

# CHAPTER – 5

- **BAILMENT AND PLEDGE**

# Definition of Bailment

- **A Bailment is**
  - i-The delivery of goods
  - ii-By one person to another
  - iii-For some specified purpose
  - iv-Upon a contract that they shall, when the purpose is accomplished, to be returned

# Characteristics of Bailment – Express \ Implied

- 1- Contract
- 2-Delivery of goods
- 3-Delivery of possession
- 4-retention of Ownership
- 5-Return of specific goods
- 6-Purpose
- 7-Goods only

# Classification of Bailments

- **1-Deposition**-Deposit of goods with bailee for safe custody
- **2-Commodatum**-A gratuitous loan of goods by the bailor to bailee
- **3-location Rei** -Bailment for mutual benefit
- **4-Vadium**-Bailment of goods as security for loan
- **5-Lactio operis faciendi** -Bailor engages bailee to perform services
- **6-Mandatum**-Delivery of goods carried from one place to another

# Rights of Bailor

- 1- Restoration of goods lent gratuitously
- 2-Entitled to increase of profits to goods bailed
- 3-Enforcement of rights
- 4-Claim for compensation
- 5-Right for termination

# Duties of Bailor

- 1-To disclose faults in goods bailed
- 2-Repayment of Expenses
- 3-Responsibility for lack of Title
- 4-To receive back the goods



# Rights of Bailee

- 1-Right to compensation
- 2-Right to Remuneration
- 3-Right to particular Lien
- 4-Right to General Lien
- 5-Right to claim compensation in case of faulty goods
- 6-Right to inter Plead
- 7-Right to Bailment by several joint Owner
- 8-Right to sue

# Duties of Bailee

- 1-Duty of reasonable care of goods bailed
- 2-Not to make unauthorized use of goods  
Bailee
- 3-Duty not to mix goods bailed with other goods
- 4-Duty to return goods
- 5-Duty not to set up adverse title



# Rights of Bailor and Bailee against Third parties

- 1-Right of third person claiming goods bailed
- 2-Suit by bailor or Bailee against wrongdoer
- 3-Appointment of relief of compensation obtained

# Finder of Lost Goods

- **1-Right of Possession**-The finder is entitled to retain possession of goods
- **2-Right of Lien**-When the true owner is found, the finder can exercise possessory lien
- **3-Right to Reward**-When the owner has offered a reward for the return of goods lost
- **4-Right of Sale**-When a thing which is commonly the subject of sale is lost

# Obligations of Finder of Lost goods

- 1-He must take reasonable care of the goods and ,if , in spite of this the goods are destroyed, he is not responsible for any loss
- 2-He must not use the goods for his own purpose
- 3-He must not mix the goods with his own goods
- 4-He must try to find out the owner of goods. If he does not do that ,he will be liable as a trespasser

# Termination of Bailment

- 1-Lapse of time
- 2-Accomplishment of the purpose
- 3-Inconsistent use of goods
- 4-Death
- 5-Premature termination in Gratuitous bailment

# Distinction between Bailment and Sale

- In bailment there is no transfer of ownership of goods. In sale ,the ownership is transferred from the seller to the buyer

# Distinction between Bailment and License

- If a person gets permission to place his goods in a particular place, that is ,a relationship of Licensor and Licensee , he gets the License to keep his goods in his place



# Lien

- **Lien** is the right to retain property until the charges due in respect of the property are paid. A Lien is a right of a person in possession of goods belonging to another ,to retain or detain the goods,untill certain demands are satisfied. Possession is essential to create a right to Lien. This right is sometimes is called as possessory lien.

# Kinds of Lien

- **1- Particular Lien-** Also called 'Special Lien' It is attached to some specific goods. It is a Creditor's right to retain goods belonging to debtor for the discharge of debt or liability incurred in their connection

# Kinds of Lien ( contd.)

- **2-General Lien** –It is the right to hold goods bailed belonging to another, not only for the discharge of a debt or liability incurred in respect of those goods , but also as a security for the general balance of account

# General Lien

- **1- Lien of Banker-** Bankers have a general Lien
- **2-Lien of Factors-**A Factor is an Agent entrusted with the possession of goods
- **3-Lien of Wharfingers-**The Wharefinger is a person who keeps goods belonging to others
- **4-Lien of Attorney-**Has a Lien on Client's papers
- **5-Lien of Policy Brokers-**Are the persons

# Differences between Particular Lien and General Lien

- **1-Application**-Particular Lien can be exercised
- **2-Object of Lien**- Particular Lien has the right to retain goods
- **3-Entitlement**-Particular Lien can be exercised by all bailees



# Termination of Lien

- **1-Surrender of Possession**-It is lost as soon as the possession of goods is surrendered.
- **2-Payment of Amount due**-The right of Lien is terminated as soon as the amount due is paid
- **3-Abandonment or Waiver**-the bailee may give up his right of lien by entering into an agreement



# Pledge

- **Essentials of a Pledge-**
- 1-There must be delivery of goods
- 2-The delivery must be made for some specific purpose
- 3-The delivery must be made on condition that the goods shall be returned in specific when the purpose is over, or disposed off according to the directions of the bailor

# Rights of a Pledgee

- 1-Rights of Retainer
- 2-Security for other debts
- 3-To recover any extraordinary expenses
- 4-To bring civil suit for amount due
- 5-Sale after notice
- 6-Right to compensation
- 7-Right to claim damages
- 8-Remedies as owner of the goods

# Duties of a Pledgee \ Pawnee

- 1- Take reasonable care
- 2-Not to make any unauthorized use
- 3-Return on payment
- 4-Return any increase
- 5-Not to set up adverse title

# Right of Pledger \ Pawnor

- 1- Right
- of a Pledger \ Pawnor
- 2-Right to receive notice of Sale
- 3-Right to receive the surplus
- 4-Right to take action for conversion
- 5-Receive any increase or profit

# Duties of a Pledger\ Pawnor

- **1-Disclose the faults**-The Pledger should disclose to the Pledgee , the faults in the goods pledged.
- **2-To meet extraordinary expenses**-The pledger should bear the extraordinary expenses incurred by the pledgee
- **3-To indemnify the pledge** –In case of defective goods ,,the pledger should indemnify the pledgee

# Distinction between Lien and Pledge

- 1- Property
- 2-Ownership
- 3-Right to sell
- 4-Delivery and Possession
- 5-Creation of Right
- 6-Purpose
- 7-Loss of Possession
- 8-Right to sure



# Pledge by Non- owner

- 1- Pledge by a Mercantile Agent
- 2-Pledge by person in possession under voidable contract
- 3-Pledge by pawner who has only a limited interest
- 4-Pledge by co-owner
- 5-Seller or Buyer in possession after sale

# Bailment

- 1- Scope
- 2-Purpose
- 3-Reward and Return
- 4-Possession and Ownership
- 5-Lien and Sale
- 6-Right to use

# Pledge

- 1-Scope
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