

Laws relating to Drafting and Conveyancing

Lesson 3

KEY CONCEPTS

■ Execution of Agreements ■ Offer and Acceptance ■ Void and Voidable Contracts ■ Specific Reliefs ■ Specific Performance ■ Transfer of Properties ■ Registration of Documents ■ Stamping of Instruments ■ Adjudication of Stamp Duty ■ Authorisation to Attorneys

Learning Objectives

To understand:

- Formation of Contract
- Essentials for entering into a Contract
- Competent Parties for an Agreement
- How can property be recovered
- Specific Enforcement of Contracts
- Transfer by way of Sale, Mortgages, Lease, Easement, Gifts etc.
- The requirements of registration of documents
- Effects of Non-registration
- Payments of Stamp Duties
- Adjudication of Stamp Duties
- Execution of Power-of-Attorneys

Lesson Outline

- Communication, Acceptance and Revocation of Proposals
- Essentials of Contracts
- Contingent Contracts
- Specific Reliefs
- Declaratory Decrees
- Sale
- Mortgage
- Lease & Licences
- Gift
- Compulsory and Optional Registration of Documents
- Time and Place of Registration
- Effects of Registration and Non-registration of Documents
- Instruments Chargeable with Duty (Section 3)
- Adjudication of Stamp Duty
- Execution under Power-of-attorney
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References (including Websites / Video links)

REGULATORY FRAMEWORK

- Indian Contract Act, 1872
- Specific Relief Act of 1963
- Transfer of Property Act, 1882
- Registration Act, 1908
- Indian Stamp Act, 1899
- Powers-Of-Attorney Act, 1882

PART – A: INDIAN CONTRACT ACT, 1872

Indian Contract Act, 1872 governs the Law relating to Contracts. This Act was enacted to define and amend certain parts of the law relating to contracts. The act does not deal with the law of contract exclusively. It does not deal with all the branches of the law of contract exclusively.

The Act is divisible into two parts. The first part (Section 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature. The second part (Sections 124-238) deals with certain special kinds of contracts, namely contracts of Indemnity and Guarantee, Bailment, Pledge, and Agency.

The preamble to the Act says that it is an Act “to define and amend certain parts of the law relating to contract”. The Act is by no means exhaustive on the law of contract. It does not deal with all the branches of the law of contract. Thus, contracts relating to partnership, sale of goods, negotiable instruments, insurance etc. are dealt with by separate Acts.

In order to understand, the critical aspects of Drafting and Conveyancing it is necessary to study the basic concepts relating to formation of contracts viz. Offers, Communication, acceptance and revocation of proposals, Essentials of Contracts and Contingent Contracts.

COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

Proposals

Proposal has been defined in section 2(a) of the Indian Contract Act, 1872, as under:

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.

A proposal is also known as an offer. An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance. The person making the proposal or offer is called the *proposer or offeror* and the person to whom the proposal is made is called the *offeree*.

Essentials of a proposal

1. There should be at least 2 persons.
2. One person should express his willingness to do or abstain from doing an Act or abstinence.
3. The purpose should be to obtain the assent of the other on the same thing.

If all the above three conditions are present, there is a valid proposal. However, the proposal should not be for any illegal act or abstinence.

Example: A send an email expressing his willingness to sell a Farm Land to B at a certain price.

A is the proposer, B is Offeree and the email send can be called a proposal or offer.

Kinds of Offers

There are generally 7 types of offers:

Types of Proposals	Particular offer/Specific Offer
	General Offer
	Cross Offers
	Open/Continuing/Standing Offer
	Counter offer
	Contracts by Post/Email
	Contracts over the Telephone

Identify the Proposals

1. Akshar offers to sell his old motorcycle to Bineet at a price of Rs. 50,000/-. Bineet made an offer to purchase the same motorcycle at a price of Rs. 40,000/-. Identify the type of offer.
2. XYZ Limited issued a tender to obtain services of Annual Maintenance of its Computer Systems for the year 2024. The services were required to be provided as and when the need arises. The tender was awarded to a partnership firm. There is no concluded contract. Contract will be concluded on placing of the order. Identify the type of offer.
3. Rajan advertises in Newspaper that the 1st person who communicates that he is ready provide him 5000 units of mobile phones within 7 days of the advertisement, he will purchase all 5000 mobiles from him. Identify the type of offer.

Rules governing Offers

A valid offer must comply with the following rules:

- (a) An offer must be clear, definite, complete and final. It must not be vague. For example, a promise to pay an increased price for a horse if it proves lucky to promisor, is too vague and is not binding.
- (b) An offer must be communicated to the offeree. An offer becomes effective only when it has been communicated to the offeree so as to give him an opportunity to accept or reject the same.
- (c) The communication of an offer may be made by express words-oral or written-or it may be implied by conduct.
- (d) The communication of the offer may be general or specific. Where an offer is made to a specific person it is called specific offer and it can be accepted only by that person. But when an offer is addressed to an uncertain body of individuals i.e. the world at large, it is a general offer.

How an offer gets revoked?

How a Proposal or Offer be revoked?

by the communication of notice of revocation by the proposer to the other party

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

by the failure of the acceptor to fulfil a condition precedent to acceptance

by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance

Offer and invitation to offer

Invitation to offer is a communication to invite certain person(s) or public for making offer. The same may be understood from below mentioned examples:

- (a) *An invitation to treat or an invitation to make an offer:* e.g., an auctioneers request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self- service store or a shopkeepers catalogue of prices are invitations to an offer.
- (b) *A mere statement of intention:* e.g., an announcement of a coming auction sale.
- (c) *A mere communication of information in the course of negotiation:* e.g., a statement of the price at which one is prepared to consider negotiating the sale of piece of land.

An offer that has been communicated properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

Communication

According to section 3 of the Indian Contract Act, 1872, the communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, 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.

Essentials of section 3

1. The purpose of section 3 is to provide the provision relating to four incidents:
 - i) Communication of the Proposal,
 - ii) Acceptance of the Proposal,
 - iii) Revocation of the Proposal, and
 - iv) Revocation of the Acceptance.
2. There must be an act or omission of the maker for acceptance and revocation.
3. The Act or Omission should intend to communicate such proposal, acceptance or revocation, or should have the effect of communicating it.

Completion of Communication

1. **Proposal:** The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made i.e. the offeree.
2. **Acceptance:** The acceptance completes for the Offeror and Offeree at different times.

The communication of an acceptance is complete, –

- i) **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.
- ii) **As against the acceptor,** when it comes to the knowledge of the proposer.

3. **Revocation:** The revocation also takes place for the Offeror and offeree at different times.

The communication of a revocation is complete,—

- i) **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;
- ii) **As against the person to whom it is made,** when it comes to his knowledge.

By When an acceptance or Proposal be revoked?

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor.

Example: Ankush send an email proposing to sell his factory to Baman. Baman accepted the proposal by a letter sent by post. Ankush may revoke his proposal at any time before or at the moment when Baman posts his letter of acceptance, but not afterwards. Baman may revoke his acceptance at any time before or at the moment when the letter communicating it reaches Ankush, but not afterwards.

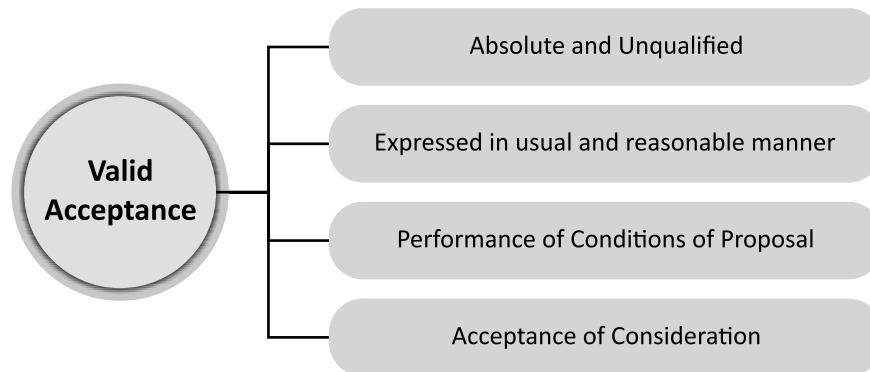
Acceptance

A proposal on acceptance becomes a promise. Every promise or set of promises forming consideration for each other become agreement. Therefore, special relevance should be given to acceptance. According to section 7 of Indian Contract Act, 1872, 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.

According to section 8 of Indian Contract Act, 1872, performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

The below clarify the rules relating to a valid acceptance:



ESSENTIALS OF CONTRACTS

According to section 10 of the Indian Contract Act, 1872, 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.

Therefore, the essentials of valid contracts are:

- 1) Valid Agreement as per section 2(e) of Indian Contract Act, 1872
- 2) Free Consent of the parties
- 3) Competence of Parties
- 4) Valid Consideration
- 5) Lawful Object
- 6) Agreement not declared Void.

The process for reaching a valid agreement has already been discussed in this chapter. The other essentials are discussed hereunder:

Free Consent of the parties

Section 13 of the ICA defines the term “consent” as under:

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

Section 14 of the ICA defines free consent as under:

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

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

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

Coercion, as defined in section 15

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

Example

A threatens B to inflict grievous hurt to B's son if he does not enter into Contract for giving performance at A's restaurant. A has applied coercion for the purpose of entering into contract.

Undue influence, as defined in section 16

Section 16(1) of the ICA provides that a contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Example

Ajith has given a loan of Rs. 10,00,000/- (Ten Lakh Rupees) to his son Binay, during his minority. When Binay attained majority, Ajith by misuse of parental influence took a bond from Binay for Rs. 1,00,00,000 (One Crore) than the sum due in respect of that Loan. Here, relations subsisting Ajith and Binay are such that one of the parties is in a position to dominate the will of the other. Therefore, Ajith employs undue influence.

Section 16(2) provides the situation in which it is deemed that one has dominated the will of other. It provides that in particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another:

- (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

Section 16(3) provides about the provisions relating to Burden of Proof of Undue Influence. It says, where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Example

Amantha, being in debt to Bikrant, the money-lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on Bikrant to prove that the contract was not induced by undue influence.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872, which is relating to Proof of good faith in transactions where one party is in relation of active confidence.

Fraud, as defined in section 17

“Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or 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; i.e. Suggestion of False Fact by the Believer.

- (2) the active concealment of a fact by one having knowledge or belief of the fact; i.e. Active concealment by person having knowledge of belief.
- (3) a promise made without any intention of performing it; i.e. False Promise.
- (4) any other act fitted to deceive; i.e. deceptive Act.
- (5) any such act or omission as the law specially declares to be fraudulent. i.e. Any other act or omission declared as fraud by any Law.

However, as per the explanation, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances are such that it is the duty of the person keeping silence to speak, or unless his silence is equivalent to speech.

Misrepresentation, as defined in section 18

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 any one claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;
- (3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Mistake, subject to the provisions of sections 20, 21 and 22

Both the parties Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. It should be noted that an erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

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

Consequence of agreement being vitiated by Coercion, undue influence, fraud and misrepresentation

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

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

If 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.

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.

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

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.

Competence of Parties

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

Accordingly, there may be three categories which are not competent to contract:

1. Persons who have not attained the majority
2. Person of Unsound Mind
3. Persons who are disqualified by any law.

Who has attained majority?

According to the Indian Majority Act, 1875, a minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the Court of Wards, the person continues to be a minor until he completes his age of 21 years. According to the Indian Contract Act.

Who is person of sound mind?

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

It should be noted that a person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind and a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Who are disqualified by the Law?

The persons disqualified by Law includes as under:

1. **Alien Enemies:** A person who is not an Indian citizen is an alien. An alien may be either an alien friend or a foreigner whose sovereign or State is at peace with India, has usually contractual capacity of an Indian citizen. On the declaration of war between his country and India he becomes an alien enemy. A contract with an alien enemy becomes unenforceable on the outbreak of war.
2. **Foreign Sovereigns and Ambassadors:** Foreign sovereigns and accredited representatives of foreign states, i.e., Ambassadors, High Commissioners, enjoy a special privilege in that they cannot be sued in Indian Courts, unless they voluntarily submit to the jurisdiction of the Indian Courts. Foreign Sovereign Governments can enter into contracts through agents residing in India. In such cases the agent becomes personally responsible for the performance of the contracts.
3. Oudh Land Revenue Act provides that where a person in Oudh is declared as a 'disqualified proprietor under the Act, he is incompetent to alienate his property.

Valid Consideration

According to Section 2(d) of ICA, consideration is: 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.

Essentials of Considerations

1. Consideration should be at the desire of the person making promise. He may be the offeror or the Offeree.
2. The promisee or any other person on his/her behalf has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing an act or abstinence or promise. It is clear that the consideration may be Executory/Future or Executed /Present or Past Act/Forbearance.

It should be noted that in English law, consideration must move from the promisee, so that a stranger to the consideration cannot sue on the contract but according to Indian Laws consideration may move from stranger also.

CASE LAW

In ***Chinnaya v. Ramaya, (1882) 4 Mad. 137***, a lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donors brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donors brother agreeing to pay the annuity. Afterwards the donee (the daughter) declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. The Court, however, held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

Privity of consideration

In India *privity* of consideration is not strictly applicable. It means that consideration may be paid by parties or any other person. The doctrine of *privity* of contract provides that a contract cannot confer rights or impose obligations upon any person who is not a party to the contract. It is applicable in India with certain exception like trust, covenant running with land, family settlements etc.

Rules Governing Consideration

- (a) Every contract must be supported by valuable consideration otherwise it is formally void subject to some exceptions.
- (b) Consideration may be by an act of abstinence or promise.
- (c) There must be mutuality i.e., each party must do or agree to do something.
- (d) Consideration must be real, and not vague, indefinite, or illusory, e.g., a son's promise to "stop being a nuisance" to his father, being vague, is no consideration.
- (e) Although consideration must have some value, it need not be adequate.
- (f) Consideration must be lawful.
If the consideration is unlawful, the agreement is void.
- (g) Consideration must be something more than the promisee is already bound to do for the promisor. Thus, an agreement to perform an existing obligation made with the person to whom the obligation is already owed, is not made for consideration.

Exceptions to consideration

According to section 25 of ICA, 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 authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

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.

Lawful Object

According to section 23 of ICA, the consideration or object of an agreement is lawful, unless:

1. it is forbidden by law; or
2. is of such a nature that if permitted, it would defeat the provisions of any law; or
3. is fraudulent; or
4. involves or implies injury to the person or property of another; or
5. 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 and every agreement of which the object or consideration is unlawful is void.

Example

Lawful Consideration

1. Anantha agrees to sell his Factory to Brajesh for 10,00,000/- rupees. Here Brajesh's promise to pay the sum of 10,00,000 rupees is the consideration for Anantha's promise to sell the house, and Anantha's promise to sell the factory is the consideration for Brajesh's promise to pay the 10,00,000 rupees. These are lawful considerations.

Unlawful Consideration

2. A, B and C enter into an agreement for the division among them of gains acquired, by them by fraud. The agreement is void, as its object is unlawful.

Agreement not declared Void

The following types of agreements are void under Indian Contract Act:

- (a) Agreement by or with a minor or a person of unsound mind or a person disqualified to enter into a contract - Section 11.
- (b) Agreement made under a mistake of fact, material to the agreement on the part of the both the parties - Section 20.
- (c) An agreement of which the consideration or object is unlawful - Section 23.
- (d) If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void - Section 24.
- (e) An agreement made without consideration subject to three exceptions provided to Section 25.
- (f) An agreement in restraint of marriage - Section 26.
- (g) An agreement in restraint of trade - Section 27.
- (h) An agreement in restraint of legal proceedings - Section 28.
- (i) Agreements, the meaning of which is not certain, or capable of being made certain - Section 29.

- (j) Agreement by way of wager- Section 30.
- (k) An agreement to enter into an agreement in the future.
- (l) An agreement to do an act impossible in itself - Section 56(1).

An agreement not enforceable by law is void *ab initio*.

CONTINGENT CONTRACTS

According to section 31 of ICA, 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.

Example

Anantha contracts to pay Brajesh Rs. 2,00,000 if Brajesh's will construct a House within 1 month. This is a contingent contract.

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.

PART – B: SPECIFIC RELIEF ACT, 1963

The law relating to specific relief in India is provided in the Specific Relief Act of 1963. The expression 'specific relief' means a relief in specie. In this lesson, relevant part of specific relief act dealing with enforcement of contracts has been covered.

SPECIFIC RELIEFS

Recovery of specific immovable property

According to section 5 of Specific Relief Act, 1963(SRA), a person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908. Therefore, a civil suit may be filled by a party for recovering the possession of Immovable Property.

Section 6 provides the provisions related to suit by person dispossessed of immovable property. It says 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 possession or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

However, no suit under section 6 should be brought:

- (a) after the expiry of six months from the date of dispossession; or
- (b) against the Government.

Appeal or review is not allowed from any order or decree passed in any suit instituted under section 6.

However, suit to establish his title to such property and to recover possession thereof is not barred.

Recovery of specific movable property

According to section 7 of SRA, a person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908. The provision is similar to section of SRA which provides for the provision for Recovery of specific immovable property. However, two explanation to the main provision has been provided as under:

Explanation 1. – A trustee may sue under section 7 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 section 7.

Further, section 8 of SRA provides for the Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession.

It 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) of this section, presume—

- (a) that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or,
- (b) that it would be extremely difficult to ascertain the actual damage caused by its loss.

Specific Performance of Contracts

Except as otherwise provided in SRA where any relief is claimed under Chapter II of Part II of SRA 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.

The specific performance of a contract are enforceable by the court subject to the provisions contained in section 11(2), section 14 and section 16.

Except as otherwise provided in SRA, specific performance of a contract is enforceable when the act agreed to be done is in the performance wholly or partly of a trust.

Further section 11(2) provides that a contract made by a trustee in excess of his powers or in breach of trust cannot be specifically enforced.

The court may direct the specific performance of a part of a contract only as per the provisions provided under section 12 of SRA which are as follows:

1. 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 be a only a small proportion to the whole in value and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

2. 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 other 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 right to compensation, either for the deficiency or for the loss or damage sustained by him through the default of the defendant.
3. 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.

Explanation. – For the purposes section 12, a party to a 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.

Example

X and Y entered into the contract in which X will provide 500 printers to Y. X had to shut down his manufacturing unit due to the local conditions out of his control. X has only 475 printers in his warehouse.

X or Y may file a civil suit and the court may direct to deliver 475 printers and award compensation.

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

Section 13 of SRA enumerates the Rights of purchaser or lessee as under:

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 Chapter II of Part II), has the following rights, namely:

- (a) if the vendor or lessor has subsequently to the contract acquired any interest in the 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.

These provisions are also applicable to contracts for the sale or hire of movable property.

Contracts not specifically enforceable

According to section 14, 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;
- (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
- (c) 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
- (d) a contract which is in its nature determinable.

Example

X and Y entered into a contract in which Y will work in the restaurant of X as marketing manager and expand the restaurant business. In this scenario, the court cannot supervise continuously. Therefore, this contract may be covered within the purview of section 14.

Who may obtain specific performance

Section 15 provides the provisions relating to the persons who may obtain specific performance. It provides that except as otherwise provided by Chapter II of Part II, 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:

Provided 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 remainderman;
- (e) 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;
- (f) 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.

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

Non availability of Specific performance of a contract in favour of certain persons

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 the performance of which has been prevented or waived by the defendant.

Explanation. – For the purposes of clause (c),—

- (i) where a contract involves the payment of money, it is not essential for the plaintiff 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 (Section 17)

A contract to sell or let any immovable property cannot be specifically enforced in favour of a vendor or lessor:

- i) who, knowing himself not to have any title to the property, has contracted to sell or let the property;
- ii) 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 provisions above are also applicable to contracts for the sale or hire of movable property to the possible extent.

Non-enforcement except with variation (Section 18)

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 mis-representation, 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 contract;
- (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)

Except as otherwise provided by Chapter II of Part II, 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:

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

Substituted performance of contracts, etc.

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.

No substituted performance of contract under section 20(1) of SRA 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 section 20(1) unless he has got the contract performed through a third party or by his own agency.

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 section 20(1), he shall not be entitled to claim relief of specific performance against the party in breach.

Nothing in section 20 shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.

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

Power to award compensation in certain cases (Section 21)

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

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.

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.

In determining the amount of any compensation awarded under section 21, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.

No compensation shall be awarded under section 21 unless the plaintiff has claimed such compensation in his plaint. Provided that 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.

Power to grant relief for possession, partition, refund of earnest money, etc. (Section 22)

Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, 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) above be granted by the court unless it has been specifically claimed:

Provident that 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) above shall be without prejudice to its powers to award compensation under section 21.

Liquidation of damages not a bar to specific performance (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 the party in default an option of paying money in lieu of specific performance.

When enforcing specific performance under this section, 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)

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, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

DECLARATORY DECREES (SECTION 34 & 35)

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:

However, no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation. – A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not inexistence, and for whom, if in existence, he would be a trustee.

A declaration made under Chapter VI of Part II 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.

PART C: TRANSFER OF PROPERTY ACT, 1882

The Transfer of Property Act, 1882 (TPA) comprises the provisions relating to transfer of property. This law was enacted with the object to *amend the law relating to the transfer of property by act of parties*. The law excludes the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession. The Act is limited to transfers *inter vivos* and excludes testamentary succession, i.e. transfers *by will*. *The substantial portions of contracts in any organisation relate to the Transfer of Property. Therefore, the study of relevant part of this law is imperative for upskilling of a professional in contract drafting.*

SALE

Section 54 of TPA defines the term Sale. According to this section, it is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. In order a document be treated as Sale Document, ownership must be transferred from one person to the other person and the transaction must be supported by a considerations paid or promised or partly paid and partly promised.

How sale is effected?

Transfer of Property Act, 1882 primarily deals with the transfer of immoveable property. A transfer of property may be effected in two ways according to section 54 i.e. when the value of the property is equal to more than 100 rupees and where the value of the property is less than 100 rupees.

Value of the Property equal to and more than 100 rupees: Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. The first essential is that the property must be tangible immoveable property and value of property should be equal to or exceed 100 rupees. If both the conditions are satisfied than transfer should be by way of registered instrument only.

Value of the property is less than 100 rupees: In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. If the value is less than 100 rupees than it is dependent on the parties to decide to mode of transfer either by way of registered instrument or mere delivery.

Further, Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he(buyer) directs, in possession of the property.

Contract for sale: A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.

MORTGAGE

Chapter IV of the Transfer of Property Act, 1882 deals with the provisions relating to Mortgages of Immoveable Property and Charges. Section 58 defines certain terms such as “Mortgage”, “mortgagor”, “mortgagee”, “mortgage-money” and “mortgage-deed”.

A mortgage is defined as the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

The rights and liabilities of mortgagor and mortgagee are also mentioned in the Transfer of Property Act, 1882.

Types of the Mortgages

1. **Simple mortgage:** Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.
2. **Mortgage by conditional sale:** Where the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the sale shall become void, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

However, no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale.

3. **Usufructuary mortgage:** Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property or any part of such rents and profits and to appropriate the same in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest or partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.
4. **English mortgage:** Where the mortgagor binds himself to repay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.
5. **Mortgage by deposit of title-deeds:** Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.
6. **Anomalous mortgage:** A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds is called an anomalous mortgage.

LEASE & LICENCES

A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession. Where a lease of

immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

Difference between Lease and licence

A lease should be distinguished from a licence. A licence is a right to do or continue to do in or upon the immoveable property of the grantor, something which would, in the absence of such a right, be unlawful.

A licence does not transfer any interest in the property and the licensee has no right to possession. A licence can be revoked by the grantor at any time, whereas a lease cannot be revoked. If, I sell the fruits of my garden to you, you are given permission or licence to enter my garden and take away the fruits. A lease involves a transfer of interest followed by possession of the property for a specified period. The real test is the intention of the parties.

If the document creates an interest in the property, it is a lease but if it only permits another to make use of the property of which the legal possession continues with the owner, it is a licence because it does not create any interest in that property [*Associated Hotel of India v. R.N. Kapoor, A.I.R. (1956) S.C. 1962*].

The question is not of words but of substance and the label which the parties choose to put upon the transaction though relevant is not decisive.

GIFT

“Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Such acceptance must be made during the lifetime of the donor and while he is till capable of giving, If the donee dies before acceptance, the gift is void.

For a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. A gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

A gift comprising both existing and future property is void as to the latter.

A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a it shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked. Nothing contained in section 126 shall be deemed to affect the rights of transferees for consideration without notice.

Onerous Gifts

Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully. Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Actionable Claims

The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent. It shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not.

However, every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

However, nothing in the sections 130 to 136 of Transfer of Property Act, 1882, applies to stocks, shares or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

PART D: REGISTRATION ACT, 1908

Registration means recording of the contents of a document with a Registering Officer and preservation of its copies. The Registration Act, 1908 was enacted with the purpose of ensuring registration of documents related to deals regarding land or other immovable or moveable property. A document which is registered becomes more authentic and trustable. The registration is of a document and not of a transaction. Therefore, this law is an important enactment for the purpose of drafting and conveyancing.

COMPULSORY AND OPTIONAL REGISTRATION OF DOCUMENTS

Documents of which registration is compulsory (Section 17)

The following documents shall be registered compulsorily:

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property.

The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 relating to Doctrine of Part Performance shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

Exemptions from section 17

The registration of the non-testamentary documents mentioned in clauses (b) and (c) of Section 17(1) is subject to the exceptions provided in Section 17(2). These are as follows:

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or
- (iv) any endorsement upon or transfer of any debenture issued by any such Company; or
- (v) any document other than the documents specified in sub-section 17(1A) not itself creating declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) any grant of immovable property by Government; or
- (viii) any instrument of partition made by a Revenue-Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists, Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or
- (xa) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Example

X and Y executed and signed a Lease Deed for 5 Years. The lease deed is compulsorily registrable.

Documents of which registration is optional (Section 18)

The following documents are optionally registered under the Registration Act, 1908, namely:–

- (a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (b) instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;
- (c) leases of immovable property for any term not exceeding one year, and leases exempted under section 17;
- (cc) instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;
- (d) instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property;
- (e) wills; and
- (f) all other documents not required by section 17 to be registered.

TIME AND PLACE OF REGISTRATION

Subject to the provisions contained in sections 24, 25 and 26 of the Registration Act, 1908, no document other than a will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. However, a copy of a decree or order may be presented within four months from the day on which the decree or order was made, or, where it is appealable, within four months from the day on which it becomes final.

Notwithstanding anything to the contrary contained in Registration Act, if a document requiring registration has been accepted for registration by a Registrar or Sub-Registrar from a person not duly empowered to present the same, and has been registered, any person claiming under such document may, within four months from his first becoming aware that the registration of such document is invalid, present such document or cause the same to be presented, in accordance with the provisions of Part VI for re-registration in the office of the Registrar of the district in which the document was originally registered; and upon the Registrar being satisfied that the document was so accepted for registration from a person not duly empowered to present the same, he shall proceed to the re-registration of the document as if it has not been previously registered, and as if such presentation for re-registration was a presentation for registration made within the time allowed therefore under Part IV, and all the provisions of this Act, as to registration of documents, shall apply to such re-registration; and such document, if duly re-registered in accordance with the provisions of section 23A, shall be deemed to have been duly registered for all purposes from the date of its original registration:

However, within three months from the twelfth day of September, 1917, any person claiming under a document

to which this section applies may present the same or cause the same to be presented for re-registration in accordance with section 23A, whatever may have been the time when he first became aware that the registration of the document was invalid.

Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.

However, if, owing to urgent necessity or unavoidable accident, any document executed, or copy of a decree or order made, in India is not presented for registration till after the expiration of the time hereinbefore prescribed in that behalf, the Registrar, in cases where the delay in presentation does not exceed four months, may direct that, on payment of a fine not exceeding ten times the amount of the proper registration-fee, such document shall be accepted for registration. Any application for such direction may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.

When a document purporting to have been executed by all or any of the parties out of India is not presented for registration till after the expiration of the prescribed time, the registering officer, if satisfied:

- (a) that the instrument was so executed, and
- (b) that it has been presented for registration within four months after its arrival in India, may, on payment of the proper registration-fee accept such document for registration.

A WILL may at any time be presented for registration or deposited.

Place of Registration

According to section 28, save as in Part V otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property, and section 18, clauses (a), (b) (c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub-district the whole or some portion of the property to which such document relates is situate.

Every document not being a document referred to in section 28 or a copy of a decree or order, may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed, or in the office of any other Sub-Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered.

A copy of a decree or order may be presented for registration in the office of the Sub-Registrar in whose sub-district the original decree or order was made, or, where the decree or order does not affect immovable property, in the office of any other Sub-Registrar under the State Government at which all the persons claiming under the decree or order desire the copy to be registered.

Any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

In ordinary cases the registration or deposit of documents under Registration Act shall be made only at the office of the officer authorised to accept the same for registration or deposit. However, such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

EFFECTS OF REGISTRATION AND NON-REGISTRATION OF DOCUMENTS

No document required by section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall:

- (a) affect any immovable property comprised therein, or

- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

However, an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be effected by registered instrument.

Every document of the kinds mentioned in clauses (a), (b), (c) and (d) of section 17, sub-section (1), and clauses (a) and (b) of section 18, shall, if duly registered, take effect as regards the property comprised therein, against every unregistered document relating to the same property, and not being a decree or order, whether such unregistered document be of the same nature as the registered document or not.

CASE STUDY

XYZ Pvt. Ltd and DEF Co. LLP have entered into a contract of sale of plant and machinery. The Managing Director of the XYZ Pvt. Ltd. signed the contract in Mumbai and send the same to the office of DEF Co. LLP in Delhi and its partner has signed the document. The consideration for the transaction is Rs. 50 Crore. A dispute arose between the parties over the identification of this property. Identify the following.

1. Whether the registration of this contract is compulsory.
2. Where the contract can be registered?
3. What is the time period for getting the contract registered?
4. What is effect of non-registration of this document?

PART E: INDIAN STAMP ACT, 1899

The Indian Stamp Act, 1899 is the law relating to stamps which consolidates and amends the law relating to stamp duty. It is a fiscal legislation envisaging levy of stamp duty on certain instruments. Therefore, this law is complementary in Laws relating to Drafting and Conveyancing.

INSTRUMENTS CHARGEABLE WITH DUTY (SECTION 3)

Subject to the provisions of Indian Stamp Act, 1899 and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say:

- (a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
- (b) every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
- (c) every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India:

Provided that no duty shall be chargeable in respect of –

- (1) any instrument executed by, or on behalf of, or in favour of, the Government incases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument;

- (2) any instrument for the sale, transfer or other disposition, either absolutely or by way of mortgage or otherwise, of any ship or vessel, or any part, interest, share or property of or in any ship or vessel registered under the Merchant Shipping Act 1894, Act No. 57 & 58 Vict. c. 60 or under Act XIX of 1838 Act No. or the Indian Registration of Ships Act, 1841, (CX of 1841) as amended by subsequent Acts.

Several instruments used in single transaction of sale, mortgage or settlement (Section 4)

- (1) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that Schedule.
- (2) The parties may determine for themselves which of the instrument so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument. However, the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.
- (3) Notwithstanding anything contained in sub-sections (1) and (2), in the case of any issue, sale or transfer of securities, the instrument on which stamp-duty is chargeable under section 9A shall be the principal instrument for the purpose of this section and no stamp-duty shall be charged on any other instruments relating to any such transaction.

Instruments relating to several distinct matters (Section 5)

Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under Indian Stamp Act, 1899.

Instruments coming within several descriptions in Schedule I (Section 6)

Subject to the provisions of the last preceding section, an instrument so framed as to come within two or more of the descriptions in Schedule I, shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties. However, nothing in Indian Stamp Act contained can render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

ADJUDICATION OF STAMP DUTY

Adjudication as to proper stamp.(Section 31)

- (1) When any instrument, whether executed or not and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount (not exceeding five rupees and not less than fifty naye paise) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.
- (2) For this purpose the Collector may require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that –

- (a) no evidence furnished in pursuance of section 31 shall be used against any person in any civil proceeding, except in an inquiry as to the duty with which the instrument to which it relates is chargeable; and

- (b) every person by whom any such evidence is furnished, shall, on payment of the full duty with which the instrument to which it relates, is chargeable, be relieved from any penalty which he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

Certificate by Collector (Section 32)

- (1) When an instrument brought to the Collector under section 31 is, in his opinion, one of a description chargeable with duty, and
 - (a) the Collector determines that it is already fully stamped, or
 - (b) the duty determined by the Collector under section 31, or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid, the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.
- (2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.
- (3) Any instrument upon which an endorsement has been made under this section, shall be deemed to be duly stamped or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been originally duly stamped.

However, nothing in this section authorizes the Collector to endorse—

- (a) any instrument executed or first executed in India and brought to him after the expiration of one month from the date of its execution or first execution, as the case may be;
- (b) any instrument executed or first executed out of India and brought to him after the expiration of three months after it has been first received in India; or
- (c) any instrument chargeable with a duty not exceeding ten naye-paise, or any bill of exchange or promissory note, when brought to him, after the drawing or execution thereof, on paper not duly stamped.

Instruments not duly stamped inadmissible in evidence, etc. (Section 35)

No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.

Provided that –

- (a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;
- (b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;
- (c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

- (d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898;
- (e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.

Admission of instrument where not to be questioned (Section 36)

Where an instrument has been admitted in evidence, such admission shall not, except as provided in section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Admission of improperly stamped instruments (Section 37)

The State Government may make rules providing that, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped, and any instrument so certified shall then be deemed to have been duly stamped as from the date of its execution.

Revision of certain decisions of Courts regarding the sufficiency of stamps (Section 61)

- (1) When any Court in the exercise of its civil or revenue jurisdiction or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898), makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section 35, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.
- (2) If such Court, after such consideration, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section 35, or without the payment of a higher duty and penalty than those paid, it may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.
- (3) When any declaration has been recorded under sub-section (2), the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.
- (4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section 42, or in section 43, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument.

Provided that:

- (a) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section 35, is paid to the Collector, unless he thinks that the offence was committed with an intention of evading payment of the proper duty;
- (b) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section 42.

Payment of Stamp Duty

Duties how to be paid

- (1) Except as otherwise expressly provided in Indian Stamp Act, 1899, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps:
 - (a) according to the provisions herein contained; or
 - (b) when no such provision is applicable thereto – as the State Government may be rule direct.
- (2) The rules made under sub-section (1) may, among other matters, regulate,—
 - (a) in the case of each kind of instrument – the description of stamps which may be used;
 - (b) in the case of instruments stamped with impressed stamps – the number of stamps which may be used;
 - (c) in the case of bills of exchange or promissory notes the size of the paper on which they are written.

The practical aspects with regard to the calculation and payment of stamp duty can be referred to from Paper 1: jurisprudence, interpretation & General Laws of Executive Programme.

Use of adhesive stamps (Section 11)

The following instruments can be stamped with adhesive stamps, namely:

- (a) instruments chargeable with a duty not exceeding ten naye paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, and promissory notes drawn or made out of India;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

How transfer in consideration of debt, or subject to future payment, etc., to be charged (Section 24)

Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with ad valorem duty.

However, nothing in section 24 apply to any such certificate of sale as is mentioned in Article No. 18 of Schedule I.

PART F: THE POWERS-OF-ATTORNEY ACT, 1882

The Powers-of-Attorney Act is a longstanding enactment dated back in 1882. In the originally enacted legislation, there was no express definition of power-of-attorney. This definition has been inserted as section 1A by Act 55 of 1982 and was retrospectively made applicable w.e.f. 22nd October, 1980. As per the definition, it includes any instrument empowering a specified person to act for and in the name of the person executing it. A Company is not a human being, it has to act through human beings. It is considered as a legal person which can enter into contracts, possess properties in its own name, sue and can be sued by others etc. Due to this, companies are required to execute power of attorney for various purposes. Not only companies, other form of entities and individuals are also required to execute power of attorney for various purposes such as in case of agencies, legal representation etc.

EXECUTION UNDER POWER-OF-ATTORNEY

The person assigning the authority is called donor and the in whose favour the power-of-attorney has been made is called the donee. The donee of a power-of-attorney can execute any instrument or do anything in and with his own name and signature, and his own seal, wherever required by the authority of the donor of the power. Every instrument and thing so executed and done is as effectual in law as if it had been executed or done by the donee in the name and with the signature and seal of the donor thereof.

The Act provides for the protection of action taken by donee in good faith. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney cannot be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become of unsound mind, or insolvent, or had revoked the power, if the fact of death, unsoundness of mind, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same. However, this does not affect any right against the “payee of any person” i.e. receiver, interested in any money so paid. That person has the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

Procedure for Deposit of original instruments creating Powers-of-Attorney provided under section 4

The procedure for Deposit of original Powers-of-Attorney is provided under Section 4 of the Powers-of-Attorney Act, 1882. It provides that:

- (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument may be.
- (b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.
- (c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.
- (d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court or District Court.
- (e) The High Court may, from time to time, make rules for the purposes of section 4, and prescribing, with the concurrence of the State Government, the fees to be taken under clauses (a), (b) and (c).

Power-of-attorney of married women

According to section 5, a married woman of full age shall, by virtue of Powers-of-Attorney Act, have power, as if she were unmarried, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do.

Example

Delegation of powers through a power of attorney is resorted to in view of the fact that it will be very easy to prove the execution thereof. In the case of a resolution, it would be necessary to produce the Minutes Books, etc., to prove the passing of the resolution of delegation of the powers. Further, under Section 22 of the Companies Act, 2013, a company may, by writing under its Common Seal if any, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place either in India or outside India.

LESSON ROUND-UP

- Indian Contract Act, 1872 governs the Law relating to Contracts. This Act was enacted to define and amend certain parts of the law relating to contracts. The act does not deal with the law of contract exclusively. It does not deal with all the branches of the law of contract exclusively.
- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.
- The law relating to specific relief in India is provided in the Specific Relief Act of 1963. The expression 'specific relief' means a relief in specie.
- 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.
- 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.
- The Transfer of Property Act, 1882 (TPA) comprises the provisions relating to transfer of property. This law was enacted with the object to *amend the law relating to the transfer of property by act of parties*. The law excludes the transfers by operation of law, i.e. by sale in execution, forfeiture, insolvency or intestate succession.
- The transfer of an actionable claim whether with or without consideration shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent.
- Registration means recording of the contents of a document with a Registering Officer and preservation of its copies. The Registration Act, 1908 was enacted with the purpose of ensuring registration of documents related to deals regarding land or other immovable or moveable property.
- Where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.
- The Powers-of-Attorney Act is a longstanding enactment dated back in 1882. In the originally enacted legislation, there was no express definition of power-of-attorney. This definition has been inserted as section 1A by Act 55 of 1982 and was retrospectively made applicable w.e.f. 22nd October, 1980.

GLOSSARY

Agreement : Every promise and every set of promises, forming the consideration for each other.

Contract : An agreement enforceable by law.

Obligation : Includes every duty enforceable by law.

Gift : It is the transfer of certain existing moveable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee.

Immovable Property : It includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

TEST YOURSELF

(These are meant for recapitulation only. Answers to these questions are not to be submitted for evaluation.)

1. Write a note on essential elements to be considered before entering into a Lease Deed.
2. Explain the consequence of non-registration of compulsorily registrable instrument.
3. XYZ Limited intends to enter into Agreement to Sell. The company is not aware of the amount of stamp duty that is required to be paid. Advise the company the provisions relating to adjudication.
4. Can a contract to perform at an event be enforced? Explain with the help of relevant provisions.
5. Power of Attorney is an important instrument for any company. Comment.
6. Explain the type of mortgages.
7. Enumerate the essential elements for entering into a valid contract.
8. What is the importance of Declaratory Decrees? Explain.

LIST OF FURTHER READINGS

- Bare Act of Indian Contract Act, 1872
- Bare Act of Specific Relief Act, 1963
- Bare Act of Transfer of Property Act, 1882
- Bare Act of Registration Act, 1908
- Bare Act of Indian Stamp Act, 1899
- Bare Act of Powers-of-attorney Act, 1882
- The Indian Contract & Specific Relief Acts (Set of 2 Volumes) (2017)- Pollock and Sir Dinshaw Fardunji Mulla
- Specific Relief Act by R K Bangia
- The Indian Stamp Act. by K Krishnamurthy.
- The Transfer of Property Act, 1882 with Exhaustive Case Law- Universal's Concise Commentary
- Articles by the professionals and Firms

OTHER REFERENCES (Including Websites / Video Links)

- <https://www.indiacode.nic.in/bitstream/123456789/2190/5/A1908-16.pdf>
- <https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>
- <https://www.indiacode.nic.in/bitstream/123456789/1583/7/A1963-47.pdf>
- <https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf>
- <https://www.indiacode.nic.in/bitstream/123456789/2338/1/A1882-04.pdf>
- <https://www.indiacode.nic.in/bitstream/123456789/15510/1/a1899-2%20.pdf>

