THE INDIAN CONTRACT ACT, 1872 - AN ANNOTATION

*By **Shrieya Gosain* & Pranav Gosain*****

** 3rd Year BA LLB Student, Amity Law School, Delhi*

*** 5th Year BA LLB Student, Amity Law School, Delhi*

ABSTRACT:

The Indian Contract Act brings inside its ambit the contractual rights that have been conceded to the Indian citizens. It invests rights, obligations and commitments on the contracting parties to push them to effectively finish up business from regular daily exchanges to confirming to the organizations of global companies. The Indian Contract Act, 1872 was enacted on 25th April, 1872 [Act 9 of 1872] and came into force on 1st September 1872. The quintessence of the India Contract Act has been based on that of the English Common Law.[i]

The present article attempts to discuss and evaluate the pertinent sections of the Indian Contract Act, 1872 vis-a-vis judicial pronouncements to provide an in-depth analysis on the functioning and working of the Indian Contract Act, 1872.

KEYWORDS: Agreement, Contract, Exchange, Obligation, Promise

WHAT IS A CONTRACT?

Generally speaking, a contract is an agreement which is enforceable by law which dictates two or more parties to do or to abstain from doing a certain act. A contract unvaryingly styles a legal obligation fringed by the respective parties through which rights are conferred on one party and a conforming duty is levied on the other party. According to Section 2(h) of the Act[ii] an agreement enforceable through law is a contract. On careful perusal of the definition of contract, one will notice that a contract fundamentally entails of two basics –

(i) An agreement, and

(ii) its enforceability through law.

AGREEMENT

Section 2(e) of the Contract Act[iii] states agreement as every promise and every set of promises forming the consideration for each other. In this background a promise denotes a proposal which has been accepted by the other party to an agreement. As per section 2(e) of the Contract Act, every promise and every set of promises forming the consideration for each other is an "agreement". For an agreement there has to be a promise and the proposal/offer culminates into a promise only if the acceptance of the offer is absolute and unqualified[iv].For example, Mr. X bids to vend his workplace for Rs. 9,000 to Mr. Y. Mr. Y agrees to this offer. Such acceptance becomes a promise and will be termed as an agreement between Mr. X and Mr. Y. In other words, an agreement involves an offer made by one party and its concurring acceptance by the other party. From the above analysis, it can be inferred that the necessity requires that there shall be at least two parties to an agreement, one party giving an an offer and the other party accepting the said offer.[v] There is additional noteworthy facet relating to an agreement that is the parties to an agreement have necessity regarding identity in respect of the subject matter of the agreement.

LEGAL OBLIGATION

In regard that an agreement may be observed as a contract, it must give rise to a legal obligation that is its existence should be enforceable through law. An agreement, even though it is supported by consideration, is not binding as a contract if it was made without any intention of creating legal relations. Of course, in the case of ordinary commercial transactions it is not normally necessary to prove that the parties in fact intended to create legal relations[vi]. Such an intention ordinarily will be inferred when parties enter into an agreement which in other respects conforms to the rules of law as to the formation of contracts.

FORMATION OF A CONTRACT

For the formation of a contract, the process of proposal or offer by one party and its acceptance thereof by the other is necessary.[vii] This generally involves the process of negotiation wherein the parties apply their minds while making offer and acceptance and create a valid contract.

Where one person indicates to another person his willingness regarding doing or abstaining from doing any act with a sight to attain the assent of the other person to such act or abstinence, then such person is said to make a proposal to other person. [viii] When the person to whom such a proposal is made by the promisor, assent thereto to the proposal, then the proposal is deemed to be accepted.

In order to translate a proposal into a valid promise[ix], the acceptance must be following:

1. ***Absolute and unqualified*** - Any withdrawal concerning the terms of the proposal or any other qualification may vitiate the acceptance unless it is agreed by the person from whom the offer is conveyed. [x]

2. ***Expressed in some usual and reasonable manner.*** - If the person making the offer proposes any specific manner of acceptance, then such acceptance has to be in the prescribed manner as stated.[xi]

In ***Cooke v. Oxley***[xii], a tobacco merchant offered to sell a quantity of tobacco to the plaintiff at a certain price. The plaintiff asked the tobacco merchant for time in which to decide whether he should buy the goods or not. The time for consideration was granted; but before it expired, the tobacco merchant sold the goods to a third party. In a suit for damages by the plaintiff, it was held that the action did not lie, as at the time of entering into the contract the engagement was all on one side. No consideration had passed to the seller by his promise to give time and consequently he was entitled to ignore it. Lord Kenyon put it on the true ground by saying:

"At the time of entering into this contract the engagement was all on one side; the other party was not bound."[xiii]

WHO CAN ENTER INTO CONTRACT?

A person may enter into contract if following essentials are satisfied:

1. Person has reached the age of majority

2. Person is of sound mind

3. Is not disqualified from contracting by any law to which he is subject is competent to contract. [xiv]

Hence, a minor is not capable to enter into the contract and an agreement accepted by a minor is void – ab - initio.[xv](Void ab initio implies without legal validity from the beginning). [xvi]

The following persons are inept to contract-

1. Those who are minors
2. Persons who are of unsound mind
3. Persons who are disqualified by law to which they are subject to

ESSENTIAL OF A VALID CONTRACT

All agreements are contracts if they are made

a. By the free consent of parties competent to contract - Consent is said to be free if it is not caused by

- ***Coercion*** - Consent is said to be caused by coercion[xvii] when it is obtained by pressure exerted by either committing or threatening to commit an act prohibited by the operation of Indian Penal Code or illegally impeding or intimidating to detain any property of such person. [xviii] See National Westminster Bank plc v. Morgan[xix].
- ***Undue influence*** - A contract is said to be induced by undue influence[xx] where the relation subsisting between the parties are such that one of the parties is in a situation to control the determination of the other person and uses that position to get a prejudicial benefit over the other person.[xxi]

In ***Afsar Shaikh vs. Soleman Bibi***[xxii], Supreme Court recognizes that the law in India as to undue influence is the same be it a case of gift inter vivos or a case of contract; that although undue influence, fraud and misrepresentation are cognate vices and may overlap, they are in law distinct categories and are required to be separately pleaded specifically, particularly and with general precision; and that a general allegation in the plaint that the plaintiff was a simple

old man of ninety who had reposed great confidence in the defendant in wholly insufficient to amount to an averment of undue influence.

- ***Fraud*** - Means and includes the following acts done with the intention to deceive or to induce a person to enter into a contract.[xxiii] (a) the proposition that a fact is correct when it is not actually true and the person making the recommendation does not either believe it to be right (b) active suppression of a material fact by a person who has required information or credence of such fact, (c) promise made by the person deprived of the intention of performing[xxiv].

The Hon'ble Supreme Court in ***Ram Chandra Singh v. Savitri Devi***[xxv] **,** held that:

"Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."[xxvi]

- ***Misrepresentation*** - When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true, it is misrepresentation.[xxvii] A breach of duty which carries a benefit to the person promising it by misleading the other person to his predisposition is also considered as a misrepresentation. [xxviii] See Barclays Bank Vs O'Brien[xxix]
- ***Mistake*** - Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void[xxx]. A flawed opinion as the worth of the thing, which formulae the core of the agreement is not considered as a mistake regarding matter of fact.[xxxi] See Bell v. Lever Bros. Ltd.[xxxii]

The Hon'ble Supreme Court in ***Central National Bank Ltd. V. Industrial Bank Ltd.***[xxxiii] held-

"Section 14 of the Contract Act defines the expression free consent and consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. A consent induced by false representation may not be free, but it can nevertheless be real, and ordinarily the effect of fraud or misrepresentation is to render a transaction voidable only and not void." [xxxiv]

b. For A Lawful Consideration and Object - Consideration or object is unlawful if:

- It is forbidden by law.
- Is considered of such a nature that if legalized, it would rout the provisions of any law in force.
- It is considered fraudulent in nature.
- The court reputes it as immoral in operation.
- The court esteems it as contrasting to the public policy.

Not expressly declared to be void.

CLASSIFICATION OF CONTRACTS

Contracts can be classified on the basis of following.[xxxv] They are as follows:

- On the foundation of creation.
- On the foundation of execution.
- On the foundation of enforceability

ON THE FOUNDATION OF CREATION

A contract may be:[xxxvi]

- Made through writing or words of mouth.
- Inferred from the conduct of the parties.

The first category of contracts is termed as "express contracts" whereas the second category of contracts are known as "implied contracts".[xxxvii]

- ***Express Contract:*** In an express contract[xxxviii], the conditions are evidently specified in words, figures, written or spoken. For example, Mr. A inscribed a message to Mr. B stating "I would like to offer to sell my wagon for Rs. 50,000 to you"; Mr. B accepts the offer through medium of letter sent to Mr. A. This is an example of express contract. Similarly, when Mr. A request a mechanic to overhaul his scooter and the mechanic agrees to it, then in such a case it is an express contract completed orally through verbal words.

- ***Implied Contract:*** An implied contract[xxxix] may be shaped through the appropriate conduct of the parties and not through words spoken or written. It is a result of an ongoing course of conduct of the relevant parties. For illustration, a coolie in uniform carries the luggage of Mr. A to be out of railway station to the taxi stand without being expressly by Mr. A to do so and consequentially Mr. A allows it, the law therefore infers that Mr. A had agreed to pay for the services availed of the coolie.

ON THE FOUNDATION OF EXECUTION

On the basis of foundation of the extent to which the contracts have been performed, they are classified as

- Executed contracts
- Executory contracts.

Executed Contracts: An express contract[xl] is contracting whereby both the parties to the contract have fulfilled their respective obligations under the contract. For example, Mr. A agrees to sell his books to Mr. B for Rs. 1000. Afterwards, Mr. A transport the books to Mr. B and Mr B as a result pays Rs. 100 to Mr. A. It is an example of executed contract.

Executory Contracts: An implied contract is a contract where both the parties still have to perform their respective obligations under the contract.[xli] For instance, Mr. A agrees to sell a book to Mr. B for Rs. 50. Consequently, if the book has not been delivered by Mr. A and Mr. B has not paid the said price, then in such a case the contract is executory.

A contract may occasionally be partly executed and partly executory. It happens only where one of the parties to the contract has performed his obligation. For example, if Mr. A has delivered the book to Mr. B but Mr. B refuses to pay the agreed price, the contract will be termed as executed to Mr. A and executory to Mr. B. On the foundation of execution, a contract can also be classified as unilateral or bilateral.

ON THE FOUNDATION OF ENFORCEABILITY

In terms of enforceability, a contract may be named as

- Valid
- Void
- Voidable
- Illegal
- Unenforceable

Valid Contract: A contract which mollifies all the conditions prescribed through law in an agreement is a valid contract.[xlii] If one or more of the elements are missing, then the contract may be termed as void, voidable, illegal or unenforceable as the case may be. For example, Mr. A, a homeowner contracts with appliance store to buy a refrigerator. Mr. A pays for the said refrigerator and in lieu of such payment, the appliance store delivers the refrigerator at the home of Mr. A. This a valid contract.[xliii]

Void Contract: A contract which terminates to be enforceable through law becomes void when it ceases to be enforced. [xliv]It is a contract deprived of any legal effects. It is pertinent o state that a contract is not void from its commencement.[xlv] It is considered valid and binding upon the parties when it is made, but subsequent due to some reasons its operation becomes unenforceable and therefore will be treated as void. A contract may be declared void owing to impossibility of performance, variation of law or some other reasons. For example, a contract between a drug dealer and a drug supplier to purchase a specified number of drugs which are banned for sale. This is a void contract.

Voidable Contract: An agreement which is enforceable through law at the choice of one or more of the parties to the contract but not at the option of the other party is termed as a voidable contract.[xlvi] Therefore, a voidable contract is one which can be nulled or renounced at the desire of such aggrieved party. A contract is typically declared as voidable when the consent of a party has not been freely taken i.e., it has been gained through the use of force, coercion, undue power, misrepresentation or fraud.[xlvii] The contract is voidable at the option such party to the contract whose consent has been so taken. For example, a contract with a minor is a voidable contract.

The House of Lords in ***Universe Tankships of Monrovia v. International Transport Workers Federation***[xlviii]**,** stated that a difficult labour law case, clearly assumed that there was a doctrine

of economic duress which would render the contract voidable because one party had entered into it as a result of economic pressure which the law regards as illegitimate.

Illegal Contract: The word illegal implies that an agreement which is contrary to law.[xlix] The agreement can only be termed as illegal rather than contract be deemed to be unlawful.[l] Henceforth, it is more suitable to imply the term illegal agreement instead of illegal contract. An illegal agreement is one which has been professed to be illicit under any mandate of the Indian Contract Act or which goes in incongruity of the provisions of any other law which is in force in territory of India. For example, a contract to kill somebody is an illegal contract.

Unenforceable Contract: It is a contract which is albeit valid but cannot be enforced by law due to technological defect.[li] Such non-enforcement may be because of non-registration of an agreement or non-payment of the required stamp fee.[lii] For example, an agreement which is not registered as required to be registered under the provisions of registration act, 1908 will be termed as an unenforceable contract.

QUASI-CONTRACT

Quasi-contract implies a relation between contractual parties, which is akin to the significances of contract but is not a contract. In simple words, there is no offer or acceptance but the basis of liability is based on the provision of law. It functions because it would be unfair to permit a party to hold a benefit conversed by the other party, which the other party did not mean to confer gratuitously. A quasi-contractual liability arises from a contract which is deemed to be implied in law. A contractual liability, whereas is grounded through the contract which is implied in fact.

Sections 68 to 72 of the Indian Contract Act deals with illustrations of quasi-contract. Indian Contract Act evades the phrase quasi-contract, rather the expression certain relationship those created by contract is used.

1. ***Supply of necessaries:*** According to section 68, where necessaries for supporting life are provided to a person who is disqualified from contracting, the supplier in such case is eligible to be reimbursed from the property of such disqualified person.[liii] For example, a minor's agreement, however for necessaries of life, is not valid agreement per se. But the

property is liable under the pretext of quasi-contract as there was a real contract to supply of the necessaries which are essential for maintain life. The minor's liability in such a case is not a personal one.

2. ***Payment by interested persons:*** According to section 69, where it is required to protect one's own interest, any person who pays money for another who in law is legally bound to pay it, such person who pays on others behalf is entitled to be reimbursed as it would be deemed that there was a valid contract amid the parties for such repayment.[liv] For example, payment made by a buyer for outstanding taxes construed on property which is contracted to be sold to him, and such taxes have been accrued owing to the default of the said seller then the buyer will be reimbursed because the buyer is interested in the payment of it.
3. ***Liability to pay for non-gratuitous act:*** According to section 70, a person who lawfully does whatsoever for another person, or delivers anything to him, not intending to do so in a gratuitous manner, and such other person enjoys the benefit such thing, the person who is enjoying the use of such benefit is bound to make compensation to the former in respect of the things so delivered.[lv] For example, when the goods have been provided to the government under a void agreement and if such goods have been used by the government, the government must pay the for the fair value of the goods.
4. ***Finder of Goods:*** According to section 71, when a person discovers goods belonging to another person and takes such goods into his own custody, then in such a case his liability is that of a bailee. [lvi]The finder of goods must have animus possidendi. The finder of goods is deemed as if he is a bailee under law of contract concerning his rights and duties. For example, Pete owns a flashy flower shop. Oliver visits the shop to buy a bouquet of flower but forgets her purse at the shop. Regrettably, there were no identity in the purse to help determine her identity. Pete left the purse at the checkout counter presuming that Oliver would return to take back the purse. Johnny, an assistant at Pete's shop finds the purse at the counter and places the said purse in a drawer without notifying Pete. When Oliver returns seeing for her purse, Pete is unable to locate it. Hence, he is liable for compensation to Oliver since he did not take reasonable care of the purse which any prudent man may have taken.
5. ***Mistake:*** According to section 72, when money has been paid or anything is delivered under mistake or coercion to any person, the said person must repay or return such delivery. The courts have apprehended that the word mistake embraces both mistake of

fact as well as mistake of law. For example, tax waged beneath the mistaken belief that the said tax was legally due, while it was not, can be recovered under the said provision.[lvii]

INDEMNITY AND GUARANTEE

According to Section 124, a contract of indemnity is a contract through which one person promises to save the other from any loss which may be caused to him by the conduct of the promisor or by the conduct of any other concerned person.[lviii] This constricts the connotation of indemnity to loss motivated by human conduct and ignores loss caused by natural happenings. Loss must be triggered by some sort of human agency. Therefore, marine insurance contracts are not considered contracts of indemnity rather they are enforced as contingent contract[lix]. A contract between a vendor of an immovable property and the vendee that the vendor would be entitled to recover the amount he is obliged to pay to a third person in order to satisfy the claim of that person on the property sold, if any, is in the nature of an indemnity contract.

According to Section 126, a contract of guarantee is a contract to perform the certain promise or discharge the liability of a third person from a contract in case of his default. Such a contract may be made orally or in writing.[lx] The guarantor is named as surety, the person in whose default the said guarantee is given is called as the principal debtor, and the person to whom such guarantee is given is called the creditor. There should be a valid conditional promise to be held liable on the account of default of the principal debtor[lxi]. Further to note that if there is no principal debt, then there can be no valid guarantee to the effect.

BAILMENT

Section 148 of the act suggest bailment as the situation wherein good are delivered by one person to another person for some purpose based upon a contract whereby once the purpose is accomplished, the said goods shall be returned according to the directions given by the person delivering them.[lxii] The person who delivers such goods is called the bailor whilst the person to whom such goods are being delivered is called the bailee. Where a person already possesses the goods but contracts to hold them as bailee there is a bailment contract although the physical

possession of the goods has not been transferred from the bailor to the bailee. Therefore, a bailment arises from the contract. For example, any guest is considered as a bailee using furniture of the hotel. A person who delivers any of his goods without any charge thereof is termed as gratuitous bailor.

PLEDGE

Section 172 of the act classifies Pledge as the bailment of goods by the pawnor to the pawnee as a measure for security for payment of a debt or performance of an any such promise.[lxiii] The bailor is called as the Pawnor (pledger), whereas the bailee is known as the Pawnee (pledgee). The parties are free to stipulate the terms of the bargain. A valid pledge may be made by the owner of the goods, and by a person who has a limited interest in the goods provided that such pledge does not extend beyond enumerated interest, through a mercantile agent and also by a person who has so taken the possession of the goods pledged by him under a voidable contract.

When the pawnor defaults in payment of the debt or performance of any condition, then in such a case the pawnee is entitled to bring a suit against the pawnor based on the debt or promise, and may thereby retain the goods so pledged in the form of a collateral security; or the pawnee may sell the goods pledged on giving the pawnor a reasonable notice of such sale. [lxiv]Where the pledge is by through hypothecation of goods, the creditor doesn't have the power to directly seize the goods. He has option either to do so either with the consent of the borrower or through the court proceedings. The pawnee is entitled only to retain the goods so pledged for the debt or promise.

REMEDIES IN CONTRACT ACT

When a party to the contract makes a breach of contract, there are two possible alternatives available to the other party.[lxv] First option is to take an action for such breach of the contract, and second, is to bring an action for specific performance of the contract.

COMPENSATION IN CASE OF BREACH

1. ***Compensation for loss or damage caused by breach of contract.***

   For the redressal of breach of contract, damages are considered as the most suitable remedy. When a contact has been wrecked, the party who grieves by such breach is allowed to obtain, from the party who has shattered the contract, the compensation for any loss so suffered or damage so caused, which indeed ascended in the usual course of business, or which the parties were aware when they completed the contract, to be expected to outcome from the breach. [lxvi] Such compensation is not valid for any remote damage or indirect loss which might be sustained by reason of such breach. [lxvii]

2. ***Compensation for breach of contact where penalty stipulated for.***

   When a contract has been fragmented and an amount has been stated in the contract as the amount to be rewarded in instance of such breach, or if the contract comprises any other requirement through penalty,[lxviii] the party complaining of such breach is allowed, whether actual damage or loss suffered is proved to have been caused, to obtain from the party who has smashed the contract, the reasonable compensation not beyond the amount so stated or any penalty stipulated for. [lxix]

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

   A person who lawfully annuls a contract is allowed to compensation for any damage which he has suffered through such non-fulfilment of the contract.

SPECIFIC PERFORMANCE

Specific performance implies definite execution of the contract as settled between the parties to the contract.

Specific Performance of any contract can be enforced by the discretion of the court, in the subsequent circumstances - [lxx]

- Where there is no way for determining the actual damage, which is caused by the non-performance of the act which was agreed to be performed.

- Where the act which was decided to be done is of such a nature that compensation in money terms for its subsequent non-performance will not be adequate.

CONCLUSION

The common framework in the antiquated occasions was barter system and it depended on the shared norms of give and take.[lxxi] This was related to commodities; as there was no mechanism of trade in money as we see today and this framework can be followed back so to the era of Indus Valley Civilization. The system of barter was not suitable or efficient as there was no single criteria for assessing or exchanging of goods and mostly people used to buy goods which were in shortage and sell those which were in bulk.[lxxii] The framework still discovers importance in the contemporary world, where it tends to be found in monetarily and financially underdeveloped zones.

However, the present system is called as the intricacy arose in the nature of economic systems as well as the changes in demand and supply systems because of ever changing needs of the people. With development of economies, barter system is now eroded and money has become a medium of exchange wherein the value of every commodity can be assessed in monetary terms. Thus, the need of Contract Act in present times is unavoidable and is rather essential to sustain contractual relations in modern economies.

REFERENCES

i Steel Authority of India Ltd. v. National Union Water Front Workers, AIR 2001 SC 35.

ii Indian Contract Act, 1872 (Act No. 9 of 1972), s. 2(h).

iii Indian Contract Act, 1872 (Act No. 9 of 1972), s. 2(e).

iv Abhay Construction v. State of Maharashtra, (2005) 2 SCC 591

v Bank of India v. O P Swarnkar (2003) 2 SCC 721.

vi Joseph Chitty, Chitty on Contracts 67 (Sweet & Maxwell, UK, 28th Edn., 1999)

vii Gould v. Gould (1970) 1 Q.B. 275.

viii Indian Contract Act, 1872 (Act No. 9 of 1972), s.2(a).

ix Anil Kumar v. State of UP, AIR 2004 SC 4299.

[x] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 7.

[xi] *Ibid*.

[xii] (1790) 100 E.R 785 (5).

[xiii] *Ibid* as observed by Lord Kenyon at page 22.

[xiv] Indian Contract Act, 1872 (Act No. 9 of 1972), s.11.

[xv] CWT v. Her Highness Vijayaba (1979) 2 SCC 213.

[xvi] Mohoribibi v. Dharmodas Ghose (1903) 30IA 114.

[xvii] Indian Contract Act, 1872 (Act No. 9 of 1972), s.15.

[xviii] North Ocean Shipping Co. Ltd. v. Hyundai Construction Co. Ltd. (1978)3 All ER 1170.

[xix] National Westminster Bank plc v. Morgan (1985) 1 All ER 821

[xx] Indian Contract Act, 1872 (Act No. 9 of 1972), s.16.

[xxi] Atlas Express Ltd. v. Kafco Ltd. (1989) 1 All ER 64.

[xxii] AIR 1976 SC 163

[xxiii] Indian Contract Act, 1872 (Act No. 9 of 1972), s.17.

[xxiv] Universal Tankship Inc. of Monrovia v. International Transport Workers Federation (1982) 2 WLR 803.

[xxv] (2003) 8 SCC 319.

[xxvi] *Ibid* at page 328.

[xxvii] Indian Contract Act, 1872 (Act No. 9 of 1972), s.18.

[xxviii] Universal Tankship Inc. of Monrovia v. International Transport Workers Federation (1982) 2 WLR 803.

[xxix] Barclays Bank v. O'Brien 1993 (4) All ER 417.

[xxx] Indian Contract Act, 1872 (Act No. 9 of 1972), s.21.

[xxxi] Roshan v. Kartar Chand, AIR 2002 HP 134.

[xxxii] Lord Atkin in Bell v. Lever Bros. Ltd., (1913).

[xxxiii] AIR 1954 SC 181.

[xxxiv] *Ibid* at page 3.

[xxxv] Nagendra Singh, Commercial Law of India 208-210 (Thomson Press India, 6th edn., 1975).

[xxxvi] Indian Contract Act, 1872 (Act No. 9 of 1972), s.9

[xxxvii] Dr. H.K. Saharay, Textbook on Law of Contract 24 (Universal Law House, Delhi, 2nd edn., 2016).

[xxxviii] Union of India v. M/s. D.N. Revri & Co, (1976) 4 SCC 147.

[xxxix] Shirlaw v Southern Foundries, (1926) Ltd [1939] 2 KB 206.

[xl] Union of India v. Chaman Lal Loona, (1957) SCR 1039.

[xli] Pankaj Bhargava and another v. Mohinder Nath and another, AIR 1991 SC 1233.

[xlii] Bareilly Development Authority v. Ajai Pal Singh, AIR 1989 SC 1076.

[xliii] Indian Contract Act, 1872 (Act No. 9 of 1972), s.2(h).

[xliv] Indian Contract Act, 1872 (Act No. 9 of 1972), s.2(g).

[xlv] Mulamchand v. State of Madhya Pradesh, AIR 1968 SC 1218.

[xlvi] Indian Contract Act, 1872 (Act No. 9 of 1972), s.2(i).

[xlvii] Swiss Timing Ltd. v. Commonwealth Games 2010 Organizing Committee, (2014) 6 SCC 677.

[xlviii] (1983) 1 AC 366.

[xlix] Indian Contract Act, 1872 (Act No. 9 of 1972), s.24.

[l] Pandit Ishwardas v. State of Madhya Pradesh, (1979) 4 SCC 163.

[li] Indian Contract Act, 1872 (Act No. 9 of 1972), s.2(j).

[lii] Shin Satellite Public Co. Ltd. v. Jain Studios Ltd., AIR 2006 SC 963.

[liii] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 68.

[liv] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 69.

[lv] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 70.

[lvi] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 71.

[lvii] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 72.

[lviii] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 124.

[lix] State Bank of India v. Mula Sahakari Sakhar Karkhana Ltd., (2006) 6 SCC 293.

[lx] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 126.

[lxi] National Highways Authority of India v. Ganga Enterprises and Another, (2003) 7 SCC 410.

[lxii] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 148.

[lxiii] Indian Contract Act, 1872 (Act No. 9 of 1972), s. 172.

[lxiv] CDC Financial Services (Mauritius) Ltd. v. Bpl Communications Ltd. And Others, (2003) 12 SCC 140.

[lxv] Indian Contract Act, 1872 (Act No. 9 of 1972), s.73.

[lxvi] Prema v. Mustak Ahmed, AIR 1987 Guj. 106.

[lxvii] *Ibid* at 57.

[lxviii] Indian Contract Act, 1872 (Act No. 9 of 1972), s.74.

[lxix] Jagdish Singh vs. Nathu Singh, (1992) 1 SCC 647.

[lxx] Bala Krishna vs Bhgawan Das, AIR 2008 SC 1786.

[lxxi] Pollock S F, Pollock and Mulla, The Indian Contract and Specific Relief Acts 2 Vols 456-469 (LexisNexis Butterworths Wadhwa & Co, Nagpur, 14th ed., 2012).

[lxxii] Rose & Frank Co. v. R. Crompton & Bros. (1923) 2 KB 261.