

Difference between 'Sale' and 'Bailment'

- In the case of a 'sale' the ownership is transferred to the buyer and the buyer is under no obligation to return the goods, but in the case of a 'bailment' the ownership in goods is not transferred to the bailee and he is bound to return the goods in specie.
- The explanation to Section 148 points out that 'if a person already in possession of the goods of another, contracts to hold them as a bailee, he thereby becomes the bailee, and the owner (i.e., the buyer) becomes the bailor although such goods may not have been delivered by way of bailment.' Thus, where A sells a cycle to B but B leaves it in A's possession till he completes his other shopping, A becomes a bailee although originally he was the owner.

- **2. Duty not make unauthorized use of goods entrusted to him (Sec. 154).**

- It is the duty of the bailee to use the goods strictly in accordance with the terms of the bailment.

- If he makes an unauthorized use of the goods, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

- As per Section 153, the bailor can also terminate the bailment if the bailee makes an unauthorized use of goods.

Duties of Bailor

- 1. Duty to disclose faults in goods bailed.

- Section 150 lays down this duty. The Section makes a distinction between a gratuitous bailor and a bailor for reward and provides as follows:

- (a) A gratuitous bailor is bound to disclose to the bailee all those faults in the goods bailed, of which he is aware and which materially interfere with the use of them, or expose the bailee to extraordinary risks, and if he fails to do so, he will be liable to pay such damages to the bailee as may have resulted directly from the faults. A gratuitous bailor will not be liable for damages arising to the bailee from defects of which he was ignorant.

- **ILLUSTRATION** (to Sec. 150). A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

- **4. Duty to indemnify bailee (Sec. 164).**

- A bailor is also bound to indemnify the bailee for any loss suffered by the bailee, by reason of the fact that the bailor was not entitled to bail the goods because of the defective title.

ILLUSTRATION. A gives his neighbor's scooter to B for use without the neighbor's permission. The neighbor sues B and receives compensation. A is bound to indemnify B for his losses.

- **5. 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 bailment has expired or the purpose of bailment has been accomplished.
- If the bailor refuses to take delivery of goods when it is offered at the proper time, the bailee can claim compensation for all necessary expenses of, and incidental to, the safe custody.

- **4. Right of lien.**

- The right to retain possession of the property or goods belonging to another until some debt or claim is paid, is called the right of lien.
- The right depends on possession and is lost as soon as possession of the goods is lost. As such it is also called as 'possessory lien'.
- Liens may be of two types — 'particular' and 'general'.

- **'Particular lien'** means the right to retain only that particular property in respect of which the charge is due.
- A gives two cars - An Ambassador and a Fiat, for repairs to B. B repaired only the Ambassador car. A took delivery of the Ambassador car without making the payment of the repair charges. B cannot retain the Fiat car for the repair charges due in respect of the Ambassador car.
- It should be noted that lien is possessory in nature. Hence if possession is lost, the lien is also lost,
- **'General lien'** means the right to retain all the goods of the other party until all the claims of the holder against the party are satisfied. In other words, this is a right to retain the goods of another as a security for a general balance of account.
- A has two accounts in a bank. In savings bank account, he has a credit balance of Rs. 500. In current account, he has an overdraft of Rs. 1,000. Bank can exercise right of lien on the savings account for the amount due on the current account. It should be noted that right of lien will not apply to properties deposited for safe custody or for a specific purpose.

- (v) The goods must be in possession of the bailee. If possession is lost, the lien is also lost.
- (vi) There must not be a contract to the contrary.
- If all the above mentioned conditions are satisfied, the bailee can exercise his right of particular lien until he is paid for his services.
- The following points must also be noted in connection with the bailee's particular lien:
 - (a) The bailee retaining the article to enforce his lien cannot charge for keeping it.
 - (b) The bailee cannot exercise his lien for the non-payment of extraordinary expenses incurred in relation to the thing bailed. He should sue for them.
- Besides the bailee, other persons who are entitled to exercise the right of particular lien are: finder of goods (Sec. 168), pawnee (Secs. 173-174), agent (Sec. 221), and unpaid seller (Sec. 47 of the Sale of Goods Act).

Termination of Bailment

- A contract of bailment terminates under the following circumstances:
- 1. If the bailment is for a 'specified period', the bailment terminates as soon as the **stipulated period expires**.
- 2. If the bailment is for a 'specific purpose', the bailment terminates as soon as the **purpose is fulfilled**.
- 3. If the bailee does **any act with regard to the goods bailed, which is inconsistent** with the terms of bailment, the bailment may be terminated by the bailor even though the term of bailment has not expired or the purpose of bailment has not been accomplished (Sec. 153).
- 4. A **gratuitous bailment can be terminated by the bailor at any time**, even before the specified time or before the purpose is achieved, subject to the limitation that where such termination causes loss in excess of benefit actually derived by the bailee, the bailor must indemnify the bailee for the amount in which the loss occasioned exceeds the benefit derived (Sec. 159).
- 5. A **gratuitous bailment is terminated by the death either of the bailor or of the bailee** (Sec. 162).