

3. Contract of Bailment

3.1 Meaning and Definition

The term 'Bailment', is derived from a French term 'Bailor' which means "to deliver or handing over". A Bailment is the delivery of goods by a person to another for definite purpose, in the condition that after the purpose is accomplished; the goods have to be returned. Bailment is the change of possession of goods, not a transfer of ownership of goods as in sale. The common illustrations of bailment are hiring of goods, furniture or cycle etc. Delivering of cloth to a tailor for making suit, delivering a car or scooter for repairing and delivery dress to dry cleaner are the example of bailment.

According to Section 25 of Nepal Contract Act, 2056, "a contract relating to bailment shall be deemed to have been concluded in case any person delivers any property to another person on a returnable basis or for handing it over to any other person or selling it as ordered by him."

According to Section 148 of Indian Contract Act, 1872, "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."

If a person gives some property to another person upon a contract that it shall be returned to him or otherwise disposed off or sold out according to the order of the person delivering it, the contract is said to be the contract of bailment. Thus a bailment is a delivery of goods on condition that the recipient shall ultimately restore them to Bailor or dispose of them according to the directions of the Bailor.

3.2 Essential Features or Characteristics of Bailment

3.2.1 Contract

The relationship of Bailor and Bailee is the creation of a contract. In other words, the bailment is based on contract between the Bailor and Bailee. There must be written document if delivery of goods is worth more than five thousands rupees in accordance with the Section 25 of Nepal Contract Act, 2056.

3.2.2 Delivery of Moveable Goods

Firstly, for the valid contract of bailment, the property must be moveable. Money is not movable goods but it signifies the goods, which is moveable like, car, timber, horse. Delivery of goods involves a change of possession of goods from one person to another, but not a change of ownership of the goods. Delivery of goods is needed to be a valid contract of bailment.

- a. Actual delivery: Handover of goods to Bailee is an actual delivery.
- b. Constructive Delivery: Secondary things handover to Bailee is the constructive delivery. e.g Receipt of purchasing or Key of Car

3.2.3 Delivery for Some Special Purpose

Delivery of goods must be made for some specific purpose. e.g repair, security, making something. When the goods are delivered by mistake without any purpose, there is no bailment.

3.2.4 Non-transfer of Ownership

Under the contract of bailment, the ownership of goods is not transferred, only the possession of goods is transferred from a Bailor to Bailee. The ownership of goods remains with Bailor.

3.2.5 Return or Dispose of Goods

The goods are to be return either in their original form or in an altered form or disposed in accordance with the directions of the Bailor.

3.3 Rights and duties of Bailor and Bailee

3.3.1 Rights of Bailor

The duties of Bailee are the rights of the Bailor. The following are the rights of the Bailor and reciprocate duties of the Bailee.

1.1.1 3.3.1.1 Enforcement of Bailee's duties:

The duties of Bailee are the rights of Bailor. The Bailor can enforce by suit all the duties of the Bailee as his right. And the Bailee has to fulfill the rights of Bailor as his duty. These are as follows;

- Right to claim damages for loss caused to the goods bailed by Bailee's negligence. (Section 28.2)
- Right to claim compensation for any damage arising from or during unauthorized use of goods. (Section 28.3)
- Right to claim compensation for any loss caused by unauthorized mixing of bailed goods with his own goods. (Section 28.6)
- Rights to demand return of goods in the prescribed time. (Section 29.1)
- Right to claim any natural increment to the bailed goods (Section 29.4)

1.1.2 3.3.1.2 Right to termination a contract of bailment:

The Bailor has right to terminate the contract of bailment before the prescribed time in the following circumstances. (Section 34)

- If the objectives of the contract can not be fulfilled.
- If the contract has an illegal object.
- If the Bailee breaches the terms of the contract.
- If the contract has a fraudulent object.

3.3.2 Duties of Bailor

The following are the liabilities and duties of Bailor. (Section 27 of Nepal Contract Act, 2056)

1.1.3 3.3.2.1 Duty to disclose known defects of goods:

The Bailor has duty to disclose the known defects of goods bailed to the Bailee. Known measures necessary for the safe custody should be disclosed otherwise the Bailor will be responsible for the loss caused by the defects of the bailed goods.

3.3.2.2 Duty to repay necessary expenses:

The Bailor is responsible to bear or reimburse the extraordinary expenses of goods .e.g. medical treatment of the sick animal.

1.1.4 3.3.2.3 Duty to indemnify bailee:

For any loss suffered by the Bailee, by reason of the fact the Bailor was not entitled to bailed goods because of the defective title, in such case the Bailor has duty to indemnify the Bailee for this loss.

1.1.5 3.3.2.4 Duty to receive back the goods:

It is the duty of the Bailor to receive back the goods when the Bailee returns them after the time of expiration of bailment or the purpose of bailment has been accomplished.

3.4 Rights and duties of Bailee

A Bailee is a person to whom the goods are delivered for specific purpose or for specific period of time. During the period he has actual possession over the goods bailed, being a Bailee, he has some rights against his Bailor and he is bound some duties towards the Bailor. The rights and duties of Bailee are given below:

3.4.1 Rights of Bailee

1.1.6 3.4.1.1 Enforcement of bailor's duties:

The duties of the Bailor are rights of Bailee. And the Bailor has to fulfill the rights of Bailee as his duty these are as follows.

- (a) Right to claim damages for loss arising from the undisclosed faults in the bailed goods. (Section 27.2)
- (b) Right to claim reimbursement for extra-ordinary expenses incurred in the bailed goods. (Section 33)
- (c) Right to indemnity for any loss suffered by him by reason of defective title of the Bailor to the bailed goods. (Section 27.3)
- (d) Right to claim compensation for expenses incurred for the safe custody of the goods if the Bailor has wrongfully refused to take delivery of them after the term of bailment is over. (Section 29.1.2)

1.1.7 3.4.1.2 Rights to deliver goods to one of several joint Bailor. (Section 29.3 of NCA, 2056)

If there are several bailor, bailee can deliver goods to one of several joint bailor.

1.1.8 3.4.1.3 Right to lien:

The right to possession of the property or goods belonging to another until some debt of claim is paid is called the right of lien. The Bailee may enjoy the right of special lien to the bailed goods.

1.1.9 3.4.1.4 Right to deliver goods in good faith to the untitled Bailor:

The Bailee may deliver the bailed goods to his Bailor, he should not be responsible to the real owner of the goods.

1.1.10 3.4.1.5 Right of general lien:

A Bailee can keep any kind of goods of the same Bailor in his possession until the full payment of necessary charges.

3.4.2 Duties of Bailee

The Bailee is the person to whom the goods are delivered. The duties of the Bailee are as follows:

1.1.11 3.4.2.1 Duty to take reasonable care of goods delivered to him:

The Bailee must take reasonable care of goods as like his own goods in similar circumstance. If in spite of reasonable care, the goods are lost or destroyed without any negligence on his part, the Bailee is not liable in respect of any damage of the goods. He is liable to make an effort to recover the goods in case of stolen.

1.1.12 3.4.2.2 Duty not to make unauthorized use of goods of bailment:

It is the duty of Bailee to use the goods with the terms of the bailment. If he makes an unauthorized use of the bailed goods he is liable to make compensation to the Bailor for any damages arising to the goods from or during such use of them.

1.1.13 3.4.2.3 Duty not to mix bailed goods with his own goods:

It is also the duty of Bailee that he should not mix his own goods with those of the Bailor, without Bailors' consent. Otherwise, he is liable for compensation.

1.1.14 3.4.2.4 Duty to return the goods:

"It is the duty of Bailee to return or deliver, according to Bailors' directions the goods bailed, without demand, as soon as the time for which they were bailed or has expired or purpose for which they were bailed has been accomplished." In case of joint bailers, the Bailee may return the goods to any one of the joint owners.

1.1.15 3.4.2.5 Duty to deliver any accretion (increment) to the goods:

It is the duty of the Bailee to deliver to the Bailor any natural increase or profit from the bailed goods. Example, cow give birth to calf then bailee has to return the calf also.

1.1.16 3.4.2.6 Duty not to set up adverse title:

The Bailee has duty not to set up adverse title in the goods of bailment. As a rule the bailee is stopped from denying bailor's title or setting up against the bailor his own title or right of a third party. He must inform the bailor of the third party's claim. Example, 'A' obtain some goods from 'B' by unfair means then give the goods on bailment to 'C'.

3.5 Termination of Bailment

Termination of bailment means the bailment comes to end and the legal relationship of the parties is no longer remain. There are various circumstances under which the contract of bailment is terminated. Nepal Contract Act, 2056 has also laid down some legal provisions in respect of the termination of bailment. A contract of the bailment is terminated as follows:

- On the expiry of specific time period.
- On the accomplishment of specific purpose.
- Inconsistent act with the term.
- On the death of the party of the bailment.
- On the destruction of subject matter of the contract of the bailment.
- On the void condition of the contract.
- A gratuitous (Without price) bailment: It can be terminated by the Bailor at any time.

3.6 Finder of Lost Goods

The term finder of lost goods means a person who has found goods not belonging to him and keeps them with him. Although the Nepal Contract Act, 2056 has not defined the term finder of lost goods but under section 11.d of Nepal Contract Act, 2956 has made the provisions relating to the responsibilities of the finder of lost goods as same as the Bailee. According to this provisions when any person keeps any property of another person he has to keep it as bailment. According to the section 71 of Indian Contract Act, 1872; A person who finds goods belonging to another person and takes them in to his custody, he is subject to the same responsibility as Bailee. According to these statutory provisions, the person who finds the lost goods, is treated as equivalent as to Bailee. Example, 'A' finds a watch belonging to somebody he is finder of goods. He is bound to take the watch with him safely until the owner is find out.

3.6.1 Rights and duty of finder of lost goods:

Although the person, who finds goods, has no direct contract to the owner of the lost goods but he has some rights implied by the law. They are as follows:

1.1.17 3.6.1.1 Right to retain possession of the goods until the true owner is found:

A finder of lost goods has the right to possession of the goods against the whole world, except the true owner. But the finder never becomes the owner of the goods. The ownership will always remain with the true owner, and the finder only enjoys the rights to (retain) possession of the goods,

1.1.18 3.6.1.2 Right to lien over the goods for expenses:

A finder has right to retain the goods against the true owner until he receives reasonable compensation and expense incurred by him to preserve the goods and to find out true owner.

1.1.19 3.6.1.3 Right to sue for reward:

The finder can file the suit against the true owner to recover any reward, which was offered by the true owner for the return of lost goods, provided he came to know of the offer before actually finding out the goods. He may also retain the goods until he receives the reward.

1.1.20 3.6.1.4 Right to sale:

If true owner cannot be found or if he refuses upon demand to pay lawful charges of finder, the finder may sales the goods in the following conditions:

- When the owner refused to pay the expenses incurred by him.
- When the things is in danger nature or of losing the greater part of its value.
- When the lawful charges of the finder in respect of things found amount of two third of its value.
- The true owner however is entitled to get the balance of sale proceeds, if there is a surplus left after meeting the lawful charges of the finder.

3.6.2 Duties of the Finder of Lost Goods

The finder of lost goods has some duties implied by the law. They are as follows:

1.1.21 3.6.2.1 Duty to take reasonable care of the goods as Bailee:

The finder of the lost goods has duty to take reasonable care of the goods as Bailee because he has physically possessed the goods found, under this his duties are as follows:

- a. To take necessary care of the goods
- b. Not to use for personal purpose and
- c. Not to mix with his own goods.
- d. To retain the goods to the real owner after receiving the necessary expenses.

1.1.22 3.6.2.2 Duty to find out true owner:

It is duty of the finder to make efforts to find the true owner of the goods, if the finder of lost goods fails in his duty he should inform the police about it.

3.7 Pledge or Pawn

3.7.1 Meaning and Definition

The Pledge is also a kind of special contract and a part of bailment. The bailment of goods as security for payment of a debt is called pledge. It is a transfer or bailment of goods as a security for the payment of debt or performance of the promise. Loan transaction is very familiar in business operation. Pledge or pawn provides security for repayment of such loan. The goods deposited as security to repay the debt or to perform the promise is known as pledge. The term pawn is synonymous to the term pledge. e.g. 'A' takes Rs. 20 thousands from 'B' and keeps his golden chain as security for payment of debt. The bailment of chain is Pledge. 'A' is Pledger and 'B' is Pledgee.

A contract by which a person received some property from another as security for granting a loan or as guarantee for performing a job is known as pledge or pawn. The contract by which the possession of goods is transferred as a security is known as a pledge. In this case the person who gives goods as security is called the Pledger or Pawner and the person who receives the goods as security is called the Pledgee or Pawnee.

According to Section 172 of the Indian Contract Act, 1872; the bailment of goods as security for payment of debt or performance of promise is called pledge or pawn. The Bailor in this case is called the Pledger or Pawner and the Bailee is called the Pledgee or Pawnee.

Similarly according to Section 35.1 of Nepal Contract Act, 2056 defined that; *if there is a delivery of a property from one person to another for security of debt or for the guarantee of the performance of any promise there is a contract of pledge. In Nepalese context pledge is also called mortgages.*

Thus a pledge is only special kind of bailment contract. A pledge also involves only a transaction of possession of goods pledged. The ownership of such goods remains with the Pledger.

3.7.2 Different between Bailment and Pledge

Bailment	Pledge
1. Its scope is wider than pledge.	1. Its scope is limited. It is a branch of bailment.
2. Goods are bailed for carrying out specific purpose, repair or safe custody etc.	2. Goods are pledged as a security of debt or performance of promise.
3. Bailee may be used the goods bailed as per the terms of the contract.	3. Pledgee has no right to use the goods, but he can use if the Pledger allows to do so.
4. The Bailee has no right to sell the goods bailed but he can either, sue the Bailor of retain the goods until payment of his due.	4. The Pledgee has right to sell the goods pledged on default after giving notice to the Pledger.
5. There is no need of the guarantee in the contract of bailment.	5. A guarantee of goods is necessary for the purpose of security for the payment of debt in pledge.

6. There is no loan transaction exist under it.	6. Loan transaction may exist under it.
7. Goods must be moveable in bailment.	7. The goods may be moveable or immovable but must be long lasting.
8. Consideration may or may not be in bailment.	8. Consideration is necessary in the pledge.

3.7.2 Essential elements of Pledge

The essential elements of pledge are as below:

1.1.23 3.7.2.1 Delivery of goods:

As in a bailment, the goods should be delivered from the Pledger to the pledgee, which may be either actual or constructive.

1.1.24 3.7.2.2 Delivery for Security:

Such delivery of goods should be made by way of security for payment of debt or performance of promise.

1.1.25 3.7.2.3 Lawful purpose:

The delivery of goods for a security purpose should be lawful. Otherwise it is not valid pledge.

1.1.26 3.7.2.4 Return of goods:

The pledged goods must be returned after the purpose is achieved.

1.1.27 3.7.2.5 The goods must be (durable) long lasting:

The pledged goods must be durable.

3.8 Right and duties of Pawner and Pawnee

3.8.1 Rights of Pawner

The rights of Pawner are as follows:

1.1.28 3.8.1.1 Enforcement of Pawnee's duties:

The duties of the Pawnee are the rights of the Pawner. Therefore, partner enforces by suit all the duties of the Pawnee as his rights.

1.1.29 3.8.1.2 Right to get back the goods pledged:

A Pawner has right to return the goods after the fulfillment of duties or fulfillment of his obligation as per the contract of pledge.

1.1.30 3.8.1.3 Right to receive notice before sale of pledged goods:

A Pawner, who defaults in payment of the debt amount the partner, has right to receive the notice before sale of goods of pledge.

1.1.31 3.8.1.4 To receive the goods with accretion:

The Pawner has right to receive the goods with accretion. Example, 'A' leaves a cow as a security to debt of 'B' the cow gave birth a calf, 'B' is bound to delivery the cow as well as to 'A'.

3.8.2 Duties of Pawner

The duties of Pawner are as below;

- To compensate the extra-ordinary expenses incurred for necessary care of the goods pledged.
- To pay of the dues, if it is inadequate by the sale of the goods pledged.
- To disclose the facts of defect and goodness of the goods pledged.
- To meet his obligation on stipulated time, date and complies with the terms of contract.

3.8.3 Rights of Pawnee

The followings are the rights of the Pawnee:

1.1.32 3.8.3.1 Right to retain continuous possession:

A Pawnee has right to retain the continuous possession over the goods pledged until he is received his dues. He has the right to detain the goods not only the payment of debt or performance of promise, but for the interest due to the debt and all other necessary expenses incurred by him in respect of the possession or for preservation of the goods pledged. Thus, this right may be termed as the Pawnees' right of particular lien.

1.1.33 3.8.3.2 Right to extra-ordinary expenses:

The Pawnee has also right to be recovered from the Pawner extra-ordinary expenses incurred by him for the protection of goods pledged. He has right to sue the Pawner for recovery of such extra ordinary expenses.

1.1.34 3.8.3.3 Right to sell the goods on default of the Pawner:

Where a Pawner makes defaults in the payment of the debt or performance of promise, the Pawnee may exercise either of the following rights:

- To sue the Pawner for nonperformance of the contract.
- To sell the goods after giving notice to the Pawner.
- To recover the debt from the Pawner if it is inadequate for the full claim but the surplus amount should be returned to the Pawner if any.
- To retain the goods as collateral security after the snit.

1.1.35 3.8.3.4 Right of retainer for subsequent advances:

When the Pawnee lends money to the same debtor after the debt of pledge without any further security, it shall be presumed that the right of retainer over the pledged goods extends even to subsequent advantage.

3.8.4 Duties of Pawnee

The duties of the Pawnee are similar to Bailee, however following are the duties of the Pawnee:

- To take reasonable care of the goods pledged
- Not to make any unauthorized use of the goods pledged.
- Not to mix the goods pledged with his own goods.
- Not to do any act in violation of the terms of the contract of pledge and of the provisions of contract Act.
- To return the goods pledged on the receipt of his full dues or fulfillment of promise of the Pawner.
- To deliver any accretion to the goods pledged to the Pawner. e.g. Bonus share.
- He should not sell the goods pledged without a reasonable notice to the pawner.

3.9 Pledged by Non-owner

The owner of the goods can always make a valid pledge but in the following cases pledge made by the non owner is also valid. (Section 38 of Nepal Contract Act, 2056 and Section 178, 179 of Indian Contract Act, 1872.)

3.9.1 Pledge by mercantile agent

Mercantile agent can keep some goods on pledge, on the consent of his principal. It can be valid if it was made on good faith even if he is not the owner of the goods pledged. According to the Section 178 of Indian Contract Act, 1872; Pledge by a mercantile agent, who is not authorized by the owner of goods, will be valid if it was made on the ground of the good faith. e.g. Railway receipt or bill lading can make a valid pledge of the goods while acting in the ordinary course of business.

3.9.2 Pledge by person in possession under voidable contract

A pledge may be made by a person who has obtained some goods under the voidable contract. It can be a valid pledge if:

- The Pawnee acts in good faith and he has no notice about the defective title of the Pawner.
- The contract is not made void before the contract of pledge.

3.9.3 Pledged by person having limited interest and right [Section 38 (3) of NCA]

When, Pledger has a limited right or interest, the pledge will be valid only to the extent of his rights over the goods. Example, 'A' delivers a suit to 'B' the tailor master for making a suit and agrees to pay Rs. 1,500/- as sewing charges. 'B' pledges the suit with for Rs. 3,000/-. The pledge is valid to the extent of 'B's interest in the suit, namely, Rs. 1,500/- (sewing charges). 'A' can, therefore, recover the suit only on paying Rs. 1,500/- to 'C', the pledge.

3.9.4 Pledge by buyer in possession of goods under an agreement to sale

When a buyer has got possession of goods under a contract of sale or even before payment he can make a valid pledged; which should be acted on the ground of good faith.

3.9.5 Pledge by co-owner in possession

Where there are several joint owners of goods, one of the co-owner may be sole possession with the consent of other co-owner may make a valid pledge of the goods.

3.9.6 Pledge by the same seller after sale

If a pledge is made in good faith by the same seller in possession after the sale it will be valid.

Questions

1. State and explain the important provision of "Naso Dharot" in Nepal. [10]
2056
2. Who is a finder of lost goods? Briefly explain the rights and duties of the finder of lost goods. [4+6]
2056
3. Explain any four cases where a non-owner can give the transfer a valid title to the goods. [10]
2056
4. What is meant by pledge? What are the essentials of a valid pledge? [4+6]
2057
5. What is a "holder"? Is there any difference between a holder and a holder in due course? [4+6]
2058
6. Who is a bailor? What are his rights? [4+6]
2058
7. Who is a bailee? Write down the duties of a bailee. [4+6]
2059
8. Write down the various provisions of Nasho Dharaut in Nepal. [10]
2060
9. Write about the rules relating of Nasho Dharaut in Nepal. [10]
2061
10. Define contractual capacity. Explain the rules regarding minor's agreements. [3+7]
2062
11. When does a non-owner of goods can transfer a valid ownership to the buyer? [10]
2064
12. What a pledge of goods made by a person who is not the real owner is valid and blinding. Explain and illustrate. [10]
2065
13. Who is bailee? Explain the duties of bailee. [3+7]
2066
14. What is contract of bailment? Explain the rights and duties of finder of lost goods. [3+7]
2067
15. What is pledge? Explain the legal effect of pledge by a non-owner. [3+7]
2068

1.1.36 Comprehensive Answer Questions

1. Any lawful contract creates the legal relationship and there upon rights and duties between the contracting parties. In view of the given statement discuss the rights and duties of bailee under a contract of bailment. [10+10]
2061

2. Define pledge. Discuss the rights and duties of pawner and pawnee. [5+15]
2063
3. Who is the considered as the finder of lost goods? Explain the rights and duties of finder of lost goods.[3+7]
2068

