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CORRELATIONAL ANALYSIS OF THE DUTIES OF A BAILEE IN SECTIONS 151 AND 152 OF THE CONTRACT ACT

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1. INTRODUCTION

One of the most commonly used but misconstrued notions in the Indian Contract Act, 1872, is bailment. Bailment applies to a broad scope of daily transactions, including parking vehicles and putting valuables in commercial storage facilities. The key provisions in this relationship are Sections 151 and 152, which together set out the extent of a bailee's duty of care and the conditions under which they may escape liability. This blog examines the operation of these two provisions together and the reasons courts have viewed them as inseparable in decisions on a bailee's responsibility.

2. UNDERSTANDING BAILMENT UNDER SECTION 148

Bailment, under Section 148, is the delivery of goods for a purpose, which, when fulfilled, results in the goods being disposed of.¹

- **Four Essentials emerge from this definition-**

1. **Delivery of goods**²- May be actual or constructive. The former occurs in the handling of the goods by the Bailee³ and the latter when something done by the bailor places the Bailee in possession of goods⁴.
2. **Delivery upon purpose**- When the purpose is fulfilled, the bailed goods should be returned to the bailor, distinguishing bailment from permanent ownership transfer.

¹ S. 148, Indian Contract Act, 1872

² Kavita Trehan v. Balsara Hygiene Products Ltd., 1991 SCC OnLine Del 348

³ Bhuwarka Brothers Ltd. v. Dunichand Rateria, 1952 SCC OnLine Cal 134

⁴ Fazal v. Salamat Rai, 1929 SCC OnLine Lah 17

3. **Delivery upon Contract-** No bailment if possession of goods without a contract. Mere possession of goods without agreement or consent is no bailment⁵
4. **Be returned or otherwise disposed of-** Bailment consists of a mere temporary transfer. If the goods are not returned, they have to be disposed of, as permanent possession is prohibited.

2. SECTION 151: CARE TO BE TAKEN BY BAILEE

Section 151 explains the duty of a bailee to exercise the care of an ordinarily prudent person with similar goods and under similar circumstances.⁶

- **Three Essentials from the definition-**

1. **Duty of Care- ‘measuring the standard of care.’**

In *Southcott v Bennet*, the court held the bailee responsible for stolen goods, stating that accepting them for safekeeping meant he had to guard them at his own risk.⁷ *Houghland v RR. Low*⁸ held that the standard of care of a bailee of reasonable care was the same, irrespective of the bailment being gratuitous or for reward.⁹ The duty of care depends on the type and quality of goods involved. In *Shantilal v. UOI*¹⁰, where loss occurs due to unavoidable events like floods, the bailee isn't held liable unless they are negligent. The measure of care varies with each case, rejecting a rigid standard.¹¹

2. **Man of Ordinary Care**

Sec-151 says that the Act of a Bailee must be similar to the act of a prudent man. Ordinary prudence is not defined in any legislation; therefore, the court refers to precedents.

⁵ Surendra Nath Koley v. Kali Kumar Sen, 1955 SCC OnLine Gau 32

⁶ S.151 Indian Contract Act, 1872

⁷ Beale, J. H. “Southcott v. Bennett. Queen’s Bench, Pasch. 43 Eliz. (1601).” *Harvard Law Review*, vol. 13, no. 1, 1899, pp. 43–47. *JSTOR*, <https://doi.org/10.2307/1322673>. Accessed 13 Apr. 2024.

⁸ (1962) 1 QB 694 CA: (1962) 2 All ER 159

⁹ Abhik Chakraborty, Duty of Care of Bailee: The Evolution of Doctrine of Reasonable Care in Common Law (Jan. 1, 2014), SSRN, <https://ssrn.com/abstract=2373722>

¹⁰ Shanti Lal v Tara Chand, 1933 All 158: 142 IC 691

¹¹ Ibid 13

1. *CBI v Grains and Gunny Agencies*¹² held, a bailee needs to prove as much care as a man of ordinary prudence, despite keeping himself out of liability by a contract with the bailor.
2. *Calcutta Credit v. Prince Peter*¹³, held that even if Bailee's own goods are lost with bailed commodities, it doesn't mean reasonable care is taken.

3. Take Care of his own goods

In bailment, the duty of care is uniform but adaptable to the unique attributes of bailed goods. *For example*, if Bailee is entrusted with the custody of 2-kilogram onions and 10-kilogram wheat, they must tailor their care to account for the perishability and fragility of these items. While onions are less susceptible to damage than wheat, the bailee is responsible for ensuring both sets of goods are appropriately safeguarded.

In *Gour Mukherjee v. Andrew*,¹⁴ the director was responsible for keeping the society's cash safe. When he kept the cash locked like everyday practice, it was held, the director was negligent, although he followed a usual practice.

3. SECTION 152: NON-LIABILITY OF BAILEE

If no special contract exists, a bailee is not liable for loss, destruction, or deterioration if due care is taken under section 151.¹⁵

3.1 Absence of any special contract

- If there is no specific agreement regarding the care of the bailed goods between the bailor and the bailee, it is governed by Section 151 of the Act.

3.2 Loss, destruction, or deterioration

- **Loss:** Theft, misplacement, or any other circumstance where the goods are no longer in the possession or control of the bailee.
- **Destruction:** bailed goods are no longer usable for their intended purpose. This could result from accidents, natural disasters, or other unforeseen events.

¹² Central Bank of India v. Grains, 1988 SCC OnLine MP 341

¹³ Calcutta Credit Corporation Ltd. v. His Royal Highness Prince Peter of Greece, 1963 SCC OnLine Cal 111

¹⁴ Gour Chandra Mukherjee v. Andrew Yules Co-operative Credit Society Ltd., 1977 SCC OnLine Cal 40

¹⁵ S. 152, Indian Contract Act, 1872

- **Deterioration:** Gradual decline in condition or quality of the bailed goods over time due to factors like exposure to environmental conditions or neglect on the part of the bailee.

4. CO-RELATIONSHIP BETWEEN SECTION 151 AND SECTION 152 IN RESPECT OF DUTIES OF A BAILEE

1. Section 152 acts as a safeguard for the bailee, contingent upon demonstrating adherence to the duty of care outlined in Sec-151.
2. The foundational basis of Sec-152 lies in Sec-151 because it absolves the bailee of his liability if he proves he took all precautionary foreseeable measures. *When the railway authorities were unable to explain how the vessel, which contained the plaintiff's goods, sank, negligence was presumed.*¹⁶
3. Section 152 operates in correlation with Section 151, where the latter sets the benchmark for the standard of care expected. Compliance with the care standards delineated in Section 151 forms the basis for invoking the protections outlined in Section 152.
4. The relationship between Sec-151 and 152 is complementary in nature. Section 152 saves or absolves the bailee from liability and provides exceptions to liability in Section 151.
5. Together, Secs. 151 and 152 provide a mechanism to the bailee and add a comprehensive framework governing his duties.
6. In *Kuttappa v State of Kerala*, the port authority was held liable for the lack of proof of good care taken of goods as mandated in Section 151.¹⁷
7. In *Taj Mahal Hotel v United India Insurance Ltd*,¹⁸ SC held that the standard of care under Section 151 is sacrosanct and parties cannot contract out of it, and doing it under the phrase "in the absence of any special contract" in Section 152 is incorrect. This phrase allows parties to have higher standards, not otherwise.¹⁹
8. In *N.R. Srinivasa Iyer v New India Assurance Co*²⁰ as the bailee couldn't provide any evidence about his measures to extinguish the fire and save the destroyed car, he was held liable for not taking reasonable care.

¹⁶ Union of India v. Sugauli Sugar Works (P) Ltd., (1976) 3 SCC 32

¹⁷ Kuttappa v. State of Kerala, 1988 SCC OnLine Ker 542

¹⁸ Taj Mahal Hotel v. United India Insurance Co. Ltd., (2020) 2 SCC 224

¹⁹ Ibid.

²⁰ N.R. Srinivasa Iyer v. New India Assurance Co. Ltd., (1983) 3 SCC 458

5. SHORTCOMINGS IN THE RESPECTIVE SECTIONS AND SOLUTIONS

1. Lack of illustrations-

- The lack of clear illustrations in Sections 151 and 152 of the Indian Contract Act makes them ambiguous and open to interpretation, hindering a better understanding.
- In Sec-152, there should be illustrations of all 3 scenarios of loss, destruction, and deterioration.

2. Lack of an explanation clause

- The two sections provide duties in general, but do not contain a proper explanation clause, which leads to a lack of specificity.
- The measure of care should be specific, and an explanation to ordinary prudence must be provided.

3. Enforcing the duties outlined in Sections 151 and 152 may be challenging in proving breaches of duty, especially where the bailment is informal or verbal.

4. This section does not provide for any exceptional situations but rather assumes generality in bailment.

5. Bailee will be considered to be general (i.e. not including special cases of a bailee, for example, being a carrier or a sub-bailee or a pledgee)

6. The references to trustees of Port of Madras and the inclusion of liability of common carriers responsible as bailees must be further clarified.

7. CONCLUSION

Sections 151 and 152 of the Indian Contract Act form the basis of a bailee's legal liability. Section 151 provides a flexible and challenging standard of care, whereas in Section 152, conditioned immunity is provided that relies solely on adherence to this standard. The judicial interpretation has consistently held that these provisions should be construed collectively and that negligence cannot be defended under the contractual dilution clause or by vague illustrations.

Though the framework is workable, greater legislative clarity in terms of illustrations and explanatory provisions would enhance uniformity and pragmatic application. The law of bailment will then continue to develop until a certain time; the main method of this development will be through judicial review, whereby the bailee will have to show prudence in each case in which they are taken to court.