

6. Under this Section, an order or decree is final in the sense that it is not open to review or appeal, although it is subject to revision by High Court.

SECTION 5	SECTION 6
The plaintiff has to file a long-drawn regular suit for ejection.	It gives a summary remedy.
The claim is based on title.	The claim is based on possession and no proof of title is required and even rightful owner may be precluded from showing his title to the land.
The period of limitation is 12 years.	The period of limitation is of only 6 months from the date of dispossession.

RECOVERY OF SPECIFIC MOVABLE PROPERTY

Section 7 - Recovery of specific movable property

A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.

Explanation 1- A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.

Explanation 2- A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.

Section 7 provides for the recovery of movable property in specie i.e. the things itself. The things to be recovered must be specific in the sense they are ascertained and capable of identification. The nature of things must continue without alteration. Where the Court decrees delivery of such property, the decree shall also state the amount of money to be paid in alternative, if delivery cannot be had.

Section 8 - Liability of person in possession, not as owner, to deliver to persons entitled to immediate possession

Any person having the possession or control of a particular article of movable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:-

- (a) when the thing claimed is held by the defendant as the agent or trustee of the plaintiff;
- (b) when compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed;
- (c) when it would be extremely difficult to ascertain the actual damage caused by its loss;
- (d) when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

Explanation- Unless and until the contrary is proved, the court shall, in respect of any article of movable property claimed under clause (b) or clause (c) of this section, presume-

- i. that compensation in money would not afford the plaintiff adequate relief for the loss of the thing claimed, or, as the case may be;
- ii. that it would be extremely difficult to ascertain the actual damage caused by its loss.

The relief under Section 8 can only be granted against a person having the possession and control of the particular article claimed by the plaintiff. The object of this section is to provide special remedy so that persons having the possession or control of particular articles of movable property, although not as their owners, may be compelled specifically to deliver them to the persons entitled to their immediate possession.

Requisites of Section 8:

1. The defendant has possession or control of the particular article claimed;
2. Such article is movable property;
3. The defendant is not the owner of the article;
4. The plaintiff is entitled to immediate possession; and
5. Any one of the condition laid down under clauses (a) to (d) of Section 8 must exist.

Provisions of Section 8 are applicable in the following situations only:

- (a) When such property is held by the defendant as agent or trustee of the property.
- (b) When compensation is not an adequate relief for the loss to the plaintiff.
- (c) When ascertainment of actual damage is not possible.
- (d) When possession of the property is wrongfully transferred from the plaintiff.

In case of situations under (a) and (b), burden of proof is on the plaintiff and under (c) and (d) burden is on the defendant.

Difference between Section 7 and section 8:

Section 7 and Section 8 both speak of the recovery of movable property. However the point of difference between two are:

- Relief under Section 7 is of general nature, independent of nature of property, independent of relationship between the parties. Whereas, relief under Section 8 is of specific character, depends upon the nature of property, depends upon the relationship existing between the parties.
- Relief claimed under Section 7 is for the possession of movable property and in alternate for compensation equal to the value of property whereas relief under Section 8 is for delivery of property (specific movable property).
- Under Section 7, a suit to recover possession can be maintained against the owner of property. Section 8 does not contemplate a suit against the owner.

SPECIFIC PERFORMANCE OF CONTRACTS

The contract is an agreement upon consideration to do or not to do particular thing. If the person on whom this contractual obligation rests, fails to discharge it, other party has right either to insist on the literal and actual performance of the contract or to obtain compensation for the non-performance of it. The former is called the '***Specific Performance.***'

The subject- matter of Specific performance of contracts is dealt in Part II, Chapter II of the Specific Relief Act, 1963 which may be classified under the following heads-

- (a) *Contracts which may be specifically enforced.*
- (b) *Contracts which cannot be specifically enforced.*
- (c) *Parties to an action for specific performance.*
- (d) *Specific performance with a variation.*
- (e) *Discretion of the Court in ordering specific performance.*

Section 9 - Defences respecting suits for relief based on contract.

Section 9 simply declares that defendant may raise any ground available in law to him while resisting suit for specific performance. In other words all those pleas as recognized under law of contract like incapacity of parties, the absence of concluded contract, the uncertainty of the contract, coercion, fraud, misrepresentation, mistake, illegality etc. are available to defendant in a suit for specific performance.

CONTRACTS WHICH MAY BE SPECIFICALLY PERFORMED

The remedy of specific performance being an equitable remedy is at the discretion of the Court. But in the exercise of this discretion, the Court is governed by certain principles. **The circumstances in which specific performance may be granted are enumerated in Section 10 of the Specific Relief Act.**

Section 10 - Cases in which specific performance of contract enforceable

Except as otherwise provided in this Chapter, the specific performance of any contract may, in the discretion of the court, be enforced-

- (a) *when there exists no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done; or*
- (b) *when the act agreed to be done is such that compensation in money for its non-performance would not afford adequate relief.*

Explanation- Unless and until the contrary is proved, the court shall presume-

- i. that the breach of a contract to transfer immovable property cannot be adequately relieved by compensation in money; and
- ii. that the breach of a contract to transfer movable property can be so relieved except in the following cases:-
 - (a) Where the property is not an ordinary article of commerce, or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;
 - (b) Where the property is held by the defendant as the agent or trustee of the plaintiff.

No standard for ascertaining damages: Section 10 provides for specific performance of contract in those cases where there is no standard for ascertaining damages or where the money cannot form

adequate relief for the non-performance. Also, the enforcement of the specific performance is at discretion of the court and no one claim it as a matter of right.

Pecuniary compensation not adequate relief: The specific performance will also be granted when compensation in money is not adequate relief in facts and circumstances of case.

Conditions for applicability of Section 10-

1. The suit must relate to the specific performance of contract;
2. The case must fall within any of the Clauses (a) and (b) of Sec.10;
3. The case must in the discretion of the court, be fit one to order specific performance; and
4. The case must not fall within any of the Section of Chapter II which prohibits specific performance.

Explanation to Section 10 carries a presumption in favour of plaintiff and declares that it should be presumed that compensation does not afford adequate relief in following cases:

- A. In all cases where the contract is for the transfer of immovable property.
- B. In case of movable property where-
- (a) The property is not an ordinary article but an article of special value or of special interest to plaintiff.
 - (b) The article is not easily obtainable in the market.
 - (c) The property is held by the defendant as an agent or trustee of the plaintiff.

However, these presumptions can be rebutted by the defendant by proving the contrary.

DOCTRINE OF MUTUALITY No person can sue for specific performance if he cannot be sued for it, whether because he is minor or for any other reason. The contract to be specifically enforced must be mutual. The doctrine of mutuality means the contract must be mutually enforceable by each party against the other.

Section 12: Specific performance of part of contract

The general rule of equity is that the court will not compel specific performance of a contract unless it can enforce the whole contract. The rule laid in above case is contained in Section 12(1) of the Specific Relief Act which says court shall not direct the specific performance of a part of contract, except in cases coming under on or other of the three proceeding sections. To this general rules there are certain exceptions which proceed upon the principle of that 'equity looks to the substance of contract and requires substantial compliance with its conditions rather than its literal fulfilment' and these are embodied in Section 12 (2), (3) and (4).

Section 13: Rights of purchaser or lessee against person with no title or imperfect title.

This section is based on the extended principle what is known in English Law as '**Doctrine of feeding the grant by estoppel**'. This doctrine found acceptance in India, in the form of Section 43 of Transfer of property Act. The right of the purchaser or lessee against the person with no title or imperfect title has been enumerated in Section 13 of the Specific Relief Act. A contract may be specifically enforced even though the promisor had no title or imperfect title at the time of the contract. The promisor is bound to comply with the terms of the contract if he subsequently acquires the power of performing the contract.

Section 14: Contracts not specifically enforceable

1) The following contracts cannot be specifically enforced, namely:-

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

2) Save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced; but if any person who has made such a contract (other than an arbitration agreement to which the provisions of the said Act apply) and has refused to perform it, sues in respect of any subject which he has contracted to refer, the existence of such contract shall bar the suit.

3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:-

(a) where the suit is for the enforcement of a contract,-

- i. to execute a mortgage or furnish any other security for security for securing the repayment of any loan which the borrower is not willing to repay at once:
Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or
- ii. to take up and pay for any debentures of a company;

(b) where the suit is for,-

- i. the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
- ii. the purchase of a share of a partner in a firm,

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:-

- i. the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;
- ii. the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
- iii. the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.

The effect of the provisions in Section 14 can be stated in terms of certain propositions, namely, that in the case of following contracts the relief of specific performance cannot be allowed:

1. **Where compensation is adequate:** Courts will not order specific performance of a contract where the aggrieved party can be adequately compensated in terms of money.
2. **Contracts involving personal skill:** It is not possible for the court to supervise the performance of a contract which runs into minute and numerous details or is dependent upon the personal qualifications of the promisor or is otherwise of volitional nature. Contracts of

employment, contracts of personal service, contracts involving performance of artistic skill, like contract to sing, to paint, to act are ordinary examples of things requiring personal skill and therefore beyond the capacity of the judicial process to enforce their actual performance. The only choice in such cases is to be content with damages.

3. **Contracts of Determinable Nature:** Specific performance is not ordered of a contract which is in its nature determinable. Thus no order of specific performance is likely to be passed when the contract is revocable at the option of the opposite party.
4. **Contracts requiring constant supervision:** A contract cannot be specifically enforced where it involves the performance of continuous duty which the court cannot supervise. Contracts requiring the performance of a continuous duty extending over period longer than three years from the date of the contract cannot be specifically enforced.
5. **Construction contracts:** Subject to certain exceptions, the court will not enforce specific performance to build, repair, or maintain works or building both because-
 - (a) Specific performance is decreed only where the party wants the thing in specie and cannot have it in any other way; and
 - (b) Such contracts are for the most part so uncertain that the court will be unable to enforce its own decree.

PARTIES TO AN ACTION FOR SPECIFIC PERFORMANCE

Section 15: Who may obtain specific performance

Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

- (a) any party thereto;
- (b) the representative in interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest of his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;

- (c) where the contract is a settlement on marriage, or a compromise of doubtful rights between members of the same family, any person beneficially entitled there under;
- (d) where the contract has been entered into by a tenant for life in due exercise of a power, the remainder-man;
- (e) a reversioner in possession, where the agreement is a covenant entered into with his predecessor in title and the reversioner is entitled to the benefit of such covenant;
- (f) a reversioner in remainder, where the agreement is such a covenant, and the reversioner is entitled to the benefit thereof and will sustain material injury by reason of its breach;
- (g) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;
- (h) when the promoters of a company have, before its incorporation, entered into a contract for the purposes of the company, and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and has communicated such acceptance to the other party to the contract.

It is a general rule that a contract cannot be got enforced except by a party to the contract. This general rule is embodied in clause (a) of Section 15. But there are certain exceptions to this general rule. These exceptions are contained in clause (b) to (h) of the section and contain list of persons who although not a party to the contract, are entitled to obtain specific performance of contract.

Section 16: Personal bars to relief: Specific performance of a contract cannot be enforced in favour of a person-

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation- For the purposes of clause (c)-

- i. where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;
 - ii. the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.
- In **clause (a)**, Court of equity would refuse the specific performance not only for fraud but also for trickiness for 'he who comes for equity must come with clean hands.'
 - In **clause (b)**, the incapacity may be physical or mental or even legal.
 - In **clause (c)**, when a plaintiff in his suit for specific performance of the contract insists upon the implementation of the terms of the contract but on his own does not disclose his readiness and willingness to perform his own part of term, such contract cannot be enforced. It is necessary for the party claiming specific performance to aver and prove that he has been all the time ready and willing to perform his part of contract.

Section 17: Contract to sell or let property by one who has no title, not specifically enforceable

Section 18: Non-enforcement except with variation

Section 18 deals with cases in which the contract entered into is valid contract. In other words, it is one in respect of which the remedy of damages is available. Section 18 does not apply unless there is complete contract. It sets out the cases in which contracts cannot be enforced except with a variation and there are three particular cases set out in which a contract may be enforced subject to variation, such a variation being in favour of the defendant. But the remedy of specific performance is available when the plaintiff is prepared to accept the variation pleaded by the defendant.

Ingredient summarized:

- ⇒ Contract in writing. The section does not apply unless there is a complete contract.
- ⇒ Defendant sets up a variation.
- ⇒ The plaintiff is put to an election either to have his action for specific performance dismissed or have it subject to such variation.
- ⇒ But if plaintiff does not accept variation, he does not lose ordinary common law remedy of damages.

DISCRETION OF THE COURT IN ORDERING SPECIFIC PERFORMANCE

It has been recognized on all hands that to decree specific performance is a matter of discretion of the court. But it does not mean that it is open to the court to do just what it pleases in an individual case without regard to authority or principle.

Section 20: Discretion as to decreeing specific performance

- 1) The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so; but the discretion of the court is not arbitrary but sound and reasonable, guided by judicial principles and capable of correction by a court of appeal.
- 2) The following are cases in which the court may properly exercise discretion not to decree specific performance-
 - (a) where the terms of the contract or the conduct of the parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant; or
 - (b) where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff;
 - (c) where the defendant entered into the contract under circumstances which though not rendering the contract voidable, makes it inequitable to enforce specific performance.

Explanation 1- Mere inadequacy of consideration, or the mere fact that the contract is onerous to the defendant or improvident in its nature, shall not be deemed to constitute an unfair advantage within the meaning of clause (a) or hardship within the meaning of clause (b).

Explanation 2- The question whether the performance of a contract would involve hardship on the defendant within the meaning of clause (b) shall, except in cases where the hardship has resulted from any act of the plaintiff subsequent to the contract, be determined with reference to the circumstances existing at the time of the contract.

- 3) The court may properly exercise discretion to decree specific performance in any case where the plaintiff has done substantial acts or suffered losses in consequence of a contract capable of specific performance.
- 4) The court shall not refuse to any party specific performance of a contract merely on the ground that the contract is not enforceable at the instance of the other party.

The section gives to the Court discretion in the matter of decreeing specific performance. This discretion is not arbitrary, but sound and reasonable, guided by the judicial principles. Under no circumstances, the court should exercise its discretion, where it would be improper. Mere on the ground that the contract is unenforceable court can't refuse relief to any party. The discretion of the court is to decide whether enforcement of the contract in the present circumstances is fair and if the contract is fair and reasonable character of the plaintiff has been good then the discretion of the court has no application.

Section 21: Power to award compensation in certain cases

- 1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.
- 2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

- 3) If, in any such suit, the court decides that specific performance ought to be granted, but that is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.
- 4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872.
- 5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint: Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation-The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

The plaintiff in a suit for specific performance of contract, under Section 21 may also ask for compensation in case of the breach of the contract, either in addition to or in substitution for such performance but if the plaintiff in a suit for specific performance omits to ask for compensatory relief and his suit for specific performance is dismissed then his subsequent suit for compensation will be barred by the provisions of Section 24.

Section 22: Power to grant relief for possession, partition, refund of earnest money, etc

Section 23: Liquidation of damages not a bar to specific performance

- 1) A contract, otherwise proper to be specifically enforced, may be so enforced, though a sum be named in it as the amount to be paid in case of its breach and the party in default is willing to pay the same, if the court, having regard to the terms of the contract and other attending circumstances, is satisfied that the sum was named only for the purpose of securing performance of the contract and not for the purpose of giving to the party in default an option of paying money in lieu of specific performance.
- 2) When enforcing specific performance under this section, the court shall not also decree payment of the sum so named in the contract.

Section 24: Bar of suit for compensation for breach after dismissal of suit for specific performance

The dismissal of a suit for specific performance of a contract or part thereof shall bar the plaintiff's right to sue for compensation for the breach of such contract or part, as the case may be, but shall not bar his right to sue for any other relief to which he may be entitled, by reason of such breach.

CHAPTER V: RECTIFICATION OF INSTRUMENTS

Section 26: When instrument may be rectified

1. When, through fraud or a mutual mistake of the parties, a contract or other instrument in writing (not being the articles of association of a company to which the Companies Act, 1956, applies) does not express their real intention, then-
 - (a) either party or his representative in interest may institute a suit to have the instrument rectified; or
 - (b) the plaintiff may, in any suit in which any right arising under the instrument is in issue, claim in his pleading that the instrument be rectified; or
 - (c) a defendant in any such suit as is referred to in clause (b), may, in addition to any other defence open to him, ask for rectification of the instrument.

2. If, in any suit in which a contract or other instrument is sought to be rectified under sub-section (1), the court finds that the instrument, through fraud or mistake, does not express the real intention of the parties, the court may, in its discretion, direct rectification of the instrument so as to express that intention, so far as this can be done without prejudice to rights acquired by third persons in good faith and for value.
3. A contract in writing may first be rectified, and then if the party claiming rectification has so prayed in his pleading and the court thinks fit, may be specifically enforced.
4. No relief for the rectification of an instrument shall be granted to any party under this section unless it has been specifically claimed: Provided that where a party has not claimed any such relief in his pleading, the court shall, at any stage of the proceeding, allow him to amend the pleading on such terms as may be just for including such claim.

Doctrine of Rectification: Rectification means correction of an error in an instrument in order to give effect to the real intention of the parties. Where a contract has been reduced into writing, in pursuance of a previous engagement and the writing, owing to fraud or mutual mistake, fails to express the real intention of the parties, the court will rectify the writing instrument in accordance with their true intent. Here the fundamental assumption is that there exists in between the parties a complete and perfectly acceptable contract but the writing designed to embody it, either from fraud or mutual mistake is incorrect or imperfect and the relief sought is to rectify the writing so as to bring it into conformity with true intent.

Who can apply for rectification: The following persons may apply-

- (a) Either party or his representative in interest
- (b) The plaintiff in any suit
- (c) A defendant in such suit

Conditions necessary for obtaining rectification are:-

- ⇒ There must have been a complete agreement reached prior to the written instrument which is sought to be rectified. There must be two distinct stages: a) an agreement, verbal or written, which clearly expresses the final intention of the parties, and b) instrument which purports to embody that intention.
- ⇒ Both the parties must have intended, and still intending, that the exact terms of the prior contract should be reduced to writing.
- ⇒ Clear evidence of mistake common to both parties or of fraud must be there.

The principle on which the court acts in correcting instruments is that the parties are to be placed in the position as that in which they would have stood if no error had been committed.

CHAPTER VI: DECLARATORY DECREES

Section 34: Discretion of court as to declaration of status or right

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff being able to seek further relief than a mere declaration of title, omits to do so.

Explanation-A trustee of property is a "**person interested to deny**" a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.

A declaratory decree is a mode of relief where there is no specific performance and no award of compensation. There is only a declaration of rights of the parties without any consequential relief which can be enforced by the execution of the decree. In other words, declaratory decrees are those where some right is declared in favour of the plaintiff but nothing is sought to be paid or performed by the defendant. Further, the declaration does not confer any new rights upon the plaintiff; it merely declares what he had before.

OBJECT: The object of such decrees is that where a person's status or legal character has been denied or where a doubt has been created upon his titles to rights and interests in some property, he may have the doubt removed by having his legal status or rights declared by the court. But it is not a matter of absolute right to obtain a declaratory decree. It is purely the discretion of the Court. The object of Section 34 is to perpetuate and strengthen testimony regarding title and protect it from adverse attacks.

Essential requisites for a declaratory action

1. The plaintiff must be entitled to any legal character or to any right as to any property.
2. The defendant should have denied or be interested in denying the character or title of the plaintiff. It is this denial which gives a cause of action for declaratory relief.
3. The plaintiff is not in a position to claim further relief than mere declaration of his title, or where he is so able to seek further relief, he seeking such relief also.

Section 35: Effect of declaration

A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of the declaration, such parties would be trustees.

According to this section, the declaratory decree is not binding on everybody in the world. It cannot bind strangers and **as such a declaration will not operate as a judgement in rem** and will be binding only between parties to the suit and their representatives. Hence, a declaratory decree is binding between the parties inter se and its effect does not bind persons who are not connected with the suit in question.

CHAPTER VII: INJUNCTIONS

An injunction is a specific order of the court forbidding the commission of a wrong threatened or the continuance of a wrongful course of action already begun, or in some cases, when it is called mandatory injunction requiring active restitution of the former state of things. An injunction is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing. In former case it is called **restrictive injunction** and in the latter case it is called **mandatory injunction**.

Section 36: Preventive relief how granted

Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual

Section 37: Temporary and perpetual injunctions

1. Temporary injunctions are such as are to continue until a specified time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908.
2. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

CHAPTER VIII: PERPETUAL INJUNCTIONS

Section 38: Perpetual injunction when granted

1. Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
2. When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.
3. When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:-
 - (a) where the defendant is trustee of the property for the plaintiff;
 - (b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
 - (c) where the invasion is such that compensation in money would not afford adequate relief;
 - (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Section 39: Mandatory injunctions

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts.

Section 40: Damages in lieu of, or in addition to, injunction

1. The plaintiff in a suit for perpetual injunction under section 38, or mandatory injunction under section 39, may claim damages either in addition to, or in substitution for, such injunction and the court may, if it thinks fit, award such damages.
2. No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint.
Provided that where no such damages have been claimed in the plaint, the court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.
3. The dismissal of a suit to prevent the breach of an obligation existing in favour of the plaintiff shall bar his right to sue for damages for such breach.

Section 41: Injunction when refused-

An injunction cannot be granted-

- (a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;
- (b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;
- (c) to restrain any person from applying to any legislative body;
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter;
- (e) to prevent the breach of a contract the performance of which would not be specifically enforced;
- (f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- (g) to prevent a continuing breach in which the plaintiff has acquiesced;
- (h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- (i) when the conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the court;
- (j) when the plaintiff has no personal interest in the matter.



Class -B.A.LL.B. I SEM.

Subject - Law of Contract-I

Section 42: Injunction to perform negative agreement

Notwithstanding anything contained in clause (e) of section 41, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement:

Provided that, the plaintiff has not failed to perform the contract so far as it is binding on him.

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