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Print ISSN: [3006-2497](https://doi.org/10.55966/assaj.2025.4.1.0108) Online ISSN: [3006-2500](https://doi.org/10.55966/assaj.2025.4.1.0108)<https://doi.org/10.55966/assaj.2025.4.1.0108>Platform & Workflow by: [Open Journal Systems](https://openjournal.org/)**Enforcing a Contract: The Legal Intricacies Involving Specific Performance in Pakistan****Amr Ibn Munir**

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[amribnmunir2000@gmail.com](mailto:amribnmunir2000@gmail.com)**ABSTRACT**

*Specific performance is an equitable and discretionary remedy that is granted by a court of law, which compels the party to perform his contractual obligations. In Pakistan, it is incorporated alongside other equitable remedies within the Specific Relief Act, 1887. It provides many different provisions that discuss the ins and outs of specific performance. It provides the mechanism of partial performance in a contract, to what extent the doctrine of frustration can impact specific performance, the parties to whom specific performance can or cannot be enforced against and the parties who can or cannot enforce specific performance. It also provides for particular circumstances in which specific enforcement can or cannot be enforced by particular parties, such as contracts for the sale or rent of moveable or immoveable properties. The most important principles however are that: specific performance is purely discretionary; it is highly dependent upon the facts and circumstances of a case. Hence, it need not be granted because it is lawful to do so, but only because it is just and equitable to do so. In fact, a court cannot grant it if it feels that it will cause injustice to both parties. Damages are not a bar to specific performance, provided the defendant is willing to give compensation in the first place. However, a subsequent suit for damages cannot be entertained if a suit for specific performance is dismissed. Additionally, specific performance can even be applied mutatis mutandis, to awards and directions contained in wills and codicils as well. The methodology used in this paper is doctrinal.*

**Keywords:** Contract, Equity, Remedy, Equitable Remedy, Specific Performance.

**Introduction**

A specific performance is “an extraordinary equitable remedy that compels a party to execute a contract according to the precise terms agreed upon or to execute it substantially so that, under the circumstances, justice will be done between the parties.”<sup>1</sup> Taymour Soomro defines it as a “court order for the defendant to do or abstain from doing a specific act.”<sup>2</sup> He gives the example of a defendant who is ordered to convey his house to another person or he may be ordered not to compete with the other person.<sup>3</sup> He terms the former as specific performance and the latter as an injunction. While his practical distinction may be correct for all technical purposes, the interlink between both may cause confusion. In such a case, it would be far less confusing to term specific performance as the contractual remedy that compels a contractual party to fulfil his contractual

<sup>1</sup> James Cahoy and others, West’s Encyclopedia of American Law, (Thomson Gale, 2nd ed., Vol. 9., 2005), 268.

<sup>2</sup> Taymour Soomro, “*The Contract Law of Pakistan*” (Karachi: Oxford University Press, 2014), 291.

<sup>3</sup> Ibid.

obligation. Said contractual obligation may involve the commission or omission of an act on his part. In such a case, while there may be a similarity, a notable distinction has been made in terms of the actual definition of the term and the actual action on the part of the party. Only the latter part may be linked with an injunction. Thus, this is a remedy that compels a party to perform the obligations imposed upon them as per the precise terms and conditions of the contract.<sup>4</sup> “It is an equitable remedy which a court in its sound discretion may grant a promisee whose money damages remedy is inadequate.”<sup>5</sup> Hence, it is a discretionary remedy only given by a court where monetary or expectation damages are proved to be an inadequate remedy.<sup>6</sup> This was one of the equitable remedies that was developed as a result of the application of equity in the common law legal system.<sup>7</sup> It is the most accurate method of achieving the compensation goal of contract remedies because it gives the promisee the precise performance that he purchased.<sup>8</sup> This remedy is incorporated within Chapter II (Sections 12-30) of the Specific Relief Act, 1887<sup>9</sup> (hereinafter referred to as the “Act”). It is on a court of law’s discretion to grant this remedy or not.<sup>10</sup> This paper shall entirely focus on the intricacies involved in specific performance as per the Pakistani legal system.

This paper thus discusses the basic principles of specific performance that are incorporated within the Act; it discusses whether damages can be granted alongside specific performance; who can enforce it and who cannot enforce it; what is the scope and extent of a court’s discretion to grant it; whether a contract’s frustration can impact it or not; under what circumstances can it be enforced or not be enforced;

### Literature Review

When it comes to specific performance in Pakistan, there is no direct work available on it. However, there is some literature that discusses it in line with contract law, albeit even then they are not a commentary on the law of specific performance itself inasmuch as they are discussions of the alternate remedy of specific performance in the enforcement of a contract when said contract has been breached or has yet to be enforced. Hence, specific performance has mostly been discussed in line with commentaries on Pakistani contract law. Aftab Ahmed,<sup>11</sup> Taymour Soomro<sup>12</sup> and Zubair Abbasi et al<sup>13</sup> more or less have commented on the same lines. Soomro

<sup>4</sup> Francis Quinn, “*Elliot and Quinn’s Contract Law*”, (Pearson Education Limited, 12<sup>th</sup> ed., 2019), 312.

<sup>5</sup> Anthony T. Kronman, *The University of Chicago Law Review*, vol. 45, 1978, pp. 351-382. <<https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=4117&context=uclrev>> accessed 12<sup>th</sup> May 2024.

<sup>6</sup> Felipe Jimenez, Specific Performance, Jiménez, Felipe, Specific Performance (March 6, 2023). Mindy Chen-Wishart and Prince Saprai (eds) *Research Handbook on the Philosophy of Contract Law* (Elgar Publishing) Forthcoming, USC CLASS Research Paper No. 23-4. <<https://ssrn.com/abstract=4380580>> accessed 12<sup>th</sup> May 2024.

<sup>7</sup> For more information, see this author’s, *The Development of Equity under the Common Law Legal System: An Introduction*. <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4714736](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4714736)> accessed 12<sup>th</sup> May 2024.

<sup>8</sup> Alan Schwartz, *The Case for Specific Performance*, *Yale Law Journal*, vol. 89, 1979, pp. 271-306. <<https://core.ac.uk/download/pdf/72835713.pdf>> accessed 12<sup>th</sup> May 2024.

<sup>9</sup> *Secretary, Government of the Punjab v. Muhammad Toheed*, 2003 YLR 1411 [Lahore], at para 3.

<sup>10</sup> See, Specific Relief Act, Section 12.

<sup>11</sup> Aftab Ahmed, “*Law of Contract and Agency in Pakistan*” (Multan: Aamir & Aasim Publications, 1987), 138.

<sup>12</sup> Soomro, “*Contract Law*”, *supra* note 2.

<sup>13</sup> Muhammad Zubair Abbasi, Aimen Akhtar and Muhammad Usman Mumtaz, “*Contract Law*” (Global Institute of Law Press, Oxford), 247-248.

dedicates only a very small portion to specific in relation to the enforcement or non-enforcement of a contract while specifically relying on Section 12 of the Act and some judicial decisions.<sup>14</sup> This work in retrospect shall not just deliberate on specific performance as a contractual remedy for breach of contract but also as it would apply as a whole. Hence, substantive rights and procedural duties shall both be contemplated in this work.

### **Partial Performance**

The general principle is that if a contract is to be enforced, it shall be enforced in its entirety, not in bits and pieces.<sup>15</sup> However, every general principle has one or more general exceptions. In this case, we shall discuss the three general exceptions to this rule as envisioned under Sections 14-16 of the Act.<sup>16</sup> A court can only direct partial performance of a contract should it fall under the said provisions.<sup>17</sup> Every contract is different. Depending upon the terms and conditions stipulated therein, each party could have different parts to perform. It is however a necessary prerequisite that the said obligation must be performed. Where the whole obligation is unable to be performed for some reason, then can specific performance can still be granted? Where the obligation to perform is smaller and bears only little in value and the remaining can be compensated, then the court may direct specific performance at the suit of either party.<sup>18</sup>

However, where the unperformed obligation is large and bears a lot of value or there is no chance that compensation can be made, then there can be no claim for specific performance for the defendant. However, the plaintiff may still make a claim for it and direct the defendant to perform as much of his obligation as is possible, provided he relinquishes all claims to further performance, compensation or for any loss or damage caused to by such non-performance.<sup>19</sup>

Where a part of the contract is so significant that if taken by itself, it can stand independently and has to be performed in comparison to another part of the same contract, which cannot and should not be performed, the court may direct specific performance in such a case.<sup>20</sup>

Hence, in all three cases discussed hereinabove, we can see the principle of partial performance of a contract.<sup>21</sup> Needless to say, partial performance of a contract can only be directed if the contract is able to be divided.<sup>22</sup> If the transaction in the agreement is one that consists of a single one and division is not possible, then partial performance cannot be granted.<sup>23</sup>

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<sup>14</sup> Soomro, *supra* note 2 at pp. 291-292.

<sup>15</sup> Specific Relief Act, 1877, Section 17. See also, *Wali v. Manak Ali*, PLD 1965 SC 651, 659, *Razia Sultana Bano v. Muhammad Sharif*, 1993 SCMR 804, 809, *Muhammad Bakhsh v. Jamadar Rahim Khan*, 1996 MLD 1681 [Lahore], 1686.

<sup>16</sup> Ibid. See also, *Malik Tanveer Ali v. Sardar Ali Imam*, 2010 YLR 1799 [Lahore], at para 13.

<sup>17</sup> *Mst. Mumtaz Majeed v. Muhammad Inayat*, 2016 CLC 780 [Lahore], at para 8. See also, *Mian Abdul Ghaffar v. Mst. Kishwar Iqbal*, 2024 CLC 301 [Lahore (Bahawalpur Bench)], at para 11.

<sup>18</sup> Specific Relief Act, 1877, Section 14. See also, *Lila Ram v. Ghulam Ali*, PLD 1983 Karachi 93, 99, *Razia Sultana Bano v. Muhammad Sharif*, 1993 SCMR 804, 809, *Ghulam Muhammad v. Noor Muhammad*, 2001 CLC 174 [Lahore], at para 3.

<sup>19</sup> Specific Relief Act, 1877, Section 15. See also, *Razia Sultana Bano v. Muhammad Sharif*, 1993 SCMR 804, 809-810.

<sup>20</sup> Specific Relief Act, 1877, Section 16. See also, *Razia Sultana Bano v. Muhammad Sharif*, 1993 SCMR 804, 809-810, *Muhammad Bakhsh v. Jamadar Rahim Khan*, 1996 MLD 1681 [Lahore], 1686.

<sup>21</sup> *Sinaullah v. Muhammad Rafique*, 2005 SCMR 1408, at para 13.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

### Specific Performance and the Doctrine of Frustration

The doctrine of frustration refers to the phenomenon where a contract becomes impossible to perform due to human or non-human factors which is incorporated in Section 56 of the Contract Act, 1872.<sup>24</sup> This shall not apply to cases where only a portion of the subject matter that existed at the date the contract was made, ceases to exist at the time of performance.<sup>25</sup> Hence, only when the obligation is wholly impossible to perform can this principle be applied.<sup>26</sup>

### Can Damages be Granted Alongside Specific Performance?

Liquidated damages are not a bar to the granting of specific performance.<sup>27</sup> Although, in such a case, the defaulted party must be willing to pay such damages as well.<sup>28</sup> A person in addition to suing for specific performance of a contract may also ask for compensation for the breach or may only ask for damages and not specific performance of a contract.<sup>29</sup> The Court may not enforce specific performance but the court may award the plaintiff damages as compensation for the breach of contract from the defendant's part.<sup>30</sup> Should the court enforce specific performance but decides that it is not enough and that damages should also be awarded to the plaintiff as compensation for the breach of contract to meet the ends of justice, then the court may enforce specific performance in addition to awarding damages to the plaintiff.<sup>31</sup> Hence, in all cases, it is the discretion of the court whether to award damages or enforce specific performance, or grant both, or grant one and not the other depending upon the facts and circumstances of the case.<sup>32</sup> The compensation shall be assessed by the court in any manner it may direct.<sup>33</sup> Since the right to claim damages accrues coincidentally with the right to claim specific performance under Section 19 of the Act, then the limitation periods for both rights shall be the same as the right of compensation in such cases, either in substitution or in addition to the right of specific performance.<sup>34</sup> When it comes to the principle of the discretion of a court of law, Soomro while relying on foreign judicial decisions states that a court may refuse an order of specific performance should it cause undue hardship to the defendant or if the court disapproves of the plaintiff's conduct.<sup>35</sup>

### Circumstances in Which Specific Performance can be or cannot be Granted

<sup>24</sup> For more information, see this author's, *The Doctrine of Frustration under the Law of Contract in Pakistan: A Critical Evaluation*. < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4549332](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4549332) > accessed 12<sup>th</sup> May 2024.

<sup>25</sup> Specific Relief Act, 1877, Section 13.

<sup>26</sup> *Mian Zahid Sarfraz v. Ch. Fazal Din*, 1989 MLD 2770 [Lahore], at para 8.

<sup>27</sup> Specific Relief Act, 1877, Section 20. See also, *Retd. Major Hamid Ali Khan v. Mian Muhammad Anwar*, 1988 MLD 280 [Lahore], at para 20, *Mst. Noor Jehan v. Muhammad Rafique*, 1995 CLC 43 [Peshawar], at para 15, *Abdul Majeed v. Ghulam Shabbir*, 2000 CLC 643 [Lahore], at para 10, *Gulzar Ahmed v. Ammad Aslam*, 2022 SCMR 1433, at para 10.

<sup>28</sup> Ibid.

<sup>29</sup> See, Specific Relief Act, 1877, Section 19. See also, *Atlas Khan v. Muhammad Nawaz Khan*, 2010 SCMR 1217, at para 6, *Liaquat Ali Khan v. Falak Sher*, PLD 2014 SC 506, at para 18, *Muhammad Imran v. Multan*, 2021 MLD 1313 [Islamabad], at paras 9-10, *Asim Jamshaid v. Shahzad Iqbal Malik*, 2023 CLC 1100 [Lahore], at para 6.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Specific Relief Act, Section 12. See also: Soomro, *supra* note 2 at p. 291.

<sup>33</sup> Specific Relief Act, Section 19.

<sup>34</sup> *Muhammad Ramzan v. Muhammad Ali*, 2016 MLD 1255 [Sindh (Hyderabad Bench)], at para 18.

<sup>35</sup> Soomro, *Contract Law*, *supra* note 10 at p. 292. He relied on *Redland Bricks v. Morris*, [1970] AC 652 and *Shell UK Ltd v. Lostock Garages Ltd*. [1976] 1 WLR 1187.

There can be numerous circumstances in which specific performance can be or cannot be granted. The remedy of specific performance of a contract can be granted in the following cases:

1. Where the act that is agreed to be done is the whole or partial performance of a trust.<sup>36</sup>
2. When the actual damage caused by the non-performance of the cannot be ascertained.<sup>37</sup>
3. When the act that caused damage was such that pecuniary damages would not afford adequate relief or simply that damages would not serve as adequate relief.<sup>38</sup>
4. When it is possible that damages cannot be awarded.<sup>39</sup>

Thus, in all four cases mentioned hereinabove, the relief for specific performance can be granted. Specific performance will not be enforced in the following cases:

1. Where awarding damages as compensation is an adequate relief.<sup>40</sup>
2. Where the contract is of such a nature that it runs too much into minute or numerous details or is dependent upon the personal qualifications or volition of the parties or is otherwise of such a nature that specific performance cannot be enforced<sup>41</sup> such as contracts for personal service<sup>42</sup> between a master and servant.<sup>43</sup>
3. Where the contract's terms are such that it cannot be reasonably ascertained<sup>44</sup> such as a contract where the property has not been specified.<sup>45</sup> This can be read with Section 29 of the Contract Act, 1872, which provides how a contract whose meaning cannot be ascertained is void.<sup>46</sup>
4. Where the contract is revocable.<sup>47</sup>
5. Where the contract is made by trustees either in excess of their powers or in breach of their trust.<sup>48</sup>

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<sup>36</sup> See, Specific Relief Act, 1877, Section 12(a).

<sup>37</sup> See, Specific Relief Act, 1877, Section 12(b).

<sup>38</sup> See, Specific Relief Act, 1877, Section 12(c).

<sup>39</sup> See, Specific Relief Act, 1877, Section 12(d).

<sup>40</sup> See, Specific Relief Act, 1877, Section 21(a). See also, *Ch. Nazir Ahmad v. Usman Khan*, 1993 CLC 937 [Lahore], 942-43, *Messrs Pakistan State Oil Company v. Federation of Pakistan*, 2010 CLC 1843 [Karachi], 1850-51, *Ghulam Nabi Shah v. PIA*, 2013 PLC (C.S.) 768 [Sindh High Court], at para 13.

<sup>41</sup> See, Specific Relief Act, 1877, Section 21(b). See also, *Lahore Stock Exchange Ltd. v. Messrs Hassan Associates*, 2010 MLD 800 [Lahore], at para 4.

<sup>42</sup> *Sanjay Kumar v. Siemens Pakistan Engineering Company Ltd.*, 2020 PLC (C.S.) 80 [Sindh High Court], 84-85. See also, *Pakistan Airline Pilots Association v. Federation of Pakistan*, 2021 PLC (C.S.) 860 [Sindh High Court], at para 15, *PIA v. Federation of Pakistan*, 2021 MLD 1059 [Sindh], at para 15.

<sup>43</sup> *Ghulam Nabi Shah v. PIA*, 2013 PLC (C.S.) 768 [Sindh High Court], at paras 13 and 16.

<sup>44</sup> See, Specific Relief Act, Section 21(c). See also, *Haji Faizur Rahman v. Sultan Ali Shah*, 2021 CLC 2160 [Peshawar (Mingora Bench)], at para 8, *Muhammad Ghaffar (Deceased) v. Arif Muhammad*, 2023 SCMR 344, at para 11, *Ahmad v. Manzoor Ahmad*, 2023 YLR 687 [Lahore], at para 3, *Ghulam Hassan v. Ijaz Naseer*, 2025 CLC 196 [Lahore], at para 10.

<sup>45</sup> *Muhammad Ghaffar (Deceased) v. Arif Muhammad*, 2023 SCMR 344, at para 11.

<sup>46</sup> *Mst. Shah Sultan v. Syed Jameel Shah*, 2021 CLC 1451 [Peshawar (Abbottabad Bench)], at para 8. See also, *Syed Zaheer Hussain Naqvi v. Asif Raza Mir*, 2023 MLD 242 [Islamabad], at para 9.

<sup>47</sup> See, Section 21(d) of the SPECIFIC RELIEF ACT. See also, *Messrs Pakistan State Oil Company v. Federation of Pakistan*, 2010 CLC 1843 [Karachi], 1850-51.

<sup>48</sup> See, Specific Relief Act, 1877, Section 21(e).

6. Where a contract is made by or on behalf of a corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers.<sup>49</sup>
7. Where the obligation or performance stipulated in the contract is such that it the performance involves a continuous duty extending over a period longer than three years from its date.<sup>50</sup>
8. Where the material or important part of the subject matter of the contract which both parties thought to exist, ceases to exist before it has been made.<sup>51</sup>
9. Where the contract contains an arbitration clause which stipulates any dispute between both parties shall be referred to arbitration.<sup>52</sup>

Hence, specific performance cannot be enforced in the nine circumstances discussed hereinabove. We can even understand from the points hereinabove that Section 21(g) of the Act can be read with Article 113 of the Limitations Act, 1908.<sup>53</sup> When it comes to the performance of a contractual obligation, the period of limitation shall be calculated in two ways. The first is where the date has been specified in the agreement itself, then subject to the modification of such date by the parties, that date shall be the basis for determining the date from which the period of limitation shall be calculated.<sup>54</sup> In the event where a date for performance of the contractual obligation is not specified, then the limitation period will accrue from the date the performance of said obligation is refused.<sup>55</sup> Hence, in both scenarios, the period of limitation will be three years which shall be counted from the expiry of the specified period or the notice of refusal as the case may be.<sup>56</sup>

#### **Extent of Court's Discretion to Grant Specific Performance**

We have discussed hereinabove that a court of law has the discretion to grant the relief of specific performance depending upon the facts and circumstances of the case. However, this too has parameters that it needs to adhere to. Such discretion should not be applied arbitrarily but should be based on sound reasoning and guided by judicial principles which can be corrected by a Court

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<sup>49</sup> See, Specific Relief Act, 1877, Section 21(f).

<sup>50</sup> See, Specific Relief Act, 1877, Section 21(g).

<sup>51</sup> See, Specific Relief Act, 1877, Section 21(h). Similarly, Soomro also opines that a specific performance will not be granted if performance is impossible, see: Soomro, *Contract Law*, *supra* note 10 at p. 292.

<sup>52</sup> See, Specific Relief Act, 1877, Section 21.

<sup>53</sup> *Malik Tanveer Ali v. Sardar Ali Imam*, 2010 YLR 1799 [Lahore], at para 12. The Court held that the appellant's suit is barred by limitation as they did not file a suit within 3 years from its date and thus upheld the trial court's decree.

<sup>54</sup> *Abdul Mateen v. Syed Asim Nisar*, PLD 2015 Sindh 108, para 16.

<sup>55</sup> *Ibid*.

<sup>56</sup> *Muhammad Ali v. Umar Farooq*, 2025 YLR 1662 [Lahore], para 8. The Court relied on Article 113 of the Limitation Act, 1908. See also: *Atif Khan v. Merja Din*, 2024 YLR 1833 [Lahore], at para 5.

of appeal.<sup>57</sup> A court need not grant specific performance just because it is lawful to do so.<sup>58</sup> In fact, specific performance can be refused even if the execution of an agreement is proved.<sup>59</sup> This is an equitable remedy and a court should be guided by the principles of equity, justice and good conscience, that is to say it must be granted for the sake of promoting equity and fairness.<sup>60</sup> For example, in cases where a plaintiff would receive an unfair advantage over the defendant due to receiving a relief of specific performance, despite the fact that there was no fraud or misrepresentation on the plaintiff's part.<sup>61</sup> Hence, no rigid rule can be laid down when and where this discretion can be exercised by the Court.<sup>62</sup> The discretion that shall have to be exercised by the Court will depend on the circumstances of each case but that discretion must be a judicial one. The plaintiff must prove his readiness and willingness to fulfil his contractual obligations.<sup>63</sup> Although, the court for one must also consider whether the person seeking specific performance is fully committed to perform his contractual obligations but the other side is circumventing or evading the execution of his obligations arising out of the contract.<sup>64</sup> Thus, "the relinquishment of right to seek specific performance of contract is to be decided keeping in view the conduct of the parties and evidence led in this respect."<sup>65</sup> One way to prove a party's readiness and willingness to fulfil his contractual obligation can be of a vendee seeking specific performance of an agreement to sell depositing the amount in a court of law.<sup>66</sup> While there is no express provision provided in the Act itself which requires a vendee to do such an act upon filing a suit for specific performance, however as specific performance is a discretionary and equitable remedy which cannot be claimed as a matter of right, a court of law may thus order a vendee to deposit the balance sale consideration at any stage of the proceedings so as to put him to terms.<sup>67</sup> Furthermore, he must not just narrate his readiness and willingness in his plaint but is also bound

<sup>57</sup> Specific Relief Act, 1877, Section 22. See also, *Muhammad Jamil v. Muhammad Arif*, 2021 SCMR 1108, at para 16. The Court held that the discretion to grant relief of specific performance or otherwise, by the Court is not something mechanical or arbitrary exercise of jurisdiction but, is structured on sound and reasonable judicial principles, amenable to judicial review and correction by the court of appeal. See also, *Syed Tajamul Hussain Bukhari v. Khalid Pervaiz Hamid*, 2016 CLC Note 126 [Lahore], at para 8, *Muhammad Ashraf v. Mst. Kokab Benazir Fatima*, 2008 CLC 1398 [Karachi], 1404, *Allah Dino v. Ali Muhammad*, 2016 YLR 890 [Sindh], at para 22, *Liquat Ali Khan v. Muhammad Akram*, 2024 SCMR 1883, para 8, *Ufaid Gul v. Mst. Farkhanda Ayub Khan*, 2025 SCMR 64, para 5, *Malik Faisal Mahmood v. Shahid Ali*, 2025 YLR 1144 [Lahore (Multan Bench)], at para 16, *Sheikh Khalid Javed v. Shamas ud Din Chisti*, 2025 CLC 513 [Lahore (Multan Bench)], para 9, *Mohammad Qasim Shad v. Muhammad Iqbal Malik*, 2025 CLC 370 [Islamabad], para 17, *Mst. Qamar Bibi v. Shahab ud Din*, 2025 CLC 352 [Lahore], para 11.

<sup>58</sup> *Ibid.* See also, *Bank of Bahawalpur Ltd. v. Punjab Tanneries, Waziristan Ltd.*, PLD 1971 Lahore 199, at para 4.

<sup>59</sup> *Mst. Kalsoom Bibi v. Saif Ullah*, 2024 YLR 1731 [Lahore], para 3.

<sup>60</sup> *Messrs DW Pakistan (Private) Limited, Lahore v. Begum Anisa Fazl-i-Mahmood*, 2023 SCMR 555, at para 6. See also: *Muhammad Ali v. Umar Farooq*, 2025 YLR 1662 [Lahore], para 15.

<sup>61</sup> Specific Relief Act, 1877, Section 22.

<sup>62</sup> *Nowab Mean Chowdhury v. Syed Ezaz-ud-Din Ahmed*, PLD 1962 Dacca 655, 658-59.

<sup>63</sup> *Ijaz Ul Haq v. Mrs. Maroof Begum Ahmed*, PLD 2023 SC 653, at para 7.

<sup>64</sup> *Messrs DW Pakistan (Private) Limited, Lahore v. Begum Anisa Fazl-i-Mahmood*, 2023 SCMR 555, at para 6. See also, *Rao Abdul Rehman (Deceased) v. Muhammad Afzal (Deceased)*, 2023 SCMR 815, at para 7, *Atlas Khan v. Muhammad Nawaz Khan*, 2010 SCMR 1217, at para 6, *Malik Faisal Mahmood v. Shahid Ali*, 2025 YLR 1144 [Lahore (Multan Bench)], at paras 13-15, *Sheikh Khalid Javed v. Shamas ud Din Chisti*, 2025 CLC 513 [Lahore (Multan Bench)], para 9.

<sup>65</sup> *Asim Jamshaid v. Shahzad Iqbal Malik*, 2023 CLC 1100 [Lahore], at para 6.

<sup>66</sup> *Mst. Qamar Bibi v. Shahab ud Din*, 2025 CLC 352 [Lahore], at para 9.

<sup>67</sup> *Ibid.*, para 10. See also: *Meer Gul v. Raja Zafar Mehmood*, 2024 SCMR 1496, para 9.

to do the same with supporting evidence such as pay orders, bank statements or other such material.<sup>68</sup>

### **Who can enforce Specific Performance of a Contract?**

Generally, any party of a contract<sup>69</sup> or his authorized agent or representative may enforce the specific performance of a contract.<sup>70</sup> Although, where the contract is such that the party's knowledge, skill, solvency or any other personal quality is a necessary or material ingredient of the contract, then in such cases, the authorized representative or agent cannot have the contract be specifically performed by the other party on behalf of the party he represents, unless he has performed his part of the obligations of the contract.<sup>71</sup> Where the contract is one where a marriage is to be settled or where the doubtful rights of the members of the same family are to be compromised, then in such a case, any person who will be entitled to the benefit arising from such contracts can enforce specific performance.<sup>72</sup> The tenant can also enforce specific performance of a contract where he has entered into as a tenant for life in due exercise of power.<sup>73</sup> A person who is set to inherit a property from his predecessor (reversioner) can also enforce specific performance of a contract he has entered into with his predecessor in title.<sup>74</sup> Also, where the reversioner has entered into a contract where he will be given the remainder instead of the whole property can also enforce specific performance of said contract, provided he is entitled to the benefit thereof and will sustain material injury due to breach of the same.<sup>75</sup> A new public company which was formed due to an amalgamation of two public companies can also enforce specific performance of a contract.<sup>76</sup> Lastly, where the promoters of a company before its incorporation, that is to say, its coming into being, which entered into a contract for the purposes of the company can also enforce specific performance of a contract, provided that such contract is warranted by the terms and conditions of the incorporation.<sup>77</sup>

### **Who cannot enforce Specific Performance of a Contract?**

A person cannot enforce specific performance of a contract in the following cases: i). where he could not recover compensation for its breach<sup>78</sup>, ii). who cannot perform his obligations of the contract due to his incapacity or who violates any essential terms or conditions of the contract he still needs to fulfill on his part,<sup>79</sup> where he has already chosen his remedy and has also acquired

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<sup>68</sup> Ibid, para 11.

<sup>69</sup> Specific Relief Act, 1877, Section 23(a). See also, *Nazeer Ahmed v. Ahmed Khan*, 2018 MLD 151 [Sindh (Larkana Bench)], 159-60.

<sup>70</sup> Specific Relief Act, 1877, Section 23(b). See also, *Nazeer Ahmed v. Ahmed Khan*, 2018 MLD 151 [Sindh (Larkana Bench)], 159-60.

<sup>71</sup> Ibid. See also, *Muhammad Farouk v. Mrs. Oudsia Dossa*, 1990 MLD 2016 [Karachi], 2022.

<sup>72</sup> Specific Relief Act, 1877, Section 23(c).

<sup>73</sup> Specific Relief Act, 1877, Section 23(d).

<sup>74</sup> Specific Relief Act, 1877, Section 23(e).

<sup>75</sup> Specific Relief Act, 1877, Section 23(f).

<sup>76</sup> Specific Relief Act, 1877, Section 23(g).

<sup>77</sup> Specific Relief Act, 1877, Section 23(h).

<sup>78</sup> Specific Relief Act, 1877, Section 24(a).

<sup>79</sup> Specific Relief Act, 1877, Section 24(b). See also, *Hakim Ghulam Rasool v. Sh. Imdad Hussain*, PLD 1968 Lahore 501, 505, *Muzaffar Javed v. Haji Noor Bakhsh*, 2002 MLD 1474 [Lahore], at para 9, *Irfan Rasheed v. Muhammad Muazim*, PLD 2022 Lahore 372, at para 10, *Khairat Ali v. Saqib Ashfaq*, 2023 CLC 926 [Lahore], at paras 7-8,



satisfaction for the alleged breach of contract<sup>80</sup> and lastly, iv). Where, prior to the contract, he has received notice that a settlement, which is not found on any valuable consideration, has been made for the subject-matter of the contract.<sup>81</sup> Interestingly enough, Shahid J. in his concurring opinion laid down some guidelines in regards to Section 24(b) of the Act so as to “prevent misdirection of the law by the lower courts.”<sup>82</sup> He observed that:

“At the time of taking cognizance of the suits by the civil courts, while issuing notice to the defendants, an order shall be made for the deposit of the balance sale consideration by the vendee (if he is a plaintiff in the suit) within a stipulated time. In sum, not more than two opportunities for making the deposit shall be given by the court. At the time of granting the second and last opportunity (if requested by the vendee), the civil court shall specifically mention the consequences that will visit the failure to deposit, that the suit shall be dismissed on that account. It is made clear that this order shall be passed separately and will not be made part of any other order passed for a different purpose. The amount so deposited as balance sale consideration shall be invested, pendente lite, in a profit bearing scheme with a high rate of return.”<sup>83</sup>

After laying down these guidelines, he further directed the Punjab Government to initiate legislative progress on this regard as he felt that such “judge-made rules” should be given statutory recognition.<sup>84</sup> This is very interesting as notwithstanding his guidelines, being a judge, he can neither create a law or policy.<sup>85</sup> Furthermore, his concurring opinion is not part of the binding judgement and is therefore not binding.<sup>86</sup> Coming to the ‘guidelines’ themselves, although they may aid in making the process more expeditious but whether they may or may not be necessary is to be ultimately decided by the legislators and policy-makers, not judges or academicians.

Where the contract is one where the sale or renting of moveable or immovable property is involved, then the same cannot be enforced in the favour of a vendor or lessor in the following circumstances: i). When the person does not have any ownership of the property but despite knowing this, he still intentionally sells or rents out the property.<sup>87</sup> ii). When the person enters into a contract of sale or renting out the property believing he had ownership of the property but he cannot give a title free from reasonable doubt to the other party at the time fixed by both of them or by the Court to complete the contract.<sup>88</sup> iii). When the person has settled with another

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*Muhammad Ali Housing Scheme v. Kamran Latif*, 2023 CLC 1892 [Lahore], at para 6, *Mst. Qamar Bibi v. Shahab ud Din*, 2025 CLC 352 [Lahore], para 10.

<sup>80</sup> Specific Relief Act, 1877, Section 24(c).

<sup>81</sup> Specific Relief Act, 1877, Section 24(d).

<sup>82</sup> *Irfan Rasheed v. Muhammad Muazim*, PLD 2022 Lahore 372, 381.

<sup>83</sup> *Ibid*, 381-382.

<sup>84</sup> *Ibid*, 382.

<sup>85</sup> For a detailed deliberation on whether judges make law or not, see, Muhammad Munir, Are Judges the Makers or Discoverers of Law? Theories of Adjudication and Stare Decisis with Special Reference to Case Law in Pakistan, *Annual Journal of International Islamic University, Islamabad*, vol. 21, (2013), pp. 7-40. <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1792413](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1792413)> accessed 13<sup>th</sup> May 2024.

<sup>86</sup> For more information, see, Muhammad Munir, “*Precedent in Pakistani Law*”, (Oxford University Press, 2014).

<sup>87</sup> Specific Relief Act, 1877, Section 25(a). See also, *Sardar Gul Muhammad Khan v. Kh. Shamsuddin*, PLD 1956 (W. P.) Karachi 514, 518-19, *Muhammad Ashraf v. Mst. Kokab Benazir Fatima*, 2008 CLC 1398 [Karachi], 1404, *Allah Dino v. Ali Muhammad*, 2016 YLR 890 [Sindh], at para 23.

<sup>88</sup> Specific Relief Act, 1877, Section 25(b). See also, *Muhammad Ashraf v. Mst. Kokab Benazir Fatima*, 2008 CLC 1398 [Karachi], 1404.

person but has not received any valuable consideration prior to entering into a contract.<sup>89</sup> Although, where the case is such that the vendor or lessor has an imperfect title and he sues the purchaser or lessee for specific performance and the same is dismissed, then in such a case, the purchaser or lessee has a right to have his deposit along with interests returned back to him.<sup>90</sup> He may also lien the property for such deposit, interests and costs as well.<sup>91</sup> Hence, we can see that the seller must have knowledge that he possesses good title to dispose of the property<sup>92</sup> and that, unless the title of the property devolves in him or he has been invested with specific powers to convey the said property, he cannot dispose of the property without proper title of the property in question.<sup>93</sup>

Where a plaintiff wants to seek the remedy of a specific performance of a contract which is in writing, to which a defendant sets up a variation or amendment of any kind, then in such cases, the plaintiff cannot be granted the said provided except in cases where the variation made by the defendant is one of the following:

- i. Where the terms and conditions stipulated in the contract are different from the ones when the defendants thought them to be at the time he entered into a contract because of either fraud or a mistake of fact.<sup>94</sup>
- ii. Where the defendant entered into a contract under a reasonable misapprehension or misunderstanding as to its full effect and impact between the defendant and the plaintiff because of either fraud, mistake of fact or surprise.<sup>95</sup>
- iii. Where the defendant knew and understood the terms and conditions and as well as the contract's effect but he entered into said contract due to misrepresentation on the plaintiff's part or due to some special stipulation on the plaintiff's part, which he refuses to fulfil.<sup>96</sup>
- iv. Where the object of the contract was to produce a particular legal result which the said contract is unable to do so.<sup>97</sup>
- v. Where the parties after entering into a contract have subsequently entered into another contract to make variations to the first contract.<sup>98</sup> That is to say, "an agreement can also be enforced in the light of the subsequent variation subject to the condition that the original agreement was not completely abandoned by parties."<sup>99</sup>

### **Against Whom can a Contract may be Specifically Enforced?**

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<sup>89</sup> Specific Relief Act, 1877, Section 25(c). See also, *Muhammad Ashraf v. Mst. Kokab Benazir Fatima*, 2008 CLC 1398 [Karachi], 1404.

<sup>90</sup> Specific Relief Act, 1877, Section 18(d).

<sup>91</sup> Ibid.

<sup>92</sup> *Muhammad Ashraf v. Mst. Kokab Benazir Fatima*, 2008 CLC 1398 [Karachi], 1405.

<sup>93</sup> Ibid.

<sup>94</sup> Specific Relief Act, 1877, Section 26(a).

<sup>95</sup> Specific Relief Act, 1877, Section 26(b).

<sup>96</sup> Specific Relief Act, 1877, Section 26(c).

<sup>97</sup> Specific Relief Act, 1877, Section 26(d).

<sup>98</sup> Specific Relief Act, 1877, Section 26(e).

<sup>99</sup> *Muzzafar Javed v. Haji Noor Baksh*, 2002 MLD 1474 [Lahore], at para 9.

Section 27 of the Act stipulates how certain persons who have been granted a particular title which they did not have before prior to the contract can have the said contract be specifically performed except as provided otherwise under Chapter II of the Act.<sup>100</sup> Hence, this provision is discussing a particular class of people against whom a specific performance may be enforced. These persons include: i). either party to the contract,<sup>101</sup> any person who is claiming a title that arose subsequently to the contract except a transferee who paid his money in good faith and without the original contract's notice,<sup>102</sup> any person who claims a title which was displaced by the defendant prior to the contract, a new public company that arose due to a merger/amalgamation by two public companies<sup>103</sup> and lastly, the promoters of a public company who entered into a contract before its incorporation, provided that the company has ratified and adopted the contract and the same is warranted by the terms and conditions of the incorporation.<sup>104</sup> Section 27(b) basically enacts the Anglo equitable rule which allows later legal title to prevail over an equitable interest in case of bona fide purchaser for value without notice.<sup>105</sup> This principle has to be kept in mind by the Courts while analysing and appreciating the evidence on the record for the discharge of the requisite burden.<sup>106</sup> This principle incorporates three rules; first, the subsequent vendee must provide concrete evidence of the sale transaction, secondly, such transaction must be done in good faith, that is to say, it must be done honestly.<sup>107</sup> He must thus act as a reasonable man would in making inquiries expected from a purchaser who wants to acquire a good title for the price/value he is paying.<sup>108</sup> Lastly, there should be a lack of knowledge about the original contract between the instant case's plaintiff and vendee.<sup>109</sup> Hence, this provision shields and safeguards the *bona fide* purchaser in good faith for value without notice of the original contract.<sup>110</sup>

Section 27A provides how subject to the provisions of the Act, where a written contract to lease immoveable property and signed by the respective parties or their representatives, either party has the option sue the other party for the contract's specific performance even though they are not registered despite its requirement<sup>111</sup> in the following circumstances: where the lessor claims

<sup>100</sup> Specific Relief Act, 1877, Section 27.

<sup>101</sup> Specific Relief Act, 1877, Section 27(a).

<sup>102</sup> Specific Relief Act, 1877, Section 27(b). When it comes to this provision, Supreme Court ruled in *Faqir Syed Anwar ud Din v. Syed Raza Haider*, PLD 2025 SC 31 at para 4 that “the subsequent vendee who asserts that he is a bona fide purchaser i.e. a transferee for value has to discharge the initial onus. The latter has to discharge the initial onus to the effect that; he had acquired the property for due consideration and thus is a transferee for value; he or she, as the case may be, has to show that the sale was for a price paid to the vendor and not otherwise; there was no dishonesty of purpose of tainted intention to enter into the transaction thereby meaning that the latter had acted in good faith or bonafidely and, lastly, that he/she had taken reasonable care to inquire i.e. had acted as a person of ordinary prudence in making inquiries expected of a purchaser who intends to acquire a good title for the value being paid for.”

<sup>103</sup> Specific Relief Act, 1877, Section 27(c).

<sup>104</sup> Specific Relief Act, 1877, Section 27(d).

<sup>105</sup> *Ghulam Sarwar v. Qazi Muhammad Bakhsh*, 2012 SCMR 935, at para 11.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> *Muhammad Rafiq v. Hussain*, 2022 MLD 939 [Lahore], at para 5.

<sup>111</sup> Specific Relief Act, 1877, Section 27A. See also, *Sh. Barkatullah v. Khawaja Muhammad Ibrahim*, PLD 1970 SC 483, 487. See also, *Carrier Telephone Industries Ltd., Islamabad v. Messrs Sohail Brothers*, P L D 1978 Lahore 1116,

it and has also delivered the possession of the property to the lessee as part performance of the contract<sup>112</sup> and where the lessee claims it and has already taken possession of the property or if he already has possession, he continues to remain in possession and has done some act in furtherance of the contract as part performance on his part.<sup>113</sup> Hence, the biggest prerequisite for both parties to claim specific relief is whether both the lessor and lessee have already partly performed their part of the contract in terms of whether possession has been transferred or not. It should also be noted however that this provision does not apply to anyone who has no notice of the contract or its obligations thereof.<sup>114</sup>

#### **Against Whom can Contracts cannot be Specifically Enforced?**

Section 28 of the Act discusses the circumstances in which specific performance cannot be performed by any of the parties.<sup>115</sup> These circumstances include:

- i. When the consideration is so inadequate with regard to the state of things existing at the date of the contract, that either by itself or coupled by other circumstances, there is evidence that the plaintiff has committed either fraud or undue advantage.<sup>116</sup>
- ii. If the defendant's assent was obtained by wilful or innocent misrepresentation or by concealment, circumvention or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled.<sup>117</sup>
- iii. If the defendant's assent was obtained under the influence of a mistake of fact, misapprehension or surprise, provided that where compensation for mistake of fact is concerned, the compensation may be made within the scope of such provision and the contract may be specially enforced in other respects if it is deemed proper to do so.<sup>118</sup>

Hence, in cases where the consent of the defendant has not been obtained lawfully but by other illegitimate means such as fraud, misrepresentation, misapprehension or mistake of fact. In the case of the latter, the compensation can be made within the scope of what the provision provides, the rest may still be specifically enforced.

#### **Dismissing Suit for Specific Performance**

Section 29 of the Act provides that if a suit for specific performance of a contract is dismissed either wholly or partly, the plaintiff shall lose the right to sue for compensation of breach of contract, either wholly or partly, as the case may be.<sup>119</sup> Hence, a plaintiff cannot file separate suits

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para 21. The Court held that the reference in this section is to a document which is unregistered and which was required to be registered apparently is *inter alia* to a case where a lease deed has been executed but has not gotten registered.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Specific Relief Act, 1877, Section 28.

<sup>116</sup> Specific Relief Act, 1877, Section 28(a). See also, *Muzafar Hussain v. Nazir Ahmad*, 2005 YLR 2080 [Lahore], at para 9, *Fazal Hussain Shah v. Rustam*, 2010 YLR 297 [Karachi], 302, *Mrs. Perin J. Dinshaw v. Mubarak Ali*, 2016 YLR 251 [Lahore], at para 12.

<sup>117</sup> Specific Relief Act, 1877, Section 28(b).

<sup>118</sup> Specific Relief Act, 1877, Section 28(c).

<sup>119</sup> Specific Relief Act, 1877, Section 29.

for specific performance and for damages for breach of contract when his claims for these reliefs arise out of the same contract.<sup>120</sup> Or in simpler words, by virtue of this provision, a plaintiff is barred from subsequently suing for breach of contract if his suit for specific performance is dismissed.<sup>121</sup>

### **Can the Principles of Specific Performance be Applied to Something Other Than a Contract?**

Section 30 of the Act provides that all these principles discussed hereinabove shall, *mutatis mutandis*, apply to awards and to directions in a will or codicil to execute a particular settlement.<sup>122</sup> That is to say, all the principles of specific performance can be applied to awards and the directions of wills and codicils with as much necessary alterations as possible without affecting the main issue at hand.

### **Conclusion**

Specific performance is an equitable remedy that is granted at a court's discretion when expectation damages prove to be inadequate. In Pakistan, this remedy is incorporated within Sections 12-30 of the Act. The Act provides different principles regarding specific performance. It provides for circumstances in which specific performance may be granted, which mainly revolves around whether the expectation damages were either inadequate or cannot be granted or the actual damage cannot be ascertained. It also involves whether the act involved the partial or whole performance of a trust. It is highly dependent upon the facts and circumstances of the case whether specific performance of a contract can be granted alongside compensatory damages. There are also circumstances where specific performance cannot be granted by a court such as when compensatory damages prove to be adequate relief. Other circumstances include: where the contract is too dependent upon minute details or personal qualifications of the parties or its terms or conditions cannot be ascertained or is revocable or the obligation stipulated therein requires a continuous performance that goes beyond the limitation period of three years or where a material part of the contract's subject matter ceases to exist or where an arbitration clause stipulating parties to go to arbitration in the event of any dispute is stipulated therein. In fact, special contracts made by trustees in excess of their powers or in breach of their trust or where a public company made for special purposes enters into a contract in excess of their powers cannot be enforced either.

While the general principle is that a contract must be enforced in its entirety and not in bits and pieces, but the Act provides for three exceptions in which a contract can be partially performed instead of being wholly performed. These exceptions include: first, where the part to be performed bears little in value and the remaining can be compensated, then specific performance can be granted at the suit of either party, secondly, where the part to be performed is large and no compensation can be made then there can be no claim for specific performance for the defendant. However, in such a case, the plaintiff may still make a claim for it and direct the defendant to perform as much of his obligation as is possible, provided he relinquishes all claims to further performance, compensation or for any loss or damage caused to by such non-performance and lastly, where a part of the contract is so significant that if taken by itself, it can

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<sup>120</sup> *Messrs Nigar Pictures, Karachi v. Messrs United Brothers, Lahore*, PLD 1970 Karachi 770, at para 9.

<sup>121</sup> *Ansar Ali v. Altaf Ahmed Memon*, 2019 YLR 979 [Sindh], at para 9.

<sup>122</sup> Specific Relief Act, 1877, Section 30.

stand independently and has to be performed in comparison to another part of the same contract, which cannot and should not be performed.

Specific performance may also be granted notwithstanding the doctrine of frustration, provided that only a portion of the contract's subject-matter which originally existed at the time of the contract, ceases to exist at the time of performing the contract's obligations. Additionally, damages are not a bar to granting specific performance, provided the defendant is willing to make such compensation. In fact, a court may grant it alongside specific performance, depending upon the facts and circumstances of a case.

While specific performance is a discretionary remedy, it must still be granted on the basis of proper judicial reasoning and equity, justice and good conscience. Not just because it is lawful to do so. In fact, specific performance may not be granted if it seen that it could cause injustice rather than justice between both parties. While any party or their authorized agents or representatives can enforce specific performance, there are still certain cases in which particular parties can or cannot enforce it. Additionally, there are classes of persons who can and cannot enforce specific performance and also can or cannot have specific performance be enforced against them as specified by the Act. In contracts involving the sale or renting of a moveable or immoveable property, the granting of specific performance on the lessor or seller's part is entirely contingent upon whether he actually owns the property or not and also whether he made a previous settlement where he received no valuable consideration for the same. The Act also provides for circumstances where either party has the option sue the other party for the contract's specific performance even though they are not registered despite its requirement in a written contract to lease immoveable property. Where a defendant made variations to a contract, then the plaintiff cannot have said contract be specifically enforced unless the defendant made a particular variation as specified by the Act itself. A plaintiff is also barred from subsequently suing for breach of contract if his suit for specific performance is dismissed. Lastly, all the principles of specific performance can be applied to awards and the directions of wills and codicils with as much necessary alterations as possible without affecting the main issue at hand.