

Advanced Contracts, Tendering and Public Procurement
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Lecture No: 29
Special Contracts: Bailment – Part 01

Let us move on to understanding special contracts. These are contracts that are specifically defined under the Indian Contract Act 1872. They are special for the simple reason that they are categorized as kinds or types of contracts, and the Indian Contract Act 1872 in Part 2 talks about contracts such as bailment, pledge, indemnity, guarantee, and agency.

And these are in terms of the fact that the statute defines who the parties to these contracts are. The statute also talks about the rights and obligations between the parties and in some cases, certain special rights and obligations are also defined in this chapter. You will notice that time and again in the modern context when certain kinds of contracts are made, the principles of these special contracts as stated in 1872 are applied.

I can give you one instance or example. For example, in India there is no law on joint ventures, and hence very often than not when joint venture contracts are being made. The question of whether the partners in a joint venture are agents of each other and will the principle of agency will apply in such circumstances. Take another instance of franchise contract.

Again, you will notice there is no law governing franchise contracts. These are modern contemporary styles of contracting, outsourcing sometimes. So, different contracts are made from time to time, and the Indian Contract Act has not been amended or there are too many special laws on contracts that have defined various obligations. Some of these contracts may fit into the old schemes of things or they may just look at a normal contractual relationship upon which we have spoken so far.

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Bailment



- **Definition of Bailment**

- Section 148 of the Indian Contract Act lays down the definition of bailment as a contractual agreement of delivery of possession of goods by one person to another for some cause.
- Bailment can be of chattel of goods, or it could be of money under special circumstances.

- **Mode of Delivery of goods to the bailee**

- Delivery to the bailee can be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or any person authorized to hold them on his behalf.

- **Is the delivery actual or constructive (also referred to as attornment)?**

- In constructive delivery, goods are in possession of the seller unless the actual delivery is made. For e.g. A railway receipt

- **Gratuitous bailment**

- This is a non-contractual type of bailment where the possession of the property is transferred by the bailor to the bailee on the condition that no compensation is to be paid.
- In *Maffatt v Bateman [(1869)3 PC 115]* the defendant took the plaintiff in his carriage gratuitously, without proper examination of the bolts and during the journey, and buckling up the speed of the carriage led to an accident.
- The court held that he is not liable for negligence since he had no knowledge of the defect of the bolts.



So, let us understand the first type of contract called bailment. This is defined under Section 148 of the Indian Contract Act. Bailment is a very important type of contract for the simple reason that if you look at carriage, you would have a carrier of goods by air, sea, and road. All these carriages carry goods and they are covered under a contract of bailment.

Carriage by road includes a truck that is carrying goods or it could include the Indian railways as well which are recognized that it is obligated under the contract of bailment though there is a specific statute called the Railway Act which defines the obligation between the railways and its customers. Now, in a contract of bailment, what is important is that there is the delivery of goods from one person to another, that is, from the 'bailor' who is supposed to be the owner of the goods to the 'bailee' who is supposed to take these goods for certain purposes.

Now those purposes could be transportation, it could be for redesigning or refurbishing goods, for example, one of the ordinary examples of bailment is giving your automobile or car for services. You give it for a temporary purpose and on the completion of that purpose the goods are to be returned. So, this is a typical case of bailment where temporary possession is handed over.

And once the purpose is accomplished it should be given back. Interestingly, safe keeping of goods such as keeping goods in a warehouse or a cloakroom is also a contract of bailment. So, we enter many of these contracts on a day-to-day basis where our goods are kept with

someone else and he deals with the goods, and after payment for such goods, he returns it all of these will be covered under the contract of bailment.

And you may notice that in a contract of bailment, it is only movable property that can be the subject matter of bailment and when you talk about movable property, it implies goods per se because that is how section 148 deals with goods. What constitutes 'goods' is also an interesting characteristic that we must understand in these circumstances because if you talk about goods, the definition of goods is not provided under contract law and hence we must refer to the definition of goods under the Sale of Goods Act of 1930. Now, Section 2 Sub Clause 7 of the Sale of Goods Act defines goods, and these kinds of goods could mean and include cattle, crops, water, and other things which are movable property, but it does not include cash.

So, there is a distinction between money and cash sometimes, and hence, when you deposit cash in a bank for safety purposes, you want the bank to take care of it. Unfortunately, cash cannot be considered as bailment. Further, when you deposit cash, the kind of numbers on the notes that you deposit and the return that you get back are not the same number on the notes.

So, you get the money that you have deposited, but it is not the same notes. So, in bailment what you have given, mostly the same goods along with increment is going to be returned. So, cash in a bank is not considered bailment. However, an interesting question with bailment is about a cloakroom or a locker facility in a bank. Now, a locker facility in a bank is a contract that we often consider as a contract in which there is some kind of responsibility of a banker.

But here, the contents of the locker are not delivered to the bank. The contents of the locker are something that you keep on your own, though you are given the facility of the locker. So, sometimes bailment is very close to something called hire. Now, we must understand that as a customer you had hired the service of the bankers' locker, but it is not bailment because there is no delivery.

See, delivery can be of a couple of factors. One, we can say it is actual delivery where physically the goods are handed over or second it can be constructive delivery as well. Constructive delivery is when you deliver the goods with the title of the goods. You do not have to give the physical possession. You can give control of the goods. For instance, it is like giving the key to a warehouse. This is constructive bailment.

And then there is delivery for attornment. Now, attornment means where someone else is already in possession of the goods, and from there, you start bailment. So, someone who is already in possession is then asked to continue the possession under a contract of bailment and that would become delivery by attornment. So, if we magnify the contract of bailment into several circumstances, you may notice that aircraft also must be serviced so they are also under the contract of bailment. Ships may also have to be serviced so they are also contract of bailment. So, these are various facets of bailment and the contract of bailment comes into existence, and how the provisions of the India Contract will apply in defining the relationship between the bailor who is the owner of the goods to the bailee to whom the goods have been delivered temporarily.

Now, one of the interesting facets of special contracts is there could be special conditions to these contracts. Now, the general rule is that without any consideration there would not be a contract. However, in a special contract there can be an exception to the same rule and what are these exceptions? The exceptions are in the contract of bailment because we say the contract law is based on the law of obligation and not necessarily just based on consideration. There is this introduction of provisions of the law on what we call 'gratuitous bailment.' Gratuitous bailment means it is not a bailment forever. It is not a bailment for consideration. It is some kind of bailment between two parties out of say friendship, love, and relationship out of any other persistent kind of relationship that is of a neighbor or family member.

Here, the goods are handed over to you without any expectation of compensation and you will notice that because there is no expectation of compensation in such cases, it is gratuitous in nature. Gratuitous means it is out of charity, it is out of gratitude, it is about not expecting any reward, it is not some kind of professional service, it is out of consideration of love and affection that such contract of bailment comes into existence.

One of the classic illustrations that I can share with you is that let us assume that you are my neighbor and you want to borrow my car to go and pick up your mother from the railway station or the airport. Now, in these circumstances, if I lend my car to you to go and pick up your mother I am not doing so as a professional car lending agency. Now professional car lending agency can also give you the car, but that is a contract of bailment for reward and not gratuitous.

Like you have Hertz rental car or Zoom rental car or Drivezy. So, these are professional rental cars in which you are the bailee where you come to the car owner and you want the car to be delivered. So, you pick up the car and you take the car for a particular purpose, say to fulfill a journey, and then after fulfilling the journey you come and return the car. So, this is how you could enter a contract of bailment with a professional car rental service.

At the same time, you should also know the difference that valet parking is a contract of bailment because you are handing over the possession of the car and the keys are granted to valet parking, but if you are parking in a place like a mall or a designated place in a hotel or a parking area it is not bailment because you have not handed over the possession of the car it is only just a license to park.

So, these are certain things that we must clearly understand. However, a gratuitous bailment is where two neighbors are sharing the car for a particular purpose. Now the interesting difference is that here, I am not expecting any direct reward. I do not have any conditions of saying this is how much you should be looking. No such conditions are mentioned and I hand over this car to you to go and pick up your mother from the railway station or airport.

Now, if I lend this car to you, the contract law stipulates that this is a gratuitous bailment, this is not for any reward and it is not for any consideration and it also says that you who have borrowed this car will have to take care of the car as if the car is your own. So, there is a duty, there is an obligation cast upon you because this is a contract of bailment and bailment can be beyond just the reward and consideration.

And hence if you fail to take care of the car if you fail to take care of the goods, then you could be held liable for a breach of the contract of bailment. So, gratuitous bailment or implied bailment, and voluntary bailment are also bailments for which the Indian Contract Law recognizes those obligations and makes the other party entitled to get a remedy as well. So, how do you define the aspect of taking care of the goods?

You will notice that you must take care of the goods as if the goods were your own it is important that if you while driving this car were negligent and if I can prove the same then I can hold you responsible or accountable as well. Secondly, please note in gratuitous bailment we also say that as the owner of the car, I am also duty bound to lend that car which is safe for your purpose.

Just because it is gratuitous, I cannot put your life at risk. So, I must know whether the car is responsible for the journey and whether it has any trial defects. So, I also have a duty to disclose the faults in the goods and you have the duty not to be negligent in taking a car and getting it back as well. So, a gratuitous bailment is the most interesting aspect of the contract of bailment because it places a contract beyond just consideration in reward.

And it makes these contracts enforceable by law even if no consideration is forthcoming between the parties.

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- **Gratuitous Bailment (Sec. 158, 159, 162)**

- This is a non-contractual type of bailment where the possession of the property is transferred by the bailor to the bailee on the condition that no compensation is to be paid.
- It is one without any stipulation for reward, such as bailment can be terminated at anytime, even though originally made for a fixed time or for a specific purpose.
- The gratuitous bailment terminates by the death of the bailee or the bailor.
- In *Moffatt v Batemen [(1869)3 PC 115]* the defendant took the plaintiff in his carriage gratuitously, without proper examination of the bolts and during the journey, and buckling up the speed of the carriage led to an accident.
- The court held that he is not liable for negligence since he had no knowledge of the defect of the bolts.

- **Bailment for the money advance, pledge**

- Keeping gold with bank/money lender to obtain the loan.

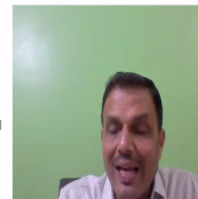
- **Bailment for reward**

- When a member of a tenant's family deposits baggage with the landlord, the bailment is for reward.

- **Bailment for hire of goods or services or carriage etc.**

- **Bailment of pledges**

- A special kind of bailment where the delivery of goods is for the purpose of security for payment of a debt or performance of a promise.



In this case of *Moffatt versus Batemen* a carriage was given gratuitously and when it was given unfortunately it was not examined while this carriage was lent gratuitously. During the journey unfortunately the carriage met with an accident because the bolts of the carriage in 1869 so transportation by carriage was the only means, and this led to of course some kind of an injury to the person who had borrowed the carriage.

Now, interestingly what the law says is that the bailor either in a contract of bailment for reward that is with consideration or in gratuitous bailment the bailor should have a responsibility to disclose the faults in the goods. This is the obligation; this is the duty that is cast on the bailor. Now, why is this duty cast if you are handing your goods to say your service station engineer and this is your car, naturally you are duty bound to hand over these goods or transport the possessions of the goods it is for your purpose finally he has to send and give it back to you, but you have the duty and obligation to ensure that why he is using that car while he is using the goods it does not cost any injury to either him or his property.

So, this is what the contract law states, that you are duty bound to disclose the faults in the goods.

However, the difference is whether you knew the faults and if you know the faults did you decide not to disclose them? You will notice that in gratuitous bailment and bailment for reward, the distinction is that in gratuitous bailment you must disclose the faults that you had knowledge of, whereas in bailment for reward you are duty bound to disclose this irrespective of the fact of whether you have knowledge or not because you cannot infringe the rights of the bailee and you cannot cause any kind of injury to him or his property.

Knowledge becomes a critical factor in this case because when I am lending my car to you. If I knew the car is not safe, I am duty-bound to you, but if I did not know about it because I am giving it out of love and affection or I am lending it out of friendship, I cannot be held responsible for negligence for not disclosing the faults in the goods and that is the only difference that can be seen.

Whereas in all other forms of bailment, if the bailee suffers an injury while using your goods or injury is caused to his property because your goods were not safe, then the bailor owes a responsibility of compensating the bailee as well. Apart from gratuitous bailment, there are different other kinds of bailment which are bailment for money advance. What is bailment for money advance?

It is a kind of bailment in which goods are kept as security. let us say a banker or goods can be kept as security with say a finance company say you want to take a gold loan. As gold is goods, it can be pledged, it can be kept as security and you will get money or you will get a loan advance. A pledge is a very interesting combination of bailment and the lending business.

So, a pledge is an essential part of bailment because in a pledge you can only have goods as security. So, what can be bailed in a pledge, shares can be kept as a pledge and can be bailed as well, or any other valuable security that the bank or the financial institution has agreed to keep as security you can go ahead and pledge the same. So, a bailment is also something that you must understand can benefit both parties.

In some cases, bailment benefits only one party, but in some cases, bailment benefits both parties, for example, when you go to a bank and you pledge something, the bank is also going

to earn from the money that is given to you with the interest so it is beneficial to the banker. It is also beneficial to you because you are getting the loan as well. So, this is a unique bailment that benefits both parties.

However, a gratuitous bailment is a bailment that is only beneficial to the bailee because he is going to take the car, and he or is going to get his amount. So, it benefits only one party that is a bailee. In certain kinds of bailment, it only benefits the bailor that is how we see certain three categories of something that benefits both parties.

Some contracts benefit only either the bailor or the bailee. Bailment for reward is where both parties are in a commercial relationship and they expect compensation, they expect to launder, and they expect a charge that is where bailment for reward is understood. However, one should understand that when you give your house to a tenant as a landlord this is not a bailment.

It is for a simple reason that the house is an immovable property and it is not covered under the contract of bailment, but in that house, if you keep your baggage and you expect the landlord or the tenant to take care of the baggage for one week till you come back, then that kind of baggage that is kept in the landlord house can be considered as bailment.

Bailment for hire of goods and services. Hiring of goods and services is another type and kind of bailment. Hiring and bailment are two different things. For example, if you go in the Ola and Uber car, please note it is not bailment why? Because the goods are not delivered to you it is not in your possession and after use, you are not returning it at all.

In Uber and Ola kind of services, you are taking the service of hiring. It is driven by a driver and you just sit in that, you take the goods or the car for hire, you pay the hire charges and then you get out of the car. The car is not handed over to you. So, this is a typical hire kind of service or the hire kind of services could be in many other circumstances and hence they do not fall in the category of bailment.

However, if you hire a rental car service then you are given the key and you are the driver, you can drive the car say between two cities then those cases where you are given the car or the control of the car, the car is handed over to you for a particular purpose those cars can be a contract of bailment. So, for example, we say I hire the Indian railways for the transportation of goods.

You normally hire because you also handed over the possessions of goods to the Indian railways. In those circumstances, it is a bailment contract, but if you just want to hire for example, I need JCB or a crane to excavate my land that was a very interesting case of an elephant that was asked for moving often. Now, when you talk about a JCB or a crane or an elephant if you are given the crane and the control of the crane and you are operating the crane then it is bailment.

But if the crane or the JCB or the elephant comes with a mahout, or with a driver and they come and do the service over there and leave then it is a hire service, not a bailment. So, that is how the categorization of hire contracts and bailment contracts is certainly been met. Finally, in India, we did have a Hire Purchase Act of 1972.

Interestingly, it was not enacted or not brought into force because there were issues of taxation, there were issues of challenges of commerce and that is why states did not encourage hire purchase act, but the hire purchase contract is kind of a bailment contract. Now, what is a hire purchase contract? Hire purchase contracts were typically like this; you can go to an electronic shop and you want to buy a washing machine or a TV.

You get into a hire purchase contract. So, the goods are handed over to you. Immediately you must give a down payment and then the rest of the price or consideration of that electronic goods may be paid in 6-month or 12-month installments. It is an EMI kind of contract. Please note the goods are handed over to you there is a possession that is transferred to you, but there is no sale or title that is transferred.

When can the sale or the title transfer to you in a hire purchase contract? Only after you pay towards installment. Once the 6 of the 12 installments or the EMI is made then the goods become yours, and you become the owner till then the goods are on bailment. So, that is the whole reason why hire purchase transactions are also bailment.

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- **Goods seized by the Government: Is it bailment?**

- In *L.M. Co-operative Bank v. Prabhudas Hathibai*, AIR 1966 Bom 134 a few packets of tobacco belonging to party A were pledged to the bank without giving the actual possession. Goods were kept in A's go-down. In virtue of non-payment of some income-tax dues by A, the aforementioned goods were affixed by the Collector. These goods kept inside were damaged due to heavy rains.
- It was held by the court that Bank (referred to as a state) shall be held liable though it was not in possession of goods.
- In another case, *State of Gujarat v. Memom Mahomed Haji Hasan AIR 1967 Sc 1885* it was laid down that seizure does not amount to Bailment. Bailment is a relationship sui generis and unless it is sought to increase or diminish the burdens imposed upon the bailee by the very act of Bailment, it becomes quite unnecessary to forcibly incorporate it into the Indian Contract Act and prove a valid point of consideration.

- **Bailment or sale?**

- In *Kalyani Breweries Ltd v. State of West Bengal and Ors* beer was sold in the beer bottles by the assessee and later when the bottles were returned by the customers, the refund was molded at a rate similar to the deposit the customers had paid at the time of purchase. There were no terms and conditions regarding the repayment of the deposit or the time frame within which the bottles were to be given back. The assessor treated the amount written off (Bottle Deposit Forfeited Account) as a part of the assessee's sales realization and taxed it.
- Issue raised: Whether the transaction is a sale or bailment?
- Held: As per the facts and circumstances, it was a sale of the bottles to the customers, the assessee buying back the empties from some customers.



Another important aspect that one would want to consider is government bailment. Now, government, say, the Indian railways can be the bailee. You could hand over the goods to the railways to be transported from destination A to destination B. Equally you would notice the time when Air India was with the government. If the Air India airline was transporting cargo you say it is carriage of goods by air.

We could also consider that there was a bailment transaction. So, the government is into business, government has warehouses that belong to the Food Corporation of India. Government has a lot of businesses in which bailment can be inferred. Apart from that you will notice that we have the Port Authority of India and the Port Trust that are there in different ports, and cities of this country.

And goods are handed over there in the port so that they can be loaded onto the ship. So, whenever these port trusts are dealing with these goods, they would be covered under the aspect of a bailment contract unless also the point is in many of these cases some statutes govern this kind of a relationship, but the basic law that we refer to usually is the contract of bailment. We also have government banks that take the security of goods for a loan advance.

And hence even in those circumstances a bailment contract can also be inferred, but interestingly one of the issues that have been raised in the State of Gujarat versus Memom Haji Hasan case of 1967 is the government when it enters into a commercial transaction a contract bailment is something that you can infer, commercial contract business bailment is there with the government, but suppose through its agencies like say the custom department

or the police department or the income tax department exercises what is known as the police power of the state and decides to seize certain goods.

Now, the police seize a two-wheeler because it does not have license point one. Point two is you will have the income tax department seizing and sealing certain kinds of properties or the enforcement directed during the same or the customs department trying to seize goods that are not declared or goods that are smuggled. Now, when these departments of the government exercise their power of seizure towards these goods can a contract of bailment be inferred?

Now, usually, we say that these are sovereign powers, these are police powers because the power of search and seizure is sovereign and it is not commercial. Interestingly when goods are seized there is no consent, it is not a contract, you do not hand it over, it is not delivery of possession, it is not voluntary and because of all of these, you do not want to infer a contract of bailment in such cases. This is point one. Point two is you may notice that the courts as I told you in the past when I was dealing was quasi-contract.

I did say that they do want to impose the law of obligation through the contract law especially when it comes to government, I did tell you about income tax refunds in quasi-contracts as one such example. Second, the court intends to make the government more accountable and responsible to citizens interested in rights and to hold the government having some kind of obligation in law.

And hence in the state of Gujarat versus Memom Haji Hasan case the court said to look at the aspect of gratuitous bailment; gratuitous bailment is not for a reward; it is done out of gratuitous character which means someone else goods come to you; either it is given to you or it comes to you as a finder of lost goods because you have found someone else lost goods or it has been forcefully acquired.

In any of these circumstances I think the duty and obligation are very simple in gratuitous bailment please take care of the goods as if the goods were your own that is a simple duty and an obligation that can be imposed under bailment transaction and the court said although you cannot create commerce, trade, and contract and in such circumstances, I think it is important to propose that obligation of the government.

And if the government fails to take care of the goods because finally tomorrow you would want to release the goods, you would want to get a court order to get the custody of the goods

back and probably you want to enjoy the benefits of goods because when these goods are seized the government does not become the owner. The government is having temporary possession of the goods.

They can forfeit it at a later point in time and make it out as a different issue, but finally, if it is to be returned to the consumers, customers, and citizens. The government till that point in time should have taken care of the goods as a bailee. It is what the court had to say in this case. So, from the time of 1967, I think the opinion of the judiciary was very clear that the government owes an obligation of a bailment both as a normal bailee and gratuitous when it is exercising sovereign functions of the state because contract law is only a branch of the laws of obligation.

And the government owes an obligation whether it is a pure contract or whether it is by quasi-contract or whether is based on the principle of equity and justice. So, the government owes this responsibility to the final consumer. So, that creates a very interesting dimension to government bailment and what should also be noticed is that in government contracts sometimes we have seen some works contracts are made or any other contract made the worker has left certain material in the government premises.

Now, the government can take control of that material, and it can sell the material as a finder of lost goods, but it has an obligation towards the final owner as well. So, the government can deal with someone else's property, but they must deal with it with care and caution. The principal rules of bailment can apply to the way they have dealt with those goods as well. The next point of discussion is to understand the distinction between bailment and sale.

Why is this distinction important for us to appreciate and understand very often than not contracts the judges would go by the intention of the parties and hence if the intention is bailment the court will bring the application of the chapter on bailment in terms of rights and duties and obligation of the parties. So, Section 148 of the Indian Contract Act, but if the intention is of sale, then probably the Sale of goods act and any other law for the time being in force will be probably read into to determine the rights and duties of the parties.

However, if often than not the issues on bailment of sale are also misused in terms of the intention of the parties because the parties may deliberately intend to deceive taxation law, and they may want to refer to or express that intention in a manner that is different so that they can avoid certain kinds of tax to the accountant and hence in those circumstances instead

of allowing the intention of the parties to be prevalent the court will have to look at the facts of the case, the material circumstances of the transaction and then control whether it is one of sale or one of bailment. So, we usually say that the courts determine such kinds of transactions based on whether it is an issue of fact or whether it is an issue of law or is it a mixed question of issue of law and issue of fact. Now, let us take this instance of a Pepsi bottle. Now, when you buy Pepsi, it is given to you in a container or a bottle.

The biggest question that has arisen in many of the cases is whether the bottle or container is sold along with the content. So, is the container plus content sold to you or is it going to be content that is sold to you and not the container? One more thing why this element is important is because generally when you buy a bottle of Pepsi in a glass bottle in a niche shop or a retail shop, the ordinary rule is that you return the bottle. It is not that Pepsi that is available in a tin. It is not a Pepsi that is available in a plastic container. It is that Pepsi which is in a glass bottle. Here, you must return the bottle, which is the duty and obligation. So, can we say that the bottle that was given to you is one element because it was given to you for a particular purpose and not to sell it?

Here, only delivery of possession or delivery of title is made. Similarly, when it comes to liquor bottles or breweries like the case of Kalyani Breweries, there are three other cases in which one is called the Britannia Industries case, the other is called United Breweries case, and the Kalyani Breweries case and these were cases that were decided by the courts in trying to understand whether the container or a bottle in which drinks or the contents are used can also be the subject matter of same.

Now, why did companies argue that it was bailment? They argued it was bailment because they must fix the price of the bottle and the price of the bottle is the price of the container plus the price of content which would be the price on which sales are being made. So, there was a kind of allegation from the state sales tax department that the companies are deliberately not including the price of the container.

And that is now being attracted or added at the sales tax as that valuation has not got into the determination of sales and thereby the state is losing on revenue and taxation because of the intention, it has been reflected as a bailment, not a sale. So, based on that allegation the matter has been given to the court and the court had to decide two things. It is not only an

issue of fact, but an issue of law as well because you must apply sales tax to a sale, not to a bailment.

And you must determine whether this is a sale or bailment based on fact and then apply the law accordingly. So, generally what happens with breweries is initially, they did come to this suggestion that we expect the bottles to be returned and when they return this bottle, we can reduce the cost, and keep the cost less. We can recycle the bottle reuse the bottle, recap it, and then give it to customers.

That was the reason for saying it is bailment and they also mentioned a small deposit that they take from the retailers. Once they return the bottle the deposit is safe, if they do not return a few bottles, a certain amount is forfeited from the deposit and hence it is bailment because there is a firm duty to return the bottle. There was a firm understanding to return the bottle.

So, they argued that the containers or the bottles are a part of bailment. However, the courts did consider the fact that overall, it is not only the retailers' role, but it is also the customers' role, of whether the customer has the option to return the bottle, or is it mandatory for them to return the bottle. That would be the real test to determine whether it is one of sale or bailment.

Now, very often than not some customers take it with them, and some drink it there and return it. So, there is no consistency between these bottles and the containers. Yes, to keep the cost less people may be encouraged to return, but that is not the mandate rule and in case it is a mandate rule bailment cannot come into existence. So, to set things into place, the courts said that the containers and the contents both should be considered for the sale price on which sales tax can be imposed.

The aspects that were on bailment cannot be considered and hence this is a transaction of sale and not bailment. What this highlight is the conditions of bailment are very important and one of the essential conditions on bailment is the delivery of goods for a certain purpose and the condition of that purpose there is a mandatory duty to return the goods to the bailor. If the duty to return the goods is not mandatory is an obligatory or optional basis then it would not be considered as bailment.

This is the test under Section 148 that must be completed and fulfilled for the bailment transaction to come into existence. Interestingly, many goods that are delivered under bailment are in the form of service like an automobile being given on service which led to a new form of taxation apart from sales tax called service tax and hence the government which is the Central taxes this kind of a contract not as sales, but as service tax as well.

So, this is a settled position right now, but bailment intends that there is no transfer of title or ownership, there is a transfer of possession and a transfer of ownership or title as well. Bailment does not include the second part of ownership or title transfer as in the cases.

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- **Bailment and trust**

- Bailment can confer only a possessory title to the property for a limited purpose, and not a proprietary right whereas trust is implied when one person holds the personal or proprietary rights on behalf of another.

- **Bailor's duties (Section 150 of the Indian Contract Act)**

- Includes a duty to disclose the faults of which he has the knowledge, followed by the responsibility for damage surfacing up to the bailee.
 - In *Reed v. Dean 1949 1 KB 188* a motorboat was hired by A from B for a holiday on the banks of the River Thames. Meanwhile, the motorboat caught fire and as the firefighting equipment was out of order, A could not extinguish the fire and was badly injured.
 - The major issue raised here is, whether B is liable for the injury caused to A?
 - The Court held B liable for the injury caused to A because the motorboat should have been fit for the purpose for which it was being hired.
- Two kinds of bailor; gratuitous bailor and bailor for reward. A gratuitous bailor is one who lends goods without a charge. Bailor for the reward would be held liable irrespective of the fact that he was aware or unaware of the default in the goods bailed.
- To reimburse the expenses met by the bailee (only general and ordinary, and not extra-ordinary expenses)
- Standard of Care (Sec. 152) – *Union of India v. Utho Ram and Sons AIR 1963 SC 422.*



Next is the distinction between bailment and trust. Trusts are of different kinds; a private trust, a public trust, or a public charitable trust, and when a trust is created, the property given to the trustee can be either movable or immovable, who is then supposed to manage the property on behalf of the beneficiaries.

And that is what trust property is all about. Now trust looks like bailment, but it is not bailment due to the simple reason that a trustee can exercise sale or transfer the property in favor of some third party. He has been given that kind of authority or right to deal with the property and he can act as an agent on behalf of the beneficiary and make a sale to some third parties.

So, trust is like bailment in the sense that you get hold of someone else's property for some purpose, but you do not necessarily return it to them as it is not a mandatory condition. On

the other hand, a bailment is also a trust in terms of the fact that the bailor entrusts the property to the bailee with hopes that the bailee will return the goods. Both are two different kinds of transactions dealt with under two different legislations.

Nonetheless, there is an interconnection of the responsibilities and principles that these two contracts hold.