

## Unit → 4

# Obligation of Parties to Contract 3 →

- A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal & most usual mode of discharge.
- The obligation to perform is absolute [exactly same as you promised].
- It is the primary duty of each party to a contract to either perform or offer to perform his promise.

PerformanceActual Performance.

- ① Promisor - Actually Performance
- ② Promisee - Payment

↓  
Contract will be discharged

Attempted/Tender of Performance

- Promisor offered ~~to~~ to perform the promise but promisee did not accept the performance

- Promisor need not perform his obligation

↓  
Here Promisee cannot sue Promisor for non-performance.

## # By Whom Contract May be Performed? →

### ① Promisor Himself →

Contracts which involve the exercise of personal skill or diligence, which are founded on personal confidence between the parties must be performed by the Promisor himself.

eg → Personal skill  
Ankita maam  
Padhai

death of an  
Surgery doctor  
↓  
Contract → void

In short:

• If there is something in contract to show that it was intention of parties that promise should be performed by promisor himself, such promise must be performed by promisor.

### ② Agent →

• Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.

eg → Shop  
or servant

### ③ Legal Representative →

• In case of death (deceased)  
• If contract is of personal nature after the death, the contract become void.  
• But if contract is not of personal nature (personal skill) then legal representative of promisor are bound to perform

inherent

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contracts but their liability is limited to value of property they inherit from deceased.

#### ④ Third Person →

- Performance by stranger, if accepted by promisee, this results in discharging promisee, although latter has neither authorised nor satisfied act of third party.

eg. By friend.

#### ⑤ Joint Promiser →

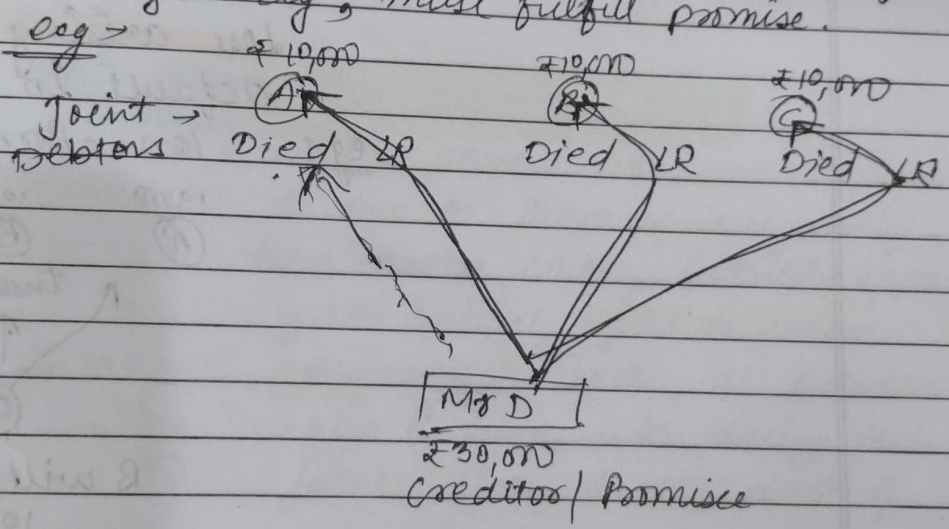
- When two or more persons have made joint promise all such persons must jointly fulfill promise.
- If any of them dies, his legal representatives must, jointly with surviving promisee, fulfill the promise. If all of them die, the legal representative of all of them must fulfill the promise jointly.
- All promisees are jointly & severally liable.
- All promisees are equally liable.

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## Liability of Joint Promiser & Promisee :-

### ① Devolution of joint liabilities :-

• When two or more persons have made promise, then, unless contrary intention appears by contract, all such persons, during their joint lives & after death of any of them, his representative jointly with survivors & after death of last survivor, representative of all jointly, must fulfill promise.



### ② Any one of Joint Promiser may be compelled to perform :-

• When two or more persons make joint promise, promisee may, in absence of express agreement to contrary, compel any one or more of such joint promisor to perform of promise.

(i) Each promisor may compel contribution :-

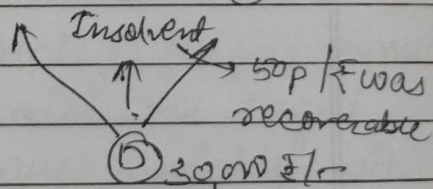
- If one of joint promisors is made to perform whole contract, he can call for contribution from others.

(ii) Sharing of loss by default in contribution :-

- ~~remaining~~ remaining joint promisors must bear the loss arising from such default in equal shares.

eg 1      loss  $\rightarrow$  Borne - equally

10,000      10,000      10,000  
 (A)      (B)      (C)



B will  $\rightarrow$

$$10,000 \times 50\% \rightarrow 5000$$

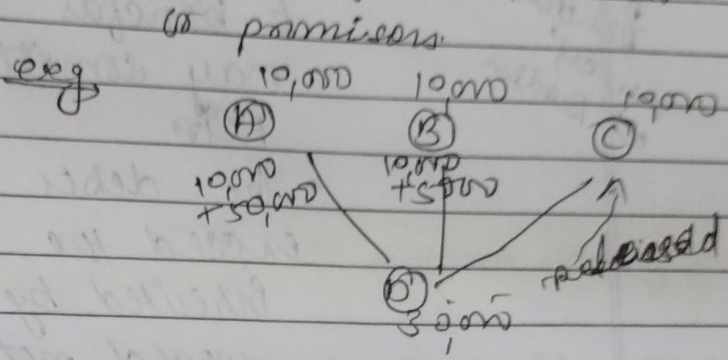
& remaining 5000

will come by A & C equally.

(3) Effect of release of one joint promisor :-

- When two or more persons have made joint promise, release of one of such joint promisors by promisee does not discharge

Other joint promisor or joint promisors, neither does it free joint promisor so released from responsibility to other joint promisor

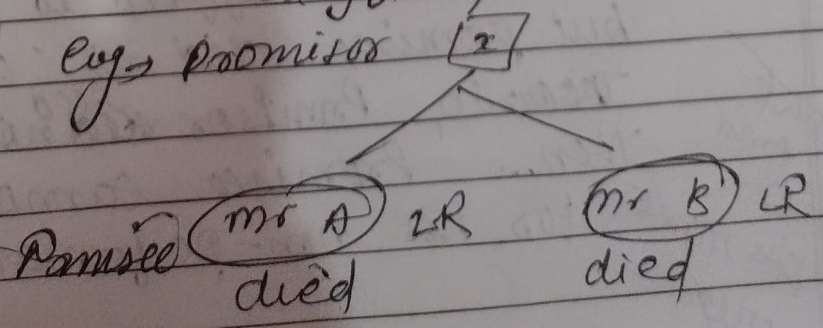


### ④ Right of Joint Promisee: →

When persons has made promise to two or more persons jointly, then unless contrary intention appears from contract, right to claim performance vests, as between him & them, with during their joint lives, & after death of any of them, with representative of such deceased person jointly with survivor or survivors, & after death of last survivor, with representatives of all jointly.

devolution of joint rights

eg, promisor



Succession → death of ~~Grand~~ father

Assets & Lia → Pass to father.

105 - 100 → 50  
90 - 100 → (100) → father not personally liable

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## Distinction between Succession & Assignment

Succession → [Assets as well as Liabilities]

• When benefits of contract are succeeded to process of law, then both <sup>(Assets)</sup> benefits & <sup>(Liabilities)</sup> burden may sometimes devolve on legal heirs.

• The debts owned by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess.

Benefits  
as well  
as Burden

Assignment → [only Assets]

• A person who has given only rights through an contract

• Benefits of contract can only be assigned but not liabilities thereunder. This is because when liability is assigned, 3rd party gets involved therein.

only  
Benefits

#

## Effect of Refusal to accept offer of Performance

→

• When promisor offered to perform the promise but promisee did not accept the performance then... Promisor <sup>need</sup> not perform his obligation then... Promisee cannot sue promisor for his non-performance.

eg -  
Sharek  
Amir  
or  
Anita mam  
election

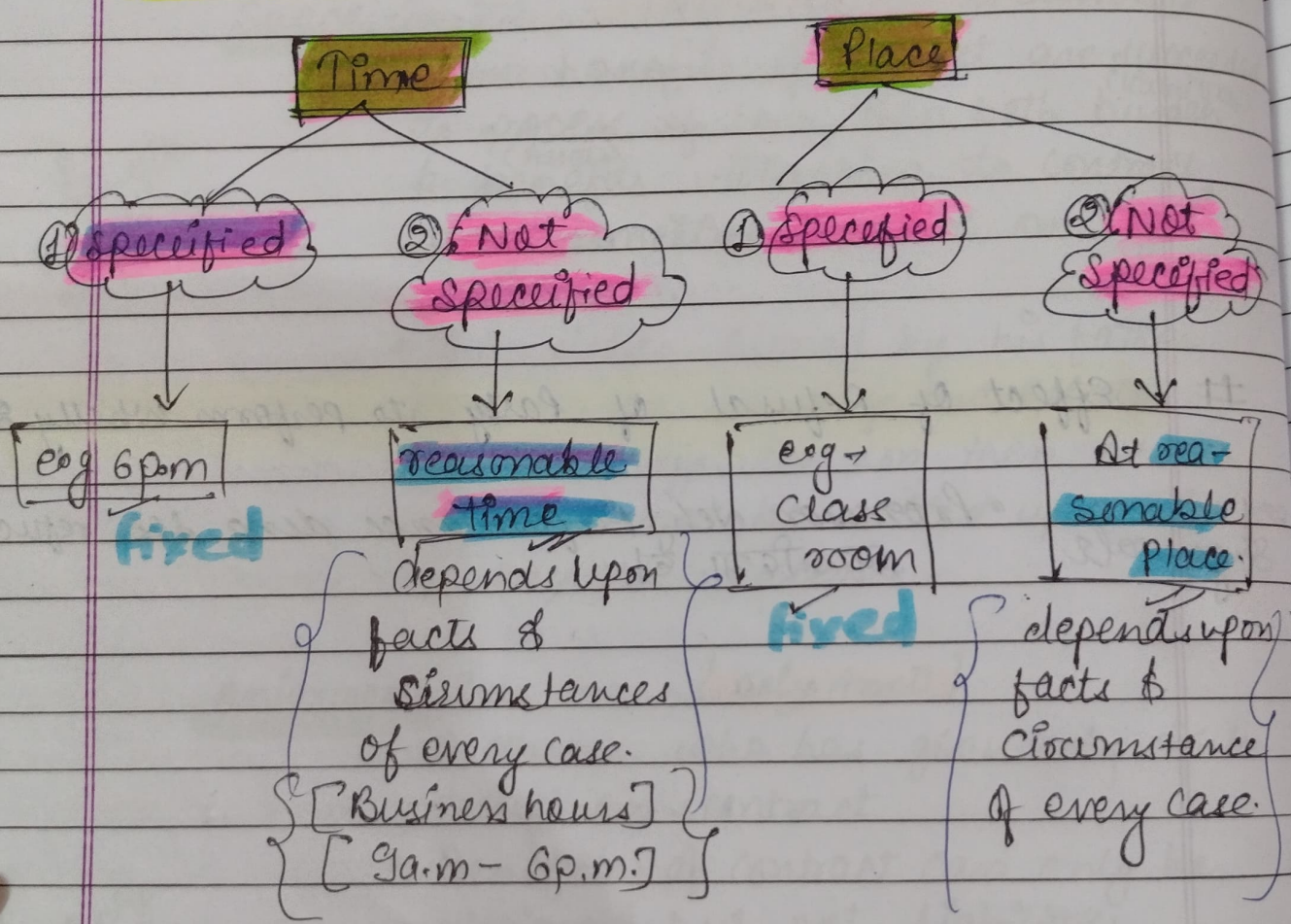
### # Effect of Refusal of Party to perform wholly →

संग्रह →  
Sangrahal

- Promisor ने Performance देना से refuse कर दिया है।



# # Time and Place for Performance of the Promise? →



\* Time for Performance of promise, where no application is to be made & no time is specified? →

- Where, by contract, promiser is to perform his promise without application by promisee, & no time for performance is specified, engagement must be performed with reasonable time.

\* Time and Place for Performance of Promise, where time is specified & no application to be made :-

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

\* Application for performance on certain day to be at proper time & place :-

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

\* Place for Performance of Promise, where no application to be made & no place fixed for performance :-

- When promise is to be performed without application by promisee, & no place is fixed for performance of it, it is duty of promisor to apply to promisee to absent reasonable place for performance of promise, & to perform it at such place.

## # Performance of Reciprocal Promise :->

\* Performance in manner or at time prescribed or sanctioned by promisee :-

- Performance of any promise may be made in any such manner, or at any time which promisee prescribes or sanctions

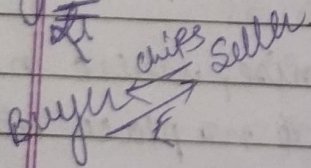
## # Performance of Reciprocal Promise :->

- reciprocal promises - means performance should be performed simultaneously or one after ~~other~~ other.

① promisor not bound to perform, unless reciprocal promise ready & willing to perform :->

- When contract consists of reciprocal promises to be simultaneously performed, no promisor need to perform his promise unless promisee is ready & willing to perform his reciprocal promise.

eg, tea



② Order to performance of reciprocal promises :->

- When order to perform of reciprocal promises is expressly fixed by contract, they shall be performed; & where order is not expressly

eg, ticket & picture see

default → गैरपूरतना

eg. Gold loan

fixed by contract, they shall be performed as required by nature of transaction.

③ Liability of party preventing event on which contract is to take effect

eg. → Share of Amis

• When contract contains reciprocal promises & one party to contract prevents other from performing his promise, contract become voidable at the option of party so prevented; & he is entitled to compensation from other party for loss in consequence for non-performance of contract.

④ Effects of default as to that promise which should be first performed, in contract consisting of reciprocal promises :->

eg. → A then B order.

A did not perform.  
So, B cannot sue B for non-performance

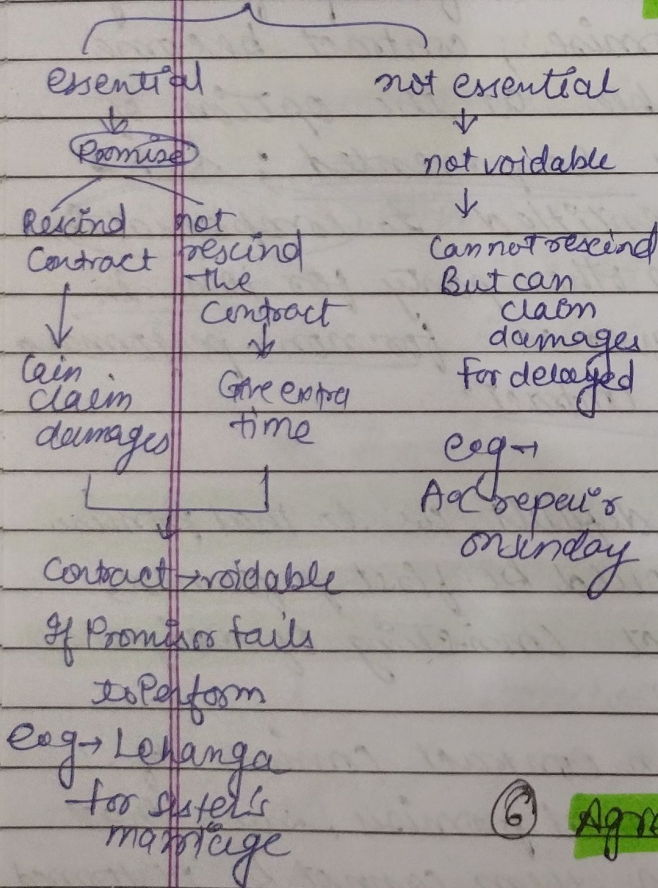
eg. → Plywood, removal & shoe rack (A)

• When contract consists of reciprocal promise, such that one of them cannot be performed, or that its performance cannot be claimed till other has been performed, & promisor of promise last mentioned fails to perform it, such promisor cannot claim performance of reciprocal promise.

and must make compensation to other party to contract for any loss which such other party may sustain by non-performance of contract.

⑤ Effects of failure to Perform at Time fixed in Contract in which time is essential :->

time is essential



• When party to contract promises to do certain thing at or before specified time, & fails to do at or before specified time, contract, or so much of it as has not been performed, becomes voidable at option of promisee, if intention of parties was that time should be of essence of contract.

⑥ Agreement to do impossible act :-

(a) Contract to do act afterwards becoming impossible or unlawful :->

• Contract to do an act which, after contract is made, become impossible, or, by reason of some event

which promises could not prevent, unlawful, becomes void when act becomes impossible or unlawful.

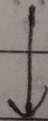
(b) Compensation for loss through non-performance of act known to be impossible or unlawful :->

- where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which 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 non-performance of promise.

\* Impossibility of performance may be two types :->

(i)

Initial impossibility



Agreement void  
(void-ab-inito)

(ii)

Subsequent or Supervening Impossibility



void contract

Indicate

appropriate  $\rightarrow$  adjust  $\rightarrow$   $\frac{1}{2}$

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## Appropriation of Payments $\rightarrow$

④ Sometimes a debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all the debts. In such cases the payment is appropriated [adjusted against the debts]  $\rightarrow$

### ① Application of payment where debt to be discharged is indicated $\rightarrow$

Where a debtor, owing several

• Debtor expresses that the payment is applied to the discharge of which debt.

### ② Application of payment where debt to be discharged is not indicated $\rightarrow$

• If Debtor omitted to express that <sup>which</sup> particular debt is to be discharged. Then, creditor may apply it at his discretion (अनुचित)

### ③ Application of payment where neither party appropriates $\rightarrow$

• Then payment shall be applied in discharge of debts in order of time.

Debt will be appropriated acc to debtor instruction

Debt will be appropriated acc to creditor discretion

Order of time

rescission = rescind = revoke = cancel = total back

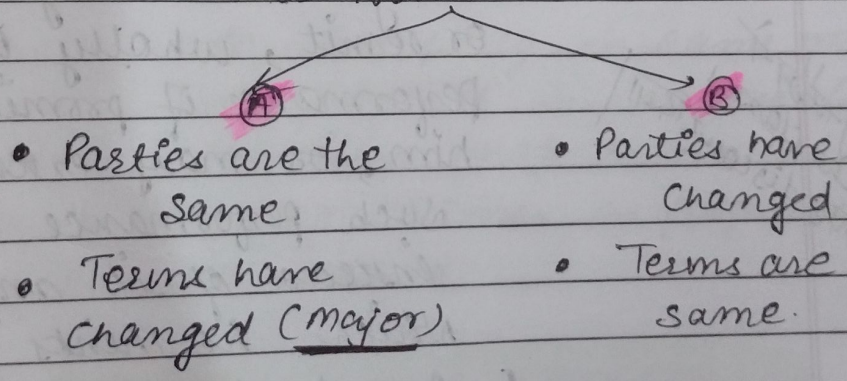
## # Contracts which need not be performed with the consent of Both the parties :->

### ① Effect of novation, rescission and alteration of contract :->

- If the parties to contract agree to substitute new contract for it, or to rescind or alter it, original contract need not be performed.
- \* old contract -> discharged

#### (a) Effect of Novation :->

• when parties enter into a new contract in substitution of an old contract, it is a Novation.



#### (b) Effect of rescission :->

- When the parties rescind the old contract and no new contract comes into existence on its place, it is rescission
- Contract is discharged by mutual agreement.