

CONTRACT ACT 2056 (2000)

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1. The Act Amending Some Nepal Acts, 2064 2064.5.9

An Act Made to Provide for legal provisions on contract

Preamble : Whereas it is expedient to update legal provisions concerning contract;
Be it enacted by the Parliament in the 20th year of the reign of His Majesty the
King Birendra Bir Bikram Shah Dev.

Chapter -1

Preliminary

1. **Short Title and Commencement:** (1) This Act may be called
Contract Act, 2056 (2000) '.
(2) It shall come into force immediately.
2. **Definitions:** Unless the context otherwise requires; in this Act;

any work in return of doing or not doing of any work mentioned in the proposal.

Chapter- 2

Contracting Parties and Proposal and Consent

3. **Person competent to Conclude Contracts:** (1) Any person other than those mentioned below may be competent for concluding a contract;
 - (a) Those who have not attained 16 years of age.
 - (b) Those who are of unsound mind.
 - (2) Notwithstanding anything contained in Sub-section (I) any person not qualified to enter into a specific contract under the prevailing law shall be deemed to be incompetent to conclude that contract. ,
 - (3) The guardian of a person who is incompetent to conclude a contract under Section 1 may conclude a contract on his/her behalf in his interest.
 - (4) Notwithstanding anything contained elsewhere in this Section, in case the prevailing law provides for a provision even to persons who are incompetent under this Act to conclude a contract on any specific matter, they shall be deemed to be qualified to conclude a contract on such that matter accordingly.
4. **Parties to be autonomous:** The parties to contract, subject to this Act shall be free to choose the form and content of contract and to determine consideration and its quantum, the terms and conditions of the contract and the nature of the remedy in the event of its violation, as well as to determine the measures for resolving disputes under the contract.
5. **Contract to be deemed to have been concluded:** A contract shall be deemed to have been concluded once the person to whom a proposal has

been presented by another person communicates his/her consent thereto.

6. **Place of contract:** (1) The place where the person advances a proposal expecting to receive consent shall be deemed to be the place where the contract has been concluded

(2) In case the place has not been specified under Sub-section (1), the place where the offerer received consent shall be deemed to be the place where the contract has been concluded.

7. Processes of proposal and consent to be deemed completed: (1) The communication of a proposal shall be deemed to be completed when it comes to the knowledge of the person to whom it is made.

(2) In case the offerer receives a notice of consent to the sent to him/her by the person to whom he/she had sent a proposal, the process of receiving consent shall be deemed to have been completed in the case of the offerer, and in case the offerer is noticed that the consent has been given in the proposal the process of giving consent shall be deemed to have been completed in the case of the proposed person.

(3) The person who has been presented with a proposal shall be deemed to have given his/her consent to it even if he/she has not done it directly to the offer in case he/she complies with the term and conditions mentioned in the proposal, or accepts any consideration, benefit or service mentioned in the proposal or expresses his/her consent in any other form.

(4) In case the offerer has mentioned in the proposal that he/she would deem the proposal to have been accepted unless he receives a notice of refusal within a specified period, the proposal shall not be deemed to have been accepted in case a notice of refusal has been sent within that-period.

8. **Proposal or Consent may be cancelled:** (1) The offerer may cancel

his/her proposal through a notice.

Provided that, in case the offerer has received from the person whom he has presented a proposal a notice to the effect that he/she has approved the proposal before receiving a notice of the cancellation of the proposal, the proposal shall not be deemed to be cancelled.

(2) The person to whom, a proposal has been presented may cancel proposal through a notice.

Provided that, the consent shall not be cancelled in case the offerer has received the notice of consent before receiving the notice of cancellation of consent.

(3) The person who has sent a notice expressing his/her refusal of a proposal may again send a notice expressing his/her consent to the proposal.

Provided that, in case the notice of refusal reaches first out of the notices of refusal or consent the contract shall not be deemed to have been concluded. In case the notice of consent reaches first; the contract shall be deemed to have been concluded.

(4) In case the notice mentioned in Sub-section (1) has been sent after sending the proposal, or the notice mentioned in Sub-section (2) has been sent after sending a notice of consent, or in case a notice has been sent under Sub-section (3) after sending a notice of refusal shall not be deemed to have been concluded if the concerned person receives such notices at the same time.

9. **Proposal to be deemed cancelled:** A proposal shall be deemed to be cancelled in any of the following circumstances:

(a) In case the offerer has proposed that the notice of consent to the proposal be given to him/her within a specified period, and the offerer

does not receive the notice of consent given by the person to whom the proposal has been presented within the period.

(b) In case the period for sending a notice of consent is not specified as mentioned in Clause (a), and the person to whom the proposal has been presented does not furnish a notice to the proposer within a reasonable period.

(c) In case the offerer dies or loses his senses before receiving consent after presenting the proposal.

(d) In case the proposal is cancelled as mentioned in Section 8.

(e) In case the person to whom a proposal has been presented dies or loses his/her senses after giving his/her consent but before the offerer receives the consent.

(f) In case the person to whom a proposal has been presented accepts it after altering any particular contained in the proposal or attaching any condition thereto.

(g) In case a proposal has been presented subject to the condition that the person to whom the proposal has been presented has to do anything or fulfill any condition before accepting the proposal, and her/she accepts the proposal without doing that work or fulfilling that condition.

10. **Contract according to proposal presented before the public:** (1) In case any person, by means of an advertisement, advances a proposal in public to the effect that he/she will pay a specific prize or any person for performing any work specified in the advertisement, and in case any person performs the work as mentioned in the advertisement, the advertiser shall pay the specific remuneration to that person.

(2) In case the work mentioned in Sub-section (2) is performed by one or more persons, only the person who has performed the work first

shall be paid prize.

Provided that, in case two or more persons have performed the work mentioned in the proposal at the same time, all of them may share the prize among themselves. In case the prize can not be shared, the proceeds of the sale of the same shall be equally distributed among them.

(3) In case a specific period has been prescribed for performing the work as per the advertisement published under Sub-section (1), the proposal, mentioned in the advertisement shall be deemed to have been cancelled immediately after the expiry of that period.

(4) A proposal advanced under Sub-section (2) may be cancelled through the medium through which it was published.

(5) Notwithstanding anything contained in Sub-section (4), in case anyone has, performed the work mentioned in the advertisement published under Sub - section (1) before the publication of a notice of cancellation of the proposal, he/she shall be paid the prize mentioned in the advertisement.

Provided that, the person who has performed the work as mentioned in the advertisement must have notified the advertiser about the completion of the work by the quickest possible means.

(6) In case any person has begun the work according to the advertisement published under Sub-section (1) and furnished a notice thereof to the advertise, he/she shall be paid an appropriate remuneration for the work, performed by him/her before the cancellation of the advertisement.

11. **Indirect contract:** Notwithstanding anything contained elsewhere in this act, a contract shall be deemed to have been concluded as follows in the following circumstances:

(a) In case a person who is incompetent to conclude a contract under

this Act or other prevailing Nepal law, or any other person who is to be maintained by him/her is provided with any material, commodity or service which material commodity service paid from the property of such he/she needs and that is consistent with his social status, to have the cost of such person to the person so meeting his/her need.

(b) In case any person, who is concerned with the payment or non-payment of any amount to be paid by another person under the prevailing Nepal law makes such payment him/herself, to have that payment repaid to him/her from the property of the person who is actually under obligation to make the payment.

(c) In case any person gives anything to another person, or employs him/her in any work, to pay the appropriate cost or remuneration.

(d) In case any person keeps under his/her personal possession any property belonging to another person that may be kept as such under the law, to keep that property as a bailment property.

(e) In case any person pays any amount (to any person) by mistake, to refund the same.

12. **Contingent contracts**: (1) In case a contract has been concluded to performing or not to perform any work if any event happens in the future, the contract shall not create any liability until such event happens.

(2) In case a contract has been concluded subject to the condition that it shall be deemed to have been concluded in case person performs any specified work in the future, no liability shall be deemed to have emerged from that contract if such person does anything in such a manner as not to perform that work or acts in such a manner that the work can not be performed.

(3) In case a contract has been concluded to perform or not to

perform any work if any uncertain event does not happen in the future, liability under that contract shall emerge only after the happening of that event becomes impossible.

(4) In case a contract has been concluded with a provision to perform or not to perform any work if any event happens within a specified period in the future, the contract shall be deemed to have become invalid after the happening of that event becomes impossible within the specified period or after the expiring of that period.

(5) In case a contract has been concluded with a provision to perform or not to perform any work if any event does not happen within a specified period in the future, liability under such contract shall emerge if that event does not happen within that period or if it becomes certain that the event will not happen within that period.

Chapter : 3

Void and Voidable Contracts

13. **Void Contracts**: The following contracts shall be void: (a) A Contract preventing anyone from engaging him/herself in any occupation, profession or trade which is not prohibited by prevailing law.

Provided that a contract shall not be deemed to have been concluded in preventing profession or trade in the following circumstances:

- (1) A contract preventing the seller from engaging him/herself in a profession or trade at the time and place as mentioned in the contract concluded between the buyer and the seller on selling and buying of the goodwill of any trade;
- (2) A contract concluded among partners in preventing their engagement in any trade or business, other than those of the

partnership firm, similar to those of the partnership firm or any other trade or business together with other competitors belonging to the same kind of trade or business as long as the partnership continues.

- (3) A contract concluded among the partners in preventing them from engaging in a trade or business under the partnership firm for the specified time or place after being separated from the partnership;
- (4) A contract preventing any individual from receiving the service of any such agency, company, firm, individual or competitor of such agency, company, firm, or individual for the specified period of time after the retirement from service or during the service of such agency, company, firm or individual pursuant to contract concluded by any individual with any agency, company, firm or individual.
 - (b) A contract restraining marriages other than those prohibited by the prevailing law.
 - (c) A contract preventing any one from enjoying the facilities already being enjoyed by the general public.
 - (d) A contract seeking to prevent the legal rights of any person from being enforced by any government office or court.
 - (e) A contract concluded in matters' contrary to or prohibited by the prevailing law.
 - (f) A contract concluded for immoral purpose or against Public morality or public interest.
 - (g) A contract which cannot be performed because the parties thereto do not exactly know about the matter in relation to which it has been

concluded.

(h) A contract which is considered impossible to fulfill even at the time is concluded.

(i) A contract which is vague as it does not provide reasonable meaning thereof.

(j) A contract concluded by an incompetent person to conclude such contract.

(k) A contract concluded with an unlawful consideration or objective.

14. **Voidable Contracts:** (1) The following contracts may be made void by the aggrieved party:

(a) A contract concluded through coercion:

Explanation

A person shall be deemed to have indulged in coercion if he/she, with the objective of compelling any person, to accept any contract against his/her will, withholds or threatens to withhold property belonging to him/her, or threatens to defame him/her, or takes or threatens to take any other action in contravention of prevailing law.

(b) A contract concluded through of undue influence:

Explanation

(1) Undue influence means influence exercised by a person upon another person who is under his/her influence and is amenable to his/her personal benefit or interest.

- (2) Without prejudice to the generality of Clause (1), the following persons shall be deemed to be under the influence of any person and amenable to his/her wishes:
- (i) A person living under his/her guardianship, protection or custody.
 - (ii) a persons who cannot take care of their interest temporarily or permanently by reason of old age, sickness or physical or mental weakness.
 - (iii) A person who can be subjected to under one's economic or ranking influences.
- (c) A contract concluded through fraud:

Explanation

A party to the contract or his/her agent shall be deemed to have committed fraud if he/she, leads the other party or his/her agent to believe or takes any action to believe the particular matter is true, although he/she knows that it is false, or suppresses any information in his/her possession, or indulges in any other fraudulent act punishable under prevailing law, with the intention of deceiving the opposite party or his/her agent.

- (d) A contract concluded through deceit:

Explanation

- (1) Any of the following act shall be taken as deceit:
- (i) Submission of false particulars on any matter without reasonable basis for doing so;

- (ii) Misleading any party so as to aggrieve him/her;
 - (iii) Causing any wrong deliberately on the matter of contract;
- (2) In a case of a voidable contract under this section, the following matters shall be dealt with as prescribed below:
- (i) The party caused to enter into a contract may, instead of making the contract void, demand his/her position to be remained the same, as it was prior to conclusion of the contract.
 - (ii) Burden of proof of innocence of undue influence shall be rest in the party who claims that such contract is not concluded under an undue influence in case a contract is concluded with the person who is under one's influence and amenable to his/her wishes.

Chapter- 4 :

Contracts relating to Guarantee, Indemnity and Subrogation

15. **Contracts relating to guarantee:** (1) A contract relating to guarantee shall be deemed to have been concluded in case it provides that if any person defaults in the repayment of the loan obtained by him or fulfillment of the obligation accepted by him/her, it shall be repaid or fulfilled by a third person.

(2) In case a third party has provided guarantee under Sub-section (1) and in case the person who has to repay the loan does not repay it or fulfill the obligation to be fulfilled, the person guaranteeing such loan or

obligation shall repay the loan or fulfill the condition according to the contract.

(3) Contract relating to guarantee must have been concluded in writing.

16. **Surety's liability**: Except when otherwise provided for in the contract, the surety's liability shall be as follows:

- (a) Liability of the surety shall emerge from the very time when the person who has to meet the liability fails to meet it.
- (b) Liability of a surety shall be similar to that of the person who has to repay the loan or fulfill any obligation. The surety shall remain responsible until the person becomes free from the liability of repaying the loan or fulfilling the obligation.
- (c) The creditors may impose the surety with the liability immediately after the default by the person who is under obligation to repay the loan or fulfill the obligation.
- (d) In case both security and guarantee have been provided in consideration of any loan or liability, the surety shall have no liability to the extent covered by the security so provided.
- (e) The liability of a surety shall not terminate simply because the person who has to repay the loan or fulfill the liability becomes free from the liability through the mobilization of law.

Explanation

For the purpose of this Act, the term 'creditor' shall denote a person who has supplied the loan and this term also includes a person who may obtain any benefits from or have any work done by the person who has to repay the loan or fulfill the

liability.

17. **Circumstance in which surety will be free from liability:** (1) Except when otherwise provided for in the contract, the surety shall be free from liability to the extent as mentioned in any of the following circumstance:

- (a) In case the person who has to repay a loan or fulfill a liability changes the terms and conditions of the contract in such a way as to have a substantial impact on the contract without the approval of the surety, in respect to the transaction to be carried out after such changes.
- (b) In case a contract is concluded to absolve from liability to the person who has to fulfill the concerning matter in respect to which the guarantee has been provided.
- (c) In case the person who has to repay a loan or fulfill a liability is absolved from liability, or in case the loan is waived, due to the action of the creditors.
- (d) In case the creditor agrees to absolve the debtor from the liability by collecting a sum less than what is due, or to provide additional time limit for repaying the loan, or not to initiate a lawsuit.
- (e) In case any action of the creditors causing an adverse impact to the surety's right to legal remedy against the person who is under obligation to repay the loan or fulfill the liability.
- (f) In case the creditor loses, damages or returns any security obtained by him from the debtors, to the extent of the value of that security.
- (g) To the extent to which the person who is under obligation to repay a loan or fulfill a liability has repaid the loan or fulfilled

the liability according to the contract.

(2) Notwithstanding anything contained in Sub-section (1), the surety shall not be deemed to have been absolved from the liability, except when otherwise provided for in the contract, simply because the creditor fails to initiate legal action against the surety or try to realize the amount to be realized by him/her in time.

(3) In case there are two or more sureties, and in case the creditors absolves any one of them from the liability, the other surety/sureties shall not be free from his/her/their share in the liability. In case the share in the liability of the surety/sureties can not be separated, no surety shall be deemed to have been absolved from his liability simply because; the creditor has absolved him/her from the liability.

(4) In respect to a contract relating to guarantee which concerned with the fulfillment of a liability, the surety shall not be deemed to have been absolved from the obligation of fulfilling the liability under the contract simply because a dispute has arisen among the parties in relation to that contract, except when otherwise provided for in the contract.

18. **Relationship between the Surety and the Debtors:** Except when otherwise provided for in the contract, the relationship between the surety and the debtors in respect to the following matters shall be as follows:

- (a) The surety shall cause a person who is under obligation to repay a loan or fulfill a liability according to the contract.
- (b) In case the debtor has supplied any property or security to the surety in consideration of the guarantee provided by him/her while obtaining the loan or accepting a liability, the surety may not mortgage, sell, or otherwise transfer the title, thereto without the consent of the debtor.

- (c) In case a guarantee has been provided in consideration of any loan obtained or liability accepted for any specific purpose, the objectives, nature or terms and conditions of that loan or liability may not be changed without the consent of the surety.

19. **Surety to substitute creditor:** (1) After the surety repays the loan to be repaid by the debtor or fulfills the liability to be fulfilled by the debtors under the contract, the surety shall substitute the creditor in regard to that loan or liability, and may initiate legal action against the debtor like a creditor under this Act or prevailing law.

(2) Notwithstanding anything contained elsewhere in this chapter, the total amount and interest due on that amount, or any other fee or amount payable on that, shall be paid by the debtors to the surety in consideration of the loan repaid or liability fulfilled by the surety on his behalf according to the contract relating to guarantee.

(3) In case it becomes necessary to take legal action because of the failure the debtor to pay the amount payable by him/her under Sub-section (2), or in case it becomes necessary to incur any other expenses in consideration of the surety may have such expenses recovered from the debtor.

20. **Guarantee related viable contract:** The surety may cause to declare void the contract relating to guarantee in the following circumstances:

(a) In case the creditors him/herself, or any other person with his/her consent, has obtained the guarantee by supplying wrong or misleading information or notice to the surety in connection with the matter connected with the transaction in respect to which the guarantee has been provided;

(b) In case the subject matter, property (cash or kind) involved or

facts relating to guarantee have been concealed or not mentioned:

(c) In case the contract has been concluded with a provision a third person as a surety, and the third person has not given his/her consent to provide the guarantee.

21. **Equal liability of co-sureties:** (1) In case two or more person have jointly or separately provided joint guarantee for any loan or liability, and in case the debtor fails to repay the loan or meet the liability, the co-sureties shall repay the loan or meet the liability or the requirements of the contract on an equal basis, except when otherwise provided for in the contract.

(2) In case the guarantee has been provided on a sector wise basis while providing joint guarantee under Sub-section (1), a surety shall be required to meet only the liability for that sector for which he/she has provided the guarantee.

22. **Contract relating to indemnity:** (1) In case person has entered into a contract relating to indemnity with a provision to pay any party to a contract or a third person for any loss or damage that may result from his/her actions while working under the direction of that party to that contract, he/she may realize as compensation all or any of the following amounts, subject to that contract:

- (a) The indemnity amount mentioned in the contract;
- (b) In case any loss or damage has been caused to a third person, the amount to be paid or borne in consideration thereof;
- (c) The amount spent on the case filed or defended by him/her in connection with the contract relating to indemnity;
- (d) The amount spend on the legal action, if it becomes necessary to initiate such action for failure to pay the amounts

mentioned in Clause (a) to (c).

(2) Notwithstanding anything contained in Sub-section (1), in case any person, while working under the direction of the other party, works negligently or with the intention of causing any loss or damage to that party or a third person, and in case the concerned party or the third person suffers a loss damage as a result thereof, he/she shall him/herself be responsible for such loss or damage.

23. **Provision concerning subrogation:** (1) In case any person has concluded a contract with any other person against any loss or damage that could be caused by a third person to his/her property, facilities, rights or profits that could result from his/her business, the other person who has signed the contract shall him/herself bear any such loss or damage irrespective of who is responsible.

Provided that, in case the contract has been signed with a provision to have any such loss or damage borne by any other person, such loss or damage shall be realized from that person.

(2) In case the amount or compensation to be paid for any loss or damage under Sub-section (1) has been mentioned in the contract, it shall be done accordingly and in case no such provision has been made in the contract, an appropriate amount or compensation shall be paid, or arrangements be made for payments, to the person affected by the loss or damage, or to his/her heir in case he/she is dead.

(3) In case there has been any loss or damage as mentioned in Sub-section (1), the person paying the amount or compensation under Sub-section (2) shall be deemed to have subrogated the person who has sustained the loss or damage, and, accordingly, the subrogator may have the amount or compensation in consideration of such loss or damage recovered

from the person causing such loss or damage.

24. **Rights of subrogator:** The rights and liabilities of a subrogator shall be as mentioned in the contract, if any, and if not, it shall be as follows:
- (a) All the rights of the person who has sustained the loss or damage shall devolve on the subrogation.
 - (b) The subrogator mentioned in Clause (a) may realize from the person who has caused the loss or damage, or from the party to a contract concluded in that connection, if any, the amount or reasonable compensation paid by him/her to the person who has suffered the loss or damage, as well as the expenses incurred in contesting a case, if any.

Chapter- 5:

Contracts Relating to Bailment

25. **Contract relating to Bailment:** A contract relating to bailment shall be deemed to have been concluded in case any person delivers any property to another person on a returnable basis or for handing it over to any other person or selling it as ordered by him/her.

Provided that, a deed must be execute while bailing any property worth more then Rs.5,000.00

Explanation: For the purpose of this chapter, the term 'property' includes any movable property and title to such property.

26. **Process of bailment to be deemed completed:** (1) The process of bailment shall be deemed to have been completed after the bailee receives the bailment property for being kept as such.
- (2) In case any property is already being kept by any person or a person authorized by him/her under his/her custody or control, the

concerned property shall be deemed to have been taken by him/her as a bailed property.

27. **Particulars of bailed property to be mentioned:** (1) In case the bailee knows that the bailed property must not be used due to any defect in it, or because it could cause any loss or damage or because separate arrangements or provisions be made for its protection, he/she shall inform the bailee about all such matters to the best of his/her knowledge.

(2) In case any information to be supplied under Sub-section (1) is not supplied even while knowing about it, the bailer must bear the loss or damage caused by that property or because of that property to the bailee.

(3) Notwithstanding anything contained in Sub-section (1), in case any property given on rent or as collateral or for sale causes any loss or damage while using it due to its defect, the bailer must bear such loss or damage even if he/she has no knowledge about the defect in the property.

28. **Bailee's liability:** (1) A bailee shall look after and arrange for the safety of the property received by him/her as bailed property as mentioned in the terms and conditions of the contract, or as his/her own property in case nothing has been mentioned in the contract.

(2) Except when otherwise provided for in the contract, in case any bailed property depreciates or is lost, stolen, damaged, destroyed, decreased or harmed because of a natural calamities despite taking care and arranging for its security under Sub-section (1), the bailee need not return such property.

Provided that, in case the property is depreciated or is lost, stolen, damaged, destroyed decreased or harmed because of the negligence or *malfide* intention of the bailee, or of his/her failure to take care or ensure its safety according to the terms and conditions of the contract, he/she must

return the property or pay an equivalent amount to the bailer.

(3) In case the bailee uses the bailed property without having the right to do so under the contract or in a manner contrary to the terms and conditions of the contract, and in case such use causes any loss, damage, destruction, depreciation or harm to the property, the bailee shall pay for compensation to the bailer.

(4) Except when otherwise provided for in the contract, the bailee shall not mix-up the bailer's property with his/her own property.

Provided that, in case the bailee has mixed-up his/her own property with that of the bailer, both parties shall have title on that property, as well as to the income accruing there from, in proportion to their respective shares.

(5) In case the bailee has mixed-up his/her own property with the bailer's property and the property so mixed-up can be separated, the two parties shall have title to their respective property so separated, and the expenses incurred for separating the property so mixed and the loss, if any caused, to the bailer while mixing-up such property in that manner shall be borne by the bailee.

(6) In case the bailee has mixed-up his/her own property with the bailer's property without the consent of the bailer and their property cannot be separated as mentioned in Sub-section (5), the title of the bailer to the bailee's property shall terminate if he/she agrees to obtain his/her share from the property so mixed-up. In case the bailer does not agree to take his/her share from such property the bailee shall be required to pay compensation for his/her property.

29. **Bailed property to be returned:** (1) After the expiry of the period prescribed while bailing a property or fulfillment of the objectives with which the property has been bailed, the bailee shall return the bailed

property to the bailer.

(2) In case the property is not returned under Sub-section (1) within the prescribed period, or within a reasonable period according to the nature of the property where no such period has been prescribed, or in case the bailer does not take it back and the property is lost, stolen, damaged, destroyed or reduced after that date or bailer suffers any loss or damage due to that property after that date the party because of which the loss or damage has resulted shall bear the loss or damage.

(3) Except when otherwise provided for in the contract, in the case of a bailed property owned by several persons, it may be handed over to any one of such owners or to the person ordered by them, and the hand over of the property in that manner shall be deemed to have been done duly.

(4) Except when otherwise provided for in the contract, the property raised or earned through the bailed property shall also belong to the bailer.

30. **Person bailing other's property to be held responsible:** In case any person bails any property on which he/she has no title, right or ownership to any other person to keep as a bailed property, and the bailee has to bear any claim of a third party or any loss, damage or any expenses in for accepting that bailment the bailer shall be required to bear such expenses as well.
31. **Found property may be kept after notifying the police:** In case person finds any property in any way, he/she may keep it safely with him/herself until the concerned owner is found out after notifying the police. The expenses incurred for finding out the owner of the property and for keeping the property shall be borne by the concerned owner, and the person who has found the property may keep it with him/herself until the

owner pays such expenses.

32. **Property given for repair and maintenance to be returned:** (1) In case person has given any property for repair, improvement or renovation in any way to any person, the latter shall return it to the former after collecting expense or service charge fixed for repair, improvement or renovation.

(2) The property handed over under Sub-section (1) shall be returned to the concerned owner after repairing, improving or renovating it within the period mentioned in the contract. In case it is not returned within the prescribed period, or any additional loss or damage is caused to the property or the property is damaged in such a way as to become unusable in the course of repair, improvement or renovation, action shall be taken as provided for in the contract, and if no provision has been made in the connection in that contract, an appropriate compensation shall be paid to the concerned owner.

(3) Notwithstanding anything contained elsewhere in this Section, the person repairing, improving or renovating any property may keep it with him/herself until the cost of repair, improvement or renovation or the service charge fixed for that purpose is paid. In case the cost or service charge is not paid within a reasonable period, the person repairing, improving or renovating the property may recover his/her expenses or service charge by selling the property,

33. **Bailment Expenses:** While bailing a property, expenses incurred for looking after and ensuring the safety of the bailed property shall be borne by the bailer, except when otherwise provided for in the contract.

34. **Contract relating to bailment to be void:** (1) In case it is proved that any property has been bailed with the intension of avoiding a partition of

property or payment of any government charge or any amount involved in any claim or to be paid to anybody, or with any other illegal motives, the contract relating to such bailment shall be void.

In case the bailee does not keep the bailed property according to the term and conditions of the contract, the bailer may get back the bailed property at any time.

Chapter -6

Contracts relating to Collateral and Deposit

35. **Contracts relating to collateral or deposit:** (1) In case any person has obtained a collateral while supplying credit to anybody as a security for that credit, or obtained any property as a deposit in the form of a guarantee to perform the concerned work while having any work performed a contract relating to collateral or deposit shall be deemed to have been concluded.

Explanation:

For the purpose of this Chapter, the term 'property' shall denote any movable or immovable property, and title or document establishing title to that property.

(2) In case a collateral has been obtained while supplying a credit, the credit and interest thereon, and in case any deposit has been obtained to perform any work the other expenses relating to that work, as well as the expenses incurred for looking after the collateral or deposit, shall also be deemed to have been included in the contract relating to collateral or deposit.

36. **Collateral or deposit to be returned:** (1) Except when otherwise provided for in the contract, the collateral obtained for a credit shall be returned after the repayment of the credit, or the deposit obtained for a

work shall be refunded to the concerned person after the completion of that work.

(2) In case the collateral or deposit kept under Sub-section (1) has been or can be divided into different parts, the collateral or deposit may be returned to the extent covered by the portion of the credit repaid or work performed.

37. **Rights of person obtaining collateral or deposit:** (1) In case a credit has been obtained by pledging any property as collateral and the debtor fails to repay the credit or interest thereon, if any, within the prescribed period, the person who has taken the collateral may initiate action according to law and realize the amount to be realized in consideration of that credit by selling or auctioning the collateral according to current market price or transfer the title to such collateral subject to law in case it can not be sold or auctioned.

(2) In case the property kept as collateral is sold at a price lesser than the amount to be realized from the debtor by the person who has the collateral under Sub-section (1), the shortfall may be recovered from other assets of the debtors. In case the collateral is sold at a price higher than the amount to be recovered, the excess amount shall be refunded to the debtors.

(3) Notwithstanding anything containing in Sub-section (1) and (2), in case the property kept as collateral has not yet been sold or the title to it has not yet been transferred, the person who has pledged the property as collateral may clear his property by repaying the credit and interest thereon and any other amount payable at any time.

Provided that, the person pledging the property as collateral shall also bear the additional liability emerging on the property kept as collateral owing to his failure to repay the amount within the stipulated period.

(4) In case anyone has been entrusted with the responsibility of performing any work by obtaining any property as deposit, and the concerned person fails to complete the concerned work or the concerned work fails to be completed within the stipulated period, the property kept as deposit may be used to complete the work or to recover the expenses incurred thereupon. In case the work can not be completed with the property kept as deposit, the amount in shortfall may be recovered from the other assets of the person who has furnished the deposit.

38. **Consequences of pledging property without sufficient title as collateral or 'deposit':** (1) In case anyone has obtained a credit or work by pledging as collateral or depositing any property to which he/she has no title or ownership or any property received under a contract which is void under this Act, and the person obtaining such collateral or deposit has no knowledge about the matter, the latter may demand the property from the to which the he/she has a title so as to be kept as collateral or deposit. In case the former fails to provide such collateral, the latter may cause the contract to be void.

(2) In case any property received under a void contract has been pledged as collateral or deposit, and such contract had become void before furnishing such collateral or deposit or the party receiving the collateral or deposit know that the concerned property did not belong to the person furnishing it as collateral or deposit, the person obtaining such property as collateral or deposit shall have no right to it and may realize the amount to be realized by him/her or have the work to be performed from the other property of the party furnishing the collateral or deposit.

(3) In case the person furnishing the collateral or deposit has a partial or limited title to or ownership of the property pledged as collateral or deposit, the person accepting such property as collateral or deposit shall

also have title to that property to the same extent.

39. **Creditors to have equal status:** (1) In case anyone has obtained credit from several creditors in one or several installments by pledging his/her property as collateral, and the property so pledged as collateral is not sufficient to repay the credit of all the creditors, all the creditors who have used the property as collateral shall be deemed to have equal status in respect to outstanding credit and all of them may make a proportionate claim on the property, except when otherwise provided for in the contract.

(2) In case any property which has already been pledged as collateral under Sub-section (1) is again pledged as such with a provision to give priority to the second creditors in the future, the concerned contract shall be void. In case the (second) creditor has already realized his/her credit from the collateral before the contract becomes void even while knowing that there are other creditors in respect to the collateral, he/she shall refund the amount to the other creditors and realize his/her credit from the other assets of the person who has pledged the property as collateral.

Chapter- 7

Contract relating to Sale of Goods

40. **Contract relating to sale of goods:** (1) A contract relating to sale of goods shall be deemed to have been concluded . in case any seller agrees to hand over any goods to the buyer immediately or in the future by receiving a price.

Explanation

***For the purpose of this chapter, the term 'goods' means any type of movable or immovable property except current used currency, security,**

* Amended by the Act Amending Some Nepal Acts, 2064

or actionable claim .

(2) A contract relating to sale of goods may be conditional or unconditional.

(3) A contract may be concluded with a provision to sell goods owned or possessed by the seller or those to be produced or acquired by him/her in the future.

41. **Contract relating to sale of goods to be void:** In case a contract has been concluded to sell specific goods, and in case the goods have suffered any loss or damage at the time of or before concluding the contract and the seller had no knowledge thereon at the time of concluding the contract, the contract shall be void.

Explanation

For the purpose of this Section, 'Specific goods' means the specific goods mentioned at the time of concluding the contract.

42. **Determination of price of goods:** (1) Except when otherwise provided for in the contract, the price of goods shall be determined on the basis of the terms and conditions of the contract or according to the procedure agreed upon in the contract or in the process of transaction between the parties.

(2) In case the price of goods has been determined according to their weight and measurement, the price of goods shall be fixed on the basis of the net weight and measurement, except when otherwise provided for in the contract.

(3) In case the price of goods can not be determined under Sub-section (1) or (2), the buyer shall pay to the seller a reasonable price taking into account the concerned circumstances.

43. **Price of goods to be paid:** Except when otherwise provided for in the

contract, the price of goods must be fully paid as follows in the following circumstances:

- (a) A buyer shall pay to the seller the price of goods bought by him/her at the time of buying them.
- (b) The price of goods shall be paid in cash.
- (c) The contract shall be deemed to have been concluded with a provision to pay the price and hand over the goods simultaneously.

Explanation

For the purpose of this Section, the term 'cash' includes cheques, traveler's cheques, promissory notes, bills of exchange, letter of credit, bank draft, credit card and telegraphic transfers payable through bank.

44. **Particulars of goods:** (1) In case the name, brand, trademark or specification of goods to be sold are mentioned in the contract, the contract shall be deemed to have been concluded to sell goods of the same name, brand, trade mark or specification.

(2) In case the name, brand, trademark or specification and sample goods to be sold have been mentioned, the bulk of those goods shall correspond not only to the sample but also to their name, brand, trademark or specification as mentioned in the contract.

45. **Title to be deemed to the goods to be sold:** (1) Except when otherwise provided for in the contract, the seller shall be deemed to have or going to have title to the goods agreed to sell in the future. Goods agreed to sell in the future shall be considered to be or going to be free from anybody's seizure, control or procession .

(2) Except when otherwise provided for in the contract, the seller shall be deemed to have the right to sell the goods sold or to be sold by him/her.

46. **Goods to be deemed to be of merchantable quality:** (1) Except when otherwise provided for in the contract, goods sold or to be sold shall be deemed to be of merchantable quality.

(2) In case specific goods sold or to be sold for any specific purpose are suitable for that purpose, they shall be considered to be of merchantable quality.

Provided that in case any defect in the goods has been mentioned in the contract itself, or in case the buyer had become aware of any defect before signing the contract or while inspecting the goods, those goods shall not be deemed to be of merchantable quality.

(3) In case the quality of specific goods has been mentioned in the contract, those goods shall be deemed to be of the same quality. In case the quality of the goods is not mentioned in the contract, their quality shall be as of the current standard.

(4) Except when otherwise provided for in the contract, the seller shall not be deemed to have given a warranty to the effect that the goods sold or to be sold are of a specific quality.

47. **Sale through samples:** (1) In case provisions have been made in a contract to sell goods after inspecting their samples directly or otherwise, it shall be deemed to have been signed to sell goods after inspecting their samples.

(2) In case a contract has been signed to sell goods after inspecting their sample, it shall be deemed to include the following conditions, except when otherwise provided for in the contract:

- (a) The bulk of the goods shall correspond to the samples in quality.
- (b) The buyer shall have, a reasonable opportunity to compare the quality of the bulk of the goods with the sample.
- (c) The goods sold or to be sold shall be free from any defect, and that their merchantable quality shall be apparent while inspecting them at the time of comparing them with the sample.

48. **Provisions concerning transfer of ownership of goods:** (1) In case a contract has been signed to sell specific or particular goods, their delivery shall be made as provided for in the contract, if any, and if not, according to the conditions of the contract, the conduct of the parties, and the intention of the parties expressed through the concerned circumstances.

(2) Except when otherwise provided for in the contract, in case a contract has been signed in such a situation that specific goods can be delivered immediately, the parties shall be deemed to have the intention of delivering them after concluding the contract or paying their price.

(3) In case a contract has been signed in such a situation that specific goods can be delivered immediately, and in case the buyer has to weigh, measure and examine them or execute any function to determine their price, such goods shall not be delivered until such functions are executed and information thereof is supplied to the seller within a reasonable period.

(4) Except when otherwise provided for in the contract, a contract shall be deemed to have been made with a provisions to deliver the goods at the very place where they have been sold or are to be sold.

(5) Except when otherwise provided for in the contract, the title or ownership of the buyer shall be deemed to have been established on the

goods from the very moment when they are delivered to him/her.

49. **Risk to be borne:** (1) Except when otherwise provided for in the contract, the seller him/herself shall bear the risk of any loss or damage to the concerned goods until they are delivered to the buyer.

(2) In case there has been a delay in the delivery of goods due to any reason concerning the buyer or the seller, the party responsible for such delay shall bear the risk of loss or damage under Sub-section (1).

(3) In case the seller has agreed to deliver goods from the place of purchase to the place specified by the buyer, the seller him/herself shall bear the risk of any loss or damage to goods, except when otherwise provided for in the contract.

50. **Buyer's right to inspect goods:** In case sold goods are delivered to the buyer; the buyer shall have a reasonable opportunity to examine and ascertain whether or not they, conform to the contract and he/she shall not be deemed to have accepted the goods until this is done.

51. **Goods to be deemed delivered:** The buyer shall be deemed to have received the goods in any of the following' circumstances:

- (a) In case the buyer or his/her representative receives the goods;
- (b) In case a receipt or letter acknowledging the delivery of the goods is issued;
- (c) In case the buyer inspects the goods and ascertains that they conform to the contract under Section 50, and accordingly keeps them in his/her stock;
- (d) In case the goods reach the buyer and are retained by him/her, even if he does not send information about his/her refusal to accept them within a reasonable time limit,

(e) In case he/she does anything to prove his/her ownership of such goods.

52. **Time-limit for delivering goods:** (1) In case the contract provides that goods to be delivered at any specified time or within any specified period, the seller must deliver the same to buyer at that very time or within that very period.

(2) Notwithstanding anything contained in Sub-section (1), in case the buyer accepts goods delivered by the seller before the time or period prescribed in the contract, or after the time of period prescribed in the contract, the seller shall be deemed to have delivered the goods.

53. **Documents relating to sold goods to be handed over:** Except when otherwise provided for in the contract, the ownership of goods shall not be deemed to have been transferred after sale until basic documents connected with their ownership or required for their use are handed over.

54. **In the event of delivery of goods in a quality different from the contracted quality:** (1) In case the seller delivers goods to the buyer in a quantity less than the quantity mentioned in the contract, the buyer may refuse to accept them.

Provided that, in case the buyer accepts goods even in the quantity, he/she shall be required to pay the price of the quantity at the rate mentioned in the contract.

(2) In case the seller delivers goods to the buyer in a quantity higher than the quantity mentioned in the contract, the buyer might accept them only in the quantity mentioned in the contract, and reject the rest or the entire quantity.

Provided that, in case the buyer accepts the entire quantity of goods so delivered, he/she shall be required to pay for them at the contract

rate.

(3) In case the seller delivers to the buyer, he has contracted to sell mixed with goods of a description not included in the contract, the buyer may accept the goods mentioned in the contract and reject the rest, or reject the entire lot.

(4) Except when otherwise provided for in the contract, the buyer shall not be bound to accept delivery of goods in installments.

(5) Excepts when otherwise provided for in the contract, in case the buyer refuses to accept goods brought by the seller for delivery, the buyer shall not be bound to return them to the seller.

Provided that the buyer shall inform the seller through the quickest possible means about his/her refusal along with the reasons thereof.

55. **Special provisions concerning compensation:** Notwithstanding anything contained elsewhere in this Act, action in respect to compensation for contract under this chapter shall be taken as follows:

(1) In case a buyer does not accept or refuses to accept or refuses to pay the price of goods after once signing a contract relating to sale of goods, the seller may, subject to the contract, claim compensation from the buyer in consideration of the buyer's failure to accept or refusal to accept the goods.

(2) While determining compensation under Clause (a), in case goods not accepted or rejected by the buyer are available in the market, compensation shall be determined on the basis of the difference between the price of goods mentioned in the contract and the market or current price.

(3) In case the seller does not deliver or refuses to deliver goods

according to the contract after signing a contract relating to sale of goods, the buyer may claim compensation from the seller in consideration of his/her failure to deliver the goods.

While determining Compensation under Clause (c), in case the goods which the seller has refused or failed to deliver to the buyer are available in the market, compensation shall be determined on the basis of difference between the price of the goods mentioned in the contract and the market or current price.

Chapter- 8

Contracts Relating to Agency

56. **Contracts relating to Agency:** Any person may appoint any other person as his/her agent to do anything on his/her behalf, except something connected with his/her personal skills or to conduct business as his/her agent of may transaction with a third person on his behalf or to represent himself to such person, or to establish any kind of legal relation with the person appointing an agent and a third person, and in case an agent is so appointed, a contract relating to agency shall be deemed to have been concluded.
57. **Recognition of transaction made or carried out by an agent:** (1) The liability resulting from the contract concluded through an agent appointed under Section 57 or from the action taken or work performed by the agent, shall be recognized as resulting from a contract signed or work performed by the principal person, and implemented accordingly.

Provided that, the principal person shall not be responsible for any action taken by the agent beyond his/her authority.

(2) Notwithstanding anything contained in Sub-section (2), among the actions taken beyond the authority, in case some of them are within

his/her authority and some beyond it, and in case the action taken from within his authority can be separated principal person shall be responsible for actions taken to the extent of his/her authority.

(3) Any information supplied to the agent in the course of transactions with the principal person through his/her agent shall be deemed to have been supplied to the principal person.

58. **Power to appoint Sub-agents:** (1) In case it is necessary to appoint, a sub-agent according to the nature of any trade, business or transaction, or in case a sub-agent can be appointed according to provision contained or practice followed in the contract relating to agency, the agent may, except when otherwise provided for in the contract, appoint a sub-agent with the consent of the principal person.

Provided that, an agent who has been appointed on the condition that he/she will personally represent or personally execute any work may be able to appoint a sub-agent.

(2) In case a sub-agent is appointed under Sub-section (1), the principal person shall be informed accordingly, and a sub-agent so appointed in that manner shall have right and duty equal to that of the agent appointed by the principal person.

(3) In case any agent appoints a sub-agent without the consent of the principal person, the latter shall not be responsible for any action taken or work performed by the sub-agent. A sub-agent so appointed shall be personally responsible.

59. **Matters to be complied with by agent:** (1) Except when otherwise provided for in the contract, an agent shall comply with the following matters:

(a) Work subject to the conditions of the contract relating to

agency and the directives issued by the principal person.

- (b) In case no condition has been mentioned in the contract or the principal person has issued no directive, the agent shall work as entrusted to him/her in the manner in which it has to be performed according to the nature of the trade and business and the laws and practices of the place of transaction, with *bona fide* motive, full dedication and necessary skills and efficiency.

Provided that in case the principal person has a knowledge in advance that the agent has a knowledge in advance that the agent has no skill or capability in respect to any subject, the agent shall not be responsible for any loss or damage resulting from such lack of skill or capability.

- (c) An agent who has been removed from his/her position shall not do anything on the same subject, as before, in the capacity of an agent.
- (d) The agent shall supply or show details of account and record relating to the agency business when demanded by the principal person.
- (e) In case any obstruction, obstacle or difficulty arises in the course of performing work relating to agency, the agent shall notify the principal person as soon as possible and obtain necessary directives, and the principal person shall him/herself be responsible for any action taken according to the directives so issue.

(2) In case the principal person suffers any loss or damage because of the failure of the agent to fulfill his/her duties under Clause (a),

(b) and (c), agent shall personally bear loss or damage so incurred.

60. **Agent to be responsible:** (1) Except when otherwise provided for in the contract, the agent shall be personally responsible for transactions made by him/her on behalf of the principal person in the following circumstances:

- (a) In case he/she concludes a contract with a third party in relation to any transaction with provision for personal responsibility.
- (b) In case any work has been done for or on behalf of an unidentified principal person, in case the principal person is not identified;
- (c) In case the principal person can not be sued for any reason;
- (d) In case the contract has been signed in his/her own name;
- (e) In case anything has been done in contravention of the contract relating to the appointment of agent or beyond his/her authority;
- (f) In case any fraud or cheating has been committed in the course of the transaction
- (g) In case the agent has to bear personal liability according to the nature of the trade;
- (h) In case the interest of the agent is also involved in the transaction.

(2) Except when otherwise provided for in the contract concluded between the agent and a third person, only the fact that the agent is personally responsible under Sub-section (1) shall not be deemed to have

prejudices the right of the third person to make any claim against the principal person and legal action may be initiated against the principal person as well for arrears due from the agent.

(3) For the purpose of initiating legal action against the principal person under Sub-section (2), the time limit shall be deemed to have begun from the date of the last payment made by the agent.

61. **Termination of agency:** (1) Except when otherwise provided for in the contract, the agency shall be deemed to have *epso facto* terminated in the following circumstances;

- (a) In case the agent voluntarily decides not to continue it;
 - (b) In case the principal person conceals the authority granted or contract signed with the agent or gives a notice to the agent regarding the impossibility of complying with the contract;
 - (c) In case the agent has been appointed for any specific work that works is completed;
 - (d) In case the agent has been appointed for a specific period, after the expiry of that period;
 - (e) In case the principal person or the agent loses his/her senses;
 - (f) In case the principal person is declared bankrupt;
 - (g) In case the subject regarding, which the agent has been appointed no longer exists;
 - (h) In case an agent is appointed by a company or an agent of a company, if the company is liquidated.
- (2) All or any of the power granted by the principal person to the

agent may be cancelled at any time before the agent exercises them. Provided that, in case the agent has already exercised some of such powers, the work performed regarding to those powers shall not be deemed to have been cancelled.

(3) Notwithstanding anything contained elsewhere in this Section, in case the agent has a share in the property connected with the main subject of the agency, the agent may not be dismissed, in such a manner as to have a negative impact on such share.

62. **Prohibition to remove an agent:** (1) Except when otherwise provided for the contract, in case an agent has been appointed for any specific period or work, the principal person shall not remove him/her before that period or before the completion of that work without appropriate and sufficient reasons.

(2) An agent who has been appointed without prescribing any specific period or work can not be removed without a prior notice mentioning appropriate reasons;

(3) In case the principal person removes any agent in a manner opposed to Sub-sections (1) or (2), the principal person shall pay a reasonable compensation to the agent.

63. **Agent prohibited from giving up agency:** (1) Except when otherwise provided for in the contract, the agent who has been appointed for a specific period or work shall not stop working as an agent before the expiry of the specific period or completion of the specified work without appropriate and sufficient reasons.

(2) An agent who has been appointed without specifying the period or work under Sub-section (1) shall not give up that work without informing the principal person in advance along with the reasons for doing so.

(3) In case any agent stops working in that capacity contrary to Sub-section (1) or (2), the principal person may claim a reasonable compensation.

64. **Sub-agent also to leave if agent leaves:** In case an agent no longer remains in that capacity under this act, the sub-agent appointed by him/her shall also be deemed to have automatically left.

Chapter- 9

Contracts Relating to Transportation of Goods

65. **Contracts relating to Transportation:** (1) A contract relating to transportation shall be deemed to have been concluded if it provides for the transportation of goods from one place to another.

(2) Except when otherwise provided for in the contract, the receipt to be issued by the transporter to the owner of goods for their transportation at the time of handling them over for the purpose of transportation shall be recognized as proof of contract between them.

Explanation:

For the purpose of this Chapter, the term 'transporter' means a person operating a transport service other than air or marine transport, or a person operating a business of such operation, and the term also includes a person operating the transport business through animal or any other means.

Provided that, in case any person employed by the owner of goods on wage basis or his/her agent or a person working under him/her transports goods, he/she shall not be recognized as a transporter for the purpose of this chapter.

66. **Transporter's obligations:** (1) It shall be the obligation of the transporter to transport and condition goods received from their owners for

transportation at the prescribed place and in their proper condition.

(2) In case goods received from the owner for transportation are lost, destroyed, broken, harmed or damaged, or in case they do not reach their destination in proper condition for any other reason, the transporter shall be held responsible.

(3) The transporter shall transport goods within the period mentioned in the contract, and within a reasonable period in case no period for transporting the same has been mentioned in the contract, and hand them over to their owner or his/her agent or a person designated by him/her.

67. **First transporter to be held responsible in case goods are transported through several means of transport:**

In case it becomes necessary to transport goods through more than one transporter or through more than one means of transport, the transporter to whom the owner of goods has handed them over shall be held personally responsible for the purpose of this chapter, except when otherwise provided for in the contract.

68. **Liability of transporter to be limited:** (1) Except when the owner of goods or his/her agent has clearly declared at the time of concluding the contract that the goods to be transported are worth more than Ten Thousand Rupees or except when otherwise provided for in the contract, the amount of compensation to be paid by a transporter for any loss or damage to goods transported by him/her shall not exceed Ten Thousand Rupees.

(2) Notwithstanding anything contained in Sub-section (1), the transporter shall not be held liable for any loss or damage to gold, silver, diamond jewels or goods made thereof, precious stone, negotiable instruments, securities, documents registered by offices, certificates issued by educational and other institutes, coins, bank notes, postal stamps, fish,

meat, fresh fruits and vegetables, insecticide, inflammable materials, petroleum products, precious art pieces, idols, curio goods or fragile goods, wildlife and pets, handicrafts, arms and ammunition, explosives, radio, television, computer and similar other goods and their spare parts, machinery and goods specified in prevailing law as those which have to be declared by the owner before their transportation, except when the owner or his agent has clearly declared them at the time of signing the contract or at the time of handing them over to signing the contract or at the time of handing them over to the transportation for the transporter.

(3) For the purpose of bearing the risk involved in the transportation of goods mentioned in Sub-section (2), the transporter might have them insured against the risk through their owner or his/her agent or by him/herself by collecting a separate fee for the purpose, or take other necessary arrangement to avoid the risk.

69. **Transporters to be responsible:** A transporter shall pay a reasonable compensation to the concerned owner for any loss or damage in the process of transportation of goods declared at the time of signing the contract of handling them over to the transporter for transportation under this Chapter, or for goods which need not be declared, as provided for in the contract, if any, and, if not, reimbursement of the transported goods with the agreement of their owner, or in case no such agreement is reached or can be reached, according to the current price of the goods, and if the current price can not be determined, according to a reasonable price, subject to Chapter 12.
70. **Transporter's liability to be ended:** Except when otherwise provided for in the contract, the liability of a transporter shall be deemed to have ended in any of the following circumstances:
- (a) In case the transporter or his agent transports the goods and hands them over to the owner or his/her agent, or a person

designated by him;

- (b) In case the goods handed over to the transporter are received back by the owner or his/her agent.
- (c) In case the transporter or his agent returns the goods to the owner or his/her agents citing the reason why the goods can not be transported within the prescribed period in the circumstances mentioned in Clause (b) of Sub-section (2) of Section 79.

Chapter- 10

Time, Procedure and Place for Performing Contracts

71. **Times and Procedure of performing contract:** (1) In case the time and procedure of performing the contract has been mentioned in the contract, it shall be performed within the specified time and according to the specified procedure.
- (2) In case no time or procedure of performing the work mentioned in the contract has been specified, whereas, in case the work can be performed only at any specific time or according to any specific procedure, the contract shall be deemed to have been concluded so as to perform the work at that time and according to that procedure.
- (3) Except in the circumstances mentioned in Sub-section (2), in case the time and procedure of performing the contract has not been mentioned in the contract, the contract shall be performed within a reasonable time by adapting a reasonable procedure.
72. **Place for performing contract:** (1) In case any specific place has been specified in the contract for performing the work, the work shall be performed at the same place.

(2) In case any party has to hand over or deliver goods to the other party under the contract, and the place where those goods are to be handed over or delivered has not been specified in the contract, the contract shall be deemed to have been concluded with a provision to hand over or deliver the goods at the place where those goods are stored.

(3) In case the specific place where the work mentioned in the contract has to be performed, has not been specified in the contract, and where as that work can be performed only in a specific place, or in case the work needs to be performed in any specific place due to the general practice and custom or the nature of the work, the contract shall be deemed to have been concluded with a provision to perform at work at place.

(4) In circumstances other than those mentioned in Sub-sections (2) and (3), in case the place for performing the work prescribed in the contract is not mentioned in the contract, the party performing the work according to the contract shall inform the other party to specify a reasonable place for performing the work, and the other party shall specify a reasonable place to perform the work.

73. **Circumstances in which contracts need not be performed:**

Work under a contract need not be performed in any of the following circumstances:

- (a) In case one party to the contract absolves the other party from fulfilling the obligations according to the contract;
- (b) In case a voidable contract is made void by the party concerned;
- (c) In case one can not execute the contract due to its violation by the other party;
- (c) In case it becomes unnecessary to perform the work mentioned

in the contract under any provision of this Act;

- (d) In case it becomes unnecessary to comply with the contract under Section 79.

Chapter- 11

Execution of Contract and Obligation Arising out of the Contract

74. **Obligation under contract to be fulfilled**: Each party to a contract shall fulfill his/her obligation under the contract.
75. **Reciprocal compliance with contract**: (1) In case a contract has been concluded with a provision requiring both parties to simultaneously fulfill their respective obligations, and in case one party fundamentally shows a conduct or intention of not fulfilling his/her obligation the other party shall not be required to fulfill his/her promise.
- (2) In case the order of priority relating to fulfillment of any promise has been specified in the contract itself, it shall be fulfilled accordingly, and in case no such order of priority has been specified, the party who is required to do so first according to the nature of the contract shall fulfill it.
- (3) In case one promise can not be fulfilled without fulfilling another promise under any contract containing reciprocal promises, the party, which can not execute the contract because of the failure of the other party to fulfill its promise, may recover the loss or damage caused by the failure of the other party to execute the contract.
- (4) In case a contract of the type mentioned in Sub-section (1) has been concluded, and any party obstructs the other party from executing the contract, the party which becomes unable to execute the contract may the contract cancel and also recover any loss or damage suffered by him/her

from the cancellation of the contract in that manner.

76. **Devolution of rights and liabilities of contract:** In case party to a contract dies or loses his/her senses, the rights accruing from the contract shall devolve on the heir to his/her property, and the heir shall also bear liability to the extent covered by the property received by him/her.

Provided that, the rights and liabilities accruing on the basis of personal skills and qualification shall not devolve on such heir.

77. **Person to execute contract:** (1) Except when the person concluding contract is under the obligation to execute the contract, he/she may have it executed by his agent or a person appointed by him/her or any other person on his/her behalf.

Provided that, no party to a contract may transfer the obligations under the contract to any other person without the consent of the other party.

(2) Except when otherwise provided for in the contract, once a party accepts a work done by a third person, he/her may not later claim that the work has to be done by the party signing the contract.

(3) In case two or more person have jointly signed a contract with any other party, any of the persons jointly signing the contract shall fulfill or cause to do so for the fulfillment of the obligation under the contract, except when otherwise provided for in the contract.

(4) In case any person has fulfilled his/her obligation under Sub-section (3), the person so fulfilling the obligations may recover compensation or loss on a proportionate basis from the other persons jointly signing the contract.

(5) In a contract signed in the manner mentioned in Sub-section (3), in case any party gives concession to any person belonging to the other

party from the obligations of his/her share, the other person shall not be free from the remaining obligation of the contract.

78. **Only the party shall have right to execute the contract:** (1) Only a person who is a party to a contract may demand the execution of that contract from other party.

Provided that, in case the contract has been signed for the benefit of any person, such person may demand the execution of that contract even if he/she is not a party to that contract.

(2) In case two or more than two persons jointly agree upon to perform or not to perform any work, except when otherwise provided for in the contract, all persons so concluding- the contract may demand the execution of that contract.

79. **Contracts need not executed in the event of fundamental changes in the situation:** (1) In case it becomes impossible to execute a contract as a result of fundamental change in the situation prevailing at the time of signing of the contract, the work under the contract need not be performed.

(2) Without prejudice to the generality of Sub-section (1), fundamental change shall be deemed to have come in the situation prevailing at the time of signing of the contract in any of the following circumstances:

- (a) In case the contract becomes illegal and it can not be executed;
- (b) In case it becomes impossible to execute the contract due to emergence of such situations as war, floods landslides, fire, earthquakes, and volcanic eruptions, which are beyond the control of human beings;

- (c) In case anything essential for executing the contract is destroyed or damaged, or no longer exists, or can not be obtained;
- (d) In case the contract has been signed with a provision to provide services on the basis of efficiency, skill or talent, and the person providing such service dies or loses his/her sense or becomes incapable of performing the contract because of physical or mental disability.

(3) Notwithstanding anything contained in Sub-section (2), fundamental changes shall not be deemed to have come in the situation prevailing at the time of signing the contract in any of the following circumstances:

- (a) In case it becomes difficult to perform the contract;
- (b) In case profit margin is low or loss is expected;
- (c) In case any party to a contract is dependent upon any third party who is not a party to the contract for performing the contract, if the third party commits a mistake or becomes unfit;
- (d) In the event of strikes and lockouts;
- (e) In case it becomes necessary to pay additional tax, fee or other revenue;
- (f) In case the contract has been signed with several objectives and only some of them can not be fulfilled.

(4) In case it becomes impossible to execute a contract because of fundamental changes in the situation as mentioned in Sub-section (2), action in the following matters shall be taken as follows;

- (a) The amount paid by one party to the other in consideration of the contract before such a change in the situation occurs shall be refunded to the other party.
- (b) Payment to be made or due from one party to the other in consideration of the contract shall not be made after such a change in the situation.
- (c) In case any party has performed any work or paid any amount before such a change in the situation, such work or amount shall be calculated and the amount to be paid to each other should be determined, and reasonable expenses incurred by one party in consideration of the contract may be recovered from the other party.

(5) Notwithstanding anything contained in this Section, after the end of the situation mentioned in Clause (b) of Sub-section (3), the parties to a contract may agree to fulfill their respective obligations by executing the contract.

80. **Facilities to be provided:** The parties to a contract shall provide facilities needed for executing the contract from their respective sides. In case the contract can not be executed due to failure of providing such facilities, the party failing to execute the contract in that manner shall not be held responsible.
81. **Contract may be suspended or altered:** (1) In case the parties to a contract agree, all or any of the portions of the work to be performed under the contract may be changed or amended, the time-limit for performing any work under the contract extended, the contract suspended by not making it obligatory to perform any work to be performed under the contract for some time, the work mentioned in the contract may be replaced by another

work, or a new contract may be signed as a replacement of the original contract.

(2) In case any change or amendment is made in the contract under Sub section (1), a new contract shall be deemed to have been signed, and the contract shall become effective accordingly. In case a new contract is signed in this manner, liability under the initial contract need not be borne except when otherwise provided for in the contract.

Chapter- 12:

Breach of Contract and Remedies

82. **Breach of contract:** (1) In case any party to a contract does not meet liability under the contract, or gives a notice to the other party that he/she will not perform the work to be performed under the contract, or in case his/her action or conduct shows that he/she is incapable of performing the work under the contract, he shall be deemed to have breached the contract.

(2) In case a party has broken the contract under Sub-section (1), or in case his/her action or conduct shows that he/she has not basically complied with the contract, the other party shall not be compelled to perform the contract, and may cancel the contract by furnishing a notice thereof to the other party.

83. **Compensation on breach of contract:** (1) In case a contract has been breached under Section 82, the aggrieved party may realize from the party who has broken the contract, the actual loss or damage suffered by him/her a result of such breach of contract of the loss or damage, which the contracting parties had anticipated at the time of signing the contract.

(2) In case the contract provides that any specific amount or compensation shall be paid in the event of breach of contract, the aggrieved party may recover from the other party a reasonable amount not exceeding

that amount.

(3) In case the amount of compensation under Sub-section (2) is not mentioned, the party making a claim for such compensation may realize a reasonable amount in consideration of the direct and actual loser damage that has resulted form the breach of contract, or in consideration of the breach of contract, or in consideration of the breach of contract, or in consideration of compensation. No compensation may be recovered for any indirect or imaginary loss or damage.

(4) In case a contract has been signed for completing any work within a specific period, and in case provision has been made for payment of compensation under Sub-section (1) for failure to complete that work within the specific period, the party paying compensation may request for extension of the period for completing the contract in proportion to the amount paid by him/her as compensation.

84. **Compensation in the event of cancellation or termination of**

contract: (1) In case a contract is terminated with the mutual consent of both parties or it is no longer necessary to perform the contract under this Act or other prevailing laws, or in case the contract is made void under the law or becomes void or cancelled under this Act, after one party has already received some amount in cash or in kind or any other benefit from the other party as per the contract, the cash or goods which have to be refunded after adjusting the accounts until the term of the contract expires from the amount paid in cash or in kind shall be refunded. In case any service or benefit other than cash or goods has been provided, the beneficiary must pay a reasonable amount to the other party in consideration thereof.

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[∞] Deleted by the Act Amending Some Nepal Acts, 2064

(2) In case it becomes necessary to initiate legal action owing to the non-refundment of the amount paid in cash or kind or the non-payment of amount under Sub-section (1), the concerned party may also realize reasonable expenses incurred for the purpose.

85. **Right to recover a reasonable amount:** The aggrieved party may claim payment in proportion to the work performed or the amount paid by him/her in cash or in kind in any of the following circumstances;

- (a) In case the contract is terminated due to the mistake of the other party at a time when he/she has already completed the work to be performed under the contract or was performing it;
- (b) In case the other party utilizes any service or commodity that has been given to him/her without the clear intention of giving it free of cost.

86. **Execution of contract as stipulated (Specific performance):** (1) In case the cash compensation paid in consideration of the actual loss or damage suffered by the aggrieved party as a result of breach of contract is not reasonable or adequate, the aggrieved party may demand the execution of the contract as stipulated specific performance instead of making a claim for compensation.

(2) Notwithstanding anything contained in Sub-section (1), no claims for execution of the contract as stipulated specific performance shall be heard in any of the following circumstances;

- (a) In case the amount paid in cash as compensation for breach of contract is adequate;
- (b) In case the court can not supervise whether or not the work to be performed under the contract has been actually performed;

- (c) In case the contract has been signed for providing services relating to personal expertise, skill or knowledge;
- (d) In case the situation is such that the contract can not be executed as stipulated;
- (e) In case the party violating the contract him/herself demands that the contract be executed as stipulated.

87. **Power of the judiciary to issue orders:** (1) In case it becomes impossible to execute the contract because any party about to take any action or behave in a manner contrary to the nature of the contract, the party aggrieved by such action or conduct may file a complaint with the Appellate Court to stay such action or conduct.

(2) In case a complaint is filled under Sub-section (1), the court may issue an appropriate order to any party to immediately stop his/her specific action or conduct with a provision to settle the dispute resulting from that contract according to the contract or prevailing law, notwithstanding, anything contained in prevailing law.

(3) In case such order is issued, the aggrieved party may also realize the additional loss or damage resulting from the failure of the other party to comply with the order issued under Sub-section (2).

Chapter- 13

Miscellaneous

88. **Prevailing law to be obeyed:** In case prevailing law prescribes that any specific procedure must be followed for executing any specific contract, or that any specific contract, must be registered at any government office, a contract signed without fulfilling such formalities shall not be valid.

89. **Limitations:** (1) In case prevailing law prescribe any specific limitation

in respect to any specific contract or any specific matter relating to contracts, such time limits shall be applicable.

(2) Complain in respect to the following contracts or matters other than those mentioned in Sub-section (1) shall not be heard unless these are filed within the limitation as mentioned hereunder;

- (a) In the case of void a contract, to have them declared void at any time;
- (b) In the case of a voidable contract, within a year from the date when the party that can have the contract declared void learns about the reason for having the contract declared to be void;
- (c) In the case of contracts mentioned in Chapter 7, within two years from the date of emergence of the reason for filing a lawsuit;
- (d) In the case of any other claim under this Act, within two years from the date of emergence of the reason for filing a lawsuit for such a claim.

90. **Repeal and saving:** The Contract Act 2023 (1966), and the Chapter on Bailment and Deposits of the Muluki Ain (Legal Code) have been repealed.