

26th August, 2011

STATUTORY INSTRUMENTS SUPPLEMENT

to The Uganda Gazette No. 52 Volume CIV dated 26th August, 2011

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STATUTORY INSTRUMENTS

2011 No. 45.

The Contracts Act, 2010 (Commencement) Instrument, 2011.

(Under section 1 of the Contracts Act, 2010, Act No. 7 of 2010)

IN EXERCISE of the powers conferred on the Minister by section 1 of the Contracts Act, 2010, this Instrument is made this 25th day of July, 2011.

1. Title.

This Instrument may be cited as the Contracts Act, 2010 (Commencement) Instrument, 2011.

2. Appointment of commencement date for Act No. 7 of 2010.

The 15th day of September, 2011 is appointed as the date on which the Contracts Act, 2010 shall come into force.

MAJ. GEN. KAHINDA OTAFIIRE,
Minister of Justice and Constitutional Affairs.

28th May, 2010.

ACTS SUPPLEMENT

to The Uganda Gazette No. 32 Volume CIII dated 28th May 2010.

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Act 7

Contracts Act

2010

THE CONTRACTS ACT, 2010

ARRANGEMENT OF SECTIONS.

Section.

PART I—PRELIMINARY.

1. Commencement.
2. Interpretation.

PART II—COMMUNICATION, ACCEPTANCE AND
REVOCATION OF AN OFFER.

3. Communication of offer, acceptance or revocation.
4. Completion of communication.
5. Revocation of offer or acceptance.
6. Mode of revocation of offer.
7. Acceptance to be absolute.
8. Acceptance by performing conditions or receiving consideration.
9. Express or implied promise.

PART III—CONTRACTS, VOID AND VOIDABLE AGREEMENTS.

Contracts.

10. Agreement that amounts to a contract.
11. Capacity to contract.
12. Sound mind for purposes of contracting.
13. Free consent of parties to a contract.
14. Undue influence.
15. Fraud.

Void and voidable agreements.

16. Voidability of agreements without consent.
17. Mistake of fact.
18. Mistake of law.
19. Lawful consideration or objects.
20. Effect of lack of or failure of consideration.
21. Agreement in restraint of profession, trade, etc.

Section.

22. Agreement in restraint of legal proceedings.
23. Agreement void for uncertainty.
24. Agreement by way of wager.
25. Agreement to do impossible act.
26. Reciprocal promise to do legal and illegal acts.
27. Alternative promise, one part being illegal.

PART IV—CONTINGENT CONTRACTS.

28. Contract contingent on event happening.
29. Contract contingent on event not happening.
30. Contract contingent on conduct of a person.
31. Contract contingent on happening of specified event within a specified time.
32. Agreement contingent on an impossible event.

PART V—PERFORMANCE OF CONTRACTS.

Contracts which have to be performed.

33. Obligation of parties.
34. Refusal to accept offer of performance.
35. Refusal of party to perform promise.
36. Person to perform promise.
37. Effect of accepting performance from third person.

Joint liability and rights.

38. Joint liability.
39. Obligation and liability of joint promisors.
40. Release of a joint promisor.
41. Joint rights.

Time and place for performance.

42. Time for performance.

Performance of reciprocal promises.

43. Reciprocal obligation to perform.
44. Order of performance of reciprocal promises.

Section.

45. Liability of party preventing event on which contract is to take effect.
46. Default in the performance of reciprocal promises.
47. Failure to perform within a fixed time.

Appropriation of payments.

48. Application of payment where debt to be discharged is indicated.
49. Application of payment where debt to be discharged is not indicated.
50. Application of payment where no party appropriates.

Contracts which need not be performed.

51. Effect of novation, rescission and alteration of contract.
52. Promisee may dispense with or remit performance of promise.
53. Consequence of rescission of voidable contract.
54. Obligation of person who receives advantage under a void agreement or a contract that becomes void.
55. Communicating or revoking rescission by one party to the other of a voidable contract.
56. Neglect or refusal of promisee to afford reasonable facilities for performance.

PART VI—RELATIONS SIMILAR TO THOSE CREATED BY CONTRACT.

57. Claim for necessaries supplied to person incapable of contracting.
58. Obligation of person enjoying benefit of non-gratuitous act.
59. Responsibility of finder of goods.
60. Liability of person to whom money is paid or thing is delivered by mistake or under coercion.

PART VII—CONSEQUENCES OF BREACH OF CONTRACT.

61. Compensation for loss or damage caused by breach of contract.
62. Compensation for breach of contract where penalty is stipulated.
63. Party rightfully rescinding contract, entitled to compensation.
64. Right to specific performance.
65. Right of third party to enforce contractual term.
66. Discharge by frustration.
67. Variation of contracts.

PART VIII—INDEMNITY AND GUARANTEE.

68. Interpretation for Part VIII.
69. Right of indemnity holder when sued.
70. Consideration for guarantee.
71. Liability of guarantor.
72. Revocation of continuing guarantee.
73. Liability of two persons who are primarily liable, not affected by arrangement where one is to be guarantor on default of the other.
74. Discharge of guarantor by variance in terms of contract.
75. Discharge of guarantor by release or discharge of principal debtor.
76. Discharge of guarantor when creditor compounds with, gives time to or agrees not to sue, principal debtor.
77. Guarantor not discharged where agreement is made with third person to give time to principal debtor.
78. Forbearance of creditor to sue does not discharge guarantor.
79. Release of one co-guarantor does not discharge the other.
80. Discharge of guarantor by an act or omission by creditor.
81. Rights of guarantor on payment or performance.
82. Right of guarantor to benefit from securities of creditor.
83. Guarantee obtained by misrepresentation.
84. Guarantee on contract that creditor shall not act until co-guarantor joins.
85. Implied promise to indemnify guarantor.
86. Co-guarantors liable to contribute equally.
87. Liability of co-guarantors bound in different sums.

PART IX—BAILMENT.

88. Interpretation for Part IX.
89. Modes of bailment.
90. Delivery to bailee.
91. Duty to disclose fault in bailed goods.
92. Duty of care by a bailee.
93. Liability of bailee for loss.
94. Termination of bailment due to act of bailee.
95. Unauthorised use of bailed goods.

96. Mixture of goods of bailee and bailor.
97. Repayment by bailor of necessary expenses.
98. Return of bailed goods.
99. Failure to return goods.
100. Termination of gratuitous bailment.
101. Bailor entitled to increase or profit from bailed goods.
102. Responsibility of bailor to bailee.
103. Bailment by several joint owners.
104. Bailee not responsible on redelivery to bailor without title.
105. Right of third person claiming bailed goods.
106. Right of a finder of goods.
107. Right of finder to sell.
108. Lien of bailee.
109. General lien of bankers, brokers, warehouse keepers, advocates and insurance brokers.
110. Rights of pledgee.
111. Pledgee not to retain goods for debt or promise.
112. Right of pledgee to extraordinary expenses incurred.
113. Right of pledgee where pledgor defaults.
114. Right of pledgor to redeem on default.
115. Pledge by mercantile agent.
116. Pledge where pledgor has limited interest.
117. Suit by bailor or bailee against wrongdoer.

PART X—AGENCY.

118. Interpretation for Part X.
119. Capacity to employ agent.
120. Capacity to act as agent.
121. Consideration not necessary.
122. Authority of agent may be express or implied.
123. Extent of authority of agent.
124. Authority of agent in an emergency.
125. Power to delegate.
126. Representation of principal by sub-agent.
127. Sub-agent appointed without authority.
128. Relation between principal and person appointed by agent.

Section.

129. Duty of agent in naming another agent.
130. Ratification of acts done by person who is not an agent.
131. Ratification may be express or implied.
132. Knowledge requisite for valid ratification.
133. Effect of ratifying unauthorised act.
134. Ratification of unauthorised act does not injure third person.
135. Termination of agency.
136. Termination of agency where agent has interest in subject matter.
137. Revocation of authority of agent by principal.
138. Revocation where authority is partly exercised.
139. Compensation for revocation by principal or renunciation by agent.
140. Notice of revocation or renunciation.
141. Revocation and renunciation may be express or implied.
142. Termination of authority of agent.
143. Termination of agency by death or insanity of principal.
144. Termination of authority of sub-agent.
145. Duty of an agent in conducting business of principal.
146. Skill and diligence required from agent.
147. Accounts of an agent.
148. Duty of an agent to communicate with principal.
149. Right of principal to repudiate when agent deals without consent of principal.
150. Right of principal to benefit gained by agent dealing on own account in business of agency.
151. Right of agent to retain sums received on account of principal.
152. Duty of agent to pay sums received for principal.
153. Remuneration of agent.
154. Agent not entitled to remuneration for misconduct.
155. Lien of an agent on property of principal.
156. Indemnity of agent.
157. Non liability of principal to agent in a criminal act.
158. Compensation to agent for injury caused by principal.
159. Enforcement and consequences of contract of agent.
160. Liability of principal where agent exceeds authority.
161. Consequences of notice to agent.
162. Agent not to enforce or be bound by contracts on behalf of principal.
163. Right of parties to a contract made by agent not disclosed.

Section.

164. Performance of contract with agent acting as principal.
165. Joint liability of agent and principal to a third party.
166. Consequence of inducing agent or principal to act on belief that either will be held liable.
167. Liability for fraudulently holding out as agent.
168. Person falsely contracting as agent not entitled to performance.
169. Liability of principal inducing belief that unauthorised acts of agent were authorised.
170. Misrepresentation or fraud by agent.
171. Minister's power to amend Schedule.
172. Repeal.

SCHEDULE

CURRENCY POINT

THE CONTRACTS ACT, 2010.

An Act to codify the law relating to contracts and to provide for other related matters.

DATE OF ASSENT: 22nd April, 2010.

Date of Commencement: See section 1.

BE IT ENACTED by Parliament as follows—

PART I—PRELIMINARY

1. Commencement.

This Act shall come into force on a date appointed by the Minister, by statutory instrument.

2. Interpretation.

In this Act, unless the context otherwise requires—

“acceptance” means an assent to an offer made by a person to whom the offer is made;

“agreement” means a promise or a set of promises forming the consideration for each other;

“coercion” means the commission or threatening to commit any act forbidden under any law or the unlawful detaining or threatening to detain any property, to the prejudice of any person with the intention of causing any person to enter into an agreement;

“consent” means agreement of two or more persons obtained freely, upon the same thing in the same sense;

“consideration” means a right, interest, profit or benefit accruing to one party or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party;

“consideration for a promise” means where, at the desire of a promisor, a promisee or any other person does or abstains from doing or promises to do or to abstain from doing something;

“contingent contract” means a contract to do something or not to do something where an event, collateral to a contract, does or does not happen;

“contract” means an agreement enforceable by law as defined in section 10;

“currency point” has the value assigned to it in the Schedule to this Act;

“documents of title to goods” includes any bill of lading, dock warrant, warehouse keeper’s certificate, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of possession or control of goods or which authorises or purports to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods represented by the document;

“mercantile agent” means a person who in the ordinary course of his or her business, has authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods or raise money on the security of goods;

“Minister” means the Minister responsible for justice;

“misrepresentation” means—

- (a) a positive assertion made in a manner which is not warranted by the information of the person who makes it or an assertion which is not true, though the person who makes it believes it to be true;
- (b) any breach of duty which without an intent to deceive, gains an advantage to the person who commits it or anyone who claims under that person by misleading another person to his or her prejudice or to the prejudice of any one claiming under that other person; or
- (c) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement;

“offer” means the willingness to do or to abstain from doing anything signified by a person to another, with a view to obtaining the assent of that other person to the act or abstinence;

“promise” means an offer that is accepted;

“promisee” means the person who accepts an offer;

“promisor” means the person who makes an offer;

“reciprocal promises” mean promises that form the consideration or part of the consideration for each other;

“void agreement” means an agreement that is not enforceable by law;

“voidable contract” means an agreement which is enforceable by law at the option of a party to a contract but not at the option of the other party and a contract which ceases to be enforceable by law and which becomes void when it ceases to be enforceable.

PART II—COMMUNICATION, ACCEPTANCE AND REVOCATION OF AN OFFER

3. Communication of offer, acceptance or revocation.

(1) The communication of an offer is made by an act or omission of a party who proposes the offer, by which that party intends to communicate the offer or which has the effect of communicating the offer.

(2) The communication of acceptance of an offer is made by an act or omission of a party who accepts the offer, by which that party intends to communicate the acceptance or which has the effect of communicating the acceptance.

(3) The communication of revocation of an offer or acceptance is made by any act or omission of a party who revokes the offer or acceptance, respectively, by which that party intends to communicate the revocation or which has the effect of communicating the revocation.

4. Completion of communication.

(1) Communication of an offer is complete when it comes to the knowledge of the person to whom it is made.

(2) Communication of an acceptance is complete—

(a) as against the offeror, when it is put in a course of transmission to him or her so as to be out of the power of the acceptor; or

(b) as against the acceptor, when it comes to the knowledge of the offeror.

(3) Communication of a revocation is complete—

(a) as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; or

(b) as against the offeree, when it comes to his or her knowledge.

5. Revocation of offer or acceptance.

(1) An offer may be revoked at any time before the communication of its acceptance is completed.

(2) An acceptance may be revoked at any time before the communication of the acceptance is complete.

6. Mode of revocation of offer.

An offer is revoked by—

- (a) communication of the notice of revocation by the offeror to the other party;
- (b) lapse of the time prescribed in the offer, for its acceptance, or, where time is not prescribed, by the lapse of a reasonable time without communication of the acceptance;
- (c) the failure of the acceptor to fulfil a condition precedent to acceptance; or
- (d) the death or insanity of the offeror, where the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

7. Acceptance to be absolute.

(1) An offer is converted into a promise where the acceptance is—

- (a) absolute and unqualified; and
- (b) expressed in a usual and reasonable manner, except where the offer prescribes the manner in which it is to be accepted.

(2) Where an offer prescribes the manner in which it is to be accepted and the acceptance is not made in that manner, the offeror may, within a reasonable time after the acceptance is communicated to him or her, demand that the offer is accepted only in the prescribed manner.

(3) Where an offeror fails to demand under subsection (2) that acceptance be made in the prescribed manner, the offeror shall be deemed to have accepted the manner of acceptance offered by the offeree.

8. Acceptance by performing conditions or receiving consideration.

The performance of the conditions of an offer or the acceptance of any consideration for a reciprocal promise which may be offered with an offer, is an acceptance of the offer.

9. Express or implied promise.

(1) A promise may be express or implied.

(2) A promise is express, where an offer or an acceptance of a promise is made either verbally or in writing.

(3) A promise is implied, where an offer or an acceptance is not made either verbally or in writing.

PART III—CONTRACTS, VOID AND VOIDABLE AGREEMENTS

Contracts

10. Agreement that amounts to a contract.

(1) A contract is an agreement made with the free consent of parties with capacity to contract, for a lawful consideration and with a lawful object, with the intention to be legally bound.

(2) A contract may be oral or written or partly oral and partly written or may be implied from the conduct of the parties.

(3) A contract is in writing where it is—

- (a) in the form of a data message;
- (b) accessible in a manner usable for subsequent reference; and
- (c) otherwise in words.

(4) Nothing in this Act shall affect any law in Uganda relating to contracts by corporations or generally.

(5) A contract the subject matter of which exceeds twenty five currency points shall be in writing.

(6) A contract of guarantee or indemnity shall be in writing.

(7) In this section, “guarantee” and “indemnity” have the meaning assigned to them in Part VIII of this Act.

11. Capacity to contract.

(1) A person has capacity to contract where that person is—

(a) eighteen years or above;

(b) of sound mind; and

(c) not disqualified from contracting by any law to which he or she is subject.

(2) Notwithstanding this section, a person of sixteen years or above has the capacity to contract as provided under article 34 (4) and (5) of the Constitution.

12. Sound mind for purposes of contracting.

(1) For purposes of entering into a contract, a person is said to be of sound mind, if at the time of entering into the contract, that person is capable of understanding the contract and of forming a rational judgment as to its effect upon his or her interests.

(2) A person who is usually of unsound mind but occasionally of sound mind may enter into a contract during periods when he or she is of sound mind.

(3) A person who is usually of sound mind but occasionally of unsound mind may not enter into a contract during periods when he or she is of unsound mind.

13. Free consent of parties to a contract.

Consent of parties to a contract is taken to be free where it is not caused by—

(a) coercion;

(b) undue influence, as defined in section 14;

(c) fraud, as defined in section 15;

(d) misrepresentation; or

(e) mistake, subject to sections 17 and 18.

14. Undue influence.

(1) A contract is induced by undue influence where the relationship subsisting between the parties to a contract is such that one of the parties is in a position to dominate the will of the other party and uses that position to obtain an unfair advantage over the other party.

(2) For the purposes of subsection (1), a party is taken to be in a position to dominate the will of another party, where—

(a) the party holds a real or apparent authority over the other party;

(b) the party stands in a fiduciary relationship to the other party; or

(c) the mental capacity of the other party is temporarily or permanently affected by reason of age, illness, mental or bodily distress.

(3) Where a party who is in a position to dominate the will of the other party, enters into a contract with that other party and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that the contract was not induced by undue influence shall be upon the party in a position to dominate the will of the other party.

(4) Nothing in subsection (3) shall affect section 111 of the Evidence Act.

(5) In this section, a party is said to stand in a fiduciary relationship to another party if the party has duties involving good faith, trust, special confidence and candor towards that other party, such as a relationship between an attorney and a client, a guardian and a ward, a principal and an agent, an executor and an heir, a trustee and a beneficiary or a landlord and tenant.

15. Fraud.

(1) Consent is induced by fraud where any of the following acts is committed by a party to a contract, or with the connivance of that party, or by the agents of that party, with intent of deceiving the other party to the contract or the agent of the other party, or to induce the other party to enter into the contract—

- (a) a suggestion to a fact which is not true, made by a person who does not believe it to be true;
- (b) the concealment of a fact by a person having knowledge or belief of the fact;
- (c) a promise made without any intention of performing it;
- (d) any act intended to deceive the other party or any other person; or
- (e) any act or omission declared fraudulent by any law.

(2) For the purposes of this Act, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, it is the duty of the person keeping silence to speak, or unless the silence is, in itself, equivalent to speech.

*Void and voidable agreements***16. Voidability of agreements without consent.**

(1) Where consent to an agreement is obtained by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was obtained by coercion, undue influence, fraud or misrepresentation.

(2) Where consent is caused by misrepresentation or by silence which is deemed fraudulent within the meaning of section 15, the contract is not voidable, if the party whose consent was obtained had the means of discovering the truth with ordinary diligence.

(3) Fraud or misrepresentation which does not cause a party on whom the fraud or misrepresentation is effected, to consent to a contract, does not render a contract voidable.

(4) A party to a contract, whose consent is obtained by fraud or misrepresentation, may, where that party thinks fit, insist that the contract is performed and that he or she is put in the position in which he or she would have been if the representations made, had been true.

(5) A contract which is voidable on the ground that the consent of a party to the contract was caused by undue influence, may be set aside absolutely or where the party who was entitled to avoid it received any benefit under the contract, upon such terms and conditions as may seem just to court.

17. Mistake of fact.

(1) Where both parties to an agreement are under a mistake as to a matter of fact which is essential to the agreement, consent is obtained by mistake of fact and the agreement is void.

(2) A contract is void where one of the parties to it operates under a mistake as to a matter of fact essential to the contract.

(3) An erroneous opinion as to the value of the things which form the subject matter of an agreement shall not be deemed a mistake as to a matter of fact.

18. Mistake of law.

Where a contract is entered into by a mistake in respect of any law in force in Uganda, the contract is void.

19. Lawful consideration or objects.

(1) A consideration or an object of an agreement is lawful, except where the consideration or object—

- (a) is forbidden by law;
- (b) is of such nature that, if permitted would defeat the provisions of any law;

- (c) is fraudulent;
- (d) involves or implies, injury to a person or the property of another person; or
- (e) is declared immoral or against public policy by a court.

(2) An agreement whose object or consideration is unlawful is void and a suit shall not be brought for the recovery of any money paid or thing delivered or for compensation for anything done under the agreement, unless—

- (a) the court is satisfied that the plaintiff was ignorant of the illegality of the consideration or object of the agreement at the time the plaintiff paid the money or delivered the thing sought to be recovered or did the thing in respect of which compensation is sought;
- (b) the court is satisfied that the illegal consideration or object had not been effected at the time the plaintiff became aware of the illegality and repudiated the agreement;
- (c) the court is satisfied that the consent of the plaintiff to the agreement was induced by fraud, misrepresentation, coercion or undue influence; or
- (d) the agreement is declared illegal by any written law, with the object of protecting a particular class of persons of which the plaintiff is one.

(3) Where a part of a single consideration for one or more objects, or one of several considerations for a single object is unlawful, the agreement is void.

20. Effect of lack of or failure of consideration.

(1) An agreement made without consideration is void except where the agreement—

- (a) is expressed in writing and registered under the Registration of Documents Act and is made on account of natural love and affection between parties standing in a near relation to each other;
- (b) is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compellable to do; or
- (c) is a promise, made in writing and signed by the person responsible for it or by the agent of that person, to pay wholly or in part a debt for which a creditor may have enforced payment but is restricted by the Limitation Act.

(2) Nothing in this section shall affect the validity of any gift given by a donor to a donee.

(3) An agreement to which the consent of a promisor is freely given is not void merely because the consideration is inadequate.

(4) Notwithstanding sub section (3), the inadequacy of consideration may be taken into account by the court in determining whether the consent of a promisor was freely given.

21. Agreement in restraint of profession, trade, etc.

(1) An agreement which restrains a person from exercising a lawful profession, trade or business of any kind, is to that extent void, unless the restraint is reasonable in respect to the interests of the parties concerned and in respect to the interests of the public.

(2) For the purposes of sub section (1), an agreement in restraint of trade is not reasonable in respect to the interests of the parties, where the restraint exceeds what is reasonably necessary to protect a proprietary interest of a promisee.

(3) The burden of proving that a restraint is reasonable in respect to the interests of the parties shall lie upon the promisee and the burden of proving that a restraint is unreasonable in respect to the interests of the public shall lie on the promisor.

22. Agreement in restraint of legal proceedings.

(1) An agreement which restricts a party absolutely, from enforcing his or her rights under or in respect of a contract, by legal proceedings or which limits the time within which the party may enforce his or her rights is void to that extent.

(2) This section shall not—

(a) render illegal—

(i) a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject shall be referred to arbitration and that only the amount awarded in the arbitration shall be recoverable in respect of the dispute referred to arbitration; or

(ii) any contract in writing, by which two or more persons agree to refer to arbitration any question which has already arisen between them; and

(b) affect any reference to arbitration under any law.

23. Agreement void for uncertainty.

An agreement, the meaning of which is not certain or capable of being made certain, is void.

24. Agreement by way of wager.

(1) An agreement made by way of an unlicensed wager is void.

(2) For the purposes of this section, “wager” means a promise to pay money or other consideration on the occurrence of an uncertain event.

25. Agreement to do impossible act.

(1) An agreement to do an act which is impossible to perform is void.

(2) A contract becomes void, where the contract is to do an act which, after the contract is made, becomes impossible or unlawful or which by reason of an event which the promisor could not prevent, becomes impossible or unlawful.

(3) Where a person promises to do an act which he or she knew or which with reasonable diligence, may have known to be impossible to perform and which the promisee did not know to be impossible or unlawful, the promisor shall compensate the promisee for any loss which the promisee may suffer as a result of the non performance of the promise.

(4) For the purposes of this section, an act shall be taken to be impossible of performance if in law or the course of nature, no person can do or perform it.

26. Reciprocal promise to do legal and illegal acts.

Where a person makes a reciprocal promise, firstly to do a certain thing which is legal, and, secondly, under specified circumstances, to do a certain thing which is illegal, the promise to do the legal thing shall be a contract but the promise to do an illegal thing shall be a void agreement.

27. Alternative promise, one part being illegal.

Where an alternative promise, one part of which is legal and the other part illegal, is made, only the legal part may be enforced.

PART IV—CONTINGENT CONTRACTS.

28. Contract contingent on event happening.

A contract to do something or not to do a particular thing where an uncertain future event on which the contract is contingent, happens, shall not be enforced except where and until that event happens, and where the event becomes impossible, the contract shall become void.

29. Contract contingent on event not happening.

A contract to do something or not to do a particular thing where an uncertain future event on which the contract is contingent does not happen, may be enforced after the happening of that event becomes impossible, but not before.

30. Contract contingent on conduct of a person.

Where a future event on which a contract is contingent is the way in which a person is to act at an unspecified time, the event shall be considered to have become unattainable where that person does anything which renders it impossible for him or her to act within a definite time or under further contingencies.

31. Contract contingent on happening of specified event within a specified time.

(1) A contract to do something or not to do a particular thing, which is contingent on the happening of a specified or uncertain event within a specified time, becomes void where—

(a) at the expiration of the time fixed, the event has not happened; or

(b) before the time fixed, the happening of the event becomes impossible.

(2) A contract to do something or not to do a particular thing, which is contingent on the fact that a specified event or uncertain event does not happen within a fixed time, may be enforced—

(a) when the time fixed for the happening of the event expires and the event has not happened; or

(b) before the time fixed expires, where it becomes certain that the event will not happen.

32. Agreement contingent on an impossible event.

An agreement to do something or not to do a particular thing, which is contingent on the happening of an impossible event, is void, whether the impossibility of the event is known to the parties to the agreement or not, at the time the agreement is made.

PART V—PERFORMANCE OF CONTRACTS

*Contracts which have to be performed***33. Obligation of parties.**

(1) The parties to a contract shall perform or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act or any other law.

(2) A promise binds a representative of a promisor, in case of the death of the promisor before performance, unless a contrary intention appears from the contract.

34. Refusal to accept offer of performance.

(1) Where a promisor makes an offer of performance to a promisee but the offer is not accepted, the promisor is not responsible for non performance and does not lose his or her rights under the contract.

(2) An offer shall fulfill the following conditions—

(a) it shall be unconditional;

(b) it shall be made at a time and place and under such circumstances that the person to whom it is made has a reasonable opportunity of ascertaining that the person by whom it is made is able and willing to do what he or she is bound to do by the promise; and

(c) where the offer is an offer to deliver anything to the promisee, the promisee shall have a reasonable opportunity to see that what is offered is what the promisor is bound by the promise to deliver.

(3) An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

35. Refusal of party to perform promise.

Where a party to a contract refuses or disables himself or herself from performing a promise in its entirety, the promisee may put an end to the contract unless he or she signifies by words or conduct, to its continuance.

36. Person to perform promise.

Where it appears from the nature of a case that it was the intention of the parties to a contract that a promise contained in it is to be performed by the promisor—

- (a) the promise shall be performed by the promisor; or
- (b) the promisor or the representative of the promisor may employ a competent person to perform the promise.

37. Effect of accepting performance from third person.

When a promisee accepts performance from a third person, the promisee shall not afterwards enforce performance against a promisor.

*Joint liability and rights***38. Joint liability.**

(1) Where two or more persons make a joint promise, then unless a contrary intention appears in the contract, all the persons who make the joint promise, shall be bound to fulfil the promise.

(2) Where a person who makes a joint promise dies, the representative of that deceased person, jointly with the surviving person shall fulfil the obligations.

(3) Where all the persons who make a promise die, their representatives shall fulfil their obligations jointly.

39. Obligation and liability of joint promisors.

(1) Where two or more persons make a joint promise, the promisee may, in the absence of an express agreement to the contrary, compel one or more of the joint promisors to perform the whole promise.

(2) Where a promisee who institutes a suit against one or several joint promisors obtains a decree against the promisor or promisors, nothing in this section shall be construed as permitting the promisee to institute any further suit arising out of the same cause of action, against any other joint promisor.

(3) A joint promisor may compel the other joint promisor to contribute equally to the performance of the promise unless a contrary intention appears from the contract.

(4) Where a joint promisor defaults in a contribution to the performance of a promise, the other joint promisors shall bear the loss arising from the default, in equal shares.

(5) A joint promisor who bears the loss referred to in sub section (4) may recover from the defaulting joint promisor the amount contributed by him or her arising out of the default.

40. Release of a joint promisor.

Where two or more persons make a joint promise, a release of one of the joint promisors by the promisee shall not—

- (a) discharge the other joint promisor; or
- (b) free the joint promisor who is released, from responsibility to the other joint promisor.

41. Joint rights.

(1) Where a person makes a promise to two or more persons jointly, then unless a contrary intention appears in the contract, the right to claim performance rests between that person and the other persons, jointly.

(2) Where a person to whom a joint promise is made dies, the representative of that deceased person jointly with the surviving person to whom the promise is made, are entitled to the fulfilment of the joint promise.

(3) Where persons who make a joint promise die, their representatives shall fulfil their obligations jointly.

*Time and place for performance***42. Time for performance.**

(1) Where a promisor is to perform a promise in a contract without a request by a promisee and time for performance is not specified in the contract, the engagement shall be performed within a reasonable time.

(2) Where a promise is to be performed on a specific day and a promisor undertakes to perform it without a request by a promisee, the promisor may perform it at any time during the usual hours of business on that day, at the place at which the promise ought to be performed.

(3) Where a promise is to be performed on a specific day and a promisor does not undertake to perform it without a request by a promisee, the promisee may apply for the performance of the promise at a proper place within the usual hours of business.

(4) Where a promise is to be performed without a request by a promisee and a place for its performance is not fixed, a promisor may apply to the promisee to appoint a reasonable place for the performance of the promise.

(5) Subject to the provisions of this section, the performance of a promise may be made in any manner and at any time which a promisee prescribes or sanctions.

(6) Determination of what a proper time or a proper place is, shall in each case be a question of fact.

Performance of reciprocal promises

43. Reciprocal obligation to perform.

Where a contract consists of reciprocal promises to be performed simultaneously, a promisor need not perform his or her promise unless the promisee is ready and willing to perform his or her reciprocal promise.

44. Order of performance of reciprocal promises.

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, the promises shall be performed in that order, and where the order is not expressly fixed by the contract, the promises shall be performed in the order in which the nature of the transaction requires.

45. Liability of party preventing event on which contract is to take effect.

(1) When a contract contains reciprocal promises and one party to the contract prevents the other party from performing his or her promise, the contract shall become voidable at the option of the party who is prevented from performing his or her promise.

(2) A party who sustains a loss as a result of non performance of a promise under sub section (1) is entitled to compensation from the other party for any loss which he or she sustains.

46. Default in the performance of reciprocal promises.

Where a contract consists of reciprocal promises and one of them cannot be performed, or where the performance of a promise cannot be claimed until the other promise is performed and the promisor of the other promise fails to perform it, the promisor shall not claim the performance of the reciprocal promise and shall pay compensation to the other party to the contract for any loss which the other party may sustain by the non-performance of the contract.

47. Failure to perform within a fixed time.

(1) Where a party to a contract promises to do a certain thing at or before the specified time but fails to do the thing at or before the specified time, the contract or the part of the contract that has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time was of the essence to the contract.

(2) Where it was not the intention of the parties that time is of the essence to a contract, the contract does not become voidable by the failure to do the thing promised in the contract at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to the promisee, by the failure.

(3) Where a contract is voidable on account of the failure by the promisor to perform his or her promise at the agreed time and the promisee accepts performance of the promise at a time other than the agreed time, the promisee shall not claim compensation for any loss occasioned by the non-performance of the promise at the time agreed.

