

Advanced Contracts, Tendering and Public Procurement
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Lecture No: 30: Special Contracts: Bailment Part 02

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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*.



The responsibilities of the parties in a contract are laid down by the Indian Contract Act and that is why we have definitions of Special Contracts wherein the parties have defined, for example, in a contract of bailment, there is bailor and then there is a bailee. These are two parties and the statute impose certain obligations on the parties to a contract.

The contract of bailment has duties and this will result in giving or vesting a right with the bailee. So, the bailor's duties are the rights of the bailee and the bailee's duties are the right of the bailor. Now, what is important here is, the statute prescribes these duties and second, modern contracts can also add to these duties where we cannot diminish or waive the statutory duties that are laid down by law.

And the bailor has a very important duty in that he must disclose the faults in the goods of which he knows of, and for which he believes that it may result in some kind of damage to a bailee. Now, why does the bailor have the duty to disclose faults in the goods? It is for the simple reason that the goods belong to the bailor. He is the owner; he is giving these goods to

the bailee for a certain purpose, be it for servicing, etc and in case those goods have certain forms, he must disclose it because while using these goods, the bailee can suffer some kind of damage. Now for example I give you a simple thing, suppose you are hiring a Hertz rental car and you are driving this car or Drivezy or a Zoom car, these are cars that you can take on bailment. You can drive this car and it is not an Uber or an Ola driver car.

You take this car to say from Bangalore to Mysore and you happen to find out that in between the car has certain faults and the fault may be with the tyre of the car, the puncture that took place, the puncture is a normal routine. So, when you drive, puncture can take place but it is not necessarily a fault, but if the tyres are old or the tube is not serviced or the car is not proper, the brakes are not functioning. There was no oil in the engine or there was no coolant in the engine, all of these are faults. Now, if Zoom Car does not disclose these faults and give this car to you for rent then they would be liable for the breach that has occurred under Section 150 of the Indian Contract Act. So, I think you ought to look at it from the perception that the drafter of the Indian Contract Act wanted to state that when goods are exchanged between two parties, One who has already used the goods, one who has the goods, and one who is the owner of the goods while giving the goods must disclose faults in the goods and remember Section 150 applies to all kinds of bailment contracts and it is not only for bailment of reward, but even in gratuitous bailment. If I am lending my car to you on a friendly basis even then I must disclose faults in the goods.

Why? Because even in friendly nature when you are using my car you may get injured, you may cause injury to even a third party because the goods had fault and hence, in all these circumstances these duties and obligations are kept. Second, the contract of bailment also states that apart from disclosing faults in the goods, the bailor also must reimburse the expenses met by the bailee.

So, whatever cost the bailee incurs in the contract of bailment for example, the cost of labor, cost of skill in servicing their car or two-wheeler, cost of redesigning a gold ornament, etc. For all those expenses that are met by the bailee, the bailor must reimburse the bailee for those expenses.

Suppose an aero plane is being sent for servicing to say a company called Airbus or Boeing then of course Indigo Airlines or any other owner of that kind of airline must need the expenses of the bailee in servicing the same. If they do not do so, they do not have the right to ask for the goods to be returned. So, that kind of consideration in the contract must be met and that is also one of the duties of the bailor.

Section 152 also states something called the standard of care. Now, what is called the standard of care is, when a bailee owns the goods, in those circumstances it is the responsibility of the bailee to take care of the goods as if the goods were his own. This is the test of standard of care. So, it is someone else's goods that the bailee possesses. So, how should he take care of the goods? He should take care of the goods as if the goods were his own. If he is negligent in handling the goods, or if he is negligent in taking care of the goods then he would commit a breach of not only the contract, but he will be committing a breach of the Indian Contract Act or the statute of contract which imposes such a duty and obligation which states that you should take care of the goods in a good condition.

Suppose you hired a Zoom car or Hertz rental car or any other car on your own and you are driving these cars you cannot drive it rashly, and you cannot misuse the goods that are given to you, you have the duty as a bailee to use the goods use it wisely, use it in a proper manner and in case of your negligence in taking care of the goods anything happens to the goods, you who has hired that zoom car will be liable and responsible for a breach of Section 152 for which you will be responsible to pay the compensation.

One of the most interesting cases under Section 152 is the case of Union of India versus Udho Ram and Sons. It was an interesting case of the Indian railways being involved in a breach of Section 152. The railways transport goods and hence when they transport goods, every kind of carriage of goods be it on land, sea or road is considered as a bailee.

So, Indian railways are also bailee when I take your goods and agree to transport it from destination A to destination B. Now, this train was leaving from Howrah in Kolkata and it was going northwards and the train left and it was goods train as we call it and the goods were loaded and sealed. Such goods train have a last cabin which is for the guard.

And this cabin also had two railway protection force. Now, the railway protection force is to guard the property of those who are using the services of the railways and may include passengers or people who want to use the railways for cargo facility. Unfortunately, the train left Howrah and within a couple of hours that the train left Howrah, the train was looted. Now, a couple of things that go to the facts of these cases are very important and it is a matter of fact to show whether bailee has breached the standard of care that is required under Section 152. Now, as railways, what is the standard of care that is expected, is it of an ordinary person or is it of a professional carrier? How is the standard of care tested in such cases?

The Indian railways is not an ordinary man or a normally prudent common man. So, the standard that is expected is not of a normal person the standard that is expected is of a professional which is the first and most important aspect that one should analyze in this case. Standard of care means, suppose the railways were handling their goods, would they allow the goods to be stolen by dacoits in the night? Would they have done nothing once the goods were stolen?

Care means the test is to look how would you take care of someone's if you are dealing with their goods how should you take care of it that is what Section 152 stipulates. The Indian railways said that they had completed the standard of care and because they have fulfilled the obligation under Section 152 for the theft of goods, they should not be held liable which means they need not compensate the bailor that is the argument of the Indian railways.

Unfortunately, in this case, if you go by what the railways have done what did they do? They argued that they had deployed two railway protection forces and there was nothing more that could be done. Despite the presence of the railway protection force, if the goods were stolen, they could not be held accountable, and believed just deploying the railway protection force is sufficient. When the theft was happening, what was the reaction, what was the response, how did the railway protection force service some goods or protect the goods, did they take any proactive steps in protecting the goods that I think was the important element that the court had to examine? Are questions which the Court had to consider. Second, unfortunately, when this theft took place, it was not a scheduled stock it was an unscheduled stock. Now, if you know that a particular route is susceptible to dacoity or theft and certain other aspects. should the railways have stopped at a place which is not scheduled.

Thereby creating a vulnerable situation, thereby exposing themselves to this kind of accident or an incident in which the goods were stolen. So, I think unfortunately please note the burden of proof is on a bailee to say that he had taken the standard of care. He must convince the court that he has taken the standard of care and he is not in violation of Section 152.

And in this case unfortunately the railways deliberately failed in convincing the court that they had undertaken sufficient standard of care in the goods that are bailed to them and the court was not convinced by the actions of the railways hence the railways were held liable for breach of Section 152. So, the burden of proof is very important whatever your actions are very important so you have to say just by closing the wagons or stealing the wagons where the goods are stored in the railways is not sufficient care taken.

I think those are certain aspects that your case establishes and hence the kind of standard of care is vis-a-vis the law of negligence. So, if you have taken the standard of care, no allegation of negligence can take place, but, if you have not taken the standard of care the railways in this case were found to be negligent in the performance of their duty and obligation as required under contract law for which the railways can be held accountable as well as responsible. (Refer Slide Time: 11:53)

- **Duties of a bailee (Section 151 of the Indian Contract Act)**

- Includes a duty to extend reasonable care.
 - *Bank of India Raigarh v. M/s Grains and Gunny Agencies AIR 1989 MP 28.*
 - A suit was filed by the Bank for the recovery of loan advanced against certain goods pledged. The suit was dismissed as due to the negligence of bank staff, the pledged goods were lost and the Bank was unable to return the goods pledged. There was an absence of adequate/reasonable care which made the Bank liable for the loss of goods. Any loss or damage to the goods entrusted to the bailee depicts the "*prima facie*" evidence of negligence on his part.
- Duty to not mix goods
- Duty to make use of goods for the authorized purpose only
- Duty to return the goods on the expiry of a fixed period.
 - In *Shaw and Co. v. Symmons and Sons 1917 1 KB 799*, certain books were handed over to the bookbinder for the binding who had promised to return the books within a reasonable time. He, however, failed to return the books within a stipulated period and the books burnt due to the accidental fire
 - **Issues:** Is the bookbinder responsible for the loss?
 - **Held:** The bookbinder was held liable as he failed to deliver the books within a reasonable time when asked to deliver. When such wrongs take place due to the wrongful action of the bailee, no questions of defense like the act of God or inevitable accident can be raised.
 - **Burden of proof.** In case of negligence, the burden of proof of disapproving it lies on the bailee.



Now the duties of the bailee is that they have to take reasonable care I have already mentioned the same and when it comes to the kind of reasonable care that the bailee has to undertake which also extends to bailment for a money advance. Now, when I said bailment for a money advance, this is about goods that are pledged in a bank for a loan.

Now, a bank when they take these goods as security, they keep these goods and suppose it is a gold loan they keep the gold and give you the money how should they take care of the goods that are pledged or kept as security before them? They have to take reasonable care and if they do not know what happens very often than not, we are seeing cases where the banks have lost security. Now, if the banks lose the security can they enforce that the borrower should repay the loan? The primary answer would be no, because the bank themselves are negligent in taking care of goods. So, the bank should not lose the goods. This is rule number one. Losing goods or the goods getting stolen or theft or the goods getting taken by someone else is *prima facie* evidence of negligence.

See banks must have security. Now, it is just not having a security guard with a gun, but he should be able to protect the property of the bank and the property of those customers that are kept as security in the bank. So, negligence means that any goods that are stolen of course, the aspect of negligence can be proved by point one. Point two very often than not the goods

are not stolen they are lost because the banks are not very good at keeping things properly and these are public sector banks and are not held accountable.

So, the goods are not found or the security of the goods is not found in those cases also negligence can be easily attributed. There are circumstances in which unfortunately the goods get deteriorated or destroyed because of the negligence of the employees of the bank. Now bank of course do not have their mind of their own, they are not necessarily negligent of their character, but the employees of the bank also can be attributed with that kind of negligence.

So, the bailee if he fails to take care of the goods and if there is any aspect of negligence in taking care of the goods and evidence is attributed to the fact that there was not enough care, enough caution, enough consistency in terms of trying to secure the goods in those circumstances we can say that Section 152 and 151 have been violated by the bailee and for which the bailee can be held accountable and answerable as well.

Usually, when the bailor gives it to the bailee, it is for servicing. It is the bailor who must pay in this context. The bailee sometimes will have to give compensation and damages if he fails to take care of the goods properly. Here, there is a reversal of rules that usually happens. So, when you take a Zoom car on rent or hire you are the bailee. Zoom car is the bailor so they are the ones who got you the goods. So, take care of the goods and if you do not do so, then you can be held responsible under the contract of bailment. Bailee has additional duties. For example, they have a duty not to mix the goods with their own. They have to Keep the goods of the bailor separately and should not mix it because the goods are not yours. You are not the owner you and you have to return it so do not mix the goods. So, these are very traditional duties which go back to food grains in warehouses and so on. This is the reason why these duties are mentioned in the Indian Contract Act.

Most importantly there is a duty of the bailee not to make any unauthorized use of the goods. This is a critical point to note. Authorized means a permission or license from the bailor is required to use it and what is an unauthorized use? Simply put, suppose you have given your automobile for servicing do you expect the service station owner to take the automobile for his personal use? No. You have given it for servicing it should be used only for servicing and nothing more. Second, let us look at unauthorized use in the Zoom car case. Now in a Zoom car case, you have taken the Zoom car. Now does the Zoom car allow another driver to use it

if yes then it is authorized to use, but suppose you put your son and who is a minor to drive the car because it is someone's car, I will let him drive.

Then in that case it is a clear case of unauthorized use for which the bailee can be held responsible and accountable. Most importantly that the bailee has a duty to return the goods on the expiration of the contract or once the period of bailment is completed. Why there is a duty to return because the goods do not belong to the bailee he is not the owner. Once the purpose is accomplished the bailee must return the goods. Now, a duty to return is based on certain conditions that simultaneously the bailor is ready to compensate which is important.

It is like a simultaneous transaction in those cases. Now, you will notice that in case the bailee fails in his duty to return the goods at the proper time and place then he could be held responsible for a couple of things. Most importantly what would he be responsible for? If the goods are with him after the expiration of the purpose of the contract or after the expiration at the time of the contract if he continues to keep the goods, this is called wrongful possession of goods.

Rightful possession of goods is when he is within the period of a contract, right from the possession of goods is before the purpose of a contract is to be accomplished those are rightful possessions. Once everything is done, if you continue to go to goods for nothing then that would be wrongful possession of goods and in case of wrongful possession of goods if anything happens to the goods, the bailee liability will be an enhanced liability.

And there could be no kind of excuse or justification for any kind of negligence that would have resulted in damage to the goods. So, that is an extra liability that can be imposed on the bailee. The parties must know their responsibility and liability which seems like common sense which the law has noted such as principles and imposed the same as duties or responsibilities.

For example, bailment contracts take place from time to time and on a fairly day-to-day basis and for such, contractual provisions of the Indian Contract Law will apply.

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- If the goods are not returned, or if there is a wrongful conversion or wrongful detention, Bailor has a right to sue and claim compensation
- Bailee is also liable for the loss or destruction or deterioration of goods.
- Bailee is not responsible for the fault of the bailor.
- Directions of the bailor must be followed by the bailee while delivering the goods back
- In *Orient Longman Ltd v. Jayati Laila Kabir AIR 1988 Cal 410*, notes of Maulana Abdul Kalam Azad on Kabir were deposited under sealed covers in the National Archives, New Delhi with a stipulation that they must be opened by 30 years after his death and at a particular place. The Government opened the covers before the 30 years in New Delhi.
- **Issue Raised:** Could a petition under Article 226 be maintained against the Government?
- **Held:** It was laid down by the court that the Govt had violated section 160, the contract of Bailment.
- **Rights of the bailee (Section 155 of the Indian Contract Act)**
 - Recover the charges (non-gratuitous)
 - To return the goods in cases of joint bailers.
 - Right to apply to the Court and claim compensation.
 - Right to lien: Section 170 of the Act provides that where the bailee has, by the purpose of the bailment, rendered any service involving the exercise of labor or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them- Lien.
 - Right to sue against the wrongdoer. (Section 180)



One of those interesting aspects in which the court looked at bailment was in this very interesting case of Orient Longman Limited versus Jayati Laila Kabir. Interestingly what had happened in this case was that the notes written by Maulana Abdul Kalam Azad on Kabir had been handed it over to the National Archives in New Delhi.

With certain kinds of stipulations that they must be open 30 years after the death of Maulana Abdul Kalam Azad. This was a condition that was given to the government Generally, when you give something to the government either you gift it or you give it as bailment. You give it so that the government will be in a better position to use it for public purposes and so on.

Now, the government through the National Archive opened it before the 30 years as per the condition that was laid down and hence the court said that when the government is acting as a bailee, it has certain responsibilities and it must deal with the goods under the instructions of the bailor. Whatever the instructions of the bailor are, the bailee should not violate those instructions.

So, the directions that are given by the bailor to the bailee are sacrosanct and the bailee can only use or deal with the goods as per those directions hence the court in this case said that the government had violated the provisions of bailment because they opened it before those 30 years and hence the government is responsible in breach of that kind of a trust and in the said contract.

Further, you will notice that there are few cases the duties of the bailee are fine that the rights of the bailee as well because the bailee has already worked on the goods. So, he must be paid so that he can recover the charges, he has to return the goods and that is his duty and he can claim all his legitimate expenses in case he is called upon to return the goods.

But what is critical now is to understand Section 170 and Section 171 because you will notice that now the special contract starts with special remedies as well which means that that most of the remedies that one seeks is to go to the court and this requires the intervention of the court to grants these remedies, but when you look at the right of lien which is there under the bailment of law, it is there in most special contracts, but the bailment contract is easily explained through Section 170 because they make a distinction between a general lien and a particular lien. You will notice that a lien is an equitable right in which a person has the right to retain the goods for any kind of payment that is due to him. So, the bailee does not need to return the goods and he can continue to exercise the right of lien if the bailor does not pay his honorarium, his commission, his money, or his charges.

So, this is a self-remedy that parties can exercise by saying that look I will not return the goods till the time I have been paid for the same. Now, lien is available to every individual in a contract of bailment who has involved in the servicing of the goods or in dealing with the goods especially when he has put in certain labor of skill. A typical example is giving your automobile for servicing.

If you do not pay his service charges then he need not give the automobile back to you because he has already incurred his labor or skill in servicing the goods that are billed and hence under Section 170 he can exercise what we know as the right of lien that is interesting because you would first force him to give the goods back and then go out and ask him to go to the court to claim and the same will delay or postpone his remedies.

So, whatever you can exercise legitimately under the provisions of law you should do so and hence that kind of a right to retain the goods is called the right of lien. General lien and particular lien are two distinctive factors where a general lien is available to only certain categories of bailee, like a banker or policy broker or a wharfinger or a factor.

These are certain kinds of bailee who can exercise general lien. Now what is a general lien? General lien means not only towards that product but for a general set of accounts. So, it is broader than what a particular lien is, but a lien is a right that everyone can exercise and you will notice that even bankers can exercise a right of lien.

So, that is how the right of lien is exercised. This concludes the discussion on contract of bailment because we have understood bailment with the help of a couple of cases, but what is important is that we have looked at government as under contract of bailment where government can either be the bailor or the bailee.

In most cases, the railways are a bailee. Air India before it was sold to the Tatas then Air India was carrying cargo. Here, Air India can be a bailee, and ships can be under a contract of bailment. So, in many cases, government also acts as a bailor by being involved in these kinds of contracts. So this is how the government enters a lot of these aspects of bailment in different forms.

And that is also something that should be noticed, regarding the responsibilities, especially with tendering and public procurement. So, that is how the aspect of bailment will give us an idea where how this special contract is applicable in tendering and public procurement.