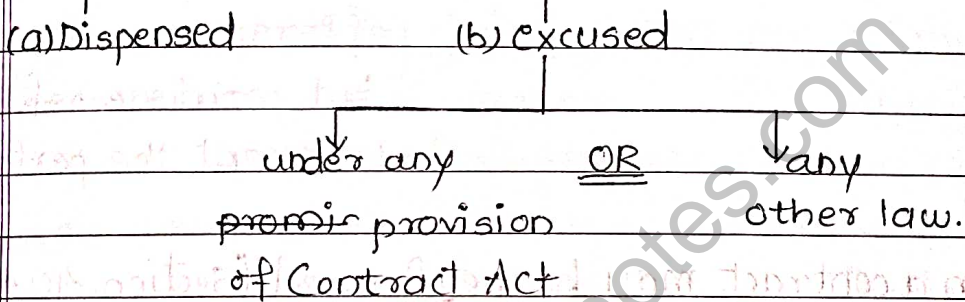


UNIT-4: Performance of a Contract

4.1 Obligations of parties to contracts (Section 37)

- ① Parties to contract must either
- (a) perform or
 - (b) offer to perform
- } respective promise

② No performance

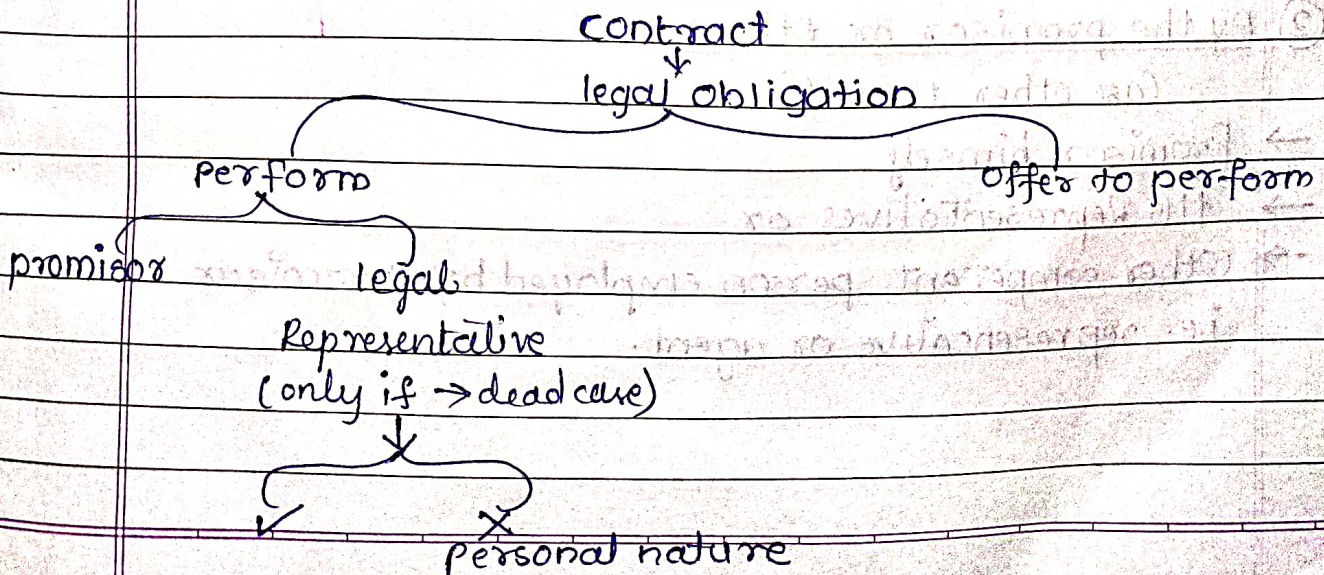


- ③ Obligation continues even after death of PROMISOR.
- Representative of promisor will be bound by promisee
 - unless otherwise agreed.

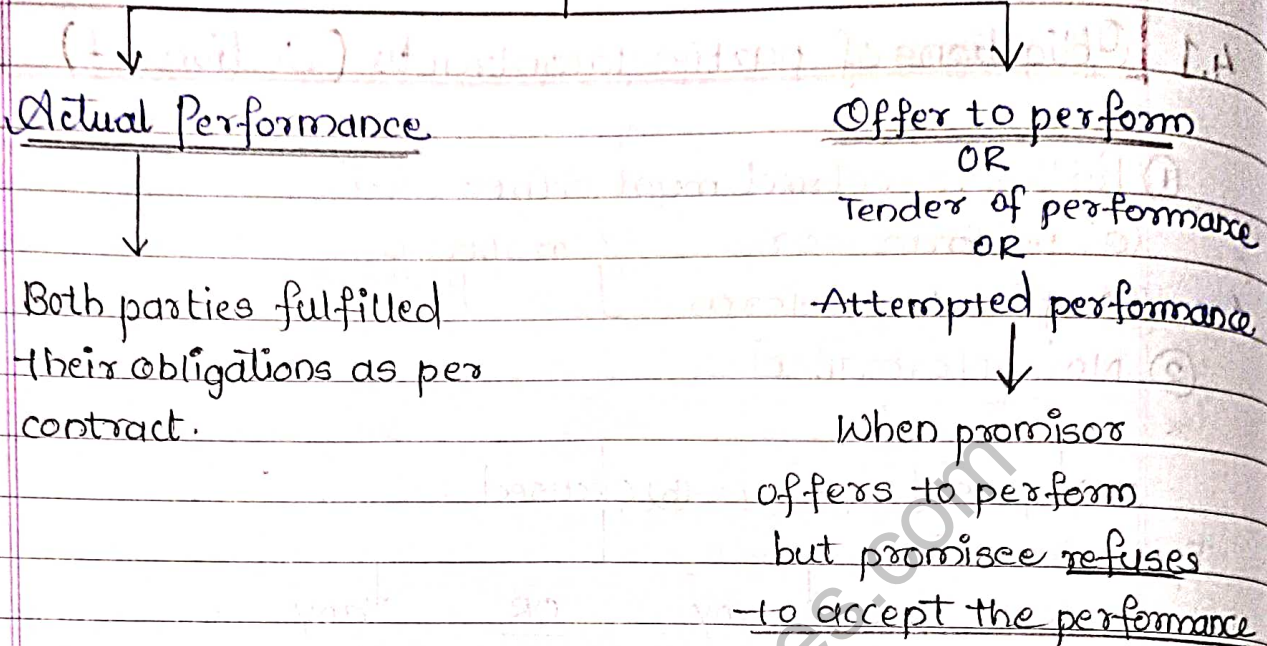
• Exceptions:-

- a) Involves personal skill of promisor
- b) No provision in contract

Section 37



Performance



4.4 By whom a contract may be performed (Section 40, 41 & 42)

① Only by promisor

- (a) If contract shows the intention of the parties that any promise contained in it should be performed by PROMISOR HIMSELF.
- (b) In most cases → it involves personal skill.
- (c) Where promise is based on personal confidence between the parties.

② By the promisor or others.

Case other than ①.

- Promisor himself
- His Representatives or
- Other competent person employed by promisor i.e. representative or agent.

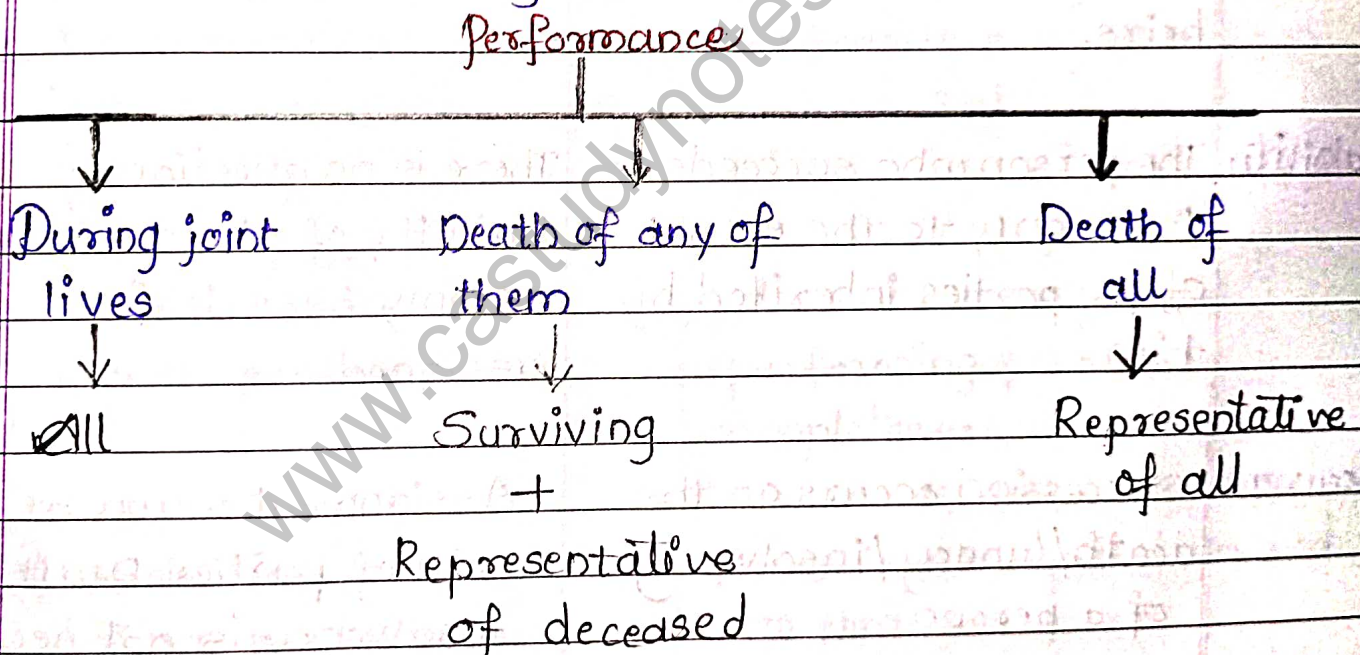
③ Performance of promise by third party [Sec 41]

- Promisee may accept performance by third party.
- In such case; promisee cannot afterwards enforce the performance against the promisor.

Note: Performance by stranger if accepted by promisee produces the result of discharging the promisor even though promisor neither authorised nor ratified act of third party.

④ Performance by joint promisors

- Unless otherwise agreed



4.5. Distinction between Succession and Assignment

	Succession	Assignment
Nature.	Succession occurs by the process of law (i.e. compulsory by law)	Assignment occurs at the wish of the parties (i.e. voluntary in nature)
Transfer	Both burden and benefits attaching to the contract are transferred to legal heirs.	In assignment, only the benefit of the contract can be assigned.
Liability	The person who succeeds is liable only to the extent of properties inherited by him.	There is no question of liability of the assignee as only benefit is assigned.
Occurrence	Succession occurs on the death/insolvency of a person.	Assignment occurs at the will of parties. Death/insolvency is not necessary.
Eligibility	A successor must be a family member.	Assignee can be any person.
Example.	On death of father son succeeds his estate, but he is liable to the extent of his estate received.	A assigns his right to recover money from B to C.

4.2 & 4.3. Non Performance / Part Performance & Non-Acceptance

	Default by Promisee	Default by Promisor
	Refusal to accept performance (Section 38)	Part performance (Section 39)
default	Promisee	Promisor
Descrip- -tion	Refusal to accept	Part performance
Situation	<p>a) Promisor offered to perform his promise</p> <p>i) to the promisee <u>OR</u></p> <p>ii) one of joint promisee <u>AND</u></p> <p>b) Promisee refused to accept performance.</p>	<p>a) Promisee ready to accept the performance by promisor <u>But</u></p> <p>b) Promisor refused perform <u>OR</u></p> <p>disabled himself from performing promise in completeness.</p>
Effect	<p>a) Promisor not responsible for non-performance</p> <p>b) Promisor does not lose his right under contract</p>	<p>a) Promisee may put an end to contract</p> <p>b) Where promisee expressly or impliedly consents for continuance he cannot put an end.</p> <p>c) Promisee is entitled for damages for non-performance</p>

4.6 Liability of joint promisor & Joint Promisee

① Devolution of joint liabilities (Obligations to perform joint promises): (Section 42)

- > Devolution means passing over from one person to another
- > When two or more persons have made a joint promise, they are known as joint promisors. Unless a contrary intention appears from the contract, all joint promisors must jointly fulfill the promise. If any of them dies, his legal representative must, jointly with the surviving promisor, fulfill the promise. If all of them die, the legal representative of all of them must fulfill the promise jointly.

• The rules regarding performance of joint promises are:

[Sec 43] a) Anyone of the joint promisors may be compelled to perform
 ex: A, B and C jointly promise to pay D Rs. 3000. D may compel either A or B or C or any two of them to pay him Rs. 3000.

b) Right of contribution

ex: A, B, and C are under a joint promise to pay Rs. 3000. A is compelled to pay the whole. A can recover Rs 1000 each from B and C.

Note: If any one of the joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such defaulting in equal share.

c) Release of joint promisor: (Section 44) *utilidhi/DA*
 → When two or more person have made a joint promise, a release of one such joint promisors by the promisee, does not discharging the other joint promisor or promisors from liability. The released joint promisor is responsible to the other joint promisor or promisors.

② Devolution of joint rights: [Sec 45]

→ When a person has made a promise to two or more persons jointly these persons are known as joint promisees.

4.7 Time and place for performance of the promise

① Time for performance of promise, where no application is to be made and no time is specified - [Sec 46]

→ Agar contract me koe specific time or notice nahi diya hai tab uss contract ko reasonable time per performe karna hai.

↓
depends upon
facts of the case

② Time and place for performance of promise, where time is specified and no application to be made - [Sec 47]

→ Time specified hai contract me lekin koe koe notice nahi hai to hame usse usual hours of business me perform karna hai

↓
10.00 to 7.00 → depend upon the business to business
 agar business hours me nahi hai to hum usee reject kar sakte hai

③ Application for performance on certain day to be at proper time and place - [Section 48]

→ promisee ko duty hai ki promisor ko batana, kis din or kis samay or kis place par aana hai. promise ko perform karne ke liye. #

④ Place for the performance of promise, where no application to be made and no place fixed for performance - [Sec 49]

→ koe place nahi bataya hai to hum promise ko reasonable place par jaake perform karna hai

⑤ Performance in manner or at time prescribed or sanctioned by promisee - [Sec 50]

→ Agar aapka contract "kuch" kehta toh aapko kuch ki sunna hoga.

ek hi jan vaada kare to usse promise bolte hai.

wada ke badle
wada milta hai usse
reciprocal promise bolte
hai

Page No.	
Date	

4.8 Performance of Reciprocal Promise

① Promisor not bound to perform, unless reciprocal promise ready and willing to perform - [Sec 51]

→ ek haath se lena dusre haath se dena. (saath-saath)

→ Same vala ready nahi hai to promise kaise perform nahi ho sakta.

→ A or B ne contract kiya. A goods deliver karega or B paise dega. jab tak B goods deliver karne ke liye paise nahi dega tab tak goods kaise deliver hoga.

② Order of performance of reciprocal promises - [Sec 52]

→ pehle tum kuch karo fir hum kuch kare.

eg → pizza ki jab tak delivery nahi hoti tab tak hum usse paise nahi dete. pizza pehle aayega tab na hum paisa denge or same hotel me hum order karenge khana fir khayenge tab paise denge. khane se pehle paise nahi dete.

③ Liability of party preventing event on which the contract is to take effect - [Sec 53]

→ do person ke bich me contract ho raha hai or koe dusra ek party ko roka ja raha hai promise perform karne uss case me party contract ko void bana sakta hai or vo losses bhi recover kar sakta hai.

④ Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises [Sec 54] - promise perform hoga tab na reciprocal promise hoga

pehle aap perform karoge tab hum usse mana kar paayenge na, aap ko perform hi nahi karoge to hum kaise perform karenge, agar aap perform nahi karke uske liye aapko hame compensation dena hoga or losses bhi.

eg. A or B ne contract kiya. A → B ko bolta hai tu mujhe diamond ka ring banake de jo mene design bataya hai uss hisab se me ek mahine baad lena aunga. B apna paisa kharch karke diamond ring bana deta hai lekin A lena se mana kar deta hai. vo apna promise perform nahi karke.

hamara
kaam
depend
rehta
→
hai
promisor
par

A or B contract kar-te hai or
A → B ko bolta hai kuch kaam
karne ko or B ok bolta
hai. fir A madna kar-ta hai.
Tab contract voidable hai B
ke liye or vo compensation bhi

1c sak ba hai

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⑤ Effects of Failure to perform at a time fixed in a Contract in which Time is Essential [Sec 55]

- contract → time essential element hai → or vo time pe perform nahi hoti to hum contract ko → rescind kar sakte hai or damages bhi claim kar sakte hai
- contract becomes voidable at the option of the promisee.
- eg. shaadi ke liye jewellery ka order diya tha vo shaadi ke din se pehle nahi aata to hum contract ko rescind kar sakte hai or damages bhi claim kar sakte hai.

a) Effect of such failure when time is not essential: -

- agar time essential element nahi hai contract me to vo valid contract hota hai or vo voidable nahi hota lekin hum compensation le sakte hai or losses bhi recover kar sakte hai.

b) Effect of acceptance of promisor performance at time other than agreed upon -

- agar promisee waive off karta hai matlab usse maaf karta hai promise ka performance accept kar leta hai uss case me vo compensation or losses claim nahi kar sakta or contract voidable nahi ho sakta kyu ki usne accept kar liya promisor ka performance late hone par bhi.

⑥ Agreement to do Impossible Act [Sec 56]

① Initial Impossibility (Impossibility existing at the time of contract):

→ Shuruvaat se hi impossible tha (void-ab-intio)

ex: make dead person alive

a) If known to the parties → VOID

ex: B promise karta hai ki agar aap Indian Ocean from Mumbai to Aden swim kar loge ek week me to vo 500000 Rupees dega.

→ aise agreement impossible in itself hote hai

b) If unknown to the parties → VOID

ex: A or B contract karte hai. A → B ko brown horse bechega ₹50,000 me lekin dono ko pata nahi hota ki horse agreement ke ~~hi~~ pehle hi mar gaya.

→ aise agreement void hote hai.

c) If known to the promisor only → void + damage claim

ex: A → B ko redmi ke phone apple ka sticker lagake bechta hai. A ko pata rehta lekin B apna diligence use karta to wo nahi khridta. B khrid leta hai fir B → A se uske losses recover kar sakta hai

② Subsequent or Supervening impossibility (becomes impossible after entering into contract):

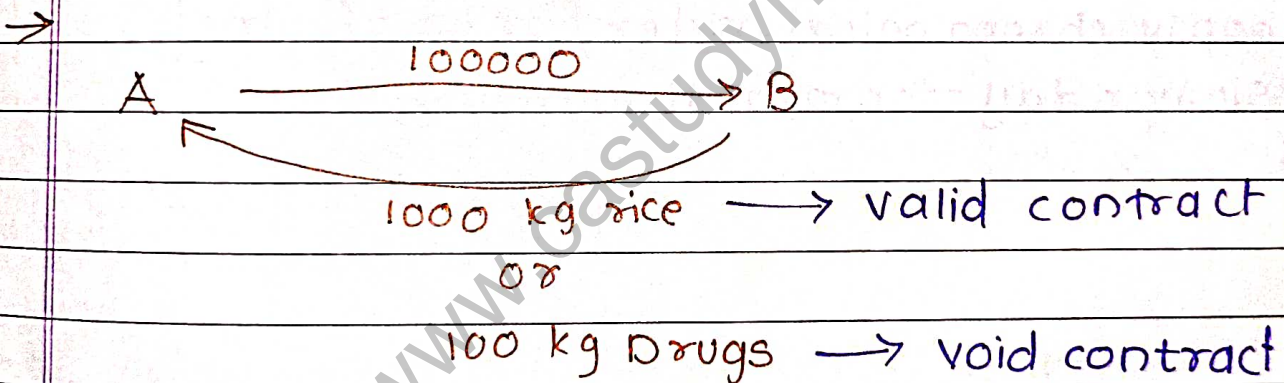
→ pehle valid hota hai lekin kuch ghatna hone ki wajah se vo void ho jata hai baad me.

ex. hume hamne plastic bags bechne ka deal kya lekin plastic bags banned kar diya government ne to ab hum perform nahi kar sakte.

⑦ Reciprocal promise to do certain things that are legal, and also some other things that are illegal -
[Sec 57]

- A or B contract karte hai, A → B ko house sell karta hai ₹ 500000 me agar B gambling ke liye use karega to A ₹ 750000 charge karega.
- isme jo ghar sell kiya or B ne 500000 diya ye valid contract tha.
- lekin jo A ne ₹ 750000 manga B se gambling ke use ke liye vo unlawful contract tha isliye ye ~~vo~~ contract void hoga.

⑧ 'Alternative promise' one branch being illegal -
[Sec 58]



1.9. Appropriation of Payments

① Application of payments where debt to be discharged is indicated [Sec 59]
→ Application of money where indicated → as per debtor indication.

② Application of payments where debt to be discharged is no indicated [Sec 60]
→ Application not indicated
→ Creditor may apply to any lawful debt

③ Application of payment where neither party appropriates [Sec 61]
→ No act done by anyone [Sec 62]

→ apply chronological order [order of time]
→ Similar day → proportionately

4.10 Contracts, which need not be performed — with the consent of both the parties

① Effect of novation, rescission, and alteration of contract [Sec 62]

a) Effect of Novation :- Parties to a contract agrees to "Substitute a new contract for old contract"

- It may take place

- between same parties

OR

- different parties

* Parties have changed
* Terms are the same

Note :-

① Novation must be made with mutual consent of all the parties to original contract.

② Original contract rescinded.

b) Rescission :- (Cancellation)

- When parties to a contract agrees to rescind it, contract need not be performed.

- No new contract comes into existence

c) Remis alteration :- contract me kuch change kama

- Parties are the same

- Terms have changed (major)

② Promises may wave or remit performance of promise [Sec 63]

→ remit the whole or part of promise

OR

→ extend the time of performance

OR

→ accept other satisfaction

③ Restoration of Benefit under a Voidable Contract [Sec 64]

→ acquired party job contract ko rescind karega to usse uska property mil jaaye or badle me jo usse mila hoga vo usse lotand hoga.

④ Obligations of Person who has received advantage under Void agreement or contract that becomes void. [Sec. 65]

Provision:-

- When an agreement

→ discovered to be void

OR

→ when a contract becomes void

- Any person who has received any advantage

→ under such agreement or contract

→ is bound to restore it.

→ to the person from who he received it

ex:- A → B ko 1 lakh pay karta hai kyunki B ko A ke daughter C se shaadi karni hogi. lekin C mar jati hai promise ke time par. ye agreement void, lekin B must repay A ₹ 1,00,000.

(v) Communication of Rescission [Sec 66]

- Rescission must be communicated to the other party
- in the same manner as a proposal is communicated under Section 4 of the Contract Act.
- Similarly, a rescission may be revoked in the same manner as a proposal is revoked.

(vi) Effects of neglect of promisee to afford promisor reasonable facilities for performance. [Sec 67]

- If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.
- reasonable facilities depend on the facts.
- ex:- If student refuses to learn, the teacher cannot be held liable for not teaching.

4.11 Discharge of a Contract

① Discharge by performance :

- a) actual performance
- b) attempted performance.

② Discharge by mutual agreement :

- a) Novation
 - b) Rescission
 - c) Alteration
 - d) Remission
- } section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.

③ Discharge by impossibility of performance :

① Initial Impossibility

② Supervening impossibility

→ an unforeseen change in law

→ the destruction of the subject matter essential to that performance

→ declaration of a war (section 56)

→ the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing

④ Discharge by lapse of time: If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and irrecoverable.

⑤ Discharge by operation of law: → by death of the promisor or by insolvency

⑥ Discharge by breach of contract.

→ Breach of contract may be actual breach of contract OR
→ anticipatory breach of contract

⑦ Promisee may waive or remit performance of promise:
→ a contract may be discharged by remission (sec 63)

⑧ Effect of neglect of promisee to afford promisor reasonable facilities for performance:

⑨ Merger of rights:-

→ When inferior rights and superior rights meet in one and the same person.

→ merger → Inferior → vanish
→ Superior → exist

The promisor is excused by such neglect or refusal as to any non-performance called thereby.