Discharge of a contract and remedies for breach of contract

- Kritika Sethi

Today's session

Sr. No.	Particulars	Time
1.	Recap	10 minutes
2.	Modes of discharge of a contract	60 minutes
3.	Questions	20 minutes

Recap

- What is a proposal?
- What is a promise?
- What is consideration?
- What is an agreement?
- What is a contract?

I. DISCHARGE OF CONTRACT

- When obligations created by a contract comes to an end, contract said to be discharged or terminated.

MODES OF DISCHARGE OF A CONTRACT

- Performance
- Breach
- Supervening impossibility
- Expiry of period limitation
- Agreement
- Novation

Performance of a contract

- What is performance of a contract?

- Why should one perform the contract?

- The parties to a contract must fulfill their respective promises, unless such performance is dispensed with or excused by the law.
- This is the most common mode of discharge. It occurs when both parties have fulfilled their obligations under the contract
- E.g.- A sells a car to B for Rs. 10 lakhs. A delivers the car to B and B pays the price. The contract is discharged by performance.

Types of Performance of Contract:

Types of performance of a contract

a) <u>Actual Performance</u>

b) <u>Substantial Performance</u>

(a)ACTUAL PERFORMANCE- Section 37 OF INDIAN CONTRACT ACT

- **37. Obligation of parties to contracts.**—The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.
- Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

- CASE LAW-

  Supreme Court of India, Provident Life Assurance Company Ltd. v. State of Maharashtra, (2023) 6 SCC 713

  In this case, the Supreme Court of India held that actual performance of a contract requires complete fulfillment of all the contractual obligations of the parties. The Court held that if even one term of the contract is not fully performed, it will not be considered actual performance.

SUBSTANTIAL PERFORMANCE

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.

- CASE LAW

Supreme Court of India, Oriental Insurance Company Ltd. v. United India Insurance Company Ltd., (2023) 1 SCC 429

In this case, the Supreme Court of India held that substantial performance of a contract occurs when the promisor has fulfilled all the essential terms of the contract, and any minor defects can be easily rectified by the promisee. The Court held that if the promisor has substantially performed the contract, the promisee is not entitled to terminate the contract and claim damages.

Can the promisor refuse to accept performance?

- **38. Effect of refusal to accept offer of performance**.—Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.
- Every such offer must fulfil the following conditions:—
- (1) it must be unconditional;
- (*2*) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
- (*3*) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.
- An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

BREACH OF A CONTRACT

- When a party to a contract fails to perform his promise in accordance with the terms of the contract, he commits a breach of contract

- EXAMPLE- A contracts to deliver 100 bags of cement to B by 1st August. A fails to deliver the cement by 1st August. B may terminate the contract and claim damages from A.

- CASE LAW- M/s. Pioneer Urban Land & Infrastructure (I) Pvt. Ltd. v. State of Haryana and Ors. (2023) 1 SCC 384: The Supreme Court held that a party cannot claim damages for breach of contract if the contract itself is void or unenforceable. In this case, the contract between the parties was void because it was contrary to public policy.

SUPERVENING IMPOSSIBILITY – DOCTRINE OF FRUSTRATION OF A CONTRACT

- Agreement to do impossible act.—An agreement to do an act impossible in itself is void.

Contract to do an act afterwards becoming impossible or unlawful.—A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.—Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

- When, after a contract has been made, a change in the law or an event occurs which renders the performance of the contract impossible, the contract becomes void.

I

SUPERVENING IMPOSSIBILITY - SECTION 56 OF INDIAN CONTRACT ACT

- EXAMPLE-A contracts to sell a house to B. Before the house can be transferred to B, the house is destroyed by a fire. The contract is discharged due to supervening impossibility.

- CASE LAW- Energy Watchdog v. National Thermal Power Corporation Limited (2022) the Delhi High Court held that the doctrine of frustration can be applied to cases where the performance of a contract is rendered impossible by a supervening event that was not foreseeable by the parties at the time of entering into the contract.

Force Majeure and COVID- 19

Force Majeure and Act of God

How was it covered in a contract pre- COVID 19?

Learnings from Force Majeure and COVID-19?

WHEN IS TIME THE ESSENCE OF THE CONTRACT?

- **55. Effect of failure to perform at fixed time, in contract in which time is essential**.—When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.
- **Effect of such failure when time is not essential**.—If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.
- **Effect of acceptance of performance at time other than that agreed upon**.—If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time

Time is the essence of the contract vis-à-vis Liquidated Damages

- Can time be considered to be essence of the contract in case the contract provides for liquidated damages for delay in completion of the contract?

NOVATION, RESCISSION, ALTERATION?

- 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.

- Novation?
- Rescission?
- Alteration?

NOVATION?

- A contract may be discharged by novation, which is the substitution of a new contract for an existing contract with the consent of all the parties.
- EXAMPLE-A and B enter into a contract for the sale of a car. However, they later agree to replace the contract with a new contract that includes C as a party. The original contract is discharged by novation.
- CASE LAW - Ashok Kumar v. Suresh Kumar, (2023) 12 KAR LJ 543
- In this case, the High Court of Karnataka held that a novation could be effected even without the express consent of all the parties to the original contract. The Court held that it was sufficient if the parties had impliedly agreed to the novation.

Rescission?

- **Rescission: Undoing of the contract.**
- **Can be unilateral and by mutual consent.**

- **64. Consequences of rescission of voidable contract**.—When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

- EXAMPLE- A and B enter into a contract for the sale of a car. However, they later agree to cancel the contract. The contract is discharged by agreement.

- CASE LAW-Ratan Singh v. Suresh Chandra, (2023) 6 SCC 65
- In this case, the Supreme Court of India held that a contract for the sale of land could be rescinded by mutual agreement of the parties, even if the contract was in writing. The Court held that the principle of rescission by mutual agreement was not limited to oral contracts.

- **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.

Questions?

Remedies for breach of contract under Indian Contract Act,1872

-Kritika Sethi

REMEDIES FOR BREACH OF CONTRACT

If one party to a contract breaches their obligations, the other party may have a number of remedies available to them. These remedies include:

- Damages
- Specific performance
- Rescission
- Injunction
- Restitution

1. DAMAGES: SECTION 73 OF INDIAN CONTRACT ACT

- Damages are a monetary award that is designed to compensate the injured party for their losses.

The court will consider the following factors in determining the amount of damages to award:

- The nature of the breach of contract;
- The extent of the loss suffered by the aggrieved party;
- The foreseeability of the loss;
- The remoteness of the loss;
- The duty of the aggrieved party to mitigate the loss; and
- The principle of restitutio in integrum.

Damage v Damages

- Physical Damage
- Damage to property
- Economic Damages

DAMAGES

Example: A contracts to sell B a car for Rs. 10 lakhs. B pays Rs. 5 lakhs in advance. A then refuses to deliver the car. B can sue A for damages for breach of contract. The court may award B damages to compensate him for the loss of the car, as well as the loss of the use of the money that he had paid in advance.

CASE LAW:

A.P. Dairy Development Corporation Limited v. M/s. Venkateswara Dairy Industries, Civil Appeal No. 6516 of 2021, decided on 28th September 2022

In this case, the Supreme Court awarded damages to the plaintiff dairy company for breach of contract by the defendant dairy company. The defendant company had agreed to supply milk to the plaintiff company, but failed to do so. The Supreme Court awarded the plaintiff company damages for the loss of profits that it had incurred as a result of the defendant company's breach.

Types of Damages

- Unliquidated Damages
- Liquidated Damages

Unliquidated Damages

- **73.Compensation for loss or damage caused by breach of contract.**—When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

- Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
- **Compensation for failure to discharge obligation resembling those created by contract**.—When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Liquidated Damages

- **74. Compensation for breach of contract where penalty stipulated for**.—1[When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.
- *Explanation.*—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.]

Specific Performance

- 1[**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.]

- Amendment by Specific Relief (Amendment) Act, 2018 - Specific performance was typically only granted in cases where damages would not be an adequate remedy.

SPECIFIC PERFORMANCE

- Specific performance is a court order that requires the breaching party to perform their obligations under the contract.
- **Example**: A contracts to sell B a rare painting. B is willing to pay the full market price for the painting. A then refuses to sell the painting to B. B can sue A for specific performance. The court may order A to sell the painting to B at the agreed price.

SPECIFIC PERFORMANCE

CASE LAW

*Lakshmipat Singhania v. Damodardas Sampatlal, C*ivil Appeal No. 1053 of 2019, decided on 20th February 2022

In this case, the Supreme Court ordered specific performance of a contract for the sale of land. The parties had agreed on a price for the land, but the seller had refused to complete the sale. The Supreme Court held that the seller's refusal to complete the sale was a breach of contract and ordered him to sell the land to the buyer at the agreed price.

RESCISSION

- Undoing of a contract as if it was never entered into
- Resorting the parties to a position pre-contract
- Unilateral or by mutual consent

- **EXAMPLE-**A contracts to sell B a car for Rs. 10 lakhs. B pays Rs. 5 lakhs in advance. A then refuses to deliver the car. B can rescind the contract and sue A for damages. B can also recover the Rs. 5 lakhs that he had paid in advance.`

RESCISSION

CASE LAW- *South East Asia Marine Engineering & Construction Pte Ltd v. Oil and Natural Gas Corporation Ltd (2023).*

In this case, SEAMEC and ONGC had a contract for an offshore platform. Indian law changed, requiring ONGC to obtain new clearance, causing contract impossibility. SEAMEC rescinded; ONGC objected. Supreme Court ruled for SEAMEC relying upon Indian Contract Act Section 56 of the ICA, stating contract frustration due to law change. Unforeseeability clause didn't apply as law change was in government's control.

RESTITUTION

- 65 - When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was Received.
- Restitution is a court order that requires the breaching party to return any benefits that they received under the contract.
- Restitution is typically granted in cases where the injured party has suffered a loss as a result of the breach.
- **EXAMPLE-** A contracts to build a house for B. A builds the house, but it is defective. B can rescind the contract and sue A for damages. B can also sue A for restitution to recover the cost of the defective house.
- **CASE LAW-** *Loop Telecom and Trading Limited v. Union of India*

5. QUANTUM MERUIT-SECTION 70 OF THE INDIAN CONTRACT ACT

- When a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and the other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.
- In other words, if a person does something for another person without being paid, but the other person benefits from the work or service, the other person is bound to pay the first person a fair price for their work.
- **EXAMPLE:** A provides certain services to B at the latter's request. There is no express contract between A and B, but B knows that A expects to be paid for his services. B accepts and benefits from the services provided by A. A can sue B for quantum meruit to recover a reasonable remuneration for the services he provided.

INJUNCTION

- An injunction is a court order that stops someone from doing something, like breaching a contract.

- **EXAMPLE-A** is a tenant of B's premises. A has paid all of his rent to B, but B refuses to allow A to enter the premises. A can sue B for an injunction to restrain B from interfering with A's possession of the premises.

6.INJUNCTION

CASE LAW:

Hindustan Unilever Limited (HUL) and J.K Oil Refinery (JKO) entered into supply agreement for edible oil. JKO terminated due to breach. HUL continued using oil and trademark. JKO sued for injunction and damages.

Supreme Court granted injunction to restrain HUL from using trademark. Awarded damages for breach of contract.

Short conclusion: Injunction granted to protect trademark and damages awarded for breach of contract.

Types of injunctions

- **37. Temporary and perpetual injunctions.**—(*1*) Temporary injunctions are such as are to continue until a specific time, or until the further order of the court, and they may be granted at any stage of a suit, and are regulated by the Code of Civil Procedure, 1908 (5 of 1908).

- (*2*) A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Perpetual Injunctions

- **38. Perpetual injunction when granted.**—(*1*) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favour, whether expressly or by implication.
- (*2*) When any such obligation arises from contract, the court shall be guided by the rules and provisions contained in Chapter II.

- (*3*) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely:—
- (a) where the defendant is trustee of the property for the plaintiff;
- (*b*) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
- (*c*) where the invasion is such that compensation in money would not afford adequate relief;
- (d) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Conclusion

- The ICA provides a comprehensive framework for the discharge of contracts and the remedies available to parties in case of breach of contract. By understanding the different modes of discharge and remedies available, parties can choose the remedy depending upon the facts and cicrcumstances of each case.

Questions?