

Module V

Discharge of Contract and Modes

Nilima Bhadbhade, PhD (Law)
nilima.bhadbhade@gmail.com
<http://obiterdicta.in>

Discharge

- Meaning
- Obligations come to an end

Performance

- Section 37
- Parties must perform or offer to perform their respective obligations
 - Unless
 - Dispensed with, or
 - Excused under the ICA or any other law

Tender of performance

- Effect
- Conditions of valid tender of performance TO DO
 - Unconditional
 - Made at proper time and place
 - Opportunity to ascertain whether the person tendering is able and willing to perform the whole
 - Opportunity to see whether thing offered is the one promised

Who must perform

- Promisor
- Employ another competent person
 - Unless parties intend of personal performance
- Representatives can employ competent person
- If performance accepted from third party
 - cannot performance again

Place of performance

- At place fixed for performance
- Sale of Goods Act specifies the place if parties have not agreed
- If promisee must apply under the contract
 - Promisee must apply
- If no place fixed, promisor must apply
- Else
 - Where promise “ought to be performed”.
“Debtor must seek the creditor.”

Time of performance

- Specified time
- Else reasonable time
- Failure to perform in time
 - Compensation
 - Termination, if time is of the essence

“Time of essence” and Termination

- Failure, if time is of the essence
 - Option
 - To avoid (terminate) the contract
 - Else wait and accept performance
 - Seek compensation
 - Importance of asserting the right to claim compensation

Manner of performance

- Promisee can prescribe time and manner of performance
- Promisor ***may*** perform at that time or manner
- If he does so, he is discharged.

Reciprocal promises

- Promises that form consideration for one another
 - Promises by both parties
- Simultaneous performance or dependent
- Order of performance
- If first promise is not performed
 - Second promise cannot be claimed
 - Compensation can be claimed

Assignment of contract

- Rights can be assigned
 - Unless prohibited or restricted
- Liabilities cannot be assigned
 - Unless permitted
- Assignee cannot sue except through his assignor

Effect of death and bankruptcy

- Death does not discharge liability
- Legal representatives liable
- To the extent of the estate of the deceased
- Exception: personal contracts

Breach

- Breach does not end contract.
 - Gives right to remedy
- Breaches that give right to end
 - Refusal
 - Prevention
 - Failure, time being of essence

Anticipatory breach

- Refusal by promisor
- Other party has option to end the contract
- “It takes two to end the contract”
- If ended
 - Other party need not perform
 - Right to claim compensation
- If contract continued
 - Both parties must perform
 - Performance must be paid for

Supervening impossibility

- Supervening event makes performance impossible
- Strict doctrine : no easy excuses
- Satyabrata Ghose v Mugneeram Bangur 1954 SC
- Change of law
- State of things has changed
- Physical impossibility
- Strikes, lockouts, non-availability of material, rise in prices etc do not affect the contract

Effect of frustration

- Contract “becomes void”
- Automatic discharge
- Termination not required
- Whether impossible : court will decide
- Does not apply to leases
- Party who has gained advantage must restore or compensate.

'force majeure' clauses

- Parties make provisions for unforeseen events
- Provide
 - Which events
 - Procedures
 - Notices
 - Consequences
 - Termination
 - Suspension

Bar of limitation

- Discharge by expiry of limitation
- Limitation bars the remedy but does not extinguish the right.
- Contracts : three years
Government: thirty years
- Save limitation by
 - Acknowledgment in writing
 - Payment towards debt
- Promise to pay time-barred debt can be enforced

Discharge by agreement

- Parties can do whatever they want with the contract together

Novation, alteration

- TOGETHER
- Substitute new contract
- Substitute parties
- Alter any of the terms
- Variation clauses in contracts:
one party can order changes

Rescission and termination

- TOGETHER
- Cancel the contract
- Termination clauses
 - By one or both parties
 - With or without reason
 - Notice period or forthwith

Remission, waiver and extension of time

- Promisee can
 - remit performance
 - “Dispense with “ = Waive
 - Extend time

Accord and satisfaction

- Agreement made after breach

* * *