

THE JERSEY LAW COMMISSION



REPORT

THE LAW OF CONTRACT

To be laid before the States by the President of the Legislation Committee pursuant to the Proposition to establish the Commission approved by the States on 30th July 1996

JERSEY LAW COMMISSION
TOPIC REPORT No 10

February 2004

The Jersey Law Commission was set up by a Proposition laid before the States of Jersey and approved by the States Assembly on 30 July 1996.

The Commissioners are:

Mr David Lyons, English Solicitor, *Chairman*

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REPORT

THE LAW OF CONTRACT

To the President of the Legislation Committee of the States of Jersey

PART 1 Introduction

- 1 The law of Jersey is based on the customary law of the Ancient Duchy of Normandy and the Jersey law of contract is no exception to this. However in areas where the Norman Coutume was lacking the general practice was, for many years, to look to mainstream civil law as expounded by notable French jurists such as Pothier, who wrote in the 19th Century on the Coutume d'Orleans.
- 2 More recently, and in particular during the second half of the 20th Century, there has been a tendency for the courts of Jersey to look at English common law authorities in matters of contract law, whilst nevertheless continuing to draw on Norman and civil law sources. In our Consultation Paper we noted that to some extent this approach has resulted in a degree of confusion and uncertainty, neither of which is a desirable attribute of any legal system.
- 3 The Consultation Paper issued in October 2002 summarised what we perceived to be the present difficulties arising from the courts' approach to the Jersey law of contract:
 - (a) Accessibility, or rather, inaccessibility, of Norman texts. There are no modern textbooks on Norman Law and access to the early Norman texts is restricted to a small collection housed in the Public Library, a small collection in the library of the Jersey Law Society and a small number of books held by local practitioners.
 - (b) Language. Works on Norman customary law and on more modern French law, are almost exclusively written in the French language which, despite the Island's geographical proximity to France, is regarded as totally alien by the majority of the Island's population
 - (c) The difficulty of applying ancient concepts. A system of law which originated in medieval Normandy and which, because of the advent of the French Civil Code, has remained frozen in time save for the small number of Jersey cases which have developed it, is arguably ill-suited to the needs of the commercial world of the 21st Century. In addition, in areas where the law of contract overlaps other areas of law, such as that of trusts, there is the obvious difficulty of applying principles of the law of contract that derive from a jurisdiction to which the concept of a trust was unfamiliar.
 - (d) Uncertainty. An examination of Jersey contract law cases from the 1950's onwards suggests that in relation to the law of contract the legal system to

which a court will look for guidance in contract law cases where there is no existing Jersey case law on the point depends to a large extent on the identity of the judges sitting on the particular case and of the counsel appearing before them. To that extent there is an element of inconsistency of approach.

PART II Background

4 The Commission's Consultation Paper of October 2002 invited responses by 31 December 2002. The Paper set out three proposals for the reform of the Jersey law of contract.

- (a) maintenance of the status quo - encourage the Jersey courts to apply the Jersey law of contract as expounded by the earlier writers on Norman law and jurists such as Pothier but developing the law by analogy with concepts drawn from English and French law as required.
- (b) codification of the Jersey law of contract - produce a codification of the Jersey law of contract either by using a model from another jurisdiction or attempting to codify the Jersey law as it stands today.
- (c) incorporation of English law by statute- a direct incorporation of the English common law of contract .

5 The Commission received a number of responses from various organisations and individuals from which we have distilled the following key comments.

- (a) maintaining the status quo - although this would allow judicial flexibility and permit the Jersey courts to develop the Jersey law of contract it would still leave a Jersey contracting party unsure as to his/her rights or obligations.
- (b) codification - the main argument against codification is the time and effort that such a process would take and the identification and subsequent debate that would ensue in relation to what the Jersey law of contract actually is.

Some argued that Jersey could codify Pothier but, as Pothier wrote in the 18th Century his work would need to be heavily updated to provide a modern contract law for the island and this could lead to protracted debate.

Other respondents to the consultation paper gave examples of the laws of various foreign jurisdictions that could be used as a model for a new Jersey law of contract (see paragraph 6 below).

- (c) adoption of English law - this is by far the simplest proposal but could lead, as was pointed out by several respondents, to a further erosion of Jersey's relative independence from England. A number of respondents emphasised that if Jersey is to have any chance of preserving its unique constitutional status it will have to demonstrate that it is "different" from the United Kingdom. Adopting yet another aspect of English law will serve only to erode that difference.

The main counter to the argument that Jersey will continue to erode its independent status was that it was unfair to those who contract under Jersey law to be disadvantaged by an uncertain legal framework for the sake of preserving the Island's identity when criminal defendants, trustees and beneficiaries and shareholders are not, given that criminal, trust and corporate law all substantially follow English law.

Some respondents argued that an adoption of the English common law of contract would be practically impossible as it would be difficult, if not impossible, to distinguish between the judge-made common law of contract and statutory modifications. There was a fear that an adoption of the English common law of contract would lead in effect to the adoption of subsequent statutory modification almost by stealth.

PART III Proposal

6 The Commission has given careful consideration to the comments of the respondents to the Consultation Paper and has reached the conclusion that the most practicable solution to the existing problem lies with the adoption of a statutory framework for the law of contract. We have rejected a codification of the existing law as we believe that it is likely to take many years, during which the present unsatisfactory state of affairs will no doubt continue. It seems to us that it would be preferable to base the statutory framework upon a model used in another jurisdiction. Some of the respondents to the Consultation Paper suggested particular jurisdictions which should be examined and we have considered the following :

- (a) the Quebec Civil Code (for a model which reflects the French elements in our existing system);
- (b) the Indian Contract Act 1872 (for a model which reflects the English elements in our existing system); and
- (c) the Uniform Commercial Code of the United States of America (for a model which would provide a completely modern system, familiar to many commercial contracting parties).

Although the Quebec Civil Code is attractive, based as it is on the Napoleonic Code, (which has from time to time been relied on by the Jersey courts), we feel that those parts relating to contract have become too integrated into the remaining parts of the Code to form a useful model upon which to base a Jersey contract law.

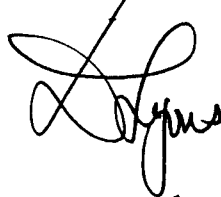
If Jersey were to use the Quebec Civil Code as a base for its new law of contract the Jersey courts may well be tempted to look to Quebec case law and, possibly, to French case law for help in interpreting the provisions of the new statute. There would be a major disadvantage to this, which was pointed out by several respondents to the consultation paper, in that the majority of Jersey residents are insufficiently fluent in French to be able to consider the relevant case law and text books, which was one of the disadvantages of the present system relying, as it does, on Norman Customary Law.

The relevant parts of the Uniform Commercial Code are also too deeply imbedded to enable it to be used as a base for codifying Jersey law. Furthermore it is yet another totally alien system.

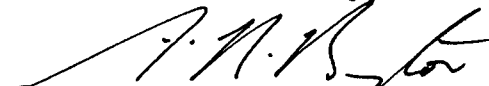
The Indian Contract Act 1872 (a copy of which is attached as an appendix) is an interesting model, standing alone and defining the Indian law of contract without reference to an entire code of laws. It is based heavily on the English common law of contract as it stood in 1872 and its provisions enshrine principles which would be familiar to both local practitioners and residents alike, given that the Jersey courts have in recent times adopted more and more of the elements of the English law of contract. There are however obvious differences from our existing law in certain areas such as the concept of "*cause*" under Jersey law as opposed to the concept of "*consideration*" in English law. We believe that using the Act as a model it should not be too great a task to incorporate those aspects of the existing Jersey law of contract that are different from English contract law but which are still regarded as good law, thus ensuring that the Jersey law of contract does indeed remain different from English law.

PART IV Conclusion

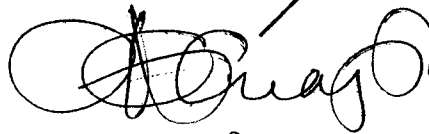
- 7 We recommend that a statutory framework be adopted for the Jersey law of contract and that the Indian Contract Act of 1872 be used as a model, incorporating where necessary those aspects of our existing law which are peculiar to Jersey as opposed to England and which are found to be worthy of retention.



DAVID LYONS, *Chairman*



ALAN BINNINGTON



CLIVE CHAPLIN



JOHN WHEELER



KERRY LAWRENCE

APPENDIX A

PERSONS WHO COMMENTED ON THE CONSULTATION PAPER

Sir Philip Bailhache, Bailiff of Jersey

Mr Michael Birt, Deputy Bailiff

William Bailhache QC, Attorney General

Advocate Graham Boxall

Mrs Linda Williams

Advocate Andrew Bridgeford

Mrs Wendy Malorey

Advocate Robert MacRae

Advocate Gordon Dawes

Jersey Consumer Council

Trading Standards Service

Channel Islands Co-Operative Society Ltd.

Mrs M Fleming

APPENDIX B

ACKNOWLEDGEMENTS

The topic Commissioner for this case was Advocate Alan Binnington and he joins with the other Commissioners in thanking Advocate John Kelleher for acting as topic practitioner.

APPENDIX C**INDIAN CONTRACT ACT, 1872****PRELIMINARY****1 Short title**

This Act may be called be the Indian Contract Act, 1872.

Extent, commencement - It extends to the whole of except the State of Jammu and Kashmir; and it shall come into force on the first day of September, 1872.

Enactment repealed - [***]. Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or customs of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

2 Interpretation - clause

In this Act the following words and expressions are used in the following senses, unless contrary intention appears from the context:

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

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

CHAPTER I

OF COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3 **Communication, acceptance and revocation of proposals**

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

4 **Communication when complete**

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

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

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

5 **Revocation of Proposals and acceptance**

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

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

6 **Revocation how made**

A proposal is revoked –

- (1) by the communication of notice of revocation by the proposer to the other party;

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

7 **Acceptance must be absolute**

In order to convert a proposal into a promise the acceptance must –

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

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

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

9 **Promise, express and implied**

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

CHAPTER II

OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS

10 **What agreements are contracts**

All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

11 **Who are competent to contract**

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

12 **What is a sound mind for the purposes of contracting**

A person is said to be of sound mind for the propose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

13 **"Consent" defined**

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

14 **"Free consent" defined**

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

- (1) coercion, as defined in section 15, or
- (2) undue influence, as defined in section 16, or
- (3) fraud, as defined in section 17, or
- (4) misrepresentation, as defined in section 18, or
- (5) mistake, subject to the provisions of section 20,21, and 22.

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

15 **"Coercion" defined**

"Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

16 **"Undue influence" defined**

- (1) A contract is said to be induced by "under influence" where the relations subsisting between the parties are such that one of the parties is in a position to

dominate the will of the other and uses that position to obtain an unfair advantage over the other.

- (2) In particular and without prejudice to the generally of the foregoing principle, a person is deemed to be in a position to dominate the will of another –
- (a) where he hold a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
 - (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.

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

17 "Fraud" defined

"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract;

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

18 "Misrepresentation" defined

"Misrepresentation" means and includes –

- (1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;

- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement.

19 Voidability of agreements without free consent

When consent to an agreement is caused by coercion, [***] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.

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

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

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

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

21 Effect of mistake as to law

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

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

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

23 What consideration and objects are lawful, and what not

The consideration or object of an agreement is lawful, unless -It is forbidden by law; or is of such nature that, if permitted it would defeat the provisions of any law or is fraudulent; or involves or implies, injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy.

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

24 **Agreements void, if consideration are objects unlawful in part**

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

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

An agreement made without consideration is void, unless –

- (1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
- (2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
- (3) it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorised in that behalf, to pay wholly or in part debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

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

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

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

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

27 **Agreement in restraint of trade, void**

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

Exception 1 : Saving of agreement not to carry on business of which good will is sold - One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business

therein, provided that such limits appear to the court reasonable, regard being had to the nature of the business.[***]

28 **Agreements in restraint of legal proceedings, void**

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

Exception 1 : Saving of contract to refer to arbitration dispute that may arise. This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.[***]

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

29 **Agreements void for uncertainty**

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

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

Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which may wager is made. Exception on favour of certain prizes for horse-racing: This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be rewarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected : Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.

CHAPTER III

OF CONTINGENT CONTRACTS

31 **"Contingent contract" defined**

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

32 Enforcement of Contracts contingent on an event happening

Contingent contracts to do or not to do anything in an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

33 Enforcement of contract contingent on an event not happening

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

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

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

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

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

When contracts may be enforced, which are contingent on specified event not happening within fixed time : Contingent contract tutu or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it become certain that such event will not happen.

36 Agreements contingent on impossible event void

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

CHAPTER IV

OF PERFORMANCE OF CONTRACTS, CONTRACTS WHICH MUST BE PERFORMED

37 **Obligations of parties to contract**

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

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

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

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

Every such offer must fulfil the following conditions –

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

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

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

40 **Person by whom promises is to be performed**

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

In other cases, the promisor or his representative may employ a competent person to perform it.

41 **Effect of accepting performance from this person**

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

42 **Devolution of joint liabilities**

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

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

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

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

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

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

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

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

45 **Devolution of joint rights**

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

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

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

Explanation : The question "what is a reasonable time" is, in each particular case, a question of fact.

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

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

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

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

Explanation : The question "what is proper time and place" is, in each particular case, a question of fact.

49 Place for the performance of promise, where no application to be made and no place fixed for performance

When a promise is to be performed without application by the promisee, and not place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

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

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

51 Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

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

52 **Order of performance of reciprocal promises**

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

53 **Liability of party preventing event on which contract is to take effect**

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

54 **Effect of default as to the promise which should be performed, in contract consisting or reciprocal promises**

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

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

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

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

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

56 **Agreement to do impossible act**

An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is

made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

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

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

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

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

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

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

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

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

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

61 **Application of payment where neither party appropriates**

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

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

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

63 Promise may dispense with or remit performance of promise

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

64 Consequence of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need to perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

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

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

66 Mode of communicating or revoking rescission of voidable contract

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

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

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

CHAPTER V**OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT****68 Claim for necessaries supplied to person incapable of contracting, or on his account**

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

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

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

70 **Obligation of person enjoying benefit of non-gratuitous act**

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

71 **Responsibility of finder of goods**

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

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

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

CHAPTER VI

OF THE CONSEQUENCES OF BREACH OF CONTRACT

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

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

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

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

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

74 Compensation of breach of contract where penalty stipulated for

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

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

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

75 Party rightfully rescinding contract, entitled to compensation

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

Chapter VII, comprising sections 76-123, is repealed by the Sale of Goods Act(3 OF 1930), section 65

CHAPTER VIII

OF INDEMNITY AND GUARANTEE

124 "Contract of indemnity" defined

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

125 Right of indemnity-holder when sued

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

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit, if in bringing of defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contract to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

126 **"Contract of guarantee", "surety", "principal debtor" and "creditor"**

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

127 **Consideration for guarantee**

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

128 **Surety's liability**

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

129 **Continuing guarantee**

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

130 **Revocation of continuing guarantee**

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

131 **Revocation of continuing guarantee by surety' death**

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

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

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

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

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

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

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

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

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

136 **Surety not discharged when agreement made with third person to give time to principal debtor**

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

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

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

138 **Release of one co-surety does not discharge other**

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

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

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

140 **Rights of surety on payment or performance**

Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety upon payment or performance

of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

141 Surety's right to benefit of creditor's securities

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

142 Guarantee obtained by misrepresentation, invalid

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

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

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

145 Implied promise to indemnify surety

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

146 Co-sureties liable to contribute equally

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

147 Liability of co-sureties bound in different sums

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

CHAPTER IX

OF BAILMENT

148 **"Bailment", "bailor" and "bailee" defined**

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

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

149 **Delivery to bailee how made**

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

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

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

151 **Care to be taken by bailee**

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

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

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

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

A contract of bailment is voidable 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.

154 Liability of bailee making unauthorised use of goods bailed

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

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

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

156 Effect of mixture, without bailor's consent, when the goods can be separated

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

157 Effect of mixture, without bailor's consent, when the goods cannot be separated

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

158 Repayment, by bailor, of necessary expenses

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

159 Restoration of goods lent gratuitously

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

160 Return of goods bailed, on expiration of time or a accomplishment of purpose

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

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

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

162 **Termination of gratuitous bailment by death**

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

163 **Bailer entitled to increase or profit from goods bailed**

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

164 **Bailor's responsibility to bailee**

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

165 **Bailment by several joint owners**

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

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

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

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

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

168 **Right to finder of goods may sue for specified reward offered**

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

169 When finder of thing commonly on sale may sell it

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

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

170 Bailee's particular lien

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

171 General lien of bankers, factors, wharfinger, attorneys and policy brokers

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

172 "Pledge", "Pawnor", and "Pawnee" defined

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

173 Pawnee's right of retainer

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

174 Pawnee not to retain for debt or promise other than for which goods pledged - presumption in case of subsequent advances

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

175 Pawnee's right as to extraordinary expenses incurred

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

176 Pawnee's right where pawnor makes default

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

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

177 Defaulting pawnor's right to redeem

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

178 Pledge by mercantile agent

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

Explanation: In this section, the expression "mercantile agent" and "documents of title" shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930 (3 of 1930).

178A Pledge by person in possession under voidable contract

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

179 Pledge where pawnor has only a limited interest

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

180 Suit by bailor or bailee against wrong-doer

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

181 Appointment of relief or compensation obtained by such suit

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

CHAPTER X**AGENCY****182 "Agent" and "principal" defined**

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

183 Who may employ agent

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

184 Who may be an agent

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

185 Consideration not necessary

No consideration is necessary to create an agency;

186 Agent's authority may be expressed or implied

The authority of an agent may be expressed or implied.

187 Definitions of express and implied

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.

188 **Extent of agent's authority**

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

189 **Agent's authority in an emergency**

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

190 **When agent cannot delegate**

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

191 **"Sub-agent" defined**

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

192 **Representation of principal by sub-agent properly appointed**

Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. Agent's responsibility for sub-agent: The agent is responsible to the principal for the acts of the sub-agent. Sub-agent's responsibility: The sub-agent is responsible for his acts to the agent, but not to the principal, except in cases of fraud, or wilful wrong.

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

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

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

When an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly,

such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

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

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

CHAPTER XI : [OF PARTNERSHIP] Repealed by the Indian Partnership Act, 1932 (9 of 1932).

SCHEDULE : [ENACTMENTS REPEALED] Repealed by the Repealing and Amending Act, 1914 (10 of 1914).