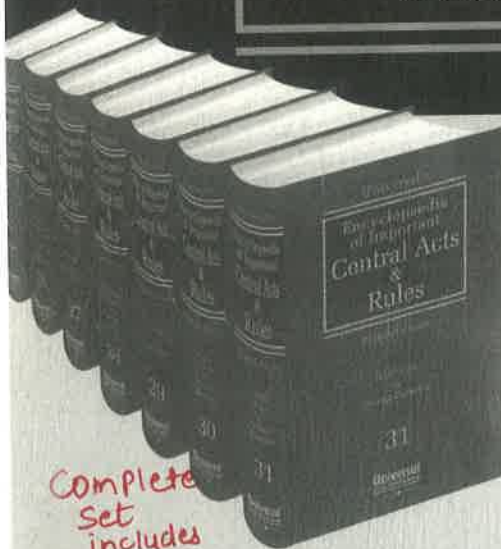


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The Indian Contract Act, 1872

(9 of 1872)

with
**Model Specimens of
Damages on Breach of Contract and
Execution of Deeds by Agents**

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along with
SHORT NOTES

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Contract of uberrimae fidei

↳ Contract of absolute faith

(Contract of insurance)

*① ubi jus ibi remedium
↳ where there is wrong, there is a remedy*

Indian Contract Act, enacted in 1872

Contract is not Joke of leisure time

↳ Lord Stowell

*Consensus ad idem
↳ Meeting of mind*

*② a contract can be discharged by
- Frustration of contract
- by Performance of contract*

③ in case of joint promise, performance must be by All of the promisees jointly

*Senior Resident
Department of Gen
DIWAS KUMAR*

- ① Intention to offer - harvey v. falle
- ② Anticipatory breach - hobbes v. o'le
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Sturges v. piper
- ⑤ URM offer - Tinn v. Hoffman and co.

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THE INDIAN CONTRACT ACT, 1872

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③ In order to constitute a contract void on ground of mistake, mistake must be of fact and not of law

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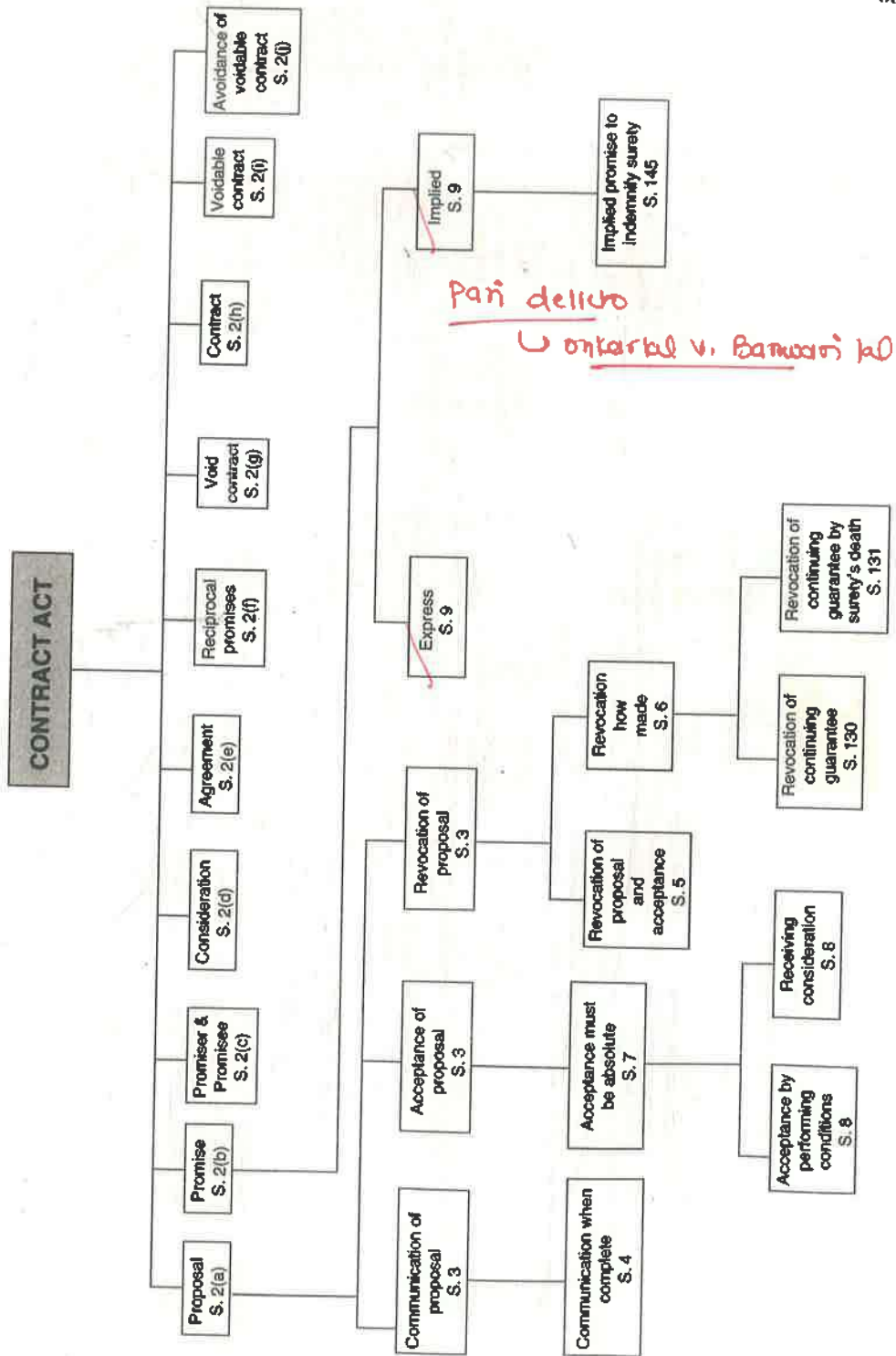
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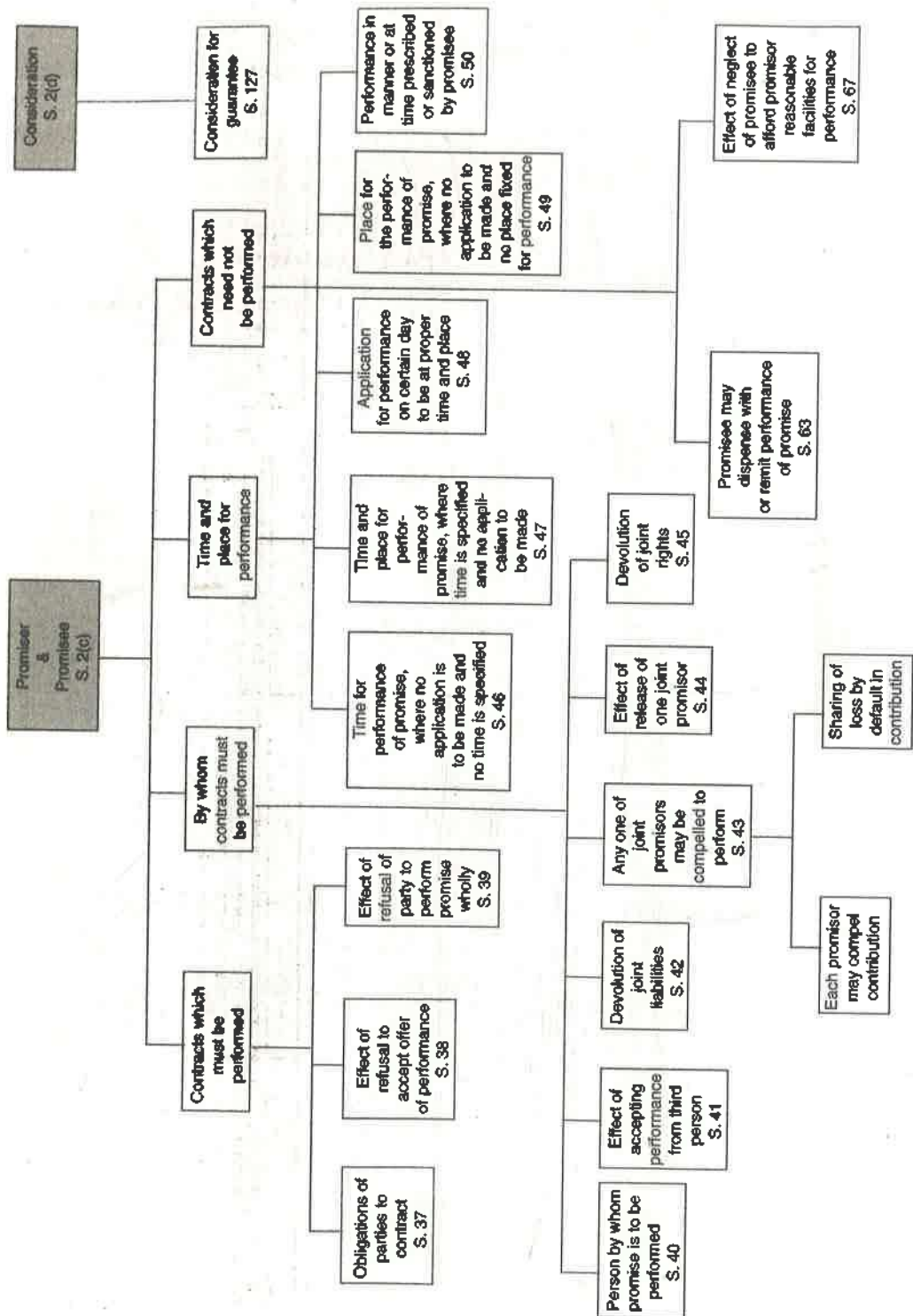
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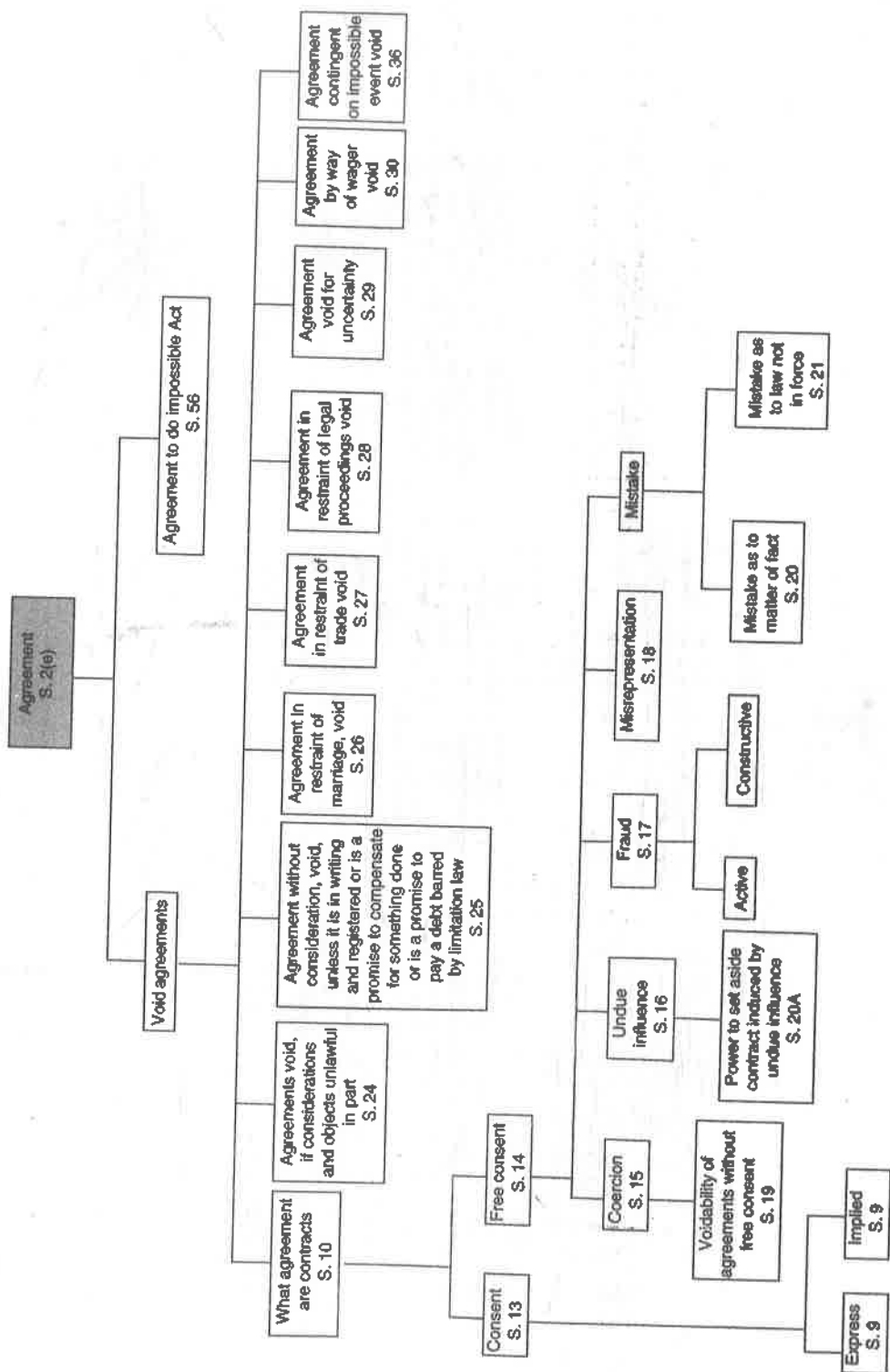
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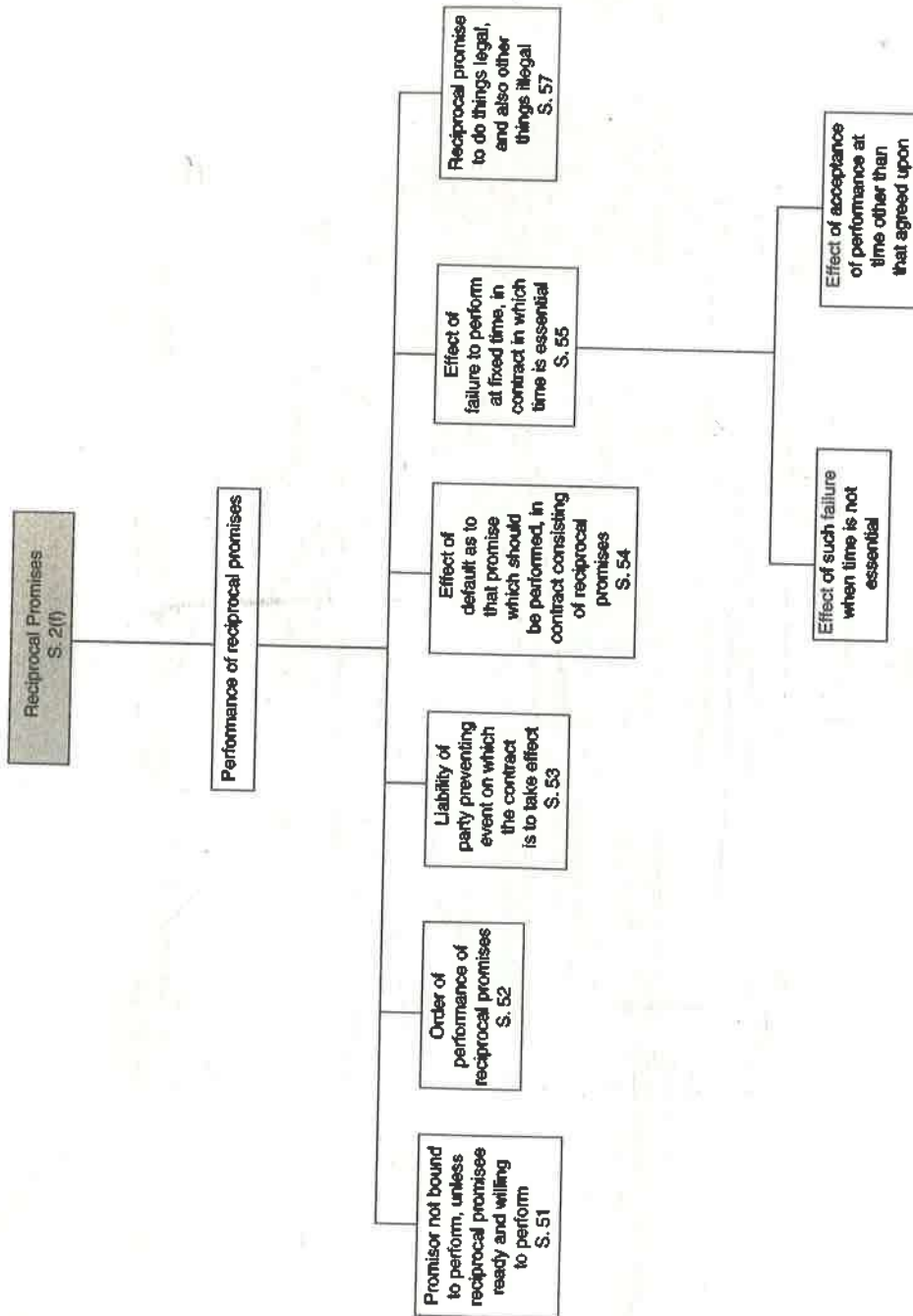
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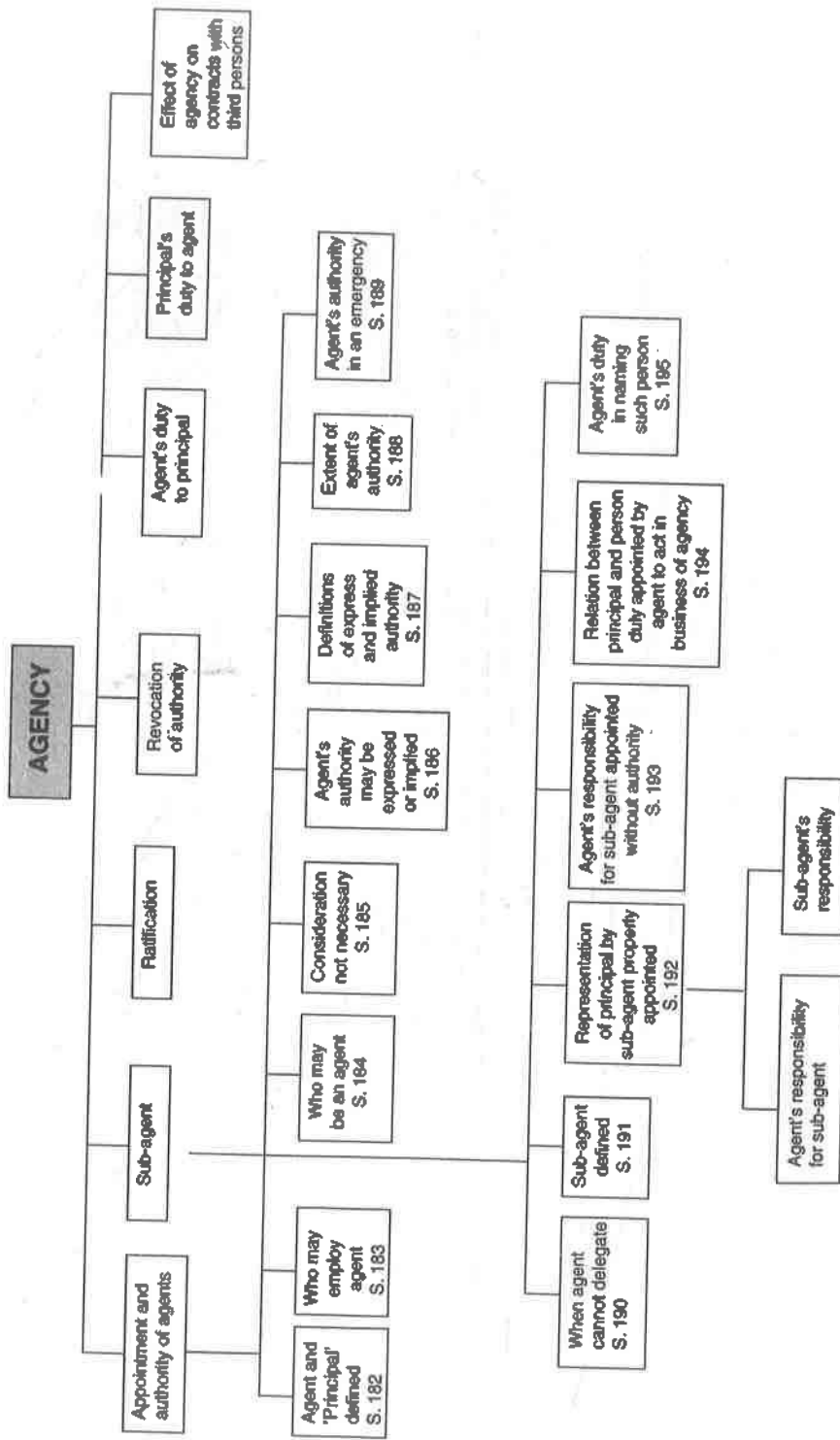


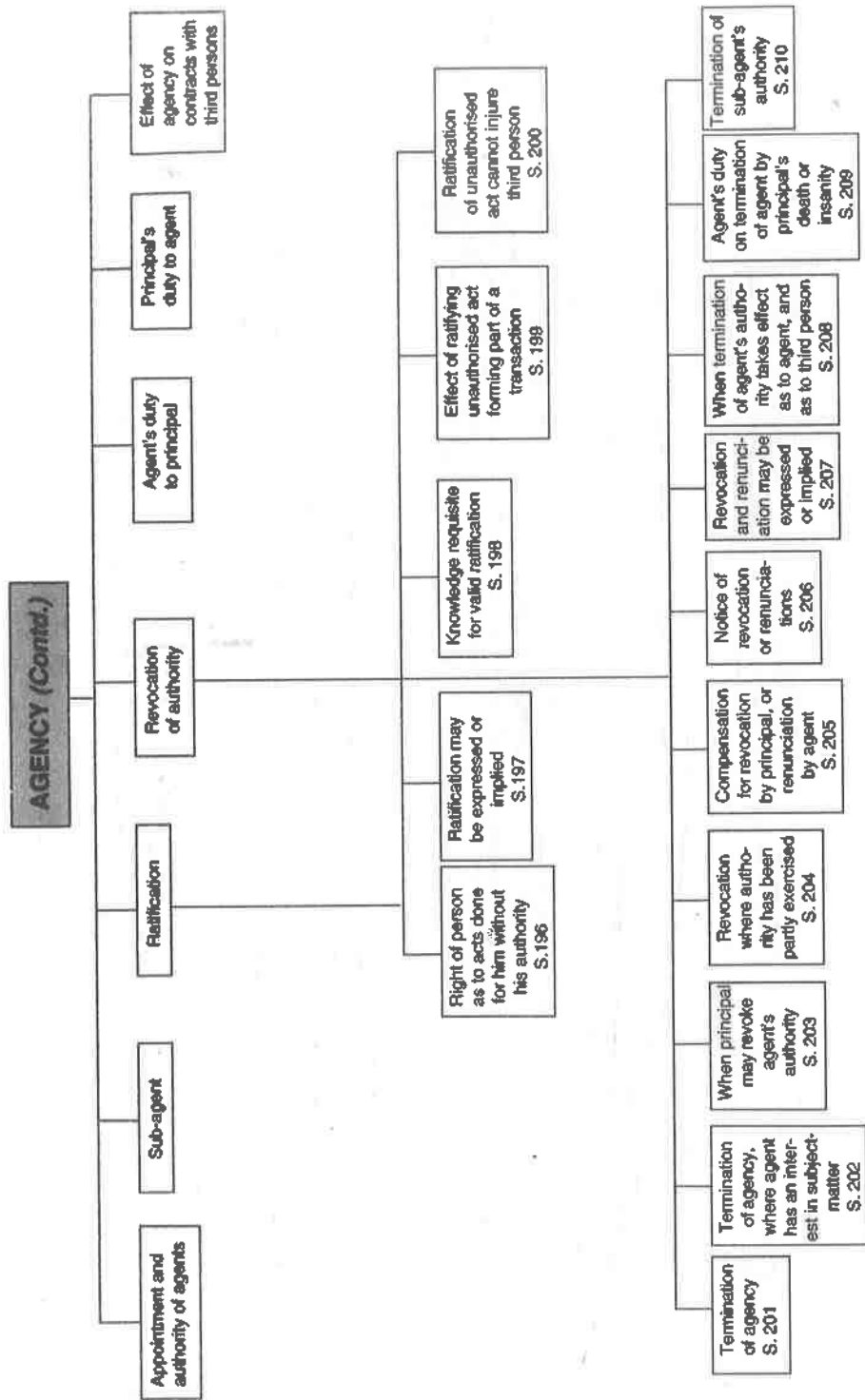


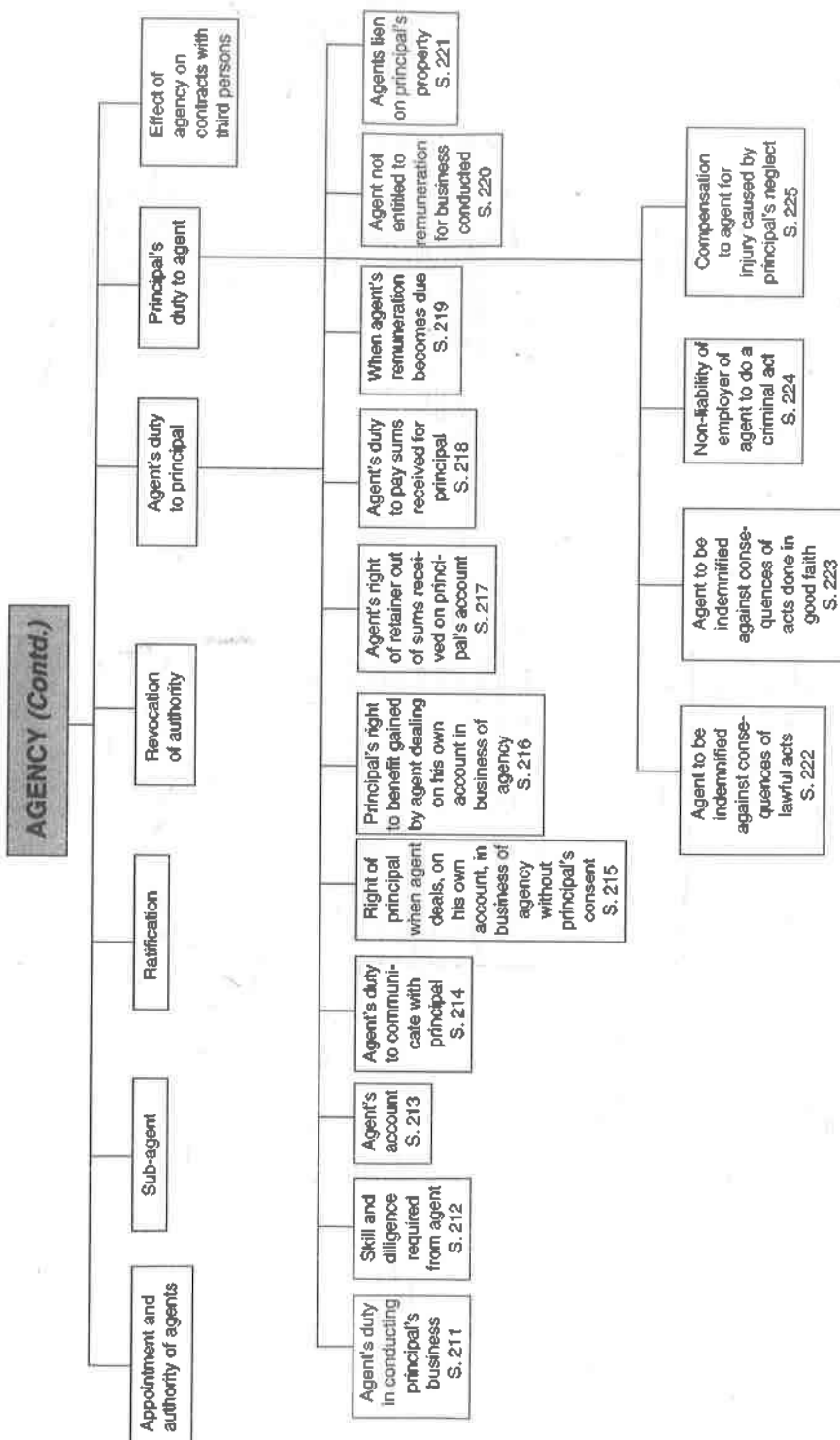
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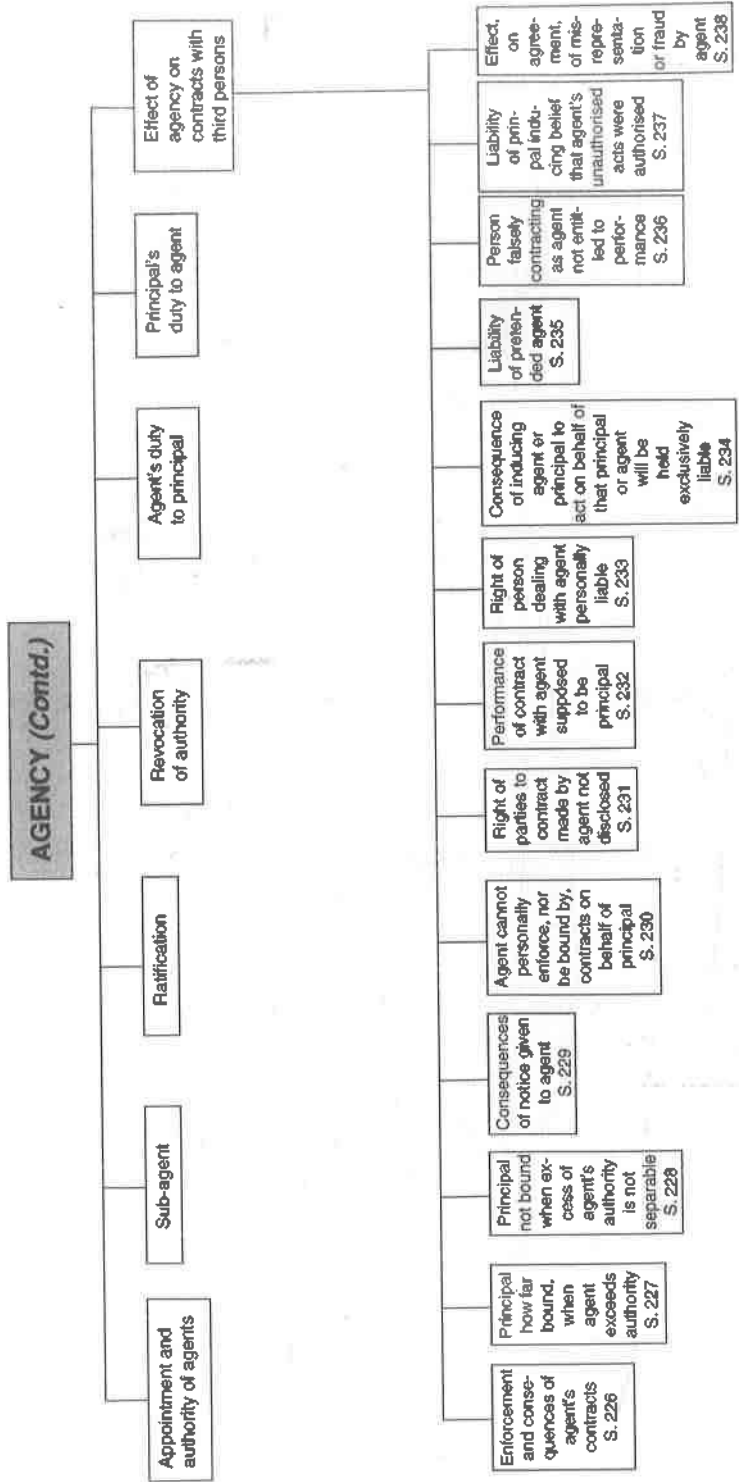












THE INDIAN CONTRACT ACT, 1872

INTRODUCTION

When the Courts of Justice for the three presidency towns of Calcutta, Madras and Bombay were established, the English common law and statute law relating to contracts, as suitable to Indian conditions, were introduced by Charters' Application of English law to Hindus and Mohammadans led to many inconveniences.

To remove this difficulty the statute of 1781 empowered the Supreme Court, *i.e.*, Court at Calcutta and statute of 1797 the Recorders' Court, *i.e.*, Court at Madras and Bombay to determine all matters of contract in case of Mohammadans by the laws governing them and in case of Hindus by the laws and usages governing them. The effects of the statutes was to supersede English law so far as regards Hindus and Mohammadans in the case of contracts. In spite of the changes made by the Statutes of 1781 and 1797 the difficulties being faced could not be solved properly. It was strongly felt that a comprehensive law must be enacted in respect of contracts. Accordingly the Indian Contract Bill was introduced in Legislature.

ACT 9 OF 1872

The Indian Contract Bill having been passed by the Legislature received its assent on 25th April, 1872. It came on the Statute Book as THE INDIAN CONTRACT ACT, 1872 (9 of 1872) (*Came into force on 1-9-1872*).

LIST OF AMENDING ACTS AND ADAPTATION ORDERS

1. The Specific Relief Act, 1877 (1 of 1877).
2. The Indian Contract Act (1872) Amendment Act, 1886 (4 of 1886).
3. The Amending Act, 1891 (12 of 1891).
4. The Indian Contract (Amendment) Act, 1899 (6 of 1899).
5. The Repealing and Amending Act, 1914 (10 of 1914).
6. The Repealing and Amending Act, 1917 (24 of 1917).
7. The Sale of Goods Act, 1930 (3 of 1930).
8. The Indian Contract (Amendment) Act, 1930 (4 of 1930).
9. The Indian Partnership Act, 1932 (9 of 1932).
10. The Government of India (Adaptation of Indian Laws) Order, 1937.
11. The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948.
12. The Adaptation of Laws Order, 1950.
13. The Part B States (Laws) Act, 1951 (3 of 1951) (*w.e.f.* 1-4-1951).
14. The Indian Contract (Amendment) Act, 1996 (1 of 1997) (*w.r.e.f.* 8-1-1977).
15. The Banking Laws (Amendment) Act, 2012 (4 of 2013) (*w.e.f.* 18-1-2013).

THE INDIAN CONTRACT ACT, 1872

(9 of 1872)¹

[25th April, 1872]

Preamble.—Whereas it is expedient to define and amend certain parts of the law relating to contracts;

It is hereby enacted as follows:—

PRELIMINARY

1. Short title.—This Act may be called the Indian Contract Act, 1872.

Extent, Commencement.—It extends to the whole of India ²[except the State of Jammu and Kashmir]; and it shall come into force on the first day of September, 1872.

Saving.—³[***] Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2. Interpretation-clause.—In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise;
- (c) The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee";
- (d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

1. The Chapters and sections of the Transfer of Property Act, 1882 (4 of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of this Act—See Act 4 of 1882, sec. 4.

This Act has been extended to and brought into force in Dadra and Nagar Haveli by Regulation 6 of 1963, sec. 2 and Sch. I (w.e.f. 1-7-1965), to Goa, Daman and Diu by Regulation 11 of 1963, sec. 3 and Sch., to the whole of the Union Territory of Lakshadweep by Regulation 8 of 1965, sec. 3 and Sch., to the Union Territory of Pondicherry by Act 26 of 1968, sec. 3 and Sch.

The Act has been extended to and brought into force in the State of Sikkim (w.e.f. 1-9-1984) vide S.O. 641 (E), published in the Gazette of India, Extra., Pt. II, Sec. 3(ii), dated 24th August, 1984.

- 2. Subs. by Act 3 of 1951, sec. 3 and Sch., for "except Part B States" (w.e.f. 1-4-1951).
- 3. The words "The enactments mentioned in the Schedule hereto are repealed to the extent specified in the third column thereof, but" rep. by Act 10 of 1914, sec. 3 and Sch. II.

- (e) Every promise and every set of promises, for each other, is an agreement;
- (f) Promises which form the consideration or part for each other, are called reciprocal promises.
- (g) An agreement not enforceable by law is said to be void.
- (h) An agreement enforceable by law is a contract.
- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract;
- (j) A contract which ceases to be enforceable by law when it ceases to be enforceable.

Consideration must have some value in the eyes of law
 ↳ must be real
 ↳ must not be illusory
 Part consideration in valid in India only

voidable contract

COMMENTS

At the desire of the promisor

Suit would lie for the recovery of a promised subscription where on the faith of the promisee, the promisor entered into a contract with a contractor; *Kedarnath Bhattacharji v. Gorie Mohamed*, (1886) ILR 14 Cal 64.

Consideration and motive

A promise founded on motive of generosity, prudence and natural duty is a promise without consideration; *Abdul Aziz v. Masum Ali*, (1914) ALJR 36 All 268.

Contract

Quid Pro Quo → something in return.

A contract comes into existence only when all the terms and conditions have been finalised. If the facts of a particular case show that execution of a written contract was a condition precedent for coming into force of the contract between the parties, then it cannot be said that any concluded contract in absence of a written contract being executed has come into force between the parties; *J.K. Industries Ltd. v. Mohan Investments and Properties Pvt. Ltd.*, AIR 1992 Del 305.

Proposal: Offer and statement of intention

The proposal when accepted gives rise to an agreement. It is at this stage that the agreement is reduced into writing and a formal document is executed on which parties affix their signature or thumb impression so as to be bound by the terms of the agreement set out in that document. Such an agreement has to be lawful; *Tarsem Singh v. Sukhminder Singh*, AIR 1998 SC 1400.

Valid consideration

The consideration should be something of some value. It must be legal. *Ranga*, AIR 1965 SCR 168.

exception to the rule
 Privity of contract
 Libenjuancy under a charge
 Restoppel
 Marriage Settlement

Consideration

When Statement is Valid under English law. *Kata Chinnaya Rau Garu v. Venkataratnam*, AIR 4 Mad 137.

Creating If the responder retain or of Tripura. If the responder retain or of Tripura. If the responder retain or of Tripura.

adequacy of consideration is not a condition under Indian law.

exception: Family settlement

to signify - means that the proposal must be communicated to the other party.

CHAPTER I
OF THE COMMUNICATION, ACCEPTANCE
AND REVOCATION OF PROPOSALS

3. **Communication, acceptance and revocation of proposals.**—The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it.

COMMENTS

Communication of acceptance

An offer is accepted when the acceptance is communicated. The communication must be made to the offeror and a communication of acceptance made to a third person creates no contract; *Felthouse v. Bindely*, (1862) 6 LT 157.

Exposure of goods: offer or not

The Exposure of goods by a shopkeeper does not amount to an offer to sell. On picking the goods, it is an offer by the customer to buy, and sale is not effected until the buyer's offer price is accepted by the shopkeeper; *Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd.*, (1952) 2 QB 795.

Offer to the whole world

Though an offer may be made to the whole world, a contract can arise only by acceptance of the offer. Hence knowledge of the terms of the offer is essential for acceptance. Thus where a person sent his servant in search of his missing boy and subsequently offered a reward to any one who would find the boy, the servant, on finding the boy, could not claim the reward, as his search for the boy could not be regarded as a consideration for the promise of reward; *Lalman Shukul v. Gauri Dat*, (1913) 11 AQLJ 489.

Unaccepted offer creates no right or obligation

A mere making of an offer does not form part of the cause of action for damages for breach of contract which has resulted from the acceptance of the offer. Ordinarily it is the acceptance of the offer and intimation of that acceptance which results in a contract; *Bhagwan Das Goverdhan Das Kedia v. Girdhari Lal & Co.*, AIR 1966 SC 543.

4. **Communication when complete.**—The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

- as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor;
- as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

- as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;
- as against the person to whom it is made, when it comes to his knowledge.

Illustrations

- (a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.
- (b) B accepts A's proposal by a letter sent by post.

(Handwritten notes in margin)

The communication of the acceptance is complete, as against A when the letter is posted; as against B, when the letter is received by A.

(c) A revokes his proposal by telegram.

The revocation is complete as against A when the telegram is complete as against B when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches

Handwritten notes in pink: Bhagwandas Gowardhandas Fedla v. Girdharilal Contract through tele- - Phone B when Concluded at the place Where acc- - eptance is heard.

COMMENTS

Communication of proposal and acceptance

(i) The advertisement of the Corporation for tenders was 'offer'. The tenders when submitted to the Corporation were terms of section 4 of the Act and the 'communication' of 'complete when received by the Corporation. In terms of section 4 of the Act, the 'acceptance' was not complete as it was never made, and never put into transmission. The revocation within the meaning of section 4 was complete as it was received and within the knowledge of the Corporation. The offers on tenders were revoked before it was accepted. The contract never saw the light of the day; Shyam Biri Works Pvt. Ltd. v. U.P. Forest Corporation, AIR 1990 All 205.

(ii) Where an offer is made by a method of instantaneous communication like telex, the contract is only complete when the acceptance is received by the offerer, and the contract is made at the place where the acceptance is received; Entores Ltd. v. Miles Far East Corporation, (1955) 2 All ER 493; (1955) 2 QB 327; (1955) 3 WLR 48.

Contract by correspondence: Antecedents and subsequent negotiations

The communication of acceptance of the highest bid is necessary for completed contract; Haridwar Singh v. Begum Sumbrui, AIR 1972 SC 1942.

Dispensing with notice of acceptance

A notification of acceptance is required for the benefit of the person who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so: there can be no doubt that where a person in an offer made by him to another person expressly or impliedly, intimates a particular mode of acceptance as sufficient to make the bargain binding, it is only necessary for the other person to whom such offer is made to follow the indicated mode of acceptance; and if the person making the offer expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of the contract is sufficient acceptance without notification; Carlill v. Carbolic

Handwritten notes in yellow: Lalman Shukla v. Gauri Dutt Point of communication of offer

of Proposals and acceptance.—A proposal may be communication of its acceptance is complete afterwards.

may be revoked at any time before the communication is complete as against the acceptor, but not afterwards.

Illustrations

A letter sent by post, to sell his house to B.

proposal by a letter sent by post.

is proposal at any time before or at the moment when the letter is received, but not afterwards.

Handwritten notes in yellow: In case of conflict of jurisdiction of the laws, the incident of a contract shall be governed by the law of the place where the contract is made

* B
 comm
 acceptance at any time before or at the moment when the letter
reaches A, but not afterwards.

COMMENTS

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 as the offerer an option to accept within a fixed period, it may be
 the expiry of that period unless there is some consideration for
Schonlank v. Muthurayna Chetty, (1892) 2 Mad LJ 57.

6. A proposal is revoked—
 communication of notice of revocation by the proposer to the
 party;
 lapse of the time prescribed in such proposal for its
 acceptance, or, if no time is so prescribed, by the lapse of a
 reasonable time, without communication of the acceptance;
 failure of the acceptor to fulfil a condition precedent to
 the acceptance; or

(4) by the death or insanity of the proposer, if the fact of his death or
 insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance must be absolute.—In order to convert a proposal into a
 promise the acceptance must—

- (1) be absolute and unqualified;
- (2) be expressed in some usual and reasonable manner, unless the
 proposal prescribes the manner in which it is to be accepted. If the
 proposal prescribes a manner in which it is to be accepted, and the
 acceptance is not made in such manner, the proposer may, within a
 reasonable time after the acceptance is communicated to him,
 insist that his proposal shall be accepted in the prescribed manner,
 and not otherwise; but, if he fails to do so, he accepts the
 acceptance.

COMMENTS

Acceptance must be unqualified and without condition

(i) The cardinal principle in the light of section 7 of the Act is that the offer and
 acceptance of an offer must be absolute without giving any room of doubt. It is well
 settled that the offer and acceptance must be based or founded on three components—
 Certainty, commitment and communication. If any one of three components is lacking
 either in the offer or in the acceptance there cannot be a valid contract; *Kilburn Engineering
 Ltd. v. Oil and Natural Gas Corporation Ltd., AIR 2000 Bom 405.*

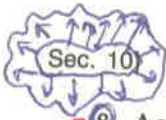
(ii) When the acceptor puts in a new condition while accepting, the contract already
 signed by the proposer is not complete until the proposer accepted the condition;
Begum Sumbrui, AIR 1972 SC 1942.
 acceptance with a variation is no acceptance; it is simply a counter proposal
 accepted by the original promisor before a contract is made; *Haji Mohd.
 Anwar, (1900) 24 Bom 510.*

Acceptance of a promise can be in express terms and can be in implied terms.
 In *Rakesh Kumar Dinesh Kumar v. U.G. Hotels and Resorts Ltd., AIR 2006*
 SC 1000, the parties showed that plaintiff had impliedly accepted offer and received
 the property; *Rakesh Kumar Dinesh Kumar v. U.G. Hotels and Resorts Ltd., AIR 2006*

It is that a mere offer to sell property, which can be withdrawn at any
 time, is not a contract. The person to whom the offer has been made, cannot, by
 his acceptance, create a binding contract after he knows that the person who has made the
 offer has offered the property to someone else; *Dickinson v. Dodds, 1876 Ch. D. 463.*

When no
 application is
 made and no
 time is
 specified for
 performance
 of promise,
 then the
 agreement is
 performed
 within
 reasonable
 time

Misere Image
 law
 ↓
 The acceptance
 should be
 unconditional
 and must
 should
 correspond
 to the offer



meeting of minds of 17 promises

8. Acceptance by performing conditions, or receiving consideration.—

Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

No. of ingredients of promise = 2

COMMENTS

Performance by act: Interference of acceptance

The defendant company advertised that they would pay pound 1,000 to any person who used their carbolic smoke ball for a certain time any yet contracted influenza. The plaintiff purchased the medicine, used it for the stated time but contracted the disease. It was held that the contract was accepted by being acted upon, that the defendant had not stipulated for any communication of acceptance and therefore the plaintiff was entitled to recover the amount; *Carlill v. Carbolic Smoke Ball Co.*, (1893) 1 QBD 256.

9. Promises, express and implied.—In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

valid proposal may be made by words (spoken or written) or by conduct

COMMENTS

Implied terms

offer → acceptance → agreement → consideration

A contract can be implied and it is very clear from section 9 of the Contract Act, but it is a fundamental principle of law that the court should not make a contract for the parties. A contract implied in fact requires meeting of minds. The court should refuse to read an implied term into a contract which is silent on the point or did not clearly indicate the nature of the term. However, when the stipulations are clear and in contemplation of the parties or which necessarily arise out of the contract between the parties, they will be implied; *State of Maharashtra v. Saifuddin Mujjaffarali Saifi*, AIR 1994 Bom 48.

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10. What agreements are contracts.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

→ Sec-23

→ Sec-27

Nothing herein contained shall affect any law in force in ¹[India], and not hereby expressly repealed, by which any contract is required to be made in writing² or in the presence of witnesses relating to the registration of documents.

Breach of statutory provision

Railway invited tenders for the supply of 1000000 cwt of sugar. The respondent submitted his tender for the supply of 1000000 cwt during the month of February and March 1951. The offer of a supply of a definite quantity of sugar was accepted by the railway.

When the promisor offers to perform his obligation to the promisee it is called → tender of performance → offer of performance

the railway grain shops. The respondent submitted his tender for the supply of 1000000 cwt of sugar during a specified period at a price of Rs. 100 per cwt. The offer was accepted by the railway. The railway invited tenders for the supply of 1000000 cwt of sugar during the month of February and March 1951. The offer of a supply of a definite quantity of sugar was accepted by the railway.

1. Subs. by Act 3 of 1951, sec. 3 and Sch., for the words "Part A States and Part B States" the words "the Provinces".
2. See e.g., sec. 25 of this Act, the Copyright Act, 1912 (3 of 1865) sections 6 and 7; the Copyright Act, 1957 (14 of 1957) sections 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

+ 29-56-125

Part C States" (w.e.f. 1-4-1951). The Act was substituted by the A.O. 1950, for the purpose of giving effect to the provisions of section 19; the Carriers Act, 1865 (3 of 1865) sections 12, 30, 46 and 47; the Carriers Act, 1925 (10 of 1925) sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.

certain rate and the acceptance of the offer would constitute an agreement, but would fall short of amounting to a legal contract inasmuch as the date of delivery of the jaggery was not specified. Once the order is placed for such supply on such dates, that order amounts to a binding contract making it incumbent on the respondent to supply jaggery in accordance with the terms of the order and also making it incumbent on the Dy. General Manager to accept the jaggery delivered in pursuance of that order; *Union of India v. Maddala Thathaiah*, (1964) 3 SCR 774.

Letter of intent

A letter of intent merely indicates a party's intention to enter into a contract with other party in future. It is prelude to contract. However, a letter of intent may be construed a letter of acceptance if such intention is evident from its terms; *Dresser Rand S.A. v. Bindal Agro Chem. Ltd.*, AIR 2006 SC 871.

What agreements are Contract

(i) If entering into a contract containing prescribed terms and conditions is a must under the statute then that contract becomes a statutory contract. If contract incorporates certain terms and conditions in it, which are statutory then the said contract to that extent is statutory; *Thermal Power Ltd. v. State of Madhya Pradesh*, AIR 2000 SC 1005.

(ii) In order to constitute a contract, both the parties must consent to the agreement; *Steel Authority of India Ltd. v. Salem Stainless Steel Suppliers*, AIR 1994 SC 1415.

(iii) A person who by reason of infancy is incompetent to contract cannot make a contract within the meaning of the Act. The question whether a contract is void or voidable presupposes the existence of a contract within the meaning of the Act, and cannot arise in the case of an infant; *Mohoribibi v. Dharmodas Ghose*, (1903) 30 IA 114.

What agreements are not Contract

Agreement subject to ratification by others who are not parties to it is not a conclusive contract; *M.V. Shankar Bhat v. Claude Pinto (Deceased) by LRs*, (2003) 4 SCC 86.

• **11. Who are competent to contract.**—Every person is competent to contract who is of the age of majority according to the law to which he is subject,¹ and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

COMMENTS

Minor's contract of service [Mahori Bibi v. Dharmodas Ghosh]

A contract of marriage, entered into by a father for the benefit of his minor child is not void for want of consideration, unlike a contract of service by a minor which is a contract of service entered into by a father on behalf of the minor which is not enforceable as it is void for want of consideration; *Raj Rani v. Prem Adib*, AIR 1949 Bom 215.

Minor's contract void

Where a mortgage was made by a minor and the money lender who had advanced money to the minor on the security of the mortgage sued the minor on the strength of the contract. It is held, having regard to sections 2, 10 and 11 of the Contract Act, that the Act makes it essential that the contracting parties should be competent to contract and that a minor's contract is void; *Mohoribibi v. Dharmodas Ghose*, (1903) ILR 30 Cal 539 (PC).

• **12. What is a sound mind for the purposes of contracting.**—A person is said to be of sound mind for the purpose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

1. See the Indian Majority Act, 1875 (9 of 1875).

IPC
Sec-85

- (a) A pati during those in
- (b) A san understand the interests, can-
- 13. 'Cons agree upon t
- 14. 'Free by-

- (1)
- (2)
- (3)
- (4)
- (5)

A Guru (spiritual Advisor) induced the Chela (his devotee) to gift him the whole of his property to secure benefit to his soul in the next world. Gift shall be voidable Courtesy sec 16 ICA

① Brahm Dutt was the defendant in case of Mohini Bibi v. Dharmodas Ghosh

I mind, may contract
 drunk that he cannot
 as to its effect on his
 is.
 consent when they
 mind | contract ad idem
 then it is not caused

), 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

• 15. 'Coercion' defined.—'Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

Illustrations—Dispossession of property induced by threat to cause death

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Indian Penal Code (45 of 1860).

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Indian Penal Code (45 of 1860) was not in force at the time when or place where the act was done.

Contract voidable at the option of coerced person

COMMENTS

Threat of suicide

The threat of suicide amounts to coercion within section 15; Chikam Amiraju v. Chickam Seshamma, (1912) 16 IC 344.

• 16. 'Undue influence' defined.—(1) A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

1. Subs. by Act 6 of 1899, sec. 2, for section 16.

Relationship of partner being such that one party is in position to dominate the will of the other

Presumption of undue influence can be raised in cases of

(3) A contract is voidable if it is caused by concealment of a material fact by someone who is under duty to speak because it is fraud.

on who is in a position to dominate the will of another, with him, and the transaction appears, on the face of it or induced, to be unconscionable, the burden of proving that such induced by undue influence shall be upon the person in a position to dominate the will of the other.

Sub-section shall affect the provisions of section 111 of the Indian Contract Act, 1872 (1 of 1872).

Illustrations

(a) A lends money to his son, B, during his minority, upon B's coming of age of parental influence, a bond from B for a greater amount than the sum advanced. A employs undue influence.

(b) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(c) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.]

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.]

COMMENTS

Unconsiderable transaction

The circumstance that a grandfather made a gift of a portion of his properties to his only grandson a few years before his death is not on the face of it an unconscionable transaction; *Subhas Chandra Das Mushib v. Ganga Prasad Das Mushib*, AIR 1967 SC 878.

Undue influence

Merely because the parties were nearly related to each other no presumption of undue influence can arise; *Subhas Chandra Das Mushib v. Ganga Prasad Das Mushib*, AIR 1967 SC 878.

Undue influence and fraud

(i) Undue influence is said to be a subtle species of fraud whereby mastery is obtained over the mind of the victim, by insidious approaches and seductive artifices; *Mahboob Khan v. Hakim Abdul Rahim*, AIR 1964 Raj 250.

(ii) Where pardanashin and illiterate woman acting under full confidence of the defendant who projected a false impression of the contents of a documents, put this thumb impression on such documents, their comment is a vitiated one; *Kharbuja Kuer v. Jangbahadur Rai*, AIR 1963 SC 1203.

What to prove—Burden of proof

If the transaction appears to be unconscionable then the burden of proving that the contract was not induced by undue influence is to lie upon the person who was in a position to dominate the will of the other; *Shrimati v. Sudhakar R. Bhatkar*, AIR 1998 Bom 122.

17. 'Fraud' defined.—'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent¹, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

- (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

1. Cf. section 238 of this Act.

deceive → to make (someone) believe that is not true

A representation made without knowing it to be false, honestly believed it to be true is not fraud

(2) the active concealment of a fact by one having knowledge or belief

Where 'A' did not disclose (B) at the time of selling his car that he had stolen the car (A) had committed 'fraud'

any intention of performing it;

ive;

as the law specially declares to be

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak¹, or unless his silence, is, in itself, equivalent to speech.

Illustrations

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A—"If you do not deny it, I shall assume that the horse is sound". A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

X enters into contract with (A), for which (A) is

COMMENTS

guilty of fraud → (A) can set aside the contract and can recover damages also

Duty of the assured

It is the duty of the assured to put the insurer in possession of all material facts affecting the risk covered; *Mithoo Lal Nayak v. L.I.C. of India*, AIR 1962 SC 814.

Fraudulent Transaction

The transaction designed to defeat the plaintiff creditors was fraudulent. Fraud was fully carried into effect in letter and spirit. In as much as the plaintiff himself was the preparator of fraud, he should not be granted any discretionary relief. Once it is found that the parties are in *pari delicto* the court will not assist the party who enters into illegal transaction and makes that transaction the basis of his claim; *Sultan Ahmad v. Rashid Ahmad*, AIR 1990 All 47.

"Misrepresentation" defined.—"Misrepresentation"

sec 17, ill-10

main agar "sells to daughter" then it will amount to fraud as he had a duty to disclose because of no relation ship she has.

the positive assertion, in a manner not warranted by the knowledge of the person making it, of that which is not true, though he believes it to be true;

any breach of duty which, without an intent to deceive, results directly in advantage of the person committing it, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him;

causing, however innocently, a party to an agreement to do an act which he would not do, had he been correctly informed of the substance of the thing which is the subject of the agreement.

Section 143 of this Act.

Here silence is not fraud unless

there is duty to speak

no silence is deceptive

there is a change in circumstances to be brought to the notice of the other party

COMMENTS

A statement is said to be warranted by the information of the person making it when he receives the information from a trustworthy source. It should not be a mere hearsay; *Mohanlal v. Sri Gungaji Cotton Mills Co.*, (1900) 4 CWN 369.

19. **Voidability of agreements without free consent.**—When consent to an agreement is caused by coercion, ¹[**] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation.—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations

(a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and mortgage-debt redeemed.

(d) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(e) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

COMMENTS

Scope

The defendant represented himself to be a partner of the firm by his conduct and through documents and got a loan of Rs. 60,000 from the plaintiff bank. The plaintiff bank gave loan to all the defendants believing them to be partners of the defendant. It was held that the defendant had represented himself to be a partner and therefore liable with other defendants; *Oriental Bank of Commerce v. M/s S.R. Kishore & Co.*, AIR 1992 Del 174.

2[19A. **Power to set aside contract induced by undue influence.**—When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

1. The words "undue influence" rep. by Act 6 of 1899, sec. 3.
2. Ins. by Act 6 of 1899, sec. 3.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations (i) illegality renders a contract void

(a) A's son has forged B's name to a promissory note. B under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.]

Sec 20 • 20. Agreement void where both parties are under mistake as to matter of fact.—Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void. *Quinn v. Boymer*

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

unilateral mistake in outside scope of sec 20 -> has to be bilateral mistake Foreign law | void for public policy | to be treated as mistake of law | void ab initio

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C, B was dead at the time of agreement, but both parties were ignorant of the fact. The agreement is void.

COMMENTS

Mistake

There can be a mistake of identity only when a person bearing a particular identity exists within the knowledge of the plaintiff and the plaintiff intends to deal with him only; *King's Norton Metal Co. v. Edridge, Merrett & Co.*, (1897) 14 TLR 98 (CA).

• 21. Effect of mistakes as to law.—A contract is not voidable because it was caused by a mistake as to any law in force in ¹[India]; but a mistake as to a law not in force in ¹[India] has the same effect as a mistake of fact.

²[***]

Illustration

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Indian Law of Limitation; the contract is not voidable.

³[***]

1. The original words "British India" have successively been amended by the A.O. 1948 and the A.O. 1950 to read as above.
2. Paragraph 2 omitted by the A.O. 1950. Earlier paragraph 2 was inserted by the A.O. 1937 and was amended by the A.O. 1948.
3. The second Illustration rep. by Act 24 of 1917, sec. 3 and Sch. II.

22. **Contract caused by mistake of one party as to matter of fact.**—A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

23. **What consideration and objects are lawful, and what not.**—The consideration or object of an agreement is lawful, unless—

it is forbidden by law;¹ or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

(a) A agrees to sell his house to B for 10,000 rupees. Here, B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house and A's promise to sell the house is the consideration for B's promise to pay the 10,000 rupees. These are lawful considerations.

(b) A promises to pay B 1,000 rupees at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here, the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here, A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child, and B promises to pay A 1,000 rupees yearly for the purpose. Here, the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter and would so defeat the object of the law.

1. See sections 26, 27, 28 and 30 of this Act.

(j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Indian Penal Code (45 of 1860).

COMMENTS

Applicability

The notification permitting refund of sales tax was contrary to the statute. The tax paid is not an amount spent by the appellant but realised on sale by it. The constitutional requirements of levy of tax being for the welfare of the society and not for a specific individual the agreement or promise made by the Government was in contravention of public purpose thus violative of public policy and void under section 23 of the Contract Act; *Amrit Banaspati Co. Ltd. v. State of Punjab*, AIR 1992 SC 1076.

Illegal and void agreements

The distinction between illegal and void contracts is very thin but it is there. The law may either forbid an agreement to be made, or it may merely say that if it is made the courts will not enforce it. In the former case, it is illegal in the latter only void; *Nutan Kumar v. Ind Additional District Judge, Banda*, AIR 1994 All 298.

Validity of exemption clause

The exemption clause containing that the carrier shall be under no liability for any damages to passengers, is valid and it legally excludes all liability for negligence and such clause cannot be held bad under section 23 of Act; *Indian Airlines v. Madhuri Chowdhuri*, AIR 1965 Cal 252. In *Nash v. Inmam*

Scope

(i) If an agreement is merely collateral to another or constitutes an aid facilitating the carrying out of the object of the other agreement which though void, is not prohibited by law it may be enforced as a collateral agreement. Where a person entering into an illegal contract promises expressly or by implication that the contract is blameless such a promise amount to collateral agreement upon which the other party if in fact innocent of turpitude may sue for damages; *Rajat Kumar Rath v. Government of India*, AIR 2000 Ori 32.

(ii) The appellation 'void' in relation to a juristic act, means without legal force, effect or consequence, not binding, invalid, null, worthless, cipher, useless and ineffectual etc.; *Nutan Kumar v. Ind Additional District Judge, Banda*, AIR 1994 All 298.

(iii) An agreement offending a statute or public policy or forbidden by law is not merely void but it is invalid from nativity. It cannot become valid even if the parties thereto agree to it; *Nutan Kumar v. Ind Additional District Judge, Banda*, AIR 1994 All 298.

(iv) While the term 'object' unlike the term 'consideration' has not been defined in section 2 of the Act, but has been held to mean as 'purpose' or 'design' of the contract. If the object is opposed to public policy or tends to defeat any provision of law, it becomes unlawful and thereby it is void under section 23 of the Act; *Nutan Kumar v. Ind Additional District Judge, Banda*, AIR 1994 All 298.

(v) The term 'law' in section 23 of the Act must be understood in the sense of the term explained in the Article 13(3) of the Constitution; *Nutan Kumar v. Ind Additional District Judge, Banda*, AIR 1994 All 298.

Void agreements

∴ If only a part of consideration/object is unlawful - whole agreement is void

itions and objects unlawful in part.—If one or more objects, or any one or any part of a single object, is unlawful, the agreement

↳ when it is forbidden by law.

Q A
illegal
agree
in par

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not u

In case of alternative promise, one branch of which is legal and the other is illegal. If legal branch can be enforced.

Illustration
erintend, on behalf of B, a legal manufacturer of indigo, and an articles. B promises to pay to A a salary of 10,000 rupees a year. The object of A's promise, and the consideration for B's promise, being A promises B to obtain employment in public.

COMMENTS

offences, which are a matter of public concern, cannot be subject suits and administration of criminal justice should not be allowed s of judges to private individuals. Where the offence is of public can be valid that is founded on the consideration of stifling of a ne payment of 470 million US dollars by the Union Carbide of India was held not to be stifling of prosecution and the payment Carbide Corporation v. Union of India, AIR 1992 SC 248.

25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.—An agreement made without consideration is void, unless—

ex nudo pacto non oritur curio
↓
an agreement without consideration is void

- (1) it is expressed in writing and registered under the law for the time being in force for the registration of [documents], and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
- (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless.
- (3) It is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract. *free consent*

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An Agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations

- (a) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.
- (b) A, for natural love and affection, promises to give his son, B, Rs. 1,000. A puts his promise to B into writing and registers it. This is a contract.
- (c) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.
- (d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.
- (e) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

1. Subs. by Act 12 of 1891, sec. 2 and Sch. II, Pt. I, for "assurances". *A promise to pay time barred debt, made enforceable by 25*

(f) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

COMMENTS Godown Jm extinguished, -

Natural love and affection as a consideration

In order to rely upon clause (1) of section 25, the existence of the factum of natural love and affection between parties standing in a near relation to each other is a condition precedent; *Rajlukhy Dabee v. Bhootnath Mookherjee*, (1900) 4 CWN 488.

Voluntary services

If the services are rendered voluntarily, without the desire of the promisor or otherwise than at his request and the promisor undertakes to recompense the person who has rendered his services for it. In such cases, the promise does not need a consideration to support it, and the case falls under section 25 of the Act; *Sindha Shri Ganpatsingji v. Abraham alias Vazir Mahomed Akuji*, (1895) 20 Bom 755.

26. **Agreement in restraint of marriage, void.**—Every agreement in restraint of the marriage of any person, other than a minor, is void.

COMMENTS

Agreement in restraint of marriage

An agreement between two co-widows that if any of them remarried, she should forfeit her right to her share in the deceased husband's property is not in restraint of marriage; *A. Suryanarayan Murthi v. P. Krishna Murthy*, AIR 1957 Ori 125.

27. **Agreement in restraint of trade, void.**—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—Saving of agreement not to carry on business of which goodwill is sold.—One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

[***] (to protect the buyer)

COMMENTS

leg. A enters into agreement w/d B that he would not sell stock beyond radius of 1 mile beyond radius of Godown

Agreement in restraint of trade

The words "restrained from exercising a lawful profession, trade or business", do not mean an absolute restriction, and are intended to apply to a partial restriction, a restriction limited to same particular place; *Mahub Chander v. Raj Coomar*, (1874) XIV Bengal Law Reports 76.

28. **Agreements in restraint of legal proceedings, void.**—²[Every agreement,—

- (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or
- (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to that extent.]

Exception 1.—Saving of contract to refer to arbitration dispute that may arise.—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any

1. Exceptions 2 and 3 rep. by Act 9 of 1932, sec. 73 and Sch. II.
2. Subs. by Act 1 of 1997, sec. 2, for certain words (w.e.f. 8-1-1997).

Sec 28 → agreement not to refer to arbitration

subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

¹[***]

Exception 2.—Saving of contract to refer questions that have already arisen.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.²

³*Exception 3.*—Saving of a guarantee agreement of a bank or a financial institution.—This section shall not render illegal a contract in writing by which any bank or financial institution stipulate a term in a guarantee or any agreement making a provision for guarantee for extinguishment of the rights or discharge of any party thereto from any liability under or in respect of such guarantee or agreement on the expiry of a specified period which is not less than one year from the date of occurring or non-occurring of a specified event for extinguishment or discharge of such party from the said liability.

Explanation.—

- (i) In *Exception 3*, the expression "bank" means—
- a "banking company" as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949).
 - "a corresponding new bank" as defined in clause (da) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - "State Bank of India" constituted under section 3 of the State Bank of India Act, 1955 (23 of 1955);
 - "a subsidiary bank" as defined in clause (k) of section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
 - "a Regional Rural Bank" established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976);
 - "a Co-operative Bank" as defined in clause (cci) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);
 - "a multi-State co-operative bank" as defined in clause (cciiia) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); and
- (ii) In *Exception 3*, the expression "a financial institution" means any Public financial institution within the meaning of section 4A of the Companies Act, 1956 (1 of 1956).]

COMMENTS

Agreement in restraint of trade

If any mutual agreement is intended to restrict or extinguish the right of a party for enforcing his/her right under or in respect of a contract, by the usual legal proceedings in the ordinary tribunals, such an agreement would to that extent be void; *A.V.M. Sales Corporation v. Anuradha Chemicals Pvt. Ltd.*, (2012) 2 SCC 315; JT 2012 (1) SC 176; (2012) 1 SCALE 349.

Agreement restricting law of limitation

The clause in the agreement that the appellant would not have any right under the bond after the expiry of six months from the date of termination of the contract has been held not to be contrary to section 28 of the Act nor it imposed any restriction to file a suit within six months; *Food Corporation of India v. New India Assurance Co. Ltd.*, AIR 1994 SC 1896.

Jurisdiction of the proper court

It has been held that it is not open to the parties by agreement to confer jurisdiction on any court which it did not otherwise possess under section 20 of Code of Civil Procedure; *Patel Roadways v. Prasad Trading Company*, AIR 1992 SC 1514.

29. Agreements void for uncertainty.—Agreements, the meaning of which is not certain, or capable of being made certain, are void.

- The second clause of *Exception 1* rep. by Act 1 of 1877, sec. 2 and Sch.
- Cf.* the Arbitration Act, 1940 (10 of 1940) and the Companies Act, 1956 (1 of 1956), section 389.
- Ins. by the Banking Laws (Amendment) Act, 2012 (4 of 2013), sec. 17 and Sch. (w.e.f. 18-1-2013, vide S.O. 192(E), dated 17-1-2013).

A agrees to sell his car to B at a price which B may be able to pay.

Illustrations

- (a) A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.
- (b) A agrees to sell B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.
- (c) A, who is a dealer in coconut-oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut-oil.
- (d) A agrees to sell B "all the grain in my granary at Ramnagar". There is no uncertainty here to make the agreement void.
- (e) A agrees to sell to B "one thousand maunds of rice at a price to be fixed by C". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.
- (f) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand". There is nothing to show which of the two prices was to be given. The agreement is void.

30. Agreements by way of wager, void.—Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. (not enforceable)

Deiry v. Peck -> nature of wagering agreements explained

Exception in favour of certain prizes for horse-racing.—This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be rewarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected.—Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.

*Horse racing - legal COMMENTS: valid.
Crossword competition - contingent contract*

Scope
To treat an agreement by way of wager as void is that the law discourages people to enter into games of chance and make earning by trying their luck instead of spending their time, energy and labour for more fruitful and useful work for themselves, their family and the society; *Subhash Kumar Manwani v. State of Madhya Pradesh, AIR 2000 MP 109.*

Wagering Contract

A chit-fund does not come within the scope of wager; *Narayana Ayyangar v. K.V. Ambalam, (1927) ILR 50 Mad 696 (FB).*

**CHAPTER III
OF CONTINGENT CONTRACTS (31-36)**

31. "Contingent contract" defined.—A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

A enters into contract with B to buy his house for Rs. 10,000 if B's house is burnt. This is a contingent contract. Illustration buy his house for Rs. 10,000 if B's house is burnt

32. Enforcement of contracts contingent on an event happening.—Contingent contracts to do or not to do anything if an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Illustrations

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b) A makes a contract with B to buy a horse to B at a specified price, if C, to whom A is indebted, pays him. The contract cannot be enforced by law unless C pays him.

A makes a contract with B to buy his house for Rs. 50,000 if he is able to secure a bank loan for that amount - - contingent contract

Contract of a life insurance - contingent contract

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

COMMENTS

Applicability

The essential idea upon which doctrine of frustration is based is that of impossibility of performance of contract; *Satyabrata Ghose v. Mugneeram Bangur*, AIR 1954 SC 44.

• **33. Enforcement of contracts contingent on an event not happening.**—Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

Illustration

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

• **34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person.**—If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration

A agrees to pay B a sum of money if B marries C, C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

• **35. When contracts become void, which are contingent on happening of specified event within fixed time.**—Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced, which are contingent on specified event not happening within fixed time.—Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened, or before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year; and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

• **36. Agreements contingent on impossible event void.**—Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations

(a) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

(c) A agrees to pay B 1000 rupees if B produces secret money for him by way of magic

CHAPTER IV (33-67)
OF THE PERFORMANCE OF CONTRACTS

Contracts which must be performed → tender of performance

37. Obligation of parties to contract.—The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Illustrations

(a) A promises to deliver goods to B on a certain day on payment of Rs.1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

COMMENTS

Assignment of Contract

A person cannot be subject to the obligation of a contract to which he is not a party and the logical consequence is that a stranger cannot acquire rights under a contract; *Harnam Singh v. Purbi Devi*, AIR 2000 HP 108.

Scope

(i) If the agreement makes express provision for enhancement of rate of interest, held, bank need not put borrower on notice before charging higher rate on the basis of the agreement; *Syndicate Bank v. R. Veeranna*, (2003) 2 SCC 15.

(ii) It is well settled principle of law that an arbitration clause is assignable, if the main contract is assignable. An arbitration agreement will bind not only the actual parties to it, but also an assignee of the contract containing it; *R.K. Associates v. V. Channappa*, AIR 1993 Kant 248.

38. Effect of refusal to accept offer of performance.—Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his right under the contract.

Every such offer must fulfil the following conditions:—

- (1) it must be unconditional;
- (2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
- (3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration

A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of performance with the effect stated in this section. A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

COMMENTS

Tender must be strict

Where the instructions have been issued to Bidders asking them to state against each work item unit rate in Indian Currency and in U.S. Dollar or Japanese Yen. Then the quoting of the unit rate 50 per cent. in Indian Rupee and 50 per cent. in U.S. Dollar will not be treated as clerical or Mechanical error and cannot be allowed to be corrected; *West Bengal Electricity Board v. Patel Engg. Co. Ltd.*, AIR 2001 SC 683.

39. Effect of refusal of party to perform promise wholly.—When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Anticipatory breach of contract Illustrations: *Frost v. Knight, (1872)*

(a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom contracts must be performed

40. Person by whom promise is to be performed.—If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

Illustrations

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

41. Effect of accepting performance from third person.—When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Handwritten notes: (C) entitled to pay (D) in full (A and B) unreleasee
 A, B, C jointly promise to pay D. (A and B) unreleasee

-42. Devolution of joint liabilities.—When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. Any one of joint promisors may be compelled to perform.—When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any ¹[one or more] of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.—Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.—If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payment made by the principal.

Illustrations

(a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees. A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Effect of release of one joint promisor.—Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.²

45. Devolution of joint rights.—When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.³

1. Subs. by Act 12 of 1891, sec. 2 and Sch. II Pt. I, for "one".

2. See section 138 of this Act.

3. For an exception to section 45 in case of Government securities, see the Public Debt Act, 1944 (18 of 1944), section 8.

Illustration

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C, with the representatives of B and C jointly.

Time and place for performance

46. Time for performance of promise, where no application is to be made and no time is specified.—Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact.

47. Time and place for performance of promise, where time is specified and no application to be made.—When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration

A promises to deliver goods at B's warehouse on the first January. On the day A brings the goods to B's warehouse, but after the usual hour closing it, and they are not received. A has not performed his promise.

48. Application for performance on certain day to be at proper time and place.—When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

49. Place for the performance of promise, where no application to be made and no place fixed for performance.—When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

Illustration

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

50. Performance in manner or at time prescribed or sanctioned by promisee.—The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations

(a) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account

to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him Rs.100, to send him a note for Rs.100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

COMMENTS

Manner and time of performance

If any agreement states that a particular act relating to the furtherance of a contract is to be done in a particular manner, it should be done in that manner and it is not open to the parties to chalk out his own manner of performing his part of contract; *Bishamber Nath Agarwal v. Kishan Chand*, AIR 1990 All 70.

Performance of reciprocal promises

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.—When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

52. Order of performance of reciprocal promises.—Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promise to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of transaction requires that A should have security before he delivers up his stock.

doctrine of frustration
 ↳ Satya Brata Chohan v. Mungceram
 The Indian Contract Act, 1872

Sec. 56]

time; but the promisee is entitled to compensation from any loss occasioned to him by such failure.

Effect of acceptance of performance at time other
 If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts the performance of such promise at any time other than that agreed, the promisee is not entitled to claim compensation for any loss occasioned by the non-performance of such promise at the time agreed, unless, at the time of such acceptance, the promisee was aware of the promisor's intention to do so.¹

In India, the doctrine of impossibility of performance of a contract being void is based on supervening impossibility or illegality as laid down in Sec 56 of Contract Act

COMMENTS

Time - whether essence of Contract

(i) Though one of the clauses of contract stipulated a stipulated delivery period will not deprive party of its right to read of all clauses showed that time was essence of contract.

made after and damage

(ii) The parties, may make time of the essence either expressly in terms which unmistakably provide that they intended to do so. Alternately, making of time as the essence of a contract may be inferred from the nature of the contract, the property or the surrounding circumstances; *Swarnam Ramchandran v. Aravacode Chakungal Jayapalan*, AIR 2000 Bom 410.

(iii) When the contract itself provides for extension of time, the same cannot be termed to be the essence of the contract and default, however, in such a case it does not make the contract voidable; *Arosan Enterprises Ltd. v. Union of India*, AIR 1999 SC 3804.

(iv) The deferred clause indicated that time was not the essence of the contract. But in the present case the defendants had kept quite for an unreasonably long time so the defendants cannot rely on this clause but the plaintiffs can seek the relief of possession prayed for; *Y.A. Kader v. Muthulakshmi Ammal*, AIR 1992 Mad 208.

(v) In a contract for the sale of land or immovable property, it would normally be presumed that time was not of the essence of the contract; *Gomathinayagam Pillai v. Palaniswami Nadar*, AIR 1967 SC 868: (1967) 1 SCR 227.

56. Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.²

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Commercial impossibility not covered
 Illustrations

- (a) A agrees with B to discover treasure by magic. The agreement is void.
- (b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

1. Cf. sections 62 and 63 of this Act.
 2. See section 65 of this Act.

Contract for Shamiana to make for marriage → caused → void
 NOT liable to pay for Shamiana as impossible to perform

① does not become void
 to B
 ↓
 contract not enforceable

- RA non cogit ad impossibilia
- (c) initial and subsequent impossibility Harry B, being already married to C, and being forbidden by the law to practise polygamy. A must make compensation to B for the loss caused by the non-performance of his promise.
- (d) initial impossibility A contracts to ship goods in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when the war begins.
- (e) initial impossibility A contracts to act at a theatre for six months in consideration of a sum paid in advance. On several occasions A is too ill to act. The contract to act on those occasions is void.

COMMENTS

Contract is void if it is not to be in default

(i) Where the performance depends on the continued existence of a given person or thing, a condition is implied that the impossibility arising from the perishing of the person or thing shall excuse performance; *Taylor v. Caldwell*, 122 ER 30.

(ii) It is not permissible for the courts to travel outside the provisions of the section and import the principles of English law *de hors* the statutory provisions; *Satyabrata Ghose v. Mugneeram Bangur & Co.*, AIR 1954 SC 44.

Impossibility may be in law or in fact

The doctrine of frustration is really an aspect or part of the law of discharge of contract by reason of supervening impossibility or illegality of the act agreed to be done and hence comes within the purview of section 56; *Satyabrata Ghose v. Mugneeram Bangur*, AIR 1954 SC 44.

Scope and applicability

Section 56 lays a positive rule relating to frustration and does not leave the matter of frustration to the court to be determined. There can be no agreement on altered circumstances and it has also been held that if a consideration of the terms of the contract in the light of the circumstances when it was made shows that the parties never agreed to be bound in a fundamentally different situation which unexpectedly arises the contract ceases to bind at that point, not because the court in its discretion considers it just but on true construction it does not apply in that situation; *Shyam Biri Works Pvt. Ltd. v. U.P. Forest Corporation*, AIR 1990 SC 205.

57. Reciprocal promise to do things legal, and also other things illegal.—Where persons reciprocally promise, firstly to do certain things which are legal, and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Illustration

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

58. Alternative promise, one branch being illegal.—In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

Illustration

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of payments

59. Application of payment where debt to be discharged is indicated.—Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations

(a) A owes B, among other debts, 1,000 rupees upon a promissory note, which falls due on the first June. He owes B no other debt of that amount. On the first June, A pays to B 1,000 rupees. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

COMMENTS

(59-61) -> Appropriation of debts.

Scope of applicability

(i) To several distinct debts payable by a person and not to the various heads of one debt. The principal and interest due on a single debt or decree passed on such debt carrying subsequent interest cannot be held to several distinct debts. Accepting such an argument would amount to doing violence to the language employed in the section and the purpose sought to be achieved by it. Besides it would also be contradictory in terms; Industrial Credit and Development Syndicate now called I.C.D.S. Ltd. v. Smithaben H. Patel, AIR 1999 SC 1036.

(ii) The principle applies to several distinct debts and not to a single debt payable by instalments; Munno Bibi v. Commissioner of Income-tax, AIR 1952 All 514.

60. Application of payment where debt to be discharged is not indicated.—Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

61. Application of payment where neither party appropriates.—Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Contracts which need not be performed

62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

novation
change of
nature of
obligation in
a contract

effect of
novation

↳ substitution
of new

contract
in place
of old one

Illustrations

(a) A owes money to B under a contract. It is agreed between A, B and C, that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B 10,000 rupees. A enters into an agreement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(c) A owes B 1,000 rupees under a contract, B owes C 1,000 rupees, B orders A to credit C with 1,000 rupees in his books, but C does not assent to the agreement. B still owes C 1,000 rupees, and no new contract has been entered into.

COMMENTS**Alteration of Contracts**

Person entering into agreement under section 8(1)(a) of Requisition and Acquisition of Immovable Property Act cannot later claim a legal right to obtain a court order directing reopening of the agreement, just because a subsequent award granted higher compensation for land similar to his own; *Dayal Singh v. Union of India*, (2003) 2 SCC 593.

Subsequent agreement

The plaintiff Bank had agreed that the defendants could pay the amount of Rs.10,00,000 which would be convenient to both the parties subsequent to the filing of the suit. The parties have entered into a second agreement to supersede the liability and the entitlement formulated through the transaction and that under the circumstances the said subsequent agreement squarely comes within the ambit of section 62 of the Act; *Central Bank of India v. V.G. Naidu & Sons (Leather) Pvt. Ltd.*, AIR 1992 Mad 139.

Material alteration

(i) A material alteration is one which varies the rights, liabilities or legal position of the parties as ascertained by the deed from its original state, or otherwise varies the effect of the instrument as originally expressed or reduces to certainty some provisions which were originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed. The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed. The last line in the schedule of property regarding delivery of possession was held to be inserted not on the date of execution of agreement but subsequent to it and have material alteration; *Janab M.H.M. Yakoob v. M. Krishnan*, AIR 1992 Mad 80.

(ii) Where an existing mortgage was replaced by a new agreement of mortgage, the new agreement being not enforceable for want of registration, the parties were still bound by the original mortgage; *Shanker Lal Damodhar v. Ambalal Ajaipal*, AIR 1946 Nag 260.

Novation of contract

Permissibility to raise first time in appeal—Raising the issue of novation of contract for the first time in the appeal before apex court. Issue of novation being a mixed question of fact and law, in absence of findings, cannot be raised and decided in the appeal; *Purbanchal Cables & Conductors Pvt. Ltd. v. Assam State Electricity Board*, AIR 2012 SC 3167: (2012) 7 SC 462; JT 2012 (6) SC 327: (2012) 6 SCALE 314.

63. **Promisee may dispense with or remit performance of promise.**—Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance,¹ or may accept instead of it any satisfaction which he thinks fit.

Illustrations

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.²

1. But See section 135 of this Act.

2. See section 41 of this Act.

No promissory estoppel against Government

(c) A contracts with B, the manager of a theatre, to sing at his theatre for two nights during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights she had sung.

(d) A contracts with B for a concert for 1,000 rupees, which are paid in advance. A is too ill to perform, and B is bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid.

Quasi contract emerged from
Indebitatus
quasi contract

belongs with
Sec-56

COMMENTS

Frustrated Contract. Where a contract of Insurance the insured gave a cheque to the insurer for payment of the amount, but the cheque was dishonoured by the drawee-bank due to inadequate funds in the account of the drawer, the insurer is not liable in such a situation to honour the claim of the insured. Even if the insurer has disbursed the amount covered by the policy to the insured before the cheque was returned dishonoured insurer is entitled to get the money back; *National Insurance Company Ltd. v. Seema Malhotra*, AIR 2001 SC 1197.

66. Mode of communicating or revoking rescission of voidable contract.—The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of the proposal.¹

67. Effect of neglect of promisee to afford promisor reasonable facilities for performance.—If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

Loss of money
founder of

(68-72)

Can be explained on Judicial basis of Quasi contract
CHAPTER V
basis is unjust enrichment

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

major
enrichment

Section 68. Where necessaries supplied to person incapable of contracting, or on whom no contract is binding, are provided for by a person who is bound to support, is supplied by another person with his condition in life, the person who has furnished such necessaries is entitled to be reimbursed from the property of such incapable person.

doctrine of unjust enrichment
hence to be
down by
in major lab
indistinguishable

Illustrations

(1) A lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

- 1. A Government ward in Madhya Pradesh is not liable under this section; see Government Ward Act, 1899 (C.P. Act 24 of 1899), section 31(I).
- 2. A minor is not liable under this section; see the Indian Contract Act, 1872, section 11.

v. Union of India

if supplied to minor

Can be enforced against the minor's property or estate, during his minority even

Sec. 72]

(b) A s condition i

69. Re of which l which and be reimbu

B hold: by A to t Governm of B's lease the Govern

Promissory contract to contract upon of as a subs - nature for quasi contract Quantum meruit To the extent work done upon person

The Indian Contract Act, 1872

and children of B, a lunatic, with necessities suitable to their and to be reimbursed from B's property.

of person paying money due by another, in payment of money due by law to pay, and who therefore pays it, is entitled to be reimbursed from A. A is bound to make good to B the amount so paid.

Illustration

on a lease granted by A, the zamindar. The revenue payable being in arrear, his land is advertised for sale by the revenue law, the consequence of such sale will be the annulment of the sale and the consequent annulment of his own lease, pays the amount so paid from A. A is bound to make good to B the amount so paid.

COMMENTS

Contribution and reimbursement

Where a person is jointly liable with other to pay, a payment by him of the other's share would not give him a right of recovery under this section; Jagpatiraju v. Sadnusannama, AIR 1916 Mad 980.

70. Obligation of person enjoying benefit of non-gratuitous act.—Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.¹

Illustrations

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

COMMENTS

Compensation for non gratuitous act

Where a claim for compensation is made under section 70, by one person against another, it is not on the basis of any subsisting contract between the parties; it is on the basis of the fact that something was done by the party for another and the said work has been voluntarily accepted by the other party; State of West Bengal v. B.K. Mondal, AIR 1962 SC 779.

Scope and applicability

Where a contractor whose work has been accepted by the other party claims compensation under an oral agreement, which he is not able to prove he would still be entitled to compensation under section 70; V.R. Subramanyam v. B. Thayappa, (1961) 3 SCR 663 : (1961) 2 SCJ 191.

71. Responsibility of finder of goods.—A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.² (Bailment is a contract).

72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.—A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

Unjust enrichment

1. As to suits by minors under section 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act, 1882 (15 of 1882), section 32.
2. See sections 151 and 152 of this Act.

State of W.B. v. B.K. Mondal and sons
↳ interpretation of sec 70

↳ Who finds the goods = bailee (subject to his responsibility)

Suit for damages for breach of contract can be filed
 ↳ Where contract was executed
 ↳ Where contract has to be performed

Illustrations

(a) A and B jointly owe 100 rupees to C, A alone pays the amount to C, and B, not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegal and excessive.

COMMENTS

Ingredients of unjust enrichment

Under this Section the principle of unjust enrichment cannot be extended to give a right to the State to recover or realise vend fee after the concerned statute for realisation or recovery of vend fee has been struck down; *Somaiya Organics (India) Ltd. v. State of Uttar Pradesh*, AIR 2001 SC 1725.

Hadley v. Baxendale → Principle of assessment of damages

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT

73. Compensation for loss or damage caused by breach of contract.—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Compensation for damages
 to mitigate the loss
 to be taken into account
 when computing the loss
 of contract

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

A sum fixed before hand as amount of compensation payable in the event of breach of contract is called liquidated damage.

Illustrations

(a) A contracts to deliver to B 50 maunds of saltpetre to B, at a certain price to be paid on delivery. B is entitled to receive from A, by way of compensation, the sum which B might have obtained if the contract price falls short of the price for saltpetre of like quality at the time when the contract was made.

(b) A hires B's ship to carry a cargo, which A is to pay for. B's ship does not arrive at the port of destination, but A has opportunities of procuring suitable conveyance for the cargo, as advantageous as those on which he had chartered the ship. A is not entitled to receive compensation from B in respect of such trouble and expense.

and there takes on board, on the first of January, a cargo of goods, and brings it to Calcutta, the freight to be paid when the ship arrives, but A has opportunities of procuring suitable conveyance for the cargo, as advantageous as those on which he had chartered the ship, but is put to trouble and expense in receiving compensation from B in respect of such

(c) A contracts to buy of B, at a stated price, 50 maunds of rice for delivery. A afterwards informs B that he will not accept the rice. B is entitled to receive from A, by way of compensation, the amount of the contract price exceeds that which B can obtain for the rice at the time when it is delivered. that he will not accept it.

(d) A contracts to buy B's ship for 60,000 rupees, but breaks his promise to B, by way of compensation, the excess, if any, of the contract price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of goods for sale at that place, starting on a specified day. The boat, owing to a delay, does not start at the time appointed, whereby the arrival of the cargo is delayed beyond the time when it would have arrived if the boat had complied with the contract. After that date, and before the arrival of the cargo, the market price of the goods falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it was forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rises, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at 80 rupees a ton, contracts with C for the same quantity of iron at 80 rupees a ton. C fails to perform his contract with A, who consequently rescinds it. A must pay to B the amount of the contract price which he would have made had he delivered the iron to B. C is not liable to A for the price of the iron, but is liable to A for the profit which he would have made had he delivered the iron to B.

(k) A contracts to supply B with a certain piece of machinery at a specified price, to be delivered at a certain time. A does not deliver the machinery at the time specified, and, in consequence, B is obliged to purchase a similar piece of machinery at a higher price than that which he had made when he contracted with A. A must pay to B the difference between the price of the price of the machinery which B had made when he contracted with A and the price of the price of the machinery which B had to purchase at the time when he was obliged to purchase it.

In determining amount of any compensation in contract cases be guided by principle of Sec 73 in ICA.

Hadley v. Baxendale
↓
Principle of Assessment of damages
(Sec 73)
deals with remoteness of damages

When measuring damages relevant in determining the quantum of damages is Sec 73 of ICA. Motive & Manner of loss suffered.

ing fixed to him. which the informs B must pay ice which zapur, for ble cause, irzapur is rding to The falls. The rice which ve arrived

(l) *A*, a builder, contracts to erect and finish a house by the first of January, in order that *B* may give possession of it at that time to *C*, to whom *B* has contracted to let it. *A* is informed of the contract between *B* and *C*. *A* builds the house so badly that, before the first of January, it falls down and has to be re-built by *B*, who, in consequence, loses the rent which he was to have received from *C*, and is obliged to make compensations to *C* for the breach of his contract. *A* must make compensation to *B* for the cost of rebuilding of the house, for the rent lost, and for the compensation made to *C*.

(m) *A* sells certain merchandise to *B*, warranting it to be of a particular quality, and *B*, in reliance upon this warranty, sells it to *C* with a similar warranty. The goods prove to be not according to the warranty, and *B* becomes liable to pay *C* a sum of money by way of compensation. *B* is entitled to be reimbursed this sum by *A*.

(n) *A* contracts to pay a sum of money to *B* on a day specified. *A* does not pay the money on that day. *B*, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. *A* is not liable to make good to *B* anything except the principal sum he contracted to pay, together with interest upto the day of payment.

(o) *A* contracts to deliver 50 maunds of saltpetre to *B* on the first of January, at a certain price, *B*, afterwards, before the first of January, contracts to sell the saltpetre to *C* at a price higher than the market price of the first of January. *A* breaks his promise. In estimating the compensation payable by *A* to *B*, the market price of the first of January, and not the profit which would have arisen to *B* from the sale to *C*, is to be taken into account.

(p) *A* contracts to sell and deliver 500 bales of cotton to *B* on a fixed day. *A* knows nothing of *B*'s mode of conducting his business. *A* breaks his promise, and *B*, having no cotton, is obliged to close his mill. *A* is not responsible to *B* for the loss caused to *B* by closing of the mill.

(q) *A* contracts to sell and deliver to *B*, on the first of January, certain cloth which *B* intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. *B* is entitled to receive from *A*, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) *A*, a ship owner, contracts with *B* to convey him from Calcutta to Sydney in *A*'s ship, sailing on the first of January, and *B* pays to *A*, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and *B*, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. *A* is liable to repay to *B* his deposit, with interest, and the expense to which he is put by his detention in Calcutta, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which *B* lost by arriving in Sydney too late.

COMMENTS

Award of damages

When a contract is broken, the party who suffers by such breach is entitled to receive compensation for any loss or damage caused to him from the party who has broken the contract; *K. Narayana Kurup v. Sankaranarayanan*, AIR 2000 Ker 296.

Breach of Contract of carriage

A corporation had placed the order on telephone. The entire transaction was oral and no attempt was made to produce any witness of the alleged buyer to support the

contention. The material facts proved by Petro Chen value of the goods was at the rate of Rs. 3,000 per metric ton. It does not show that the price of goods has risen to Rs. 3,000. As a result of non-delivery of the alleged goods, have not been proved by Petro Chen he is not entitled to any damages; *Thakral and Sons v. Indian Oil Co. Ltd.*, AIR 1994 Del 226.

Damages

(i) Where a party who has committed a breach of contract is considered to be liable for damages conferred on the other party. Damages could be recovered from the person who has committed the breach and the same is determined. The conditions of contract would be considered and damages could be recovered and no power has been conferred on the contracting party to determine the damages; *P.V. Paily v. State of Kerala*, AIR 1951 SC 145: (1950) SCR 979.

(ii) The party who has committed a breach must make compensation in respect of the direct consequences of the breach and not in respect of loss or damage indirectly or remotely caused; *Pannalal Jankidas v. Mohanlal*, AIR 1951 SC 145: (1950) SCR 979.

Damages for breach of contract of service

A contract of service entered into by father on behalf of minor is void being without consideration; *Raj Rani v. Prem Adib*, AIR 1949 Bom 215.

Damages when become due

A seller who commits breach will be liable to compensate according to the prices at the place of sale and not at destination; *Murlidhar Chiranjilal v. Harish Chandra Dwarkadas*, AIR 1962 SC 366: (1962) 1 SCR 653.

Limitation

The principle of awarding damages for a reasonable period or reasonable period of notice comes into play only when the contract of employment is not for a fixed period; *S.S. Shetty v. Bharat Nidhi Ltd.*, AIR 1958 SC 12: (1958) SCR 442.

Measure of damages - Breach of contract for sale of goods

Damages are to be awarded as compensation for any loss or damage arising naturally in the usual course of things from the breach of contract; *Karsandas H. Thacker v. Saran Engg. Co. Ltd.*, AIR 1965 SC 1981.

Natural and probable result of breach: Special damage

In cases of breach of contract the damages should be such as may fairly and reasonably be considered as arising naturally or the damages may be such as may reasonably be supposed to have been in contemplation of both parties at the time they made the contract as the probable result of the breach of it. The damages, however cannot include compensation for any remote and indirect loss or damages sustained by reason of the breach; *Hadley v. Baxendale*, 9 Ex 742.

Taking advantage of benefit resulting from breach of contract

Where a vendee is in default and the vendor subsequently sells at a price higher than the market price on the date of delivery, the fact that by reason of the loss of the contract which the vendee had failed to perform, the vendor obtained the benefit of another contract which was of value to him did not entitle the vendee to the benefit of the later contract; *Jamal v. Moola Dawood Sons & Co.*, (1916) AC 175.

74. Compensation for breach of contract where penalty stipulated for.—
 [When a contract has been broken, if a sum is named in the contract as the

1. Subs. by Act 6 of 1899, sec. 4, for the first paragraph.

appreciate
 whether
 parties seeking
 fixed amount
 as compensation
 on breach of
 contract

amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature or, under the provisions of any law, or under the orders of the ¹[Central Government] or of any ²[State Government], gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations

(a) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compensation, not exceeding Rs. 1,000, as the Court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation; not exceeding Rs. 5,000 as the court considers reasonable.

(c) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

³(d) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

(e) A, who owes money to B, a money-lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable consideration in case of breach.

(f) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments, with a stipulation that, in default, of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.]

COMMENTS

Right to recover liquidated damages

Where the right to recover liquidated damages under section 74 is found to exit no question of ascertaining damages really arises; *Chunilal Mehta & Sons Ltd. v. Century Spinning & Mfg. Co. Ltd.*, AIR 1962 SC 1314.

1. Subs. by the A.O. 1937, for "Government of India".
2. Subs. by the A.O. 1950, for "Provincial Government".
3. Ins. by Act 6 of 1899, sec. 4(2).

Penalty and liquidated damages

A clause in a contract can be described as penal if the party who has to pay a certain amount of money fails to pay the amount within the time stipulated. In such a situation the other party will be at liberty to recover the entire sum with interest and costs. Such a clause would be penal in character. But if half payment is made within the time stipulated, the other party waves his right to the balance amount; *Prithvichand Ramchand Sablok v. S.Y. Shinde*, AIR 1993 SC 1934.

• **75. Party rightfully rescinding contract, entitled to compensation.**—A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Illustration

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contracts. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

CHAPTER VII

Sale of Goods.—Sections 76-123 [Rep. by the Sale of Goods Act, 1930 (3 of 1930) sec. 65.]

CHAPTER VIII

OF INDEMNITY AND GUARANTEE

124. "Contract of indemnity" defined.—A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustration

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

COMMENTS

Indemnity and guarantee

Acknowledgement of debt by principal debtor binds the guarantor in all respects as if he had given express consent; *United Commercial Bank v. B. M. Mahadev Babu*, AIR 1992 Kant 294. but accidents like fire, flood, g. m. sea → Not covered u/s 124

125. Rights of indemnity-holder when sued.—The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;

which he may have paid under the terms of any contract of any such suit, if the compromise was not contrary to the intention of the promisor, and was one which it would have been reasonable for the promisee to make in the absence of any contract of compromise, or if the promisor authorized him to compromise the suit.

guarantee, 'surety', 'principal debtor' and 'creditor'—A contract of guarantee is a contract to perform the promise, or discharge the liability of a person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person to whom the guarantee is given is called the 'creditor'. A guarantee may be either oral or written.

Bank guarantee
dated 01/12/16

COMMENTS

(i) A bank guarantee is the common mode of securing payment of money in commercial dealings as the beneficiary, under the guarantee, is entitled to realize the whole of the amount under that guarantee in terms thereof irrespective of any pending dispute between the person on whose behalf the guarantee was given and the beneficiary; *Interior's India v. Balmer Lawrie*, AIR 2007 Del 16.

(ii) Once it becomes apparent that there was no chance to fulfil the conditions in the bank guarantee, invocation of the bank guarantee would not be premature or unjustified; *Daewoo Motors India Ltd. v. Union of India*, (2003) 4 SCC 690.

(iii) It is well settled that bank guarantee is an autonomous contract. It is in common parlance that the issuance of guarantee is what a guarantor creates to discharge liability when the principal debtor fails in his duty and guarantee is in the nature of collateral agreement to answer for the debt; *Syndicate Bank v. Vijay Kumar*, AIR 1992 SC 1066.

127. Consideration for guarantee.—Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

Illustrations

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. Surety's liability.—The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

COMMENTS

General

Contract of guarantee does not provide any contra-note pertaining to the liability of the surety so as to create an exception within the meaning of section 128; *Industrial Finance Corporation of India Ltd. v. Cannonore Spinning & Weaving Mills Ltd.*, (2002) 5 SCC 54.

Liability of guarantor/surety — *conditional on default*

Liability of guarantor/Surety is co-extensive with that of the debtor. Creditor has a right to obtain a decree against the surety and the principal debtor. Surety has no right to restrain execution of the decree against him until the creditor has exhausted his remedy against the principal debtor for the reason that it is the business of the surety/guarantor to see whether the principal debtor has paid or not; *Ram Krishan v. State of Uttar Pradesh*, AIR 2012 SC 2288; JT 2012 (5) SC 483; (2012) 5 SCALE 673.

Limitation

It is a settled law that the creditor would be entitled to adjust from the payment of a sum by a debtor towards the time barred debt from the guarantor's account. The appellant did not act in violation of any law when he cut the amount from the fixed deposit of the respondent i.e. the surety when the principal debtor failed to pay; *Punjab National Bank v. Surendra Prasad Sinha*, AIR 1992 SC 1815.

Scope

(i) The clauses of the guarantees executed by the appellant in favour of PICUP clearly show that the liability of the guarantors was to remain unaffected by the failure of PICUP to enforce its mortgage and hypothecation against the assets of the company. There is nothing in the contracts which can in any way be construed as contrary to the joint and several liability created under section 128; *Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corporation of U.P. Ltd.*, (2003) 4 SCC 305.

(ii) The surety has given a continuing guarantee, limited in amount, to secure the floating balance which may from time to time be due from the principal debtor to the creditor, the guarantee is *prima facie* to be construed as being of part only of the debt. A continuing guarantee may even be for the fixed period. It is well settled that the guarantor cannot be made liable beyond the terms of the agreements; *Aditya Naryan Chouresia v. Bank of India*, AIR 2000 Pat 222.

Surety may be liable though the principals Contract is void

The Liability of the sureties is co-extensive with that of the principal debtor. Consequently creditor can proceed against the principal debtor or against the sureties, unless it is otherwise provided in the contract. The same should also be the principle with regard to the rights and liabilities between co-sureties as well. A co-surety cannot insist that the creditor should proceed either against the principal debtor or against other sureties before proceeding against him; *Kerala State Financial Enterprises Ltd. v. C.J. Thampi*, AIR 2000 Ker 36.

129. 'Continuing guarantee'.—A guarantee which extends to a series of transactions, is called a 'continuing guarantee'.

Illustrations

(a) A, in consideration that B will employ C in collecting the rents of B's zamindari, promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of £ 100, for any tea he may from time to time supply to C. B supplies C with tea of above the value of £ 100, and C pays B for it. Afterwards, B supplies C with tea of the value of £ 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £ 100.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

130. Revocation of continuing guarantee.—A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Illustrations

(a) *A*, in consideration of *B*'s discounting, at *A*'s request, bills of exchange for *C*, guarantees to *B*, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. *B* discounts bills for *C* to the extent of 2,000 rupees. Afterwards, at the end of three months, *A* revokes the guarantee. This revocation discharges *A* from all liability to *B* for any subsequent discount. But *A* is liable to *B* for the 2,000 rupees, on default of *C*.

(b) *A* guarantees to *B*, to the extent of 10,000 rupees, that *C* shall pay all the bills that *B* shall draw upon him. *B* draws upon *C*, *C* accepts the bill. *A* gives notice of revocation. *C* dishonours the bill at maturity. *A* is liable upon his guarantee.

131. Revocation of continuing guarantee by surety's death.—The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

132. Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's default.—Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustration

A and *B* make a joint and several promissory note to *C*. *A* makes it, in fact, as surety for *B*, and *C* knows this at the time when the note is made. The fact that *A*, to the knowledge of *C*, made the note as surety for *B*, is no answer to a suit by *C* against *A* upon the note.

133. Discharge of surety by variance in terms of contract.—Any variance, made without the surety's consent, in the terms of the contract between the principal ¹[debtor] and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations

(a) *A* becomes surety to *C* for *B*'s conduct as manager in *C*'s bank. Afterwards, *B* and *C* contract, without *A*'s consent, that *B*'s salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. *B* allows a customer to over-draw, and the bank loses a sum of money.

A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) *A* guarantees *C* against the misconduct of *B* in an office to which *B* is appointed by *C*, and of which the duties are defined by an Act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, *B* misconducts himself. *A* is discharged by the change from future liability under his guarantee, though the misconduct of *B* is in respect of a duty not affected by the later Act.

(c) *C* agrees to appoint *B* as his clerk to sell goods at a yearly salary, upon *A*'s becoming surety to *C* for *B*'s duly accounting for moneys received by him as such clerk. Afterwards, without *A*'s knowledge or consent, *C* and *B* agree that *B* should be paid by a commission on the goods sold by him and not by a fixed salary. *A* is not liable for subsequent misconduct of *B*.

1. Ins. by Act 24 of 1917, sec. 2 and Sch. I.

(d) A gives a guarantee to the extent of 3,000 rupees for any oil supplied by C. Afterwards B becomes embarrassed, and, without the knowledge of A, contracts with his creditors (including C) that C shall continue to supply B with oil for ready money, and that C shall be applied to the then, existing debts between B and C. A is not liable for any goods supplied after this new arrangement.

(e) C contracts with B to supply 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January, A is discharged from his liability, as the contract has been performed, as C might sue B for the money before the first of March.

134. Discharge of surety by release or discharge of principal debtor.—The discharge of a surety is effected by a contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time. B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

135. Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.—A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

136. Surety not discharged when agreement made with third person to give time to principal debtor.—Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

Illustration

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give to B. A is not discharged.

137. Creditor's forbearance to sue does not discharge surety.—Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Illustration

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

When a surety is a bond does before, no bond is forfeited. The liability in respect of bond shall be discharged

138. Release of one co-surety does not discharge others.—Where there are co-sureties, a release by the creditor of one of them does not discharge the others, neither does it free the surety so released from his responsibility to the other sureties.¹

139. Discharge of surety by creditor's act or omission impairing surety's eventual remedy.—If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Illustrations

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realized. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

140. Rights of surety on payment or performance.—Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

COMMENTS

A guarantor will get invested with all the rights which the creditor had only "upon payment or performance of all that he is liable for". A guarantor is liable for any payment or performance of any obligation only to the extent the principal debtor has defaulted; *C.K. Aboobacker v. K.P. Ayishu*, AIR 2000 Ker 29 (NOC).

141. Surety's right to benefit of creditor's securities.—A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and if the creditor loses, or without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Surety's right of subrogation

Illustrations

(a) C, advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture. C, cancels the mortgage. B becomes insolvent and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

1. See section 44 of this Act.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

COMMENTS

Meaning of security

Creditor cannot be said to have lost or parted with a security, without consent of the surety, unless there has been some voluntary act by him; *Industrial Finance Corporation of India Ltd. v. Cannanore Spinning & Weaving Mills Ltd.*, (2002) 5 SCC 54.

142. Guarantee obtained by misrepresentation, invalid.—Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

143. Guarantee obtained by concealment, invalid.—Any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

Illustrations

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Guarantee on contract that creditor shall not act on it until co-surety joins.—Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

145. Implied promise to indemnify surety.—In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety, and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but he is compelled to pay the amount of debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

COMMENTS

Surety's right

There is an implied promise by the principal debtor to indemnify the surety and on its basis the latter is entitled to recover from the former whatever sum the latter had rightfully paid under the contract of guarantee; *C.K. Aboobacker v. K.P. Ayishu*, AIR 2000 Ker 29 (NOC).

146. Co-sureties liable to contribute equally.—Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.¹

Illustrations

(a) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(b) A, B and C are sureties to D for the sum of 1,000 rupees lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

147. Liability of co-sureties bound in different sums.—Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations

(a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are liable to pay 10,000 rupees.

(b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay the full penalty of his bond.

CHAPTER IX

Arto, Adomson v. Jarvis OF BAILMENT

148. 'Bailment', 'bailor' and 'bailee' defined.—A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of

1. See section 43 of this Act.

Consideration not required in contract of bailment.

according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'.

Explanation.—If a person is already in possession of the goods of other contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor of such goods, although they may not have been delivered by way of bailment.

COMMENTS

Bailment - general

One of the requirements of bailment is delivery of goods to the bailee. Delivery of possession to the bailee is *sine qua non* of bailment. In order to constitute a bailment change of possession is necessary; *Kavita Trehan v. Balsara Hygiene Products Ltd.*, AIR 1992 Del 103.

149. Delivery to bailee how made.—The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

150. Bailor's duty to disclose faults in goods bailed.—The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If such goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. Care to be taken by bailee.—In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.²

COMMENTS

Care required

In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances; *Kavita Trehan v. Balsara Hygiene Products Ltd.*, AIR 1992 Del 103.

1. The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act, 1905 (Madras Act 2 of 1905), in regard to goods has been declared to be that of a bailee under these sections, without the qualifying words "in the absence of any special contract" in section 152, see section 40(1) of that Act.
2. As to railway contracts see the Indian Railways Act, 1890 (9 of 1890), section 72. [Ed. The Indian Railways Act, 1890 (9 of 1890) has been repealed by the Railways Act, 1989 (24 of 1989), sec. 200.] As to the liability of common carriers, see the Carriers Act, 1865 (3 of 1865), section 8.

Railway company as bailee

Under section 73 of The Railways Act, the responsibility of railway administration as a carrier and also as a bailee commences from the moment the goods are entrusted to the railway administration for transit to be carried by railway and continues until the goods are unloaded at the destination point. When the responsibility under section 73 of the Railways Act terminates, the responsibility of the railway administration under section 77 of The Railway Act commences; *Union of India v. Sattur Nataraja Traders*, AIR 1992 Kant 301.

152. Bailee when not liable for loss, etc., of thing bailed.—The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

153. Termination of bailment by bailee's act inconsistent with conditions.—A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Illustration

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. Liability of bailee making unauthorised use of goods bailed.—If the bailee makes any use of the goods bailed which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Illustrations

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse in Calcutta from B expressly to march to Banaras. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. Effect of mixture, with bailor's consent, of his goods with bailee's.—If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

156. Effect of mixture, without bailor's consent, when the goods can be separated.—If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

1. The responsibility of the Trustees of the Port of Madras constituted under the Madras Port Trust Act, 1905 (Madras Act 2 of 1905), in regard to goods has been declared to be that of a bailee under these sections, without the qualifying words "in the absence of any special contract" in section 152, see section 40(1) of that Act.

Illustration

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

157. Effect of mixture, without bailor's consent, when the goods cannot be separated.—If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

Illustration

A bails a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

158. Repayment, by bailor, of necessary expenses.—Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

159. Restoration of goods lent gratuitously.—The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

160. Return of goods bailed, on expiration of time or accomplishment of purpose.—It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

161. Bailee's responsibility when goods are not duly returned.—If by the fault of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.²

162. Termination of gratuitous bailment by death.—A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

163. Bailor entitled to increase or profit from goods bailed.—In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or

1. Section 161 has been declared to apply to the responsibility of the Trustees of the Port of Madras as to goods in their possession see the Madras Port Trust Act, 1905 (Madras Act 2 of 1905).

2. As to Railway contracts, see the Indian Railways Act, 1890 (9 of 1890), section 72 [Ed. The Indian Railways Act, 1890 (9 of 1980) has been repealed by the Railways Act, 1989 (24 of 1989), sec. 200.]

according to his directions, any increase or profit which may have accrued from the goods bailed.

Illustration

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. Bailor's responsibility to bailee.—The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

165. Bailment by several joint owners.—If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all in the absence of any agreement to the contrary.

166. Bailee not responsible on re-delivery to bailor without title.—If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.¹

167. Right of third person claiming goods bailed.—If a person, other than the bailor, claims goods bailed he may apply to the Court to stop delivery of the goods to the bailor, and to decide the title to the goods.

168. Right of finder of goods, may sue for specific reward offered.—The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

169. When finder of thing commonly on sale may sell it.—When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand, to pay the lawful charges of the finder, the finder may sell it—

- (1) when the thing is in danger of perishing or of losing the greater part of its value, or
- (2) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

170. Bailee's particular lien.—Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

1. See the Indian Evidence Act, 1872 (1 of 1872), section 117.

a cow of A
 in custody
 of B
 B bound
 to deliver
 cow &
 calf

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.

171. General lien of bankers, factors, wharfingers, attorneys and policy-brokers.—Bankers, factors, wharfingers, attorneys of a High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.¹

COMMENTS

Banker's lien

In mercantile system the Bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customers in the ordinary course of banking business. The Bank has the liberty to adjust from the proceeds of the two FDR's towards the dues to the Bank and if there is any balance left that would belong to the depositor; *Syndicate Bank v. Vijay Kumar*, AIR 1992 SC 1066.

General and particular lien

Section 171 of the Act is clear and categorical that unless a contract to the contrary is established by the plaintiffs, the bank's right of lien will have to be accepted; *Smt. K.S. Nagalambika v. Corporation Bank*, AIR 2000 Kant 201.

Workman's lien for remuneration

The proposition that the bailee, who exercises a lien, is not entitled to charge rent for storage of goods can never apply to a case where the lien is exercised for non-payment of rent or storage charges; *Om Shankar Biyani v. Board of Trustees, Port of Calcutta*, (2002) 3 SCC 168.

Bailments of pledges — ownership of prop. continued in Pledgee.

172. 'Pledge', 'pawnor' and 'pawnee' defined.—The bailment of goods as security for payment of a debt or performance of a promise is called 'pledge'. The bailor is in this case called the 'pawnor'. The bailee is called 'pawnee'.

173. Pawnee's right of retainer.—The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interests of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. Pawnee not to retain for debt or promise other than that for which goods pledged. Presumption in case of subsequent advances.—The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

175. Pawnee's right as to extraordinary expenses incurred.—The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

1. As to lien of an agent, see section 221, *infra*. As to lien of a Railway Administration, see the Indian Railways Act, 1890 (9 of 1890), section 55. [Ed. The Indian Railways Act, 1890 (9 of 1890) has been repealed by the Railways Act, 1989 (24 of 1989) Sec. 200. Now see the Railways Act 1989 (24 of 1989, section 83.)

176. P
default in
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suit against
as a collateral
reasonable

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debt or pro
the sale are
surplus to t

Hedge by
a seller in
possession
of goods
after sale
↓
valid

where pawnor makes default.—If the pawnor makes debt, or performance; at the stipulated time or the which the goods were pledged, the pawnee may bring a on the debt or promise, and retain the goods pledged he may sell the thing pledged, on giving the pawnor le.

If the sale are less than the amount due in respect of the or is still liable to pay the balance. If the proceeds of he amount so due, the pawnee shall pay over the

Notice of Sale

It is not i
time or place
sale; *Sunderla*

Scope

It is the discretion of the pawnee to sell the goods in case the pawnor makes default but if the pawnee does not exercise that discretion no blame can be put on the pawnee and pawnee has the right to bring a suit for recovery of the debt and retain the goods pledged as collateral security; *State Bank of India v. Smt. Neela Ashok Naik*, AIR 2000 Bom 151.

177. 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 them¹, but he must, in that case, pay, in addition, any expenses which have arisen from his default.

²[178. Pledge by mercantile agent.—Where a mercantile agent is, with the consent of the owner, in possession of goods or the document of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge.]

Explanation.—In this section, the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (3 of 1930).]

³[178A. Pledge by person in possession under voidable contract.—When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.]

179. Pledge where pawnor has only 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.

Suits by bailees or bailors against wrong-doers

180. Suit by bailor or bailee against wrong-doer.—If a third person wrongfully deprives the bailee of the use of possession of the goods bailed, or

1. For limitation, see the Limitation Act, 1963 (36 of 1963), Schedule 1.

2. Sections 178 and 178A subs. by Act 4 of 1930, sec. 2, for section 178.

does them any injury, the bailee is entitled to use such might have used in the like case if no bailment had been made or the bailee may bring a suit against a third person for injury.

181. Apportionment of relief or compensation obtained. — Whatever is obtained by way of relief or compensation in respect of a bailment between the bailor and the bailee, be dealt with according to their respective interests.

Under section 182 of contract Act, National Taxile Corporation Ltd is not an agent of central government.

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CHAPTER X
AGENCY

Appointment and authority of agents

182. 'Agent' and 'principal' defined.—An 'agent' is a person authorized to do any act for another, or to represent another in dealings with third person. The person for whom such act is done, or who is so represented, is called the 'principal'.

COMMENTS

Principle of agency

D.E.S.U. is not an insurance agent within the meanings of life Insurance Corporation Act, 1956 and the Life Insurance Corporation of India (Agents) Regulations, 1972 but D.E.S.U. is certainly an agent as defined in section 182 of the Act. When there is no insurance agent as defined in the Regulations and the Insurance Act, general principles of the law of agency as contained in the Contract Act are to be applied; *D.E.S.U. v. Basanti Devi*, AIR 2000 SC 43.

of necessity applicable in emergent situations where communication with principal is not possible

183. Who may employ agent.—Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

COMMENTS

Scope

Since the defendant is weak, mentally infirm and cannot comprehend for herself, the power of attorney which authorised to act as agent of the defendant had been exhausted because of the defendant's incapacity; *Mahendra Pratap Singh v. Padam Kumari Devi*, AIR 1993 All 182.

184. Who may be an agent.—As between the principal and third person any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

185. Consideration not necessary.—No consideration is necessary to create an agency.

186. Agent's authority may be expressed or implied.—The authority of an agent may be expressed or implied.¹

187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. An authority is said to

1. See, however, the Registration Act, 1908 (16 of 1908), section 33; See also the Code of Civil Procedure, 1908 (5 of 1908), Schedule I, Order III, rule 4.

be im... things circum... to be inferred from the circumstances of the case; and then, or the ordinary course of dealing, may be accounted as.

A employs B to recover Rs. 1000 from C through B's intervention. The money is not so covered. B is permitted to no remuneration and must make good the loss.

Illustration

A Serampor, living himself in Calcutta, and visiting the shop managed by B, and he is in the habit of ordering goods from C in the name of the shop, and of paying for them out of A's funds as an implied authority from A to order goods from C in the name of the shop.

188. Agent's authority in an emergency.—An agent having an authority to do an act which is necessary in order to do such act.

An agent, in an authority to carry on a business, has authority to do every lawful thing which is necessary for the purpose, or usually done in the course, of conducting such business.

Illustrations

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

189. Agent's authority in an emergency.—An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case under similar circumstances.

Illustrations

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Calcutta, with directions to send them immediately to C, at Cuttack. B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-agents

190. When agent cannot delegate.—An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

191. 'Sub-agent' defined.—A 'sub-agent' is a person employed by, and acting under the control of, the original agent in the business of the agency.

192. Representation of principal by sub-agent properly appointed.—Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent.—The agent is responsible to the principal for the acts of the sub-agent.

* A person appointed by an agent under no authority of principal — substituted agent

Sub-agent's responsibility.—The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud or wilful wrong.

193. Agent's responsibility for sub-agent appointed without authority.—Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

194. Relation between principal and person duly appointed by agent to act in business of agency.—Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations

(a) A directs B, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorizes B, a merchant in Calcutta, to recover the moneys due to A from C & Co. B instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is solicitor for A.

195. Agent's duty in naming such person.—In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship-surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification

196. Right of person as to acts done for him without his authority. Effect of ratification.—Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

197. Ratification may be expressed or implied.—Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done. → effect of ratification — Retrospective

Illustrations

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) *A*, without *B*'s authority, lends *B*'s money to *C*. Afterwards *B* accepts interest on the money from *C*. *B*'s conduct implies a ratification of the loan.

198. Knowledge requisite for valid ratification.—No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

199. Effect of ratifying unauthorized act forming part of a transaction.—A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which such act formed a part.

200. Ratification of unauthorized act cannot injure third person.—An act done by one person on behalf of another, without such other person's authority, which, if done with authority would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations

(a) *A*, not being authorized thereto by *B*, demands, on behalf of *B*, the delivery of a chattel, the property of *B*, from *C* who is in possession of it. This demand cannot be ratified by *B*, so as to make *C* liable for damages for his refusal to deliver.

(b) *A* holds a lease from *B*, terminable on three months' notice. *C*, an unauthorized person, gives notice of termination to *A*. The notice cannot be ratified by *B*, so as to be binding on *A*.

Revocation of authority

201. Termination of agency.—An agency is terminated by the principal revoking his authority, or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.

202. Termination of agency, where agent has an interest in subject-matter.—Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Illustrations

(a) *A* gives authority to *B* to sell *A*'s land, and to pay himself, out of the proceeds, the debts due to him from *A*. *A* cannot revoke this authority, nor can it be terminated by his insanity or death.

(b) *A* consigns 1,000 bales of cotton to *B*, who has made advances to him on such cotton, and desires *B* to sell the cotton, and to repay himself out of the price the amount of his own advances. *A* cannot revoke this authority, nor is it terminated by his insanity or death.

COMMENTS

Agent may enforce Contracts if personally interested

A power of attorney executed in favour of an agent recording or recognizing an interest of the Agent/Attorney in the property which is the subject-matter of the Agency, cannot be revoked or terminated, even if the instrument does not state specifically that it is irrevocable, as then it would be a power coupled with an interest but a power of attorney simpliciter which merely authorised an agent to do certain acts in the name of

or on behalf of the executant at any time in spite of the instrument that power of attorney be revoked or cancelled by the executant at any time in spite of the instrument stating that the Power of Attorney is irrevocable; *Corporation Bank, Bangalore v. Lalitha H. Holla*, AIR 1994 Kant 133.

203. When principal may revoke agent's authority.—The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

204. Revocation where authority has been partly exercised.—The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

Illustrations

(a) A authorizes B to buy 1,000 bales of cotton on account of A and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Compensation for revocation by principal, or renunciation by agent.—Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

206. Notice of revocation or renunciation.—Reasonable notice must be given of such revocation or renunciation, otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

207. Revocation and renunciation may be expressed or implied.—Revocation or renunciation may be expressed or may be implied in the conduct of that principal or agent respectively.

Illustration

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. When termination of agent's authority takes effect as to agent, and as to third persons.—The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

Illustrations

(a) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards by letter, revokes B's authority. B after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(b) *A*, at Madras, by letter directs *B* to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter revokes his authority to sell, and directs *B* to send the cotton to Madras. *B* after receiving the second letter, enters into a contract with *C*, who knows of the first letter, but not of the second for the sale to him of the cotton. *C* pays *B* the money, with which *B* absconds. *C*'s payment is good as against *A*.

(c) *A* directs *B*, his agent, to pay certain money to *C*. *A* dies, and *D* takes out probate to his will. *B*, after *A*'s death, but before hearing of it, pays the money to *C*. The payment is good as against *D*, the executor.

209. Agent's duty on termination of agency by principal's death or insanity.—When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

210. Termination of sub-agent's authority.—The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's duty to principal

211. Agent's duty in conducting principal's business.—An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and if any profit accrues, he must account for it.

Illustrations

(a) *A*, an agent engaged in carrying on for *B* a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investments. *A* must make good to *B* the interest usually obtained by such investments.

(b) *B*, a broker in whose business it is not the custom to sell on credit, sells goods of *A* on credit to *C*, whose credit at the time was very high. *C*, before payment, becomes insolvent. *B* must make good the loss to *A*.

212. Skill and diligence required from agent.—An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business unless the principal has notice of this want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

Illustrations

(a) *A*, a merchant in Calcutta, has an agent, *B*, in London, to whom a sum of money is paid on *A*'s account, with orders to remit. *B* retains the money for a considerable time. *A*, in consequence of not receiving the money, becomes insolvent. *B* is liable for the money and interest, from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as, e.g., by variation of rate of exchange—but not further.

(b) *A*, an agent for the sale of goods, having authority to sell on credit, sells to *B* on credit, without making the proper and usual enquiries as to the solvency of *B*. *B* at the time of such sale is insolvent. *A* must make compensation to his principal in respect of any loss thereby sustained.

(c) *A*, an insurance-broker employed by *B* to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. *A* is bound to make good the loss to *B*.

(d) *A*, a merchant in England, directs *B*, his agent at Bombay, who accepts the agency, to send him 100 bales of cotton by a certain ship. *B*, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. *B* is bound to make good to *A* the profit which he might have made by the 100 bales of cotton at the time of ship arrived, but not any profit he might have made by the subsequent rise.

COMMENTS

General

The defendant/respondent had grossly misconducted himself firstly when he communicated to the appellant that the goods had been purchased at the rate of Rs. 36 per pound when they had not been and further stating that these goods would be despatched as soon as the transporters strike was over. The defendant later on informed the appellant that the goods could not be purchased as their delivery was dependant on yet another party. The defendant had misinformed his principal and his misconduct squarely comes within section 212 of Contract Act; and the defendant must bear the brunt to pay the damages; *Jayabharathi Corporation v. SV P.N. SN Rajasekara Nadar*, AIR 1992 SC 596.

213. Agent's accounts.—An agent is bound to render proper accounts to his principal on demand.

214. Agent's duty to communicate with principal.—It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions.

215. Right of principal when agent deals, on his own account, in business of agency without principal's consent.—If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows, either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations

(a) *A* directs *B* to sell *A*'s estate. *B* buys the estate for himself in the name of *C*. *A*, on discovering that *B* has bought the estate for himself, may repudiate the sale, if he can show that *B* has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) *A* directs *B* to sell *A*'s estate. *B*, on looking over the estate before selling it, finds a mine on the estate which is unknown to *A*. *B* informs *A* that he wishes to buy the estate for himself, but conceals the discovery of the mine. *A* allows *B* to buy, in ignorance of the existence of the mine. *A*, on discovering that *B* knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

216. Principal's right to benefit gained by agent dealing on his own account in business of agency.—If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. Agent's right of retainer out of sums received on principal's account.—An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

218. Agent's duty to pay sums received for principal.—Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

219. When agent's remuneration becomes due.—In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

220. Agent not entitled to remuneration for business misconducted.—An agent who is guilty of misconduct in the business of the agency, is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Illustrations

(a) A employs B to recover 1,00,000 rupees from C, and to lay it out on good security, B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees on security which he ought to have known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(b) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. Agent's lien on principal's property.—In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

COMMENTS

Lien of agent

The lien of an agent extends only to the retention of the property till his dues are paid. At common law a legal lien merely confers on the holder of the articles in respect

of which it was claimed, a passive right to detain the articles until the debt is paid. Such a lien cannot be enforced by sale of the goods; *Kavita Trehan v. Balsara Hygiene Products Ltd.*, AIR 1992 Del 103.

Principal's duty to agent

222. Agent to be indemnified against consequences of lawful acts.—The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Illustrations

(a) *B*, at Singapore, under instructions from *A* of Calcutta, contracts with *C* to deliver certain goods to him. *A* does not send the goods to *B*, and *C* sues *B* for breach of contract. *B* informs *A* of the suit, and *A* authorises him to defend the suit. *B* defends the suit, and is compelled to pay damages and costs, and incurs expenses. *A* is liable to *B* for such damages, costs and expenses.

(b) *B*, a broker at Calcutta, by the orders of *A*, a merchant there, contracts with *C* for the purchase of 10 casks of oil for *A*. Afterwards *A* refuses to receive the oil, and *C* sues *B*. *B* informs *A*, who repudiates the contract altogether. *B* defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. *A* is liable to *B* for such damages, costs and expenses.

223. Agent to be indemnified against consequences of acts done in good faith.—Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it may cause an injury to the rights of third persons.

Illustrations

(a) *A*, a decree-holder and entitled to execution of *B*'s goods requires the officer of the Court to seize certain goods, representing them to be the goods of *B*. The officer seizes the goods, and is sued by *C*, the true owner of the goods. *A* is liable to indemnify the officer for the sum which he is compelled to pay to *C*, in consequence of obeying *A*'s directions.

(b) *B*, at the request of *A*, sells goods in the possession of *A*, but which *A* had no right to dispose of. *B* does not know this, and hands over the proceeds of the sale to *A*. Afterwards *C*, the true owner of the goods, sues *B* and recovers the value of the goods and costs. *A* is liable to indemnify *B* for what he has been compelled to pay to *C*, and for *B*'s own expenses.

224. Non-liability of employer of agent to do a criminal act.—Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise to indemnify him against the consequences of that act.¹

Illustrations

(a) *A* employs *B* to beat *C*, and agrees to indemnify him against all consequences of the act. *B* thereupon beats *C*, and has to pay damages to *C* for so doing. *A* is not liable to indemnify *B* for those damages.

(b) *B*, the proprietor of a newspaper, publishes, at *A*'s request, a libel upon *C* in the paper, and *A* agrees to indemnify *B* against the consequences of the publication, and all costs and damages of any action in respect thereof. *B* is sued by *C* and has to pay damages, and also incurs expenses. *A* is not liable to *B* upon the indemnity.

1. See section 24 of this Act.

225. Compensation to agent for injury caused by principal's neglect.—The principal must make compensation to his agent in respect of injury¹ caused to such agent by the principal's neglect or want of skill.

Illustration

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contracts with third persons

226. Enforcement and consequences of agent's contracts.—Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person.

Illustrations

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(b) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

227. Principal how far bound, when agent exceeds authority.—When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

Illustration

A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

228. Principal not bound when excess of agent's authority is not separable.—Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction.

Illustration

A, authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

229. Consequences of notice given to agent.—Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequences as if it had been given to or obtained by the principal.

1. Cf. the Indian Fatal Accidents Act, 1855 (13 of 1855).

Illustrations

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

230. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal.—In the absence of any contact to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Presumption of contract to contrary.—Such a contract shall be presumed to exist in the following cases:—

- (1) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
- (2) where the agent does not disclose the name of his principal;
- (3) where the principal, though disclosed, cannot be sued.

COMMENTS**When agent can be impleaded**

It is true that under section 230 if contract not falling within exception therein, cannot be enforced by or against the agent, obviously the suit cannot be filed by or against agent to get relief. However, section 230 is no bar to implead agent as party for other purpose or may be for effective adjudication of the suit if called for; *Jaqua Industries and Sales Co. Pvt. Ltd. v. Mussammat Anis Fatima Begum*, AIR 2007 (NOC) 81 (Cal).

When agent can be sued

Before the agent can be sued it must be pleaded and shown that the principal is undisclosed and the contract, the breach of which is sued on was entered into by the agent as having contracted personally. Where the contract is entered into by agent contracting on behalf of a foreign principal who is named and disclosed, the agent can not be sued personally nor made personally liable; *Midland Overseas v. "CMBT TANA"*, AIR 1999 Bom 401.

231. Right of parties to a contract made by agent not disclosed.—If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

232. Performance of contract with agent supposed to be principal.—Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the right and obligations subsisting between the agent and the other party to the contract.

Illustration

A, who owes 500 rupees to B, sells 1,000 rupees worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Standard form of contract is either in favour of or against the contractor

233. Right of person dealing with agent personally liable.—In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

Illustrations

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.—When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

235. Liability of pretended agent.—A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

236. Person falsely contracting as agent, not entitled to performance.—A person with whom a contract has been entered into in the character of agent, is not entitled to require the performance of it, if he was in reality acting, not as agent, but on his own account.

237. Liability of principal inducing belief that agent's unauthorized acts were authorized.—When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Illustrations

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

238. Effect, on agreement, of misrepresentation or fraud by agent.—Misrepresentation made or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations

(a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

~~By~~ A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

CHAPTER XI

Of Partnership.—Sections 239-266. [Rep. by the Indian Partnership Act, 1932 (9 of 1932), sec. 73 and Sch. II.]

SCHEDULE

Enactments repealed.—[Rep. by the Repealing and Amending Act, 1914 (10 of 1914) sec. 3 and Sch. II.]

① Breach of contract : — actual or anticipatory

② Del credere

↳ In a kind of mercantile Agent

③ Right to sell → not available to an agent

↳ Right to retain claim compensation available.

④ A unilateral contract in which only one party is bound is known as Executed Contract

⑤ defence of "non est factum" is available to the contracting party who has committed mistake as to the
↳ Nature of contract

"Non est factum" = a plea that a written agreement is invalid because the defendant was mistaken about its character when signing it.

⑥ Quantum meruit

↳ proportionate earning

⑦ An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by an ascertained person — London

Contract can be discharged :- By Performance of the contract
 - By Frustration of the contract

MODEL SPECIMENS*

DAMAGES ON BREACH OF CONTRACT

1. That the defendant entered into an agreement dated..... with the plaintiff, a dealer in cereals for the supply of..... bags of gram at the rate of..... per bag by the..... day of.....20... (time being an essence of the contract) and took an advance of Rs..... therefor. The agreement is enclosed herewith.

2. That the defendant supplied..... bags of gram under the agreement and received a further sum of Rs..... as advance on.....but defaulted to supply the balance in breach of the agreement for which the plaintiff sent a lawyer's notice which the defendant received on.....

3. That due to breach of the agreement the plaintiff suffered the damages detailed below in schedule which the defendant is liable to compensate along with the customary interest of 9% p.a. according to the prevailing business practice. The plaintiff is liable to pay a sum of Rs..... towards the price of bags of green gram supplied under the agreement after deducting the advances made as stated above. Deducting the defendant's balance dues from the plaintiff's claim for damages, the plaintiff's net dues from the defendant come to Rs..... as shown in the schedule below.

4. That the defendant not having paid the plaintiff's aforesaid dues, the plaintiff has been compelled to institute the suit.

5. (Jurisdiction facts, Courts fees, etc.)

Prayer: Let a decree be passed in favour of the plaintiff for the recovery of a sum of Rs..... as per details in the schedule below along with *pendente lite* and future interest and the costs of the suit.

SCHEDULE

Defendant agreed to deliverbags	(gram)
Deliveredbags	
Default ofbags	
Sale price (Prevalent in...)per bag	Rs/-...
Purchase priceper bag	Rs/-...
Loss of profit per bag		Rs/-...
Total loss for... bags at above rates		Rs/-...
9% interest from to		Rs/-...
	Damage	Rs/-...
Minus defendant's balance dues		Rs/-...
Plaintiff's net dues		Rs/-...
Verification		Rs/-...

.....
 Plaintiff's Advocate

Limitation Act 55: Three years: when the contract is broken.

* These specimens are for guidance. Contents may vary according to the terms and conditions of the agreement and prevailing circumstances.

EXECUTION OF DEEDS BY AGENTS

This Deed is executed the day of 20... by an attorney, or a guardian, or some other person in a representative capacity on behalf of the principal;

"Whereas (name of the attorney) has been authorised to execute these presents by the said (name of the principal) by means of a power of attorney dated duly registered in the office of the Sub-Registrar of as number " or "Whereas by an order dated (name of the guardian) has been appointed as guardian of the said (name of the minor) minor declared by the Court of and on sanction was granted by the said Court to the said..... (name of the guardian) to transfer in the manner hereinafter following property of minor intended hereby to be transferred."

The concluding clause of the deed, that is, the *Testimonium clause*, should be:—

"In witness whereof (name of the principal) has executed this document, through (name) his [attorney/guardian] in the presence of or in the alternative." In witness whereof (name) [attorney/guardian, etc.] has set his signatures to this deed on behalf of the said (name) in the presence of, etc."

If a deed is to be executed by or on behalf of a corporation, *i.e.*, a registered company, or a public body like a Municipal Board/Corporation, District Board, etc., it should be made to commence in the official name of such corporation. The following will be the form of commencement in the case of a Registered Company. "This sale-deed made between Company Ltd., a Joint Stock Company limited by [shares/guarantee] duly incorporated under the Companies Act, 1956 and having its registered office at " In the case of the other corporations the commencement would be "between the Municipal Board/ Corporation of (name of place)" or between the District Board of District" or between the Cantonment Board of"

In the recitals it should be added "Whereas the said [Company/Corporation or Board] did by a resolution passed by its [Directors/Members] or authorised and (names of persons executing the documents) to transfer, in the manner hereinafter mentioned, property intended to be sold by these presents (or to execute this agreement, sale-deed, or these presents)."

Where the Company or the Corporation possesses a seal and, under its Articles of Association or the law governing it, contracts have to be sealed with the seal of the Company or of the Corporation, the seal should in such cases be affixed on the deed at the end, in the presence of the persons authorised to affix the same. The following should be the form of the concluding clause, *i.e.*, the *Testimonium clause*:

"In witness whereof the seal of the..... Company Ltd., (Municipal Corporation/ Board of etc.,) has been affixed hereto by and in the presence of (person authorised)." After this should follow the signatures of such persons, and of the witnesses to their signatures.

In short, when a person executes a deed in the name and on behalf of another person, his authority to do so must be clearly set out in the deed at the commencement, or in the recitals, or the concluding part of the document.

Where the sanction of a superior authority is legally necessary to validate a contract, as for instance, of the Commissioner, or of the Government, in certain contracts by the local bodies, such sanction should be described in the deed, preferably in the recitals.

Notes

- ① Promissory estoppel is sometimes spoken of as substitute of quid pro quo consideration
- ② The defendant promises to marry plaintiff on day of his father. He marries during the lifetime of father. Plaintiff has option to sue immediately or wait for the death of father — eg sec 29
- ③ Restitution stops where repayment begins — Mohdobi v. Mahmood Omarwal & Khan Gul v. Lakha Singh
- ④ Union of India v. Maddala Mathala — Standing offer.
- ⑤ Justice Hawkins gave form of 'wagering agreement' in Carill v. Carbolic Smoke Ball Co.
- ⑥ An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by ascertained person — Anson
- ⑦ Sabya Prasad Ghose v. Mangiram Bonger → Frustration
- ⑧ "Nudum pactum" — Without consideration.
↳ An agreement without consideration is called "nudum pactum"
- ⑨ Two main competing definitions of contract in common law
 - ↳ contract is a promise or set of promises which the law will enforce.
 - + ↳ contract is an agreement giving rise to obligations which are enforced, or recognized by law
- ⑩ A right to sue on "Quantum Merit" arises when a party partly performed the contract and is discharged by the other party.
- ⑪ In Relation to devolution of joint liabilities, as a general rule the Indian Contract Act, incorporates principle of — survivorship + succession (Both)
- ⑫ Where there is breach of contract, special damages are awarded — only when there is a notice of the likely special loss (special circumstances must be communicated).

Del credere agent → mercantile agent

C-5	Thredde v. Atkinson — Privity of contract	05	65.00
C-4	Bajour v. Bajour — Intention to contract	es	55.00
C-2			45.00
C-21	Khan Gul v. Lakha Singh — Restitution		
C-4		with	
C-2	Nash v. Inman → necessaries	fee Rules,	
C-2		bre	
C-5		payment	125.00
C-5	⊙ In Corlil v Carbolic Smoke Ball Co	Act, 1997	
C-5	↳ Justin Hawkins gave the	ong with	
C-46	definition of "wagering	: of IPC	
C-41	Intention of contract	to Dowry	35.00
C-27	is not an essential of	376	35.00
C-28	contract under Indian law.		65.00
C-29			450.00
		actionable	
		ig with	
		013	35.00
			65.00
			95.00

Lalman Shukla v. Appand Out → General offer

McPherson v. ~~Suthardhan~~ Appana → invitation to treat

Barwarial v. Suthardhan Dayal → intention to create legal relationship

Mc Chacko v. State Bank of Hyderabad → Privity of contract

⊙ Mc Gregor v. Mc Gregor — Intention to contract

⊙ Weeks v. Rybold — General proposal

⊙ Henderson v. Stevenson — Reasonable notice

⊙ Currie v. Misa — Consideration.

D-1.

⊙ executory consideration

D-11.

↳ consists of promise in future

D-2.

↳ liable is outstanding on both sides

D-3.

↳ In a promise for promise

Unive.

A contract over telephone becomes complete at place where
 acceptance is heard — Bhagwandas v. Girdharibai

P-24. Flag Code of India, 2002 see Prevention of Insult to National Honour Act, 1971	35.00	I-8. Industries (Development and Regulation) Act, 1951	45.00
F-16. Food Safety and Standards Act, 2006	75.00	I-9. Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 along with Rules, 1993	35.00
F-15. Food Safety and Standards Act, 2006 along with allied Rules, Regulations and order	495.00	I-10. Information Technology Act, 2000 along with Rules & Regulations	190.00
F-5. Foreign Contribution (Regulation) Act, 2010 along with Rules and Regulations	75.00	I-19. Inland Vessels Act, 1917	70.00
F-6. Foreign Exchange Management Act, 1999 as amended by the Finance Act, 2015	40.00	I-11. Insecticides Act, 1968 along with Rules and Order	100.00
F-7. Foreign Exchange Management Act, 1999 along with allied Rules and Regulations & Orders	295.00	I-23. Insolvency and Bankruptcy Code, 2016	150.00
F-8. Foreign Exchange Regulation Act, 1973 along with Rules, 1974	70.00	I-12. Insurance Act, 1938 along with allied Act and Rules	315.00
F-9. Foreign Marriage Act, 1969 along with Foreign Marriage Rules, 1970	35.00	I-13. Insurance Regulatory and Development Authority Act, 1999 along with allied Rules and Regulations	425.00
F-10. Foreign Trade (Development and Regulation) Act, 1992 along with Rules, 1993	65.00	I-14. Insurance Regulatory and Development Authority Act, 1999	45.00
F-11. Foreigners Act, 1946 along with Foreigners Orders, 1948 with Registration of Foreigners Act, 1939 and Rules, 1992	65.00	I-15. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 along with Rules, 1980	70.00
F-12. Forest Act, 1927 along with The Forest (Conservation) Act, 1980 and Rules, 2003	135.00	I-16. Interest Act, 1976	35.00
F-13. Forward Contracts (Regulation) Act, 1952 as amended by the Finance Act, 2015	50.00	I-17. Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993	35.00
F-14. Freedom of Information Act, 2002	35.00	J	
G		J-1. Juvenile Justice (Care and Protection of Children) Act, 2000 along with Rules, 2007	160.00
G-1. Gas Cylinders Rules, 2004 along with Rules, 1981 and allied Orders	140.00	K	
G-2. General Clauses Act, 1897	35.00	M-18. Kazis Act, 1880 see Muslim laws (containing 9 Acts & Rules)	55.00
I-12. General Insurance Business (Nationalisation) Act, 1972 see Insurance Act, 1938	315.00	L	
G-5. Geographical Indications of Goods (Registration and Protection) Act, 1999 along with Rules, 2002	100.00	L-1. Land Acquisition Act, 1894	90.00
G-7. Government Securities Act, 2006 along with Regulations	60.00	L-9. Land Ports Authority of India Act, 2010	55.00
G-8. Gram Nyayalayas Act, 2008	40.00	L-7. Legal Metrology Act, 2009 along with Allied Rules	450.00
G-6. Guardians and Wards Act, 1890	35.00	L-2. Legal Services Authorities Act, 1987 along with allied Rules and Regulations	90.00
H		L-3. Life Insurance Corporation Act, 1956 along with Rules, 1956	55.00
H-1. Hindu Laws (Containing 5 Acts)	70.00	L-4. Limitation Act, 1963	40.00
H-2. Hindu Adoption & Maintenance Act, 1956	35.00	L-6. Limited Liability Partnership Act, 2008 along with Notification and Allied Rules	340.00
H-1. Hindu Disposition of Property Act, 1916 see Hindu Laws (containing 5 Acts)	70.00	L-8. Limited Liability Partnership Act, 2008	55.00
H-3. Hindu Marriage Act, 1955	40.00	L-10. Lokpal and Lokayuktas Act, 2013	60.00
H-4. Hindu Minority & Guardianship Act, 1956	35.00	L-5. Lotteries (Regulation) Act, 1998	35.00
H-5. Hindu Succession Act, 1956	40.00	M	
H-6. Hire-Purchase Act, 1972 along with Hire-Purchase (Repeal) Act, 2005	35.00	A-8. Madras Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1966 see Ancient Monuments and Archaeological Sites and Remains Act, 1958	110.00
I		M-26. Mahatma Gandhi National Rural Employment Guarantee Act, 2005	60.00
I-1. Identification of Prisoners Act, 1920	35.00	M-22. Major Port Trusts Act, 1963	65.00
I-2. Immoral Traffic (Prevention) Act, 1956	40.00	M-1. Majority Act, 1875 along with Guardian and Wards Act, 1890	40.00
I-18. Income Tax Act as amended by Finance Act, 2016 & Insolvency and Bankruptcy Code, 2016	895.00	M-24. Maintenance and Welfare of Parents and Senior Citizens Act, 2007	35.00
I-3. Indecent Representation of Women (Prohibition) Act, 1986 along with Rules, 1987	35.00	M-2. Maternity Benefit Act, 1961 along with Rules, 1963	45.00
I-4. Indian Penal Code, 1860 with Classifications of offences and State Amendments	150.00	M-3. Medical Council Act, 1956 along with Allied Act, Rules and Regulations	350.00
I-21. Indo-Tibetan Border Police Force Act, 1992 along with Rules, 1994	130.00	M-4. Medical Termination of Pregnancy Act, 1971 along with Rules and Regulations	35.00
I-6. Industrial Employment (Standing Orders) Act, 1946 along with Rules, 1946	45.00	M-5. Medicine Central Council Act, 1970	70.00
I-7. Industrial Disputes Act, 1947 along with (Central) Rules, 1957 and allied Rules	140.00	M-6. Medicinal and Toilet Preparations (Excise Duties) Act, 1955	35.00
		M-7. Mental Health Act, 1987 along with Central Mental Health Authority Rules, 1990 and State Mental Health Rules, 1990	65.00

M-8. Merchant Shipping Act, 1958 along with allied Rules	495.00	N-19. National Waterways Act, 2016	45.00
M-25. Metro Railways (Construction of Works) Act, 1978 see Metro Railways (Operation and Maintenance) Act, 2002	175.00	N-8. Navy Act, 1957	70.00
M-25. Metro Railways (Operation and Maintenance) Act, 2002 along with allied Rules and Metro Railways (Construction of Works) Act, 1978		N-9. Negotiable Instruments Act, 1881	55.00
M-21. Micro, Small and Medium Enterprises Development Act, 2002		N-10. Notaries Act, 1952 along with Rules, 1956	40.00
M-10. Min. Min. Reg. and a. Min. Devel. Miner and a. Min. Centra. Monop. Practic.			
M-9. Mine and a. Min. Devel. Miner and a. Min. Centra. Monop. Practic.			
M-10. Mine Devel. Miner and a. Min. Centra. Monop. Practic.			
M-11. Motor 1			
M-14. Motor V			
M-15. Motor V allied M			
M-16. Multimod Act, 1993			
M-17. Multi-Stat Act, 2002			
M-18. Muslim Law Application			
M-19. Muslim Pe Rules, 1986			
M-20. Muslim Wo on Divorce) Rules, 1986			
M-18. Mussalman & 1930 see			
N-1. Narcotic Dr. 1985 along			
N-18. National An Anti-Doping			
N-2. National Co 4 Acts-Wor 1992, Back Safai Karan Information			
N-3. National Co Educational with allied			
N-16. National Fo			
N-6. National Hi with allied			
N-6. National Hi 1988 see h			
N-15. National G 2010 along (Practice at			
N-14. National In			
N-17. National Ju Commissi			
M-26. National R Guarantee.			
N-7. National Security Act, 1980	35.00		
N-13. National Security Guard Act, 1986	60.00		
N-12. National Tax Tribunal Act, 2005	35.00		
P-9. National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation with Multiple Disabilities Act, 1999 see Persons with Disabilities (Equal Opportunities.....) Act, 1995	90.00		
		P-21. Prevention of illicit traffic in NDPS Act, 1988 see Preventive Detention Laws	55.00
		P-24. Prevention of Insults to National Honour Act, 1971 along with Flag Code of India, 2002 and Orders Relating to the National Anthem of India	35.00
		P-25. Prevention of Money Laundering Act, 2002 along with allied Rules	150.00

Real consideration is not essential consideration to contract (under law)

While it is in law to enforce

- 1) Tinn v. Hoffman → cross offer
- 2) Fisher v. Bell → invitation to treat
- 3) Corbi v. Carbolic → offer at large
- 4) Harvelly v. Paddy → invitation to treat offer

- 1) Bhagwati Prasad Sawant Kumar v. UOI → Acceptance of offer by conduct
- 2) Ali mohd Sheikh v. J&K → Promissory estoppel
- 3) Sapna Ganglani v. R.S. Enterprises → Contract through email

Universal's Bare Acts & Rules—1st Choice of Bench & Bar

An easement which, not being an easement of absolute necessity, comes into existence by presumed grant or operation of law is called — quasi-easement —

✓ Supervening impossibility → frustration
 ✓ consideration — Quid Pro quo
 ✓ Good faith → uberrima fides contract
 ✓ Only by the court → privity of contract

P-27. Preventive Detention Laws (Containing 4 Acts)	55.00
P-29. Prisoners Acts (Containing 6 Acts & Rules)	60.00
P-29. Prisoners (Attendance in Courts) Act, 1955 see Prisoners Acts	60.00
P-30. Private Security Agencies (Regulation) Act, 2005 with Rules, 2006	40.00
P-31. Prize Chits and Money Circulation Schemes (Banning) Act, 1978	35.00
P-32. Probation of Offenders Act, 1958	35.00
P-45. Prohibition of Child Marriage Act, 2006 along with Allied Acts	35.00
P-47. Protection of Children from Sexual Offences Act, 2012	40.00
P-33. Protection of Civil Rights Act, 1955 along with Rules, 1977	35.00
P-34. Protection of Human Rights Act, 1993 along with Regulations and Rules	55.00
P-35. Protection of Plant Varieties and Farmers' Rights Act, 2001 along with Rules & Regulations	170.00
P-44. Protection of Women from Domestic Violence Act, 2005 along with Rules 2006	70.00
P-36. Provincial Insolvency Act, 1920	70.00
P-37. Provincial Small Cause Courts Act, 1887	40.00
P-38. Public Gambling Act, 1867	40.00
P-39. Public Liability Insurance Act, 1991 along with Rules, Forms & Notification	35.00
P-40. Public Premises (Eviction of Unauthorised Occupants) Act, 1971 along with Rules, 1971	50.00
P-41. Public Provident Fund Act, 1968	35.00
P-42. Public Records Act, 1993 along with Rules, 1997	35.00
P-43. Public Servants (Inquiries) Act, 1850	35.00

R

R-1. Railways Act, 1989 along with allied Acts and Rules	130.00
R-13. Railway Claims Tribunal Act, 1987 along with allied Rules	65.00
R-2. Railway Protection Force Act, 1957 along with Rules, 1987	140.00
R-16. Real Estate (Regulation and Development) Act, 2016	65.00
R-3. Recovery of Debts Due to Banks and Financial Institutions Act, 1993 along with allied Rules	60.00
R-4. Registration Act, 1908	80.00
R-5. Registration of Births and Deaths Act, 1969 and The Births, Deaths and Marriages Registration Act, 1886	40.00
F-11. Registration of Foreigners Act, 1939 along with Rules, 1992 see Foreigners Act, 1946	65.00
C-11. Religious Endowments Act, 1863 see Charitable and Religious Trusts Act, 1920	55.00
R-6. Representation of the People Act, 1950 and Representation of the People Act, 1951 along with allied Act & Rules	295.00
R-7. Repatriation of Prisoners Act, 2003 along with allied Acts	50.00
R-12. Requisitioning and Acquisition of Immovable Property Act, 1952	40.00
R-8. Research and Development Cess Act, 1986 along with Rules, 1996	30.00
R-10. Reserve Bank of India Act, 1934	100.00
R-14. Right of Children to Free and Compulsory Education Act, 2009	50.00

R-15. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013	100.00
R-9. Right to Information Act, 2005 along with allied Rules and Regulations	55.00
R-11. Road Transport Corporation Act, 1950	30.00

S

C-26. SAFEMFOP Act, 1976 see COFEPOSA Act, 1974	40.00
S-1. Sale of Goods Act, 1930	35.00
S-2. Sales Promotion Employees (Conditions of Service) Act, 1976 along with Rules, 1976	35.00
S-23. Sarais Act, 1867	35.00
S-26. Sashstra Seema Bal Act, 2007 along with Rules, 2009	140.00
S-3. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Rules	95.00
S-25. Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006	35.00
S-4. Securities and Exchange Board of India Act, 1992	250.00
S-5. Securities Contracts (Regulation) Act, 1956 as amended by the Finance Act, 2015 along with Allied Rules	70.00
S-6. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 along with Allied Rules and Orders	85.00
S-7. Seeds Act, 1966 along with Rules, & Orders, 1983	40.00
S-8. Semiconductor Integrated Circuits Layout-Design Act, 2000 along with Rules, 2001	85.00
S-27. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	40.00
S-9. Sick Industrial Companies (Special Provisions) Act, 1985 along with BIFR and other allied Rules	90.00
S-10. Slum Areas (Improvement and Clearance) Act, 1956 along with Rules, 1957	35.00
S-11. Small Industrial Development Bank of India Act, 1989 along with Rules, 2003	80.00
S-12. Societies Registration Act, 1860 with State Amendments	55.00
S-13. Special Economic Zones Act, 2005 along with Rules, 2006	140.00
S-14. Special Marriage Act, 1954	35.00
S-24. Special Protection Group Act, 1988	35.00
S-15. Specific Relief Act, 1963	35.00
S-16. Stamp Act, 1899	70.00
S-17. Standards of Weights and Measures Act, 1976 along with allied Rules and Act, 1985	130.00
P-13. State Armed Police Forces (Extension of laws) Act, 1952 see Police Acts	60.00
S-18. State Bank of India Act, 1955	55.00
S-19. State Financial Corporations Act, 1951 along with Rules, 2003	55.00
S-28. Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014	35.00
S-20. Succession Act, 1925	110.00
S-21. Suits Valuation Act, 1887 with State Amendments	35.00

5 *Culpa in Contracta Rendo*

↳ unfair or unconscionable contracts or clauses should not be enforced

Universal's Bare Acts & Rules—1st Choice of Bench & Bar

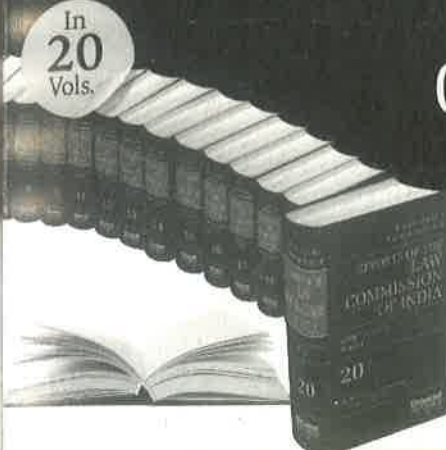
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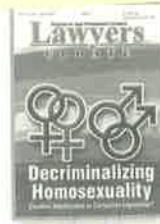
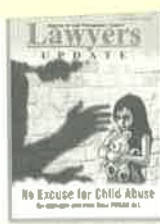
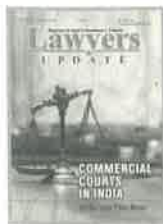
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Chairman, Law Commission of India

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