LAWS OF MALAYSIA

Act 136

CONTRACTS ACT 1950

Complete redraft with Sections and Illustrations restored

Based on the 2006 reprint incorporating amendments up to 1 January 2006

Prepared from the official text for clean working use

An Act relating to contracts. [Kuala Lumpur, Johore, Kedah, Kelantan, Negeri Sembilan, Pahang, Perak, Perlis, Selangor and Terengganu—23 May 1950; Malacca, Penang, Sabah and Sarawak—1 July 1974]

PART I
PRELIMINARY

Short title

1. (1) This Act may be cited as the *Contracts Act 1950. (2) Nothing herein contained shall affect any written law or any usage or custom of trade, or any incident of any contract, not inconsistent with this Act.

Interpretation

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context: (a) when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal; (b) when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise; *NOTE—See Appendix—Contracts (Amendment) Act 1976 [Act A329] with respect to Scholarship Agreements.

(c) the person making the proposal is called the "promisor" and the person accepting the proposal is called the "promisee"; (d) when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise; (e) every promise and every set of promises, forming the consideration for each other, is an agreement; (f) promises which form the consideration or part of the consideration for each other are called reciprocal promises; (g) an agreement not enforceable by law is said to be void; (h) an agreement enforceable by law is a contract; (i) an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract; and (j) a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

PART II
OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

Communication, acceptance and revocation of proposals

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate the proposal, acceptance, or revocation, or which has the effect of communicating it.

Communication, when complete

4. (1) The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

(2) The communication of an acceptance is complete— (a) as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; and (b) as against the acceptor, when it comes to the knowledge of the proposer. (3) The 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; and (b) as against the person to whom it is made, when it comes to his knowledge.

ILLUSTRATIONS

(a) A proposes, by letter, to sell a house to B at a certain price. The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete— as against A, when the letter is posted; as against B, when the letter is received by A.

(c) A revokes his proposal by telegram. The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it.

(d) B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him

Revocation of proposals and acceptances

5. (1) A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

(2) An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

ILLUSTRATION

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

Revocation how made

6.

A proposal is revoked— (a) by the communication of notice of revocation by the proposer to the other party; (b) by the lapse of the time prescribed in the proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance; (c) by the failure of the acceptor to fulfil a condition precedent to acceptance; or (d) by the death or mental disorder of the proposer, if the fact of his death or mental disorder comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute

7. In order to convert a proposal into a promise the acceptance must— (a) be absolute and unqualified; (b) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in that manner, the proposer may, within a reasonable time after

the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied

9. So far as the proposal or acceptance of any promise is made in words, the promise is said to be express. So far as the proposal or acceptance is made otherwise than in words, the promise is said to be implied.

PART III
OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

What agreements are contracts

10. (1) All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. (2) Nothing

herein contained shall affect any law by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting

12. (1) A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests. (2) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. (3) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

ILLUSTRATIONS

(a) A patient in a mental hospital, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

"Consent"

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent"

14.

Consent is said to be free when it is not caused by— (a) coercion, as defined in section 15; (b) undue influence, as defined in section 16; (c) fraud, as defined in section 17; (d) misrepresentation, as defined in section 18; or (e) mistake, subject to sections 21, 22 and 23.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

"Coercion"

15. "Coercion" is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. Explanation—It is immaterial whether the Penal Code is or is not in force in the place where the coercion is employed.

ILLUSTRATION

A, on board an English ship on the high seas, causes B to enter into an agreement by an act amounting to criminal intimidation under the Penal Code. A afterwards sues B for breach of contract at Taiping. A has employed coercion, although his act is not an offence by the law of England, and although section 506 of the Penal Code was not in force at the time when or place where the act was done.

"Undue influence"

16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. (2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another— (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress. (3) (a) Where a person who is in a position to dominate the will of another, enters into a contract with him, 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 lie upon the person in a position to dominate the will of the other.

(b) Nothing in this subsection shall affect section 111 of the Evidence Act 1950 [Act 56].

ILLUSTRATIONS

(a) A having advanced money to his son, B, during his minority, upon B's coming of age, obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

(c) A, being in debt to B, the moneylender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

"Fraud"

17. "Fraud" includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract: (a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true; (b) the active concealment of a fact by one having knowledge or belief of the fact; (c) a promise made without any intention of performing it; (d) any other act fitted to deceive; and (e) any such act or omission as the law specially declares to be fraudulent. Explanation—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, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

ILLUSTRATIONS

(a) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. This is not fraud in A.

(b) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(c) B says to A, "If you do not deny it, I shall assume that the horse is sound." A says nothing. Here, A's silence is equivalent to speech.

(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation"

18.

"Misrepresentation" includes— (a) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; (b) any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; and (c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent

19. (1) When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. (2) A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be

performed, and that he shall be put in the position in which he would have been if the representations made had been true. Exception—If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom the fraud was practised, or to whom the misrepresentation was made, does not render a contract voidable.

ILLUSTRATIONS

(a) A, intending to deceive B, falsely represents that five hundred gantangs of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

(b) A, by a misrepresentation, leads B erroneously to believe that five hundred gantangs of indigo are made annually at A's factory. B examines the accounts of the factory, which show that only four hundred gantangs of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(c) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an undervalue. The contract is voidable at the option of A.

(d) A is entitled to succeed to an estate at the death of B; B dies; C, having received intelligence of B's death, prevents the intelligence reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence

20. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the court may seem just.

ILLUSTRATIONS

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the court may set the bond aside.

(b) A, a moneylender, advances RM100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for RM200 with interest at 6 per cent per month. The court may set the bond aside, ordering B to repay the RM100 with such interest as may seem just. Agreement void where both parties are under mistake as to

matter of fact

21. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Explanation—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

ILLUSTRATIONS

(a) A agrees to sell B a specific cargo of goods supposed to be on its way from England to Kelang. It turns out that, before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C. B was dead at the time of the agreement, but both parties were ignorant of the fact. The agreement is void.

Effect of mistake as to law

22. A contract is not voidable because it was caused by a mistake as to any law in force in Malaysia; but a mistake as to a law not in force in Malaysia has the same effect as a mistake of fact.

ILLUSTRATION

A and B make a contract grounded on the erroneous belief that a particular debt is barred by limitation: the contract is not voidable.

Contract caused by mistake of one party as to matter of fact

23. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

What considerations and objects are lawful, and what not

24.

The consideration or object of an agreement is lawful, unless— (a) it is forbidden by a law;

(b) it is of such a nature that, if permitted, it would defeat any law; (c) it is fraudulent; (d) it involves or implies injury to the person or property of another; or (e) the court regards it as immoral, or opposed to public policy. In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

ILLUSTRATIONS

(a) A agrees to sell his house to B for RM10,000. Here, B's promise to pay the sum of RM10,000 is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the RM10,000. These are lawful considerations.

(b) A promises to pay B RM1,000 at the end of six months, if C, who owes that sum to B, fails to pay it. B promises to grant time to C accordingly. Here the promise of each party is the consideration for the promise of the other party, and they are lawful considerations.

(c) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(d) A promises to maintain B's child, and B promises to pay A RM1,000 yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(e) A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(f) A promises to obtain for B an employment in the public service, and B promises to pay RM1,000 to A. The agreement is void, as the consideration for it is unlawful.

(g) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as it implies a fraud by concealment, by A, on his principal.

(h) A promises B to drop a prosecution which he has instituted against B for robbery, and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

(i) A's estate is sold for arrears of revenue under a written law, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(j) A, who is B's advocate, promises to exercise his influence, as such, with B in favour of C, and C promises to pay RM1,000 to A. The agreement is void, because it is immoral.

(k) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the Penal Code. Void Agreements

Agreements void if considerations and objects unlawful in part

25. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

ILLUSTRATION

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of RM10,000 a year. The agreement is void, the object of A's promise and the consideration for B's promise, being in part unlawful.

Agreement without consideration, void, unless—

26.

An agreement made without consideration is void, unless— it is in writing and registered (a) it is expressed in writing and registered under the law (if any) for the time being in force for the registration of such documents, and is made on account of natural love and affection between parties standing in a near relation to each other;

or is a promise to compensate for something done (b) it 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 or is a promise to pay a debt barred by limitation law (c) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract. Explanation 1—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made. Explanation 2—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the court in determining the question whether the consent of the promisor was freely given.

ILLUSTRATIONS

(a) A promises, for no consideration, to give to B RM1, 000. This is a void agreement,

(b) A, for natural love and affection, promises to give his son, B, RM1, 000. A puts his promise to B into writing and registers it under a law for the time being in force for the registration of such documents. This is a contract.

(c) A finds B's purse and gives it to him. B promises to give A RM50. This is a contract.

(d) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(e) A owes B RM1,000, but the debt is barred by limitation. A signs a written promise to pay B RM500 on account of the debt. This is a contract.

(f) A agrees to sell a horse worth RM1,000 for RM10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(g) A agrees to sell a horse worth RM1,000 for RM10. A denies that consent to the agreement was freely given. The inadequacy of the consideration is a fact which the court should take into account in considering whether or not A's consent was freely given.

Agreement in restraint of marriage void

27. Every agreement in restraint of the marriage of any person, other than a minor during his or her minority, is void.

Agreement in restraint of trade void

28. Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void. Saving of agreement not to carry on business of which goodwill is sold

Exception 1—One who sells the goodwill of a business may agree with the buyer to refrain carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein: Provided that such limits appear to the court reasonable, regard being had to the nature of the business. of agreement between partners prior to dissolution Exception 2—Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar

to that of the partnership within such local limits as are referred to in exception

1. or during continuance of partnership Exception 3—Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Agreements in restraint of legal proceedings void

29. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise Exception 1—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in the arbitration shall be recoverable in respect of the dispute so referred. Saving of contract to refer questions that have already arisen Exception 2-—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any law as to references to arbitration. *Exception 3—Nor shall this section render illegal any contract in writing between the Government and any person with respect to an award of a scholarship by the Government wherein it is provided that the discretion exercised by the Government under that contract shall be final and conclusive and shall not be questioned by any court. In this exception, the expression "scholarship" includes any bursary to be awarded or tuition or examination fees to be defrayed by the Government and the expression "Government" includes the Government of a State.

Agreements void for uncertainty

30. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

ILLUSTRATIONS

(a) A agrees to sell to B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in coconut oil only, agrees to sell to B "one hundred tons of oil". The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.

(d) A agrees to sell to B "all the grain in my granary at Ipoh". There is no uncertainty here to make the agreement void. *NOTE—See Appendix–Contracts (Amendment) Act 1976 [Act 32a] with respect to Scholarship Agreements.

(e) A agrees to sell to B "one thousand gantangs of rice at a price to be fixed by C". As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B "my white horse for five hundred ringgit or one thousand ringgit". There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void

31. (1) Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on

which any wager is made. Exception in favour of certain prizes for horse racing (2) This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred ringgit or upwards, to be awarded to the winner or winners of any horse race. (3) Nothing in this section shall be deemed to legalise any transaction connected with horse racing forbidden by any written law.

PART IV
OF CONTINGENT CONTRACTS

"Contingent contract"

32. A "contingent contract" is a contract to do or not to do something, if some event, collateral to the contract, does or does not happen.

ILLUSTRATION

A contracts to pay B RM10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening

33. (a) Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. (b) If the event becomes impossible, such contracts become void.

ILLUSTRATIONS

(a) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's lifetime.

(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening

34. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not happening.

ILLUSTRATION

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent to be deemed

impossible, if it is the future conduct of a living person

35. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

ILLUSTRATION

A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening

of specified event within fixed time

36. (1) Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, the event has not happened, or if, before the time fixed, the event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time
(2) Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and the event has not happened, or, before the time fixed has expired, if it becomes certain that the event will not happen.

ILLUSTRATIONS

(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreement contingent on impossible events void

37. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

ILLUSTRATIONS

(a) A agrees to pay B RM1,000 if two straight lines should enclose a space. The agreement is void.

(b) A agrees to pay B RM1,000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

PART V
OF THE PERFORMANCE OF CONTRACTS

Contracts which must be Performed

Obligation of parties to contracts

38. (1) The parties to a contract must either perform, or offer to perform, their respective promises, unless the performance is dispensed with or excused under this Act, or of any other law. (2) Promises bind the representatives of the promisors in case of the death of the promisors before performance, unless a contrary intention appears from the contract.

ILLUSTRATIONS

(a) A promises to deliver goods to B on a certain day on payment of RM1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the RM1000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of refusal to accept offer of performance

39. (1) Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. (2) Every such offer must fulfil the following conditions: (a) it must be unconditional; (b) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do; and (c) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

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

ILLUSTRATION

A contracts to deliver to B at his warehouse, on the 1st of March, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's

warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to perform promise wholly

40. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

ILLUSTRATIONS

(a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her RM100 for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of RM100 for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night. By whom Contracts must be Performed

Person by whom promise is to be performed

41. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

ILLUSTRATIONS

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B, or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person

42. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities

43. When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform

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

Each promisor may compel contribution (2) Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution (3) If any one of two or more joint promisors makes default in the contribution, the remaining joint promisors must bear the loss arising from the default in equal shares.

Explanation—Nothing in this section shall prevent a surety from recovering from his principal payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

ILLUSTRATIONS

(a) A, B and C jointly promise to pay D RM3, 000. D may compel either A or B or C to pay him RM3, 000.

(b) A, B and C jointly promise to pay D the sum of RM3,000. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive RM500 from A's estate, and RM1,250 from B.

(c) A, B and C are under a joint promise to pay D RM3,000. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive RM1,500 from B.

(d) A, B and C are under a joint promise to pay D RM3,000, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor

45. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint rights

46. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of the deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

ILLUSTRATION

A, in consideration of RM5,000 lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and Place for Performance Time for performance of promise where no application is to be

made and no time is specified

47. Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Explanation— The question "what is a reasonable time" is, in each particular case, a question of fact.

Time and place for performance of promise where time is

specified and no application to be made

48. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on the day and at the place at which the promise ought to be application performed.

ILLUSTRATION

A promises to deliver goods at B's warehouse on the 1st of January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time

and place

49. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the hours of business. Explanation— The question "what is a proper time and place" is, in each particular case, a question of fact.

Place for performance of promise where no application to be

made and no place fixed

50. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at that place.

ILLUSTRATION

A undertakes to deliver a thousand gantangs of rice to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at that place.

Performance in manner or at time prescribed or sanctioned by

promisee

51. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

ILLUSTRATIONS

(a) B owes A RM2,000. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(b) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(c) A owes B RM2,000. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(d) A desires B, who owes him RM100, to send him a note for RM100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A. Performance of Reciprocal Promises Promisor not bound to perform unless reciprocal promisee

ready and willing to perform

52. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

ILLUSTRATIONS

(a) A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods unless A is ready and willing to deliver them on payment.

(b) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery. A need not deliver unless B is ready and willing to pay the first instalment on delivery. B need not pay the first instalment unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises

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

ILLUSTRATIONS

(a) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(b) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock. Liability of party preventing event on which contract is to take

effect

54. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

ILLUSTRATION

A and B contract that B shall execute certain work for A for RM1,000. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first

performed, in contract consisting of reciprocal promises

55. When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, the promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which the other party may sustain by the non-performance of the contract.

ILLUSTRATIONS

(a) A hires B's ship to take in and convey, from Kelang to Singapore, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(b) A contracts with B to execute certain builders' work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(c) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(d) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation. Effect of failure to perform at fixed time, in contract in which

time is essential

56. (1) When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract. Effect of failure when time is not essential (2) If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do the thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by the failure. Effect of acceptance of performance at time other than that agreed upon (3) If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of the promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the

non-performance of the promise at the time agreed, unless, at the time of the acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act

57. (1) An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful (2) A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful (3) Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, the promisor must make compensation to the promisee for any loss which the promisee sustains through the non-performance of the promise.

ILLUSTRATIONS

(a) A agrees with B to discover treasure by magic. The agreement is void.

(b) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(c) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(d) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void. Reciprocal promise to do things legal, and also other things

illegal

58. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

ILLUSTRATION

A and B agree that A shall sell B a house for RM10,000, but that, if B uses it as a gambling house, he shall pay A RM50,000 for it. The first set of reciprocal promises, namely, to sell the house and to pay RM10,000 for it, is a contract. The second set is for an unlawful object, namely, that B may use the house as a gambling house, and is a void agreement.

Alternative promise, one branch being illegal

59. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

ILLUSTRATION

A and B agree that A shall pay B RM1,000 for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of Payments

Application of payment where debt to be discharged is indicated

60. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

ILLUSTRATIONS

(a) A owes B, among other debts, RM1,000 upon a promissory note, which falls due on the 1st of June. He owes B no other debt of that amount. On the 1st of June A pays to B RM1,000. The payment is to be applied to the discharge of the promissory note.

(b) A owes to B, among other debts, the sum of RM567. B writes to A and demands the payment of this sum. A sends to B RM567. This payment is to be applied to the discharge of the debt of which B had demanded payment. Application of payment where debt to be discharged is not

indicated

61. Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where neither party appropriates

62. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law relating to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably. Contracts which need not be Performed

Effect of novation, rescission and alteration of contract

63. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

ILLUSTRATIONS

(a) A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(b) A owes B RM10,000. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for RM5,000 in place of the debt of RM10,000. This is a new contract and extinguishes the old.

(c) A owes B RM1,000 under a contract. B owes C RM1,000. B orders A to credit C with RM1,000 in his books, but C does not assent to the agreement. B still owes C RM 1,000, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise

64. Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

ILLUSTRATIONS

(a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(b) A owes B RM5, 000. A pays to B, and B accepts, in satisfaction of the whole debt, RM2, 000 paid at the time and place at which the RM5,000 were payable. The whole debt is discharged.

(c) A owes B RM5,000. C pays to B RM1,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(d) A owes B under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of RM2,000. This is a discharge of the whole debt, whatever may be its amount.

(e) A owes B RM2,000, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of fifty cents in the dollar upon their respective demands. Payment to B of RM1,000 is a discharge of B's demand.

Consequences of rescission of voidable contract

65. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore the benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void

agreement, or contract that becomes void

66. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

ILLUSTRATIONS

(a) A pays B RM1,000 in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the RM1,000.

(b) A contracts with B to deliver to him 250 gantangs of rice before the 1st of May. A delivers 130 gantangs only before that day, and none later. B retains the 130 gantangs after the 1st of May. He is bound to pay A for them.

(c) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her RM100 for each night's performance. On the sixth night A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(d) A contracts to sing for B at a concert for RM1,000, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the RM1,000 paid in advance. Mode of communicating or revoking rescission of voidable

contract

67. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal. Effect of neglect of promisee to afford promisor reasonable

facilities for performance

68. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by the neglect or refusal as to any non-performance caused thereby.

ILLUSTRATION

A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

PART VI
OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

Claim for necessaries supplied to person incapable of contracting,

or on his account

69. If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

ILLUSTRATIONS

(a) A supplies B, a mentally disordered person, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b) A supplies the wife and children of B, a mentally disordered person, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property. Reimbursement of person paying money due by another, in

payment of which he is interested

70. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

ILLUSTRATION

A, the owner of a holding situated within a Town Board area, allows the assessment due thereon to fall into arrear. The Chairman of the Town Board seizes movable property found on the holding with a view to its sale by public auction under the Town Boards Enactment [F. M. S. Cap. 137]. B having an interest in the movable property pays the arrear. A is bound to make good to B the amount so paid.

Obligation of person enjoying benefit of non-gratuitous act

71. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

ILLUSTRATIONS

(a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

Responsibility of finder of goods

72. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Liability of person to whom money is paid, or thing delivered, by

mistake or under coercion

73. A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

ILLUSTRATIONS

(a) A and B jointly owe RM100 to C. A alone pays the amount to C, and B, not knowing this fact, pays RM100 over again to C. C is bound to repay the amount to B.

(b) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

PART VII
OF THE CONSEQUENCES OF BREACH OF CONTRACT

Compensation for loss or damage caused by breach of contract

74. (1) When a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from the breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. (2) Such compensation is not to be given for any remote

and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract (3) When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if the person had contracted to discharge it and had broken his contract. Explanation— In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

ILLUSTRATIONS

(a) A contracts to sell and deliver 50 gantangs of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise. B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 gantangs of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(b) A hires B's ship to go to Telok Anson, and there take on board, on the 1st of January, a cargo, which A is to provide, and to bring it to Port Dickson, the freight to be paid when earned. B's ship does not go to Teluk Intan, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of the trouble and expense.

(c) A contracts to buy of B, at a stated price, 50 gantangs of rice, no time being fixed for delivery. A afterwards informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(d) A contracts to buy B's ship for RM60,000, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(e) A, the owner of a boat, contracts with B to take a cargo of tin to Singapore, for sale at that place, starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Singapore is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of tin falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Singapore, at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(f) A contracts to repair B's house in a certain manner, and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(g) A contracts to let his ship to B for a year, from the 1st of January, for a certain price. Freights rise, and, on the 1st of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the 1st of January.

(h) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(i) A delivers to B, a carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill

during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(j) A, having contracted with B to supply B with 1,000 tons of iron at RM100 a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at RM80 a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A RM20,000, being the profit which A would have made by the performance of his contract with B.

(k) A contracts with B to make and deliver to B, by a fixed day, for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

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

(m) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be reimbursed this sum by A.

(n) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B, in consequence of not receiving the money on that day, is unable to pay his debts and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, together with interest up to the day of payment.

(o) A contracts to deliver 50 gantangs of saltpetre to B on the 1st of January, at a certain price. B afterwards, before the 1st of January, contracts to sell the saltpetre to C at a higher price than the market price of the 1st of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the 1st of January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(p) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton, is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(q) A contracts to sell and deliver to B, on the 1st of January, certain cloth which B intends to manufacture into caps of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive from A, by way of compensation, the difference between the contract price of the cloth and its market price at the time of delivery, but not the profits which he expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(r) A, a shipowner, contracts with B to convey him from Kelang to Sydney in A's ship, sailing on the 1st of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the 1st of January, and B, after being, in consequence, detained in Kelang for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest, and the expense to which he is put

by his detention in Kelang, and the excess, if any, of the passage-money paid for the second ship over that agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated

for

75. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for. Explanation—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception—When any person enters into any bail-bond, recognizance, or other instrument of the same nature, or, under the provisions of any law, or under the orders of the Federal Government or the Government of any State, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein. Explanation— A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

ILLUSTRATIONS

(a) A contracts with B to pay B RM1,000, if he fails to pay B RM500 on a given day. A fails to pay B RM500 on that day, B is entitled to recover from A such compensation, not exceeding RM1,000, as the court considers reasonable.

(b) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B RM5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding RM5,000, as the court considers reasonable.

(c) A gives a recognizance binding him in a penalty of RM500 to appear in court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(d) A gives B a bond for the repayment of RM1,000 with interest at 12 per cent at the end of six months, with a stipulation that, in case of default, interest shall be payable at the rate of 75 per cent from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the court considers reasonable.

(e) A who owes money to B, a moneylender, undertakes to repay him by delivering to him 10 gantangs of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 gantangs. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(f) A undertakes to repay B a loan of RM1,000 by five equal monthly instalments, with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced according to its terms.

(g) A borrows RM100 from B and gives him a bond for RM200 payable by five yearly instalments of RM40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is a stipulation by way of penalty.

Party rightfully rescinding contract entitled to compensation

76. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

ILLUSTRATION

A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her RM100 for each night's performance. On the sixth night

A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilment of the contract.

PART VIII
OF INDEMNITY AND GUARANTEE

"Contract of indemnity"

77. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity".

ILLUSTRATION

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of RM200. This is a contract of indemnity.

Rights of indemnity-holder when sued

78. The promisee in the contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor— (a) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies; (b) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit; and

(c) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit. "Contract of guarantee", "surety", "principal debtor" and

"creditor"

79. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of which default the guarantee is given is called the "principal debtor", and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

Consideration for guarantee

80. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

ILLUSTRATIONS

(a) B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C will guarantee the payment of the price of the goods, C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

(b) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year and promises that, if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient consideration for C's promise.

(c) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

Surety's liability

81. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

ILLUSTRATION

A guarantees to B the payment of a bill of exchange by C, the acceptor. The bill is dishonoured by C. A is liable, not only for the amount of the bill, but also for any interest and charges which may have become due on it.

"Continuing guarantee"

82. A guarantee which extends to a series of transactions is called a "continuing guarantee".

ILLUSTRATIONS

(a) A, in consideration that B will employ C in collecting the rents of B's estate, promises B to be responsible to the amount of RM5,000, for the due collection and payment by C of those rents. This is a continuing guarantee.

(b) A guarantees payment to B, a tea-dealer, to the amount of RM1,000 for any tea he may from time to time supply to C. B supplies C with tea to above the value of RM1,000, and C pays B for it. Afterwards, B supplies C with tea to the value of RM2,000. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of RM1,000.

(c) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee, and accordingly he is not liable for the price of the four sacks.

Revocation of continuing guarantee

83. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

ILLUSTRATIONS

(a) A, in consideration of B's discounting, at A's request, bills of exchange for C, guarantees to B, for twelve months, the due payment of all such bills to the extent of RM5,000. B discounts bills for C to the extent of RM2,000. Afterwards, at the end of three months, A revokes the guarantee. This revocation discharges A from all liability to B for any subsequent discount. But A is liable to B for the RM2,000 on default of C.

(b) A guarantees to B, to the extent of RM10,000, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death

84. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons, primarily liable, not affected by arrangement between them that one shall be surety on other's

default

85. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to the contract, the liability of each of the two persons to the third person under the first contract is not affected by the existence of the second contract, although the third person may have been aware of its existence.

ILLUSTRATION

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms of contract

86. Any variance, made without the surety's consent, in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

ILLUSTRATIONS

(a) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(b) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by law. By a subsequent law, the nature of the office is materially altered. Afterwards, B misconducts himself, A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of a duty not affected by the later law.

(c) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent, C and B agree that B should be paid by a commission on the goods sold by him and not by a fixed salary, A is not liable for subsequent misconduct of B.

(d) A gives to C a continuing guarantee to the extent of RM3,000 for any oil supplied by C to B on credit. Afterwards, B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money, and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(e) C contract to lend B RM5,000 on the 1st of March. A guarantees repayment. C pays the RM5,000 to B on the 1st of January. A is discharged from his liability, as the contract has been varied, inasmuch as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor

87. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

ILLUSTRATIONS

(a) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C, and A is discharged from his suretyship.

(b) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance for this contract. B diverts a stream of water which is necessary for irrigation of A's land, and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(c) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship. Discharge of surety when creditor compounds with, gives time

to, or agrees not to sue principal debtor

88. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person

to give time to principal debtor

89. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

ILLUSTRATION

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

Creditor's forbearance to sue does not discharge surety

90. Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

ILLUSTRATION

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

Release of one co-surety does not discharge others

91. Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties. Discharge of surety by creditor's act or omission impairing

surety's eventual remedy

92. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

ILLUSTRATIONS

(a) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(b) C lends money to B on the security of a joint and several promissory note made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture, and apply the proceeds in discharge of the note. Subsequently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A is discharged from liability on the note.

(c) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

Rights of surety on payment or performance

93. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Surety's right to benefit of creditor's securities

94. A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with the security, the surety is discharged to the extent of the value of the security.

ILLUSTRATIONS

(a) C advances to B, his tenant, RM2,000 on the guarantee of A, C has also a further security for the RM2,000 by a mortgage of B's furniture. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(b) C, a creditor, whose advance to B is secured by a decree, receives also a guarantee for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(c) A, as surety for B, makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt. Subsequently, C gives up the further security. A is not discharged.

Guarantee obtained by misrepresentation invalid

95. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by concealment invalid

96. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstance is invalid.

ILLUSTRATIONS

(a) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(b) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five ringgit per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety. Guarantee on contract that creditor shall not act on it until

co-surety joins

97. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Implied promise to indemnify surety

98. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor whatever sum he has rightfully paid under the guarantee, but not sums which he has paid wrongfully.

ILLUSTRATIONS

(a) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suit, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs. He can recover from B the amount paid by him for costs, as well as the principal debt.

(b) C lends B a sum of money, and A, at the request of B accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill, demands payment of it from A, and, on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amount of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(c) A guarantees to C, to the extent of RM2,000, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than RM2,000, but obtains from A payment of the sum of RM2,000 in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally

99. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

ILLUSTRATIONS

(a) A, B and C are sureties to D for the sum of RM3,000 lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay RM1,000 each.

(b) A, B and C are sureties to D for the sum of RM1,000 lent to E, and there is a contract between A, B and C that A is to be responsible to the extent of onequarter, B to the extent of one-quarter, and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay RM250, B RM250 and C RM500.

Liability of co-sureties bound in different sums

100. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

ILLUSTRATIONS

(a) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty—namely, A in the penalty of RM10,000, B in that of RM20,000, C in that of RM40,000, conditioned for D's duly accounting to E. D makes default to the extent of RM30,000. A, B and C are each liable to pay RM10,000.

(b) A, B and C, as sureties for D enter into three several bonds, each in a different penalty—namely, A in the penalty of RM10,000, B in that of RM20,000, C in that of RM40,000, conditioned for D's duly accounting to E. D makes default to the extent of RM40,000. A is liable to pay RM10,000, and B and C RM15,000.

(c) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty—namely, A in the penalty of RM10,000, B in that of RM20,000, C in that of RM40,000, conditioned for D's duly accounting to E. D makes default to the extent of RM70,000. A, B and C have to pay each the full penalty of his bond.

PART IX
OF BAILMENT

"Bailment", "bailor" and "bailee"

101. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee". Explanation—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods, although they may not have been delivered by way of bailment.

Delivery to bailee how made

102. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorized to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed

103. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make the disclosure, he is responsible for damage arising to the bailee directly from those faults.

If the goods are bailed for hire, the bailor is responsible for the damage, whether he was or was not aware of the existence of the faults in the goods bailed.

ILLUSTRATIONS

(a) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(b) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

Care to be taken by bailee

104. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality, and value as the goods bailed.

Bailee when not liable for loss, etc., of thing bailed

105. The bailee, in the absence of any special contract, is not responsible for the loss, destruction, or deterioration of the thing

bailed, if he has taken the amount of care of it described in section

104. Termination of bailment by bailee's act inconsistent with

conditions

106. A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions or the bailment.

ILLUSTRATION

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

Liability of bailee making unauthorized use of goods bailed

107. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

ILLUSTRATIONS

(a) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(b) A hires a horse in Taiping from B expressly to march to Kuala Kangsar. A rides with due care, but marches to Parit Buntar instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse. Effect of mixture, with bailor's consent, of his goods with

bailee's

108. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced. Effect of mixture, without bailor's consent, when the goods can

be separated

109. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expense of separation or division, and any damage arising from the mixture.

ILLUSTRATION

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark. A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage.

Effect of mixture, without bailor's consent, when the goods

cannot be separated

110. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

ILLUSTRATION

A bails a barrel of Cape flour, worth RM45, to B. B, without A 's consent, mixes the flour with country flour of his own, worth only RM25 a barrel. B must compensate A for the loss of his flour.

Repayment by bailor of necessary expenses

111. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously

112. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of the loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived. Return of goods bailed, on expiration of time or accomplishment

of purpose

113. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned

114. If, by the fault of the bailee, the goods are not returned, delivered, or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.

Termination of gratuitous bailment by death

115. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Bailor entitled to increase or profit from goods bailed

116. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

ILLUSTRATION

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

Bailor's responsibility to bailee

117. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

Bailment by several joint owners

118. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailee not responsible on re-delivery to bailor without title

119. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of the delivery.

Right of third person claiming goods bailed

120. If a person, other than the bailor, claims goods bailed, he may apply to the court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of finder of goods; may sue for specific reward offered

121. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

When finder of thing commonly on sale may sell it

122. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it— (a) when the thing is in danger of perishing or of losing the greater part of its value; or (b) when the lawful charges of the finder, in respect of the thing found, amount to two-thirds of its value.

Bailee's particular lien

123. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain the goods until he receives due remuneration for the services he has rendered in respect of them.

ILLUSTRATIONS

(a) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(b) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid. General lien of bankers, factors, wharfingers, advocates and

policy brokers

124. Bankers, factors, wharfingers, advocates and policy brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect. Bailments of Pledges

"Pledge", "pawnor" and "pawnee"

125. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge". The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Pawnee's right of retainer

126. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession for the preservation of the goods pledged. Pawnee not to retain for debt or promise other than that for

which goods pledged. Presumption in case of subsequent advances

127. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee's right as to extraordinary expenses incurred

128. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right where pawnor makes default

129. If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

Defaulting pawnor's right to redeem

130. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before they are actually sold; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Pledge by possessor of goods, or of documentary title to goods

131. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of the goods or documents: Provided that— (a) the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly; and (b) the goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

Pledge where pawnor has only a limited interest

132. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Suits by Bailees or Bailor againts Wrongdoers

Suit by bailor or bailee against wrongdoer

133. If a third person wrongfully deprives the bailee of the use of possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits

134. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

PART X
AGENCY

Appoinment and Authority of Agents

"Agent" and "principal"

135. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

Who may employ agent

136. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent

137. As between the principal and third persons, any person may become an agent; but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary

138.

No consideration is necessary to create an agency.

Agent's authority may be expressed or implied

139.

The authority of an agent may be expressed or implied.

Definitions of express and implied authority

140. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

ILLUSTRATION

A owns a shop in Kajang, living himself in Kuala Lumpur, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purpose of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority

141. (1) An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do the act. (2) An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

ILLUSTRATIONS

(a) A is employed by B, residing in London, to recover at Teluk Intan a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(b) A constitutes B his agent to carry on his business of a shipbuilder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business.

Agent's authority in an emergency

142. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

ILLUSTRATIONS

(a) An agent for sale may have goods repaired if it be necessary.

(b) A consigns provisions to B at Taiping, with directions to send them immediately to C at Parit Buntar. B may sell the provisions at Taiping, if they will not bear the journey to Parit Buntar without spoiling. Sub-agents

When agent cannot delegate

143. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the agency, a sub-agent must, be employed.

"Sub-agent"

144. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed

145. (1) Where a sub-agent is properly appointed, the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal. Agent's responsibility for sub-agent (2) An agent is responsible to the principal for the acts of the subagent. Sub-agent's responsibility (3) A sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority

146. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards that person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to third persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal. Relation between principal and person duly appointed by agent

to act in business of agency

147. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, that person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

ILLUSTRATIONS

(a) A directs B, his advocate, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is A's agent for the conduct of the sale.

(b) A authorizes B, a merchant in Taiping, to recover the moneys due to A from C & Co. B instructs D, and advocate, to take legal proceedings against C & Co. for the recovery of the money. D is not a sub-agent, but is advocate for A.

Agent's duty in naming such person

148. In selecting such an agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

ILLUSTRATIONS

(a) A instructs B, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for A. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is not, but the surveyor is, responsible to A.

(b) A consigns goods to B, a merchant for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds. Ratification Right of person as to acts done for him without his authority.

Effect of ratification

149. Where acts are done by one person on behalf of another but without his knowledge or authority, he may elect to ratify or to disown the acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied

150. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

ILLUSTRATIONS

(a) A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(b) A, without B's authority, lends B's money to C. Afterwards B accepts interest on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite to valid ratification

151. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorized act forming part of a transaction

152. A person ratifying any unauthorized act done on his behalf ratifies the whole of the transaction of which the act formed a part.

Ratification of unauthorized act cannot injure third person

153. An act done by one person on behalf of another, without that other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have that effect.

ILLUSTRATIONS

(a) A, not being authorized thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(b) A holds a lease from B, terminable on three month's notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A. Revocation of Authority

Termination of agency

154. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated or declared a bankrupt or an insolvent.

Termination of agency, where agent has an interest in subjectmatter

155. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

ILLUSTRATIONS

(a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his unsoundness of mind or death.

(b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority nor is it terminated by his unsoundness of mind or death.

When principal may revoke agents' authority

156. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

Revocation where authority has been partly exercised

157. The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.

ILLUSTRATIONS

(a) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1, 000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in A's name, and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton. Compensation for revocation by principal or renunciation by

agent

158. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Notice of revocation or renunciation

159. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Revocation and renunciation may be expressed or implied

160. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent, respectively.

ILLUSTRATION

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

When termination of agent's authority takes effect as to agent,

and as to third persons

161. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

ILLUSTRATIONS

(a) A directs B to sell goods for him, and agrees to give B 5 per cent commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for RM100. The sale is binding on A, and B is entitled to RM5 as his commission.

(b) A, at Port Dickson, by letter directs B to sell for him some cotton lying in a warehouse in Kelang, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Port Dickson. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton. C pays B the money, with which B absconds. C's payment is good as against A.

(c) A directs B, his agent, to pay certain money to C. A dies, and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

Agent's duty on termination of agency by principal's death or

insanity

162. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Termination of sub-agent's authority

163. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Agent's duty to Principal

Agent's duty in conducting principal's business

164. An agent is bound to conduct the business of his principal according to the directions given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts the business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

ILLUSTRATIONS

(a) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make the investment. A must make good to B the interest usually obtained by such investments.

(b) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

Skill and diligence required from agent

165. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill, or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill, or misconduct.

ILLUSTRATIONS

(a) A, a merchant in Kuala Lumpur, has an agent, B, in London, to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss— as, e. g., by variation of rate of exchange—but not further.

(b) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of the sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(c) A, an insurance broker employed by B to effect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(d) A, a merchant in England, directs B, his agent at Kelang, who accepts the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts

166. An agent is bound to render proper accounts to his principal on demand.

Agent's duty to communicate with principal

167. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instructions. Right of principal when agent deals, on his own account, in

business of agency without principal's consent

168. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

ILLUSTRATIONS

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(b) A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allows B to buy, in ignorance of the existence of the mine. A, on discovering that B knew of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own

account in business of agency

169. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

ILLUSTRATION

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

Agent's right of retainer out of sums received on principal's

account

170. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's duty to pay sums received for principal

171. Subject to the deductions specified in section 170, the agent is bound to pay to his principal all sums received on his account.

When agent's remuneration becomes due

172. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of the act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

Agent not entitled to remuneration for business misconducted

173. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

ILLUSTRATIONS

(a) A employs B to recover RM100,000 from C, and to lay it out on good security. B recovers the RM100,000 and lays out RM90, 000 on good security, but lays out RM10,000 on security which he ought to have known to be bad, whereby A loses RM2,000. B is entitled to remuneration for recovering the RM100,000 and for investing the RM90,000. He is not entitled to any remuneration for investing the RM10,000, and he must make good the RM2,000 to A.

(b) A employs B to recover RM1,000 from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

Agent's lien on principal's property

174. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements, and services in respect of the same has been paid or accounted for to him.
Principal's duty to Agent

Agent to be indemnified against consequences of lawful acts

175. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by the agent in exercise of the authority conferred upon him.

ILLUSTRATIONS

(a) B, at Kelang, under instructions from A, of Taiping, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorizes him to defend the suit. B defends the suit, and is compelled to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses.

(b) B, a broker at Taiping, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks of oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs, and incurs expenses. A is liable to B for such damages, costs and expenses. Agent to be indemnified against consequences of acts done in

good faith

176. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it cause an injury to the rights of third persons.

ILLUSTRATIONS

(a) A, a decree-holder and entitled to execution of B's goods, requires the officer of the court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(b) B, at the request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

Non-liability of employer of agent to do a criminal act

177. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

ILLUSTRATIONS

(a) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(b) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication, and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

Compensation to agent for injury caused by principal's neglect

178. The principal must make compensation to his agent in respect of injury caused to the agent by the principal's neglect or want of skill.

ILLUSTRATION

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskillfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of Agency on Contract with Third Persons

Enforcement and consequences of agent's contracts

179. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person.

ILLUSTRATIONS

(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(b) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority

180. When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal.

ILLUSTRATION

A, being owner of a ship and cargo, authorizes B to procure an insurance for RM4,000 on the ship. B procures a policy for RM4,000 on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not

separable

181. Where an agent does more than he is authorized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

ILLUSTRATION

A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of RM6,000. A may repudiate the whole transaction.

Consequences of notice given to agent

182. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

ILLUSTRATIONS

(a) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(b) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C. Agent cannot personally enforce, nor be bound by, contracts on

behalf of principal

183. In the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Such a contract shall be presumed to exist in the following cases: (a) where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad; (b) where the agent does not disclose the name of his principal; and (c) where the principal, though disclosed, cannot be sued. Presumption of contract to contratry

Rights of parties to a contract made by agent not disclosed

184. (a) If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

(b) If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal

185. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain the performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

ILLUSTRATION

A, who owes RM500 to B, sells RM1,000 worth of rice to B. A is acting as agent for C, in the transaction, but B has no knowledge nor reasonable ground of suspicion that that is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

Right of person dealing with agent personally liable

186. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable.

ILLUSTRATION

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

Consequence of inducing agent or principal to act on belief that

principal or agent will be held exclusively liable

187. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal, respectively.

Liability of pretended agent

188. A person untruly representing himself to be the authorized agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Person falsely contracting as agent not entitled to performance

189. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account. Liability of principal inducing belief that agent's unauthorized

acts were authorized

190. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by those acts or obligations if he has by his words or conduct induced such third persons to believe that those acts and obligations were within the scope of the agent's authority.

ILLUSTRATIONS

(a) A consigns goods to B for sale, and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract with B to buy the goods at a price lower than the reserved price. A is bound by the contract.

(b) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect, on agreement, of misrepresentation or fraud by agent

191. Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.

ILLUSTRATIONS

(a) A, being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorized by B to make. The contract is voidable, as between B and C, at the option of C.

(b) A, the captain of B's ship, signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

APPENDIX

Act A329 CONTRACTS (AMENDMENT) ACT 1976 An Act to amend the Contracts Act 1950 to make provisions with respect to scholarship agreements. [27 February 1976] BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

Short title and construction

1. This Act may be cited as the Contracts (Amendment) Act 1976, and shall be construed as one with the Contracts Act 1950 [Act 136] (hereinafter referred to as the "principal Act").

Interpretation

2.

In this Act, unless the context otherwise requires—

"appropriate authority" means the Federal Government or a State Government, a statutory authority, or an approved educational institution; "approved educational institution" means any institution or body declared as such by the Minister under section 3; "existing scholarship agreement" means a scholarship agreement entered into before the commencement of this Act and which had not expired prior to the commencement of this Act; "scholarship agreement" means any contract or agreement between an appropriate authority and any person (hereinafter in this Act referred to as a "scholar") with respect to, any scholarship, award, bursary, loan, sponsorship or appointment to a course of study, the provision of leave with or without pay, or any other facility, whether

granted directly by the appropriate authority, or by any other person or body, or by any government outside Malaysia, for the purpose of education or learning of any description; "statutory authority" means an authority established by any written law; and "surety" means a person referred to as a surety, or as a guarantor, or by any other corresponding term, in a scholarship agreement.

Declaration of an approved educational institution

3. The Minister for the time being in charge of education may by notification in the Gazette declare any institution or body, whether corporate or unincorporate, to be an approved educational institution for the purpose of this Act.

Validity of scholarship agreement

4. Notwithstanding anything to the contrary contained in the principal Act, no scholarship agreement shall be invalidated on the ground that— (a) the scholar entering into such agreement is not of the age of majority; (b) such agreement is contrary to any provision of any law in force relating to moneylenders; or (c) such agreement lacks consideration.

Remedy in the event of breach

5.

Where a scholarship agreement has been broken by the scholar— (a) if a sum is named in the agreement as the amount to be paid in case of such breach, notwithstanding anything to the contrary contained in the principal Act, the scholar and the surety shall be liable jointly and severally to pay and the appropriate authority shall be entitled to be paid the whole of such named sum whether or not actual damage or loss has been caused by such breach, and no deduction shall be made from the said named sum on account of any partial period or service performed by the scholar on completion of his course of study; or

(b) if no such sum is mentioned in the scholarship agreement, the scholar and the surety shall be jointly and severally liable to pay and the appropriate authority shall be entitled to be paid— (i) the whole amount expended by the appropriate authority under the agreement; and (ii) the whole of such further amount as it will cost the appropriate authority or another authority designated by it to engage a person with qualifications and experience similar to those which were to be obtained by the scholar to perform the

services required of the scholar on the completion of his course or study for the period specified in the scholarship agreement.

Application to existing scholarship agreements

6. The provisions of this Act shall apply to existing scholarship agreements in the same way as they apply to scholarship agrements entered into after the coming into force of this Act.

Jurisdiction

7. Notwithstanding anything contained in any written law to the contrary, the Sessions Court and, in the case of Sabah and Sarawak, the Court of a Magistrate of the First Class* shall have jurisdiction in all civil proceedings which arise from or relate to a scholarship agreement.

Representation

8. In all proceedings which arise from or relate to a scholarship agreement— (a) the Federal Government, any statutory authority under the jurisdiction of the Federal Government and any approved educational in stitution may be represented by a Federal Counsel; and (b) the State Government and any statutory authority under the jurisdiction of the State Government may be represented by the respective State Legal Adviser, or the respective State Attorney General, or a Federal Counsel authorized by either of them.

*NOTE—See section 111 of the Subordinate Courts Act 1948 [Act 92].

Act 136 CONTRACTS ACT 1950