

# THE CONTRACT ACT, 1872 (IX OF 1872)

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# THE CONTRACT ACT, 1872

(IX OF 1872)

25th April, 1872

Preamble. Whereas it is expedient to define and amend certain parts of the law relating to contracts, it is hereby enacted as follows:-

## PRELIMINARY

1. **Short title.**-- This Act may be called the Contract Act, 1872,

It extends to [the whole of Pakistan]; and it shall come into force on the first day of September, 1872.

**Extent, Commencement, Enactments repealed.** Nothing herein contained shall affect the provisions of any statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract not inconsistent with the provisions of this Act.

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

- (a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;
- (b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise.
- (c) The person making the proposal is called the "Promisor".
- (d) When at the desire of the promisor, the promisee or any other person who has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.
- (e) Every promise and every set of promises, forming the consideration for each other, is an agreement.
- (f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises.
- (g) An agreement not enforceable by law is said to be void.
- (h) An agreement enforceable by law is a contract.

- (i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
- (j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

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## **Chapter I.**

### **OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.**

#### **3. Communication, acceptance and revocation of proposals:-**

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

#### **4. Communication when complete.**

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

The communication of an acceptance is complete,--

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

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,--

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

as against the person to whom it is made, when it comes to his knowledge.

#### **Illustrations**

- (a) A proposes, by letter to sell a house to B at a certain price.

The communication of the proposal is complete when B receives the letter.

- (b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete.--

as against A. when the letter is posted;

as against B. when the letter is received by A.

- (c) A revokes his proposal by telegram.

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

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

5. **Revocation of proposals and acceptances.**

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

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

**Illustrations**

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

B accepts the proposal by a letter sent by post.

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

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

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

- (1) by the communication of notice of revocation by the proposer to the other party;
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptances;
- (3) by the failure of the acceptor to fulfill a condition precedent to acceptance; or
- (4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

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

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

8. **Acceptance by performing, conditions, or receiving consideration.--**

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

9. **Promises, express and implied.**

Insofar as the proposal, or acceptance of any promise is made in words, the promise is said to be express. Insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

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Chapter II

**OF CONTRACTS, VOIDABLE  
CONTRACTS AND VOID AGREEMENTS.**

10. **What agreements are contracts.--**

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

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

11 **Who are competent to contract.--**

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

12 **What is sound mind for the purposes of contracting.--**

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

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

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

**Illustrations**

- (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of contract or form a rational judgment as to its effect on his interest cannot contract whilst such delirium or drunkenness lasts.

13. **“Consent” defined.--**

Consent is said to be free when it is not caused by --

- (1) coercion, as defined in section 15 or
- (2) undue influence, as defined in section 16 or
- (3) fraud, as defined in section 17 or

- (4) misrepresentation, as defined in section 18 or
- (5) mistake, subject to the provisions of sections, 20, 21, and 22.

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

**15 “Coercion” defined.--**

Coercion is the committing or threatening to commit, any act forbidden by the Pakistan Penal Code (XLV of 1860) or the unlawful detaining, or threatening to detail, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

**Explanation--**

It is immaterial whether the Pakistan Penal Code (XLV of 1860) is or is not in force in the place where the coercion is employed.

**Illustrations**

A, on board an English ship on the high seas, causes Be to enter into an agreement by an act amounting to criminal intimidation under the Pakistan Penal Code.

A afterwards sues Be for breach of contract at Karachi.

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

**16. “Undue influence” defined.**

- (1) A contract is said to be induced by “undue influence” where the relation subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain unfair advantage over the other.
- (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another.
  - (a) where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or
  - (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reasons of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Evidence Act, 1872 (1 of 1872).

### Illustrations

- (a) A having advanced money to his son, B, during his minority, upon B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.
- (b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.
- (c) A being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.
- (d) A applied to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

#### 17. "Fraud" defined.-

Fraud means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent either intent to deceive another party thereto or his agent, or to induce to enter in to the contract:-

- (1) the suggestion, as a fact of that which is not true, by one who does not believe it to be true;
- (2) the active concealment of a fact by one having knowledge or belief of the fact;
- (3) a promise made without any intention of performing it;
- (4) any other act fitted to deceive;
- (5) any such act or omission as the law specially declares to be fraudulent.

#### Explanation:-

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

### Illustrations

- (a) A sells, by auction to B, a horse which A knows to be unsound. A says nothing to B about horse's unsoundness. This is not fraud in A.
- (b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.
- (c) B says to A - "If you do not deny it, I shall assume that the horse is sound". A says nothing. Here A's silence is equivalent to speech.

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

18. **“Misrepresentation” defined.**

Misrepresentation means and includes:-

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

19. **Voidability of agreements without free consent.**

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

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

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

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

**Illustrations.**

- (a) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.
- (b) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines the accounts of the factory which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.
- (c) A fraudulently informs B that A's estate is free from incumbrance, B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage debt redeemed.

- (d) B, having discovered a vein of ore on the estate of A, adopts means to conceal and does conceal, the existence of the ore from A. through A's ignorance B is enabled, to buy the estate at any under value. The contract is voidable at the option of A.
- (e) A is entitled to succeed to an estate at the death of B; B dies. C, having received intelligence of B's death, prevents the intelligence reach A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

**19-A. Power to set aside “contract induced by undue influence”.**

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

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

**illustrations**

- (a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.
- (b) A, money lender, advances Rs.100 to B. an agriculturist, and, by undue influence, induces B to execute a bond for Rs.200 with interest at 6 per cent. Per month. The Court may set the bond aside, order B to repay Rs.100 with such interest as may seem just.

**20 Agreement void where both parties are under mistake as to matter of fact.**

Where both the parties to an agreement, are under a mistake as to matter of fact essential to the agreement, the agreement is void.

**Explanation:**

An erroneous opinion as to the value of the thing which form the subject matter of the agreement is not to be deemed a mistake as to a matter of fact.

- (a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Karachi. it turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreements is void.
- (b) A agrees to but from B a certain horse. It turns out that the horse was dead at the time of the bargain though neither party was aware of the fact. The agreement is void.
- (c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

## **21 Effect of mistake as to law.**

A contract is not voidable because it was caused by a mistake as to any law in force in Pakistan; but a mistake as to a law not in force in Pakistan has the same effect as a mistake of fact.

### **Illustration.**

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

## **22 Contract caused by mistake of one party as to matter of fact.**

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

## **23 What considerations and objects are lawful and what not.**

The consideration or object of an agreement is lawful, unless it is forbidden by law; or

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

is fraudulent; or

involves or implies injury to the persons or property of another;

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

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

### **Illustration**

- (a) A agrees to sell his house to B for Rs.10,000/-. Here B's promise to pay the sum of Rs.10,000/- is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the Rs.10,000/-. These are lawful consideration.
- (b) A promises to pay B 1,000 rupees at the end of six months, if C who owes that sum to B, fails to pay it, B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party and they are lawful considerations.
- (c) A promises, for a certain sum paid to him by B, to make goods to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment and B's payment is the consideration for A's promise and these are lawful considerations.
- (d) A promises to maintain B's child and B promises to pay A 1,000 rupees yearly for the purposes. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.
- (e) A B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

- (f) A promises to obtain for B an employment in the public service and B promises to pay Rs.1,000/- to A. The agreement is void as the consideration for it is unlawful.
- (g) A being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment by A, on his principal.
- (h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.
- (i) A's estate is sold for arrears of revenue under the provisions of an Act of the Legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would defeat the object of the law.
- (j) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay Rs.1,000/- to A. The agreement is void, because it is immoral.
- (k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Pakistan Penal Code (XLV of 1860).

***Void agreements.***

**24 Agreements void, if considerations and objects unlawful in part.**

If any part of a single consideration for one or more objects, or any one or any party of any one of several considerations for a single object, is unlawful, the agreement is void.

**Illustration.**

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

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

- (1) is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing near relation to each other; or unless
- (2) it is promise to compensate, wholly or in a part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

- (3) it is a promise, made in writing and signed by the person to be charged therewith, or by the agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

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

**Explanation:**

- (1) Nothing in this section, shall affect the validity as between the donor and donee, of any gift actually made
- (2) An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

**Illustration.**

- (a) A promises, for no consideration, to give to B Rs.1,000/-. This is a void agreement.
- (b) A for natural love and affection, promises to give his son, B, Rs.1,000/-. A puts his promise to B into writing and registers it. This is a contract.
- (c) A finds B's purse and gives it to him. B promises to give A Rs.50/-. This is a contract.
- (d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.
- (e) A owes B Rs.1,000/- but the debt is barred by the Limitation Act, A signs a written promise to pay Rs.500/- on account of the debt. This is a contract.
- (f) A agrees to sell a horse worth Rs.1,000/- for Rs.10/-. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.
- (g) A agrees to sell a horse worth Rs.1,000/- for Rs.10/-. A's denies that his consent to the agreement was freely given.

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

**26 Agreement in restraint of marriage void.**

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

**27 Agreement in restraint of marriage void.**

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

**Exception 1. Saving of agreement not to carry on business of which goodwill is sold.**

One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carried on a like business therein: Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

**28. Agreement in restraint of legal proceedings void.**

Every agreement, by which any party thereto is restricted absolute from enforcing his right under or in respect of any contract, by the usual legal proceedings in the ordinary Tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

**Exception 1. Saving of contract to refer to arbitration dispute that may arise.**

This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

**Suits barred by such contracts.**

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

**Exception 2. Saving of contract to refer questions that have already arisen.**

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

**29. Agreement void for uncertainty.**

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

**Illustrations**

- (a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreements is void for uncertainty.
- (b) A agrees to sell to b one hundred tons of oil of a specified description known as an Article of commerce. There is no uncertainty here to make the agreement void.
- (c) A who is a dealer in coconut oil only, agrees to sell to B one hundred tons of oil. The nature of A’s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.

- (d) A agrees to sell to B all the grain in my granary at Rahimyar Khan. There is no uncertainty here to make the agreement void.
- (e) A agrees to sell to B one thousand maunds of rice at a price to be fixed by C. as the price is capable of being made certain there is no uncertainty here to make the agreement void.
- (f) A agrees to sell to B my white horse for rupees five hundred or rupees one thousand. There is nothing to show which of the two prices was to be given. The agreement is void.

**30. Agreements by way of wager void.**

Agreement by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

**Exception in favour of certain prize for horse racing.**

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse race.

**Section 294A of the Pakistan Penal Code not affected.**

Nothing in this section shall be deemed to legalize any transaction connected with horseracing to which the provisions of section 294A of the Pakistan Penal Code apply.

**30-A Agreements collateral to wagering agreements.**

A agreements knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any agreement void under section 30; are void.

**30-B** No suit for recovery of money, commission, etc., in respect of void agreement. No suit or other proceeding shall lie for the recovery of :-

- (a) any sum of money paid or payable in respect of any agreement void under section 30-A, or
- (b) any commission, brokerage, fee or reward in respect of knowingly affecting or carrying out, or aiding in affecting or carrying out, of any such agreement, or of any sum of money otherwise claimed or claimable in respect thereof, or
- (c) any sum of money knowingly paid or payable on account of any person by way of commission, brokerage, fee reward or other claim in respect of any such agreement.

**30-C. Payment of guardian executor, etc., in respect of void agreements not to be allowed credit.**

No guardian executor, administrator heir or personal representative of any minor or deceased person, as the case may be, shall be entitled to or allowed any credit in his amount for or in respect of any payment made by him on behalf of such minor or

deceased person in respect of any such agreement, or any such commission, brokerage, fee, reward or claim as is referred to in sections 30-A and 30-B.

### **Chapter III**

#### **OF CONTINGENT CONTRACTS**

##### **31 “Contingent contract” defined.**

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

##### **Illustration**

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

##### **32 Enforcement of contracts contingent on an even happening.**

Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

##### **Illustrations**

- (a) A makes a contract with B to buy B’s horse if A survives C. this contract cannot be enforced by law unless and until C dies in A’s lifetime.
- (b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.
- (c) A contracts to pay B a sum of money when B marries C. c dies without being married to B. the contract becomes void.

##### **33 Enforcement of contracts contingent on an event not happening.**

Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that even becomes impossible, and not before.

##### **Illustration.**

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

##### **34. When even on which contract is contingent to be deemed impossible, if it is the future conduct of living person.**

If the future even on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any defined time, or otherwise than under further contingencies.

### **Illustration**

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

### **35 When contracts become void which are contingent on happening of specified event within fixed time.**

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed such event has not happened, or if, before the time fixed, such event becomes impossible.

### **When contracts may be enforced which are contingent on specified event not happening within fixed time.**

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

### **Illustrations.**

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

### **36 Agreement contingent on impossible events void.**

Contingent agreements to do or not to do anything, if any impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

### **Illustrations.**

- (a) A agrees to pay B Rs.1,000/- if two straight lines should enclose a space. The agreement is void.
- (b) A agrees to pay B Rs.1,000/- if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

## **Chapter IV.**

### **OF THE PERFORMANCE OF CONTRACTS.**

#### ***Contracts which must be performed.***

### **37. Obligation of parties of to contracts.**

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

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

#### **Illustrations.**

- (a) A promises to deliver goods to B on a certain day on payment of Rs.1,000/-. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs.1,000/- to A's representatives.
- (b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

### **38. Effect of refusal to accept offer of performance.**

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfill the following conditions:-

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

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

#### **Illustrations.**

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

### **39. Effect of refusal of party to perform promise wholly.**

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

#### **Illustrations.**

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

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

**40. Person by whom promise is to be performed.**

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

**Illustrations.**

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

**41 Effect of accepting performance from third person.**

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

**42 Devolution of joint liabilities.**

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

**43 Any one of joint promisors may be compelled to perform.**

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary compel any one or more of such joint promisors to perform the whole of the promise.

**Each promisor may compel contribution.**

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

**Sharing of loss by default in contribution.**

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

### **Explanation.**

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

### **Illustrations.**

- (a) A, B and C jointly promise to pay D Rs.3,000 /-. D may compel either A or B or C to pay him Rs.3,000/-.
- (b) A, B and C jointly promise to pay D the sum of Rs.3,000/-. C is compelled to pay the whole. A is insolvent, but his assents are sufficient to pay one half of his debts. C is entitled to receive Rs.500/- from A's estate and Rs.1,250/- from B.
- (c) A,B and C are under a joint promise to pay D Rs.3,000/-. C is unable to pay anything and A is compelled to pay the whole. A is entitled to receive Rs.1,500/- from B.
- (d) A,B and C are under a joint promise to pay D Rs.3,000/-. A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

#### **44. Effect of release of one joint promisor.**

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

#### **45 Devolution of joint rights.**

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

### **Illustrations.**

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

#### **46 Time for performance of promise where no application is to be made and no time is specified.**

Where, by the contract, a promisor is to perform his promise with application by the promise, and no time for performance is specified, the engagement must be performed within a reasonable time.

**Explanation.**

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

**47 Time and place for performance of promise where time is specified and no application to be made.**

When promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promise, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

**Illustration.**

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

**48. Application for performance on certain day to be at proper time and place.**

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

**Explanation.**

The question “what is a proper time and place”, is, in each particular case, a question of fact.

**49. Place for performance of promise where no application to be made and no place fixed for performance.**

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

**Illustration.**

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

**50. Performance in manner or at time prescribed or sanctioned by promise.**

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

**Illustrations.**

- (a) B owes a Rs.2,000/-. A desires b to pay the amount to A’s account with C, a banker. B who also banks with C, orders the amount to be transferred from his account to A’s credit, and this is done by C. afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

- (b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B respectively, of the sums which they owed to each other.
- (c) A owes B Rs.2,000/-. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as part payment.
- (d) A desires B, who owes him Rs.100/- to send him a note for Rs.100/- by post. The debt is discharged as soon as puts into the post a letter containing the note duly addressed to A.

***Performance of Reciprocal Promises.***

**51. Promisor not bound to perform, unless reciprocal promise ready and willing to perform.**

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promise is ready and willing to perform his reciprocal promise.

**Illustrations.**

- (a) A and B contract that A shall deliver goods to B to be paid for by B on delivery.  
A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.  
B need not pay for the goods, unless A is ready and willing to deliver them on payment.
- (b) A and B contract that A shall deliver goods to B at a price to be paid by installments, the first installment to be paid on delivery.  
A need not deliver, unless B is ready and willing to pay the first installment on delivery.  
B need not pay the first installment, unless A is ready and willing to deliver the goods on payment of the first installment.

**52. Order of performance of reciprocal promises.**

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

**Illustrations.**

- (a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.
- (b) A and B contract that A shall make over his stock in trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given for the nature of the

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

**53 Liability of party preventing even on which the contract is to take effect.**

When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non performance of the contract.

**Illustration.**

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

**54. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises.**

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

**Illustrations.**

- (a) A hires B's ship to take in and convey from Karachi to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non performance of the contract.
- (b) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make combination to A for any loss caused to him by the non performance of the contract.
- (c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.
- (d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed and A must make compensation.

**55 Effect of failure to perform at fixed time, in contract in which time is essential.**

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified time, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

**Effect of such failure when time is not essential.**

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

**Effect of acceptance of performance at time other than that agreed upon.**

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non performance of the promise at the time agreed, unless, at the time of acceptance he gives notice to the promisor of his intention to do so.

**56 Agreement to do impossible act.**

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

**Contract to do act afterwards becoming impossible or unlawful.**

A contract to do an act which, after the contract is made, could not be performed, becomes void when the act becomes impossible or unlawful.

**Compensation for loss through non performance of act known to be impossible or unlawful.**

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

**Illustrations.**

- (a) A agrees with B to discover treasure by magic. The agreement is void.
- (b) A and B contract to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.
- (c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy. A must make compensation to B for the loss caused to her by the non performance of his promise.
- (d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

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

**57 Reciprocal promise to do things legal, and also other things illegal.**

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

**Illustrations.**

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

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

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

**58 Alternative promise, one branch being illegal.**

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

**Illustration.**

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

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

***Appropriation of Payments.***

**59 Application of payment where debt to be discharged is indicated.**

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

**Illustrations.**

- (a) A owes B, among other debts, Rs.1,000/- upon a promissory note which falls due on the first June. He owes B on other debt of that amount. On the first June A pays to B Rs.1,000/-. The payment is to be applied to the discharge of the promissory note.
- (b) A owes B, among other debts, the sum of Rs.567/-. B writes to A and demands payment of this sum. A sends to B Rs.567/-. This payment is to be applied to the discharge of the debt of which B had demanded payment.

**60 Application of payment, where debt to be discharged is not indicated.**

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his

discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

**61 Application of payment were neither party appropriates.**

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

**Contracts which need not be performed.**

**62. Effect of novation, rescission and alteration of contract.**

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

**Illustrations.**

- (a) A owes money to B under a contract, it is agreed between A, B and C that B shall thenceforth accepts C as his debtor, instead of A. the old debt of A to B is at an end, and a new debt from C to B has contracted.
- (b) A owes B Rs.1,000/-. A enters into an arrangement with B and gives b a mortgage of his (A's estate for Rs.5,000/- in place of the debt of Rs.10,000/-). This is new contract and extinguishes the old.
- (c) A owes B Rs.1,000/- under a contract. B owes C Rs.1,000/-. B Orders A to credit C with Rs.1,000/- in his books, but C does not assent o the arrangement. B still owes C Rs.1,000/- and no new contract has been entered into.

**63 Promisee may dispense with or remit performance of promise.**

**Illustrations.**

- (a) A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
- (b) A owes B Rs.5,000/-. A pays to B, and B accepts in satisfaction of the whole debt, Rs.2,000/- paid at the time and place at which the Rs.5,000/- were payable. The whole debt is discharged.
- (c) A owes B Rs.5,000/-. C pays to B Rs.1,000/- and B accepts them in satisfaction of his claim on A. this payment is a discharge of the whole claim.
- (d) A owes B under a contract, a sum of money, the amount, of which has not been ascertained. A, without ascertaining the amount, gives to B and B in satisfaction thereof, accepts the sum of Rs.2,000/-. This is a discharge of the whole debt whatever may be its amount.
- (e) A owes b Rs.2,000/- and is also indebted to other creditors. A makes an arrangement with his creditors, including B to pay them a composition of eight an as in the rupee upon their respective demands. Payment to B of Rs.1,000/- is a discharge of B's demand.

**64 Consequences of rescission of voidable contract.**

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

**65 Obligation of person who has received advantage under void agreement or contract that becomes void.**

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

**Illustrations.**

- (a) A pays B Rs.1,000/- in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void but B must repay A the Rs.1,000/-.
- (b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.
- (c) A singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundred rupees for each night's performance. On the sixth night, A willfully absents herself from the theatre, and B in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.
- (d) A contracts to sing for B at a concert for Rs.1,000/- which are paid in advance. A is to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able, to sing but must refund to B the Rs.1,000/- paid in advance.

**66 Mode of communicating or revoking rescission of voidable contract.**

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

**67. Effect of neglect of promise to afford promisor reasonable facilities for performance.**

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

**Illustration**

A contracts with B to repair B's house.

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

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

## **Chapter V.**

### **OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.**

#### **68. Claim for necessaries supplied to person incapable of contracting, or on his account.**

If a person incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

#### **Illustrations.**

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

#### **69. Reimbursement of person paying money due by another in payment of which he is interested.**

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

#### **Illustration.**

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

#### **70. Obligation of person enjoying benefit of non gratuitous act.**

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

#### **Illustrations.**

- (a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.
- (b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

**71. Responsibility of finder of goods.**

A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

**72 Liability of person to whom money is paid or thing delivered by mistake or under coercion.**

A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

**Illustrations.**

- (a) A and B jointly owe Rs.100/- to C. A alone pays the amount to C, and B, not knowing this fact, pays Rs.100/- over again to C. C is bound to repay the amount to B.
- (b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

**Chapter VI.**

**OF THE CONSEQUENCES  
OF BREACH OF CONTRACT**

**73 Compensation for loss or damage caused by breach of contract.**

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

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

**Compensation for failure to discharge resembling those created by contract.**

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

**Explanation**

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

**Illustrations.**

- (a) A contracts to sell and deliver 50 maunds of saltpeter to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short

of the price for which B might have obtained 50 manuds of saltpeter of like quality at the time when the saltpetre ought to have been delivered.

- (b) A hires B's ship to go to Karachi and there takes on board, on the first of January, a cargo which A is to provide and to bring it to Karachi but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.
- (c) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs that he will not accept it.
- (d) A contracts to buy B's ship for Rs.60,000/- but breaks his promise. A must pay to B by way of compensation, the excess, if any, of the contract price over the price which B can obtain from the ship at the time of the breach of promise.
- (e) A, the owner of a boat, contracts with B to take a cargo of jute to [Mymensingh] for sale at that place, starting on a specified day. The boat, owing to some avoidable cause does not start at the time appointed, whereby the arrival of the cargo at [Mymensingh] is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at [Mymensingh] at the time when it would have arrived if forwarded in due course and its market price at the time when it actually arrived.
- (f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to the contract. B is entitled to recover from A the amount of making the repairs conform to the contract.
- (g) A contracts to let his ship to B for a year, from the first of January, for a certain price. Freight rates rise, and, on the first of January the hire obtained from the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.
- (h) A contracts to supply B with a certain quantity of iron at a fixed price being a highest price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

- (i) A delivers to B, a common carrier, a machine, to be compared without delay, to A's mill informing B that his mill is stopped for want of the machine B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.
- (j) A having contracted with B to supply B with , tons of iron at Rs.10/- a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at Rs.80/- a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract, C must pay to A Rs.20,000/-, being the profit which A would have made by the performance of his contract with B.
- (k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.
- (l) A a builder, contracts to erect and finish a house by the first of January, in order that B may give possession of it at that time to C to whom B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January it falls down and has to be rebuilt by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C, for the breach of his contract. A must make compensation to B for the cost of rebuilding the house for the rent lost, and for the compensation made to C.
- (m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.
- (n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day; B, in consequence of not receiving the money on that day, is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

- (o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpetre to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.
- (p) A contracts to sell and deliver 500 bales of cotton to be on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.
- (q) A contracts to sell and deliver to B on the first of January, certain cloth which B intends to manufacture into case of a particular kind for which there is no demand, except at that season. The cloth is not delivered till after the appointed time and too late to be used that year in making caps. B is entitled to receive from A by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.
- (r) A, a ship owner, contracts with B to convey him from Karachi to Sydney in A's ship to A, by way of deposit, one half his passage money. The ship does not sail on the first of January and B after being, in consequence, detained in Karachi for some time and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense which he is put to by his detention in Karachi, and the excess, if any of the passage money paid for the second ship over that agreed upon for the first but not the sum of money which B lost by arriving in Sydney too late.

**74. Compensation for breach of contract where penalty stipulated for.**

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

**Explanation.**

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

**Exception.**

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

### **Explanation**

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

### **Illustrations.**

- (a) A contracts with B to pay B Rs.1000/- if he fails to pay B Rs.5000/- on a given day. A fails to pay B Rs.500/- on that day. B is entitled to recover from A such compensation, not exceeding Rs.1000/- as the Court considers reasonable.
- (b) A contracts with B that if A practices as a surgeon within Peshawar he will pay B Rs.5000/-. A practices as a surgeon in Peshawar. B is entitled to such compensation not exceeding Rs.5000/- as the court considers reasonable.
- (c) A gives a recognizance binding him in a penalty of Rs.500/- to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.
- (d) A gives B a bond for the repayment of Rs.1000/- with interest at 12%, at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75% from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.
- (e) A who owes money to B, a money lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.
- (f) A undertakes to repay B a loan of Rs.1000/- by five equal monthly installments with a stipulation that in default of payment of any installment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.
- (g) A borrows Rs.1000/- from B and gives him a bond for Rs.200/- payable by five yearly installments of Rs.40/-, with a stipulation that, in default of payment of any installment, the whole shall become due. This is stipulation by way of penalty.

### **75. Party rightfully rescinding contract entitled to compensation.**

A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non fulfillment of the contract.

### **Illustration.**

A, singer contracts with B, the manager of a theatre, to sing at his theatre for two night in every week during the nest two months and B engages to pay her Rs.100/- for each night's performance. On the sixth night, A willfully absents herself from the theatre,

and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which has sustained through the non fulfillment of the contract.

## **Chapter VII.**

### **[SALE OF GOODS]**

## **Chapter VIII.**

### **OF INDEMNITY AND GUARANTEE**

#### **124. “Contract of indemnity’ defined.**

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

#### **Illustration.**

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

#### **125. Rights of indemnity holder when sued.**

The promise in a contract of indemnity, acting with in the scope of his authority, is entitled to recover from the promisor.

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applied.
- (2) All costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
- (3) All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized to compromise the suit.

#### **126. “Contract of guarantee”, “Surety”, “Principal debtor” and “Creditor”.**

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

#### **127 Consideration for guarantee.**

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

### **Illustrations.**

- (a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.
- (b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.
- (c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. the agreement is void.

### **128 Surety's liability.**

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

### **Illustration.**

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

### **129 "Continuing guarantee"**

A guarantee which extends to a series of transactions is called a continuing guarantee.

### **Illustrations.**

- (a) A, in consideration that B will employ C in collecting the rent of B's zamindari, promises B to be responsible, to the amount of Rs.5000/- for the due collection and payment by C of those rents. This is a continuing guarantee.
- (b) A guarantees payment to B, a tea dealer, to the amount of pound 100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of pound 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of pound 100.
- (c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C, pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

### **130 Revocation of continuing guarantee.**

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

### **Illustrations.**

- (a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of Rs.5000/-. B discounts bills for C to the extent of Rs.2000/-. Afterwards at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the Rs.2000/- on default of C.
- (b) A guarantees to B, to the extent of Rs.10,000/-, that C shall pay all the bills that B shall draw upon him. B draws upon C, accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

#### **131 Revocation of continuing guarantee by surety's death.**

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

#### **132 Liability of two persons primarily liable, not affected by arrangement between them that one shall be surety on other's default.**

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

### **Illustration**

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

#### **133 Discharge of surety by variance in terms of contract.**

Any variance, made without surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

### **Illustrations.**

- (a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.
- (b) A guarantees C against the misconduct of B in an office to which B is appointed C, and of which the duties are defined by an act of the Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability

under his guarantee, though the misconduct of B is in respect of a duty not affected by the later Act.

- (c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.
- (d) A gives to C a continuing guarantee to the extent of Rs.3,000/- for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after his new arrangement.
- (e) C contracts to lend B Rs.5,000/- on the 1st March. A guarantees repayment. C pays Rs.5,000/- to B on the 1st January. A is discharged from his liability, as the contract has been varied inasmuch as C might sue B for the money before the 1st March.

#### **134. Discharge of surety by release or discharge of principal debtor.**

The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

##### **Illustrations.**

- (a) A gives a guarantee to C for goods to be supplied by C to B. C supplied goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.
- (b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer on his guarantee.
- (c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber, C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

#### **135 Discharge of surety when creditor compounds with, gives time to, or agrees not to sue, principal debtor.**

A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor discharges the surety, unless the surety assents to such contract.

**136 Surety not discharge when agr4reement made with third person to give time to principal debtor.**

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

**Illustration.**

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

**137 Creditor's forbearance to sue does not discharge surety.**

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

**Illustration.**

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

**138. Release of one Co-surety does not discharge others.**

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

**139 Discharge of surety by creditor's act or omission impairing surety's eventual remedy.**

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

**Illustrations**

- (a) B contracts to build a ship for C for a given sum, to be paid by installments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two installments. A is discharged by this prepayment.
- (b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and willful negligence, only a small price is realized. A is discharged from liability on the note.
- (c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity, B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

#### **140 Rights surety on payment.**

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

#### **141 Surety's right to benefit of creditor's securities.**

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

#### **Illustrations.**

- (a) C advances to B, his tenant, Rs.2,000/- on the guarantee of A. C has also, a further security for Rs.2,000/- by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.
- (b) C, a creditor, whose advance to B is secured by a decree, receives goods in execution under the decree, and then without the knowledge of A, withdraws the execution. A is discharged.
- (c) A, as surety for B, makes a bond jointly with B to C to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt subsequently C gives up the further security. A is not discharged.

#### **142 Guarantee obtained by misrepresentation invalid.**

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

#### **143 Guarantee obtained by concealment invalid.**

Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

#### **Illustrations.**

- (a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is valid.
- (b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed, the B should pay Rs.5/- ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

**144 Guarantee on contract that creditor shall not act on it until co-surety joins.**

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

**145 Implied promise to indemnify surety.**

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

**Illustrations.**

- (a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from the amount paid by him for costs, as well as the principal debt.
- (b) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill demands payment of it from A, and on A's refusal to pay, sues him upon the bill. A not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill but not the sum paid for costs, as there was no real ground for defending the action.
- (c) A guarantees to C, to the extent of Rs.2,000/-, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than Rs.2,000/- but obtains from A payment of the sum of Rs.2,000/- in respect to rice supplied. A cannot recover from B more than the price of the rice actually supplied.

**146 Co-sureties liable to contribute equally.**

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

**Illustrations.**

- (a) B and C are sureties to D for the sum of Rs.3,000/- lent to E. E makes default in payment. A, B, and C are liable, as between themselves, to pay Rs.1,000/- each.
- (b) A, B and C are sureties to D for the sum of Rs.1,000/- lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of one quarter. B to the extent of one quarter and C to the extent of one half. E makes default in payment. As between the sureties, A is liable to pay Rs.250/-, B Rs.250/- and C Rs.500/-.

### **147 Liability of co-sureties bound in different sums.**

Co-sureties who are bound in different sum are liable to pay equally as far as the limits of their respective obligations permit.

#### **Illustrations.**

- (a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of Rs.10,000/-, B, in that of Rs.20,000/-, C in that of Rs.40,000/-, conditional for D's duly accounting to E. D makes default to the extent of Rs.30,000/-. A, B and C are each liable to pay Rs.10,000/-.
- (b) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of Rs.10,000/-, B, in that of Rs.20,000/-, C in that of Rs.40,000/-, conditioned for D's duly accounting to E. D makes default to the extent of Rs.40,000/-. A, is liable to pay Rs.10,000/- and B and C are each liable to pay Rs.15,000/- each.
- (c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of Rs.10,000/-, B, in that of Rs.20,000/-, C in that of Rs.40,000/-, conditioned for D's duly accounting to E. D makes default to the extent of Rs.70,000/-. A, B and C have to pay each the full penalty of his bond.

## **Chapter IX**

### **OF BAILMENT.**

#### **148 "Bailment", "Bailor", and "Bailee" defined.**

A bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "Bailor". The person to whom they are delivered is called the "bailee".

#### **Explanation.**

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

#### **149 Delivery to bailee how made.**

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

#### **150 Bailor's duty to disclose faults in goods bailed.**

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

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

#### **Illustrations.**

- (a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fault that the horse is vicious. The horse runs away. B is thrown injured. A is responsible to B for damage sustained.
- (b) A hires a carriage of B. the carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

#### **151 Care to be taken by bailee.**

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

#### **152 Bailee when not liable for loss etc., of thing bailed.**

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

#### **153 Termination of bailment by bailee's act inconsistent with conditions.**

A contract of bailment is avoidable at the option of the bailor, if the bailee does any act with regard to the goods bailed inconsistent with the conditions of the bailment.

#### **Illustration.**

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

#### **154 Liability of bailee making unauthorized use of goods bailed.**

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

#### **Illustrations.**

- (a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.
- (b) A hires a horse in Karachi from B expressly to march to Hyderabad. A rides with due care, but marches to Khairpur instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

#### **155 Effect of mixture, with bailor's consent, of his goods with bailee's**

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

**156 Effect of mixture, with bailor's consent, when the goods can be separated.**

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

**Illustration.**

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

**157 Effect of mixture, with bailor's consent, when the goods can not be separated.**

If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

**Illustration.**

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

**158 Repayment by bailor of necessary expenses.**

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

**159 Restoration of goods lent gratuitously.**

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

**160 Return of goods bailed on expiration of time or accomplishment of purpose.**

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

**161 Bailee's responsibility when goods are not duly returned.**

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

**162 Termination of gratuitous bailment by death.**

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

**163 Bailor entitled to increase or profit from goods bailed.**

In the absence of any contact to the contrary, the bailee is bound to delivery to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

**Illustration.**

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

**164 Bailor's responsibility to bailee.**

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

**165 Bailment by several joint owners**

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

**166 Bailee not responsible on redelivery to bailor without title.**

If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to or according to the directions of the bailor the bailee is not responsible to the owner in respect of such delivery.

**167 Right of third person claiming goods bailed.**

If a person other than the bailor, claims goods bailed he may apply to the court to stop the delivery of the goods to the bailor and to decide the title to the goods.

**168 Right of finder of goods; may sue for specific reward offered.**

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

**169 When finder of thing commonly on sale may sell it.**

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

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

**170 Bailee's particular lien**

where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour of skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

**Illustrations.**

- (a) A delivers a rough diamond to B, a jeweler to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.
- (b) A gives cloth B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months credit for the price. B is not entitled to retain the coat until he is paid.

**171 General lien of bankers, factors, wharfingers, attorneys and policy brokers.**

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

***Bailments of pledges.***

**172 "Pledge", "pawnor" and "Pawnee" defined.**

The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

**173 "Pawnee's right of retainer".**

The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

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

The pawnee shall not, in the absence of a contract to that effect retain the goods pledged for any debt or promise other than the debt or promise for which they are

pledged; but such contract, in the absence of any thing to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

**175 Pawnee's right as to extraordinary expenses.**

The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

**176 Pawnee's right where pawnor makes default.**

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

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

**177 Defaulting pawnor's right to redeem**

If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must in that case, pay in addition, any expenses which have arisen from his default.

**178 Pledge by mercantile agent.**

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

**Explanation.**

In this section the expressions "mercantile agent" and "documents of title" shall have the meanings assigned to them in the sale of goods Act, 1930 (III of 1930).

**178-A Pledge by persons in possession under voidable contract.**

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

**179 Pledge where pawnor has only a limited interest.**

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

**180 Suit by bailor or bailee against wrong doer.**

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

**181 Appointment of relief or compensation obtained by such suits.**

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

**Chapter X**

**AGENCY**

*Appointment and Authority of Agents.*

**182 “Agent” and “Principal” defined.**

An agent is a person employed to do any act for another or to represent another in dealing with third persons. The person for whom such act is one, or who is so representative, is called the principal.

**183 Who may employ agent.**

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

**184 Who may be an agent.**

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

**185 Consideration not necessary.**

No consideration is necessary to create an agency.

**186 Agent’s authority may be expressed or implied.**

The authority of an agent may be expressed or implied.

**187 Definitions of express and implied authority.**

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing may be account for circumstances of the case.

**Illustration**

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

**188 Extent of agent's authority.**

An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

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

**Illustrations.**

- (a) A is employed by B residing in London to recover at Karachi debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt and may give a valid discharge for the same.
- (b) A constitutes B his agent to carry on his business of a ship builder B may purchase timber and other materials, and hire workmen for the purposes of carrying on the business.

**189 Agent's authority in tan emergency.**

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

**Illustrations.**

- (a) An agent for sale may have goods repaired if it be necessary.
- (b) A consigns provisions to B at Lahore with the directions to send them immediately to C at Rawalpindi. B may sell the provisions at Lahore if they will not bear the journey to Rawalpindi without spoiling.

**Sub Agents.**

**190 When agent cannot delegate.**

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

**191 "Sub Agent" defined.**

A sub agent is a person employed by and acting under the control of, the original agent in the business of the agency.

**192 Representation of principal by sub agent property appointed.**

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

**Agent's responsibility for sub agent.**

The agent is responsible to the principal for the acts of the sub agent.

### **Sub Agent's responsibility.**

The sub agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or willful wrong.

### **193 Agent's responsibility for sub agent appointed without authority.**

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

### **194 Relation between principal and person duly appointed by agent to act in business of agency.**

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another, person accordingly, such person is not a sub agent but an agent of the principal for such part of the business of the agency as is entrusted him.

#### **Illustrations.**

- (a) A directs B, his solicitor to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub agent, but A's agent for the conduct of the sale.
- (b) A authorizes B, a merchant in Chittagong to recover the money due to a firm C & Co. B, instructs D, a solicitor, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub agent but is solicitor for A.

### **195 Agent's duty in naming such person.**

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

#### **Illustrations.**

- (a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to chose a ship for A. the surveyor makes the choice negligently and ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to a.
- (b) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in goods credit to sell the goods of A. and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

### **196 Right of person as to acts done for him without his authority - - Effect of ratification.**

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

**197 Ratification may be expressed or implied.**

Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

**Illustrations.**

- (a) A, without authority, buys goods for B. afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.
- (b) A, without B's authority, lends B's money to C. afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

**198 Knowledge requisite for valid ratification.**

No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

**199 Effect of ratifying unauthorized act forming party of a transaction.**

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

**200 Ratification unauthorized act cannot injure third person.**

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

**Illustrations.**

- (a) A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.
- (b) A holds a lease from B, terminable on three months notice, C, an unauthorized person gives notice of termination to A. the notice cannot be ratified by B, so as to be binning on A.

*Revocation of Authority*

**201 Termination of Agency.**

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

**202 Termination of agency where agent has an interest in subject matter.**

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

**Illustrations.**

- (a) A gives authority to B to sell A's land, and to pay himself out of the proceeds, the debts due to him from a. A cannot revoke this authority, nor can it be terminated by his insanity or death.
- (b) A consigns 1,000 bales of cotton to B, who has made advance to him on such cotton, and desires B to sell the cotton and to repay himself, out of the price, the amount of his own advances. A cannot revoke this authority, nor it is terminated by his insanity or death.

**203 When principal may revoke agent's authority.**

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

**204 Revocation where authority has been partly exercised.**

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

**Illustrations.**

- (a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.
- (b) A authorizes B to buy 1000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

**205 Compensation for revocation by principal or renunciation by agent.**

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

**206 Notice of revocation or renunciation.**

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

**207 Revocation and renunciation may be expressed or implied.**

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

**Illustration.**

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

**208 When termination agent's authority takes effect as to agent, and as to third person.**

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or so far as regards third person, before it becomes known to them.

**Illustrations.**

- (a) A directs B to sell goods for him, and agrees to give B five per cent, commission on the price fetched by the goods. Afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for Rs.100/-. The sale is binding on A, and B is entitled to 5%, rupees as his commission.
- (b) A, at Quetta by letter, directs B to sell for him some cotton lying in a warehouse in Karachi, and afterwards, by letter revokes his authority to sell, and directs B to send the cotton to Quetta. B, after receiving the second letter, enters into a contract with C who knows of the first letter but not of the second, for the sale to him of the cotton, C pays B the money with which B absconds, C's payment is goods as against A.
- (c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B after A's death, but before hearing of it, pays the money to C. the payment is goods as against D, the executor.

**209 Agent's duty on termination of agency by principal's death or insanity.**

When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

**210 Termination of sub agent's authority.**

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

*Agent's duty to principal*

**211 Agent's duty in conducting principal's business.**

An agent is bound to conduct the business of his principal according to the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent

conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

#### **Illustrations.**

- (a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investments. A must make good to B the interest usually obtained by such investments.
- (b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

### **212 Skill and diligence required from agent.**

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

#### **Illustrations.**

- (a) A, a merchant in Islamabad has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss as e.g., by variation of rate of exchange but not further.
- (b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.
- (c) A, an insurance broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.
- (d) A, a merchant in England, directs B his agent at Karachi, who accepts the agency to send him 100 bales of cotton by a certain ship. B having it in his power to send the cotton, omits to do so, the ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

### **213 Agent's accounts.**

An agent is bound to render proper accounts to his principal on demand.

**214 Agent's duty to communicate with principal.**

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

**215 Right of principal when agent deals on his own account in business of agency without principal consent.**

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

**Illustrations.**

- (a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed an material fact, or that the sale has been disadvantageous to him.
- (b) A directs B to sell A's estate, B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

**216 Principal's right to benefit gained by agent dealing on his own account in business of agency.**

If an agent, without the knowledge of his Principal, deals in the business of the agency on his own account instead of on account of his Principal, the Principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

**Illustrations.**

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

**217 Agent's right of retaining out of sums received on Principal's account.**

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

**218 Agent's duty to pay sums received for Principal.**

Subject to such deductions, the agent is bound to pay to his Principal all sums received on his account.

**219 When agent's remuneration becomes due.**

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

**220 Agent not entitled to remuneration for business misconducted.**

An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which has been misconducted.

**Illustrations**

- (a) A employs B to recover Rs.100,000/- from C and to lay it out on good security. B recovers the Rs.100,000/- and lays out Rs.90,000/- on good security, but lays out Rs.10,000/- on security which he ought to have known to be bad, whereby A loses Rs.2,000/-. B is entitled to remuneration for recovering Rs.100,000/- and for investing the Rs.90,000/-. He is not entitled to any remuneration for investing the Rs.10,000/- and he must make good the Rs.2,000/- to B.
- (b) A employs B to recover Rs.1,000/- from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services and must make good the loss.

**221 Agent's lien on Principal property.**

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

***Principal's duty to Agent.***

**222 Agent to be indemnified against consequences of lawful acts.**

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

**Illustrations.**

- (a) B, at Singapore, under instructions from A of Quetta contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract, B informs A of the suit, and A authorizes him to defend the suit. B defends the suit and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.
- (b) B, a broker at Quetta by the orders of A, a merchant there, contracts with C for the purchase of 1- casks of oil for A. afterwards A refuses to receive the oil, and C sues B. B informs A who repudiates the contract altogether, B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

**223 Agent to be indemnified against consequences of acts done in good faith.**

Where one person employs another to do an act and the agent does the act in good faith the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the right of third persons.

**Illustrations.**

- (a) A, a decree holder and entitled to execution of B's goods, requires the officer of the Court to seize certain goods representing them to be the goods of B. the officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.
- (b) B, at request of A, sells goods in the possession of A, but which A had no right to dispose of B, does not know this, and hands over the proceeds of the sale to A. afterwards C, the true owner of the goods, sues B and recovers the value of goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

**224 Non liability of employer of agent to do a criminal act.**

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

**Illustrations.**

- (a) A employs B to beat C and agrees to indemnify him against all consequences of the act. B thereupon beats C and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.
- (b) B, the proprietor of a newspaper publishes, at A's request, libel upon C in the paper and A agrees to indemnify B against the consequences of the publication, all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

**225 Compensation to agent for injury caused by Principal's neglect.**

The Principal must make a compensation to his agent in respect of injury caused to such agent by the Principal's neglect or want of skill.

**Illustrations.**

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

**Effect of agency on contract with third persons.**

**226 Enforcement and consequences of agent's contract.**

Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal

consequences, as if the contracts had been entered into and the acts done by the Principal in person.

#### **Illustrations.**

- (a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the Principal. B's Principal is the person entitled to claim from A the price of the goods, and C cannot, in a suit by the Principal, set off against that claim a debt due to himself from B.
- (b) A, being B's an agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

#### **227 Principal how far bound when agent exceeds authority.**

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

#### **Illustrations.**

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

#### **228 Principal not bound when excess of agent's authority is not separable.**

Where an agent does more than he is authorized to do and what he does beyond the scope of his authority cannot be separated from what is within it, the Principal is not bound to recognize the transactions.

#### **Illustration.**

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

#### **229 Consequences of notice given to agent.**

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

#### **Illustrations.**

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

really belonged to D, but B is ignorant of that fact, in spite of the knowledge of his agent, B may set off against the price of the goods a debt owing to him from C.

**230 Agent cannot personally enforce nor be bound by, contracts on behalf of Principal.**

In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his Principal, nor is he personally bound by them.

**Presumption of contract to contrary.**

Such a contract shall be presumed to exist into the following cases:-

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

**231 Right of parties to a contract made by agent not disclosed.**

If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his Principal may require the performance of the contract; but the other contracting party has, as against the Principal, the same rights as he would have had as against the agent if the agent had been Principal.

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

**232 Performance of contract with agent supposed to be Principal.**

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

**Illustration**

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

**233 Right of person dealing with agent, personally liable.**

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

### **Illustration.**

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

#### **234 Consequence of inducing agent or Principal to act on belief that Principal or agent will be held exclusively liable.**

When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the Principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or Principal respectively.

#### **235 Liability of pretended agent.**

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

#### **236 Person falsely contracting as agent not entitled to performance.**

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

#### **237 Liability of Principal inducing belief that agent unauthorized acts were authorized.**

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

### **Illustrations.**

- (a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C being ignorant of B's instructions, enters into a contract with B to buy the goods at the price lower than the reserved price. A is bound by the contract.
- (b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. the sale is good.

#### **238 Effect, on agreement of misrepresentation or fraud by agent.**

Misrepresentations made, or frauds committed, by agents acting in the course of their business for their Principals have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the Principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their Principals.

**Illustrations.**

- (a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C at the option of C.
- (b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and pretended consignor.

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