APPENDIX – A

CONTRACTS (RIGHTS OF THIRD PARTIES)

A.D. 1996

An Act to make provision for the enforcement of a contract in certain circumstances by a person who is not a party to the contract; and for connected purposes.

It is enacted by the Queen’s most Excellent Majesty, with the advice and consent of the Lords Spiritual and Temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows :-

Clause – I, RIGHT OF THIRD PARTY TO ENFORCE CONTRACT

Subject to the provisions of this Act, a person who is not a party to a contract (in this Act referred to as a third party) may in his own right enforce the contract if –

the contract contains an express term to that effect; or

subject to subsection (2) below, the contract purports to confer a benefit on the third party.

Subsection (1) (b) above does not apply if on a proper construction of the contract if appears that the parties did not intend the contract to be enforceable by the third party.

The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.

For the purpose of exercising the rights conferred on him by this section
there shall be available to the third party all such remedies as would have been available to him in an action for breach of the contract if he had been a party to it, and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly.

Where the contract excludes or limits the third party's liability in relation to any matter references in this Act to his enforcing it shall be construed as references to his availing himself of the exclusion or limitation.

In this Act "the promisor" means the party to the contract against whom it is enforceable by the third party by virtue of this section and "the promisee" means the party to the contract by whom it is enforceable against the promisor.

**Clause – II, VARIATION AND CANCELLATION OF CONTRACT**

Subject to the provisions of this Act, where a contract is enforceable by a third party by virtue of section 1 above the parties to the contract may not without his consent vary or cancel the contract is -

the third party has communicated his assent to the contract to the promisor;

the promisor is aware that the third party has relied on the contract; or

the promisor can reasonably be expected to have foreseen that the third party would rely on the contract and the third party has in fact relied on it.

The assent referred to in subsection (1)(a) above —
may be by words or conduct; and
if sent to the promisor by post or other means, shall not be regarded as communicated to the promisor until received by him.

A contract which is enforceable by a third party by virtue of section 1 above may expressly provide —
that it shall be capable of cancellation or variation without the consent of the third party; or
that his consent is to be required in circumstances specified in the contract instead of those specific in subsection (1) above.

Where by virtue of the foregoing provisions of this section the consent of a third party is required for the cancellation or variation of a contract the court may, on the application of the parties of the contract, dispense with that consent if satisfied—
that the third party's consent cannot be obtained because his whereabouts cannot reasonably be ascertained; or
that he is mentally incapable of giving his consent.

The court may, on the application of the parties to a contract, dispense with any consent to a variation or cancellation of the contract that may be required by virtue of subsection (1) (c) above if satisfied that it cannot reasonably be ascertained whether or not the third party has in fact relied on the contract.

Where the court dispenses with a third party's consent it may impose such conditions as it thinks fit including a condition requiring the
payment of compensation to the third party.

The jurisdiction conferred by subsections (4) to (6) above shall be exercisable both by the High Court and a country court.

**Clause – III, DEFENCES ETC. AVAILABLE TO PROMISOR**

Subsections (2) to (5) below apply where in reliance on section 1 above proceedings for the enforcement of a contract are brought by a third party.

The promisor shall have available to him by way of defence or set-off any matter that —

arises from or in connection with the contract; and

would have been available to him by way of defence or set-off in proceedings for the enforcement of the contract if those proceedings had been brought by the promisee.

Subsection (2) above is subject to any express term of the contract as to the matters that are not to be available to the promisor by way of defence or set-off, and is without prejudice to any express term of the contract which makes available to the promisor by way of defence or set-off any other matter which would have been so available in proceedings for the enforcement of the contract had they been brought by the promisee.

The promisor shall also have available to him

by way of defence or set-off any matter, and

by way of counterclaim any matter not arising from the contract,

that would have been available to him by way of defence or set-off
or, as the case may be, by way of counterclaim against the third party if the third party had been a party to the contract.

(5) Subsection (4) above to any express term of the contract as to the matters that are not to be available to the promisor by way of defence, set-off or counterclaim.

(6) Where in any proceedings brought against him a third party seeks in reliance on section 1 above to enforce a contract (including, in particular, a contract purporting to exclude or limit any liability of his), he may not do so to the extent that he could not have done so (whether by reason of any particular circumstances relating to him or otherwise) if he had been a party to the contract.

Clause – IV, ENFORCEMENT OF CONTRACT BY PROMISEE

Section 1 above is without prejudice to any right of the promise to enforce the contract.

Clause-V, PROTECTION OF PROMISOR FROM DOUBLE LIABILITY

Where by virtue of section I above a contract is enforceable by a third party, and the promise has recovered from the promisor a sum in respect of —

(a) the third party’s loss in respect of the contract, or

(b) the expense to the promise of making good to the third party the default of the promisor.

then, in any proceedings brought by virtue of that section by the third party, the court shall reduce any award to the third party to such extent as it thinks appropriate to take account of the sum recovered by the promise.
Clause – VI, SUPPLEMENTARY PROVISIONS RELATING TO THIRD PARTY

6. (1) Section I above is without prejudice to any right or remedy of a third party which exists or is available apart from this Act.

(2) Section I above confers no rights on a third party in the case of —

(a) a contract for the carriage of goods by sea, except that a third party may by virtue of that section avail himself of an exclusion of limitation of liability in such a contract.

(b) a contract for the carriage of goods by rail or road, or for the carriage of cargo by air, which is subject to the rules of the appropriate international transport convention, except that a third party may by virtue of that section avail himself of an exclusion or limitation of liability in such a contract;

(c) a contract contained in a bill of exchange, promissory note or other negotiable instrument.

(d) an agreement to submit to arbitration present or future disputes; or

(e) an agreement as to the court, or courts, which are to have jurisdiction to settle present or future disputes or are not to have such jurisdiction.

1992 sec. 50

(3) For the purposes of subsection (2) above —
1983 sec. 14

(a) "contract for the carriage of goods by sea" means a contract of carriage —

(i) which is contained in or evidenced by a bill of lading or sea waybill to which the Carriage of Goods by Sea Act 1992 applies; or

1965 sec. 37

(ii) under, or for the purposes of, which there is given an undertaking which is contained in a ship's delivery order to which that Act applies;

(b) "the appropriate international transport convention"—

1961 sec. 27

(i) in relation to a contract for the carriage of goods by rail, means the Convention which has force of law in the United Kingdom by virtue of section 1 of the International Transport Conventions Act 1983;

1962 c. 43

(ii) in relation to a contract for the carriage of goods by road, means the Convention which has force of law in the United Kingdom by virtue of section 1 of the Carriage of Goods by Road Act 1965; and

S.I. 1967/480

(iii) in relation to a contract for the carriage of cargo by air, means the Convention which has force of law in the
United Kingdom by virtue of section 1 of the Carriage of Air Act 1961 or the Convention which has such for by virtue of section 1 of the Carriage by Air (Supplementary Provisions) Act 1962 (or either of the amended Conventions set out in Part B of Schedule 2 to the Carriage by Air Acts (Application of Provisions) order 1967).

1977 C. 50

(4) Section 2(2) of the Unfair Contract Terms Act 1977 (restriction on exclusion etc. of liability for negligence) shall not apply where the negligence consists of the breach of an obligation arising from the terms of a contract and the person seeking to enforce them is a third party acting by virtue of section 1 above.

1980 C. 58

(5) In section 5 and 8 of the Limitation Act 1980 the references to an action founded on a simple contract and an action upon a specialty shall respectively include references to an action brought by virtue of section 1 above relating to a simple contract and an action brought by virtue of that section relating to a specialty.

(6) A third party shall not by virtue of section 1(4) or 3(4) or (6) above be treated, for the purposes of any other Act (or any instrument made under any Act), as a party to the contract.
Clause – VII, ENFORCEMENT LIMITED TO PARTICULAR PROVISIONS OF CONTRACT

7. (1) Section 1 above applies also where —

(a) the express term referred to in paragraph (a) of subsection (1) applies only to a particular provision of the contract; or

(b) it is only a particular provision of the contract that purports to confer a benefit as mentioned in paragraph (b) of that subsection.

(2) In any such case —

(a) references in this Act to the enforcement of the contract, or to a contract being enforceable, by a third party shall be construed as references to the enforcement of the particular provision in question, or to its being enforceable, by a third party; and

(b) the reference in section 3(2)(a) above to the contract shall be construed as a reference to the contract so far as relevant to that particular provision.

Clause – VIII, JOINT PROMISSEE NOT PROVIDING CONSIDERATION

8. (1) Where the persons to whom a contractual promise is made include a person who does not provide consideration for the promise, that person shall not be treated as a third party for the purpose of this Act.

(2) Subsection (1) above is without prejudice to any right or remedy of such a person in relation to the contract which exists or is
available apart from this act.

Clause- IX, SHORT TITLE, COMMENCEMENT AND EXTENT

9. (1) This Act may be cited as the Contracts (Rights of Third Parties) Act 1966.

(2) This Act comes into force at the end of the period of six months beginning with the day on which it is passed and does not apply in relation to contracts entered into before the end of that period.

(3) This Act extends to England and Wales only.
APPENDIX – B

LEGISLATION FROM SOME OTHER JURISDICTIONS’

1. WESTERN AUSTRALIA

Property Law Act 1969, section 11

"(2)" Except in the case of a conveyance or other instrument to which subsection (1) of this section applies, which a contract expressly in its terms purports to confer a benefit directly on a person who is not named as a party to the contract, the contract is, subject to subsection (3) of this section, enforceable by that person in his own name but —

all defences that would have been available to the defendant in an action or proceeding in a court of competent jurisdiction to enforce the contract had the plaintiff in the action or proceeding been named as a party to the contract, shall be so available;

each person named as a party to the contract shall be joined as a party to the action or proceeding; and

such defendant in the action or proceeding shall be entitled to enforce as against such plaintiff, all the obligation that in the terms of the contract are imposed on the plaintiff for the benefit of the defendant.

(3) Unless the contract referred to in subsection (2) of this section otherwise provides, the contract may be cancelled or modified by the mutual consent of the persons named as parties thereto at any time
before the person referred to in that subsection has adopted it either expressly or by conduct."

2. **QUEENSLAND**

**Property Law Act 1974, section 55**

(1) A promisor who, for a valuable consideration moving from the promisee, promises to do or refrain from doing an act or acts for the benefit of a beneficiary shall, upon acceptance by the beneficiary, be subject to a duty enforceable by the beneficiary to perform that promise.

(2) Prior to acceptance the promisor and promisee may without the consent of the beneficiary vary or discharge the terms of the promise and any duty arising therefrom.

(3) Upon acceptance —

   (a) the beneficiary shall be entitled in his own name to such remedies and relief as may be just and convenient for the enforcement of the duty of the promisor; and relief by way of specific performance, injunction or otherwise shall not be refused solely on the ground that, as against the promisor, the beneficiary may be a volunteer;

   (b) the beneficiary shall be bound by the promise and subject to a duty enforceable against him in his own name to do or refrain from doing such act or acts (if any) as may by the terms of the promise be required of him;

   (c) the promisor shall be entitled to such remedies and relief as may be just and convenient for the enforcement of the duty
of the beneficiary.

(d) the terms of the promise and the duty of the promisor or the beneficiary may be varied or discharged with the consent of the promisor, the promisee and the beneficiary.

(4) Subject to subsection (1), any matter which would in proceedings not brought in reliance on this section render a promise void, voidable or unenforceable, whether wholly or in part, or which in proceedings (not brought in reliance on this section) to enforce a promissory duty arising from a promise is available by way of defence shall, in like manner and to the like extent, render void, voidable or unenforceable or be available by way of defence in proceedings for the enforcement of a duty to which this section gives effect.

(5) In so far as a duty to which this section gives effect may be capable of creating and creates an interest in land, such interest shall, subject to section 12, be capable of being created and of subsisting in land under the provisions of any Act but subject to the provisions of that Act.

(6) In this section —

(a) "acceptance" means an assent by words or conduct communicated by or on behalf of the beneficiary to the promisor, or to some person authorised on his behalf, in the manner (if any), and within the time, specified in the promise of, if no time is specified, within a reasonable time of the promise coming to the notice of the beneficiary.

(b) "beneficiary" means a person other than the promisor or
promisee, and includes a person who, at the time of acceptance is identified and in existence, although that person may not have been identified or in existence at the time when the promise was given;

(c) "promise" means a promise—

(i) which is or appears to be intended to be legally binding; and

which creates or appears to be intended to create a duty enforceable by beneficiary,

and includes a promise whether made by deed, or in writing, or, subject to this Act, orally, or partly in writing and partly orally;

(d) "promise" means a person to whom a promise is made or given;

(e) "promisor" means a person to whom a promise is made or given;

(7) Nothing in this section affects any right or remedy which exists or is available apart from this section.

(8) This section applies only to promises made after the commencement of this Act."

3. **THE COMMONWEALTH OF AUSTRALIA**

**Insurance contracts Act 1984, section 48**

"(1) Where a person who is not a party to a contract of general insurance is specified or referred to in the contract, whether by name or otherwise, as a person to whom the insurance cover provided by
the contract extends, that person has a right to recover the amount of his loss from the insurer in accordance with the contract notwithstanding that he is not a party to the contract.

(2) Subject to the contract, a person who has such a right;
(a) has, in relation to his claim, the same obligations to the insurer as he would have if he were the insured; and
(b) may discharge the insured’s obligation in relation to the loss.

(3) The insurer has the same defences to an action under this section as he would have in an action by the insured.

(4) Where a contract of life insurance effect by a person upon his own life is expressed to be for the benefit of a person specified or referred to in the contract, whether by name or otherwise, that second-mentioned person has a right to recover the moneys payable under the contract from the insurer in accordance with the contract notwithstanding that the second-mentioned person is not a party to the contract, and the moneys payable under the contract do not form part of the estate of the person whose life is insured and are not subject to his debts.

(5) Section 94 of the Life Insurance Act 1945 does not apply in relation to a policy within the meaning of that Act that is entered into after the commencement of this Act.”

4. **NEW ZEALAND**

**Contracts (Privity) Act 1982**

1. **Short Title and commencement** — (1) This Act may be cited as the Contract (Privity) Act. 1982.
(2) This Act shall come into force on the first day of April 1983.

2. Interpretation: In this Act, unless the context otherwise requires,—

"Benefit" includes —

any advantage; and

any immunity; and

any limitation or other qualification of —

An obligation to which a person (other than a party to the deed or contract) is or may be subject; or

A right to which a person (other than a party to the deed or contract) is or may be entitled; and

Any extension or other improvement of a right or rights to which a person (other than a party to the deed or contract) is or may be entitled:

"Beneficiary", in relation to a promise to which section 4 of this Act applies, means a person (other than the promisor or promisee) on whom the promise confers, or purports to confer, a benefit:

"Contract" includes a contract made by deed or in writing, or orally, or partly in writing and partly orally or implied by law:

"Court" means —

The High Court; or

A District Court that has jurisdiction under section 10 of this Act; or

A small Claims Tribunal that has jurisdiction under section 11 of this Act: "Promisee", in relation to a promise to which section 4 of this Act applies, means a person who is both—

A party to the deed or contract; and
A person to whom the promise is made or given:

"Promisor", in relation to promise to which section 4 of this Act applies, means a person who is both—

(i) A party to the deed or contract; and

A person to whom the promise is made or given:

ACT OF BIND THE CROWN This Act shall bind the Crown.

DEEDS OR CONTRACT FOR THE BENEFIT OF THIRD PARTIES

Where a promise contained in a deed or contract confers, or purports to confer, a benefit on a person, designated by name, description, or reference to a class, who is not a party to the deed or contract (whether or not the person is in existence at the time when the deed or contract is made), the promisor shall be under an obligation, enforceable at the suit of that person, to perform that promise:

Provided that this section shall not apply to a promise which, on the proper construction of the deed or contract, is not intended to create, in respect of the benefit, an obligation enforceable at the suit of that person.

LIMITATION ON VARIATION OR DISCHARGE OF PROMISE—

Subject of sections 6 and 7 of this act, where, in respect of a promise to which section 4 of this Act applies,

The position of a beneficiary has been materially altered by the reliance of that beneficiary or any other person on the promise (whether or not that beneficiary or that other person has knowledge of the precise terms of the promise); or
A beneficiary has obtained against the promisor judgment upon the promise; or

A beneficiary has obtained against the promisor the award of an arbitrator upon a submission relating to the promise,—

the promise and the obligation imposed by that section may not be varied or discharged without the consent of that beneficiary.

(2) For the purposes of paragraph (b) or paragraph (c) of subsection (1) of this section, —

(a) An award of an arbitrator or a judgement shall be deemed to be obtained when it is pronounced notwithstanding that some act, matter, or thing needs to be done to record or perfect it or that, on application to a court or on appeal, it is varied:

(b) An award of an arbitrator or a judgement set aside on application to a Court or on appeal shall be deemed never to have been obtained.

6. **VARIATION OR DISCHARGE OF PROMISE BY AGREEMENT OR IN ACCORDANCE WITH EXPRESS PROVISION FOR VARIATION OR DISCHARGE**:

Nothing in this Act prevents a promise to which section 4 of this Act applies or any obligation imposed by that section from being varied or discharged at any time —

By agreement between the parties to the deed or contract and the beneficiary; or

By any party or parties to the deed or contract if —

The deed or contract contained, when the promise was
made, an express provision to that effect; and

The provision is known to the beneficiary (whether or not
the beneficiary has knowledge of the precise terms
of the provision); and

The beneficiary had not materially altered his position in
reliance on the promise before the provision
became known to him; and

The variation or discharge is in accordance with the
provision.

7. **POWER OF COURT TO AUTHORISE VARIATION OR DISCHARGE**

(1) Where, in the case of a promise to which section 4 of this
Act applies or of an obligation imposed by that section, —

(a) The variation or discharge of that promise or
obligation is precluded by section 5(1) (a) of this Act; or

(b) It is uncertain whether the variation or discharge
of that promise is so precluded, —

a Court, on application by the promisor or promisee, may, if it is just
and practicable to do so, make an order authorising the variation or
discharge of the promise or obligation or both on such terms and
conditions as the Court thinks fit.

(2) If a Court —

(a) Makes an order under subsection (1) of this section; and

(b) Is satisfied that the beneficiary has been injuriously
affected by the reliance of the beneficiary or any other
person or obligation, —
the Court shall make it a condition of the variation or discharge that
the promisor pay to the beneficiary, by way of compensation, such
sum as the Court thinks just.

8. **ENFORCEMENT BY BENEFICIARY** —

The obligation imposed on a promisor by section 4 of this Act may be
enforced at the suit of the beneficiary as if he were a party of the
deed or contract, and relief in respect of the promise, including relief
by way of damages, specific performance, or injunction, shall not be
refused on the ground that the beneficiary is not a party to the deed
or contract in which the promise is contained or that, as against the
promisor, the beneficiary is a volunteer.

9. **AVAILABILITY OF DEFENCES** —

(1) This section applies only where, in proceedings brought in a
Court or an arbitration, a claim is made in reliance on this Act by a
beneficiary against a promisor.

(2) Subject to subsections

(3) and

(4) of this section, the promisor shall have available to him by way
of defence, counterclaim, set-off or otherwise, any matter which
would have been available to him —

(a) If the beneficiary had been a party to the deed or
contract in which the promise the contained; or

(b) If —

(i) The beneficiary were the promisee; and

(ii) The promise to which the proceedings relate had
been made for the benefit of the promisee; and

(iii) The proceedings had been brought by the promisee.

(3) The Promisor may, in the case of set-off or counterclaim arising by virtue of subjection (2) of this section against the promisee, avail himself of that set-off or counterclaim against the beneficiary only if the subject-matter of that set-off or counterclaim arises out of or in connection with the deed or contract which the promise is contained.

(4) Notwithstanding subsections (2) and (3) of this section, in this case of a counterclaim brought under either of those subsections against a beneficiary.

(a) The beneficiary shall not be liable on the counterclaim, unless the beneficiary elects, with full knowledge of the counterclaim, to proceed with his claim against the promisor; and

(b) If the beneficiary so elects to proceed, his liability on the counterclaim shall not in any event exceed the value of the benefit conferred on him by the promise.

10. **JURISDICTION OF DISTRICT COURTS**

(1) A District Court shall have jurisdiction to exercise any power conferred by section 7 of this Act in any case where —

(a) The occasion for the exercise of the power arises in the course of civil proceedings properly before the court; or

(b) The value of the consideration for the promise of the
promisor is not more than $12,000; or

(c) The parties agree, in accordance with section 37 of the District Courts Act 1947,

(2) For the purposes of section 43 of the District Courts Act 1947, an application made to a District Court under section 7 of this Act shall be deemed to be an action.

11. **JURISDICTION OF SMALL CLAIMS TRIBUNAL**

(1) A Small Claims Tribunal established under Small Claims Tribunals Act 1976 shall have jurisdiction to exercise any power conferred by section 7 of this Act in any case where-

   (a) The occasion for the exercise of the power arises in the course of proceedings properly before that Tribunal; and
   (b) The value of the consideration for the promise of the promisor is not more than $500.

(2) A condition imposed by the Small Claims Tribunal under section 7(2) of this Acts shall not require the promisor to pay a sum exceeding $500 and an order of a Tribunal that exceeds any such restriction shall be entirely of no effect.

12. **AMENDMENTS OF ARBITRATION ACT 1908-**

The Second Schedule to the Arbitration Act 1908 is hereby amended by inserting, after clause 10B (as inserted by section 14(2) of the "10C. The arbitrators or umpire shall have the same powers conferred by section 7 of the Contracts (Privity) Act 1982."

13. **REPEAL-**

Section 7 of the Property Law Act 1952 is hereby repealed.
14. **SAVINGS**-

(1) Subject to section 13 of this Act, nothing in this Act limits or affects-

(a) Any right or remedy which exists or is available apart from this Act; or

(b) The Contracts Enforcement Act 1956 or any other enactment that requires any contract to be in writing or to be evidenced by writing; or

(c) Section 49A of the Property Law Act 1952; or

(d) The law of agency; or

(e) The law of trusts.

(2) Notwithstanding the repeal effected by section 13 of this Act, section 7 of the Property Law Act 1952 shall continue to apply in respect of any deed made before the commencement of this Act.

15. **APPLICATION OF ACT**

Except as provided in section 14(2) of this Act, the Act does not apply to any promise, contract, or deed made before the commencement of this Act.
APPENDIX – C

INDIAN LEGISLATIVE PROVISIONS ON

THIRD PARTY

(I)  THE MARRIED WOMEN'S PROPERTY ACT, 1874

Sec. 6,  A policy of insurance effected by any married man on his own life, expressed on the fact of it to be for the benefit of his wife, or children, shall be deemed to be a trust for the benefit of his wife or such children.

(II)  THE MOTOR VEHICLES ACT, 1988

Sec. 149,  An insurer issuing a policy under the Motor Vehicles Act covering third party liability is liable to satisfy any judgment or decree which may be passed in favour of the third party against the insured in respect of compensation for loss to the third party against the insured in respect of compensation for loss to the third party arising in an accident involving a motor vehicle.

Sec. 150,  Where an insured under such a policy becomes insolvent or makes composition or arrangement with creditors, or the insurance company is wound up, the rights of the insured against the insurer stand transferred to such third party to whom such liability is incurred.

(III)  THE WORKMAN'S COMPENSATION ACT, 1923 :

Sec. 12,  Where a person (Principal employer) employs a contractor for execution of any work involved in his business or trade, such principal employer is liable to pay compensation under the Workmen's Compensation Act arising out of accidents to the workmen employed by the contractor in doing such work (subject to being indemnified by the
contractor.

(IV) THE MARINE INSURANCE ACT 1963

Sec. 17, A mortgagee, consignee of other person having an interest in the subject matter insured may insure on behalf of and for the benefit of other persons insured as well as for his own benefit.

(V) THE NEGOTIABLE INSTRUMENTS ACT, 1881

Sec. 8, A holder of a promissory note, bill of exchange or cheque is entitled to recover the amount due thereon.

Sec. 31, of the Negotiable Instruments Act, 1881 deals with the liability of a drawee to the payee when cheque is presented to him. It provides that 'the drawee of a cheque' having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required to do so. This section makes it compulsory that the drawee must have sufficient funds of the drawer, otherwise he will not be bound.

Sec. 32, of the Negotiable Instruments Act the liability of the drawee of a bill of exchange arises only when he accepts the bill.

Sec. 36, of the Act provides that 'every party to a Negotiable Instrument is liable to a holder in due course until the instrument is duly satisfied.

Sec. 53, of the Act provides that a holder of a negotiable instrument, who derives title from a holder in due course has the right thereon of that holder in due course. Thus, by this process the holder acquires right equal to the rights of a holder in due course.

(VI) THE INDIAN BILLS OF LADING ACT, 1856

Sec. 1, Every consignee of goods under a bill of lading and every
endorsee of a bill of lading has the right of suit and is subject to the same liabilities as if he were a party to the bill of lading.

(VII) THE RAILWAY’S ACT, 1989

Sec. 74, A consignee of goods covered by railway receipt or the endorsee shall have all rights and liabilities of the consignor on delivery of railway receipt to him.

(VIII) THE INDIAN CONTRACT ACT, 1872

Sec. 37, which enables parties to dispense, with performance should also enable them to assign their contractual obligation.

"Assignment" means transfer of contractual rights or obligations by a party to the contract to some other person who is not a party.

Sec. 40, of the Indian Contract Act lays down two general principles. The first principle is that where parties intend that the contract should be performed by the promisor personally and no other person can perform such promise, the promisor is only bound to perform it. He cannot delegate his contractual obligations to a third person without consent of the promisee.

Sec. 41, of the Contract Act provides that when a promisee accepts performance of the promise from a third person he cannot, afterwards, enforce it against the promisor.

This section permits performance of a contract by a stranger also. It, further, makes it clear that once performance of a contract by a stranger is accepted by the promisee the promise stands discharged and the promisee cannot, afterwards, sue the promisor.

Sec. 42, of the Indian Contract Act deals with devolution of joint
liabilities to perform a joint promise. This section lays down two principles. The first is that if there is a joint promise, all the promisors are bound to perform such promise jointly. Unless, a contrary intention appears by the contract they cannot perform it separately. The second principle is that after death of any of the joint promisors, his legal representative, jointly with other surviving promisors will have to perform the promise.

Sec. 62, provides "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." The section embodies three principle of law of contract.

The relationship between agent and the third party arises when the agent acting within the scope of his authority enters into a contract with the third party.

Sec. 230, of the Indian Contract Act, the general rule is that the agent can neither sue nor be sued by the third party on the contract made by him with the third party. But, when there is a contract between the principal and the agent to the effect that the agent would be, personally, entitled to sue or bound by the contract, the agent can sue or be sued. The second part of section 230 of the Act provides that in the following cases an agent can sue the third party:

(a) Where contact is made by an agent for the sale or purchase of goods of a merchant residing abroad.

(b) Where the agent does not disclose the name of the principal.

(c) where the principal though disclosed, cannot be sued e.g. where the principal is non-existent or incompetent.
**Sec. 226,** of the **Indian Contract Act** provides that the obligation 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 acts done by the principal in person.

This section makes it clear that as a general rule a contract made by an agent, within scope of his authority, with third party confers rights and imposes liabilities upon the principal.

(IX) **THE CONSUMER PROTECTION ACT, 1986**

**Sec. 2(d)(i),** A user of goods or beneficiary of services using or taking benefit with the consent of the person who has purchased the goods or hired the services, is a consumer, and can file a complaint and obtain relief for defect in goods or deficiency in services.

(X) **THE SPECIFIC RELIEF ACT, 1953**

**Sec. 15,** Specific performance may be obtained by a person beneficially entitled under a marriage settlement and family arrangement, a new company arising out of amalgamation of a contracting party (company) with another company, and a new company in respect of contracts entered into before its incorporation.

(XI) **THE INDUSTRIAL DISPUTES ACT, 1947**

**Sec. 18(3),** of the Act, a settlement arrived at in the course of conciliation proceedings will be binding on all parties to the industrial dispute referred in clause (a) to (d) of Section 18 (3) which in the case of workmen will include all persons who are employed in the establishment or part of the establishment to which that dispute relates on the date of dispute and all persons who subsequently become employed in the establishment or part.
But a settlement arrived at between the management and workmen otherwise than in the course of conciliation proceedings will bind only the actual parties to the agreement in accordance with **Section 18 (1) Act.**

**XII) THE TRUST ACT, 1882**

The first part of **Section of the 33** of the Indian Trusts Act, provides that a person other than trustee who has gained an advantage from breach of a trust, must indemnify the trustee to the extent of the amount actually received by such person under the breach of trust; and where he is beneficiary the trustee has a charge on his interest for such amount. This section, thus, lays down two principles of law: Firstly, it makes it clear that any one who receives advantage from breach of a trust is liable to compensate the trustee. This is the general principle. Secondly, it emphasises beneficiary's liability in case of such breach. It provides that if the beneficiary receives any benefit from such breach he is liable to compensate the trustee.

Similarly, **Section 68** of the Act provides that where one of the several beneficiaries:–

(a) joins in committing breach of trust, or

(b) knowingly obtains any advantage therefore, without the consent of the other beneficiaries, or

(c) becomes aware of breach of trust committed or intended to be committed and either actually conceals it, or does not within a reasonable time, take proper steps to protect the interests of other beneficiaries, or

(d) has deceived the trustee and thereby induced him to commit a breach of trust, the other beneficiaries are entitled to have all his beneficial
interests impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of breach) until the loss caused by the breach has been compensated.

(XIII) THE INDIAN PARTNERSHIP ACT, 1932

Sec. 18, of the Partnership Act. This section provides that 'subject to provisions of the Act, a partner is the agent of the firm for purpose of business of the firm.' Consequently, the firm on which behalf a partner makes contract with another person can be treated as a principal. The principal (i.e. the firm) is a stranger as regards the contract made between acting partner and third person.

Sec. 22, the act of a partner which is done to carry on, in the usual way, the business of the kind carried on by the firm binds the firm.' An implied authority depends upon the nature of the business of firm.

Sec. 26, of the Partnership Act deals with the liability of the firm for torts committed by a partner. The firm is bound for wrongful act of a partner provided that (1) it has been done in the ordinary course of the business of the firm i.e., it is committed within implied authority of the partner, or (2) with the authority (express) of his co-partners. The firm is liable for both negligent and intentional tort.

Sec. 27, of the Partnership Act provides that a firm is liable for mis-application of money or property received from a third party. For this purpose, it makes no difference that money or property has been received by the partner or the firm. What is required is that the partner must be guilty of committing wrong of misuse of money or property. If such wrong is committed by a partner it is the firm which is liable to compensate the
person wronged.

**Sec. 30,** sub section (i) of the Indian Partnership Act provides that although a minor may not be a partner in a firm but he may be admitted to the benefits of partnership.

Sub-section 3 of Section 30 of the Act, lays down two general principles. The first is that a minor is, personally, not liable for firm’s act. It is because a partnership with a minor is void. In Sri Rama Mohan Motor Service v. C.I.T., the Supreme Court held that where partnership deed disclosed that one of five partners was a minor, the partnership was void.

The Second principle is that the share of a minor in the firm is liable for firm’s act. That is, a minor is liable to third person to the extent of his share in the firm but he is not liable personally. It follows from this that the second principle is an exception to the privity rule.

**Sec. 45,** clause (i) of the Partnership Act provides that notwithstanding the dissolution of a firm the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before dissolution, until public notice is given of the dissolution. Thus, if no public notice regarding the dissolution of the firm is given, all the partners will be bound for acts of a partner done after dissolution of the firm. But, the act must be of the kind which the firm was usually doing before dissolution.

It is clear that the act of a partner is deemed an act of the firm. The partners who have actually not contracted with third person are held liable for acts of contracting partner.

(XIV) **THE PROVINCIAL INSOLVENCY ACT, 1920**
Sec. 59, of the provincial Insolvency Act, 1920 provides that the receiver shall distribute insolvent's property among the creditors entitled thereto\(^1\). The estate of insolvent debtor is, however, liable to discharge his debts which he owned till the date on which he was adjudged insolvent by court of law. His estate is not liable for such debts which he incurs after an order of adjudication is passed.

\(^1\) The Provincial Insolvency Act, 1920. See also section 68, The Presidency Towns Insolvency Act, 1909.