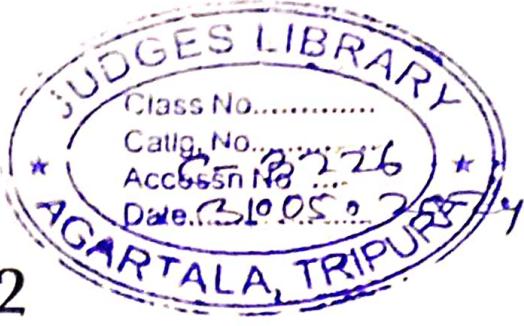


The Contract Act, 1872



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The Contract Act, 1872

List of Amending Acts and Adaptation Orders

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 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).
 14. The Indian Contract (Amendment) Act, 1996 (1 of 1997).
 15. Banking Laws (Amendment) Act, 2012 (4 of 2013).
 16. Jammu and Kashmir Reorganisation Act, 2019 (34 of 2019).
 17. Mediation Act, 2023 (32 of 2023).
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The Contract Act, 1872

[Act 9 of 1872¹]

[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 and commencement.—It extends to ²[the whole of India] ³[* * *]; and it shall come into force on the first day of September, 1872.

⁴[* * *] Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

CASE LAW ▶ Applicability.—Section 1 is applicable to contract for sale of goods by virtue of Section 3 of Sale of Goods Act, 1930, *Andhra Sugars Ltd. v. State of A.P.*, 1967 SCC OnLine SC 74.

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:—

-
1. For the Statement of Objects and Reasons for the Bill which was based on a report of Her Majesty's Commissioners appointed to prepare a body of substantive law for India, dated 6th July, 1856, *see* Gaz. of India, 1867, Extra., p. 34; for the Report of the Select Committee, *see ibid.*, Extra., dated 28th March, 1872; for discussions in Council, *see ibid.*, 1867, Supplement, p. 1064; *ibid.*, 1871, p. 313 and *ibid.*, 1872, p. 527.

The Chapters and sections of the Transfer of Property Act, 1882 (IV of 1882), which relate to contracts are, in places in which that Act is in force, to be taken as part of Act IX of 1872—*see* Act IV of 1812, S. 4.

This Act has been extended to Berar by the Berar Laws Act, 1941 (IV of 1941) to Dadra and Nagar Haveli by Reg. 6 of 1963, S. 2 and Sch. I, to Goa, Daman and Diu by Reg. 11 of 1963, S. 3 and Sch., to Laccadive, Minicoy and Amindivi Islands by Reg. 8, 1965, S. 3 and Sch., to Pondicherry by Act 26 of 1968, S. 3 and Sch. and has been declared to be in force in—

the Santhal Parganas—*see* the Santhal Parganas Settlement Regulation (III of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), S. 3.

Panth Piploda—*see* the Pantha Piploda Laws Regulation, 1929 (I of 1929), S. 2.

It has been declared, by notification under S. 3(a) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in—

the Tarai of the Province of Agra—*see* Gaz. of India, 1876, Pt. I, p. 505; the Districts of Hazaribagh, Lohardaga and Manbhumi, and Pargana Dhalbhum and the Kolhan in the District of Singbhum—*see* Gaz. of India, 1881, Pt. I, p. 504.

The District of Lohardaga included at this time the present District of Palamau which was separated in 1894. The District of Lohardaga is now called the Ranchi District—*see* Calcutta Gaz., 1899, Pt. I, p. 44.

It has been amended in C.P. by C.P. Act 1 of 1915 and in C.P. and Berar by C.P. and Berar Act 15 of 1938.

2. *Subs.* for “all the Provinces of India” by the A.O. 1950 (w.e.f. 26-1-1950).

3. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95, 96 and Sch. V (w.e.f. 31-10-2019).

4. The words “The enactments mentioned in the Schedule hereto are repealed to the extent specified in the third column thereof; but” omitted by Act 10 of 1914, S. 3 and Sch. II (w.e.f. 17-3-1914).

- (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;
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement;

CASE LAW ▶ Gift.—It is of the essence of a gift as defined in Section 122 T.P. Act that it should be without 'consideration' of the nature defined in Section 2(d) of the Contract Act, *Shakuntala v. State of Haryana*, (1979) 3 SCC 226.

- (f) Promises which form the consideration or part of the consideration 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;

CASE LAW ▶ Valid contract.—Requisites of valid contract, summarised, *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*, (2023) 7 SCC 1.

► **Void Contract.**—The contract effected in the absence of one of the trustees by the remaining trustees in the absence of any stipulation to that effect in the trust deed and without obtaining express and specific authorisation from the absent trustee, in contravention of Sections 47 and 48 Trusts Act, is not a concluded contract and hence void, *Shanti Vijay & Co. v. Fatima Fauzia*, (1979) 4 SCC 602.

- (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 or others, is a voidable contract;
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

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.

CASE LAW ▶ Acceptance of Offer.—Acceptance of the offer must be communicated to constitute a binding contract, an internal noting does not constitute a communication, *National Textile Corpn. (M.P.) Ltd. v. M.R. Jadhav*, (2008) 7 SCC 29 : (2008) 2 SCC (L&S) 216.

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.

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 despatched. It 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 him.

5. Revocation of proposals and acceptances.—A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

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

Illustrations

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

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

STATE AMENDMENTS

UTTAR PRADESH

In Section 5 at the end of the first paragraph, the following explanation shall be *inserted*, namely:—

"Explanation.—Where an invitation to a proposal contains a condition that any proposal made in response to such invitation shall be kept open for a specified time and a proposal is thereupon made accepting such condition, such proposal may not be revoked within such time."—U.P. Act 57 of 1976, S. 25 (w.e.f. 1-1-1977).

CASE LAW ▶ Forfeiture of earnest money.—Forfeiture of earnest money when it is made for breach of auction/tender conditions at pre-contractual stage when no contract has yet come into existence, does not infringe any statutory right under the Contract Act, 1872 since earnest/security is given and taken in such cases to ensure that a contract comes into existence. Tenderer has a right to withdraw his offer, but he will have no right to claim refund of earnest money if said offer is subject to condition that earnest money will be forfeited if offer is withdrawn, *NTPC v. Ashok Kumar Singh*, (2015) 4 SCC 252 : (2015) 2 SCC (Civ) 563.

6. Revocation how made.—A proposal is revoked—

- (1) by the communication of notice of revocation by the proposer to the other party;
- (2) by the 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;
- (3) by the failure of the acceptor to fulfil a condition precedent to 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.

CASE LAW ▶ Conditional Offer.—When an offer is conditional, the offeree has the choice of either accepting the conditional offer, or rejecting the conditional offer, or making a counter-offer. But what the offeree cannot do, when an offer is conditional, is to accept a part of the offer which results in performance by the offeror and then reject the condition subject to which the offer is made, *Food Corporation of India v. Ram Kesh Yadav*, (2007) 9 SCC 531 : (2007) 2 SCC (L&S) 559.

▶ **Sub Silentio.**—Principle of sub silentio is not applicable when contract was governed by express terms and conditions of supply order, which were clearly known to accepting party as was evident from post-acceptance objections raised by such party, *Security Printing and Minting Corpn. of India Ltd. v. Gandhi Industrial Corpn.*, (2007) 13 SCC 236.

▶ **Acceptance.**—No doubt a contract comes into existence by the acceptance of a proposal made by one person to another by that other person. That other person is not bound to accept the proposal but it may not necessarily follow that where that other person had no choice but to accept the proposal the transaction

would never amount to a contract, *Mangaldas Raghavji Ruparel v. State of Maharashtra*, 1965 SCC OnLine SC 56.

► **Offer and Acceptance.**—Under Section 7 of the Contract Act, 1872 in order to convert a proposal into a promise, the acceptance must be absolute and unqualified. Reference to a future formal contract does not create a binding contract, when the parties do not intend to be bound until a formal contract is signed, *PSA Mumbai Investments Pte. Ltd. v. Board of Trustees of the Jawaharlal Nehru Port Trust*, (2018) 10 SCC 525.

► **Formation of contract by auction.**—Unilateral alteration/addition of material terms and conditions at time of acceptance of offer (highest bid) is not permissible. Hence, offeror/bidder may withdraw its offer/bid if new/ altered terms are not acceptable to it, and is entitled to refund of security amount/earnest money, *Suresh Kumar Wadhwa v. State of M.P.*, (2017) 16 SCC 757.

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.

CASE LAW ▶ Nature and Scope.—Section 8 provides for an implied acceptance by performance on the part of the promisee of the conditions of a proposal or by the acceptance of any consideration offered for a reciprocal promise invited from the promisee, *Gaddar Mal v. Tata Industrial Bank Ltd.*, 1927 SCC OnLine All 55.

There is in principle a material distinction between the acceptance of an offer which asks for a promise and an offer which asks for an act on the condition of the offer becoming a promise. In the former case where the acceptance is to consist of a promise there must be communication to the proposer. But in the latter class of cases where the acceptance is to consist of an act as for example, despatching goods by post, the rule is that no further communication of the acceptance is necessary than the performance of the proposal act. The distinction is recognised in Sections 5 and 8, *State of Bihar v. Bengal Chemical and Pharmaceutical Works Ltd.*, 1953 SCC OnLine Pat 67.

► **Acceptance by Conduct.**—Conduct would only amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. Each case must rest on its own facts, *Bhagwati Prasad Pawan Kumar v. Union of India*, (2006) 5 SCC 311.

► **Contract of tenancy.**—Mere reciprocal promises are sufficient to constitute contract. A stipulation for payment of rent may bring about a contract of tenancy, *Industrial Credit & Development Syndicate v. Smithaben H. Patel*, (1999) 3 SCC 80.

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.

CASE LAW ▶ Quasi Contract.—The *quasi-contract* is a constructive contract as distinguished from either implied or express contracts and is defined rather as a relation than as a contract a fiction of law adopted to enforce legal duties by actions of contract where no proper contract exist express or implied [*Brown's Estate v. Stair*, 25 Colo App 140 (USA)]. *Quasi-contractual obligations* are imposed by the law for the purpose of bringing about justice without reference to the intention of the parties, *Sukhjit Starch and Chemicals Ltd. v. Union of India*, 1960 SCC OnLine Punj 254.



► **Implied term.**—A term necessary to give effect to the contract can be implied, *Rojasara Ramjibhai Dahyabhai v. Jani Narottamdas Lallubhai*, (1986) 3 SCC 300.

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.

Nothing herein contained shall affect any law in force in ⁵[India] and not hereby expressly repealed, by which any contract is required to be made in writing⁶ or in the presence of witnesses, or any law relating to the registration of documents.

CASE LAW ▶ Bilateral Contracts.—Supply of country liquor and payment of price by the Government on the basis of a written agreement amounts to a bilateral contract and does not involve the exercise of sovereign power. If, therefore, the Government impounds the remaining stock of liquor not lifted by the liquor licensees in the district, the obligation to pay the same price does not cease, *Karnal Distillery Co. Ltd. v. Union of India*, (1977) 3 SCC 506.

► **Enforceability of terms.**—Terms of contract can be read and enforced only in consonance with law, *Balkrishna S. Dalwale v. Vithabai C. Rathod*, (2010) 13 SCC 291 : (2010) 4 SCC (Civ) 896.

► **Scope.**—Contract made under requirement of law included under this section, *Andhra Sugars Ltd. v. State of A.P.*, 1967 SCC OnLine SC 74.

11. Who are competent to contract.—Every person is competent to contract who is of the age of majority according to law to which he is subject⁷, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

CASE LAW ▶ “Competent to contract”.—Competency is the rule in matters relating to contracts. It is necessary that the parties must have capacity or competency to enter a contract. Section 11 aims at defining inherent incompetency to contract. It does not cover cases of agents and representatives, who, though competent to contract are contracting for and on behalf of others and are, therefore, under restriction. The section provides that the following persons cannot make a valid contract—

- (i) minors;
- (ii) persons in a state of unsound mind; and
- (iii) persons who are disqualified from contracting by law, any law, to which they are subject, *Dharmashwar v. Union of India*, 1954 SCC OnLine Gau 53.

5. Subs. for the words “Part A States, and Part C States” by S. 3 and Sch. of Act 3 of 1951 (w.e.f. 1-4-1951) which have been substituted by the A. O. 1950 for “the Provinces.” (w.e.f. 26-1-1950).

6. See e. g. S. 25 infra; the Copyright Act, 1957 (14 of 1957), S. 19; the Apprentices Act, 1850 (19 of 1850), S. 8; Conveyance of Land Act, 1854 (31 of 1854), Ss. 14 and 18; the Carriers Act, 1865 (3 of 1865), Ss. 6 and 7; the Merchant Shipping Act, 1894 (57 and 58 Vict. c. 60), S. 24; the Imperial Bank of India Act, 1920 (47 of 1920), S. 21; the Companies Act, 1956 (1 of 1956), Ss. 12, 30, 46 and 109 (Repealed by Companies Act, 2013 (18 of 2013), S. 465(1) (w.e.f. 30-1-2019)).

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

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 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.

Illustrations

(a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

13. "Consent" defined.—Two or more persons are said to consent when they agree upon the same thing in the same sense.

14. "Free consent" defined.—Consent is said to be free when it is not caused by—

- (1) coercion, as defined in Section 15, or
- (2) undue influence, as defined in Section 16, or
- (3) fraud, as defined in Section 17, or
- (4) misrepresentation, as defined in Section 18, or
- (5) mistake, subject to the provisions of Sections 20, 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.

NOTES ▶ Free consent.—Section 10 of the Indian Contract Act provides "All agreements are contracts if they are made by the free consent of the parties.....". In other words it means that to make a contract valid not only the presence of a consent of the other party is necessary but this consent should also be 'free'. Section 14 defines the term "Free consent".

There may be cases in which the consent obtained is apparent but not real and though the consent actually given has been obtained in some improper way. Where the consent is not real consent there is no agreement and the transaction is an absolute nullity.

15. "Coercion" defined.—"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (XLV 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 (XLV of 1860), is or is not in force in the place where the coercion is employed.

Illustrations

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 (XLV 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 (XLV of 1860), was not in force at the time when or place where the act was done.

CASE LAW ▶ No-claim Certificate.—Issuance of "No-claim" certificate is not an absolute bar. Genuine claims can still be raised, *Ambica Construction v. Union of India*, (2006) 13 SCC 475.

▶ **Coercion.**—Assent of buyer under compulsion of law is not coercion, *Andhra Sugars Ltd. v. State of A.P.*, 1967 SCC OnLine SC 74.

8[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.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provision of Section 111 of the Indian Evidence Act, 1872 (I of 1872).

Illustrations

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

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

8. *Subs. by Act 6 of 1899, S. 2 (w.e.f. 1-5-1899).* Prior to substitution it read as:

'16. "*Undue influence*" defined.—"Undue influence" is said to be employed in the following cases:—

(1) When a person in whom confidence is reposed by another, or who holds a real or apparent authority over that other, makes use of such confidence or authority for the purpose of obtaining an advantage over that other, which, but for such confidence or authority, he could not have obtained;

(2) When a person whose mind is enfeebled by old age, illness, or mental or bodily distress, is so treated as to make him consent to that, to which, but for such treatment, he would not have consented, although such treatment may not amount to coercion.'

(c) 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.

(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.

CASE LAW ▶ Undue influence.—Relationship between parties so as to enable one of them to dominate the will of other is a sine qua non for constitution of undue influence, *Bellachi v. Pakeeran*, (2009) 12 SCC 95 : (2009) 4 SCC (Civ) 640.

► **Presumption.**—Burden of proof regarding genuineness of document containing contract by pardanashin woman would be on the vendee. However, in case of registered document there is presumption that it was executed in accordance with law, *Bellachi v. Pakeeran*, (2009) 12 SCC 95 : (2009) 4 SCC (Civ) 640.

Law does not envisage raising of a presumption in favour of undue influence. Party alleging the same must prove it subject to just exceptions, *Bellachi v. Pakeeran*, (2009) 12 SCC 95 : (2009) 4 SCC (Civ) 640.

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 agent⁹, 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;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

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 speak¹⁰, 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.

CASE LAW ▶ Applicability.—The Section applies at contract formation stage i.e. if contract itself is obtained by fraud or cheating. It does not apply in cases of post-contract fraud. Remedy in case of post-

9. Cf. S. 238, *infra*.

10. See S. 143, *infra*.

contract fraud would be remedy of damages but not remedy of treating contract itself as void or voidable, *Vidya Drolia v. Durga Trading Corp.,* (2021) 2 SCC 1.

► **Breach of contract or fraud.**—Supply of inferior quality of products or delay in supply or a short supply amounts only to breach of contract and not fraud, *Reliance Salt Ltd. v. Cosmos Enterprises,* (2006) 13 SCC 599.

Subsequent breach of contract on the part of a party to the contract would not vitiate the contract itself. Fraud, which vitiates the contract, must have a nexus with the acts of the parties prior to entering into the contract, *Reliance Salt Ltd. v. Cosmos Enterprises,* (2006) 13 SCC 599.

► **Fraud.**—Fraud vitiates all transactions known to the law, however high degree of solemnity may be attached to the transactions, *DDA v. Skipper Construction,* (2007) 15 SCC 601.

Section 17 of the Contract Act, only applies where contract is obtained by fraud or cheating. Further, in this the remedy of rescission is available and remedy of treating the contract as void ab initio is available. Whereas in tort of deceit, which would lead to damages, remedy of rescission of the contract as being void ab initio, is not available. Further held, both kinds of fraud mentioned above are subsumed within the expression "fraud" when it comes to questions of arbitrability, *Avitel Post Studioz Ltd. v. HSBC PI Holdings (Mauritius) Ltd.,* (2021) 4 SCC 713.

► **Fraudulent misrepresentation.**—When fraudulent misrepresentation is with respect to character of document, it is void, and when it is with respect to contents of document, it is voidable, *Prem Singh v. Birbal,* (2006) 5 SCC 353.

18. “Misrepresentation” defined.—“Misrepresentation” means and includes—

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to 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;
- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

19. Voidability of agreements without free consent.—When consent to an agreement is caused by coercion,¹¹[* * *] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a 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 representation 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

11. The words “undue influence” omitted by Act 6 of 1899, S. 3 (w.e.f. 1-5-1899).

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 of 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 encumbrance. 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 the 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.

CASE LAW ▶ Fraud.—Deed of partition of joint family properties based on family settlement if vitiated by fraud and misrepresentation, would be voidable and not void, *Ranganayakamma v. K.S. Prakash*, (2008) 15 SCC 673.

▶ **Void transactions.**—While voidable transactions are required to be avoided, void transactions are not required to be avoided and in respect of *prima facie* valid transactions, a presumption arises in regard to their genuineness, *Ranganayakamma v. K.S. Prakash*, (2008) 15 SCC 673.

▶ **Rescission of Contract.**—Principles explained regarding permissibility of option to insist on performance of contract despite fraud or misrepresentation, *Texco Marketing (P) Ltd. v. TATA AIG General Insurance Co. Ltd.*, (2023) 1 SCC 428.

¹²[**19-A. 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.

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.

12. Ins. by Act 6 of 1899, S. 3 (w.e.f. 1-5-1899).

Illustrations

(a) *A's son has forged B's name to a promissory note. A, under threat of prosecuting A's son obtains 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 Rs. 100 with such interest as may seem just.*

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.

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.

Illustrations

(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 date 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 the agreement, but both parties were ignorant of the fact. The agreement is void.*

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 ¹³[India]; but a mistake as to a law not in force in ¹⁴[India] has the same effect as a mistake of fact.

Illustrations

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.

¹⁵[* * *]

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 matter of fact.

CASE LAW ▶ Unilateral mistake of fact.—Unilateral mistake of fact is not ordinarily sufficient to nullify contract or to make it voidable. Clarifying the law on this issue, held, unless the unilateral mistake about the terms of a contract is so serious as to adversely undermine the entire bargain, it does not result in automatic avoidance of a contract or render the contract voidable, *Jacob Punnen v. United India Insurance Co. Ltd.*, (2022) 3 SCC 655.

13. *Subs. for "British India" by the A. O. 1948 (w.e.f. 23-3-1948) and later subs. for "any Province of India" by A.O. 1950 (w.e.f. 26-1-1950).*
14. *Subs. for "British India" by the A. O. 1948 (w.e.f. 23-3-1948) and later subs. for "any Province of India" by A.O. 1950 (w.e.f. 26-1-1950).*
15. The Second Illustration to S. 21 omitted by Act 24 of 1917, S. 3 and Sch. II (w.e.f. 27-9-1917). Prior to omission it read as:

"A and B make a contract grounded on the erroneous belief as to the law regulating bills of exchange in France; the contract is voidable."

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

- it is forbidden by law¹⁶; 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 the 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 of 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.

(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 (XLV of 1860).

16. See Ss. 26, 27, 28 and 30, *infra*.

NOTES ▶ Consideration and object.—This section provides, what kind of consideration and object are unlawful. In this section word 'object' is not used in the sense of consideration. It means 'something aimed at'. The consideration and object both must be lawful to make a contract valid.

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CASE LAW ▶ Scope of transactions covered.—The transactions covered by Section 23 are the transactions where the consideration or object of such transaction is forbidden by law or the transaction is of such a nature that, if permitted, would defeat the provisions of any law or the transaction is fraudulent or the transaction involves or implies injury to the person or property of another or where the court regards it immoral or opposed to public policy. Whether a particular transaction is contrary to a public policy would ordinarily depend upon the nature of transaction, *Phulchand Exports Ltd. v. O.O.O. Patriot*, (2011) 10 SCC 300 : (2012) 1 SCC (Civ) 131.

► **Contract against statute.**—Parties cannot contract against statute. Any mutual agreement intending to restrict or extinguish right of a party from enforcing his/her right under or in respect of a contract, would be void to that extent, *A.V.M. Sales Corpn. v. Anuradha Chemicals (P) Ltd.*, (2012) 2 SCC 315 : (2012) 1 SCC (Civ) 809, See also *G.T. Girish v. Y. Subba Raju*, (2022) 12 SCC 321.

► **Contract opposite to public policy.**—A contract whose object is opposed to public policy is invalid and it is not any the less so by reason alone of the fact that the unlawful terms are embodied in a consensual decree, *Union Carbide Corpn. v. Union of India*, (1991) 4 SCC 584.

► **Role of Supreme Court.**—Concept of public policy varies upon changing social values. Court can add new heads of public policy. Unconscionable contract of service under public undertakings is covered by Art. 12. Supreme Court in exercise of its equity jurisdiction would relieve the weaker party from the unconscionable, oppressive, unfair, unjust and unconstitutional contractual obligation, *DTC v. Mazdoor Congress*, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213.

► **Bribery.**—Bribery is covered is Section 23, *Gulabchand v. Kudilal*, 1966 SCC OnLine SC 56.

► **Natural Justice.**—Provision for termination of service of permanent employees of public/semi-govt. undertakings or statutory corporations only on one month's notice or pay in lieu of notice without any enquiry is unconstitutional as also violative of audi alteram partem rule of natural justice and Section 23 of Contract Act, *DTC v. Mazdoor Congress*, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213.

► **Works Contract.**—There is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services, *CCE & Customs v. Larsen & Toubro Ltd.*, (2016) 1 SCC 170.

► **Formation Defects.**—Once it is found that such agreement was in violation of Sanctioned Scheme, said agreement loses its legal force and no right would accrue on the basis of said agreements to parties, *DGIT v. GTC Industries Ltd.*, (2016) 12 SCC 62.

Agreement under which a party to an agreement is required to influence a statutory authority and to procure a decision favourable to other party, held, is certainly opposed to public policy, *R. Rajashekhar v. Trinity House Building Coop. Society*, (2016) 16 SCC 46 : (2017) 4 SCC (Civ) 202.

► **Severability of legal limb.**—If several distinct promises are made for one and same lawful consideration, and one or more of them be such as law will not enforce, that would not by itself prevent rest from being enforced i.e. where it is not possible to sever illegal and legal part of covenant, contract is altogether void; but where it is possible to sever legal and illegal part, bad part may be rejected while retaining good, *SBI v. Radhey Shyam Pandey*, (2020) 6 SCC 438.

Void Agreements

24. Agreements void, if considerations and objects unlawful in part.—If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Illustration

A promises to superintend, on behalf of B, a legal manufacturer of Indigo, and an illegal traffic in other articles. B promises to pay A a salary of 10,000 rupees a year. The agreement is void, the object of A's promise, and the consideration for B's promise, being in part unlawful.

CASE LAW ▶ Unenforceable contract.—A distinction is sometimes made between contracts entered into with the object of committing an illegal act and contracts expressly or impliedly prohibited by statute. The distinction is that in the former class one has only to look and see what acts the statute prohibits; it does not matter whether or not it prohibits a contract; if a contract is made to do a prohibited act, that contract will be unenforceable. In the latter class, one has to consider not what act the statute prohibits, but what contracts it prohibits. One is not concerned at all with the intent of the parties, if the parties enter into a prohibited contract, that contract is unenforceable, *Mannalal Khetan v. Kedar Nath Khetan*, (1977) 2 SCC 424.

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—

- (1) it is expressed in writing and registered under the law for the time being in force for registration of ¹⁷[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 authorised 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.

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

17. Subs. for the word "assurance" by Act 12 of 1891, S. 2 and Sch. II (w.e.f. 21-3-1891).

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 to 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.
- (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.

CASE LAW ▶ Consideration.—Contractual obligations entered into or arising out of family settlement are binding, the consideration being purchase of peace for the family, which is a good consideration, *CWT v. Her Highness Vijayaba*, (1979) 2 SCC 213.

Love and affection constitute valid consideration, *Ranganayakamma v. K.S. Prakash*, (2008) 15 SCC 673.

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

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.

[* * *]¹⁸

18. Exceptions 2 and 3 relating to agreements between partners upon, or in anticipation of, dissolution of partnership and during continuance of partnership respectively omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). See now Ss. 11(2) and 36(2) of that Act.

Prior to omission original Exceptions 2 and 3 read as:

"Exception 2.—or agreement between partners prior to dissolution.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such local limits as are referred to in the last preceding exception.

CASE LAW ▶ Post contractual restrictions.—Bar on post-contractual covenants or restrictions under this section is not confined only to contracts of employment, but is also applicable to all other contracts, *Percept D'Mark (India)(P) Ltd. v. Zaheer Khan*, (2006) 4 SCC 227.

While construing post-contractual covenants or restrictions neither test of reasonableness nor principle or restraint being partial is applicable, unless the case falls within the express exception engrafted in Section 27, *Percept D'Mark (India)(P) Ltd. v. Zaheer Khan*, (2006) 4 SCC 227.

► **Covenants between master and servant.**—Courts take a far stricter view of covenants between master and servant than it does of similar covenants between vendor and purchaser or in partnership agreements. An employer, for instance, is not entitled to protect himself against competition on the part of an employee after the employment has ceased but a purchaser of a business is entitled to protect himself against competition *per se* on the part of the vendor. This principle is based on the footing that an employer has no legitimate interest in preventing an employee after he leaves his service from entering the service of a competitor merely on the ground that he is competitor, *Niranjan Shanker Golikari v. Century Spg. and Mfg. Co. Ltd.*, 1967 SCC OnLine SC 72.

28. Agreements in restraint of legal proceedings void.—¹⁹[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.]

²⁰[**Exception 1.—Saving of contract to refer to arbitration or mediation 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

Exception 3.—or during continuance of partnership.—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.”

19. Subs. by Act 1 of 1997, S. 2 (w.e.f. 8-1-1997).

20. Subs. by Act 32 of 2023, S. 58 and Sch. III (w.e.f. the date to be notified). Prior to substitution it read as:

“**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 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.

Suits barred by such contracts.—*When such a contract has been made, a suit may be brought for its specific performance; and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party, in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.*

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.”

respect of any subject or class of subjects shall be referred to resolution through arbitration or mediation.

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 or mediation 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 or mediation.]

²¹[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) a “banking company” as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (b) “a corresponding new bank” as defined in clause (da) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (c) “State Bank of India” constituted under Section 3 of the State Bank of India Act, 1955 (23 of 1955);
- (d) “a subsidiary bank” as defined in clause (k) of Section 2 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959);
- (e) “a Regional Rural Bank” established under Section 3 of the Regional Rural Bank Act, 1976 (21 of 1976);
- (f) “a Co-operative Bank” as defined in clause (cci) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
- (g) “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 4-A of the Companies Act, 1956 (1 of 1956).]

CASE LAW ▶ Interpretation/construction.—Section 28 is substantive law and operates prospectively. Language used in Section 28 does not make it operative retrospectively. As it is remedial in nature, it is neither clarificatory or declaratory, *Union of India v. Indusind Bank Ltd.*, (2016) 9 SCC 720 : (2016) 4 SCC (Civ) 545.

▶ **Limitation.**—Curtailment of period of limitation otherwise provided in law not permissible but extinction of the right itself unless exercised within a specified time is permissible. Contract containing a provision that a right if not claimed by a suit within the period specified therein would stand extinguished. Such a provision, even though the period specified therein even though shorter than the period of limitation

21. Ins. by Act 4 of 2013, S. 17 and Sch. (w.e.f. 18-1-2013).

provided in the Limitation Act is nonetheless valid, *National Insurance Co. Ltd. v. Sujir Ganesh Nayak & Co.*, (1997) 4 SCC 366.

► **Jurisdiction of Court.**—Of the multiple courts that might have jurisdiction, the parties can by agreement specify court of a particular place alone to the exclusion of others, to have exclusive jurisdiction to adjudicate disputes between them, *EXL Careers v. Frankfinn Aviation Services (P) Ltd.*, (2020) 12 SCC 667.

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

Illustrations

(a) A agrees to sell to 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 to 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 to 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 by the result of any game or other uncertain event on which any wager is made.

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 towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.²²

Section 294-A 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 294-A of the Indian Penal Code (XLV of 1860) apply.

CASE LAW ▶ Badla transaction.—Badla transactions on forward contracts known as 'continuation' or 'carrying over' are nothing short of contracts for speculation in rise and fall of prices of goods purchased only notionally without any intention to actually deliver them to the purchasers. In such a transaction, a purchaser is not at all expected to make a demand for actual delivery of goods ostensibly sold, *Pratapchand Nopaji v. Kotrike Venkata Setty & Sons*, (1975) 2 SCC 208.

22. Cf. the Gaiming Act (8 and 9 Vict. C. 109), S. 18.

CHAPTER III OF CONTINGENT CONTRACTS

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.

Illustration

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

CASE LAW ▶ Contingent contracts.—Contingent contract became enforceable on the happening of the contingency, *CWT v. Her Highness Vijayaba*, (1979) 2 SCC 213.

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 sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.*

(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.*

CASE LAW ▶ Relative scope and applicability.—Section 32 applies when the agreement itself provides for contingencies upon happening of which contract cannot be carried out and provides for the consequences; while the latter part of Section 56 is applicable when promisee did not know the act (to be done under the contract) to be impossible or unlawful, *National Agricultural Coop. Mktg. Federation of India v. Alimenta S.A.*, (2020) 19 SCC 260.

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 events, 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.

CHAPTER IV OF THE PERFORMANCE OF CONTRACTS

Contracts which must be performed

37. Obligation of parties to contracts.—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 representative 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 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.

CASE LAW ▶ Interpretation of contract.—It is the duty of the court to interpret the document of contract as was understood between the parties, strictly, without altering the nature of the contract. A



different interpretation cannot be given dehors the context, *Polymat India (P) Ltd. v. National Insurance Co. Ltd.*, (2005) 9 SCC 174.

No aid outside the terms of the contract should be sought unless the meaning is ambiguous, on a strict reading of the said terms, *United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal*, (2004) 8 SCC 644.

► **Uninvoiced claims.**—Uninvoiced claims can be the subject matter of a dispute. A claim can also be made through correspondence or in meetings, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

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 rights 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 first 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.

CASE LAW ▶ Breach of reciprocal obligation.—Offer of performance of obligation contrary to agreed terms does not give rise to liability to fulfil the reciprocal obligation. Hence suit for damages or compensation for breach of reciprocal obligation will not lie, *Vidya Vati v. Devi Das*, (1977) 1 SCC 293.

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.

Illustrations

(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 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. 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 the 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 damage sustained by him through *A*'s failure to sing on the sixth night.

CASE LAW ▶ Maintainability of suit.—When in an oral agreement to sell the agricultural land, the buyer failed to pay full amount the suit filed by plaintiff for possession or in the alternative for remaining amount with interest, the maintainability of the suit could not be challenged on ground of Sections 39 and 55 of the Act, *Ranchhoddas Chhaganlal v. Devaji Supdu Dorik*, (1977) 3 SCC 584.

▶ **International breach of contract.**—Where there is intentional breach of contract or refusal to work with due notice, the contract cannot be said to subsist, *S. Munishamappa v. B. Venkatarayappa*, (1981) 3 SCC 260.

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.

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 representatives 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 any²³[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.

23. Subs. for "one" by Act 12 of 1891, S. 2 and Sch. II (w.e.f. 21-3-1891).

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 payments 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 promisor so released from responsibility to the other joint promisor or joint promisors.²⁴

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.²⁵

Illustration

A, in consideration of 5,000 rupees, lent to him and 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.

CASE LAW ▶ Nature and scope.—Section 45 of the Contract Act deals with devolution of joint rights in the case of joint promisees but it does not deal with a case where a joint promisee does not want to join as a co-plaintiff and is arrayed as a pro-forma defendant with the specific plea that no relief is claimed against him, *Jahar Roy v. Premji Bhimji Mansata*, (1977) 4 SCC 562.

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.

24. See S. 138, *infra*.

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

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

CASE LAW ▶ Extension of time for performance of contract.—Promisee, can unilaterally extend time for benefit of promisor, *Kailash Nath Associates v. DDA*, (2015) 4 SCC 136 : (2015) 2 SCC (Civ) 502.

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 that day *A* brings the goods to *B*'s warehouse, but after the usual hour for 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 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 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*.

CASE LAW ▶ Implied inference.—The same is not necessarily to be inferred from a written document. It can also be implied. Conduct of parties would be relevant in this behalf, *Panchanan Dhara v. Monmatha Nath Maity*, (2006) 5 SCC 340.

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* promises 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 the transaction requires that *A* should have security before he delivers up his stock.

53. Liability of party preventing event on which contract is to take effect.—When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation²⁶ from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Illustration

A and *B* contract that *B* shall execute certain work for *A* for a thousand rupees, *B* is ready and willing to execute the work accordingly, but *A* prevents him from doing so. The contract is voidable at the option of *B*; and, if he elects to rescind it, he is entitled to recover from *A* compensation for any loss which he has incurred by its non-performance.

26. See S. 73, *infra*.

54. Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.—When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations

(a) A hires B's ship to take in and convey, from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

CASE LAW ▶ Fundamental breach/Repudiatory breach.—Once it is established that the party was justified in terminating the contract on account of fundamental breach thereof, then the said innocent party is entitled to claim damages for the entire contract i.e. for the part which is performed and also for the part of the contract which it was prevented from performing, *Maharashtra State Electricity Distribution Co. Ltd. v. Datar Switchgear Ltd.*, (2018) 3 SCC 133.

55. Effect of failure to perform at fixed time, in contract in which time is essential.—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.—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 performance of such promise at any time other than that agreed, the promisee cannot claim

compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so²⁷.

STATE AMENDMENTS

UTTAR PRADESH

In Section 55 of the principal Act, in the third paragraph, for the words "unless at the time of such acceptance he gives notice to the promisor of his intention to do so", the words "where at the time of such acceptance he was waived his right to do so" shall be substituted—U.P. Act 57 of 1976, S. 26 (w.e.f. 1-1-1977).

CASE LAW ▶ Time, if essence of contract.—Where time was not of the essence of the contract rescission of the contract without fixing a further period for completion, making time the essence was illegal amounting to breach of contract by the respondent, *Hind Construction Contractors v. State of Maharashtra*, (1979) 2 SCC 70.

When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract, *Govind Prasad Chaturvedi v. Hari Dutt Shastri*, (1977) 2 SCC 539.

In a suit for specific performance of contract in respect of any immovable property, time would ordinarily not be the essence of the contract, *Panchanan Dhara v. Monmatha Nath Maity*, (2006) 5 SCC 340.

In construction contracts generally time is not of the essence unless special features exist therefore, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

Question whether or not time was of the essence of the contract would essentially be a question of the intention of the parties, to be gathered from the terms of the contract, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

▶ **Penalty for delayed performance.**—Imposition of penalty instead of termination of contract, as termination was not proper *M.P. Power Management Co. Ltd. v. Renew Clean Energy (P) Ltd.*, (2018) 6 SCC 157.

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 unlawful²⁸.

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.

Illustrations

(a) A agrees with B to discover treasure by magic. The agreement is void.

27. Cf. Ss. 62 and 63, *infra*.
28. See S. 65, *infra* and see also the Specific Relief Act, 1963 (47 of 1963).

(b) *A* and *B* contract to marry each other. Before the time fixed for the marriage, *A* goes mad. The contract becomes void.

(c) *A* contracts to marry *B*, being already married to *C*, and being forbidden by the law to which he is subject to practise polygamy. *A* must make compensation to *B* for the loss caused to her by the non-performance of his promise.

(d) *A* contracts to take 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 war is declared.

(e) *A* contracts to act at a theatre for six months in consideration of a sum paid in advance by *B*. On several occasions *A* is too ill to act. The contract to act on those occasions becomes void.

CASE LAW ▶ Applicability.—Applicability of Section 56 is not limited to cases of physical impossibility, but includes cases of legal impossibility, *Loop Telecom & Trading Ltd. v. Union of India*, (2022) 6 SCC 762.

▶ **Doctrine of frustration.**—Allocation and assumption of risk is not simply a matter of express or implied provision but may also depend on less easily defined matters such as "the contemplation of the parties", the application of doctrine can often be a difficult one. In such circumstances, test of "radically different" is important: that doctrine of frustration is not to be lightly invoked; that mere incidence of expense or delay or onerousness is not sufficient; and that there has to be as it were a break in identity between contract as provided for and contemplated and its performance in the new circumstances, *Energy Watchdog v. CERC*, (2017) 14 SCC 80.

▶ **Force majeure events.**—Abnormal rise or fall in prices of fuel is not a force majeure event in contract of electricity PPA. Mere incidence of expense or delay or onerousness not sufficient to invoke doctrine of frustration, *Energy Watchdog v. CERC*, (2017) 14 SCC 80.

In case of occurrence of an event which renders performance of contract impossible, by virtue of Section 56, Contract Act, 1872, contract in such a case, held, becomes void and parties are exempted from further performance thereof. However, in terms of Section 32 of Contract Act, parties may instead choose consequences that would flow on happening of an uncertain future event, *South East Asia Marine Engg. & constructions Ltd. (SEAMEC Ltd.) v. Oil India Ltd.*, (2020) 5 SCC 164.

▶ **Allocation of Risk.**—Meaning of terms "as is where is" and/or "liable to obtain all clearances" relates only to physical issues pertaining to project land and ancillary or peripheral legal issues pertaining to actual construction activity, such as compliance with building bye-laws, environmental clearances, etc. They did not extend to commencement of activity prohibited by law. Contract and Specific Relief, *DDA v. Kenneth Builders & Developers (P) Ltd.*, (2016) 13 SCC 561.

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 1,50,000 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.

CASE LAW ▶ Interpretation/Construction.—The expression 'impossible of performance' in Section 56 implies that the parties shall be excused if substantially the whole contract becomes impossible of performance or in other words impracticable by some cause for which neither was responsible, *Govindbhai Gordhanbhai Patel v. Gulam Abbas Mulla Allibhai*, (1977) 3 SCC 179.

When void part of the agreement can be separated from the valid part, the latter does not become invalid, *BOL Finance Ltd. v. Custodian*, (1997) 10 SCC 488.

► **Legal part of the contract.**—This section provides that when a contract consists of two parts, one part legal and the other illegal and the legal part is separable or severable from the illegal one, then the court will enforce the legal part, *Robinson v. Marsh*, (1921) 2 KB 640, See also *Poonoo Bibi v. Fyez Buksh*, 1874 SCC OnLine Cal 59.

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.

CASE LAW ▶ Applicability.—Sections 59 to 61 are applicable only in case where more than one debt is due from debtor to creditor. They do not get attracted when there is only one debt due, *Gurpreet Singh v. Union of India*, (2006) 8 SCC 457.

Sections 59 & 60, Contract Act are applicable only in pre-decretal stage and not in post-decretal stage. Contract and purchased prior to dispatch, is nonetheless a firm contract, *Collector of Customs v. Rakesh Press*, (1997) 10 SCC 457.

► **Mode of appropriation.**—Acceptance or protest by creditor of stipulation made by debtor as to mode of appropriation, does not amount to agreement as to mode of appropriation, *Leela Hotels Ltd. v. Housing & Urban Development Corp. Ltd.*, (2012) 1 SCC 302 : (2012) 1 SCC (Civ) 58.

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 limitation of suits.

CASE LAW ▶ Applicability.—Sections 59 & 60, Contract Act are applicable only in pre-decretal stage and not in post-decretal stage. Contract and purchased prior to dispatch, is nonetheless a firm contract, *Collector of Customs v. Rakesh Press*, (1997) 10 SCC 457.

► **Interpretation/Construction.**—The expression "actually due and payable to him" contrasted with "due and payable". The signification of use of "actually", held, is that in fact a debt must be due and payable notwithstanding the law of limitation, *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, (2019) 11 SCC 633.

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 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 proportionately.

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.

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.

CASE LAW ▶ Amendment to a contract.—An amendment to a contract being in the nature of a modification of the terms of the contract must be read in and become a part of the original contract in order to amount to an alteration under Section 62 of the Contract Act, *All India Power Engineer Federation v. Sasan Power Ltd.*, (2017) 1 SCC 487 : (2017) 1 SCC (Civ) 277.

► **Modification/Variation or Novation of contract.**—For determination to see whether a case whether falls under Section 62 (i.e. original contract need not be performed or novatio) or Section 63 (i.e. variation of original contract), test is to see whether modification(s) go to very root of original contract and change its essential character and modified contract replaces original contract, or whether original contract survives, but with some modifications. Former case will fall under Section 62 and latter case may fall under Section 63. Terms of original and modified contract(s) have to be examined carefully in each case, *Chrisomar Corp. v. MJR Steels (P) Ltd.*, (2018) 16 SCC 117.

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 performance²⁹, 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.³⁰

(d) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount gives to B, and B, in satisfaction thereof, accepts the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a³¹ [composition] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

CASE LAW ▶ Alteration in contract.—If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed, after its execution, by or with the consent of any party to or person entitled under it, but without the consent of the party or parties liable under it, the deed is rendered void from the time of the alteration so as to prevent the person who has made or authorised the alteration, and those claiming under him, from putting the deed in suit to enforce against any party bound by it, who did not consent to the alteration, any obligation, covenant, or promise thereby undertaken or made, *Seth Loonkaran Sethia v. Ivan E. John*, (1977) 1 SCC 379.

A material alteration is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state, or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was 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, *Seth Loonkaran Sethia v. Ivan E. John*, (1977) 1 SCC 379.

▶ **Remission.**—Under Section 63 of the Contract Act, a promisee can remit a promise in part. It is not necessary under the Contract Act that such remission should be supported by consideration, *Hari Chand Madan Gopal v. State of Punjab*, (1973) 1 SCC 204.

64. Consequences of rescission of voidable contract.—When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be to the person from whom it was received.³²

29. But see S. 135, *infra*.

30. See S. 41, *supra*.

31. Subs. for "compensation" by Act 12 of 1891, S. 2 and Sch. II (w.e.f. 21-3-1891).

32. See S. 75, *infra*.

65. Obligation of person who has received advantage under void agreement, or contract that becomes void.—When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations

(a) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first May. He is bound to pay A for them.

(c) 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 a hundred rupees for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B, in consequence rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not 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 in advance.

CASE LAW ▶ Refund of earnest money.—Unsuccessful buyer is entitled to claim refund of earnest money, *Revanasiddayya v. Gangamma*, (2018) 1 SCC 610.

► **Claim of restitution.**—Principle of *in pari delicto* for denial of restitution is applicable where the claimant is more responsible for the illegality or the parties are considered to be equally responsible. In adjudicating a claim of restitution under Section 65 of the Contract Act, held, the court must determine the illegality which caused the contract to become void, and, the role the party claiming restitution has played in it. If the party claiming restitution was equally or more responsible for the illegality (in comparison to the defendant), there shall be no cause for restitution, *Loop Telecom&Trading Ltd. v. Union of India*, (2022) 6 SCC 762.

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 a proposal.³³

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.

Illustrations

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.

33. See Ss. 3 and 5, supra.

CHAPTER V
OF CERTAIN RELATIONS RESEMBLING
THOSE CREATED BY CONTRACT

68. Claim for necessities supplied to person incapable of contracting, or on his account.—If a person, incapable of entering into a contract or anyone whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person³⁴.

Illustrations

(a) *A supplies B, a lunatic, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.*

(b) *A supplies the wife and children of B, a lunatic, with necessities suitable to their condition in life. A is entitled to be reimbursed from B's property.*

69. Reimbursement of person paying money due by another, in payment of which he is interested.—A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it is entitled to be reimbursed by the other.

Illustration

B holds land in Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

CASE LAW ▶ Legal duty to pay money.—In cases where there is reimbursement of money paid which another is bound by law to pay, there is necessity to establish legal duty of the other to pay the money concerned, *Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.*, (2007) 8 SCC 466.

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.³⁵

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.*

CASE LAW ▶ Intention of restoration.—Intimation to the supplier that he can take back the goods is sufficient to show the intention of restoration, *Union of India v. Sita Ram Jaiswal*, (1976) 4 SCC 505.

34. The property of a Government Ward in Madhya Pradesh is not liable under this section; see the C.P. Court of Wards Act, 1899 (24 of 1899), S. 31(1).
35. As to suits by minors under S. 70 in Presidency Small Cause Courts, see the Presidency Small Cause Courts Act, 1882 (15 of 1882), S. 32.

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.³⁶

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.

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 illegally excessive.

CASE LAW ▶ Quantum of damages.—Finding on quantum of damages for breach of contract should not be disturbed by the appellate Court, *Mohd. Salamatullah v. Govt. of A.P.*, (1977) 3 SCC 590.

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.

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.

Illustrations

(a) *A* contracts to sell and deliver 50 maunds of saltpetre to *B*, at a certain price to be paid on delivery. *A* breaks his promise. *B* is entitled to receive from *A*, by way of compensation, the sum, if any, by which the contract price falls short of the price for which *B* might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) *A* hires *B*'s ship to go to Bombay, and there takes on board, on the first of January, a cargo, which, *A* is to provide and to bring it to Calcutta, the freight to be paid when earned. *B*'s ship does not go to Bombay, but *A* has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. *A* avails himself of those opportunities,

36. See Ss. 151 and 152, infra.

but is put to trouble and expense in doing so. *A* is entitled to receive compensation from *B* in respect of such trouble and expense.

(c) *A* contracts to buy of *B*, at a stated price, 50 maunds of rice, no time being fixed for delivery. *A* afterwards informs *B* that he will not accept the rice if tendered to him. *B* is entitled to receive from *A*, by way of compensation, the amount, if any, by which the contract price exceeds that which *B* can obtain for the rice at the time when *A* informs *B* that he will not accept it.

(d) *A* contracts to buy *B*'s ship for 60,000 rupees, but breaks his promise. *A* must pay to *B*, by way of compensation, the excess, if any, of the contract price over the 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 jute to Mirzapur, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute 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 would have arrived if 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 receive 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 that 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. Freights rise, 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 the 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 a stated time, contracts with *C* for the purchase of 1,000 tons of iron at 80 rupees a ton, telling *C* that he does so for the purpose of performing his contract with *B*. *C* fails to perform his contract with *A*, who cannot procure other iron, and *B*, in consequence, rescinds the contract. *C* must pay to *A* 20,000 rupees, being the profit which *A* would have made by the performance of his contract with *B*.

(k) *A* contracts with *B* to make and deliver to *B*, by a fixed day, for a specified price a certain piece of machinery. *A* does not deliver the piece of machinery at the time specified, and, in consequence of this, *B* is obliged to procure another at a higher price than that which he was to have paid to *A*, and is prevented from performing a contract which *B* had made with a third person at the time of his contract with *A* (but which had not been then communicated to *A*), and is compelled to make compensation for breach of that contract. *A* must pay to *B*, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by *B* for another, but not the sum paid by *B* to the third person by way of compensation.

S. 73]

(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 rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compensation to B for the cost of rebuilding 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 up to 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 the 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.

CASE LAW ▶ Claim of compensation.—The plaintiff cannot claim if he contributed to the breach, *Timblo Irmaos Ltd. v. Jorge Anibal Matos Sequeira*, (1977) 3 SCC 474.

▶ **Grant of Injunction.**—Injunction is a form of specific relief. It is an order of a court requiring a party either to do a specific act or acts or to refrain from doing a specific act or acts either for a limited period or without limit of time. In relation to a breach of contract, the proper remedy against a defendant who acts in breach of his obligations under a contract is either damages or specific relief. The two principal varieties of specific relief are decree of specific performance and the injunction. The remedy for the non-performance of a duty are (1) compensatory, (2) specific. In the former, the court awards damages for breach of the obligation. In the latter, it directs the party in default to do or forbear from doing the very thing, which he is bound to do or forbear from doing, *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.*, (2007) 7 SCC 125.

For raising a claim based on breach of contract, no invoice is required to be drawn, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

Claim for overhead costs/additional management costs which resulted in decrease in profits, is a claim for damages, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

► **Quantification of loss/damages.**—For claiming Compensation/Damages there is no need for quantification. Quantification of a claim is merely a matter of proof, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

Compensation must correlate to damages, but cannot be same in all cases, because type and nature of damages suffered can differ, *Fortune Infrastructure v. Trevor D'lima*, (2018) 5 SCC 442.

Expectation loss and reliance loss are mutually exclusive and thus both cannot be claimed simultaneously. Moreover, award of damages for reliance loss should not amount to a windfall on party who breached contract, *Kanchan Udyog Ltd. v. United Spirits Ltd.*, (2017) 8 SCC 237 : (2017) 4 SCC (Civ) 1.

For quantification of loss suffered on account of increase in overhead expenses when no method of measurement is specified in contract. Appropriate formula must be used. Relative merits of Emden, Hudson and Eichleay formulae, considered, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

► **Legal Obligations.**—Court must consider only strict legal obligations and not the expectations, however reasonable, of one contractor that the other will do something that he has assumed no legal obligation to do, *McDermott International Inc. v. Burn Standard Co. Ltd.*, (2006) 11 SCC 181.

The contract price is no measure of damages to be awarded in a case like loss caused by fire in possession of Railways. It is well settled that it is the market price at the time the damage occurred which is the measure of damages to be awarded, *Union of India v. West Punjab Factories Ltd.*, 1965 SCC OnLine SC 68.

► **Compensation.**—Compensation may be awarded in lieu of specific performance, where agreement to sell immovable property becoming incapable of performance due to acquisition of that property by Government, vendee under agreement to sell is entitled to compensation paid by State for acquisition, *Urmila Devi v. Mandir Shree Chamunda Devi*, (2018) 2 SCC 284.

► **Non-delivery of flat/house.**—Even in absence of fraud, mere unwillingness could constitute bad faith to ground claim for damages. Onus is on seller to show bona fides, *Fortune Infrastructure v. Trevor D'lima*, (2018) 5 SCC 442.

In case of non-delivery of flat/house, and developer refusing alternative equivalent accommodation and buyer lacking means to purchase substitute from market, it would not be reasonable to assess damages from date of breach because of price escalation, *Fortune Infrastructure v. Trevor D'lima*, (2018) 5 SCC 442.

► **Nature of claims covered by Section 73 Para 3.**—Section 73 makes it clear that damages arising out of a breach of contract are treated separately from damages resulting from obligations resembling those created by contract. When a contract has been broken, damages are recoverable under Section 73 Para 1. When, however, a claim for damages arises from obligations resembling those created by contract, this would be covered by Section 73 Para 3, *MTNL v. Tata Communications Ltd.*, (2019) 5 SCC 341.

74. Compensation for breach of contract where penalty stipulated for.—³⁷[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other

37. These paragraphs were substituted for the first paragraph by Act 6 of 1899, S. 74(1) (w.e.f. 1-5-1899).

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 ³⁸[Central Government] or of any ³⁹[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 any 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.

⁴⁰[(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 compensation 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.]

38. Subs. for "Government of India" by the Government of India (Adaptation of Indian Laws) Order, 1937 (w.e.f. 1-4-1937).

39. Subs. for "Provincial Government" by the A. O. 1950 (w.e.f. 26-1-1950).

40. Illustrations (d) to (g) ins. by Act 6 of 1899, S. 4(2) (w.e.f. 1-5-1899).

CASE LAW ▶ Applicability.—Where agreement specifying damages for certain types of breach of contract did not cover the particular breaches alleged by claimant, Section 74 not applicable, *SAIL v. Gupta Brother Steel Tubes Ltd.*, (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16.

Section 74 applies when forfeiture is in the nature of penalty, *Phulchand Exports Ltd. v. O.O.O. Patriot*, (2011) 10 SCC 300 : (2012) 1 SCC (Civ) 131.

▶ **Forfeiture of earnest money.**—Forfeiture of earnest money is permissible only after concluded contract comes into being, *Yogesh Mehta v. Custodian*, (2007) 2 SCC 624.

Though in public auctions, prior to conclusion of contracts, earnest money can be forfeited for breach of terms and conditions of auction, Section 74 cannot be invoked at pre-contractual stage. Since an agreement mentioning pre-estimated loss or damage in case of breach of contract is essential for application of Section 74, said section is not attracted where forfeiture of earnest money takes place under terms and conditions of auction before an agreement is reached, *Kailash Nath Associates v. DDA*, (2015) 4 SCC 136 : (2015) 2 SCC (Civ) 502.

In order to forfeit the sum deposited by the contracting party as "earnest money" or "security" for the due performance of the contract, it is necessary that the contract must contain a stipulation of forfeiture. If there is no stipulation in the contract of forfeiture, there is no right available to the party to forfeit the sum, *Suresh Kumar Wadhwa v. State of M.P.*, (2017) 16 SCC 757.

In a scenario where the contractual terms clearly provide the factum of the pre-estimated amount being in the nature of "earnest money", the onus to prove that the same is "penal" in nature squarely lies on the party seeking refund of the same and failure to discharge such burden would treat any pre-estimated amount stipulated in the contract as a "genuine pre-estimate of loss", *Desh Raj v. Rohtash Singh*, (2023) 3 SCC 714.

▶ **Compensation/Damages.**—Damage or loss is sine qua non for payment of compensation for breach of contract even under Section 74. Proof of loss or damage is not dispensed with under Section 74. However, where damage or loss is difficult or impossible to prove, court is empowered to award liquidated amount named in contract, if it is genuine pre-estimate of damage or loss, or reasonable compensation for said loss or damage, *Kailash Nath Associates v. DDA*, (2015) 4 SCC 136 : (2015) 2 SCC (Civ) 502.

▶ **Quantum of damages.**—For measure of damages there are two classes of cases (*i*) where contract names a sum to be paid in case of breach, and (*ii*) where contract contains any other stipulation by way of penalty, *Phulchand Exports Ltd. v. O.O.O. Patriot*, (2011) 10 SCC 300 : (2012) 1 SCC (Civ) 131.

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 contract. 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
When Property in Goods Sold Passes

- 76. 'Goods' defined.—⁴¹[* * *]**
- 77. 'Sale' defined.—⁴²[* * *]**
- 78. Sale how.—⁴³[* * *]**
- 79. Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.—⁴⁴[* * *]**
- 80. Completion of sale of goods which the seller is to put into state in which buyer is to take them.—⁴⁵[* * *]**

41. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:*

“76. *'Goods' defined.*—In this chapter, the word 'goods' means and includes every kind of moveable property.”

42. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:*

“77. *'Sale' defined.*—'Sale' is the exchange of property for a price. It involves the transfer of the ownership of the thing sold from the seller to the buyer.”

43. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:*

“78. *Sale how.*—Sale is effected by offer and acceptance of ascertained goods for a price, or of a price for ascertained goods,

together with payment of the price or delivery of the goods; or with tender, part payment, earnest or part-delivery; or with an agreement, express or implied, that the payment or delivery, or both, shall be postponed.

Where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price, or when the earnest, is paid, or when the whole or part of the goods is delivered.

If the parties agree, expressly or by implication, that the payment or delivery, or both, shall be postponed, the property passes as soon as the proposal for sale is accepted.

Illustrations

(a) B offers to buy A's horse for 500 rupees. A accepts B's offer, and delivers the horse to B. The horse becomes B's property on delivery.

(b) A sends goods to B, with the request that he will buy them at a stated price if he approves of them, or return them if he does not approve of them. B retains the goods, and informs A that he approves of them. The goods become B's when B retains them.

(c) B offers A, for his horse, 1000 rupees, the horse to be delivered to B on a stated day, and the price to be paid on another stated day. A accepts the offer. The horse becomes B's as soon as the proposal is accepted.

(d) B offers A, for his horse, 1000 rupees, on a month's credit. A accepts the offer. The horse becomes B's as soon as the offer is accepted.

(e) B, on the 1st January, offers to A, for a quantity of rice 2000 rupees, to be paid on the 1st March following, the rice not to be taken away till paid for. A accepts the offer. The rice becomes B's as soon as the offer is accepted.”

44. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:*

79. *Transfer of ownership of thing sold, which has yet to be ascertained, made or finished.*—Where there is a contract for the sale of a thing which has yet to be ascertained, made or finished, the ownership of the thing is not transferred to the buyer until it is ascertained, made or finished.

Illustration

B orders A, a barge-builder, to make him a barge. The price is not made payable by instalments. While the barge is building, B pays to A money from time to time on account of the price. The ownership of the barge does not pass to B until it is finished.

45. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:*

“80. *Completion of sale of goods which the seller is to put into state in which buyer is to take them.*—Where, by a contract for the sale of goods, the seller is to do anything to them for the purpose of putting them into a state in which the buyer is to take them, the sale is not complete until such thing has been done.



81. Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.—⁴⁶[* * *]

82. Completion of sale, when goods are unascertained at date of contract.—⁴⁷[* * *]

83. Ascertainment of goods by subsequent appropriation.—⁴⁸[* * *]

84. Ascertainment of goods by seller's selection.—⁴⁹[* * *]

85. Transfer of ownership of moveable property, when sold together with immovable.—⁵⁰[* * *]

Illustration

A, a ship-builder, contracts to sell to B, for a stated price, a vessel which is lying in A's yard; the vessel to be rigged and fitted for a voyage, and the price to be paid on delivery. Under the contract, the property in the vessel does not pass to B until the vessel has been rigged, fitted up, and delivered."

46. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"81. *Completion of sale of goods, when seller has to do anything thereto in order to ascertain price.*—Where anything remains to be done to the goods by the seller for the purpose of ascertaining the amount of the price, the sale is not complete until this has been done.

Illustration

(a) A, the owner of a stack of bark, contracts to sell it to B, weigh and deliver it, at 100 rupees per ton. B agrees to take and pay for it on a certain day. Part is weighed and delivered to B; the ownership of the residue is not transferred to B until it has been weighed pursuant to the contract.

(b) A contracts to sell a heap of clay to B at a certain price per ton. B is, by the contract, to load the clay in his own carts, and to weigh each load at a certain weighing machine, which his carts must pass on their way from A's ground to B's place of deposit. Here, nothing more remains to be done by the seller; the sale is complete, and the ownership of the heap of clay is transferred at once."

47. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"82. *Completion of sale, when goods are unascertained at date of contract.*—Where the goods are not ascertained at the time of making the contract of sale, it is necessary to the completion of the sale that the goods shall be ascertained.

Illustration

A agrees to sell to B, 20 tons of oil in A's cisterns. A's cisterns contain more than 20 tons of oil. No portion of the oil has become the property of B."

48. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"83. *Ascertainment of goods by subsequent appropriation.*—Where the goods are not ascertained at the time of making the agreement for sale, but goods answering the description in the agreement are subsequently appropriated by one party, for the purpose of the agreement, and that appropriation is assented to by the other, the goods have been ascertained, and the sale is complete.

Illustration

A, having a quantity of sugar in bulk, more than sufficient to fill 20 hogsheads, contracts to sell B 20 hogsheads of it. After the contract, A fills 20 hogsheads with the sugar, and gives notice to B that the hogsheads are ready, and requires him to take them away. B says he will take them as soon as he can. By this appropriation by A, and assent by B, the sugar becomes the property of B."

49. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"84. *Ascertainment of goods by seller's selection.*—Where the goods are not ascertained at the time of making the contract of sale, and, by the terms of the contract, the seller is to do an act with reference to the goods which cannot be done until they are appropriated to the buyer, the seller has a right to select any goods answering to the contract, and by his doing so, the goods are ascertained.

Illustration

B agrees with A to purchase of him, at a stated price, to be paid on a fixed day, 50 maunds of rice out of a larger quantity in A's granary. It is agreed that B shall send sacks for the rice, and that A shall put the rice into them. B does so, and A puts 50 maunds of rice into the sacks. The goods have been ascertained."

50. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"85. *Transfer of ownership of moveable property, when sold together with immovable.*—Where an agreement is made for the sale of immoveable and moveable property combined, the ownership of the moveable property does not pass before the transfer of the immoveable property.

Illustration

86. Buyer to bear loss after goods have become his property.—⁵¹[* * *]

87. Transfer of ownership of goods agreed to be sold while non-existent.—⁵²[* * *]

88. Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.—⁵³[* * *]

89. Determination of price not fixed by contract.—⁵⁴[* * *]

Delivery

90. Delivery how made.—⁵⁵[* * *]

A agrees with B for the sale of a house and furniture. The ownership of the furniture does not pass to B until the house is conveyed to B."

51. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"86. Buyer to bear loss after goods have become his property.—When goods have become the property of the buyer, he must bear any loss arising from their destruction or injury.

Illustrations

(a) B offers, and A accepts, 100 rupees for a stack of firewood standing on A's premises, the firewood to be allowed to remain on A's premises till a certain day, and not to be taken away till paid for. Before payment, and while the firewood is on A's premises, it is accidentally destroyed by fire. B must bear the loss.

(b) A bids 1000 rupees for a picture at a sale by auction. After the bid, it is injured by an accident. If the accident happens before the hammer falls, the loss falls, on the seller; if afterwards, on A."

52. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"87. *Transfer of ownership of goods agreed to be sold while non-existent.*—When there is a contract for the sale of goods not yet in existence, the ownership of the goods may be transferred by acts done, after the goods are produced in pursuance of the contract, by the seller, or by the buyer with the seller's assent.

Illustrations

(a) A contracts to sell to B, for a stated price, all the indigo which shall be produced at A's factory during the ensuing year. A, when the indigo has been manufactured, gives B an acknowledgement that he holds the indigo at his disposal. The ownership of the indigo vests in B from the date of the acknowledgement.

(b) A, for a stated price, contracts that B may take and sell any crops that shall be grown on A's land in succession to the crops then standing. Under this contract, B, with the assent of A, takes possession of some crops grown in succession to the crops standing at the time of the contract. The ownership of the crops, when taken possession of, vests in B.

(c) A, for a stated price, contracts that B may take and sell any crops that shall be grown on his land in succession to the crops then standing. Under this contract, B applies to A for possession of some crops grown in succession to the crops which were standing at the time of the contract. A refuses to give possession. The ownership of the crops has not passed to B, though A may commit a breach of contract in refusing to give possession."

53. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"88. *Contract to sell and deliver, at a future day, goods not in seller's possession at date of contract.*—A contract for the sale of goods to be delivered at a future day is binding, though the goods are not in the possession of the seller at the time of making the contract, and though, at the time, he has no reasonable expectation of acquiring them otherwise than by purchase.

Illustration

A contracts, on the 1st January, to sell B 50 shares in the East Indian Railway Company, to be delivered and paid for on the 1st March of the same year. A, at the time of making the contract, is not in possession of any shares. The contract is valid."

54. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"89. *Determination of price not fixed by contract.*—Where the price of goods sold is not fixed by the contract of sale, the buyer is bound to pay the seller such a price as the court considers reasonable.

Illustration

B, living at Patna, orders of A, a coach-builder at Calcutta, a carriage of a particular description. Nothing is said by either as to the price. The order having been executed, and the price being in dispute between the buyer and the seller, the Court must decide what price it considers reasonable."

55. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

91. Effect of delivery to wharfinger or carrier.—⁵⁶[* * *]

92. Effect of part delivery.—⁵⁷[* * *]

93. Seller not bound to deliver until buyer applies for delivery.—⁵⁸[* * *]

94. Place of delivery.—⁵⁹[* * *]

"90. *Delivery how made.*—Delivery of goods sold may be made by doing anything which has the effect of putting them in the possession of the buyer, or of any person authorised to hold them on his behalf.

Illustration

(a) A sells to B a horse, and causes or permits it to be removed from A's stables to B's. The removal to B's stable is a delivery.

(b) B, in England, orders 100 bales of cotton from A, a merchant of Bombay, and sends his own ship to Bombay for the cotton. The putting the cotton on board the ship is a delivery to B.

(c) A sells to B certain specific goods which are locked up in a godown. A gives B the key of the godown, in order that he may get the goods. This is a delivery.

(d) A sells to B five specific casks of oil. The oil is in the warehouse of A. B sells the five casks to C. C receives warehouse rent for them from C. This amounts to a delivery of the oil to C, as it shows an assent on the part of A to hold the goods as warehouseman of C.

(e) A sells to B 50 maunds of rice in the possession of C, a warehouseman. A gives B an order to C to transfer the rice to B, and C assents to such order, and transfers the rice in his books to B. This is a delivery.

(f) A agrees to sell B five tons of oil, at 1000 rupees per ton, to be paid for at the time of delivery. A gives to C, a wharfinger, at whose wharf he had twenty tons of the oil, an order to transfer five of them into the name of B. C makes the transfer in his books, and gives A's clerk a notice of the transfer for B. A's clerk takes the transfer notice to B, and offers to give it him on payment of the price of the oil. B refuses to pay. There has been no delivery to B, as B never assented to make C his agent to hold for him the five tons selected by A."

56. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"91. *Effect of delivery to wharfinger or carrier.*—A delivery to a wharfinger or carrier of the goods sold, has the same effect as a delivery to the buyer, but does not render the buyer liable for the price of goods which do not reach him, unless the delivery is so made as to enable him to hold the wharfinger or carrier responsible for the safe custody or delivery of the goods.

Illustration

B, at Agra, orders of A, who lives at Calcutta, three casks of oil to be sent to him by railway. A takes three casks of oil directed to B to the railway station, and leaves them there without conforming to the rules which must be complied with in order to render the Railway Company responsible for their safety. The goods do not reach B. There has not been a sufficient delivery to charge B in a suit for the price.

57. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"92. *Effect of part delivery.*—A delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Illustrations

(a) A ship arrives in a harbour laden with a cargo consigned to A, the buyer of the cargo. The captain begins to discharge it, and delivers over part of the goods to A in progress of the delivery of the whole. This is a delivery of the cargo to A for the purpose of passing the property in the cargo.

(b) A sells to B a stack of firewood, to be paid for by B on delivery. After the sale, B applies for and obtains from A leave to take away some of the firewood. This does not have the legal effect of delivery of the whole.

(c) A sells 50 maunds of rice to B. The rice remains in A's warehouse. After the sale, B sells to C 10 maunds of the rice, and A, at B's desire, sends the maunds to C. This has not the legal effect of a delivery of the whole."

58. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"93. *Seller not bound to deliver until buyer applies for delivery.*—In the absence of any special promise, the seller of goods is not bound to deliver them until the buyer applies for delivery."

59. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"94. *Place of delivery.*—In the absence of any special promise as to delivery, goods sold are to be delivered at the place at which they are at the time of the sale; and goods contracted to be sold are to be delivered at the place at which they are at the time of the sale."

Seller's Lien

95. Seller's lien.—⁶⁰[***]

96. Lien where payment to be made at a future day, but no time fixed for delivery.—⁶¹[***]

97. Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.—⁶²[***]

98. Seller's lien against subsequent buyer.—⁶³[***]

Stoppage in Transit

99. Power of seller to stop in transit.—⁶⁴[***]

100. When goods are to be deemed in transit.—⁶⁵[***]

delivered at the place at which they are at the time of the contract for sale, or, if not then in existence, at the place at which they are produced."

60. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"95. *Seller's lien.*—Unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price or any part of it remains unpaid."

61. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"96. *Lien where payment to be made at a future day, but no time fixed for delivery.*—Where, by the contract, the payment is to be made at a future day, but no time is fixed for the delivery of the goods, the seller has no lien, and the buyer is entitled to a present delivery of the goods without payment. But if the buyer becomes insolvent before delivery of the goods, or if the time appointed for payment arrives before the delivery of the goods, the seller may retain the goods for the price.

Explanation.—A person is insolvent who has ceased to pay his debts in the usual course of business, or who is incapable of paying them.

Illustration

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse. Before the expiry of the three months, B becomes insolvent. A may retain the goods for the price."

62. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"97. *Seller's lien where payment to be made at future day, and buyer allows goods to remain in seller's possession.*—Where, by the contract, the payment is to be made at a future day, and the buyer allows the goods to remain in the possession of the seller until that day, and does not then pay for them, the seller may retain the goods for the price.

Illustration

A sells to B a quantity of sugar in A's warehouse. It is agreed that three months' credit shall be given. B allows the sugar to remain in A's warehouse till the expiry of the three months, and then does not pay for them. A may retain the goods for the price."

63. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"98. *Seller's lien against subsequent buyer.*—A seller, in possession of goods sold, may retain them for the price against any subsequent buyer, unless the seller has recognised the title of the subsequent buyer."

64. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"99. *Power of seller to stop in transit.*—A seller who has parted with the possession of the goods, and has not received the whole price, may, if the buyer becomes insolvent, stop the goods while they are in transit to the buyer."

65. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"100. *When goods are to be deemed in transit.*—Goods are to be deemed in transit while they are in the possession of the carrier, or lodged at any place in the course of transmission to the buyer, and are not yet come into the possession of the buyer or any person on his behalf, otherwise than as being in possession of the carrier, or as being so lodged.

Illustrations

(a) B, living at Madras, orders goods of A, at Patna, and directs that they shall be sent to Madras. The goods are sent to Calcutta, and there delivered to C, a wharfinger, to be forwarded to Madras. The goods, while they are in the possession of C, are in transit.

101. Continuance of right of stoppage.—⁶⁶[* * *]**102. Cessation of right on assignment by buyer of document showing title.—⁶⁷[* * *]****103. How seller may stop where instrument of title assigned to secure specific advance.—⁶⁸[* * *]****104. Stoppage how effected.—⁶⁹[* * *]****105. Notice of seller's claim.—⁷⁰[* * *]**

(b) B, at Delhi, orders goods of A, at Calcutta. A consigns and forwards the goods to B at Delhi. On arrival there, they are taken to the warehouse of B, and left there. B refuses to receive them, and immediately afterwards stops payment. The goods are in transit.

(c) B, who lives at Puna, orders goods of A at Bombay. A sends them to Puna by C, a carrier appointed by B. The goods arrive at Puna, and are placed by C, at B's request, in O's warehouse for B. The goods are no longer in transit.

(d) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay, B sends his own ship to Bombay for the cotton. The transit is at an end when the cotton is delivered on board the ship.

(e) B, a merchant of London, orders 100 bales of cotton of A, a merchant at Bombay. B sends his own ship to Bombay for the cotton. A delivers the cotton on board the ship, and takes bills of lading from the master, making the cotton deliverable to A's order or assigns. The cotton arrives at London, but, before coming into B's possession, B becomes insolvent. The cotton has not been paid for. A may stop the cotton."

66. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"101. *Continuance of right of stoppage.*—The seller's right of stoppage does not, except in the cases hereinafter mentioned, cease on the buyer's reselling the goods while in transit, and receiving the price, but continues until the goods have been delivered to the second buyer, or to some person on his behalf."

67. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"102. *Cessation of right on assignment by buyer of document showing title.*—The right of stoppage ceases if the buyer, having obtained a bill of lading or other document showing title to the goods, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

Illustrations

(a) A sells and consigns certain goods to B, and sends him the bill of loading. A being still unpaid, B becomes insolvent, and while the goods are in transit, assigns the bill of lading for cash to C, who is not aware of his insolvency. A can not stop the goods in transit.

(b) A sells and consigns certain goods to B. A being still unpaid, B becomes insolvent, and, while the goods are still in transit, assigns the bill of lading for cash to C, who knows that B is insolvent. The assignment not being in good faith, A may still stop the goods in transit."

68. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"103. *How seller may stop where instrument of title assigned to secure specific advance.*—Where a bill of lading or other instrument of title to any goods is assigned by the buyer of such goods by way of pledge, to secure an advance made specifically upon it, in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods in transit.

Illustrations

(a) A sells and consigns goods to B of the value of 12,000 rupees, B assigns the bill of lading for these goods to C, to secure a specific advance of 5000 rupees made to him upon the bill of lading by C, B becomes insolvent, being indebted to C to the amount of 9000 rupees. A is not entitled to stop the goods except on payment or tender to C of 5000 rupees.

(b) A sells and consigns goods to B of the value of 12,000 rupees, B assigns the bill of lading for these goods to C, to secure the sum of 5000 rupees due from him to C, upon a general balance of account. B becomes insolvent. A is entitled to stop the goods in transit without payment or tender to C of the 5000 rupees.

69. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

"104. *Stoppage how effected.*—The seller may effect stoppage in transit, either by taking actual possession of the goods, or by giving notice of his claim to the carrier or other depository in whose possession they are."

70. *Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930).* Prior to omission it read as:

106. Right of seller on stoppage.—⁷¹[* * *]

Resale

107. Resale on buyer's failure to perform.—⁷²[* * *]

Title

108. Title conveyed by seller of goods to buyer.—⁷³[* * *]

"105. *Notice of seller's claim.*—Such notice may be given, either to the person who has the immediate possession of the goods, or to the principal whose servant has possession. In the latter case, the notice must be given at such a time, and under such circumstances, that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer."

71. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"106. *Right of seller on stoppage.*—Stoppage in transit entitles the seller to hold the goods stopped until the price of the whole of the goods sold is paid.

Illustration

A sells to B 100 bales of cotton; 60 bales having come into B's possession, and 40 being still in transit, B becomes insolvent, and A, being still unpaid, stops the 40 bales in transit. A is entitled to hold the 40 bales until the price of the 100 bales is paid."

72. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"107. *Resale on buyer's failure to perform.*—Where the buyer of goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them, the seller, having a lien on the goods, or having stopped them in transit, may, after giving notice to the buyer of his intention to do so, resell them, after the lapse of a reasonable time, and the buyer must bear any loss, but is not entitled to any profit, which may occur on such resale."

73. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"108. *Title conveyed by seller of goods to buyer.*—No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases—

Exception 1.—When any person is, by the consent of the owner, in possession of any goods, or of any bill of loading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary:

Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

Exception 2.—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has not right to sell them.

Exception 3.—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract rescinded, buy them in good faith of the person in possession; unless the circumstances which render the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

Illustrations

(a) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months credit. The property in the goods passes to D.

(c) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d) A, B and C are joint Hindu brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e) A, by a misrepresentation not amounting to cheating, includes B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred

Warranty

109. Seller's responsibility for badness to title.—⁷⁴[* * *]

110. Establishment of implied warranty of goodness or quality.—⁷⁵[* * *]

111. Warranty of soundness implied on sale of provisions.—⁷⁶[* * *]

112. Warranty of bulk implied on sale of goods by sample.—⁷⁷[* * *]

113. Warranty implied where goods are sold as being of a certain denomination.—⁷⁸[* * *]

114. Warranty where goods ordered for a specified purpose.—⁷⁹[* * *]

115. Warranty on sale of article of well-known ascertained kind.—⁸⁰[* * *]

to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f) A compels B by wrongful intimidation, or induces him by cheating or forgery, to sell him a horse, and before B rescinds the contract, sells the horse to C. The property is not transferred to C."

74. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"109. *Seller's responsibility for badness to title.*—If the buyer, or any person claiming under him, is, by reason of the invalidity of the seller's title, deprived of the thing sold, the seller is responsible to the buyer, or the person claiming under him, for loss caused thereby, unless a contrary intention appears by the contract."

75. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"110. *Establishment of implied warranty of goodness or quality.*—An implied warranty of goodness or quality may be established by the custom of any particular trade."

76. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"111. *Warranty of soundness implied on sale of provisions.*—On the sale of provisions, there is an implied warranty that they are sound."

77. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"112. *Warranty of bulk implied on sale of goods by sample.*—On the sale of goods by sample, there is an implied warranty that the bulk is equal in quality to the sample."

78. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"113. *Warranty implied where goods are sold as being of a certain denomination.*—Where goods are sold as being of a certain denomination, there is an implied warranty that they are such goods as are commercially known by that denomination, although the buyer may have brought them by sample, or after inspection of the bulk.

Explanation.—But if the contract specifically states that the goods, though sold as of a certain denomination, are not warranted to be of that denomination, there is no implied warranty.

Illustrations

(a) A, at Calcutta, sells to B twelve bags of "waste silk", then on its way from Murshedabad to Calcutta. There is an implied warranty by A that the silk shall be such as is known in the market under the denomination of "waste silk".

(b) A buys, by sample and after having inspected the bulk, 100 bales of "FAIR Bengal" cotton. The cotton proves not to be such as is known in the market as "FAIR Bengal": There is a breach of warranty."

79. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"114. *Warranty where goods ordered for a specified purpose.*—Where goods have been ordered for a specified purpose, for which goods of the denomination mentioned in the order are usually sold, there is an implied warranty by the seller that the goods supplied are fit for that purpose.

Illustration

B orders of A, a copper manufacturer, copper for sheathing a vessel. A, on this order, supplies copper. There is an implied warranty that the copper is fit for sheathing a vessel."

80. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"115. *Warranty on sale of article of well-known ascertained kind.*—Upon the sale of an article of a well-known ascertained kind, there is no implied warranty of its fitness for any particular purpose.

Illustration

B writes to A, the owner of a patent invention for cleaning cotton—"Send me your patent cotton-cleaning machine to clean the cotton at my factory". A send the machine according to order. There is

- 116. Seller when not responsible for latent defects.**—⁸¹[***]
- 117. Buyer's right on breach of warranty.**—⁸²[***]
- 118. Right of buyer on breach of warranty in respect of goods not ascertained.**—⁸³[***]

Miscellaneous

- 119. When buyer may refuse to accept, if goods not ordered are sent with goods ordered.**—⁸⁴[***]

an implied warranty by A that it is the article known as A's patent cotton-cleaning machine, but none that it is fit for the particular purpose of cleaning the cotton at B's factory.'

81. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"116. *Seller when not responsible for latent defects.*—In the absence of fraud and of any express warranty of quality, the seller of an article which answers the description under which it was sold is not responsible for a latent defect in it."

Illustration

A sells to B a horse. It turns out that the horse had, at the time of the sale, a defect of which A was unaware. A is not responsible for this."

82. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"117. *Buyer's right on breach of warranty.*—Where a specific article, sold with a warranty, has been delivered and accepted, and the warranty is broken, the sale is not thereby rendered voidable; but the buyer is entitled to compensation from the seller for loss caused by the breach of warranty."

Illustration

A sells and delivers to B a horse warranted sound. The horse proves to have been unsound at the time of sale. The sale is not thereby rendered voidable, but B is entitled to compensation from A for loss caused by the unsoundness."

83. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"118. *Right of buyer on breach of warranty in respect of goods not ascertained.*—Where there has been a contract, with a warranty for the sale of goods which, at the time of the contract, were not ascertained or not in existence, and the warranty is broken, the buyer may accept the goods or refuse to accept the goods when tendered."

Or keep the goods for a time reasonably sufficient for examining and trying them, and then refuse to accept them; provided that, during such time, he exercises no other act of ownership over them than is necessary for the purpose of examination and trial.

If any case the buyer is entitled to compensation from the seller for any loss caused by the breach of warranty; but if he accepts the goods and intends to claim compensation, he must give notice of his intention to do so within a reasonable time after discovering the breach of the warranty.

Illustrations

(a) A agrees to sell and, without application on B's part, deliver to B 200 bales of unascertained cotton by sample. Cotton not in accordance with sample is delivered to B. B may return it if he has not kept it longer than a reasonable time for the purpose of examination.

(b) B agrees to buy of A twenty-five sacks of flour by sample. The flour is delivered to B, who pays the price. B, upon examination, finds it not equal to sample; B afterwards uses two sacks, and sells one. He cannot now rescind the contract and recover the price, but he is entitled to compensation from A for any loss caused by the breach of warranty.

(c) B makes two pairs of shoes for A by A's order. When the shoes are delivered, they do not fit A. A keeps both pairs for a day. He wears one pair for a short time in the house, and takes a long walk out of doors in the other pair. He may refuse to accept the first pair, but not the second. But he may recover compensation for any loss sustained by the defect of the second pair."

84. *Omitted* by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:

"119. *When buyer may refuse to accept, if goods not ordered are sent with goods ordered.*—When the seller sends to the buyer goods not ordered with goods ordered, the buyer may refuse to accept any of the goods so sent, if there is risk or trouble in separating the goods ordered from the goods not ordered."

Illustration

A orders of B specific articles of china. B sends these articles to A in a hamper, with other articles of china which had not been ordered. A may refuse to accept any of the goods sent."

120. Effect of wrongful refusal to accept.—⁸⁵[* * *]

121. Right of seller as to rescission on failure of buyer to pay price at time fixed.—⁸⁶[* * *]

122. Sale and transfer of lots sold by auction.—⁸⁷[* * *]

123. Effect of use, by seller, of pretended biddings to raise price.—⁸⁸[* * *]

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.

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 authorised him to bring or defend the suit;
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor; and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

126. "Contract of guarantee", "surety", "principal debtor" and "creditor".—A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who

85. Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:
"120. *Effect of wrongful refusal to accept.*—If a buyer wrongfully refuses to accept the goods sold to him, this amounts to a breach of the contract of sale."

86. Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:
"121. *Right of seller as to rescission on failure of buyer to pay price at time fixed.*—When goods sold have been delivered to the buyer, the seller is not entitled to rescind the contract on the buyer's failing to pay the price at the time fixed, unless it was stipulated by the contract that he should be so entitled."

87. Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:
"122. *Sale and transfer of lots sold by auction.*—Where goods are sold by auction, there is a distinct and separate sale of the goods in each lot, by which the ownership thereof is transferred as each lot is knocked down."

88. Omitted by Act 3 of 1930, S. 65 (w.e.f. 1-7-1930). Prior to omission it read as:
"123. *Effect of use, by seller, of pretended biddings to raise price.*—If, at a sale by auction, the seller makes use of pretended biddings to raise the price, the sale is voidable at the option of the buyer."

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.

CASE LAW ▶ Transaction in multiple documents.—Transaction in more than one document must be read together, *S. Chattanatha Karayalar v. Central Bank of India Ltd.*, 1965 SCC OnLine SC 67.

► **Bank guarantee/Indemnity.**—A bank guarantee constitutes an independent contract between the issuing bank and the beneficiary to whom the guarantee is issued. Such a contract is independent of the underlying contract between the beneficiary and the third party at whose behest the bank guarantee is issued. Absent a case of fraud, irretrievable injustice and special equities, the Court should not interfere with the invocation or encashment of a bank guarantee so long as the invocation was in terms of the bank guarantee, *A.P. Pollution Control Board v. CCL Products (India) Ltd.*, (2019) 20 SCC 669, See also *Standard Chartered Bank v. Heavy Engg. Corp. Ltd.*, (2020) 13 SCC 574.

► **“Pledge agreement” and “Contract of guarantee”.**—Distinguishing a pledge agreement from a contract of guarantee, held, a contract of guarantee contains a guarantee “to perform the promise or discharge the liability of third person in case of his default” and the key words in Section 126 are contract “to perform the promise”, or “discharge the liability”, of a third person, *Phoenix ARC (P) Ltd. v. Ketulbhai Ramubhai Patel*, (2021) 2 SCC 799.

See also *Vistra ITCL (India) Ltd. v. Dinkar Venkatasubramanian*, (2023) 7 SCC 324.

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.

CASE LAW ▶ Sufficient consideration.—Anything done for the benefit of the principal debtor, would be sufficient consideration to the surety for giving guarantee. Thus, when creditor abstained from enforcing the claim against the principal debtor because of promise to create mortgage by the surety, such forbearance was sufficient and valid consideration to the surety, *Jaypee Infratech Ltd. v. Axis Bank Ltd.*, (2020) 8 SCC 401.

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.

CASE LAW ▶ Liability of surety.—Decree holder can execute decree against the guarantor without proceeding against the principal borrower. Guarantor's liability is coextensive with that of principal debtor, *Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala*, (2009) 9 SCC 478 : (2009) 3 SCC (Civ) 797.

Liability of surety/guarantor is co-extensive with that of principal debtor. Liability is immediate and surety has no right to ask for deferment of recovery proceeding against him until creditor exhausts his remedy against principal debtor, *Ram Kishun v. State of U.P.*, (2012) 11 SCC 511.

► **Guarantor/Surety.**—This guarantor's duty to make full disclosure of assets when called upon to do so by court. It is irrelevant whether assets had been declared by personal guarantee or not, *SBI v. Kingfisher Airlines Ltd.*, (2017) 6 SCC 654.

► **Liability of surety and principal debtor.**—Implication of co-extensiveness of liability of surety and principal debtor is not that it permits a creditor to "double proof" of their debt i.e. double recovery from one and the same estate. Rather, what is permissible is "double dip" i.e. recovery of the debt from separate estates (those of principal borrower and surety) : that is to say, in case a portion of debt is recovered from one of the entities, either principal borrower or guarantor, the other would be liable only for the unsatisfied amount of the claim, the principal borrower being joint and several with the surety, *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321.

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 rent 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 to the above value of £ 100, and C pays B for it. Afterwards, B supplies C with tea to 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 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, guarantee to B, for twelve months, the due payment of all such bills to the extent of 5,000 rupees. B discounts bill 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 in 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 principal⁸⁹[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 a 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 overdraw, 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 latter 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*.

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

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

134. Discharge of surety by release of discharge of principal debtor.—The surety is discharged by any contract between the creditor and the principal debtor,

89. Inserted by Act 24 of 1917, S. 2 and Sch. 1 (w.e.f. 27-9-1917).

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*'s 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 time 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.

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 sureties⁹⁰.

CASE LAW ▶ Bailment.—Bailment can be created by any person who is in possession/custody of goods but not necessarily the owner of the goods, *Rasiklal Kantilal & Co. v. Port of Bombay*, (2017) 11 SCC 1.

In case of storage of agricultural produce in cold storage by farmers on payment of rent, the nature of relationship was a bailor-bailee relationship. Neither were the goods kept in trust, nor on commission, *Canara Bank v. United India Insurance Company Ltd.*, (2020) 3 SCC 455.

90. See S. 44, *supra*.

Mere hiring of locker of bank would not constitute contract of bailment *Amitabha Dasgupta v. United Bank of India*, (2021) 14 SCC 177.

► **Existence of bailment relationship.**—The laws of bailment apply where custody or possession of the vehicle is purposefully handed over to the hotel (as is the case with valet parking). However, but where a person is merely allowed to park his car in a parking space or facility, there is only a licensor-licensee relationship and laws of bailment/prima facie liability rule cannot be applied. In a situation where hotel actively undertakes to park vehicle for the owner, keep it in safe custody and return it upon presentation of a parking slip in a manner such that parking of vehicle is beyond control of the owner, a contract of bailment exists. Thus, hotel would be liable as a bailee for returning vehicle in the condition in which it was delivered, *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*, (2020) 2 SCC 265, See also *Taj Mahal Hotel v. United India Insurance Co. Ltd.*, (2020) 2 SCC 224.

► **Taking over possession by Corporation.**—When the corporation takes over possession of the plant and machinery in exercise of its statutory power, apart from its obligation as a "bailee", it also acts as a "trustee". Its action otherwise must be fair and reasonable. Whereas the Corporation has a right to realize its dues, it must act strictly in terms of the statutory and constitutional scheme. While it exercised its enormous statutory power, it is expected to perform its duties also, *Everest Wools (P) Ltd. v. U.P. Financial Corp.,* (2008) 1 SCC 643.

► **Transfer of right.**—Transfer of right to use any goods is not in the nature of bailment. It is a deemed sale under the legal fiction engrafted in Article 366(29-A)(d), *20th Century Finance Corp. Ltd. v. State of Maharashtra*, (2000) 6 SCC 12.

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 right 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 *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 to 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.

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.

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.*

(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.*

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 material circumstances, 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 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 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 is compelled to pay the amount of the 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.

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.⁹¹

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 each the full penalty of his bond.

CHAPTER IX 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 according to the directions of the person delivering them. The person delivering

91. See S. 43, supra.

the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation.—If a person already in possession of the goods of another 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.

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 the 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.

92151. 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.⁹³

CASE LAW ▶ Required degree of care under bailment.—Where guest purposefully hands over custody/possession of his vehicle to hotel (as in the case with valet parking), burden of proof is on hotel (bailee) to show that efforts were undertaken by it to take reasonable care of vehicle bailed, and that theft did not occur due to its neglect or misconduct. Further, it is not sufficient for the hotel to merely appoint an attendant or security guard who takes responsibility of parking the vehicle and keeping car keys in his custody until vehicle owner is inside hotel premises and hotel must take additional steps to guard against situations which may result in wrongful loss or damage to the car, *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*, (2020) 2 SCC 265.

The words "in the absence of any special contract" indicate that it is open to bailee to accept a higher standard of liability than Section 151 under contract, and not otherwise, *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*, (2020) 2 SCC 265.

92. 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 S. 152, see S. 40(1) of that Act.
93. As to railway contracts see the Indian Railways Act, 1890 (9 of 1890), S. 72. As to the liability of common carriers, see S. 8 of the Carriers Act, 1865 (3 of 1865), S. 8.

► **Exemption clause/"owner's risk" clause.**—Even where there is a general or specific exemption clause, there remains a *prima facie* burden of proof on the hotel to explain that any loss or damage caused to vehicles parked was not on account of its negligence or want of care per Sections 151 and 152 of the Contract Act. It is only after this burden of proof is discharged that the exemption clause can come into force. Further, burden of proving that such loss or damage was covered by the exemption clause will also be on the hotel, *Lilavati Kirtilal Mehta Medical Trust v. Unique Shanti Developers*, (2020) 2 SCC 265.

⁹⁴ **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 avoidable 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.

CASE LAW ▶ Hire-purchase.—Repossession of vehicle by financier/owner in accordance with the terms and conditions of the hire-purchase agreement, hired under a hire-purchase agreement, on default of payment by hirer and non-releasing of the same on the promise of payment does not amount to deficiency of service.\, *Magma Fincorp Ltd. v. Rajesh Kumar Tiwari*, (2020) 10 SCC 399.

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 Benaras. 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 good 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

94. 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 S. 152, see S. 40(1) of that Act.

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.

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 expenses 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 for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

95 161. Bailee's responsibility when goods are not duly returned.—If, by the default 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.⁹⁶

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

95. S. 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).

96. As to railway contracts see the Indian Railways Act, 1890 (9 of 1890), S. 72.

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.⁹⁷

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 the 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.

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

(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 month's 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.⁹⁸

Bailments of pledges

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 the "pawnee".

CASE LAW ▶ Pledge.—A pawn or pledge is an intermediate between a simple lien and a mortgage, which wholly passes the property. A pawnor has an absolute right to redeem the pledged property upon tendering the amount advanced but that right would be lost if the pawnee in the meantime has lawfully sold the pledged property. *PTC (India) Financial Services Ltd. v. Venkateswarlu Kari*, (2022) 9 SCC 704.

▶ **Lien of pawnee.**—The lien of a pawnee traceable to Sections 172, 173 and 176 of the Contract Act is capable of satisfaction from property in the hands of the Government obtained even by lawful seizure, *O. Konavalov v. Commander, Coast Guard Region*, (2006) 4 SCC 620.

▶ **Reasonableness of restriction.**—Security deposit is required to be furnished by moneylenders and pawnbrokers under Karnataka Moneylenders Act and Karnataka Pawnbrokers Act respectively to obtain licence for business of moneylending/ pawnbroking. Considering that businesses of moneylending and pawnbroking are usurious businesses and Government may impose onerous conditions to restrict or even discourage people from entering into such businesses, held, impugned provisions prohibiting payment of any interest on said security deposit under respective Acts (i.e Karnataka Moneylenders Act and Karnataka Pawnbrokers Act) could not be said to be unreasonable, *State of Karnataka v. Karnataka Pawn Brokers Assn.*, (2018) 6 SCC 363.

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

CASE LAW ▶ Right of retention.—The right of the lender, or pledgee, is to retain the chattel until a proper tender of the amount due is made. Under Section 173 of the Contract Act a pawnee has the right to retain the goods pledged for payment of the debt including interest on the debt and all necessary expenses incurred by the pawnee in respect of the possession or for the preservation of the goods pledged, *Central Bank of India v. Siriguppa Sugars & Chemicals Ltd.*, (2007) 8 SCC 353 : (2007) 2 SCC (L&S) 919.

174. Pawnee not to retain for debt or promise other than that for which goods pledged: Presumption in case of subsequent advances.—The pawnee

98. As to lien of an agent, see S. 221, *infra*. As to lien of a Railway Administration, see the Indian Railways Act, 1890 (9 of 1890), S. 55.

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.

176. Pawnee's right where pawnor makes default.—If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

CASE LAW ▶ Pawnee's rights/remedies/obligations in case of pawnor's default in payment of debt.—If the pawnor makes default in payment of the debt or performance as promised, and in respect of which the goods were pledged, the pawnee may bring a suit on the pawnor upon the debt or promise and may retain the goods pledged as collateral security, or the pawnee may sell the things pledged on giving the pawnor reasonable notice of sale, *PTC (India) Financial Services Ltd. v. Venkateswarlu Kari*, (2022) 9 SCC 704.

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 them;⁹⁹ but he must, in that case, pay, in addition, any expenses which have arisen from his default.

CASE LAW ▶ Pawnor's right of redemption.—Pawnor's right of redemption, until when subsists, explained. Sale of pledged securities by pawnee to itself is not permissible, *PTC (India) Financial Services Ltd. v. Venkateswarlu Kari*, (2022) 9 SCC 704.

¹⁰⁰[**178. Pledge by mercantile agent.**—Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile

99. For limitation, see the Limitation Act, 1963 (36 of 1963), Sch. I.

100. Substituted by Act 4 of 1930, S. 2 (w.e.f. 15-3-1930). Prior to substitution Section 178 read as:

“178. *Pledge by possessor of goods, or of documentary title to goods.*—A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods, or documents:

Provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.”

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 no 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 (III of 1930).

CASE LAW ▶ Creation of valid pledge.—An owner of goods can make a valid pledge of them by transferring the railway receipt representing the said goods. The general rule is expressed by the maxim *nemo dat quod non habet*, i.e., no one can convey a better title than what he had. To this maxim, to facilitate mercantile transactions, the Indian law has grafted some exceptions, in favour of bona fide pledges by transfer of documents of title from persons, whether owners of goods or their mercantile agents who do not possess the full bundle of rights of ownership at the time the pledges are made, *Morvi Mercantile Bank Ltd. v. Union of India*, 1965 SCC OnLine SC 66.

178-A. 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 19-A, 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 or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

CASE LAW ▶ Remedies available in pledges.—Under Section 180 a pledge being a bailment of goods as security for payment of a debt, the pledgee will have the same remedies as the owner of the goods would have against a third person for deprivation of the said goods or injury to them, *Morvi Mercantile Bank Ltd. v. Union of India*, 1965 SCC OnLine SC 66.

181. Apportionment of relief or compensation obtained by such suits.—Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X

AGENCY

Appointment and authority of agents

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

CASE LAW ▶ Agent.—Where the mortgagor gives right to the mortgagee to sell mortgaged property without intervention of the Court the mortgagee does not act as agent of the mortgagor, *Narasdas Karsondas v. S.A. Kamtam*, (1977) 3 SCC 247.

▶ **Appointment of agent.**—More than one principal can appoint an agent by executing a power of attorney in his favour, *Syed Abdul Khader v. Ramireddy*, (1979) 2 SCC 601.

The mere formal description of a person as an agent or buyer is not conclusive, unless the context shows that the parties clearly intended to treat a buyer as a buyer and not as an agent, *Bhopal Sugar Industries Ltd. v. STO*, (1977) 3 SCC 147.

▶ **Contract of sale and contract of agency.**—A contract of agency, however, differs essentially from a contract of a sale inasmuch as an agent after taking delivery of the property does not sell it as his own property but sells the same as the property of the principal and under his instructions and directions. Furthermore, since the agent is not the owner of the goods, if any loss is suffered by the agent he is to be indemnified by the principal, *Bhopal Sugar Industries Ltd. v. STO*, (1977) 3 SCC 147.

▶ **Liability to fulfill obligation.**—Offer of performance of obligation contrary to agreed terms does not give rise to liability to fulfil the reciprocal obligation, *Vidya Vati v. Devi Das*, (1977) 1 SCC 293.

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.

184. Who may be an agent.—As between the principal and third persons, 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.¹⁰¹

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 be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration

A owns a shop in Serampore, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

188. Extent of agent's authority.—An agent, having an authority to do an act, has authority to do every lawful thing which is necessary in order to do such act.

101. See however, S. 33 of the Indian Registration Act, 1908 (16 of 1908). See also the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order III, Rule 4.

An agent having an authority to carry on a business, has authority to do every lawful thing 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 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 provision 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 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.

Sub-agent's responsibility.—The sub-agent is responsible for his acts to the agent, but not to the principal, except in case 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 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 authorises 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 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.

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

200. Ratification of unauthorised 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 authorised 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 unauthorised 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.

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* authorises *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 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* authorises *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 and renunciation may be expressed or may be implied in the conduct of the 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 investment. *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 his 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 the ship arrived, but not any profit he might have made by the subsequent rise.

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 of 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.

NOTES ▶ The Law as to the principal's right of repudiation under Section 215 can be summed up thus: 'Have been disadvantageous' means 'disadvantageous in fact'. (102 IC 366). The burden of proving that the transaction is not disadvantageous to the principal is on the agent. (110 IC 6).

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 direct 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.

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 Singapur, 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 causes 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 not 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.¹⁰²

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

102. See S. 24, *supra*.

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.

225. Compensation to agent for injury caused by principal's neglect.—The principal must make compensation to his agent in respect of injury¹⁰³ 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 and 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 authorised 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.—When an agent does more than he is authorised 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.

103. Cf. the 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 contract to that effect, an agent cannot personally enforce contract 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.

CASE LAW ▶ Liability of agent.—Agent is not liable for acts of a disclosed principal subject to contract to the contrary, *Vivek Automobiles Ltd. v. Indian Inc.*, (2009) 17 SCC 657.

231. Rights 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 rights 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.

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.

Illustration

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 authorised 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 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 unauthorised acts were authorised.—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.—Misrepresentations 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*.

(b) *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

239. 'Partnership' defined.—¹⁰⁴[* * *]

240. Lender not a partner by advancing money for share of profits.—¹⁰⁵[* * *]

241. Property left in business by retiring partner, or deceased partner's representative.—¹⁰⁶[* * *]

242. Servant or agent remunerated by share of profits, not a partner.—¹⁰⁷[* * *]

243. Widow or child of deceased partner receiving annuity out of profits, not a partner.—¹⁰⁸[* * *]

244. Person receiving portion of profits for sale of good-will, not a partner.—¹⁰⁹[* * *]

104. *Omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932).* Prior to omission it read as:
“239. ‘Partnership’ defined.—‘Partnership’ is the relation which subsists between persons who have agreed to combine their property, labour, or skill in some business, and to share the profits thereof between them.

‘Firm’ defined.—Persons who have entered into partnership with one another are called collectively a ‘firm’.

Illustrations

(a) A and B buy 100 bales of cotton, which they agree to sell for their joint account; A and B are partners in respect of such cotton.

(b) A and B buy 100 bales of cotton, agreeing to share it between them. A and B are not partners.

(c) A agrees with B, a goldsmith, to buy and furnish gold to B, to be worked up by him and sold, and that they shall share in the resulting profit or loss. A and B are partners.

(d) A and B agree to work together as carpenters, but that A shall receive all profits and shall pay wages to B. A and B are not partners.

(e) A and B are joint owners of a ship. This circumstance does not make them partners.”

105. *Omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932).* Prior to omission it read as:
“240. *Lender not a partner by advancing money for share of profits.*—A loan to a person engaged or about to engage in any trade or undertaking, upon a contract with such person that the lender shall receive interest at a rate varying with the profits, or that he shall receive a share of the profits, does not, of itself, constitute the lender a partner, or render him responsible as such.”

106. *Omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932).* Prior to omission it read as:
“241. *Property left in business by retiring partner, or deceased partner's representative.*—In the absence of any contract to the contrary, property left by a retiring partner, or the representative of a deceased partner, to be used in the business, is to be considered a loan within the meaning of the last preceding section.”

107. *Omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932).* Prior to omission it read as:
“242. *Servant or agent remunerated by share of profits, not a partner.*—No contract for the remuneration of a servant or agent of any person, engaged in any trade or undertaking, by a share of the profits on such trade or undertaking shall, of itself, render such servant or agent responsible as a partner therein, nor give him the rights of a partner.”

108. *Omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932).* Prior to omission it read as:
“243. *Widow or child of deceased partner receiving annuity out of profits, not a partner.*—No person, being a widow or child of a deceased partner of a trader, and receiving, by way of annuity, a proportion of the profits made by such trader in his business, shall, by reason only of such receipt, be deemed to be a partner of such trader, or be subject to any liabilities incurred by him.”

109. *Omitted by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932).* Prior to omission it read as:
“244. *Person receiving portion of profits for sale of good-will, not a partner.*—No person receiving, by way of annuity or otherwise, a portion of the profits of any business, in consideration of the sale by

245. Responsibility of person leading another to believe him a partner.—¹¹⁰[***]

246. Liability of person permitting himself to be represented as a partner.—¹¹¹[***]

247. Minor partner not personally liable, but his share is.—¹¹²[***]

248. Liability of minor partner on attaining majority.—¹¹³[***]

249. Partner's liability for debts of partnership.—¹¹⁴[***]

250. Partner's liability to third person for neglect or fraud of co-partner.—¹¹⁵[***]

251. Partner's power to bind co-partners.—¹¹⁶[***]

him of the good-will of such business, shall, by reason only of such receipt, be deemed to be a partner of the person carrying on such business, or be subject to his liabilities."

110. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"245. *Responsibility of person leading another to believe him a partner.*—A person who has, by words spoken or written, or by his conduct, led another to believe that he is a partner in a particular firm, is responsible to him as a partner in such firm."

111. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"246. *Liability of person permitting himself to be represented as a partner.*—Any one consenting to allow himself to be represented as a partner, is liable, as such, to third persons who, on the faith thereof, give credit to the partnership."

112. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"247. *Minor partner not personally liable, but his share is.*—A person who is under the age of majority according to the law to which he is subject, may be admitted to the benefits of partnership, but cannot be made personally liable for any obligation of the firm; but the share of such minor in the property of the firm is liable for the obligations of the firm."

113. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"248. *Liability of minor partner on attaining majority.*—A person who has been admitted to the benefits of partnership under the age of majority, becomes on attaining that age, liable for all obligations incurred by the partnership since he was so admitted, unless he gives public notice, within a reasonable time, of his repudiation of the partnership."

114. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"249. *Partner's liability for debts of partnership.*—Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership; but a person who is admitted as a partner into an existing firm does not thereby become liable to the creditors of such firm for anything done before he became a partner."

115. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"250. *Partner's liability to third person for neglect or fraud of co-partner.*—Every partner is liable to make compensation to third persons in respect of loss or damage arising from the neglect or fraud of any partner in the management of the business of the firm."

116. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"251. *Partner's power to bind co-partners.*—Each partner who does any act necessary for, or usually done in, carrying on the business of such a partnership as that of which he is a member, binds his co-partners to the same extent as if he were their agent duly appointed for that purpose.

Exception.—If it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement.

Illustrations

(a) A and B trade in partnership, A residing in England, and B in India. A draws a bill of exchange in the name of the firm. B has no notice of the bill, nor is he at all interested in the transaction. The firm is liable on the bill, provided the holder did not know of the circumstances under which the bill was drawn.

(b) A, being one of a firm of solicitors and attorneys, draws a bill of exchange in the name of the firm without authority. The other partners are not liable on the bill.

252. Annulment of contract defining partners' rights and obligations.—¹¹⁷[* * *]

253. Rules determining partners' mutual relations, where no contract to contrary.—¹¹⁸[* * *]

254. When Court may dissolve partnership.—¹¹⁹[* * *]

(c) A and B carry on business in partnership as bankers. A sum of money is received by A on behalf of the firm. A does not inform B of such receipt, and after-wards A appropriates the money to his own use. The partnership is liable to make good the money.

(d) A and B are partners. A, with the intention of cheating B, goes to a shop and purchases articles on behalf of the firm, such as might be used in the ordinary course of the partnership business, and converts them to his own separate use, there being no collusion between him and the seller. The firm is liable for the price of the goods."

117. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"252. *Annulment of contract defining partners' rights and obligations.*—Where partners have by contract regulated and defined, as between themselves, their rights and obligations, such contract can be annulled or altered only by consent of all of them, which consent must either be expressed or be implied from a uniform course of dealing.

Illustration

A, B and C, intending to enter into partnership, execute written articles of agreement, by which it is stipulated that the nett profits arising from the partnership business shall be equally divided between them. Afterwards they carry on the partnership business for many years, A receiving one-half of the nett profits, and the other half being divided equally between B and C. All parties know of and acquiesce in this agreement. This course of dealing supersedes the provision in the articles as to the division of profits."

118. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"253. *Rules determining partners' mutual relations, where no contract to contrary.*—In the absence of any contract to the contrary, the relations of partners to each other are determined by the following rules—

- (1) All partners are joint owners of all property originally brought into the partnership stock, or bought with money belonging to the partnership, or acquired for purposes of the partnership business. All such property is called partnership property. The share of each partner in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss;
- (2) All partners are entitled to share equally in the profits of the partnership business, and must contribute equally towards the losses sustained by the partnership;
- (3) Each partner has a right to take part in the management of the partnership business;
- (4) Each partner is bound to attend diligently to the business of the partnership, and is not entitled to any remuneration for acting in such business;
- (5) When differences arise as to ordinary matters connected with the partnership business, the decision shall be according to the opinion of the majority of the partners; but no change in the nature of the business of the partnership can be made, except with the consent of all the partners;
- (6) No person can introduce a new partner into a firm without the consent of all the partners;
- (7) If, from any cause whatsoever, any member of a partnership ceases to be so, the partnership is dissolved as between all the other members;
- (8) Unless the partnership has been entered into for a fixed term, any partner may retire from it at any time;
- (9) Where a partnership has been entered into for a fixed term, no partner can, during such term, retire, except with the consent of all the partners, nor can he be expelled by his partners for any cause whatever, except by order of court;
- (10) Partnerships, whether entered into for a fixed term or not, are dissolved by the death of any partner."

119. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"254. *When Court may dissolve partnership.*—At the suit of a partner the court may dissolve the partnership in the following cases—

- (1) When a partner becomes of unsound mind;

255. Dissolution of partnership by prohibition of business.—¹²⁰[* * *]

256. Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.—¹²¹[* * *]

257. General duties of partners.—¹²²[* * *]

258. Account, to firm, of benefit derived from transaction affecting partnership.—¹²³[* * *]

259. Obligations, to firm, of partner carrying on competing business.—¹²⁴[* * *]

260. Revocation of continuing guarantee by change in firm.—¹²⁵[* * *]

- (2) When a partner, other than the partner suing, has been adjudicated an insolvent under any law relating to insolvent debtors;
- (3) When a partner, other than the partner suing, has done any act by which the whole interest of such partner is legally transferred to a third person;
- (4) When any partner becomes incapable of performing his part of the partnership contract;
- (5) When a partner, other than the partner suing, is guilty of gross misconduct in the affairs of the partnership or towards his partners;
- (6) When the business of the partnership can only be carried on at a loss."

120. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"255. *Dissolution of partnership by prohibition of business.*—A partnership is in all cases dissolved by its business being prohibited by law."

121. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"256. *Rights and obligations of partners in partnership continued after expiry of term for which it was entered into.*—If a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will, in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner."

122. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"257. *General duties of partners.*—Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives."

123. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"258. *Account, to firm, of benefit derived from transaction affecting partnership.*—A partner must account to the firm for any benefit derived from a transaction affecting the partnership.

Illustrations

(a) A, B and C are partners in trade. C, without the knowledge of A and B, obtains for his own sole benefit a lease of the house in which the partnership business is carried on. A and B are entitled to participate, if they please, in the benefit of the lease.

(b) A, B and C carry on business together in partnership as merchants trading between Bombay and London. D, a merchant in London, to whom they make their consignments, secretly allows C a share of the commission which he receives upon such consignments, in consideration of C's using his influence to obtain the consignments for him. C is liable to account to the firm for the money so received by him."

124. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"259. *Obligations, to firm, of partner carrying on competing business.*—If a partner, without the knowledge and consent of the other partners, carries on any business competing or interfering with that of the firm, he must account to the firm for all profits made in such business, and must make compensation to the firm for any loss occasioned thereby."

125. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

"260. *Revocation of continuing guarantee by change in firm.*—A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given."

- 261. Non-liability of deceased partners' estate for subsequent obligations.**—¹²⁶[* * *]
- 262. Payment of partnership-debts, and of separate debts.**—¹²⁷[* * *]
- 263. Continuance of partners' rights and obligations after dissolution.**—¹²⁸[* * *]
- 264. Notice of dissolution.**—¹²⁹[* * *]
- 265. Right of partners to apply for winding-up by court after termination of partnership.**—¹³⁰[* * *]
- 266. Limited-liability partnerships, incorporated partnerships, and joint-stock companies.**—¹³¹[* * *]

126. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

“261. *Non-liability of deceased partners' estate for subsequent obligations.*—The estate of a partner who has died is not, in the absence of an express agreement, liable in respect of any obligation incurred by the firm after his death.”

127. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

“262. *Payment of partnership-debts, and of separate debts.*—Where there are joint debts due from the partnership, and also separate debts due from any partner, the partnership property must be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner must be applied in payment of his separate debts or paid to him. The separate property of any partner must be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.”

128. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

“263. *Continuance of partners' rights and obligations after dissolution.*—After a dissolution of partnership, the rights and obligations of the partners continue in all things necessary for winding-up the business of the partnership.”

129. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

“264. *Notice of dissolution.*—Persons dealing with a firm will not be affected by a dissolution of which no public notice has been given, unless they themselves had notice of such dissolution.”

130. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

“265. *Right of partners to apply for winding-up by court after termination of partnership.*—In the absence of any contract to the contrary, after the termination of a partnership, each partner or his representatives may apply to the court to wind-up the business of the firm, to provide for the payment of its debts, and to distribute the surplus according to the shares of the partners respectively.”

Explanation.—The court in this section means a court not inferior to the court of a District Judge within the local limits of whose jurisdiction the place or principal place of business of the firm is situated.”

131. *Omitted* by Act 9 of 1932, S. 73 and Sch. II (w.e.f. 1-10-1932). Prior to omission it read as:

“266. *Limited-liability partnerships, incorporated partnerships, and joint-stock companies.*—Extraordinary partnerships, such as partnerships with limited liability, incorporated partnerships, and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.”

SCHEDELE*Enactment Repealed*¹³²[* * *]

132. *Omitted by Act 10 of 1914, S. 3 and Sch. II (w.e.f. 17-3-1914).*

"SCHEDULE
Enactment Repealed

No. and year of Statute	Title	Extent of repeal.
Stat. 29 Car. II, Cap. 3	An Act for prevention of Frauds and Perjuries	Sections 1, 2, 3, 4, and 17
Stat. 11 & 12 Vic., Cap. 21	To consolidate and amend the law relating to insolvent debtors in India	Section 42

Acts

No. and year of Act	Title	Extent of repeal.
Act XIII of 1840	An Act for the amendment of the law regarding factors, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 4 Geo. (iv), C. 83, as altered and amended by the Stat 6 Geo. (iv), C. 94.	The whole
Act XIV of 1840	An Act for regarding a written memorandum necessary to the validity of certain promises and engagements, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Stat. 9 Geo. (iv), C. 14.	The whole
Act XX of 1844	An Act to amend the law relating to Advances bona fide made to Agents intrusted with goods, by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 5 and 6 Victoria. (iv), C. 39. as altered by this Act.	The whole
Act XXI of 1848	An Act for avoiding Wagers	The whole
Act V of 1866	An Act to provide a summary procedure on bills of exchange, and to amend in certain respects the commercial law of British India.	Sections 9 and 10
Act XV of 1866	An Act to amend the law of Partnership in India.	The whole
Act VIII of 1867	An Act to amend the law relating to House-racing in India.	The whole