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# **THE EVOLUTION OF DUTY OF CARE IN BAILMENT CONTRACTS: ANALYSING THE CONFLICT BETWEEN SECTION 151 AND SECTION 152**

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## **ABSTRACT**

The evolution of duty of care in bailment contracts has been a subject of interest and debate, particularly the conflict between Section 151 and Section 152 of the Indian Contract Act, 1872. These sections specifically define the parameters of the duty of care owed by a bailee to a bailor and discuss circumstances where the bailee may be held liable for causing any loss to bailed goods. This paper tries to chart the historical development of bailment contracts and the paradigm shift in holding the bailee strictly liable for all malfeasances. The primary conflict which arises is whether the bailee can contract himself out of these obligations by a special contract under Section 152. Possible solutions to resolve such conflicts are also explored by the paper. While the contract act continues to tackle this conundrum, efforts from learned judges and law commission have been made to branch through this labyrinth.

## Introduction

Forming an integral part of specific contracts under Indian contract act, 1872, is the contract of bailments defined under Section 148. Panning across a total of 33 sections, Bailment contracts deal with inherent subjects like delivery of goods, responsibility and liability of bailee, lien, and bailment of pledges among others. Technological advancements paved way for developed regimes and a need for growing responsibility on the bailee's part. This evolution resulted in a broader and nuanced understanding of what constitutes duty of care under bailment contracts. As per the common law understanding, duty of care is defined as the legal obligation to act in a prudent manner, so as not to be negligent. The understanding of duty of care in tort law categorises duty of care owed by one party to the other and a breach of that duty resulting in subsequent damages to the party<sup>1</sup>. While tort law principles are established over a period of time through court precedents, duty of care in bailment contracts is defined under Section 151 and Section 152 of the Indian Contract Act, 1872. Section 151 introduces the principle of reasonable care and how the bailee would be held liable if he defaults in maintaining the standard of care which would have been taken by a man of ordinary prudence in a similar situation<sup>2</sup>. Section 152, on the other hand, alleviates the liability of the bailee by limiting it to the reasonability criteria mentioned in Section 151 in cases of loss, destruction or deterioration of the thing bailed<sup>3</sup>. On first glance, there appears to be no discrepancy between the two sections, however, after a close reading there appears to be an underlying conflict. The primary focus of this research will be to address this conflict by understanding and analysing the scope of liability of a bailee and how the essence of duty of care remains ambiguous in bailment contracts.

## The history of Bailment contracts and their progress

While bailor and bailee relations have existed even before the contractual terms came into play, the idea of attributing the entire liability to the bailee was not uncommon. As per common law customs and rulings, a bailee was held liable for acts, as well as, omission forming a part of negligence cases stemming from a large brindle of causes. The only bar to this responsibility was act of god and acts of public enemy<sup>4</sup>. English law categorises bailees on the basis of

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<sup>1</sup> WINFIELD ET. AL, TORT, 5-005 (1937)

<sup>2</sup> The Indian Contract Act, 1872, § 151

<sup>3</sup> The Indian Contract Act, 1872, § 152

<sup>4</sup> Hugh Evander Willis, *The Right of Bailees to Contract against Liability for Negligence* 2807 HLR 297 (1907)

consideration received, namely, gratuitous bailee and bailee for reward<sup>5</sup> However, the proposition of holding the bailee responsible for all malfeasances witnessed a change for the first time in *R v. Viscount Hertford*<sup>6</sup>, when the court granted leeway to a gratuitous bailee for theft of money stored without any consideration. In a further judgement, the courts held the bailee liable for negligence, when the War Office had stationed troops outside a locked room which stored certain articles of the plaintiff, which ended up being stolen<sup>7</sup>. In a case such as this, the courts lean beyond the prima facie evidence of bailee's duty of care into the concept of how reasonably a bailee is supposed to act in a certain prefixed situation. Indian case laws and jurisprudence in regard to bailment contracts finds its origins in section 151 and section 152. In contrast to UK, there is no separate categorization of bailees on the basis of consideration received as the duty of care to be undertaken by the bailee is the same for gratuitous bailees and bailees for a reward. This uniformity creates the scope for an unwavering judicial interpretation when it comes to bailment cases.

Over the past few decades, various High court and Supreme Court judgements have set varying precedents in regards to holding the bailee accountable for the damage caused to the goods bailed. Some judgements have extensively specified a clear accountability on the bailee's part, while others have restricted themselves to a specific set of facts and circumstances applicable to that case. The application of Section 151 and Section 152 comes into play when ascertaining the boundaries beyond which a bailee's liability is determined. A High Court judgement delivered in 1912 lays emphasis not just on the initial responsibility of a bailee to ensure that proper care of goods is taken, but also, extends to the aftermath of preventing further damage to goods when such risks have already occurred<sup>8</sup>. Such an understanding goes beyond Section 151 which limits the bailee's responsibility only to a circumference of this section. The issue of whether or not the bailee will be held liable for every damage caused to the goods in his possession is not elaborated within this judgement. The principle of taking prudent care is however, discussed in further judgements which relied upon Section 151 to arrive at conclusions.

Madhya Pradesh High Court in a judgement covered the issue, whether a special contract existing between the parties would absolve the bailee of his liability in case of mismanagement

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<sup>5</sup> AVTAR SINGH, *CONTRACT AND SPECIFIC RELIEF*, 681 (1973)

<sup>6</sup> *R v. Viscount Hertford* (1681) Shower 172: 39 ER 870

<sup>7</sup> *Blount v. War Office* (1953) IWL 736

<sup>8</sup> *Lakhichand Ramchand v. G.I.P* (1912) 14 Bom LR 165

or loss? The court answered in negative. Except the circumstances listed in Section 152, the bailee would be held liable for all kinds of losses regardless of a separate contract<sup>9</sup>. This decision placed an unquestionable faith on the merits of Section 151. This link and dependence of Section 152 on Section 151 is suggestive of the fact that, not only are the two sections simultaneously read together, but applying section 152 alone to a set of facts would be incompetent without the preliminary understanding of duty of care arriving out of section 151. On the other hand, the courts while analysing the scope of Section 152 have parted ways from their previous judgements and held the bailee not liable for negligence. The courts have stated that except in certain special circumstances or according to the situations mentioned in Section 152, the bailee would not be held liable for loss of goods<sup>10</sup>. The situations included in Section 152 are loss, deterioration or destruction of the good bailed. However, the context preceding such situations takes one back to Section 151. In situations where the bailee has adopted a prudent duty of care, but due to unforeseen or uncontrollable circumstances a default occurs, the bailee would not be liable. How do the courts determine this distinction? According to a judgement delivered by the Allahabad High Court, duty of care cannot be measured by laying down a cast-iron standard<sup>11</sup>. The nature and amount of care to be taken varies with the posture of every case. While it is agreeable to an extent that a straitjacket approach cannot fit in the abundance of cases originating from different sources, it is also necessary to establish a standard mode of quantifying the responsibility a bailee has to undertake. In suits resulting out of bailment contracts, the burden of proof lies on the defendant i.e. the bailee in this case. The bailee would be expected to prove that he took all reasonable care, while maintaining a prudent duty of care of standard and argue for loss taking place outside his circumference of care.

### **Evaluating the contradiction in Section 152**

The principle conflict that arises in such relationships is not the duty of care taken by the bailee, but the duty of care he is expected to take in situations not discussed by the statute. According to a Kerala High Court judgement, regardless of the exemption mentioned in a specific contract limiting bailee's liability, he cannot claim total exemption from the standard of care prescribed in Section 151<sup>12</sup>. The specific contract mentioned in such a situation is none other than the one provided by the statute. Section 152 explicitly mentions liability, "in the absence of a special

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<sup>9</sup> Central Bank of India v. Grains and Gunny Agencies, AIR 1989 MP 28

<sup>10</sup> Supra note 3

<sup>11</sup> Shanti Lal v. Tara Chand Madan Gopal AIR 1933 ALL 158

<sup>12</sup> United India Insurance v. Pooppally Coir Mills, (1994) 2 KER. LT 473

contract". Such a provision not only limits the liability of the bailee to the extent provided under this section, but also creates an exit in cases where the bailee can absolve himself from liability. Even though the judgement pronounced above holds the bailee liable irrespective of a special contract, a contrary view was taken by the Punjab and Haryana High Court. In a decision contesting whether the bailee can contract himself out of liability if a special contract between the creditor and debtor exists, the High court answered in affirmative. The view taken by the High court submits to the understanding that the bailee can contravene the provisions of Section 151, if a special contract as per Section 152 exists<sup>13</sup>. A similar stance was taken by the Bombay High court, which was relied upon by the Punjab and Haryana High Court in this judgement. The court in that case proposed a similar observation where the contradictory nature of Section 151 and Section 152 was brought forward. Holding the bailee to be non-negligent, the court held that the statute does not expressly prohibit the parties from entering a bailment contract, but does not hold the bailee liable if he simply agrees to store the goods of his friend on the condition that the owner will be liable if any damage occurs<sup>14</sup>.

Judgements on the other side of the mirror offer a unique reflection to the extent of the situation where a bailee would be held liable. Even if the bailee is taking prudent measures, he would not be liable in situations apart from the ones mentioned in Section 152 and if he happens to be a part of a special contract. The above three judgements have been provided by different high courts across the country. The differing opinions of the high courts in this context not only implore the complexity surrounding these two sections, but also how both the sections contradict each other in some sense. A landmark judgement provided by the Bombay High Court briefly touched upon the subject of these sections acting in contradiction to each other. However, the Learned Judges in that case translated Section 152 as being in continuation of Section 151, where one follows the other and would be incomplete without the first one<sup>15</sup>. In such a scenario, even though both sections exist independently of each other in ascertaining liability of the bailee if he fails to take reasonable care, it also provides a middle path to realising that Section 152 may only come into play when the bailee defaults on taking prudent care of the goods. The conflict, however, does not end there. Further, the question regarding jurisdiction and precedence emerges as far as the position of the Supreme Court is concerned.

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<sup>13</sup> State Bank of India v Quality Bread Factory AIR 1983 P&H 244

<sup>14</sup> Lakhaji Dollaji And Co. v Boorugu Mahadeo Rajanna (1939) 41 BOMLR 6

<sup>15</sup> Bombay Steam Navigation Co. v Vasudev Baburao Kamat (1927) 29 BOMLR 1551

While interpreting the statute, different high courts have attempted to tackle this Pandora box, but have ended up diminishing a source of clarity.

### **Possible suggestions**

The path forward from here requires answers two main questions. One is, whether the bailee can contract himself out of the obligation imposed on him by Section 151 in lieu of the alternative contract granted to him by Section 152? The solution to this issue still remains to be unsolved as the variety of judgements provided by high courts in this context have not been overruled by the Supreme Court. Nor has the court set a precedent in terms of how the two sections should be interpreted when a conflict arises between the two. The second issue and possibly, one of the most essential conflicts in bailment contracts is when the bailee is held liable for breach of duty of care, whether section 152 will supersede section 151? While both sections attribute a certain responsibility and a prudent judicial standard, what remains unanswered is, if the bailee has undertaken reasonable care, would he still be liable under Section 152? One of the possible solution as put forth by the Law Commission of India in its 13<sup>th</sup> report is the addition of the phrase, ‘in the absence of any special contract’ in section 151, so as to avoid the confrontation between the two mentioned sections<sup>16</sup>. While this suggestion has not been added as an amendment to the Indian Contract Act yet, however, it does offer an acknowledgment to the underlying conflict.

### **Conclusion**

The practice of bailment contracts existed even before they were crafted to be a part of the statute. The intention behind codifying this specific contract has been to provide clarity, as well as, directions to be followed in cases of breach and the possible remedies. The concept of bailment shares some parallels with the common law understanding of law of torts. Vicarious liability as propounded by different relationships existing between the agent and principle form a part of bailment contracts to the extent where the servant of the bailee can be held liable in case of damage. The purpose of writing this research paper has been to explore certain intrinsic concepts surrounding the subject of bailment and the parties involved in this contract. A special focus has been drawn towards the bailee, a person to whom the goods are bailed, who happens to hold onto them till further delivery to another person or according to the instructions given

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<sup>16</sup> Law Commission of India, Indian Contract Act, 1872 (Law Com No.13, 1958)

by the bailor. The sections related to this concept are Section 151 and Section 152 of the Indian contract act which govern the duty of care to be followed by the bailee and cases where the bailee would not be liable for breach of that duty of care.

Further, this paper explored a variety of case laws and court interpretations of the extent of duty of care a bailee is obliged to maintain. On the other hand, cases where bailee would not be held liable in specific unforeseen circumstances that could not have been avoided after undertaking precautionary measures were studied. The second issue dealt in this paper was the ambiguous wordings of the two sections which allow the bailee to opt out of liability in cases of a special contract, while also holding the bailee liable for a multitude of causes. While high courts have attempted to decode this section by interpreting it according to the facts and circumstances of each case, a fixed standard of differentiating between the two sections and the conflict they entail has not been agreed upon. Lastly, while this paper offered an analysis of how this section can be used by either parties to their benefit, it also highlights the need to determine whether the bailee should be attributed liability for causes that go beyond his control and if he holds to right to disperse off his contractual liability by becoming a party to another contract.