

Discharge by Agreement and Breach of Contract

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Discharge by Agreement

Discharge by Agreement

- Novation
- Rescission
- Alteration
- Remission
- Waiver
- Accord and Satisfaction

S. 62. Effect of novation, rescission, and alteration of contract

- 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.

• Illustrations

- (a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.
- (b) A owes B 10,000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.
- (c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into

Novation

- **Involving change of parties**
- A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.
- **Substitution of new agreement**
- A owes B 10,000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old

Alteration

- A owes B 1,000 rupees under a contract. B owes C 1,000 rupees B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into

S. 63. Promisee may dispense with or remit performance of promisee

- Every promisee may dispense with or remit, wholly or in part, the performance of the promisee made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations

- (a) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
- (b) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

S. 63. Promisee may dispense with or remit performance of promisee

- (c) A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim .
- (d) A owes B, under. a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.
- (e) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a [composition] of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Effect of S. 63

- **Acceptance of less sum**
- A owes B 5,000 rupees. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim
- **Waiver**
- A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.
- **Extension of time**

Accord and Satisfaction



Discharge by Breach

Discharge by Breach

- Anticipatory Breach
- Actual Breach

S.39. Effect of refusal of party to perform promise wholly

- When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

Illustrations

- (a) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.
- (b) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two night's in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night, A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it, but is entitled to compensation for the damage sustained by him through A's failure to sing on the sixth night

Anticipatory Breach

- **Effects upon Rights**
- Innocent party excused from further performance
- Immediate right of action
 - Consequence of aggrieved party waiting for performance
 - Party reupdating may chose to perform
 - Discharge by other event may benefit both
 - Date of assessment of damages

Actual Breach

- Non-performance including defective performance
- Refusal to discharge the contractual obligation at the time when it is due as per the contract
- **What amounts to repudiation?**
 - Conduct of the party needs to be assessed
- Contract for supply of 100 tons of flock of government standard to be delivered by the instalment, the sixteen delivery was below the standard and the buyer attempted to treat this as a repudiation. Can it be treated as repudiation?

What amounts to repudiation?

- Failure to perform as the occasion arises
- Refusal to perform whole of the contract not just apart of the contract
- A agreed to purchase from B under two contracts 300 tons of sugar to be delivered at different dates. A having failed to take delivery under the first contract, B claimed to rescind both contracts.