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Q1: Explain fully the term Bailment and duties of Bailer and Bailee?

ANS:

1. Meaning of bailment :

The term bailment is derived from French word 'bailor' which means to deliver. Bailment is a delivery of goods on condition that the receipent shall ultimately restore them to the Bailor or dispose of them according to the direction of the Bailee or dispose of them according to the direction of the Bailor.

A bailment is the delivery of goods by one person to another for some purpose; upon a contract that they shall, when the purpose is accomplished, the property must be returned back or otherwise disposed off according to the directions of the person delivering them.

Definition:

Section 148 of the Contract Act, 1872 defines bailment - A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. In bailment the person delivering the goods is called the 'bailor' and the person to whom they are delivered is called the 'bailee'.
Examples - Hiring of goods, car , furniture etc.

Duties of Bailee

1. Duty to take care of the goods.

2. Duty to return goods: After the accomplishment of purpose, it is the duty of the bailee to return the goods to the bailor.

3. To make proper use of goods bailed: The use of the goods which are mentioned under the contract, the use must be according to the contract.

4. Duty not to mix his own goods with the goods of bailor.

5. Duty not to question the title of the bailor.

6. Duty of bailee to pay increase or profit from goods bailed. For Example, A gives a cow to B on bailment and after the bailment cow gives birth to a calf. It is the duty of the bailee to return cow as well as the calf to the bailor.

Duties of Bailor

1. It is the duty of bailor to disclose faults in goods bailed: It is the paramount duty of the bailor to express the fault of the goods to the bailee.

2. Duty of the bailor to give compensation to the bailee.

3. Duty to give expenses.

4: Duty to dispose faults*:* Bailer should disclose faults present in goods at the time of making delivery. Faults are of two types namely ; Known faults and Un-known faults. On the other hand bailments also are of two types namely Gratuitous bailment and Non-Gratuitous bailment. In case of gratuitous bailment, bailer is liable to compensate for bailee injuries arising out of known faults. In Gratuitous bailment, bailer is not answerable to un-known faults. In case of Non-Gratuitous bailment, bailer is answerable to both known faults and Un-known faults.

5: Duty to contribute for expenses*:* Bailer should Contribute for expenses incurred by bailee. In case of Gratuitous bailment, bailer need not contribute for ordinary expenses and extra ordinary expenses or to the contributed by bailer. In case of Non-Gratuitous bailment, bailer should contribute for both ordinary expenses and extra ordinary expenses.

6: Duty with regard to defective title*:* In case where bailer has delivered the goods with defective title, the bailee may come across suffering from the side of true owner due to bailers defective title. In such a case bailer with defective title should compensate bailee.

7: Duty to Indemnify*:* Principal of indemnity operates between bailer and bailee, where bailer becomes implied indemnifier and bailee becomes implied indemnity holder. So bailer has duty to indemnify bailee.

8: Duty to take the Goods back*:* After fulfillment of purpose bailee returns the goods to bailer. Then bailer should take them back. If bailer refuses to take the goods back, bailer has to compensate bailee.

Q2: What do you understand by contract of Indemnity and Contract of Guarantee? What is the difference between them?

ANS:

Contract of Guarantee:

Definition of Guarantee

When one person signifies to perform the contract or discharge the liability incurred by the third party, on behalf of the second party, in case he fails, then there is a contract of guarantee. In this type of contract, there are three parties, i.e. The person to whom the guarantee is given is Creditor, Principal Debtor is the person on whose default the guarantee is given, and the person who gives a guarantee is Surety

The expression 'Guarantee' literally means "assurance given by one person to another at the default of some other". In other words, it is a secondary agreement in which a person is liable for the debt or default of another, who is the party primarily liable for the debt. Contract of guarantee also called as the Contract of Surety ship.

1) Definition :

Section 126 of the Contract Defines the contract of Guarantee as, "A “contract of guarantee” is a contract to perform the promise, or discharge the liability, of a third person in case of his default.

Surety: The person who gives the guarantee is called the “surety”.Surety also known as Guarantor.

Principal Debtor: The person in respect of whose default the guarantee is given is called the “principal debtor”,

Creditor: The person to whom the guarantee is given is called the “creditor”.

The function of a contract of guarantee is to enable a person to get a loan or goods on credit. or an employment. Some person comes forward and tells the lender, on the supplies, on the employee that he may be trusted and in case of any default I undertake to be responsible. A guarantee may be either oral or written.

Example :

'X' takes loan from a bank. 'X' promise to the bank to repay the loan. 'Y' also makes a promise to the bank saying that if 'X' does not repay the loan "then I will pay".

Here, in the above example, X is Principal debtor , Y is surety , whose liability is secondary. and the Bank is creditor.

2) Essentials of Contract of Guarantee:

(i) Principal Debt: There can be no Contract of Guarantee unless there is a principal debtor.

(ii) Consideration for Guarantee: According to Section 127 of the Contract Act, 1872 Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C

promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient **consideration** for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

Contract of indemnity:

Contract of indemnity meaning is a special kind of contract. The term indemnity literally means security or protection against a loss or comprnsation. According to section 124 of the Indian contract act 1872 " A contract by which one party promises to save the other from loss caused to him by the conduct of the promise himself, or by the conducted of any other person, is called a contract of indemnity.

Definition of Indemnity

A form of contingent contract, whereby one party promises to the other party that he will compensate the loss or damages occurred to him by the conduct of the first party or any other person, it is known as the contract of indemnity. The number of parties in the contract is two, one who promises to indemnify the other party is indemnifier while the other one whose loss is compensated is known as indemnified.

The indemnity holder has the right to reimburse the following sums from the indemnifier:

- Damages caused, for which he was compelled.
- The amount paid for defending the suit.
- The amount paid for compromising the suit.

One more common **example** of indemnity is the insurance contract where the insurance company promises to pay for the damages suffered by the policyholder, against the premiums.

The difference between Contract of Indemnity and Contract of Guarantee:

we need to understand few important terms. Indemnity means "Security against loss". Both indemnity and guarantee are contingent contracts that are governed by the Contract Law.

While indemnity implies protection against loss, the guarantee is when an individual assures the opposite party that he or she will fulfil the obligation in case of a default.

Indemnity means money that needs to be paid for the loss. If you want to secure your position or interest in a given contract, you should opt for either of the two. However, before you go ahead, you need to understand the differences between guarantee and indemnity. There are some borderline differences between them.

Key features of the contract of indemnity

- Some key features include the fact that the contract is made for the protection of the promise against contingent loss
- The event mentioned in the contract must take place
- As soon as the indemnified faces the loss, the liability of the **indemnifier** takes place
- Indemnification is made for actual damage or loss
- The contract may be implied and expressed.
- If the loss is caused due to the indemnifier's mistake, then he or she is responsible for the same.

Key features of contract of guarantee

- An agreement between three parties
- No misrepresentation of the facts related to the contract
- No direct consideration between the creditor and the surety
- Apart from other features of a valid contract, the involvement of competent parties is mandatory
- Since it is a conditional contract, the liability of the surety takes place when the principal debtor.

Basis of Comparison	***Indemnity***	***Guarantee***
Meaning	Indemnity is a contract	Guarantee is a contract

	where one party promises to another that he or she will compensate the other for any kind of loss suffered by the act of the third party	where a party promises the other that he or she will compensate for the loss or perform the contract if there is a default.
Defined in	Section 124 of Indian Contract Act, 1872	Section 126 of Indian Contract Act, 1872
Parties	2, namely indemnifier and indemnified	3, namely creditor, principal debtor and surety
Number of contracts and details	1	3
Degree of liability of promisor in each case	Primary	Secondary
Maturity of liability	When the contingency occurs.	Liability is already in existence
Purpose	To compensate for the loss	To provide some kind of assurance to the promise

Q3: Define Bailment? What are the kinds of Bailment?

ANS:

Introduction

In law, the word bailment is used in its technical sense which means the change in the possession of goods i.e. one person transfers the goods to another person. On the other hand, Pledge is a kind of bailment in which one person bails his goods to another person as security against loans.

Both bailment and pledge are examples of specific contracts. The contract of bailment can be classified into three categories:

In basic terms, bailment implies the “change in possession” or “to hand over”. As per Contract Act, bailment can be understood as the transaction wherein delivery of any item by an individual (bailor) to another individual (bailee) takes place with a specific objective, under a contract.

2. Definition of bailment

Section 148 of the Contract Act, 1872 defines bailment - A ‘bailment’ is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. In bailment the person delivering the goods is called the ‘bailor’ and the person to whom they are delivered is called the ‘bailee’.
Examples - Hiring of goods, car , furniture etc.

Kinds of Bailment:
1: Gratuitous Bailment
2: Non Gratuitous bailment:

1: Gratuitous Bailment:

A bailment with no considerations is called a gratuitous bailment. In this kind of bailment neither the bailor, nor the bailee is entitled to any remuneration or reward. Such a bailment may be for the exclusive benefit of either party, i,e the bailor or the bailee, discussed as below.

Bailment for the exclusive benefit of the bailer:

In the case the bailer delivers the goods for the exclusive benefits and the bailee does not derive any benefit out of it.

Under this Bailment, anyone, either the bailor or the bailee gets the sole benefit.

For sole benefit of Bailor

In this concept, the bailor transfer the goods to the bailee for some specific purpose which result in the benefit of bailor only i.e. bailee has no expectation in return.

Illustration

A and B are the neighbours. One fine day A gave his jewellery to B to keep it safe because A is going out of town for some days. B return A's jewellery to A when he came back. Here there is no benefit of B in keeping those goods i.e. B does not get anything in return.

2: Non Gratuitous Bailment:

Contrary to gratuitous bailment, a non gratuitous bailment or bailment for reward is one that involve some consideration passing between the bailor and the bailee. Obviously in this case the delivery of goods takes place for the mutual benefit of both the parties.

Under this concept, both the bailor and the bailee get some rewards in return i.e. mutual benefit of both.

When bailor transfers his goods to the bailee for some specific purpose. After the completion of that specific purpose, the bailee returns the goods back to the bailor and in return gets the payment for his services.

Illustration

If A gives his car to B for repairing purpose. After the complete repair, B returns A's car to him and A will pay B for his service.