
Indian Contract Act 1872, With Sections & Illustrations

[Section 1]- Title, Commencement & Scope

This section contains the following information:-

Title- Name of act. i.e. "Indian Contract Act 1872"

Commencement- From 1st September, 1872

Scope- Applicable to whole of India except the state of J&K

[Section 2] Interpretation-clause

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.

(c) The person making the proposal is called the "promisor and the person accepting the proposal is called the promisee".

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

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

(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

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(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

[Section 3]-. Communication, acceptance and revocation of proposals

[Section 4]-. Communication when complete

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

The communication of an acceptance is complete,--

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

The communication of a revocation is complete,

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

[Section 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.

[Section 6]-. Revocation how made.-

A proposal is revoked-

- (1) By the communication of notice of revocation by the pro poser to the other party
- (2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

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- (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.
6. Revocation how made.

[Section 7]-. Acceptance must be absolute.

In order to convert a proposal into a promise, the acceptance must be absolute and unqualified;

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

[Section 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.

[Section 9]-. Promises express and implied.

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

[Section 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 1*[India] and not hereby expressly repealed by which any contract is required to be made in writing^{2*} or in the presence of witnesses, or any law relating to the registration of documents.

[Section 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.

[Section 12]-. What is a sound mind for the purposes of contracting?

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

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

[Section 13]-. "Consent" defined

Two or more persons are said to consent when they agree upon the same thing in the same sense.

[Section 14]-. "Free consent" defined

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

1. Coercion, as defined in section 15, or
2. Undue influence, as defined in section 16, or
3. Fraud, as defined in section 17, or
4. Misrepresentation, as defined in section 18, or
5. Mistake, subject to the provisions of sections 20, 21 and 22.

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

[Section 15]-. "Coercion "defined

Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the

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prejudice of any person whatever, with the intention of causing any person to enter into an agreement. (45 of 1860.)

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

Illustration

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

A afterwards sues B for breach of contract at Calcutta.

[Section 16]- "Undue influence" defined

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

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

(a) Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other; or

(b) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

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

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

Illustrations

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

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

[Section 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, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:-

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

Explanation.-Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak,^{1*} or unless his silence is, in itself, equivalent to speech.

[Section 18]-."Misrepresentation" defined

"Misrepresentation" means and includes-

- 1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true

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- 2) any breach, of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;
- 3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

[Section 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 he shall be put in the position in which he would have been if the representations made had been true.

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

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

[Section 20]-. Agreement void where both parties are under mistake as to matter of fact

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

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

[Section 21]-. Effect of mistakes as to law

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

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

[Section 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.

[Section 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 person or property of another

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

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

[Section 24]-. Agreement void, if considerations and objects unlawful in part

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

[Section 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-

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it is expressed in writing and registered under the law for the time being in force for the registration of 1*[documents], and is made on account of natural love and affection between parties standing in a, near relation to each other ; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do ; or unless

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

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

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

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

[Section 26]-. Agreement in restraint of marriage void

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

[Section 27]-. Agreement in restraint of trade void

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

Saving of agreement not to carry on business of which good-will is sold.-Exception 1.-One who sells the good-will 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 good-will from him, carries on a like business therein, provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

[Section 28]-. Agreements in restraint of legal proceedings void

Every agreement,-

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(a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(b) which extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to that extent.

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

Saving of contract to refer questions that have already arisen.-

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

[Section 29]-. Agreements void for uncertainty

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

[Section 30]-. Agreements by way of wager void

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

Exception in favor of certain prizes for horse-racing.-This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.1*

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CONTINGENT CONTRACTS

[Section 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

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

[Section 32]- Enforcement of contracts contingent on an event happening

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

If the event becomes impossible, such contracts become void.

Illustrations

(a) A makes a contract with B to buy B's horse if A survives C.

This contract cannot be enforced by law unless and until C dies in A's lifetime.

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

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

[Section 33]- Enforcement of contracts contingent on an event not happening

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

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Illustration

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

[Section 34]-. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person

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

[Section 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.

[Section 36]-.Agreement contingent on impossible events void.-Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Illustrations

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

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

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THE PERFORMANCE OF CONTRACTS

Contracts which must be performed

[Section 37]-. Obligation of parties to contracts

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

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

[Section 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 whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do
- 3) If the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

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

[Section 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.

[Section 40]-. Person by who promise is to be performed

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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.

[Section 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.

[Section 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.

[Section 43]- Any one of joint promisor may be compelled to perform

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any 1*[one or more] of such joint promisor, to perform the whole of the promise.

Each promisor may compel contribution. Each of two or more joint promisor 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 promisor makes default in such contribution, the remaining joint promisor 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.

[Section 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 promisor by the promisee does not discharge the other joint promisor or joint promisor ; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint Promisor.

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[Section 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.^{2*}

[Section 46]- Time for performance of promise, when no application is to be made and no time is specified

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

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

[Section 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 promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

[Section 48]- Application for performance on certain day to be at proper time and place

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

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

[Section 49]- Place for performance of promise, where no application to be made and no place fixed for performance

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

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

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

[Section 51]-. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

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

[Section 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.

[Section 53]-. Liability of party preventing event 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 ^{1*} from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

[Section 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,

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and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

[Section 55]-. Effect of failure to perform at fixed time, in contract in which time is essential

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

Effect of such failure when time is not essential.

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

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

[Section 56]-. Agreement to do impossible act

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

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

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

[Section 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.

[Section 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.

[Section 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.

[Section 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.

[Section 61]-. Application of payment where neither party appropriates

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

Contracts which need not be performed

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[Section 62]-. Effect of notation, 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.

[Section 63]-. Promisee may dispense with or remit performance of promise

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

[Section 64]-. Consequences of rescission of voidable contract

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

[Section 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.

[Section 66]-. Mode of communicating or revoking rescission of voidable contract

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.^{2*}

[Section 67]-. Effect of neglect of promisee to afford promisor reasonable facilities for performance

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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.

[Section 68]-. Claim for necessities supplied to person incapable of contracting, or on his account

If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another, person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.^{1*}

[Section 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.

[Section 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.^{2*}

[Section 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 bailed.

[Section 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.

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THE CONSEQUENCES OF BREACH OF CONTRACT

[Section 73]-. Compensation for loss or damage caused by breach of contract

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

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

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

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

[Section 74]- . Compensation for breach of contract where penalty stipulated for

1*[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 1*[Central Government] or of any State Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

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

[Section 75]-. Party rightfully rescinding contract entitled to compensation

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

[Section 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".

[Section 125]-. Rights of indemnity holder when sued

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor-

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

[Section 126]-. "Contract of guarantee", "surety", principal debtor" and "creditor".-

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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 person in respect of whose default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

[Section 127]-. Consideration for guarantee

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

[Section 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.

[Section 129]-."Continuing guarantee"

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

[Section 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.

[Section 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.

[Section 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.

[Section 133]-. Discharge of surety by variance in terms of contract

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

[Section 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.

[Section 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.

[Section 136]-. Surety not discharged when agreement made with third person to give time to principal debtor

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

[Section 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.

[Section 138]-. Release of one co-surety does not discharge others

Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties¹.

[Section 139]-. Discharge of surety by creditor's act or omission impairing surety's eventual remedy

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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.

[Section 140]-. Rights of surety on payment or performance

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

[Section 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 surety ship 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.

[Section 142]-. Guarantee obtained by misrepresentation invalid

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

[Section 143]-. Guarantee obtained by concealment invalid

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

[Section 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.

[Section 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.

[Section 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 debtor¹.*.

[Section 147]-. Liability of co-sureties bound in different sums

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

BAILMENT

[Section 148]-. "Bailment" "bailer" and "bailed" 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 "bailer". The person to whom they are delivered is called, the "bailed ".

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

[Section 149]-. Delivery to bailee how made

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

[Section 150]-. Baylor's duty to disclose faults in goods bailed

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

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

[Section 151]-. Care to be taken by bailed

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.

[Section 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.

[Section 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.

[Section 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.

[Section 155]-. Effect of mixture, with bailor's consent, of his goods with bailee's

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

[Section 156]-. Effect of mixture without bailor's consent, when the goods can be separated

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

[Section 157]-. Effect of mixture, without bailor's consent, when the goods cannot be separated

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

[Section 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.

[Section 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.

[Section 160]-. Return of goods bailed on expiration of time or accomplishment of purpose

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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.

[Section 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.

[Section 162]-. Termination of gratuitous bailment by death

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

[Section 163]-. Bailor entitled to increase or profit from goods bailed

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

[Section 164]- Bailor's responsibility to bailee

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

[Section 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.

[Section 166]-. Bailee not responsible on re-delivery to bailor without Title

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

[Section 167]-. Right of third person claiming goods bailed

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

[Section 168]- . Right of finder of goods; may sue for specific reward offered

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

[Section 169]-. When finder of thing commonly on sale may sell it

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

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

[Section 170]-. Bailee's particular line

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

[Section 171]-. General line of bankers, factors, harbingers, attorneys and policy brokers

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

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[Section 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".

[Section 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.

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

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

[Section 175]-. Pawnee's right as to extraordinary expenses incurred

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

[Section 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 pledge as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

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

[Section 177]-. Defaulting pawn or's right to redeem

If a time is stipulated for the payment of the debt, of 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

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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.

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