

# Indemnity and Guarantee

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The necessary provisions in respect of Contract of Indemnity and Contract of Guarantee are contained in *Sections 124 to 147* of the Indian Contract Act, 1872.

These have been dealt with in this Chapter.

## CONTRACT OF INDEMNITY

The Dictionary meaning of the term 'Indemnity' is 'Security against Damage or Loss' or 'Compensation for Damage'.

To 'Indemnify' someone means to 'Compensate him for a certain Loss' or '*To Make Good the Loss*'.

### Definition of Contract of Indemnity

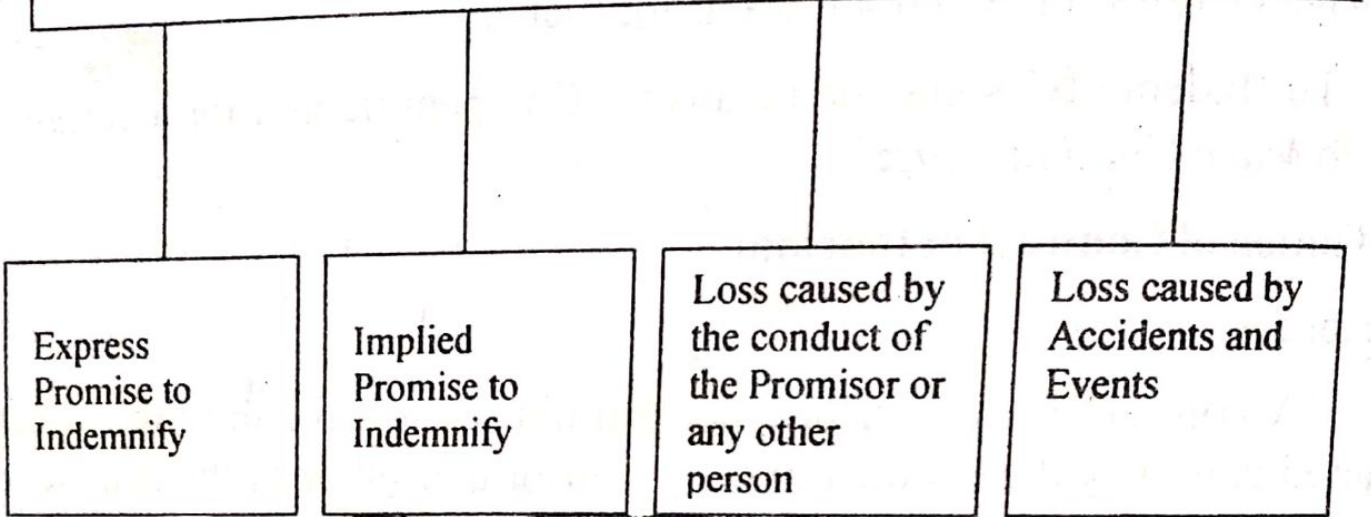
According to *Section 124*,

'A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a contract of indemnity'.

The person who agrees to make good the loss is called the 'Indemnifier'. He is the Promisor. The person whose loss is to be made good is called the 'Indemnified' or 'Indemnity-holder'. He is the Promisee.

the promisee

## SCOPE OF CONTRACT OF INDEMNITY



Express  
Promise to  
Indemnify

Implied  
Promise to  
Indemnify

Loss caused by  
the conduct of  
the Promisor or  
any other  
person

Loss caused by  
Accidents and  
Events

respect of contract of indemnity.

### **Rights of the Indemnity-holder (Section 125)**

The promisee (the indemnified or the indemnity-holder) in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor (the indemnifier) –

- (1) All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
- (2) All costs which he may be compelled to pay in bringing or defending such a suit. The indemnified, however, should have acted in a prudent manner or with the authority of the indemnifier.
- (3) All sums which he may have paid under the terms of any compromise of any such suit. The compromise, however, should be prudent or authorised by the indemnifier.

### **When will the Indemnifier's Liability Arise?**

The Indian Contract Act, 1872 is silent about the time of commencement of the indemnifier's liability. Based on the observations made in different High Courts in India, it may be said that once the liability of the indemnified becomes absolute and certain, he can call upon the indemnifier to relieve him from that liability.



## CONTRACT OF GUARANTEE

According to *Section 126*,

A "contract of guarantee" is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor'; and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written.

### Example:

X approaches the LIC Housing Finance Ltd. for securing a housing loan of Rs.5Lakhs. As required by the lender, X has to find a person who would guarantee the prompt repayment of the loan amount. X finds Y. In this contract involving three parties, X is the Principal Debtor, the LIC Housing Finance Ltd. is the Creditor and Y is the Surety.

A contract of guarantee too is a contingent contract.

### ESSENTIALS OF A CONTRACT OF GUARANTEE

A contract of guarantee must have all the essential elements of a valid contract. However, the following points need to be remembered:

1. Three Contracts : A contract of guarantee is not a single contract. It involves three contracts as shown below:

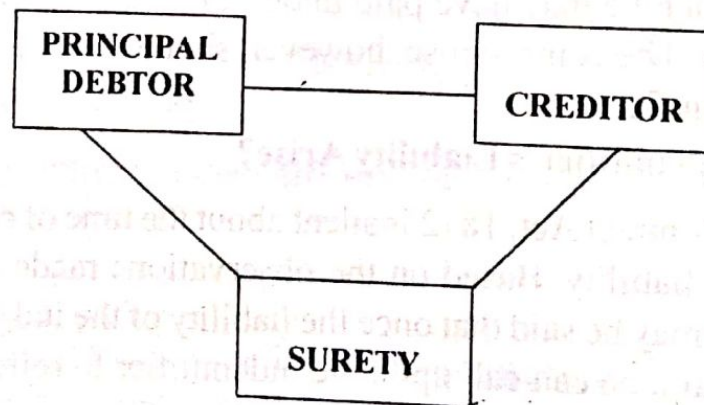


Figure 12.2

Thus, the three contracts in a contract of guarantee are:

- (a) Between the Principal Debtor and the Creditor
- (b) Between the Principal Debtor and the Surety and
- (c) Between the Creditor and the Surety

1. *Principal Debtor's liability is primary* : In a contract of guarantee, the liability of the principal debtor is primary. The surety's liability is only secondary. It will arise only when the principal debtor defaults (fails to pay).



2. *Principal debtor may be incompetent to contract* : The principal debtor may suffer from incapacity to contract, e.g. he is a minor. In such a case, he is not liable to pay but the surety will be liable for payment.
3. *Consideration received by the principal debtor is sufficient* : According to Section 127, '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'. A contract of guarantee, thus, need not result in some benefit to the surety himself.
4. *A contract of guarantee need not be in writing* : According to Section 126, 'A guarantee may be either oral or written.'

**Guarantee – Not a contract of ‘Uberrimae Fidei’**

A contract of guarantee is not a contract of ‘uberrimae fidei’, i.e., one that requires complete disclosure of all material facts by the principal debtor or the creditor to the surety before entering into the contract. For example, when a guarantee is given to a bank, it is not necessary for the bank to inform the surety of matters affecting the debtor’s credit.

The surety can file a suit for relief only if he can show that the creditor is aware of the debtor’s misconduct.

**Case: London General Omnibus Co. vs. Holloway**

In this case, X appointed Y as a clerk to collect money for him. X misappropriated certain amounts due to Y. The loss was made good by some of X’s relatives. Y agreed to retain X if someone guaranteed his honesty. Z agreed to guarantee X’s conduct. Y did not acquaint Z with X’s earlier act of dishonesty. It was held that the guarantee could not be enforced as the creditor who had knowledge of the dishonesty of the clerk failed to inform the surety about it.

**Distinction Between a Contract of Indemnity and a Contract of Guarantee**

The following are the important points of distinction between a contract of indemnity and a contract of guarantee:

Contract of Indemnity	Contract of Guarantee
1. The Indemnifier agrees to make good the loss of the Indemnified.	1. The Surety agrees to compensate the Creditor in the event of the Principal Debtor’s default.
2. There are two parties – the Indemnifier (the Promisor) and the Indemnified (the Promisee).	2. There are three parties, namely, the Principal Debtor, the Creditor and the Surety.
3. There is only one contract in a contract of indemnity – between	3. There are three contracts in a



the Indemnifier and the Indemnified.

4. The Indemnifier's liability is primary and independent.
5. The Indemnifier need not act at the request of the Indemnified.
6. The liability of the Indemnifier arises only on the happening of a contingency.
7. The Indemnifier cannot sue a third party for loss in his own name, as there is no privity of contract. He gets the right to sue such third party only if there is an assignment in his favour.

contract of guarantee – (i) between the Principal Debtor and the Creditor, (ii) between the Principal Debtor and the Surety and (iii) between the Creditor and the Surety.

4. The Surety's liability is secondary. It is the Principal Debtor's liability that is primary.
5. The Surety gives guarantee at the request of the Principal Debtor.
6. There is already an existing debt or duty. The liability of the surety arises when the Principal Debtor fails to pay his debt or perform his duty as the case may be.
7. After discharging the debt due by the Principal Debtor, the Surety can step into the shoes of the Creditor and take legal action.

### **EXTENT OF SURETY'S LIABILITY**

According to *Section 128*,

'The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract'.



## KINDS OF GUARANTEE

A guarantee may be given for –

- (a) the repayment of a debt or
- (b) the payment of the price of the goods sold on credit or
- (c) the good conduct and character of a person to be employed (called '*Fidelity Guarantee*').

Guarantee may be classified into –

- I. Specific Guarantee and
- II. Continuing Guarantee

### Specific Guarantee

A 'Specific Guarantee' applies to a specific transaction only. It comes to an end the moment the promise is duly performed or the guaranteed debt is duly discharged.

#### Example:

D supplies 5 bags of wheat on credit to E. F guarantees the payment of E. This guarantee by F is a specific guarantee applicable only to this specific transaction.

### Continuing Guarantee

According to Section 129,

'A guarantee which extends to a series of transactions is called a Continuing Guarantee'.

#### Example:

A, in consideration that B will employ C for collecting rent from B's tenants, guarantees to B the due collection of rent by C. This is a continuing guarantee.

A continuing guarantee may be given –

- (a) For a part of the entire debt or
- (b) For the entire debt subject to a limit

## Revocation of Continuing Guarantee

A continuing guarantee may be revoked, as to future transactions, by any of the following modes:

### 1. *By Notice* –

According to **Section 130**,

‘A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor’.

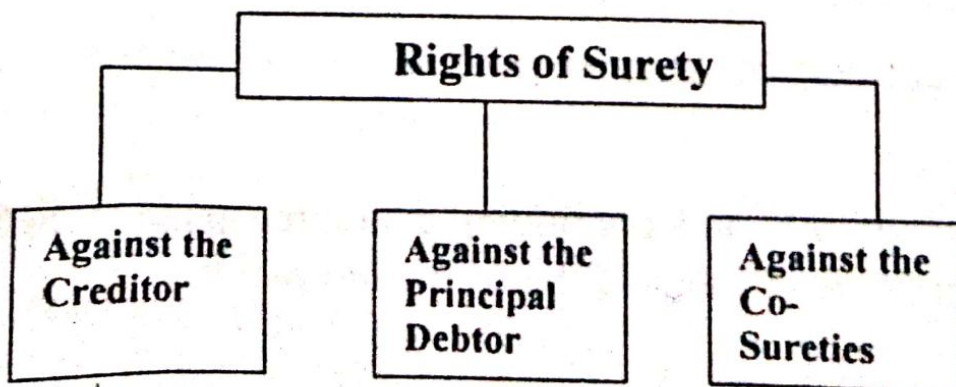
### 2. *By the death of the Surety* –

According to **Section 131**,

‘The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions’.

Some of the other modes of revocation of continuing guarantee have been explained under ‘Discharge of Surety’ later in this Chapter.

The rights of a surety may be discussed as shown below:





## Rights Against the Creditor

The following are the rights of the surety against the creditor:

1. *To require the creditor to sue the principal debtor* : The surety may require the creditor to proceed against the principal debtor before coming to him. He, however, will have to indemnify the creditor for any expenses or loss resulting therefrom.
2. *To demand credit in respect of all payments made by the principal debtor* : As against the guaranteed amount, the surety can demand the creditor to give credit in respect of all amounts paid already by the principal debtor. This is what is called the surety's right of set off.
3. *To claim benefit of every security the creditor has against the principal debtor* : According to *Section 141*, the surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into. This right exists irrespective of whether the surety knows of the existence of such security or not.

### Example:

D owes C Rs.25, 000. This debt is guaranteed by S. D further assigns his insurance policy for

Rs.10, 000 in favour of C. In the event of D's failure to pay C, the liability of S will be reduced by Rs.10, 000.

## Rights Against the Principal Debtor

The surety has the following rights against the principal debtor:

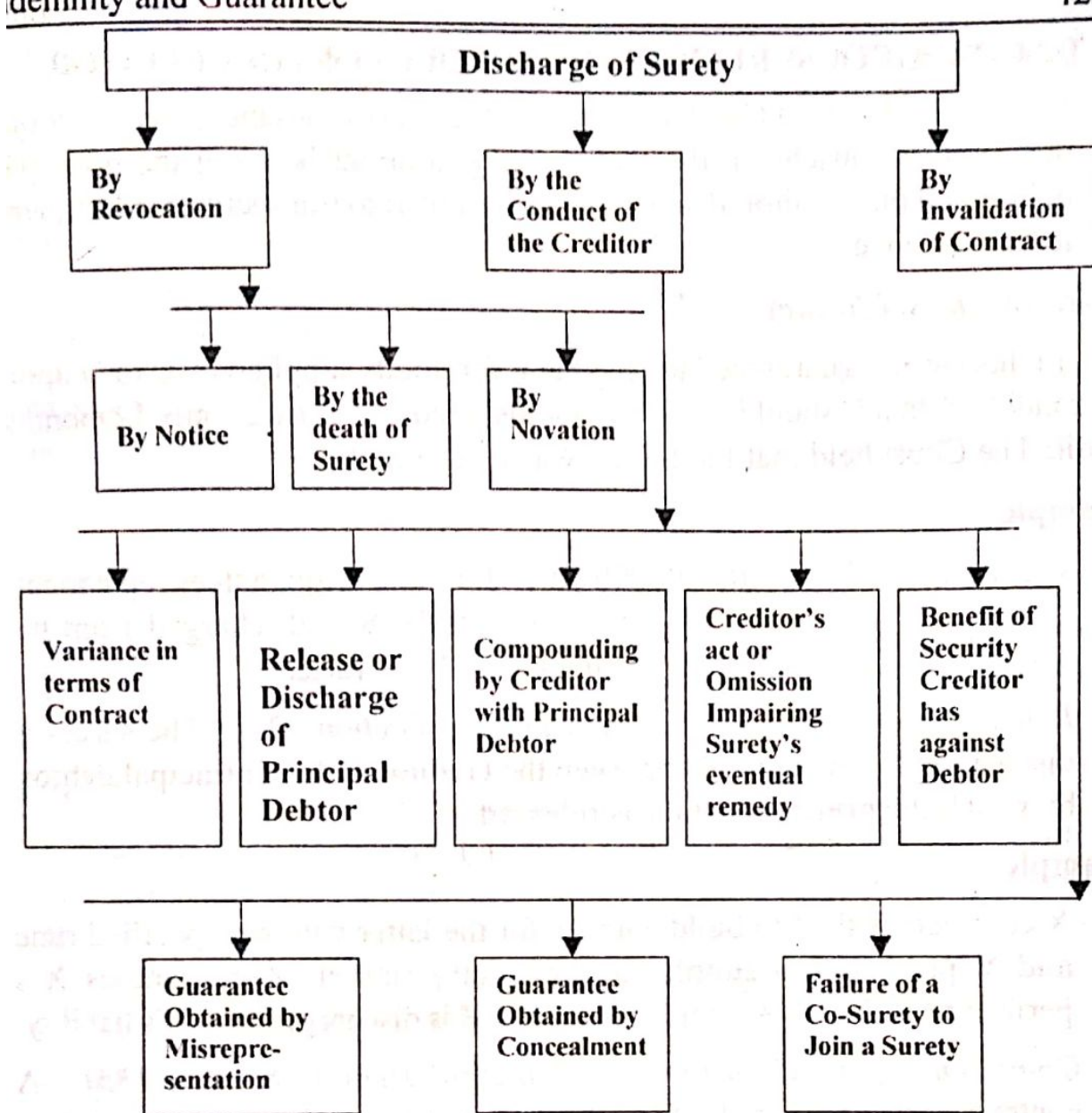
1. *To require the principal debtor to pay off the creditor* : Before paying the guaranteed sum to the creditor, the surety can compel the principal debtor to relieve him from liability by paying off the debt.
2. *To recover from the principal debtor all sums paid under the guarantee* : According to **Section 145**, in every contract of guarantee, there is an implied promise by the principal debtor to indemnify the surety. The surety is entitled to recover from the principal debtor whatever sum he has properly paid under the guarantee.

## Rights Against Co – Sureties

When two or more sureties guarantee a certain debt, they are called co-sureties. The creditor can enforce the following rights against the co-sureties:

1. *Co-sureties liable to contribute equally* : According to **Section 146**, when there are two or more co-sureties for the same debt or duty and the principal debtor defaults, the co-sureties, in the absence of any contract to the





**Figure 12. 4 – Different modes of Discharge of Surety**

Let us now discuss these different modes of discharge of Surety.

### **DISCHARGE OF SURETY BY REVOCATION (WITHDRAWAL)**

1. *Notice (Section 130)* : A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor. The surety cannot revoke a specific guarantee if the liability has already accrued.
2. *Death of Surety (Section 131)* : The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. The deceased surety's estate, however, remains liable for the transactions that have taken place already before the surety's death.
3. *Novation (Section 62)* : When an old contract of guarantee is substituted by a new contract of guarantee either between the same parties or between new parties, it is known as 'Novation'. The consideration for the new contract is the mutual discharge of the old contract. The old contract of guarantee, in such a case, comes to an end.



# Bailment and Pledge

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This Chapter is divided into two parts. The first part deals with 'Bailment' and the second part discusses 'Pledge'.

## BAILMENT

Sections 148 to 171 of the Indian Contract, 1872 contain provisions in respect of Bailment.

### Meaning

The word 'Bailment' is derived from the French word 'baillier' which means 'to deliver'.

### Definition

According to **Section 148,**

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. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

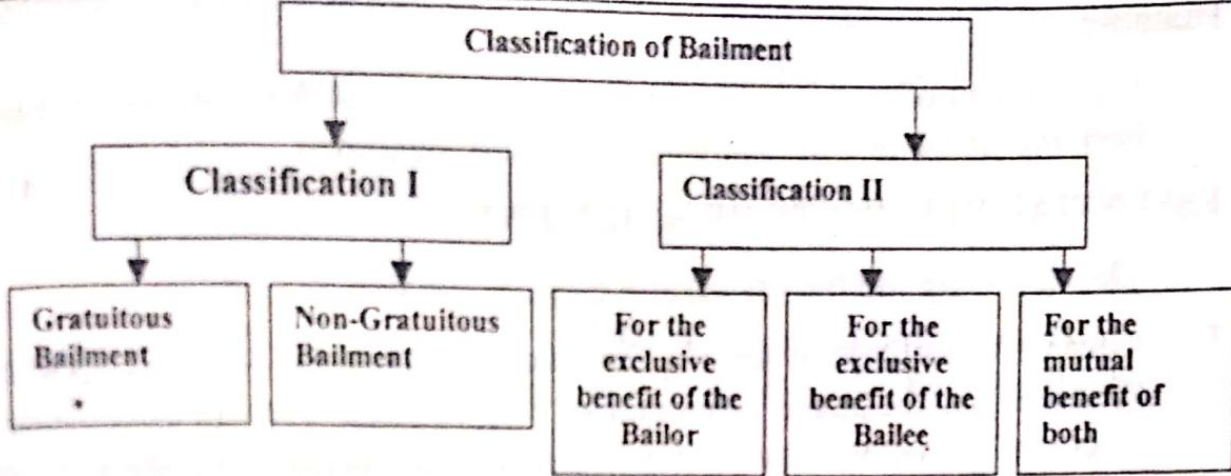


Figure 13.1

### Classification I

#### (a) Gratuitous Bailment

Bailment done free of charge is called gratuitous bailment.

#### Example:

A lends his book to B, a close friend, to be returned after the examination.

#### (a) Non-Gratuitous Bailment

Non-gratuitous bailment is the case where charges are payable.

#### Example:

X hires a cycle from a cycle shop.

### Classification II

#### (a) Bailor alone benefited

In this case, the beneficiary is the bailor alone. The bailee is no way benefited.

#### Example:

P delivers his valuables to his neighbour Q and requests him to take care of the same for a month when P is not in station. Here, the beneficiary is only P, the bailor.

#### (a) Bailee alone benefited

Here, the party benefited is only the bailee. The bailor is no way benefited.

#### Example:

R lends his book to S, a close friend, to be returned after the examination. In this case, S, the bailee, alone is benefited.

#### (a) Bailment for the Mutual benefit of both the Bailor and the Bailee

Sometimes, a contract of bailment may be beneficial to both the bailor and the bailee.



# ESSENTIAL ELEMENTS OF BAILMENT

The following are the essential elements of bailment:

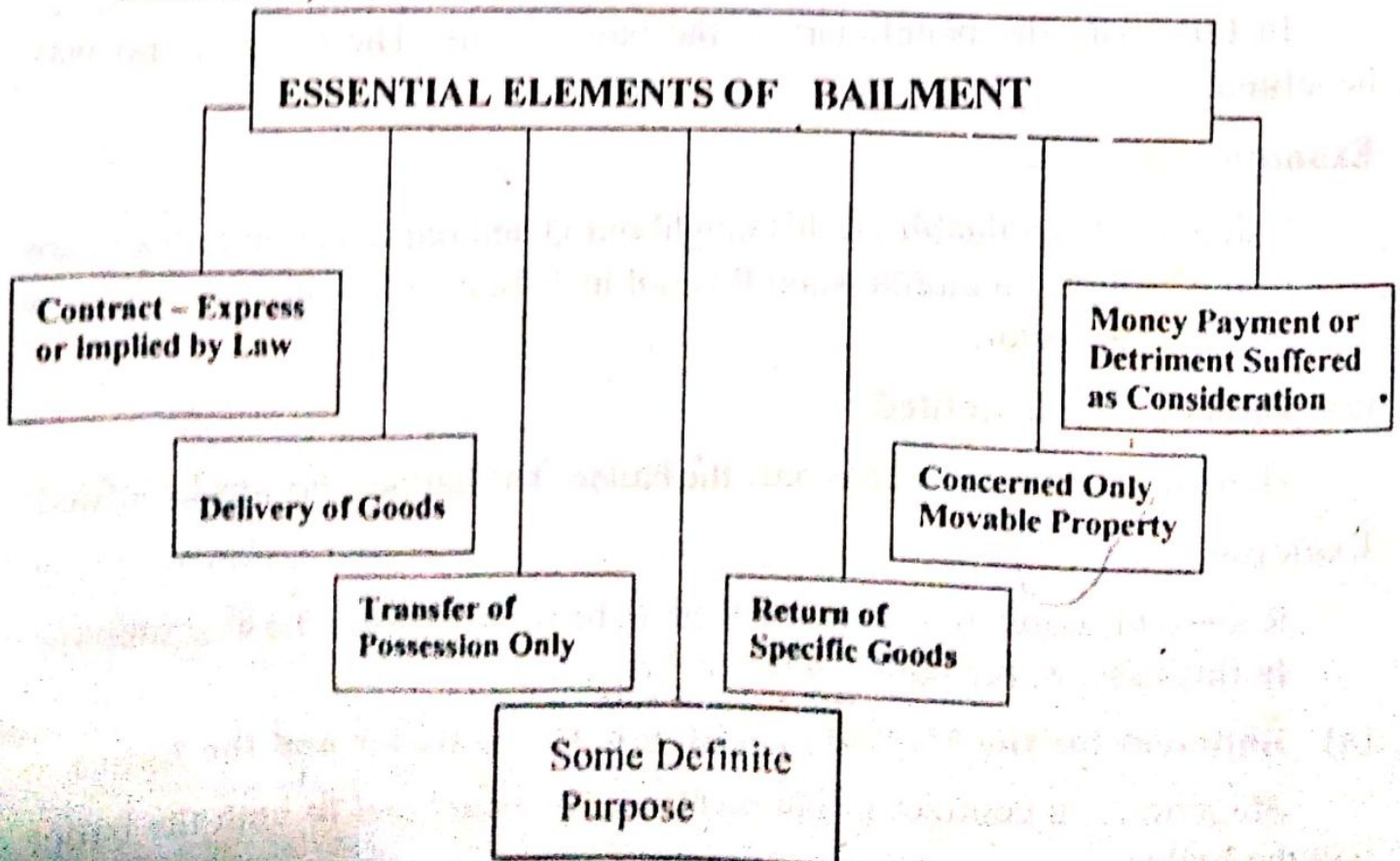
1. **Contract** : Bailment is usually the result of an express contract between the bailor and the bailee. Sometimes it may be implied by law as between a finder of goods and the owner – a quasi-contractual obligation arises under Section 71.
2. **Delivery of Goods** : Delivery of goods by one person to another is important in bailment. Delivery may be 'actual' or 'constructive'.

Actual delivery means the act of physical delivery of goods, e.g., A may lend his book to B and it is possible to physically hand it over to B.

Where physical delivery is not possible, e.g., when goods are bulky in nature, the bailor has to resort to constructive delivery. In this case, delivery is made by doing anything that has the effect of putting the goods in the possession of the intended bailee (Section 149). Delivery of the warehouse receipt, for example, amounts to delivery of goods.

Delivery of goods must also be voluntary and not the result of coercion.

3. **Transfer of Possession Only and Not Title** : In bailment, there is only a transfer of possession of goods by the bailor to the bailee and there is no transfer of title (ownership in respect of the goods). If title itself is transferred, it becomes a sale.





4. *Some Definite Purpose* : Goods are delivered by the bailor to the bailee for some purpose, e.g., for the bailee's use, to enable the bailee to carry out some work, safe custody etc. If goods are delivered by mistake or under coercion, there is no bailment.
5. *Return of Specific Goods* : The goods, entrusted to the bailee, are to be returned to the bailor once the purpose for which they have been entrusted has been fulfilled. The goods may, in certain cases, be returned in an altered form, e.g., a bit of cloth given to a tailor is stitched into a shirt.
6. *Concerned only with Movable Property* : Bailment is concerned only with goods, *i.e.*, movable property. It has nothing to do with immovable property like land and building.
7. *Money Payment or Detriment Suffered as Consideration* : Consideration, in a contract of bailment, is usually in the form of money payment by the bailor or the bailee. The detriment suffered by the bailor, in parting with possession of the goods, is also a sufficient consideration to support the contract of bailment.

### DUTIES OF THE BAILOR

The duties of the bailor, in a contract of bailment, are as follows:

1. *To disclose faults in goods bailed (Section 150, Paragraph 1)* : The bailor is bound to disclose, at the time of bailment, the known faults in the goods to the bailee. If he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

#### Example:

X lends his bike to Y but fails to disclose that the brake system is faulty. Y suffers injury in a road accident due to brake failure. X is liable.

If the goods are bailed for hire, the bailor's duty is still greater. He is responsible even for those faults which are not known to him (*Section 150, Paragraph 2*).

#### Example:

P hires a bicycle from a cycle shop. The cycle is not really in a good condition although the owner of the cycle shop, Q, is not aware of it. P is injured. Q is liable to P for the injury.

2. *To bear the risk of loss (Section 152)* : If, in spite of the precautions taken by the bailee, there is loss, destruction or deterioration of the thing bailed, the bailor cannot hold the bailee liable. In such a case, the bailor has to bear the loss himself.
3. *To repay the bailee the necessary expenses incurred by him (Section 158)* : In case the bailment is for the benefit of the bailor, he shall repay the



bailee all the necessary expenses incurred by the latter for the protection and preservation of what has been delivered to him.

**Example:**

M leaves his car with N, a friend, to be taken care of by N for a period of 6 months when M is not in station. N assigns his servant the additional work of washing the car once in three days and pays him Rs.75 per month for doing the job. M shall repay this amount to N.

In case the bailment is for the benefit of the bailee, he shall meet out all the ordinary and reasonable expenses but all extraordinary expenses shall be borne by the bailor.

**Example:**

X lends his car to Y, a close friend, for two months. The petrol and other routine expenses for the maintenance of the car are to be borne by Y. In case, Y incurs any major repair charges during the period of two months, he can claim reimbursement from X.

4. *To indemnify the bailee in case of premature termination of gratuitous bailment (Section 159)* : The bailor may terminate a gratuitous bailment at any time even if the bailment is for a specified time or purpose. But he may have to indemnify the bailee in case loss accruing to the bailee from such premature termination exceeds the benefit he has actually derived out of the bailment.

**Example:**

P lends his scooter to Q for a period of 6 months. The scooter is actually not in a good condition and Q, therefore, has to get it thoroughly serviced. He incurs Rs.1, 000 towards repair charges. If, within a month, P asks for the return of the scooter, he may have to compensate Q for the expenses incurred in excess of the benefit actually received by him.

5. *To receive back the goods (Section 164)* : If, after the expiry of the term of bailment or the accomplishment of its purpose, the bailor does not receive back the goods, the bailee can claim compensation for the expenses of custody.

**Example:**

R delivers his TV set to S for carrying out certain repairs. He fails to receive back the TV, after service, even after the expiry of 3 months. S can recover the expenses of custody from R.

6. *To indemnify the bailee (Section 164)* : Where, owing to the bailor's defective title (Ownership), in respect of the goods bailed, the bailee suffers, the former shall indemnify the latter.



## DUTIES OF THE BAILEE

The bailee's duties, in a contract of bailment, are given below:

1. *To take care of the goods bailed (Section 151)* : The bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quantity and value as the goods bailed.

If, in spite of the care taken by the bailee, the goods get damaged or destroyed, the bailee does not incur any liability under Section 152.

### Example:

X leaves his dog with Y for safe custody for two weeks when X is not in station. The dog falls sick and Y fails to give the necessary medical treatment. As a result, the dog dies. Y is liable to X.

2. *Not to make an unauthorised use of the goods (Section 154)* : If the bailee makes use of the goods bailed in a manner inconsistent with the terms of the contract, he is liable to the bailor for damages.

### Example:

R lends his bike to S for S's use only for a week. S lets his brother T, who is not good in riding, to ride the bike. T meets with an accident and escapes unhurt. But the bike suffers extensive damage. S is liable to R for the loss.

3. *Not to mix the goods bailed with his own goods* : If the bailee mixes the goods bailed to him with his own goods –
  - (a) With the consent of the bailor, both shall have a proportionate share of the mixture produced (*Section 155*).
  - (b) Without the consent of the bailor and the goods can be separated or divided, the bailee is bound to bear the expenses of separation and also any damage arising from the mixture (*Section 156*).

### Example:



### Example:

D bails a container with 500kgs of 'export quality sugar' to E. Without D's consent, E mixes the same with sugar of the ordinary variety lying in his godown. E must compensate D for the loss.

4. *To return the goods (Section 160)* : It is the duty of the bailee to return the goods bailed, without demand, as soon as the time of bailment expires or the purpose is accomplished. If he fails to return the goods, he is responsible to the bailor for any loss destruction or deterioration of the goods from that time (Section 161).

### Case: *Shaw & Co. vs. Symmons & Sons*

In this case, certain books given for binding were not returned even after the expiry of a reasonable time. A fire accident occurred at the bailee's place and the books were burnt. The Court held that although the bailee was not negligent, he was liable for the loss as he failed to return the books within a reasonable time.

5. *To return any benefit accrued from out of the goods bailed (Section 163)* : The bailee shall return to the bailor not only what has been bailed to him but also any benefit that has accrued from out of the goods bailed.

### Example:

X leaves his cow in the custody of Y to be taken care of. The cow has a calf. Y is bound to return the cow as well as the calf to X.

## RIGHTS OF THE BAILOR

The following are the rights of the bailor:

1. *To claim damages if the bailee shows negligence (Section 152)* : If the bailee fails to take care of the goods bailed as required under Section 151 and, as a result, there is any damage to the goods, the bailor can claim compensation from the bailee.
2. *To terminate the contract if the bailee's acts are inconsistent with the terms of bailment (Section 153)* : The bailor can terminate the contract of bailment if the bailee does any act, with regard to the goods bailed, inconsistent with the conditions of bailment.

### Example:

X lends his bike to Y for Y's use only for a period of one month. Y allows his friend Z to use the bike. X can terminate the contract.

3. *To claim compensation in case of unauthorised use (Section 154)* : The bailor can claim compensation from the bailee for any damage arising due to the unauthorised use of the goods bailed.



4. *To claim separation if the bailee, without consent, mixes up the goods bailed with his own goods (Section 156)* : If the bailee, without the bailor's consent, mixes up the goods bailed with his own goods, the bailor is entitled to have his goods separated where separation is possible. The bailor can also require the bailee to bear the cost of separation.
5. *To claim compensation if the goods mixed up by the bailee with his own goods cannot be separated (Section 157)* : If the bailee, without the bailor's consent, mixes up the goods bailed with his own goods, the bailor is entitled to claim compensation if separation is not possible.
6. *To demand return of goods (Section 160)* : The bailor is entitled to receive back his goods once the purpose of bailment is served or the period of bailment has ended.
7. *To claim any loss owing to unauthorised retention of goods by the bailee (Section 161)* : The bailor can claim compensation from the bailee for any loss arising from the unauthorised retention of the goods by him.
8. *To claim any benefit accrued from out of the goods bailed (Section 163)* : The bailor is also entitled to receive from the bailee any benefit accrued from out of the goods bailed.

### RIGHTS OF THE BAILEE

The rights of the bailee are as follows:

1. *To claim damages (Section 150)* : If the bailor fails to disclose the faults in the goods bailed to the bailee, the latter may sue the former for any damage arising directly from such faults.
2. *To recover expenses incurred (Section 158)* : In case of gratuitous bailment, the bailee is entitled to recover all the necessary expenses incurred by him, under the contract, from the bailor.
3. *To claim compensation in case of premature termination of gratuitous bailment (Section 159)* : In case of premature termination of gratuitous bailment by the bailor, if the loss incurred by the bailee exceeds the benefits received by him, he can claim compensation from the bailor.
4. *To recover loss arising out of bailor's defective title (Section 164)* : The bailee is entitled to recover from the bailor any loss sustained by him by reason of the bailor's defective title to the goods bailed. The bailee can also recover from the bailor the expenses of custody where the bailor fails to receive back the goods after the terms of bailment has expired or after the purpose of bailment has been fulfilled.
5. *To return the goods to one of the several joint owners (Section 165)* : In case the goods have been bailed by several joint owners of goods, the



bailee may, in the absence of any agreement to the contrary, return the goods to any one of the joint owners.

6. *Not liable if the bailor has no title to the goods (Section 166)* : If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.
7. *To apply to the Court to decide the title (Section 167)* : If a person, other than the bailor, claims the goods bailed, the bailee may apply to the Court to stop delivery of the goods to the bailor, and to decide the title to the goods.
8. *To bring an action against a wrong-doer (Section 180)* : If a third person wrongfully deprives the bailee of the use or possession of the goods bailed to him, he has the right to bring an action against such a person.
9. *To exercise the right of particular lien (Section 170)* : Where the bailee has rendered some service involving the exercise of labour or skill in respect of the goods bailed, he has the right to retain the goods until he receives due remuneration for the services he has rendered.

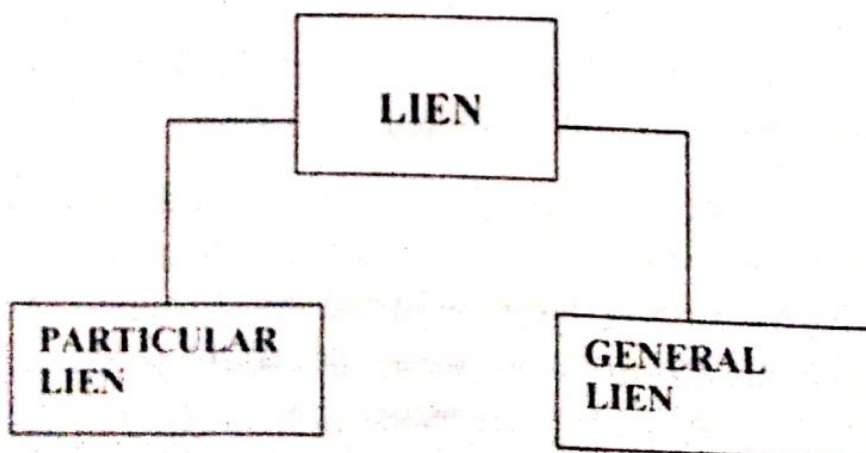
## LIEN

### Meaning

'Lien' is the right of a person, in possession of certain goods belonging to another, to retain possession of the same until the lawful charges or dues of such a person are settled.

Possession of goods is essential for exercising the right of lien. A bailee can exercise the right of lien against the bailor for the purpose of recovering the amount due from the bailor in respect of the contract of bailment.

Lien is of two types –





Particular Lien	General Lien
<ol style="list-style-type: none"> <li>1. It is the right of a bailee to retain a particular thing belonging to another.</li> <li>2. It is available only when some service has been rendered involving the exercise of labour or skill.</li> <li>3. The object of retaining a particular thing is to recover the remuneration or charges due upon it.</li> <li>4. This right is available to any bailee or creditor.</li> </ol>	<ol style="list-style-type: none"> <li>1. It is the right to of a person to retain anything belonging to another.</li> <li>2. It is available even when no such service has been rendered.</li> <li>3. The object of retaining any property belonging to another is to recover all the amounts due from that person.</li> <li>4. This right is available only to bankers, factors, wharfingers, attorneys of High Court and policy - brokers.</li> </ol>

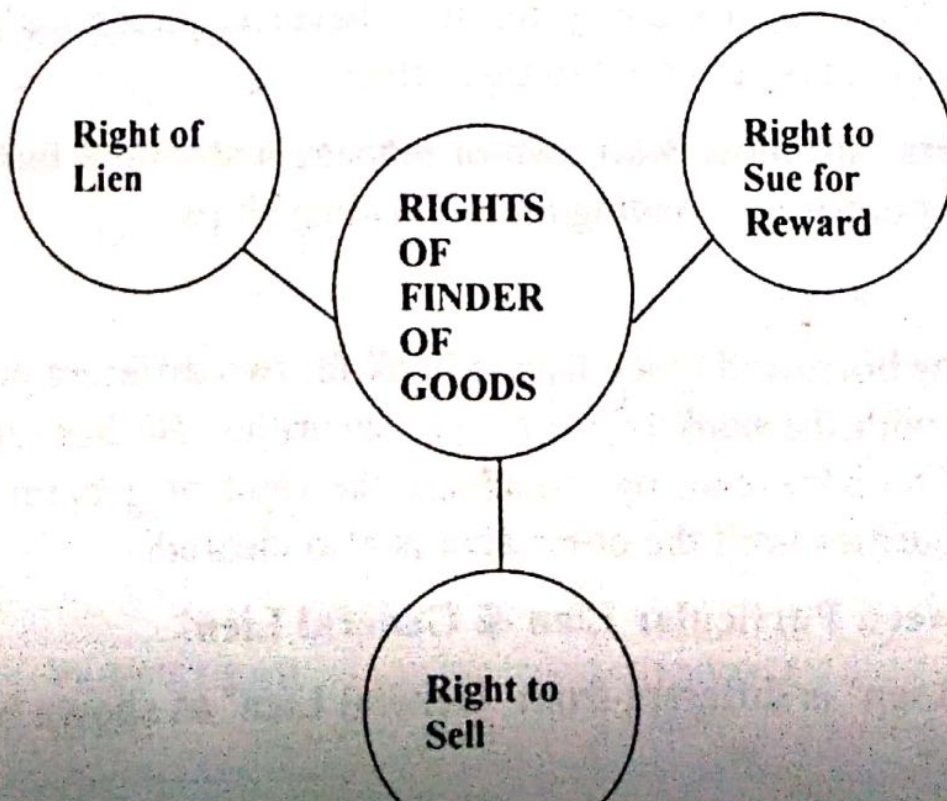
## FINDER OF GOODS

According to Section 71,

‘A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee’.

### Rights of Finder of Goods

A finder of goods has certain rights as shown below:





## Right of Lien (Section 168)

The finder of goods can exercise the right of lien until he receives compensation for the trouble and expense incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation, as it is a voluntary act.

## Right to Sue for Reward (Section 168)

Where the owner offers a specific reward for the return of the goods lost, the finder may sue for such reward. The finder may also retain the goods until he receives the reward.

## Right to Sell (Section 169)

A finder of goods gets the right to sell the goods found under the following circumstances:

- (a) If the owner cannot with reasonable diligence be found, or
- (b) If he refuses upon demand to pay the lawful charges of the finder, or
- (c) If the goods are in the danger of perishing or of losing the greater part of their value, or
- (d) If the lawful charges of the finder, in respect of the goods found, amount to two-thirds of their value.

## TERMINATION OF BAILMENT

A contract of bailment is terminated under the following circumstances:

1. *Expiry of the Period* : If the bailment is for a specific period, it terminates on the expiry of that period, e.g., where X lends his bike to Y, a close friend, for the latter's use for a month, the contract is terminated on the expiry of one month.
2. *Attainment of the Specific Purpose* : If the bailment is for a specific purpose, it terminates once the purpose is achieved, e.g., where A gives a bit of cloth to a tailor to be stitched into a shirt, the contract is terminated once the shirt is made ready.
3. *Inconsistent use of the goods by the Bailee* : The contract of bailment is terminated if the bailee uses the goods in a manner inconsistent with the terms of the contract.
4. *Destruction or Change in the Nature of Goods* : Termination of contract of bailment occurs when the goods bailed are destroyed or become incapable of use due to change in their nature.
5. *Premature termination of Gratuitous Bailment* : In case of gratuitous bailment, the contract may be terminated at any time even if the contract is for a specific period or purpose. But the bailor may have to indemnify the



bailee if the loss suffered by the bailee exceeds the benefit received by him due to the premature termination of bailment.

6. *Death of Bailor or Bailee* : A gratuitous bailment is terminated by the death either of the bailor or of the bailee (Section 162).

### PLEDGE

Sections 172 to 181 of the Indian Contract Act, 1872 deal with Pledge.

#### Definition

According to Section 172,

The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor, in this case, is called the '*pawnor*' and the bailee is called the '*pawnee*'.

#### Example:

X borrows Rs.2, 000 from Y and keeps his gold ring as security for the payment of the debt. X is the pawnor and Y is the pawnee.

Any kind of movable property can be pledged. Delivery of goods is necessary for the creation of pledge. The delivery of goods may be actual or constructive.

#### Distinction between Bailment and Pledge

Bailment	Pledge
1. Bailment of goods may be for any purpose, e.g., for bailee's use, safe custody etc.	1. Bailment of goods as security for the payment of a debt or performance of a promise is what is pledge.
2. The bailee can exercise the right of lien for recovering all charges due from the bailor in respect of the goods bailed. A finder of goods (as the bailee), under certain circumstances, has the right to sell the goods found.	2. If the pawnor makes default in repaying the debt, the pawnee may, after giving notice to the pawnor, sell the goods pledged with him.
3. If the terms of contract so provide, the bailee can make use of the goods delivered to him.	3. The pawnee has no right to use the goods pledged with him.

### RIGHTS OF THE PAWNEE

In pledge, the rights of the pawnee are as follows:

1. *Right of Retainer (Section 173)* : The pawnee may exercise the right of particular lien in respect of the goods pledged with him until he receives



- (a) the debt due, (b) the interest due on the debt and (c) the necessary expenses incurred for the preservation of the goods pledged.
2. *Right to retain to extend to subsequent advances (Section 174)* : In the absence of a contract to the contrary, the presumption is that the right of retainer of the pawnee over the pledged goods extends to subsequent advances also.
  3. *Right to receive extraordinary expenses incurred (Section 175)* : The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.
  4. *Rights in case of default by the pawnor (Section 176)* : If the pawnor makes default in payment of the debt, the pawnee may file a suit against him. The pawnee may also exercise his right of particular lien. He may sell the goods pledged with him after giving due notice to the pawnor. If, on any such sale, there is deficiency, he can recover the same from the pawnor. But in case there is surplus, he shall have to hand it over to the pawnor.
  5. *Right to have valid title where the pawnor's title is defective (Section 178-A)* : Where the pawnor has obtained possession of the goods under a voidable contract (induced by coercion, undue influence etc.) and the contract has not been rescinded by the affected party at the time of pledge, the pawnee will get a good title provided he acts in good faith.

### **RIGHTS OF THE PAWNOR**

The pawnor's rights in pledge are given below:

1. *To receive back the goods* : The pawnor is entitled to receive back the goods pledged once he repays the debt, pays the interest and other lawful charges of the pawnee.
2. *To redeem the goods pledged in case of default (Section 177)* : If the pawnor makes default in paying the debt within the stipulated time, he may redeem (retrieve or get back) the goods pledged at any subsequent time before the actual sale of them. He must, however, have to pay, in addition, any expenses which have arisen from the default.
3. *To require proper maintenance of the goods pledged* : The pawnor is entitled to require the pawnee to preserve and maintain properly the goods pledged with him.

### **CAN A NON-OWNER PLEDGE?**

Under the following circumstances, a non-owner can create a valid pledge:

1. *Pledge by Mercantile Agent (Section 178)* : A pledge made by a mercantile agent is valid. The pawnee must, however, act in good faith and without notice that the pawnor has no authority to pledge.