

CONTRACT OF PLEDGE

COMPOSED BY-
DR. SOOFIA FATIMA

CONTRACT OF PLEDGE



PLEDGE

- ❑ Pledge or Pawn is a special kind of bailment where good is delivered as security for payment of a debt or performance of a promise against some advances.
- ❑ According to Sec. 172 of the Contract Act , “ The bailment of goods as security for payment of a debt or for performance of a promise , is called a pledge”.
- ❑ The person who delivers the goods as security is referred to as the Pledgor or Pawnor.
- ❑ The person to whom the goods are delivered is known as the Pledgee or Pawnee.
- ❑ Example - A borrows Rs. 25,000 from B and keeps his scooter as security for repayment of the debt. This kind of bailment of good is called a pledge or pawn. Here A is the pawnor and B is the pawnee.

ESSENTIALS OF PLEDGE

ESSENTIALS OR MAIN CHARACTERISTICS OF PLEDGE

1. The goods must be delivered by borrower to the lender as a security for repayment of debt or for performance of promise. Delivery of goods may be either actual or constructive. Goods are delivered under a contract.
2. The possession of the goods passes from one person to the other person and not the ownership.
3. Pledge can be of movable goods only.
4. The same specific good is required to be returned by the pledgee on receipt of his full dues.

DUTIES OF PLEDGOR

1. It is the duty of the pledgor to repay the loan taken from the pledgee within the time and in the manner specified in the contract.
2. To repay to the pledgee any extra-ordinary expenses incurred by him (pledgee) in preservation of the pledged good.
- ✗ To disclose any material fault, extra-ordinary risk or the abnormal nature of the goods pledged like-explosive or fragile goods, failing which he will be liable to damages caused to the pledgee directly due to such faults or risky nature of such goods, irrespective of the fact whether such fault was known to the pledgor or not.
- ✗ To repay to the pledgee any shortfall that may still remain outstanding in the loan account, even after realizing the entire sale proceeds of such goods.

PLEDGOR AND PLEDGEE

RIGHTS OF THE PLEDGOR

- ❑ The pledgor has the right to take back the goods pledged provided that he has paid the whole of the amount of debt along with any interest or charges thereon, to the pledgee.
- ❑ All the duties of the pledgee are the rights of the pledgor.
- ❑ Payment of the debt or performance of the promise at the stipulated time or redemption of the goods pledged at any subsequent time before the actual sale is made. (Refer- Sec- 177)
- ❑ Right to receive a reasonable notice from the pledgee of his intention to sell the goods

DUTY OF PLEDGEE

- ❑ Pledgee should take due care of the goods pledged .
- ❑ Not to make any unauthorised use of the good pledged.
- ❑ Not to mix up Pledgor's goods with his own goods .
- ❑ To return the pledged goods with the accruals, if any.

PLEDGOR AND PLEDGEE

RIGHTS OF PLEDGEE

1. Rights of retainer (Sec 173)
2. Right of retention for subsequent advances (sec 174)
3. Right to extra ordinary expenses (175)
4. Right in case of default by pledgor (sec 176)
5. Right against the true owner, when the pledgor's title is defective.

PLEDGE BY NON-OWNERS

SECTION 178, 178 A AND SECTION 179 of the Indian Contract Act, provides certain circumstances in which the pledge made by a non-owner or a co-owner is also valid..

In the following cases, a non owner can make a valid pledge,

1. Pledge by Mercantile agent.
2. .Pledge by Seller or Buyer in Possession after sale.
3. Pledge by a person in possession under a voidable contract.
4. Pledge by person having limited interest. (sec 179)
5. Pledge by co-owners in possession.

PLEDGE BY NON-OWNERS

Pledge by Mercantile Agent - A mercantile agent is one who, in the usual course of business, has the authority as such an agent either to sell or to consign goods for the purpose of sale or to buy goods or to raise money on the security of the goods.

A mercantile agent can create a valid pledge of the goods, if such goods are already in his possession (that too with the consent of the real owner), or even by the endorsement of the relative document to the title to goods, but only while acting as mercantile agent in the ordinary course of business, despite the fact that he is not the true owner of the business. Pledgee accepts the pledge in good faith, having no knowledge about the agent that he has no authority of the real owner.

Pledge by seller or buyer in possession of the goods after the sale - A seller who has the possession of the goods after the sale and a buyer who obtains possession of the goods with the consent of the seller before the sale thereof, can create a valid charge of pledge on such goods.

Pledge by a person in possession of the goods under a voidable contract- A person who has obtained the possession of the goods under a voidable contract, can also create a valid pledge, provided the following two conditions are fulfilled:

1. The contract had not been rescinded by the person (who had the option to do so before the creation of such pledge); and
2. The pledgee had acted in good faith and without notice of any defect in the title of the pledgor in respect of the pledged goods.

PLEDGE BY NON-OWNERS

Pledge by a co-owner in possession of the goods - Even only one of the co-owners of the goods, by virtue of being in the sole possession thereof, can create a valid pledge of these goods, but only with the consent of all the remaining co-owners.

Pledge by a person having limited interest (sec 179)- in case a person having only limited interest in the goods, pledges them, such pledge is valid, though only to the extent of his own interest therein. Accordingly, a pledgee may create a further charge of pledge in regard to the same goods to the extent of the amount he has advanced against them.

Example- A finds a cycle on the road and gets it repaired for Rs. 500 and pledges it with B for Rs. 1000. The real owner can get the cycle on payment of Rs. 500.

PLEDGE : MOVABLE GOODS :: MORTGAGE : IMMOVABLE GOODS



PLEDGE AND MORTGAGE

| BASIS OF DISTINCTION | PLEDGE | MORTGAGE |
|---------------------------|---|--|
| 1. Subject - matter | Movable property is the subject matter. | Immovable property is the subject matter. |
| 2. Use of goods | A pledgee is not allowed to use the goods pledged. | Mortgagee has the right to use the property mortgaged. |
| 3. Delivery of possession | Delivery of possession is essential. | The property in goods passes to the mortgagee though the possession remain with the mortgagor. |
| 4.loan | Only one loan can be taken at time on the pledge of the same goods. | On a mortgage of asset more than one loan can be taken. |
| 5.Right of foreclosure | A pledgee cannot impose the right of foreclosure on the goods pledged with the exception of exercising his right to sell on giving notice to the pledgor. | In mortgage that can happen under certain circumstances. |

Thank You!

