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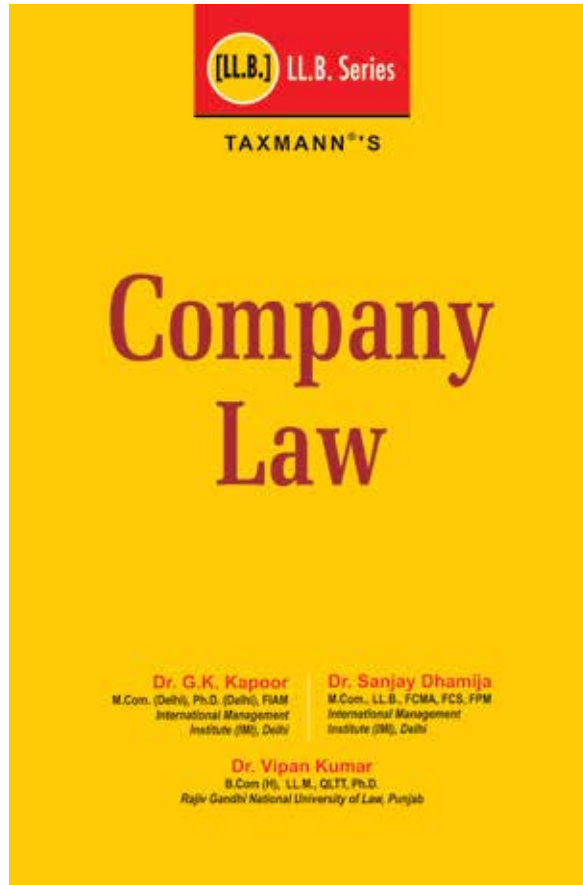
# LL.B.

S e r i e s



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#### 14.12 RESIGNATION BY A DIRECTOR

A director may resign from his office by giving a notice in writing to the company [Section 168(1)]. On receipt of such notice, the Board shall take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company. The director may also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed. The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

It may be noted that sub-section (2) of section 168 provides that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

As per Rule 15 of the Companies (Appointment and Qualification of Directors), 2014, the company must within 30 days from the date of receipt of notice of resignation from a director intimate the Registrar in Form DIR 12 and post the information on its website. Further, Rule 16 require the director to file, within 30 days of the date of resignation, forward to the Registrar a copy of his resignation along with reasons thereof in Form DIR 11. *Vide* its Notification dated 19 January, 2015, MCA has issued the Companies (Appointment and Qualification of Directors) Amendment Rules, 2015 whereby in case a company has already filed Form DIR-12 with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practicing chartered accountant or cost accountant in practice or company secretary in practice or any other resident director of the company to sign Form DIR-11 and file the same on his behalf intimating the reasons for the resignation.

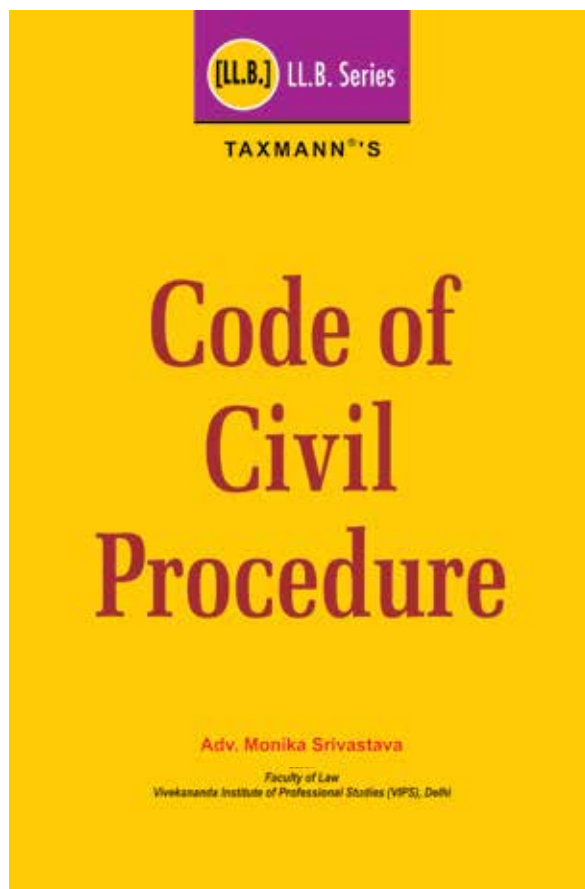
**CASE LAW :** **Saumil Dilip Mehta v. State of Maharashtra [2002] 39 SCL 102 (Bom.)**

Where a director has tendered his resignation and Board of directors has accepted it and has acted on it, such a director cannot be held liable for liability incurred by said company after date of acceptance of his resignation except the liability which has been incurred by him for purchase of shares of said company and nothing more

**CASE LAW :** **Mosely v. Koffyfontein Mines Ltd. [1911] 1 Ch. 73**

A managing or whole time director cannot resign merely by giving a notice. In his case, a formal acceptance of the resignation by the company is essential. This is because of the fact that such a director, besides being an ordinary director, is also in the whole or substantially the whole time employment of the company. He has to be relieved of all the duties and responsibilities attaching to his office. The notice by a director holding office both of a whole time and ordinary director, for resignation shall apply to both the offices.





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## 7.2 NECESSARY AND PROPER PARTIES

Order I prescribes that only a necessary and proper party can be impleaded in a suit. A necessary party is one without whom order cannot be made effectively and a proper party is one in whose presence the adjudication becomes final and concrete<sup>2</sup>. A person who is a necessary party cannot be denied impleadment. A person is impleaded or can claim to be impleaded if he has any interest in lis<sup>3</sup>. Where an act is done by a single individual and affects only a single individual, there is no question of joinder of parties. Joinder of parties would emerge only wherein act or transaction either proceeds from two or more persons or affects two or more persons.

### i. Joinder of Plaintiffs

All persons may be joined in one suit as Plaintiff

- (i) Where right to relief alleged, exists in each Plaintiff, arises out of same act or transaction and
- (ii) where if such persons, brought separate suits, any common question of law or fact would arise.

Both the conditions are cumulative and not alternative and both must be fulfilled<sup>4</sup>. It is not essential that all the questions arising in a case must be common to all the parties and it would be sufficient if one of the question is common to them. However, the Court has the power to order separate trial when any such joinder embarrasses the trial<sup>5</sup>. Unless both these conditions are fulfilled, it has to be held that the suit would be bad for multifariousness and would be liable to be dismissed<sup>6</sup>.

#### ■ ILLUSTRATION:

Where A, a cab driver hits B and C, pedestrians walking together, B and C can, together join as Plaintiffs and bring a suit for compensation against A.

### ii. Joinder of defendants

Similarly, Defendants may be joined in one suit<sup>7</sup>

- (i) Where right to relief alleged, exists in each Plaintiff, arises out of same act or transaction and
- (ii) where if such persons, brought separate suits, any common question of law or fact would arise.

Both the conditions are cumulative and not alternative and both must be fulfilled<sup>8</sup>.

2. *State of Assam v. Union of India* [2010] 10 SCC 408.

3. *UP Avas Evam Vikas Parishad v. Gyan Devi* AIR 1995 SC 724.

4. *Chandi Prasad Sikaria v. Premlata Nahata* MANU/WB/0294/2005; *Sant Singh v. Desh Ram* AIR 1974 P & H 276.

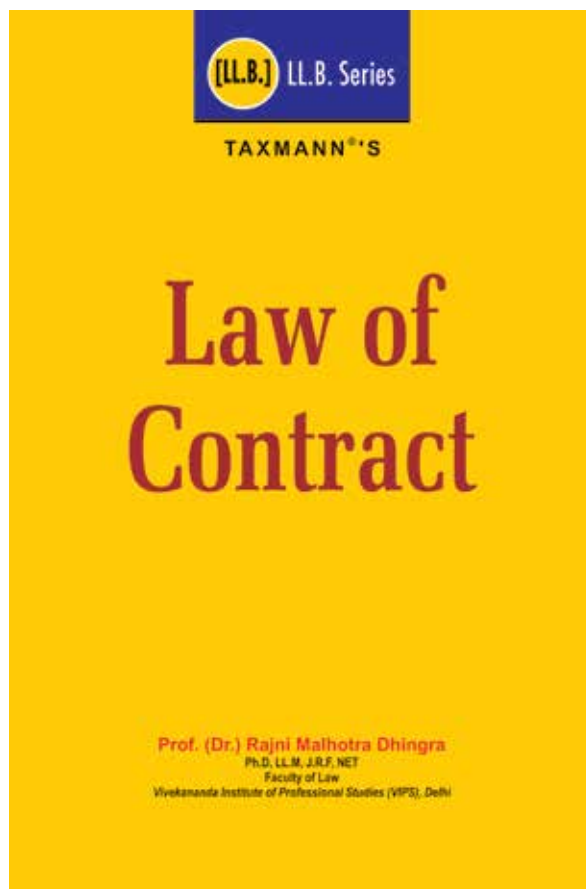
5. Order R. 2 and R.3A in case of defendants.

6. *Chandi Prasad Sikaria v. Premlata Nahata* MANU/WB/0294/2005.

7. Order I Rule 3.

8. *Sant Singh v. Desh Ram* AIR 1974 P & H 276.





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## 2. Kinds of Contract from the Points of Execution

### *Executed and executory contracts*

Depending on whether all the obligations of a contract have been fulfilled or have remained to be accomplished, contracts can be either 'executed' or 'executory'.

#### (a) *Executed contracts*

A contract is said to be executed, where both the parties have done their share of obligation and nothing remains to be done by either party under the contract.

#### EXAMPLE:

X offer to sell his car to Y for ₹ 1 lakh, Y accepts X offer. X delivers the car to Y and Y pays ₹ 1 lakh to X. It is an executed contract. A cash sale is also an example of an executed contract.

#### (b) *Executory contracts*

An 'executory contract' is one in which the reciprocal promises or obligations, which serve as consideration, are yet to be carried out. In other words, contract in which one or both the contracting parties have still to carry out their respective obligations is termed as an executory contract.

#### EXAMPLE:

X offers to sell his car to Y for ₹ 1 lakh. Y accepts X offer. The car has not yet been delivered by X and the price has also not been paid by Y, it is an Executory contract.

The executory contract becomes an executed one when completely performed. For instance, in the above example, if both X and Y perform their obligations the contract becomes executed. However, if in terms of the contract performance of promise by one party is to precede performance by another party then the contract is still executory, though it has been performed by one party.

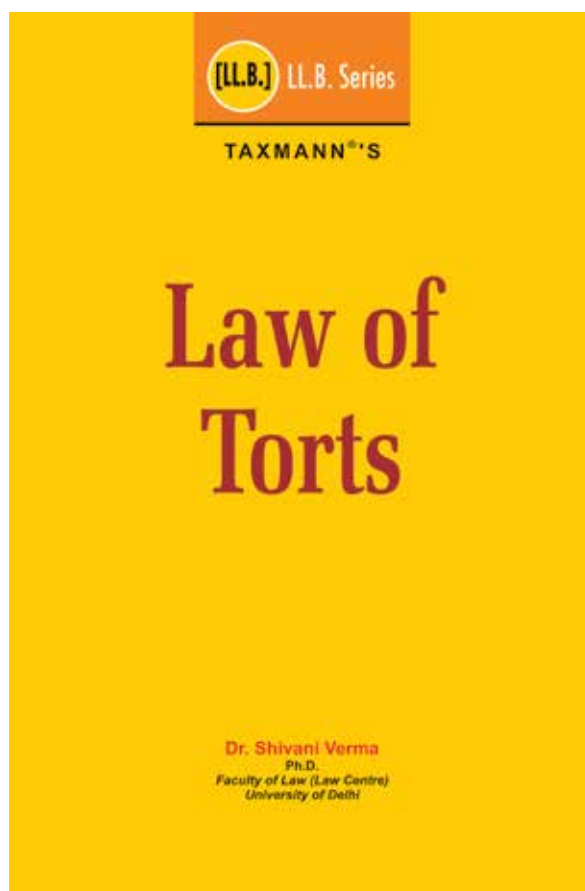
#### EXAMPLE:

A agrees to sell his scooter to B. The latter has paid the price but A has yet to deliver the scooter. The contract is, thus, executory as the right to the goods is transferred but not the possession.



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### 10.1 TO COMMIT THE TORT OF NEGLIGENCE, THERE ARE PRIMARILY THREE MAIN ESSENTIALS

- ◆ Existing duty of care,
- ◆ Breach of that duty and
- ◆ The causation of the damage.

An act will be categorised as negligence if all the three conditions are satisfied.

#### ILLUSTRATION :

'X' while shifting to his new house hired 'ABC' movers and clearly told them that a container containing glassware is to be handled with extra care. The glass ware was found broken when unpacked. 'ABC' movers responsible for negligence. But why? Because;

- ◆ 'ABC' had duty to take care of the glassware as they were hired to shift the household goods safely.
- ◆ 'ABC' breached the duty by not taking the due care.
- ◆ 'X's' glassware broke causing him loss.

All the three essentials of negligence are present so, 'ABC' is liable for negligence.

Thus, all the conditions were satisfied and thus it can be taken as the case of negligence. Further, no act can be done if any of the above element is missing.

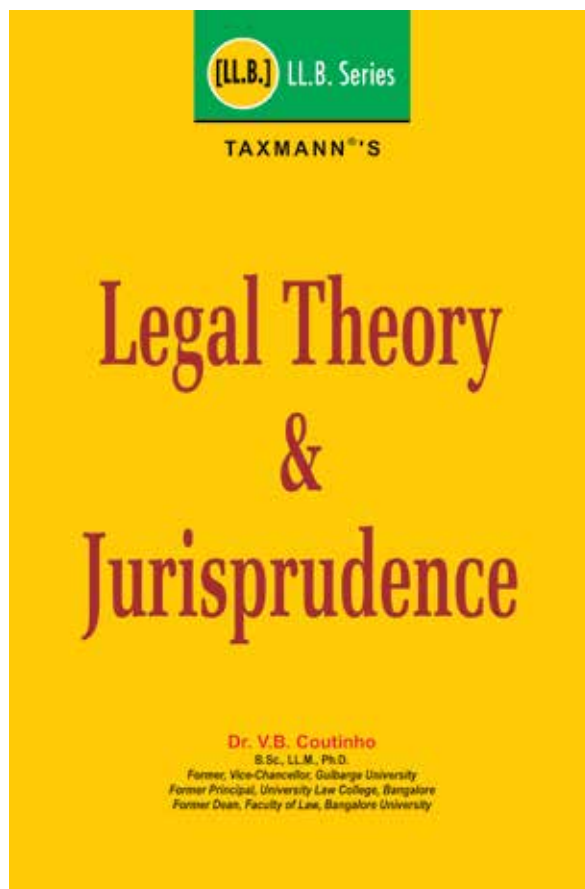
#### CASE LAW: **Nazir Abbas v. Raja Ajamshah**<sup>9</sup>

**Facts:** The suit was filed against the Kamdar who was responsible for making the realisations, and also the Manager, Court of Wards, whose principal duty was to supervise the work of the Kamdars. The receipts passed by the Kamdar were filed in the suit, and his signature thereon was proved. A wrong realisation allegedly caused plaintiff a huge loss.

**Held:** Their Lordships did not hold the receipts as sufficient to prove the loss as against the Manager, Court of Wards. The Court laid down the principles governing the suit based on negligence. It was held that the plaintiff, in order to succeed in his suit for damages for negligence, must establish, firstly a duty to take care, secondly a breach of the duty and thirdly that such breach was the proximate cause of the loss or injury sustained by him.

9. ILR 1947 Nag 955.





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## 5.8 Different forms of Ownership

### 5.8-1 Legal and Equitable Ownership

Where a person deposits the titles deeds of his house in a bank and takes a loan, he is the legal owner of the property and the Bank the equitable owner, which will hold the title deeds until the loan is cleared.

#### Example:

A is in urgent need of money. He takes the title deeds of his house and goes to bank B where he is having his account. A deposits the title deeds with the bank and takes a loan of Rupees 50,000. Here A is the legal owner of the property while bank B is the equitable owner of the property. If A fails to return the money B can sell the house and recover the loan on the basis of equitable rights.

### 5.8-2 Trust and Beneficial Ownership

Here the property under a trust will belong to the trust but the beneficiary under the trust will have a right to draw the benefits under the trust. These two are different types of Ownerships which can be exercised by different persons. Trustee only manages but beneficiary enjoys the property.

#### Example:

A creates a trust for educating girl students in his village B. Here A is the owner of the trust while the girl students are the beneficiaries of the Trust. The ownership of the trust property is vested both in the owner of the trust which is called trust ownership and in the girl students who are the beneficiaries and is called beneficial ownership.

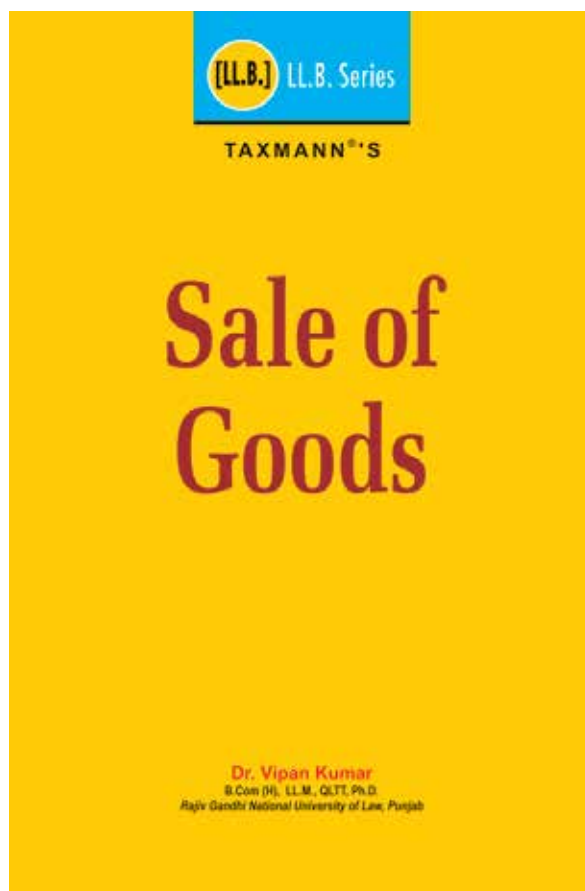
### 5.8-3 Corporeal and Incorporeal Ownership

Corporeal Ownership deals with material aspects *i.e.* owning a book one has purchased. But Incorporeal Ownership deals with mere rights *i.e.* copyright of the book which involves the right to publish and multiply copies of the same.

### 5.8-4 Co-ownership and Joint Ownership

In Joint Ownership as in a partnership, each one knows what share one has in the property. All enjoy the property but all the time being aware of one's rights and share. In the case of Co-ownership, the property belongs to all with equal rights. This has been will explained by the Privy





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## 2.2 FORMALITIES OF THE CONTRACT (SECTION 5)

### **Section 5: Contract of sale how made**

- (1) *A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by instalments, or that the delivery or payment or both shall be postponed.*
- (2) *Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth, or partly in writing and partly by word of mouth or may be implied from the conduct of the parties.*

Section 5 provides for the bare formalities for making of a contract of sale. It is based upon the general principles laid down in the Indian Contract Act. The essential ingredients required to make a valid contract of sale can be highlighted as under:

### **2.2.1 There must be at least two parties**

A contract of sale is a bilateral act. It requires at least two parties, one of whom is known as 'seller' and the other one as 'buyer'. The same person cannot be both a seller and a buyer.

**CASE LAW :** **State of Gujarat v. Ramanlal Sankalchand and Co. (08.11.1963 - GUJHC): MANU/GJ/0092/1965**

In this case, a partnership firm was dissolved and there was division of assets among the partners. The question which arose for the consideration by the court was whether the division of assets amounted to sale or not. The court while analyzing the essentials of a valid contract of sale held that the division of assets among the partners on dissolution cannot be treated as sale on two grounds: (1) the partners were themselves the joint owners of the goods and hence, there could be no sale by a person to himself. The partners could not be treated as both sellers and buyers; and (2) the price consideration was absent as no money were paid by the partners to the partnership firm.

**CASE LAW :** **Chittoor Motor Transport Co. (P.) Ltd. v. Income Tax Officer, Chittoor (06.10.1965 - SC): MANU/SC/0176/1965**

However, in this case there was transfer of assets by a company to a partnership firm consisting of the same persons who were the members of the company. The question arose that whether this transfer was a sale or not. The court held that such transaction was a sale as the company had a separate legal personality and there was no transfer by the person to himself. The company was a separate person who was the seller and the partnership firm was the buyer.



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