



ISSN: 0975-833X

Available online at <http://www.journalcra.com>

**INTERNATIONAL JOURNAL  
OF CURRENT RESEARCH**

*International Journal of Current Research*  
Vol. 13, Issue, 12, pp.19828-19830, December, 2021

DOI: <https://doi.org/10.24941/ijcr.42768.12.2021>

## RESEARCH ARTICLE

# A REVIEW OF BAILEE OBLIGATIONS FOR LOST GOODS

**\*Avinash Pandey**

Student – Kirit P. Mehta School of Law, Mumbai, Maharashtra, India

### ARTICLE INFO

#### Article History:

Received 05<sup>th</sup> September, 2021  
Received in revised form  
19<sup>th</sup> October, 2021  
Accepted 30<sup>th</sup> November, 2021  
Published online 29<sup>th</sup> December, 2021

#### Keywords

Turnover, Performance,  
Job satisfaction and Monetary benefits.

*\*Corresponding author:*  
**Rajalakshmi, G.S.**

### ABSTRACT

In this paper, the author has explained the definition of Bailment as defined under S. 148 of Indian Contract Act, 1872. The author also explains various essentials necessary to form a contract of Bailment and important precedents surrounding including the four important precedents of Bailment, the authors also discuss the nature of bailment, the responsibilities of the Bailee as mentioned under The Indian Contracts Act, 1872 and also the rights that the bailee has under the Indian Contracts Act. The paper further explains the provisions of Section 151 and Section 152 of the Indian Contracts Act, 1872. As the paper proceeds it explains with reference to several case laws the obligations of bailee under the Indian Contracts Act as well as explains the identification of common carriers as well as Air and Sea Carriers, and if the carrier act as a bailee and is responsible for the lost goods.

*Copyright © 2021. Avinash Pandey. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.*

**Citation:** Avinash Pandey. "A Review of Bailee Obligations for Lost Goods", 2021. *International Journal of Current Research*, 13, (12), 19828-19830.

## INTRODUCTION

Bailment refers to a type of connection wherein one person's private possessions is temporarily transferred to the hands of another. The things or products are owned by one person, while they are in the possession of someone else. The paper mentions the conditions in which a bailee does not return the goods to its owner (Bailor) and parted with ownership due to his negligence in taking care of the goods as a sensible cautious individual, it also discusses the bailee's responsibilities for lost goods and the actions that they can be taken against the bailee for his negligence and loss incurred by the bailor. According to the ICA, bailment is defined as the transfer of possession of things from one individual to another for a specific purpose within the terms of a contract. When the mission was finished, the things would be retrieved or otherwise handled of in accordance with the instructions of the person who had provided them. The "delivery of possession" from one individual to the another is the first significant feature of bailment. Possession for this reason should be distinguished from ordinary "custody." However, a bailee is not one who has custody or possession, such as a worker or a visitor utilizing his host's belongings.

The second and third crucial characteristics are that the transfer of ownership must be for an "objective" and must be "upon a contract" that whenever the purpose is fulfilled, the commodities must be delivered to the bailor. As a result, if the objective of the bailment is fulfilled or the time period for which the commodities were bailed has elapsed, the bailee must return the items to the bailor without objection. If he fails to return the items, he shall be held accountable for any loss or damage to the products beginning with the date of delinquency. In accordance with Sections 151 and 152, a bailee is exempted from delivering the subject matter of the bailment to the bailor if it has been taken away from him by legal power applied via legal and lawful actions. The delivery of goods should be made for a specific objective, with the agreement that after the purpose of distribution is met, the commodities should be restored to the bailor or disposed of appropriately. There is no bailment when a person's goods are transferred to another without any motive or intention of restoring the items. In this research, the main focus is on the situations surrounding lost items while in the possession of a bailee. As a result, if the bailee is unable to return the items owing to carelessness, he will be held accountable.

## BAILMENT ESSENTIALS

Bailment is the process of temporarily entrusting personal property or assets to the custody or control of someone else. The bailee is the custodian or bearer of the property who is accountable for the preservation and restoration of the item. The bailor is the individual who distributes or transfers the property to the bailee. The bailee would have to have real physical possession of the property with the purpose to maintain it for a bailment to be lawful. In essence, the bailee has no right to utilise the property while it is in his custody, and a bailor can request that the goods be returned to him at any time. In a bailment, the individual giving the property is known as the bailor, and the person receiving the property is known as the bailee. Within certain conditions, a sub-bailment may also arise, in which the bailee subsequently bails the commodities towards another individual, who becomes a sub-bailor. A "bailment" is the giving of things by one individual to another for some objective, with the agreement that after the objective is completed, the commodities will be reclaimed or otherwise disposed of in accordance with the directives of the person delivering them. The individual who delivers the goods is referred to as the "bailor." The individual to whom they are handed is referred to as the "bailee." In other terms, it is a situation in which one person lends property to another with the expectation of receiving it back. The transaction passes the criteria if it contains the four items listed below:

- The bailor's conveyance of the exclusive right of possession,
- Voluntarily accepted by the bailee,
- With the bailee's admission of duty to keep the goods secure,
- The bailor's conveyance of the exclusive right of possession.

**Possession transfer:** Delivery of ownership should be distinguished from simple custody in this context. The commodities must be delivered to the bailee for the objective of bailment. According to Section 149, delivery might be either real or constructive. Actual delivery occurs when the bailor passes over physical custody of commodities to the bailee, whereas constructive delivery occurs when there is no transfer in physical possession but the bailee does something to put the bailor in ownership.

**Delivery should be based on the contract:** There should be a contract that states that after usage, the things will be returned. If there is no contract, there is no bailment.

**There should be a reason for the delivery:** Bailment is always established for a specific reason and is subject to the condition that the items be returned to the bailor after the objective is completed. Where commodities are not expressly reported for, there is no bailment. A payment with a banker is not bailment since he is not obligated to repay the very same notes and coins. Bailment can only be of 'goods.' According to section 2(7) of the Sale of Goods Act, "goods" include any moveable assets other than currency and enforceable claims. Keeping money in a bank account is thus not 'bailment.' Asking someone to watch after your home or farmland while you are away is not 'bailment,' because a home or farmland is not transportable property. Pledge is a type of bailment in which items are delivered as collateral for the payment of a debt or the execution of a commitment.

A pledge is a security deposit. A common example is holding gold with a bank or money lender in order to receive a loan. Because a pledge is a bailment, all regulations that apply to bailment also pertain to a pledge. Furthermore, some unique provisions apply to promise. The bailment of commodities as security for the payment of a debt or the fulfilment of a commitment is referred to as "pledge." In this scenario, the bailor is referred to as the "pawnor." The bailee is referred to as a "pawnee" [The Indian Contract Act, Section 172]. Concerning the viability of a claim against the government Reference should be made to Article 299 of the Constitution, Section 176 of the Government of India Act, 1935, Section 32 of the Government of India Act, 1919, and Section 65 of the Government of India Act, 1858. In *Thawardas Pherumal v Union of India*, AIR1955 (SC) 468, the Supreme Court held that the government can only be obligated by contracts entered into in a specific manner and bound by proper authority. Article 299(1) states that all contracts formed under administrative power of state must expressly be made by the governor of state, and all such contracts must be executed on authority of the governor by such people and in such way as he may order or allow. The parties have specific rights and obligations under the Bailment contract. Nevertheless, the rights and responsibilities of the bailor and bailee under a bailment contract are not absolute. As a result, they are fully described in the Indian Contract Act of 1872. Each party's rights become the duty of another, and vice versa.

### Bailee's Responsibilities:

- The duty to use reasonable care. (Sections 151-152)
- Obligation not to make unlawful use. (Section 154)
- Obligation not to combine. (Sections 155-157)
- Obligation to refund items (Sections 160-161)
- Obligation to repay the excess (Page 163)

### Bailee's rights include the following:

- The right to recompense. (Section 164)
- The right to be compensated. (Section 158)
- The right to encumber. (Sections 170-171)
- Legal right to prosecute. (Sections 180-181)

Section 151 of the Indian Contracts Act states:

"In all situations of bailment, the bailee is obligated to take as much responsibility of the commodities bailed to him as a man of conventional wisdom would take of his own commodities of the same bulk, condition, and worth as the things bailed." Section 152 of the Indian Contracts Act states: "In the absence of any specific arrangement, the bailee is not liable for the loss, damage, or degradation of the object bailed if he has undertaken the level of care stated in Section 151."

**The Bailee Must Use Precaution:** The bailment contract imposes specific obligations on the bailee. The first and most essential obligation of a bailee is to take proper care of the commodities committed to him. According to Section 151 of the Indian Contract Act, the bailee is obligated to take the same or more care of the goods as a man of conventional wisdom would take care of his own property in a comparable circumstance. Even a complimentary bailee is required to apply the expertise that he possesses or that he is reasonably anticipated to acquire due to his job or situation.

Failure to use that talent may be considered neglect on his behalf.

**In Gibaud v. Great Eastern Railway**, a railway company agreed to store plaintiff's possessions at the cloakroom but instead kept them elsewhere in the station, resulting in theft. The court determined that because the contract required the products to be kept in the cloakroom, trust was put on the provision, and so the defendant was found accountable. The Assam High Court decided in *Bachraj Dugar v. Lalchand Todi* that a *sapurddar*, a caretaker, was regarded a bailee and his ownership was governed by the Contract Act. And he is obligated to return the products, failing which he is obligated to pay the amount. It has been established in a number of decisions that a bailee's duty of care extends beyond using reasonable precautions to limit risk and includes taking all necessary precautions to prevent any form of harm to good. There's really one exception to this rule: if items are lost or stolen throughout a riot due to a rioting mob or an act of God, the bailee is not accountable for the loss. The bailee of grain was not found accountable for the loss of bags of grain in *Shanti Lal v. Tara Chand Madan Gopal*, because the water took them all away and he was unable to defend them. In Common Law, the situation is slightly different since the bailee's responsibility does not terminate when the items are lost or stolen. In order to reclaim the items, a bailee for reward must take reasonable and customary procedures. If he failed to do so, he bears the burden of proving that reasonable efforts would not have resulted in accomplishment.

In *Canara Bank, Mannarkkad v. Bhavani Oil Company*, an exclusion provision in a bailment contract stated that the items would be maintained in the bank's godown at the borrower's expense and obligation. It was determined that this did not cover the bank's conduct, and that the provision merely addressed the usual care needed under Section 151. The bank could not avoid accountability because of its carelessness, that resulted in the loss of commodities in its custody. Sections 151 and 152 of the Contract Act don't really extend to common carriers. A common carrier is someone who delivers or carries commodities on behalf of another person. For a long time, it was debated if common carriers should indeed be deemed bailees. In the case of *Kuverji Tulsidas v. Great Indian Peninsular Railway Company* in 1878, it was determined that the meaning of bailment in section 148 was broad enough to encompass bailment for carrier. However, the Privy Council eventually ruled that the obligations and liabilities of common carriers in India should be regulated by English common law principles in combination with the requirements of the Carriers Act 1865.

**Carriage by Air:** The Carriage of Goods by Air Act, 1974 governs the carriage of goods by air for domestic flights. This legislation is based on the terms of the Warsaw Convention of 1929 and the Hague Protocol of 1955 (revised section of the Warsaw Convention of 1929). By these laws, the bailee is accountable for the stolen property if he can demonstrate that he and his servants or agents took all necessary precautions to avoid the loss of the commodity or that it was impracticable for them to take such precautions. The plaintiff in *Fothergill v. Monarch Airlines Ltd.* travelled by air whose luggage were destroyed. The conveyance was controlled worldwide by the Warsaw and Hague Conventions, and indeed the defendant conceded accountability for the luggage damage but denied the claim again for lost items. Because the plaintiff only

complained about damages to his bag and not really about the disappearance of products, the airline wasn't really found liable for the loss of commodities.

**Carriage by Sea:** There is a dispute between judgements about the responsibility of such carriers being regulated by English Common Law or the requirements of Sections 151 and 152 of the Contract Act. In *MacKillican v. Compagnie Des Messageries Maritimes De France*, the High Court of Calcutta ruled that foreign businesses are not common carriers, but in *Hajee Ismail Sait v. Compagnie Des Messageries Maritimes of France*, the court reversed that decision. The Madras High Court ruled that they were common carriers since they were an overseas firm, and that the company's responsibility was regulated by English common law.

## CONCLUSION

The bailee must use the same level of caution as a wise person would. If it is discovered that the bailee fails to take care of the goods owing to his irresponsible conduct, he will be held accountable under the Indian Contract Act bailment rules. It was also discovered that a bailee might reduce his culpability for carelessness by entering into a contract with the bailor under Section 152 of the ICA. However, in this scenario as well, the bailee cannot contract to restrict the obligation below what a rational person would expect since it would be against public policy. As examined some significant kinds of bailees, it was discovered that a minimal degree of care is anticipated from each type of bailee and that he was held accountable if indications of his carelessness were discovered. The bailee will always bear the burden of evidence because he must demonstrate that he exercised the minimum necessary of care that would be expected of a reasonable individual. Because of recent changes, bailees can now sue bailors under COPRA. The significance of this is that bailor can bring a lawsuit against bailee under COPRA and ICA at the same moment, where under COPRA he can demand financial damages and under ICA in civil courts he can plead for jail, license revocation, and a variety of many other civil remedies.

## Bibliography

- Gibaud v. Great Eastern Railway, [1921] 2 KB 426
- Bachraj Dugar v. Lalchand Todi, AIR 1962 Assam 23
- Shanti Lal v. Tara Chand Madan Gopal, AIR 1933 All 158
- Canara Bank, Mannarkkad v. Bhavani Oil Company, Chemmannur, AIR 2004 Ker 273.
- MacKillican v. Compagnie Des Messageries Maritimes De France, (1881) ILR 6-7 Cal 148.
- Hajee Ismail Sait v. Compagnie Des Messageries Maritimes of France, (1905) ILR 28 Mad 400.
- Indian Contract Act 2013.
- Diganth Raj Sehgal -, Bailment- meaning and introduction iPleaders (2020), <https://blog.iplayers.in/bailment-meaning-introduction>.
- <https://consumeraffairs.nic.in/acts-and-rules/consumer-protection>
- Fothergill v Monarch Airlines Ltd - House of Lords[1981] AC 25.