

general nature emitted or produced from the use by the neighbor of his or her house or land shall not be deemed to have caused a loss or damage or effect to the house or land.

**279. Prohibition of building a house in other's land without consent:**

(1) No person shall build a house in a land without obtaining written consent of the owner of that land.

(2) If any person builds a house in a land without obtaining written consent of the owner of that land, the land-owner may, if he or she so desires, purchase the house on payment of the price that is less by up to twenty-five percent of the market price of that house.

(3) If the land-owner does not purchase such house pursuant to sub-section (2), the house-owner may, if the owner so consents, purchase the land on payment of the price that is higher by up to twenty-five percent of the market price of the land where the house is located.

(4) If both parties do not agree to purchase and sell the house or land pursuant to sub-section (2) or (3), the person who has built the house shall demolish the house and take away his or her materials within a period of three months of the date on which the house was so built.

(5) If the house is not demolished within the period referred to in sub-section (4), such a house shall belong to the landowner.

**280. To leave land while putting window:** If a person or government body has to build a house by putting a window or door towards the

neighbor's land, the person or body shall leave the land according to the standards specified by the concerned body.

**281. Prohibition of channeling water of house or roof:** No person shall channel the water of his or her house or roof to other's house or land or a public road.

**282. Prohibition of making safety tank adjoining to neighbor's land:**

(1) No person shall construct a safety tank by adjoining it to the neighbor's land.

(2) If a person has to construct a safety tank in his or her land, he or she shall leave at least the land according to the standards specified by the concerned body, except in cases where the neighbor's consent is available.

**283. To leave land while digging well or *Kuwa*:** In digging a well or a small (*Kuwa*) in one's land, one shall leave the land so that the distance of at least one meter can be maintained from the neighbor's land.

**284. Prohibition of planting trees or plants causing effect:** (1) No person shall plant a tree or plants in such a way so that it causes effects to other's house, land or property.

(2) If any tree or plant planted by a person in one's land cause any effect by expanding to other's house, land or property, the person who has planted such tree or plants shall cut the branches or roots of the tree or plant in such manner as not to cause loss or damage to that person's house, land or property.

(3) If a person who has planted such tree or plants fails to cut off the branches or roots of the tree or plants pursuant to sub-

section (2), the person who is affected therefrom may cut off the branches or roots of such tree or plants on his or her own.

- 285. Compensation to be recovered:** If any damage is caused to any person from any act done or action taken by any person under this Chapter, the damage sustaining person shall be entitled to recover a reasonable compensation from the person who has done such act.
- 286. Statute of limitation:** A person who is aggrieved from any act done or action taken under this Chapter may make a lawsuit within six months after the date of knowledge of the commission of such act or action.

## Chapter-4

### Provisions Relating to Cultivation, Use and Registration of Land

- 287. Prohibition of use of other's land:** No person shall cultivate or use, or cause to be cultivated or used, any land in which another person has right, possession and ownership, without consent of that person.
- 288. Requirement to allow land to be used for ditch:** (1) If a person who needs to construct a ditch through other's land to cultivate land requests for land, the concerned owner of the land shall provide the land for the construction of the ditch through the place where the concerned landowner considers appropriate.
- (2) In consideration for the land provided for construction of a ditch through it pursuant to sub-section (1), the person who constructs the ditch shall provide a substitute land, amount according to the prevailing price of the land used in the construction of the ditch or reasonable compensation to the concerned landowner.
- (3) Notwithstanding anything contained in sub-section (2), if a ditch is constructed in a public or government land, it is not required to provide a substitute land, price of land or compensation for the land used in construction of the ditch.
- 289. Prohibition of using whole water of river or stream:** No owner of a land shall so use the whole water of the river or stream which originates or flows from the land as to prevent the owner of downstream land from using the same or as to endanger the life of

aquatic animals in the river or stream or as to adversely affect the ecological balance.

- 290. Prohibition of making new ditch affecting irrigated field:** No person shall construct a new ditch above a land irrigated by a ditch already made and in operation in a manner to significantly lessen the volume of water in that land.
- 291. Use and allocation of ditch water:** (1) A person who has spent labor or money in the construction of a ditch shall have the first priority to the ditch water for the cultivation of land.
- (2) Notwithstanding anything contained in sub-section (1), in a place where people have been using the water according to agreed division between them from the time immemorial, all people shall be entitled to use the ditch water according to the division.
- (3) If the water is sufficient for or no longer required for a person who uses the water pursuant to sub-section (1), another person shall be entitled to use the ditch water for cultivating the land irrespective of the person whom the ditch belongs to.
- (4) If the land of a person is irrigated and then water overflows to other's land, such water may be used even without the consent of the concerned land-owner, and no claim shall entertained for the same.
- 292. Prohibition of alteration in ditch without consent:** If any ditch is constructed only in the land of a person and other persons have also been using the ditch, the owner of land where such ditch is situated shall not be allowed to alter the ditch without consent of the other persons using it.

- 293. One who does not make labor or expenses in making ditch not allowed to use water:** (1) While making a new ditch or repairing an old ditch, all persons who use the water of such ditch shall make necessary labor or expenses in proportion to their respective land.
- (2) A person who does not make labor or expenses in making a new ditch or repairing an old one pursuant to sub-section (1) shall not be entitled to use the water of such a ditch.
- 294. Construction of ditch or use of water with mutual consent:** Notwithstanding anything contained elsewhere in this Chapter, if there is a separate agreement between the concerned land-owners or those who make a ditch or who are users of water in relation to the construction of ditch or using of water for the cultivation of land, the ditch may be made or water used according to that agreement.
- 295. Cultivation of land adjacent to river bank:** If a river or stream enters in a land and divides it or cuts a land, the land shall belong to its owner and may be cultivated by the owner after the river or stream changes its course and leaves the land.
- 296. Prohibition of registration:** No person shall register, or cause to be registered, other's land in his or her name.
- 297. Transmission and registration and deregistration to be effected:**
- (1) If a person needs to have transfer of a land on the death of its registration holder or to have registration and deregistration of a land in which the person has got right in any manner, the concerned person shall submit an application to the Land Revenue Office and obtain transmission and registration and deregistration of the matter within thirty-five days of the occurrence of such an event.

(2) If a person submits an application for transmission and registration and deregistration of the matter after the expiry of the time-limit referred to in sub-section (1), the Land Revenue Office shall execute the transmission and registration of such land in the applicant's name by collecting the fee of one hundred rupees irrespective of the length of time after such expiration.

- 298. Statute of limitation:** A person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within six months after the date of knowledge of commission of such an act or action.

## Chapter-5

### Provisions Relating to Government, Public and Community Properties

**299. Property deemed to be government property:** The following property title to which belongs to, or which is owned, controlled by, or subject to, the Government of Nepal shall be deemed to be the government property:

- (a) Government houses, buildings or lands,
- (b) Roads, paths or railways,
- (c) Forests, or trees or trees, bushes in forests,
- (d) Rivers, rivulets, streams, lakes, ponds and banks thereof,
- (e) Canals, ditches or uncultivated, barren lands,
- (f) Mines or minerals,
- (g) Himalaya, mountains, rocks, sandy lands, public gardens,
- (h) Any Property other than a public, community, trust property or any one's property.

**300. Property deemed to be public property:** (1) The following property which is for public purpose shall be deemed to be the public property:

- (a) Houses, lands, sewerage or roads having been used since ancient times,
- (b) Wells, water conduits, shores, ponds and banks thereof,

- (c) Exits for chattels, pasture lands, *Kharka*, graveyards, *Chihan*, Samadhishthal, *Kabristan* and lands where these are located,
  - (d) Inns, *Pauwas*, *Dewals*, religious meditation sites, memorials, temples, shrines, *Chaitya*, monasteries, *Stupas*, churches, *Chowk*, *Dawali*, *Chautari* or lands where these are located,
  - (e) Lands where fairs, markets and public entertainment or sports sites are located,
  - (f) Private property provided by any person for public purposes,
  - (g) Such other property as prescribed to be the public property by the Government of Nepal, by a notification in the Nepal Gazette.
- (2) The ownership of the public property shall vest in the public body or the Government of Nepal.

**301. Property deemed to be community property:** Any land held by a community for its use, any structure built in such land or other property owned by it shall be deemed to be the community property.

**302. Details to be updated:** (1) The Land Revenue Office shall prepare and update the following details in relation to the government and public properties situated within the district:

- (a) The location where the government or public properties are situated, plot number and area, in the case of a land, and situation of the house, if any,

- (b) If the government or public properties are possessed by, or subjected to, any body or organization, details thereof,
- (c) Other necessary details.

(2) The Local Level shall render necessary assistance to the Land Revenue Office in preparing the details referred to in sub-section (1).

(3) After the preparation of the details pursuant to sub-section (1), the Land Revenue Office shall forward a copy thereof to the concerned district level administrative office and Local Level.

(4) The Local Level shall collect and update the details referred to in sub-section (1) in relation to the community properties situated within its jurisdiction and forward a copy thereof to the concerned Land Revenue Office.

**303. Land ownership registration certificate to be provided:** (1) If any government land is held in the name of a government body or public organization, the Land Revenue Office shall prepare the land ownership registration certificate of such land in the name of such body or organization and provide it to such body or organization.

(2) If any land is available to a community in accordance with law, the Land Revenue Office shall prepare the land ownership registration certificate of such land in the name of such community and provide it to that community.

**304. Obligation to protect government, public or community properties:** (1) The Government of Nepal, public organization or

community holding the right in, possession, custody of, and control over, the government, public or community properties shall itself protect such properties.

(2) To protect government and public properties shall be responsibility of the concerned district level administrative office and Local Level.

(3) The concerned community and Local Level shall be responsible for the protection of the community property.

**305. Prohibition of registration of government, public or community properties in individual's name:** (1) No person shall register, or cause to be registered, any government, public or community property in his or her name.

(2) If a person registers, or causes to be registered, any government, public or community property in the name of any individual, such registration shall, *ipso facto*, be void.

(3) If a complaint is filed as to the registration of any government, public or community property in any individual's name, the concerned Land Revenue Office shall summon the presence of the registration-holder also and inquire into the matter, as required, and make necessary decision within six months after the date of filing the complaint.

(4) If the registration of any government, public or community property in any individual's name is annulled pursuant to this Section, the Land Revenue Officer shall make necessary entries in the records maintained in his or her office and give

information thereof to the concerned district level administrative office and Local Level.

(5) The Land Revenue Office shall punish a person who registers, or causes to be registered, any government, public or community property in contravention of this Section with a fine of twenty-five thousand to one hundred thousand rupees.

**306. Prohibition of possession or cultivation of government, public or community land:** (1) No person shall possess any government, public or community land by way of overlapping, encroachment, surrounding or otherwise.

(2) No person shall, except with the permission of the Government of Nepal, concerned public organization or community, cultivate, or cause to be cultivated, any government, public or community land.

(3) If any person possesses or cultivates any government, public or community land in contravention of sub-section (1) or (2), the concerned Land Revenue Office, in the case of the government or public land, and the concerned Local Level, in the case of the community land, shall separate such land, recover the crops yielded in the land from that person and vacate the land.

(4) The Land Revenue Office may punish any person who possesses or cultivates any government, public or community land in contravention of this Section with a fine not exceeding ten thousand rupees.

**307. Prohibition of building structure:** (1) No person shall build any structure in any government, public or community land, for any personal or public purpose.

Provided that any structure may be constructed as considered appropriate by the Government of Nepal, in the case of a government or public land, and by the concerned community for public purpose, in the case of a community land.

(2) If any person initiate to construct any structure in any government, public or community land in contravention of sub-section (1), the concerned Chief District Officer or Local Level shall stop such work immediately.

(3) If any person has already constructed any structure in any government, public or community land in contravention of sub-section (1), the concerned Chief District Officer shall give a time-limit of fifteen days to the main person having constructed the structure to demolish such structure.

(4) The main person having constructed such a structure shall demolish the structure at his or her own expense within the time-limit given pursuant to sub-section (3).

(5) If the main person having constructed such a structure fails to demolish the structure within the time-limit given pursuant to sub-section (3), the concerned Chief District Officer shall demolish such a structure.

(6) If the Chief District Officer demolishes any structure pursuant to sub-section (5), the Chief District Officer may recover the expenses incurred in such demolition from the main person

having constructed the structure and punish him or her with a fine not exceeding twenty-five thousand rupees.

(7) It shall be the duty of the concerned police office to render necessary assistance, if any, sought by the Local Level in stopping the construction of any structure or in demolishing any already built structure pursuant to this Section.

**308. Power to transfer government property:** The Government of Nepal may transfer any government property owned and possessed by, or subjected to, any body or organization to any other body or organization, with the permission of such an owner body or organization.

**309. Conversion of community property into public property:** (1) If any community holding a community property does not use it or submits an application bearing signature or thumb impression of each of the main persons of all families of such a community, setting out that it is not necessary to use such community property in its purpose, to the concerned Land Revenue Office, the concerned Land Revenue Officer may make necessary inquiry into the matter and convert such property into the public property.

(2) In the event of conversion of any community property into the public property pursuant to sub-section (1), the concerned Land Revenue Officer shall make necessary entries in the records maintained in his or her office and give information thereof to the concerned district level administrative office and Local Level.

**310. To reward complainant:** (1) Any person whosoever may make a complaint with the concerned body on the matters of registration, or

causing registration, of a government, public or community property, or possession, use or cultivation of a land under such property or construction work done in such land, in contravention of this Chapter.

(2) If, on inquiring into a complaint made pursuant to sub-section (1), the complaint is held to be true, the concerned body shall provide the complainant with a reward in a sum that is half the fine imposed on the wrongdoer pursuant to this Chapter.

(3) The concerned body may keep confidential a complaint made pursuant to sub-section (1).

**311. Action to be taken:** (1) If any employee, either knowingly or negligently or recklessly registers, or causes to be registered, any government, public or community property in the name of any person or if any employee with the duty to render assistance pursuant to this Chapter does not render such assistance, such employee shall be liable to departmental action in accordance with the law of terms and conditions of his or her service.

(2) Nothing shall prevent the taking of action against an employee who commits an act referred to in sub-section (1) on a criminal offence, in addition to the action taken under sub-section (1).

**312. Governmental attorney empowered to file or make case, petition or appeal:** (1) The concerned government attorney shall have power to file or make a case, petition or appeal against any decision made by any body or authority, adversely affecting any government or public property.

- (2) The concerned office or authority shall provide the government attorney with such documents and other assistance as may be necessary in relation to the filing or making of a case, petition or appeal pursuant to sub-section (1).
- 313. Statute of limitation:** A person may make a lawsuit at any time in the cases of Sections 305, 306 and 307 of this Chapter, and a person who is aggrieved from any act done or action taken referred to in other Sections of this Chapter may make a lawsuit within six months after the date on which such an act was done or action was taken.

## **Chapter-6**

### **Provisions Relating to Trusts**

**314. Trust deemed to be established:** If a person makes necessary arrangements for the operation and management by another of a property in which the person has right, ownership and possession for the benefit of beneficiary, a trust shall be deemed to be established.

**Explanation:** For the purposes of this Chapter, the term "beneficiary" means a person, group, general public, body whether incorporated or unincorporated, or community getting the benefit from the trust property.

**315. Trust may be public or private:** (1) A trust may be either public or private.

(2) A trust established for the accomplishment of the following object shall be deemed to be a public trust:

- (a) To establish, operate and use a fund for infrastructures of economic development or other development works,
- (b) To establish and operate a fund necessary for the development of skills, creation of employment opportunities and development of the people with low income,
- (c) To operate social welfare programs,
- (d) To establish and operate such educational and academic institutes like schools, colleges and

universities as may be useful for the general public,

- (e) To establish and operate **clinics** such as hospitals and health posts for public purposes,
- (f) To protect natural, historical or cultural heritages or to promote such act,
- (g) To operate programs for the protection of wildlife, aquatic animals or environment,
- (h) To operate programs for the protection of interest, welfare or upliftment of various classes, groups or communities,
- (i) To operate programs relating to sports,
- (j) To carry out service-oriented welfare programs,
- (k) To operate rescue works,
- (l) To establish shrines, temples, monasteries, domes, mosques, churches or carry out similar other religious activities,
- (m) To operate other public programs for the interest of public.

(3) A trust which is established with object to render benefit, advantage or facility to any particular person or group shall be deemed to be a private trust.

(4) If a trust is established to accomplish both public and private objectives, such a trust shall be deemed to be a public trust.

**316. Application to be made for establishment of trust:** (1) A person who intends to establish a trust shall make an application, setting out the following matters, to the Registrar:

- (a) Value and details of the property held for the trust,
- (b) Beneficiary, and benefit and facility to the beneficiary, the terms and limitation thereof,
- (c) If the trust is to be established for any particular period, matter relating thereto,
- (d) Other necessary details.

(2) In making an application pursuant to sub-section (1), the following documents shall also be submitted with the application:

- (a) Memorandum of incorporation of the trust,
- (b) Trustee's name and photocopy of the deed relating to his or her consent,
- (c) Photocopy of the deed, if any, executed for the establishment of the trust,
- (d) Photocopy of a reliable deed relating to the trust settler's identity, and, in the case of the trust settler being a body corporate, certified copies of the documents relating to the incorporation of the body corporate and of the decision by such a body corporate in relation to the establishment of trust,
- (e) Receipt of payment of the fees chargeable by law for the registration of trust.

**Explanation:** For the purposes of this Chapter:

- (1) "Registrar" means the authority provided for by law for the registration, supervision and liquidation of trusts, and this term also includes the Land Revenue Officer in the concerned district if such authority is not so provided for.
- (2) "Trustee" means the person who is responsible for the operation and management of a trust property.
- (3) Notwithstanding anything contained in sub-section (1), if any person has, by way of his or her oral behavior, conduct or a testamentary gift or will, provided for the operation and management of a property in which he or she has right, ownership and possession as a trust, the trust shall be deemed to have been established by such behavior, conduct or will.

Provided that in the case of a property requiring registration for the transfer of its title in accordance with law, a deed pertaining to such transfer has to be registered.

(4) If a foreign person intends to establish a trust, the person shall make an application, upon fulfilling the procedures as referred to in sub-sections (1) and (2). A foreign person may be the founder of the trust to be so established.

Provided that a foreign person is not allowed to establish a trust for the accomplishment of the object referred to in clause (l) of sub-section (2) of Section 315.

(5) At least one-thirds of the trustees of a trust established pursuant to sub-section (4) shall be Nepali citizens having permanent residence in Nepal.

**317. Details to be set out in memorandum of incorporation:** The following matters shall be set out in the memorandum of incorporation of a trust:

- (a) Names, surnames and addresses of the founders of the trust, and, if a body corporate is the founder, names, surnames and addresses of the directors of such body,
- (b) Objects and nature of the trust,
- (c) Names, surnames and addresses of the trustees, details of the business to be performed by them, and, if a body corporate is a trustee, name, surname and address of the person designated by the body to act as the trustee,
- (d) Details of the beneficiaries,
- (e) Method of use of the trust property,
- (f) Details of the tenure of the trustee, if any, so specified,
- (g) If the beneficiaries are entitled to remuneration or other facilities, details thereof and limitation,
- (h) If the trust is intended to be established for a certain period, details of such period,
- (i) In the event of termination of the trust, consequences thereof,
- (j) Provisions relating to the operation, management and monitoring of the trust property,

(k) Other necessary matters.

**318. Trust to be registered:** (1) If an application is made for the establishment of a trust pursuant to Section 316, the Registrar shall make necessary inquiry into the objects of the trust and the details of the property proposed for the establishment of the trust, and, if it appears reasonable to register the trust, register the trust and issue the trust registration certificate, within a period of thirty-five days of the making of such application.

(2) If a trust is registered pursuant to sub-section (1), the trust is deemed to have been established.

(3) Notwithstanding anything contained elsewhere in this Section, a private trust may be operated even without registration.

Provided that if a person so operates a private trust, the person shall give information thereof to the concerned Registrar.

**319. Power to refuse registration of trust:** (1) Notwithstanding anything contained in Section 318, the Registrar may refuse to register a trust in any of the following circumstances:

- (a) If the details, documents or fees referred to in Section 316 are not mentioned or paid,
- (b) If the name of the trust resembles with the name of any other trust already registered prior to the registration of the trust applied for,
- (c) If the objects or terms of the trust appear to be inappropriate or undesirable for reasons of public interest, decency, courtesy or public order, are not

lawful or are not capable of being implemented owing to their uncertainty or vagueness.

(2) If a trust is not capable of being registered pursuant to sub-section (1), the Registrar shall give information thereof, along with the reason for refusal, to the applicant within thirty-five days.

(3) If, upon receipt of information pursuant to sub-section (2), the applicant makes necessary corrections and an application again for the registration of the trust, the Registrar shall register the trust and issue the registration certificate pursuant to sub-section (1) of Section 318, within fifteen days of the making of such an application.

**320. Transfer of property for incorporation of trust:** (1) The trust founder shall transfer the property settled for the trust to the trustee within a period of three months of the establishment of the trust.

(2) If the property to be transferred pursuant to sub-section (1) is an immovable property, such a property shall be deemed to have been duly transferred only when it is transferred in accordance with law.

(3) A foreign person that establishes a trust in Nepal shall remit into Nepal a movable property equivalent to at least one million United States Dollars through regular banking channel and hand over the same to the trustee within a period of three months.

(4) The information of the hand-over of the movable property pursuant to sub-section (3) shall be given to the Registrar.

**321. Dissolution of trust on failure of transfer of property:** In the event of failure to transfer the property within the time-limit

referred to in Section 320, the registration of such a trust shall be deemed to be void *ipso facto* and the trust shall be deemed to have been dissolved.

- 322. Operation and management of trust property according to memorandum of incorporation:** (1) The trustee shall, subject to the terms and restrictions set forth in the memorandum of incorporation, operate and manage the trust property.

(2) Except as otherwise provided for in the memorandum of incorporation, the trustee shall, in operating and managing the property pursuant to sub-section (1), not sell, mortgage, or otherwise transfer title to, the immovable property or any part thereof without prior permission of the concerned Registrar.

(3) In asking for prior permission of the Registrar pursuant to sub-section (2), the reason for the sale, mortgage of, or transfer of title to, such property, and the reasons and grounds that it may result in more benefit to the beneficiary shall be set out.

- 323. Duty to operate and manage trust property properly:** (1) The trustee shall operate and manage the trust property properly, by exercising his or her capacity and diligence honestly.

(2) In the operation and management of the trust property pursuant to sub-section (1), the trustee shall make arrangement to avoid any loss and damage to, and maintain sustainability of, such property.

(3) Except as otherwise provided for in the memorandum of incorporation, in the operation and management of the trust property pursuant to sub-sections (1) and (2), income earned from

the trust property which is not required immediately to accomplish the objects of trust may be invested for the accomplishment of the objects of trust.

(4) Except as otherwise provided for in the memorandum of incorporation, in making investment pursuant to sub-section (3), it may be invested as follows, in the following proportion of the total sum:

- (a) At least twenty-five percent in the purchase of bonds or treasury bills issued by the Government of Nepal or Nepal Rastra Bank or bonds guaranteed by the Government of Nepal,
- (b) Deposit of a maximum of twenty-five percent in a fixed account with a commercial bank,
- (c) Deposit of a maximum of ten percent in a fixed account with a development bank,
- (d) A maximum of five percent in the subscription of ordinary shares of a commercial bank,
- (e) Deposit of a maximum of ten percent in a fixed account with a finance company,
- (f) A maximum of five percent in the subscription of such ordinary shares of an enlisted public limited company as are dealt publicly.

(5) The trustee shall, from time to time, carry out monitoring as to the investment made pursuant to sub-section (4), and if it appears from such monitoring that the returns of investment made in one sector be lesser, such investment shall be

withdrawn immediately and made in another sector yielding more returns, subject to the terms and restrictions of the investment.

(6) In making monitoring or investment pursuant to sub-section (5), opinion of an expert in the concerned sector may, as required, be obtained.

(7) An opinion obtained pursuant to sub-section (6) may be taken as the basis for monitoring or investment.

(8) The trustee shall maintain his or her personal property and the trust property separately and operate and manage the trust property accordingly, and in the event of a need to operate an account, separate accounts shall be maintained.

**324. Trustee to be appointed:** (1) A trustee shall be appointed for the operation, management, protection and care of the trust property and for using fruits of such property to the benefit of the beneficiary or making proper arrangements thereof.

(2) Except as otherwise provided for in the memorandum of incorporation, the founder of the trust shall appoint the trustee.

(3) In the event of the failure to appoint or inability to appoint the trustee pursuant to sub-section (1) or (2), the founder of trust shall be deemed to be the trustee.

**325. Disqualification of trustee:** The following person shall not be qualified to be a trustee:

- (a) A person who is not competent to make contract,
- (b) A person who has embezzled a property in his or her custody,

- (c) A person who has been convicted by a court of the offense of corruption,
- (d) A person who has been sentenced for a criminal offense involving moral turpitude,
- (e) A person who is the sole beneficiary of the trust property.

**326. Number of Trustees:** Except as otherwise provided for in the memorandum of incorporation, the number of trustees shall, subject to the other provisions of this Chapter, be one in minimum and seven in maximum.

**327. Body corporate being eligible to be trustee:** (1) A body corporate which is established in accordance with law may be appointed as a trustee.

(2) If the body corporate referred to in sub-section (1) is appointed as a trustee, the person working as the chief of such a body or a person to whom the power is delegated by a decision of the board of directors of such a body shall act on behalf of such a body.

**Explanation:** For the purposes of this Section, the term "person working as the chief" means the chairperson, director, managing director, general manager, executive director of such body or a person empowered by such a body to work as its chief.

**328. Provisions relating to vacancy in office of trustee:** (1) The office of the trustee shall be fallen vacant in any of the following circumstances:

- (a) If the person is not qualified to be a trustee,

- (b) If the person resigns from the office of a trustee,
- (c) If the person dies or is dissolved or liquidated or becomes insolvent in accordance with law,
- (d) If, in the case of a body corporate, it is dissolved, liquidated or becomes insolvent in accordance with law,
- (e) If a trust is established for a certain period and such a period is completed,
- (f) If the trustee is appointed for a certain tenure and such a tenure is completed,
- (g) If the trustee is removed by the trust founder or court on the ground that he or she has embezzled the trust property or has not taken a reasonable care of such property.

(2) If the office of a trustee is fallen vacant pursuant to sub-section (1), such an office shall be filled in accordance with the procedures set forth in the memorandum of incorporation.

(3) If the office of trustee cannot be fulfilled pursuant to sub-section (2), the beneficiary, if available, and the concerned Local Level, if there is no beneficiary or the beneficiary cannot be identified, shall make an application, accompanied by a list of possible candidates, to the concerned District Court for the appointment of a trustee.

(4) If an application is made for the appointment of trustee pursuant to sub-section (3), the District Court shall appoint to the office of trustee an appropriate person from the list of candidates

provided by the applicant, in consonance with the spirit of the memorandum of incorporation.

(5) If any trustee is relieved of his or her office by virtue of the circumstance referred to in sub-section (1), he or she shall, as promptly as possible, hand over the trust property in his or her custody, control or use to other trustees, and he or she shall not get immunity from any kind of liability or legal action for any act done or action taken by him or her while in office of a trustee by the reason only that he or she has been so relieved of office.

Provided that if all trustees are relieved of office, such property shall be transferred after the appointment of another trustee.

(6) If the office of a trustee of a public trust with only one trustee falls vacant or is fulfilled pursuant to this Section, information thereof shall be given to the registrar.

**329. To specify roll of succession of trustee:** (1) Except as otherwise provided for in as to the roll of succession of trustees in the memorandum of incorporation, after the death of a trustee, his or her eldest son, daughter-in-law or daughter shall succeed the office of a trustee according to the roll of succession, and if there is no one out of them, his or her heir shall succeed the office of trustee.

(2) If a person who becomes the trustee pursuant to sub-section (1) is not qualified to be the trustee, his or her guardian or the person taking care of him or her shall perform the obligation of the trustee on his or her behalf until such a person becomes qualified.

(3) Except as otherwise provided for in the memorandum of incorporation, if there is a provision that one's descendants are entitled to be the trustee, the descendants of such a person shall succeed the office of trustee according to the limit of their respective rights, and the provisions contained in Section 326 shall not apply to such case.

- 330. Requirement to perform obligation of trustee in special circumstance:** If there exists a situation that the office of trustee falls vacant in entirety and the office of trustee cannot be filled immediately pursuant to sub-section (2) of Section 328, the Local Level shall function as the trustee until the office is filled.
- 331. Requirement to operate trust by consensus:** (1) Except as otherwise provided for in the memorandum of incorporation, the trust with more than one trustee shall be operated by consensus decision of all the trustees as far as possible.
- (2) In the event of failure to reach consensus pursuant to sub-section (1), the trust may be operated by a majority decision of the then existing trustees, and if that is not possible, by the decision of the eldest trustee.
- 332. To carry out object of trust:** The trustee shall carry out the object of trust as set forth in the memorandum of incorporation, and in so carrying out the object, the trustee shall discharge functions honestly and according to his or her capacity and diligence.
- 333. To maintain records of trust property:** (1) The trustee shall prepare an inventory of the trust property and update the records

thereof, and, in the case of a public trust, a copy of such records shall be submitted to the registrar each year.

(2) The inventory referred to in sub-section (1) shall also reflect the total assets, loans, or if such property has been invested in any business, principal, interest or other returns of such investment.

**334. Protection of trust property:** (1) The trustee shall protect and maintain the trust property, and may also make any kind of such legal action or complete any kind of such formality with any public authority as may be required for this purpose.

(2) In protecting or maintaining the trust property, the trustee shall take proper and reasonable care of, and do act conducive to the enhancement of, the trustee property as if the property were his or her own.

**335. Prohibition of possession of trust property to prejudice benefit of beneficiary:** No trustee shall so possess or use the trust property for himself or herself or other person as may be prejudicial to the benefit of the beneficiary.

**336. Duty to prevent loss to trust property:** (1) It shall be the duty of the trustee to prevent destruction, termination of, or otherwise loss to, the trust in a manner prejudicial to the benefit of the beneficiary or contrary to the object of the trust.

(2) If the trust property is not managed properly or is made subject to cheating or fraud or is embezzled or used for other purposes, any trustee or beneficiary may, subject to the provisions

set forth in the memorandum of incorporation, file a complaint in the court for the prevention of such embezzlement.

Provided that any one whosoever may file a complaint in the case of a public trust.

(3) If, upon a complaint filed pursuant to sub-section (2), it is held that the trust property has not been managed properly or has been made subject to cheating or fraud or embezzled or used for other purposes, the court shall recover the claimed amount from the embezzler and may also order compensation to be paid by a trustee if the trustee has committed such embezzlement.

**337. To maintain accounts of trust:** (1) The trustee shall maintain accounts in a manner to reflect clearly and actually the accounts of the trust property, and provide statements thereof available to the registrar, and trust founder or beneficiary, identified, if any, intends to inspect the same.

(2) In the case of a public trust, the trustee shall have its accounts audited by a recognized auditor each year and submit a copy of the audit report to the registrar.

**338. Breach of trust:** (1) If a trustee fails to fulfill the duties required to be fulfilled pursuant to this Chapter, the trustee shall be deemed to have committed a breach of trust.

(2) In the event of a breach of trust pursuant to sub-section (1), the trustee so breaching trust shall be responsible for the loss and damage caused to the beneficiary and bear liability for the same.

(3) In bearing the liability pursuant to sub-section (2), the trustee breaching trust shall bear such profits as may be equal to the income or profits which the trust or beneficiary would have made or earned if the trust had not been breached.

(4) If a trust has more than one trustee, all trustees who commit a breach of trust shall collectively bear the liability for the loss and damage caused from such breach of trust.

(5) If, in relation to one portion of any trust, the trust is breached, and, in relation to another portion of the trust, benefit is derived, the trustee shall not use such benefit in the fulfillment of his or her liability.

(6) Notwithstanding anything contained elsewhere in this Section, the trustee shall not bear the liability for the loss and damage caused from the breach of trust, in the following circumstance:

- (a) If the loss and damage is caused by operation of law,
- (b) If the loss and damage is a result of the breach of trust by any act done by the previous trustee or the consequence thereof.

(7) Notwithstanding anything contained elsewhere in this Section, any one who does any of the following acts in relation to a trust in operation upon being incorporated in accordance with law in force for the time being prior to the commencement of this Act shall be deemed to have committed a breach of trust:

- (a) Failing to do acts set forth in the Donative inscription, *Shilapatra* of the trust or deed establishing such trust,

(b) Selling, disposing of, gifting, donating or pledging or mortgaging the trust property by the trust founder or his or her offspring or heir, except for the residual property that can be possessed and used after making operation as set forth in the deeds including the Donative inscription, *Shilapatra* of the trust,

(c) Embezzling the movable trust property by the trustee, except for reasonable wear and tear while using it for the trust purpose.

(7) One who commits a breach of trust under sub-section (7) shall be liable to action in accordance with the law in force at the time of the commencement of this Act.

**339. Deed of trust property to remain with trustee:** (1) Except as otherwise provided for in the memorandum of incorporation, the deeds, documents of the ownership and possession of the trust property and other proofs and evidences pertaining thereto shall all be in the custody of the trustee, and in the case of a public trust, the trustee shall submit copies of such deeds and documents to the registrar.

Provided that in the case of any deed, document or evidence to be approved by the registrar, it is not required to submit the copies of such deeds, documents or evidence to the registrar.

(2) The trustee and the registrar shall safely retain the deeds, documents and evidences referred to in sub-section (1).

**340. Entitlement to reimbursement from trust property:** Notwithstanding anything contained elsewhere in this Chapter, if

the trustee has used his or her personal property or other's property in the course of the protection of the trust property, accomplishment of the object of trust or protection of the benefit of the beneficiary, the trustee shall be entitled to reimburse the amount for such property from the trust property.

- 341. Other powers, duties and liabilities deemed to be vested with trustee:** Except as otherwise provided for in the memorandum of incorporation, in addition to the powers, duties and liabilities clearly set forth in this Chapter, such other powers and duties as may be required for the implementation and accomplishment of the object of trust, care and protection of the trust property and protection of the rights and benefits of the beneficiary shall be deemed to be vested with the trustee.
- 342. Acts not to be done by trustee:** (1) Except as otherwise provided for in the memorandum of incorporation, no trustee shall do, or cause to be done, any of the following acts:
- (a) To use the trust property in any manner other than in the accomplishment of the object of trust,
  - (b) To use, or caused to be used, the trust property in any act yielding profit to the trustee himself or herself or to anyone else, except in the accomplishment of the object of trust,
  - (c) To delegate or hand over the responsibility or obligation of trustee to another trustee or a person,

Provided that nothing shall bar the appointing of his or her agent or attorney in the course of ordinary

transaction or assigning of any responsibility or obligation if such responsibility or obligation is to be assigned in view of the nature of such transaction or assigning of any responsibility to another person with the consent of the beneficiary, if any, identified.

- (d) To carry out any act relating to the trust solely contrary to Section 329, if there are more than one trustee,
- (e) To obtain any remuneration, allowance or facility in consideration for being a trustee,

Provided that nothing shall bar the receiving of reasonable remuneration, allowance or facility for any work done whole-time or part-time after establishing the office or with the prior permission of the registrar, without prejudicing the object of the trust or benefit of the beneficiary.

- (f) To purchase or otherwise receive on pledge, mortgage, lease or rent the property of the trust for which he or she is a trustee during his or her tenure or before at least three **years of his or her** retirement from the office of a trustee.

(2) The trustee shall not make any economic transaction between his or her private property and the trust property. He or she shall make compensation for the loss, if any, to the trust property from such transaction.

(3) The trustee shall not merge his or her property with the trust property.

**343. To give direction to transfer trust property:** Except as otherwise provided for in the memorandum of incorporation, in the case of only one beneficiary, after he or she becomes competent to make contract, and in the case of more than one beneficiary, after all of them become competent to make contract and reach consensus, such beneficiary or beneficiaries may direct the trustee to hand over the trust property to him or her or them, and if any direction is so given, it shall be the duty of the trustee to abide by such direction.

Provided that this provision shall not apply to the public trust.

**344. Power to relinquish benefit of trust property:** (1) In the case of a private trust, the beneficiary who is competent to make contract may, by a notice in writing to the trustee and the registrar, relinquish any or all of his or her right, benefit, facility or interest from the trust property.

(2) If every beneficiary wholly relinquishes the right, benefit, facility or interest from the trust property pursuant to subsection (1), such a trust shall be deemed to have been dissolved.

**345. Duty to maintain ownership of trust property:** (1) The trust property shall be entered as such in the records of trust and held in the name of the person specified in the memorandum of incorporation and in the name of the beneficiary, if such a person is not specified in the memorandum of incorporation.

(2) If, in the case of a public trust, the memorandum of incorporation provides for the establishment of a separate body corporate for the operation and management of the trust property,

such property shall be held in the name of the body corporate so established.

**346. Alteration in the object of trust:** (1) Notwithstanding anything contained elsewhere in this Chapter, if the trust founder considers appropriate to make any amendment or alteration in the object set forth in the memorandum of incorporation at the time of the creation of trust, he or she may make an application, accompanied by the reason for such amendment or alteration, to the registrar.

(2) If, on an inquiry into an application made pursuant to sub-section (1), the reason for the amendment or alteration in the object set forth in the memorandum of incorporation seems to be reasonable, the registrar may issue an order to amend or alter such object, and, if an order is so made, the object set forth in the memorandum of incorporation shall be deemed to have been amended or altered accordingly.

**347. Trust property not to be counted:** Any trust property operated and managed by the trustee shall not be counted as the property of the trustee for the purpose of assessment of tax or for any other purpose.

Provided that in the case of a person who derives any benefit, facility or interest from such property, such benefit, facility or interest shall be counted.

**348. Consequence of voidance of trust:** (1) If a trust once established is dissolved or voided for any reason, such dissolution or voidance shall not affect any act already done.

(2) In the event of dissolution or voidance of a trust for any reason pursuant to sub-section (1), in the case of a public trust, except as otherwise provided for in the memorandum of its incorporation, the trustee may, by order of the registrar, hand over the trust property to any other trust with the identical object or to any public body with similar objects if such other trust is not available, and in the case of a private trust, the trustee shall hand over the trust property to the beneficiary, if identified, or to the nearest successor to the beneficiary if the beneficiary is not available or to the trust founder if even such successor is not available or to other successor if even the trust founder is not available.

(3) If any body or person referred to in sub-section (2) is not available, the property of the dissolved or voided trust shall devolve on the Government of Nepal.

- 349. Appeal may be made:** A party who is not satisfied with any order or decision made by the registrar pursuant to this Chapter may make an appeal to the concerned High Court within thirty-five days after the date of knowledge of such order or decision.
- 350. Not to affect other trust:** (1) Nothing contained in this Chapter shall affect any trust in operation upon being incorporated in accordance with law in force for the time being prior to the commencement of this Act, and such a trust may be operated in accordance with the Donative inscription (*Danpatra*), *Shilapatra*, memorandum of incorporation or other deed establishing such a trust or with the ritual, custom or practice.

Provided that such a trust shall be registered under this Act or information of its operation shall be given to the registrar within three years of the commencement of this Act, and records thereof shall be maintained.

(2) The trust referred to in sub-section (1) shall be managed and operated as previously for the object and purpose for which it was established, and the property or income that remains upon the accomplishment of that object and purpose may be possessed, used, pledged or mortgaged.

(3) The property of a trust established pursuant to sub-section (1) may be purchased or sold in a manner without prejudice the object and purpose of the trust.

(4) The purchaser under sub-section (3) shall use the property for the object and purpose for which the trust was established.

(5) If a trust under sub-section (1) has been established or operated for any specific purpose by obtaining a government land, such a land shall be used for the accomplishment of the object and purpose for which the trust was established, and such a land shall not be used by the trustor or his or her offspring or successor.

(6) If the person referred to in sub-section (5) does not accomplish the object and purpose of such a trust, the person who accomplishes such object and purpose shall be entitled to possess and use such a land.

(7) Notwithstanding anything contained elsewhere in this Section, if any person has continuously operated a trust referred to

in sub-section (1) since last sixteen years or more than sixteen years ago without any deed to that effect, that person may possess and use such property upon the accomplishment of the object and purpose of such a trust.

(8) Matters other than those set forth in this Section shall be as set forth in the memorandum of incorporation of a trust, *Sheelapatra*, Donative Inscription or as per the custom and practice in relation to the operation of such a trust.

**351. Statute of limitation:** (1) There shall be no statute of limitation in relation to the following matters if a person who is aggrieved from any act done or action taken pursuant to this Chapter is to make a lawsuit:

- (a) Embezzlement of the trust property,
- (b) Fraud or forgery of any document relating to the trust property,
- (c) Embezzlement or misappropriation of the trust property,
- (d) Derivation of benefit by the trustee contrary to the terms of the memorandum of incorporation of the trust,
- (e) Restitution of the trust property or its value or income from the trustee or other person.

(2) A lawsuit may be made within six months after the date of the accrual of cause of action in relation to any matter other than that set forth in sub-section (1).

## **Chapter-7**

### **Provisions Relating to Usufruct**

- 352. Usufruct deemed to be constituted:** (1) When a person gives free a property in which he or she has title and ownership and fruits, benefit, income or facility to be yielded from that property to another person entitling that other person to enjoy such property and fruits, benefit, income or facility thereof, usufruct shall be deemed to be constituted.
- (2) The provisions of usufruct shall be as set forth in a contract entered into between the concerned persons.
- 353. Usufruct to be effective:** The provision of usufruct constituted by a contract shall become effective on the date of the commencement of the contract unless otherwise set forth in the contract.
- 354. Deed to be executed:** (1) In giving an immovable property in usufruct, its owner shall execute a deed to that effect in accordance with law.
- (2) In giving a property in common in usufruct, consent of the coparceners living in a joint family shall be obtained.
- 355. Entitlement of usufructuary to enjoy property as if it belonged to him or her:** (1) If a person gives another person his or her property in usufruct, the usufructuary of such property shall be entitled to enjoy the property, fruits, benefit, income or facility to be yielded or earned from the property and fruits, benefit, income or facility accrued from the property as if it were his or her own property.

(2) If there are more than one usufructuary obtaining a property pursuant to sub-section (1), every usufructuary shall be entitled to enjoy that property jointly or severally.

(3) If a property obtained under the provision of usufruct is partitioned, every coparcener who is entitled to enjoy the property in usufruct shall be entitled to enjoy the property pursuant to sub-section (1).

(4) A usufructuary may make a lawsuit in the court, as required, for the protection or enjoyment of the property obtained under the provision of usufruct.

**356. Property which usufructuary cannot enjoy:** Notwithstanding anything contained in Section 355, a usufructuary shall not be entitled to enjoy the following properties relating to the property obtained under the provision of usufruct:

(a) Mines and minerals related with the property,

Provided that where the mines are the subject of usufruct, the mines may be enjoyed.

(b) Grown trees.

Provided that fruits, flowers or other products obtained from the trees may be enjoyed.

**357. Prohibition of alteration in structure of property without consent:** A usufructuary shall not be entitled to significantly alter the substance or form of the property obtained under the provision of usufruct or to destroy such property, except with the owner's prior permission.

Provided that if the enjoyment of the property given under the provision of usufruct is not possible without an alteration in the form of or destruction of the property, except as otherwise provided for in the contract, the property may be enjoyed by altering its form or destroying it, on payment of the price that may be set at the time of returning such property.

- 358. Power to rent, lease or mortgage property under provision of usufruct:** (1) The usufructuary may, if he or she so desires, rent, lease or mortgage the property obtained under the provision of usufruct, by executing a deed, subject to the contract referred to in sub-section (2) of Section 352.

Provided that:

- (1) It is not required to execute a deed for renting a property for a monthly rent not exceeding twenty thousand rupees.
  - (2) If a property is so rented, leased or mortgaged, the usufructuary shall give information thereof to the owner.
  - (3) The property obtained under the provision of usufruct may not be rented, leased or mortgaged for a period that exceeds the validity period of usufruct.
- (2) The usufructuary shall, in renting, leasing or mortgaging the property obtained under the provision of usufruct, mention in the relevant deed that the property is under the provision of usufruct.

(3) If a rent, lease or mortgage of the property obtained under the provision of usufruct is executed in contravention of sub-sections (1) and (2), such a transaction shall *ipso facto* be void.

(4) A person who obtains a property on rent, lease or mortgage pursuant to sub-section (1) shall be entitled to enjoy the property as if the person were the usufructuary.

**359. Duty to maintain and care property under the provision of usufruct:** (1) The usufructuary shall maintain and take care of the property which he or she has obtained under the provision of usufruct properly and reasonably as if it were his or her own property.

(2) If a person obtains a property under the provision of usufruct by way of rent, lease or mortgage, the person shall take care of such property properly and reasonably.

(3) The usufructuary shall maintain the property obtained under the provision of usufruct at his or her cost.

Provided that if it is necessary to maintain such property by spending a substantial amount in consequence of a disaster, the usufructuary shall obtain the owner's prior permission, and the owner shall bear such maintenance expenses.

**360. Prohibition of causing damage to property obtained under the provision of usufruct:** (1) The usufructuary shall not damage, or cause to be damaged, the property obtained under the provision of usufruct.

(2) If such a property is damaged in any manner in the course of its enjoyment by the usufructuary or by the person who

has obtained it on rent, lease or mortgage pursuant to Section 358, the usufructuary shall be liable for it.

Provided that the usufructuary shall not be liable for any damage or loss caused to such property by a disaster.

(3) The usufructuary may make insurance or take other necessary preventive measures for the protection of the property obtained under the provision of usufruct against possible loss or damage in the course of its enjoyment pursuant to sub-section (2).

- 361. Usufructuary to bear tax or fee:** The usufructuary shall pay such tax or fee as may be leviable by law in relation to the property obtained under the provision of the usufruct.

Provided that the owner shall bear the wealth tax payable for the property obtained under the provision of the usufruct.

- 362. Information of claim or interference by any one to be given to owner:** (1) If any one makes encroachment, claim or interference on or with the property under the provision of usufruct, the usufructuary shall give information thereof to the owner within fifteen days of such encroachment, claim or interference.

(2) The usufructuary who does not give information pursuant to sub-section (1) shall be liable to any consequence resulting therefrom.

- 363. Validity period of the provision of usufruct:** (1) The provision of usufruct shall remain valid for the period set forth in the contract.

(2) Notwithstanding anything contained in sub-section (1), the provision of usufruct shall not remain valid beyond the following period, except as otherwise provided for in the contract:

- (a) If the usufructuary is a natural person, the death of the usufructuary or the expiration of a period of forty-nine years since the execution of the provision of usufruct, whichever occurs earlier,
- (b) If the usufructuary is a legal person, the dissolution of the usufructuary or the expiration of a period of twenty-nine years since the execution of the provision of usufruct, whichever occurs earlier.

**Explanation:** For the purposes of this Section, the term "dissolution" includes the termination, liquidation, revocation of registration or insolvency of a legal person.

(3) If there are more than one usufructuary, the property in usufruct shall devolve on the owner in proportion to the death or dissolution of any usufructuary, except as otherwise provided in the contract.

**364. Usufruct may be canceled:**(1) Notwithstanding anything contained in Section 363, if the usufructuary damages or misuses the property obtained under the provision of usufruct or does not enjoy it for the purpose for which it has been given in usufruct or otherwise does any act that prejudices the right of the owner in such property, the concerned owner may cancel the provision of usufruct at any time.

(2) In the event of cancellation of the provision of usufruct pursuant to sub-section (1), the usufructuary shall return the property obtained under the provision of usufruct.

**365. Power to return property by usufructuary:** Notwithstanding anything contained in Sections 363 and 364, if the usufructuary does not wish to enjoy the property obtained under the provision of usufruct, the usufructuary may return such a property to the owner at any time, by giving a notice of at least forty-five days.

**366. Usufruct deemed to be extinguished:** (1) The provision of usufruct shall be deemed to be extinguished in any of the following circumstances:

- (a) In the event of expiration of the validity period of usufruct pursuant to Section 363,

**Explanation:** For the purposes of this Chapter, the term "expiration of the validity period" means:

(1) If more than one natural person are usufructuary, the usufruct shall be deemed to be terminated on the date on which the last survivor usufructuary dies.

(2) If more than one legal person are usufructuary, the usufruct shall be deemed to be terminated on the date on which the last usufructuary legal person is dissolved.

(b) In the event of return of the property on the cancellation of usufruct pursuant to Section 364,

(c) In the event of return of the property in usufruct by the usufructuary pursuant to Section 365,

(d) In the event, except for a reasonable reason, of the failure of the usufructuary to enjoy the property in

usufruct until six months after the date on which the provision of usufruct became effective,

(e) In the event of the accomplishment of the special purpose for the accomplishment of which the provision of usufruct has been made,

(f) In the event that the property obtained under the provision of usufruct is transferred to the usufructuary in accordance with law,

(g) In the event of total loss of the property obtained under the provision of usufruct.

(2) In the event of the extinguishment of the provision of usufruct pursuant to sub-section (1), the property given to any person in usufruct shall *ipso facto* devolve on the owner except in the circumstance set forth in clause (f) or (g).

(3) Notwithstanding anything contained in sub-section (1) or (2), if a property is given in usufruct on the condition that it shall remain valid until any person attains a certain age, the provision of usufruct shall remain valid until the date on which the person attains that age even if the person dies before the date of attainment of such age, as if he or she were surviving.

**367. Statute of limitation:** A person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within six months after the date of knowledge of the commission of such an act or action.

## **Chapter-8**

### **Provisions Relating to Servitudes**

**368. Servitude to be deemed:** (1) If there is a provision of enjoyment or use by the owner of another property of any immovable property or any part thereof in which another person has right, ownership or possession pursuant to this Chapter, provision of servitude shall be deemed to have been created.

(2) A servitude shall be in existence in accordance with the contract, nature of the place where the immovable property is situated, custom or practice exercised since ancient time therein.

**369. Use of provision of servitude to be allowed:** (1) If there is a provision of servitude pursuant to Section 368, the owner of the concerned immovable property shall allow another person to enjoy or use the immovable property in accordance with the provision of servitude.

(2) Notwithstanding anything contained in sub-section (1), if there is a provision of servitude for public purpose, such a servitude may also be used for personal purpose.

(3) Notwithstanding anything contained elsewhere in this Section, a servitude created by operation of law may be used in accordance with law.

**370. Servitude not to be adversely affected by transfer of immovable property:** (1) A servitude in a servient immovable property shall continue to exist even if the owner of such a immovable property transfers all or any of such property to another person in any manner.

(2) Even if the servient immovable property is partitioned, each coparcener shall be deemed to have provided such a servitude.

(3) Notwithstanding anything contained in sub-section (1) or (2), if in transferring or partitioning the servient immovable property, there is a provision of servitude elsewhere in such property and servitude is not thus required to be provided in the immovable property in which a person acquires right by way of such transfer or partition, the servitude shall be deemed to have been extinguished to that extent.

- 371. To allow enjoyment or use:** (1) If any land, despite that a person has right, ownership or possession in it, has been in use since ancient time as a public or community road, cattle exit, pasture land, ditch, cannel, quay, pond, public road, sewage, track road or main road, public shelter, tomb, graveyard, shrine, temple, monastery, dome, mosque, *Idgaha*, *Karbala*, *Kabristan* or church, community school, hospital or similar other public monument or site, the land shall be allowed to be used by the concerned persons accordingly for the particular purpose.

(2) The owner or possessor of the servient land shall not cultivate or use, make any structure in, or otherwise own or possess, it in such manner as to adversely affect the provision set forth in sub-section (1).

- 372. Use of neighbor's house or land at time of disaster:** If, at the time of disaster such as fire, earthquake, volcano and flood, it is not possible to rescue victims of such disaster without entering or using the house or land of a person, the victims may be rescued, or caused to be rescued, by entering the house or land with the consent of the

owner of the house or land if the owner is available, and even without consent of the owner of the house or land if the owner is not available for the time being or refuses to give consent.

**Explanation:** For the purposes of this Section, the term "the owner of the house or land" means the person who is using, possessing or controlling the concerned house or land for the time being.

**373. Acquisition of servitude of passage:** (1) If the passage originally available to have access to and from a house or land is destroyed subsequently due to a disaster, the person who has been using the passage to and from such house or land from the past shall have the servitude of a reasonable passage to the public road.

(2) A person shall not be entitled to demand the servitude of passage from the owners of all surrounding houses or land pursuant to sub-section (1), and he or she may demand such a servitude from the owner of the house or land through which the distance to the public road is the shortest.

**374. Prohibition of transfer of house or land without provision of passage or exit:** (1) In setting aside and transferring any part of the house or land with the provision of passage or exit, such a house or land shall not be transferred without making provision of passage or exit to both the purchaser and the seller.

(2) Notwithstanding anything contained in sub-section (1), if there is another passage or exit to and from such house or land, it is not required to make provision of passage or exit.

**375. Power to extend basic services:** If it is not possible to provide basic services such as sewerage, water supply, electricity, gas and telephone service to the house of a person through his or her own land or public, government or community land, the person shall be entitled to lay pipe or line in the neighbor's land in such manner as not to cause any loss or damage to the owner of such land.

**376. Power to use river or stream or river or stream bank:** Any person may carry out movement, navigation, boating or fishing in the river or stream which is situated in, or originated from, the personal property of any person or within the zone of a maximum of four meters in either side of such river or stream.

Provided that such activity is not allowed in small rivulets that do not have perennial flow of water.

**377. Power to use exit road:** (1) If a river or stream is diverted or a reservoir is built or a dam is made for any reason in the river or stream, the owner of the concerned land shall provide a reasonable exit for the public and livestock to have access to and from such diversion, reservoir or dam.

(2) If, in maintaining the provision of exit passage referred to in sub-section (1), it is possible to maintain such exit passage through the land of more than one person, the exit passage shall, unless provided otherwise, be maintained through the nearest land that is technically feasible for the access to the diversion, reservoir or dam though that passage.

**378. Prohibition of preventing natural flow of water:** (1) Every house or land owner shall himself or herself manage the rain water flow from his or her house or land.

(2) If there is no provision referred to in sub-section (1), the rain water shall be allowed to make its natural course.

Provided that no water shall be let to so flow as to cause adverse effect on the downstream land by making a ditch, controlling floods or otherwise diverting the flow or through human intervention.

**379. Power to use stream, river or pond water:** Any person may use the water of a stream, river or pond, which is originated from, flows through or situated in, the land of another person for the purpose of irrigation and drinking, after the use of such water by the concerned owner.

Provided that in making such use, the adjoining neighbor shall have priority.

**380. Requirement to allow passage or exit for farming:** (1) If a person does not have a passage or exit for people or livestock to have access to and from his or her farm land and needs such passage or exit, the owner of the concerned land shall provide the facility of passage or exit to such a person.

Provided that no person shall be compelled to provide such a passage or exit through the house and compound land.

(2) A person who uses the passage or exit pursuant to sub-section (1) shall so use it that no loss or damage is caused to the

crops or other property of the person providing such a passage or exit.

- 381. Compensation to be paid:** If, in using a house or land belonging to another person, any kind of loss or damage is caused to any one for the purposes set forth in Sections 372, 373, 375, 377 and 380, the person using the passage or exit shall pay a reasonable compensation to the concerned house or landowner.
- 382. Statute of limitation:** A person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within six months after the date of knowledge of such an act or action.

## **Chapter-9**

### **Provisions Relating to House Rent**

**383. House deemed to be rented:** If a person who has right, possession or ownership in a house lends, for a rent, the house to another person to use it for a certain period of time, the person shall be deemed to rent the house.

**Explanation:** For the purposes of this Chapter, the term "house" means any house, storey, unit or room of the house, or land or cartilage occupied by such a house.

**384. Prohibition of renting unsafe house:** (1) No person shall rent or take on rent a house which is not safe for human habitation from health and security perspectives.

(2) The quality standards of a house for non-residential purpose such as a warehouse, livestock farming, storage and cold storage shall be as specified in the house rent agreement.

**385. Period of house rent:** (1) The period of house rent shall be as set forth in the agreement, not exceeding five years.

Provided that if a house is rented for a commercial purpose, it shall be as set forth in the agreement.

(2) Notwithstanding anything contained in sub-section (1), after the expiration of the period of house rent, the period may be extended at times with the consent of the house owner and the tenant.

**386. Agreement to be concluded while renting:** (1) While renting a house, its owner shall enter into an agreement in writing with the tenant, setting out the following matters:

- (a) Full name and address of the owner and of the tenant, their citizenship number, and passport or identification certificate, in the case of a foreigner,
- (b) Place and plot number of the land where the house is located,
- (c) Purpose for rent,
- (d) Date of commencement of rent,
- (e) Validity period of rent,
- (f) Monthly rent,
- (g) Time and mode of payment of rent,
- (h) Liability to pay tariffs of electricity, water supply, telephone etc. used in the house,
- (i) Matter on payment of house rent tax,
- (j) If the rented house is to be insured, matter relating thereto,
- (k) Matter on leaving the rented house and eviction of the tenant from it,
- (l) Matter as to whether the rented house can be sublet to another, and
- (m) Other necessary matters.

(2) Notwithstanding anything contained in sub-section (1), it is not necessary to enter into an agreement in writing with the tenant if the monthly house rent does not exceed twenty thousand rupees.

(3) The tenant's photograph shall also be affixed to the agreement referred to in sub-section (1).

(4) The agreement referred to in sub-section (1) shall also be signed by at least two witnesses of each side, namely the house owner and the tenant, and a copy thereof shall be retained each by the owner and the tenant.

(5) After the completion of the procedures referred to in sub-section (4), an agreement shall be deemed to be entered into between the house owner and the tenant.

**387. Details of house to be provided:** In renting a house, the owner shall, at the time of entering into agreement, disclose the weakness or fault, if any, in the structure of the house to the tenant.

**388. Preparation of description of goods or chattels:** (1) The house-owner shall, prior to renting his or her house, prepare a description of the goods or chattels in the house to be rented.

(2) If the tenant is to use the goods or chattels set forth in the description prepared pursuant to sub-section (1), he or she shall receive such goods or chattels and give a receipt thereof to the house-owner.

**389. Obligations of house owner:** The obligations of the house-owner shall be as follows:

- (a) To allow the tenant to use the house in accordance with the agreement,
- (b) To arrange for such water and electricity supply, sewerage and sanitation in the rented house as may be required, except as otherwise provided for in the agreement,
- (c) To prevent the tenant from insecurity, harassment or unrest from other persons dwelling in the house,
- (d) To abide by the other matters set forth in the agreement.

**390. Obligations of tenant:** The obligations of the tenant shall be as follows:

- (a) To pay the rent to the house owner within the specified period,
- (b) To maintain sanitation in, take care of, protect and safeguard the rented house properly and reasonably, as if it were his or her own,
- (c) Not to do any act such as causing unrest, harassment or insecurity to the other dwellers in the house or neighbors,
- (d) To abide by the other matters set forth in the agreement.

**391. Mode and procedure of payment of rent:** (1) The tenant shall pay the rent to the house owner in accordance with the mode and procedure set forth in the agreement.

(2) If the agreement does not provide for any mode and procedure of the payment of rent pursuant to sub-section (1), the tenant shall pay the rent to the house owner within seven days of the expiry of each month.

(3) The rent may be paid by way of cheque or cash pursuant to sub-section (2).

(4) If the owner receives the rent in cash pursuant to this Section, he or she shall give a receipt thereof to the tenant.

**392. Obligation to pay tax and other charge:** (1) Except as otherwise set forth in the agreement, it shall be the obligation of the house owner to pay the tax and other charge leviable by law in relation to the house rented.

(2) If it is the obligation of the land owner to pay tax or charge pursuant to sub-section (1) and the house owner fails to pay the tax or charge in time, the tenant may pay such tax or charge.

(3) If the tenant pays the tax or charge pursuant to sub-section (2), he or she shall be entitled to deduct such an amount from the rent payable to the house owner.

**393. Insurance of house to be procured:** (1) A tenant who rents a house for industrial or business purpose shall procure the insurance of the house for its security.

**Explanation:** For the purposes of this Section, the term "industrial or business purpose" means the operation of any industry or carrying on a business or trade by having a departmental store or one or more than one shop.

(2) If the person obliged to procure insurance pursuant to sub-section (1) fails to procure insurance of the house and the house is damaged by such cause as disaster, unrest, riot or fire, the tenant shall be liable for such damage.

**394. Repair and maintenance of house rented:** (1) Except as otherwise set forth in the agreement, the tenant shall be obliged to repair and maintain the rented house, as required.

(2) If the agreement provides that the house owner is obliged to repair and maintain the rented house and it is necessary to carry out any repair and maintenance of the house, the tenant shall give a notice in writing to the house owner in time.

(3) If the land-owner fails to repair and maintain the rented house despite the notice given pursuant to sub-section (2), the tenant may repair and maintain such a house.

(4) The tenant shall be entitled to deduct the billed amount of expenses incurred in the repair and maintenance of the house carried out pursuant to sub-section (3) from the rent payable to the house owner.

(5) Except as otherwise agreed upon between the house owner and the tenant in respect of the repair and maintenance of the house, the tenant shall, prior to carrying out repair and maintenance under sub-section (4), prepare a cost estimate of the repair and maintenance and give its written information to the house owner in advance of fifteen days.

**395. Subletting house rented to other person:** (1) If the agreement entered into with the house owner provides that the tenant may

sublet the whole or any portion of the house rented by him or her to another person, the tenant may, subject to the agreement, sublet the whole or any portion of such a house to another person.

(2) If the tenant sublets the whole or any portion of the house rented to another person pursuant to sub-section (1), the tenant shall, no later than fifteen days, give information in writing indicating the name and address of the sub-tenant to the house-owner.

(3) A sub-tenant who rents the house pursuant to sub-section (1) shall pay the rent of the house or its portion to the tenant who has so sublet.

(4) The sub-tenant who rents the house pursuant to sub-section (1) shall, while dwelling in the rented house, abide by all such terms and provisions as required to be abided by the tenant pursuant to this Chapter.

(5) If the sub-tenant who rents the house pursuant to sub-section (1) fails to act in accordance with the terms while dwelling in the rented house or fails to maintain sanitation in, protect or safeguard, the house or carries out any act such as causing harassment, pain or unrest to the other dwellers of the house or neighbors, the tenant may evict the sub-tenant from the house at any time.

**396. Prohibition of altering structure without consent:** (1) Except as otherwise provided in the agreement, the tenant shall not demolish, remove or disorder any structure of, or add any structure to, the

rented house or otherwise alter it without the house owner's consent in writing.

(2) If the tenant does any act in contravention of sub-section (1) and thereby causes any loss to the house-owner, the house-owner shall be entitled to recover compensation for the loss caused to him or her from the tenant.

- 397. Prohibition of using house contrary to agreement:** The tenant shall not use the house for any purpose other than that for which he or she has rented it, without prior consent of the house-owner.
- 398. Alteration in agreement:** The house owner and the tenant may, with mutual consent, make necessary alteration in the house rent agreement.

Provided that if such an agreement is registered pursuant to this Act, alteration shall be made upon making application to the concerned body.

- 399. Power to inspect:** (1) The house-owner may, by an advance notice to the tenant, inspect the rented house from time to time.

(2) If the house-owner intends to inspect the rented house pursuant to sub-section (1), it shall be the duty of the tenant to allow the house-owner to inspect the house.

- 400. Leaving rented house:** (1) A tenant may leave the rented house prior to the expiration of the period of rent in any of the following circumstances:

(a) If the house owner fails to perform his or her obligations pursuant to Section 389,

(b) If the tenant no longer needs the house for the purpose for which he or she rented it,

(c) If the house owner does any act in contravention of the agreement or this Chapter.

(2) If the tenant is to leave the house in the circumstance referred to in clause (b) of sub-section (1), except as otherwise provided in the agreement, the tenant shall give a notice in writing to the house-owner in advance of at least thirty-five days.

(3) If the tenant leaves the house without giving a notice pursuant to sub-section (2), the house-owner shall be entitled to deduct the rent for that period from the rent, if any, paid in advance by the tenant and to recover the same from the tenant, failing such advance payment.

**401. Power to evict tenant:** (1) The house-owner may evict the tenant from the house in any of the following circumstances:

(a) If the tenant fails to perform his or her obligations pursuant to Section 390,

(b) If the tenant commits in the rented house any offense related activity prohibited by law,

(c) If the house-owner needs the house for himself or herself,

(d) If it is necessary to repair and maintain the house by removing inhabitants from the house,

- (e) If the rented house does not appear to be appropriate for human habitation from the technical and health perspectives,
  - (f) If the period of house rent expires,
  - (g) If the tenant does any act in contravention of the agreement or this Chapter,
  - (h) If there exists the circumstance under sub-section (5) of Section 395.
- (2) If it is necessary to evict the tenant from the house in the circumstance referred to in clause (c) of sub-section (1), the land-owner shall give a notice in writing to the tenant in advance of at least thirty-five days.
- (3) If the house owner evicts the tenant from the house pursuant to sub-section (2), the house-owner is not entitled to rent such a house to another person until three months, without using it on his or her own.
- (4) If the house-owner is to rent such house to another person within three months pursuant to sub-section (3) and the previous tenant intends to rent such a house, he or she shall get priority.

**402. House rent agreement deemed to be terminated:** A house rent agreement entered into pursuant to Section 386 shall be deemed to have been terminated in any of the following circumstances:

- (a) If the tenant leaves the house,
- (b) If the house-owner evicts the tenant from the house,

- (c) If the house-owner and the tenant cancel the agreement with mutual consent,
- (d) If the period of house rent expires.

**403. Duty to hand over goods or chattels in good condition:** (1) The tenant shall, while leaving the rented house, count the goods or chattels in his or her custody, clean or color the house, if required, and hand over the same in good condition to the house-owner.

(2) If the tenant loses or damages any goods or chattel in his or her custody, the tenant shall hand over similar goods or chattel or pay a sum of money as per the prevailing price of such goods or chattel to the house-owner.

(3) Notwithstanding anything contained in sub-section (2), the tenant shall not be bound to reimburse for any goods or chattel which is depreciable or destroyable in the course of daily use or to pay price for such goods or chattel.

**404. Power to vacate house:** (1) Notwithstanding anything contained elsewhere in this Chapter, if a tenant disappears without paying the rent for three months or more without notice and the tenant is not found despite a public notice or correspondence with his or her address or the tenant or his or her successor or agent does not appear despite that he or she has been found, the house-owner shall submit an application with such statement to the concerned ward office of the Local Level.

(2) If an application is submitted pursuant to sub-section (1), the concerned ward office shall make a public notice inviting the tenant to appear within a period of fifteen days.

(3) If a notice is published pursuant to sub-section (2), the tenant shall appear within such a period.

(4) If such a person does not appear within the period referred to in sub-section (3), the concerned ward office may open and vacate the rented house, upon having the goods therein in its or any one's custody.

(5) If the person who has disappeared pursuant to sub-section (3) returns or sends his or her agent within six months, the concerned ward office shall collect the due rent from, and return the goods to him or her.

(6) Notwithstanding anything contained elsewhere in this Section, if the concerned ward office of the Local Level does not take any action even within one month of the application submitted to it, the concerned house-owner shall submit an application to the concerned ward office and the nearby police office, and execute a deed and open the house in witness of a police employee and at least two local persons, and hand over the custody of the tenant's goods to the police.

- 405. Statute of limitation:** A person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within six months after the date on which such an act was done or action was taken.

## **Chapter-10**

### **Provisions Relating to Donation and Gift**

**406. Donation or gift deemed to be effected:** (1) If a person grants free of cost a property in which the person has right and ownership to another person or for any religious, social, public or community purpose such an act shall be deemed to be a donation.

(2) If a person grants free of cost a property in which the person has right and ownership to another person as a reward, prize or tip in consideration for merits to him or her by that other person by way of fostering him or her or otherwise or for family love or affection such an act shall be deemed to be a gift.

(3) In effecting a donation or gift pursuant to sub-section (1) or (2), such a donation or gift may be so effected that it is effective immediately or after a certain period or after the death of its maker.

(4) If a donation or a gift becomes effective only after the death of the maker of such donation or gift, it shall be deemed that he or she has executed a testamentary donation or testamentary gift.

**407. Property may be donated by pronouncement:** A person may donate a certain amount or property for any specific purpose by making pronouncement in writing or publicly in a public function organized for that purpose.

Provided that no lawsuit may be made if the person does not transfer the property so donated by him or her.

**408. Voidance of donation or gift:** Any donation or gift made pursuant to this Chapter shall *ipso facto* be void in any of the following circumstances:

- (a) If the person entitling to donation or gift does not accept the donated or gifted property himself or herself or through his or her agent,
- (b) If a property is donated or gifted to a person with entitlement after testament and the receiver of donation or gift dies before the person making such a donation or gift or the organization obtaining donation or gift is dissolved,
- (c) If a property is donated or gifted to an unborn baby and the baby is not born alive,
- (d) If the donated or gifted property is so destroyed that its existence is extinct before the donation or gift becomes effective.

**409. Donation or gift to be voidable:** (1) Notwithstanding anything contained elsewhere in this Act, a donation or gift may be voided in any of the following circumstances:

- (a) If a person donates or gifts a property in which another has right and ownership,
- (b) If any property is donated or gifted without obtaining the consent of another person where such consent is needed pursuant to law,
- (c) If the maker of the donation or gift is an incompetent or quasi-competent person,

- (d) If the donation or gift is made without fulfilling the legal requirements.
- (2) In the case of a donation or gift made without the consent of another person pursuant to clause (b) of sub-section (1) where such consent is required, the property shall be void to the extent of such consent not taken.
- 410. Power to amend or revoke deed of gift with testament:** (1) The maker of gift with testament may, if he or she so wishes, amend the terms of, or revoke, the deed of gift with testament executed by him or her at any time, by making an application in person before the concerned authority.
- (2) In amending or revoking the deed of gift with testament pursuant to sub-section (1), such a person shall appear before the concerned authority, execute a separate deed and then amend or revoke such a deed of gift with testament.
- (3) The deed revoking or amending the deed of gift with testament pursuant to sub-section (2) shall be executed in fulfillment of the procedures applicable to the execution of the deed of gift with testament.
- (4) No person may grant a property once granted to any one by executing the deed of gift with testament to other person by executing such a deed, without revoking the earlier deed of gift with testament pursuant to this Section.
- (5) If a deed of gift with testament is executed in contravention of sub-section (4), the deed of gift with testament executed earlier shall ipso facto be valid.

- 411. Not to obtain property under deed of gift with testament:** If the receiver of gift with testament is convicted to have committed any criminal offense against the maker of such a gift before the deed of gift with testament becomes effective, the receiver shall not be entitled to obtain the property under such a deed.
- 412. Statute of limitation:** A lawsuit may be made within the statute of limitation, if any, specified separately in this Chapter, within two years after the date of maturation of one's right in donation or gift received by one and after the date of possession and enjoyment upon maturity of right in a donation or gift incapable of being made, and, in relation to the other cases, within one year after the date of knowledge of any act done or action taken pursuant to this Chapter, by a person who is aggrieved from such an act or action.

## **Chapter-11**

### **Provisions Relating to Transfer and Acquisition of Property**

- 413. Property deemed to be transferred:** If a person sells, donates, gifts or otherwise transfers a property in which he or she has right and ownership to another person, the property shall be deemed to have been transferred to that other person.
- 414. Property may be transferred:** (1) Any person, other than a person who is not competent to make contract pursuant to this Act or laws in force, may, subject to this Act, transfer a property in which he or she has right and ownership to one or more than one person jointly or severally.
- (2) The competency or incompetency referred to in sub-section (1) shall be determined on the basis of whether he or she was competent or incompetent at the time of the transfer of property by him or her.
- (3) A person may, pursuant to sub-section (1), transfer a property in which he or she has right and ownership to another person with immediate or testamentary effect.
- (4) In transferring a property pursuant to this Section, a deed shall be executed in fulfillment of the legal requirements.

Provided that:

- (1) It is not required to execute a deed to donate or gift any movable property or cash amounting up to one hundred thousand rupees.

(2) Sale or otherwise transfer of a movable property shall be made in accordance with the laws in force.

**415. Power of guardian or curator to sell property:** (1) A guardian or curator may, subject to this Act, sell and transfer a property for the rights, interests and protection of the person under his or her guardianship or curatorship.

(2) Notwithstanding anything contained in sub-section (1), except as otherwise provided in this Act, no immovable property may be sold without permission of the court.

**416. Ownership devolving on transferee of property:** (1) If any person transfers his or her property to another person pursuant to Section 414, his or her ownership in that property shall cease to exist from the date of such transfer and the transferee shall have ownership in such property.

(2) Notwithstanding anything contained in sub-section (1), if a person transfers the right in his or her property to be effective with testament, the transferee shall have ownership in such property only after the death of the transferor.

(3) If two or more persons acquire the same property, they shall have that much entitlement to such property in proportion to their respective portion.

(4) If a deed does not indicate the portion to which a person is entitled on the acquisition of a property, all the persons acquiring the property shall be deemed to have acquired it equally.

**417. Power to transfer private property:** A person may transfer his or her private property to another person without any one's consent.

**418. Joint property may be sold by way of sale:** (1) A joint property may be sold and transferred with the consent of all of its owners.

(2) Even though all the owners do not agree to transfer the joint property pursuant to sub-section (1), any owner may transfer the property of his or her right or portion.

(3) If, in making a transfer pursuant to sub-section (1), it is technically not possible to separate the right or portion of any owner from the joint property, and another owner intends to acquire such property, that other owner shall be entitled to obtain it at the price mutually agreed upon between the owners.

(4) If more than one owner intend to acquire the joint property, the owner who agrees to pay the highest price shall be entitled to obtain such property.

(5) Notwithstanding anything contained in sub-section (3), if the other owners do not intend to acquire the right or portion of any owner and it is not possible technically to separate such property and, the whole of the joint property shall be sold and the proceeds of sale shall be divided between the owners according to their respective right or portion in that property.

(6) If any person transfers the joint property in contravention of sub-section (1), only the transfer of the extent of his or her right or portion in such property shall be valid, and the concerned person shall be entitled to get return of the property transferred in excess of the right or portion of the transferor.

**419. Prohibition of transferring property in common without obtaining consent:** (1) No person shall, without obtaining written

consent of the coparceners in common, transfer a property in common to another person.

(2) Notwithstanding anything contained in sub-section (1), if a coparcener of the joint family is a witness to the deed of transfer of a property in common, consent of that coparcener shall be deemed to have been obtained.

(3) If any person transfers a property in common in contravention of sub-section (1), the transfer of title only to the extent of such right or portion that person has in that property shall be valid. The concerned coparcener shall be entitled to get back the property transferred in excess of such right or portion.

**420. Property in common may be sold for household purpose:**

Notwithstanding anything contained in Section 419, the person acting as the head of family may, for the household purpose, sell whole of the property in common, in the case of a movable property, and the half of such property, in the case of an immovable property, without consent of the others.

**421. Prohibition of transferring other's property:** (1) No person shall transfer a property to another person in which any one else has right and ownership.

(2) If any person transfers a property in contravention of sub-section (1), such a deed or transaction shall be void.

(3) If the real owner makes a claim in the property transferred pursuant to sub-section (1), the transferee of such property shall return it to the concerned owner.

(4) If a person finds any lost or stolen property, the owner of such property may claim it, along with evidence showing his or her ownership, within three years after the date on which the property was lost or stolen.

(5) If any person claims such property pursuant to sub-section (4), the finder of that property shall return it to the owner, by collecting the amount of expenses, if any, incurred in its preservation or maintenance.

(6) Notwithstanding anything contained in sub-section (4), if a person has acquired any stolen or lost property by way of purchase at a public market or auction or bidding made publicly by any person or body, the person shall not be bound to return such property to the real owner unless and until he or she obtains the real value of such property and the fees or amount, if any, paid by him or her in the acquisition of such property.

**422. Prohibition of transferring property in duplication:** (1) No person shall re-transfer to another person a property which he or she has already transferred to some other person.

(2) If any person transfers a property in contravention of sub-section (1), the deed of transfer registered at an earlier date shall get legal validity if the transfer of an immovable property has been made, and if the transfer of a movable property has been made, the transfer to the person who acquires the property earlier shall be valid.

**423. Donation or gift incapable of being effected by guardian or curator:** No guardian or curator may donate or gift any property

belonging to the person under his or her guardianship or curatorship to any person.

**424. Entitlement to amount or compensation in event of deprivation of enjoyment of property:** (1) If a person transfers a property by way of sale pursuant to this Chapter and the purchaser is deprived of enjoying the property wholly or partly because of such transfer being invalid for any reason, the purchaser shall be entitled to recover from the transferor the amount paid by him or her for the property to the extent that he or she is so deprived of enjoying, an interest to be set by yearly ten percent of the amount and the registration fee or other amount, if any, he or she has paid for the transfer of that property as if it were an unsecured bond (*Kapali*).

(2) If any person makes any structure in a property purchased pursuant to this Chapter and is not able to enjoy that property because of such transfer being invalid for any reason, that person may demolish and take away the structure made by him or her within six months.

(3) If any person is aggrieved from the transfer of a property in contravention of Sections 419, 421 and 422 or the failure to demolish and take away any structure pursuant to sub-section (2), such a person shall also be entitled to a reasonable compensation for actual loss and damage suffered by him or her from such transferor, in addition to the amount referred to in sub-section (1).

(4) If a person who may be entitled to a donation or who is entitled to a donation or gift is aggrieved from being unable to use the property for any reason under this Chapter, the person shall be

entitled to get a reasonable compensation from the person making donation or gift, subject to the other Sections of this Chapter.

Provided that compensation cannot be recovered in the case of a testamentary gift being void.

(5) Notwithstanding anything contained elsewhere in this Section, a person who obtains a property in any of the following circumstances shall not be entitled to recover the amount referred to in sub-sections (1), (3) and (4):

- (a) If he or she has obtained the property knowingly that it was other's property or a stolen property,
- (b) If he or she has obtained the property knowingly that it was already transferred to another person.

**425. Right in property may be transferred by attorney:** (1) If a person appoints another person, who is competent to be an attorney in accordance with law, as his or her authorized attorney indicating the reason that he or she is not able to appear in person before the concerned office in order to sell and transfer his or her immovable property, such an authorized attorney may, on his or her behalf, sell and transfer his or her property to another person.

(2) A person may sell his or her movable property through his or her attorney or agent.

**426. Procedure to be followed by body corporate while purchasing or transferring property:** (1) If, in transferring an immovable property held in the name of a body corporate established in accordance with law, the board of directors of such a body gives power by a decision to any member of the board of directors or

employee of such a body to transfer the property, such a person may transfer the property on behalf of such a body.

(2) If the procedure referred to in sub-section (1) is fulfilled while purchasing or otherwise obtaining an immovable property in the name of a corporate body, the property may be purchased or obtained in the name of such a body.

- 427. Property may be purchased or obtained by other person on one's behalf:** If, except the circumstance set forth in Section 426, a person who purchases or obtains a property in accordance with this Chapter is, for any reason, unable to appear in person before the concerned office and gives a power of attorney, accompanied by his or her citizenship certificate, to a person who is competent to be an attorney by law in relation to the purchase or obtainment of the property, such an attorney may purchase or obtain the property in the name of that person.
- 428. Property may be purchased or obtained in the name of incompetent or quasi-competent person:** A guardian or curator may acquire any property by way of donation, gift, purchase or otherwise for the baby in the womb or minor under his or her guardianship or curatorship.
- 429. Registration and deregistration of property right in which is transferred in testament:** (1) If a person transfers his or her right in a property to another person with testamentary effect and such transferor of property dies, one who obtains the property shall submit an application, accompanied by the death registration certificate as well as other evidences, to the concerned office for the

transmission of the property to him or her, within six months after the date of the transferor's death.

(2) If an application is submitted pursuant to sub-section (1), the concerned office shall examine the deed maintained in it and make necessary inquiry as to whether the deed executor has died or not and the deed is void or not.

(3) If, upon an inquiry made pursuant to sub-section (2), it appears that the transferor of the property has died and has not got the deed voided, such property shall be transmitted to the applicant.

(4) If any person submits an application to the office for the transmission after the expiration of the time-limit referred to in sub-section (1), the office shall transmit such property to the applicant in accordance with such a deed, by collecting the fees by five hundred rupees for each year after the expiration of the time-limit.

- 430. Not to claim for damage, destroy or low quality:** A person who has once purchased a property from another person shall not be entitled to make a claim that such property is damaged, destroyed or of low quality.

Provided that if the seller has sold the property by misrepresentation or with deviation from the particulars set forth in the deed, the purchaser shall be entitled to compensation for the same.

- 431. Property may be exchanged:** (1) Any person may exchange his or her property with another person with or without adding any amount.

(2) A deed shall be executed in accordance with law in exchanging a property pursuant to this Act.

**432. Restriction on transfer of immovable property to foreigner:** (1) No person shall, without obtaining prior permission of the Government of Nepal, transfer any immovable property to a foreigner.

(2) If any person transfers any immovable property to a foreigner in contravention of sub-section (1), the relevant deed shall *ipso facto* be void, and such property shall devolve on the Government of Nepal.

(3) The amount invested by the creditor in the obtainment of an immovable property pursuant to sub-section (1) shall be equivalent to an unsecured bond (Kapali).

**433. Foreigner to transfer partition share or inheritance, if any obtained:** (1) If any foreigner obtains a partition share in or succeeds to any immovable property in Nepal, the property shall not be eligible to be transferred to or registered in his or her name nor shall he or she be entitled to enjoy the income of that property, except where so permitted by the Government of Nepal.

Provided that this provision shall not apply to a person who has obtained non-resident Nepali citizenship.

(2) Any foreigner who obtains any partition share or succession pursuant to sub-section (1) shall transfer such property to a citizen of Nepal in any manner, and the concerned office shall, for that purpose, issue a provisional landownership registration certificate valid for the day of transfer of right.

(3) If the foreigner fails to transfer a partition share or succession obtained in his or her name pursuant to sub-section (1) to a citizen of Nepal pursuant to sub-section (2) at any time, in the case of the partition share, and within three years of its obtainment, in the case of succession, the Government of Nepal shall have right in such property after the expiration of that time-limit.

- 434. Statute of limitation:** A lawsuit may be made within the statute of limitation, if any, specified separately in this Chapter, at any time in the case of Section 449, and, in relation to the other cases, within six months after the date of knowledge of any act done or action taken pursuant to this Chapter, by a person who is aggrieved from such act or an action.

## **Chapter-12**

### **Provisions Relating to Mortgage of Immovable Property**

**435. Property deemed to be mortgaged:** (1) If a debtor gives the whole or any portion of an immovable property in which the debtor has right, ownership or possession to a creditor in consideration for a loan which the debtor borrows from the creditor, entitling the creditor to possess that property with effect from the date of execution of the deed or after a certain period, such property shall be deemed to have been given in mortgage.

(2) If the deed provides that the creditor is entitled to possess the property mortgaged pursuant to sub-section (1) with immediate effect at the time of lending or after a certain period, such a mortgage shall be deemed to be a mortgage with possession (*Bhogbandaki*), and if the deed provides that the creditor is entitled to possess the property in the event of the debtor's default on repayment of the loan within the deadline set by the creditor and the debtor for repayment, such a mortgage shall be deemed to be a mortgage without possession (*Drishtibandhaki*).

(3) A property to be mortgaged shall be of such nature as may be capable of being enjoyed by the mortgagee.

(4) A person shall not mortgage a property in which he or she has not right, ownership or possession or which he or she will acquire in the future.

**436. Deed to be executed:** (1) A deed shall be executed in accordance with law for mortgaging any property pursuant to this Chapter.

(2) A person executing the deed of mortgage shall be competent in accordance with law.

**437. Mortgaged property to be possessed and enjoyed:** (1) The creditor shall possess and enjoy the property in mortgage with possession from the date of execution of the deed thereon or from a particular date, if any, specified in the deed, and the property in mortgage without possession within two years of the expiration of the date for repayment of loan by the debtor.

(2) If, for any reason, the creditor is not able to possess and enjoy such property within the period referred to in sub-section (1) or if the debtor does not allow, by any means, the creditor to possess and enjoy it, the creditor may make a lawsuit in accordance with law for effecting the possession and enjoyment of such property.

(3) If the creditor fails to possess and enjoy the property pursuant to sub-section (1) or to make a lawsuit for effecting its possession and enjoyment pursuant to sub-section (2), such a mortgage shall *ipso facto* be inoperative.

(4) If the deed of a mortgage becomes inoperative pursuant to sub-section (3), the deed shall be equivalent to an unsecured bond (*Kapali*).

**438. Possessory right in mortgaged property to be deemed transferred:** If any person mortgages any property, the possessory right in such property shall be deemed to have been transferred to the creditor from the date of its possession and enjoyment by the creditor.

**439. Entitlement to possess as if it belonged to oneself:** (1) The creditor shall be entitled to possess and enjoy the property mortgaged to him or her and fruit, benefit and facility brought out from such property as if the same were his or her own property.

(2) If the creditor is not able to possess and enjoy the property mortgaged to him or her because of its incapability of being transferred or of any hindrance or obstruction by the debtor, the debtor shall pay a reasonable compensation to the creditor for the same.

**440. Duty to take reasonable care of mortgaged property:** (1) After acquiring possessory right in the mortgaged property, the creditor shall take a reasonable care and protection of that property as if it were his or her own.

(2) The creditor himself or herself shall pay the tax or charge, if any, payable by law for the possession and enjoyment of the mortgaged property.

Provided that the debtor shall pay the land revenue payable by law.

(3) If the creditor is not able to possess and enjoy the mortgaged property because of any hindrance or obstruction by any person other than the debtor, the creditor may make a lawsuit in accordance with law for its possession and enjoyment.

**441. Interest, charge or fee not to be collected:** (1) Notwithstanding anything contained elsewhere in this Act, no creditor who has lent money against the security of mortgage with possession in a

property shall collect any kind of interest, charge or fee in consideration of such loan from the debtor.

(2) After the creditor has acquired possession in the property of mortgage without possession, the creditor shall not collect any kind of interest, charge or fee in consideration for such loan.

**442. Period for possession and enjoyment of property in mortgage with possession:** (1) Except as otherwise provided in the deed of mortgage, no property in mortgage with possession may be possessed and enjoyed for a period exceeding ten years.

(2) If the property in mortgage with possession is not redeemed within the period referred to in sub-section (1), the deed of mortgage shall be equivalent to an unsecured bond.

**443. Maximum period of mortgage without possession:** (1) No period of a mortgage without possession in a property shall exceed five years.

(2) No creditor is entitled to take action for effecting possession in the property in mortgage without possession or having recovery of the related loan from the debtor prior to the completion of the period referred to in sub-section (1).

(3) After the expiry of the period referred to in sub-section (1), the property may be possessed for a period not exceeding ten years.

(4) If the property given in mortgage without possession is not redeemed within the period of ten years after the possession

pursuant to sub-section (3), the relevant deed shall be equivalent to an unsecured bond.

**444. Redemption of mortgaged property at any time:** The debtor may, at any time, redeem his or her property from the creditor by repaying the loan, in the case of a property given in mortgage with possession, and also the interest, if any, payable on the loan, in the case of a property given in mortgage without possession, to the creditor.

(2) Notwithstanding anything contained in sub-section (1), if the property in mortgage is a cultivable land and the creditor has already planted crops in such a land at the time of redemption, the creditor shall be entitled to possess and enjoy such crops except as otherwise agreed upon between the creditor and the debtor.

**445. Property in mortgage may be remortgaged:** (1) A person who has obtained a property in mortgage shall be entitled to remortgage such property or any part thereof to another person in consideration for an amount which is equal to, or lesser than, the amount specified in the deed of mortgage, and in such a case, a re-mortgage is deemed to have been created.

Provided that a mortgaged property shall not be the object of re-mortgage prior to the existence of the possessory right in such property.

(2) The period of possession and enjoyment of the re-mortgage given pursuant to sub-section (1) shall not exceed the period of possession and enjoyment under the mortgage.

(3) If the debtor who has right and ownership in the property intends to redeem the property re-mortgaged pursuant to sub-section (1), the debtor may redeem the property upon payment of the price directly from the re-mortgagee if the price of the re-mortgage is equal to the original price and through the original mortgagee if such price is less than the original price.

(4) Notwithstanding anything contained elsewhere in this Section, the transaction of remortgage made inconsistent with the terms of the mortgage shall *ipso facto* be void to the extent of such inconsistency.

(5) If the creditor is not entitled to possess the property re-mortgaged pursuant to this Chapter, the deed of such a re-mortgage shall be equivalent to an unsecured bond (*Kapali*).

**446. Fruits or benefits of property may be mortgaged:**

Notwithstanding anything contained in Section 445, a creditor who has obtained a property in mortgage may, instead of remortgaging the whole property, remortgage only the fruits, benefit or facility of such property, or, if such property is a cultivable land, only the crops, products, trees, bamboo trees, reaped or to be reaped fruits, vegetables, flowers or any other kinds of products to be yielded from such land.

**447. Mortgaging by third party on behalf of debtor:** (1) A third person may, in consideration for a loan borrowed by a debtor, mortgage a property in which the third person has right and ownership to the creditor on behalf of the debtor.

(2) The creditor shall, pursuant to this Chapter, be entitled to possess and enjoy the property mortgaged pursuant to sub-section (1) as if it were the property mortgaged by the debtor to the creditor.

(3) If a property is mortgaged by a third person pursuant to sub-section (1), the relationship between the debtor and the third person shall be governed by the deed of mortgage or other separate contract, and in the default of such provision, such transaction shall be equivalent to an unsecured bond (Kapali).

**448. Property in mortgage to be indivisible:** (1) A property mortgaged by a debtor to a creditor shall remain indivisible notwithstanding the creation of more than one creditor by virtue of the partition or succession between the creditor's coparceners or the division between creditor's partners, and the debtor shall not be entitled to redeem the whole or any portion of the mortgaged property until the loan borrowed by him or her is repaid in full in accordance with the deed of mortgage.

(2) If more than one debtor are maintained by virtue of the partition, succession between the debtor's coparceners or division between the debtor's partners, the mortgaged property shall not be liable to redemption until each debtor repays his or her respective portion of the loan in full.

**449. Creditor to be liable for loss and damage to property in mortgage:** (1) After the creation of the creditor's possessory right in the property in mortgage, the creditor shall be liable for any kind of loss or damage, if any, caused to the property in mortgage.

(2) In the event of any loss or damage to the property in mortgage pursuant to sub-section (1), the creditor shall so repair such property, at his or her cost, as to restore it into its original form.

(3) Notwithstanding anything contained in sub-section (1), the creditor shall not be liable for any loss or damage to the property in mortgage caused by a disaster, and the creditor shall repair such loss or damage with the debtor's consent in writing.

(4) The debtor shall, while redeeming the property in mortgage, pay also the expenses incurred in the maintenance under sub-section (3), in addition to the loan borrowed from the creditor.

- 450. Not to create trouble on property in mortgage:** After the creation of the possessory right in the property in mortgage, the creditor shall not so trouble the debtor stating that such property is inappropriate or inaccurate or less as to be inconsistent with the terms of the deed.

Provided that nothing shall bar the making of a claim for the repayment of a loan in accordance with the deed of mortgage if the creditor is not entitled to possess the property in mortgage for any reason or if the property is held to be defective for any reason.

- 451. Mortgage not to be made to foreigner:** No person may mortgage an immovable property to a foreign person other than a person having obtained the non-resident Nepali citizenship, without prior approval of the Government of Nepal.

**452. Not to be mortgaged or transferred in duplication:** (1) No property once mortgaged may be mortgaged or transferred again, in duplication, to other person.

(2) If a person mortgages a property in duplication in contravention of sub-section (1), the deed registered at an earlier date shall be valid and the subsequent deed shall *ipso facto* be void.

(3) If a deed becomes void pursuant to sub-section (2), the amount of a creditor who knowingly executes the deed in duplication shall lapse, and that of a creditor who executes it without knowledge of duplication shall be equivalent to an unsecured bond (Kapali).

(4) Notwithstanding anything contained in sub-section (1), in the event of the execution of deeds in duplication, and the first deed providing for any kind of mortgage and the second deed providing for the transfer of title, the transferee shall be entitled to establish the title by making repayment of loan in accordance with the first deed of mortgage.

(5) One who executes a deed in duplication as mentioned in this Section shall be liable to the punishment with a fine of a sum that is equal to the amount in controversy, if any, indicated in the second deed, to the amount indicated in the earlier deed, if such amount in controversy is not indicated in the second deed, and a sum not exceeding twenty-five thousand rupees if no such amount is indicated even in the earlier deed.

Provided that a fine in excess of one hundred thousand rupees shall not be imposed irrespective of the sum of amount in controversy.

(6) Notwithstanding anything contained elsewhere in this Section, in the event of the execution of the deed of mortgage in duplication, possessory right shall be established within two years from the date of the first deed if it provides for mortgage with possession (Bhogbhandhaki) and within two years from the date of entitlement to the possessory right if the first deed provides for mortgage without possessory right (Drishtibandhaki).

(7) In the event of a failure to establish the possessory right pursuant to sub-section (6), the creditor's amount shall be equivalent to an unsecured bond (Kapali).

- 453. Statute of limitation:** A lawsuit may be made within the statute of limitation, if any, specified separately in this Chapter, and, in relation to the other cases, within a period of one year after the date on which any act was done or action was taken pursuant to this Chapter, by a person who is aggrieved from such an act or action.

## **Chapter-13**

### **Provisions Relating to Pre-emption of Immovable Property**

**454. Pre-emption deemed to be made:** If a person transfers, in any manner, any immovable property in which that person has right, ownership and possession to another person and anyone who is in neighbor of such property redeems it in accordance with this Chapter, pre-emption shall be deemed to be made.

**Explanation:** For the purposes of this Chapter, the term “in neighbor of” includes a situation where a ditch, water supply, passage, exit etc. for one will be closed by the reason that one does not have other’s house or land that is bordering one’s house or land and has been transferred.

**455. Entitlement of heir to pre-emption:** (1) If a person sells his or her immovable property, the heir in neighbor of such property may pre-empt such property upon payment of the amount paid by the buyer of that property as well as the fees incurred in course of approval of deed to the buyer.

(2) If there are more than one heir who intend to make pre-emption pursuant to sub-section (1), the nearest heir, and, if such heirs are also more than one, the heir who is the most immediate neighbor, and, if even such heirs are more than one, all the heirs may pre-empt such property in equal proportion.

(3) If the nearest heir does not pre-empt such property pursuant to sub-section (2), the heir who is the nearest in the order of preference may pre-empt such property.

- 456. Pre-emption by tenant:** If there is no heir in neighbor of the property pursuant to Section 455 or even if there is an heir, he or she does not intend to make pre-emption and if there is a tenant in accordance with law in such a property, the tenant may pre-empt such property.
- 457. Pre-emption of sold house:** (1) If there are different owners of the different parts of the same house and the owner of a part sells his or her part to another person, the owner of another part may, if he or she intends to pre-empt that part, preempt such a part of the house by paying the amount paid by the buyer and the fee incurred in the registration of the deed to the buyer.
- (2) In making pre-emption pursuant to sub-section (1), the following person shall get preference as follows:
- (a) If the owner of the other part is the heir, such an heir, and if there are more than one heir, the nearest heir,
  - (b) If the owner of the other part is a person other than the heir, the owner in neighbor of or the owner of the part adjoining such a part.
- 458. Pre-emption of house donated or gifted:** (1) Notwithstanding anything contained in Section 471, 472 or 473, if any person relinquishes in any manner his or her right in and donates or gifts the half part of the same house or any portion thereof or the land occupied by or appurtenant to the house and the donee has transferred the right in the house or land in any manner to another person, the donor or his or her heir residing in the same place may,

if he or she so intends, pre-empt such a house or any portion thereof or the land occupied by or appurtenant to the house.

(2) Notwithstanding anything contained in sub-section (1), if a person gets a donation or gift of the half part or any portion of the same house or the land occupied by or appurtenant to the house from a donor and the donor donates or gifts the remaining part of such a house or land to another person, the former donee or giftee or his or her heir may pre-empt such remaining part or portion.

(3) In making pre-emption pursuant to sub-section (1) or (2), the figure of price, if any, indicated in the instrument of donation or gift, and amount equal to the prevailing market price, if such figure is not so indicated, and the fees incurred in the registration of the deed shall be paid to the creditor.

(4) If, there are more than one heir intending to make pre-emption pursuant to sub-section (1) or (2), the nearest heir, and the most aggrieved heir, if even the nearest heirs are more than one, may make pre-emption.

**459. Where pre-emption is not permitted:** Notwithstanding anything contained in Sections 478 and 479, any part of or house built under the provision of joint housing shall not be subject to pre-emption.

**460. Procedures for making pre-emption:** (1) A person who intends to make pre-emption of any immovable property pursuant to this Chapter shall make a petition to the office making registration of the relevant deed, and such a petition has to be accompanied by a deposit of an amount equal to the price of the property to be pre-empted, if any, indicated in the deed registered for the transfer of

such property, or an amount equal to the prevailing market price if such price is not indicated in the deed, and the fees charged in the approval of registration of such a deed.

(2) If a petition is received pursuant to sub-section (1), the office that approves the registration of the deed shall hold the petitioner on recognizance and send a process of summon to the person obliged to allow preemption to appear in the office, within a period of seven days excluding the time required for journey.

(3) If the person obliged to allow preemption appears and consents to preemption within the time limit as referred to in sub-section (2), the office that approves the registration of the deed shall effect preemption by paying to him or her the amount deposited pursuant to sub-section (1).

(4) If, despite that the person obliged to allow preemption does not appear and consent to preemption within the time-limit referred to in sub-section (2), it appears from the received petition, registered deed and records of the office that pre-emption is to be effected, the office that approves registration of the deed shall make decision to effect pre-emption, and if it appears that pre-emption is not to be made, that office shall make decision not to effect pre-emption and give according information to the petitioner.

(5) If the person obliged to allow pre-emption does not appear within the time limit referred to in sub-section (2), and, after the expiration of the time limit, if it appears from the received petition, registered deed and records of the office that pre-emption is to be effected, the office shall make decision to effect pre-emption and give an execution slip to the person entitled to pre-

emption to enjoy the property to be pre-empted, and send a notice to the person obliged to allow preemption to receive the amount of deposit made pursuant to sub-section (1).

(6) If the person obliged to allow pre-emption appears within the time-limit referred to in sub-section (2) but expresses his or her disagreement with the market price of such property, the office that approves the registration of the deed shall fix the market price of that property and effect pre-emption by having the amount equal to that market price paid to the person obliged to allow pre-emption.

(7) If any party does not agree to the market price of the property subject to pre-emption fixed pursuant to sub-section (6) or if the person obliged to allow preemption appears within the time limit and shows the reason why pre-emption is not to be made, and it is necessary to decide it upon examination of evidence on the matter, the office that approves the registration of the deed shall inform that the concerned person may make a lawsuit in the court within thirty-five days; and in such a case, action shall be taken pursuant to a decision of the court if a lawsuit has been filed within the time-limit, and pursuant to a decision of the office if no such a lawsuit has been filed.

(8) In returning the amount to the petitioner on holding that pre-emption cannot be made pursuant to sub-section (4), two and half percent of the amount deposited pursuant to sub-section (1) shall be deducted.

(9) If the person who has petitioned for pre-emption does not subsequently intend, for any reason, to make pre-emption or

fails to appear at the appointed dates, the office shall punish that person with a fine of three percent of the amount of deposit furnished by him or her and the amount that remains after deducting that fine from the amount of deposit shall be returned to him or her.

- 461. To update records upon pre-emption:** If it is held by the concerned office or court that pre-emption can be made pursuant to this Chapter, the office shall make entries into and update accordingly the records of the pre-empted property maintained in such an office.
- 462. Statute of limitation:** A person who is aggrieved from any act done or action taken pursuant to this Chapter may file a lawsuit within thirty-five days after the date of knowledge thereof not later than six months after the date of registration of the deed.

Provided that a tenant may file a lawsuit within thirty-five days after the date of expiration of the date within which the land-owner may make pre-emption.

## **Chapter-14**

### **Provisions Relating to Approval of Registration of Deeds**

**463. Deed deemed to be registered:** If any deed submitted by a person to the concerned office for approval pursuant to this Chapter is approved by such an office, such a deed shall be deemed to be registered.

**Explanation:** For the purposes of this Chapter, the term “concerned office” means such an office as may be designated by the Government of Nepal, by a notification in the Nepal Gazette, and includes the concerned Land Revenue Office until the office is so designated.

**464. Deeds to be registered:** (1) In making any of the following deeds, such a deed shall be got registered with the concerned office:

- (a) A deed transferring the right in an immovable property in any manner,
- (b) A deed of mortgage with possession, mortgage without possession or re-mortgage,
- (c) A deed on donation or gift of immovable property in testament,
- (d) A deed on exchange of immovable property,
- (e) A deed on partition or relinquishment of partition share of property in common,
- (f) A deed on separation of board and bread or unification of board and bread,
- (g) A deed on establishment of a trust,

- (h) A deed on house renting with a monthly rent of more than one hundred thousand rupees,
- (i) A deed on usufruct in an immovable property,
- (j) Such other deed required to be registered pursuant to this Act or law.

(2) If any person fails to have registered a deed required to be registered pursuant to sub-section (1), such a deed shall not be legally recognized.

**465. Other deeds may be registered:** (1) A person may, if he or she so intends, have registered also any deed other than that set forth in Section 464.

(2) If a person makes an application for the approval of registration of a deed pursuant to sub-section (1), the concerned office shall register such deed by fulfilling the legal requirements.

**466. Deed may be registered by commission:** (1) If a person makes an application to the concerned office for the approval of registration of a deed by a commission deputed by the office and it appears that such a deed can be registered by that office, the chief of office or other employee deputed by him or her shall, on deposit with the office of the fees chargeable for such registration, visit the location indicated by the applicant within five days and register such a deed by fulfilling the legal requirements.

(2) If the deed is approved by a commission deputed pursuant to sub-section (1), the office shall credit into revenue the deposit made pursuant to that sub-section.

(3) If, for any reason, the deed is not approved and registered by a commission deputed pursuant to sub-section (1), the applicant shall get refund of the deposit within three months.

(4) If the applicant fails to get refund of the deposit within the time-limit referred to in sub-section (3), the office shall credit such deposit into revenue.

**467. Deed may be approved and registered with office in other district:** (1) If the parties to a deed intend to get the deed approved and registered in a district other than the district in which either of them resides or the property is situated, they shall make an application, setting out the matter, to the concerned office of that district.

(2) If an application is made for the registration of a deed pursuant to sub-section (1), such an office shall make necessary inquiry into the matter and approve and register such deed by fulfilling the legal requirements.

(3) If a deed of immovable property is approved and registered in other district pursuant to sub-section (2), the office shall send a copy of the registered deed to the relevant office of the concerned district.

**468. Fee chargeable for registration of deed:** (1) The fee specified by law shall be charged for the approval and registration of a deed.

(2) Except where the law provides for the fee of approval and registration of a deed, fee shall be charged according to the amount set forth in the deed dealing with transaction of money.

Provided that if the price of the immovable property referred to in the deed is less than the minimum price specified by the Government of Nepal, the fee shall be charged according to the price specified by the Government of Nepal.

(3) Notwithstanding anything contained in sub-section (1) or (2), in registering a deed in another district, there shall be charged an additional fee by ten percent of the fee set forth in that sub-section.

**469. Obligation to pay fees:** (1) The following person shall pay the fee chargeable for the registration of the following deed:

- (a) In the case of a deed transferring a property or relating to mortgage, the transferee or mortgagee,
- (b) In the case of a deed on partition or relinquishment of partition share, separation of board and bread or unification of board and bread, all coparceners in equal portion,
- (c) In the case of a deed on exchange of property, both parties to the deed,
- (d) In the case of a deed of testamentary gift, the donor or testator,
- (e) In the case of a deed on house renting, the house lord,
- (f) In case of a memorandum of establishment of trust, founder of a trust,

(g) In the case of any other deed, both parties to the deed.

(2) In registering the deed referred to in clause (e) of sub-section (1), the fee shall be determined considering the amount of rent of the first month receivable for house rent as the price.

**470. Provision relating to payment of amount:** If any amount is to be paid and received between the parties to a deed according to the deed intended to be approved and registered, such payment may be effected either in household or in presence of the concerned employee of the office or by a good for payment cheque.

**471. Transmission and registration and de-registration to be made:**  
(1) If any transmission has to be effected in consequence of a deed registered, the concerned office shall execute transmission, and registration and deregistration of the matter on the day of registration of the deed, and on the following day if it is not possible to do so on that day.

(2) If any transmission and registration and deregistration of the matter have to be made in the records of another office according to the deed registered by one office, the latter shall give a time-limit of thirty-five days to the transferee, thereby informing him or her to go to the concerned office for the transmission, and registration and deregistration of the matter, and send also the deed to the concerned office.

(3) On receipt of a deed sent by another district for the transmission, and registration and deregistration of the matter pursuant to sub-section (2), the concerned office shall enter the

matter of such registration into its records and effect transmission and registration and deregistration of the matter according to the deed.

472. **Deed registered at earlier date to be valid:** In the event of approval and registration of more than one deed in relation to the same matter, the deed approved and registered on the earlier date shall be valid.
473. **Statute of limitation:** (1) A person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit within six months after the date on which such an act was done or action was taken.  
  
(2) Notwithstanding anything contained in sub-section (1), if a deed is approved and registered by an office of another area, a lawsuit may be made within one year after the date of receipt by the concerned office of a copy of such a deed.

## **Chapter-15**

### **Provisions Relating to Transactions**

**474. Transaction deemed to be made:** (1) If there is give-and-take of any amount or goods between two or more persons subject to any condition, transaction shall be deemed to have been made between them.

(2) If a transaction is made pursuant to sub-section (1), the receiver of amount or goods shall return the same to the giver of amount or goods.

**Explanation:** For the purposes of this Chapter, the term “amount” includes the price of a goods.

**475. Loan deemed to be borrowed:** If a person has an obligation to pay any amount or goods to another person in any manner, such obligation shall be deemed to be a loan borrowed by that person, and such a person shall return such amount or goods to the concerned person, subject to the provisions of this Chapter.

**476. Transaction not to be carried on without executing deed:** No person shall carry on transaction without executing a deed in accordance with law.

**Explanation:** For the purposes of this Chapter, the term “deed” means any document that substantiates a transaction including a cheque, bill, voucher and receipt.

**477. Matters to be set out in deed:** In carrying on a transaction, the following matters shall be set out in the deed according to the nature of transaction:

- (a) Name, surname, age and address of each person involved in transaction, and name of his or her father, mother, grand-father and grand-mother,

Provided that in the case of a married person, the name of his or her husband or wife, as the case may be, shall also be mentioned.

- (b) Reason for transaction,
- (c) Volume of transaction,
- (d) In the case of transaction of any good, price of such goods,
- (e) In the case of exchange of any goods by way of borrowing, loan or otherwise, the matter to that effect,
- (f) Details of the goods, if any, exchanged,
- (g) Date for repayment of the transacted amount,
- (h) Rate of interest, if any, payable on the transaction,
- (i) Matter that the creditor may recover the amount involved in the transaction from the borrower's assets in the event of failure to repay such amount within the specified time or to fulfill the other conditions set forth in the deed,
- (j) Place of the deed executed,
- (k) Date of the deed executed,
- (l) Such other matters as required to be set out according to the nature of transaction.

**478. Entitlement of creditor to interest from debtor:** (1) If a deed on transaction provides for the payment of interest, the creditor may collect the interest from the debtor as set forth in the deed.

(2) The amount of interest which the creditor is entitled to collect from the debtor pursuant to sub-section (1) shall not exceed ten percent of the principal per annum.

(3) If the deed executed pursuant to sub-section (1) does not provide for the rate of interest but only for the payment of interest, the creditor may collect interest from the debtor at the rate of ten percent of the principal per annum.

(4) If the deed executed pursuant to sub-section (1) provides for the payment of profit instead of interest but does not specify the amount of such profit, the creditor may collect such profit from the debtor as if it were interest.

**479. Creditor not allowed to collect interest from debtor:** If the deed on transaction does not provide for the payment of interest, the creditor shall not collect interest from the debtor.

**480. Compound interest not to be collected:** (1) The creditor shall not collect compound interest from the debtor.

(2) If any creditor collects compound interest from a debtor in contravention of sub-section (1), such interest shall be deducted from the principal and refunded if the principal has already been repaid.

**481. Interest in excess of principal not to be collected:** Notwithstanding anything contained elsewhere in this Chapter, the creditor shall not collect interest in excess of the principal.

**482. Procedures to be fulfilled in paying and collecting principal and interest:** The following procedures shall be fulfilled in paying and collecting interest:

- (a) If the debtor repays the whole of the principal and interest, the creditor shall sign and return the deed on transaction to the debtor by tearing out the deed or indicating on its space or reverse side that the loan has been repaid,
- (b) If the deed is not found at the time of repayment of the principal and interest pursuant to clause (a), the creditor shall give the debtor a receipt indicating the receipt of the particular amount on the particular date,
- (c) In repaying some amount out of the principal and interest, the creditor shall indicate on the reverse side of the deed how much he or she has received from the debtor on which date, and get the debtor to sign the deed and issue a separate receipt of amount accordingly if the deed is not found immediately or it is not with the creditor for the time being.

**483. Interest accruable as of the date of recovery of amount:** Notwithstanding anything contained elsewhere in this Chapter, if the court passes a judgment on a lawsuit, if any, made within the period under Section 484 entitling the creditor to recover interest as well, the creditor shall be entitled to the interest as of the date of recovery according to the judgment.

**484. Period of deed executed in household:** (1) The period of a deed executed in household pursuant to this Chapter shall not exceed ten years.

(2) Notwithstanding anything contained in sub-section (1), if the debtor repays some of the principal or interest thereon to the creditor or the term of a deed is extended for the repayment of principal or interest within the period of ten years, another period of ten years shall be extended from the date of such repayment of principal or interest or extension of the period, as the case may be.

**485. Transaction carried on with incompetent or quasi-competent person not to be recognized:** A transaction carried on by a person with an incompetent or quasi-competent person shall not get legal recognition.

**486. Recovery of amount not available from property in common:**  
(1) If any person carries on transaction with another person and the deed of such transaction does not bear the signature of the person acting as the head of family, the creditor shall not be entitled to recover his or her amount from such property until the debtor's right in the property in common is established.

(2) Notwithstanding anything contained in sub-section (1), if the person acting as the head of family repays such amount, the creditor may recover the same.

(3) If any person is not able to recover the amount from the debtor on the occurrence of the circumstance referred to in sub-section (1), the creditor shall make a lawsuit against the debtor and maintain his or her right within a period of ten years.

(4) In the event of the maintenance of the right with the debtor pursuant to sub-section (3), the creditor may recover his or her amount from the debtor in accordance with law after his or her right in the property in common has been established.

(5) The statute of limitation for making a lawsuit shall, for the recovery of the amount pursuant to sub-section (4), commence from the date of establishment of the debtor's right.

**487. Exchange of movable property not allowed without consent:** (1) A person of majority age in a joint family is not allowed to exchange any movable property in common without consent of the person acting as the head of family.

Provided that the consent of the person acting as the head of family shall not be required to exchange his or her private property.

(2) If a person exchanges a movable property in contravention of sub-section (1), the exchange of such property shall not be valid if the person acting as the head of family does not consent to such exchange.

(3) If there is no consent of the person acting as the head of family to the exchange of movable property made in contravention of sub-section (1), the property so exchanged may be taken back within thirty-five days.

**488. Recovery of amount if transaction appears to have been carried on:** Even though any person does not execute a deed by fulfilling the procedures referred to in this Chapter, if it appears from any deed, banking transaction, **negotiable instrument**, cheque, voucher or book of account that transaction has been carried on with any

person, the court may, based on such deed, banking transaction, negotiable instrument, cheque, voucher or book of account, order the recovery of such amount from the debtor to the lawsuit maker.

**489. Procedure to be followed if deed executed on household is lost or destroyed due to force majeure event:** (1) If a deed executed in household is lost or destroyed due to a force majeure event, the creditor shall make an application, setting out the matter, to the concerned Local Level within fifteen days from the date of loss or occurrence of the force majeure event.

(2) If an application is made pursuant to sub-section (1), the concerned Local Level shall draw up a receipt setting out the matter and issue the receipt, sealed with the stamp of the office, to the applicant.

(3) If an application is made pursuant to sub-section (1), the Local Level shall summon the presence of the deed executor, if he or she is alive, and of the nearest heir, if such executor is not alive, within seven days, and cause a deed to be prepared as per the original deed, if he or she so consents, and authenticate such deed and deliver it to the applicant.

(4) If the deed executor does not consent to execute another deed indicating that the deed was lost or destroyed due to a force majeure event pursuant to sub-section (3), the creditor shall make a lawsuit and maintain his or her right, showing the evidence of the loss of deed or occurrence of the force majeure event, within thirty-five days of the expiry of that time-limit.

**490. To return goods transacted in the event of imperfection:** (1)

Except as otherwise provided for in the deed, if the receiver of any goods transacted with specification of price is not able to possess the goods due to the fact that the goods do not correspond to that set forth in the deed or are imperfect for any reason, he or she shall give a notice thereof to the giver of goods within thirty-five days of such transaction.

(2) If a notice is received from the receiver of goods pursuant to sub-section (1) and his or her statement appears to be reasonable, the exchange of goods shall be made if the giver has similar other goods, and if the giver does not have such goods, he or she shall get back his or her goods and cancel the deed executed in relation to such transaction.

(3) If the giver of goods refuses to exchange or to take back the goods pursuant to sub-section (2), the receiver of goods may make a lawsuit to have recovery of an amount equivalent to the price of such goods and a reasonable compensation for the loss and damage caused to him or her from the concerned person or get such transaction to be void.

**491. To return goods in original condition:** (1) If any person obtains or borrows for any specific purpose any goods owned or possessed by another person whether for rent or not or for borrowing or not or on any other terms and conditions, the person shall, after the completion of the purpose, return the goods that are the same in kind, quantity and quality as have been so acquired or borrowed, to the owner or possessor.

(2) If the goods obtained pursuant to sub-section (1) are lost, broken, destroyed, out of order or otherwise damaged, except as otherwise provided for in the deed, the person obtaining such goods shall return similar other goods to the owner or possessor or pay to the owner or possessor an amount equivalent to the prevailing market price of such goods if similar other goods are not available.

(3) Except as otherwise provided for in the deed in relation to the return of, or payment of rent or amount for, the goods pursuant to sub-section (1) or (2), such goods or rent shall be returned or paid to the owner or possessor within fifteen days after the completion of the purpose for which the goods were obtained.

(4) If the person obtaining the goods fails to return or pay the goods or amount to the owner or possessor within the time-limit under sub-section (3), the aggrieved person may recover the amount of such goods and a reasonable compensation, as well, for the loss caused to him or her.

**492. Statute of limitation:** (1) There shall be no statute of limitation for making a lawsuit in the matter of transaction carried on with intent to take rights to, misappropriate, cause loss to, or disorder, the property of an incompetent and quasi-competent person or in the matter of collection of compound interest or collection of interest in excess of ten percent.

(2) Except as provided for in sub-section (1), a person who is aggrieved from any act done or action taken pursuant to this Chapter may make a lawsuit as follows from the date of such act or action:

- (a) Where this Chapter provides for a separate statute of limitation for making a lawsuit, within such limitation,
- (b) Within a period of one year from the date of expiration of the period, if any, specified in any deed, and failing such a deed, or in the other cases, from the date of accrual of the cause of action.

## **Part-5**

### **Provisions Relating to Contract and Other Obligations**

#### **Chapter-1**

##### **General Provisions Relating to Obligations**

**493. Obligation to be created:** (1) If there is a legal compulsion for one to do or to abstain from doing any act, an obligation is created if one omits to do or does such an act.

(2) The obligation to be created pursuant to sub-section (1) shall be maintained and determined pursuant to this Chapter.

**494. Circumstances in which obligation is created:** (1) The obligation under Section 493 shall be created and maintained as follows:

- (a) By a law,
- (b) By a contract,
- (c) By an indirect or quasi-contract,
- (d) By an unjust enrichment,
- (e) By an unilateral commitment of any person to assume obligation,
- (f) By an act to be treated as tort under law,
- (g) By an act to be treated as a quasi-tort under law.

(2) In regard to sub-section (1),

- (a) The obligation referred to in clause (a) shall be created under this Act or other law.
- (b) The obligation referred to in clause (b) shall be created under a contact entered into between the parties.

- (c) The obligation referred to in clause (c) shall be created under an indirect or quasi-contact as defined in Chapter-15 of this Part.
- (d) The obligation referred to in clause (d) shall be created under an unjust enrichment as defined in Chapter-16 of this Part.
- (e) The obligation referred to in clause (e) shall be determined under provision for creating obligation under law through an unilateral commitment.
- (f) The obligation referred to in clause (f) shall be created under torts as defined in Chapter-17 of this Part.
- (g) The obligation referred to in clause (g) shall be created from the defective product as defined in Chapter-18 of this Part or from other act to be deemed as a quasi-tort under law.

**495. Obligation to be fulfilled:** (1) A person shall himself or herself fulfill the obligation of any matter which has been so maintained or created as to be fulfilled by him or her or which he or she has undertaken to fulfill.

(2) If such a person dies or becomes of unsound mind prior to the fulfillment of the obligation pursuant to sub-section (1), the heir succeeding to his or her property or his or her guardian or curator or the guarantor in the case of a contract relating to guarantee shall fulfill such obligation.

**496. Obligation to be fulfilled within the prescribed time:** (1) If a certain period has been specified for fulfilling any obligation, the concerned person shall fulfill such an obligation within that period.

(2) If a certain day or time has been specified for fulfilling any obligation, the concerned person shall fulfill such obligation on that day or at that time.

Provided that if there is a stipulation that the obligation shall be fulfilled within certain day or time, the obligation may be fulfilled even prior to such day or time.

(3) If no period, day or time has been specified under sub-section (1) or (2), the period, day or time for fulfilling the obligation shall be determined having regard to the nature of obligation and the obligation shall be fulfilled within a reasonable period.

(4) If any obligation is not fulfilled pursuant to sub-section (1), (2) or (3), the person who is bound to fulfill the obligation shall be deemed to have not been fulfilled, or to have been unable to fulfill, the obligation.

**497. Each person to fulfill obligation:** (1) If more than one person have undertaken to fulfill an obligation or such an obligation has been created in relation to them, every person shall, except as otherwise provided for in the contract, fulfill such an obligation equally.

(2) If any person is bound to fulfill any obligation vis-à-vis more than one person, he or she shall, except as otherwise provided for in the contract, fulfill the obligation vis-à-vis every person equally.

**498. Obligation may be divisible:** (1) If any obligation has to be fulfilled vis-à-vis or by more than one person and the obligation vis-à-vis or by such persons is capable of being divided or fragmented, having regard to its nature, such obligation may be divided and shall be fulfilled by or vis-à-vis every person accordingly.

(2) In the circumstance referred to in sub-section (1), every person or all persons may demand for the fulfillment of the obligation by every person or all persons bound to fulfill such obligation.

**499. Obligation to be fulfilled in good faith:** The person who is bound to fulfill the obligation created pursuant to Section 494 shall fulfill it in good faith.

**500. To bear compensation for failure to fulfill obligation:** (1) If a person bound to fulfill any obligation fails to fulfill it or delays its fulfillment, and thereby a loss or damage is caused to any other person in any manner, such a person shall bear compensation for the actual loss or damage so caused.

(2) If a person bound to fulfill any obligation does not fulfill it by fraud or does any act knowingly or recklessly, thereby any loss or damage is caused in any manner, such a person shall bear compensation for the loss or damage so caused.

**501. Obligation contrary to law not to be fulfilled:** Notwithstanding anything contained elsewhere in this Chapter, if the fulfillment of any obligation would be contrary to law, public order or public morality, it shall not be required to fulfill such an obligation.

**502. Impossible obligation not to be fulfilled:** (1) Notwithstanding anything contained elsewhere in this Chapter, if, at the time of its creation, any obligation of such nature as is impossible for fulfillment has been created, such an obligation shall not be required to be fulfilled.

(2) If any obligation which was possible for fulfillment at the time of its creation subsequently becomes impossible for fulfillment, the consequence of such obligation shall be determined according to the law.

(3) Notwithstanding anything contained in sub-section (1) or (2), if a portion of any obligation can be fulfilled and the rest portion cannot be fulfilled, the obligation shall be fulfilled to the extent that it can be fulfilled.

**503. Statute of limitation:** A person who is aggrieved from any act done or action taken under this Chapter may make a lawsuit within two years from the date of the accrual of the cause of action.

## **Chapter-2**

### **Provisions Relating to Formation of Contracts**

**504. Contract deemed to be made:** (1) If an agreement enforceable by law is concluded between two or more persons to do or abstain from doing any act, a contract shall be deemed to be concluded.

(2) For the purposes of sub-section (1), a contract shall be deemed to have been concluded once the person to whom an offer has been made by another person communicates his or her acceptance thereto.

(3) Once a contract is concluded, a binding legal relationship shall be created between the parties to it.

**Explanation:** For the purposes of this Chapter,

(1) “Offer” means an offer made by one person to another person with the intent of obtaining his or her acceptance to do or abstain from doing any act.

(2) “Acceptance” means the acceptance given by the person to whom the offer has been made in the same meaning in which the offer is made.

**505. Contract enforceable by law:** (1) A contract concluded in fulfillment of the following conditions shall be deemed to be a contract enforceable by law:

- (a) The consent expressed by a person to a contract to bind himself or herself,
- (b) Capacity or qualification of a person to a contract to conclude the contract,

- (c) Certain matter for the creation of an obligation,
  - (d) Lawful obligation.
- (2) A contract may be made in written or verbal form or even by conduct of the parties to it.
- (3) Notwithstanding anything contained in sub-section (2), if there is a requirement that a particular contract be concluded in fulfillment of any particular procedure or formality, such a contract may not be enforceable unless such procedure or formality is completed.

**506. Persons competent to concluded contract:** (1) Every person other than the following persons shall be competent to conclude a contract:

- (a) One who is a minor,
- (b) One who is of unsound mind.

**Explanation:**

- (1) A person who is usually of unsound mind, but occasionally of sound mind, may conclude a contract when he or she is of sound mind.
  - (2) A person who is usually of sound mind, but occasionally of unsound mind, may not conclude a contract when he or she is of unsound mind.
- (2) Notwithstanding anything contained in sub-section (1), any person who is deemed incompetent to conclude a particular contract under the law shall not be deemed to be a competent to conclude such a contract.

(3) In concluding a contract on behalf of a person who is incompetent or quasi-competent, his or her guardian or curator may conclude such a contract.

(4) In concluding a contract on behalf of a legal person, it shall be concluded by a decision of the director or directors authorized for the management and operation of such a person or by a person authorized by such a director or directors.

(5) Notwithstanding anything contained elsewhere in this Section, if a person deemed to be incompetent to conclude a contract under this Chapter on any particular matter is competent by other law to conclude a contract on such a matter, such a person shall be deemed to be competent to conclude a contract on that matter.

**507. Parties to be autonomous:** The parties to a contract shall, subject to this Act, be autonomous to choose the form and contents of the contract, to determine terms and conditions of the contact and the nature of the remedy for its breach as well as to determine the measures for resolving disputes arising out of it.

**508. Offer and acceptance deemed to be completed:** (1) Once the offeree comes to the knowledge of an offer, the act of making the offer shall be deemed to have been completed.

(2) The act of giving acceptance shall be deemed to be completed, in case of the offerer, if the offerer receives the acceptance forwarded by the offeree to the offerer having indicated his or her acceptance to the offer, and in case of the offeree, if the offerer comes to know that the offeree has accepted the offer.

(3) Even though there is no expression of acceptance to the offer directly, if the offeree abides by any terms mentioned in the offer by way of his or her conduct or accepts the advantage or service mentioned in the offer or indicates acceptance in any other manner, the offeree shall be deemed to have accepted the offer.

(4) If the offerer makes an offer having stipulated certain time and specifies that the offer is regarded as accepted if a notice of its rejection is not sent within such time, and if the offeree does not send a notice of acceptance of the offer within such time, the offer shall not be deemed to have been accepted.

**509. Offer or acceptance may be revoked:** (1) The offerer may revoke his or her offer through a notice.

Provided that, if the offerer has received from the offeree a notice to the effect that he or she has accepted the offer before receiving a notice of revocation of the offer, such an offer shall not be revoked.

(2) The offeree may revoke his or her acceptance by a notice.

Provided that if the offerer has already received the notice of acceptance before receiving the notice of its revocation, such an acceptance shall not be revoked

(3) The person who has sent a notice expressing his or her refusal of the offer may again send a notice expressing his or her acceptance to the offer.

Provided that, if the notice of refusal out of the notices of refusal or acceptance reaches first, the contract shall not be deemed to have been concluded, and if the notice of acceptance reaches

first, the contract shall be deemed to be concluded.

(4) If the notice under sub-section (1) has been sent after sending the offer, the notice under sub-section (2) has been sent after sending acceptance or the notice under sub-section (3) has been sent after sending a notice of refusal and the concerned person receives such notices at the same time, the contract shall not be deemed to have been concluded.

(5) If the offeree sends an acceptance with condition or with alteration to the offer sent by the offerer, the offeree shall be deemed to after a counter offer.

**510. Offer deemed to be revoked:** An offer shall be deemed to been revoked in any of the following circumstances:

- (a) If the offerer makes an offer with a condition that a notice of acceptance to the offer be given within any certain time, and the offerer does not receive a notice of acceptance by the offeree within that time,
- (b) If the time for sending a notice of acceptance is not specified pursuant to clause (a) and the offeree does not give a notice of acceptance to the offerer within a reasonable time,
- (c) If the offerer, after making the offer, dies or becomes insane before receiving the acceptance,
- (d) If the offer is revoked pursuant to Section 509,
- (e) Even if the acceptance was given by the offeree, the offeree dies or becomes insane before the offerer receives the acceptance,

- (f) If the offeree sends a counter offer pursuant to sub-section (5) of Section 509,
- (g) If the offerer makes an offer on a condition that the offeree has to do any act or fulfill any condition before accepting the offer, and acceptance is made without doing such an act or fulfilling such a condition.

**511. Contract according to offer made before the public:** (1) If a person makes an offer publicly by means of an advertisement that he or she will pay certain remuneration to any person for doing any act specified in the advertisement, and if any person does such an act, the advertiser shall pay remuneration specified in the advertisement to such a person.

Provided that if a person does the act specified in the advertisement without knowing such advertisement, such a person shall not be entitled to the remuneration.

(2) If more than one person do the act specified in the offer under sub-section (1), only the person who does the act first shall be entitled to the remuneration.

Provided that if two or more persons do the act specified in the offer at the same time, all of such persons shall be entitled to the equal share of the remuneration, and if the remuneration is incapable of being shared, the proceeds of the sale of the remuneration shall be equally divided among them.

(3) If a specific period is prescribed for doing the act according to the advertisement published pursuant to sub-section (1), the offer made according to the advertisement shall be deemed

to have been revoked immediately after the expiry of that period.

(4) An offer made pursuant to sub-section (1) may be revoked through the same medium through which it was published.

(5) Notwithstanding anything contained in sub-section (4), if anyone has already done the act specified in the advertisement under sub-section (1) before the publication of the notice of revocation of the offer, the remuneration specified in the advertisement shall be provided.

Provided that the person who does the act specified in the advertisement shall notify the advertiser of the completion of the act as soon as possible.

(6) If any person begins to do the act specified in the advertisement under sub-section (1) by giving its notice to the advertiser, appropriate remuneration shall be paid to such a person for the act done until the revocation of the advertisement.

**512. Place of formation of contract:** (1) The place where the offerer sends an offer expecting to receive its acceptance shall be deemed to be the place of formation of the contract.

(2) If the place is not specified pursuant to sub-section (1), the place where the offerer receives acceptance shall be deemed to be the place of formation of the contract.

(3) Notwithstanding anything contained in sub-sections (1) and (2), if the parties specify the place of its formation in the contract, such a place shall be deemed to be the place of formation of the contract.

**513. Contingent contract:** (1) If a contract is concluded to do or not to do any act if some event happens in the future, such a contract shall create no obligation until such an event happens.

(2) If a contract is so concluded as to be deemed to be concluded if any person does a particular act in the future, such a contract shall create no obligation if such a person does anything by which he or she becomes unable or it becomes impossible for him or her to do such an act.

(3) If a contract is concluded to do or not to do any act if any uncertain event does not happen in the future, the obligation under such a contract shall arise only after such an event becomes impossible to happen.

(4) If a contract is concluded to do or not to do any act if any event happens within any fixed time in the future, the contract shall be deemed to be void after such an event becomes impossible to happen within, or after the expiry of, the fixed time.

(5) If a contract is concluded to do or not to do any act if any event does not happen within any fixed time in the future, the obligation under such a contract shall arise if such an event does not happen or it becomes certain that such an event will not happen within the fixed time.

**514. Application of general provisions of contract:** The provisions contained in this Chapter and Chapters 3, 4 and 5 of this Part shall, generally, be applicable, to the other contracts to be concluded according to this Act or law.

**515. Interpretation of contract:** (1) A contract shall be interpreted according to the common intention of its parties.

(2) If the intention cannot be established pursuant to subsection (1), a contract shall be interpreted according to the meaning of general understanding that a reasonable person of the same prudence as a party to the contract would give to it in normal circumstances.

(3) If one party to a contract knows or is deemed to know a statement and conduct of the other party, the contract shall be interpreted according to the intention of such a party.

(4) The terms and expressions used in a contract shall be interpreted in the light of the entire contract or the context in which such terms and expressions are used.

(5) A contract shall be interpreted in a manner so that all the terms used in the contract are given effect without separating some terms from others.

**516. Statute of limitation:** A person who is aggrieved from any act done or action taken under this Chapter may file a lawsuit within two years after the date of the accrual of the cause of action.

## **Chapter-3**

### **Validity of Contracts**

**517. Void contracts:** (1) A contract which is not valid according to law shall be deemed to be a void contract.

(2) The following contracts shall be void:

(a) A contract that restrains anyone from exercising any profession, trade or business which is not prohibited by law,

Provided that a contract shall not be deemed to be made in restraint of any profession, trade or business in any of the following circumstances:

(1) Where a contract is concluded between a buyer and a seller on the sale and purchase of the goodwill of any trade or business, the contract restraining the seller from carrying on similar trade or business under such goodwill for the time and at the place specified in such contract,

(2) A contract concluded between the partners to restrain them from doing the same profession, trade or business as that of the partnership firm or any other profession, trade or business together with other persons who are competitors of the

profession, trade or business of the same nature other than the profession, trade or business of the partnership firm until the partnership exists,

(3) A contract concluded between the partners restraining them from exercising a profession, trade or business of the partnership firm for a certain reasonable period or at a certain place after being separated from the partnership,

(4) A contract so concluded between a person and any person, firm, company or body that the person is restrained from accepting the service of another person, firm, company or body who is the competitor of such other person, firm, company or body until the person is in the service of, or for a specified period after retirement from the service of, such other person, firm, company or body.

(b) A contract in restraint of a marriage other than one prohibited by the law,

(c) A contract restraining any one from enjoying the facilities being enjoyed by the public,

- (d) A contract restraining legal right of any person from being enforced by a court,
- (e) A contract concluded contrary to law or on a matter prohibited by the law in force,
- (f) A contract made for an immoral purpose or against public order or public interest,
- (g) A contract which cannot be performed because the parties thereto do not exactly ascertain or know about the matter in relation to which it has been concluded,
- (h) A contract the performance of which is impossible at the time of its conclusion or a fictitious contract,
- (i) A contract which is vague because of its subject matter being incapable of giving a reasonable meaning,
- (j) A contract concluded by a person not competent to make contract,
- (k) A contract with an illegal purpose,
- (l) A contract concluded by mistake of both parties as to the essential fact of the contract at the time of its conclusion.

(3) A void contract is invalid *ab initio* and it shall create neither any legal consequence nor any right and obligation of its parties.

(4) Even if any part of a contract becomes void, its remaining parts shall be enforceable according to law.

**518. Voidable contracts:** (1) A contract which, at the initiation of its party, may be declared void by the court shall be deemed to be a voidable contract.

(2) The person aggrieved from any of the following contracts may get the contract voided by the court:

(a) A contract concluded by coercion,

**Explanation:** If a person detains or threatens to detain any property of another person or threatens to put that other person's body, life or prestige in peril or commits or threatens to commit any other act forbidden by law, with the intention of causing that other person to enter into a contract against his or her will, the person is said to commit coercion.

(b) A contract concluded by undue influence,

**Explanation:**

(1) Undue influence means an influence exercised by a person over another person who is under his or her influence or who may be employed according to his or her will with the intention of

taking any unfair advantage for his or her interest or concern.

- (2) Without prejudice to the generality of clause (1), the following person is deemed to be under influence or who may be employed according to his or will:
- (a) A person who is under his or her guardianship, curatorship or custody,
  - (b) A person who is incapable of representing his or her interest for the time being or forever by reason of age, illness or physical or mental distress,
  - (c) A person who may be subjected to financial or positional influence of that other person.
- (c) A contract concluded by fraud,

**Explanation:** A party to a contract or his or her agent is said to commit fraud when he or she, with intent to deceive another party thereto or his or her agent, makes the suggestion, as to a fact, of that which is not true which he or she does not believe it to be true or does any act that is likely to make the other party or his or her agent believe it, or knowingly conceals a fact which is in his or her knowledge or does any such act as the law declares to be fraudulent.

- (d) A contract caused by misrepresentation.

**Explanation:** Misrepresentation means any of the following acts:

- (1) Presenting a false description of any matter or fact on without reasonable basis,
  - (2) Misleading any party to his or her detriment,
  - (3) Causing a mistake as to any matter of the contract,
  - (4) Making assurance to have concluded a contract in one subject and but causing to enter into it in another subject.
- (3) In the case of a voidable contract under this Section, the following matters shall be governed as follows:

- (a) The party caused to enter into a contract may, instead of having the contract voided, demand that his or her position be restored into the position that would have been had the contract not been concluded.
- (b) If a contract is made with the person who is under his or her influence and whose will can be dominated by him or her, the party who claims that he or she has not exercised such undue influence shall have the onus to prove that the contract has not been caused by undue influence.

(4) A voidable contract shall, before it is voided, be enforceable as if it were a lawful contract.

(5) If a voidable contract under this Section is voided by the court, it shall not affect the act done under such contract before the voidance.

(6) If any contract is voided pursuant to this Section, the legal right or interest of a bona fide third party shall not be prejudiced merely by the reason of such voidance.

**519. Unenforceable contracts:** (1) A contract that is not enforceable by the court shall be regarded as an unenforceable contract.

(2) Any of the following contracts is not enforceable by the court in spite of its being concluded in fulfillment of the procedures under Chapter-2 of this Part:

- (a) A contract required to be made in written form according to law is not concluded in written form,
- (b) A contract required to be made in fulfillment of any particular formality or procedure or to be registered with any body according to law is not so made in fulfillment of such formality or procedure or is not so registered,
- (c) Where a contract is concluded on behalf of another person, the contract is concluded on a matter not authorized by, or concluded beyond the authority given by, that other person.

**520. Statute of limitation:** A person who is aggrieved from any act done or action taken under this Chapter may make a lawsuit at any time, in the case of a void contract, within one year after the date of accrual of the cause of action for voidance, in the case of a voidable contract, and within two years after the date of accrual of the cause of action, in the case of other contracts.

## Chapter-4

### Provisions Relating to Performance of Contracts

- 521. Obligation under contract to be fulfilled:** Each party to a contract shall fulfill his or her obligation under the contract.
- 522. Reciprocal performance of contract:** (1) If a contract is so concluded that the parties to the contract shall fulfill their respective obligations simultaneously and one party demonstrates such conduct or intention that he or she is not willing to fulfill his or her obligation materially, the other party need not perform his or her promise.
- (2) If the contract fixes the order of priority for the fulfillment of any promise, the promise shall be fulfilled in that order, and failing the fixation of such an order, the party who is liable to perform the promise first according to the nature of the contract shall perform it first.
- (3) If, in the case of a contract containing reciprocal promises, and performance of one promise depends on the performance of the other promise, one party cannot perform the contract because of the failure of the other party to perform his or her promise may recover the loss or damage caused by the failure of the other party to perform the contract.
- (4) If a contract concluded for reciprocal promises to be simultaneously performed pursuant to sub-section (1) and one party prevents the other party from performing such a contract, the other party so prevented is entitled to rescind the contract and also to

recover the loss or damage, if any, caused to him or her in consequence of such termination of the contract.

**523. Time and manner for performance of contract:** (1) If a contract specifies the time and manner for its performance, the contract shall be performed within the specified time and in the specified manner.

(2) If a contract does not specify the time or manner for the performance of an act under the contract but the act can be performed only at any specific time or only in a specific manner, the contract shall be deemed to have been so concluded that the act has to be performed at that time and in that manner.

(3) If, except in the circumstance under sub-section (2), a contract does not specify the time and manner for its performance, the contract shall be performed within a reasonable time and in a reasonable manner.

**524. Place for performance of contract:** (1) If a contract specifies any particular place for the performance of any act, that act shall be performed at such a place.

(2) If, any party is required by a contract to hand over or deliver any goods to the other party and the contract does not specify the place for such hand-over or delivery of the goods, the contract shall be deemed to have been so concluded that the goods have to be delivered or handed over at the place where such goods are located.

(3) If a contract does not specify a particular place for the performance of an act but the act can be performed only at a particular place or has to be performed in any particular place

having regard to practice or usage or nature of the act, the contract shall be deemed to have been so concluded that the act has to be performed at that place.

(4) In any case other than those referred to in sub-sections (2) and (3), if a contract does not specify the place for the performance of an act, the party performing the act according to the contract shall notify the other party to specify a reasonable place for the performance of the act, and the other party shall specify a reasonable place for the performance of the act.

**525. Performance of contract deemed to be delayed:** (1) If a contract so made as to be performed at a particular time is not performed at or within such time, the performance of contract shall be deemed to have been delayed.

(2) If the contract under sub-section (1) can be performed even after such time, one party of the contract may notify the other party to perform the contract, having given a reasonable time.

(3) If a notice is given pursuant to sub-section (2), the other party shall perform the contract accordingly, and may claim for compensation for any loss or damage caused in consequence of the delayed performance of the contract.

(4) If a contract is not performed pursuant to sub-section (3), the party giving such a notice may rescind the contract.

**526. Time to be considered as essence of contract:** (1) If the purpose or objective of a contract cannot be achieved, in case of non-performance of the contract within a particular day, time or period, having regard to the nature of the contract or intention

shown by the parties at time of its conclusion, the time for the performance of such a contract shall be considered to be the essence of the contract.

(2) If either party of a contract does not perform the contract under sub-section (1) within such a day, time or period, such a contract shall be deemed to have been breached and the other party may **rescind** the contract immediately.

**527. Circumstances where a contract needs not be performed:** In any of the following circumstances, it is not necessary to perform any act under, or perform, a contract:

- (a) If either party to a contract waives the other party from fulfilling the obligation under the contract,
- (b) If a voidable contract is voided by the party entitled to do so,
- (c) If the contract cannot be performed for the reason of its breach by the other party,
- (d) If it is not necessary to perform the act under the contract by operation of any provision of this Part,
- (e) If a contract which is unenforceable according to Section 531.

**528. Assignment of rights and liabilities under a contract:** If any party to a contract dies or becomes insane, the rights accruing from the contract shall devolve on to the heir succeeding the property of such a party to the contract, and the heir himself or herself shall also bear the obligations to the extent of the property succeeded by him or her.

Provided that the rights and obligations accruing on the basis of personal skill and qualification shall not devolve on to such an heir.

**529. Party who must perform contract:** (1) Except in cases where a contract specifies that it must be performed by its party only, the contract may be performed by his or her agent or by a person appointed by him or her or by any other person on his or her behalf or the rights and obligations under the contract may be transferred.

Provided that no party to a contract may transfer his or her obligations under the contract to another person without consent of the other party.

(2) The following terms and conditions shall be fulfilled in order to transfer rights and obligations under a contract pursuant to sub-section (1):

- (a) Unless the contract otherwise provides for, the transfer shall be in written form,
- (b) The transfer shall be unconditional,
- (c) The transfer of rights or obligations is not prohibited by law or the contract,
- (d) In the case of the transfer of rights and obligations, a notice along with its time limit shall be given to the other party.

(3) Once any party to a contract accepts any act done by a third person, that party shall not be entitled to claim subsequently that the act must be done by the party to the contract himself or herself, except as otherwise provided for in the contract.

(4) If two or more persons jointly enter into a contract with another party, any or all of such joint promisors shall fulfill, or cause to be fulfilled, the obligations under the contract, except as otherwise provided for in the contract.

(5) The joint promisor who fulfills the obligation shall be entitled to recover damages or loss on a *pro rata* basis from the other joint promisors, in consideration for the default of any other joint promisor in the fulfillment of the obligation under sub-section (4).

(6) Even if one party releases one joint promisor of the other party to the contract concluded pursuant to in sub-section (4) from the obligation on his or her part, such release shall not discharge the other joint promisors from the obligation under that contract.

**530. Only the parties to contract can demand its performance:** (1) Only the person who is a party to a contract can demand the performance of the contract by the other party.

Provided that if a contract is concluded for the benefit of any person, such a person can demand the performance of that contract even if he or she is not a party to such a contract.

(2) If two or more persons jointly enter into contract to do or not to do any act, all such a persons can jointly demand the performance of that contract, except as otherwise provided for in the contract.

**531. Discharge of contracts in the event of fundamental changes in circumstances:** (1) If it becomes impossible to perform a contract

as a result of fundamental change in the circumstance existed at the time of conclusion of the contract, the act according to the contract need not be performed.

(2) Without prejudice to the generality of sub-section (1), emergence of any of the following circumstances shall be deemed to constitute a fundamental change in the circumstance existed at the time of conclusion of a contract:

- (a) If the contract becomes illegal and thereby it cannot be performed,
- (b) If it becomes impossible to perform the contract due to emergence of situations beyond human control such as war, flood, landslide, fire, earthquake and volcanic eruption,
- (c) If the subject matter essential for the performance of the contract is destroyed or damaged, or exists no longer, or such a subject matter could not be obtained,
- (d) If the contract is so concluded that its performance depends on the personal ability, skill or talent of a person, and the performance of the contract becomes impossible by the reason that such a person dies or becomes insane or is incapable of performing the contract because of physical or mental disability.

(3) Notwithstanding anything contained in sub-section (2), none of the following circumstances shall be deemed to constitute a fundamental change in the circumstance existed at the time of conclusion of a contract:

- (a) If the performance of the contract has become difficult,
- (b) If the performance of the contract results in less profit or in loss,
- (c) If any party to the contract is dependent upon any third party who is not a party to the contract for its performance, and the third party makes a default or becomes incompetent,
- (d) In the event of a strike or lockout,
- (e) If additional tax, fee or other revenue is required to be paid,
- (f) If a contract is concluded with more than one object and some of the objects cannot be fulfilled.

(4) In the case of emergence of any of the circumstances referred to in sub-section (3), the parties may, except as otherwise provided for in the contract, negotiate to review or alter the terms and conditions of the contract.

(5) If the performance of a contract becomes impossible by the reason of a fundamental change in the circumstance as referred to in sub-section (2), the following matters shall be governed as follows:

- (a) A party who has received any amount paid by the other party in consideration of the contract, prior to the occurrence of such a change in the circumstance, shall refund it to the other party,

- (b) Payment to be made or due from one party to the other party in consideration of the contract shall not be payable after such a change in the circumstance.
- (c) The amount payable to each other shall be determined in consideration the act or amount already performed or paid, if any, by one party to the other party before such a change in the circumstance, and one party shall be entitled to recover reasonable expenses incurred by that party in consideration of the contract from the other party.

(6) Notwithstanding anything contained elsewhere in this Section, the contracting parties may agree to fulfill their respective obligations by continuing the performance of the contract after the end of the circumstance under clause (b) of sub-section (2).

**532. Facilities to be provided:** (1) The parties to a contract shall provide to each other such facilities as may be needed to perform the contract from their respective sides.

(2) If the contract cannot be performed due to the failure to provide such facilities, the party in default of the performance shall not be held liable responsible.

**533. Contract may be suspended or altered:** (1) The parties to a contract may, if they so agree, change or alter all or any of the portions of the act to be performed under the contract, extend the time for the performance of any act under the contract, suspend the contract by not making it obligatory to perform any act to be performed under the contract for some time, substitute any act for

the act specified in the contract or make a new contract in substitution for the original contract.

(2) If any change or alteration is made to a contract pursuant to sub-section (1), a new contract shall be deemed to be made, and the new contract shall become effective accordingly.

(3) If a new contract is made pursuant to sub-section (2), the obligation under the original contract need not be borne except as otherwise provided for in the new contract.

- 534. Statute of limitation:** A person who is aggrieved from any act done or action taken under this Chapter may make a lawsuit within two years after the date of the accrual of the cause of action.

## **Chapter-5**

### **Provisions Relating to Breach of Contract and Remedies**

**535. Breach of contract deemed to occur:** (1) If any party to a contract fails to fulfill the obligation under the contract or gives a notice to the other party that he or she will not perform the act to be performed by him or her under the contract or his or her action and conduct demonstrate that he or she is incapable of performing the act under the contract, the party shall be deemed to have breached the contract.

(2) If one party commits a breach of the contract pursuant to sub-section (1) or action or conduct of that party demonstrates non-performance of the contract in a material respect or demonstrates a material breach of the contract by the conduct or action of a party, the other party may rescind the contract by giving a notice to such a party.

(3) In the case of the rescission of the contract pursuant to sub-section (2), the party rescinding the contract shall not be bound to perform the contract.

**536. Indivisible nature of the authority to rescind contract:** If either party of a contract consists of two or more persons, the contract may be rescinded only if all of such persons rescind it or if the rescission is applicable to all of them.

**537. Compensation for breach of contract:** (1) In the case of breach of a contract under Section 535, the party aggrieved by it shall be entitled to recover from the party in breach of the contract damages for the actual loss or damage caused by the breach or such loss or

damage which the contracting parties knew when they made the contract to be likely result from the breach.

(2) If the parties to a contract, in anticipation, at the time of its formation specify a sum in the contract, which becomes payable for breach of the contract, the aggrieved party shall be entitled to recover a reasonable amount not in excess of that sum from the other party, pursuant to sub-section (1).

(3) If the contract does not provide for compensation referred to in sub-section (2), the party claiming such compensation shall be entitled to recover a reasonable amount for the direct and actual loss or damage resulted from the breach of contract or for the breach of contract or for compensation.

Provided that no compensation may be recovered for any indirect or remote loss or damage.

(4) If a contract, which is concluded for the completion of any act within a fixed period, contains a provision that compensation as referred to in sub-section (2) is payable if such an act cannot be completed within that period, the party paying such compensation may request for the extension of the period for the completion of the contract in proportion to the amount of compensation paid by him or her.

(5) The right of a party to a contract to seek other legal remedies for the breach of a contract shall not be deemed adversely affected merely by the reason that the amount of compensation has been paid pursuant to this Section.

**538. Consequences of rescission or voidance of contract:** (1) If, after a party to a contract has already received some cash or kind or any other benefit from the other party or after the fulfillment of the obligations under the contract partially, the contract is rescinded by mutual consent of the parties and the performance of the contract is not required under this Part or other law, the contract is voided or declared to be void according to law or the contract becomes invalid or is rescinded under this Part, such cash, kind or service so received shall be returned upon having settled the accounts of the cash or kind given until the date of the contract being in force.

(2) If any service or advantage other than cash or kind has been given pursuant to sub-section (1), the party receiving such service or advantage shall pay a reasonable amount to the other party in consideration for such service or benefit.

(3) If it becomes necessary to institute legal action by the reason of failure to return the cash or kind or to pay the amount as referred to in sub-section (1), a reasonable expense incurred for that purpose may also be recovered.

**539. Amount to be recovered in proportion to performed contract (quantum meruit):** If a contract is rescinded by the reason of its breach by any party or for any other reason, the aggrieved party may claim for the payment by the other party of amount under the contract in proportion to the work done or the performance of contract made by that party.

**540. Specific performance of contract:** (1) If monetary compensation is not reasonable and adequate for the actual loss or damage suffered by the aggrieved party because of the breach of contract,

the aggrieved party may claim for the specific performance of the contract instead of compensation.

(2) Notwithstanding anything contained in sub-section (1), specific performance may not be claimed in any of the following circumstances:

- (a) If monetary compensation is an adequate remedy for the breach of contract,
- (b) If the court cannot supervise the performance of the act under the contract,
- (c) If the contract is for providing services of personal ability, skill or knowledge,
- (d) If the contract cannot specifically be performed,
- (e) If the party in breach of the contract claims for its specific performance.

**541. Power of court to make order:** (1) If the performance of a contract is not possible because any party to the contract is about to perform any act or conduct which is contrary to the nature of the contract, the party aggrieved by such an action or a conduct may file a complaint in the court to prevent such an act or conduct.

(2) If a complaint is filed pursuant to sub-section (1), the court may issue an appropriate order to any party to immediately stop his or her particular action or conduct, subject to the settlement of the dispute arising out of that contract in accordance with such a contract or law.