

# Pledges and pawn essay sample



**ASSIGN  
BUSTER**

**DEFINITION :**

The bailment of goods as security for payment of a debt or performance of a promise is called Pledge or Pawn. The bailor in this case is called the Pledgor or, the pawnor. The bailee is called the Pledgee or the Pawnee.-Sec. 172.

**DIFFERENCE BETWEEN PLEDGE AND BAILMENT**

Pledge is a particular kind of bailment. The difference between Pledge and other kinds of bailment lies in the purpose or objective of the transaction. The purpose of a pledge is to provide security for a debt or the performance of a promise. In other kinds of bailment there are other purposes for example, repair, safe-custody etc. The pledgor and the pledgee have certain special rights and duties. PLEDGE| BAILMENT|

\* PURPOSEThe goods are delivered to provide a security of a loan or for the performance of promise. \* RIGHTSThe pledgee has the right of a sale of the pledged goodson default after giving a notice to the pledgor. \* USE OF GOODSThe pledgee has no right of using the goods pledged e. g. A placed 50 kg gold to NationalBank. Bank cannot use that goods or sell to anyone. | The goods are delivered for a purpose other than the above two i. e. For repair and safe custody etc. The bailee has no right of sale. He can retain the goods or sue for the dues. There is no such restriction, if the nature of transaction so requires.

When can a non-owner make a valid Pledge?

The owner of goods can always make a valid-pledge. In the following cases, one who is not, an owner can make I valid pledge.

### 1. Mercantile Agent

A mercantile agent, who is, with the consent of the owner, in possession of the goods or of the documents of title to goods, can make a valid pledge of the goods while acting in the ordinary course of business of a mercantile agent. Such a pledge will be valid even if the agent had no authority to pledge, provided that the Pawnee acts in good faith and has not at the time of the pledge any notice that the pawnor has no authority to pledge Sec. 178.

### 2. Possession under a voidable contract

A person having possession of goods under a voidable contract can make a valid pledge of the goods so long as the contract is not rescinded. The Pawnee gets a good title to the goods provided he acts in good faith and without notice of the pawnor's defect of title.-Sec. 178

Example:

A gets an ornament by inducing the owner to sell it to him by undue influence. Before the contract is rescinded by the owner, he pawns it to B. B will get a good title to the ornament provided he acted in good faith and was unaware of A's defective title.

### 3. Pawnor with a limited interest

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.- Sec. 179.

### 4. Possession with co-owner

If one of several co-owners is in sole possession of the goods with the consent of the owners, he can make a valid pledge of the goods.-Sec. 30 (1).

## Sale of Goods Act. RIGHTS OF PLEDGEE OR PAWNEE

### 1. Right of Retainer

“ The Pawnee can retain the goods pledged not only for payment of the debt or the performance of the promise, but also for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.”-Sec. 173.

### 2. Retainer for subsequent advance

The Pawnee's lien is a particular lien, i. e., he cannot retain the goods for any debt other than the debt for which the security was given unless there is an express contract to the contrary. If the Pawnee makes fresh advances to the same debtor it will be presumed that the debtor has agreed to create on the goods already pledged a lien for the fresh advance.-Sec. 174

### 3. Extraordinary expenses

The Pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.-Sec. 175. .

### 4. Pawnee's right where pawnor makes default

If the pawnor makes a default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the Pawnee may bring a suit against the pawnor upon the debt or promise,

and retain the goods pledged as collateral security; or, he may sell the thing pledged on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the Pawnee shall pay over the surplus to the pawnor.-Sec. 176.

## RIGHTS OF PLEDGOR

### 1. Defaulting pawnor's right to redeem

“If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them ; but he must, in that case, pay, in addition, any expenses which have arisen from his default.”-Sec. 177.

### 2. Preservation and maintenance

The pledgor can enforce the preservation and proper maintenance of the goods pledged.

### 3. Protection of debtors

The pledgor as a debtor has various rights given to him by statutes enacted for the protection of debtors e. g., the Moneylenders Acts.

## AGENCY

Section 182 of the Contract Act, 1872 is the defining section of an Agent. It states:

“ An agent is a person employed to do any act for another or to represent another in dealing with third person, the person for whom such act is done or who is so represented is called Principal.”

The contract which creates the relationship of principal and agent is called “ Agency”.

Essentials of an Agency

The next three sections (183, 184 and 185) explain the same.

AGREEMENT:

The relationship of agency is the result of an agreement between the Principal and the agent.

Agency may be created:

(A) By an Express agreement (When such agreement is written or spoken it is express), or

(B) By Implication (When agreement is by conduct, situation or relationship of parties). Implied agency may be,-

(i) By estoppels;

(ii) By holding;

(iii) By necessity (as in emergency, for safety of principal, between husband and wife;

(iv) By operation of law.

(C) By Ratification (Where acts are done by person on behalf of another but without the knowledge or authority, he may elect to ratify such acts. If he ratifies them, the same effects will follow as if those had been performed.

As for the contractual capacity it is not the same for the principal and the agent, under the Contract Act, 1872.

A principal must be competent to contract, he must have attained the age of majority, and he should be sane (of sound mind). Thus a minor cannot appoint an agent. [Section 183]

An agent need not be competent to contract. A person may contract through a minor agent. [s. 184]

IS CONSIDERATION NECESSARY TO CREATE AN AGENCY?

Normally lawful consideration is one of the essential elements to constitute a valid agreement. An agreement enforceable by law is called a contract. All agreements are contract if they are made by free consent of parties, competent to contract, for a lawful consideration and with a lawful object and not expressly declared as void.

There are certain distinct points in the case of an agreement agency. As for consideration it is not necessary to create an agency [s. 185] As for intention

to act on behalf of principal, the agent must have intention to act on behalf of the principal.

#### DUTIES OF AN AGENT

As for duties of an agent towards his principal, those are:

- (i) Duty to execute Principal's mandate.
- (ii) Duty to follow principal's direction or custom under section 211.
- (iii) Duty to work with reasonable care and diligence under section 212.
- (iv) Duty to render accounts under section 213.
- (v) Duty to communicate in difficulty and get instructions from the principal under section 214.
- (vi) Duty on termination of agency to take reasonable steps for protection of interests of the Principal.
- (vii) Duty not to deal on his own accounts in the business of agency without obtaining prior permission of the Principal.
- (viii) Duty not to make any secret profit out of his agency.
- (ix) Duty to remit all sums received on his account to the Principal.  
[section218].
- (x) Duty not to delegate authority to another person but to perform the work of agency himself. [section 190].



## RIGHTS OF AN AGENT

An agent has the following rights under the law:

- (i) Right to receive remuneration [section 219]
- (ii) Right to retain out of the money recovered on account of the principal, all moneys in respect of the remuneration, advances or reasonable expenses incurred by him in conducting the business of agency. According to judicial precedent an agent can retain only such money as is in his possession.
- (iii) Right of lien over goods, papers and other property whether movable or immovable of the principal until the amount due as commission and expenses has been paid to the agent. [s. 221]
- (iv) Right to be indemnified against the consequences of all lawful acts done by the agent in exercise of authority conferred upon him by the principal.[s. 222]
- (v) Right to be indemnified against consequences of acts done in good faith [s. 223]
- (vi) Right to compensation for injury sustained by the agent due to the principal' neglect or want of skill.[s. 225]
- (vii) Right to stoppage of goods in transit to the principal like unpaid seller, if he has brought goods with his own money and the principal has become insolvent.

## HOW AN AGENCY CAN BE TERMINATED?

An agency can be terminated in the following ways:

- (1) By Agreement.
- (2) By Revocation of the Principal.
- (3) By Revocation of the Agent
- (4) By completion of the business of agency.
- (5) By expiry of the time.
- (6) By death of Principal or Agent.
- (7) By Insanity of Principal or Agent.
- (8) By Insolvency of the Principal.
- (9) Principal and Agent becoming alien enemy.
- (10) Where it is created by illegal contract.