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UNIT-II

**Performance of contracts – Discharge of
contracts – remedies for breach including specific
Performance – Quasi contracts.**

BUSINESS LAW

PERFORMANCE OF CONTRACT

A Contract is performed when the parties to it fulfil their respective obligations arising under it.

EXAMPLE: M contracts with N to supply 100litres of Gingelly oil at Rs.180 per litre on a specific day. The contract is performed when on the day specified, M delivers 100 litres of Gingelly oil to N and N makes a payment of Rs.18000.

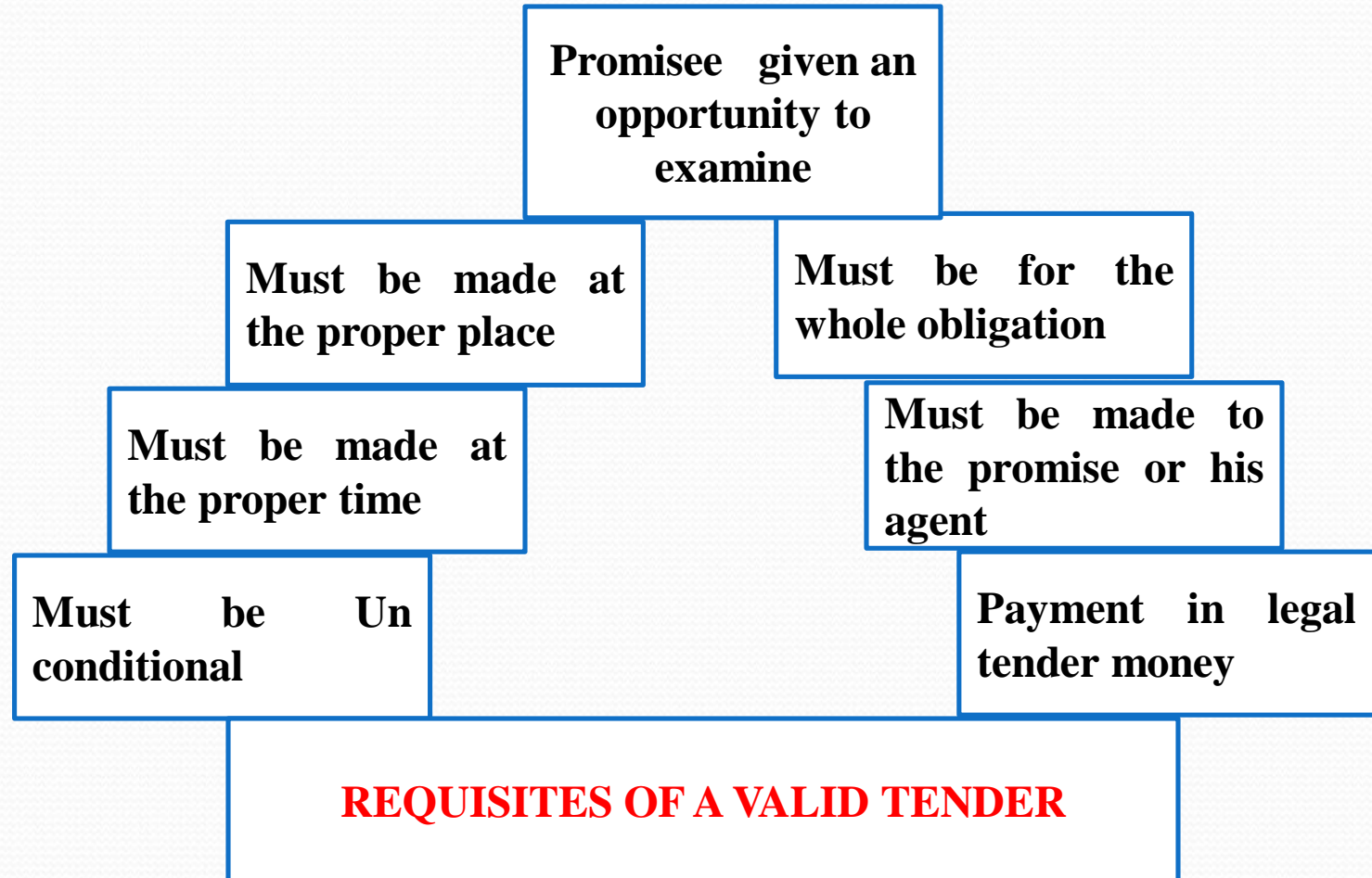
DEMAND PERFORMANCE

It is only the promisee who can demand performance of the contract. A **third party cannot demand performance** of the contract even though it was made for his benefit. In case of death of the promisee, his legal representatives can demand performance.

Example: A draws a cheque for Rs.100 in favour of C the banker makes a mistake regarding A's balance and refuses payment. Bank is liable to A and not to C because C is not a party to contract.

REQUISITES OF A VALID TENDER

CONDITIONS OF A VALID OFFER TO PERFORM



PERSONS WHO MUST PERFORM THE CONTRACT

- **THE PROMISOR HIMSELF**
- **THE PROMISOR OR HIS AGENT**
- **THE LEGAL REPRESENTATIVE**
- **THE THIRD PERSON**

THE PROMISOR HIMSELF

According to Sec (40) If the contract provides for the performance of the promise by the promisor himself, such promise must be performed by the promisor. In case of **death or disablement of a promisor**, a contract will be discharged and the other party would be free from liability. **(personal skill is necessary)**

EXAMPLE: A promise to sing at a music concert for an organizer of B. A must perform the promise himself.

THE PROMISOR OR HIS AGENT

In case of a contract to sell goods, the promisor himself or his agent may perform the contract. Where **personal skill is not necessary** and the work could be done by any one.

EXAMPLE: A promise B to sell goods. A may perform this promise himself or ask his agent for performance.

THE LEGAL REPRESENTATIVE

In case of death of the promisor before performance, the liability of performance falls on his legal representatives of a deceased promisor are not bound to perform the contract. They are **not personally liable**.

EXAMPLE: Promises to deliver goods to Y on a certain day on payment of Rs.1000. **X dies before that day.** X's representatives are bound to deliver the goods to Y and Y is bound to pay the settled sum of Rs.1000 to X's representatives.

THE THIRD PERSON

Sec(41) Where a promisee accepts performance of the promise from a third person, he cannot, afterwards, enforce it against the promisor.

EXAMPLE: A promisee accepted lesser amount from a third party in full satisfaction of his claim; it was held that **he could not enforce** the promise against the promisee against the promisor for the remainder.

JOINT PROMISORS

- Where **several joint promisor** make a promise with a single promise, e.g. A, B C jointly promise to pay Rs.3,000 to D, or
- Where a **single promisor** makes a promise with several joint promises e.g. P promise to pay Rs.3000 to Q and R jointly, or
- Where several joint promisor make a promise with **several joint promises**, e.g. A, B and C jointly promise to pay Rs.3000 to P, Q and R jointly. The following are the rules regarding performance in this case.

Demand performance of joint promises

- **WHEN ALL THE PROMISE ARE DEAD, THE LEGAL REPRESENTATIVES OF ALL JOINTLY CAN DEMAND PERFORMANCE.**

A borrows Rs.5000 from B and C. A promises B and C jointly return the sum with interest B dies. B's representative with C jointly can demand performance. On the death of C the representative of B and C jointly can demand performance.

Demand performance of joint promises

➤ EACH PROMISOR MAY COMPEL FOR CONTRIBUTION

If A is compelled to pay the entire amount of Rs.3000 he can recover from B and C Rs.1000 each.

➤ SHARING OF LOSS BY DEFAULT IN CONTRIBUTION

If A is compelled to pay the whole Rs.3000 and C is unable to pay anything. A is entitled to receive Rs.1500 from B. If C's estate is able to pay one half of his share, A is entitled to receive Rs.500 from C's estate and Rs.1250 from B.

Demand performance of joint promises

➤ EFFECT OF RELEASE OF ONE JOINT PROMISOR

A, B and C are under a joint promise to pay Rs.3000 to X. X may release C from liability, but A & B remain liable to pay to X. C is not released from the debt.

➤ ALL PROMISORS MUST JOINTLY FULFILL THE PROMISE

A, B and C jointly promise to pay D Rs.3,000. D may compel either A or B or C or all or any two of them to pay him Rs.3000.

DISCHARGE OF CONTRACT

Discharge of contract takes place when the rights and obligations created by it **come to an end. It results in the termination of the contractual relationship between the parties to a contract.**

MODES OF DISCHARGE OF CONTRACT

- **PERFORMANCE**
- **MUTUAL CONSENT**
- **IMPOSSIBILITY**
- **OPERATION OF LAW**
- **BREACH**
- **LAPSE OF TIME**

METHODS OF DISCHARGE OF CONTRACT

performance

1. Actual
2. Attempted

Mutual Consent

1. Novation
2. Rescission
3. Alteration
4. Remission
5. Waiver
6. Merger

Impossibility

1. Destruction of subject
2. Death
3. War
4. Change of law
5. Change in state of things

Operation of Law

1. By the death of the promisor
2. By insolvency
3. By unauthorised material alteration
4. By liabilities

Lapse of Time

Actual

1. On the due date
2. During Performance

Breach

Anticipatory

1. Express
2. Implied

ACTUAL PERFORMANCE

The usual manner in which a contract is discharged is by the parties to it fulfilling their respective obligations arising under it

Example: There is a contract between **A** and **B** by which the former is sell his car to the latter for Rs.2,00,000.the contract gets discharged upon **A** delivering the car to **B** and **B** paying the agreed sum to **A**

ATTEMPTED PERFORMANCE OR TENDER

Section 38, when the promisor offers to perform his obligation as per the terms of the contract but the promisee does not accept the performance.

Tender of Performance=Actual Performance

it does not make the promisor responsible for non-performance and at the same time gives him the rights to sue the promisee for the breach of contract

MUTUAL CONSENT

- **NOVATION**
- **RESCISSION**
- **ALTERATION**
- **REMISSION**
- **WAIVER**
- **MERGER**

NOVATION

Novation occurs when a new contract is **substituted for an existing** contract, either between the same parties or between different parties. The **former agreement is replaced** by the latter. There is Novation.

Example : 'A' is indebted to 'B' and 'B' is indebted to 'C'. by mutual agreement B's debt to 'C' and A's debt to 'B' are cancelled and 'C' accepts 'A' as his debtor. It is Novation.

RECESSION

Recession means cancellation of all or some of the terms of the contract. Where parties **mutually decide to cancel** the terms of the contract. The obligations of the parties there under terminates.

EXAMPLE: P, an Actor, and **Q**, a Producer enter in to a contract to make a film. After sometime, both find the story outdated. They may rescind the contract by mutual consent.

ALTERATION

If the parties mutually agree to change certain terms of the contract, it has the effect of terminating the original contract. There is, however, no change in the parties.

Example: M enter in to a contract with N in April to let out his flat to the latter with effect from June upon a monthly rent of Rs.5000.Later,M tells N that the flat will be ready for occupation only with effect from August. N too requests M to reduce the monthly rent to Rs.4500.Both M and N decide to give effect to these change in a contract made earlier. The net result is that the old contract get discharged by reason of the alteration of the term.

REMISSION

Sec. 63 deals Remission is the acceptance of a **lesser sum** than what was contracted for or a lesser fulfilment of the promise made.

Example: 'A' owes 'B' Rs.15,000. He pays Rs.13,000 and **B** accepts it in full settlement of his claim The whole debt is discharged.

WAIVER

‘To waive’ means not to insist on a certain obligations of a person arising under a contract under circumstances.

Where a party waives his right under the contract, the other party is released of his obligations.

Example: The **Government** may always come forward to waive the **interest** due from farmers on their **farm loans** during periods of **monsoon failure**.

MERGER

A contract is said to have been discharged by way of 'Merger' where an inferior right possessed by a person coincides with a superior right of the same person.

Example: 'A' is a tenant, occupying the flat of 'B' under a contract. later, A agrees to buy the flat and enters into a contract with B. A 's inferior right as a tenant, thus, merges with his superior right as the purchaser of the flat.

DISCHARGE BY IMPOSSIBILITY

(Sec. 56) Impossibility in a contract may either be inherent in the transaction or it may happen later by the change of certain circumstances material to the contract. If it happens at a later stage we call it subsequent impossibility. In England this is referred to as **'Doctrine of Frustration'**.

Example: 'A' and 'B' contract to marry each other. Before the marriage, 'A' goes mad. The contract gets discharged.

DESTRUCTION OF THE SUBJECT MATTER

If, after the formation of the contract, its subject matter is **destroyed** without any fault of the parties, the contract gets discharged.

EXAMPLE: X enters in to a contract with Y to sell his house at a certain price. Before the sale is effected, the **house is completely damaged** in an earthquake. The contract between X and Y is discharged on the ground of supervening impossibility.

DEATH OR PERSONAL INCAPACITY

If the performance of the contract depends on the **personal skill** or ability of a party to the contract, the death or incapacity of such a party will result in the discharge of contract.

EXAMPLE: S, a dancer, enter into a contract with **P** to perform on a particular day. On the day of the programme, **S** meets with an accident and is seriously injured. The contract of **P** with **S** is discharged.

CHANGE OF LAW

If, after the formation of the contract, change of law takes place that renders the performance of the contract **impossible**, the contract gets discharged.

EXAMPLE: 'A' contracts to supply 'B' bulk of lottery tickets. Before the contract is executed, dealings in all sorts of lottery business are declared **prohibited** by the Government; the contract becomes void.

DECLARATION OF WAR

A contract made with an alien is either suspended or declared void if, before its performance, **war breaks out** between the countries of the promisor and the promisee.

EXAMPLE: X enter into a contract with N to import certain goods. But before the contract is performed, war breaks out between the countries of the promisor and the promisee.

Non-existence or Non-occurrence of particular state of things

When certain things necessary for performance cease to exist, the contract becomes void on the grounds of impossibility.

Example: 'A' and 'B' contract to marry each other.

Before the marriage, 'A' suffer head injury and goes into a coma condition .The contract gets discharged.

IMPOSSIBILITY OF PERFORMANCE-NOT AN EXCUSE

- ❖ **difficulty of performance does not amount to impossibility.**
- ❖ **Commercial impossibility** does not render a contract void.
- ❖ **Strikes**, lock-outs and civil disturbances do not terminate contracts unless provided for in the contract.
- ❖ **Failure of one of the objects** does not terminate the contract.
- ❖ **Non-performance of third party** does not exonerate the promisor from his liability.

DISCHARGE BY OPERATION OF LAW

- The **death** of the promisor results in termination of the contract in cases involving personal skill and ability.
- The **insolvency** Act provides for discharge of contracts whenever the promisor becomes insolvent.
- By Liabilities and rights accruing to the same person (**merger**)
- By material **alteration** without seeking the consent of the other party

BY BREACH OF CONTRACT

A contract terminates by breach of contract.

Breach of contract may arise in two ways:

- Actual Breach.**
- Anticipatory Breach**

ACTUAL BREACH OF CONTRACT- ON THE DUE DATE

when the performance of the contract is due; one party either fails or refuses to perform his obligations under the contract. The refusal of performance may be express or implied.

Example: 'D' agrees to deliver to 'B' 50 kilos of Ghee on 1st June. 'D' fails to do so on 1st June. A breach of contract occurs and B can initiate legal action.

ACTUAL BREACH OF CONTRACT- DURING PERFORMANCE

When a party, after having performed a part of the contract, refuses to perform further.

‘A’ contracted with a **Railway Co.**, to supply it certain quantity of railway chairs **six** instalment at a certain price. The delivery was to be made in instalments. After **four** instalments had been supplied, the railway company asked ‘A’ to deliver **no more**. Held, A could sue for breach of contract. *Cort V. Ambergate Railway Co.(1851)*

ANTICIPATORY BREACH OF CONTRACT-EXPRESS

When the promisor expressly makes known to the promisee of his intention to commit a breach.

Example: 'A' Contracts with 'B' to supply 100 liters of ghee at a certain price on 15th September. if, before 15th September, A informs B that he will not be able to supply as promised. 'B' is entitled to sue 'A' for breach of promise.

ANTICIPATORY BREACH OF CONTRACT-IMPLIED

When the promisor does some act that makes the performance of his promise impossible.

Example: X contract Y with in May to sell his car for Rs.2,00,000 on 30th June. Y comes to know that on 1st June itself, X has sold the car to Z .This results is an anticipatory breach of contract is an implied manner

DISCHARGE BY LAPSE OF TIME

Under the limitation Act,1963,a contract must be performed within a specified period known as the period of limitation. If the promise fails to take legal action within period of limitation, he loses his legal remedy.

- When goods are sold on credit **without any stipulation** as to the time for payment, the amount due must be recovered within 3 years from the date of delivery of goods.

When goods are sold on credit and the time for payment is specified in the contract, the amount **due** must be recovered within 3 years from the date of expiry of the period of credit.

Example: A sold goods worth Rs.10,000 on credit to B on 1st June 2017 **without any stipulation** as to the time for payment. A should have realised the amount before 1st June 2020.

Example: A sold goods worth Rs.10,000 on credit to B on 1st June 2017 and allowed B a period of **3 months** for payment. A should have recovered the amount before 1st September 2020.

REMEDIES FOR BREACH OF CONTRACT

When a breach of contract occurs, the aggrieved party or **the injured party** becomes entitled to the following remedies or reliefs:

- **Rescission**
- **Damages**
- **Quantum Meruit**
- **Specific Performance**
- **Injunction**

RESCISSION

When a breach of contract is committed by one party, the aggrieved party is relieved from all his obligations under the contract.

Example: 'A' promises 'B' to supply 10 bags of sugar on a certain date and 'B' promises to pay the price on receipt of the goods. 'A' does not deliver the goods on the appointed day. 'B' needs not pay the price.

RESCISSION

Party Rightfully Rescinding the Contract Entitled to Compensation (Sec. 75): A person who rightfully rescinds the contract is entitled to **compensation** for any damage which he has sustained through the **non-fulfilment of the contract.**

DAMAGES

‘Damages’ are nothing but the **monetary compensation** awarded to the affected party by the court for the **loss suffered** by him in view of the breach of the contract.

- Ordinary damages
- Special damages
- Vindictive damages
- Nominal damages
- Damages for inconvenience
- Damages for loss of reputation

ORDINARY DAMAGES

Ordinary damages are those which naturally arose in the **usual course** of things from such breach. The measure of ordinary damages is the difference between the **contract** price and the **market** price on the date of breach.

Example: 'A' contracts to deliver **100** bags of wheat at **Rs.800** a bag on a future date. On the due date he refuses to deliver; the price on that day is **Rs.900** per bag. The measure of damages is the difference between the market price on the date of breach and the contract price i.e. **Rs.10,000**.

SPECIAL DAMAGES

Example: 'A' a builder, contracts to erect and finish a house by the 1st of January so that 'B' may give possession of it at that time to 'C'. to whom 'B' has contracted to let it. 'A' is informed of the contract between 'B' and 'C'. 'A' builds the house so badly that, before the 1st January, it falls down and has to be rebuilt by 'B' who in consequence loses rent which he was to have received from 'C', and is obliged to make compensation to 'C' for the breach of his contract. 'A' must make compensation to 'B' for the cost of rebuilding the house, for the rent lost, and for the compensation made to 'C'.

VINDICTIVE DAMAGES

These damages are awarded to **punish the defaulter** than to really compensate the plaintiff and have no place in the law of contracts. But in the following cases vindictive damages are awarded.

- Breach of a contract to marry and
- **Wrongful dishonor of a cheque by a banker.**

Example: A cheque issued in favour of the Telephone Department towards the payment of a bill by a company

NOMINAL DAMAGES

This kind of damages is awarded when the injured party **does not suffer any damages**. Yet this damage consisting of a very small amount, say, a rupee or two, is awarded for violation of a legal right.

Example: In this case, **B** was given employment for a certain period by a partnership firm comprising of four partners. The firm was dissolved before the expiry of the period for which **B** was employed. It was held that **B** could claim only nominal damages, as **he suffered no loss**.

DAMAGES FOR INCONVENIENCE

Damages are awarded to the aggrieved person for the **physical** inconvenience and discomfort caused to him.

Case: Hobbs vs. London & S.W. Rail. Co.

Example: H, with his wife and children, took a ticket for a midnight train. But they were transported to a wrong place **due to the negligence of the railway authorities**. As a result they had to travel several miles to reach home. It was held that **H** could recover damages for the inconvenience caused (medical exp-cough) to him and his family.

DAMAGES FOR LOSS OF REPUTATION

When a cheque issued by a businessman gets dishonoured, his **business image** is bound to suffer. The creditworthiness of a businessman in something that is very important for him to stay in business and to sustain its reputation.

Example: A businessman whose cheque has been wrongfully dishonoured by the bank can recover damages in respect of any loss to his business reputation due to such wrongful dishonour. **The smaller the amount of the cheque dishonoured, the greater the amount of damages awarded.**

QUANTUM MERUIT

when a person has done some work under a contract, and the other party repudiated the contract, or some event happened which makes the further performance of the contract impossible, then the party who has performed the work can claim **remuneration** for the **work he has already done**.

Example: 'A' contracts with 'B' to deliver to him 500 kilos of butter before 1st May. 'A' delivers 200 kilos only before that date and none after. 'B' retains the 200 kilos after the 1st May. 'B' is bound to pay 'A' for them

SPECIFIC PERFORMANCE

Where **damages are not an adequate remedy**, the court may direct the party in breach to carry out his promise according to the terms of the contract. This is called '**Specific performance**' of the

contract some of the instances where court can direct specific performance are: a contract for the sale of a particular house or some rare article or another thing for which monetary compensation is not enough because **the injured party will not be able to get an exact substitute in the market.**

Specific performance will not be granted where:

- Monetary compensation is an adequate relief.
- The contract is of personal nature, e.g. **a contract to marry**
- Where it is not possible for the court to supervise the performance of the contract, e.g. **a building contract.**
- The contract is made by a company beyond its objective as laid down in its **Memorandum of Association.**

INJUNCTION

Injunction means an **order of the court**. Where a party is in breach of a negative term of a contract (i.e. where he does something which he promised not to do) the court may, by issuing an order, **prohibit him from doing**.

EXAMPLE: N, a film star, agreed to act exclusively for a particular producer, for one year. During the year she contracted to act for some other producers. Held, she could be restrained by an injunction.

QUASI CONTRACT

A Quasi-contract is not actually entered into by the parties but is something imposed on a party by law.

Example: 'X' a shopkeeper supplied groceries to 'Y' by **mistake**. 'Y' used the items as his own. 'Y' is bound to pay.

In the above case there is **no consensus, no offer, no acceptance**; still the law implies a contract. This is known as quasi-contract.

QUASI - CONTRACT



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graph TD; A[QUASI - CONTRACT] --- B[Claim for necessities supplied to a person incapable of contracting(sec.68)]; A --- C[Reimbursement of amount paid by a person on behalf of another(Sec.69).]; A --- D[Responsibility of finder of goods (Sec.71)]; A --- E[Liability of a person to whom money is paid or thing delivered by mistake or under coercion(Sec.72)]; A --- F[Obligation of a person enjoying the benefit of a non-gratuitous act(Sec.70).];
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Claim for necessities supplied to a person incapable of contracting(sec.68)

Reimbursement of amount paid by a person on behalf of another(Sec.69).

Responsibility of finder of goods (Sec.71)

Liability of a person to whom money is paid or thing delivered by mistake or under coercion(Sec.72)

Obligation of a person enjoying the benefit of a non-gratuitous act(Sec.70).

EXAMPLES OF QUASI CONTRACT

- **A** supplies **B**, a lunatic, with necessaries suitable to his condition in life. **A** is entitled to get reimbursement from **B**'s property. (sec68)
- **M** pays the electricity bill of his neighbour **N** when the latter is not in station. This **M** does to avoid disconnection. **N** has to reimburse the amount to **M**. (sec69)
- **X** trader leaves certain goods at **A**'s residence by mistake. **A** starts using the goods. He has to pay the trader. (sec70)

EXAMPLES OF QUASI CONTRACT

- **L** finds a diamond bracelet on the road. He gives a newspaper advertisement to trace out the owner. The owner, on being found, cannot refuse to reimburse the amount spent by **L** to trace him out. **L** need not handover the bracelet until his lawful charges are reimbursed. (Sec71)
- **P** and **Q** jointly owe Rs.500 to **R**. **P** alone pays the amount to **R**. **Q**, without knowing this fact, also pays **R**. **R** has to return the amount to **Q**. (Sec72)

Thank you