

Performance of Contract.

Obligation of parties to Contract → (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 provision of Contract law or any other law.

→ Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from contract.

Actual Performance → where a party to a contract has done what he had undertaken to do or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed.

Offer to perform or attempted performance or tender of performance →
 → It may happen sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance.

Promisee refused to perform

(Section 38)

Effect of refusal to accept offer of performance.
 where a promisor has made an offer of performance to the promisee, and offer has not been accepted, then promisor is not responsible for non-performance, nor does he lose his right.

Every such offer must fulfill certain conditions →

- it must be unconditional.
- It must be made at a proper time & place and also reasonable opportunity of ascertaining so that promisor is bound by his promise to do.
- If the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing, that the thing offered is the thing which promisor is bound by his promise.

An offer to one of several joint promises has the same legal consequence as an offer to all of them.

promisee refused to perform

(Section 39)

Effect of refusal of party to perform 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 had signified, by words or conduct his acquiescence in its continuance.

→ Promisee can claim damages that he suffers due to breach

By whom a contract may be performed → (Section 40)

→ The promise under a contract may be performed, as circumstances may permit, by promisor himself, or by his agent or legal representative.

i) Promisor himself: - (personal skill & diligence)

If it was the intention of parties that promise should be performed by promisor himself. such promise are performed by promisor.

ii) Agent: -

the promisor or his representative may employ a competent person to perform it.

iii) Legal representative: -

→ A contract which involves personal skill or personal consideration comes to an end on death of promisor.

→ The legal representative of deceased partner promisor are bound to perform it unless a contrary intention appears from contract.

iv) Third persons: (Section 41)

→ When a promisee accepts performance of promise from a third person, he can't enforce it against promisor.

→ Performance by a stranger, if accepted by promisee, that results in discharging the promisor, although the latter has neither authorised nor ratified the act of third party.

v) Joint promisor → (Section 42)

- When two or more persons have made a joint promise, then unless contrary intention appears by contract all such persons must jointly fulfill the contract.
- If any of them dies then his legal representative along with other promisor will perform the contract.
- If all of them dies, legal representative of all promisor will perform the contract.

Distinction b/w Succession & Assignment →

#1) When benefits of contract are succeeded by person process of law, then both burden & benefits attaching to contract devolve to legal heir.

Example → Suppose father dies then all his assets & liabilities are transferred to his son.

→ But if liability exceeds value of assets then son would not be called upon to pay excess.

#2) Assignment →

→ Benefit of contract can be assigned but not liability. Thus one can't transfer his liability to other person.

Liability of Joint Promisor & Promisee →

1. Devaluation of joint liabilities → (Section 42)

→ When two or more persons have made a joint promise then unless contrary intention appears by contract all such persons during joint life shall perform contract and after death of any of them, legal representative along with other survivor and after death of all, representative of all promisor shall perform.

2. Any one of joint promisor may be compelled to perform. (Section 43).

→ When two or more person make a joint promise, the promisee may, in absence contract compell any one of such joint promisor to perform contract.

ii) Each promisor may compel competition:-

→ Each of two or more joint promisor may be compell every other joint promisor to contribute Equally with himself to perform contract.

iii) Sharing of loss in default contribution:-

→ If any one of two or more joint promisor makes default in contribution than remaining joint promisor shall bear loss in default contribution.

3. Effect of release of one or more Joint promisor → (Section 44)

→ When two or more person have made a joint promise then release of one of such joint promisor does not discharge other joint promisor.

→ Neither it releases joint promisor^{or} released from responsibility towards other joint promisor.

Rights of Joint promisee →

1) When a person had made promise of two or more person jointly then unless contrary intention appears than any of joint promisee can claim performance during their joint lives, and after death of any LR can claim.

Time & place of performance →

i) Time for performance of promise, where no application is to be made and no time is specified → (Section 46)

→ Performance must be in reasonable time. RT depends upon facts and circumstances of case.

ii) Time & place for performance, where time is specified & no application is to be made → (Section 47)

→ Promisor may perform during usual hour of business and on such day or place which is ought to be performed.

(iii) Application for performance on certain Day to be at proper time & place → (Section 48)

→ It is duty of promisee to apply for performance at proper time & place and that too within usual hour of business.

(iv) Place for performance of promise, where no application has to be made and no place fixed for performance → (Section 49)

→ Promisor has to apply to promisee to appoint reasonable place for performance and perform it at such place.

(v) Performance in the manner or at time prescribed or sanctioned by promisee → (Section 50)

→ It should be as per decided terms.

Performance of Reciprocal Promise →

i) Promisor not bound to perform unless promisee is ready and willing to perform → (Section 51)
In case, where contract consist of reciprocal promise to be simultaneously performed than promisor not bound to perform unless promisee is ready and willing to perform.

(ii) Order of performance and reciprocal promise → (Section 52)
→ When order of performance is Expressly fixed contract shall be performed in that order.
→ Where it is not Expressly fixed than it shall be performed in order which nature of transaction requires.

(iii) Liability of party preventing event on which contract has to take effect → Section 53.

When one party in contract prevents other party from performing his promise than contract becomes voidable, at the option of party so prevented and also he shall be entitled for compensation arising from such non-performance.

(Section 54)
iv) Effect of Default as to the promise which should be 1st performed in contract consisting of reciprocal promises: —
→ If party fails to perform his part of promise and other promise depends upon performance of 1st party promise than unless such performance is done, party can't claim performance from promisor.
→ Also other party need to make compensation for such loss.

v) Effect of failure to perform within time fixed by Contract → (Section 55)

- If party promises to perform contract within time and is not able to perform it then contract becomes voidable at the option of other party (Aggrieved Party)
- But contract can be avoided only when time is essential element of contract. (

Can claim Compensation

Effect of failure when time is not essential →

- In such case contract do not become voidable but Compensation can be claimed for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than agreed upon →

- In such case performance will be valid and promise cannot claim compensation unless at the time of acceptance. Promisor has agreed to pay damages.

(vi) Agreement to do impossible Act → (Section 56)

#1) Initial impossibility →

Impossibility which exist at time of making contract.

- such agreement are void in nature.
- fact of impossibility may be known or unknown.

i) If known to the parties →

- Agreement void in nature
- Impossible to perform
- No damages can be claimed.

ii) If unknown to parties →

- When parties are ignorant about impossibility, contract is void.

iii) If known to promiser only →

When promiser knows about impossibility or even if he should have known with reasonable diligence, promise is entitle to claim compensation for any loss suffered.

2) Subsequent or supervening impossibility →

→ When performance of contract becomes impossible or Illegal by occurrence of an unexpected event or change in circumstances beyond contemplation of parties contract becomes void.

→ They are also known as post-Contractual impossibility.

vii) Reciprocal promise to do certain things that are legal and certain other are illegal. → (Section 57)

→ Reciprocal promise to do legal thing is valid.

→ Reciprocal promise to do illegal thing is void.

viii) Alternative promise - one being illegal → (Section 58)

→ Only legal branch can be enforced and illegal will be void.

Appropriation of payments →

i) Application of payment where debt to be discharged is indicated → (Section 59)

Where a debtor owing several debts to one person makes a payment to him either by Express intimation or implied intimation about payment to be applied to discharge of some particular debt, it has to be applied accordingly.

(ii) Application of payment where debt to be discharge is not indicated → (Section 60)

Where debtor omitted to intimate about Debt against which payment has to be applied, creditors may apply at his own discretion against lawful debt - are due and payable and ^{as between} it is ^{not} barred by limitation of suits.

(Section 61)

(iii) Application of payment where neither party appropriates →

→ Where neither party makes any appropriation payment shall be applied in discharge of debts in order of time, irrespective of fact ~~and~~ whenever they are or are not barred by implication of suits.

→ If Debts are of Equal standing, payment have to be appropriate proportionately.

Contract which need not be performed with consent of both parties →

(i) Effect of novation, rescission and alteration → (Section 62)

(a) → Novation: Old contract is replaced by new contract.

→ The parties to a contract may substitute new party contract in place of old.

→ Old contract is discharged and consequently it need not be performed.

→ Parties to a contract may or may not change.

(b) Rescission: Old contract is cancelled.

→ Contract is also discharged by rescission.

→ When party agrees to rescind it old contract is cancelled and no new contract comes into existence.

Remission → एक रकम
→ to relief ^{some} part of total Amt.

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c) Alteration → Change in terms (

→ When parties to a contract agrees to alter it, original contract got rescinded.

→ It has Effect of rescinding original contract in place of new one.

Difference b/w novation & alteration →

#i) Novation means substitution of Existing contract with new one. Alteration means some terms may be changed in contract but parties remain same.

→ Novation → Substitution of new contract instead of old.

Alteration → There may be some changes in terms of contract.

(Section 63)

(ii) Promisee may waive or remit performance of promise →

→ Every promise may dispense part or full performance of promise made to him or he may extend time for such performance.

(iii) Restoration of benefit under voidable Contract → (Section 64)

→ Where under voidable contract, if person rescinds contract then other party need not to perform contract.

→ The party rescinding contract if had received only benefit under contract shall restore it to person from whom he has received such benefit.

iv) Obligation of person who has received advantage under void agreement or contract that becomes void. (Section 65)

→ In such case, person who has received benefit is bound to restore it to person from whom he received such benefit.

v) Communication of rescission (Section 66) →

→ If contract is rescinded then it has to be communicated in same way as that in case of Communication of offer.

vi) Effect of neglect of Promisee to afford promisor reasonable facilities of performance. (Section 67) →

→ In such case, promisor is Excused to perform contract.

Discharge of Contract →

(i) By Performance → (refer Sec 37)

(ii) By mutual agreement → (refer Section 62)

(iii) Discharge by impossibility of performance →

Impossibility may exist from very start. It would be case of void ab initio.

Supervening impossibility may take place owing to →

→ unforeseen change in law.

→ destruction of subject matter.

→ Non-occurrence of particular state of thing

→ Decree Declaration of war.

(iv) Discharge by lapse of time →

Contract should be perform within time prescribed as per limitation act. If it is not performed within time, then contract is discharge.

(v) Discharge by operation of law → (Death, insolvency)

vi) Discharge by breach of Contract → (next chapter)

vii) Promisee may waive or remit performance →

(viii) Effect of neglect of promisee to afford promisor reasonable facilities for performance →

(ix) Merge of Rights →

Inferior rights & superior rights coincide and must in one person. on merger inferior rights get vanished and are not required to enforce.