

## Law of Contract in Nepal

Nepal enacted, in 1966, a fairly detailed enactment on the law relating to contracts, which came into force on 16th December, 1966 (corresponding to Poush 1, 2023 according to the Nepalese Calendar).

### Scheme of the Act

The Nepal Act contains 19 sections in all. Sections 1 and 2 contain preliminary provisions, including definitions. Section 3 deals with contracting parties. Sections 4, 5 and 6 contain detailed provisions as to offer, acceptance and their revocation. Sections 7 and 8 deal with:-

- (i) contracts, which may be avoided by a party and
- (ii) contracts which are invalid, respectively.

Section 9 deals with “indirect contracts” these are really quasi contracts.

Sections 10 and 11 are the key provisions, dealing with contractual liabilities. Alterations in the contract and delegation of work under contract are taken care of, by section 12. Matters concerning time, manner, and place of performance are dealt with in sections 13 and 14.

Section 15 is devoted to the important topic of compensation for breach of contract, while section 16 deals with restitution to be made, when a contract is terminated (with mutual consent) or otherwise cancelled.

The relationship of the 1966 Act with other current Nepal laws is governed by sections 17 and 18. Section 19 repeals certain laws, but the Government Contracts (Arrangements) Act, 1963, is saved, by an express proviso.

The Nepal Act thus, seems to present, in a simplified form, some of the basic principles of contract, in a manner suitable to the needs of the country.

### Definitions

The Nepal Act contains, in section 2, only three definitions, as under:

- (a) “contract” is defined as an agreement concluded between two or more parties for performing or not performing any work. This has to be read with section 4(1), which provides that if any person “advances” any proposal to any other person and the latter gives his acceptance thereto, they shall be deemed to have concluded a contract.

The definition of “contract” in section 2 (a) is noteworthy, for two reasons:

- (i) It expressly covers a multi-party transaction [Note the words – “two or more parties”];
- (ii) Further, it covers negative agreements also vide the words “agreement ..... for ..... not performing any work” .

These words seems to take in (for example), restrictive covenants, e.g., covenants in restraint of trade.

- (b) “proposal” is defined as a proposal put forward by one person to another, with the expectation of obtaining his “consent for performing or not performing any work” .

The definition expressly brings out one element, which, (in many other models) is left to implication, namely, that the proposer desires to elicit a response from the person to whom the proposal is made.

- (c) “consent” is defined as meaning consent given by a person “in the same sense in which the proposer has taken the substance of the proposal presented by him to the former” .

Obviously, the object of this elaborate definition is to incorporate the juristic concept of “consensus ad idem” .

In this manner, the intellectual aspect of consent is adequately dealt with in the Nepal Act. The psychological and moral aspects, (which are also relevant, when there is fraud, undue influence or coercion) are not dealt with, in the definition. However, section 7 takes care of all such factors which corrupt consent. [See “Free consent” , infra].

### Competence to contract

The effect of section 3 of the Nepal Act is that a minor (i.e., a person below 16 years) or a person of unsound mind, cannot enter into a contract. But his guardian can do so, “in his interest” and on his behalf.

### Proposal and acceptance

Sections 4, 5 and 6 of the Nepal Act contain very elaborate provisions as to (i) proposal, (ii) acceptance, (iii) cancellation of proposal or acceptance, (iv) offer to the general public, etc.

The rest of the Act is couched in simple and short provisions, but these sections are found to be much more elaborate. Perhaps, some actual problems must have arisen in the country, necessitating a statutory clarification.

Section 4 (1) of the Nepal Act lays down the basic proposition, that if a person “advances” a proposal to a person who “gives his acceptance” thereto, they shall be deemed to have concluded a contract. Section 4(2) contains a specific provision, by laying down that if a person making a proposal states that he should be given notice of the acceptance of the proposal within a specified period, but does not receive such notice within such period, then no contract shall be deemed to have been concluded. Under section 4 (3), if no time limit is specified in the proposal, then it must be accepted within reasonable time. Section 4 (4) provides that an offeror cannot bind the offeree by a stipulation that if the offeror is not given notice of rejection within a specific time limit, then he shall be deemed to have accepted the offer.

Section 5 contains detailed rules as to cancellation of an offer, while section 6 deals with offer made to the general public and is obviously reminiscent of the English case of *Carlill v. Carbolic Smoke Ball Co.*

## Free Consent

Section 7 of the Nepal Act provides that in certain circumstances, contracts “may be made void by the party aggrieved thereby”. In this context, the following factors are mentioned:

- (a) coercion;
- (b) Undue influence;
- (c) fraud;
- (d) deceit (which is distinct from fraud and may cover even innocent misrepresentation). [See “Fraud and deceit”, *infra*].

In regard to undue influence, one finds certain special features in the Nepal Act. “Undue influence” means influence exercised by a person upon another person “who is under his influence or is amenable to his wishes”, with the intention of deriving some advantage for personal benefit or to fulfil some such interests. Explanation give specific instances, one of which deals with persons of physical or mental weakness, while another speaks of persons who can be subjected to economic pressures.

Incidentally, the draftsman in Nepal seems to have found the Indian legislative practice of inserting an "Explanation" to be very useful.

## Fraud and deceit

Section 7 (c) of the Nepalese Contract Act which defines "fraud", covers wilful deception, whether it be in the nature of suggestio falsi or suppressio veri.

Section 7 (d) deals separately with deceit and seems to cover even a misrepresentation made innocently, because the Explanation states that a person commits deceit, if, without the intention of committing fraud, he does the acts enumerated in clauses (a), (b) and (c). Of these, clause (c) runs as under:

"(c) causes any mistake or error to be committed in respect to the particulars of the contract, out of ignorance".

These words definitely cover innocent misrepresentation. Incidentally, the draftsman, by using the two words "mistake or error", seems to show his awareness of the fine distinction, between the two. "Mistake" leads to positive action, while "error" covers even inaction (resulting from misrepresentation).

## Illegality, immorality and public policy.

Certain agreements are declared invalid by section 8 of the Nepal Act. Section 8, clauses (a) to (f) mostly cover agreements tainted by illegality or immorality or violating the public interest, agreements in restraint of trade or marriage, etc. But two clauses of the section are worth notice, as quoted below:

(c) "Contracts preventing any person from enjoying the privileges or facilities already being enjoyed by the general public.

(d) Contracts seeking to prevent the legal rights of any person from being made applicable by any government officer or court".

## Uncertainty

In section 8 of the Nepal Contract Act, uncertainty seems to have been taken care of, by the following clauses:

(g) "contract which cannot be carried out, because the parties thereto do not exactly know about the matter in relation to which it has been concluded:

(i) contract which is not explicit, because there is lack of a reasonable interpretation thereof” .

### Impossibility

A simple provision in the Nepalese Contract Act [section 8 (h)] declares, as invalid, a contract, “work in respect to which is considered impossible at the time it is conducted or after it has been conducted” .

### Indirect contracts

Under the heading of “indirect contracts”, the Nepalese Act, in section 9, deals with five situations of unjust enrichment.

### Liability of the Parties

Section 10 of the Nepalese Contract Act spells out the obligation of each party to a contract, “to meet his liabilities” . In the case of a joint contract, the liability is joint and several. A joint promisor can be compelled to perform a contract and can (on such performance) demand contribution from the other co-promisors.

A party must (under section 11) extend, to the other party, such facilities as are required, so that the other party may render performance of the contract.

A contract can be abandoned, or the time for performance extended, by mutual consent, under section 11 of the Nepalese Contract Act.

### Time, manner and place of performance

Sections 13 and 14 of the Nepal Act deal with the time, manner and place of performance of contracts. These are governed by agreement or (in the absence thereof), by the test of “reasonableness” . The Act is salient as to the circumstances in which time shall be deemed to be of the essence. The matter must therefore be left to be decided on the facts of each case.

### Damages for breach of contract

The thorny topic of damages for breach of contract is dealt with, in a fairly simple provision, in the Nepal Act.

Section 15 reads as under:

(1) In case any party fails to carry out the contract, the opposite party may realise compensation therefore

(2) In case the contract specifically provides for compensation for specific matters, compensation shall be paid accordingly, and where no compensation is specified in the contract, the party claiming compensation may receive compensation to the extent to which he has actually suffered losses or damages.

Compensation shall not be realised for indirect or imaginary losses or damages” 15 Compensation.

This provision is of considerable interest, for more reasons than one. In the first place, where the damages are liquidated by the contract, then the section steers clear of the various controversies as to whether the damages are “penal”, or whether proof should be given of actual loss and so on. Secondly, if the damages are not liquidated, then, (under the section), compensation can be claimed for loss actually suffered. Obviously, the plaintiff will have to prove it. Thirdly, by prohibiting recovery for indirect or imaginary losses, the section incorporates the doctrine of “ordinary and natural consequences of breach” and thus, in a sense, brings the Nepalese law very near to section 73 of the Indian Contract Act 1872, and the common law rule in *Hadley v. Baxendale*.