
FINDER OF GOODS: WHY LAW TREATS A FINDER AS A BAILEE

Shambhavi, Chanakya National Law University

ABSTRACT

The law of a finder of goods under the Indian Contract Act, 1872 is an interesting amalgamation of morality and duty, where obligations are created in the absence of a contract. This research paper explores why a finder of goods is considered a bailee, with emphasis on the quasi-contractual nature of this relationship. It starts with examining the definition of "lost goods" and the status of the finder, and then moves to study the quasi-contract and its purpose of avoiding unjust enrichment. The paper also explores the legal provisions, including the notion that a finder who takes goods into custody takes on the role of a bailee.

The study then delves into the detailed rights, duties, and responsibilities of the finder including the right to possession, lien, reward, and right to sell the goods in certain circumstance, and correlating duties such as duty of care, duty not to use the goods and duty to return the goods. It also includes references to relevant cases referred to in the material to conceptualise the doctrine. A critique is also carried out to determine whether this legal stance strikes the right balance between the finder and the owner of goods, analysing its merits and demerits.

The research is important as it shows how the law deals with practical situations through quasicontractual principles instead of contractual principles. It is suggestive of the implication that the law needs to evolve to ensure justice, accountability, and guard against potential abuse in informal contractual arrangements. In conclusion, this work helps in understanding the operation of quasicontractual principles in today's legal system and how they achieve justice by regulating relationships that are not consented to.

INTRODUCTION

The idea of the finder of goods under Contract Law, deals with a scenario where a person acquires possession over someone else's goods without any prior agreement. In the case of the materials provided, goods are deemed "lost" if the owner has accidentally lost possession of goods and does not know where they are. The goods are also considered lost even if the owner voluntarily leaves the goods in a certain location but then loses track of where they are. The finder of the goods is the person who acquires possession of the goods. Crucially, though, the finder does not own the goods outright; rather, their ownership is qualified, conditional and always subject to the overriding claim of the owner.

So, the question we dealing here is how does the law govern the conduct of a person who has possession without ownership, and where there is no contractual relationship? Thus, the question arises as to why the law imposes the duties of a bailee on a finder of goods in such situations. The paper continues on the basis of the hypothesis that this kind of treatment is required so as to promote justice, forestall unfair enrichment as well as hold the parties accountable in circumstances where formal principles of contract are inapplicable.

The status of the finder is described using the concept of quasi-contract. In contrast to the normal contracts, quasi-contracts are made by the law and come about due to the need to avoid injustice as they are not founded on consent or mutual agreement. The material underlines the fact that this relationship is imposed on the principles of equity, justice, and good conscience. Therefore, although the finder and the owner do not have close interaction or agreement, the law considers the relationship between the two to be as though there are some obligations. This is to ensure that the finder does not abuse the goods and the rights of the owner are not compromised.

This research paper will look into the legal framework of the finder of goods by looking at the quasi-contractual nature of the relationship and statutory provisions which make the position of the finder the same as that of a bailee. It also discusses the rights, liabilities and entitlements of the finder such as right to possession, lien, reward and to sell the good under certain conditions, duty to exercise reasonable care, not to misuse it and the duty to restore possession of the good to its rightful owner. The case references that are relevant and cited in the material are also included in the study so as to support the doctrinal understanding of these principles.

Critically, the paper assesses the extent to which this legal framework strikes the right balance between competing interests of a finder and the true owner. It finally finds that the law takes a pragmatic and fair stance in acknowledging the finder as a transitory custodian but not an owner, and as such will hold the finder accountable and yet safeguard honesty. This framework emphasizes the wider application of law to the regulation of everyday circumstances by means of notions of fairness and avoiding unjust enrichment.

LITERATURE REVIEW

The law of bailment, and the particular status of a finder of goods, have been long-standing academic interest, which may not be as commercially dominant as the other subjects. The commentary on the Indian Contract Act.

remains Pollock Mulla: Indian Contract and Specific Relief acts-3, that follows the trail of statutory provisions are supported by their English common law origins and give a thorough analysis of the judicial rulings that have influenced the Indian law of bailment. The authors observe that though Section 71 seems like a relatively short and somewhat informal one, it is packed with power in one sentence a complete quasi-contractual regime.

Law of Contract of Avtar Singh is a second standard reference, notable in its accessible case law analysis and good citation. Singh makes a significant differentiation between the voluntary delivery that results in a conventional bailment and the involuntary assumption of custody that defines a finding situation - a difference which is at the core of the justification for Section 71.

Michael Bridge, in his Personal Property Law in the English tradition, offers a sophisticated common law analysis of the position of the finder. The treatment of the tension by Bridge of whether and why between the possessory and absolute title of the true owner and the finder. The law interposes these two and has been felt to affect the thought of Indian courts, especially in situations of competing rights between finders and occupiers of premises.

RESEARCH QUESTION AND OBJECTIVES

Questions

▸ Why do the Indian Contract Act, 1872 places the finder of lost goods in a bailee position, regardless of any contractual relationship between the parties and what are the doctrinal,

practical and legal implications of doing so to the parties.

Objectives

▸ The research aims are:

- I. To investigate the law of a finder of goods according to the Indian Contract Act.
- II. To examine the notion of quasi-contract as applied to finder of goods.
- III. To see why the finder is considered a bailee.
- IV. To assess the rights, duties and liabilities of the finder.
- V. To critically examine whether such a legal framework is reasonable in the modern context.

HYPOTHESIS

The Finder as bailee is a legal fiction which guarantees fairness, responsibility, and preservation of ownership, even though they are not based on a contract, due to the equity and justice considerations.

RESEARCH METHODOLOGY

This study is more of a doctrinal one. This research is closely involved with the text of the Indian Contract Act, 1872 - especially in Sections 71, 148 to 171 and with the judicial rulings of the Supreme Court of India and several High Courts that have construed and put into practice those provisions. Where Indian jurisprudence turns on English common law principles, reference is made to the relevant English decisions, which still remain as authority of persuasion in Indian courts.

The approach that is used is firstly, a close reading of the material statutory provisions in order to determine their plain meaning and scope; secondly, an analysis of judicial interpretation to see what has been done in practice with the provisions; and thirdly, a critical checking of the consistency and sufficiency of the current framework. Secondary sources- the contextualisation and enriching of the same are done by using commentaries, textbooks, and journal articles.

CONCEPT OF FINDER OF GOODS AND QUASI- CONTRACT

The Indian Contract Act of 1872 concept of finder of goods is based on the real life aspects of

day to day life, as people can come across property that is not theirs. Such cases are identified by the law and a systematic legal framework is given to control the action of the individual who discovers such goods and takes them in possession. Finders of goods are individuals who find goods belonging to a third party and remove them into their custody, normally being unaware of the actual owner when they are found. But not all possession of goods is a finding. To be considered as lost, it is mandatory that the owner has lost possession against his will and does not know where the goods are located. Even in cases whereby the owner deliberately deposits goods in a particular place, but forgets the whereabouts of the same, such goods are still regarded as lost.

A significant explanation provided in the text is that an individual cannot be termed as a finder when the goods have been in possession of another individual. The idea is only applicable when the finder gains possession of genuinely lost goods. When such possession has been obtained the finder holds a special legal status. Even though the finder does not assume the status of the absolute owner of the goods, he or she is considered to have a superior right over the goods as compared to anyone except the true owner. This implies that the finder is considered the best owner as compared to third parties although his/her title is conditional. The rights of the real owner never pass away and the claim of the finder can be defeated as soon as the real owner has been found. Therefore, the title of the finder is conditional and stays in place until the actual owner makes a claim.

The material also highlights that the finder is a mere custodian of the goods but not an owner. This difference is important as it determines the boundaries of the authority of the finder. The finder has no right to pass ownership to any other individual, neither can they use the goods as their own to gain their benefits. That is a provisional position and will be determined by the ultimate determination of the actual owner. This is an indication of the intention by the law to safeguard the right of ownership but at the same time to acknowledge the reality on the ground that someone must come forward in order to reclaim the goods on his or her possession.

The legal basis of the finder position is the idea of quasi-contract. A quasi-contract, in addition, does not emerge as a result of agreement, consent or intention of the parties as is the case with a normal contract. Rather, it is a legal requirement, which is set by law. In the material, it is explicitly mentioned that the status of the finder of goods is the development of a quasi-contractual situation, rather than a contractual relationship. This implies that neither the finder

nor the owner makes any offer, nor does he accept an offer or agree with each other. Although this is not in agreement, the law enforces the duties as though there is a contract.

The idea of quasi-contract is founded on the principle of ensuring the prevention of unjust enrichment. This is a principle that does not allow an individual to end up advantaging another person unfairly. This principle is prominent in the case of finder of goods. When an individual discovers commodities, he/she enriches oneself with the property of another person. Unless the law is used to control such a case, the finder might misappropriate the goods or make unjust gain. Conversely, the finder can as well face costs or even hustle in maintaining the goods and trying to find the owner. Thus, a balance between these competing interests is created by the law.

The material explains that quasi-contractual obligations are not founded on voluntary acts of the parties but are enforced by law to attain justice, equity, and good conscience. The principle that law should avert unjust enrichment was historically put forward to support this idea. Therefore, quasicontact is not a contract, but a legal fiction that is used to provide fairness. It has also been established as a different category of law as opposed to both contract and tort. Such classification emphasises its special character and aim.

Under the quasi-contractual relationship, in the case of a finder of goods, the finder is obliged to act as a responsible party, and he/she is also guarded against his/her honest actions. Some of the duties that are imposed by the law include reasonable care of the goods and returning them to the actual owner. Simultaneously, it provides rights like retaining possession against third parties and rewarding in case of being offered. These rights and liabilities are similar to that of a bailee and that is why the law considers the finder as a bailee as per Section 71 of the Act.

The other significant point that was emphasised in the material is the fact that the liability of the finder does not depend on any agreement. This supports the argument that quasi-contractual obligations are not based on consent but are established by the law itself. The finder is under obligation to behave in such a way that a sane and sensible person would behave in such a circumstance. The standard guarantees protection of the goods without overloading the finder.

FINDER AS THE BAILEE UNDER INDIAN CONTRACT ACT

The status of a finder of goods as per the Indian Contract Act, 1872 is specially controlled by

the principle that a finder would be considered a bailee. This is expressly provided under Section 71 which provides that a person who discovers goods that belong to another and takes them into custody is liable to the same liabilities as a bailee. This provision establishes to the law a legal relationship without there being an agreement between the finder and the real owner. This rule is important because it not only puts a responsibility on the finder but also a right; to make sure the goods are well taken care of.

Generally, the concept of bailment comes about when goods are brought to another person (the bailor) to deliver those goods to another person (the bailee) for some purpose, based on some contract that the goods would be returned or disposed as per the directions of the bailor. But where there is a finder of goods there is no such delivery or agreement. Possession is voluntary and without the consent of an owner by the finder. Although this is lacking a contractual basis, the law considers the finder to be a bailee since the circumstance is similar to bailment in the aspect of possession and responsibility. In both scenarios, an individual is in lawful possession of goods that are in the possession of another and thus a duty to be careful of such goods exists.

The content makes it clear that the finder does not acquire ownership of the goods but is just a temporary custodian. The position of the finder is commonly expressed as that of the best owner as compared to all but the owner. This implies that although the finder stands in a better position as compared to the third parties, such a position is not absolute. The real owner has undivided ownership and the rights of the finder are never beyond the claim of the owner. In this way the title of the finder is contingent and can be defeated when the true owner is found.

The legal use of the finder as a bailee. It makes sure that the finder is subjected to a reasonable care standard. The finder ought to maintain the goods in a reasonable manner in the same way a prudent person maintains his or her own goods, in the same circumstances, as a bailee does. This is a necessary responsibility to avoid carelessness and abuse. Meanwhile, the finder is safeguarded by some rights, including the right to keep the possession of the goods until payment of legal charges.

Such a balance of rights and responsibilities indicates the fairness of the rule.

The fact that the liability of the finder does not depend on a contract is another significant point. This further supports the notion that the relationship is quasi-contractual. The law has its obligations that are founded on fairness and justice and not consent. The finder must be honest

and responsible and her/his actions that do not comply with this standard can lead to liability. As an example, when the finder takes the goods in bad faith and uses them himself even when he or she is aware of the actual owner of the same, then such action can be termed as wrongful or even criminal activity.

The material also points out that the finder is not able to assign ownership of the goods to another individual. The finder does not have absolute title and therefore cannot transfer a better title than he or she has. This restriction also highlights the fact that the finder is only a custodian and not an owner. They are supposed to maintain the goods and help to recover them to the rightful owner whenever possible.

Also, the finder is bound to give the goods back upon the discovery of the actual owner. This obligation fits the fundamental principle of bailment, i.e. the bailee should deliver the goods at the end of the purpose. In case the finder does not do so, he or she can be liable to any loss or damages incurred afterwards.

This is to make sure that there is accountability and the position of the finder is not abused.

4. RIGHTS AND DUTIES OF FINDER OF GOODS

► Rights of the Finder of Goods

Right to possession of the goods is one of the most significant rights of a finder. In case an individual discovers the lost property and brings it under their custody, the law acknowledges it as legitimate. This implies that the finder is better off the goods than any other person in the world besides the actual owner. This is a significant principle as it prevents interference by the third parties to the finder. As an example, when a third party attempts to steal the goods of the finder, the finder is allowed to defend himself or herself against the third party and keep the goods. But it is not an absolute right, and ceases when the actual owner takes possession of the goods. The finder, therefore, is regarded as a transitory possessor having a better claim than all except the true owner.

The other significant right is the right of lien, and according to which the finder has the right to hold the goods until they are paid the amount of money that he incurs to maintain the goods. In cases where a finder has used his money or effort to protect the goods or to make an attempt to find the owner, the law acknowledges that it would be unjust to compel him or her to part

with the goods without any form of compensation. Thus, the discoverer is allowed to retain the good until the payment of those legal duties. This right is however restricted. The finder is not allowed to sue to reimburse these costs; the finder is allowed to keep the goods as security. This demonstrates that the law offers protection and does not entirely make the finder a party to the contract.

There is also a right to reward by the finder, yet this right is not obtained until the owner has conspicuously offered a reward to the recovery of the lost goods. Under these circumstances, the claimant has the right to receive the reward once he/she meets the requirement of handing back the goods. This right, as opposed to the right to expenses, is a legally enforceable right. This implies that when the owner is not willing to pay the reward as promised, the finder has the option of suing to get it back. Such a promise is considered binding under the law since it is an explicit offer to the populace, and the finder takes such an offer.

Very much connected with this is the right to sue to reward which enhances the status of the finder. Although the finder is not entitled to sue by way of general expense, he is entitled to claim a reward being paid out if there is a promise of such reward. This distinction is significant in that it demonstrates that the law distinguishes between voluntary efforts and contractual-like promises. By providing a reward, a stronger legal claim on the owner is established and the finder given full legal aid to claim it.

The other important right is the right to sell the goods subject to some conditions. The law enables the finder to sell the goods in case of necessity. This is normally the case when the goods are perishable, or when they tend to depreciate with time. It is also used when the cost of keeping or preserving the goods is very high and in particular where the cost is two-thirds of the value of the goods. Furthermore, the finder may sell the goods in case the owner is not found following the reasonable efforts. This right is practical in the sense that it helps to avoid unnecessary loss and to make sure that the finder is not overburdened with the goods that could not be safely kept.

► **Duties of the Finder of goods**

The finder, along with rights, has several obligations as well, which are crucial to act responsibly. The essential one is the duty to exercise reasonable care over the goods. The law obliges the finder to care about the goods in the same manner as a prudent and reasonable

person would take care of his/her own property. This is not about extraordinary care but it does take honesty and hard work. In case of negligence which causes damage to the goods the finder is likely to be held responsible.

This is the basis of the obligation of the finder as a bailee.

The other significant responsibility is the duty not to make unauthorised use of the goods. The finder cannot take the goods and use them to his/her advantage or pleasure. The goods are the property of another person; hence, any form of unauthorised use constitutes a breach of duty. Such a finder will be liable to the damage incurred to the goods even when he or she uses the goods with care and without negligence. This is an absolute principle since it is the right of the real owner of the goods and should not be treated as such by the finder.

It is also the responsibility of the finder not to confound the found goods with their own goods. This obligation is significant since confusion may be formed due to the mixing of goods and it is hard to recognise or restore the initial property. In case the finder mixes the goods with the consent of the owner, then both parties will equally share the goods. The finder is however suffer the consequences in case the mixing occurs without consent. Where the goods are separable the finder is liable to the cost of separation and loss. In case they are not separable, the finder might be forced to pay the owner in full. The rule is a form of accountability and it prevents mishandling of goods.

The other important obligation is the obligation of delivery of the goods to the actual owner. The owner or a person who claims ownership of the goods must then be found after which the finder should hand back the goods. This obligation emphasises the provisional character of the possession of the finder. The finder is not allowed to reject the goods, unless he is exercising his right of lien, or demanding a reward. Failure on the part of the finder to deliver the goods at the right time makes the finder liable to any loss, damage, or deterioration that occur subsequent to it. This causes the finder to be liable even outside the ordinary situation in case they postpone the recovery.

The finder has a liability also to repay any increase or profit of the goods. In case the goods bring about any benefit, either in the form of profit, interest or natural increase, the finder must also give it back to the owner. This is to make sure that the finder does not obtain any extra benefit of the goods than what is allowed by the law. It supports the notion that the finder is a

custodian, but not an owner.

Finally, the finder is obliged not to establish an adverse title over the owner. This implies that the finder cannot refuse to pay the ownership of the true owner or claim the goods as his. Although the finder is in possession, he is not allowed to make the possession owned. This obligation does not violate the rights of the original owner and makes sure that the finder does not exceed the boundaries of his/her legal status.

5. SUGGESTIONS AND CONCLUSION

▸ Suggestions

Based on the reading of the given material, it is evident that the law in regard to finder of goods is just yet it can be enhanced to be more practical. Firstly, the law needs to provide that the finder gets to legally recover expenses which are necessary to preserve the goods. Currently, the finder is only entitled to the right of lien and is not entitled to recover and this may not encourage good behaviour. It would be more realistic to grant a restricted right to recover reasonable expenses to make the system more realistic.

Secondly, the awareness and guidance on the responsibilities of a finder should be more clear. Lots of individuals do not know that it is their legal duty to take care of the goods and deliver it back to the owner. Raising awareness will contribute to a reduction of misuse and confusion in real-life.

Thirdly, the legislation may offer a greater clarification of the cases when the owner is inaccessible, particularly in the case of selling products. Although it is provided, there should be more explicit procedural guidelines to prevent abuse or conflicts.

Finally, it needs to focus more on rewarding the honest behaviour by rewarding and safeguarding the efforts of the finder in a more efficient way. This may be achieved through increasing the enforceability of rewards, as well as making it easier to claim the rewards.

▸ Conclusion

As a conclusion to the position of a finder of goods in the Indian Contract Act, this is a reasonable and balanced law. The law would establish a quasi-contractual relationship where

the law would provide fairness in the relationship between the finder and the real owner even in the absence of a contract. The law places the required obligations on the finder by considering the finder as a bailee, which encompasses the following:

Taking reasonable care and delivery of the goods alongside the limited rights of possession, lien, and reward.

The paper indicates that the finder is not the owner but a custodian that is temporary and whose rights can always be claimed by the actual owner. This guarantees that the ownership is still intact and also the efforts of the finder are appreciated. The principles underpinning the framework are justice, equity and good conscience, which will help to avoid unjust enrichment and misuse of property.

Nevertheless, there are some disadvantages, including the inefficacy of the finder to claim costs, which can decrease practical value. Despite, overall system is able to achieve a reasonable balance between responsibility and protection.

In this way, the finder of goods law emphasises the flexibility of the law applied to real-life scenarios, accountability without the formal requirements, and the encouragement of honesty and responsibility in the society.

BIBLIOGRAPHY

Primary Sources

1. *The Indian Contract Act*, No. 9 of 1872, §§ 68–72, 148–171

Cases

1. *Armory v. Delamirie*, (1722) 1 Strange 505, 93 E.R. 664 (K.B.).
2. *Bridges v. Hawkesworth*, (1851) 21 L.J.Q.B. 75.
3. *South Staffordshire Water Co. v. Sharman*, (1896) 65 L.J.Q.B. 460.
4. *Parker v. British Airways Board*, [1982] 1 Q.B. 1004.

Secondary Sources

Books

1. Avtar Singh, *Law Of Contract & Specific Relief* (12th Ed. 2020).
2. Pollock & Mulla, *The Indian Contract And Specific Relief Acts* (17th Ed. 2024).
3. Michael Bridge, *Personal Property Law* (4th Ed. 2015).