

Tanzania

## Law of Contract Act

### Chapter 345

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# Tanzania

## Law of Contract Act

### Chapter 345

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Amended by [Electronic Transactions Act, 2015 \(Act 13 of 2015\)](#) on 1 September 2015]*

*[Ord. No. 1 of 1961; R.L. Cap. 433; Acts Nos. 55 of 1963, 13 of 2015]*

**An Act to provide for the law relating to contracts.**

## Part I – Preliminary provisions

### 1. Short title

- (1) This Act may be cited as the Law of Contract Act.
- (2) Nothing contained in this Act shall effect the provisions of any written law heretofore in force in Tanzania and not hereby expressly disappplied or repealed, nor any usage or custom of trade, nor any incident of any contract not inconsistent with the provisions of this Act.

### 2. Construction

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

- (i) an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;
  - (j) a contract which ceases to be enforceable by law becomes void.
- (2) Notwithstanding the provisions of paragraphs (g) or (j) of subsection (1) of this section, where any written law in force in Tanzania on the date on which this Act comes into operation provides that an agreement (howsoever described), of the kind specified therein, shall not be enforceable by action unless or until certain requirements therein specified are complied with, or certain consents are obtained, no such agreement shall be void by reason only that it is not enforceable by action under the provisions of that law for want of compliance with any such requirement or of the obtaining of any such consent.
- (3) Nothing in this Act, other than [section 23](#), shall affect any customary law; and in relation to any matter in which the law applicable is customary law, the provisions of the said [section 23](#) shall be in addition to any relevant rule of customary law and the references to a law in the said [section 23](#) shall be deemed to be references to the Acts of Tanzania.

*[Act No. 55 of 1963 Sch.]*

## **Part II – Communication, acceptance, and revocation of proposals**

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

The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, 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, and which has the effect of communicating it.

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

- (1) The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.
- (2) The communication of an acceptance is complete—
  - (a) 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;
  - (b) as against the acceptor, when it comes to the knowledge of the proposer.
- (3) The communication of a revocation is complete—
  - (a) 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;
  - (b) as against the person to whom it is made, when it comes to his knowledge.

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

- (1) A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
- (2) An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

## 6. Revocation how made

A proposal is revoked—

- (a) by the communication of notice of revocation by the proposer to the other party;
- (b) 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;
- (c) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
- (d) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

## 7. Acceptance must be absolute

In order to convert a proposal into a promise, the acceptance must—

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

## 8. Acceptance by performing conditions or receiving consideration

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

## 9. Promises, express and implied

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

# Part III – Voidable contracts and void agreements

## 10. What agreements are contracts

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

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

*[Act No. 13 of 2015 s. 39]*

## 11. Persons competent to contract

- (1) 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.
- (2) An agreement by a person who is not hereby declared to be competent to contract is void.

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

- (1) 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.
- (2) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.
- (3) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

**13. "Consent" defined**

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

**14. "Free consent" defined**

- (1) Consent is said to be free when it is not caused by—
  - (a) coercion, as defined in [section 15](#);
  - (b) undue influence, as defined in [section 16](#);
  - (c) fraud, as defined in [section 17](#);
  - (d) misrepresentation as defined in [section 18](#); or
  - (e) mistake, subject to the provisions of sections 20, 21 and 22.
- (2) Consent is said to be not free when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

**15. "Coercion" defined**

- (1) "Coercion" is the committing, or threatening to commit, any act forbidden by the 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.
- (2) For the purposes of this Act it is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

*[Cap. 16]*

**16. "Undue influence" defined**

- (1) A contract is said to be induced by "undue influence" where the relationship subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
- (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—
  - (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
  - (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
- (3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be

unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other:

Provided that, nothing in this subsection shall affect the provisions of section 120 of the Evidence Act.

[Cap. 6]

## 17. "Fraud" defined

- (1) "Fraud" means 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—
  - (a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;
  - (b) the active concealment of a fact by one having knowledge or belief of the fact;
  - (c) a promise made without any intention of performing it;
  - (d) any other act fitted to deceive; or
  - (e) any such act or omission as the law specially declares to be fraudulent.
- (2) For the purposes of this Act, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

## 18. "Misrepresentation" defined

"Misrepresentation" means—

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

## 19. Effect of agreements induced by coercion, fraud, misrepresentation or undue influence

- (1) Where consent to an agreement is caused by coercion, undue influence, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused:

Provided that, if such consent was caused by misrepresentation or by silence, or fraud 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.

[Cap. 4 s. 8]

- (2) 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.
- (3) 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.

- (4) A contract, which is voidable on the ground that the consent of a party thereto was caused by undue influence, 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.

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

- (1) 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.
- (2) 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.

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

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

## **22. Unilateral mistake**

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

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

- (1) The consideration or object of an agreement is lawful, unless—
  - (a) it is forbidden by law;
  - (b) it is of such a nature that, if permitted, it would defeat the provisions of any law;
  - (c) it is fraudulent;
  - (d) it involves or implies injury to the person or property of another; or
  - (e) the court regards it as immoral or opposed to public policy.
- (2) In each of cases referred to in subsection (1), 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 and no suit shall be brought for the recovery of any money paid or thing delivered, or for compensation for anything done, under any such agreement, unless—
  - (a) the court is satisfied that the plaintiff was ignorant of the illegality of the consideration or object of the agreement at the time he paid the money or delivered the thing sought to be recovered or did the thing in respect of which compensation is sought, and that the illegal consideration or object had not been effected at the time when the plaintiff became aware of the illegality and repudiated the agreement;
  - (b) the court is satisfied that the consent of the plaintiff to the agreement was induced by fraud, misrepresentation, coercion or undue influence; or
  - (c) the agreement is declared to be illegal by any written law with the object of protecting a particular class of persons of which the plaintiff is one.

*[Cap. 4 s. 8]*

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

Where 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.

## 25. Agreement without consideration

- (1) An agreement made without consideration is void unless—
- (a) it is expressed in writing in electronic form 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;
  - (b) 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
  - (c) it is a promise, made in writing or electronic form and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits,

in any of the cases under paragraphs (a), (b) and (c), such an agreement is a contract.

- (2) Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.
- (3) 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.

*[Act No. 13 of 2015 s. 40; Cap. 4 s. 8]*

## 26. Agreement in restraint of marriage void

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

## 27. Agreement in restraint of trade void

- (1) Every agreement by which anyone is restrained from exercising a lawful profession, trade or business is to that extent void, unless the restraint is reasonable in reference to the interests of the parties concerned and in reference to the interests of the public.
- (2) In particular and without prejudice to the generality of the foregoing principle, an agreement in restraint of trade is not reasonable in reference to the interests of the parties, if the restraint exceeds what is reasonably necessary to protect a proprietary interest of the promisee.
- (3) The burden of proving that any restraint is reasonable in reference to the interests of the parties shall lie upon the promisee, and the burden of proving that any restraint is unreasonable in reference to the interests of the public shall lie on the promisor.

## 28. Agreement in restraint of legal proceedings void

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

Provided that, this section shall not—

- (a) render illegal—
- (i) a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred; or



- (ii) any contract in writing by which two or more persons agree to refer to arbitration any question between them which has already arisen; or
- (b) affect any provision of any law in force for the time being as to references to arbitration.

### **29. Agreement void for uncertainty**

An agreement, the meaning of which is not certain, or capable of being made certain, is void.

### **30. Agreement by way of wager void**

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

## **Part IV – Contingent contracts**

### **31. "Contingent contract" defined**

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

### **32. Enforcement of contract contingent on event happening**

A contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened; and if the event becomes impossible, such contract becomes void.

### **33. Enforcement of contract contingent on event not happening**

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

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

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

### **35. Contingent contract**

- (1) A contingent contract to do or not to do anything if a specified uncertain event happens within a fixed time becomes void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
- (2) A contingent contract to do or not to do anything if a specified or uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired if it becomes certain that such event will not happen.

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

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

## **Part V – Performance of contracts**

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

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

- (1) The parties to a contract must perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law.
- (2) Promises bind the representatives of the promisor in case of the death of such promisor before performance, unless a contrary intention appears from the contract.

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

- (1) Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for nonperformance, nor does he thereby lose his rights under the contract.
- (2) Every such offer must fulfil the following conditions—
  - (a) it must be unconditional;
  - (b) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
  - (c) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.
- (3) An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

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

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

#### **40. Persons by whom promise is to be performed**

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

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

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

## Joint liabilities and rights

### 42. Devolution of joint liabilities

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

### 43. Obligations and liabilities of joint promisors

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

Provided that, where a promisee institutes a suit against any one or more of such joint promisors and obtains a decree therein, nothing in this subsection shall be construed as permitting the promisee to institute any further suit arising out of the same cause of action against any other of such joint promisors.

- (2) Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
- (3) Where any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.
- (4) Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

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

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

### 45. Devolution of joint rights

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

## Time and place for performance

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

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the promise must be performed within a reasonable time, which is, in each particular case, a question of fact.

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

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

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

- (1) When a promise is to be performed on a certain day and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.
- (2) The question as to what is a proper time and place is, in each particular case, a question of fact.

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

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

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

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

### **Performance of reciprocal promises**

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

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

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

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

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

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

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

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise,

and must make compensation to the other party to the contract for any loss which such other party may sustain by the nonperformance of the contract.

#### **55. Effect of failure to perform at fixed time in contract**

- (1) When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.
- (2) Where it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.
- (3) Where, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

#### **56. Agreement to do impossible act, subsequent impossibility or unlawfulness and related compensation**

- (1) An agreement to do an act impossible in itself is void.
- (2) A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
- (3) Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

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

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

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

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

### **Appropriation of payments**

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

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

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

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

and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

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

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

### **Contracts which need not be performed**

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

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

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

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

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

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

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

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

Provided that, where a contract becomes void by reason of the provisions of subsection (2) of [section 56](#), and a party thereto incurred expenses before the time when that occurs in, or for the purposes of, the performance of the contract, the court may, if it considers it just to do so in all the circumstances of the case, allow such party to retain the whole or any part of any such advantage as aforesaid received by him, or discharge him wholly or in part from making compensation therefore, or may make an order that such party recover the whole or any part of any payments or other advantage which would have been due to him under the contract had it not become void, being, in any such case, an advantage or part thereof, discharge or payment, not greater in value than the expenses so incurred.

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

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

#### **67. Effect of neglect of promisee**

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

## Part VI – Certain relations resembling those created by contract

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

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

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

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

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

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

Provided that, no compensation shall be made in any case in which the person sought to be charged had no opportunity of accepting or rejecting the benefit.

### 71. Responsibility of finder of goods

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

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

A person to whom money has been paid, or anything delivered, by mistake as to a matter of fact which, if true, would give rise to a legal obligation or under coercion, must repay or return it.

## Part VII – Consequences of breach of contract

### 73. Compensation for loss or damage caused by breach of contract, etc.

- (1) Where a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
- (2) The compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
- (3) Where an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.
- (4) In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

[Cap. 4 s. 8]

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

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

*[Cap. 4 s. 8]*

- (2) A stipulation for increased interest from the date of default may be a stipulation by way of penalty.
- (3) Notwithstanding the foregoing provisions of this section, when any person enters into any bail-bond, recognisance or other instrument of the same nature, or under the provisions of any law, or under the orders of the Government or the President gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.
- (4) For the avoidance of doubt, it is hereby declared that a person who enters into a contract with the Government or the President does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

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

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

**Part VIII – Indemnity and guarantee****76. "Contract of indemnity" defined**

A contract by which one party promises to save the other from loss caused to him is called a "contract of indemnity".

**77. Rights of indemnity holder when sued, etc.**

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

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

**78. "Contract of guarantee", "surety", "principal debtor", and "creditor" defined**

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



**79. Consideration for guarantee**

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

**80. Surety's liability**

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

**81. "Continuing guarantee" defined**

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

**82. Revocation of continuing guarantee**

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

**83. Revocation of continuing guarantee by surety's death**

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

**84. Liability of two persons, primarily liable, not affected by arrangements between them that one shall be surety on another's default**

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

**85. Discharge of surety by variance in terms of contract**

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

**86. Discharge of surety by release or discharge of principal debtor**

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

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

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

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

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

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

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

**90. Release of one co-surety does not discharge others**

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

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

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

**92. Rights of surety on payment or performance**

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

**93. Surety's right to benefit of creditor's securities**

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

**94. Guarantee obtained by misrepresentation invalid**

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

**95. Guarantee obtained by concealment invalid**

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

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

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

**97. Implied promise to indemnify surety**

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

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

Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other,

the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

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

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

### **Part IX – Bailment**

#### **100. "Bailment", "bailor" and "bailee" defined**

- (1) A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them; and the person delivering the goods is called the "bailor" while the person to whom they are delivered is called the "bailee".
- (2) Where a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

#### **101. Delivery to bailee, how made**

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

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

- (1) The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.
- (2) Where the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

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

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

Provided that, nothing in this section shall be construed as applying to or qualifying the liability at common law of a common carrier or an inn keeper.

#### **104. When bailee not liable for loss, etc., of thing bailed**

The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care described in [section 103](#).

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

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

**106. Liability of bailee making unauthorised use of goods bailed**

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

**107. Effect of mixture, with bailor's consent, of his goods with bailee's**

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

**108. Effect of mixture, without bailor's consent, when goods can be separated**

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

**109. Effect of mixture, without bailor's consent, when goods cannot be separated**

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

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

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

**111. Restoration of goods lent gratuitously**

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

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

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

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

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

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

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

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

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

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

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

**117. Bailment by several joint owners**

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

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

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

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

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

**120. Right of finder of goods**

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

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

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

- (a) when the thing is in danger of perishing or of losing the greater part of its value; or

*[Cap. 4 s. 8]*

- (b) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

**122. Bailee's particular lien**

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

**123. General lien of bankers, factors, wharfingers, advocates, and policy-brokers**

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

## Bailments of pledges

### 124. "Pledge", "pawnor", and "pawnee" defined

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

### 125. Pawnee's right of retainer

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

### 126. Pawnee not to retain for debt or promise other than that for which goods pledged

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

## Presumption in case of subsequent advances

### 127. Pawnee's right as to extraordinary expenses incurred

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

### 128. Pawnee's right where pawnor makes default

- (1) Where the pawnor makes default in payment of the debt or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.
- (2) Where the proceeds of such sale are less than the amount due in respect of the debt or promise; the pawnor is still liable to pay the balance but if the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

### 129. Defaulting pawnor's right to redeem

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

### 130. Pledges by mercantile agents and persons in possession under voidable contracts

- (1) Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge.
- (2) Where a mercantile agent validly pledges the documents of title to goods, the pledge shall be deemed to be a pledge of the goods.

- (3) Where a pawnor has obtained possession of the goods pledged by him under a contract voidable under [section 19](#), but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods; provided he acts in good faith and without notice of the pawnor's defect of title.
- (4) In this section the expressions "mercantile agent"; and "documents of title to goods" shall have the meanings ascribed to them respectively in the Sale of Goods Act.

*[Cap. 214]*

### **131. Pledge where pawnor has only limited interest**

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

## **Suits by bailees or bailors against wrongdoers**

### **132. Suit by bailor or bailee against wrongdoer**

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

### **133. Apportionment of relief or compensation obtained by such suits**

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

## **Part X – Agency**

### **Appointment and authority of agents**

### **134. "Agent" and "principal" defined**

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

### **135. Who may employ agent**

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

### **136. Who may be agent**

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

### **137. Consideration not necessary**

No consideration is necessary to create an agency.

**138. Agent's authority may be express or implied**

The authority of an agent may be express or implied.

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

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

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

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

**141. Agent's authority in emergency**

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

### **Sub-agents**

**142. When agent cannot delegate**

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

**143. "Sub-agent" defined**

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

**144. Representation of principal by sub-agent properly appointed**

- (1) Where a sub-agent is properly appointed the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts as if he were an agent originally appointed by the principal.
- (2) The agent is responsible to the principal for the acts of the sub-agent.
- (3) The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

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

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



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

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

**147. Agent's duty in naming such person**

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

*[Cap. 4 s. 8]*

### **Ratification**

**148. Right of person as to acts done for him without his authority and effect of ratification**

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

**149. Ratification may be express or implied**

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

**150. Knowledge requisite for valid ratification**

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

**151. Effect of ratifying unauthorised act forming part of transaction**

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

**152. Ratification of unauthorised act cannot injure third person**

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

### **Revocation of agency**

**153. Termination of agency**

An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying, becoming of unsound mind or being adjudged bankrupt under the provisions of any law for the time being in force relating to bankruptcy.

**154. Termination of agency, where agent has interest in subject matter**

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

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

The principal may, save as is otherwise provided by [section 154](#), revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

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

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

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

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

**158. Notice of revocation or renunciation**

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

**159. Revocation and renunciation may be express or implied**

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

**160. When termination of agent's authority takes effect as to agent, and as to third persons**

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

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

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

*[Cap. 4 s. 8]*

**162. Termination of sub-agent's authority**

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

### **Agent's duty to principal**

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

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

otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

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

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

#### **165. Agent's accounts**

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

#### **166. Agent's duty to communicate with principal**

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

#### **167. Right of principal when agent deals, on his own account, in business of agency without principal's consent**

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

#### **168. Principals right to benefit gained by agent dealing on his own account in business of agency**

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

#### **169. Agent's right of retainer out of sums received on principal's account**

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

#### **170. Agent's duty to pay sums received for principal**

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

#### **171. When agent's remuneration becomes due**

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

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

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

**173. Agent's lien on principal's property**

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

### **Principal's duty to agent**

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

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

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

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

**176. Non-liability of employer of agent to do criminal act**

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

**177. Compensation to agent for injury caused by principal's neglect**

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

*[Cap. 4 s. 8]*

### **Effect of agency on contracts with third persons**

**178. Enforcement and consequences of agent's contracts**

Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

**179. Principal how far bound when agent exceeds authority**

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

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

Where an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

**181. Consequences of notice given to agent**

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

**182. Agent cannot personally enforce, nor be bound by, contracts on behalf of principal**

- (1) In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.
- (2) A contract referred to in subsection (1) shall be presumed to exist in the following cases—
  - (a) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad;
  - (b) where the agent does not disclose the name of his principal;
  - (c) where the principal, though disclosed, cannot be sued.

**183. Rights of parties to contract made by agent not disclosed**

- (1) Where an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.
- (2) Where the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

**184. Right of person dealing with agent personally liable**

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

**185. Consequence of inducing agent or principal**

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

**186. Liability of pretended agent**

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

**187. Person falsely contracting as agent not entitled to performance**

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

**188. Liability of principal inducing belief that agent's unauthorised acts were authorized**

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

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

A misrepresentation made, or a fraud committed, by an agent acting in the course of his business for his principal, has the same effect on an agreement made by such agent as if such misrepresentation or fraud had been made or committed by the principal; but a misrepresentation made, or frauds committed, by an agent, in matters which do not fall within his authority, do not affect his principal.

## **Part XI – Partnership**

### **Nature of partnership**

**190. "Partnership" and "firm" defined**

- (1) "Partnership" is the relationship which subsists between persons carrying on business in common as defined with a view of profit.
- (2) Persons who have entered into partnership with one another are called collectively a "firm", and the name under which their business is carried on is called the "firm name".

**191. Rules for determining existence of partnership**

- (1) The relationship of partnership arises from contract and not from status.
- (2) In determining whether a group, of persons is or is not a partnership, regard shall be had to the following rules—
  - (a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned whether the tenants or owners do or do not share any profits made by the use thereof;
  - (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
  - (c) the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular the receipt of such share or payment—
    - (i) by a lender of money to persons engaged or about to engage in business;
    - (ii) by a servant or agent as remuneration;
    - (iii) by the widow or child of a deceased partner, as annuity; or
    - (iv) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof,

does not of it-self make the receiver a partner with the persons carrying on the business.

## **Relations of partners to one another**

### **192. General duties of partners**

Partners are bound to carry on the business of the partnership for the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives.

### **193. Variation by consent of terms of partnership**

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all of them, and such consent may either be express, or be implied from a uniform course of dealing.

### **194. Conduct of business and mutual rights and liabilities**

In the absence of any contract to the contrary, the rights and duties of the partners in relation to the partnership shall be determined by the following rules—

- (a) every partner has a right to take part in the management of the partnership business;
- (b) any differences arising as to ordinary matters connected with the partnership business may be decided by a majority of all the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners;
- (c) every partner has a right to have access to and to inspect and copy any of the books of the firm;
- (d) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- (e) all partners are entitled to share equally in the capital and profits of the business, and, must contribute equally towards the losses, whether of capital or otherwise, sustained by the firm;
- (f) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him—
  - (i) in the ordinary and proper course of the business of the firm; and
  - (ii) in or about anything necessarily done for the preservation of the business or property of the firm;
- (g) a partner shall indemnify the firm for any loss caused to it by his fraud or wilful neglect in the conduct of the business of the firm.

### **195. Partnership property**

- (1) All property and rights and interests in property originally brought into the partnership stock or acquired by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, including the goodwill of the business, are partnership property and must be held by the partners for the purposes of the partnership and in accordance with the partnership agreement, or failing such agreement, the provisions of this Act.
- (2) Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired on account of the firm.
- (3) Where land or any hereditament therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also between the heirs of a deceased partner and his executors or administrators as personal or movable and not as real or hereditament estate.

**196. Accountability of partners for private profits and competing businesses**

Subject to any contract between the partners—

- (a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
- (b) if a partner carries on any business of the same nature as and competing with that of the firm, without the consent of the other partners, he shall account for and pay to the firm all profits made by him in that business.

**197. When term for partnership expires**

Where a partnership entered into for a fixed term be continued after such term has expired, the rights and obligations of the partners will in the absence of any agreement to the contrary, remain the same as they were at the expiration of the term, so far as such rights and obligations can be applied to a partnership dissolvable at the will of any partner.

**198. Introduction of new partners**

Subject to any contract between the partners, no person shall be introduced as a partner into a firm without the consent of all the existing partners.

**199. Expulsion**

A partner may not be expelled from a firm by his partners unless a power to that effect has been expressly conferred by agreement between the partners.

**200. Retirement**

Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners.

**Relations of partners to persons dealing with them****201. Power of partner to bind firm**

- (1) Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way of business of the kind carried on by the firm bind the firm and his partners, unless, the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner.
- (2) In the absence of any usage or custom of trade or express authority to act for the firm, a partner is not an agent of the firm or his other partners to—
  - (a) submit a dispute relating to the business of the firm to arbitration;
  - (b) open a banking account on behalf of the firm in his own name;
  - (c) compromise or relinquish any claim or portion of a claim by the firm;
  - (d) withdraw a suit or proceeding filed on behalf of the firm;
  - (e) admit any liability in a suit or proceeding against the firm;
  - (f) acquire immovable property on behalf of the firm;



- (g) transfer property belonging to the firm; or
- (h) enter into partnership on behalf of the firm.

## **202. Partners bound by acts on behalf of firm**

An act or instrument relating to the business of the firm done or executed in the firm name, or in any other manner showing an intention to bind the firm, by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners:

Provided that, nothing in this section shall affect any general rule of law relating to the execution of deeds or negotiable instruments.

## **203. Liability of partners for debts**

Every partner is liable for all debts and obligations incurred while he is a partner in the usual course of business by or on behalf of the partnership.

## **204. Liability for wrongs and misapplication**

Every partner is liable to make compensation to third persons in respect of loss or damage arising or any penalty incurred—

- (a) by any wrongful act or omission of any partner acting in the ordinary course of business of the firm, or with the authority of the other partners;
- (b) by any misapplication of any money or property received by a partner acting within the scope of his apparent authority;
- (c) by any misapplication by one or more of the partners of money or property received by the firm in the course of its business while in the custody of the firm.

## **205. Improper employment of trust property for partnership purposes**

Where a partner, being a trustee, improperly employs trust property in the business or on account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein:

Provided that—

- (a) this section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust;
- (b) nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control.

## **206. Persons liable by holding out**

Everyone who by words spoken or written or by conduct represents himself, or who knowingly suffers himself to be represented, as a partner in a particular firm, is liable as a partner to anyone who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made:

Provided that, where, after a partner's death, the partnership business is continued in the old firm's name, the continued use of that name or of the deceased partner's name as part thereof shall not of itself make his executors or administrators' estate or effects liable for any partnership debts contracted after his death.

**207. Notice to partner to be notice to firm**

Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.

**208. Liabilities of incoming and outgoing partners**

- (1) A person who is admitted as a partner to an existing firm does not thereby become liable to the creditors of the firm for anything done before he became a partner.
- (2) A partner who retires from the firm does not thereby cease to be liable for partnership debts or obligations incurred before his retirement.
- (3) A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors and this agreement may be either express or implied as a fact from the course of dealing between the creditors and the firm as newly constituted.

**209. Revocation of continuing guarantee by change in firm**

A continuing guarantee, given either to a firm or to a third person, in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or in respect of the transactions of which, such guarantee was given.

**210. Rights of assignee of share in partnership**

- (1) An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs or to require any accounts of the partnership transactions or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would be otherwise entitled, and the assignee must accept the account of profits agreed to by the partners.
- (2) In the case of a dissolution of the partnership, whether as respects all the partners or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and, for the purpose of ascertaining; that share, to an account as from the date of dissolution.

**211. Minors not competent to be partners**

A person who is a minor according to the law to which he is subject is not competent to be a partner in a firm.

### **Dissolution of partnership and its consequences**

**212. Dissolution by expiration or notice**

- (1) Subject to any agreement between the partners, a partnership is dissolved—
  - (a) if entered into for a fixed term, by the expiration of that term;
  - (b) if entered into for a single venture or undertaking, by the termination of that venture or undertaking;
  - (c) if entered into for an undefined time, by the partner giving notice to the other or others of his intention to dissolve the partnership.

- (2) Where a partnership is dissolved by notice under paragraph (c) of subsection (1), the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.

### **213. Dissolution by death, bankruptcy or charge**

- (1) Subject to any agreement between the partners, a partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.
- (2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under rule 48 of Order XXI of the First Schedule to the Civil Procedure Code.

*[Cap. 33]*

### **214. Dissolution by illegality of partnership**

A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the members of the firm to carry it on in partnership.

### **215. Dissolution by court**

On application by a partner, the court may decree a dissolution of the partnership in any of the following cases—

- (a) when a partner becomes of unsound mind;
- (b) when a partner becomes incapable of performing his part of the partnership contract;
- (c) when a partner, other than the partner suing has been guilty of such conduct as, in the opinion of the court, regard being had to the nature of the business, is calculated to prejudicially affect the carrying on the business;
- (d) when a partner other than the partner suing, willfully and persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with;
- (e) when the business of the partnership can only be carried on at a loss;
- (f) whenever in any case circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved.

### **216. Rights of persons against apparent members of firm**

- (1) When a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change.
- (2) An advertisement in the *Gazette* shall be notice as to persons who had no dealings with the firm before the date of the dissolution or change so advertised.
- (3) The estate of a person who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy or retirement respectively.

### **217. Partner's right to notice of dissolution**

On the dissolution of a partnership or retirement of a partner, any partner may notify the same, and may require the other partner or partners to concur for that purpose in all proper and necessary acts, if any, which cannot be done without his or their concurrence.

**218. Continuance of rights and liabilities of partners after dissolution**

After the dissolution of a partnership, the rights and obligations of the partners continue in all things necessary for winding up the business of the partnership, and to complete transactions begun but unfinished at the dissolution, but not otherwise:

Provided that, the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not affect the liability of any person who has, after the bankruptcy represented himself or knowingly suffered himself to be represented as a partner of the bankrupt.

**219. Rights of partners as to application of partnership property**

On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

**220. Apportionment of premium where partnership prematurely dissolved**

Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the court may order the repayment of the premium, or of such part thereof as it thinks just, having regard to the terms of the partnership contract and to the length of time during which the partnership has continued unless—

- (a) the dissolution is, in the judgment of the court, wholly or chiefly due to the misconduct of the partner who paid the premium; or
- (b) the partnership has been dissolved by an agreement containing provision for a return of the premium or any part thereof.

**221. Rights where partnership dissolved for fraud or misrepresentation**

Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled—

- (a) to a lien on the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and for any capital contributed by him;
- (b) to stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and
- (c) to be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm.

**222. Right of outgoing partner in certain cases to share profits made after dissolution**

Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since the dissolution as the court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of five *per centum* per annum on the amount of his share of the partnership assets:

Provided that, where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

### **223. Retiring or deceased partner's share to be debt**

Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death.

### **224. Rule for distribution of assets on final settlement of accounts**

In settling accounts between the partners after dissolution of partnership, the following rules shall, subject to any agreement, be observed—

- (a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;
- (b) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order—
  - (i) in paying the debts and liabilities of the firm to persons who are not partners therein;
  - (ii) in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;
  - (iii) in paying to each partner rateably what is due from the firm to him in respect of capital;
  - (iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible.

### **225. Payment of firm debts and of separate debts**

Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him; the separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.

### **226. Incorporated partnerships and joint-stock companies**

Extraordinary partnerships, such as incorporated partnership and joint-stock companies, shall be regulated by the law for the time being in force relating thereto.

## **Part XII – Repeal and transitional provisions**

### **227. Disapplication of Indian Contract Act and amendment of R.L. Cap. 2**

Disapplication of the Indian Contract Act, 1872 and amendment of the Indian Acts (Application) Ordinance.

### **228. Omitted**

Transitional provisions.