Discharge of Contracts

OLIVE LAW

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- Discharge of a contract means termination of the contractual relationship between the parties to a contract.
- A contract is discharged when the rights and obligations created by it come to an end.

Modes of Discharge

- **By Performance -**
  - a. Actual
  - b. Attempted
- **By Impossibility of Performance**
- **By Mutual Agreement -**
  - a. Novation
  - b. Rescission
  - c. Alteration
  - d. Remission
  - e. Waiver
  - f. Accord and Satisfaction
- **By Breach of Contract-**
  - a. Actual
  - b. Anticipatory
- **By Operation of Law**
  - a. Death
  - b. Bankruptcy
- **By Lapse of Time**

Example

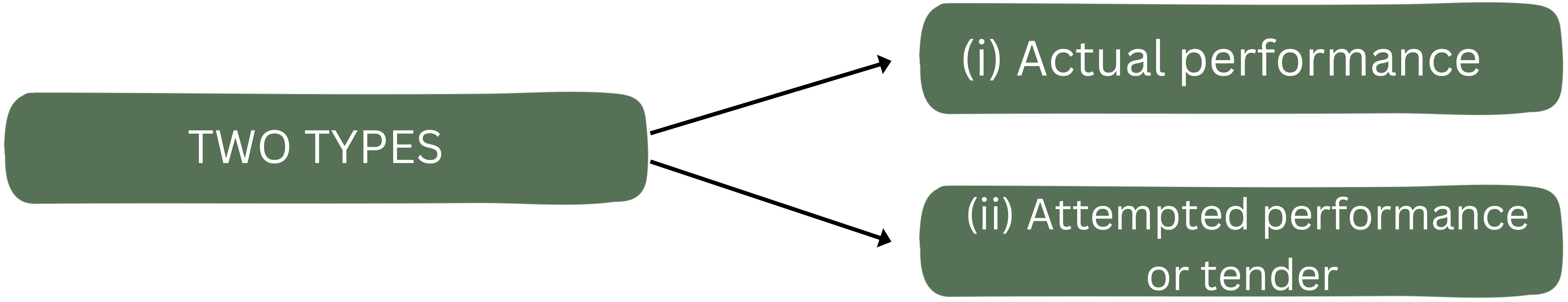
X owns an empty plot of land. He engages Y, a contractor, to construct upon the land, three-storied building, with Y spending his own resources for the construction. As consideration, X and Y agree that upon the construction of the building, the ownership of the third floor will belong to Y.

Discharge of Contract By Performance (Section 37)

"Section 37 . 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."

- Most common form of discharge of a contract.
- if the duties stated in the contract have been fulfilled by the parties.
- each party is bound to perform his obligation under the contract, unless the performance is dispensed with or excused under the provisions of the act.
- if only 1 party performs its promise - then he alone is discharged.
- he gets a right of action against the other party who is guilty of breach.
- In such a situation the contract is not discharged.



Offer of Performance – Section 38 of the ICA

- Promisor must offer to perform his obligation under the contract to the promisee.
- This offer is called “tender of performance”.
- It is then for the promisee to accept the performance.
- If the offer of performance is not accepted by the promisee, the promisor cannot be blamed for the non-performance of the contract.
- he does not lose his rights under the contract.
- he can sue for breach
- This is also a mode of discharge of contract.

Section 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.

Valid Tender of Performance

1. Unconditional (Section 38(1))

- It becomes conditional when it is not in accordance with the terms of the contract.
- Eg. a tender of an amount less than what is due under the contract is not an effective tender.

2. At a proper time and place ;

3. The promisee must have a reasonable opportunity of ascertaining that the promisor is able and willing there and then, to do the whole of what he is bound by his promise to do.

- If the time and place of performance are fixed by the parties in their contract, tender must be at the time and place so fixed
- if it is so made the promisor is under no responsibility if the tender is not accepted.
- goods tendered must be of the contract description, otherwise tender is not valid.
- if there are number of joint promisees - offer of performance must be made in favor of any of them

Example

In the example of X and Y, if Y, as agreed between the parties, constructs the building, and X upon the completion of construction, transfers the ownership of the top floor of the property, the contract is discharged qua both parties; both parties have validly performed their obligations under the contract.

Time and Place for Performance – (Section 46 - 50 of ICA)

- Where a promisor is to perform his promise without application by the promisee, and no time for performance is specified, engagement must be performed within a reasonable time.
- "What is reasonable time" is a question of fact.
- When a promise has to be performed within a certain time, it must be performed on any day before the lapse of time.
- Where no time for performance is specified, in such cases performance must be offered within a reasonable time.
- When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.
- **Illustration** - A promises to deliver goods at B's warehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Section 46 : Time for performance of promise, when no application is to be made and no time is specified.

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation.—The question "what is a reasonable time" is, in each particular case, a question of fact.

Section 47 : Time and place for performance of promise

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Section 48: Application for performance on certain day to be at proper time and place

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the, promisee to apply for performance at a proper place and within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

Section 49: **Place for performance of promise, where no application to be made and no place fixed for performance.**

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Section 50 : Performance in manner or at time prescribed or sanctioned by promise.

The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Performance of Reciprocal Promises – (Section 51-54)

Section 51 - Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.
When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Section 52 - Order of performance of reciprocal promises.
Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Section 53 - Liability of party preventing event on which the contract is to take effect.
When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the nonperformance of the contract.

Section 54 - Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises
When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Performance of Reciprocal Promises

- When a contract consists of an exchange of simultaneous promises, they are called **reciprocal promises**.
- **Section 2(f) - Reciprocal Promises**: "Promises which form the consideration or part of the consideration for each other are called reciprocal promises."
- When such promises have to be simultaneously performed, the promisor is not bound to perform unless the promisee is ready and willing to perform his promise.
- If an agreement contains reciprocal obligations to be performed by both parties, if one party fails to perform its obligations, and thereby prevents the other party from performing its obligations under the contract, the party so prevented is discharged from fulfilling its obligation.

Example : for the sale of goods on payment of a price, the seller need not deliver the goods unless the buyer is ready and willing to pay for the goods on delivery. Similarly, the buyer need not pay unless the seller is willing to deliver the goods on payment.

Order of Performance (Section 52)

- the order in which reciprocal promises must be performed may be fixed by the contract and the order so fixed must be followed.

- But where the order is not fixed, they will be performed in the order that the nature of the transaction admits.

- Where the nature of the reciprocal promise is such that one cannot be performed or its performance cannot be claimed unless the other party performs his promise in the first place, then if the latter fails to perform, he cannot claim performance from the other but must make compensation to him for his loss.

Example: If X fails to give possession of his plot to Y for the construction of the building, the contract becomes voidable at Y’s option. Y is also entitled to compensation from X for any loss sustained due to X’s failure to hand over possession.

Time as the Essence of a Contract

Section 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 agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Time as the Essence of a Contract

- Sometimes the parties to a contract specify the time for its performance. Ordinarily, it is expected that either party will perform his obligation at the stipulated time.
- But if one fails to do so, the question arises - what is the effect upon the contract .

- **two remedies:**
- one in a case when the time of performance is of the essence of the contract, ;
- and the other when the time is not of the essence of a contract.

- time when is the essence of the contract, then a failure to perform at the agreed time renders the contract voidable at the option of the opposite party.

When is time considered to be of the essence -

(i)Where the parties have expressly agreed to treat it as the essence of the contract. ;

(ii)where delay operates as injury;

(iii)where the nature and necessity of the contract requires it o be so construed for example, where a party asks for an extension of time for performance.

Example: In Construction contracts, time schedule is likely to be of the essence because construction is a commercial service. Where 24 months time was given t a builder with a stipulation that on delay he would 10% per annum of the purchase price measured by the period of delay, time was held to be of the essence entitling recovery of the stipulated amount.

Determining whether the time is of the essence of a contract or not

- The **intention** of the Parties is important.
- If the parties have not expressed their intention, then it depends on the **nature of the contract.**
- When the time of performance is the essence of a contract and the same is extended, the extended date is also of the essence of the contract.

- If time was of the essence of the contract, and the promisor fails to perform the contract within time, it is voidable at the option of the promisee.
- if the promisee accepts performance even after the time is over, he cannot claim any compensation for loss occasioned by the non-performance within time.

Consequences Of Failure

- If time was not the essence of the contract, contract does not become voidable because of a delay in performance;
- Promisee is still entitled to compensation for any loss caused due to the delay. (section 55)
- The innocent party will have to accept the performance even if it is delayed.
- Where on the other hand, the time of performance is of the essence of the contract, any delay will render the contract voidable at the option of the other party.
- He may reject the performance and immediately sue for breach.
- But he can also accept the delayed performance. In which case he cannot afterward recover compensation for delay.
- Delay by itself doesn’t put an end to the contract.

Example: If at the time of execution of the contract, X informed Y, that he intends to inhabit the ground floor and first floor of the building, because of which he is selling another property in 12 months, time is the essence of contract. If Y fails to complete construction within 12 months, the contract is voidable at X’s option.

Discharge by Impossibility of performance

Section 56 : 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 nonperformance of the promise

Initial Impossibility – at the time of making contract -

- simple principle - that an agreement to do an act impossible in itself is void.
- Both parties know–put life into dead body–void.
- Both don't know–void.
- One knows–compensate the other party.

An agreement to do an act impossible is void in itself. The object of making any contract is that the parties to it would perform their respective promises. If a contract is impossible of being performed, the parties will never be able to fuflill their object and hence such an agreement is void.

Example: If X does not have ownership of the plot, or is otherwise barred from handing over possession of the plot to any person, there is an initial impossibility.

(b) Effect of supervening impossibility:-

the second paragraph of section 56 lays down the effect of the subsequent impossibility of performance: the performance of a contract may be possible when the contract is entered into but because of some event, the performance may subsequently become impossible or unlawful.

- Where an act becomes impossible after the contract is made – void
- Becomes unlawful, beyond the control of the promisor – void
- Promisor alone knows about the impossibility- compensate for the loss

Examples-

(i)If X's plot of land is acquired by the government when Y was in the process of construction, there is a supervening impossibility.

(ii)Where In a contract for importing some goods, if the government later forbids the import of such good then the contract is subsequently void.

(iii)In a contract between X and Y that required X to make advertisement videos on TikTok, when the government subsequently banned tiktok as a platform, the contract became void.

Doctrine of Frustration

- The doctrine of supervening impossibility is also called the **doctrine of frustration,** which is one of the aspects of the law of contracts.
- It deals with the enforceability of contracts in the occurrence of some unforeseen incidents.
- The word ‘frustration’ means ‘efforts made ineffective’.
- ‘Lex non cogit ad impossibilia’ - “law does not compel the impossible”.
- Can arise in - war, act of god, amendment of laws, death of a party

- frustration of a contract, may not be applicable in situation of –

  (i)self-induced frustration, and

  (ii)in a contract, parties have, expressly agreed that the contract would stand despite such intervening circumstance or event
- Frustration operates automatically to discharge the contract.

The doctrine of frustration comes into play in 2 types of situations :

(i)where the performance is physically cut off - impossible to perform

(ii)where the object or purpose has failed

In the case of **Satyabrata Ghose v. Mugneeram Bangur and Co.**, the defendant company promised the plaintiff that they would develop a plot of land by constructing roads and drains and then sell the plot to the plaintiff. Later, some portion of the land got requisitioned for military purposes. The Supreme Court decided that since only a portion of the land got requisitioned and not the whole of it, the contract had not become impossible as per Section 56.

Impossible in this case didn't mean – physically or literally impossible but that the object or purpose which the parties had in mind is defeated which upsets the foundation of the contract.

[Satyabrata Ghose v. Mugneeram Bangur & Co. 1954 SCR 310]

Specific Grounds of Frustration

(subject to the terms of the contract)

- Destruction of subject matter
- Change of circumstances
- Death or incapacity of the party
- Declaration of war
- Change of law
- Non-occurrence of contemplated events

When Supervening Impossibility – does not make the void

- Difficulty of performance
- Commercial impossibility
- Act has become onerous
- Self Induced
- Default of a third party
- Strikes, knock out and civil disturbance. (says so under contract)
- Partial impossibility

Examples on Frustration of Contract

An event or change of circumstances occurs, which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court that can pronounce the contract to be frustrated and at an end.

Where a contract contains a force majeure clause, and the court finds that the force majeure clause would apply in the facts of the case, Section 56 of the Contract Act has no application.

The courts may also infer that the foundation of the contract had disappeared either by the destruction of the subject-matter or by reason of such long interruption or delay that the performance would really in effect be that of a different contract for which the parties had not agreed

If the parties expressly stipulate that the contract would stand despite the occurrence of a particular intervening circumstance, which might affect the performance of the contract, there can be no case of frustration

The court may infer impossibility of performance by examining the nature of the contract and the surrounding circumstances in which it was made, whether the parties made their bargain upon the basis that a particular thing or state of things would continue to exist and because of the altered circumstances, the bargain should no longer be held binding.

An event or change of circumstances occurs, which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the court that can pronounce the contract to be frustrated and at an end.

Effects of Frustration

- When there is frustration, the dissolution of the contract occurs automatically.
- It does not depend as does the recission of a contract, on the ground of repudiation or breach or on the choice or election of either party.
- It depends on the effect of what has actually happened on the possibility of the performance of contract.

Application of doctrine of frustration to leases

What is a lease?

- Section 105 of the Transfer of Property Act
- defines 'lease' as a transfer of a right to enjoy an immovable property, made for a certain time, or in perpetuity, in consideration of a price (being anything of value) to be provided periodically or on specified occasions, to the transferor/lessor by the transferee/lessee.

Raja Dhruv Dev Chand vs Harmohinder Singh & Anr

- the Supreme Court observed that if a lease requires either party to do an act, which act subsequently becomes impossible or unlawful, due to the occurrence of an event that such party could not prevent, any other covenant/obligation under such lease will also become void. However, just because the covenant has become void, it does not render the lease itself void. Thus, we can infer here that if one of the obligations under the lease has been rendered impossible or unlawful, that obligation can be avoided, though the lease itself will not fall through.

Sushila Devi And Anr vs Hari Singh And Ors.

- the Supreme Court discussed the applicability of Section 56 of the ICA to lease agreements and observed that once a valid lease has come into existence, even if it is through an agreement, the agreement to lease disappears and its place is taken by the completed conveyance –the lease. Now, the lessee acquires an interest in the property beyond the contractual right that was granted by the agreement. Section 56 of the ICA only applies to contracts and the benefit of Section 56 cannot be availed in the case of a completed conveyance.

Discharge by Mutual Agreement

Section 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.

Section 63. Promise may dispense with or remit performance of promise.

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.

Sections 62 and 63 deal with contracts in which the obligation of the parties to it may end by the consent of the parties.

- **Novation**
- **Rescission**
- **Alteration**
- **Remission**
- **Waiver**
- **Accord and satisfaction**

Novation	Rescission	Alteration	Remission	Waiver	Accord and Satisfaction
• Section 62 • substituting an existing contract with a new one. • There can be a change in the parties or a change in the terms of the contract.	• Section 62 • cancellation of a contract by any party or all the parties to a contract. • A contract that is rescinded by agreement is completely discharged and cannot be revived.	• Section 62 • alteration of some of the terms and conditions of the original contract. • There is no change in the parties.	• Section 63 • accepting a lesser consideration than what is agreed in the contract. • the acceptance of a less sum of money where more is due is a good discharge of the whole of the liability.	• Section 63 • party entitled to claim performance may waive it. • In case any of the parties surrender their rights from the contract, which affects the other party, then it leads to the discharge of the contract by substitute agreement.	• Accepting some other consideration instead of actual performance is known as the principle of Accord and Satisfaction under English Law.

Novation - Section 62

- substitution of a new contract in consideration of the discharge of the old contract. The new contract may be. –

(i)Between the same parties (by a change in the terms and conditions)
(ii)Between different parties (the term and condition remains the same or may change)

Following conditions should be satisfied :-

(1) All the parties **must consen**t to the novation
(2) The novation must take place **before the breach** of the original contract
(3) The new contract must be valid and enforceable

1

Change in terms of the contract

The parties to a contract are free to alter the contract which they have originally entered into. If they do so, their liability as regards the original agreement is extinguished and in its place they become bound by the new altered agreement.

2

Change in the parties to the contract

It is possible that by novation an obligation may be created for one party in place of another. If under an exising contract, A is bound to perform the contract in favor of B, the responsibility of A could be taken over by C, now C would be be liable to B by novation

The first illustration to Section 62 is a case of novation by the change of parties. The illustration is-
A owes money to B under a contract. It is agreed between A, B and C, that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B is at the end, and a new debt from C to B has been contracted. If A is a debtor and the creditor agrees to accept B in his place as the debtor, the original contract between the creditor and A is at the end.

In **Saleema Jabeen v. National Insurance Co. Ltd,** the appellant entered into a contract of insurance of her property against fire, with the respondent company, The insured sum was Rs 23 lacs. Her property was set on fire by the militants causing substantial damage to the property. The assessment of damages was made by 2 surveyors. The appellants accepted the compensation of Rs 6,61,772 by way of full and final satisfaction of her claim on the basis of the report submitted by the second surveyor. The said amount was paid by the insurance company and received by the appellant. It was held that by accepting the said amount of compensation and agreeing not to make any further claim, the appellant has released the insurance company from contractual obligations. She, therefore, was not entitled to any further compensation from the insurance company.

(**AIR 1999 J&K 110)**

Substitution of New Agreement

- the parties to a contract agree to substitute a new contract for it, the original contract is discharged and need not be performed.
- It is necessary for the application of this principle that the original contract must be subsisting and unbroken.

In the case of **Nagendra Kumar Brijraj Singh v Hindustan Salts Ltd**, the defendants advertised that there were vacancies in their company at a certain salary. The petitioner got selected for the job. The day he joined he was offered the job at a lesser pay scale. He consented to this new contract which offered him lesser pay than what was advertised. He later sued the defendants for the advertised pay.

The court quashed this claim and said that since the plaintiff agreed to the new contract which offered lesser pay the contract had been novated and hence it is valid. Pay scale is the heart of the contract and changes to that novates the contract. Hence defendants were held not liable.

Rescission

- Cancellation of the contract by any party or all the parties to a contract.
- **Example** - X promises Y to sell and deliver 100 bales of cotton on 1st October his go down and Y promises to pay for goods on 1st Nov. X does not supply the goods. Y may rescind the contract.
- Where an old contract is rescinded and replaced by a new one, the old one will not revive only for the reason that has been a failure to keep the new promise.
- The parties may, however, by mutual consent, restore the original and then the original will revive and become binding on the parties.
- **Effect of rescission**: A contract which is rescinded by agreement is completely discharged and cannot be revived. The parties will frequently make provisions for the restoration of money paid or for payment of service performed or goods supplied under the contract prior to recession. In the absence of such provisions (express or implied) it may be possible to bring restitution claim provided that the contract is set aside.

Mode of Communicating or Revoking Rescission

The rescission of a voidable contract may be communicated or revoked in the same manner, and the subject to the same rules, as applicable to the communication, or revocation, of a proposal. This is mentioned in Section 66 of the Indian Contract Act, 1872.

As per Section 64 of the Act, the party rescinding the voidable contract shall, if he has 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

Alteration

- Change in one or more of the terms of a contract with the mutual consent of the parties the parties of new contracts remain the same.
- **Example** - X Promises to sell and delivers 100 bales of cotton on 1st October and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at its godown. Here original contract has been discharged and a new contract has come into effect.

Remission

- Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission.
- Remission takes place when a Promisee-
  - Dispenses with (wholly or partly) the performance of a promise made to him.
  - Extends the time for performance due by the promisors
  - Accept a lesser sum instead of sum due under the contract
  - Accept any other consideration that is agreed in the contract
- the acceptance of a less sum of money where more is due is a good discharge of the whole of the liability.

Extension of time of performance (s.63) –

- Section 63 permits the promisee to grant an extension of time for the performance of the contract and no consideration is needed for the same. The extension of time must be by a mutual understanding between the parties. A promisee cannot unilaterally extend the time of performance for his own benefit.

Waiver

- to dispense with means that the party entitled to claim performance may waive it.

- ·When one party to the contract decides to ‘waive’ or relinquish the right to the fulfilment of the contract, the other party is discharged from its obligations.

- A waiver may be oral or written or inferred from conduct even though the provision waived is found in a contract required to be made in or evidenced by writing.

- The party who forbears will be bound by the waiver and cannot set up the original terms of the agreement.

- If by words or conduct, one has agreed or led the other party to believe that he will accept performance at a later date than or in a different manner from that provided in the contract, he will not be able to refuse the performance when tendered.

- In case any of the parties surrender their rights from the contract, which affects the other party, then it leads to the discharge of the contract by substitute agreement.

Accord and Satisfaction

- The accord is an agreement made after breach whereby some consideration other than his legal remedy is to be accepted by the party not in fault, followed by a performance of the substituted consideration.
- The liability arising out of breach of contract may be discharged by accord and satisfaction.
- The validity of the accord and satisfaction must be judged by the general law of contract.
- Accepting some other satisfaction instead of actual performance is known as the principle of Accord and Satisfaction under English Law. This results in the discharge of obligation under the contract.

For example, A owes, under a contract a sum of money, the amount of which has not been ascertained. A without ascertaining the amount given to B and B in satisfaction thereof, accept the sum of Rs 2000 rupees. This is the discharge of the whole debt whatever its amount.

Discharge by Breach of Contract

Section 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.

- **breach of contract occurs when a party thereto renounces his liability under it or by his own act makes it impossible that he perform his obligations under it or totally or partially fails to perform such obligations.**
- **The failure to perform or renunciation may take place when the time for performance has arrived or even before that.**

Thus breach is of two kinds–

(1) anticipatory breach

(2) actual breach

ANTICIPATORY BREACH –

An anticipatory repudiation occurs, when prior to the promised date of performance, the promisor absolutely repudiates the contract. It is an announcement by the contracting party of his intention not to fulfil the contract and that he will no longer be bound by it. The contract would thus be terminated

1. **Express repudiation:** If Y refuses to commence construction, there is express breach.
2. **Party disables himself :** If X, instead of handing over possession to Y, begins construction on the plot himself two weeks before Y was scheduled to begin construction, there is an implied repudiation by X.

This anticipatory renunciation has certain effects upon the rights of the parties.

- Innocent Party excused from further performance
- Options of Injured Party -

(i)Immediate Right of Action

(ii)Anticipatory Breach of a Contingent Contract

ACTUAL BREACH OF CONTRACT (Section 39)

- party fails or neglects or refuses to perform his obligation on the due date of performance or during performance.
- It is called an actual breach.
- party in default must have refused altogether to perform the contract ;
- and refusal must go to the whole of contract - otherwise the other party wouldn’t be justified in putting an end to the contract.

Consequences

- The aggrieved party may, after putting an end to the contract
- bring an action for damages for breach,
- but he will be bound under Section 64 to restore to the other party the benefits he might have received under the contract.

Damages for Breach- A contract is a promise supported by some consideration upon which either the remedy of specific performance or that of damages is available.

- The party who is injured by the breach of a contract may bring an action for damages i.e., compensation in terms of money for the loss suffered by the injured party.
- The burden lies on the injured party to prove his loss. (Section 73)
- A claim for damages is not debt.
- Damages are compensatory and not penal in nature.

Discharge by Operation of Law

Assignment of Contracts

- Section 37 enables the parties to dispense with performance should also enable them to assign their contractual obligations.
- Assignment means the transfer of contractual rights or liabilities by a party to the contract to some other person who is not a party.

For example, if A owes B Rs 500 and B owes C a like amount, B has the right to receive from A and is under a liability to pay C. It can ask A to pay directly to C and if A accepts, that will be an assignment of B's right to C.

- Important principle affecting assignments is that the burden of or liability under a contract cannot be assigned.

- Promisor has the right to insist that performance shall be the responsibility of the promisee.

- Rights under a contract are assignable unless the contract is **personal** in nature, or the rights are incapable of assignment.

- Example: contract for musical performance

Death

- nature of a contract requires the personal performance of the contract by a particular person, the contract is deemed to be conditional upon the continued life or good health of the person so that it is possible for him to perform the contract.

- in the case of a contract based on the personal skill or confidence of the parties, the death of a party in such a case puts an end to the contract.
- the representatives cannot be made liable to perform such contract.
- **For example** A promises to paint a picture for B by a certain day at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives nor B's.

- In other situations, when contracts are **not** of a personal capacity-
- the contract is not discharged by death and the rights and liabilities devolve to the legal representatives / legal successors.

Insolvency

- When a person is declared insolvent, he/she is released from all the liabilities incurred previously to the date of his/her declaration.
- insolvency of a party affects their ability to perform their obligations under the contract.
- With certain exceptions, the insolvent’s rights and obligations are transferred to an officer of the court known as the Official Assignee/Receiver.
- the contract also gets discharged by operation of law, if a person is declared insolvent by the court
- The Indian Contract Act, 1872, provides that when a person who has entered into a contract becomes insolvent, the rights and liabilities of the parties to the contract are determined by the law of insolvency.

For example, if A enters into a contract with B to provide services for a year, but A becomes insolvent before the completion of the contract, then the contract may be discharged by operation of law, and B may be entitled to claim for any loss or damage suffered due to the non-performance of the contract.

Discharge by Expiry of Period of Limitation

- There will be a discharge of the contract if the performance is not completed within the given period. This will likewise lead to a breach of contract.

- In such a case, the person can file a suit in the court to enforce his rights from the contract.

- **The Limitation Act, 1963** prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law.

- It discharges the contract due to the lapse of time.

- Normally, the stipulated time to fulfil the obligations is 3 years.

Illustrations -

- A took Rs.50,000/- loan from B and agrees to pay installments every month for the next 6 years. But, A failed in paying even one instalment. B calls him a few times but then gets busy and takes no action.
- Three years later, he approaches the court to help him to get his money back. But the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

- B owes Rs.20,000 to A. The last date for the repayment of the loan has expired and A does not file a suit against B for three years. A then loses the right to recover the money back, because the contract gets discharged.

Lapse of Time

- If the performance is not accomplished within the specified time, the contract will be discharged.
- This will also result in a breach of the said contract. (the two are essentially interconnected)
- When there is a specified time for the performance of the contract, if an act is not done within the stipulated time, the contract becomes voidable at the option of the promisee provided the intention of the parties was that time should be of the essence of the contract. (example - In commercial contracts, time is usually presumed to be of essence.)

For example – X and Y enter into a contract wherein X is to supply 10 crates of oranges on the last day of April i.e. 30 April 2023, to Y. X fails to supply the oranges by 30 April. The contract is discharged by lapse of time and this is also an example of breach of the contract.

Illustrations -

- suppose X wins a lottery ticket and as per the terms and conditions has to claim this lottery in one week of winning. X does not claim this lottery ticket in one week. After a month he tries to claim the ticket however, the contract is already discharged by lapse of time and the Lottery Ticket cannot be claimed.

- Now for example, X claims this ticket in one week and the lottery ticket office promises to give the money after 2 weeks of claiming. The office does not give the money and X takes no measures to claim said money until 3 years later. Such a claim would also not stand since it would be barred by Limitation and the contract would be considered as discharged.

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