

CONTRACTS -2



UNIT-1

CONTRACT OF INDEMNITY AND GUARANTEE

(Sections 124 to 147 of Indian Contract Act, 1872)

CONTRACT OF INDEMNITY (Sections 124 & 125)

Definition (Sec. 124)

A contract of indemnity is one where **one party promises to save the other from loss** caused by:

- The **conduct of the promisor** himself,
- Or the **conduct of any other person**.
- **Promisor** = Indemnifier
- **Promisee** = Indemnity-holder / Indemnified

This is a **class of contingent contracts**, enforceable only upon the occurrence of a certain event.

Indemnity in English Law vs Indian Law

Feature	English Law	Indian Law
Scope	Very broad – includes express, implied indemnities, losses from all causes	Narrow – includes only express indemnity against acts of specific persons
Nature of Promise	Express or implied	Only express
Includes Losses From	Fire, accidents, etc.	Not included unless caused by promisor or a third person

Example:

- B says to a shopkeeper “Let A have the goods; I will see you paid.” – This is indemnity

Indemnity in Insurance Contracts

- **English Law:** All insurance contracts (except life insurance) are considered indemnity contracts.
- **Indian Law:** Though not strictly under Sec. 124, the courts have held insurance contracts are **de facto** indemnity contracts.

Legal Nature

- **Species of General Contract** – Must satisfy all essentials of a valid contract (e.g., lawful object).
- **A Type of Contingent Contract** (Sec. 31): Liability arises only upon occurrence of a specific event (e.g., fire destroying house).

Rights of Indemnity-Holder (Sec. 125)

The indemnity-holder can recover:

1. **Damages** he is compelled to pay in any suit covered by the indemnity.
2. **Costs of suit** if such suits were not against promisor's instructions and were prudent.
3. **Amounts paid under compromise**, if not against the indemnifier's instructions.

Duties of Indemnity-Holder

1. Must act **prudently** – Not negligently.
2. Must **not cause harm** deliberately.
3. Must **comply with instructions** of indemnifier.

Rights of Indemnifier

- Not specified in the Indian Act.
- Under **English Law**, rights similar to a surety (Sec. 141) – i.e., subrogation after payment.

Commencement of Indemnifier's Liability

Two views:

- **Traditional View**: Liability begins only when indemnity-holder has actually suffered a loss.
- **Progressive View**: Liability arises even if indemnity-holder has incurred liability, but hasn't paid yet.

Courts generally favour the **first view** in India.

CONTRACT OF GUARANTEE (Sections 126–147)

Definition (Sec. 126)

A contract where **one person promises to perform the obligation or discharge the liability of a third person** in case of his default.

- **Surety**: Person giving guarantee
- **Principal Debtor**: Person whose default is covered
- **Creditor**: Person to whom guarantee is given

Applications of Guarantee

1. Employment security
2. Repayment of loan
3. Credit sale of goods
4. Fidelity guarantee (honesty of employee)

Case Law:

- **National Highway Authority of India vs M/s Ganga Enterprises:** Guarantee is independent and separate contract.

Relationships in Contract of Guarantee

Three interconnected relationships:

1. **Creditor ↔ Principal Debtor:** Loan or transaction.
2. **Creditor ↔ Surety:** Guarantee.
3. **Surety ↔ Principal Debtor:** Surety can claim indemnity (Sec. 145).

Essentials of a Valid Guarantee

1. Valid contract elements under Sec. 10.
2. Three parties involved.
3. Competency of parties (surety must be competent; debtor can be minor).
4. Consideration (Sec. 127): Anything done for principal debtor is valid consideration for surety.
5. Principal debt must exist.
6. Concurrence of all three parties.
7. May be **oral or written** (unlike English law – must be in writing).

Invalid Guarantees

1. Obtained by **misrepresentation** (Sec. 142).
2. Obtained by **concealment** (Sec. 143).
3. **Co-surety not joining**, if it was a precondition (Sec. 144).

DIFFERENCE BETWEEN INDEMNITY & GUARANTEE

Basis of Difference	Contract of Indemnity	Contract of Guarantee
Definition	A contract in which one party promises to compensate the other for any loss suffered due to the conduct of the promisor or another person.	A contract in which one party promises to discharge the liability of a third person in case of default.
Parties Involved	Two parties: Indemnifier and Indemnified	Three parties: Creditor, Principal Debtor, and Surety
Number of Contracts	Only one contract between the indemnifier and the indemnified	Three contracts: between Creditor & Debtor, Creditor & Surety, and Surety & Debtor (implied)
Primary Liability	Liability of the indemnifier is primary and absolute	Liability of the surety is secondary and conditional

		upon the default of the principal debtor
Existence of Debt	No existing debt or obligation is necessary	There must be an existing debt or obligation of the principal debtor
Objective	To protect the indemnified from loss	To assure the creditor of the performance or repayment by the debtor
Trigger of Liability	Loss must be suffered by the indemnified	Default must occur by the principal debtor
Right to Sue Third Party	Indemnifier has no automatic right against third party	Surety can recover the amount from the principal debtor after payment
Examples	Insurance contracts, indemnity bonds	Loan surety, bank guarantees, or co-signing a loan
Relevant Sections	Section 124 and 125 of Indian Contract Act, 1872	Section 126 to 147 of Indian Contract Act, 1872

LIABILITY OF SURETY (Sec. 128)

- Co-extensive with principal debtor unless otherwise agreed.
- Surety can be sued directly, even without suing debtor.

Rules regarding surety's liability

- **Liability is co-extensive** – Surety is liable for the same amount as the principal debtor.
- **Liability is immediate** – Creditor can directly sue the surety without suing the principal debtor first.
- **Liability arises on default** – Surety is liable only when the principal debtor fails to pay.
- **Limited by contract** – Surety can limit the amount or duration of liability in the contract.
- **Continuing guarantee** – Liability continues for future transactions until it is revoked.
- **Discharge on contract change** – If the terms between creditor and debtor are changed without surety's consent, he is discharged.
- **Discharged if debtor is discharged** – If the debtor is legally released, the surety is also released.
- **Discharge by creditor's conduct** – If the creditor acts carelessly and harms the surety, the surety is discharged.
- **Death revokes future liability** – In a continuing guarantee, the surety's death ends future liability.
- **No need for notice** – Surety is liable even if not informed about the debtor's default.

Case Laws:

- *Subramaniya vs Narayanaswami*: If debtor's liability extinguished, so is surety's.
- *Syndicate Bank vs Manjunath*: Creditor can sue surety directly.

KINDS OF GUARANTEE

1. **Specific Guarantee**:
 - One-time transaction
 - Terminates when obligation fulfilled
2. **Continuing Guarantee** (Sec. 129):
 - Series of transactions
 - Can be revoked (Sec. 130)

Revocation Modes:

- **Notice** (Sec. 130)
- **Death of Surety** (Sec. 131)
- **Novation** (Sec. 62)
- **Change in terms** without consent (Sec. 133)

DISCHARGE OF SURETY (Secs. 130–145)

A surety is said to be **discharged** when his liability to perform the obligations under the contract of guarantee comes to an end by **act of parties, operation of law, or conduct of creditor**.

A. By Revocation

- By **notice** (future transactions only)
- By **death** of surety
- By **novation**

B. By Creditor's Conduct

- Variation in terms (Sec. 133)
- Discharge of principal debtor (Sec. 134)
- Composition with debtor (Sec. 135)
- Loss of security (Sec. 141)
- Creditor's omission affecting surety's rights (Sec. 139)

C. Invalid Contract

- Misrepresentation or concealment
- Failure of consideration
- Non-joining of required co-surety

Modes of Discharge:

1. By Revocation (Sec. 130–131)

(a) By Notice – Section 130:

- A **continuing guarantee** can be revoked **at any time** by notice from the surety.
- Revocation is **only for future transactions**. The surety remains liable for **past obligations**.

Illustration:

A guarantees B for any amount lent to C up to Rs. 5,000. After Rs. 2,000 is advanced, A gives notice of revocation. A is liable for the Rs. 2,000 but not for future amounts.

Case: Offord v. Davies (1862)

Court held revocation affects only **future transactions**, not past ones.

(b) By Death – Section 131:

- Death of a surety automatically **revokes a continuing guarantee** with respect to **future transactions**.
- No requirement that creditor should be aware of death.
- Liability for past transactions continues.

2. By Conduct of the Creditor

(a) Variation in Terms Without Surety's Consent – Sec. 133

- If any **variation is made in the contract** between creditor and principal debtor without consent of surety, the surety is discharged as to **future transactions**.

Illustration: Rent increased without surety's knowledge discharges surety.

Case: Kathun Bibi v. Abdullah (1880)

Surety discharged as rent terms changed without consent.

Exception:

If variation is **immaterial** or **benefits the surety**, he may not be discharged.

Case: Sulochana v. State of A.P.

(b) Release or Discharge of Principal Debtor – Sec. 134

- If the **principal debtor is released** by any contract or agreement, the surety is also discharged.
- However, if debtor is discharged **by operation of law** (e.g., insolvency), surety is **not discharged**.

(c) Composition/Compromise with Principal Debtor – Sec. 135

- If the creditor **makes a compromise, gives more time, or promises not to sue** the principal debtor without surety's consent, then surety is discharged.

Exceptions:

- If **time is given to debtor** by contract with a **third person**, surety is **not discharged** (Sec. 136).
- **Mere forbearance to sue** principal debtor does not discharge surety (Sec. 137).

(d) Release of one co-surety does not discharge the others – Section 138

1. If there are **multiple sureties** for a debt, and the creditor **releases one surety**,
2. The **other sureties are not discharged**; they remain liable for the whole debt.
3. However, the released surety is **not released from his responsibility to the co-sureties**. He may still need to contribute if others pay more.

Example: A, B, and C are co-sureties. If the creditor releases C, A and B are still liable. C must still pay his share to A and B if they pay the full amount.

(e) Discharge of surety by creditor's act or omission- Section 139

1. If the creditor **does anything or fails to do something** which:
 - **Prejudices the rights of the surety, and**
 - **Is without the surety's consent,**
2. Then the **surety is discharged** from liability.

Example: If the creditor agrees to give more time to the debtor without informing the surety, the surety is discharged.

(e) Loss of Security by Creditor – Sec. 141

- If the creditor, without the consent of the surety, **parts with or loses security** given by the principal debtor, the surety is **discharged to that extent**.

Illustration:

C loses mortgage property worth Rs. 20,000 given as security. Surety's liability is reduced by Rs. 20,000.

Case: Union Bank v. Manku Narayana (1987) – Creditor must first proceed against security.

3. By Invalidating the Contract of Guarantee

(a) Misrepresentation – Sec. 142:

If the guarantee was obtained by misrepresentation (with knowledge or consent of creditor) – voidable at surety's option.

(b) Concealment – Sec. 143:

Guarantee obtained by **silence or hiding material facts** is invalid.

Case: London General Omnibus v. Holloway – Non-disclosure of dishonesty discharged surety.

(c) Co-surety Not Joining – Sec. 144:

If a surety signed on the condition that **another co-surety** would join, and that person doesn't, the surety is **not liable**.

(d) Failure of Consideration – Sec. 25:

If the principal debtor's contract with the creditor is **void due to lack of consideration**, surety is also discharged.

RIGHTS OF SURETY (Secs. 140, 141, 145–147)

Rights Against Whom?

1. Against Principal Debtor
2. Against Creditor
3. Against Co-Sureties

1. Against Principal Debtor

- **Right to be relieved** from liability
- **Right of Subrogation** (Sec. 140)
- **Right of Indemnity** (Sec. 145)

2. Against Creditor

- Right to benefit of securities (Sec. 141)

3. Against Co-Sureties (Sec. 146–147)

- Equal contribution unless agreed otherwise
- If co-surety is released by creditor, still liable to other sureties

1. RIGHTS AGAINST PRINCIPAL DEBTOR

(a) Right to be Relieved from Liability

- Surety can **compel the debtor to pay** the debt and relieve him from future liability.
- Known as **right of exoneration**.

(b) Right of Subrogation – Sec. 140

- After payment, surety **steps into shoes of creditor**.
- Can exercise all remedies that creditor had against the principal debtor:
 - Sue debtor
 - Enforce securities
 - Claim interest

Case: Lamplugh Iron Ore Co. Ltd.

Surety entitled to every remedy the creditor has.

(c) Right to Indemnity – Sec. 145

- Principal debtor is **impliedly bound to indemnify** the surety for any lawful payment made.

Example:

If S pays Rs. 50,000 to C under guarantee, he can recover the amount from P.

2. RIGHTS AGAINST CREDITOR

(a) Right to Benefit of Securities – Sec. 141

- After paying the creditor, surety has a right to claim **benefit of any security** held by the creditor against the principal debtor.
- Even if the surety was unaware of the securities.

Case: Union Bank v. Manku Narayana (1987)

3. RIGHTS AGAINST CO-SURETIES

(a) Right of Contribution – Sec. 146

- When there are multiple sureties for the same debt, they are **jointly and severally liable**.
- If one surety pays more than his share, he can recover the **excess from other sureties**.

When two or more persons act as **co-sureties** for the same debt or obligation, they are liable to contribute **equally** towards the debt if the principal debtor defaults, unless they have agreed otherwise. This principle of **contribution** ensures fairness – if one surety pays more than his share, he can recover the excess from the other co-sureties.

Example: A, B, and C are co-sureties for a loan of ₹90,000. The principal debtor defaults, and A pays the entire amount. A can recover ₹30,000 each from B and C as contribution.

BAILMENT AND PLEDGE – INDIAN CONTRACT ACT, 1872

BAILMENT: DEFINITION, ESSENTIALS, CLASSIFICATION

INTRODUCTION

- Bailment is a **special class of contract** under the Indian Contract Act, 1872.
- General principles of bailment are governed by this Act, whereas special types are dealt under:
 - Carriers Act, 1865
 - Indian Railways Act, 1890
 - Carriage of Goods by Sea Act, 1925
 - Carriage by Air Act

DEFINITION (Sec. 148)

Bailment is the delivery of goods by one person (bailor) to another (bailee) for a specific purpose, upon a contract that the goods will be:

- Returned once the purpose is fulfilled, or
- Disposed of as per bailor's directions.

Essentials of delivery:

- Can be **actual** (physical handing over) or **constructive** (e.g., handing over keys or documents).
- **Bailor** – person delivering goods; **Bailee** – person receiving them.
- Only **possession** is transferred, not ownership.

ILLUSTRATIONS OF BAILMENT

1. Giving cloth to a tailor – Bailor: Owner; Bailee: Tailor.
2. Giving watch for repair.
3. Hiring vehicles (car/bike/cycle).
4. Giving ornaments to bank for loan – a type of pledge.
5. Buyer hasn't taken delivery – seller becomes bailee.
6. Hire-purchase arrangement.
7. Depositing luggage in a cloakroom.
8. Giving clothes for dry cleaning.

✗ Not Bailment:

- **Money** held by bank is not bailment.
- Agent with money ≠ Bailee.

ESSENTIALS OF BAILMENT

1. **Delivery for a purpose:** Must be made under a contract for a defined objective.
2. **Delivery of goods:** Only movable goods (not money or actionable claims). Mere custody \neq bailment.
 - *Kaliaperumal v. Visalakshi*: Key custody by owner \neq bailment with goldsmith.
 - **Facts:** A woman hired a goldsmith to melt old gold jewellery. Every night, she would keep the unfinished jewellery in a box and take the key with her, leaving the box at the goldsmith's premises. One night, the jewellery was stolen.
 - **Issue:** Was there a bailment between the woman and the goldsmith?
 - **Held:** No bailment existed because the woman retained **control and possession** (via the key). The goldsmith was not a bailee.
 - **Significance:** Mere **custody without delivery of possession** is not bailment.
3. **Delivery – actual/constructive:**
 - *Twentieth Century Finance v. State of Maharashtra*: **Right to use goods \neq transfer of ownership.**
4. **Return:** Must be returned or disposed of as per instructions.
5. **Movable goods only.**
6. **Possession not ownership:** If ownership is transferred = sale.
7. **Consideration:** Can be gratuitous or for reward. Possession parted with is itself a valid consideration.

CLASSIFICATION OF BAILMENT

(i) Based on Consideration:

1. **Gratuitous Bailment:** No consideration – e.g., lending goods to a friend.
2. **Non-Gratuitous/Contract Bailment:** For consideration – e.g., repair or hire of goods.

(ii) Based on Benefit:

1. For **bailor's benefit** – safe custody.
2. For **bailee's benefit** – lending goods freely.
3. For **mutual benefit** – hiring vehicles.

DUTIES & RIGHTS OF BAILOR AND BAILEE (Sec. 150–161, 163–167, 180)

INTRODUCTION

- Bailment involves delivery of goods for a purpose, either by actual or constructive means.
- Bailor and bailee have **rights** and **duties** under the law.

DUTIES OF BAILOR

1. **Disclose known faults** (Sec. 150):
 - Must inform bailee about known defects.
 - If for hire: Liable even for unknown defects (*Read v. Dean*).
 - If gratuitous: Liable only for known faults.
 - *E.g.*: Lending a vicious horse without disclosure – bailor liable.
2. **Bear necessary expenses** (Sec. 158):
 - Ordinary expenses borne by bailee.
 - Extraordinary expenses – bailor liable.
3. **Receive goods back**: Refusal leads to compensation liability.
4. **Indemnify for defective title** (Sec. 164):
 - If bailee suffers due to defective title of goods.
5. **Indemnify for premature termination** (Sec. 159):
 - If gratuitous bailment is ended early, bailor must compensate loss.

DUTIES OF BAILEE

1. **Take reasonable care** (Sec. 151–152):
 - Bailee must treat goods like his own.
 - Not liable if he proves no negligence.
 - *Case Laws*:
 - ***Martin v. London County Council***: Loss of jewellery due to negligence.
 - **Facts**: A patient admitted in a hospital deposited jewellery with staff. It was lost due to negligence.
 - **Held**: The hospital was acting as a bailee and was liable for the loss.
 - **Significance**: Institutions (like hospitals) can also become bailees for reward and are liable for negligence.
 - ***Ulzton v. Nicols***: Waiter took coat – restaurant liable.
 - **Facts**: A customer dined at a restaurant. Waiter took and hung his coat, which was later lost.
 - **Held**: The restaurant was liable as bailee for the safe custody of the coat.
 - **Significance**: When staff voluntarily assume responsibility, it becomes a bailment.
 - ***Dwaraknath v. Rivers Railway***: Goods lost in fire – railway liable.
 - **Facts**: Goods bailed to the railway company were destroyed by fire.
 - **Held**: Railway failed to prove reasonable care and was held liable.
 - **Significance**: Burden lies on bailee to prove **absence of negligence**.

Shantilal v. Tarachand: Flood damage – no liability.

- **Facts**: Food grains stored by the bailee were damaged by unexpected floods.
- **Held**: Bailee was **not liable** since damage occurred due to **act of God** and not negligence.
- **Significance**: If bailee has taken all reasonable precautions, they are **not liable for unavoidable accidents**.

▪ ***Srinivasa Iyer v. New India Insurance***: Car destroyed in fire – bailee liable.

- **Facts**: A car was given to a garage and was destroyed in fire.
- **Held**: Garage failed to prove that they took reasonable care. Held liable.
- **Significance**: Reiterates bailee's duty of care and liability when unable to disprove negligence.

2. **No unauthorised use** (Sec. 154):

- Must use only for specified purpose.
- Even with care, if loss arises from unauthorised use – bailee liable.

3. **No deviation from terms**:

- Deviation = right to terminate.

4. **Do not mix goods** (Sec. 155–157):

- Without consent = liable for separation cost.
- If inseparable = compensate fully.

5. **Return goods** (Sec. 160–161):

- Failure = liable even for subsequent loss.

Rampal vs. Gourishankar

- **Facts**: Pledgee refused to return goods after loan repayment. Goods were later stolen.
- **Held**: Pledgee was **liable** to compensate.
- **Significance**: **Refusal to return goods** makes bailee liable for **any subsequent loss**, even if accidental.

Shaw & Co. vs. Symmons & Sons

- **Facts**: Books were delivered for binding. Bailee delayed returning them. Fire broke out, destroying books.
- **Held**: Bailee was **liable** for delay, even though fire was not due to negligence.
- **Significance**: Timely return is part of bailee's duty; **delay increases liability**.

6. **Return accretions** (Sec. 163):

- Must return any increase in bailed goods.
- *E.g.*: Cow gives birth – return both cow and the calf

7. **No adverse title:**
 - Bailee must not deny bailor's ownership.

RIGHTS OF BAILOR

1. **Right to get back goods** (Sec. 159):
 - Can demand return at end of bailment or anytime (if gratuitous).
2. **Right to compensation:**
 - For negligence, misuse, or mixing of goods.
 - Can sue third parties too (Sec. 180).
3. **Right to profit/accretions** (Sec. 163):
 - E.g., Cow with calf, shares with bonus/interest.
 - *Standard Chartered Bank v. Custodian* – accretions are bailor's. Bonus shares and interest on pledged securities are **accretions** to the bailed goods and belong to the bailor.
4. **Right to enforce duties:**
 - Through court.
5. **Avoidance of contract** (Sec. 153):
 - If bailee misuses goods – bailment terminated.

RIGHTS OF BAILEE

1. **Immunity from title defects** (Sec. 166):
 - If goods returned to bailor, bailee not liable for defective title.
2. **Right to sue wrongdoer** (Sec. 180).
3. **Right to deliver to joint owners** (Sec. 165).
4. **Bailee's Lien:** Right to retain goods for charges due (see Chapter 4).
5. **Enforce bailor's duties:**
 - Compensation for defects, expenses, loss.
6. **Right to approach court** (Sec. 167):
 - If third party claims goods – bailee may seek court directions.

FINDER OF LOST GOODS (Sec. 71, 168, 169)

INTRODUCTION

- Finder becomes **gratuitous bailee**.
- Only true owner has better title.

- *Newman v. Bowne* – shop liable for lost coat/brooch due to negligence.
 - **Facts:** Customer left her coat with a brooch in a shop. Staff took it and placed it in drawer. It went missing after a week.
 - **Held:** The shopkeeper was **liable** for not taking reasonable care.
 - **Significance:** Once a finder **voluntarily takes possession**, they assume **bailee's duties**.

GENERAL RULES

1. Finder can retain goods against all except real owner.
2. No automatic right to compensation unless expenses incurred.
3. Goods on private property = property owner has claim (e.g., pond gold).
4. Legal obligations arise even without contract.

RIGHTS OF FINDER

1. **Right of lien** (Sec. 168):
 - For lawful expenses.
 - Cannot sue for them but can retain goods.
2. **Right to sue for reward:**
 - If reward was promised for return – may sue & retain until paid.
3. **Right of sale** (Sec. 169):
 - Allowed when:
 - Owner untraceable.
 - Refusal to pay expenses.
 - Goods are perishable.
 - Goods are regularly sold items.
 - Lawful expenses $\geq \frac{2}{3}$ of value.

DUTIES OF FINDER

1. Take reasonable care.
2. No personal use of goods.
3. Don't mix with personal goods.
4. Make reasonable effort to find real owner.
5. Else, treated as trespasser.

LIABILITY OF HOTEL/INN KEEPERS AND CARRIERS

1. Hotel keepers are bailees of guest property.
2. Must ensure premises are safe.
3. Liable for theft/loss due to lack of care.

LIEN (Sections 170 & 171)

Introduction

- **Lien** is a right to retain goods until dues are paid.
- It is a **possessory right**: it ends if possession is lost.
- *Jacobs v. Latour*: Lien is a personal right ending with possession.
- Lien only allows **retention**, not **sale** of goods.

Definition

- Section 170 defines **Bailee's Particular Lien**.
- It is the **right to retain goods** until **remuneration for services involving labor/skill** is paid.

Types of Lien

1. **Particular Lien (Sec. 170)** – For specific goods on which service is done.
2. **General Lien (Sec. 171)** – Right to retain any goods for general balance of account.

Particular Lien (Section 170)

Essentials

1. **Legal & rightful possession**
2. For a **particular purpose**
3. **Continuous possession**
4. Must arise from a **contract of bailment**

Case Laws

- *Hotton v. Car Maintenance Co.*: No lien as car use wasn't restricted.

A motor company agreed to garage a car for three years. The owner was allowed to take the car out as needed. When rent was unpaid, the company detained the car claiming lien. The court held there was no continuous possession, hence no lien. It clarified that exclusive control is necessary for a valid lien.

- *Chand Mal v. Ganda Singh*: No lien for mere storage.

The bailee stored sugar and claimed lien for storage charges. The court ruled that mere custody or storage does not involve labour or skill as required under Section 170 of the Indian Contract Act. Thus, the bailee was not entitled to a lien.

Rules

- **Lien available only for charges on same goods:**

The bailee can retain only those specific goods on which labor or skill was exercised.

- **No lien for maintenance, only improvement:**

Lien applies only if the bailee has improved the goods, not just preserved them.

- **Must be performed in full:**

The bailee must complete the entire agreed work to claim lien.

- **Lost goods ≠ loss of service charge claim:**

If goods are lost without bailee's fault, he can still claim payment for the services.

- **Possession lost = lien lost:**

Lien ends once the bailee voluntarily or otherwise loses possession of the goods.

- **No lien if work done on credit:**

If the bailee agreed to give credit, he cannot claim lien.

- **No lien if work incomplete:**

The bailee cannot retain goods if the work is partially done.

- **No lien if goods returned without payment:**

Once the goods are returned to the bailor, lien is forfeited.

Who Can Exercise?

- Bailee, **finder of lost goods, pawnor, agent, unpaid seller.**

GENERAL LIEN (Section 171)

Definition

- Right to retain **any goods** for **general balance of account**.
- Applies to: **Bankers, factors, wharfingers, attorneys, policy brokers.**

Case Law

- ***R.O. Saxena v. Balaram Prasad Sharma***: Advocates cannot claim lien on files — not “goods” under Sec. 171.

An advocate claimed lien over case files for unpaid legal fees. The Supreme Court ruled that **litigation papers are not “goods”** under Section 171. Hence, **advocates cannot exercise lien** on client files — even if fees remain unpaid.

Scope

- Bankers can set-off debts from any account.
- Factors sell goods on behalf of principal and claim lien.

- Wharfingers retain goods until rent is paid.
- Attorneys retain property until fees are paid.
- Policy brokers can retain for unpaid dues on insurance.

DIFFERENCE: Particular Lien Vs General Lien

Feature	Particular Lien	General Lien
Scope	Specific goods with labor/skill	Any goods for general balance
Right	Retain specific goods only	Retain all goods
Who	Bailee, unpaid seller, finder	Bankers, attorneys, brokers

EXTINGUISHMENT OF LIEN

- **Abandonment:**

The lien ends when the bailee intentionally gives up the right to retain the goods.

- **Payment/tender of dues:**

Once the bailor pays or legally offers to pay the dues, the lien is discharged.

- **Loss/surrender of possession:**

The right of lien ceases when the bailee loses or voluntarily gives up possession of the goods.

- **Waiver:**

If the bailee agrees not to enforce the lien, either expressly or impliedly, the lien is extinguished.

TERMINATION OF BAILMENT

(Sections 154, 159, 160, 162 of the Indian Contract Act, 1872)

Introduction:

A **contract of bailment** is based on trust and a specific purpose. Once the purpose is accomplished or certain conditions are met, the **bailment terminates**. The Indian Contract Act provides specific provisions for such termination.

Legal Provisions:

Relevant sections:

- **Section 154** – Inconsistent use
- **Section 159** – Gratuitous bailment
- **Section 160** – Duty to return goods
- **Section 162** – Death of bailor or bailee (in gratuitous bailments)

Modes of Termination:

1. On Expiry of the Period

[Section 160]

If the bailment is for a fixed duration, it **automatically terminates** when that period ends.

Example: A hires a generator for 2 months. After 2 months, the contract ends.

2. On Fulfilment of the Object/Purpose

[Section 160]

When the **purpose** for which the goods were bailed is achieved, the bailment ends.

Example: A gives cloth to B to stitch into a suit. Once the suit is stitched and delivered, the bailment ends.

3. Inconsistent or Unauthorized Use of Goods

[Section 154]

If the bailee uses the goods **inconsistently** with the terms of bailment, the bailor may terminate the bailment.

Example: A lends his car to B for personal use. B uses it to drive for a cab service. A can terminate the bailment.

A lets a horse to B for riding. B uses it to pull a carriage. The bailment can be terminated by A.

4. Destruction or Change in the Nature of Goods

If the goods are destroyed or become incapable of being used for the intended purpose, the bailment ends.

Example: If perishable goods rot due to unforeseen events, bailment terminates automatically.

5. Gratuitous Bailment – Bailor's Right to Terminate

[Section 159]

In **gratuitous bailments** (no consideration), the **bailor can terminate at any time**, even before the expiry of agreed time.

However:

- If termination causes loss to bailee beyond benefit derived, bailor must compensate.

Example: A lends B a painting for free use for 3 months. A recalls it after 1 month. If B suffers a loss beyond benefit enjoyed, A must compensate.

6. Death of Bailor or Bailee

[Section 162]

In **gratuitous bailments**, the **death of either party** ends the bailment.

Example: If A lends goods to B without consideration, and A dies, the bailment ends.

Other Situations of Termination:

- **Mutual Agreement:** Bailor and bailee can terminate by consent.
- **Repudiation by either party:** In breach situations.
- **Court Order:** In cases involving dispute or bankruptcy.

Mode of Termination	Section	Triggering Event
On expiry of time	160	End of agreed period
On purpose fulfilled	160	Task completed
Inconsistent use	154	Unauthorized act by bailee
Gratuitous bailment (any time)	159	Bailor's wish (with limits)
Destruction of goods	—	Goods lost/destroyed
Death of party (gratuitous)	162	Either bailor or bailee dies

Conclusion

Termination of bailment is a vital aspect that preserves the purpose and trust embedded in bailment contracts. The Indian Contract Act balances the rights of the **bailor** and **bailee**, particularly in **gratuitous** arrangements, ensuring neither party is unfairly disadvantaged. Understanding termination helps clarify when a bailee must return goods and when obligations legally end.

PLEDGE (Secs. 172–178A)

Definition (Sec. 172)

- **Bailment of goods as security** for a debt or promise.
- **Pawnor** = bailor; **Pawnee** = bailee.

Essentials

1. Delivery (actual/constructive)
2. Delivery for security
3. Goods must be **movable** and **saleable**

Examples of Constructive Delivery

- Keys, receipts, documents.

RIGHTS OF PAWNEE

1. **Right to retain goods till full repayment (Secs. 173–174):**
The pawnee can keep the pledged goods until the entire debt is repaid.
2. **Right to claim special expenses (Sec. 175):**
The pawnee can recover extraordinary expenses for preservation of the goods.
3. **Upon default by pawnor (Sec. 176):**
 - **Sue for debt:** The pawnee can file a suit to recover the loan amount.
 - **Retain goods:** The goods may be held as security till payment.
 - **Sell goods with reasonable notice:** Pawnee may sell the goods after giving proper notice to the pawnor.
4. **Right against true owner if pawnor's title is voidable (Sec. 178A):**
Pawnee gets good title if he acts in good faith before the voidable contract is rescinded.

DUTIES OF PAWNEE

- **Reasonable care:**
The pawnee must take the same care as a prudent person would of his own goods.
- **No unauthorized use:**
Pawnee must not use the goods for personal use without permission.
- **Return goods on repayment:**
Upon full repayment, the goods must be returned to the pawnor.

RIGHTS OF PAWNOR

- **Recover/redeem goods:**
The pawnor has the right to reclaim the goods upon repayment of debt.
- **Right to check condition of goods:**
The pawnor can inspect how the pawnee is preserving the pledged goods.
- **All rights of debtor:**
Pawnor enjoys rights similar to a debtor under contract law protections.

DUTIES OF PAWNOR

- **Repay loan and redeem:**
The pawnor must pay the debt and reclaim the goods within the agreed time.
- **Compensate pawnee for:**
 - **Defective title:**
If the pawnor's title is defective, he must compensate for resulting loss.
 - **Extra expenses:**
Pawnor must repay extraordinary preservation costs borne by the pawnee.

DIFFERENCE: BAILMENT VS PLEDGE

Basis	Bailment	Pledge
Purpose	Delivery of goods for safekeeping, repair, or specific purpose	Delivery of goods as security for repayment of debt or performance of a promise
Right to sell	Bailee cannot sell the goods	Pawnee has the right to sell the goods on default after notice
Ownership	Remains with the bailor; bailee gets only possession	Remains with pawnor, but pawnee gets special interest and power of sale
Use of goods	Bailee may use the goods with bailor's consent	Pawnee cannot use the goods at all
Consideration	May or may not involve consideration	Always involves a loan or credit as consideration
Example	A gives a car to B for servicing	A pledges his gold chain to B for a loan of ₹10,000

DIFFERENCE: PLEDGE VS LIEN

Basis	Pledge	Lien
Meaning	Bailment of goods as security for debt or promise	Right to retain goods until dues are paid
Right to sell	Pawnee can sell goods on default after giving notice	Lien holder has no right to sell the goods
Creation	Created by contract between parties	Arises by operation of law or usage of trade

Possession	Possession is transferred with the right of retention and sale	Possession is retained only till payment; no transfer
Right lost when	Pledge remains until debt is repaid or goods are sold on default	Lien is lost when possession is lost or payment is made
Scope	Involves security for loan or performance	Involves retention for charges or dues
Example	A pledges his watch to B for a ₹5,000 loan	A mechanic holds a car until repair charges are paid

PLEDGE BY NON-OWNERS

(Sections 178, 178A, 179 of the Indian Contract Act, 1872)

Introduction

Under general principles of contract and property law, only the **true owner** or someone **authorized by the owner** can pledge goods. This is based on the maxim **“nemo dat quod non habet”**, meaning "no one can give what they do not have." However, in certain exceptional cases, a **non-owner** may create a valid pledge under **Sections 178, 178A, and 179** of the Indian Contract Act, 1872. These provisions carve out statutory exceptions in favour of third parties who act **in good faith** and **without notice** of the real ownership status.

1. Pledge by Mercantile Agent

Section 178 permits a **mercantile agent** to pledge goods **entrusted to him** in the ordinary course of business.

Conditions:

1. **Mercantile agent** must be in possession of goods or documents of title.
2. Possession must be **with the consent of the owner**.
3. The pledge must be made **in the ordinary course of business**.
4. The **pawnee must act in good faith**.
5. The **pawnee must not be aware** of the agent's lack of authority.

Definition (Sec. 2(9), Sale of Goods Act): A mercantile agent is one who has authority to sell, consign for sale, buy goods, or raise money on the security of goods in the ordinary course of business.

Example:

A gives a consignment of textile goods to B, a cloth merchant (mercantile agent), to sell. B, without permission, pledges the goods to C, who takes them in good faith. The pledge is valid.

2. Pledge by Seller in Possession after Sale

Even after selling goods, the **seller may retain possession** of them for some time. If he pledges them to a third party who acts in good faith, the pledge is valid under the **Sale of Goods Act** (read with Contract Act).

Conditions:

- The seller must still be **in possession** of the goods.
- The **pawner must act in good faith** and **without knowledge** of prior sale.

Example:

A sells a machine to B. Before delivering it, A pledges it to C, who is unaware of the sale. The pledge is valid.

3. Pledge by Buyer in Possession before Sale

Sometimes, a buyer may get possession of goods **before actual sale** (e.g., on approval or hire-purchase). If such a buyer pledges the goods in good faith, the pledge is valid if the pawnee is unaware of any limitations on the buyer's title.

Conditions:

- Buyer must have possession **with seller's consent**.
- Pledge must be made **in good faith**.
- Pawnee must **not have notice** of any defect in title.

4. Pledge by Pledgee (Limited Interest Holder)

A person with a **limited interest** in goods can create a pledge to the extent of that interest. This includes a:

- **Finder of lost goods**
- **Pledgee**
- **Bailee with lien**

Example:

A finds a gold chain, spends ₹500 on repairs, and pledges it to B. The true owner can recover the chain by reimbursing B ₹500.

5. Pledge by Co-owner in Possession

A **co-owner** who is in sole possession of goods **with the consent of other co-owners** can make a valid pledge.

Example:

A and B jointly own a valuable painting. A, in sole possession with B's consent, pledges it to C. The pledge is valid.

6. Pledge by Person in Possession under Voidable Contract

Section 178A recognizes a pledge made by someone who obtained possession of goods under a **voidable contract**, provided the contract has not yet been rescinded at the time of pledge.

Conditions:

1. Possession obtained under **voidable contract** (e.g., fraud, misrepresentation, coercion).
2. Contract must **not be rescinded** before the pledge.
3. Pawnee must act **in good faith** and **without knowledge** of the defect in title.

Case: *Phillips v. Brooks (1919)*

A fraudster bought a ring from B by impersonating a wealthy person and then pledged it to C before B discovered the fraud. The Court held the pledge was valid as the contract was merely voidable, not void.

Invalid Pledge by Non-Owner

If a person obtains goods under a **void contract** (e.g., by a minor or involving illegality), the pledge is **invalid**, as the person has **no title at all** to pass.

Situation	Validity of Pledge
Mercantile Agent with Owner's Consent	Valid
Seller in Possession after Sale	Valid
Buyer in Possession before Sale	Valid
Pledgee (Limited Interest Holder)	Valid to that extent
Co-owner with Others' Consent	Valid
Under Voidable Contract (not rescinded)	Valid
Under Void Contract	Invalid

Conclusion

While the general rule limits pledge rights to owners, the Indian Contract Act allows exceptions to protect **bona fide pawnees** and encourage **commercial confidence**. Sections 178, 178A,

and 179 collectively ensure that **equity and fairness** are maintained in transactions involving third parties acting in good faith. Thus, the law balances the rights of the true owner with the protection of innocent third parties and the smooth functioning of mercantile practices.

