

SPECIAL CONTRACT NOTES

TOPIC:

CONTRACT OF GUARANTEE + EXTENT OF SURETY'S LIABILITY

Answer:

INTRODUCTION

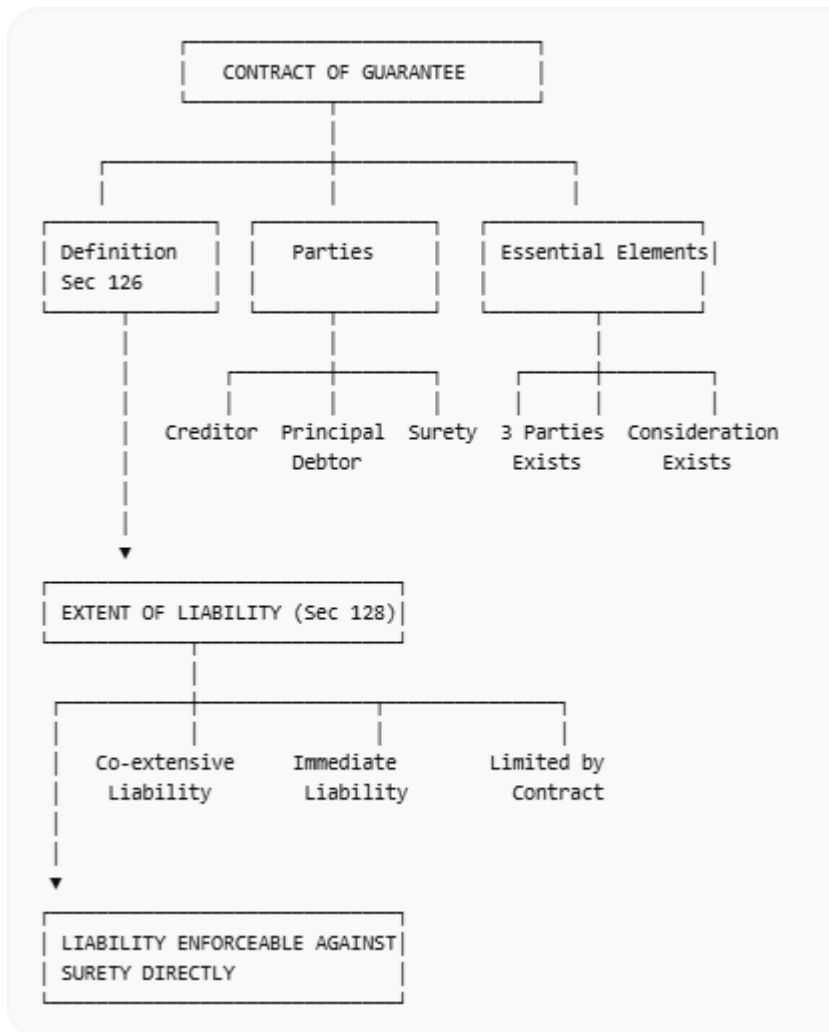
A Contract of Guarantee is a special type of contract governed by Sections 126 to 147 of the Indian Contract Act, 1872. It plays a vital role in commercial and financial transactions by providing security to the creditor against the possible default of the principal debtor. In such contracts, a third person, known as the surety, undertakes to perform the promise or discharge the liability of another person in case of his failure.

The distinguishing feature of this contract lies in the presence of three parties—creditor, principal debtor, and surety—and the existence of a secondary obligation undertaken by the surety. Although the liability of the surety arises upon default of the principal debtor, the law treats it as equally enforceable.

The most important principle governing such contracts is laid down in Section 128, which states that the liability of the surety is co-extensive with that of the principal debtor unless otherwise agreed. This principle ensures that the creditor has complete protection and may proceed directly against the surety.

Thus, a contract of guarantee creates a legally enforceable relationship that strengthens credit systems and ensures reliability in contractual dealings.

SPECIAL CONTRACT NOTES



EXPLANATION

1. Meaning and Nature of Contract of Guarantee

A contract of guarantee, as defined under Section 126, is a contract to perform the promise or discharge the liability of a third person in case of his default. It is essentially a tripartite agreement where the surety gives assurance to the creditor regarding the performance of the principal debtor.

The nature of the contract can be understood through the following aspects:

- It involves **three parties**:
 - Creditor (to whom guarantee is given)
 - Principal debtor (whose liability is guaranteed)
 - Surety (who gives guarantee)

SPECIAL CONTRACT NOTES

- The liability of the surety is:
 - **Secondary in origin** (arises after default)
 - **Direct and enforceable in law**
- The contract is based on:
 - **Trust and confidence**
 - **Assurance of performance**

Thus, even though the surety is not the original debtor, the law treats his promise as equally binding once default occurs.

2. Essential Elements of Contract of Guarantee

For a valid contract of guarantee, all essentials of a valid contract must be fulfilled along with certain special requirements.

These elements include:

- **Existence of three parties**
The contract must involve creditor, principal debtor, and surety.
- **Existence of a legally enforceable liability**
There must be a valid debt or obligation of the principal debtor.
- **Consideration**
Any benefit given to the principal debtor is sufficient consideration for the surety.
- **Free consent of surety**
The consent of the surety must not be obtained by misrepresentation or concealment.

These elements ensure that the contract is valid, enforceable, and binding on all parties involved.

3. Extent of Surety's Liability (Section 128) – CORE PART

The extent of the surety's liability is the most important aspect of a contract of guarantee. Section 128 provides that the liability of the surety is co-extensive with that of the principal debtor unless otherwise provided by the contract.

This principle can be understood through the following components:

(a) Co-extensive Liability

SPECIAL CONTRACT NOTES

The liability of the surety is equal in scope and extent to that of the principal debtor.

- The surety is liable for:
 - Principal amount
 - Interest
 - Legal costs
- The liability continues:
 - As long as the debtor is liable
 - To the same degree as the debtor

This means the surety steps into the shoes of the principal debtor.

(b) Immediate Liability

Although the surety's liability is secondary, it becomes enforceable immediately upon default.

- The creditor:
 - Can directly sue the surety
 - Is not required to first proceed against the debtor
- The surety:
 - Cannot demand prior action against debtor
 - Is equally responsible once default occurs

This ensures efficiency and protection of creditor's rights.

(c) Liability may be Limited

The surety may restrict his liability through contractual terms.

- Limitation may be:
 - Amount-based (e.g., ₹50,000 limit)
 - Time-based
 - Transaction-specific
- In such cases:
 - Liability cannot exceed agreed limits

SPECIAL CONTRACT NOTES

Thus, the law allows flexibility to the surety.

(d) Liability Independent of Debtor's Position

The surety's liability is not affected by:

- Insolvency of principal debtor
- Death of debtor
- Financial incapacity

The surety remains liable unless discharged under specific provisions.

(e) Continuing Liability

In case of continuing guarantees:

- Liability extends to:
 - Series of transactions
- Continues:
 - Until revoked

This is common in banking and commercial dealings.

4. Judicial Position

The courts have consistently upheld the strict nature of the surety's liability.

- In *Bank of Bihar v. Damodar Prasad*:
The court held that the creditor can directly sue the surety without exhausting remedies against the principal debtor.
- In *State Bank of India v. Indexport*:
It was reaffirmed that the liability of the surety is co-extensive and immediate.

These judgments strengthen the position of the creditor and emphasize the seriousness of the surety's obligation.

CONCLUSION

A contract of guarantee is a crucial legal device that ensures security and confidence in commercial transactions. By involving a third party—the surety—it provides assurance to the creditor that the obligation will be fulfilled even in case of default by the principal debtor.

SPECIAL CONTRACT NOTES

The principle of co-extensive liability under Section 128 places the surety on an equal footing with the principal debtor, thereby reinforcing the creditor's position.

At the same time, the law provides safeguards by allowing the surety to limit his liability through contractual terms. Judicial interpretations have further clarified that the liability of the surety is immediate and enforceable, making it a powerful tool in financial and contractual arrangements.

Thus, the contract of guarantee reflects a balance between protection of creditor's rights and regulation of the surety's liability, making it an indispensable part of contract law.

BY AJTABH MISHRA

SPECIAL CONTRACT NOTES

TOPIC:

BAILMENT – DEFINITION + DUTIES & RIGHTS OF BAILOR & BAILEE

Answer:

INTRODUCTION

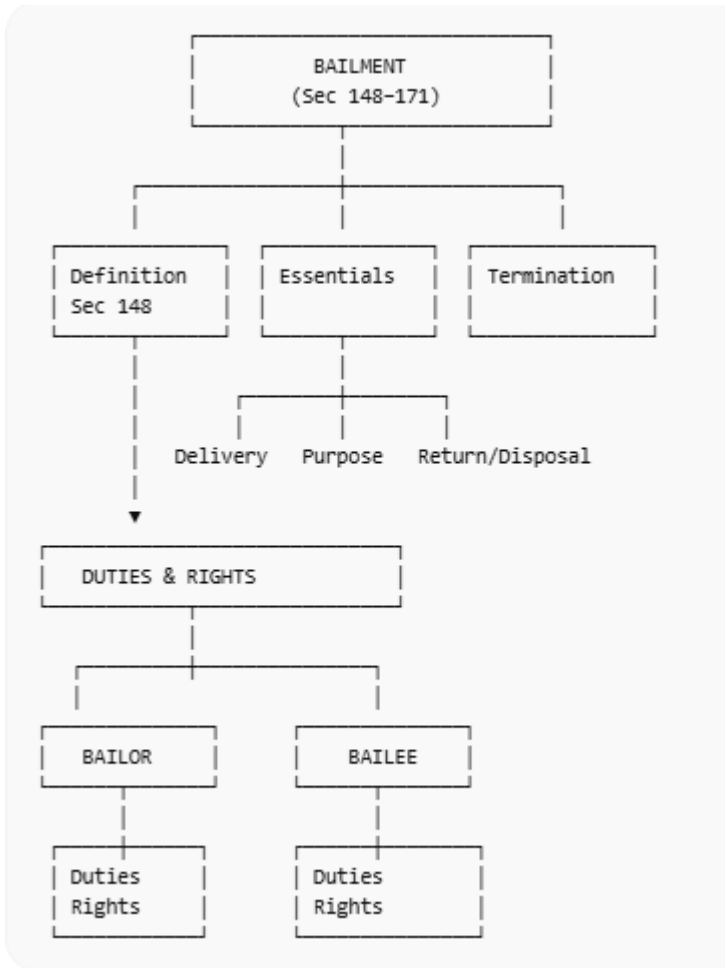
The concept of bailment is an important branch of special contracts under the Indian Contract Act, 1872, governed by Sections 148 to 171. It deals with the delivery of goods from one person to another for a specific purpose, upon a contract that the goods shall be returned or disposed of in accordance with the directions of the person delivering them once the purpose is accomplished.

Bailment is widely used in everyday and commercial transactions such as warehousing, transportation, repair, and custody of goods. The relationship created under bailment is based on trust and temporary transfer of possession, not ownership. The person delivering the goods is known as the bailor, while the person receiving them is called the bailee.

The law of bailment carefully regulates the rights and duties of both parties to ensure fairness and accountability. It imposes obligations on the bailee to take reasonable care of the goods and on the bailor to disclose defects and bear necessary expenses in certain situations.

Thus, bailment represents a balance between possession and responsibility, making it an essential concept in contract law.

SPECIAL CONTRACT NOTES



EXPLANATION

1. Definition and Nature of Bailment

Section 148 defines bailment as the delivery of goods by one person to another for some purpose, upon a contract that the goods shall, when the purpose is accomplished, be returned or otherwise disposed of in accordance with the directions of the person delivering them.

The concept of bailment involves transfer of possession but not ownership. The ownership remains with the bailor, while the bailee gets temporary control over the goods. This relationship is based on trust and contractual obligations.

The essential elements of bailment include:

- Delivery of goods from bailor to bailee
- Delivery for a specific purpose
- Return or disposal after completion of purpose
- Contract governing the relationship

SPECIAL CONTRACT NOTES

Thus, bailment creates mutual obligations between the parties based on lawful possession.

2. Duties of Bailor

The bailor, being the owner of the goods, has certain responsibilities to ensure fairness in the transaction.

The duties of the bailor include:

- **Duty to disclose known defects**
The bailor must inform the bailee of any defects in the goods which may interfere with their use or expose the bailee to extraordinary risks.
- **Duty to bear extraordinary expenses**
In gratuitous bailment, the bailor must bear necessary expenses incurred by the bailee.
- **Duty to indemnify bailee**
The bailor must compensate the bailee for any loss arising due to bailor's fault or premature termination.
- **Duty to receive back goods**
The bailor must accept the goods when returned after completion of purpose.
- **Duty to compensate for bailor's default**
If the bailor's negligence causes loss to the bailee, he must compensate.

These duties ensure that the bailor does not misuse his ownership rights.

3. Duties of Bailee

The bailee, who has possession of the goods, is under a legal obligation to take care of them.

The duties of the bailee include:

- **Duty to take reasonable care**
The bailee must take care of the goods as a prudent person would take of his own goods.
- **Duty not to make unauthorized use**
The goods must be used only for the agreed purpose.
- **Duty not to mix bailor's goods**
The bailee must not mix the goods with his own without consent.
- **Duty to return goods after purpose**
The bailee must return or dispose of goods as per bailor's directions.

SPECIAL CONTRACT NOTES

- **Duty to return any accretion**

Any increase or profit from the goods must be returned to the bailor.

Thus, the bailee's duties revolve around care, honesty, and proper use of goods.

4. Rights of Bailor

The bailor has several rights to protect his ownership and interests.

These rights include:

- **Right to demand return of goods**
After completion of purpose or termination.
- **Right to enforce bailee's duties**
Bailor can sue for negligence or misuse.
- **Right to compensation**
If goods are damaged due to bailee's fault.
- **Right to terminate bailment**
In case of misuse or breach by bailee.
- **Right to demand accretions**
Any increase in goods belongs to bailor.

5. Rights of Bailee

The bailee is also granted rights to safeguard his position.

These include:

- **Right to deliver goods to any joint bailor**
- **Right to deliver as per bailor's directions**
- **Right to take necessary action for bailment**
- **Right to deliver goods on bailor's default**
- **Right of lien** (important)
Bailee can retain goods until lawful charges are paid.

These rights ensure that the bailee is not placed at a disadvantage.



IMPORTANT CASE LAW



Kaliaperumal Pillai v. Visalakshmi

- **Facts:** Issue regarding nature of bailment

SPECIAL CONTRACT NOTES

- **Held:** Bailment depends on delivery and purpose
- **Principle:** Possession + purpose essential

CONCLUSION

Bailment is a fundamental concept in contract law that governs the temporary transfer of possession of goods from one person to another. It establishes a legal relationship based on trust, responsibility, and mutual obligations. The law carefully defines the duties and rights of both the bailor and the bailee to ensure that the goods are properly handled and returned as agreed.

While the bailor retains ownership, the bailee is entrusted with possession and must exercise reasonable care and diligence. At the same time, the bailor is required to act fairly by disclosing defects and compensating the bailee where necessary. This balanced framework ensures protection of interests of both parties.

In practical terms, bailment plays a vital role in commercial transactions such as transport, storage, and repair of goods. Its proper understanding is essential for resolving disputes and ensuring smooth functioning of contractual relationships.

SPECIAL CONTRACT NOTES

TOPIC:

DIFFERENCE BETWEEN INDEMNITY & GUARANTEE + NATURE OF BOTH

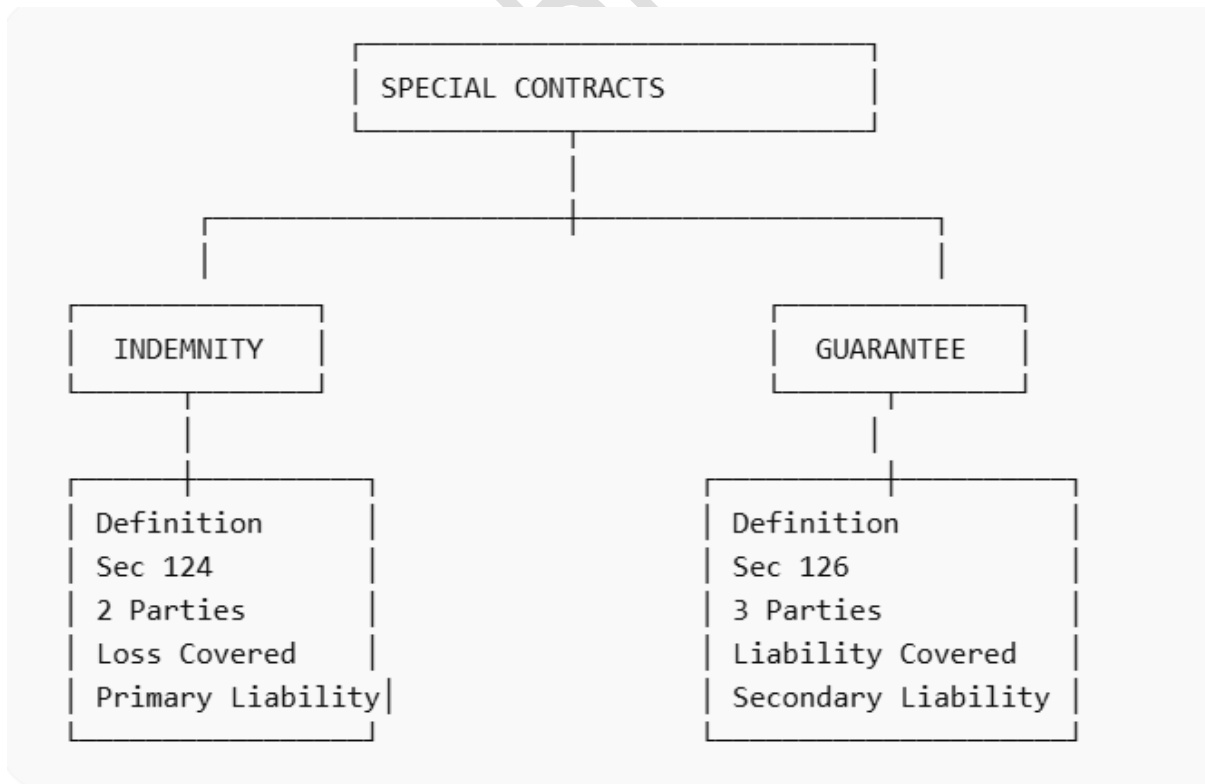
Answer:

INTRODUCTION

Contracts of indemnity and guarantee are two important forms of special contracts governed by the Indian Contract Act, 1872. Both are mechanisms to secure a person against loss, yet they differ significantly in structure, scope, and legal consequences. While a contract of indemnity involves a promise to compensate for loss, a contract of guarantee involves a promise to discharge the liability of a third person in case of default.

The distinction between these two contracts is essential because they operate in different legal contexts and impose different types of liabilities on the parties involved. The nature of these contracts determines the extent of responsibility, rights of parties, and remedies available in case of breach.

Understanding both the nature and differences between indemnity and guarantee is therefore crucial for proper application of contract law in commercial transactions.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Nature of Contract of Indemnity

A contract of indemnity, defined under Section 124, is a contract by which one party promises to save the other from loss caused by the conduct of the promisor or any other person. The nature of indemnity is fundamentally protective, as it aims to secure a party against possible loss.

The key characteristics of indemnity include:

- It involves **two parties**:
 - Indemnifier
 - Indemnity-holder
- The liability is:
 - **Primary and independent**
 - Arises when loss is suffered
- The purpose is:
 - To compensate for loss
 - To provide financial protection
- It is often:
 - Express or implied
 - Common in insurance and commercial contracts

Thus, indemnity creates a direct obligation on the indemnifier to make good the loss suffered by the indemnity-holder.

2. Nature of Contract of Guarantee

A contract of guarantee, under Section 126, is a contract to perform the promise or discharge the liability of a third person in case of default. The nature of this contract is tripartite and security-oriented.

Its characteristics include:

- It involves **three parties**:
 - Creditor

SPECIAL CONTRACT NOTES

- Principal debtor
- Surety
- The liability is:
 - **Secondary in origin**
 - Arises on default of debtor
- The purpose is:
 - To ensure performance of obligation
 - To provide assurance to creditor
- The liability is:
 - **Co-extensive with debtor** (Sec 128)

Thus, the contract of guarantee strengthens credit transactions by adding a third party's responsibility.

3. Difference between Indemnity and Guarantee

The distinction between these two contracts can be clearly understood through the following points:

(a) Number of Parties

- In indemnity, there are only two parties—the indemnifier and indemnity-holder.
- In guarantee, there are three parties—the creditor, principal debtor, and surety.

(b) Nature of Liability

- In indemnity, the liability of the indemnifier is **primary and independent**.
- In guarantee, the liability of the surety is **secondary and dependent on default**.

(c) Existence of Debt

- In indemnity, there is no pre-existing debt or obligation of a third party.
- In guarantee, there is always a **principal debtor whose liability is guaranteed**.

(d) Purpose

- Indemnity aims to **protect against loss**.

SPECIAL CONTRACT NOTES

- Guarantee aims to **secure performance or payment**.

(e) Liability Trigger

- In indemnity, liability arises when **loss is suffered**.
- In guarantee, liability arises when **default occurs**.

(f) Right to Sue

- In indemnity, the indemnifier cannot sue a third party in his own name.
- In guarantee, the surety can sue the principal debtor after payment (right of subrogation).

(g) Form of Contract

- Indemnity may be **express or implied**.
- Guarantee is generally **express**.

(h) Example

- Indemnity: Insurance contract
- Guarantee: Bank loan guarantee

4. Practical Importance

The distinction between indemnity and guarantee is not merely theoretical but has practical implications in determining:

- Extent of liability
- Rights of parties
- Remedies available
- Applicability in commercial transactions

Courts rely heavily on this distinction to decide cases involving financial liability.

CONCLUSION

Contracts of indemnity and guarantee are both essential legal tools designed to provide security against loss or default, but they operate in fundamentally different ways. While indemnity focuses on compensating for loss through a primary obligation, guarantee revolves around ensuring the performance of a third party through a secondary obligation.

SPECIAL CONTRACT NOTES

The differences in their structure, number of parties, and nature of liability make it crucial to distinguish between them in legal and commercial contexts. A proper understanding of these concepts helps in determining the rights and responsibilities of the parties and ensures effective enforcement of contractual obligations.

Thus, both contracts, though similar in objective, serve distinct purposes and are indispensable components of contract law.

BY AJTABH MISHRA

SPECIAL CONTRACT NOTES

TOPIC:

1. **Meaning of Contract of Indemnity**
2. **Rights of Indemnity-holder**
3. **Co-extensive liability of surety**
4. **Discharge of surety**
5. **Continuing guarantee & revocation**
6. **Finder of lost goods (Bailee rights)**
7. **Gratuitous vs Non-gratuitous bailment**
8. **Duties of Bailee**
9. **Termination of bailment**
10. **Case: *Gajanan Moreshwar v Moreshwar***

Answer:

■ 1. Meaning of Contract of Indemnity

● Intro

A contract of indemnity is defined under Section 124 of the Indian Contract Act, 1872 as a contract by which one party promises to save the other from loss caused by the conduct of the promisor or any other person.

● Explanation

It involves two parties—the indemnifier and the indemnity-holder. The liability of the indemnifier is primary and arises when the indemnity-holder suffers a loss. The object is to protect against financial loss.

👉 *Illustration:* A contracts to indemnify B against any loss caused by the conduct of C. If C causes loss to B, A must compensate B.

● Conclusion

Thus, indemnity is a protective contract ensuring compensation for loss and is widely used in insurance and commercial dealings.

■ 2. Rights of Indemnity-holder

● Intro

The rights of an indemnity-holder are provided under Section 125 of the Indian Contract Act.

● Explanation

The indemnity-holder is entitled to recover:

SPECIAL CONTRACT NOTES

- All damages he is compelled to pay
- All costs incurred in defending a suit
- All sums paid under compromise (if prudent)

👉 *Case: Gajanan Moreshwar v. Moreshwar Madan* — Court held that indemnity-holder can compel indemnifier even before actual loss.

● Conclusion

Thus, the law ensures full protection of the indemnity-holder against all possible losses arising from the contract.

■ 3. Co-extensive Liability of Surety

● Intro

Section 128 of the Indian Contract Act provides that the liability of the surety is co-extensive with that of the principal debtor.

● Explanation

This means the surety is liable to the same extent as the principal debtor unless otherwise agreed. The creditor may directly sue the surety without first proceeding against the debtor.

👉 *Case: Bank of Bihar v. Damodar Prasad* — Surety's liability is immediate and enforceable.

● Conclusion

Thus, the surety stands on equal footing with the principal debtor regarding liability.

■ 4. Discharge of Surety

● Intro

A surety is discharged from liability under certain conditions provided in Sections 133–139 of the Act.

● Explanation

A surety is discharged when:

- There is variation in contract without consent
- Principal debtor is released

SPECIAL CONTRACT NOTES

- Creditor impairs surety's remedy
- Security is lost

👉 *Illustration:* If creditor changes terms of loan without surety's consent, the surety is discharged.

● Conclusion

Thus, the law protects the surety from unfair changes or acts of the creditor.

■ 5. Continuing Guarantee & Revocation

● Intro

A continuing guarantee is defined under Section 129 as a guarantee extending to a series of transactions.

● Explanation

Such guarantee remains valid until revoked. Revocation may occur by:

- Notice by surety
- Death of surety

👉 *Illustration:* A guarantees payment for goods supplied over time. He can revoke future liability by notice.

● Conclusion

Thus, continuing guarantee ensures long-term security but allows revocation for future transactions.

■ 6. Finder of Lost Goods (Bailee Rights)

● Intro

A finder of lost goods is treated as a bailee under Section 168 of the Act.

● Explanation

The finder has rights similar to a bailee:

- Right of lien for reward

SPECIAL CONTRACT NOTES

- Right to sue for reward (if announced)
- Right to take reasonable care

👉 *Illustration:* If A finds B's lost watch and B had announced a reward, A can claim it.

● Conclusion

Thus, the finder enjoys limited rights but must act responsibly like a bailee.

■ 7. Gratuitous vs Non-gratuitous Bailment

● Intro

Bailment may be gratuitous or non-gratuitous depending on whether consideration is involved.

● Explanation

- Gratuitous bailment: Made without reward
- Non-gratuitous bailment: Made for consideration

👉 *Illustration:* Lending a book is gratuitous; hiring a taxi is non-gratuitous.

● Conclusion

Thus, the distinction affects rights, duties, and liability of parties.

■ 8. Duties of Bailee

● Intro

The bailee is bound by several duties under Sections 151–171 of the Act.

● Explanation

Important duties include:

- To take reasonable care
- Not to make unauthorized use
- Not to mix goods
- To return goods after purpose

SPECIAL CONTRACT NOTES

👉 *Illustration:* If bailee negligently damages goods, he is liable.

● Conclusion

Thus, the bailee must act with care and honesty while in possession of goods.

■ 9. Termination of Bailment

● Intro

Bailment terminates when the purpose is fulfilled or under certain conditions.

● Explanation

It may terminate by:

- Expiry of time
- Completion of purpose
- Death of either party
- Mixing of goods

👉 *Illustration:* Bailment for repair ends after goods are repaired.

● Conclusion

Thus, bailment ends when its objective is achieved or circumstances require termination.

■ 10. Case: Gajanan Moreshwar v. Moreshwar Madan

● Intro

This is a landmark case relating to the contract of indemnity.

● Explanation

The court held that the indemnity-holder can compel the indemnifier to perform his promise even before actual loss occurs, provided liability has become absolute.

👉 *Principle:* Indemnity is not limited to post-loss recovery.

● Conclusion

Thus, the case broadened the scope of indemnity and strengthened the rights of the indemnity-holder.

SPECIAL CONTRACT NOTES

TOPIC:

AGENCY – CREATION & TERMINATION OF AGENCY

Answer:

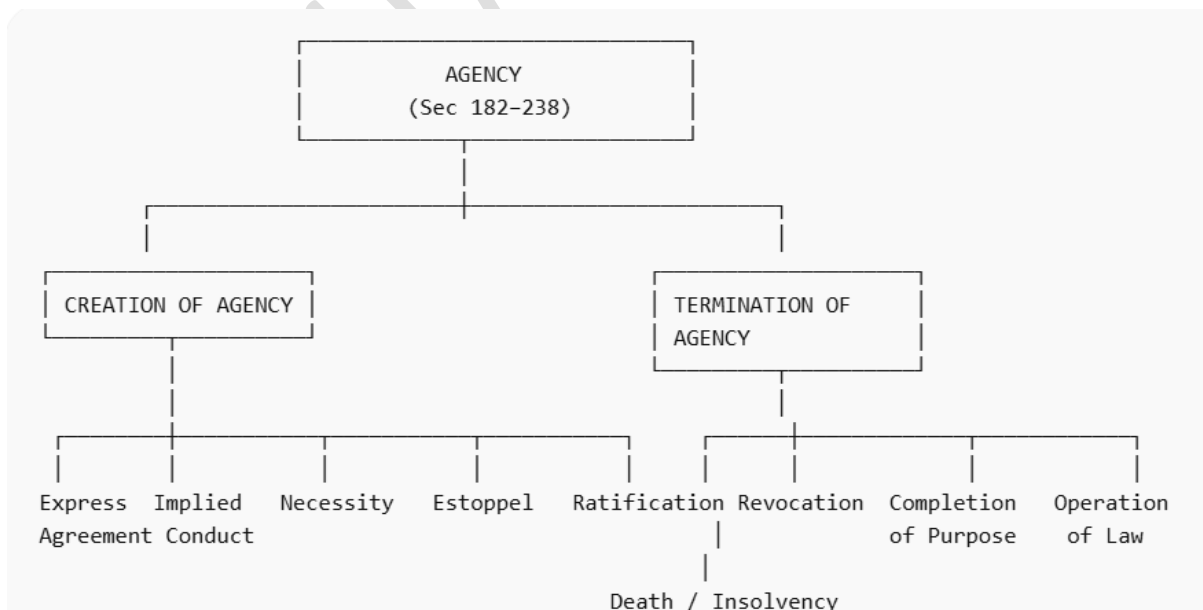
INTRODUCTION

The law of agency, governed by Sections 182 to 238 of the Indian Contract Act, 1872, is an essential part of commercial law. It facilitates transactions by allowing one person to act on behalf of another, thereby creating legal relations between the principal and third parties through the acts of the agent. In modern business, where personal presence is often not possible, agency serves as a practical and legal necessity.

An agent is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done is called the principal. The relationship between the principal and agent is fiduciary in nature, based on trust, confidence, and good faith.

The creation of agency can take place through various modes such as express agreement, implied conduct, necessity, ratification, or estoppel. Similarly, the termination of agency may occur through mutual agreement, revocation, completion of purpose, death, insolvency, or operation of law.

Thus, understanding the modes of creation and termination of agency is essential to determine the rights, duties, and liabilities arising in such relationships.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Meaning and Nature of Agency

Agency is defined under Section 182 as a relationship in which one person, called the agent, is employed to act on behalf of another, called the principal, in dealings with third parties. The essence of this relationship lies in representation, where the acts of the agent bind the principal as if he had performed them himself.

The nature of agency can be understood through the following features:

- It is a **fiduciary relationship**, based on trust and confidence
- The agent acts as a **representative of the principal**
- The acts of the agent create **legal obligations for the principal**
- Consideration is **not necessary** for creation of agency

Thus, agency enables smooth functioning of commercial transactions through delegated authority.

2. Creation of Agency

Agency may be created through various modes depending upon the intention and circumstances of the parties.

(a) Express Agreement

Agency is created when the principal expressly appoints an agent either orally or in writing.

- It may be:
 - Written (e.g., power of attorney)
 - Oral agreement
- It clearly defines:
 - Authority of agent
 - Scope of work

This is the most common and straightforward mode of creating agency.

(b) Implied Agency

Agency may also arise from the conduct or relationship of the parties.

- It is inferred from:

SPECIAL CONTRACT NOTES

- Circumstances
- Behaviour of parties
- Types include:
 - Agency by estoppel
 - Agency by holding out

Thus, even without express agreement, agency may be recognized by law.

(c) Agency by Necessity

Agency is created in situations of emergency where a person acts on behalf of another to protect his interests.

- Conditions:
 - Real necessity
 - Inability to communicate
 - Bona fide action
- Example:
 - Carrier selling perishable goods to prevent loss

This type of agency is recognized to prevent harm.

(d) Agency by Estoppel

When a person, by his conduct, leads a third party to believe that another person is his agent, he is estopped from denying the agency.

- Elements:
 - Representation by principal
 - Reliance by third party
 - Change of position

Thus, law prevents denial of agency to protect third parties.

(e) Agency by Ratification

Agency may arise when a person approves or adopts an act done by another without authority.

- Conditions:

SPECIAL CONTRACT NOTES

- Act must be lawful
- Principal must have knowledge
- Ratification must be complete
- Effect:
 - Acts become binding as if originally authorized

Thus, unauthorized acts can be validated retrospectively.

3. Termination of Agency

Agency may come to an end through various modes depending on the circumstances.

(a) By Agreement or Revocation

The principal may revoke the authority of the agent, or both parties may mutually agree to terminate.

- Revocation may be:
 - Express
 - Implied
- However:
 - Cannot revoke after authority is exercised

(b) By Completion of Business

Agency automatically terminates when:

- The purpose is achieved
- The work assigned is completed

(c) By Expiry of Time

If agency is created for a fixed period:

- It terminates after expiry of that period

(d) By Death or Insolvency

Agency comes to an end:

- On death of principal or agent

SPECIAL CONTRACT NOTES

- On insolvency of principal

This is because the relationship is personal in nature.

(e) By Operation of Law

Agency may terminate due to legal circumstances such as:

- Destruction of subject matter
- Principal becoming of unsound mind
- Change in law making contract illegal

(f) Agency Coupled with Interest (Exception)

In this case:

- Agency cannot be revoked
- It continues even after death or insolvency

Thus, it is an important exception to termination rules.

CONCLUSION

The law of agency plays a vital role in facilitating modern commercial transactions by allowing one person to act on behalf of another. The creation of agency may occur through various modes, reflecting flexibility and adaptability in legal relationships. At the same time, the law provides clear rules for termination of agency to ensure that such relationships do not continue beyond their intended purpose.

While agency is based on trust and representation, its termination is governed by principles of fairness, necessity, and legal certainty. The exception of agency coupled with interest further highlights the balance maintained by law between the rights of the principal and the agent.

Thus, the concepts of creation and termination of agency together form a comprehensive framework that regulates the functioning of representative relationships in contract law.

SPECIAL CONTRACT NOTES

TOPIC:

RIGHTS & DUTIES OF AGENT + LIABILITY OF AGENT

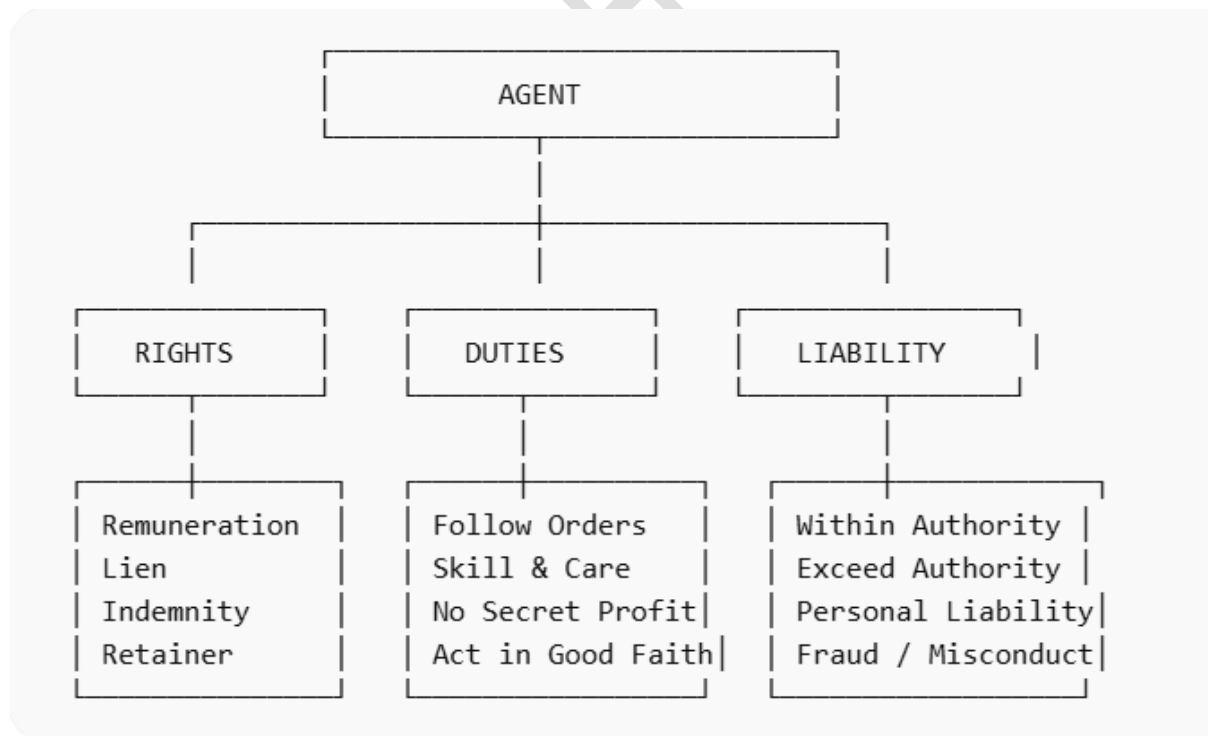
Answer:

INTRODUCTION

The law of agency under Sections 182 to 238 of the Indian Contract Act, 1872 establishes a fiduciary relationship in which an agent acts on behalf of the principal in dealings with third parties. This relationship is based on trust, confidence, and good faith. Since the agent represents the principal, his acts create legal consequences for the principal.

To maintain balance in this relationship, the law clearly defines the rights and duties of the agent. While the agent is under an obligation to act honestly, diligently, and within the scope of his authority, he is also entitled to certain rights such as remuneration, indemnity, and lien.

At the same time, the agent may incur liability for his acts, either towards the principal or towards third parties, depending upon whether he has acted within authority or exceeded it. Therefore, understanding the rights, duties, and liability of an agent is essential for determining accountability in agency relationships.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Rights of Agent

An agent is entitled to certain rights to ensure that he is not placed at a disadvantage while acting on behalf of the principal. These rights arise either from the contract or from the provisions of law.

The important rights of an agent include:

- **Right to Remuneration**
The agent is entitled to receive agreed remuneration or commission for the services rendered. This right arises only after the completion of the work, unless otherwise agreed.
- **Right of Lien (Sec 221)**
The agent has a right to retain goods, papers, or property of the principal until his lawful charges and expenses are paid. This ensures that the agent is not deprived of his dues.
- **Right of Indemnity (Sec 222–223)**
The agent is entitled to be indemnified by the principal for all lawful acts done in the exercise of authority. Even in cases of good faith acts, the principal must compensate the agent.
- **Right of Retainer (Sec 217)**
The agent may retain sums received on behalf of the principal towards his remuneration or expenses.
- **Right to Compensation**
If the agent suffers injury due to principal's neglect or lack of skill, he is entitled to compensation.

These rights ensure that the agent is fairly compensated and protected while performing his duties.

2. Duties of Agent

The agent, being in a fiduciary position, is under strict obligations to act in the best interest of the principal. The duties of the agent are fundamental to maintaining trust in the agency relationship.

The important duties include:

- **Duty to Follow Instructions (Sec 211)**
The agent must act according to the directions of the principal. If no directions are given, he must act according to prevailing customs.

SPECIAL CONTRACT NOTES

- **Duty to Act with Reasonable Care and Skill (Sec 212)**
The agent must perform his duties with the skill and diligence expected of a reasonable person in similar circumstances.
- **Duty to Act in Good Faith**
The agent must act honestly and in the best interests of the principal, avoiding any conflict of interest.
- **Duty not to Make Secret Profits (Sec 216)**
The agent must not make any undisclosed profit from the agency. If he does so, the principal may claim such profit.
- **Duty to Render Accounts (Sec 213)**
The agent must maintain proper accounts and provide them to the principal on demand.
- **Duty not to Delegate Authority (Sec 190)**
The agent must perform duties personally unless delegation is permitted by contract or necessity.
- **Duty to Protect and Preserve Interests (Sec 209)**
In emergencies, the agent must take reasonable steps to protect the principal's interests.

Thus, the duties of the agent emphasize honesty, diligence, and loyalty.

3. Liability of Agent

The liability of an agent depends upon whether he has acted within his authority or has exceeded it. It also depends on the nature of the transaction and the relationship with third parties.

(a) Liability to Principal

The agent is liable to the principal in the following situations:

- When he acts **beyond authority**
- When he commits **negligence or misconduct**
- When he makes **secret profits**
- When he fails to follow instructions

In such cases, the agent must compensate the principal for the loss caused.

SPECIAL CONTRACT NOTES

(b) Liability to Third Parties

As a general rule, an agent is not personally liable to third parties for acts done within authority. However, exceptions arise where:

- The agent acts **for an undisclosed principal**
- The agent acts **for a foreign principal**
- The agent expressly undertakes **personal liability**
- The agent acts **without authority or exceeds authority**

In these situations, the agent may be held personally liable.

(c) Liability for Fraud or Misrepresentation (Sec 238)

The principal is liable for fraud or misrepresentation committed by the agent within the scope of authority. However, if the agent acts outside authority, he himself becomes liable.

(d) Liability for Breach of Duty

Where the agent breaches his fiduciary duty:

- He must compensate the principal
- He may lose his right to remuneration
- He may be required to account for profits

Thus, liability ensures accountability in agency relationships.

CONCLUSION

The rights, duties, and liability of an agent form the core framework of the law of agency. While the agent is entrusted with the responsibility of representing the principal, the law imposes strict duties to ensure that this power is exercised honestly and diligently. At the same time, the agent is protected through various rights such as remuneration, indemnity, and lien.

The concept of liability ensures that any misuse of authority or breach of duty does not go unpunished. By clearly defining the circumstances under which an agent is liable to the principal or third parties, the law maintains a balance between authority and accountability.

Thus, the law of agency not only facilitates commercial transactions but also ensures fairness and trust in representative relationships.

SPECIAL CONTRACT NOTES

TOPIC:

PLEDGE – DEFINITION + RIGHTS OF PAWNEE

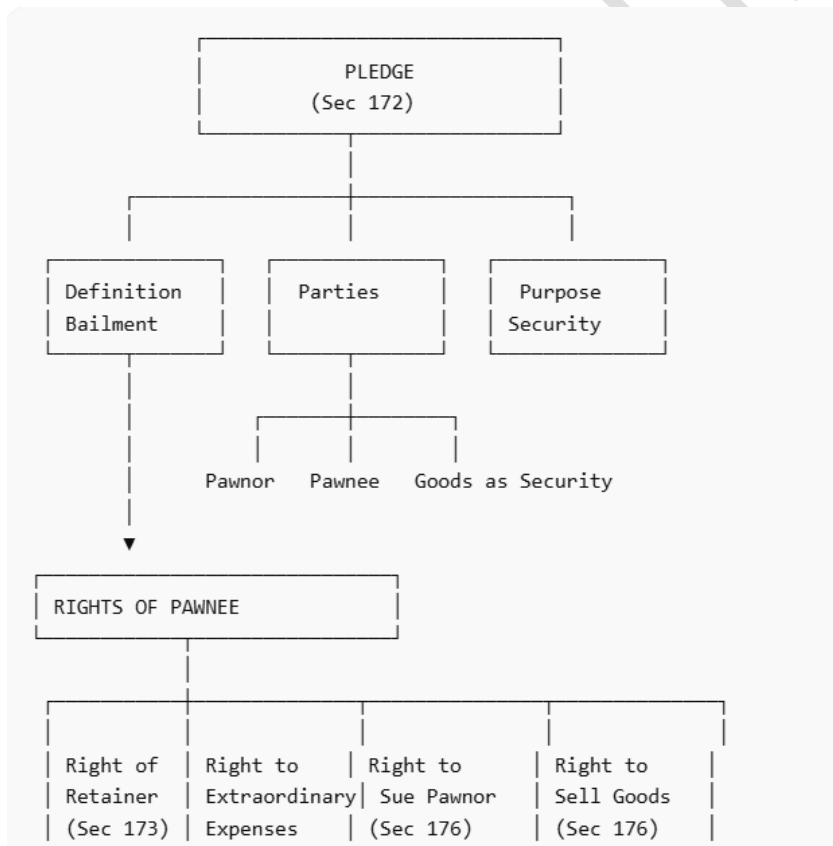
Answer:

INTRODUCTION

Pledge is a special form of bailment governed by Sections 172 to 179 of the Indian Contract Act, 1872. It arises when goods are delivered as security for the payment of a debt or performance of a promise. In commercial transactions, pledge is commonly used in banking and finance where borrowers provide goods as collateral security to lenders.

The person who delivers the goods is called the pawnor, and the person who receives them as security is called the pawnee. Unlike ordinary bailment, pledge has a specific objective—security for a debt—which gives rise to special rights in favour of the pawnee. These rights are designed to protect the creditor and ensure recovery of the debt.

The law of pledge thus strengthens financial transactions by allowing creditors to retain and even sell the goods in case of default, subject to legal safeguards.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Meaning and Nature of Pledge

Section 172 defines pledge as the bailment of goods as security for payment of a debt or performance of a promise. It is a special kind of bailment where the delivery of goods is not merely for use or custody but specifically to secure a financial obligation.

The nature of pledge can be understood through the following features:

- It is a **special form of bailment**
- It involves **delivery of goods as security**
- Ownership remains with pawnor, possession passes to pawnee
- It creates a **right in favour of pawnee to recover debt**

Thus, pledge is primarily a security arrangement that protects the creditor's interest.

2. Essentials of Pledge

For a valid pledge, the following elements must be present:

- **Delivery of goods**
There must be actual or constructive delivery of goods.
- **Purpose of security**
The goods must be delivered to secure a debt or promise.
- **Existence of debt or obligation**
There must be a valid and enforceable liability.
- **Return of goods**
Goods must be returned upon payment or performance.

These essentials distinguish pledge from ordinary bailment.

3. Rights of Pawnee

The pawnee, being in the position of a secured creditor, is given special rights under the law to protect his interest.

(a) Right of Retainer (Sec 173)

The pawnee has a right to retain the goods pledged until payment of:

SPECIAL CONTRACT NOTES

- Principal debt
- Interest on the debt
- Necessary expenses incurred

This right ensures that the pawnee is not compelled to return the goods until his dues are fully satisfied.

(b) Right to Extraordinary Expenses (Sec 175)

The pawnee is entitled to recover extraordinary expenses incurred for preservation of goods.

- These expenses:
 - Must be necessary
 - Are recoverable separately

However, pawnee cannot retain goods solely for these expenses.

(c) Right to Sue Pawnor (Sec 176)

In case of default by the pawnor, the pawnee may:

- File a suit against the pawnor for recovery of debt
- Retain the pledged goods as collateral security

Thus, the pawnee is not limited to the goods alone but may proceed legally.

(d) Right to Sell Goods (Sec 176)

The pawnee has an important right to sell the goods upon default.

- He may:
 - Sell goods after giving reasonable notice
 - Or file a suit and retain goods
- If sale proceeds:
 - Are less → pawnor liable for balance
 - Are more → surplus returned to pawnor

This right gives practical enforceability to pledge.

(e) Right of Ordinary Lien

The pawnee has a general right to retain goods until lawful charges are paid.

SPECIAL CONTRACT NOTES

- It strengthens his position as a secured creditor
- Prevents unjust enrichment of pawnor

4. Judicial Position

✦ **Lallan Prasad v. Rahmat Ali**

- **Facts:** Pawnee sued without returning goods
- **Held:** Pawnee must either return goods or account for value
- **Principle:** Pawnee cannot retain goods and claim full debt unfairly

This case highlights fairness in enforcement of pawnee's rights.

CONCLUSION

Pledge is a vital legal concept that facilitates secured transactions by allowing goods to be used as collateral for debts. It provides strong protection to the creditor by granting rights such as retention, suit, and sale of goods in case of default. At the same time, the law ensures fairness by imposing conditions such as reasonable notice before sale and return of surplus to the pawnor.

The rights of the pawnee are designed to balance the interests of both parties while ensuring that the creditor's position is not weakened. Judicial decisions have further clarified that these rights must be exercised in a reasonable and equitable manner.

Thus, the law of pledge plays a crucial role in commercial transactions and forms an essential part of the law of bailment and contract.

SPECIAL CONTRACT NOTES

TOPIC:

1. Who can pledge
2. Pledge by mercantile agent
3. Pawnor's right to redeem
4. Difference: Bailment vs Pledge
5. Actual vs Ostensible authority
6. Undisclosed principal
7. Personal liability of agent
8. Sub-agent vs Substituted agent
9. Agency coupled with interest
10. Ratification

Answer:

■ 1. Who can Pledge

● Intro

Under Section 172 of the Indian Contract Act, a pledge is the bailment of goods as security for a debt. Generally, only the owner of goods can create a valid pledge.

● Explanation

However, certain non-owners can also pledge validly:

- Mercantile agent (Sec 178)
- Person in possession under voidable contract
- Person with limited interest
- Seller/buyer in possession after sale

👉 *Illustration:* If A gives goods to a mercantile agent, and he pledges them in ordinary course, it is valid.

● Conclusion

Thus, while ownership is the rule, law allows exceptions to protect commercial transactions.

SPECIAL CONTRACT NOTES

■ 2. Pledge by Mercantile Agent

● Intro

Section 178 provides that a mercantile agent can make a valid pledge of goods.

● Explanation

Conditions:

- Agent must be in possession with owner's consent
- Must act in ordinary course of business
- Pawnee must act in good faith

👉 *Illustration:* A gives goods to B (agent) to sell; B pledges them. If C acts in good faith, pledge is valid.

● Conclusion

Thus, law protects third parties dealing with mercantile agents.

■ 3. Pawnor's Right to Redeem

● Intro

Section 177 gives the pawnor the right to redeem pledged goods.

● Explanation

- Pawnor can redeem goods:
 - Before sale
 - Even after default
- Must pay:
 - Debt
 - Expenses

👉 *Illustration:* If goods are pledged and pawnor defaults, he can still redeem before sale.

● Conclusion

Thus, the right of redemption protects the ownership rights of the pawnor.

■ 4. Difference: Bailment vs Pledge

● Intro

Pledge is a special form of bailment, but both differ in purpose and legal effect.

● Explanation

- Bailment:
 - Goods delivered for purpose
 - No security involved
- Pledge:
 - Goods delivered as security
 - Special rights of pawnee

👉 *Illustration:* Giving goods for repair = bailment; giving goods as loan security = pledge.

● Conclusion

Thus, pledge is a specific type of bailment with a security objective.

■ 5. Actual vs Ostensible Authority

● Intro

Authority of an agent may be actual or ostensible depending on its source.

● Explanation

- Actual authority:
 - Given expressly or impliedly
 - Based on agreement
- Ostensible authority:
 - Based on representation
 - Third party relies on appearance

👉 *Illustration:* If principal allows agent to act publicly, third party can rely on it.

SPECIAL CONTRACT NOTES

● Conclusion

Thus, actual authority is real, while ostensible authority is apparent but legally binding.

■ 6. Undisclosed Principal

● Intro

An undisclosed principal is one whose existence is not revealed to the third party.

● Explanation

- Agent acts in his own name
- Principal can later intervene
- Third party can sue either agent or principal

👉 *Illustration:* A buys goods in his own name but for B; B can enforce contract.

● Conclusion

Thus, law allows hidden principals but protects third party rights.

■ 7. Personal Liability of Agent

● Intro

Generally, an agent is not personally liable for acts done on behalf of the principal.

● Explanation

However, agent becomes personally liable when:

- Acting for undisclosed principal
- Acting for foreign principal
- Exceeds authority
- Expressly agrees

👉 *Illustration:* If agent signs contract in own name, he is liable.

● Conclusion

Thus, liability arises when agent steps beyond representative role.

■ 8. Sub-agent vs Substituted Agent

● Intro

The law distinguishes between sub-agent and substituted agent under Sections 191–194.

● Explanation

- Sub-agent:
 - Appointed by agent
 - Works under agent
 - Principal not directly connected
- Substituted agent:
 - Appointed with authority
 - Works under principal

👉 *Illustration:* Lawyer appoints junior (sub-agent); client appoints another lawyer (substituted agent).

● Conclusion

Thus, sub-agent is under agent, while substituted agent works directly under principal.

■ 9. Agency Coupled with Interest

● Intro

Agency coupled with interest is a special type of agency under Section 202.

● Explanation

- Agent has personal interest in subject matter
- Cannot be terminated without consent

👉 *Illustration:* A gives B authority to sell land and recover his loan—cannot revoke.

● Conclusion

Thus, such agency is irrevocable to protect agent's interest.

■ 10. Ratification

● Intro

Ratification refers to approval of an act done without authority.

● Explanation

- Principal adopts unauthorized act
- It becomes valid retrospectively

Conditions:

- Full knowledge
- Lawful act

👉 *Illustration:* Agent buys goods without authority; principal approves later.

● Conclusion

Thus, ratification validates unauthorized acts and binds the principal.

SPECIAL CONTRACT NOTES

TOPIC:

SPECIFIC PERFORMANCE OF CONTRACT

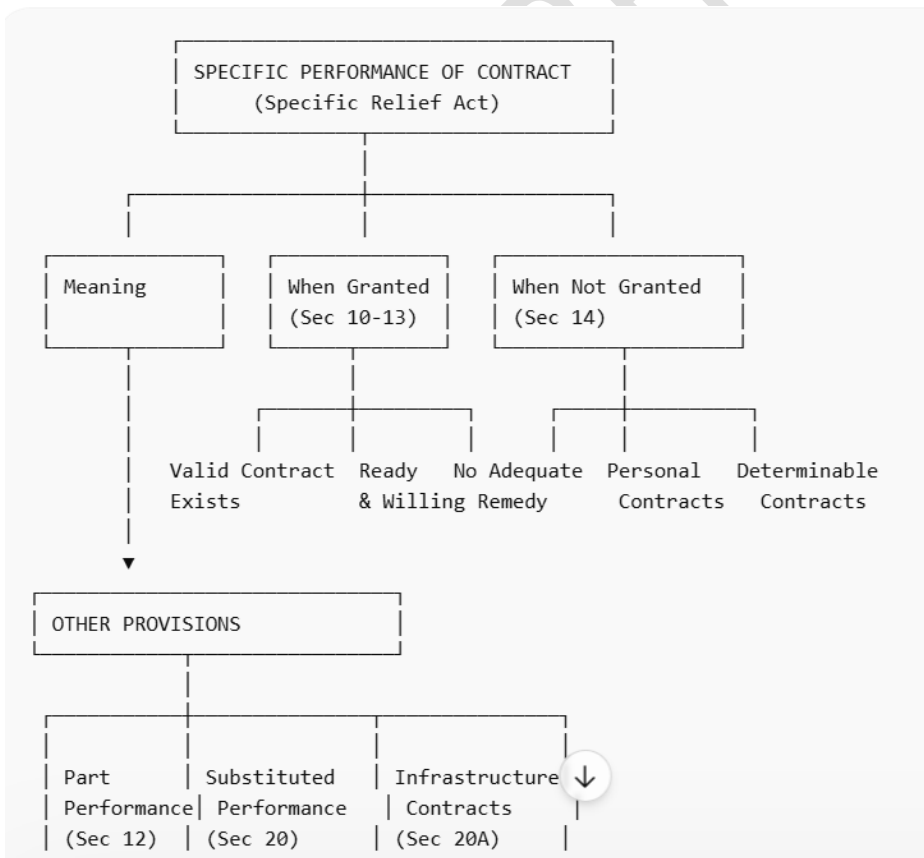
Answer:

INTRODUCTION

Specific performance of contract is an equitable remedy provided under the Specific Relief Act, 1963 (as amended by the 2018 Amendment). It refers to the enforcement of a contractual obligation by compelling a party to perform exactly what was promised under the contract, rather than merely paying damages for breach.

Traditionally, courts treated specific performance as a discretionary remedy, granted only when damages were inadequate. However, the 2018 amendment has significantly changed this approach by making specific performance a more general rule rather than an exception, particularly in commercial and infrastructure contracts.

This remedy is especially important in cases involving immovable property, unique goods, or situations where monetary compensation cannot adequately substitute the performance of the contract. The law thus aims to ensure fairness and justice by enforcing actual performance wherever appropriate.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Meaning and Nature of Specific Performance

Specific performance is a remedy by which the court directs a party to perform his contractual obligations exactly as agreed. It is an equitable remedy, meaning it is granted based on fairness, justice, and good conscience rather than strict legal right alone.

The nature of this remedy can be understood as follows:

- It is a **positive remedy**, compelling actual performance
- It is **equitable in origin**, based on fairness
- It is now more **rule-based after 2018 amendment**
- It is commonly applied in:
 - Sale of immovable property
 - Unique goods
 - Commercial agreements

Thus, the remedy ensures that justice is done by enforcing the real intention of the parties.

2. Contracts which can be Specifically Enforced (Sec 10–13)

After the 2018 amendment, specific performance is generally granted unless expressly barred.

The essential conditions for granting this remedy include:

(a) Existence of Valid Contract

The contract must be:

- Lawful
- Certain and definite
- Capable of performance

Courts will not enforce vague or uncertain agreements.

(b) Readiness and Willingness of Plaintiff

The plaintiff must prove that:

SPECIAL CONTRACT NOTES

- He was always ready
- He was willing to perform his part

This is a mandatory requirement.

(c) No Adequate Remedy by Damages

Specific performance is granted where:

- Monetary compensation is insufficient
- Subject matter is unique

Example:

- Land, rare goods, special contracts

(d) Contracts Relating to Property

The law particularly favours:

- Sale of immovable property
- Lease agreements

Because such property is considered unique.

3. Contracts which cannot be Specifically Enforced (Sec 14)

Certain contracts are not enforceable by specific performance.

These include:

(a) Personal Service Contracts

- Contracts depending on personal skill
- Example: employment contracts

Courts cannot compel personal service.

(b) Determinable Contracts

- Contracts that can be terminated easily
- Cannot be enforced specifically

(c) Contracts Requiring Continuous Supervision

SPECIAL CONTRACT NOTES

- Courts avoid enforcing contracts needing constant monitoring

(d) Impossible or Unlawful Contracts

- Contracts that are illegal or impossible cannot be enforced

4. Specific Performance of Part of Contract (Sec 12)

Generally, courts do not enforce part of a contract. However, exceptions exist where:

- A small portion cannot be performed
- Compensation can be given for deficiency

Thus, partial enforcement is allowed in limited circumstances.

5. Substituted Performance (Sec 20)

This is an important feature introduced by the 2018 amendment.

- If a party breaches:
 - The aggrieved party may get performance done by another person
- Conditions:
 - Must give notice to defaulting party
 - Can recover expenses

This reduces dependency on court enforcement.

6. Special Provisions for Infrastructure Contracts (Sec 20A–20C)

To promote economic development:

- Courts cannot grant injunctions that delay infrastructure projects
- Special courts are established
- Expeditious disposal is ensured

This reflects a shift towards commercial efficiency.

7. Judicial Interpretation

- ✦ **Mahabir Prasad Jain v. Ganga Singh**

SPECIAL CONTRACT NOTES

- **Held:** Specific performance depends on facts and conduct
- **Principle:** Readiness and willingness is essential

✦ **Abdul Rahiman v. Nalakath Muhammad**

- **Held:** Relief depends on equitable considerations
- **Principle:** Courts ensure fairness

CONCLUSION

Specific performance of contract is one of the most important remedies under the Specific Relief Act, ensuring that contractual obligations are not merely theoretical but practically enforceable. The 2018 amendment has significantly transformed this remedy from a discretionary relief to a more rule-based approach, thereby strengthening contractual enforcement in India.

By compelling actual performance, the law ensures that parties cannot escape their obligations simply by paying damages, especially in cases involving unique subject matter. At the same time, the law maintains a balance by excluding certain contracts and introducing mechanisms like substituted performance.

Thus, specific performance serves as a powerful tool for ensuring justice, fairness, and certainty in contractual relationships, making it an essential component of modern contract law.

SPECIAL CONTRACT NOTES

TOPIC:

CONTRACTS WHICH CAN & CANNOT BE SPECIFICALLY ENFORCED

(Specific Relief Act, 1963 – as amended in 2018)

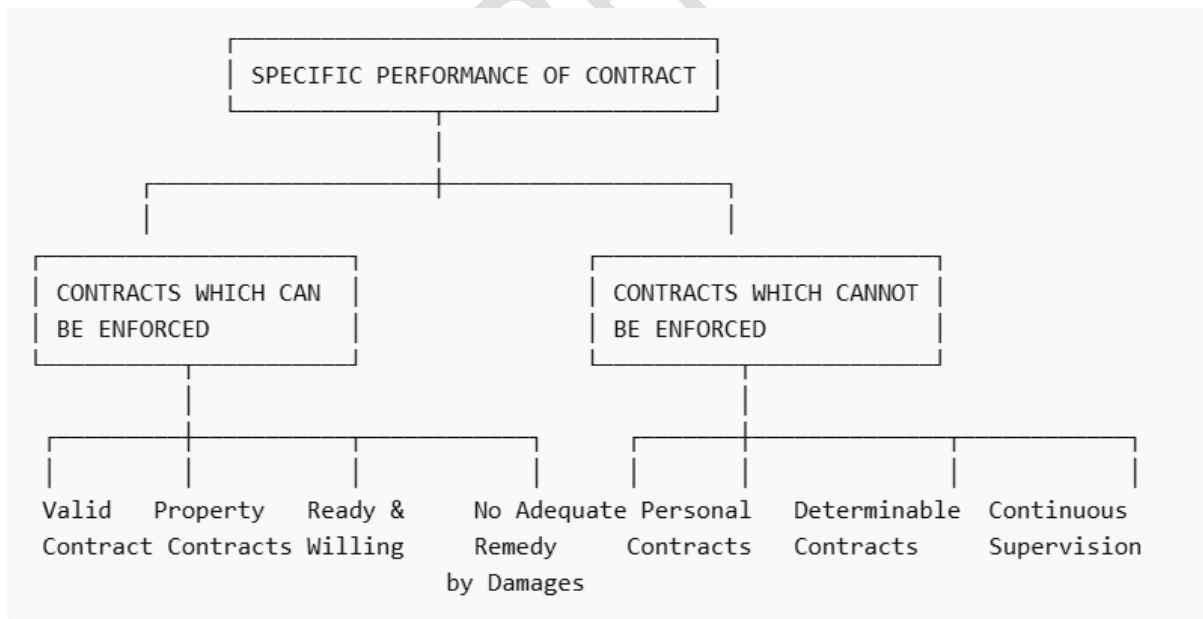
Answer:

INTRODUCTION

The remedy of specific performance under the Specific Relief Act, 1963 enables courts to compel parties to perform their contractual obligations rather than merely awarding damages. After the 2018 amendment, the law has shifted towards making specific performance a general rule, subject to certain exceptions.

However, not all contracts are capable of being specifically enforced. The Act clearly distinguishes between contracts that may be enforced (primarily under Sections 10–13) and those that cannot be enforced (Section 14). This distinction is based on the nature of the contract, feasibility of enforcement, and principles of equity and practicality.

Thus, understanding which contracts are enforceable and which are not is essential for determining the availability of this equitable remedy.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Contracts which can be Specifically Enforced (Sec 10–13)

After the 2018 amendment, the general rule is that contracts shall be specifically enforced unless they fall within the exceptions. However, certain essential conditions must be satisfied.

(a) Existence of Valid Contract

The contract must be legally valid and enforceable.

- It must be:
 - Lawful
 - Certain
 - Capable of performance

Courts will not enforce agreements that are vague or uncertain.

(b) Readiness and Willingness of Plaintiff

The party seeking specific performance must prove:

- Continuous readiness
- Genuine willingness

This is a mandatory requirement and failure to prove it results in denial of relief.

(c) Contracts relating to Immovable Property

Contracts involving land or immovable property are generally specifically enforceable.

- Reason:
 - Land is unique
 - Monetary compensation is inadequate

Thus, courts favour enforcement in such cases.

(d) Contracts where Compensation is Inadequate

Specific performance is granted where damages are not sufficient.

- Situations include:

SPECIAL CONTRACT NOTES

- Rare goods
- Unique subject matter
- Special value contracts

(e) Specific Performance of Part of Contract (Sec 12)

Although generally courts do not enforce part of a contract, exceptions exist:

- When a small portion cannot be performed
- When compensation can be awarded

Thus, partial enforcement is allowed in limited situations.

(f) Contracts involving Trust (Sec 11)

Where a person holds property in trust:

- Courts may enforce performance
- To protect beneficiary's interest

2. Contracts which cannot be Specifically Enforced (Sec 14)

The Act clearly specifies certain contracts that are not suitable for specific performance.

(a) Contracts involving Personal Skill or Personal Service

Contracts which depend on personal qualifications cannot be enforced.

- Example:
 - Employment contracts
 - Artistic performance

Courts cannot compel personal service.

(b) Determinable Contracts

Contracts which can be terminated at will cannot be specifically enforced.

- Reason:
 - Enforcement would be meaningless
 - Parties can terminate anytime

SPECIAL CONTRACT NOTES

(c) Contracts requiring Continuous Supervision

Where enforcement requires constant monitoring:

- Courts refuse specific performance
- Example:
 - Construction contracts requiring supervision

(d) Contracts which are Impossible or Unlawful

Contracts that:

- Are illegal
- Become impossible

cannot be enforced.

(e) Contracts involving minute or numerous details

Where:

- Terms are complex
- Execution is impractical

Courts avoid enforcing such agreements.

3. Importance of Distinction

The distinction between enforceable and non-enforceable contracts ensures:

- Practical enforceability of court orders
- Avoidance of judicial overreach
- Balance between fairness and feasibility

Thus, courts grant relief only where it is just and workable.

CONCLUSION

The distinction between contracts which can and cannot be specifically enforced forms the backbone of the law relating to specific performance. While the 2018 amendment has made specific performance more accessible, the law continues to recognize certain limitations based on practicality, feasibility, and fairness.

SPECIAL CONTRACT NOTES

Contracts that are clear, lawful, and capable of performance are generally enforced, especially where monetary compensation is inadequate. At the same time, contracts involving personal service, determinable obligations, or requiring continuous supervision are excluded to prevent impractical enforcement.

Thus, the law strikes a careful balance between enforcing contractual obligations and ensuring that judicial remedies remain effective and reasonable.

BY AJTABH MISHRA

SPECIAL CONTRACT NOTES

TOPIC:

RECOVERY OF POSSESSION (MOVABLE & IMMOVABLE PROPERTY)

(Specific Relief Act, 1963 – Sections 5–8)

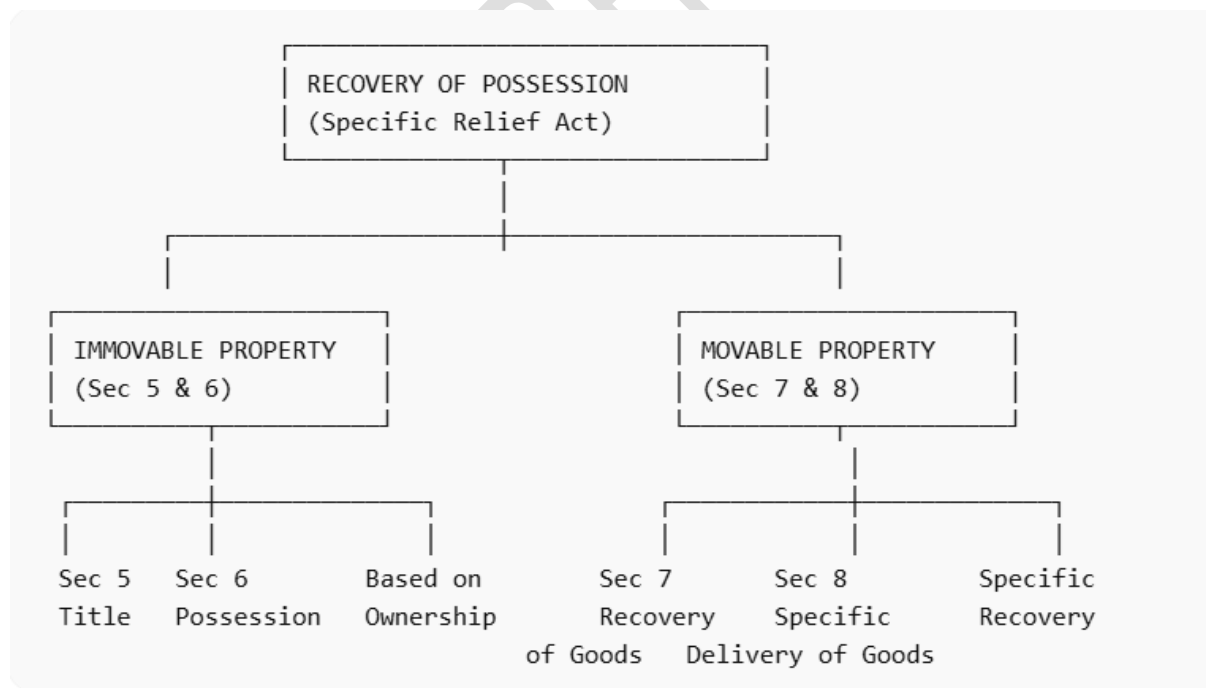
Answer:

INTRODUCTION

The Specific Relief Act, 1963 provides remedies for the enforcement of civil rights, including the recovery of possession of property. Possession is an important legal right, and the law recognizes that a person who has been wrongfully dispossessed should be restored to possession through judicial intervention.

The Act distinguishes between recovery of possession of immovable property and movable property, laying down separate provisions and remedies for each. Sections 5 and 6 deal with immovable property, while Sections 7 and 8 deal with movable property.

The remedy of recovery of possession is based on the principle that no person should take the law into his own hands, and any dispossession must be addressed through due process of law. This ensures protection of ownership as well as lawful possession.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Recovery of Possession of Immovable Property

The recovery of possession of immovable property is governed by Sections 5 and 6 of the Specific Relief Act.

(a) Section 5 – Based on Title

Section 5 provides that a person entitled to possession of specific immovable property may recover it through a civil suit.

This remedy is based on ownership or legal title.

- The plaintiff must prove:
 - His legal title to the property
 - His right to possession
- It is a regular civil suit:
 - Governed by Civil Procedure Code
 - No strict time limit like Section 6

Thus, this section protects ownership rights and allows recovery through due legal process.

(b) Section 6 – Based on Possession (Summary Remedy)

Section 6 provides a special and summary remedy for recovery of possession where a person is dispossessed without his consent and otherwise than in due course of law.

This remedy is based on possession, not ownership.

- Essential conditions:
 - Plaintiff was in possession
 - He was dispossessed unlawfully
 - Suit filed within **6 months**
- Important features:
 - Ownership is irrelevant
 - Court only examines possession
 - No appeal or review allowed

SPECIAL CONTRACT NOTES

The objective of this section is to discourage forcible dispossession and maintain public order.

2. Recovery of Possession of Movable Property

The recovery of movable property is governed by Sections 7 and 8 of the Act.

(a) Section 7 – Recovery of Specific Movable Property

Section 7 provides that a person entitled to possession of specific movable property may recover it through a suit.

- The plaintiff must prove:
 - His right to possession
 - That the property is specific and identifiable
- This applies to:
 - Goods wrongfully detained
 - Specific movable items

Thus, it protects ownership or possessory rights over movable goods.

(b) Section 8 – Specific Delivery of Movable Property

Section 8 allows the court to order specific delivery of movable property in certain cases.

This remedy is granted where:

- The property is:
 - Unique or special
 - Not easily replaceable
- Monetary compensation is:
 - Inadequate

Examples include:

- Rare goods
- Items of sentimental value

Thus, the court ensures actual delivery rather than compensation.

SPECIAL CONTRACT NOTES

3. Distinction between Immovable and Movable Property Recovery

The law treats movable and immovable property differently due to their nature.

- Immovable property:
 - Greater importance
 - Protected through title and possession
- Movable property:
 - Easier to transfer
 - Remedy depends on identifiability and value

The distinction ensures appropriate remedies based on practicality and nature of property.

4. Importance of Remedy

The remedy of recovery of possession ensures:

- Protection of ownership and possession
- Prevention of illegal dispossession
- Maintenance of law and order
- Enforcement of civil rights

Thus, it forms a crucial part of property law.

CONCLUSION

The provisions relating to recovery of possession under the Specific Relief Act provide an effective legal framework for protecting both ownership and possession of property. By distinguishing between movable and immovable property, the law ensures that appropriate remedies are available based on the nature of the property involved.

Section 5 protects ownership rights, while Section 6 provides a quick remedy against unlawful dispossession. Similarly, Sections 7 and 8 safeguard rights over movable property by allowing recovery or specific delivery. Together, these provisions prevent individuals from resorting to self-help and ensure that disputes are resolved through lawful means.

Thus, the law of recovery of possession upholds justice, order, and fairness in property relations.

SPECIAL CONTRACT NOTES

TOPIC:

1. Specific performance – meaning
2. Substituted performance (2018 amendment – VERY IMPORTANT)
3. Infrastructure contract provisions
4. Rights of purchaser with imperfect title
5. Liquidated damages vs specific performance
6. Bar of suit after dismissal
7. Trust performance
8. Court's power to grant compensation
9. Section 10 (post-amendment concept)
10. Case laws (Abdul Rahiman / Mahabir Prasad)

Answer:

■ 1. Specific Performance – Meaning

● Intro

Specific performance is an equitable remedy under the Specific Relief Act, 1963 by which the court compels a party to perform his contractual obligations.

● Explanation

Instead of awarding damages, the court enforces actual performance where monetary compensation is inadequate. It is commonly applied in contracts involving immovable property or unique goods.

👉 *Illustration:* If A agrees to sell land to B and later refuses, court may compel A to execute sale.

● Conclusion

Thus, specific performance ensures real fulfilment of contractual obligations.

■ 2. Substituted Performance (2018 Amendment)

● Intro

Section 20 introduced substituted performance after the 2018 amendment.

● Explanation

If a party breaches the contract, the aggrieved party may get the contract performed by a third party and recover expenses.

- Notice must be given

SPECIAL CONTRACT NOTES

- Defaulting party loses right to specific performance

👉 *Illustration:* If contractor fails, employer hires another and recovers cost.

● Conclusion

Thus, substituted performance provides a practical and efficient remedy.

■ 3. Infrastructure Contract Provisions

● Intro

Sections 20A–20C introduce special provisions for infrastructure contracts.

● Explanation

- Courts cannot grant injunctions delaying infrastructure projects
- Special courts for speedy disposal
- Applies to public utility projects

👉 *Illustration:* Court may refuse injunction stopping construction of highway.

● Conclusion

Thus, law promotes economic development by protecting infrastructure projects.

■ 4. Rights of Purchaser with Imperfect Title

● Intro

Sections 13 of the Act deals with rights of purchaser where seller has imperfect title.

● Explanation

The purchaser can:

- Compel seller to perfect title
- Enforce contract when title is later acquired

👉 *Illustration:* If seller acquires ownership later, buyer can enforce sale.

● Conclusion

Thus, purchaser is protected against defects in seller's title.

SPECIAL CONTRACT NOTES

■ 5. Liquidated Damages vs Specific Performance

● Intro

Liquidated damages and specific performance are alternative remedies for breach.

● Explanation

- Liquidated damages:
 - Monetary compensation
- Specific performance:
 - Actual enforcement

Even if damages are mentioned, specific performance may still be granted.

👉 *Illustration:* Contract with penalty clause does not bar specific performance.

● Conclusion

Thus, damages do not always exclude specific performance.

■ 6. Bar of Suit after Dismissal

● Intro

The Act bars certain suits after dismissal of specific performance.

● Explanation

If a suit for specific performance is dismissed, the plaintiff cannot later sue for damages for the same breach.

👉 *Illustration:* If specific performance claim fails, separate damages claim is barred.

● Conclusion

Thus, law prevents multiplicity of litigation.

■ 7. Trust Performance

● Intro

SPECIAL CONTRACT NOTES

Specific performance is allowed in contracts involving trust obligations.

● Explanation

Where a person holds property in trust, courts enforce performance to protect beneficiaries.

👉 *Illustration:* Trustee refusing to transfer property can be compelled.

● Conclusion

Thus, trust obligations are strictly enforceable.

■ 8. Court's Power to Grant Compensation

● Intro

The court has power to grant compensation along with or in substitution of specific performance.

● Explanation

- Compensation may be:
 - Additional
 - Alternative

👉 *Illustration:* Court orders performance plus damages for delay.

● Conclusion

Thus, the court ensures complete justice through combined remedies.

■ 9. Section 10 (Post-Amendment Concept)

● Intro

Section 10 (after 2018 amendment) makes specific performance a general rule.

● Explanation

Earlier, it was discretionary; now courts shall enforce contracts unless barred under Section 14.

👉 *Illustration:* Courts now favour enforcement rather than damages.

● Conclusion

SPECIAL CONTRACT NOTES

Thus, the amendment strengthens contractual enforcement.

■ 10. Case Laws (Abdul Rahiman / Mahabir Prasad)

● Intro

These cases clarify principles of specific performance.

● Explanation

👉 Abdul Rahiman v. Nalakath Muhammad

- Court emphasized equitable nature
- Relief depends on fairness

👉 Mahabir Prasad v. Ganga Singh

- Readiness and willingness is essential
- Conduct of plaintiff matters

● Conclusion

Thus, courts grant relief based on equity and conduct of parties.

SPECIAL CONTRACT NOTES

TOPIC:

PREVENTIVE RELIEF (INJUNCTIONS – FULL TOPIC)

(Specific Relief Act, 1963 – Sections 36–42)

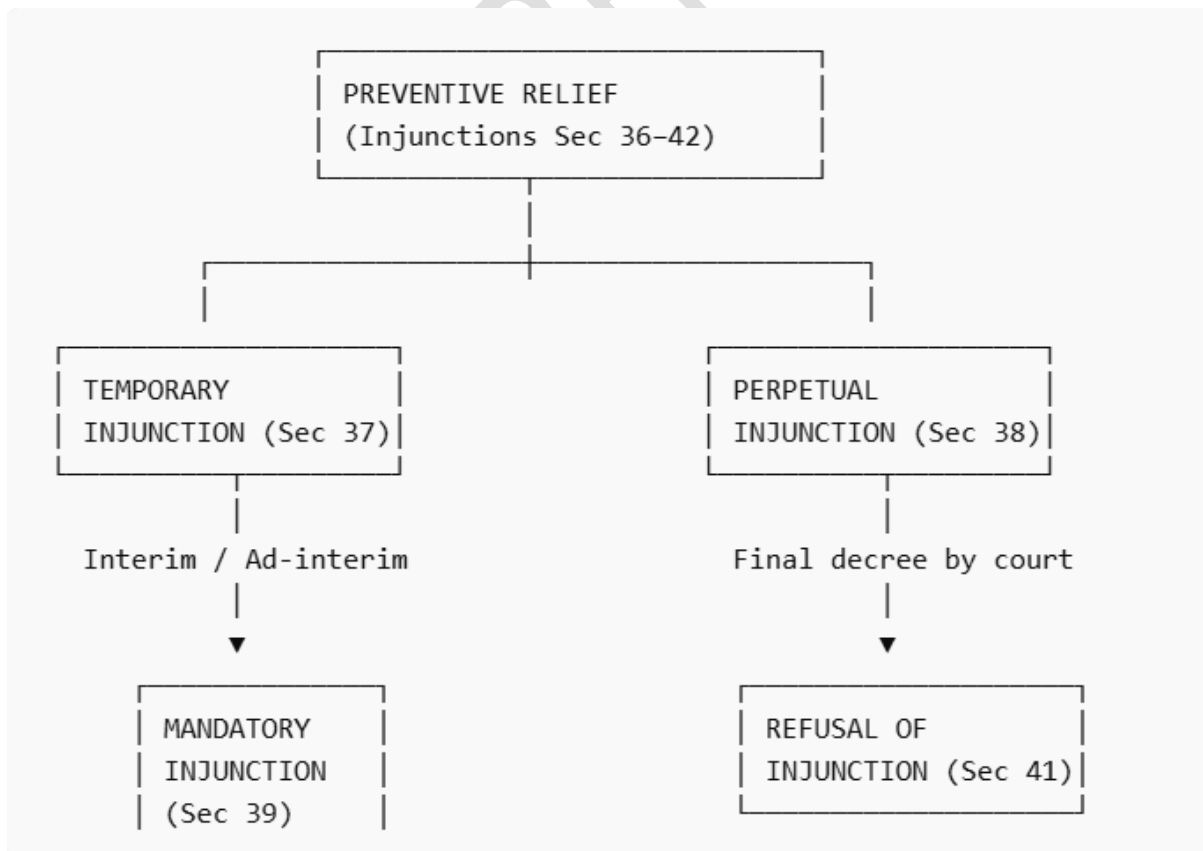
Answer:

INTRODUCTION

Preventive relief is a form of judicial remedy provided under the Specific Relief Act, 1963 with the objective of preventing the breach of an obligation rather than compensating for it after it has occurred. The law recognizes that in many situations, it is more effective to stop a wrongful act before it happens rather than to provide damages afterward.

The most important form of preventive relief is the injunction, which is an order of the court directing a party to either do a particular act or refrain from doing a particular act. Injunctions are equitable remedies and are granted on principles of justice, equity, and good conscience.

The Act classifies injunctions mainly into temporary and perpetual injunctions, along with mandatory injunctions. These remedies play a crucial role in protecting legal rights, property interests, and contractual obligations by preventing irreparable harm.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Meaning and Nature of Preventive Relief

Preventive relief refers to the relief granted by the court to prevent the commission or continuance of a wrongful act. Unlike compensatory relief, which addresses harm after it has occurred, preventive relief aims to stop the harm from taking place.

The nature of injunctions can be understood as follows:

- It is an **equitable remedy**, granted at the discretion of the court
- It is **preventive in nature**, not compensatory
- It aims to protect:
 - Legal rights
 - Property interests
 - Contractual obligations
- It is granted when:
 - Damages are inadequate
 - Irreparable injury may occur

Thus, injunctions serve as a powerful tool to maintain justice and prevent injustice.

2. Temporary Injunction (Section 37)

A temporary injunction is an interim order granted by the court during the pendency of a suit. It is governed by the Code of Civil Procedure.

Its purpose is to maintain the status quo until the final decision is made.

The key features include:

- It is **temporary in nature**
- Granted during:
 - Filing of suit
 - Pendency of proceedings
- It may be:
 - Interim

SPECIAL CONTRACT NOTES

- Ad-interim
- It is granted based on:
 - Prima facie case
 - Balance of convenience
 - Irreparable injury

Thus, temporary injunction prevents immediate harm.

3. Perpetual (Permanent) Injunction (Section 38)

A perpetual injunction is granted by the court after the final hearing of the case. It permanently restrains a party from committing a wrongful act.

This type of injunction is granted when:

- The defendant:
 - Invades or threatens to invade the plaintiff's rights
- It is necessary:
 - To prevent multiplicity of suits
 - To protect legal rights

It is granted by a decree and is binding permanently.

4. Mandatory Injunction (Section 39)

A mandatory injunction directs a party to perform a specific act to restore the previous state of things.

It differs from prohibitory injunction because:

- It **compels action**, rather than restraining it

It is granted when:

- There is:
 - Breach of obligation
 - Necessity to prevent injustice

Example:

SPECIAL CONTRACT NOTES

- Removal of illegal construction

Thus, it restores the original position.

5. Cases where Injunction is Refused (Section 41)

The court may refuse injunction in certain situations to prevent misuse of the remedy.

Important grounds of refusal include:

- To restrain judicial proceedings
- To prevent breach of contract not specifically enforceable
- Where plaintiff has no personal interest
- Where conduct of plaintiff is unfair
- Where equally efficacious remedy exists

Thus, injunction is not granted as a matter of right.

6. Other Important Provisions

- **Section 36** → Preventive relief granted by injunction
- **Section 42** → Injunction to perform negative agreements

These provisions ensure comprehensive regulation of injunctions.

7. Judicial Approach

Courts exercise discretion while granting injunctions.

- Relief is granted:
 - On equitable grounds
 - To prevent injustice
- Courts consider:
 - Conduct of parties
 - Balance of convenience

Thus, injunction is a flexible remedy.

SPECIAL CONTRACT NOTES

CONCLUSION

Preventive relief in the form of injunctions is one of the most effective remedies under the Specific Relief Act, aimed at preventing harm before it occurs. By restraining wrongful acts or compelling performance of obligations, injunctions protect legal rights and maintain justice.

The classification into temporary, perpetual, and mandatory injunctions ensures that appropriate relief is granted based on the nature and urgency of the situation. At the same time, the law imposes limitations through provisions for refusal to prevent misuse.

Thus, injunctions strike a balance between protection of rights and judicial discretion, making them an indispensable tool in civil law.

BY AJTABH MISHRA

SPECIAL CONTRACT NOTES

TOPIC:

RESCISSION OF CONTRACT + CONDITIONS

(Specific Relief Act, 1963 – Sections 27–30)

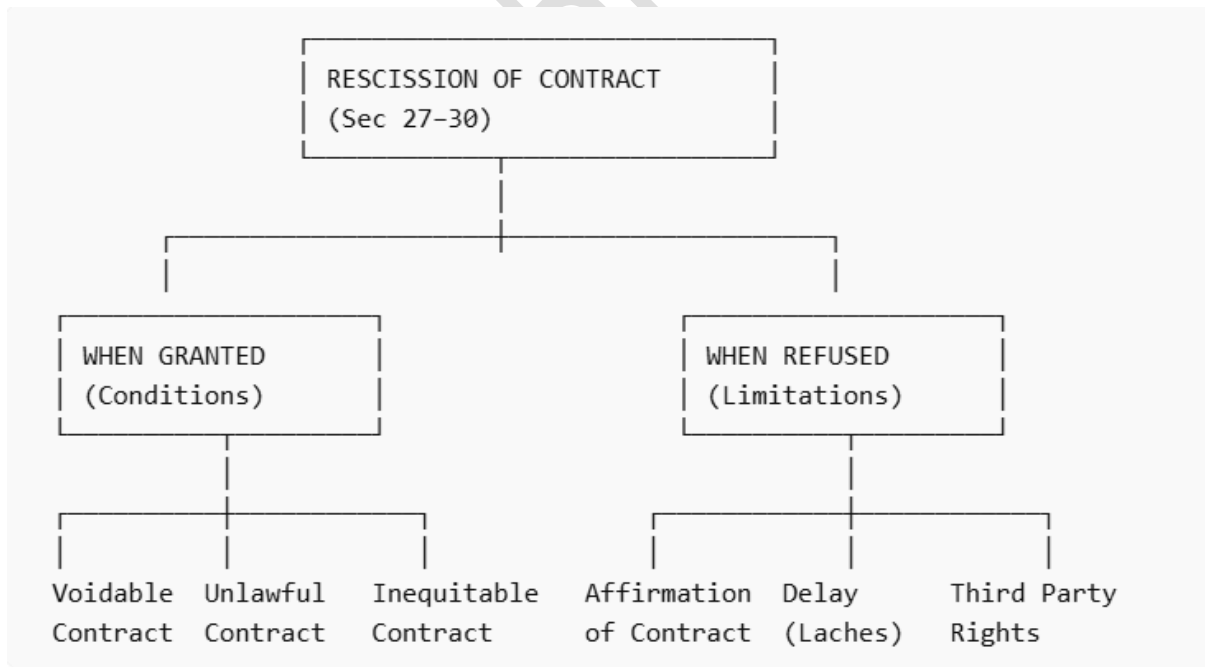
Answer:

INTRODUCTION

Rescission of contract is an equitable remedy provided under the Specific Relief Act, 1963, which enables a contract to be cancelled or set aside, thereby restoring the parties to their original position as if the contract had never been made. It is particularly relevant in cases where a contract is voidable or has been entered into under circumstances that make its enforcement unjust.

Unlike damages, which compensate for breach, rescission seeks to undo the contract itself. The remedy is discretionary in nature and is granted by courts on principles of equity, justice, and good conscience. It ensures that a party who has been wronged is not compelled to continue under an unfair or defective contract.

Thus, rescission plays a crucial role in contract law by allowing parties to escape obligations that are vitiated by factors such as fraud, misrepresentation, mistake, or undue influence.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Meaning and Nature of Rescission

Rescission refers to the cancellation or setting aside of a contract by the court, which releases both parties from their obligations. The objective is to restore the parties to their pre-contractual position, known as **status quo ante**.

The nature of rescission can be understood as follows:

- It is an **equitable remedy**
- It is **discretionary**, not a matter of right
- It applies mainly to:
 - Voidable contracts
 - Unlawful contracts
- It aims to:
 - Remove injustice
 - Restore original position

Thus, rescission ensures fairness by undoing defective agreements.

2. Grounds/Conditions for Grant of Rescission (Sec 27)

The court may grant rescission of contract under certain conditions.

(a) Voidable Contracts

Rescission is granted when a contract is voidable at the option of a party.

- Situations include:
 - Fraud
 - Misrepresentation
 - Coercion
 - Undue influence

The aggrieved party has the right to avoid such contracts.

(b) Unlawful Contracts

SPECIAL CONTRACT NOTES

Where a contract is unlawful or becomes unlawful:

- Court may rescind the contract
- Ensures that illegal agreements are not enforced

(c) Inequitable Contracts

Where enforcement would be unjust:

- Court may refuse enforcement
- Instead, rescind the contract

This reflects the equitable nature of the remedy.

3. Conditions/Limitations for Rescission (Sec 27 & 28)

Rescission is not granted automatically; certain conditions must be satisfied.

(a) Restoration of Benefits (Restitutio in Integrum)

The party seeking rescission must:

- Return benefits received
- Restore original position

If restoration is not possible, rescission may be denied.

(b) Prompt Action (No Delay)

The party must act without unreasonable delay.

- Delay indicates:
 - Acceptance of contract
 - Waiver of right

(c) No Affirmation of Contract

If the party:

- Accepts benefits
- Acts as if contract is valid

Then rescission is not allowed.

SPECIAL CONTRACT NOTES

(d) Protection of Third Party Rights

If third parties have acquired rights in good faith:

- Court may refuse rescission

This ensures fairness to innocent parties.

(e) Possibility of Restoration

Rescission is allowed only if:

- Parties can be restored to original position
- Otherwise, remedy becomes impractical

4. Effects of Rescission

Once rescission is granted:

- Contract is **cancelled**
- Parties are **freed from obligations**
- Benefits must be **restored**
- Court may grant **compensation** if necessary

Thus, rescission eliminates the contract completely.

5. Judicial Approach

Courts exercise discretion while granting rescission.

- Relief is based on:
 - Equity and fairness
 - Conduct of parties
- Courts ensure:
 - No unjust enrichment
 - No misuse of remedy

Thus, rescission is granted cautiously.

SPECIAL CONTRACT NOTES

CONCLUSION

Rescission of contract is an important equitable remedy that allows courts to cancel agreements that are unfair, unlawful, or voidable. It ensures that parties are not bound by contracts that are tainted by fraud, misrepresentation, or other vitiating factors. By restoring the parties to their original position, rescission promotes justice and fairness.

However, the remedy is subject to certain conditions such as prompt action, restoration of benefits, and absence of third-party rights. These limitations ensure that rescission is not misused and is granted only where it is equitable and practical.

Thus, rescission plays a crucial role in maintaining balance and integrity in contractual relationships.

BY AJTABH MISHRA

SPECIAL CONTRACT NOTES

TOPIC:

RECTIFICATION, CANCELLATION & RESCISSION OF CONTRACT

(Specific Relief Act, 1963 – Sections 26–33)

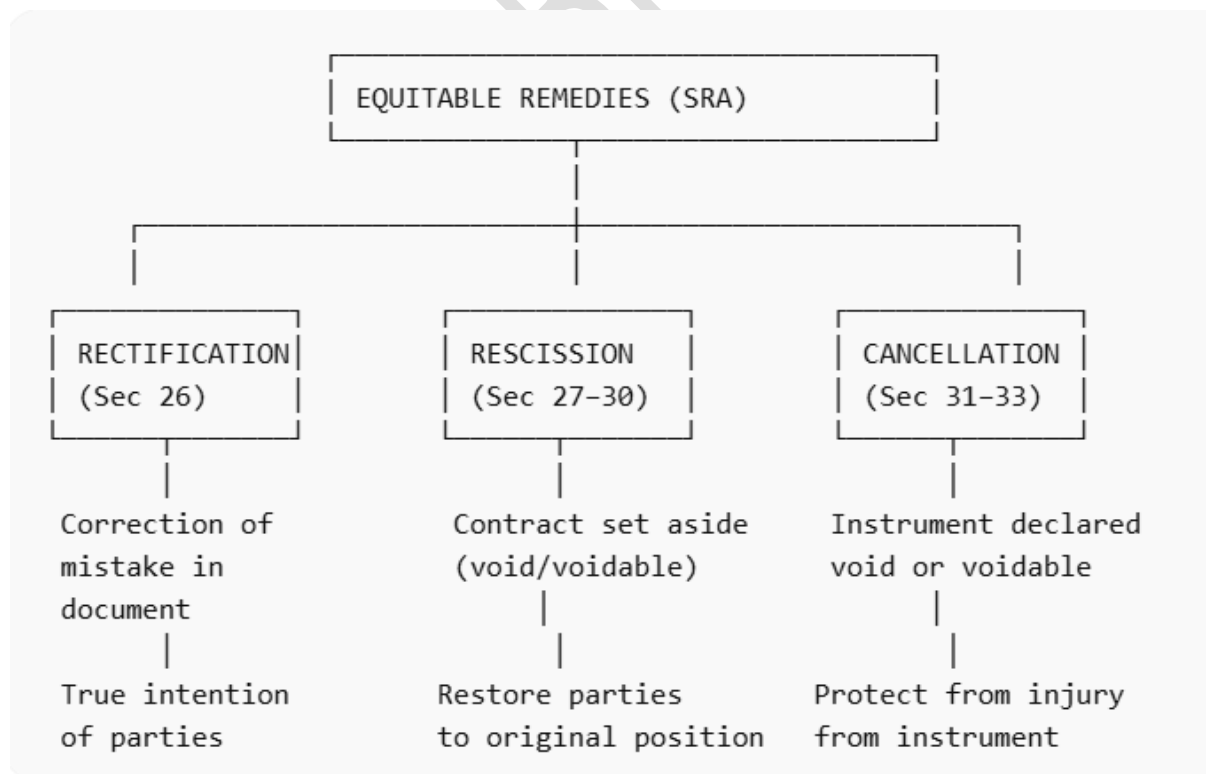
Answer:

INTRODUCTION

The Specific Relief Act, 1963 provides various equitable remedies to ensure justice in contractual and legal relationships. Among these, rectification, rescission, and cancellation of instruments are important remedies that deal with defective, unfair, or invalid contracts. While all three remedies aim at correcting or undoing contractual arrangements, they differ in their nature, scope, and legal consequences.

Rectification is used to correct mistakes in written instruments so as to reflect the true intention of the parties. Rescission, on the other hand, cancels the contract itself and restores the parties to their original position. Cancellation goes a step further by declaring an instrument void or voidable and ordering it to be formally annulled.

These remedies are discretionary and are granted by courts on equitable principles to prevent injustice, fraud, or misuse of legal documents.



SPECIAL CONTRACT NOTES

EXPLANATION

1. Rectification of Instruments (Section 26)

Rectification is a remedy by which the court corrects a written instrument when it does not reflect the true intention of the parties due to fraud or mutual mistake. The object is not to create a new contract but to make the document conform to what the parties actually agreed upon.

The nature of rectification can be understood as follows:

- It applies when:
 - There is **fraud or mutual mistake**
 - Written document does not reflect real intention
- The court:
 - Corrects the document
 - Brings it in conformity with actual agreement
- Conditions for rectification:
 - There must be a prior agreement
 - The instrument must be in writing
 - Mistake must be mutual (generally)

Thus, rectification preserves the contract but corrects its expression.

2. Rescission of Contract (Sections 27–30)

Rescission refers to the cancellation of a contract, whereby the parties are released from their obligations and restored to their original position. It is granted where the contract is voidable or its enforcement would be unjust.

The nature of rescission can be understood through the following aspects:

- It applies to:
 - Voidable contracts
 - Unlawful contracts
- Grounds include:
 - Fraud

SPECIAL CONTRACT NOTES

- Misrepresentation
- Coercion
- Undue influence
- Essential conditions:
 - Restoration of benefits (status quo)
 - No delay in seeking relief
 - No affirmation of contract
 - No prejudice to third parties

Thus, rescission destroys the contract and eliminates all obligations arising from it.

3. Cancellation of Instruments (Sections 31–33)

Cancellation is a remedy by which the court declares a written instrument void or voidable and orders it to be cancelled to prevent future injury. It is generally used when a document may cause serious harm if left outstanding.

The nature of cancellation includes:

- It applies when:
 - Instrument is void or voidable
 - It may cause serious injury
- The court:
 - Declares the instrument invalid
 - Orders it to be cancelled
- Conditions:
 - Plaintiff must show:
 - Reasonable apprehension of injury
 - Existence of a void/voidable instrument
- Effects:
 - Instrument becomes ineffective
 - Court may order delivery and destruction

SPECIAL CONTRACT NOTES

Thus, cancellation protects parties from harmful documents.

4. Key Differences among the Three Remedies

Although all three remedies are related, they differ in purpose and effect.

- **Rectification:**
 - Corrects mistakes
 - Contract remains valid
 - Focus on true intention
- **Rescission:**
 - Cancels contract
 - Restores original position
 - Eliminates obligations
- **Cancellation:**
 - Declares instrument void
 - Removes legal effect of document
 - Prevents future harm

Thus, the remedies operate at different levels—correction, termination, and annulment.

5. Importance of These Remedies

These remedies ensure:

- Protection against fraud and mistake
- Prevention of unjust enrichment
- Correction of defective agreements
- Maintenance of fairness and equity

Courts exercise discretion to grant these remedies only where justice demands.

SPECIAL CONTRACT NOTES

CONCLUSION

Rectification, rescission, and cancellation of instruments are vital equitable remedies under the Specific Relief Act, each serving a distinct purpose in ensuring fairness in contractual relationships. While rectification corrects errors in documents to reflect the true intention of the parties, rescission completely sets aside the contract and restores the parties to their original position. Cancellation, on the other hand, protects parties from harmful instruments by declaring them void or voidable.

Together, these remedies form a comprehensive framework that allows courts to address defects in agreements at different levels—whether by correction, termination, or annulment. By applying principles of equity and justice, the law ensures that contracts are not enforced in a manner that leads to injustice.

Thus, these remedies play a crucial role in maintaining integrity, fairness, and balance in contract law.

BY AJTABH MISRA

SPECIAL CONTRACT NOTES

TOPIC:

1. Rectification of instruments
2. Cancellation of instruments
3. Declaratory decree
4. Temporary injunction
5. Perpetual injunction
6. Mandatory injunction
7. Refusal of injunction
8. Difference: Rescission vs Cancellation
9. Preventive relief meaning
10. Case: *Vaish Degree College v Lakshmi Narain*

Answer:

■ 1. Rectification of Instruments

● Intro

Rectification is provided under Section 26 of the Specific Relief Act, 1963 to correct mistakes in written instruments.

● Explanation

Where a written document does not reflect the true intention of the parties due to fraud or mutual mistake, the court may rectify it. The object is not to make a new contract but to correct the existing one.

👉 *Illustration:* If amount is wrongly written due to clerical error, court may correct it.

● Conclusion

Thus, rectification ensures that the document reflects the real intention of the parties.

■ 2. Cancellation of Instruments

● Intro

Cancellation is governed by Sections 31–33 of the Act.

● Explanation

The court may cancel a written instrument if it is void or voidable and may cause serious injury if left outstanding. The instrument is declared invalid and may be ordered to be delivered and destroyed.

👉 *Illustration:* Fraudulent sale deed may be cancelled.

SPECIAL CONTRACT NOTES

● Conclusion

Thus, cancellation protects parties from harmful legal documents.

■ 3. Declaratory Decree

● Intro

Declaratory relief is provided under Sections 34–35 of the Act.

● Explanation

The court declares the legal status or right of a person without granting further relief. It is preventive in nature.

👉 *Illustration:* A may seek declaration of ownership of property.

● Conclusion

Thus, declaratory decree clarifies legal rights and avoids future disputes.

■ 4. Temporary Injunction

● Intro

A temporary injunction is granted under Section 37 during the pendency of a suit.

● Explanation

It is an interim order to maintain status quo until final decision. It is granted based on:

- Prima facie case
- Balance of convenience
- Irreparable injury

👉 *Illustration:* Court restrains sale of disputed property temporarily.

● Conclusion

Thus, temporary injunction prevents immediate harm.

■ 5. Perpetual Injunction

SPECIAL CONTRACT NOTES

● Intro

A perpetual injunction is granted under Section 38.

● Explanation

It is a final decree permanently restraining a party from doing a wrongful act.

👉 *Illustration:* Court permanently restrains trespass on property.

● Conclusion

Thus, it provides long-term protection of rights.

■ 6. Mandatory Injunction

● Intro

Mandatory injunction is provided under Section 39.

● Explanation

It compels a party to perform a positive act to restore original position.

👉 *Illustration:* Court orders removal of illegal construction.

● Conclusion

Thus, it enforces restoration of rights.

■ 7. Refusal of Injunction

● Intro

Section 41 lays down cases where injunction is refused.

● Explanation

Injunction is refused when:

- It restrains judicial proceedings
- Contract not specifically enforceable
- Plaintiff has no personal interest
- Conduct of plaintiff is unfair

SPECIAL CONTRACT NOTES

👉 *Illustration:* Injunction denied if plaintiff acts dishonestly.

● Conclusion

Thus, injunction is discretionary and not granted in every case.

■ 8. Difference: Rescission vs Cancellation

● Intro

Rescission and cancellation are distinct equitable remedies.

● Explanation

- Rescission:
 - Cancels contract
 - Restores parties
- Cancellation:
 - Declares instrument void
 - Removes legal effect

👉 *Illustration:* Contract set aside = rescission; document nullified = cancellation.

● Conclusion

Thus, rescission ends contract, while cancellation removes document validity.

■ 9. Preventive Relief Meaning

● Intro

Preventive relief is provided under Section 36.

● Explanation

It aims to prevent breach of obligation through injunctions rather than compensating afterward.

👉 *Illustration:* Court restrains illegal construction before completion.

● Conclusion

SPECIAL CONTRACT NOTES

Thus, preventive relief avoids harm before it occurs.

■ 10. Case: Vaish Degree College v. Lakshmi Narain

● Intro

This case deals with injunction and specific performance principles.

● Explanation

The Supreme Court held that contracts of personal service cannot be specifically enforced and injunction cannot compel employment.

👉 Principle: Personal service contracts are not enforceable.

● Conclusion

Thus, the case limits scope of injunction and specific performance in employment matters.

BY AJTABH MISHRA