



1.4 **Remedies for Enforcement, Breach & Performance of Contracts**

Session 2

12th November 2022
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Topics for 2nd Session : Specific Performance

1. Meaning
2. Fundamentals of Specific Performance
3. Actions for Agreed Sum
4. Constant Supervision & Personal Skill (Common Exceptions)
5. Burden of Proof to avail relief
- 6, 2018 Amendment – Rationale and Effect
7. Substituted Performance



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Meaning of Specific Performance

Specific Performance – An Equitable Remedy

Enforcement of Contracts is also an indicator of Ease of Doing Business

- Need for effective Legislative and Judicial mechanisms
- Costs of enforcement should not outweigh the gains of the Contract
- *Meaning: Court Order to a Party to fulfil their obligations under the Contract*
 - Discretionary power of the Court
 - Granted when (i) there is no other alternative remedy; (ii) matter in dispute is unique

Palcke v. Gray

- Contract for purchase of picture by a dead artist and 2 rare China vases
- *Specific Performance deals with performance of a contract in the specific form in which it was made and according to the precise terms it was agreed upon.*
 - Equitable remedy
 - Commenced with Property Contracts and developed to other Contracts



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Fundamentals of Specific Performance

Fundamentals of Specific Performance

❖ Only for enforcing individual civil rights (nor for penal laws)

Specific Relief Act, 1963



Fundamentals (Contd.)

Contracts which can be specifically enforced

- There is no standard for ascertaining the actual damage caused by non-performance - Monetary Compensation is not adequate relief - Immovable Property: Presumption that money is not adequate compensation - Movable Property: Presumption that money is adequate compensation	i. Purchase of Shares ii. Reconveyance of Property iii. Execution of Formal Partnership Deed when business has commenced iv. Construction of building or any work on land	Delay by Plaintiff: - Time is of essence - Delay is so unreasonable that it amounts to abandonment of contract Need to approach Court in a timely manner; No presumption of Delay in Property Matters
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Contracts which cannot be specifically enforced

- Monetary Compensation is Adequate - Interconnected minute details - Dependant on Personal qualifications or volition of the Parties - Determinable Contracts - Involves Continuous Duty which Court cannot supervise	Discretionary Powers - Gives Plaintiff unfair advantage over Defendant - Involves hardship on Defendant - Compensation may be claimed as additional or substitutional relief (need to be specifically asked by the Plaintiff)
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Fundamentals (Contd.)

Specific Performance of Part of Contract

- S.12 of the Specific Relief Act

Negative List – Court shall NOT direct Specific Performance unless otherwise provided in this section

- Pending portion of contract is only a small portion in comparison
- Plaintiff pays or paid the consideration for the entire contract
- The pending portion is by itself of the nature eligible for specific performance
- Multiple components of Contract – one is entitled for specific performance and other is not; then Court can order for specific performance of the first part

Examples:

- i. Sale of 100 cents of land of which there no clear title for 2 cents
- ii. Sale of house along with furniture where price of furniture is subject to valuation

Fundamentals (Contd.)

Who may obtain Specific Relief	Personal bar to relief
- Any Party thereto - Heirs or Representatives in-interest - Beneficiary – in case of settlement of marriage; or compromise of doubtful rights - Newly amalgamated company	i. One who is not entitled to recover compensation for breach ii. If Guilty of: - Incapacity to perform his part of the contract - Violated essential terms to be performed on their behalf - Acted in fraud iii. Fail to demonstrate performance of their part of the contract (except those portions which are prevented or waived by Defendant)



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Actions for Agreed Sum

Actions for Agreed Sum

Can be brought by payee if the contract provides that 1 party shall pay a definite sum of money to the other and the duty to pay has arisen but the payer refuses to pay.

The claim for an agreed sum is a common law remedy so is available as a right. It usually means that the claimant is suing for the PRICE of the contract. It differs from a claim in damages in that:

- i. there is no need to prove loss, and so
- ii. there is no need to worry about remoteness of damage nor to
- iii. mitigate loss

➔ A suit for mere enforcement of Debt; Can also ask for any additional loss

➔ **White and Carter (Councils) Ltd v McGregor 1962**

- Contract for display of Advertisements for a Garage for a period 3 years.
- On the same day that the deal was made for renewal for a further 3 years of the advertising contract, the defendant said he had changed his mind and didn't want to go ahead.
- Despite this, the advertisers decided to go ahead with the contract and displayed the adverts for the 3 years and then brought an action for the 'agreed sum' for breach of contract.



4

Constant Supervision
&
Personal Skill

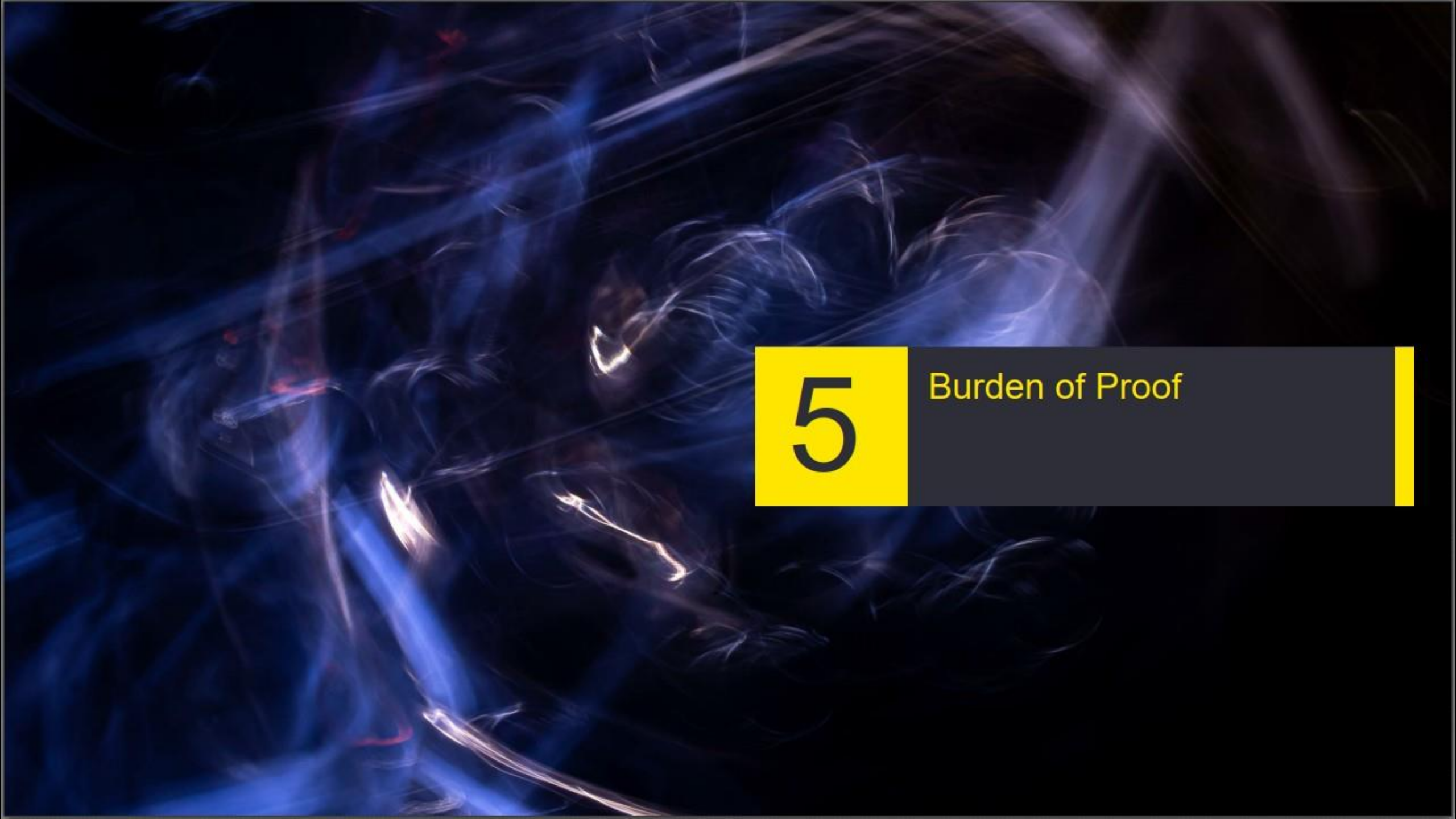
Constant Supervision; Contracts of Personal Skill

No Specific Performance for Contracts requiring Constant Supervision

- Contract to Deliver Goods in Instalments?
- Construction of Building with an agreed milestone for completion of each floor slab?

No Specific Performance for Contracts requiring Personal Skill

- Employment Contracts – can an employee be forced to work?
- Agreement with a performing artist to complete his concert?



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Burden of Proof

Burden of Proof on the Plaintiff

Need to demonstrate:

- Entitled to receive compensation for breach
- Has not become incapable or has violated any essential term of the Contract
- Has not committed any fraud
- Compensation is not adequate
- Not a determinable or voidable contract
- No additional or unforeseen hardship on the Defendant
- Substantial performance from one side



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2018 Amendment

2018 Amendment

Summary:

- Courts are Bound to enforce Specific Performance of the Contract as a Rule; subject to limited exceptions
- based on the recommendations contained in a Report submitted by an Expert Committee to the Government of India in 2016.

Amendments to Part II

Section	2018 Amendment
Section 10 - Specific performance in respect of contracts	"The specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of section 11, section 14 and section 16."
Section 11 - Cases in which specific performance of contracts connected with trusts enforceable	The words "contract may, in the discretion of the court", shall be substituted with " contract shall ".
Section 14 - Contracts not specifically enforceable	"The following contracts cannot be specifically enforced, namely: — (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20; (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise; (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and (d) a contract which is in its nature determinable."

2018 Amendment (Contd.)

Amendments to Part II

Section	2018 Amendment
Section 16 - Personal bars to relief	(i) for clause (a), the following clause shall be substituted, namely: “(a) who has obtained substituted performance of contract under section 20; or”; (ii) in clause (c), (I) for the words “who fails to aver and prove ”, the words “who fails to prove ” shall be substituted; (II) in the Explanation, in clause (ii), for the words “ must aver ”, the words “ must prove ” shall be substituted.
Section 20	The old provision with the exceptions and discretionary relief, was done away with and substituted performance was introduced and specific performance was a made into a statutory relief.
New Section 20A - Special provisions for contract relating to infrastructure project.	Addition of provision to ensure that delays in infrastructure projects is curtailed ➔ no injunction against infrastructure projects as listed in the Schedule to the Act
Section 20B - Special Courts	Constitute specialised courts to deal with the provisions and enforcement of rights under the Specific Relief Act, 1963
20C. Expeditious disposal of suits	Set the time limit to being 12 months from date of service of summons to the defendant.



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Substituted
Performance

2018 Amendment & Substituted Performance

S. 20. (1)

- Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and,
- except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party,
- the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and,
- recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach

*Also known as **Risk Purchase**: a prevalent concept under Common Law leading to claim of direct damages for the differential costs of procurement and expenses incurred*