MULLA

# The Indian CONTRACT ACT

ELEVENTH EDITION

H. S. PATHAK

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on

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[Student's Edition]

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By

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# PREFACE TO THE ELEVENTH EDITION

To edit a textbook of so distinguished an author is a delicate task. One has to show great respect for the original text, and at the same time give effect to some drastic revision in topics where the law has undergone radical changes. The editor of this edition has recast the text in several places, while taking care not to disturb the flow of the original.

A number of decisions of the Supreme Court have been delivered since the previous edition was published, which explain the principles of the contract law and interpret the Act afresh in the light of constitutional provisions. These have been discussed at appropriate place. Various High Courts have also decided on important points of contract law, notably the Gujarat High Court decision on S.72 in *Dhrangadra Municipality* v. *Dhrangadra Chemical Works Limited* (1988) 1 G.L.R. 388. The cases are discussed in simple language for the students who need not go to the law reports.

There are debts of gratitude which I would like to acknowledge : Mr. Justice Dhruvkumar Shukla; Professor I.C. Saxena, Emeritus Fellow (Law), U.G.C.; Dr. B.M. Shukla, Director, University School of Law, Gujarat University, all of whom responded generously to my queries and offered valuable advice. To Mr. Surendrabhai Yagnik, Hon. Secretary of the District Court Law Library and the library staff for the reference facilities given to me. To the publishers for entrusting the editorial responsibility to me and for their patience and understanding.

Any errors which remain in the book are mine, and I will be thankful to readers who point them out to me if they come across such errors.

Ahmedabad
*September, 1989*

HARSHENDU S. PATHAK

## PREFACE TO THE NINTH EDITION

This edition has been completely revised. Comments under various sections have been very much simplified so as to make it easier for a student to understand. Nearly 306 new decisions have been added and forty-six (old) decisions have been deleted. It is hoped that this edition will prove to be of great assistance to the students.

1972 J. H. DALAL

## PREFACE TO THE EIGHTH EDITION

As in previous editions, the commentary is in the simplest possible language as the book is intended primarily as an introductory study for the use of students. It is hoped that the synopsis of the Indian Contract Act and the Chart will be of assistance to students in viewing the whole Act in one perspective.

December 1968 K. S. S.

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# SYNOPSIS

The first six chapters of the Act contain the general principles of the law of contract. The remaining chapters refer to particular contracts arising out of the ordinary transactions of merchants and traders. The preliminary section 2 professes to be merely terminology but in effect it declares substantive law and embodies some of the principles of the English common law. Thus a promise arises out of the acceptance of an offer or proposal, and an agreement is a promise or a set of reciprocal promises. Consideration is an act or abstinence of the promisee to do or not to do something the promisee wants done or not done. The section then classifies agreements as (1) void or not enforceable by law, (2) voidable contracts enforceable by one party only, and (3) contracts enforceable by both parties.

Chapter I refers to the formation of contracts. It sets out rules for the offer and acceptance and revocation of proposals. A proposal or acceptance may be express or implied, expressed in words spoken or written or implied from conduct. A proposal remains open until it has been accepted, or if the parties are at a distance, until the acceptor has posted his acceptance—until then it can be revoked. If the parties are at a distance the acceptor may revoke his acceptance before his letter of acceptance has reached the proposer. The acceptance must be absolute and unqualified, otherwise, there is no agreement. An offer or proposal may lapse, if it is not accepted within a reasonable time.

Chapter II set out the essentials of a legally enforceable agreement or contract. It states the circumstances when it is voidable or enforceable by one party only, and when the agreement is void, i.e. not legally enforceable and not a contract. These matters have been summarized in the chart or analytical statement at p. 109.

Chapter III refers to contingent contracts, i.e. contracts which are conditional on some future event happening or not happening. Contracts of insurance or of indemnity are contracts of this class. Such contracts are enforceable when the future event or loss occurs, e.g. insurance money on a policy of fire insurance is payable when the fire takes place . . . sec. 31. The contract may be contingent (1) on the happening, or (2) on the not happening of a future event.

(1) If it is contingent on the happening of a future event, it is enforceable when the event happens—sec. 32. If the event becomes impossible, the contract becomes void—sec. 32. *A* agrees to pay a sum of money to *B* when he marries *C*. *C* dies unmarried. The contract becomes void. If a time is fixed for the happening of the event, the contract becomes void if the event does not happen at the expiry of that time or if before the expiry of that time the event becomes impossible—sec. 35. *A* agrees to pay *B* a sum of money if his ship returns within a year. The contract becomes void when the ship sinks within the year.

(2) If it is contingent on a future event not happening, it can be enforced when that event becomes impossible—sec. 33. *A* agrees to pay *B* a sum of money if his ship does not return. The contract is enforceable when the ship is wrecked. If a time is fixed within which the event should not happen, it may be enforced if the event does not happen at

the expiry of the time or if before the expiry of that time it becomes certain that the event will not happen—sec. 35. *A* agrees to pay *B* a sum of money if his ship does not return within a year. The contract is enforceable if the ship does not return within a year, or if it is wrecked before the end of the year.

If the future event is impossible at the time the contract is made, the contract is void whether the impossibility was known to the parties or not—sec. 36. *A* promises to pay *B* a sum of money if he marries *C*. *C* is dead at the time of the contract. The contract is void. If the future event is the act of a living person, any conduct of that person which prevents the event happening within a definite time renders the event impossible—sec. 34. *A* promises to pay *B* a sum of money when he marries *C*. *C* marries *D*. The event on which the contract is contingent is considered impossible although *D* may die and *B* may then marry *C*.

Chapter IV deals with the performance of contracts. A contract has for its subject the creation of an obligation between the parties. This chapter explains (1) who must perform his obligation, (2) the mode of performance, and (3) the consequences of non-performance.

(1) *Who must perform.*—The promisor or his representative must perform—sec. 37, unless the nature of the contract shows that it must be performed by a third person—sec. 40; but the promisee may accept performance by a third person—sec. 41. If there are joint promisors all must perform, and after the death of any of them the survivors and the representatives of the deceased must perform—sec. 42. But the liability of joint promisors is joint and several, so that the promisee may require any one of them to perform the whole promise—sec. 43, in which case there is a right of contribution even against a promisor who has been released from performance—secs. 43 and 44. If the promisees are joint the right to claim performance is joint and not joint and several. All must claim performance and, if some are dead, performance must be claimed by the survivors and the representatives of the deceased promisees—sec. 45.

(2) *Mode of performance.*—The promisor must offer to perform and his offer must be (1) unconditional, (2) made at the proper time and place so as to give the promisee a reasonable opportunity of ascertaining that the promisor is able and willing to perform the whole of his promise, and (3) if the promise is to deliver anything, to allow the promisee a reasonable opportunity of inspection—sec. 38. Performance may also be in the manner and at the time prescribed by the promisee—sec. 50. If the promise is to be performed on a certain day on application by the promisee, it is the duty of the promisee to appoint a proper place within the usual business hours—what is a proper place is a question of fact—sec. 48. If the promise is to be performed without application by the promisee, the promisor must perform within a reasonable time—sec. 46; and if a day is fixed he must perform within the usual business hours on that day and at a proper place—sec. 47, and if no place is fixed, it is the duty of the promisor to apply to the promisee to appoint a reasonable place—sec. 49. If the promises are reciprocal they must be performed simultaneously. If the contract is by *A* to deliver goods to *B* to be paid for on delivery, *A* need not deliver unless *B* is ready and willing to pay for them—sec. 51. If the order of performance of reciprocal promises is fixed by the contract, they must be performed in that order. If *A* contracts to build a house for *B* for a fixed price, *A* must build the house before *B* pays for it—sec. 52.

If the performance consists of payment of money and there are several debts to be paid, the debtor may indicate, or the circumstances may indicate, in respect of which debt the payment is made and the payment must be appropriated accordingly. Such a circumstance is the payment of the precise amount of one debt—sec. 59. If there is no express or implied instruction to appropriate given by the debtor, the creditor may appropriate to any debt lawfully due—sec. 60. If there is no appropriation by either party, the payment must be appropriated in the order of time, whether the debts are time-barred or not, and if the debts are of equal standing to all rateably—sec. 61.

The mode of performance may be varied by agreement, for the promisee may dispense with or remit performance, wholly or in part, or may make a composition accepting a different satisfaction—secs. 62, 63.

(3) *Consequences of non-performance.*—If an offer of performance is not accepted, the promisor is not responsible for non-performance and does not lose his rights under the contract—sec. 38, so also if the promisee fails to afford reasonable facilities—sec. 67. He may sue for specific performance or he may avoid the contract and claim compensation—secs. 39 and 53. If one party has disabled himself from performing his promise in its entirety, this anticipatory breach entitles the other party to avoid the contracts—sec. 39. So also if one party prevents the other from performing his promise—sec. 53. If reciprocal promises are to be performed simultaneously or in a certain order, one party need not perform unless the other party is ready and willing to perform—sec. 51. There is also a right to avoid the contract for failure to perform at the time fixed by the contract if time is of the essence of the contract, but if time is not of the essence of the contract the breach gives only a right to compensation—sec. 55. A voidable contract is avoided by rescission. Rescission is communicated and revoked in the same way as a promise—sec. 66. The effect of rescission is to dispense with further performance and to render the party rescinding liable to restore any benefit he may have received from the other party—sec. 64.

Parties may agree to cancel the contract or to alter it or to substitute a new contract for it. In such cases of rescission or novation there is no question of performing the original contract—sec. 62. There is also no question of performance when an agreement becomes void or is discovered to be void, but a party who has received a benefit under such a contract is bound to restore it or to make compensation—sec. 65. If the agreement is to do an act which is impossible or which becomes impossible or unlawful it is void, but if the promisor knew and the promisee did not know that it was impossible or unlawful, the promisor must make compensation. Thus if *A* promises to marry *B* who does not know that *A* is married and that his marriage to her would be bigamous and unlawful, *A* must make compensation to *B*—sec. 56.

Chapter V refers to cases in which an obligation is created without a contract. Such obligations are treated in English law as arising out of the fiction of a contract implied by law. In this chapter, however, the legal relations are defined and the obligations they give rise to are expressly enacted. If a person incapable of entering into a contract, or the dependents of such a person, are supplied with necessaires suitable to his condition in life, the person supplying is entitled to be reimbursed out of the property of the incapable person—sec. 68. There is thus a right of reimbursement for necessaries supplied to an infant or a lunatic. 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—sec. 69. A tenant who pays arrears of rent, which the zamindar is bound by law to pay, and who pays it to avoid the forfeiture of his holding, is entitled to recover it from the zamindar. A person who enjoys the benefit of a non-gratuitous act is bound to make compensation—sec. 70. If a tradesman leaves goods that have not been ordered at the house of a customer, the customer if he takes the goods is bound to pay for them. A person who finds lost property may retain it subject to the responsibility of a bailee—sec. 71. If money is paid or goods delivered under coercion, the payee or recipient must repay or make restoration—sec. 72.

Chapter VI refers to breach of contract. It has been enacted in Chapter IV that in case of non-performance by one party the other party need not perform his part of the contract and is entitled to compensation for the loss occasioned to him. This chapter explains the mode in which compensation for breach of contract is estimated and follows the rules laid down in the leading English case of *Hadley* v. *Baxendale*. Damages for breach of contract must be such loss or damage as naturally arose, in the usual course of things from such breach or which may reasonably have been supposed to have been in the contemplation of the parties when they made the contract as the probable result of the breach. Damages which do not fall within this description are said to be remote or indirect and cannot be claimed. The party who suffers by the breach must take all reasonable steps to mitigate the damages and the means he had for doing so must be taken into account in estimating damages. These rules are enacted in sec. 73, and are explained by numerous illustrations. The same rules apply to breach of the non-contractual obligations referred to in the last chapter—sec. 73; and also when estimating the compensation when a party rightfully rescinds a contract—sec. 75. In case the parties have in the contract fixed a sum to be paid in case of breach it is enacted that the party who suffers is entitled to receive only reasonable compensation not exceeding the fixed sum—sec. 74. This does away with the distinction made in English law between a penalty and liquidated damages. The same rule applies to ordinary contracts with Government, but in the case of bail bonds or recognizances given to Government for a public purpose the whole sum fixed is recoverable.

Chapter VII is repealed and re-enacted in the Indian Sale of Goods Act, 1930 (3 of 1930).

Chapter VIII refers to contracts of indemnity and guarantee. A contract of indemnity is a contingent contract and belongs to the class of contracts which are the subject of Chapter III. It is a contract between two persons by which *A* promises to save *B* from loss occasioned by the conduct of *A* or of some third person—sec. 124. Thus a contract by *A* to indemnify *B* from damages which may be decreed against him in a suit filed by *C* is a contract of indemnity. *B* is entitled to recover from *A* the damages decreed against him in *C*'s suit, and if he has acted as a prudent man unindemnified would have acted, he is also entitled to recover the costs of *C*'s suit and all sums paid under a compromise of *C*'s suit—sec. 125. In a contract of guarantee, however, there are three parties, *A* the creditor, *B* the principal debtor and *C* the surety who grarantees the default of the principal debtor—sec. 126. The debtor is called the principal debtor because the surety is also a debtor. The creditor has therefore two persons he can proceed against, for the liability of the surety is coextensive with that of the debtor—sec. 128. The consideration for the contract of guarantee is something done by the creditor for the principal debtor. Thus *A*

supplies goods to *B* because *C* guarantees payment by *B*. The supply of goods to *B* is the consideration for *C*'s guarantee—sec. 127. A guarantee may be a series of transactions and, if so, it is called a continuing guarantee—sec. 129. As to future transactions such a guarantee is an offer which does not become a promise or agreement until the transaction takes place. A continuing guarantee may therefore as to future transactions be revoked by notice to the creditor—sec. 130; and is revoked as to future transactions by the death of the surety—sec. 131. A guarantee by a surety may be conditional on another person joining as co-surety—sec. 144. A contract of guarantee is obtained by misrepresentation is invalid—secs. 142 and 143. Co-sureties are liable equally, subject to any contract to the contrary between themselves—sec. 146. Co-sureties are joint promisors, so on the principle of sec. 44 if one is released by the creditor, he is still responsible to the other sureties—sec. 138. If co-sureties have bound themselves in different sums they are still equally liable upto those amounts—sec. 147. Thus three co-sureties *A*, *B* and *C* are liable upto Rs. 10,000, Rs. 20,000 and Rs. 40,000 respectively for a debt of Rs. 40,000. *A* is liable to pay Rs. 10,000 and *B* and *C* Rs. 15,000 each. Co-sureties may contract with each other that one shall be liable only in default of the other. But if the creditor is not a party to the contract, his rights are not affected—sec. 132. A surety has a right to be indemnified by the principal debtor for any sums he has rightfully paid in performance of his obligation—sec. 145. He is also subrogated to the rights of the creditor and is invested with all the rights and securities which the creditor had against the principal debtor—secs. 140 and 141. If the debt is secured by a mortgage and the surety pays the debt he is entitled to enforce the mortgage. The surety guarantees the performance of the contract of the principal debtor. Therefore any variance of that contract without the consent of the surety discharges the surety for transactions subsequent to such variance—sec. 133. For the same reason the surety is discharged if the creditor without his consent makes a composition with the principal debtor or gives him time—sec. 135. The surety is also discharged if the creditor does any act which impairs the rights of the surety or his remedy against the principal debtor—sec. 139. So if the creditor parts with a security for the debt the surety is discharged to the extent of the value of the security—sec. 141, and he is wholly discharged, if he without the assent of the surety releases or gives time to or promises not to sue the principal debtor—secs. 134 and 135. But an agreement between the creditor and a third person not to sue the principal debtor is not enforceable by the principal debtor and has no effect on the liability of the surety—sec. 136. Mere passive inactivity on the part of the creditor, such as forbearance to sue, does not discharge the surety—sec. 137.

Chapter IX refers to bailment. Bailment is defined as a delivery of goods by one person to another for some purpose upon a contract that when the purpose is accomplished the goods are to be returned or disposed of according to the directions of the bailor—sec. 148. The chapter makes no classification of bailments, but bailments of loan and hiring and for work to be done are expressly referred to, while bailments of pledge are separately dealt with. Delivery to the bailee is effected by doing anything which has the effect of putting the goods in possession of the bailee or of some one on his behalf—sec. 149. It is the duty of the bailor to disclose to the bailee defects of which he is aware and if he does not he is liable for damage caused to the bailee—sec. 150. If *A* lends *B* a gun which he knows is likely to burst, he must warn *B* of the defect in the gun, for the object of bailment is to confer a benefit, and not to do a mischief. If the bailment is for

hire the bailor is responsible for a defect in the thing bailed whether he was aware of its existence or not—sec. 150. It is the duty of the bailee to take as much care of the goods bailed as a man of ordinary prudence would take of his own goods—sec. 151; and if he takes such care he is not responsible for their loss—sec. 152. So that if the goods are stolen from the bailee without any fault of his, the bailee is not liable. But the bailee must observe the conditions of the bailment and if he makes an unauthorized use of the goods bailed the bailor may avoid the contract and is entitled to compensation for damage due to such use—secs. 153 and 154. *A* hires his horse to *B* for riding. *B* drives the horse in a carriage. The horse falls and is injured. *A* may take back the horse and claim damages. The bailee must return the goods bailed to the bailor when the time for which they were bailed has expired—sec. 160. If the goods do not belong to the bailor, he must make compensation to the bailee for any loss he may sustain by reason of the bailor's want of title—sec. 164; but the bailee acting in good faith is not responsible if he returns the goods to the bailor—sec. 166. But in such a case the real owner may apply to the Court to stop delivery—sec. 167. If the goods are not returned at the proper time, the bailee is responsible for any loss or deterioration in the goods—sec. 161. As it is the duty of the bailee to return the identical goods he must not mix the goods bailed with his own goods without the consent of the bailor. If the bailor consents, they both have an interest in the mixture in proportion to their shares—sec. 155. If the bailor does not consent and the goods are separable the bailee must bear the expenses of their separation—sec. 156. If the goods cannot be separated, the bailee must compensate the bailor—sec. 157.

If the bailment is gratuitous the bailee is entitled to be repaid any expenses incurred for the purpose of the bailment—sec. 158. Again, if the bailment is gratuitous the bailor may take back the thing bailed at any time, but if the net result of the transaction is loss to the bailee, he is entitled to be compensated by the bailor—sec. 159. If the bailment is for skilled work to be done, the bailee is entitled to the stipulated remuneration or reasonable remuneration for his services, and to a lien, i.e. a right to retain the goods until he is paid—sec. 170. If *A* leaves his watch with *B* to be repaired, *B* is entitled to be paid and to retain the watch until he is paid. This is a particular lien, for *B* holds the watch as security for the payment due to him for repair of the watch. But certain specified bailees, viz. bankers, factors, attorneys and policy brokers are entitled to a general lien, i.e. a right to retain goods bailed to secure other debts as well, such as a general balance of account—sec. 171.

If goods are lost, the finder is under no obligation to take charge of them, but if he does, he is a gratuitous bailee. He is entitled to compensation for trouble and expense in keeping the goods and discovering the owner or to the reward, if the owner has offered a reward. He may also retain the goods until he is paid such compensation or reward—sec. 168. If the goods are saleable and the owner cannot be found or refuses to pay or compensate, the finder may sell the goods if they are perishable or if his charges amount to two-thirds of their value—sec. 169.

*Pledge.*—A bailment of goods as security for a debt or promise is called a pledge. The bailor is called the pawnor and the bailee is called the pawnee—sec. 172. The pawnee retains the goods as security for the debt and interest and necessary expenses incurred for the custody and preservation of the goods—sec. 173, but unless there is an agreement to that effect he is not entitled to retain the goods for any debt or promise other than the

debt or promise for which they were pledged, except subsequent advances—sec. 174. For extraordinary expenses, i.e. expenses other than necessary expenses, the pawnee has only a personal remedy against the pawnor—sec. 175. The pawnor may redeem the goods at the stipulated time by payment of the debt, and after that time by payment of the debt and of additional expenses incurred by his default—sec. 177. On the other hand, in default of payment by the pawnor, the pawnee may sue for his debt, or may after reasonable notice to the pawnor sell the goods. The pawnor is liable for any deficit on such sale and is entitled to the surplus sale proceeds if any—sec. 176. If the pawnor has only a limited interest in the goods the pledge is valid to the extent of that interest—sec. 179. If the pawnor has ostensible authority to pledge, the pledge is valid unless the pawnee has notice of the want of real authority. Thus a pledge by a mercantile agent who has by custom authority to dispose of goods which are in his possession or of which he holds documents of title is valid unless the pawnee has notice of want of authority—sec. 178. A pledge of documents of title is equivalent to a pledge of the goods. Similarly, a pledge by a person in possession under a contract voidable for fraud or misrepresentation or undue influence is valid unless the pawnee had notice of the pawnor's defect of title—sec. 178A.

*Right of suit.*—If the bailee is deprived of the goods bailed by the wrongful act of a third person, both the bailee and the bailor have a right to bring a suit—sec. 180. The compensation awarded in such suit must be apportioned between them in the proportion of their interests—sec. 181.

Chapter X refers to *Agency.*—Agency is created when a man employs another to do an act for him or to represent him in dealings with third persons. A contract between *B* and *C* does not bind *A*. But if *B* has been employed by *A* to make the contract, *A* is really the contracting party. *A* is called the principal and *B* who acts on his behalf is called the agent—sec. 182. The principal must have contractual capacity, i.e. he must be of the age of majority and of sound mind; but this is not necessary in the case of the agent, for he is not the contracting party, but only the mouthpiece of the principal—secs. 183 and 184. The employment of an agent may be gratuitous—sec. 185. The authority of an agent may be expressed, e.g. in a power of attorney or it may be implied from the circumstances of the case or the relationship of the parties, e.g. husband and wife, solicitor and client, owner and manager of a shop—secs. 186 and 187. An agent employed for a particular act has authority to do everything necessary and incidental to that act, e.g. an agent to carry on the business of a ship-builder may purchase timber and hire workmen—sec. 188. An agent has also authority of necessity to act in case of emergency to save his principal from loss provided he acts as a man of ordinary prudence would act—sec. 189. Thus a warehouseman may incur expenses to save the goods in case of fire. As a general rule an agent has no authority to appoint a sub-agent. This is the rule expressed in the maxim *delegatus non potest delegare*. There are, however, exceptions arising out of custom of trade or the nature of the agency—secs. 190 and 191. Thus an architect has authority to appoint a qualified sub-agent to take measurements and to make calculations. An agent must exercise the discretion of a man of ordinary prudence in selecting a sub-agent and if he does not, he is responsible for the sub-agent's negligence—sec. 195. If the sub-agent is properly appointed he is just as much as agent of the principal as the original agent. The principal is as to third parties bound by, and responsible for, the acts of the sub-agent;

but the sub-agent is responsible to the agent, and the agent is responsible to the principal—sec. 192. When an agent has authority to name another person to act for the principal and does so, the latter is not a sub-agent of the agent, but a substituted agent of the principal. He stands in the shoes of the agent and is directly responsible to the principal. So if a principal instructs a solicitor to find an auctioneer for the sale of an estate, the auctioneer sells the estate as agent of the principal—sec. 194. If the agent has exceeded his authority in the appointment of a sub-agent the principal is in no way bound, for there is no privity of contract between him and the sub-agent. Moreover the agent is in such a case responsible to the principal and to third persons for the acts and defaults of the sub-agent—sec. 193.

*Agency by ratification.*—A person may be constituted an agent by ratification as and when *A* adopts a contract made on his behalf but without his authority by *B*. Such an adoption of the contract is equivalent to a previous authority and makes *B* the agent of *A*—sec. 196. But the act must have been done by *B* on behalf of *A*. If *B* forges *A*'s name on a promissory note, *A* cannot ratify the act and adopt the promissory note as his own, for *B* was acting on his own account. Ratification may be express or implied by conduct—sec. 197. Thus if *B* buys goods for *A* without authority and *A* accepts them, that is an implied ratification of *B*'s purchase. But there can be no valid ratification unless the ratifier has full knowledge of all the advantages and disadvantages so as to justify the inference that he ratifies the acts whatever they are—sec. 198. But the ratifier must ratify all or none. He cannot ratify a part of the transaction which is advantageous to him and disown the rest—sec. 199. So when the master of a ship exceeded his authority by entering into a charterparty to alter the ship into a troopship and carry troops, the owner could not claim the freight and yet refuse to bear the expenses of the alteration. Again, the principal cannot ratify an act so as to prejudice a third person. If the agent not being authorized gives notice to quit to a tenant the principal cannot ratify the act so as to determine the tenancy—sec. 200.

*Termination of agency.*—An agency is terminated by the act of parties or by operation of law. By act of parties (*a*) when the principal revokes his authority, or (*b*) when the agent renounces the agency. By operation of law (*a*) when the business of the agency is completed, or (*b*) by the death or lunacy of the principal or agent, or (*c*) by the insolvency of the principal—sec. 201. The principal may revoke his authority at any time before it has been completely exercised; but if it has been partly exercised, the principal cannot revoke his authority as to acts already done—secs. 203 and 204. Again, if the agreement is that the agency shall continue for a fixed time, revocation by the principal before the expiry of that time is a breach of contract for which the principal must make compensation and conversely if the agent renounces before the expiry of the fixed time he must make compensation—sec. 205. Another restriction on the principal's power to revoke his authority occurs when the agent has an interest in the subject-matter of agency. In such a case the authority is regarded as security for that interest and cannot be revoked to the prejudice of that interest—sec. 202. *A* consigns goods to *B* and authorizes *B* to sell the goods at a fixed price and to pay himself out of the sale proceeds a debt which *A* owes to *B*. *A* cannot revoke the authority until the debt is paid. Revocation and renunciation may be express or implied but if the principal revokes or the agent renounces before the business of the agency is completed, the other party may be put to loss. Therefore, rea-

sonable notice must be given or compensation paid—secs. 206 and 207. Although the agency is terminated by the death or unsoundness of mind of the principal, the agent must take on behalf of the representatives of the late principal reasonable steps for the protection of their interests—sec. 209. A sub-agent's atuthority terminates with that of the agent—sec. 210. Even after the termination of the agency the principal may be liable to third persons by the rule of estoppel. *A* has held out *B* to be his agent and had induced persons to deal with *B* as his agent. It would be unfair to such third persons to affect them with knowledge of the revocation unless they had been informed of it—sec. 208.

*Rights of principal and agent inter se*.—It is the duty of the agent to act in accordance with the instructions or with usage affecting the particular business. The agent has no discretion to disregard instructions and if he does so he is responsible for the loss, and if he thereby makes a profit he must make good the profit—sec. 211. In cases of difficulty he must communicate with the principal and seek his instructions—sec. 214. As he has been selected by the principal for the conduct of his business he must conduct the business with such skill and diligence as he possesses and he is responsible for such skill as is usual and requisite—sec. 212. It is his duty to render an account of all moneys he has received on account of the principal—sec. 213. But he is entitled to deduct moneys due to himself for advances made or expenses incurred in the business of the agency and for his remuneration—sec. 217 and 218. The relationship of principal and agent is a fiduciary relationship entailing on the agent the duty of fullest disclosure if he has a personal interest in the business of the agency. He must not deal in that business on his own account without the consent of the principal. If he does the principal may repudiate the transaction—sec. 215; or claim for himself any profit that the agent has made—sec. 216. The agent's remuneration is not due until the completion of the business of the agency and may be forfeited for misconduct—secs. 219 and 220. In regard to his remuneration and his disbursements the agent has a right of retainer of moneys or goods received for his principal—secs. 217 and 221. The agent has also a right to be indemnified by the principal for all liabilities incurred by him for lawful acts done by him in the performance of the agency—sec. 222 and even for acts done by him in good faith in the performance of his duties which make him liable in damages to a third person—sec. 223. But he is not entitled to an indemnity if the act is not done in good faith or if the act is criminal—secs. 223 and 224. The agent has a right to be compensated by the principal for any injury caused to himself by the principal's neglect or want of skill—sec. 225.

*Dealings with third parties*.—If a person contracts as agent for a principal he is only the mouthpiece of the principal. The acts and knowledge of the agent are the acts and knowledge of the principal—sec. 229. The agent cannot sue or be sued on contract—secs. 226 and 230. But the agent may make himself liable as a contracting party (1) when the contract is for the sale or purchase of goods for a foreign merchant, (2) when the agent does not disclose the name of the principal, and (3) when the principal cannot be sued—sec. 230. If the agent is personally liable the third person dealing with him may hold either the agent or the principal or both liable—sec. 233. But if he has obtained a judgment against the agent he cannot proceed against the principal and conversely if he has obtained a judgment against the principal he cannot hold the agent liable—sec. 234. If the agent is personally liable either the agent or the principal may sue on the contract, but if the principal who sues has permitted the agent to hold himself out as principal the

defendant has the same right of set off and other defence as he would have had against the agent—sec. 232. A person who falsely represents himself to be an agent is not entitled to shift his position. He cannot adopt the contract as his own and sue as principal—sec. 236. Moreover the person with whom he contracts is entitled to damages for breach of the implied warranty of authority—sec. 235. If the agent has no authority or has acted in excess of his authority the principal is not bound. But in such a case the principal may be bound by the rule of estoppel. This is when the principal has held out the agent as having the requisite authority—sec. 237. If the agent while acting in the business of the agency has been guilty of fraud or misrepresentation the agent's contract is voidable against the principal—sec. 238.

Chapter XI, which dealt with partnership, is repealed and re-enacted in the Indian Partnership Act, 1932 (IX of 1932.)

# TABLE OF CASES