

Law of CONTRACT and SPECIFIC RELIEF



Eighth
Edition

Avtar Singh

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LAW OF CONTRACT
and
SPECIFIC RELIEF

LAW OF CONTRACT

(A study of the Contract Act, 1872)

and

SPECIFIC RELIEF

by

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PREFACE TO EIGHTH EDITION

The Contract Act, 1872, which provides the basic structure for the law of contract in India, has remained unchanged during the period between the present and the preceding editions. Therefore, as is usual with this subject, its development takes place through court decisions. The contribution of the judiciary is the chief source from which the current trends of change in the subject can be discovered. This role of the court depends upon chances of litigation. All that can be done is to see what kind of litigation chanced to come up to the Supreme Court and to what extent decisions generated by those chances necessitated re-examination or retouching of the existing principles or laying down of new principles. Taking note of all such trends and presenting them in the systematic order in which the subject has been arranged in this book is the chief contribution of the present edition. Cases from abroad have also been studied along with Indian cases for the purpose of presenting a composite picture of the worldwide trends in the subject. Such process helps locating a gist of the current rulings.

A dishonoured insurance premium cheque could not create a policy. A reciprocal arrangement for sale and repurchase of property creates mutual obligations. A default in the payment of an instalment of sale consideration does not entail liability to pay interest and it also does not deprive the buyer of his right to make good the default and insist upon the sale being completed. The courts and arbitrators cannot grant higher interest than that stipulated by the parties. A term giving an absolute right to a party to put an end to the contract if any term is broken by a party has been held to be void. Similarly, power with one party to vary the contract to any extent is destructive of the very integrity of the contractual arrangement. The right of lien has become expanded through recognition of some new types of lien. A decision of great importance restricts an advocate's right of lien to goods in his custody belonging to his client and that the right does not permit detention of papers and documents of the client, they being not in the category of goods. A construction contract even if made with a public sector undertaking, is an ordinary commercial contract. Courts as well as arbitrators have to adhere to contract terms, for example they cannot extend time of their own and lay down a future date of performance. Where a contract has been performed in full, an initial mistake cannot be used to unsettle the rights arising out of such performance. A

statutory contract does not mean that one party is a statutory corporation. It would require statutory content. Once an event has rendered the performance of a contract to be impossible, its effect cannot be undone by a subsequent event nullifying the earlier event. Where a party has received something in cash or kind, the doctrine of unjust enrichment would be attracted necessitating return of the benefits enjoyed and it would be specious plea that there was no privity of contract. The expression "general balance of account" as used in Section 171 has been explained and so also the position of agents of the Life Insurance Corporation.

—AVTAR SINGH

(Vidya Bhushan, Hindi Sansthan, U.P.)

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