lien by the bailee.

²⁸ Surya Pharmaceutical Limited v. Air India Limited, 2008 Indlaw MUM 837

²⁹ Board of Trustees of the port of Bombay v Union of India anad others, 2009 Indlaw MUM 837

³⁰ The Indian Contract Act, 1872, Section 149, No. 9 Act of Parliament, 1872(India)

(B) Committee report:

20th law commission report: Defined that a hire-purchase agreement is a form of bailment.

Widens the scope of section 148 of the Indian Contracts Act.

13th law commission report: Taken cognizance in the view of liability of the bailee.

Recommended amendment by adding the word “in the absence of any special contract”.

V. JUDICIAL PRECEDENT IN 18TH AND 19TH CENTURY**1. Sundar Lal v. Ram Swarup, 1950**

Under a written agreement a wooden shop was hired and said that the shop will be returned in the same condition. It was said that the hirer would be held liable in case of any loss or damage. During a communal riot, the shop was burnt down by the mob.

The court in this case held that since the destruction did not occur due to the negligence on the part of the bailee. Therefore, he cannot be held liable.

2. Calcutta credit corporation ltd v. Prince peter of Greece, 1963

Fact – A car received for repair from an auto repair shop was damaged in a fire. The garage was a Pucca building surrounded by wooden planks. In the garage, not only cars with gasoline but also combustible materials such as thinner and paint were placed. The garage was separated by wooden walls, part of which could be used for cooking. Fire-fighting measures were inadequate. The room in which the plaintiff's car was located could not be opened for fifteen minutes after he became aware of the fire because the room key did not work.

Held - Defendant failed to exercise due diligence and was held liable. In this case the defendant, i.e. The bailee treated his own property with similar care, or his own property was lost or damaged along with the depositor's property, or the depositor held his property negligently You cannot absolve yourself by claiming that you knew of The court ruled that the bailiff must exercise caution or reasonable care.

3. Ultzen v. Nicholas, 1894

Facts- Plaintiff went to eat at Defendant's restaurant. When the plaintiff entered the restaurant, the waiter unsolicited took the plaintiff's jacket and hung it on a hook behind the plaintiff. As the plaintiff was leaving, he noticed that the coat was missing.

Held- It turns out that the defendant was the owner of the cloak and therefore responsible for his negligent loss, as the servant was in possession of the cloak.

4. Union of India v. Udho Ram & sons, 1963

Fact – Certain goods were shipped from Kolkata to Delhi by rail by M/s Radha Ram Sohan Lal. Some items of this cargo stolen in transit were not delivered to the plaintiff, who sued for compensation for the same amount. The court found that when the train left Howrah at 1:30 am, the carriages loaded with goods had been properly riveted and sealed, but that the doors of the carriages had been slammed on arrival at Chandanpur station. It turned out that one seal and rivet had been opened. in two hours. The theft occurred at the halfway point where the car stopped for about 15 minutes until the home signal at 2:05 am. It turned out that a railway security guard was also in the guard's car. It turned out that the railway did not conduct due diligence. First, they do not prove on record that the railway security police escorting trains had sufficient power. Wagons were not monitored when they stopped. Prevents theft of goods. Defendants were therefore held liable.

5. State of Maharastra v. Britannia biscuit Co. Ltd.,1995

Facts: Tin-packaged cookies were produced and sold by the respondents. The assessee (respondents) only sought to be paid for the cost of the biscuits that were sold in Bombay and its surroundings. The respondents requested a refundable deposit for the tins (which was 20% higher than the actual cost of the tin), with the understanding that they would receive their money back if the tins were returned within three months and in excellent shape. In reality, the assessee did not follow through with this and continued to accept tins even three months later. According to its accounting procedures, the assessee regarded 20% of the deposit amount as profit and wrote down 50% of the remaining unrefunded deposits for the assessment year 1967–1968. The Assessing Authority considered this sum as the sale price of unreturned tins and added it to the Assessee's taxable turnover.

The HC ruled that the specific arrangement between the parties must be used to identify the genuine nature of the transaction rather than the way in which accounts are kept or entries are made in the account.

Due to the bailee's obligation to accept returned tins and the purchaser's obligation to do the same, the agreement between the two parties was one of bailment rather than sale.

VI. JUDICIAL VIEW IN 21ST CENTURY

1. Amitabha Dasgupta v. Union Bank of India (2021)³¹

The respondent (the bank) in this case reportedly broke open the locker of the petitioner of the

³¹ Amitabha Dasgupta v. United Bank of India & ORS. (2021) 3966

non-payment of dues without any intimation about the same whatsoever to the complainant. The petitioners claimed to have made the locker charges up to date. Thus as a service provider the bank owes certain responsibilities towards its customers and breaking open of the locker can be a blatant disregard towards those responsibilities. The alleged loss of goods was not a consequence of a force majeure condition or third party intervention but was rather a case of gross negligence on the part of bank itself. So, irrespective of the value of the article placed inside the locker the bank has an obligation to secure and maintain the locker by following proper procedure.

It was held that the bank under no circumstances can wash off their hand and claim to have no liability towards their customers for the lockers. The defendant were asked to pay Rs. 5,00,000 as compensation and an addition Rs. 1,00,000 as litigation expense to the petitioners.

2. Board of Trustees of the Port of Bombay v Union of India and Others(2009)

The main issue arisen was that is the port liable for the duty on the pilfered goods while in their possession? The court held that as the port's trust is the bailee in this case and the negligence on their part is dealt under Section 151 and 152 of the Contracts Act, they would be liable if anything is lost from their custody.

3. Indian Airlines Ltd. v. Prakrithi Shetty (2007)

The plaintiff was travelling from Bangalore to Bombay. On the Bombay airport she noticed that two of her bags were missing and she did not receive them. After the concerned authorities found her bags, she found that so many articles from her bag is missing. The authorities claimed that nothing was missing. The most significant development in this case was that the case was filed in the District Forum under COPRA and not under the Indian contract Act, 1872 in the civil court. It was later found by the district forum that it was a negligent act on the part of the airlines so the plaintiff was awarded with compensation for the loss of her items. But the airlines did not accept they were negligent and the case is still pending before the state commission. It was established by this case that the aggrieved bailor that is the airlines in this case also file a complaint under the Consumer Protection Act.

4. Atul Mehra v. Bank of Maharashtra (2003)

The case was filed by the petitioner on the basis that he had deposited jewellery in the locker of the defendant's bank worth Rs. 4,26,160, which was later allegedly stolen as the his locker including 43 other lockers were broken.

The court in this case held that exclusive possession of any good is sine qua non for bailment.

Therefore just the mere hiring of a locker does not constitute to a contract of bailment under Section 148 of the Indian Contract Act. The question of reasonable care only arises if the actual possession of the goods are transferred from the bailor to the bailee. Since the bank was not actually aware of the content in the locker, so it is impossible for the bank to know what were the goods stole. The relationship between the bank and the petitioner was that of a landlord and the hirer and not bailor and bailee.

VII. CRITICAL ANALYSIS

Delivery of possession is the crux of contract of bailment, without it the contract stands incomplete. The main aspect of liability both on the part of Bailor and the Bailee arises out of the reasonable care, that they take of the goods whilst it is in their respective possessions. It not only attracts liability of Bailee for lack of taking reasonable care of the goods but also he can escape the liability when the actual possession is not transferred to him by the Bailor. The degree of reasonable care is complicated by the tendency of the parties to perform their duties.

In Some of the recent judgements the Supreme Court has held that not only is the Bailee in a vulnerable position in the Contract but also the Bailor has some of his rights at stake, which must not be infringed and be given adequate protection under the law. It as well makes the Bailor immune to such liabilities and provides them the rights to file suit under the Consumer Protection Act. Unless it was the Bailor who was negligent on his/her part. Which not only makes the Bailor immune to unreasonable liabilities he would have otherwise attracted because of the element of Vicarious liability coming into the play but also works to safeguard the general interest of a Bailor.

Thus, amendments in the Contracts Act is required to give either of the party equal, fair, and reasonable rights, regardless of whether either party performs or partially performs their obligations. It would eventually reduce the disputes and the inherent ambiguity revolving around the scope and extent of rights and duties of the parties.

VIII. SUGGESTIONS AND CONCLUSION

It can be very well inferred that the contract of bailment can be rightly enforced if both the party perform their duties as per desired by the contract. When either of the party fails to perform their lawful part rightly it makes them obligated towards the other party. In most instances it is seen that the Bailee is made liable to the Bailor due to his/her inappropriate use or lack of care of the goods. Thus there is a need for right amendments in the law to reduce the liability of the Bailee to a certain extent. So as to reduce the vulnerability of the Bailee's situation in a contract

on instances when they perform their duties adequately. To emplace the Bailor and Bailee with the same level of exposure to the contract.

Laws relating to the rights and duties of the Bailor and Bailee must be put in place so as to avoid the deterrence from the minds of potential parties of a contract of Bailment. Proper amendments to Sec 148 of the Indian Contract Act must also be brought in order to protect the interest of the parties.

The bailor owes the duty to reveal all the relevant facts and faults about the good to the bailee and also reimburse him/her in case of any expenses incurred by them during the safekeeping of goods. The bailee can also claim damages in case of any loss incurred to him during the rightful course of bailment. Likewise, the bailee must ensure the goods are taken reasonable care of and return the goods back to the bailor after the fulfilment of the objective of bailment. We have inferred that a bailee's right is a bailor's duty and a bailor's right is a bailee's duty. Therefore for the contract of bailment to be enforceable both the parties must adhere to the terms of the contract.
