

Sem III Module II

Business Law

DISCHARGE OF CONTRACT

- Discharge means termination of contract where contractual relations between parties come to an end. This may happen in any of the following ways.
- Discharge by performance
- Discharge by agreement or consent
- Discharge by impossibility of performance
- Discharge by lapse of time
- Discharge by operation of law
- Discharge by breach of contract

DISCHARGE BY PERFORMANCE

- **Actual Performance**
- When both parties perform their promises & there is nothing remaining to perform, the contract discharges by performance.
- **Attempted Performance**
- When the promisor offers to perform his obligation, but promisee refuses to accept the performance, the contract discharges by attempted performance. It is also known as tender.

DISCHARGE BY AGREEMENT OR CONSENT

- NOVATION: New contract substituted for old contract with the same or different parties.
- Illustration
- 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.

- **RESCISSION:** 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 voidable contract shall, if he have received any benefit there under from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Illustration

- A under coercion employed by B, enters into contract with him. Later on he rescinds the contract through court of law. The contract gets discharged. A has received Rs. 20,000 from B under the contract. A must return this amount to B.

- REMISSION: Acceptance of a lesser fulfillment of the promise made.

Illustration

- A owes Rs. 1, 00,000 to B under a contract. B agrees to accept Rs. 60,000 as a full repayment. Contract has been discharged by remission.
- WAIVER: Mutual abandonment of the right by the parties to contract.

Illustration

- A owes money to B under a contract. B releases A altogether from repayment. Contract has been discharged by rescission.
- MERGER: When an inferior right accruing to a party to contract merges into a superior right accruing to the same party.

Illustration

- There is a contract of tenancy between A and B. while the contract is alive, A purchases the same house. The contract of tenancy has been discharged by merger.

DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

- If contract is impossible to perform, contract automatically gets discharged whether impossibility is known to the parties or unknown to the Parties.

Illustration

- A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

Subsequent or Supervening impossibility

- This is also called as 'doctrine of frustration'. A contract which was possible to perform at the time of entering but becomes impossible to perform subsequently gets discharge when the impossibility occurs. For example, destruction of subject matter.

Case law

Krell v Henry (1903)

- The property was hired for a particular purpose, viz., viewing the Coronation procession of King Edward VII. However the ceremony got cancelled. It was held that purpose has become impossible owing to unforeseen circumstances beyond the control of either party and contract has been discharge due to Supervening impossibility.

Following are some examples of Supervening impossibility.

- Death or incapacity of personal services
- Change of law
- Outbreak of war

DISCHARGE BY LAPSE OF TIME

- The Limitation Act 1963, clearly states that a contract should be performed within a specified time called period of limitation. If it is not performed and if the promisee takes no action within the limitation time, then he is deprived of his remedy at law.

DISCHARGE BY OPERATION OF LAW

- Death – death of promisor discharges the contract involving personal services.
- Insolvency – insolvency of either of the party discharges the contract.
- Unauthorized alteration of the terms of a written agreement discharges other party from the contract.
- Rights & liabilities becoming vested in the same person (e.g. bill of exchange gets into the hands of the acceptor).

DISCHARGE BY BREACH OF CONTRACT

When either of the parties fails to perform their promise made the contract, breach occurs. It may be –

– ACTUAL BREACH

- Actual breach occurs when breach is made -
- At the time when the performance is due
- During the performance of the contract.

ANICIPATORY BREACH

- When a party repudiates the contract before the time fixed for its performance or when a party by his own act disable himself absolutely from performing the contract .
Examples:
 1. Rashi Contracts To marry Raj , but before the agreed date of marriage she married to someone else . In this case Rashi committed anticipatory breach of contract .
 2. Atul contracts to supply Amit with certain articles on 1st of august , on July 20 he informs arun that he will not be able to supply the goods. A has committed anticipatory breach of contract.
- Section 39 deals with anticipatory breach of contract.

- Suit upon quantum merit
 - The term "Quantum Merit" is derived from Latin which means "what one has earned". The injured party can file a suit upon quantum merit and may claim payment in proportion to work done or goods supplied
- Suit for specific performance of the contract

Specific Performance means the actual carrying out of the contract as agreed. The Court may grant for specific performance where it is just and equitable to do.
- Suit for injunction

Injunction is an order of the Court restraining a person from doing a particular act. Where the defendant is doing something which he is promised not to do, then the injured party will get a right to file a suit for injunction.