

# CONTRACT OF BAILMENT

## Essentials

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# Essentials of Bailment

- *Delivery of possession* – The main characteristic of a bailment is that the delivery contemplated is for a temporary purpose. There can be no bailment if the whole property is transferred. Delivery may be actual or constructive.



- Actual delivery may be made by handing over something to the bailee. Constructive or symbolic delivery may be made by doing something which has the effect of putting the goods in the possession of the intended bailee.



- Thus, bailment involves a change of possession, mere custody without possession does not create the relation of a bailor and a bailee. So if 'A' forgets a box containing jewellery in the shop of a goldsmith, there is no contract of bailment and the goldsmith is not responsible for the safety or custody of A's jewellery.



- *Delivery upon contract* – Delivery of goods should be made for some purpose and upon a contract that when the purpose is accomplished the goods shall be returned to the bailor. When a person's goods go into the possession of another without any contract, there is no bailment within the meaning of its definition in Section 148.



- Though, bailment is usually based on a contract, there are some exceptions, *for example*, the case of a finder of goods. There is no contract between the finder of a lost article and its owner, still, the finder is treated as a bailee of lost article.



- *Conditional Delivery* – Bailment of goods is always made for some purpose and is subject to the condition that when the purpose is accomplished the goods will be returned to the bailor or disposed of according to his mandate.



- If the person to whom the goods are delivered is not bound to restore them to the person delivering them or to deal with them according to his directions, their relationship will not be that of bailor and bailee.





- Section 149 of the Act provides for delivery to bailee how made. It states that the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.



- Section 150 of the Act provides for bailor's duty to disclose faults in goods bailed. It states that the bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.



- If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

