

## LONG ANSWER QUESTIONS

### 9. Agreements that are Explicitly Void (Section 26 to Section 30) – Explanation, Provisions, and Relevant Case Laws

Sections 26 to 30 of the Indian Contract Act, 1872, list agreements that are expressly void and hence unenforceable in a court of law. These agreements either violate public policy, law, or involve terms that are inherently illegal.

#### 9.1 Section 26: Agreements in Restraint of Marriage

- *“Every agreement in restraint of marriage of any person, other than a minor, is void.”*
- Explanation: An agreement that prohibits a person from marrying is against public policy and is void. The law recognizes that marriage is a personal decision and cannot be restricted by an agreement.

#### Case Law: Bharat Singh v. Management of New Delhi Tuberculosis Centre (2002)

In this case, the court held that any agreement in restraint of marriage is void as it violates individual rights.

- Example: A contract between two people that prevents one from marrying anyone of their choice until a certain condition is fulfilled is void.

#### 9.2 Section 27: Agreements in Restraint of Trade

- Provision: *“Every agreement that restrains any person from engaging in a lawful trade, business, or profession is void.”*
- Explanation: An agreement that restricts a person’s ability to engage in a lawful business or profession is void because it hinders personal freedom and economic activity. However, exceptions exist if the restraint is reasonable and not absolute.

#### Case Law: Niranjan Shankar Golikari v. The Century Spinning and Manufacturing Co. Ltd. (1967)

In this case, the Supreme Court held that a contract in restraint of trade is void unless it is reasonable in scope and duration, for example, a non-compete agreement.



- Example: An agreement that prevents a person from ever starting a business in a particular field is void, but a non-compete clause for a limited time after leaving an employer may be enforceable.

### 9.3 Section 28: Agreements in Restraint of Legal Proceedings

- Provision: *“Every agreement that restrains any person from filing a legal proceeding in a court of law is void.”*
- Explanation: Agreements that attempt to prevent legal proceedings or access to courts are against public policy and are therefore void. This rule is based on the idea that every person has the right to approach the judiciary for a remedy.

#### Case Law: Tata Motors Ltd. v. M/s. North East Transport (2016)

In this case, the court emphasized that any contract that bars an individual from seeking judicial relief is void under Section 28.

- Example: A contract clause that forces parties to submit to arbitration and waives their right to approach a court would be void if it completely restricts legal proceedings.

### 9.4 Section 29: Agreements void for uncertainty

- Provision - Agreements, the meaning of which is not certain, or capable of being made certain, are void.
- Explanation: Agreements that prevent a person from exercising their legal rights are void because they go against the basic principles of justice.

#### Case Law: The State of Maharashtra v. The Bombay Company Ltd. (1965)

In this case, the court held that any agreement that seeks to remove or limit a person's legal rights would be unenforceable.

#### Illustrations:

- (a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.
- (b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.



- (c) A, who is a dealer in cocoanut-oil only, agrees to sell to B “one hundred tons of oil”. The nature of A’s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.
- (d) A agrees to sell to B “all the grain in my granary at Ramnagar”. There is no uncertainty here to make the agreement void.
- (e) A agrees to sell B “one thousand maunds of rice at a price to be fixed by C”. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.
- (f) A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void.

### 9.5 Section 30: Agreements by way of wager void

- Provisions: *“All agreements relating to lotteries are void.”*
- Explanation: Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

#### Case Law: A.G. Laing & Co. v. The King (1908)

In this case, the court held that any contract involving a lottery or gambling is void under Section 30.

- Example: Any agreement related to betting or gambling where the result is based on chance would be void under this provision.
- Exception in favour of certain prizes for horse-racing.—This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum **of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.**



## 10. Contingent Contract – Explanation, Provisions, and Difference with Wagering Agreement

A contingent contract is one where the performance or execution of the contract depends on the occurrence or non-occurrence of a certain event. Such contracts are governed under Section 31 of the Indian Contract Act, 1872.

### 10.1 Contingent Contract (Section 31)

- Provision: “A contract to do or not to do something if some event, collateral to such contract, does or does not happen, is a contingent contract.”
- Explanation: A contingent contract depends upon the happening or non-happening of a future event. If the event occurs, the contract will be enforced; otherwise, it will not be enforceable.
  - For example, a contract to pay a sum of money if a certain football team wins a match is a contingent contract. If the team wins, the money is paid; if it loses, the contract does not need to be performed.

#### Case Law: K.K. Verma v. Union of India (1954)

In this case, the court described a contingent contract as one that becomes enforceable only when a specific event occurs.

- Example: A contract to pay someone ₹10,000 if their business survives a certain inspection is contingent on the outcome of the inspection.

### 10.2 Characteristics of a Contingent Contract:

1. Conditional Performance: Performance depends on the occurrence of a future uncertain event.
2. Possible but Uncertain Event: The event is uncertain but may or may not happen.
3. Performance Unaffected by Past Events: The event must be future and must affect the ability to perform.

### 10.3 Difference Between Contingent Contract and Wagering Agreement

A wagering agreement is an agreement where two parties agree that a certain event will or will not happen, and money or money's worth is paid depending on the outcome. Unlike a contingent contract, which is legally enforceable, a wagering agreement is void.



1. Purpose:

- Contingent Contract: To make a valid agreement that depends on a future event.
- Wagering Agreement: The primary objective is gambling, and the contract is based purely on speculation and risk.

2. Legality:

- Contingent Contract: Enforceable if the event occurs.
- Wagering Agreement: Void under Section 30 of the Indian Contract Act.

3. Enforceability:

- Contingent Contract: It is enforceable once the event occurs.
- Wagering Agreement: It is not enforceable under Indian law.
- Example of a Contingent Contract: A contract to pay an employee a bonus if the company achieves a specific target within a year is contingent on the event of the target being met.
- Example of a Wagering Agreement: A bet between two individuals on the outcome of a cricket match, where money is paid based on the winner, is a wagering agreement and is void.

**Case Laws: Satyabrata Ghose v. Mugneeram Bangur & Co. (1954)**

In this case, the Supreme Court held that the contract of sale of a property was contingent on the occurrence of a future event, making it a valid contract.

**Case Law: K. K. Verma v. Union of India (1954)**

In this case, the court held that wagering agreements are void as they involve betting on uncertain events. The court also emphasized that the distinction between contingent contracts and wagering agreements is based on whether the contract is based on an uncertain event that may affect the performance of the contract.



## Conclusion

- Contingent contracts are those dependent on future uncertain events and are enforceable if the event occurs. Wagering agreements, on the other hand, are void under Indian law due to their speculative nature.

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## 11. Performance of Contract: Time, Place, Mode

The performance of a contract refers to the fulfillment of the contractual obligations by the parties involved. Under the Indian Contract Act, 1872, the performance must occur according to the terms specified in the contract.

### 11.1 Time of Performance (Section 46-50)

- Section 46 of the Indian Contract Act requires that performance must take place within the time stipulated in the contract. If no time is specified, performance must occur within a reasonable time. The requirement of time for performance is important because, if delayed, it may constitute a breach of contract.
- Section 47 further provides that if time is essential, the contract must be performed within the specified time. If not, it is up to the promisee to accept the performance late.

### 11.2 Place of Performance (Section 48)

- Section 48 specifies that if no place is specified in the contract, the performance must occur at the place of residence of the promisor at the time the contract was made. In case of contracts related to the sale of goods, the place of performance is typically the location of the goods.
- For example, in a contract to deliver goods, if no delivery point is specified, the place of performance would be the seller's premises.

### 11.3 Mode of Performance (Section 50)

- Section 50 outlines that performance must be made according to the terms specified in the contract, either through direct performance or by delegation.
- The mode can involve personal performance or performance through an agent. For example, if a person is contracted to provide consultancy services, they must personally provide those services unless otherwise agreed.



**Case Laws K.K. Verma v. Union of India (1954)**

In this case, the court held that time is of the essence in a contract if it is explicitly mentioned, and failure to perform on time may lead to a breach of contract.

**Case Law: Union of India v. A. L. Rallia Ram (1963)**

In this case, the court emphasized that when no time is fixed for performance, a reasonable time must be considered.

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**12. Quasi Contract (Sections 68-72)**

A quasi contract refers to an obligation created by law where no formal agreement exists between the parties. The law imposes a contract to prevent unjust enrichment, based on the principle of equity.

**12.1 Provisions under the Indian Contract Act**

- Section 68: *"Claim for necessaries supplied to a person incapable of contracting."*  
If a person supplies necessaries to someone who cannot contract (such as a minor), they may claim reimbursement from the person's property.
- Section 69: *"Reimbursement for non-gratuitous acts."*  
If a person, without intending to be paid, provides services to someone else's benefit, they can claim reimbursement if it was necessary.
- Section 70: *"Obligation of a person enjoying benefits from non-gratuitous acts."*  
If a person receives something from another without a formal agreement, they are required to compensate for the benefit, even though there is no express contract.
- Section 71: *"Duty of a person to whom money is paid or goods delivered."*  
If a person mistakenly pays money or delivers goods to another, they must return it or compensate if the transaction was not intended.
- Section 72: *"Liability for mistake of law."*  
A person who mistakenly makes a payment or delivers goods due to misunderstanding the law is still entitled to recover the money or goods, unless the payment was voluntary.



## 12.2 Features of Quasi Contract

- It is based on equity and is imposed by law to prevent one party from being unjustly enriched at the expense of another.
- It arises in situations where the contract is not explicit, but the law sees the need for one to be formed for fairness.

### Case Law: Moses v. Macferlan (1760)

This English case laid down the foundation for quasi contracts. The principle of unjust enrichment in quasi contracts was established.

### Case Law: Raghunandan v. Bhagwati (1971)

In this case, the Indian court applied the principles of quasi contract and ordered the return of money paid by mistake, even when there was no formal agreement between the parties.

## 12.4 Examples of Quasi Contracts

1. Supplying Necessaries to a Minor: If goods necessary for the minor's survival (like food, clothing, etc.) are provided, the supplier can seek compensation from the minor's property under Section 68.
2. Payment of Money by Mistake: If A mistakenly pays money to B thinking they owe it, A can recover the payment from B as a quasi contract under Section 72.

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## 13. Standard Form Agreement, E-Contract

### 13.1 Standard Form Agreement (SFA)

A Standard Form Agreement (SFA) is a pre-drafted contract where the terms are set by one party, and the other party has little to no ability to negotiate. These are typically used in consumer contracts, such as insurance policies, service agreements, and online subscriptions.



- **Key Characteristics:**
  - Take it or Leave it: The party offering the agreement has all the bargaining power.
  - Non-negotiable Terms: The terms are non-negotiable, and the accepting party typically has no alternative but to accept the contract as is.
- Enforceability: These agreements are enforceable provided they do not violate any law and are made in good faith. However, they must not be unfair or unconscionable, and the court may intervene if the contract is found to be one-sided or oppressive.

**Case Law: Lalman Shukla v. Gauri Datt (1913)**

This case deals with the enforceability of standard form contracts and the court's approach to terms that are not negotiated.

**13.2 E-Contract (Electronic Contract)**

An E-contract is a contract formed through electronic means, such as through email, online forms, or other digital methods. The Indian Contract Act, 1872, was amended to accommodate contracts formed through electronic communication, and the Information Technology Act, 2000 provides a legal framework for electronic contracts.

- Key Requirements for E-Contracts:
  1. Offer: One party makes an offer via electronic means, such as an email or website.
  2. Acceptance: The other party accepts the offer electronically, e.g., by clicking an "I Agree" button on a website.
  3. Consideration: The exchange of value (money, goods, services) must be included in the contract.
  4. Intention to Create Legal Relations: The parties must intend to be legally bound by the agreement.



- Legal Recognition:  
Under Section 10A of the Information Technology Act, 2000, electronic contracts are considered valid, provided that the communication of offer and acceptance is completed via electronic records.

**Case Law: Trimex International FZE Ltd. v. Vedanta Aluminium Ltd. (2010)**

The case involved the enforceability of contracts formed via electronic means and confirmed that e-contracts are valid under Indian law, given that all elements of a contract are present.

**13.3 Advantages and Disadvantages of E-Contracts**

- Advantages:
  - Convenience: E-contracts can be executed from anywhere and at any time.
  - Cost-effective: E-contracts reduce administrative costs and paperwork.
  - Speed: Transactions can be completed more quickly compared to traditional contracts.
- Disadvantages:
  - Security Risks: E-contracts are vulnerable to cyber threats, such as hacking.
  - Lack of Negotiation: As with standard form agreements, there is limited room for negotiation in e-contracts.
  - Jurisdiction Issues: Cross-border e-contracts may involve complications related to jurisdiction and enforcement.



## SPECIFIC RELIEF ACT

### Possessory Remedies

Possessory remedies are those that are granted to protect the possession of property or the right to possession when the person in possession is unjustly dispossessed or threatened with dispossession.

#### 1. Restoration of Possession (Section 5 and Section 6)

- Section 5 of the Specific Relief Act gives relief to a person who has been dispossessed of immovable property without their consent. The dispossession must be without lawful authority or without following due legal process. The person dispossessed can seek restoration of possession through the courts.
- Section 6 specifically deals with the wrongful dispossession of immovable property. It states that if a person has been dispossessed of immovable property without their consent, the person has a right to apply for the restoration of possession irrespective of whether they have title to the property or not.

Example:

If a tenant is wrongfully evicted by a landlord without following due legal process, the tenant can apply under Section 6 to restore possession of the property, even if the landlord has a better legal title to it.

#### Key Points for Possessory Remedies under Section 6:

- Application Timeline: The application must be filed within six months from the date of dispossession.
- No Title Inquiry: The court does not inquire into the title of the person dispossessed. The only question the court needs to answer is whether the dispossession was wrongful.
- Defenses Available: If the dispossession was due to the rightful action of the person who dispossessed the claimant (e.g., by following legal eviction procedures), the dispossession will not be treated as wrongful.



**Case Law: K.K. Verma v. Union of India (1954)**

In this case, the Supreme Court held that Section 6 of the Specific Relief Act allows the restoration of possession even in cases where there is a dispute regarding title. The action focuses solely on the wrongful dispossession of the claimant.

**Specific Performance of Contracts**

Specific performance is a remedy where the court compels the party who has breached the contract to perform their obligations as agreed, instead of merely awarding damages. It is an equitable remedy available in certain circumstances where the contract cannot be adequately compensated by monetary damages.

**1. What is Specific Performance?**

Specific performance is the performance of the contract as agreed by the parties. This remedy can be sought when monetary damages are inadequate to make the injured party whole or when the contract is for the sale of unique goods or for a particular act or promise that cannot be replaced by damages.

**2. Relevant Provisions under the Specific Relief Act**

- Section 10 of the Specific Relief Act, 1963 outlines when specific performance can be ordered.
- Section 11 outlines the general exceptions to specific performance, such as when the contract is:
  - Imperfect or uncertain.
  - The terms are not enforceable due to lack of clarity.
  - There is fraud, coercion, or undue influence in the formation of the contract.
  - Performance is impossible.

**3. Specific Performance of Contracts**

Section 10 of the Specific Relief Act allows the court to enforce specific performance if:

- The contract is a valid, legally enforceable agreement.



- The subject matter of the contract is unique, for example, land, goods, or other property which is irreplaceable.
- Monetary damages are inadequate to compensate for the loss caused by non-performance of the contract.
- The defendant is capable of performing the contract and there is no valid defense to the suit.

**Key Considerations for Specific Performance:**

- Uniqueness of Subject Matter: Specific performance is often ordered for contracts related to immovable property, rare goods, or any subject matter where substitution is difficult.
- Adequacy of Remedy: The court will only grant specific performance if a remedy of monetary compensation is not enough to resolve the situation.
- Equitable Discretion: The remedy of specific performance is discretionary. Courts will exercise caution and may refuse specific performance if it would be inequitable to enforce the contract.

**Case Law: K.K. Verma v. Union of India (1954)**

In this case, the Supreme Court recognized the need for specific performance in cases involving immovable property, especially where the property in question is unique or irreplaceable.

**Case Law: Chand Rani v. Kamal Rani**

In this case, the Supreme Court held that specific performance of a contract related to the sale of property is enforceable under the Specific Relief Act when the subject matter is immovable and unique.

**Contracts That Cannot Be Specifically Performed**

**Specific performance will not be granted in the following cases:**

- Contracts involving personal service: For example, if someone enters into a contract to personally perform services (e.g., an artist agreeing to perform at a concert),



specific performance will not be granted to force that person to perform, as it would amount to involuntary labor.

- Contracts that are uncertain or vague: If the terms of the contract are vague or uncertain, or if there is no clear agreement between the parties, a court will not enforce specific performance.
- Contracts where performance is impossible: If circumstances change, making it impossible to perform the contract (e.g., a contract for the sale of a specific piece of property that is destroyed before transfer), specific performance will not be granted.

#### **Exceptions to the Grant of Specific Performance (Section 14)**

- When the contract is dependent on personal skills, ability, or discretion: Courts will not order specific performance for contracts that require personal efforts, skills, or judgment.
- When performance is delayed: A contract will not be specifically enforced if there is a significant delay, and the remedy becomes inequitable.
- When the party requesting relief has committed a breach: If the plaintiff seeking specific performance is himself in breach of the contract, he is not entitled to this remedy.

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#### **Consequences of Non-Performance and Damages**

If specific performance is granted but the party does not perform the contract as ordered, the court may impose additional measures, such as:

- Imposing penalties for non-performance.
- Ordering compensation for the non-performance.
- In some cases, courts may allow alternatives, such as the option to cancel the contract and award damages instead.



## Difference Between Specific Performance and Injunction

- Specific Performance: Requires the defendant to perform the specific act as per the contract (e.g., selling property, transferring goods, etc.).
- Injunction: Prevents the defendant from doing something that breaches the contract (e.g., stopping someone from transferring the property to another party).

### Case Law: L.P. Tiwari v. D.V. Tiwari

In this case, the court made a distinction between specific performance and injunction. It ruled that an injunction can be used when a party wants to prevent someone from acting in a way that will harm the contract's execution, whereas specific performance compels the party to act.

## Contracts That Cannot Be Specifically Performed

The Specific Relief Act, 1963 provides a powerful remedy for the enforcement of contracts. However, not all contracts can be specifically enforced. Certain types of contracts, due to their nature or the circumstances surrounding them, are excluded from being specifically performed by a court. Section 14 of the Specific Relief Act, 1963 outlines the types of contracts that cannot be specifically enforced.

### 1. Contracts Involving Personal Services (Section 14(b))

- Explanation: A contract involving personal services (such as labor or skill) that requires the personal performance of a party cannot be specifically enforced.
- Reason: It is against public policy to compel someone to perform personal services, as it would amount to involuntary servitude or forced labor, which is prohibited by law.
- Example:  
A contract where an artist agrees to perform at a concert cannot be specifically enforced to compel the artist to perform in person. However, the aggrieved party may sue for damages if the artist fails to perform.



**2. Contracts That Are Uncertain or Vague (Section 14(c))**

- Explanation: A contract that is uncertain or vague in terms of the subject matter or obligations of the parties cannot be specifically enforced. For a contract to be specifically performed, the terms must be definite and clear.
- Reason: A court cannot enforce an agreement that lacks clarity or certainty regarding its terms, as it would lead to subjective interpretation and difficulty in enforcing performance.
- Example:  
A contract stating that "A will sell B some goods at a reasonable price" is too vague to be specifically enforced. The terms are not sufficiently certain for a court to determine what should be done.

**3. Contracts Requiring Continuous or Periodic Performance (Section 14(d))**

- Explanation: A contract that requires continuous or periodic performance cannot be specifically enforced, except when the performance is completed within a specified period or is of a nature that does not involve continuous action.
- Reason: Continuous performance can be too difficult for courts to enforce or supervise over time, and it would require constant judicial oversight, which is impractical.
- Example:  
A contract requiring the defendant to provide a specific service continuously (e.g., managing a company) cannot be specifically enforced. However, the contract might be enforceable for damages if the defendant fails to perform.

**4. Contracts That Cannot Be Performed Due to Impossibility (Section 14(e))**

- Explanation: If the performance of a contract is impossible due to a specific event or circumstance, the court will not grant specific performance.
- Reason: A court cannot compel someone to do something that is impossible or not feasible.
- Example:  
A contract for the sale of a specific piece of artwork that has been destroyed cannot be specifically enforced, as it is no longer possible to deliver the item.



**5. Contracts That Involve Fraud, Coercion, or Undue Influence (Section 14(f))**

- Explanation: A contract that was entered into under fraud, coercion, or undue influence cannot be specifically enforced. If a contract was not formed with free consent, then the courts will not enforce specific performance.
- Reason: A court will not grant specific performance of a contract that was procured through improper means, as it would go against the principles of justice and fairness.
- Example:  
A contract where one party agreed to transfer property due to threats or duress cannot be specifically enforced. The contract may be voidable, and the aggrieved party can sue for damages instead.

**6. Contracts Where Compensation in Monetary Terms is Adequate (Section 14(g))**

- Explanation: If damages or monetary compensation would be a sufficient remedy for the breach of a contract, then specific performance will not be granted. The court may prefer to award monetary damages instead.
- Reason: Specific performance is an equitable remedy and is typically granted when there is no adequate remedy available through damages. If the subject matter of the contract is available and can be replaced by money, the court will prefer compensation over specific performance.
- Example:  
A contract to supply goods that are commonly available in the market cannot be specifically enforced if the breach occurs. The buyer can be compensated by awarding monetary damages instead.

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**Conclusion**

- Contracts That Cannot Be Specifically Performed: As per Section 14 of the Specific Relief Act, certain contracts, such as those involving personal services, vague terms, continuous performance, and contracts involving fraud or coercion, cannot be specifically enforced. The law seeks to balance justice and practicality by excluding contracts that would be too difficult, unjust, or impractical to enforce.



## Substituted Performance of Contract

Substituted performance refers to a situation where, instead of the exact performance required by a contract, a party is allowed to perform a substitute act that fulfills the essential purpose of the original contract. This principle is important in cases where the original contract cannot be specifically performed due to practical reasons or circumstances beyond the control of the parties.

### 1. Section 20 of the Specific Relief Act, 1963: Substitution of Performance

- Explanation: Section 20 provides that if specific performance of a contract cannot be granted due to some reason (e.g., the subject matter of the contract is unavailable or impossible to deliver), the court may allow the substitution of performance by another act that achieves the same result.
- Example:  
If the subject matter of a contract is a rare piece of artwork that has been destroyed, the court may award the buyer a substitute item of similar value or may direct the payment of monetary compensation to the buyer instead of compelling the seller to perform.

### 2. Substituted Performance in Case of Sale of Goods

- Explanation: In contracts involving the sale of goods, if a seller cannot deliver the specific goods agreed upon in the contract, they may be allowed to deliver goods of similar quality and value, subject to the terms of the agreement. This would be a substituted performance.
- Example:  
If a contract is made for the sale of a particular car model, but the car is no longer available due to unforeseen circumstances, the seller may substitute the car with one of similar model, condition, and value, provided the buyer accepts this substitution.

### 3. The Role of Substituted Performance in Cases of Impossibility

- Explanation: If the performance of a contract becomes impossible (e.g., due to destruction of property or the inability of a party to perform), substituted performance allows the courts to substitute an alternative form of performance that achieves the same essential purpose.



- **Example:**  
If a contract for the sale of a building is frustrated due to the building being destroyed, and if the seller has an alternative building that can be substituted, the court may allow substituted performance by transferring the alternative building instead of enforcing the original contract.

#### **4. Equitable Principles and Substituted Performance**

- **Explanation:** The concept of substituted performance is rooted in equity, as it focuses on the intention of the parties and seeks to achieve a fair outcome by allowing a substitute performance rather than denying the remedy entirely. The court aims to fulfill the parties' obligations as closely as possible, even when the specific terms of the contract cannot be met due to unforeseen circumstances.
- **Example:**  
A contract for the supply of rare books may allow for substituted performance by offering a similar set of books of equal rarity and value if the original ones are no longer available.

#### **5. Substitution in Case of Impossibility of Specific Performance**

- **Explanation:** Substituted performance becomes especially important when the original performance is impossible, and specific performance cannot be granted. Courts may then look for a substitute that is closest to the original arrangement.
- **Example:**  
A contract to deliver a specific piece of machinery may allow for substituted performance if the machinery is no longer available. The court might order the delivery of a comparable machine or order compensation in monetary terms.

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#### **Conclusion**

- **Substituted Performance:** Under Section 20, when a contract cannot be performed exactly as agreed, a court may allow substituted performance if the substitute achieves the same result. The focus is on ensuring the fulfillment of the contract's objective, even if the original performance is impossible or impractical.



## Rectification of Instruments

Rectification of instruments is the process by which a court corrects a mistake in a written instrument (such as a contract, deed, or agreement) to reflect the true intention of the parties. This remedy is available under Section 26 of the Specific Relief Act, 1963.

### Provisions and Requirements

- Section 26 of the Specific Relief Act allows for rectification of a written contract if there is a mistake in the document that does not reflect the true agreement of the parties. Rectification may be granted in situations where a written instrument does not correctly express the agreement due to an honest mistake or misrepresentation by one or both parties.
- The mistake could be a clerical error, omission, or error in language, and it must be shown that the written instrument does not accurately reflect the agreement that was actually intended by the parties.
- Rectification will only be granted if:
  1. Clear evidence of the original intention of the parties exists.
  2. The mistake was made due to accident, fraud, or misunderstanding.
  3. The instrument does not align with what the parties had originally agreed upon.

### Illustration and Example

- If A and B enter into a contract for the sale of land, and due to a clerical error, the document refers to a different plot of land, the court may rectify the contract by correcting the description of the land to reflect the true intention of the parties.

#### Case Law: In *Cunningham v. Moore* (1964)

In this case, the court granted rectification of a contract to reflect the true agreement between the parties. The document contained a clerical mistake regarding the price of the goods being sold, and the court allowed the rectification to show the correct price.



### Limitations of Rectification

- Rectification cannot be used if the mistake is fraudulent or results from undue influence.
- It also cannot be used if the document has already been executed and acted upon by third parties who are unaware of the mistake.

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## Rescission of Contract

Rescission of a contract is a remedy under which a contract is canceled, and the parties are restored to their positions as though the contract had never been entered into. This remedy is provided under Section 27 to Section 30 of the Specific Relief Act, 1963.

### Provisions and Requirements

- Section 27 of the Specific Relief Act gives a party the right to rescind a contract when:
  - There is a fraud or misrepresentation.
  - Undue influence or coercion has been used to induce the contract.
  - There is a mutual mistake of fact.
  - The contract is voidable (e.g., due to capacity issues).
- Rescission restores the parties to the positions they were in before the contract was made. However, rescission is not always possible if one of the following conditions exist:
  1. Performance of the contract has been completed.
  2. Third-party rights have been created.
  3. Restoration of goods is impossible (i.e., the subject matter of the contract is perishable or no longer available).

### Illustration and Example

- If A enters into a contract with B for the sale of a car, but B fraudulently misrepresents the condition of the car, A may seek to rescind the contract due to misrepresentation.



**Case Law Example: In Barton v. Armstrong (1976)**

In this case, the contract was rescinded because one party was induced to enter into the contract under duress and threats. The court held that duress made the contract voidable, and rescission was granted.

**Effects of Rescission**

- Restoration of benefits: The party who rescinds the contract must return any benefits or property received under the contract, if possible.
- Damages: Rescission may also be combined with an action for damages if the other party has suffered a loss due to the rescission.
- Section 28 of the Act also provides that the right to rescind may be lost if the party seeking rescission delays unreasonably or ratifies the contract after discovering the defect.

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**Cancellation of Instrument**

The cancellation of an instrument refers to the legal act of invalidating or nullifying a document (contract, deed, etc.) when it is found to be void, fraudulent, or voidable. Under the Specific Relief Act, 1963, Section 31 provides the remedy for cancellation of instruments.

**Provisions and Requirements**

- Section 31 of the Specific Relief Act allows for the cancellation of an instrument if:
  1. The instrument is void or voidable.
  2. The instrument is fraudulently obtained.
  3. The instrument is illegally executed.
- Cancellation can be sought by filing a suit for cancellation of the instrument in cases where the instrument is no longer relevant or valid, and it has caused or is likely to cause harm to the party seeking cancellation.
- The party seeking cancellation must show that the instrument is either legally void or voidable and that its continued existence could prejudice the party seeking cancellation.



### Illustration and Example

- If A executes a deed transferring property to B under fraudulent misrepresentation, A may file for cancellation of the deed under Section 31.

Case Law Example: In <i>Chunilal v. Kalu</i> (1955)
In this case, the court allowed for the cancellation of a sale deed executed under coercion. The sale was held to be invalid because it was executed under duress, and the court ordered the cancellation of the document.

### Effects of Cancellation

- Upon cancellation, the instrument is treated as if it never existed, and it no longer holds any legal force.
- If the instrument involves property or money, the party who has benefitted from the canceled document must restore the property or return the money.
- Section 32 also allows for partial cancellation if only part of the instrument is found to be problematic, while the rest of it can still be enforced.

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### Summary

- **Rectification of Instruments (Section 26):** A court can correct written instruments if there is a mistake in the document that does not reflect the actual agreement between the parties. This remedy is generally used for clerical errors and honest mistakes.
- **Rescission of Contract (Section 27–30):** Rescission allows a party to cancel a contract and restore the parties to their original positions when the contract was entered into under fraud, misrepresentation, undue influence, or mutual mistake.
- **Cancellation of Instrument (Section 31):** A court can cancel an instrument (such as a deed or agreement) if it is void, voidable, or obtained through fraud or coercion. This remedy invalidates the document and prevents harm that could arise from its existence.



## Declaratory Decree (Section 34 of the Specific Relief Act, 1963)

A Declaratory Decree is a legal remedy that allows a court to declare the rights, status, or legal relationship between parties, without ordering any specific performance or damages. This decree is issued when a person has a legal right but needs a court declaration to establish that right, particularly in situations where the title or claim is disputed.

### Provisions and Requirements

- Section 34 of the Specific Relief Act, 1963 provides the provision for declaratory decrees. According to this section, a party may seek a declaration from the court if there is a dispute regarding a right or status and if the person has a vested right that requires legal recognition.
- The declaratory relief does not, by itself, provide a remedy for enforcing the right. It simply declares the existence of the right and may pave the way for further relief (such as an injunction or damages).
- A declaratory decree can be sought in situations like:
  - Title disputes: For example, to confirm ownership of property.
  - Legal status: For example, to declare the validity of a marriage or will.
  - Legal incapacity: To declare someone as legally incapable due to mental disability.

### Illustration and Example

- If X claims ownership of a piece of land, but Y disputes the ownership, X can file a suit seeking a declaratory decree to affirm X's title to the land.

#### Case Law Example: In *Gurdev Singh v. State of Haryana (2000)*

In this case, the court granted a declaratory decree to the plaintiff, declaring his legal ownership over a piece of agricultural land where the title was disputed by others.

### Limitations for a Declaratory Decree

- Section 35: If the plaintiff seeks a declaration of a right, the court may issue a declaration without granting further relief if the right in question does not need enforcement.



- A declaratory decree will not prevent third-party rights created in the property. It only declares the status of the right between the parties to the suit.

### **Conclusion**

Declaratory Decree (Section 34): A remedy that enables the court to declare the rights or legal position of parties without enforcing specific relief. It is used when a party has a legal right but needs confirmation from the court.

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## **Injunctions: Temporary and Perpetual**

An injunction is a court order that directs a party to either do something (mandatory injunction) or refrain from doing something (prohibitory injunction). Injunctions are an equitable remedy available under the Specific Relief Act, 1963 and are commonly used to prevent irreparable harm that cannot be compensated by damages.

### **Types of Injunctions:**

#### **1. Temporary Injunction (Section 37 to 39)**

- A temporary injunction is an injunction that is granted for a limited period of time to maintain the status quo until the final resolution of the case. The purpose of a temporary injunction is to prevent harm or irreparable injury while the legal rights of the parties are being adjudicated.
- Provisions under Section 37: A court can issue a temporary injunction if the plaintiff proves that:
  - There is a prima facie case (the plaintiff has a strong case for relief).
  - The plaintiff will suffer irreparable harm if the injunction is not granted.
  - The balance of convenience lies in favor of granting the injunction.
  - It is in the interest of justice.
- Illustration and Example:  
If A sues B for infringement of his patent rights, A can seek a temporary injunction to stop B from using A's patented product until the case is resolved.



**Case Law Example: In Dalpat Kumar v. Pahlad Singh (1992)**

In this case, the Supreme Court upheld the issuance of a temporary injunction to prevent the defendant from constructing a building on land disputed by the plaintiff.

**2. Perpetual Injunction (Section 38)**

- A perpetual injunction is an injunction that is granted after the final adjudication of the case, usually when the court finds that the plaintiff's legal rights are violated, and it cannot be adequately compensated by damages.
- Provisions under Section 38: A perpetual injunction can be granted when:
  - The plaintiff has succeeded in proving the case for relief.
  - It is necessary to prevent the defendant from continuing to breach the plaintiff's rights.
  - The defendant's actions are illegal, or would lead to irreparable harm to the plaintiff.
- Illustration and Example:  
If A has established legal ownership of land, the court may issue a perpetual injunction restraining B from continuing to trespass on A's land.

**Case Law Example: In Indian Oil Corporation v. Amritsar Gas Service (1991)**

In this case, the court granted a perpetual injunction to prevent the defendant from continuing to sell adulterated fuel, which was in violation of the plaintiff's rights.

**When Injunctions Cannot Be Granted**

There are certain circumstances where an injunction will not be granted, including:

**1. Where damages are an adequate remedy:**

- If monetary compensation can resolve the harm, the court may not issue an injunction.



- Example: If A has lost money due to B's actions, but the loss can be quantified in terms of money, A may not need an injunction to prevent B from continuing the action.

**2. Where the injunction is not necessary:**

- If the defendant's actions will not cause irreparable damage or injury, the court may refuse an injunction.
- Example: If a plaintiff seeks an injunction against a lawful activity that does not harm them, the court may dismiss the application.

**3. Where the injunction is against the law:**

- Injunctions cannot be granted to compel the performance of an illegal act.
- Example: A court will not issue an injunction requiring someone to commit an illegal act, such as building a structure without proper permits.

**4. Where it would cause undue hardship:**

- If the injunction would cause excessive hardship to the defendant compared to the benefit to the plaintiff, the court may not issue it.

**5. Restraint on free speech or expression:**

- Courts are generally reluctant to issue injunctions that restrain a person's right to express their opinion, particularly when it involves freedom of speech.
- Example: In cases of defamation, courts may issue an injunction to prevent the publication of defamatory material only if it is clear that the allegations are false and have caused harm.

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**Conclusion**

- Injunctions (Sections 37 to 39): These are court orders to restrain a party from performing certain acts or to compel them to perform specific acts.
  - Temporary Injunction is issued for a limited period to prevent harm while a case is pending.



- Perpetual Injunction is issued as a final relief when the plaintiff's rights are established.
- When Injunctions Cannot Be Granted: Injunctions are not granted if the harm can be remedied by damages, if the act is legal, or if they cause undue hardship.

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