

LAW OF CONTRACT-II

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QUESTION NO.01

Bailee and Bailor

As per the section 148 of the Indian Contract Act, 1872, a bailment is a contract where one person delivers goods to another person for some purpose. The person delivering the goods is the Bailor and the person receiving the goods is the Bailee. After the accomplishment of the purpose, the Bailee needs to return these goods to the Bailor or dispose of them according to the directions of the Bailor. Let us now discuss the duties of bailee and bailor.

Duties of Bailee and Bailor

Bailment refers to the voluntary delivery of goods. Also, such delivery is for a temporary purpose and after the fulfilment of which the bailee shall either return the goods in the same or altered form or dispose of them.

In the contract of bailment, the ownership of the goods remains with the Bailor and only the possession transfers to the bailee. Such delivery of goods may be actual or constructive.

For example, when A hands over the keys of a godown to B, it amounts to the delivery of goods in the godown. Also, A is the bailor and B is the bailee.

Duties of a Bailee

Duties of a bailee in respect of goods are as follows:

1. Take proper care of goods

According to section 151, it is the duty of a bailee to take care of goods bailed to him. Bailee should take care of these goods as an ordinary man will take care of his goods of the same value, quality, and quantity.

Thus, if the bailee takes due care of goods then he will not be liable for any loss, deterioration of such goods. Also, the bailee needs to take the same degree of care of goods whether the bailment is for reward or gratuitous.

However, the bailee is not liable for any loss due to the happening of any act by God or public enemies though he agrees to take special care of the goods.

2. Not to make unauthorized use

As per section 153, the Bailee shall not make any unauthorized use of goods bailed. In case he makes any unauthorized use, then bailor can terminate the bailment.

Bailor can also claim for damages caused to goods bailed due to unauthorized use as per Section 154.

3. Keep goods separate

The bailee needs to keep the goods separately from his own goods. He should not mix the goods under bailment with his own goods. In case bailee mixes the goods with his own goods without the consent of the bailor, then:

- Bailor also has an interest in the mixture.
- If the goods can be separated or divided, the property in the goods remains with both the parties. But, the bailee bears the expenses of separation or any damages arising from the mixture.
- If it is not possible to separate the goods, the bailee shall compensate the bailor for the loss of goods.

4. Not set adverse title

A bailee must not set an adverse title to the goods bailed.

5. Return Goods

The duty of the bailee is to return the goods without demand on the accomplishment of the purpose or the expiration of the time period. In case of his failure to do so, he shall be liable for the loss, destruction, deterioration, damages or destruction of goods even without negligence.

6. Return increase or profits

A bailee shall return the goods along with any increase or profit accruing to the goods to the bailor, in the absence of any contract to the contrary.

For example, A leaves a hen in the custody of B. The hen gets a chick. B shall deliver the hen along with the chick to A.

Duties Of A Bailor

Duties of a bailor are as follows:

1. It is the duty of a bailor to disclose all faults. If bailor fails to disclose such faults then he will be responsible for the damage caused to goods or loss suffered by the bailee.
2. Also, the bailor is under the duty to pay the extraordinary expenses incurred by the bailee for such bailment.
3. It is the duty of the bailor to accept the goods after the purpose for which such goods were bailed is accomplished.
4. It is the duty of the bailor to indemnify the bailee for the cost incurred due to the defective title of goods bailed to the bailee.

QUESTION NO. 02

1. Compensatory Damages

An award of compensatory damages is the most common of the legal remedies for breach of contract.

The calculation of compensatory damages is based on the actual losses you have sustained as a result of the breach of contract. They typically fall into two categories: expectation damages and consequential damages.

2. Specific Performance

Specific performance is a type of remedy for breach of contract in which a court orders the breaching party to perform their end of the bargain.

Monetary damages are typically favored over specific performance as a remedy for breach of contract. However, specific performance may be available when monetary damages won't adequately compensate you. For example, they may apply to a contract for something that is unique and can't be easily replaced.

.3. Injunction

Injunctions serve a similar purpose as specific performance. The difference is that with specific performance, the court orders a party to do something. With an injunction, the court often orders a party not to do something.

An injunction may be permanent or temporary. Temporary injunctions are often ordered while litigation is pending to prevent potential damage. For example, in a lawsuit that concerns a breach of a noncompete contract, a court might order the defendant to cease the allegedly competitive activity until the lawsuit is resolved. A permanent injunction, as the name suggests, is permanent. A judge may issue a permanent injunction as part of their final ruling in a lawsuit.

4. Rescission

Rescission allows a nonbreaching party to cancel the contract as a remedy for a breach. Rather than seeking monetary damages, the nonbreaching party can simply refuse to complete their end of the bargain. Rescission puts the parties back in the position they would have been in had they never entered into the contract.

However, to justify rescission, the breach must be material. That means that it has to go to the heart of the contractual agreement.

5. Liquidated Damages

Liquidated damages are a specific amount the parties agree to in the contract as compensation for a breach.

Contracts often use liquidated damages provisions where it might be difficult to calculate the correct amount of compensatory damages.

Real estate purchase agreements and construction contracts commonly rely on liquidated damages. They might be a specific sum, such as the amount of the earnest money on a purchase contract. Or they could depend on a formula, such as a certain amount of money for each day a deadline is not met. Partnership agreements are also likely to include liquidated damages provisions.

Although courts typically uphold liquidated damages clauses, they may disregard them if the amount of liquidated damages is drastically smaller or greater than the value of the actual harm the plaintiff has suffered.

6. Nominal Damages

A court may award nominal damages as a legal remedy for breach of contract when the plaintiff cannot support their claim for compensatory damages. With nominal damages, the court recognizes that a breach of contract occurred, but no harm can be calculated.

While receiving nominal damages may feel like a pyrrhic victory, the plaintiff does get the benefit of the ruling in their favor. This may be simply a moral victory, or it may pave

the way for the plaintiff to pursue another type of legal action. If the contract has an attorney fee provision, an award of nominal damages may also enable the plaintiff to seek their attorney fees from the defendant.

QUESTION NO.03

What are the ingredients of contract?

- An offer.
- Acceptance,
- Consideration.
- Mutuality of obligation.
- Competency and capacity.

A contract can be entered into by parties for the performance or non-performance of an action or an event. There are primarily two types of contracts: Absolute Contracts and Contingent Contracts. Let us explain contingent contract in detail.

Contingent Contract Meaning

In a contingent contract, the performance of the promisor is dependent on the fulfillment of certain conditions. These contracts create an obligation on the promisor only if the conditions collateral to the contract are met.

Let Us Define Contingent Contract as Per Section 31 of the Indian Contract Act, 1872

According to the Indian Contract Act, “If two or more parties enter into a contract to do or not do something if an event which is collateral to the contract does or does not happen, then it is a contingent contract.”

QUESTION NO. 04

Remedy for breach of warranty

(1) Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may-

(a) set up against the seller the breach of warranty in diminution or extinction of the price, or

(b) sue the seller for damages for breach of warranty.

(2) The fact that a buyer has set up a breach of warranty in diminution or extinction of the price does not prevent him from suing for the same breach of warranty if he has suffered further damage.

QUESTION NO. 05

Quasi Contract

The word 'Quasi' means pseudo. Hence, a Quasi contract is a pseudo-contract. When we talk about a valid contract we expect it to have certain elements like offer and acceptance, consideration, the capacity to contract, and free will. But there are other types of contracts as well.

There are cases where the law implies a promise and imposes obligations on one party while conferring rights to the other even when the basic elements of a contract are not present. These promises are not legal contracts, but the Court recognizes them as relations resembling a contract and enforces them like a contract.

These promises/ relations are Quasi contracts. These obligations can also arise due to different social relationships which we will look at in this article.

The core principles behind a Quasi Contract are justice, equity and good conscience. It is based on the maxim: "No man must grow rich out of another persons' loss."

An obligation created by law for the sake of justice; specif., an obligation imposed by law on parties because of a relationship between parties or because one of them would otherwise be unjustly enriched. It's not a contract, but instead is a remedy that allows the plaintiff to recover a benefit conferred on the defendant. These types of contracts are quasi-contract or restitution that fall in the third category of quasi-contracts or restitution.

Thank You !