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CONTRACT LAW & SPECIFIC RELEIF ACT

INDEX

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PART I – INDIAN CONTRACT ACT, 1872

1. INTRODUCTION

The law relating to contracts in India is contained in the Indian Contract Act, 1872. It is one of the oldest Mercantile Law of India. The Act was passed by British India and is based on the principles of English common law. It is applicable to all the states of India except the state of Jammu & Kashmir. The objective of the Contract Act is to ensure that the rights and obligations arising out of a contract are honoured and that legal remedies are made available to an aggrieved party against the party failing to honour his part of agreement. Hence, the Indian Contract Act 1872 being of skeletal nature deals with the enforcement of these rights and duties on the parties in India.

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2. HISTORICAL BACKGROUND

The Third law commission of British India formed in 1861 under the stewardship of chairman Sir John Romilly, with initial members as Sir Edward Ryan, R. Lowe, J.M. Macleod, Sir W. Erle (Succeeded by Sir W .M. James) and Justice Wills (succeeded by J. Henderson), in their second report had presented a Draft Contract Bill (1866). The Draft Law was enacted as The Act 9 of Indian Contract Act, 1872 on 25th April, 1872 and the Indian Contract Act, 1872 came into force with effect from 1st September 1872.

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3. ROLE OF EAST INDIA COMPANY

Before the enactment of the Indian Contract Act, 1872, there was no codified law governing contracts in India. In the Presidency towns of Madras, Bombay and Calcutta, law relating to the contract was governed by the English Law under Charter granted in 1726 by King George I to the East India Company. Now, with the indiscriminate application of English law in governing the contracts formed as per their personal laws it became quite inconvenient to govern the jural relationships. So to remove the legal barrier, the Settlement Act, 1781 as passed by the British provided that matters concerning the inheritance, succession and contracts between the parties in the case of Hindus and Muslims where to be followed their respective personal laws and in case where parties to a suit belonged to different persuasions, then the law of the defendant was to apply. In outside Presidency Towns matters with regard to the contract was mainly dealt with through English Contract Laws, ie. the principle of justice, equity and good conscience was followed. This procedure was followed until the time the Indian Contract Act was implemented in India.

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4. SCOPE OF INDIAN CONTRACT ACT, 1872

The Act as enacted originally had 266 Sections and included:

i. General Principles of Contract- Sections 01 to 75.
ii. Sale of Goods- Sections 76 to 123.
iii. Contracts of Indemnity and Guarantee - Section 124-147
iv. Contracts of Bailment & Pledge- Sections 148 to 181;
v. Contracts of Agency – Sections -182-238;
vi. Partnership Act - Sections 239 to 266.

However, the subsequent developments of the modern business it was observed that the provisions contained in the Indian Contract Act are inadequate to deal with the new regulations or give effect to the new principles.

Therefore, the provisions relating to the Sale of Goods and Partnership contained in the Indian Contract Act were repealed respectively in the year 1930 and 1932 and new enactments viz. Sale of Goods and Movables Act 1930 and Indian Partnership act 1932 were re-enacted.

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At present, the Indian Contract Act may be divided into:

i. General Principles of Law of Contract- Sections 1 to 75;

ii. Indemnity and Guarantee - Sections 124-147;

iii. Bailment and Pledge and Contract of Agency - Section 148-238.

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5. DEFINTION AND INTERPRETATION

5.1. Contract - Section 2 (h) of The Indian Contract Act, 1872 defines the term "Contract" as "An agreement enforceable by law".

The definition of the Contract has two major elements viz. – "Agreement" and "Enforceable by law". These two pivots have been defined and explained in the Indian Contract Act as follows:

5.1.1. Agreement - Section 2 (e) defines agreement as "Every promise and every set of promise forming the consideration for each other is an Agreement." In an agreement, there is a promise from both sides.

For example - A promises to deliver his watch to B and in return B promises to pay a sum of Rs. 2000 to A, there is said to be an agreement between A and B.

A promise is a result of an offer (proposal) by one person and its acceptance by the other.

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For example – When A, makes a proposal to sell his watch to B for Rs. 2,000 and B accept his proposal, it results from a promise between the two persons.

- Promise – Section 2 (b) defines promise as "when the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise."

Thus, when there is a proposal from one side and the acceptance of that proposal by the other side, it results in to a promise.

This promise from the two parties to one another is known as an Agreement. The person who makes the proposal is called the *Promisor* and the person who accepts such a promise is called the *Promisee*.

Offer + Acceptance=Agreement

5.1.2 Enforceable by Law - An agreement to mature into a contract must create legal obligation as per the provision of the Act. Any agreement which is not enforceable by law, i.e. where the parties do

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not have a right to approach the court of law to avail legal remedy for breach of contract is not a contract.

Contract = Accepted Proposal (Agreement) + Enforceable by law.

"All contracts are agreements but all agreements are not contracts"–

As stated above, an agreement to become a contract must give rise to legal obligation. If an agreement is incapable of creating a duty enforceable by law, it is not a contract. Thus, an agreement is a wider term than a contract. Agreements of moral, religious or social nature e.g.., a promise to lunch together at a friend's house or to take a walk together are not contracts because they are not likely to create a duty enforceable by law for the simple reason that the parties never intended that they should be attended by legal consequences.

Example –

i. *A, invites B to a dinner. B accepts the proposal but does not attend the dinner. A cannot sue B for damages. It is a social gathering, it does not create a legal obligation and therefore, it is not a contract.*

ii. *A, promises to sell the car to B for one million rupees.*

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This is a contract, because it creates legal obligations between the parties.

All agreements are not enforceable by law and therefore, all agreements are not contracts.

For example- An agreement to sell a radio set for Rs. 10,000/- may be a contract, but an agreement to go to watch a movie may be a mere agreement not enforceable by law.

Difference between Agreement and Contract:

BASIS FOR COMPARISON	AGREEMENT	CONTRACT
Meaning	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
Elements	Offer and Acceptance	Agreement and Enforceability
Defined in	Section 2 (e)	Section 2 (h)
In writing	Not necessarily	Normally written and registered
Legal obligation	Does not creates legal obligation	Creates legal obligation

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BASIS FOR COMPARISON	AGREEMENT	CONTRACT
One in other	Every agreement need not be a contract.	All contracts are agreement
Scope	Wide	Narrow

Thus, we see that an agreement may be or may not be enforceable by law, and so all agreements are not contract. Only those agreements are contracts, which are enforceable by law, In short.

Contracts = Agreement = Enforceability by law

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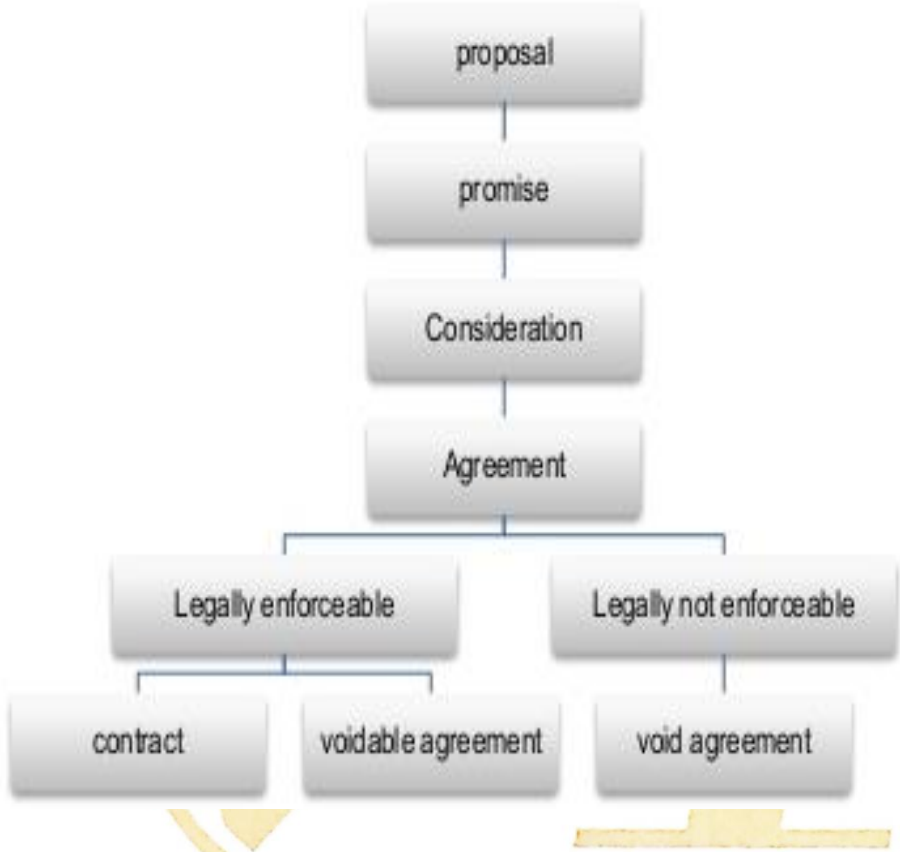
The above discussion can be diagrammatically represented as follows:



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6. ESSENTIALS OF A CONTRACT

In terms of Section 10 of the Indian Contract Act, "All agreements are contracts, if they are made by free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void".

Thus, in order to create a valid contract, following elements should be present;

a) Lawful Offer and Acceptance - Offer or proposal is defined under Section 2(a) of the Contract Act. There must be a 'Lawful Offer' and a 'Lawful Acceptance' of an offer for an agreement. The adjective 'lawful' implies that the offer and acceptance must satisfy the requirements of the Indian Contract Act in relation thereto.

Though, this might seem self-explanatory but one has to differentiate it from the legal phrase 'amounts to a valid offer'. The various modes of making an offer are **oral, written or by conduct**. Irrespective of the mode in which the offer is made, it is the intention or willingness of the offeree which is of paramount importance and that is clearly a subjective issue.

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It is important to differentiate between an "Offer" and an "Invitation to Offer". In **Fisher v Bell** it was held that:

"In accordance with the general principles of contract law, the display of the knife was not an offer of sale but merely an invitation to treat, and as such the defendant had not offered the knife for sale within the meaning of s1(1) of the Act. Although it was acknowledged that in ordinary language a layman might consider the knife to be offered for sale, in legal terms its position in the window was inviting customers to offer to buy it. The statute must be construed in accordance with the legal meaning"

"*…any statute must be looked at in light of the general law of the country, for Parliament must be taken to know the general law*" (per Lord Parker C.J.)

Another aspect which needs consideration is that "***Silence cannot amount to acceptance, an offer must be communicated***". In one of the leading judgment ***Felthouse vs. Bindley*** **(**EWHC CP J 35) it was held that:

"There had not been an acceptance of the offer; silence did not amount to acceptance and an obligation cannot be imposed by another. Any acceptance of an offer must be communicated clearly. Although the nephew had intended to sell the horse to the complainant and showed this interest,

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there was no contract of sale. Thus, the nephew's failure to respond to the complainant did not amount to an acceptance of his offer."

b) Intention to create Legal Relation – An agreement should be attached by legal consequences and create legal obligations. Agreements of social or domestic nature do not contemplate legal relations, and as such, they do not give rise to a contract.

For example:

i. An agreement to dine at a friend's house is not an agreement intended to create legal relations and therefore is not a contract.

ii. An agreement between husband and wife also lack the intention to create a legal relationship and thus do not result in a contract.

The case of Balfour v/s Balfour is a well-known example of domestic agreement, when the Appeal Court while dismissing the Appeal observed that:

"…To my mind those agreements, or many of them, do not result in contracts at all, and they do not result in contracts even

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though there may be what as between other parties would constitute consideration for the agreement. The consideration, as we know, may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. That is a well-known definition and it constantly happens, I think, that such arrangements made between husband and wife are arrangements in which there are mutual promises, or in which there is consideration in form within the definition that I have mentioned. Nevertheless they are not contracts, and they are not contracts because the parties did not intend that they should be attended by legal consequences…"

c) Consideration - (Quid Pro Quo) – "means something in return" which means that the parties must accrue in the form of some profit, rights, interest, etc. or seem to have some form of valuable "consideration". Consideration has been defined under Section 2(d) of the Act as ***"the price paid by one party for the promise of the other."*** An agreement is legally enforceable only when each of the parties gives something and gets something in return. The

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something given or obtained is the price for the promise and is called 'Consideration'. But only 'Lawful" considerations are valid.

For example, if A decides to sell his watch for Rs. 500/- to his friend B, then A's promise to give the rights to the watch to B is a consideration for B. Also, B's promise to pay Rs. 500 is a consideration for A.

d) Lawful Consideration – Section 23 of the Act lays down that, the consideration is unlawful if:

i. it is forbidden by law;

ii. it is fraudulent.

iii. it is of such a nature that, if permitted it would defeat the provision of any law;

iv. Is immoral or is opposed to public policy.

Section 25 of the Act declares that an Agreement without the consideration is void.

In ***Currie v. Misa (***LR 10 Ex 153)**,** Justice Lush defined consideration as:

"A valuable Consideration in the sense of law may consist either in some Rights, Interest, Profit or Benefit accruing to

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one party or some forbearance detriment, loss or responsibility given, suffered or undertaken by the other".

In ***Kedarnath Bhattacharji vs Gorie Mahomed*** **(**(1887) ILR 14 CAL 64) the Division bench of Calcutta High Court held that:

"*Persons were asked to subscribe, knowing the purpose to which the money was to be applied, and they knew that on the faith of their subscription an obligation was to be incurred to pay the contractor for the work. Under these circumstances, this kind of contract arises. The subscriber by subscribing his name says, in effect,--In consideration of your agreeing to enter into a contract to erect or yourselves erecting this building, I undertake to supply the money to pay for it up to the amount for which I subscribe my name. That is a perfectly valid contract and for good consideration; it contains all the essential elements of a contract which can be enforced in law by the persons to whom the liability is incurred."*

e) Capacity of the Parties – Another essential element of a valid contract is that, both the parties must be competent to enter in to a legal relationship/ contract. Capacity and incapacity could be decided only after reckoning

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various factors. Section 11 of the Act, elaborates on the issue by providing that a person who -

i. has not attained the age of majority;

ii. is of sound mind;

iii. is disqualified from entering into a contract by any law to which he is subject.

Thus, law prohibits (a) Minors (b) person of unsound mind (c) person who are otherwise disqualified like an alien enemy, insolvents, convicts etc. from entering into any contract.

An agreement with a minor is void ab initio – the Privy Council in the landmark judgment of ***Mohri Bibi vs. Dharmodas Ghose (***Ilr (1903) 30 Cal 539 (Pc)) while upholding the verdict of the High Court held that:

i. Any sought of contract with a minor or infant is void/ void ab-initio (void from the beginning).

ii. Since minor was incompetent to make such mortgage hence the contact such made or commenced shall also be void and is not valid in the eyes of law.

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iii. The minor i.e. Dahrmodas Gosh cannot be forced to give back the amount of money that was advanced to him, because he was not bound by the promise that was executed in a contract.

f) Free Consent – Section 13 of the Act, defines Consent as "Two or more parties are said to consent when they agree upon the same sense". In addition, an agreement to be enforceable by law, it must be based on the free consent of all the parties.

Section 14 of the Act defines Free Consent when it is not caused by:

i. Coercion (Section 15) - Committing any act forbidden by the Indian Penal Code 1860 or unlawful detaining of property, or unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

ii. Undue Influence (Section 16)- The use by one party to the contract of his dominant position for obtaining an unfair advantage over the other party.

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iii. Fraud (Section 17)- Act committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent or to induce him to enter into a contract;

iv. Misrepresentation (Section 18) it means false representation.

v. Mistake (Section 20, 21 and 22) - there are two types of mistake i.e. Mistake of fact and Mistake of law.

If the agreement is vitiated by any of the first four factors, the contract would be voidable and not enforceable under the law. The other party (i.e. the aggrieved party) can either reject the contract or accept it, subject to the rules laid down in the act. But, if the agreement were induced by mutual mistake that is material to the agreement, it would be void.

g) Lawful Object (Section 23) - For the formation of a valid contract, it is also necessary that the parties to an agreement must agree for a lawful object.

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The object for which the agreement has been entered into must not be fraudulent or illegal or immoral or opposed to public policy or must not imply injury to the person or property of another.

If the object is unlawful for any of the reasons mentioned above, the agreement is void.

For example – When a landlord knowingly lets a house to a prostitute to carry on prostitution, he cannot recover the rent through a court of law.

For example - if A gets into an agreement with B for murdering C. This is not a lawful object. Hence, the contract will be void.

h) Legal Formalities - The agreement may either be oral or in writing. But there are certain agreements which are required to be in writing e.g., Lease, Gift, Sale, Mortgage of immovable property, negotiable instruments, certain matters under the Companies Act, 2013 etc. Such agreements must be in writing attested and registered, if so required by Law. Registration of Agreements or deeds is thus compulsory in case of documents falling within the scope of Section 17 of the Indian Registration Act, 1908. If the agreement does not comply with these legal formalities it cannot be enforced by law.

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i) Certainty - Section 29 of the Act provides that, 'the Agreement', whose meaning is not certain, or capable of being made certain, are void.''

Hence, the Court will not enforce a Contract the terms of which are uncertain, vague or illusory. Moreover, there can never be an agreement to agree in future since there cannot be a Contract to make a contract.

Illustration- A agrees to sell B "a hundred tons of oil". There is nothing whatsoever, to show what kind of oil was intended. The agreement is void for uncertainty.

j) Possibility of Performance - Another essential feature of a valid contract is that, it must be capable of performing.

Section 56 lays down that, "An agreement to do an act impossible in itself is void." If the act is impossible in itself, physically or legally, the agreement cannot be enforced at law.

Illustration- Ajay agrees with Vijay to discover treasure by magic. The agreement is not enforceable because it is physically impossible to perform.

Example: If A promises to give Rs. 1000 to B, if B can prove that two parallel lines can meet each other such an agreement is void.

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k) Not expressly declared a Void Agreement - The agreement must not have been expressly declared to be void. Following agreements are expressly declared to be void under the Indian Contract Act:

i. Agreement in restraint to marriage (Section 26).

Every agreement in restraint of marriage of any person other than a minor, is void. Any restraint of marriage whether total or partial is also opposed to public policy.

Example: A promised to not marry anyone else except Mr. B, and in default pay her a sum of Rs.1,00,000. A married someone else and B sued A for recovery of the sum. Held, the contract was in restraint of marriage, and as such void.

ii. Agreement in restraint of trade (Section 27).

Every agreement by which anyone is restrained from exercised a Lawful profession, trade or business of any kind is void.

iii. Agreement in restraint of legal proceedings (Section 28) - An agreement by which any party is restricted absolutely from

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enforcing his legal rights under any contract is void. An agreement which limit's the time within which an action way be brought is void.

Example: A clause in a contract that any dispute arising between the parties shall be subject to jurisdiction of a court at a particular place only, is valid

iv. Agreement having uncertain meaning (Section 29)- An agreement is called an uncertain agreement when the meaning of that agreement is not certain or capable of being certain. Such agreements are declared void.

v. Wagering Agreement (Section 30)- An agreement between two persons under which money or money's worth is payable by one person to another on the happen or non-happening of a future uncertain event is called a wagering agreement

vi. Impossible Agreement (Section 56)

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7. TYPES OF CONTRACT

7.1. Void Contract – Section 2(j) defines Void Contract as "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus, a void contract is one which cannot be enforced by court of law.

It may be added by way of clarification here that, when a contract is void, it is not a contract at all but for the purpose of identifying it, it has to be called a Void contract.

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7.2. Voidable Contract – Section 2(i) defines that "An agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract".

This essentially means that, where one of the parties to the agreement is in a position or is legally entitled or authorised to avoid performing his part, then the agreement is treated and becomes voidable. Such a right might arise from the fact that the contact may have been brought about by one of the parties by coercion, undue influence, fraud or misrepresentation and hence other party has a right to treat it as a voidable contract.

A void contract cannot be enforced at all. A voidable contract is an agreement which is enforceable only at the option of one of the parties. Therefore, the enforceability or otherwise, divides the two types of contracts.

As regards the rights of the parties, in the case of a void contract there is no legal remedy for parties as the contract cannot be performed in any manner whatsoever. In the case of voidable contract the aggrieved party has a right to rescind it within a reasonable time. If it is so rescinded, it becomes void. If it is not rescinded, it is a valid contract.

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7.3. Illegal Contracts – Contract which are forbidden by law are illegal contracts. All illegal contracts are hence void. However, all void contracts might not be illegal. *For example, where terms of the agreement are uncertain the agreement would not be illegal but might be treated as void. Contracts which are opposed to public policy or immoral are illegal*. Similarly contracts to commit crime like supari contracts are illegal contracts.

7.4. Unenforceable Contracts - Where a contract is good in substance but because of some technical defect cannot be enforced by law. In such an event, one or both the parties cannot sue upon because the contract is an unenforceable contract. These contracts are neither void nor voidable.

7.5. Express Contracts – A contract would be an express contract if the terms are expressed by words or in writing. According to Section 9, in so for as the proposal or acceptance of any promise is made in words, the promise is said to be express.

7.6. Implied Contracts – Implied contract in contrast come into existence by implication. Most often the implication is by law and or by action.

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Section 9 of the Act contemplates such implied contract when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Example: A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

7.7. Quasi Contracts – Quasi contracts are contracts which are created neither by word spoken nor written nor by the conduct of the parties but are created by law.

7.8. Tacit Contracts - A contract is said to be tacit contract, when it has to be inferred from the conduct of the parties. A classic example would be when cash is withdrawn by a customer from the automatic teller machine. Another example of tacit contact is where a contract is assumed to have been entered when a sale is given effect to a fall hammer of an auction sale.

7.9. Executed Contract - A contract in which both the parties have fulfilled their obligations under the contract.

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Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.

7.10. Executory Contract – In a contract of such a nature the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore, these contracts are described as Executory Contracts.

7.11. Bilateral Contracts - A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Example : A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

7.12. Unilateral Contracts - A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.

Example - A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A "if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B if B is able to

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spare time to paint A's room. However there is no promise by B to paint the house. There is only unilateral promise.

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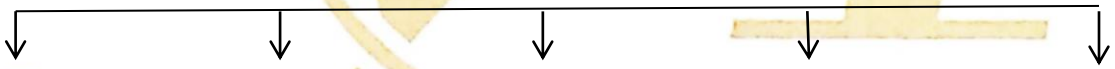
8. PROPOSAL/OFFER

The word Proposal and word Offer means one and the same thing and therefore used interchangeable. In Section 2 (a) of the Act "When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a proposal"

Hence, there are two important ingredients to an offer. Firstly, it must be expressions of willingness to do or to abstain from doing an act. Secondly, the willingness must be expressed with a view to obtain assent of the other party to whom the offer is made.

8.1. Classification of offer



General offer | Specific offer | Cross offer | Counter offer | Standing, open and continuous offer

i. General Offer – General offer is an offer made to public at large with or without any time limit. In terms of Section 8 of the Act,

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anyone performing the conditions of the offer can be considered to have accepted the offer.

In the landmark judgment of ***Carlill v Carbolic Smoke Ball Co.*** ***(***[1892] EWCA Civ 1), the Court of Appeal held that:

"*an advertisement containing particular terms to get a reward is considered a binding unilateral offer that is accepted by anyone who completes its terms. The advertisement constituted a binding agreement as the essential elements of a contract – including offer and acceptance, consideration and an intention to create legal relations – were all present*".

The Carlill case played a huge role in developing the law of unilateral offers, and laid the foundation for the modern practice of outlawing misleading advertising.

ii. Specific Offer – Where an offer is made to a particular and specified person, it is specific offer. Only that person can accept such specific offer, as it is specifically and exclusively made to him.

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In ***Boulton v. Jones*** it was held that:

"The plaintiff is clearly not in a situation to sustain this action, for there was no contract between himself and the defendant. The case is not one of principal and agent; it was a contract made with B, who had transactions with the defendant and owed him money, and upon which A seeks to sue."

iii. Cross Offer - When two parties exchange identical offers in ignorance at the time of each other's offer the offers are called cross offer. Two cross offer does not conclude a contract.

In Tinn v. Hoffman it was held that:

"There was no contract between Mr Tinn and Mr Hoffman for the iron. The cross offers were made simultaneously and without knowledge of one another; this was not a contract that would bind the parties for the iron. There is a difference between a cross offer and a counter offer. In order to form a valid contract, there must be communication that consists of an offer and acceptance. There was no acceptance by post, as had

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been stated in the offer. The court also said that while post had been indicated in the offer, another equally fast method would have been successful, such as a telegram or verbal message."

iv. Counter offer – upon receipt of an offer, if the offeree instead of accepting it straightway, imposes conditions which have the effect of modifying or varying the offer, he is said to have made a counter offer. Counter offers amounts to rejection of original offer.

v. Standing or Continuing or open offer – an offer which is made to public at large and if it is kept open for public acceptance for a certain period of time, it is known as standing or continuing or open offer. Tenders that are invited for supply of materials and good are classic examples of standing offer.

8.2. Invitation to offer – An offer and invitation to offer are two different terms, which must not be confused with one another. An **offer** is a proposal while an **invitation to offer (treat)** is inviting someone to make a proposal. In an offer, there is an intention to enter into a contract, of the party, making it and thus it is certain. On the other hand, an invitation to

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offer is an act which leads to the offer, which is made with an aim of inducing or negotiating the terms.

So, in an invitation to offer, the offeror does not make an offer, rather invites other parties to make an offer. Hence, before simply responding to an offer, one must know the difference between offer and invitation to offer because that makes a difference in the rights of parties.

In ***Pharmaceutical Society of Great Britain v Boots Cash Chemist*** the Appeal Court held that:

> "*The display of the goods on the shelves were not an offer which was accepted when the customer selected the item; rather, the proper construction was that the customer made an offer to the cashier upon arriving at the till, which was accepted when payment was taken. This analysis was supported by the fact that the customer would have been free to return any of the items to the shelves before a payment had been made.*"

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8.2.1. Offer vs. Invitation to Offer:

BASIS FOR COMPARISON	OFFER	INVITATION TO OFFER
Meaning	When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.	When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.
Defined in	Section 2 (a) of the Indian Contract Act, 1872.	Not Defined
Objective	To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.
Essential to make an agreement	Yes	No
Consequence	The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

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9. CONTINGENT CONTRACT

Section 31 of the Act defines Contingent contract as a contract, to do or not to do something, if some event, collateral to such contract does or does not happen.

Illustration - A contract to pay B Rs.10,000/= if B house is burnt.

A promise to pay B Rs.1,00,000/= if a certain ship does not return within a year.

Contingent Upon:

(a) Enforcement of a contract contingent upon the happening of an event (Section 32).

Contract of such a nature cannot be enforced and if the event becomes impossible, such contracts become void;

Example: A contract to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

(b) Non happening of a future event (Section 33)

Enforced - Such contracts can be enforced when the happening of the event becomes impossible, and not before.

Void – Such an event has already happened.

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Example: A agrees to pay B sum of money if a certain event flops. The ticket of the event could not be sold due to apparent injury of the lead artist. The contract can be enforced when the event nosedives.

(c) Future conduct of a living person. (Section 34) Enforced - When such person acts in the manner as desired in the contract.

Void - When such person does anything which makes the desired future conduct of such person – impossible – dependent upon certain contingency.

Example- A agrees to pay B a sum of money if B marries C. C married D. The marriage of B to C must now consider impossible, although it is possible that D may die any that C may afterwards marry B.

(d) Happening or not happening of an event within a specific time(Section35)

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(e) Enforced – A contract can be enforced when such event has happened within the specific time or the happening of the event becomes impossible before the expiry of the specified time.

Void - When the happening of such event because impossible before the expiry of specified time or when such event has happened within the specified time.

Example: A agrees to pay Q a sum of money if D marries Q within a year. The contract will be enforced if Q marries D within a year, and becomes void if D marries E.

(f) Impossible events (Section 36) - Such an agreement cannot be enforced since it is void whether the impossibility of the event was known to the parties or not is immaterial.

Example - A agrees to pay B Rs.1,000/= if two parallel straight lines should enclose a space. Agreements are void.

A agrees to pay B Rs.1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

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10.QUASI CONTRACT

In the case of every contract, the promisor voluntarily undertakes an obligation in favour of the promisee. A similar obligation may be imposed by law upon a person for the benefit of another even in the absence of a contract. In certain circumstances the law presumes the existence of contract even though no agreement was made between the parties. Such cases are known as quasi contracts. The obligation created in either of the cases is identical. Quasi contracts are based on principles of equity, justice and good conscience.

A quasi or constructive contract rests upon the maxims, "No man must grow rich out of another person's loss"

10.1. Salient features of Quasi contractual right:

i. Firstly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and

ii. Secondly, it is a right which is available not against the entire world, but against a particular person or persons only.

10.2. Types of Quasi-Contract:

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i. Claim for essentials supplied to persons incapable of contracting (Section 68) - If essentials are supplied to a person who is incapable of contracting, e.g. minor or a person of unsound mind, the supplier is entitled to claim their price from the property of such a person.

Accordingly, if Ramesh supplies to Raj, a lunatic, essentials suited to him, Ramesh would be entitled to recover the price from Raj's property. He would also be entitle to recover the price for essentials supplied by him to his (Raj's) wife or minor child since Raj is legally bound to support them. However, if Raj has no property, nothing would be realisable. In such circumstances, the price only of essentials and not of articles of luxury can be recovered. To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that those were suitable to his actual requirements at the time of the sale and delivery.

ii. Right to recover money paid for another person: A person who has paid a sum of money which another is obliged to pay, is entitled to

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be reimbursed by that other person provided that the payment has been made by him to protect his own interest.

iii. Obligation of a person enjoying benefits of non-gratuitous act: Such an obligation arises under the provision of Section 70 which enumerates "*Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered*."

It thus follows that for a suit to succeed, the plaintiff must prove: (i) that he had done the act or had delivered the thing lawfully; (ii) that he did not do so gratuitously; and (iii) that the other person enjoyed the benefit.

iv. Responsibility of a finder of goods: Such a responsibility arises under Section 71 which is as below: "*A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee*".

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He is therefore, required to take proper care of things found and not to appropriate it to his own use and when the owner is traced, to restore it to the owner. Further, he must take as much care of the goods found as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quantity and value as those of the goods found.

v. Liability for money paid or thing delivered by mistake or under coercion: Such liability arises under Section 72 of the Contract Act which is as below: "*A person to whom money has been paid, or anything delivered, by mistake or under coercion must repay or return it.*"

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11.PERFORMANCE OF CONTRACT

A contract being an agreement enforceable by law creates legal obligation, which subsists until discharges. Performance of the promises to be performed is the principal and most usual mode of discharge. In a contract where there are two parties, each one has to perform his part and demands the other to perform his part. This obligation is the primary tenet. The parties would be treated as having been absolved only under the provisions of any law or by the conduct of the other party. The promise under a contract can be performed by the Promisor himself, his agent or representatives, third party and joint promisors.

11.1. Effect of a refusal of a party to perform promise: (Section 39)

Refusal or failure of a party to perform the promise, gives rise to two rights to the aggrieved party - (i) to terminate the contract or (ii) to indicate by words or conduct that he is interested in its continuance.

11.2. Performance of Joint Promises:

The legal liability of a joint promisor, joint promise and other connected issues are set out in Sections 42, 43 and 44 of the Act.

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i. In terms of Section 42 of the Act, "when two or more persons have made a joint promise then unless a contrary intention appears from the contract all such person during their joint lives and joint death of any one of them, his representative jointly with the survivor or survivors and after the death of the last survivor representatives of all the parties must fulfil the promise".

ii. Section 43 of the Act, states that, when two or more persons make a joint promise, the promisor can compel any one of the joint promisor to perform the whole promise. In such a situation, the performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary.

Example: Where A, B and C have jointly signed a promissory note for Rs. 3000/- and where A, is compelled to pay the entire amount, A, is entitled to recover by way of contribution of Rs. 1000/- from each of the other two joint promisors viz. B and C.

iii. Time and place for performance of the Promise:

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Sections 46-50 of the Act deals with the issue of the "Time and place" for performance of a promise.

- No time is specified for performance [Section 46]

  Time of performance is not specified + promisor agreed to perform without, a demand from the promise the performance must be made within a reasonable time. Reasonable time – in each particulars case – a question of fact.

- Time specified but hour not mentioned [Section 47].

  Time of performance specified + promisor agreed to perform without application by the promisee.

  Performance must perform on the day fixed during the usual business hours and at the place at which the promise ought to be performed.

- Where Time is fixed and application to be made [Section 48]

  It is the duty of the Promisee to apply for performance at a proper place and within the usual hour of business.

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- Performance of promise where no place is specified and no application is to be made by the promise [Section 49]

  It is the duty of the promisor to apply to the promise to appoint a reasonable place, for the performance and perform it at such appointed place.

- Performance in manner or at time prescribed or sanctioned by promise [Section 50]

  The performance of any promise may be made in any manner, or at any time which the promise prescribes or sanctions.

  Example: 'A' desires 'B' who owes him Rs. 10,000 to send him a promissory note for Rs. 10,000 by Post. The debt is discharged as soon as 'B' puts into the post a letter containing the promissory note duly addressed to 'A'.

11.3. Reciprocal Promise:

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Promises which form the consideration or part of consideration for each other is called reciprocal promises. The law relating to reciprocal promises are set out in Section 51 to 54 of the Act.

i. Mutual and Concurrent Promise (Section 51) – Under this, promises have to be performed simultaneously. The conditions and performances are concurrent. If one of the parties does not perform his promise, the other also need not perform his promise.

ii. Order of performance of reciprocal promises (Section 52) - Where the order in which reciprocal promises to be performed is expressly fixed by the contract, then the same must be performed in that order. In such promises, order is not expressly fixed but the nature of transaction requires to be done in that manner.

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

iii. One part preventing another from performing promise (Section 53) – when in a contract consisting of reciprocal promises one party

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prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented. The person prevented is entitled to get compensation for any loss her may have sustained due to the non-performance.

Illustration: Where there is a contract for sale of standing timber and as per the terms of the said contract the seller is expected to cut and cord the standing timber before the buyer takes delivery however, seller fails to do so. The buyer has a right to avoid the contract and claim compensation for any loss sustained.

iv. Effect of default as to promise to be performed first - Section 54 of the Act provides that promises which cannot be performed or its performance cannot be demanded till the other has been performed.

v. Position of legal and illegal parts of reciprocal promises – Section 57 of the Act provides that, if reciprocal promises have two parts, the first part being legal and the second part being illegal, the legal part of contract is valid and the illegal part is void.

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Example: A, agrees to sell his house to B for Rs. 50,000/- and further A, insists and it is agreed that if the house is used as a gambling house then B would pay another Rs. 75,000/-. In this case the first part is valid as legal and the second part is void as it is illegal.

vi. Alternative promise one breach being illegal (Section 58) – in such a promises only legal breach can be enforced.

11.4. Impossibility of Performance

An agreement becomes void when it becomes impossible to perform them due to a variety of reasons.

In terms of Section 56 of the Act, "An Agreement to do an act impossible in itself is void.

Where one person has promises to do something which he knew or with reasonable diligence, might have known and when the Promisee is oblivious about the same, such Promisor, must make compensation to such Promisee for any loss Promisee sustains.

11.5. Appropriation of Payments

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Where a debtor owes several distinct debts to the creditor and the debtor releases payment to the creditor. The debtor intimates the creditor that the payment made is to be applied to the discharge of some debt. The question arises is as to how to adjust the receipt against so many dues. This issue is considered and answered in Section 59, 60 and 61 of the Act.

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

Example: A owes B three distinct debts of Rs. 2,000, 3,000 and 5,000. A sends Rs.5,000 and instructs B that the payment should be appropriated against the third debt. He is bound to appropriate the payment against the third debt only.

ii. Application of payment where debt to be discharge is Not Indicated (Section 60) - If section 60 is attracted, the creditor shall

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have the discretion to apply such payment for any lawful debt including but not limited to time barred debts which is due to him from the debtor.

iii. Application of payment where neither party appropriates (Section 61) - The payment shall be applied in discharge of the debts in order of time whether they are or are not barred by the limitation Act 1963, if the debt are of equal standing (i.e. payable on the same date) the payment shall be applied in discharge of each of these debt proportionately.

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12.DISCHARGE OF CONTRACT

Discharge of a contract means termination of contractual relation between the parties to a contract. In other words, a contract is discharged when rights and obligations created by it comes to an end i.e. the contracting parties no more owes any responsibility or liability to each other. A contract can be discharged in eight ways as discussed hereunder:

i. Discharge by Performance - When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

   Discharge by the performance of contract can be by:

   - Actual Performance – parties to the contract fulfil their obligations within time and manner prescribed.
   - Attempted Performance - Promisor offers to perform his obligation under the contract but the promisee refuses to accept the performance. It is called as attempted performance or tender of performance. But the contract is not discharged.

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Cutter v Powell:

Facts: The defendant Captain Powell, engaged Lieutenant Cutter as part of his crew for a voyage from Jamaica to Liverpool. The contract stated that payment was due only on completion of the voyage, but the Lieutenant died 19 days before the ship reached Liverpool.

Held: His widow, who sued on behalf of his estate, could not claim any part of his salary since payment of it was not due until the voyage had been completed when the entire obligation would have been discharged.

ii. Discharge by Mutual Agreement (Section 63) – A contract is made by parties and therefore come to an end by their mutual agreement where there is novation, rescission, alteration and remission. The parties may make new agreements that will discharge or modify the obligations of one or both the parties under the original contract.

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iii. Discharge by Impossibility of Performance - There are two circumstances for which contract becomes impossible to be performed

- When impossibility is existent at the time of making contract- such an agreement is void from very inception.
- When impossibility arises subsequently after the formation of the contract - Sometimes the performance of a contract is possible when it is made by the parties but, happening of some subsequent event which renders its performance impossible or unlawful and the contract becomes void in both the cases and hence gets discharged. It is known as "**Doctrine of Supervening Impossibility**" or **Doctrine of Frustration**" (Section 56).

  Various factors causing Doctrine of Supervening Impossibility are:

  - Destruction of Subject matter;
  - Failure of ultimate purpose;
  - Death or personal incapacity of the promisor;

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- Change in law or government policy rendering further performance illegal;
- Outbreak of law.

Taylor v Caldwell:

Facts: Caldwell agreed to let a music hall to Taylor so that four concerts could be held there. Before the date of the first concert, the hall was destroyed by fire. Taylor claimed damages for Caldwell's failure to make the premises available. Held: The claim for breach of contract must fail since it had become impossible to fulfil. The contractual obligation was dependent upon the continued existence of a particular object.

However, in a notable judgment of ***Ramanand vs. Giresh Soni***, the Delhi High Court on 21.05.2020 held that the Doctrine of Frustration under Section 56 is not applicable to lease agreement. Apparently, the ruling was based on Apex Court precedents which held that Section 56 is applicable only to *"Executory Contracts"* and not to *"Executed Contracts"*.

iv. Discharge by lapse of time - The Limitation Act 1963, clearly states that a contract should be performed within a specified

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time called period of limitation. If it is not performed and if the promisee takes no action within the limitation time, then he is deprived of his remedy at law.

v. Discharge by Operation of Law - A contract is discharged by Operation of Law in the case of Death, Insolvency, Merger and Unauthorised Material Alteration.

vi. Discharge by Breach of Contract - The breach of a contract means failure of a party to perform his obligations. When a party commits a breach the aggrieved party become entitled to cancel the contract causing the contract to discharge.

Breach of contract can be Actual Breach or Anticipatory Breach. When one party fails to perform his contractual obligations on the due date of performance or during the performance, he is said to have committed Actual breach. Where a party repudiates a contract before the stipulated due date, it is Anticipatory breach.

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13. BREACH OF CONTRACT

A contract is breached or violated when any of the parties fails or refuses to perform its promise under the contract. Breach of contract is a legal cause of action in which a binding agreement is not honoured by one or more parties by non-performance of its promise by him renders impossible.

As explained above there are two types of Breach of a Contract viz. Actual Breach and Anticipatory Breach.

13.1. Measurement of Damages:

In cases where there is a breach of a contract, the promisor who breaches is liable to pay compensation for damages suffered by the promisee. The compensation can be classified as:

i. Damages that usually arise in the event of breach of contract

ii. Damages which parties know and anticipated at the time of entering into the contract called special damages. Special damages can be claimed only be previous notice.

The leading rule to determine consequential damages from a breach of contract has been enunciated in detail in a leading English contract law case ***Hadley Vs. Baxendale*** wherein the Court found for the defendant, viewing that a party could only successfully claim for losses stemming

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from breach of contract where the loss is reasonably viewed to have resulted naturally from the breach, or where the fact such losses would result from breach ought reasonably have been contemplated of by the parties when the contract was formed. As Baxendale had not reasonably foreseen the consequences of delay and Hadley had not informed him of them, he was not liable for the mill's lost profits.

13.2. Calculation of Damages:

Under a contract for sale of goods, the measure of damages, when the buyer breaches the contract, is the difference between the contract price and the market price at the date of breach.

13.3. Compensation for Breach of Contract where the Penalty is stipulated for:

The compensation for breach of contract falls into two broad categories namely Liquidated Damage and Penalty.

i. Liquidated Damages is a genuine pre-estimate of compensation for damages for certain anticipated breach of contract. This estimate is agreed in to between parties to avoid at a later date

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detailed calculations and the necessity to convince outside parties.

ii. Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

In terms of Section 74, courts are empowered to reduce the sum payable on breach, whether it is "Penalty" or "Liquidated Damages" provided that the sum appears to be unreasonably exorbitant.

In ***Sir Chunilal V. Mehta And Sons, Ltd vs. The Century Spinning And Ors.*** The Apex Court laid down the ratio that *the aggrieved party should not be allowed to claim a sum greater than what is specific in the written agreement. But even there the court has powers to reduce the amount if it considers it reasonable to reduce.*

13.4. Remedies for Breach of Contract:

Apart from claiming damages from breach of contract, following are the other remedies available:

i. Rescission of contract: When a contract is breached by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the

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contract and is entitled to compensation for any damages that he may have suffered.

ii. Suit upon Quantum Meruit: The phrase "Quantum Meruit" means "as much as is earned" or "according to quantity of work done". When a party who has begun a civil contract work and has to later stop the work because the other party has made the performance impossible; is entitled to receive compensation on the principle of Quantum Meruit.

iii. Suit for specific performance: Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.

iv. Suit for injunction: Where a party to a contract negates the terms of the contract, the court may by issuing an "injunction order" restrain him from doing what he promised not to do.

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14. SPECIAL CONTRACTS

14.1. CONTRACT OF INDEMNITY

In terms of Section 124 of the Act, "a contract by which one party promises to save the other from loss caused by him by the conduct of the promisor himself or the conduct of any person is called a "Contract of Indemnity".

The party to promises to indemnify the other party from loss is known as "Indemnifier" whereas the party who is promised to be indemnified against the loss is known as "Indemnified"

Example: X a shareholder of a company lost his share certificate. He applied for the duplicate. The company agreed to issue the same on the term that X will compensate the company against the loss where any holder produced t1he original certificate. Here there is contract of indemnity between X and the company.

14.1.1. Rights of an Indemnity Holder: Section 125.

In a contract of indemnity, the promise i.e. indemnity holder acting within the scope of his authority is entitled to recover from the promisor i.e. indemnifier the following rights:

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a. Right to recover damages - The indemnity holder has the right to recover all the damages which he is compelled to pay in any suit in respect of any matter covered by the contract of indemnity.

b. Right to recover costs - The indemnity holder has the right to recover all the costs which he is compelled to pay in bringing or defending such suit.

c. Right to recover sums paid - The indemnity holder has the right to recover all the sums which he has paid under the terms of a compromise of such suit.

14.2. CONTRACT OF GURANTEE (Section 126)

A contract of guarantee is a contract to perform the promise made or discharge liability incurred by a third person in case of his default.

There are three parties in contract of guarantee. (1) Surety –person who gives the guarantee. (2) Principal debtor – person in respect of whose default the guarantee is given. (3) Creditor – person to whom the guarantee is given.

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14.2.1. Essentials and Legal Rules for a Valid Contract of Guarantee:

i. Must have all the essentials of a valid contract:

- Consideration received by the principal debtor is a sufficient consideration to the surety for giving the guarantee.
- Even if principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.

ii. Primary liability of some person:

- The principal debtor must be primarily liable. However, even if the principal debtor is incompetent to contract the guarantee is valid.
- The debt must be legally enforceable.
- The debt must not be a time barred debt.

iii. The contract must be conditional

iv. No misrepresentation;

v. A contract of guarantee may be either oral or written;

vi. The guarantee by a surety is not valid if –

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- A condition is imposed by a surety that some other person must also join as a co-surety; but
- Such other person does not join as a co-surety.

14.2.2. Nature And Extent Of Surety's Liability:

As per Section 128 of the Act, the liability is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. Thus it can be seen that:

i. the liability of surety is the same as that of the principal debtor;
ii. where a debtor cannot be held liable on account of any defect in the document, the liability of the surety also ceases;
iii. Surety's liability continues even if the principal debtor has not been sued or omitted from being sued. This is for the reason that the liability of the surety is separate on the guarantee.

14.2.3. Continuing Guarantee (Section 129):

A guarantee which extends to a series of transactions is called "Continuing Guarantee". In a continuing guarantee the liability of

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surety continues till the performance or the discharge of all the transactions entered into or the guarantee is withdrawn.

There are two important aspects regarding the revocation of continuing guarantee namely:

i. The Continuing guarantee may at any time be revoked by the surety as to future transactions by notice to creditors. However, no revocation is possible where a continuing relationship is established.

ii. The Continuing guarantee is revoked for all the future transactions in the absence of any contract to contrary upon the death of the surety.

14.2.4. Discharge of Surety From Liability

Section 133 to 139 of the Act lays down the law as to when a surety would be discharged.

i. Discharge of surety by variance in terms of contract (Section 133): Where there is any variance in the terms of the contract between the principal debtor and the creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent thereto.

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Illustration: Where 'A' stands to 'C' as surety for 'B' for rent payable by 'B' to 'C' for 'C's house and if B & C agree on higher rent without A's consent. 'A' would stand discharged for the entire rent amount accruing after the date of variance.

ii. Discharge of surety by release or discharge of Principal Debtor (Section 134):

The Surety is discharged if the principal debtor is discharged

- by a contract or;
- any act or;
- any omission the result of which is discharge of principal debtor.

iii. Composition with principal debtor (Section – 135): The surety is discharged if the creditor makes a composition with the principal debtor without obtaining the consent of surety.

iv. The Surety would be discharged if the creditor does anything or acts in a manner which

- is inconsistent with the rights of surety and
- Impairs the eventual remedy of the surety.

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Exceptions:

There are certain exceptions to the above rule which are as follows:

a. A contract for giving time to a debtor is entitled into with the third party; the surety will not be discharged.

b. A mere forbearance on the part of a creditor to sue the debtor or to enforce any other remedy would not discharge the surety in absence of any specific provision. Even where claim is barred by limitation, surety is still responsible. In Krishto Kishori & Ors. Vs. Radha Romun & Anr. It was held that even if the debt is time barred on account of death of the principal debtor, the surety is liable.

c. Where there are co-sureties, release of one co-surety would not automatically discharge the other co-sureties. Furthermore, in between other co-sureties, the released co-surety is not absolved of his liability *vis- a-vis* other co- sureties.

14.2.5. Rights of Surety against the Principal Debtor and Creditor:

After performing of the promise or discharging of the liability of the principal debtor, surety acquires various rights against the parties.

The rights of surety are contained in Sections 140 and 141 of the Act.

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14.2.6. Rights against principal debtor:

i. Right of subrogation: Where a guaranteed debt has become due or the principal debtor has defaulted to perform a guaranteed duty, the surety upon payment or upon performance of all that he is liable for, is vested with all the rights which the creditor had against the principal debtor. This right of the surety is known as the right of subrogation namely the right to stand in shoes of creditor.

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

iii. Right to Indemnity: In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety and the surety is entitled to recover

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from the principal debtor whatever sum he has rightfully paid under the guarantee. Pertinently, Surety can claim reimbursement only if actual payments have been made and not where mere promissory note has been executed by the surety.

Where surety becomes surety without the knowledge of the principal debtor, he is entitled for all the rights against the principal debtor but not the right to claim an indemnity against the principal debtor.

14.2.7. Rights against the creditor:

i. Right of subrogation: The surety gets the right to subrogation for all payments and performance he is liable. Thus right would accrue only when the surety has paid the amount of liability in full.

Example: Where a creditor had the right to stop the goods or sellers lien, surety would enjoy the same right after he has paid the amount.

iii. Right to securities: Surety is entitled for all securities which the debtor has provided to the creditor whether

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surety is aware of it or not. Where a creditor losses any of the security by default or negligence the liability of the surety abates proportionately. If a creditor does not hand over the securities to surety he can be compelled to do so.

iv. Right to sue: Surety has a right to require the creditor to sue for and recover the guaranteed debt. This right of surety is known as right to file "Quia timet" action against the debtor. There is of course an inherent risk of having to indemnify the creditor for delay expense.

v. Right to dismiss: Surety has right to call upon the creditor to dismiss the person from service if the person whose fidelity is guaranteed by surety as persistently dishonest.

vi. Right to claim set-off: Surety has right of set off against the principal debtor exactly as a creditor would have.

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15. BAILMENT

A 'Bailment' etymologically means 'handing over' or 'change of possession'. As per Section 148 of the Act, bailment is an act whereby the goods are delivered by one person to another for some purpose upon a contract that they shall when the purpose is accomplished be returned or otherwise disposed of according to the directions of the person delivering them.

The person who delivers the goods is the Bailor and the person to whom the goods are delivered is the Bailee.

15.1. The Essential Characteristics of Bailment Are:

i. Bailment is based on a contract. The contract may be expressed or implied.

ii. Bailment is only for mov1able goods and never for immovable goods or money.

iii. There must be delivery of goods by one person to another person.

iv. In bailment possession of goods changes. Change of possession can happen by physical delivery or by any action which has the effect of placing thee goods in the possession of bailee.

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v. In bailment bailor continues to be the owner of the goods as there is no change of ownership.

15.2. General Issues:

i. In bailment both custody and possession must change but not the ownership.

ii. Possession and custody do not however mean physical delivery of goods. Constructive delivery could also create a bailor and bailee relationship.

iii. Deposit of money and ornaments in a bank is not bailment.

15.3. Different Forms of Bailment:

i. Goods given to a friend for his own use without any charge;

ii. Hiring of goods;

iii. Delivering goods to a creditor to serve as a security for a loan;

iv. Delivering goods for repair with or without remuneration;

v. Delivering goods for carriage.

15.4. Duties Of A Bailor (Sections 150,182,159 and 164)

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i. Disclose faults in goods [Sec. 150]: Bailor is bound to disclose to Bailee faults in the goods bailed of which he has knowledge. He should also disclose such information which – (a) materially interferes with the use of goods, or (b) expose the Bailee to extraordinary risk.

ii. Bear expenses [Sec. 158]: Where the bailment is gratuitous Bailor shall repay to Bailee, all necessary expenses incurred by him for the purpose of Bailment.

iii. Reimbursement: The bailor should reimburse any expenses which the bailee may incur by way of loss in the process of returning the goods or complying with the other directions for returning the goods.

iv. Compensation: The bailor must compensate the bailee for the loss or damage suffered by the bailee that is in excess of the benefit received, where he has lent the goods gratuitously and decides to terminate the bailment before the expiry of the period of bailment.

15.5. Rights of a Bailor

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i. Bailor has a right to claim damages and compensation for loss caused by an unauthorised use of goods bailed.

ii. Bailor has right to terminate the contract is the bailee does any act inconsistent with the terms and conditions of the contract of bailment.

iii. Bailor in case of gratuitous bailment has right to demand the goods even before expiry of the period of bailment; and (b) the bailor shall indemnify the bailee for any loss incurred by the bailee.

15.6. Duties of a Bailee

i. Duty to take care of the goods.

ii. Duty to return goods after the accomplishment of purpose, it is the duty of the bailee to return the goods to the bailor.

iii. To make proper use of goods bailed. The use of the goods which are mentioned under the contract, the use must be according to the contract.

iv. Duty not to mix his own goods with the goods of bailor.

v. Duty not to question the title of the bailor.

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vi. Duty of bailee to pay increase or profit from goods bailed. *For Example*: A gives a cow to B on bailment and after the bailment cow gives birth to a calf. It is the duty of the bailee to return cow as well as the

vii. Calf to the bailor.

15.7. Rights of Bailee

i. Right to get compensation;

ii. Right to terminate the contract of bailment. If the terms and conditions are decided by the parties while making a contract and the goods are not according to terms and conditions of the contract, then the bailee has right to terminate the contract.

iii. Right to get expenses. If the expenses are incurred by the bailee regarding the goods bailed, then afterwards the bailee is entitled to get the expenses.

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16. LIEN

'Lien' is a right to keep in possession, the movable goods belonging to another person, till the time the debt owed by that person is realized. Lien can be classified as the General Lien and Particular Lien.

When one party is entitled to retain the goods belonging to another party, until all the dues are discharged, is called General Lien. In contrast, Particular Lien implies the right of retention of specific goods, until the claims related to those goods are realized.

Lien is tied with possession of goods, i.e. where there is no possession of goods, there is no lien. Hence, possession is the essence of the lien. Many think that the two types of the lien are one and the same thing, but there are slight and subtle differences between general lien and particular lien.

17.1. Definition of General Lien

General Lien means the right of an individual to retain or detain as security any movable property, which belongs to someone else, against a general balance of the account, until the liability of the holder is

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discharged. It is described under section 171 of the Indian Contract Act, 1872.

A person can waive the right of lien through a contract. It is commonly available to **bankers, factors, wharfingers, high-court attorneys,** etc. who keep the goods bailed to them during the course of their profession and does not require any contract to that effect. Unless there is an express contract in this regard no other person can retain the property of another as the security of the balance due to them.

In General Lien, the property on which lien is exercised can only be retained, but cannot be sold for any payment lawfully due to him.

16.2. Particular Lien

As per section 170 of the Indian Contract Ac, 1872, the particular lien is defined as a right of a person to retain particular goods bailed to him/her as security, for non-payment of dues.

In conformity to the objective of bailment, when **bailee has employed skill or labor** and improved the goods bailed to him/her. He/she is entitled to consideration for his service and if bailor denies paying the amount, then he/she can retain the goods against remuneration. On the

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other hand, if the bailee delivers the property belonging to bailor without any consideration for the services provided, he/she can sue the bailor, and the particular lien can be waived.

COMPARISON CHART

BASIS FOR COMPARISON	GENERAL LIEN	PARTICULAR LIEN
Meaning	General lien alludes to the right to keep possession of goods belonging to other against general balance of account.	Particular lien implies a right of the bailee to retain specific goods bailed for non-payment of amount.
Availability	Any goods, in respect of which the amount is due to another person.	Only against the goods, in which skill and labor is exercised.
Automatic	No	Yes
Right to sale goods	No right to sale the goods.	In general, there is no right to sell goods, however, the right can be conferred to bailee in special circumstances.

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BASIS FOR COMPARISON	GENERAL LIEN	PARTICULAR LIEN
Exercised by	Bankers, Wharfngers, factors, policy brokers, attorneys etc.	Bailee, pledgee, finder of goods, agent, partner, unpaid seller etc.

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17. PLEDGE

As per section 172 of the Indian Contract Act, 1872, a Pledge is a contract where a person deposits an article or good with a lender of money as security for the repayment of a loan or performance of a promise. Pledge is also known as a pawn. The depositor or the Bailor is the PAWNOR and the Bailee or the Depositee is the PAWNEE. The Pawnee is under the duty to take reasonable care of the goods pledged with him.

17.2. Key Features of Pledge are:

i. The property under pledge shall be delivered to the Pawnee;

ii. Such delivery shall be in the pursuance of the contract;

iii. This delivery shall be for the purpose of security;

iv. Also, delivery of articles shall be upon a condition to return.

17.3. Rights of Pawnee

Pawnee has the following rights:

i. Pawnee has a right to retain the goods pledged until payment of debt, interest and any other expense incurred for maintenance of such goods. For example, X pledges his gold jewellery for some loan from a bank. In such a case bank has all the rights to retain the

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gold jewelry not only for adjustment of loan amount but also for payment of interest accrued on such loan amount.

ii. Pawnee has a right to file a suit for recovery of debt while retaining the goods pledged as security.

iii. He has a right to sue for the sale of goods pledged and the payment of money due to him.

iv. Pawnee has a right to seek reimbursement of extraordinary expenses incurred. However, he cannot retain goods with him in such a case.

v. Pawnee has a right to sell the goods after giving reasonable notice and time to Pawnor. Pawnee can sue Pawnor for deficiency, if any, after the sale of such goods. Also, if there is any surplus on sale of goods Pawnee must return it to Pawnor.

17.4. Rights of Pawnor

In case Pawnee makes any unauthorized sale of goods pledged without giving proper notice and time to Pawnor, than the Pawnor has following rights:-

i. Right to file a suit for redemption of goods by making payment of debt.

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ii. Right to claim for damages and loss on the ground of conversion.

17.5. Mercantile Agent:

A mercantile agent who is in the possession of the goods or the documents to the title of the goods with the consent of the owner can pledge these goods while acting in the ordinary course of business. This pledge is as valid as if the owner of the goods expressly authorizes him to do so. But, this pledge is valid only when the Pawnee acts in good faith and at the time of pledge is unaware of the fact that the mercantile agent did not have the authority to pledge.

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18. AGENCY

The Indian Contract Act does not define 'Agency'. However, the word 'Agent' is defined in Section 182 as a person employed to do any act for another or to represent another in dealing with third persons.

Thus 'Agency' is a comprehensive word used to describe the relationship between one person and another, where the first mentioned person brings the second mentioned person into legal relation with others.

The law of agency is based on the Latin maxim "**qui facit per alium, facit per se**," which means, "*he who acts through another is deemed in law to do it himself*"

18.1. Creation of an Agency:

i. By express or implied contract - A principal may implicitly or expressly employ an agent. The appointment may be expressed in writing or it may be oral.

ii. By conduct of party or situation– E.g. Estoppel- Whereby a person allows another to act for him to such an extent that a third party

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reasonably believes that an agency relationship exists between the two.

iii. By Ratification- Assent is given either to an act done by someone who had no previous authority to act or to an act that exceeded the authority granted to an agent.

iv. By Necessity- A person acts for another in an emergency situation without express authority to do so.

18.2. Duties of an Agent:

i. Duty to execute mandate;

ii. Duty to follow instructions or customs;

iii. Duty of reasonable care and skill;

iv. Duty to avoid conflict of interest;

v. Duty not to make secret profit;

vi. Duty to remit sums;

vii. Duty to maintain accounts;

viii. Duty not to delegate.

18.3.Rights of an Agent

i. Right to Remuneration– An agent is entitled to get an agreed remuneration as per the contract. If nothing is mentioned in the

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contract about remuneration, then he is entitled to a reasonable remuneration. But an agent is not entitled for any remuneration if he is guilty of misconduct in the business of agency.

ii. Right of Retainer– An agent has the right to hold his principal's money till the time his claims, if any, of remuneration or advances are made or expenses occurred during his ordinary course of business as agency are paid.

iii. Right of Lien– An agent has the right to hold back or retain goods or other property of the principal received by him, till the time his dues or other payments are made.

iv. Right to Indemnity– An agent has the right to indemnity extending to all expenses and losses incurred while conducting his course of business as agency.

v. Right to Compensation– An agent has the right to be compensated for any injury suffered by him due to the negligence of the principal or lack of skill.

18.4.Personal Liability of an Agent

As per Section 230 of the Act, an agent is not personally liable for the contracts entered into by him on behalf of his principal unless there is a

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contract to the contrary. Such a contract is presumed in the following circumstances.

i. Foreign Principal : Where the contract is made by an Agent for the sale or purchase of goods for a merchant resident abroad, the agent is personally liable for such contracts

ii. Undisclosed Principal: Where the Agent does not disclose the name of his Principal, he is personally liable on the contracts.

iii. Principal cannot be sued: Where the Principal, though disclosed, cannot be sued, e.g. Principal becoming of unsound mind, subsequent to appointment of agent.

iv. Acting for a Principal not in existence: Where the Agent acts for a Principal who is not in existence at the time of making contracts, he shall be personally held liable e.g. contracts entered into by Promoters before incorporation of a Company are made in their personal capacity and hence personally liable.

v. Agency coupled with interest: Where the Agent has an interest in the subject matter of agency.

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vi. Agent guilty of Fraud [Sec.238]: Where an Agent is guilty of fraud or misrepresentation in matters that are outside the scope of his authority, he is personally liable and do not affect his Principal.

vii. Agent exceeds authority & act not ratified: Where an Agent acts either without any authority or exceeds his authority, he shall be held personally liable when the principal does not ratify his acts.

viii. Agent receives or pays money: Where an Agent receives or pays money by mistake or fraud to a third party, he shall be personally liable to such third party. He can also personally sue the third party if the fraud or mistake is accountable to such third party.

ix. Express Agreement for personal liability: Where an Agent expressly aggress to be personally bound.

x. Execution of Contract in his own name: Where an Agent executes a contract in his own name, without disclosing that he is acting as Agent for a Principal, he shall be personally liable, e.g. An Agent signs a Negotiable Instrument without making it clear that he is signing it as an Agent only, he shall be held personally liable on

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the same. He would be personally liable as Maker of P/N, even though he may be described as Agent.

xi. Trade custom or usage: Where trade usage or custom makes an Agent personally liable.

xii. Agent with special interest: An Agent with special interest or with a beneficial interest, e.g. a Factor or Auctioneer, can sue and be sued personally.

18.5. Liability Of Principal To Third Parties For The Acts Of Agent (Sec. 226 to 228):

i. When agent acts within the scope of his authority - The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority. The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

ii. Principal is bound by notice given to agent – The principal is bound by the notice given to the agent. Knowledge of the agent is

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knowledge of the principal. Knowledge of bank manages is knowledge of the bank.

iii. Liability by estoppel – where the agency is by the doctrine of estoppel, the principal is bound by the same doctrine.

18.6. Difference between Agency and Dealership:

In the law of agency, the relationship that matters the most between an agent and the principal is the legal relationship. A person cannot become an agent of another merely because he gives advice to the other. Any person acting on behalf of the other cannot be an agent for another until there is an implied or explicit agreement between them, which leads to a legal relationship between them. The dealer of a particular make of cars, e.g. Mercedes, may be called as an agent, but the dealer in law is not an agent for the manufacturer. No privity of contract exists between the manufacturer and the buyer. An agent acts as an intermediary and receives a commission for its services. But, a dealer acts on behalf of the firm rather than acting as an intermediary.

18.7. Termination of Agency:

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An agent's authority can be terminated at any time. If the trust between the agent an1d the principal has broken down, it is not reasonable to allow the principal to remain at risk in any transactions that the agent might conclude during a period of notice.

18.7.1. In terms of Section 201 of the Act, following are the circumstances when the authority conferred on the agent gets terminated:

i. Performance by the agent;

ii. Revocation by the principal;

iii. Renunciation by agent;

iv. Death or insanity of principal or agent;

v. Insolvency of the principal.

18.7.2. Agency can be terminated by the following ways:

i. By Agreement - Termination by agreement may also occur if the agency relationship is terminated pursuant to the provisions of the agreement itself. If the agreement provides for the appointment of the agent for a specified period of time,

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the agency will come to an end automatically when that period of time expires.

ii. Performance by the agent - If an agent is appointed to accomplish a particular task or for a specific purpose, when the task is accomplished by the agent or the specific purpose is attained, the agency will terminate.

iii. Revocation by the principal - The authority of an agent may be revoked at any time by the principal. However, an unilateral revocation otherwise than in accordance with the provisions of the agency agreement may render the principal liable to the agent for the breach of an agency agreement.

iv. Renunciation by Agent - An agent is entitled to renounce his power by refusing to act or by notifying the principal that he will not act for the principal.

v. By Notice – If the agency agreement provides that the agency may be terminated upon either party serving on the other written notice of a specified duration.

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However, if the agency agreement does not contain any termination provision, the general rule is that reasonable notice has to be given to the other party to terminate the agency.

vi. By Operation of Law - An agency may terminate by the operation of law upon the death, insanity and bankruptcy of the party concerned.

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PART II – SPECIFIC RELIEF ACT, 1963

1. INTRODUCTION

As the main objectives of the Act have been vested in the very title of this statute i.e. Specific Relief due to which we can have a basic understanding that the Specific Relief Act is a legal statute dealing with reliefs or recovery of the damages of the injured person. This Act was enacted in 1963 following the approach that when a person has withdrawn himself from the performance of a particular promise or a contract with respect to another person, the other person so aggrieved is entitled to a relief under Specific Relief Act, 1963. This Act is considered to be in one of the branches of the Indian Contracts Act, 1872.

SPECIFIC RELIEF

Section 4 of the Act explains that this Act grants special relief for the enforcement of individual rights and not for imposing penal laws. The enforcement under this Act is based on the civil right of an individual and the substantive nature must be established for that fact. To be understood in a simpler way specific relief is related to providing relief for the infringed civil rights of the individual.

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2. REMEDIES PROVIDED UNDER THE ACT / KIND OF SPECIFIC RELIEF.

i. Recovery of Possession of Property (Section 5-8)

ii. Specific Performance of Contract (Section 9-25)

iii. Rectification of Instruments (Section 26)

iv. Rescission of Contract (Section 27-30)

v. Cancellation of an Instrument (Section 31-33)

vi. Declaratory Decrees (Section 34-35)

vii. Preventive Relief (Section 36-44)

2.1. Recovery of Possession of Property

Under this chapter a person can recover possession of the Movable as well as Immovable property.

2.1.1. Recovery of Possession of Immovable Property (Section 5 & 6)

Section 5 explains the remedies available to a person when he is disposed from his property. If a person has been removed through the line of possession or wants to recover what lawfully is his property, then that person can do so through the recovery procedure provided by the Code of Civil Procedure, 1908 and in which the person will prove that the title belongs to him.

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Section 6 of the Act provides that, if a person has been dispossessed or divested from his property against the nature of law, then that person can file a suit for recovery of possession. This section is not only a mere legal rule but also has a wide practical approach. There are certain essential requirements for fulfilment of recovery under this section that are as follows:

i. The person suing for dispossession must be in possession of that property;

ii. The person must be dispossessed from the property and such divest from the property must be unlawfully done or must be carried out against the nature of law

iii. The dispossession must be without the consent of the person suing.

iv. The dispossession must be without the consent of the person who is suing.

v. Section 6 (2) explains that no suit can be bought by a person after the expiry of 6 months from the date of dispossession.

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vi. Section 6 (2) also explains that no suit by a person can be brought against the government.

If the person fails to file a suit in the prescribed time period (section 6) then the only relief open to him is that of section 5 i.e. to prove his title of the property in a better way. Section 6 lays down certain limitations which explains that if any order or decree has been directed by the court in regards to section 6 then, no appeal or review shall lie against such order or decree but such order is open to revision.

In ***Mahabeer Prasaad Jain vs. Ganga Singh*** (Civil Appeal Nos. 5732-33 of 1999) the Apex Court was of the firm opinion that:

"*Even for the purpose of considering the plea of limitation, the question whether the respondent was in exclusive possession as a tenant as claimed by him is absolutely necessary. Once the case of tenancy is found against, it is for the respondent to establish that his possession is exclusive possession and not one on behalf of the appellant. The question whether a relief can be granted to the respondent under Section 6 of the Specific Relief Act hinges on that*

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issue. The respondent having failed to prove the only plea of tenancy put forward by him is not entitled to get any relief in this suit".

2.1.2. Recovery of Possession of Movable Property (Section 7& 8)

Section 7 explains that when a person wants to recover the possession of the movable property, they can follow the procedure expressed by the Code of Civil Procedure, 1908. Section 7 has further two sub-clauses which further details that a trustee may file suit against the beneficial interest he was entitled to and the other sub-clause explains that the ownership of the property can also be expressed with the presence of a special right given to the person suing; which would be enough as an essential to file a suit.

Essentials of Section 7 are as follows:

i. There must be a presence of movable property which is capable of being delivered or disposed of.

ii. The person suing must have the possession of the property in question.

iii. There may be an existence of a special or temporary right on the property.

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Section 8 of the Specific Relief Act,1963 explains that when a person is in the possession of the article to which is he is not the owner, shall be compelled to deliver such article to the person who will have its immediate possession in following cases:

i. When the article is held by the defendant as the trustee of a person who has the immediate possession.
ii. When compensation in money is not an adequate relief.
iii. When it is difficult to ascertain actual damage caused to the person.
iv. When the possession of the article has been wrongfully transferred from the person so entitled.

2.2. Specific Performance of Contracts (Sections 9-25)

This chapter can be divided as under:

i. Contracts which can be specifically enforced
ii. Contracts which cannot be specifically enforced
iii. Persons against whom a contract can be specifically enforced.
iv. Discretion and Powers of Courts

2.2.1. Contracts which can be specifically enforced:

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Section 10 includes in what condition-specific performance of the contract may be enforceable, specific performance usually depends upon the discretion of the court but there are certain conditions for performance which are mentioned as follows:

i. When the damages or loss occurred due to the non-performance of the contract cannot be ascertained.

ii. When money as compensation is not an adequate relief due to the non-performance of the contact.

Until the contrary is proved it is presumed by the court that:

a. the breach of contract of immovable property cannot be adequately fulfilled by money;

b. the breach of contract of movable property can be relieved except in the cases of (A) where the property is not an ordinary article of commerce, (B) where the property is kept by the defendant as a trustee for the property.

2.2.2. Contracts which cannot be specifically enforced.

Section 14 mentions certain contracts which cannot be specifically enforced which are as follows:

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i. When there is a non-performance for the act, and money is adequate compensation.

ii. A contract that is full of many details and its nature is personal to the parties, these cannot be specifically enforced.

iii. The contract requires continuous work for which the court cannot supervise.

iv. The court whose nature is determinable.

2.2.3. Persons against whom the contracts can be specifically enforced

Section 15 deals with the person against whom the contracts can be specifically enforced:

i. Any party to contract or any party to suit.

ii. Representative in interest or principal i.e. any assignee, transferee, administrator, executor etc.

iii. Where the contract is for settling a marriage or to compromise the situation between the family members, any beneficiary.

iv. When a contract has been entered into by a tenant over a property for life.

2.2.4. Discretion and Powers of Courts:

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Under the following circumstances, the court may properly exercise its discretion for no specific performance:

i. Where the contract solely serves the interest of the Plaintiff;

ii. Where the performance of the contract would involve some unforeseen hardship on the defendant whereas, non-performance

iii. would not cause any hardship to the Plaintiff;

iv. Where the defendant enters into a contract under the circumstances which amount to inequitable to enforce the contract specifically.

2.3. Rectification of Instruments (Section 26)

Section 26 deals with the ways in which instrument can be rectified:

When through fraud or mutual mistake the parties do not show their real intention then:

i. Either party or representative in interest may file a suit for rectification of the instrument;

ii. The plaintiff in his plaint may plead for rectification of instrument;

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iii. The defendant in his defence may claim for rectification of instrument.

The court can direct rectification of instruments in cases where the party through fraud does not show their real intention to prevent violation of rights to the third party.

- Requirement for Rectification:

  The party who wants to rectify the instrument firstly must give them in writing and then mention them in their pleading. No relief shall be granted when the rectification is not specifically mentioned.

2.4. Recession of Contracts:

Section 27 deals with the recession of the contract, in law, recession means withdrawing of the contract or in simpler terms: cancellation of the contract. It brings the party in a situation as if the contract did not happen i.e. *status quo ante* meaning in its original state.

2.4.1. Recession when cancelled:

A contract can go through the recession by the pleading of any party except there are some cases in which recession may be cancelled. Recession can be cancelled in certain ways:

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i. where the contract has been terminated or "has been deemed" voidable by the plaintiff;

ii. when the contract is unlawful.

2.4.2. Cancelling the contracts through Recession:

A contract may be cancelled through the recession in cases:

i. where the plaintiff has himself given consent to the contract;

ii. where the third party has gained interest in the contract and where their rights come into question;

iii. where only a portion of the contract is to be cancelled but it is in such a position that the faulty portion cannot get separated from the contract.

2.5. Cancellation of the Contracts (Section 31-33)

Cancellation is one of the remedies which is available to parties against injuries in a contract; section 31 to 33 deals with cancellation of instruments through the court.

Section 31 explains that when an instrument is void or voidable against a person then he can get that instrument if it may cause damage to it.

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Section 32 deals when a contract can be partially cancelled; for example in cases where there are certain rights and obligations connected with some parties through that contract, then the court accordingly may cancel the faulty portion and let the other in motion.

Section 33 has two heads in it i.e. Powers to aggrieved party after cancellation and Orders to the defendant after cancellation.

2.6. Declaratory Decrees

Section 34 and 35 of the Act, deals with the declaratory decrees which is declared through the courts to the parties to suit or to the contract.

Section 34 of the Act enumerates that, when any person has a certain right or obligation over the property and he has been denied that right by any party, then the aggrieved party may file a suit for the enforcement of his right over the property which has been denied to him. The Court after considering the facts and the evidence lead by the aggrieved party will declare his right and title over such property and so a declaratory decree will be passed.

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Section 35 deals with the effect of the declaration which explains that this decree will be binding upon those who are parties to suit and the trustees at the time of suit if any.

2.7. Preventive Relief (Section 36-44)

Preventive relief is a relief that has been granted by a court which details that the party abstain from doing certain acts for which the relief shall be prescribed. Such reliefs can be imposed in the form of injunctions.

2.8. Injunctions:

Injunctions are a specific order under which a party must abstain from performing any act. Injunctions under the Specific Relief Act, 1963 may be divided into different types namely temporary, perpetual and mandatory.

2.8.1. Temporary Injunctions (Section 37)

Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by Code of Civil Procedure, 1908.

2.8.2. Perpetual Injunctions (Section 38)

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Perpetual injunctions are known as permanent injunctions. They can only be imposed after hearing the parties on the merits of the case in which the defendant has enjoyed an assertion of the right and by affecting the plaintiff on the contrary. The perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation and imposing rights in his favour. When the defendants invade the plaintiff's right to enjoyment, a perpetual injunction may be applied in certain cases where:

i. The defendant is the trustee of the property.
ii. Actual damage cannot be ascertained.
iii. Money as compensation would not be adequate relief.
iv. Injunctions are necessary to prevent multiplicity of judgments.

2.8.3. Mandatory Injunctions (Section 39):

When, to prevent the breach of obligations, it is necessary to compel the performance of certain accts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.

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2.8.4. Damages in lieu of or in addition to injunction (Section 40):

i. The Plaintiff in a suit for mandatory injunction or perpetual injunction may claim damages either in addition to on in substitution for such injunction and the court may if it thinks fir award such damages.

ii. No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint. Provided that where no such damages have been claimed in the plaint, the court shall at any stage of the proceedings allow the plaintiff to amend the plaint on such terms as may be just for including such claim

iii. The dismissal of suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

2.8.5. Injunction to perform a negative covenant (section 42)

Some time in a given contract, there may be affirmative agreement to do certain act, coupled with a Negative Covenant, express or implied, not to do a certain other act. Now the fact that the court is unable to compel specific performance of the affirmative part does not mean

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that it cannot grant an injunction in respect of the negative part. It is necessary in this case that the plaintiff has performed its part mentioned in the contract.Lumley V Wagner , A, a singer , agreed that she would sing for 12 months at B's theatre and that she would not sing elsewhere in the public during that period. Here B cannot obtain specific performance of the first part of the contract (i.e. to sing at his theatre), but he is entitled to an injunction, restraining A from singing at other public places during that period. In this case though there is one contract but contain two parts one is positive and other is negative. The two parts are independent contracts. In this case court cannot debar itself to give injunction in case of negative covenant.The Supreme Court has also observed that the jurisdiction to grant an injunction under the Act is discretionary and must be exercised according to sound principals of law, and *ex debito justito*. The plaintiff cannot claim this relief as a matter of right. Before refusing or granting the injunction, the court must weigh the pros and cons in each case, consider the facts and circumstances in their proper perspectives, and then exercise its discretion in the best interest of justice.

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CONCLUSION

The Specific Relief Act, 1963 has a set of reliefs given to the parties to suit. They have different reliefs and enforcing rules which focus on providing enough compensation to all. This legal statute's main aim is that no person shall live with the damages and losses and those who have caused such a situation must be in a position to restore all unlawful benefits received by them. This act focuses on providing justice to all and not inequitable favouring a single party.

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DISCLAIMER:

The above information has been sourced from the following sources:

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(https://www.netlawman.co.in/ia/indian-contract-act).

2. Indian contract Act Part I, Toppr available at

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5. Offer and Acceptance, iPleaders (https://blog.ipleaders.in/offer-acceptance/)

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