

# THE SPECIFIC RELIEF ACT

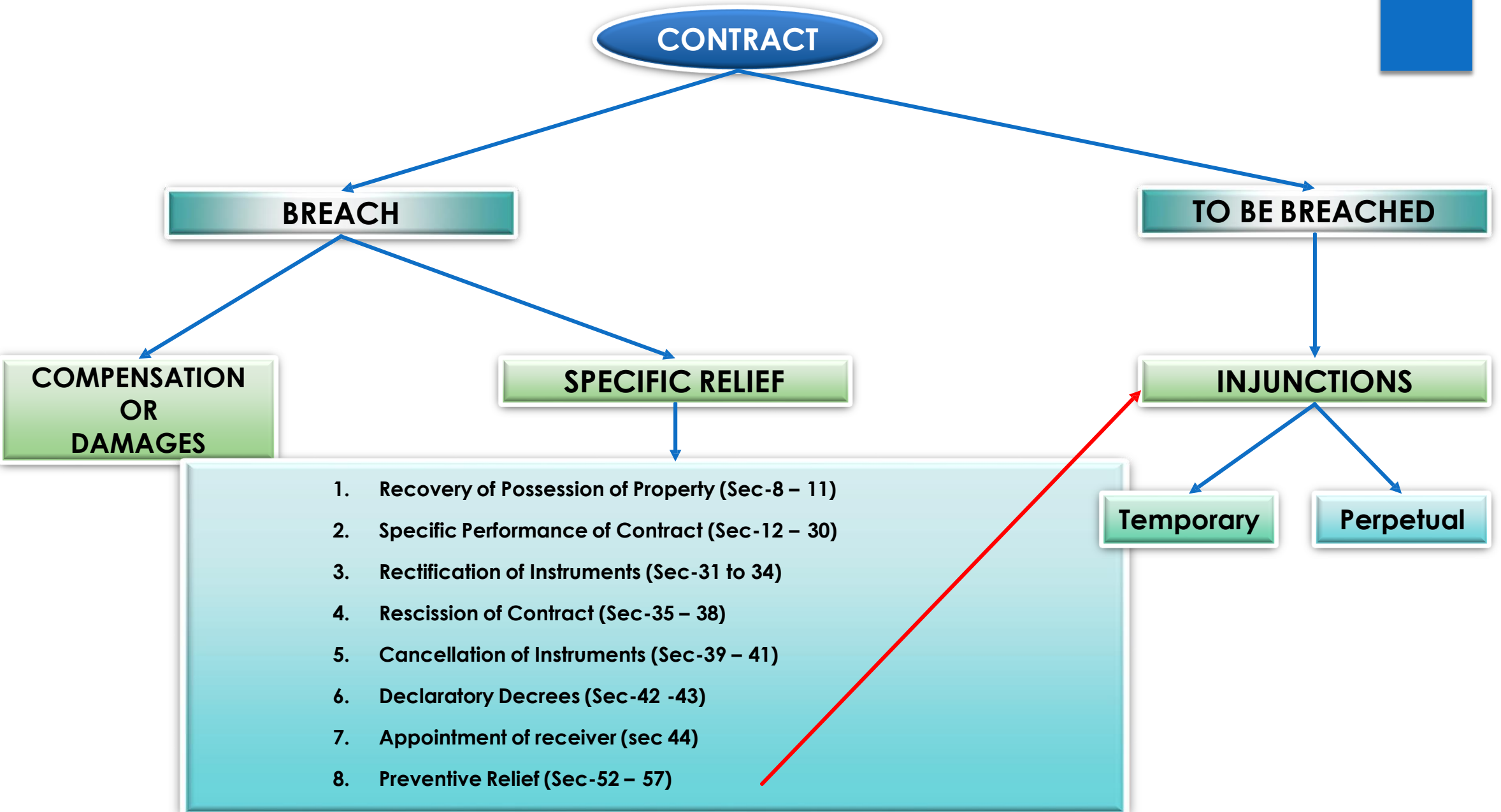
# INTRODUCTION

- ❑ Laws fall into three categories.—
  - ❑ **Those which define Rights.**
  - ❑ **Those which define Remedies.**
  - ❑ **Those which define Procedure.**
- ❑ The Law of Specific Relief belongs to the second category. It is a law which deals with **'Remedies'**.
- ❑ The term **'relief'** is only another word for remedy which a Court is allowed by law to grant to suitors.
- ❑ Before the passing of the Specific Relief Act the law as to Specific Relief was contained in **the Civil Procedure Code.**
- ❑ The Act aims to define and amend the law relating to Specific Relief obtainable in Civil Court.

# INTRODUCTION

- ▶ In case of the Specific Relief, the plaintiff claims the very thing to which he is entitled. In case of Compensatory Relief, he obtains the compensation for loss.
- ▶ Specific Relief is **only granted for enforcing civil rights** and **not penal rights (Sec-7)**.
- ▶ Specific Relief is **an equitable relief**. A person seeking specific relief must come to the court with clean hands. Granting of Specific relief is **the discretion of the court**.

# THE GENESIS OF SPECIFIC RELIEF ACT 1963



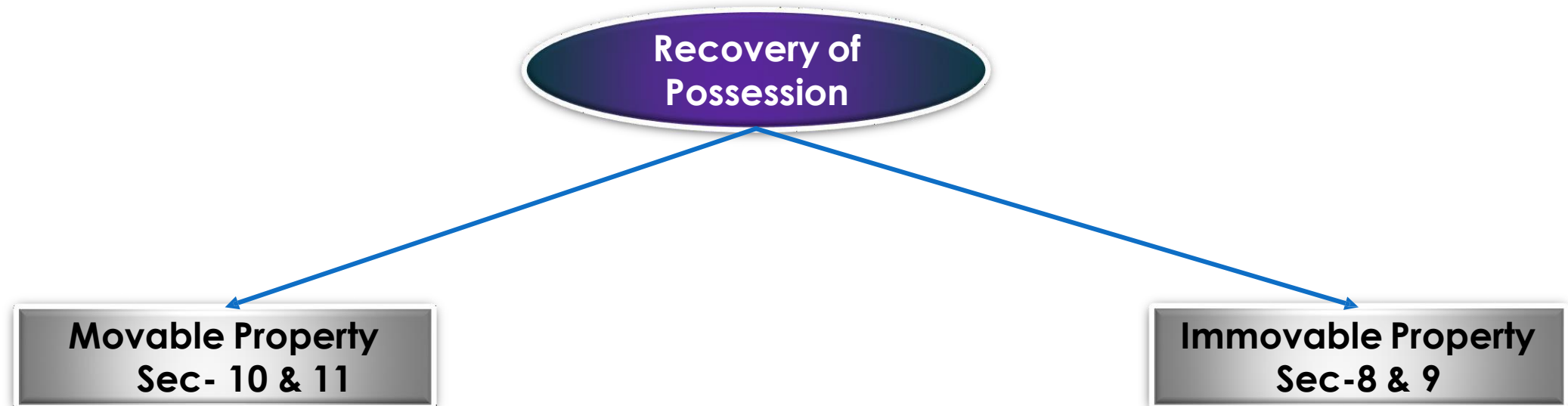
1. Recovery of Possession of Property (Sec-8 - 11)
2. Specific Performance of Contract (Sec-12 - 30)
3. Rectification of Instruments (Sec-31 to 34)
4. Rescission of Contract (Sec-35 - 38)
5. Cancellation of Instruments (Sec-39 - 41)
6. Declaratory Decrees (Sec-42 -43)
7. Appointment of receiver (sec 44)
8. Preventive Relief (Sec-52 - 57)

# REMEDIES PROVIDED UNDER THE ACT OR KINDS OF SPECIFIC RELIEF

1. Recovery of Possession of Property (**Sec-8 – 11**)
2. Specific Performance of Contract (**Sec-12 – 30**)
3. Rectification of Instruments (**Sec-31-34**)
4. Rescission of Contract (**Sec-35 – 38**)
5. Cancellation of Instruments (**Sec-39 – 41**)
6. Declaratory Decrees (**Sec-42 -43**)
7. **Appointment of receiver (sec 44)**
8. Preventive Relief (**Sec-52 – 57**)

# 1. RECOVERY OF POSSESSION OF PROPERTY (SEC- 5 TO 8)

- ▶ Under this chapter the person can recover movable and immovable property.



## A. RECOVERY OF POSSESSION OF **MOVABLE PROPERTY** (**Sec-7 & 8**)

- ▶ Specific and immediate recovery of movable property can be obtained by the plaintiff under the following cases.....
  - ❑ when the defendant holds it as a trustee or agent of the plaintiff, or
  - ❑ when compensation is not an adequate relief, or
  - ❑ when assessment of damages is difficult
  - ❑ when the possession of the thing claimed has been wrongfully transferred from the plaintiff.

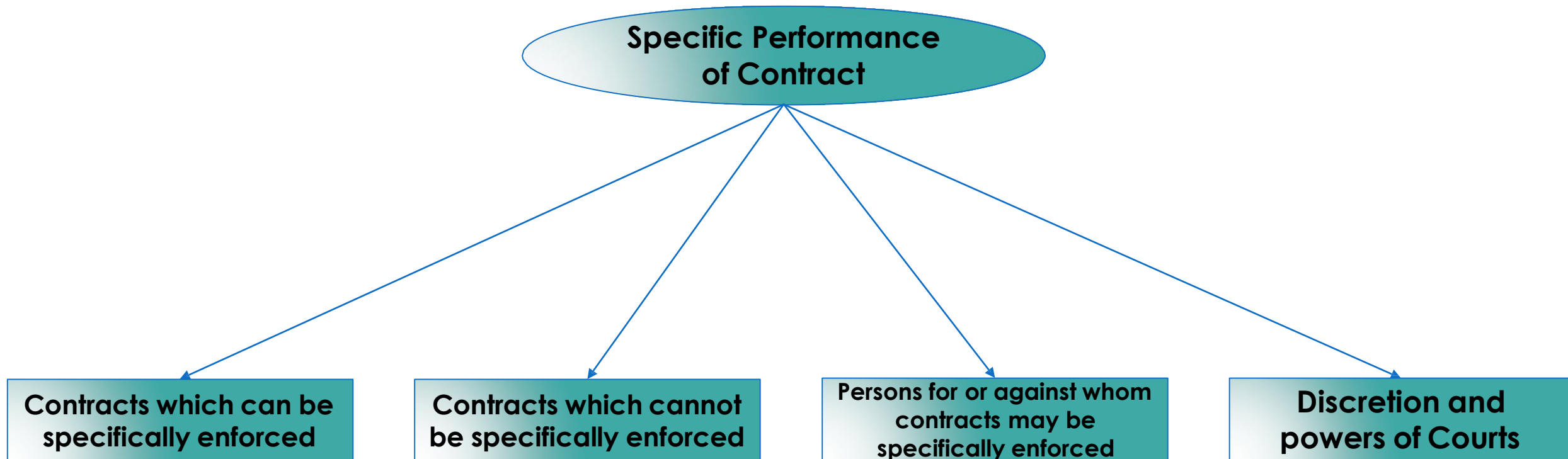
## B. RECOVERY OF POSSESSION OF IMMOVABLE PROPERTY (Sec-5 & 6)

- ▶ Where a person in possession of **immovable property** is dispossessed **without his consent** and **otherwise than in due course of law**, he is entitled to recover possession of immovable property.
  - ❑ The suit for possession of immovable property must be filed **within six months** from the dispossession.
  - ❑ Such suit **cannot be filed against Government**.
  - ❑ The possession is claimed **on basis of previous possession** but title is immaterial.
  - ❑ **No appeal is allowed** in the appellate court and no review petition is maintainable.
  - ❑ If the plaintiff has parted with the possession **voluntarily**, **he cannot file a suit**.



# 2. SPECIFIC PERFORMANCE OF CONTRACT (SEC-9 – 25)

- ▶ This is important chapter and can be sub divided as under....



## A. CONTRACTS WHICH **CAN** BE SPECIFICALLY ENFORCED (Sec-10, Sec-11(1), 12(2)(3)(4), 14(3), 20(3))

- ❑ When there exists **no standard for ascertaining the actual damage** caused by the non-performance of the act; or
- ❑ When the **compensation in money is inadequate relief.**

In case of breach of a contract in relation to...

**Transfer of Immovable Property** ----- Compensation in money is inadequate relief

**Transfer of Movable Property** ----- Compensation is adequate relief

**However, in case of movable property – in the following cases, compensation is inadequate relief**

- ❑ Where it is **not an article of ordinary commerce**; or
- ❑ Where it consists of goods which are **not easily obtainable in the market.**
- ❑ Where such goods are **special value or interest to the plaintiff.**
- ❑ Where the property is **held by the defendant as the agent or trustee** of the plaintiff.

# ILLUSTRATIONS

1. A agrees to sell to B a silver tobacco box which belonged to B's father. It was sold outside B's family sometime in distress. Subsequently, A refuses to sell it to B. What is the remedy available to B?
2. A is in possession of a house taken on lease for a period of 9 months from its owner B. But before the period of lease expired, A was dispossessed of it by B. What is the remedy available to A?
3. A pledges some family jewels to B to secure a loan which has to be repaid within a year. After 6 months, A goes to B and offers to repay the loan. B refuses to return the jewels. What is the remedy available to A?

## B. CONTRACTS WHICH **CANNOT** BE SPECIFICALLY ENFORCED

The following contracts cannot be specifically enforced....

- ❑ A contract made by a trustee **in excess of his powers or in breach of trust**.
- ❑ Where **compensation is adequate relief**.
- ❑ Where a contract (for its performance) **depends on the personal qualifications or volition** of the party.
- ❑ A contract which is **in its nature determinable** (in which damages can be ascertained).
- ❑ Which **involves the performance of continuous duty** which court cannot supervise.
- ❑ Where a contract **runs into minutes or numerous details**.
- ❑ A contract in which **the material terms are absent**.

## C. PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED

### C (i). Who CAN sue for Specific Performance

- ❑ any party to the contract
- ❑ **the representative-in-interest** (i.e., any assignee, transferee, administrator, executor etc.)
- ❑ where contract is a settlement on marriage between members of the same family, **any beneficiary,**
- ❑ a **remainder-man** of tenant.
- ❑ a **reversioner** in possession.
- ❑ a **reversioner** in remainder.
- ❑ **new amalgamated company.**
- ❑ **the company on behalf of its promoters**

## C. PERSONS FOR OR AGAINST WHOM CONTRACTS MAY BE SPECIFICALLY ENFORCED

### C (ii). Who CANNOT sue for Specific Performance

- ❑ Who would **not be entitled to recover compensation** for the breach of the contract.
- ❑ Who has become **incapable of performing** the contract.
- ❑ Who **violates any essential term** of the contract.
- ❑ Who acts in **fraud** of the contract
- ❑ Who **willfully acts at variance** (with relation to the establishment of the contract).
- ❑ Who **fails to show his readiness and willingness** to perform the essential terms of the contract (which are to be performed by him).

# D. DISCRETION AND POWERS OF COURTS

## SECTION-22

Under the following circumstances, the court may properly exercise its discretion for **no specific performance**....

- ❑ Where the contract gives an **unfair advantage to the plaintiff** over the defendant, or
- ❑ Where the performance of the contract would involve some **unforeseen hardship on the defendant**, (its non-performance would not cause any hardship to the plaintiff), or
- ❑ Where the defendant enters into a contract under the circumstances which **amount to inequitable** to enforce the contract specifically.

# 3. RECTIFICATION OF INSTRUMENTS

When through **fraud or mutual mistake** of the parties a contract **does not express their real intention then.....**

- ❑ Either party or his representative in interest **may institute a suit to have the instrument rectified;**  
or
- ❑ **In any suit pray for rectification** of instrument; or
- ❑ A **defendant** may ask for rectification.
- ❑ The **court may in its discretion direct rectification** of the instrument.
- ❑ A contract may **first be rectified** and then specifically enforced;
- ❑ **No relief unless specifically claimed.**



# 4. RESCISSION OF CONTRACT

- ▶ **Any person interested in a contract** may sue to rescind contract and court may grant such rescission if.....
  - ❑ A contract is **voidable or terminable by plaintiff**; or
  - ❑ A contract is **unlawful** for causes not apparent on its face and defendant is more to blame than the plaintiff.
- ▶ **But court may refuse to rescind the contract...**
  - ❑ Where the plaintiff has **expressly or impliedly ratified the contract**; or
  - ❑ Where owing to change of circumstances the parties **cannot be substantially restored** to the position in which they stood when the contract was made; or
  - ❑ Where **third parties have acquired rights in good faith** without notice and for value;
  - ❑ Where **part is not severable from the rest of the contract**.

## 4. RESCISSION OF CONTRACT

- ▶ **Rescission of contract after decree**
- ▶ Where a **suit for specific performance of contract is decreed** and **purchaser does not pay** the purchase money which the court has ordered him to pay, the **vendor may apply in same suit to have contract rescinded** and court may rescind the contract and may direct:-
  - ❑ Restoration of possession;
  - ❑ Refund of earnest money and other profits;
  - ❑ Restore any benefits received;
  - ❑ To give compensation.

## 5. CANCELLATION OF INSTRUMENTS

- ▶ Any person against whom a **written instrument is void or voidable** and who **has reasonable apprehension** that such instrument if left outstanding may cause him **serious injury** may sue to have it adjudged void or voidable and **the court may in its discretion** so adjudge it and order it to be delivered up and cancelled.
- ▶ If the instrument has been registered the court shall also send a copy of its decree to registration office.
- ▶ The instrument can be cancelled **partially**.
- ▶ The court may direct plaintiff **to restore benefits** taken or **grant compensation** to defendant.

## 6. DECLARATORY DECREES

- ▶ **Declaratory decree** is a specific relief that can be obtained by the plaintiff against the defendant.
- ▶ when the **plaintiff is entitled to any right** and
- ▶ the **defendant denies** or is interested to deny the plaintiff's title to such right.
- ▶ Any person....
  - ❑ entitled to any legal character or to any right
  - ❑ as to any property
  - ❑ may institute a suit
  - ❑ against any person denying his title or right
  - ❑ Court in its discretion make such declaration.
  - ❑ Such declaration is binding only on parties.

A is not the wife of B. But she persistently claims of marriage falsely alleged to have taken place between A and B. What is the remedy available to B?

# 7. PREVENTIVE RELIEF

- ▶ Preventive Relief is granted at the discretion of the Court **by injunction**,
- ▶ Injunctions may be perpetual or temporary.

Section-36

## ▶ **CHARACTERISTICS OF AN INJUNCTION**

- ❑ It is a **judicial process**.
- ❑ The objective of this judicial process is **to restrain or to prevent**.
- ❑ The act restrained or prevented is a **wrongful act**.
- ❑ An injunction operates always **in personam**.

## ▶ **TYPES OF PREVENTIVE RELIEF**

- ❑ **Perpetual Injunction** - granted at the end of suit to prevent breach of an obligation existing in favour of a plaintiff.
- ❑ **Temporary Injunction** - granted for a specific time or until further orders of the court to maintain status quo.

# A. PERPETUAL INJUNCTIONS

Perpetual injunctions may be granted.....

- ▶ To prevent the breach of an obligation existing in his favour; or
- ▶ When defendant invades or threatens to invade the right of plaintiff and
- ▶ Where there exists no standard for ascertaining the actual damage caused;
- ▶ Where invasion is such that compensation in money would not afford adequate relief;
- ▶ Where injunction is necessary to prevent a multiplicity of judicial proceedings.

## B. MANDATORY INJUNCTIONS

When to prevent the breach of obligation....

- ▶ It is necessary to compel the performance of certain acts
- ▶ Which the court is capable of enforcing
- ▶ The court may grant mandatory injunction
- ▶ To prevent the breach complained of
- ▶ And also to compel performance of the requisite acts.

# INJUNCTION WHEN REFUSED

- ▶ To restrain from prosecuting a **judicial proceeding pending**.
- ▶ To restrain from instituting or prosecuting **any judicial proceeding (whether civil or criminal)**.
- ▶ To restrain from applying to **any legislative body (MP's / MLA's / MLC's)**;
- ▶ To prevent the **breach of a contract** the performance of which would not be specifically enforced.
- ▶ To prevent on the **ground of nuisance** an act of which it is not reasonably clear that it will be a nuisance.
- ▶ To prevent a **continuing breach** in which the plaintiff has acquiesced.
- ▶ **When equally efficacious relief** can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- ▶ When the **conduct of the plaintiff or his agents** has been such as to disentitle him to the assistance of the Court.
- ▶ When the **plaintiff has no personal interest** in the matter.



# INJUNCTIONS TO PERFORM NEGATIVE AGREEMENT

- ▶ When contract comprises **an affirmative agreement to do a certain act**, and
- ▶ Coupled with **a negative agreement not to do certain act**,
- ▶ The circumstances are such that **the Court cannot grant specific performance of affirmative agreement**,
- ▶ But, it **can grant an injunction in performing the negative agreement**.

Thank you