Subject :

Special Contract

Paper : LLB201

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After the completion of the course, students will be able to:

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CO3: Analyze and evaluate the provisions relating to the relevant provisions and incorporate critical thinking for solving diverse problems for attaining advocacy in the long term.

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UNIT I

Introduction of Contract of Indemnity and Guarantee

In practice, indemnity and guarantee contracts are very much related to tackle issues of risk and to safeguard the parties in a transaction. However, the two have varied applications and roles. Indemnity represent a contract between two parties where one party promises to compensate another in case of loss or damage caused due to an action or occurrence. The party providing the indemnification is the indemnifier, and the party that receives the indemnity is the indemnitee. Basically, an indemnity agreement tries to move a financial risk regarding an activity or event from an indemnitee to an indemnifier.

For instance, a construction company may indemnify the owner if loss is incurred in building operations or damages occur in the building process. It simply means that in the case of damage, the firm will refund the amount of loss to the owner.

On the other hand, a guarantee contract is a legally binding contract whereby one party takes up the liability of another in case of default of that particular party. The party issuing the guarantee is called the guarantor, and the person whom the guarantee is issued to is the creditor. A guarantee contract is mainly used to protect the creditor in case of a possible debt defaulting by the debtor.

For example, in the case of borrowing of money, a guarantor undertakes responsibility for repaying the loan if the borrower fails to do so. Thus, the lender has recourse to principals against the guarantor for recovering the amount due from him in case the borrower fails to pay.

Contract of Indemnity

Indemnity Contract: A contract in which one party accepts responsibility to compensate the other upon loss or damage coming under certain circumstances, unless there is a proviso to the contrary. It is a kind of contingent contract and encompasses all elements of validity.

Section 124 of the Act defines a contract of indemnity as an agreement whereby one party promises to protect the other from loss, caused either by his own act or by the act of another person.

There are precisely two parties in an indemnity contract, and these are:

- The Indemnifier: It means the promisor who agrees to indemnify the other party against any losses incurred.

- The Indemnified: The party assured compensation in case of incurred losses; he/she is called an indemnity holder or indemnitee.

2. **Rights and Duties of Indemnifier and Indemnity Holder**

Rights of Indemnity-Holder

The following are the rights of the indemnity-holder which he can enforce against the indemnifier under the contract:

a) Right to recover damages- He can recover from any legal action, expense, or liability, taken in whichever form the said suit is taken.

b) Right to recover all expenses of defending any such suit which the indemnity-holder could be compelled to pay in a suit brought against him, in respect of the damage.

- The right of the indemnity-holder, on the happening of such Shirley, to recover all damages which the indemnity-holder is compelled to pay in any such legal proceeding.

- The right of the indemnity-holder to recover all outlays or expenses incurred in any such legal proceeding, on the condition that the indemnity-holder did nothing against the instructions of the indemnifier and, under the circumstances of the case, acted reasonably provided as if no contract of indemnity had been executed, and the indemnifier had authorized the indemnity-holder to act under the terms of the said promise to the best of the circumstances.

The right to recover all sums paid under the terms of any compromise of such legal action, if the compromise was not against the indemnifier's instructions and was a prudent decision for the indemnity-holder to make in the absence of any contract of indemnity, or if authorised by the indemnifier to compromise the legal action.

Rights of the Indemnifier

As a result the indemnifier gains all the rights upon making payment to the indemnity holder against damages suffered to use such methods and services which may prevent damage or reduce the extent of damage.

An indemnity agreement is solely based on the idea of loss to one of the parties. In the case where loss has taken place to the other party or where the loss is definitely going to occur can indemnification be claimed.

Contract of Guarantee

Section 126 of the Indian Contracts Act defines a contract of guarantee as follows: A contract of guarantee is, a promise to perform or discharge the liability of a third person in case of their default. By its very nature, there are three parties involved in this type of contract: the principal creditor, the surety, and the principal debtor.

A contract of guarantee involves three distinct obligations:

a) First, there is an express contractual undertaking by the principal debtor to the creditor.
b) Second, in the event of default by the principal debtor, an undertaking is made by the surety to fulfill such obligation to the creditor.
c) Third, implied in the guarantee is a promise by the principal debtor that, in the event that the surety is called upon to discharge the debtor's default liability, he will indemnify the surety for such discharge.

Salient Features of Guarantee

1. Principal Debtor: The guarantee or surety arises only to secure a debt, and there must be a recoverable debt. The contract of guarantee must constitute all the essentials of a valid contract. The guarantee is valid even if the principal debtor is incompetent but not if the surety is incompetent where it becomes void.

2. Consideration: The presence of sufficient consideration is one of the essential ingredients of a valid contract. The consideration given by the principal debtor should be adequate enough to enable the surety to give a guarantee.

3. Misrepresentation: A contract induced by misrepresentation is voidable. Misrepresentation may be, directly made by the creditor or by his silent acquiescence of facts. Besides, mere silence of the creditor regarding material circumstances also avoids the guarantee.

4. Oral or Written Form: Under Section 126, a contract of guarantee is valid if it is in either oral or written form. However, to be binding under English law, a guarantee contract should be in writing and attested by the signature.

5. Consent and Misrepresentation: A guarantee obtained by misrepresentation of the creditor, or with his knowledge or consent as regards a material fact of the transaction, under Section 142, I.C.A., 1872, is void.

6. Promise to Pay in Case of Default: As in a contract of guarantee, the liability of the surety arises only upon the default of the debtor. A surety is liable to pay only when the debtor makes a default in making a payment.

SURETY'S LIABILITY

Unless expressly limited, the liability of the surety is co-extensive with the liability of the person whose debts he has guaranteed. This is the fullest extent of the surety's obligation. However, an upper limit can be provided by the contract on the amount for which the surety may be liable, thus restricting his obligation to a certain fraction of the debts owed by the principal debtor.

Under the general rule, the surety is liable for the payment of all debts due by the principal debtor to the creditor. On its part, the principal debtor reserved the right to recover from the surety costs, damages, and interests incurred. Application of these principles yields to exceptions only in instances provided by the contracts themselves.

Commencement of the liability of the surety

The liability of the surety immediately springs into existence on the default by the principal debtor. The creditor is not bound to file a suit first against the principal debtor nor is he bound to give him any notice. The liability of the surety is a limited one and his guarantee Stands discharged, once the limit specified therein is reached.

Discharge of Surety from Liability

The surety is discharged from his liability when the limit of the surety comes to an end. The following are the modes by which the surety is discharged from his liability:

1. Cancellation: A continuing guarantee may be revoked by the surety upon giving notice to the creditor. Such revocation, however, only affects future transactions.

2. Death of Surety: The death of the surety discharges the continuing guarantee in regard to future transactions.

3. Variation in Contract: Any variation in contract entered between the creditor and the principal debtor has discharged the surety from his liability.

4. Discharge or Release of Principal Debtor: If the principal debtor is discharged from a contract, the liability of the surety will cease. The discharge of the former may be caused by an act or omission of the creditor.

5. Composition, Promise not to Sue, or Extension of Time: Any variations in the contract, to which the surety is not a party, discharge them from their liability. Such variations must be material alterations in the original contract.

6. Creditor's Forbearance to Sue: Mere forbearance to sue the principal debtor does not discharge the surety from his liability.

7. Agreement with Third Person: An agreement between the creditor and a third party, to give time to the principal debtor, does not discharge the surety unless expressly provided.

8. Impairment of Surety's Remedy: Any act or omission on the part of the creditor which impairs the remedy available to the surety against the principal debtor, discharges the surety from his liability. The creditor cannot do anything which will impair the surety's rights consistently.

Rights of Surety

The rights of the surety are three-fold and are as follows:

1. **Rights against Principal Debtor**

a) **Rights of Subrogation:** Only upon satisfaction of discharging the obligation, on account of debtor's default, does the surety acquire the rights of the creditor against the principal debtor.

b) **Right to Indemnity:** Every contract of guarantee impliedly contains a promise by the principal debtor to indemnify the surety. The principal debtor is bound to refund all sums rightfully paid by the surety, except those which he has paid by mistake.

2. **Rights against Creditor:**

a) **Right to Creditor's Securities:** If there are securities held by a creditor against the principal debtor at the time of making the contract, the surety retains the right to get benefit from it. His ignorance of the securities at the time of contract does not affect his entitlement. If the creditor loses or disposes of the securities, the liability of the surety is reduced to the extent of the value lost.

b) **Right to Set-off:** Where action is brought against the surety by the creditor, the surety is entitled to set off any claims.

3. **Rights against Co-sureties**

a) **Release of Co-surety:** Release of one co-surety does not discharge the other sureties from their liability to the creditor, or to each other.

b) **Right to Contribution:** Co-sureties are undertakers of the same debt, and they are to share alike in any discharge or payment made to the creditor. The incidence of this burden is not affected by whether the liabilities arise out of the same or separate contracts, and also whether or not the co-sureties knew of one another's liabilities

4. **Right to Set-Off:**

a) **Definition:** The right of set-off enables the surety to adjust or set off against the amount payable by him under the guarantee amounts due from the creditor to the surety.

b) **Set-Off:** In case of any surety having claims against, or counter-claims to such claims by, the creditor, the surety may set off their claims against the liability under the guarantee. This simply means that if a surety is a debtor to the creditor, this amount can be set off against the debt guaranteed.

5. **Right to Counter-Guarantee:**

It grants the surety the right to claim indemnity or a counter-guarantee from the principal debtor or another party in case the former is compelled to perform such an obligation.

Application: In the event that the debt is paid or the obligation discharged by the surety, they can claim indemnity or a counter-guarantee from the principal debtor or any other person who has agreed to indemnify the surety.

6. **Right to Exoneration:**

Definition: The right of exoneration is exercised when the surety is released from the obligation upon performance of the contract by the principal debtor, or because of material changes to the contract that alter the surety's risk.

Where the liability of the principal debtor is discharged, the surety is entitled to claim discharge or exoneration of further liability. On the same principle, if there is any alteration in the contract which would enhance the risk of the surety, without his consent then also the surety is entitled to exoneration.

Difference between Contract of Indemnity and Contract Of Guarantee

1. In a contract of indemnity, there are two parties involved, whereas a contract of guarantee involves three parties.

2. A contract of guarantee involves three distinct contracts, while that of indemnity usually has one single contract.

3. In the case of a contract of indemnity, the indemnifier is primarily liable, whereas in a contract of guarantee, the liability of the surety is secondary, the debtor being primarily liable.

4. A contract of indemnity is entered into with an object to indemnify or compensate the other party from loss. The contract of guarantee ensures the creditor that either the contract will be performed by the debtor or the liability will be discharged.

5. Liability under a contract of indemnity arises only on the happening of a specified contingency. While in a contract of guarantee, the liability exists ab initio.

6. In a contract of indemnity, the indemnifier cannot sue a third party until the indemnity holder relinquishes their right in favour of the indemnifier. However, in a contract of guarantee, the surety can sue without requiring any such relinquishment on the part of the creditor.

Types of Guarantees

Guarantees are provided as a security measure for the performance of obligations in the form of actions or payments under the Indian Contract Act, 1872. It defines the types of guarantees and prescribes the rules governing the rights of sureties and their discharge from liability.

1. Specific Guarantee:

Definition: A specific guarantee is an assurance issued to cover one particular transaction or obligation only. It is limited to one contract or debt.

Example: Guaranteeing a specific bank loan or related to a particular supplier's contract; should the principal debtor default on such loan or contract, the surety will be responsible only for such obligation.

2. Continuing Guarantee:

Definition: A guarantee continuing applies to a series of transactions or obligations arising from time to time. It remains in force until revoked or discharged.

Illustration: A guarantee granted only upon the bank providing some form of additional security—above and beyond collateral—which is payable once the outstanding loan exceeds a certain amount. The surety shall remain liable for all the guaranteed obligations of the principal debtor, only if and when the said amount has been crossed.

3. Conditional Guarantee

Definition: A conditional guarantee is that where the surety's liability is conditioned on the happening of a certain event, that is to say, the obligations of the surety shall come in play only when these conditions are fulfilled.

Example: An assurance in which the surety has agreed to pay the debt only if principal debtor fails to pay after an expiration of a certain grace period. If the happening on which the guarantee is based does not occur, then surety is not liable.

Discharge of the Surety

1. Variation of the Contract:

Definition: Any material variation in the contract between the principal debtor and the creditor, if made without their consent, discharges the surety.

Illustration: If the terms of a loan agreement are altered, either by extension of the period or increase in the rate of interest etc. and the surety did not consent to it. The surety may be discharged from his liability.

2. Release of the Principal Debtor:

Definition: If the obligor discharges the liability of the principal debtor, then the surety is ipso facto discharged from his liability.

Example: In cases where the creditor agrees to excuse a debt or discharge the principal debtor under a contract, the amount of that debt is no longer required to be covered by the surety.

3. Loss of Security:

Definition: The surety is discharged to the extent of the value of the lost security in case the creditor loses any security provided by the principal debtor to secure the obligation.

Illustration: In the case of a loan secured by property, if the security be lost or destroyed, and without fault of the debtor, the surety is discharged to the extent of the value of the security.

4. Forbearance or Delay by Creditor:

Explanation: When the creditor shows undue forbearance, or delays, on his part, without the consent of the surety, in proceeding against the principal debtor, the latter shall be released from his surety.

Illustration: If the creditor agrees not to file any action against or enforce a debt against the debtor, and this act of deferment alters the surety's position in any respect, he may be discharged from his liability.

5. Non notification of Surety about Default of Principal Debtor:

Definition: If there is a default on the part of the principal debtor and the same is not brought to the notice of the surety in a reasonable time, it may result in the discharge of the surety.

Illustration: If from omission to inform the surety of the principal debtor's default, the latter is prejudiced, and by reason thereof, the surety is discharged from the obligation.

Important Case Laws

Osman Jamal and Sons Ltd. v. Gopal Purshottam AIR 1929 CALCUTTA 208

In the instant case, the plaintiff company, acting through the official liquidator in winding up proceedings, was a commission agent for buying and selling certain goods of the defendant firm.

The defendant firm had agreed to indemnify the plaintiff company against all losses and damages arising from these transactions. The vendor resold the goods at a lesser price than that agreed upon by contract, as a result of the failure of the defendant firm to take delivery. The plaintiff sued for recovery of the loss thereby incurred. The court held in favour of the plaintiff.

Lala Shanti Swarup v. Munshi Singh & Others on 3 January, 1967

In this case, the plaintiff sold mortgaged property to the defendant upon an agreement by which the defendant had promised to make certain payments sufficient to discharge a mortgage held by the mortgagee.

The defendant failed to do so, and by the default the plaintiff lost because part of his property was sold. The plaintiff sued on an implied contract of guarantee. The legal issues considered were whether there was a contract of guarantee and whether the action was barred by limitation. It was held that a conveyance containing a covenant, whereby the purchaser covenants to clear encumbrances on the property sold, implies a contract of indemnity. The cause of action in such cases is based on actual indemnification, and issuing a mortgage decree, on its own, cannot be said to involve actual indemnification.

Contract of Bailment and Pledge

Definition of Bailment:

According to provisions of section 148 of the Indian Contract Act, 1872, bailment is defined as the delivery of goods by one to another person 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’ and the person to whom the goods are delivered is called the ‘bailee.’

Essentials of Bailment:

1. Presence of Contract: Bailment arises out of a contract. The contract may be express, implied or quasi contract.

2. Goods: Bailment can be effected only in respect of goods. Goods means as defined under the Sale of Goods Act, 1930 i.e. movable property other than money and actionable claims. Thus bailment can never be effected in respect of immovable properties.

3. Delivery of Goods: For creation of rights under bailment, delivery of goods by one person to another is essentially required. The delivery of goods does not merely imply the transfer of physical custody but rather means the transfer of right of possession and control of goods. Thus when goods are transferred so as to confer the transferee with the possession and the right to exercise control over the goods but not the ownership, then delivery is said to have taken place. Delivery may be either actual, symbolic or constructive.

4. Purpose: Under the contract of bailment good are usually delivered for the accomplishment of a specific purpose. The purpose may either be safe custody, transportation, exercise of skill or use etc.

5. Return of goods: Bailee is under a duty to return the very specific goods delivered to him under bailment, when the purpose is accomplished. However, if the bailment was done for the purpose of exercise of skill and altering its form then the goods shall be returned in the altered form according to the instructions of the bailor.

Rights of Bailor

As the owner of the goods, the bailor in a bailment arrangement has certain rights that are protected under the law. These rights include:

a) Right to Compensation for Damages: The bailor has the right to claim compensation for any damages or loss suffered to the goods during the bailment period. If the bailee fails to take proper care of the goods or breaches the terms of the bailment, the bailor can seek compensation for the resulting damages
b) Right to Demand Return of Goods: The bailor has the right to demand the return of the goods from the bailee once the purpose of the bailment is accomplished or when the agreed-upon time period for the bailment expires. The bailee is bound to return the goods to the bailor or dispose of them as per the bailor’s instructions
c) Right to Terminate Bailment: The bailor has the right to terminate the bailment at any time before the purpose of the bailment is accomplished. However, the bailor must compensate the bailee for any loss incurred due to the premature termination of the bailment
d) Right to Sue for Breach of Bailment Contract: If the bailee fails to fulfil the terms of the bailment contract, the bailor has the right to sue for breach of contract and seek appropriate legal remedies, including damages for any loss suffered.

e) 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.

Duties of a Bailor:

1. Duty to disclose faults in the goods (Sec.150):

In case of gratuitous bailment, it is the duty of the bailor to disclose to the bailee the defects/ faults in the bailed goods, of which the bailor is aware and which materially interfere with the use of them or expose the bailee to extraordinary risks. If he does not make such disclosure, he is responsible to compensate the bailee for the loss arising directly from such defects/faults. If the goods are bailed non-gratuitously, the bailor is responsible for the damage caused to the bailee due to the defects/faults in goods, whether he was or was not aware of the existence of such faults in goods bailed.

2. Duty to indemnify the bailee for loss due to defective title of bailed goods (Sec. 164):

The bailor is under a duty to indemnify 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 direction in respect of them.

3. Duty to bear expenses:

In case of gratuitous bailment, where the bailed goods are held by the bailee for safe custody or for exercise of skill without consideration, it is the duty of the bailor to repay to the bailee all necessary expenses (whether ordinary or extraordinary) incurred by him for the purpose of bailment. In the case of non-gratuitous bailments, the bailor is under a duty to bear only extraordinary expenses paid by the bailee for the purpose of bailment. However, the ordinary expenses shall be borne by the bailee.

4. Duty to compensate the bailee on premature termination of gratuitous bailment:

A gratuitous bailment may be terminated at any time by the bailor. However, if such a premature termination of bailment causes any loss/damage to the bailee, exceeding the benefit derived from the bailment, the bailor is under a duty to indemnify the bailee for such excess of loss.

5. Duty to receive back the goods after the expiry of time or accomplishment of purpose of bailment:

It is the duty of the bailor to receive back the goods from the bailee, when he returns the same, upon the expiry of the time period of bailment or upon the accomplishment of the purpose of bailment. In the event of bailor's refusal to do so, he will be liable to compensate the bailee for the necessary expenses incurred for safe custody until the actual return of the goods.

Rights of a Bailee:

1. Right to deliver the goods to any one of the joint bailors (Sec. 165):

In case of bailment by several joint owners, the bailee has a right to deliver the bailed goods to any one of the joint owners upon the expiry of the time or upon accomplishment of the purpose of bailment, unless there is a specific stipulation in the contract to the contrary.

2. Right to indemnity for loss due to defect/absence of title to goods (Sec. 166):

Bailee is entitled to be indemnified by the bailor for any loss arising to him by reasons that the bailor was not entitled to make the bailment or to receive back the bailed goods or to give directions in respect of them. If the bailor has no title to the bailed goods, and the bailee delivers them back to, or according to the directions of the bailor, then the bailee shall not be responsible to the owner in respect of such 150 UNIT II : INDIAN CONTRACT ACT, 1872 delivery, provided the bailee acted in good faith without knowledge of the absence or defect in title of the bailor.

3. Right to claim compensation in case of defective goods (Sec. 150):

In case of gratuitous bailment, the bailee is entitled to claim compensation from the bailor for any loss sustained by him due to the failure on the part of the bailor to disclose any known defects/faults in the bailed goods. However, if the bailment is for consideration, i.e. non-gratuitous, the bailor will be liable to the bailee for any loss sustained by him due to the defect in bailed goods irrespective of whether the bailor was aware or not aware of the existence of such defects in bailed goods.

4. Right to claim expenses (Sec.158):

In case of gratuitous bailment, the bailee shall have the right to claim from the bailor all the necessary expenses (including extraordinary expenses) incurred by him for the purpose of the bailment. However, in case of non-gratuitous bailment the bailee has the right to claim from the bailor, only the extraordinary expenses incurred by him, for the purpose of bailment. The ordinary expenses shall be borne by the bailee, himself.

5. Right to apply to Court to decide the title to the goods (Sec. 167):

If the bailed goods are claimed by any person other than the bailor, the bailee may apply to the court to stop its delivery and to decide the title to the goods.

6. Right of lien (Secs. 170-171):

Bailee has a right of lien in respect of the bailed goods for the recovery of his lawful charges or consideration under contract of bailment. Lien is a right in one person to retain that which is in his possession, belonging to another, until some debt or claim is paid. Bailee's lien usually in the nature of particular lien but may also be general lien in some cases.

Contract of Agency

Introduction

'Agency' is a comprehensive term which is used to describe the relationship that arises when one person is appointed to act as the representative of another to create legal relation with third parties.1 The person appointing another as his representative is the 'principal', and the person authorised to be his 'representative in creating legal relation with the third person' is the 'agent'. An agent works for his principal within the 'scope of authority' given to him by the principal. In his dealings with third party, the agent represents the principal. The contract thus made through the agent does not bind him, instead it binds the principal, since it is the principal's contract. The doctrine underlying agency is that he who does an act through another is deemed in law to do himself Even two principals (co-principals) can jointly appoint an agent for the matters in which both of them are jointly interested; while also two persons can be appointed as agents, where the principal shall be bound by the acts of either unless the contract of agency requires them to act jointly.

Agency, even in its simplest form, is triadic. It involves a third party, an agent, and a principal. The principal and agent interact directly, as do the agent and third party. The principal, however, does not interact directly with the third party; instead, the agent's interaction with the third party, creates a binding contract between the principal and the third party. Once contract is made, the agent has no further role to play. The relationship of authority between principal and agent determines who is bound by the contract the agent enters. 'Authority' of an agent derived from principal signifies his 'capacity to bind' his principal. The representative character and the derivative authority are essentials for establishing a principal-agent relationship. Acts of agent within the scope of authority derived from his principal, bind the principal; while acts beyond the scope of authority bind the agent as they are not the acts for which he can be said to be invested with legal power to alter his principal's legal relations with third parties.

'Procedure' for Creation of Agency

Agency is founded upon contract- express or implied. There is no specific procedure prescribed by the Indian Contract Act, 1872 for the creation of agency. The Act lays down certain general principals in wide terms about agency which are not exhaustive. The question of agency is one of intention to be gathered from terms of contract and the surrounding circumstances. In general, a formal contract is not mandatory to establish an agency relationship, it may exist solely on the conduct of the parties involved.

However, there may be requirements that need to be fulfilled as per provisions of law in specific situations.

a. Specific requirements under different laws.

As per the Indian Contract Act, 1872, the appointment of an agent does not need to be in writing unless it is required by any specific law. For example, the appointment of a pleader to appear or act for a person must be in writing as prescribed by Order 3, Rule 4 of the Code of Civil Procedure, and cannot be revoked by the mere will of the client. Likewise, according to the Powers of Attorney Act, 1882 authority by the appointer is to be given to the donee in writing, with his own name, signatures and seal, to act for and in the name of person executing it. According to Section 105, Companies Act, 2013 the appointment of a proxy to attend meetings and vote on behalf of a member has to be in writing and duly signed by the appointer.

b. Appointment of agent under statutory powers

An agent may be appointed by a person other than the principal. It may be appointment under statutory powers by a person appointed to represent an estate or appointment by a guardian.

c. Restrictions to be appointed as an agent

Certain restrictions may be imposed on who may be appointed as an agent. For example, under the Advocates Act, 1961 only an advocate can represent a person in court.

Statutory Requirements for Contract of Agency

a. Principal should be competent to contract (Section 183)

Section 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.

The principal who employs an agent has to be competent to contract. A person incompetent to contract cannot do something through someone what he cannot do himself. For instance, a power of attorney executed by a person of unsound mind or a minor is void and the deed of transfer executed on the authority of such power is a nullity.

b. Agent's representative character

Section 182. "Agent" and "principal" defined.—An "agent" is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal". A person who is competent to contract may appoint anyone on his behalf to do something that he can do personally.

According to Section 182 "an 'agent' is a person employed to do any act for another, or to represent another in dealings with third persons. The agent has the power to create privity between the principal and the third party. The representative character of 'agent' distinguishes principal-agent relationship from master-servant relation, or relationship between an employer and his independent contractor.

c. Agent may or may not be competent to contract

Section 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.

Section 184 declares that any person may become an agent. This means that a person who is not competent to contract may be appointed as an agent. However, such an agent who is either a minor or a person of unsound mind, will not be responsible to his principal for any loss caused by him in conducting the business of agency. The principal takes upon himself the risk of appointing an incompetent person to be his representative in his dealings with the third persons.

d. No consideration for creation of agency

Section 185. Consideration not necessary. —No consideration is necessary to create an agency. Section 185 declares that no consideration is necessary "to create an agency". The section does not say that consideration is not required at all for a contract of agency. Unlike other contracts, principal-agent relationship may be created even if there was no consideration at the time of creation of agency. For example, law recognises agency in emergency, where no consideration is required to create agency. The absence of consideration does not invalidate the agency agreement. The authority of an agent to act on behalf of the principal remains intact even when no consideration is exchanged.

The contract of agency is however, not without consideration. The agent is entitled to remuneration for all the business conducted by him. This remuneration is the consideration for his services.

e. Agent's authority may be express or implied

Section 186. Agent's authority may be expressed or implied.—The authority of an agent may be expressed or implied.

Section 187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

A principal may appoint an agent by express words. But the authority of an agent may also be inferred from the facts and circumstances of the case, the ordinary course of dealing and communication between the parties- oral or written.

Test to Establish Agency

Agency relationships are not always created by formal agreements and may arise in different ways. There are various commercial relationships that resemble agency relationships in form but vary in substance. Therefore, it becomes essential to determine how their existence is established, and what legal tests courts apply to identify such relationships, and why the determination of agency is significant in fixing rights and liabilities among the parties involved.

In a significant judgment Bharti Cellular Ltd. (Now Bharti Airtel Limited) v. Assistant Commissioner of Income Tax15, the Supreme Court elucidated the unique 'triangular relationship' between the principal, agent and the third party in agency relationships in determining the existence of a principal-agent or principal-principal relationship. It established a five factor test to qualify as an agent that must be examined:

(a) Legal power to alter principal's legal relationship: The most important criteria in determining whether someone is an agent is the legal power vested with the agent to alter his principal's legal relationship with a third party and the principal's co-relative liability to have his relations altered.

(b) Degree of control: The second important test is to determine the degree of control exercised by the principal over the conduct of activities of the agent who acts on behalf of the principal. This degree of control is less than the control exercised by the master on the servant, and is different from the rights and obligations in case of principal to principal and independent contractor relationship.

(c) Substance of relationship over nomenclature: Thirdly, the true nature of the relationship should be examined by reference to the functions, responsibility and obligations of the so-called agent to the principal and to the third parties. The substance rather than the nomenclature of the relationship between the parties is of primary importance.

(d) Fiduciary relationship: Fourthly, the task entrusted by the principal to the agent should result in a fiduciary relationship. The fiduciary relationship is the manifestation of consent by one person to another to act on his or her behalf and subject to his or her control, and the reciprocal consent by the other to do so.

(e) Liability to render accounts: Lastly, the agent should be liable to render accounts for the business done on behalf of his principal's account and should be entitled to remuneration from the principal for the work he performs for the principal. The main criteria in determining whether someone is an agent, is the power of the agent to affect the principal's position.

The true factual position must be investigated to determine whether a relationship of agency has come into existence between a set of parties or individuals. It is essential to examine each case in view of its unique facts and circumstances, and the nature, scope and extent of authority given to a person. In day to day life, the expression ‘agency’ is used to include a vast number of relationships, which are strictly, not relationships between a principal and agent.

Reference Case Laws of Contract (2024)

a) In the case of Blue Dreamz Advertising Pvt. Ltd. vs. Kolkata Municipal Corporation Civil Appeal No. 8516 of 2024 the Supreme Court ruled that a statutory body or state entity cannot resort to the extreme penalty of blacklisting or debarment for an ordinary, bona fide contractual breach. The court emphasized that administrative actions must strictly follow the principle of proportionality and are subject to public law review rather than being treated as absolute private business decisions.

b) Crosslink Food & Farms Pvt. Ltd. v. Lloyds Realty Developers Ltd. (2025): Decided by the Bombay High Court on August 26, 2025, this case evaluated the core parameters of a pledge of shares as a form of bailment under Section 172 and Section 176 of the Indian Contract Act, clarifying the pawnee's rights to retain or sell pledged securities upon debt default.

c) Vuenow Group Digital Asset Controversy (2025): Legal analysts widely discussed this matter regarding the modern expansion of bailment principles to digital "cloud particles" and data storage units worth ₹3,558 crore, testing traditional definitions of possession and safekeeping of digital assets under contract law.

d) Shriram General Insurance Co. Ltd. v. Raghuveer Lal (2025): Addressed by consumer and appellate forums, reinforcing the liability of a bailee in mutual-benefit bailments (such as commercial vehicle parking or servicing) to exercise standard reasonable care and safely return the bailed property.

e) Economic Transport Organization v. Charan Spinning Mills (P) Ltd4. (2010). The Supreme Court of India explained that the doctrine of subrogation allows the surety to step into the shoes of the creditor and exercise all the rights that the creditor had against the principal debtor. This includes the right to securities and claims, ensuring the surety can recover the amount paid from the debtor

f) Jagannath Ganeshram Aggarwala v. Shivnarayan Bhagirath, AIR 1940 Nag 170: Establishing that a surety’s liability persists despite the principal debtor’s discharge due to insolvency.

g) State Bank of India Vs. V. Ramakrishnan & Anr. – Supreme Court: The Supreme Court held that Section 14(3) of the IBC, which states that the moratorium does not apply to sureties, is retrospective.

h) Laxmi Pat Surana Vs. Union Bank of India & Anr. – Supreme Court: The Supreme Court held that the liability of a guarantor under IBC is co-extensive with that of the principal debtor, reinforcing that CIRP can be initiated against the guarantor regardless of the principal borrower’s corporate status.

i) Mr. Vikas Aggarwal Vs. Asian Colour Coated Ispat Ltd. and Ors. – NCLAT, New Delhi: The Tribunal ruled that a resolution plan could vary and modify the rights of creditors and guarantors, including the extinguishment of subrogation rights of personal guarantors.

j) Edelweiss Asset Reconstruction Company Ltd. vs. V Mahesh IRP Vasan Health Care Pvt. Ltd. and Anr.8 – NCLAT - the NCLAT addressed the rejection of a claim based on a corporate guarantee issued by Vasan Healthcare Pvt. Ltd. The Tribunal found that the

Interim Resolution Professional (IRP) and the Adjudicating Authority had erroneously rejected the claim on technical grounds, such as the guarantee not being reflected in the books of accounts. The NCLAT ruled that the existence of the corporate guarantee was established and directed the Resolution Professional to admit the appellant's claim.

k) Intec Capital Ltd. vs. Shwet Biotech Pvt. Ltd9. (NCLAT, 2023): The NCLAT held that CIRP can be initiated against a corporate entity that has given a guarantee to secure the dues of a non-corporate entity, as a financial debt accrues to the corporate person in respect of the guarantee given once the borrower defaults.

l) SVA Family Welfare Trust & Anr. Vs. Ujaas Energy Ltd. & Ors10. – NCLAT, New Delhi: The National Company Law Appellate Tribunal (NCLAT) ruled that personal guarantees can be relinquished in a resolution plan if the financial creditors agree to accept a particular value for the relinquishment. This decision emphasized the commercial discretion of the Committee of Creditors (CoC).

m) Roshan Lal Mittal and Ors. v. Rishabh Jain and Ors11. – NCLAT, New Delhi: NCLAT reaffirmed that a resolution plan does not automatically discharge the personal guarantors from their obligations, referencing the Supreme Court judgment in Lalit Kumar Jain vs. Union of India & Ors.

n) Puro Naturals JV vs. Warana Sahakari Bank & Ors12. (NCLAT, 2023): NCLAT held that a resolution plan providing for the extinguishment of security interest and guarantees of financial creditors, including dissenting financial creditors, is not contrary to the provisions of Section 30(2) of the IBC and CIRP Regulations.

o) State Bank of India vs. Ms. Savita Satish Gowda13 (NCLT Mumbai Bench): The NCLT held that it retains jurisdiction to entertain petitions related to personal guarantees of a corporate debtor even after the approval of the resolution plan.

p) Lalit Mishra & Ors. vs. Sharon Bio Medicine Ltd. & Ors14. (NCLAT): The NCLAT emphasized that it was not the legislature's intention to benefit personal guarantors by excluding legal remedies available to creditors for recovering legitimate dues through personal guarantees. (Appeal against the judgment also dismissed by the Supreme Court)

q) J.C. Flowers Asset Reconstruction Pvt. vs. Deserve Exim Pvt. Ltd15. (NCLAT, 2023): The NCLAT held that the date of default by the guarantor arises only when a demand is issued by the bank to the corporate guarantor, and not before.

r) Sudip Bijoy Dutta Vs. State Bank of India16 – NCLAT New Delhi: The Tribunal ruled that a personal guarantee remains enforceable even if the guarantor acquires foreign citizenship post the execution of the guarantee.

s) UV Asset Reconstruction Company Ltd. vs. Electrosteel Castings Ltd17(NCLAT, 2024): The NCLAT held that the approval of a resolution plan does not ipso facto discharge a personal guarantor or third party from their liabilities.

Important Questions

1. Explain the Contract of Indemnity and Contract of guarantee.
2. Discuss the rights and duties of Indemnifier and Indemnity Holder.
3. Discuss the liabilities of surety
4. Discuss the Contract of Bailment and Contract of Pledge.
5. Explain the rights and duties of Bailor and Bailee.
6. Discuss Contract of Agency.
7. Write short note on del credere agent.

Unit II: - Specific Relief Act,1963

Introduction

The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. It contains provisions, inter alia, specific performance of contracts, contracts not specifically enforceable, parties who may obtain and against whom specific performance may be obtained, etc. It also confers wide discretionary powers upon the courts to decree specific performance and to refuse injunction, etc. As a result of wide discretionary powers, the courts in majority of cases award damages as a general rule and grant specific performance as an exception.

The tremendous economic development since the enactment of the Act have brought in enormous commercial activities in India including foreign direct investments, public private partnerships, public utilities infrastructure developments, etc.; which have prompted extensive reforms in the related laws to facilitate enforcement of contracts, settlement of disputes in speedy manner. It has been felt that the Act is not in tune with the rapid economic growth happening in our country and the expansion of infrastructure activities that are needed for the overall development of the country.

In view of the above, Parliament enacted Specific Relief (Amendment) Act, 2018 and it came into effect from 01 October, 2018 to do away with the wider discretion of courts to grant specific performance and to make specific performance of contract a general rule than exception subject to certain limited grounds and to provide for substituted performance of contracts, where a contract is broken, the party who suffers would be entitled to get the contract performed by a third party or by his own agency and to recover expenses and costs, including compensation from the party who failed to perform his part of contract.

The law relating to specific relief in India is provided in the Specific Relief Act of 1963. The Specific Relief Act, 1963 was enacted to define and amend the law relating to certain kinds of specific relief. The expression 'specific relief' means a relief in specie. It is a remedy which aims at the exact fulfillment of an obligation.

The Specific Relief Act, 1963 is not exhaustive. It does not consolidate the whole law on the subject. As the Preamble would indicate, it is an Act" to define and amend the law relating to certain kinds of specific relief". It does not purport to lay down the law relating to specific relief in all its ramifications (AIR 1972 SC 1826)

There are other kinds of specific remedy provided for by other enactments e.g. the Transfer of Property Act deals with the specific remedies available to a mortgagor or mortgagee; the Partnership Act deals with the specific remedies like dissolution and accounts as between partners.

Under the Specific Relief Act, 1963, remedies have been divided as specific relief

(Sections 5-35) and preventive relief (Sections 36-42). These are:

(i) Recovering possession of property (Sections 5-8);

(ii) Specific performance of contracts (Sections 9-25);

(iii) Rectification of Instruments (Section 26);

(iv) Rescission of contracts (Sections 27-30);

(v) Cancellation of Instruments (Section 31-33);

(vi) Declaratory decrees (Sections 34-35); and

(vii) Injunctions (Sections 36-42).

Recovering Possession of Property

Recovery of specific immovable property

According to Section 5 of the Specific Relief Act, 1963 a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Suit by person dispossessed of immovable property

Section 6 provides that if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person ***through whom he has been in possesion or any person*** claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

No suit under section 6 shall be brought—

(a) after the expiry of six months from the date of dispossession; or

(b) against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under section 6, nor shall any review of any such order or decree be allowed.

Section 6 shall not bar any person from suing to establish his title to such property and to recover possession thereof.

Recovery of specific movable property

As per Section 7 a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Explanation 1.—A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2. —A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession

Section 8 provides that any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:—

(a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;

(b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;

(c) when it would be extremely difficult to ascertain the actual damage caused by its loss;

(d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation. —Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (*b*) or clause (*c*) above , presume—

(a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;

(b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

SPECIFIC PERFORMANCE OF CONTRACTS

Defences respecting suits for relief based on contract

According to section 9, where any relief is claimed in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts.

Specific performance in respect of contracts

As per section 10 of the Act, the specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16 of the Specific Relief Act, 1963.

Cases in which specific performance of contracts connected with trusts enforceable

Section 11 provides that except as otherwise provided in this Act, specific performance of a ***contract shall*** be enforced when the act agreed to be done is in the performance wholly or partly of a trust.

A contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

Specific performance of part of contract

Section 12 deals with specific performance of a part of a contract. Sub-section (1) lays down the general principle that except as otherwise hereinafter provided in this section, the Court shall not direct the specific performance of a part of a contract. Sub-sections (2)-(4) lay down the exceptions to this general rule as follows:

(i) Sub-section 2 says that where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value and admits of compensation in money, the Court may, at the suit of the either party, direct the specific performance of so much of the contract as can be performed and award compensation in money for the deficiency.

A contracts to sell B a piece of land consisting of 100 *bighas*. It turns out that 98 *bighas* of the land belongs to A and the two remaining *bighas* to a stranger, who refuses to part with them. The two bighas are not necessary for the use of enjoyment of the 98 *bighas,* nor so important for such use or enjoyment that the loss of them may not be made in goods or in money. A may be directed at the suit of B to convey to B the 98 *bighas* and to make compensation to him. For not conveying the two remaining *bighas;* B may be directed at the suit of A, to pay to A, on receiving the conveyance and possession of the land, the stipulated purchase money less the sum awarded as compensation for the deficiency.

(ii) Sub-section 3 lays down that where a party to a contract is unable to perform the whole of his part of it, and the part which must be left unperformed either (a) forms a considerable part of the whole, though admitting of compensation in money; or (b) does not admit of compensation in money; he is not entitled to obtain a decree for specific performance; but the Court may, at the suit of the other party, direct the party in default to perform specifically so much of his part of the contract as he can perform, if the party (i) in a case falling under clause (a), pays or has paid the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed and in a case falling under clause (b), pays or has paid the consideration for the whole of the contract without any abatement, and (ii) in either case, relinquishes all claims to the performance of the remaining part of the contract and all rights to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.

For example, A contracts to sell B a piece of land consisting of 100 bighas for Rs. 1,00,000. It turns out that only 50 bighas of land belong to A. 50 bighas are substantial part of the contract. A cannot demand specific performance of the contract but B can demand specific performance to get 50 bighas of land from A by paying the full consideration i.e. Rs. 1,00,000.

Sub-section 4 lays down that when a part of a contract which taken by itself, can and ought to be specifically performed, stands on a separate and independent footing from another part of the same contract which cannot or ought not to be specifically performed, the Court may direct specific performance of the former part.

For the purposes of this section, a party to the contract shall be deemed to be unable to perform the whole of his part of it, if a portion of its subject matter existing at the date of the contract has ceased to exist at the time of its performance.

Rights of purchaser or lessee against person with no title or imperfect title

Section 13 lays down the rights of a purchaser or lessee against the seller or lessor with no title or imperfect title. It lays down that where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely: —

(a) if the vendor or lessor has subsequently to the contract acquired any interest in th e property, the purchaser or lessee may compel him to make good the contract out of such interest;

(b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;

(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;

(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.

Above provisions shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Contracts not specifically enforceable

Section 14 lays down the contracts which cannot be specifically enforced. The following contracts cannot be specifically enforced, namely: —

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20; a contract, the performance of which involves the performance of a ~~continuous duty which the court cannot supervise;~~

(b) *a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and*

(c) *a contract which is in its nature determinable.*

Power of court to engage experts

Section 14A (1) provides that without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908, in any suit under this Act, where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.

Section 14A (2) lays down that the court may require or direct any person to give relevant information to the expert or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

As per Section 14A (3) the opinion or report given by the expert shall form part of the record of the suit; and the court, or with the permission of the court any of the parties to the suit, may examine the expert personally in open court on any of the matters referred to him or mentioned in his opinion or report, or as to his opinion or report, or as to the manner in which he has made the inspection.

According to Section 14A (4) the expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct.

Who may obtain specific performance

Section 15 lays down that the specific performance of a contract may be obtained by—

(a) any party thereto;

(b) the representative in interest or the principal, of any party thereto:

It may be noted that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party.

(c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled thereunder;

(d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder man; a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;

(e) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach; *(fa) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.*

(f) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(g) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

Personal bars to relief

According to Section 16 Specific performance of a contract cannot be enforced in favour of a person—

(a) who has obtained substituted performance of contract under section 20; or

(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(c) *who fails to prove* that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which has been prevented or waived by the defendant.

Explanation. —For the purposes of clause (*c*)above,-

(i) where a contract involves the payment of money, it is not essential for the plaintif f to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff ***must prove*** performance of, or readiness and willingness to perform, the contract according to its true construction.

Contract to sell or let property by one who has no title, not specifically enforceable As per Section 17, a contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor—

(a) who, knowing himself not to have any title to the property, has contracted to sell or let the property;

(b) who, though he entered into the contract believing that he had a good title to the property, cannot at the time fixed by the parties or by the court for the completion of the sale or letting, give the purchaser or lessee a title free from reasonable doubt.

The above provisions shall also apply, as far as may be, to contracts for the sale or hire of movable property.

Non-enforcement except with variation

Where a plaintiff seeks specific performance of a contract in writing, to which the defendant sets up a variation, the plaintiff cannot obtain the performance sought, except with the variation so set up, in the following cases, namely:—

(a) where by fraud, mistake of fact or misrepresentation, the written contract of which performance is sought is in its terms or effect different from what the parties agreed to, or does not contain all the terms agreed to between the parties on the basis of which the defendant entered into the contact;

(b) where the object of the parties was to produce a certain legal result which the contract as framed is not calculated to produce;

(c) where the parties have, subsequently to the execution of the contract, varied its terms.

Relief against parties and persons claiming under them by subsequent title

Section 19 lays down that specific performance of a contract may be enforced against—

(a) either party thereto;

(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company. It may be noted that the company has accepted the contract and communicated such acceptance to the other party to the contract.

Substituted performance of contracts, etc.

Section 20(1) lays down that without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.

According to section 20(2), No substituted performance of contract under above sub-section

(1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency.

However, the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

Section 20(3) provides that where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

Section 20 shall not prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

Special provisions for contract relating to infrastructure project

Section 20A lays down Special provisions for contract relating to infrastructure project. According to section 20A(1), No injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the Schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.

As per Section 20A(2), the Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors.

Section 20A(3) provides that every notification issued under the Act by the Central Government shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification

Special Courts

Section 20B empowers the State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects

Expeditious disposal of suits

Section 20C states that notwithstanding anything contained in the Code of Civil Procedure, 1908, a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant.

The above stated period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court.

Power to award compensation in certain cases

Under section 21 of the Specific Relief Act, 1963, the Court is empowered to award compensation in certain cases. They are as follows:

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, *in addition to*, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint. However, where the plaintiff has not claimed any such

compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. Even if the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

Power to grant relief for possession, partition, refund of earnest money, etc

Section 22 gives power to grant relief for possession, partition, refund of earnest money, etc. Under section 22(1) any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

No relief under clause (*a*) or clause (*b*) of sub-section (*1*) shall be granted by the court unless it has been specifically claimed. Where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

The power of the court to grant relief under clause (*b*) of sub-section (*1*) shall be without prejudice to its powers to award compensation under section 21.

Liquidation of damages not a bar to specific performance

According to Section 23, a contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to th e party in default an option of paying money in lieu of specific performance. When enforcing specific performance, the court shall not also decree payment of the sum so named in the contract.

Bar of suit for compensation for breach after dismissal of suit for specific performance
Section 24 provides that the dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

Enforcement of awards and directions to execute settlements

RECTIFICATION OF INSTRUMENTS

Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties. Section 26 of the Specific Relief Act, 1963 contains the law as to rectification of instruments.

Section 26 (*1*) provides that when, through fraud or a mutual mistake of the parties a contract or other instrument in writing not being the articles of association of a company to which the Companies Act, applies does not express their real intention, then—

(a) either party or his representative in interest may institute a suit to have the instrument rectified; or

(b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or

(c) a defendant in any such suit as is referred to in clause (*b*), may, in addition to any other defence open to him, ask for rectification of the instrument.

If, in any suit in which a contract or other instrument is sought to be rectified, the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.

A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.

Relief for the rectification of an instrument shall not be granted to any party under this section unless it has been specifically claimed. Where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

Rescission of Contracts

Section 27 deals with when rescission may be adjudged or refused. “Rescission” means putting an end to a contract which is still operative and making it null and void *ab initio.* It does not apply to void contracts.

Section 27(1) states that any person interested in a contract may sue to have it rescinded, and such rescission may be adjudged by the court in any of the following cases, namely:—

(a) where the contract is voidable or terminable by the plaintiff;

where the contract is unlawful for causes not apparent on its face and the defendant is more to blame than the plaintiff.

As per Section 27(2) the court may refuse to rescind the contract—

(a) where the plaintiff has expressly or impliedly ratified the contract; or

(b) where, owing to the change of circumstances which has taken place since the making of the contract (not being due to any act of the defendant himself), the parties cannot be substantially restored to the position in which they stood when the contract was made; or

(c) where third parties have, during the subsistence of the contract, acquired rights in good faith without notice and for value; or

(d) where only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed

Section 28(*1*) provides that where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

As per Section 28 (*2*), where a contract is rescinded under sub-section (*1*), the Court—

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor; and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and, if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

According to Section 28(*3*), if the purchase or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (*1*), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:—

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

Separate suit in respect of any relief which may be claimed shall not lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be. The costs of any proceedings under this section shall be in the discretion of the court.

Alternative prayer for rescission in suit for specific performance

Section 29 of the Act, provides that a plaintiff instituting a suit for the specific performance of a contract in writing may pray in the alternative that, if the contract cannot be specifically enforced, it may be rescinded and delivered up to be cancelled; and the court, if it refuses to enforce the contract specifically, may direct it to be rescinded and delivered up accordingly.

Court may require parties rescinding to do equity

According to Section 30, on adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may be require.

Cancellation of Instruments

Section 31 dealing with when cancellation may be ordered. Section 31(*1*) provides that any person against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding may cause him serious injury, may sue to have it adjudged void or voidable; and the court may, in its discretion, so adjudge it and order it to be delivered up and cancelled.

As per Section 30(*2*, if the instrument has been registered under the Indian Registration Act, 1908, the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.

What instruments may be partially cancelled

According to Section 32 of the Act, where an instrument is evidence of different rights or different obligations, the court may, in a proper case, cancel it in part and allow it to stand for the residue.

Power to require benefit to be restored or compensation to be made when instrument is cancelled or is successfully resisted as being void or voidable

Section 33 provides that on adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the other party and to make any compensation to him which justice may require.

Where a defendant successfully resists any suit on the ground—

(a) that the instrument sought to be enforced against him in the suit is voidable, the court may if the defendant has received any benefit under the instrument from the other party, require him to restore, so far as may be, such benefit to that party or to make compensation for it;

(b) that the agreement sought to be enforced against him in the suit is void by reason of his not having been competent to contract under section 11 of the Indian Contract Act, 1872, the court may, if the defendant has received any benefit under the agreement from the other party, require him to restore, so far as may be, such benefit to that party, to the extent to which he or his estate has benefited thereby

Declaratory Decrees

A declaratory decree is a decree whereby any right as to any property or the legal character of a person is judicially ascertained.

The Supreme Court in *State of Madhya Pradesh v. Mangilal Sharma, 1997 (7) SCALE 783*, held that a declaratory decree merely declares the right of the decreehoder vis-a-vis the judgement debtor and does not in terms direct the judgement debtor to do or refrain from doing any particular act or thing. It cannot be executed as it only declares the rights of the decree-holder qua the judgement debtor and does not, in terms, direct him to do or refrain from doing any particular act or thing

Discretion of court as to declaration of status or right

Section 34 lays down that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

It may be noted that court shall not make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Effect of declaration

According to Section 35 of the Act, a declaration made is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

Preventive Relief

Part III of the Specific Relief Act, 1963 grants specific relief called Preventive Relief i.e., preventing a party from doing that which he is under an obligation not to do. Preventive relief is granted at the discretion of the court by way of an injunction.

An injunction is a specific order of the Court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun, or in some cases (when it is called a ‘mandatory injunction’) commanding active restitution of the former state of things.

Lord Halsbury defines injunction as “a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing”.

The main difference between an injunction and specific performance is that the remedy in case of an injunction is generally directed to prevent the violation of a negative act and therefore deals not only with contracts but also with torts and many other subjects of purely equitable one, whereas specific performance is directed to compelling performance of an active duty.

It is known as a “judicial process by which one, who has invaded or is threatening to invade the rights (legal or equitable) of another is restrained from continuing or commencing such wrongful act. Injunction is the most ordinary form of preventive relief. For the effective administration of justice, this power to prevent and to restrain is absolutely necessary.

Characteristics of an injunction

An injunction has three characteristic features;

(a) It is a judicial process.

(b) The object of this judicial process is to restrain or to prevent.

(c) The act restrained or prevented is a wrongful act. An injuction acts or operates always in *personam*.

If the wrongful act has already taken place, the injunction prevents its repetition. If it is merely threatened, the threat is prevented from being executed.

Injunctions Generally

As per Section 36 of the Act, preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

Temporary and perpetual injunctions

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

(2) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Perpetual Injunctions

Specific performance is decreed to compel the performance of an active duty, while injunction is decreed to prevent the violation of a negative duty. Normally, the former deals with contracts, while the latter with torts and other subjects of equitable nature. If a contract is positive in its nature, it calls for the relief of specific performance, on the other hand, if it is negative in its nature, it calls for relief of injunction.

The principle governing the award of injunction as a mode of enforcement of contracts is similar to that of specific performance. This is clearly borne out by Section 38(2) of the Act. Thus, the enforcement of a contract is governed by both specific relief and injunction. "The jurisdiction of equity to grant such injunction is substantially coexistent with its jurisdiction to compel a specific performance". But still their fields of operation are separate from each other. While a promise to do is enforced by specific performance, a promise to forbear is enforced by injunction. Section 41(e) further provides that contract which will not be affirmatively enforced by a decree of specific performance, will not be negatively enforced by issuing an injunction. The only exception to this rule is found in Section 42.

Perpetual injunction when granted

According to Section38 states that a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication. When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—

(a) where the defendant is trustee of the property for the plaintiff;

(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;

(c) where the invasion is such that compensation in money would not afford adequate relief;

(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Mandatory injunctions

As per Section 39 of the Act, when, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Damages in lieu of, or in addition to, injunction

Section 40 dealing with damages in lieu of, or in addition to, injunction. It states that the plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.

Relief for damages shall not be granted unless the plaintiff has claimed such relief in his plaint. Where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.

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

Injunction when refused

Section 41 gives a list of cases when injunction cannot be granted. It says that an injunction cannot be granted —

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not sub-ordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;

(j) when the plaintiff has no personal interest in the matter.

Injunction to perform negative agreement

Section 42 of the Act provides that notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement. It may be noted that the plaintiff has not failed to perform the contract so far as it is binding on him.

Reference Case Laws related to Specific Relief Act,1963

1. Vasantha (Dead) Thr. L.R. vs Rajalakshmi @ Rajam (Dead) Thr. Lrs. on 13 February, 2024

In this case the Supreme Court held that The Supreme Court observed that as per Section 27 of the Limitation Act, 1963, the lapse of limitation bars only the remedy but does not extinguish the title.

1. Reaffirming and Interpreting the 2018 Amendment: Discretion as a Guided Rule

A central theme in recent jurisprudence is the Court's interpretation of the 2018 amendment. The Court has consistently held that while the amendment creates a rebuttable presumption in favour of specific performance for immovable property contracts, it does not efface the court's equitable discretion under Section 20.

In **Rajesh Gupta vs. Ram Gopal (2024)**, a three-judge bench meticulously analysed the interplay between the amended Section 10 and Section 20. The Court held that the explanation to Section 10, stating that "unless and until the contrary is proved, the court shall presume" adequacy of specific performance, shifts the initial burden of proof to the defendant. The defendant must now demonstrate why monetary compensation would be an adequate remedy or why equity demands denial. However, the Court cautioned that this presumption is not an "irrebuttable presumption of law." The plaintiff's own conduct, delays, unfairness, or statutory bars under Sections 14, 16, and 20 can rebut it. The judgment clarifies that the amendment has not created an absolute right but has structured the discretion, making specific performance the starting point of the enquiry rather than a last resort.

2. The Unyielding Scrutiny of "Readiness and Willingness" (Section 16(c))

The amended Section 16(c), which mandates that readiness and willingness be ascertained from the plaintiff's conduct throughout the transaction, has been the subject of intense judicial scrutiny. The Court has adopted a strict, evidence-based approach, moving beyond mere averments in the plaint.

The landmark case of **Vasantha Viswanathan vs. V.K. Elangovan (2023)** is illustrative. Here, the plaintiff, despite having an agreement to sell in her favour, failed to prove the continuous availability of funds to complete the purchase. The Court examined her bank statements and financial transactions and found a significant gap between the purported source of funds and the timeline of the agreement. It emphasized that "readiness" refers to financial capacity and preparedness, while "willingness" relates to conduct and intention. Both must co-exist from the date of the contract until the decree. The Court held that sporadic correspondence expressing intent, without demonstrable and consistent financial wherewithal, is insufficient. This judgment has made it imperative for plaintiffs to maintain and present clear, contemporaneous evidence of financial preparedness.

In **Arun Kumar vs. S. Regupathy (2024)**, the Court extended this principle to conduct indicating waiver or abandonment. The plaintiff, after entering into an agreement, remained silent for over two years while the defendant repeatedly wrote seeking clarification on the progress. The Court construed this silence, in the face of the defendant's calls for performance, as a manifestation of unwillingness. It noted that the amendment to Section 16(c) brings "conduct" to the forefront, and passive inactivity can be fatal to a claim for specific performance.

3. Contracts Contingent on Third-Party or Governmental Permissions

A significant line of cases has dealt with agreements made subject to conditions precedent, such as obtaining no-objection certificates (NOCs), layout approvals, or sanctions from relevant authorities. The Court has drawn a sharp distinction between contracts void due to uncertainty and contracts enforceable upon the fulfilment of a condition.

The pivotal judgment in **M/s. Urban Estates vs. State of Haryana (2025)** involved a development agreement contingent upon the vendor obtaining a change of land use (CLU) permission. The vendor made no efforts to secure the CLU. The Supreme Court, relying on Section 35 of the Indian Contract Act, 1872, held that where a contract is contingent on an event, the promisor is under an implied obligation not to act in a manner that prevents the fulfilment of that condition. By neglecting to apply for the CLU, the defendant had breached this implied duty. The Court ruled that the contract became enforceable, and the defendant could not take shelter behind the unfulfilled condition of its own making. This judgment imposes a duty of good faith and reasonable effort on the party responsible for fulfilling a condition precedent.

Conversely, in **Shakti Estates vs. K. Balakrishnan (2023)**, the agreement itself was vague, stating the sale would proceed "subject to necessary approvals" without specifying whose responsibility it was to obtain them or the timeline. The Court found this uncertainty went to the root of the contract, making it incapable of specific enforcement under Section 14(1)(a) of the Specific Relief Act. The distinction underscores the necessity for clear, unambiguous terms regarding contingencies in contracts intended to be specifically enforced.

4. The Demise of "Exceptional Circumstances" as a Vague Defence

Prior to the 2018 amendment, defendants often invoked the catch-all phrase "exceptional circumstances" under Section 20 to deny relief. Recent judgments have curtailed this, demanding concrete, evidence-backed grounds.

In **P. Lakshmi vs. Y. Venkateshwarlu (2024)**, the defendant merely pleaded that "economic conditions had changed" and the price had risen, without any specific evidence of undue hardship that would make enforcement inequitable. The Court rejected this, stating that market fluctuations and inflationary trends are inherent business risks and, by themselves, do not constitute exceptional circumstances. It reaffirmed that the hardship must be of such a degree that it would be oppressive or fraudulent to enforce the contract. This tightens the standard for invoking Section 20's discretionary denial.

5. Development Agreements and Joint Ventures: A Distinct Species

The Court has recognized development agreements and builder-buyer/joint venture arrangements as a unique category, where the essence is not merely transfer of title but the collaborative execution of a project. Specific performance in such cases often requires ongoing supervision.

In the significant ruling of **M/s. Divine Infracon vs. Cherish Pal Singh (2025)**, the Supreme Court granted specific performance of a development agreement where the landowner had repudiated after the developer had invested substantial sums and obtained several crucial approvals. The Court held that in such composite contracts, where one party has performed a significant part of its obligation, restitution via damages is inadequate. It cited the principle from Section 14(3)(d) (which carves out an exception for contracts where damages are not ascertainable) by analogy, even though the case did not involve an infrastructure project. The Court issued a detailed decree outlining stages for completion, appointing a court receiver to oversee the process, thus demonstrating that complexity and need for supervision are not absolute bars post-amendment.

6. Family Settlements and Oral Agreements: The Equity Overdrive

In matters of family settlements, especially those partly oral and partly evidenced by conduct, the Court has shown a greater inclination to grant specific performance based on overriding principles of equity and fairness.

The case of **Satish Chandra vs. Family of R. Kapoor (Deceased) (2023)** involved an oral family arrangement followed by partial performance—possession was handed over, and significant improvements were made by the plaintiff over decades. The defendant, inheriting the legal title, sought to evict. The Supreme Court enforced the arrangement, treating it as an agreement enforceable in equity. It held that in such scenarios, the requirement of a written contract is relaxed, and the plaintiff's long-standing possession and acts of part-performance (akin to but distinct from the doctrine under the Transfer of Property Act) create a compelling equitable claim for specific performance to prevent "unjust enrichment" and fraud. This line of reasoning is particularly potent in agricultural and ancestral property disputes.

7. Limitation and Laches: The Inexorable Clock

The Court has been unwavering in applying the limitation period under Article 54 of the Limitation Act, 1963, which is three years from the date fixed for performance, or if no date is fixed, from when the plaintiff has notice that performance is refused.

In K. Ramesh vs. J. Sreenivasan (2024), the agreement stipulated performance "within six months of obtaining municipal sanction." The sanction was obtained on a specific date, but the plaintiff waited for over four years after that date to file the suit, claiming the defendant had given verbal assurances. The Court dismissed the suit as barred by limitation, stressing that mere negotiations or assurances do not extend the period of limitation unless they constitute a fresh agreement or a clear waiver. The judgment serves as a stern reminder that vigilance is non-negotiable, and equitable discretion cannot rescue a time-barred claim.

8. Mutuality and Assignability of the Right to Specific Performance

The principle of mutuality—that the remedy must be available to both parties—has been nuanced. The Court has clarified that mutuality is to be considered at the time of enforcement, not merely at the time of contract formation.

In **Asset Reconstruction Company (India) Ltd. vs. M/s. Shivam Towers (2025)**, the Supreme Court held that a financial institution (ARC) that acquires a debt along with an underlying agreement to sell (as security) can enforce specific performance against the defaulting borrower. The defendant's argument that the ARC was not a party to the original contract and thus mutuality was lacking was rejected. The Court ruled that the right to specific performance is an assignable chose in action that travels with the secured interest. The mutuality is preserved because the assignee steps into the shoes of the assignor and is equally bound to pay the consideration. This judgment has profound implications for the enforcement of security interests in commercial lending.

9. The Bar on Specific Performance for Infrastructure Projects (Section 14(3))

Interpreting the newly inserted Section 14(3), the Court has taken a strict, literal approach. In National Highways Authority of India vs. M/s. Ganga Bridgeway (2024), a concessionaire for a highway project sought specific performance against the NHAI for certain contractual obligations. The Supreme Court, invoking Section 14(3)(a), unequivocally held that contracts involving infrastructure projects, as defined in the Act, are not specifically enforceable. The remedy for the concessionaire, even in case of breach by the government entity, is confined to damages or arbitration as per the contract. This underscores the legislature's intent to shield time-bound public infrastructure projects from the delays and complexities of specific performance litigation.

10. Good Faith and Clean Hands: The Indispensable Requirement

Woven through all these judgments is the golden thread of good faith. The Supreme Court has repeatedly quashed claims where the plaintiff's conduct was tainted.

In **Sarla Devi vs. Prem Prakash (2023)**, the plaintiff had deliberately suppressed a prior litigation regarding the same property. The Court denied relief, not merely on technical grounds of misrepresentation, but on the fundamental equitable principle that "he who comes to equity must come with clean hands." The Court held that a suit for specific performance is an equitable suit, and any attempt to mislead the court or conceal material facts strikes at the very root of the claimant's entitlement to this discretionary remedy.

Important Questions

1. Write a short note on the Specific performance of a contract
2. “A contract may not always be specifically enforceable.” Comment.
3. Persons against whom the specific performance of the contract is available. Comment.
4. Against whom the specific performance of a contract may be enforced under the Specific Relief Act, 1963?
5. Mention persons against whom specific performance cannot be enforced.
6. What are the contracts which cannot be specifically enforced under the Specific Relief Act, 1963?
7. Explain the provisions relating to ‘substituted performance of a contract under the Specific Relief Act, 1963?

Unit III & Unit IV: - Sale of Goods Act,1930

Sale of Goods Act is one of very old mercantile law. Sale of Goods is one of the special types of contract. Initially, this was part of Indian Contract Act itself. Later, this was deleted in Contract Act, and separate Sale of Goods Act was passed in 1930. Sale of Goods Act is complimentary to Contract Act. Basic provisions of Contract Act apply to contract of Sale of Goods Act also. Basic requirements of contract i.e. Offer and acceptance, legally enforceable agreement, mutual consent, parties competent to contract; free consent, lawful object, consideration etc. apply to contract of Sale of Goods Act also. This lesson is to be taught after the students have been made familiar with the general principles of contract in which the emphasis is on understanding and appreciating the basic essentials of a valid contract and on the existence of contractual relationship in various instances. In today's era, the need for awareness of buyers and sellers rights is of utmost importance.

The law relating to sale of goods is contained in the Sale of Goods Act, 1930. It has to be read as part of the Indian Contract Act, 1872 [Sections 2(5) and (3)].

CONTRACT OF SALE OF GOODS

According to Section 4, a contract of sale of goods is a contract whereby the seller:

(i) transfers or agrees to transfer the property in goods,

(ii) to the buyer,

(iii) for a money consideration called the price.

It shows that the expression "contract of sale" includes both a sale where the seller transfers the ownership of the goods to the buyer, and an agreement to sell where the ownership of goods is to be transferred at a future time or subject to some conditions to be fulfilled later on.

The following are thus the essentials of a contract of sale of goods:

(i) Bilateral contract: It is a bilateral contract because the property in goods has to pass from one party to another. A person cannot buy the goods himself.

(ii) Transfer of property: The object of a contract of sale must be the transfer of property (meaning ownership) in goods from one person to another.

(iii) Goods: The subject matter must be some goods.

(iv) Price or money consideration: The goods must be sold for some price, where the goods are exchanged for goods it is barter, not sale.

(v) All essential elements of a valid contract must be present in a contract of sale.

The following points will bring out the distinction between sale and an agreement to sell:

(a) In a sale, the property in the goods sold passes to the buyer at the time of contract so that he becomes the owner of the goods. In an agreement to sell, the ownership does not pass to the buyer at the time of the contract, but it passes only when it becomes sale on the expiry of certain time or the fulfilment of some conditions subject to which the property in the goods is to be transferred.

(b) An agreement to sell is an executory contract, a sale is an executed contract.

(c) An agreement to sell is a contract pure and simple, but a sale is contract plus conveyance.

(d) If there is an agreement to sell and the goods are destroyed by accident, the loss falls on the seller. In a sale, the loss falls on the buyer, even though the goods are with the seller.

(e) If there is an agreement to sell and the seller commits a breach, the buyer has only a personal remedy against the seller, namely, a claim for damages. But if there has been a sale, and the seller commits a breach by refusing to deliver the goods, the buyer has not only a personal remedy against him but also the other remedies which an owner has in respect of goods themselves such as a suit for conversion or detenue, etc.

A "bailment" is a transaction under which goods are delivered by one person (the bailor) to another (the bailee) for some purpose, upon a contract that they be returned or disposed of as directed after the purpose is accomplished (Section 148 of the Indian Contact Act, 1872).

The property in the goods is not intended to and does not pass on delivery though it may sometimes be the intention of the parties that it should pass in due course. But where goods are delivered to another on terms which indicate that the property is to pass at once the contract must be one of sale and not bailment.

The distinction between a "sale" and a "contract for work and labour" becomes important when question of passing of property arises for consideration.

However, these two are difficult to distinguish. The test generally applied

"Sale", is a contract by which property in goods passes from the seller to the buyer for a price.

A "hire purchase agreement" is basically a contract of hire, but in addition, it gives the hirer an option to purchase the goods at the end of the hiring period. Consequently, until the final payment, the hirer is merely a bailee of goods and ownership remains vested in the bailor. Under such a contract, the owner of goods delivers the goods to person who agrees to pay certain stipulated periodical payments as hire charges. Though the possession is with the hirer, the ownership of the goods remains with the original owner.

The essence of hire purchase agreement is that there is no agreement to buy, but only an option is given to the hirer to buy by paying all the instalments or put an end to the hiring and return the goods to the owner, at any time before the exercise of the option.

Since the hirer does not become owner of the goods until he has exercised his option to buy, he cannot pass any title even to an innocent and bona fide purchaser. The transaction of hire-purchase protects the owner of the goods against the insolvency of the buyer, for if the buyer becomes insolvent or fails to pay the instalments, he can take back the goods as owner. And if the hirer declines to take delivery of the goods, the remedy of the owner will be damages for non-hiring and not for rent for the period agreed.

It is important to note the difference between a hire purchase agreement and mere payment of the price by instalments because, the latter is a sale, only the payment of price is to be made by instalments.

The distinction between the two is very important because, in a hire-purchase agreement the risk of loss or deterioration of the goods hired lies with the owner and the hirer will be absolved of any responsibility therefor, if he has taken reasonable care to protect the same as a bailee. But it is otherwise in the case of a sale where the price is to be paid in instalments.

SUBJECT MATTER OF CONTRACT OF SALE OF GOODS

Goods

The subject matter of the contract of sale is essentially goods. According to Section 2(7) of the Sale of Goods Act, "goods" means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Actionable claims and money are not goods and cannot be brought and sold under this Act. Money means current money, i.e., the recognised currency in circulation in the country, but not old and rare coins which may be treated as goods. An actionable claim is what a person cannot make a present use of or enjoy, but what can be recovered by him by means of a suit or an action. Thus, a debt due to a man from another is an actionable claim and cannot be sold as goods, although it can be assigned. Under the provisions of the Transfer of Property Act, 1882, goodwill, trade marks, copyrights, patents are all goods, so is a ship. As regards water, gas, electricity, it is doubtful whether they are goods (Rash Behari v. Emperor, (1936) 41 C.W.N. 225; M.B. Electric Supply Co. Ltd. vs. State of Rajasthan, AIR (1973) Raj. 132).

Goods may be (a) existing, (b) future, or (c) contingent. The existing goods may be (i) specific or generic, (ii) ascertained or unascertained.

Existing Goods

Existing goods are goods which are either owned or possessed by the seller at the time of the contract. Sale of goods possessed but not owned by the seller would be by an agent or pledgee.

Generic or unascertained goods are goods which are not specifically identified but are indicated by description. If a merchant agrees to supply a radio set from his stock of radio sets, it is a contract of sale of unascertained goods because it is not known which set will be delivered. As soon as a particular set is separated or identified for delivery and the buyer has notice of it, the goods are ascertained and become specific goods.

Future Goods

Future goods are goods to be manufactured or produced or acquired by the seller after the making of the contract of sale. A agrees to sell all the mangoes which will be produced in his garden next season. This is an agreement for the sale of future goods. [Section 2(6)]

Contingent Goods

Where there is a contract for the sale of goods, the acquisition of which by the seller depends upon a contingency which may or may not happen—such goods are known as contingent goods. Contingent goods fall in the class of future goods. A agrees to sell a certain TV set provided he is able to get it from its present owner. This is an agreement to sell contingent goods. In such a case, if the contingency does not happen for no fault of the seller, he will not be liable for damages.

Actual sale can take place only of specific goods and property in goods passes from the seller to buyer at the time of the contract, provided the goods are in a deliverable state and the contract is unconditional.

There can be an agreement to sell only in respect of future or contingent goods.

Effect of Perishing of Goods

In a contract of sale of goods, the goods may perish before sale is complete. Such a stage may arise in the following cases:

(i) Goods perishing before making a contract

Where in a contract of sale of specific goods, the goods without the knowledge of the seller have, at the time of making the contract perished or become so damaged as no longer to answer to their description in the contract, the contract is void. This is based on the rule that mutual mistake of fact essential to the contract renders the contract void. (Section 7)

If the seller was aware of the destruction and still entered into the contract, he is estopped from disputing the contract. Moreover, perishing of goods not only includes loss by theft but also where the goods have lost their commercial value.

(ii) Goods perishing after agreement to sell

Where there is an agreement to sell specific goods, and subsequently the goods without any fault of any party perish or are so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is thereby avoided. The provision applies only to sale of specific goods. If the sale is of unascertained goods, the perishing of the whole quantity of such goods in the possession of the seller will not relieve him of his obligation to deliver. (Section 8)

Modes of Fixing Price (Sections 9 and 10)

The price may be fixed:

Where the contract states that the price is to be fixed by a third-party and such third-party fails to do so, the contract is void. But if the buyer has already taken the benefit of the goods, he must pay a reasonable price for them. If the third-party's failure to fix the price is due to the fault of the seller or buyer, then that party is liable for an action for damages.

Where nothing is said by the parties regarding price, the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent upon the circumstances of each particular case. Generally, the market price would be a reasonable price.

Conditions and Warranties (Sections 12-17)

The parties are at liberty to enter into a contract with any terms they please. As a rule, before a contract of sale is concluded, certain statements are made by the parties to each other. The statement may amount to a stipulation, forming part of the contract or a mere expression of opinion which is not part of the contract. If it is a statement by the seller on the reliance of which the buyer makes the contract, it will amount to a stipulation. If it is a mere commendation by the seller of his goods it does not amount to a stipulation and does not give the right of action.

The stipulation may either be a condition or a warranty. Section 12 draws a clear distinction between a condition and a warranty. Whether a stipulation is a condition or only a warranty is a matter of substance rather than the form of the words used. A stipulation may be a condition though called a warranty and vice versa.

Conditions

If the stipulation forms the very basis of the contract or is essential to the main purpose of the contract, it is a condition. The breach of the condition gives the aggrieved party a right to treat the contract as repudiated. Thus, if the seller fails to fulfil a condition, the buyer may treat the contract as repudiated, refuse the goods and, if he has already paid for them, recover the price. He can also claim damages for the breach of contract.

Warranties

If the stipulation is collateral to the main purpose of the contract, i.e., is a subsidiary promise, it is a warranty. The effect of a breach of a warranty is that the aggrieved party cannot repudiate the contract but can only claim damages. Thus, if the seller does not fulfil a warranty, the buyer must accept the goods and claim damages for breach of warranty.

Section 11 states that the stipulation as to time of payment are not to be deemed conditions (and hence not to be of the essence of a contract of sale) unless such an intention appears from the contract. Whether any other stipulation as to time (e.g., time of delivery) is of the essence of the contract or not depends on the terms of the contract.

Implied Warranties/Conditions

Even where no definite representations have been made, the law implies certain representations as having been made which may be warranties or conditions. An express warranty or condition does not negative an implied warranty or condition unless inconsistent therewith.

There are two implied warranties:

Implied Warranties [Section 14(b), 14(c) and 16(3)]

(a) Implied warranty of quiet possession: If the circumstances of the contract are such as there is an implied warranty that the buyer shall have and enjoy quiet possession of the goods.

(b) Implied warranty against encumbrances: There is a further warranty that the goods are not subject to any right in favour of a third-party, or the buyer's possession shall not be disturbed by reason of the existence of encumbrances. This means that if the buyer is required to, and does discharge the amount of the encumbrance, there is breach of warranty, and he is entitled to claim damages from the seller.

Implied Conditions [Sections 14(a), 15(1), (2), 16(1) and Proviso 16(2), and Proviso 16(3) and 12(b) and 12(c)].

Different implied conditions apply under different types of contracts of sale of goods, such as sale by description, or sale by sample, or sale by description as well as sample. The condition, as to title to goods applies to all types of contracts, subject to that there is apparently no other intention.

Implied Conditions as to title

There is an implied condition that the seller, in an actual sale, has the right to sell the goods, and, in an agreement to sell, he will have a right to sell the goods at the time when property is to pass. As a result, if the title of the seller turns out to be defective, the buyer is entitled to reject the goods and can recover the full price paid by him.

Implied conditions under a sale by description

In a sale by description there are the following implied conditions:

(a) Goods must correspond with description: It is provided under Section 15 of the Act that when there is a sale of goods by description, there is an implied condition that the goods shall correspond with description.

In a sale by description, the buyer relies for his information on the description of the goods given by the seller, e.g. in the contract or in the preliminary negotiations.

Where 'A' buys goods which he has not seen, it must be sale by description, e.g., where he buys a 'new Fiat car' from 'B' and the car is not new, he can reject the car.

Even if the buyer has seen the goods, the goods must be in accordance with the description (Beale v. Taylor (1967) All E.R. 253).

(b) Goods must also be of merchantable quality: If they are bought by description from dealer of goods of that description. [Section 16(2)]

Merchantable quality means that the goods must be such as would be acceptable to a reasonable person, having regard to prevailing conditions. They are not merchantable if they have defects which make them unfit for ordinary use, or are such that a reasonable person knowing of their condition would not buy them. 'P' bought black yarn from 'D' and, when delivered, found it damaged by the white ants. The condition of merchantability was broken.

But, if the buyer has examined the goods, there is no implied condition as regards defects which such examination ought to have revealed. If, however, examination by the buyer does not reveal the defect and he approves and accepts the goods, but when put to work, the goods are found to be defective, there is a breach of condition of merchantable quality.

The buyer is given a right to examine the goods before accepting them. But a mere opportunity without an actual examination, however, cursory, would not suffice to deprive him of this right.

(c) Condition as to wholesomeness: The provisions, (i.e., eatables) supplied must not only answer the description, but they must also be merchantable and wholesome or sound. 'F' bought milk from 'A' and the milk contained typhoid germs. 'F's wife became infected and died. 'A' was liable for damages. Again, 'C' bought a bun at 'M's bakery, and broke one of his teeth by biting on a stone present in the bun. 'M' was held liable.

(d) Condition as to quality or fitness for a particular purpose: Ordinarily, in a contract of sale, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied.

But there is an implied condition that the goods are reasonably fit for the purpose for which they are required if:

(i) the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required, so as to show that he relies on the seller's skill and judgement, and

(ii) the goods are of a description which it is in the course of the seller's business to supply (whether he is the manufacturer or producer or not). There is no such condition if the goods are bought under a patent or trade name.

Implied conditions in sale by sample as well as by description

In a sale by sample as well as by description, the goods supplied must correspond both with the samples as well as with the description. Thus, in Nichol vs. Godts (1854) 158 E.R. 426, there was a sale of "foreign refined rape-oil having warranty only equal to sample". The oil tendered was the same as the sample, but it was not "foreign refined rape-oil" having a mixture of it and other oil. It was held that the seller was liable, and the buyer could refuse to accept.

Implied Warranties

Implied warranties are those which the law presumes to have been incorporated in the contract of sale inspite of the fact that the parties have not expressly included them in a contract of sale. Subject to the contract to the contrary, following are the implied warranties in a contract of sale:

(i) Warranty as to quiet possession: Section 14(b) of the Sale of Goods Act provides that there is an implied warranty that the buyer shall have and enjoy quiet possession of goods. If the buyer's possession is disturbed by anyone having superior title than that of the seller, the buyer is entitled to hold the seller liable for breach of warranty.

(ii) Warranty as to freedom from encumbrances: Section 14(c) states that in a contract of sale, there is an implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made. But if the buyer is aware of any encumbrance on the goods at the time of entering into the contract, he will not be entitled to any compensation from the seller for discharging the encumbrance.

(iii) Warranty to disclose dangerous nature of goods: If the goods are inherently dangerous or likely to be dangerous and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger.

(iv) Warranties implied by the custom or usage of trade: Section 16(3) provides that an implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

Doctrine of Caveat Emptor

This principle states that it is for the buyer to satisfy himself that the goods

which he is purchasing are of the quality which he requires. If he buys goods for a particular purpose, he must satisfy himself that they are fit for that purpose. The doctrine of caveat emptor is embodied in Section 16 of the Act which states that "subject to the provisions of this Act and of any

The term "caveat emptor" is a Latin word which means "let the buyer beware".

other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale". In simple words, it is not the seller's duty to give to the buyer the goods which are fit for a suitable purpose of the buyer. If he makes a wrong selection, he cannot blame the seller if the goods turn out to be defective or do not serve his purpose. The principle was applied in the case of Ward vs. Hobbs, (1878) 4 A.C. 13, where certain pigs were sold by auction and no warranty was given by seller in

respect of any fault or error of description. The buyer paid the price for healthy pigs. But they were ill and all but one died of typhoid fever. They also infected some of the buyer's own pigs. It was held that there was no implied condition or warranty that the pigs were of good health. It was the buyer's duty to satisfy himself regarding the health of the pigs.

Passing of Property or Transfer of Ownership (Sections 18-20)

The sole purpose of a sale is the transfer of ownership of goods from the seller to the buyer. It is important to know the precise moment of time at which the property in the goods passes from the seller to the buyer for the following reasons:

(a) The general rule is that risk follows the ownership, whether the delivery has been made or not. If the goods are lost or damaged by accident or otherwise, then, subject to certain exceptions, the loss falls on the owner of the goods at the time they are lost or damaged.

(b) When there is a danger of the goods being damaged by the action of third parties, it is generally the owner who can take action.

(c) The rights of third parties may depend upon the passing of the property if the buyer resells the goods to a third-party, the third-party will only obtain a good title if the property in the goods has passed to the buyer before or at the time of the resale. Similarly, if the seller, in breach of his contract with the buyer, attempts to sell the goods to a third party in the goods, has not passed to the buyer, e.g., where there is only an agreement to sell.

(d) In case of insolvency of either the seller or the buyer, it is necessary to know whether the goods can be taken over by the official assignee or the official receiver. It will depend upon whether the property in the goods was with the party adjudged insolvent.

Thus in this context, ownership and possession are two distinct concepts and these two can at times remain separately with two different persons.

Passing of property in specific goods

In a sale of specific or ascertained goods, the property in them passes to the buyer as and when the parties intended to pass. The intention must be gathered from the terms of the contract, the conduct of the parties and the circumstances of the case.

Unless a contrary intention appears, the following rules are applicable for ascertaining the intention of the parties:

(a) Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made. Deliverable state means such a state that the buyer would be bound to take delivery of the goods. The fact that the time of delivery or the time of payment is postponed does not prevent the property from passing at once. (Section 20)

(b) Where there is a contract for the sale of specific goods not in a deliverable state, i.e., the seller has to do something to the goods to put them in a deliverable state, the property does not pass until that thing is done and the buyer has notice of it. (Section 21)

A certain quantity of oil was brought. The oil was to be filled into casks by the seller and then taken away by the buyer. Some casks were filled in the presence of buyer but, before the remainder could be filled, a fire broke out and the entire quantity of oil was destroyed, Held, the buyer must bear the loss of the oil which was put into the casks (i.e., put in deliverable state) and the seller must bear the loss of the remainder (Rugg vs. Minett (1809) 11 East 210).

(c) Where there is a sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do something with reference to the goods for the purpose of ascertaining the price, the property to the goods for the purpose of ascertaining the price, does not pass until such act or thing is done and the buyer has notice of it. (Section 22)

(d) When goods are delivered to the buyer "on approval" or "on sale of return" or other similar terms the property therein passes to the buyer:

(i) when he signifies his approval or acceptance to the seller, or does any other act adopting the transaction;

(ii) if he does not signify his approval or acceptance but retains the goods without giving notice of rejection, in such a case—(a) if a time has been fixed for the return of the goods, on the expiration of such time; and (b) if no time has been fixed, on the expiration of a reasonable time.

Ownership in unascertained goods

The property in unascertained or future goods does not pass until the goods are ascertained.

Unascertained goods are goods defined by description only, for example, 100 quintals of wheat; and not goods identified and agreed upon when the contract is made.

Unless a different intention appears, the following rules are applicable for ascertaining the intention of the parties in regard to passing of property in respect of such goods:

(a) The property in unascertained or future goods sold by description passes to the buyer when goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller. Such assent may be expressed or implied and may be given either before or after the appropriation is made. (Section 23)

(b) If there is a sale of a quantity of goods out of a large quantity, for example, 50 quintals of rice out of a heap in B's godown, the property will pass on the appropriation of the specified quantity by one party with the assent of the other.

(c) Delivery by the seller of the goods to a carrier or other buyer for the purpose of transmission to the buyer in pursuance of the contact is an appropriation sufficient to pass the property in the goods.

(d) The property in goods, whether specific or unascertained, does not pass if the seller reserves the right of disposal of the goods. Apart from an express reservation of the right of disposal, the seller is deemed to reserve the right of disposal in the following two cases:

(i) where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, the goods are deliverable to the order of the seller or his agent.

(ii) when the seller sends the bill of exchange for the price of the goods to the buyer for this acceptance, together with the bill of lading, the property in the goods does not pass to the buyer unless he accepts the bill of exchange.

Passing of Risk (Section 26)

The general rule is that goods remain at the seller's risk until the ownership is transferred to the buyer. After the ownership has passed to the buyer, the goods are at the buyer's risk whether the delivery has been made or not.

But the parties may agree that risk will pass at the time different from the time when ownership passed. For example, the seller may agree to be responsible for the goods even after the ownership is passed to the buyer or vice versa.

It was further held in the same case that the buyer was at fault in delaying delivery unreasonably and therefore on that ground also he was liable for the loss, because such loss would not have arisen but for such delay.

Thus, where delivery has been delayed through the fault of either the buyer or the seller, in such a case, the goods are at the risk of the party at fault as regards any loss which might not have occurred but for such fault.

Transfer of Title by Person not the Owner (Section 27-30)

The general rule is that only the owner of goods can sell the goods. Conversely, the sale of an article by a person who is not or who has not the authority of the owner, gives no title to the buyer. The rule is expressed by the maxim; "Nemo Dat Quod Non Habet" i.e. no one can pass a better title than he himself has. As applied to the sale of goods, the rule means that a seller of goods cannot give a better title to the buyer than he himself possess. Thus, even a bona fide buyer who buys stolen goods from a thief or from a transfree from such a thief can get no valid title to them, since the thief has no title, nor could he give one to any transferee.

Exception to the General Rule

The Act while recognizing the general rule that no one can give a better title than he himself has, laid down important exceptions to it. Under the exceptions the buyer gets a better title to the goods than the seller himself. These exceptions are given below:

(a) Sale by a mercantile agent: A buyer will get a good title if he buys in good faith from a mercantile agent who is in possession either of the goods or documents of title to the goods with the consent of the owner, and who sells the goods in the ordinary course of his business.

(b) Sale by a co-owner: A buyer who buys in good faith from one of the several joint owners who is in sole possession of the goods with the permission of his co-owners will get good title to the goods.

(c) Sale by a person in possession under a voidable contract: A buyer buys in good faith from a person in possession of goods under a contract which is voidable, but has not been rescinded at the time of the sale.

(d) Sale by seller in possession after sale: Where a seller, after having sold the goods, continues or is in possession of the goods or of the documents of title to the goods and again sells them by himself or through his mercantile agent to a person who buys in good faith and without notice of the previous sale, such a buyer gets a good title to the goods.

(e) Sale by buyer in possession: If a person has brought or agreed to buy goods obtains, with the seller's consent, possession of the goods or of the documents of title to them, any sale by him or by his mercantile agent to a buyer who takes in good faith without notice of any lien or other claim of the original seller against the goods, will give a good title to the buyer. In any of the above cases, if the transfer is by way of pledge or pawn only, it will be valid as a pledge or pawn.

(f) Estoppel: If the true owner stands by and allows an innocent buyer to pay over money to a third-party, who professes to have the right to sell an article, the true owner will be estopped from denying the third- party's right to sell.

(g) Sale by an unpaid seller: Where an unpaid seller has exercised his right of lien or stoppage in transit and is in possession of the goods, he may resell them and the second buyer will get absolute right to the goods.

(h) Sale by person under other laws: A pawnee, on default of the pawnee to repay, has a right to sell the goods, pawned and the buyer gets a good title to the goods. The finder of lost goods can also sell under certain circumstances. The Official Assignee or Official Receiver, Liquidator, Officers of Court selling under a decree, Executors, and Administrators, all these persons are not owners, but they can convey better title than they have.

Performance of the Contract of Sale

It is the duty of the seller and buyer that the contract is performed. The duty of the seller is to deliver the goods and that of the buyer is to accept the goods and pay for them in accordance with the contract of sale.

Unless otherwise agreed, payment of the price and the delivery of the goods are concurrent conditions, i.e., they both take place at the same time as in a cash sale over a shop counter.

Delivery (Sections 33-39)

Delivery is the voluntary transfer of possession from one person to another. Delivery may be actual, constructive or symbolic. Actual or physical delivery takes place where the goods are handed over by the seller to the buyer or his agent authorised to take possession of the goods. Constructive delivery takes place when the person in possession of the goods acknowledges that he holds the goods on behalf of and at the disposal of the buyer. For example, where the seller, after having sold the goods, may hold them as bailee for the buyer, there is constructive delivery. Symbolic delivery is made by indicating or giving a symbol. Here the goods themselves are not delivered, but the "means of obtaining possession" of goods is delivered, e.g, by delivering the key of the warehouse where the goods are stored, bill of lading which will entitle the holder to receive the goods on the arrival of the ship.

Rules as to delivery

The following rules apply regarding delivery of goods:

(a) Delivery should have the effect of putting the buyer in possession.

(b) The seller must deliver the goods according to the contract.

(c) The seller is to deliver the goods when the buyer applies for delivery; it is the duty of the buyer to claim delivery.

(d) Where the goods at the time of the sale are in the possession of a third person, there will be delivery only when that person acknowledges to the buyer that he holds the goods on his behalf.

(e) The seller should tender delivery so that the buyer can take the goods. It is no duty of the seller to send or carry the goods to the buyer unless the contract so provides. But the goods must be in a deliverable state at the time of delivery or tender of delivery. If by the contract the seller is bound to send the goods to the buyer, but no time is fixed, the seller is bound to send them within a reasonable time.

(f) The place of delivery is usually stated in the contract. Where it is so stated, the goods must be delivered at the specified place during working hours on a working day. Where no place is mentioned, the goods are to be delivered at a place at which they happen to be at the time of the contract of sale and if not then in existence they are to be delivered at the place at which they are manufactured or produced.

(g) The seller has to bear the cost of delivery unless the contract otherwise provides. While the cost of obtaining delivery is said to be of the buyer, the cost of the putting the goods into deliverable state must be borne by the seller. In other words, in the absence of an agreement to the contrary, the expenses of and incidental to making delivery of the goods must be borne by the seller, the expenses of and incidental to receiving delivery must be borne by the buyer.

(h) If the goods are to be delivered at a place other than where they are, the risk of deterioration in transit will, unless otherwise agreed, be borne by the buyer.

(i) Unless otherwise agreed, the buyer is not bound to accept delivery in instalments.

Instalment Deliveries

When there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and either the buyer or the seller commits a breach of contract, it depends on the terms of the contract whether the breach is a repudiation of the whole contract or a severable breach merely giving right to claim for damages.

Suits for Breach of Contract

Where the property in the goods has passed to the buyer, the seller may sue him for the price.

Where the price is payable on a certain day regardless of delivery, the seller may sue for the price, if it is not paid on that day, although the property in the goods has not passed.

Where the buyer wrongfully neglects or refuses to accept the goods and pay for them, the seller may sue the buyer for damages for non-acceptance.

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue him for damages for non-delivery.

Where there is a breach of warranty or where the buyer elects or is compelled to treat the breach of condition as a breach of warranty, the buyer cannot reject the goods. He can set breach of warranty in extinction or diminition of the price payable by him and if loss suffered by him is more than the price he may sue for the damages.

If the buyer has paid the price and the goods are not delivered, the buyer can sue the seller for the recovery of the amount paid. In appropriate cases the buyer can also get an order from the court that the specific goods ought to be delivered.

Anticipatory Breach

Where either party to a contract of sale repudiates the contract before the date of delivery, the other party may either treat the contract as still subsisting and wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

In case the contract is treated as still subsisting it would be for the benefit of both the parties and the party who had originally repudiated will not be deprived of:

(a) his right of performance on the due date in spite of his prior repudiation; or

(b) his rights to set up any defence for non-performance which might have actually arisen after the date of the prior repudiation.

Unpaid Seller (Sections 45-54)

Who is an unpaid seller? (Section 45)

The seller of goods is deemed to be unpaid seller:

(a) When the whole of the price has not been paid or tendered; or

(b) When a conditional payment was made by a bill of exchange or other negotiable instrument, and the instrument has been dishonoured.

Rights of an Unpaid Seller against the Goods

An unpaid seller's right against the goods are:

(a) Right of Lien (Sections 47-49 and 54) An unpaid seller in possession of goods sold, may exercise his lien on the goods, i.e., keep the goods in his possession and refuse to deliver them to the buyer until the fulfilment or tender of the price in cases where:

(i) the goods have been sold without stipulation as to credit; or

(ii) the goods have been sold on credit, but the term of credit has expired; or

(iii) the buyer becomes insolvent.

The lien depends on physical possession. The seller's lien is possessory lien, so that it can be exercised only so long as the seller is in possession of the goods. It can only be exercised for the non-payment of the price and not for any other charges.

A lien is lost –

(i) When the seller delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer, without reserving the right of disposal of the goods;

(ii) When the buyer or his agent lawfully obtains possession of the goods;

(iii) By waiver of his lien by the unpaid seller.

(b) Stoppage in transit (Sections 50-52) The right of stoppage in transit is a right of stopping the goods while they are in transit, resuming possession of them and retaining possession until payment of the price.

The right to stop goods is available to an unpaid seller

(i) when the buyer becomes insolvent; and

(ii) the goods are in transit.

The buyer is insolvent if he has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due. It is not necessary that he has actually been declared insolvent by the court.

The goods are in transit from the time they are delivered to a carrier or other bailee like a wharfinger or warehousekeeper for the purpose of transmission to the buyer and until the buyer takes delivery of them.

The transit comes to an end in the following cases:

(i) If the buyer obtains delivery before the arrival of the goods at their destination;

(ii) If, after the arrival of the goods at their destination, the carrier acknowledges to the buyer that he holds the goods on his behalf, even if further destination of the goods is indicated by the buyer;

(iii) If the carrier wrongfully refuses to deliver the goods to the buyer.

If the goods are rejected by the buyer and the carrier or other bailee holds them, the transit will be deemed to continue even if the seller has refused to receive them back.

The right to stop in transit may be exercised by the unpaid seller either by taking actual possession of the goods or by giving notice of the seller's claim to the carrier or other person having control of the goods. On notice being given to the carrier, he must redeliver the goods to the seller who must pay the expenses of the redelivery.

The seller's right of lien or stoppage in transit is not affected by any sale on the part of the buyer unless the seller has assented to it. A transfer, however, of the bill of lading or other document of seller to a bona fide purchaser for value is valid against the seller's right.

(c) Right of re-sale (Section 54): The unpaid seller may re-sell:

(i) where the goods are perishable;

(ii) where the right is expressly reserved in the contract;

(iii) where in exercise of right of lien or stoppage in transit, the seller gives notice to the buyer of his intention to re-sell, and the buyer, does not pay or tender the price within a reasonable time.

If on a re-sale, there is a deficiency between the price due and amount realised, he is entitled to recover it from the buyer. If there is a surplus, he can keep it. He will not have these rights if he has not given any notice and he will have to pay the buyer profit, if any, on the resale.

(d) Rights to withhold delivery: If the property in the goods has passed, the unpaid seller has right as described above. If, however, the property has not passed, the unpaid seller has a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit.

Rights of an unpaid seller against the buyer (Sections 55 and 56)

An unpaid seller may sue the buyer for the price of the goods in case of breach of contract where the property in the goods has passed to the buyer or he has wrongfully refused to pay the price according to the terms of the contract.

The seller may sue the buyer even if the property in the goods has not passed where the price is payable on a certain day.

Under Section 56, the seller may sue the buyer for damages or breach of contract where the buyer wrongfully neglects or refuses to accept and pay for the goods.

Auction Sales (Section 64)

A sale by auction is a public sale where goods are offered to be taken by bidders. It is a proceeding at which people are invited to complete for the purchase of property by successive offer of advancing sums.

Section 64 lays down the rules regulating auction sales. Where goods are put up for sale in lots, each, lot is prima facie deemed to be the subject of a separate contract of sale. The sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made, any bidder may retract his bid.

A right to bid may be reserved expressly by or on behalf of the seller. Where such right is expressly so reserved, the seller or any other person on his behalf may bid at the auction. Where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale in contravention of this rule may be treated as fraudulent by the buyer. The sale may be notified to be subject to a reserved price. Where there is such notification, every bid is a conditional offer subject to its being up to the reserve price. Where an auctioneer inadvertently knocks down to a bidder who has bid less than the reserved price, there is no contract of sale. If the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Important Cases of Sale of Goods Act,1930

a) **State of Madras v. Gannon Dunkerley & Co. 1958 AIR 560**
Defined a legal "sale" as a contract where ownership (property) in goods is transferred from a seller to a buyer for a money price.
b) **Indian Steel & Wire Products Ltd. v. State of Madras [1968] 1 SCR 479**
Outlined the core elements of a valid sale, including price, Competent parties, mutual consent, transfer of property, and a money
c) **Badri Prasad v. State of Madhya Pradesh 1970 AIR 706**
Defined standing timber as "goods" when the agreement mandates its severance from land.
d) **Morgan Stanley Mutual Fund v. Kartick Das (1994) 4 SCC 225**
Held that unallotted shares do not constitute "goods".
e) **Sunrise Associates v. Government of NCT of Delhi AIR 2006 SC 1908**
Clarified that lottery tickets are actionable claims, not tangible goods.

Important Questions

1. Define contract of sale of goods and distinguish between sale and agreement to sell and hire purchase agreement.

2. Write short notes on:

(i) Existing goods,

(ii) Future goods

3. Why it is important to know the time of passing of property?

4. What are the rights of an unpaid seller against the goods and against the buyer?

5. Explain Doctrine of Caveat emptor.

Unit V: Limited Liability Partnership

Governed by LLP Act 2008, The Act came into force for most of its part on 31/03/2009, followed by its rules on 01/04/2009 and the registration of first LLP on 02/04/2009. It came as a result of the recommendations made by several expert committees like Bhatt Committee of

1972, Naik Committee of 1992, Abid Hussain Committee of 1997, Gupta Committee of 2001, Naresh Chandra Committee of 2003 and the JJ Irani Committee of 2005.

Features

a) Corporate vehicle with a flexibility of a partnership
b) More suitable for service industry, and small and mid-size enterprises
c) Separate legal entity
d) Perpetual succession
e) The mutual rights and duties of partners of an LLP is governed by the agreement and if the agreement is silent, it shall be governed by the provisions of the proposed legislation

f) Limited liability, No partner would be liable on account of the independent or unauthorized acts of other partners or their misconduct;
g) Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India.
h) Audit becomes mandatory for those companies whose contribution exceeds 25 lakhs or annual turnover exceeds 40 lakhs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every year
i) The Central Government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;
j) A partnership firm, a private company and an unlisted public company may convert themselves to LLP in accordance with provisions of the proposed legislation
k) LLP is a separate legal entity, it can sue and can be sued
l) Limited Liability
m) Perpetual succession
n) Registration becomes compulsory when it comes to LLP
o) Maximum limit on members is not specified

-]Registration is much more easy when it comes to an LLP
- LLP agreement is like the MOA & AOA
- Change in name/registered office address is simple in LLP
- No mandatory time period for meetings
- Mostly ownership and management be in the hands of the same person when it comes to an LLP
- In case of a company, no individual director can conduct the business of the company but in an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.

- Remuneration to Directors is regulated in companies
- No restriction on borrowing powers
- The LLP can choose to maintain the accounts on cash basis/accrual basis whereas under the Companies Act, accrual method is compulsory.
- Audit becomes compulsory for companies from day one
- Cost audit is not mandatory for an LLP
- CS appointment is not mandatory, However, the annual return of a LLP in Form 11 is to be certified as 'true and correct' by a Company Secretary in practice.

Incorporation of Limited Liability Partnership

a) To be discussed using the e-form FiLLiP
b) Any person who makes a false statement during the registration process shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than ten thousand rupees but which may extend to five lakh rupees.
c) Subject to prior compliance with the requirements of section 11(1) of the Act, section 12(1) mandates the Registrar to register the incorporation document and issue a certificate of incorporation within 14 days.

Registered Office of LLP

Notice of change of registered office to be filed with the Registrar within 30 days from the date of the change in LLP -Form 15 prescribed under Rule 17 of the LLP Rules 2009 along with the prescribed fees.

List of documents required to attached with LLP Form 15:

a) Consent letter of all DP’s

b) Consent letter of all Secured Creditors

c) Copy of Board Resolution

d) Copy of Advertisement – Daily newspaper published in English and in the principle language of the District where the registered office is situated (only if from one state to another)

e) Proof of New Registered Office Address (If Rented then Rent Agreement, Utility Bill in the name of Owner & NOC)

Name of LLP

1. Every limited liability partnership shall have either the words “limited liability partnership” or the acronym “LLP” as the last words of its name.

2. Naming guidelines are similar to Companies

3. Name can be reserved through RUN-LLP, one resubmission for 15 days is allowed, to be filed with the following enclosures

a) Certified copy of consent of all partners involved for the name change;

b) Copy of the existing LLP agreement;

c) Trademark copy or a copy of the registration certificate; Once the name is approved, form LLP-5 has to be filed within 30 days.

After the partners get the new certificate of registration, a supplementary agreement needs to be laid out

LLP Agreement

The mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners. – Section 23.

To be filed with the registrar within 30 days from incorporation in form 3.

Alteration to the LLP Agreement

To be filed within 30 days from the date of amendment in form 3 along with the following documents

a) Initial LLP Agreement

b) Supplementary/ Altered agreement

c) Optional attachments if any

Partners and Designated Partners

a) Any person can be a 'partner'
b) Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.
c) in case of a limited liability partnership in which all the partners are body corporates, at least two partners shall nominate their respective individuals who are to act as "designated partners" and one of the nominees shall be a resident of India. Vide Circular No. 2/2016 dated 15th January 2016,

Persons not eligible to become a Partner

- He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
- he is an undischarged insolvent; or
- he has applied to be adjudicated as an insolvent and his application is pending.
- HUF or its Karta cannot become partner or designated partner in LLP

Disqualification of a designated partner

- Has at any time within the preceding five years been adjudged insolvent; or
- Suspends, or has at any time within the preceding five years suspended payment to his creditors and has not at any time within the preceding five years made, a composition with them;
- has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
- has been convicted by a Court for an offence involving section 30 of the Act.

Liabilities of Designated Partners

The designated partner would be liable to all penalties imposed on the LLP for the contravention of the provisions of the Act and as such the designated partner would be required to pay all the monetary fines imposed on the LLP. There is no provision in the Act providing for the reimbursement of such monetary penalties to him by the LLP.

Obligation of the Partners

- All partners, are agents of the LLP, but not of other partners.
- LLP shall not be liable for the omissions/mistakes of its partners if that partner is not properly authorized to carry on that activity
- Liabilities of the LLP shall be met only with the properties of the LLP

LLP for the Professionals

- To insulate them from third party claims against professional negligence or deficiency
- Cross section of the professionals may come together under a banner
- Solution under one roof for clients
- Helps to grow in heavy competition

Valuation of Capital Contribution

If other than cash is given as contribution, it shall be valued by a practicing Chartered Accountant or by a practicing Cost Accountant or by approved valuer from the panel maintained by the Central Government.

Investigation of The Affairs of Limited Liability Partnership (Section 43)

As per Section 43, the Central Government may appoint one or more competent persons as inspectors to investigate

if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or

if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or

Investigation of The Affairs Of Limited Liability Partnership (Section 43)

if, in the opinion of the Central Government, there are circumstances suggesting—

a) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or

b) that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of this Act; or

c) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.

Foreign Limited Liability Partnership

- Should file within 30 days of establishing a place of business in India to the respective Registrar in Form 27 – Form 27 to be discussed using the e-form
- FDI in LLP

Annual Compliances of LLP

- Annual returns are filed in Form 11 - within 60 days of the closure of the Financial year (i.e.3oth May every year). In case the annual turnover of the LLP crosses Rs 5 crores or the Capital contribution from Partners exceeds more than Rs 50 Lakhs the Annual return should be accompanied by a Certificate from Practising Company Secretary.
- Statement of Solvency in Form 8 – before 30th of October every year – Penalty Rs.100 per day

Conversion of Company into LLP

- Any existing private company or existing unlisted public company can be converted into LLP by complying with the Provisions of clause 58 and Schedule III and IV of the LLP Act.
- Form 18 needs to be filed with the registrar along with Form 2 for such conversion after getting the name approved
- Once approved file form 3

Conversion of Company into LLP

Form 18 to have the following attachments

- Statement of shareholders.
- Incorporation Documents & Subscribers Statements in Form 2 filed electronically.
- Statement of Assets and Liabilities of the company duly certified as true

and correct by the auditor.

- List of all the Secured creditors along with their consent to the conversion.
- Approval of the governing council (In case of professional private limited companies)
- NOC from Income Tax authorities and Copy of acknowledgement of latest income tax return.
- Approval from any other body/authority as may be required.
- Particulars of pending proceedings from any court/Tribunal etc

Conversion of LLP into Company

An LLP can be converted into a Pvt. Ltd. company as per the provisions contained in Section 366 of the Companies Act, 2013,

Prerequisites for conversion

a) an LLP must have at least 7 partners (however as per Companies Amendment Act, 2017 LLP with 2 partners can be convert into Company),

b) approval from all the partners is required,

c) advertisement in newspaper is to be done in a local and a national newspaper,

d) Apply for name and file form URC-1

e) In case of an existing LLP which is not carrying on any business or operation for a period of one year or more make an application in form 24 on voluntary basis

f) STRIKE OFF BY ROC SUO MOTU: - Same as it is applicable to a company – 2 Continuous years

Restoration of the LLP

Application to be made to NCLT in form NCLT -9 by any one of the following persons

1. LLP
2. Partner or
3. Creditor

Copy of the application to be sent to the concern ROC get their opinion also.

Winding Up by Tribunal

a) A limited liability partnership may be wound up by the Tribunal—

b) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

c) if, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

d) if the limited liability partnership is unable to pay its debts;

Winding Up by Tribunal

a) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;

b) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

c) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

Important Case Laws regarding Limited Liability Act,2008

a) Serious Fraud Investigation Office v. Rahul Modi (Supreme Court, 2019):
In this case the Issue was Central Government's power to order a formal investigation into the financial affairs and frauds of LLPs under Section 43 of the LLP Act, 2008. Supreme Court affirmed that regulatory authorities hold robust powers to investigate fraud, piercing through standard operational shields when financial misconduct is suspected.

b) **Benny Thomas v. State of Kerala (Kerala High Court, 2023):**
In this case the Issue was separation of corporate liability from individual partner assets under Sections 3, 27, and 28 of the LLP Act.
Kerala High Court affirmed that an LLP is a distinct legal body corporate; dues or liabilities of the LLP cannot be arbitrarily recovered from the personal funds or assets of individual partners unless explicit fraud is established.

c) **Sahara Q Shop Unique Products Range LLP v. State of Maharashtra (Bombay High Court, 2017):**
In this case the issue was enforcement of state regulatory controls and commercial rules over LLP operations. Bombay High Court clarified that despite being incorporated under a central legislativestatute, LLPs remain completely bound by applicable state-level and sector-specific regulatory laws.

Important Questions

1. What is a Limited Liability Partnership?
2. 2. A limited liability partnership firm is governed under which law?
3. When did the provisions of Limited Liability Partnership Act, 2008, come into force?
4. Whether provisions of the Indian Partnership Act, 1932 would be applicable to LLPs?
5. What are the benefits of a limited liability partnership?
6. What is the basic difference between a Limited Liability Partnership and a General Partnership?
7. What shall be the financial year of a limited liability partnership?
8. Who are the target groups of a limited liability partnership?
9. Who can be a partner of a limited liability partnership?
10. Can a body corporate be a partner to a limited liability partnership? What is the meaning of 'Body Corporate' as per Limited Liability Act, 2008?
11. What is a "foreign limited liability partnership"?
12. Whether Hindu Undivided Family (HUF) / its Karta can become partner / designated Partner in Limited Liability Partnership (LLP).