

Unit - 4

Performance of Contract



which means carrying out the obligations

* Types:

1. Actual (Sec. 37)

2. Tender performance (Sec. 38):

Promisor offers to perform his obligation under the contract at the proper time and place but the promisee refuses to accept the performance.

* Condition for a Valid performance:

1. Must be unconditional.

2. At proper time and place.

3. Reasonable opportunity to examine goods.

4. For whole obligation.

5. To the promisee or his duly authorized agent.

However a tender maybe made to anyone of the joint promisee.

6. Tender must be of exact amount and must be in legal tender.

* By Whom -

1. Promisor himself

2. Agent (where the contract does not involve personal skills).

2. Legal Representative (In case of death of the promisor. However, if contract involves personal skill, it comes to an end with the death of the promisor)

4. Third persons (When a promisee accepts performance of the promise from a third person, he cannot afterward enforce it against the promisor.)

* Performance of Joint Promises:

1. All joint promisors are liable jointly and severally. However contract may provide otherwise.

2. One has right of contribution from others.

3. If one of the joint promisors is released he is responsible to the other joint promisor or promisors.

* Time place and manner:

It is decided otherwise during business hours at business place or residence of promisee.

* Performance of Reciprocal promises:

Reciprocal promise means a promise in return for a promise.

=> 1. Mutual and Dependent - If the promisor, who must perform, fails to perform it, he cannot claim the performance of the reciprocal promise.

=> a. Mutual and Independent - Each party must perform his promise without waiting for the performance or readiness to perform on the part of the other.

=> 2. Mutual and Concurrent - Promises have to be simultaneously performed.

* Note: Reciprocal promises to do things legal and also other things illegal (Sec. 57) - the first set of promises is a contract, but second is a void agreement.

* Appropriation of Payment:
(Adjustment of payment against debt)

=> Rule 1: Appropriation by Debtor: If accepted, must be applied to that debt.

=> Rule 2: Appropriation by Creditor: Debtor does not intimate, the creditor may apply it at his discretion to any lawful debt including a time-barred debt. (But not to a disputed debt).

=> Rule 3: Where neither party appropriates:
Neither party makes any appropriation
the payment is to be applied in
discharge of the debts in order of time,
including time-barred debts. If the debts
are equal the payment is to be
applied proportionately.

* Discharge of contract:

Which means termination of the
contractual relationship between the
parties. In other words, a contract is
said to be discharged when either of
the parties is no more liable to contract.

=> By Performance:

- a) Actual
- b) Tender

=> By Mutual Consent or Agreement:

- a) Novation (New)
- b) Rescission (Cancellation)
- c) Alteration (Atering within some parties)
- d) Remission (Discount)
- e) Waiver (Full for free)
- f) Merger (Merging with superior power / like owning the property) - for eg:!

Buying the house which
you used to live in rent.

=> By Impossibility of Performance:

- a) Destruction of subject matter
- b) Death or disablement for personal service
- c) Subsequently illegality
- d) Declaration of War
- e) Non-existence of state of things.

=> By Operation of Law:

- a) By death
- b) Insolvency
- c) Merger
- d) Unauthorized alteration of terms of a written document.

=> By Breach of Contract:

- a) Anticipatory
- b) Actual

=> By Lapse of Time

* Contracts which need not be performed:

1. If the parties mutually agree to substitute the original contract by a new one or rescind or alter it.

2. If the promisee dispenses with or waives, wholly or in part the performance of the promise made to or extends the time for such performance or accepts any satisfaction for it.

3. If the person, at whose option the contract is voidable, rescinds it.

4. If the promisee neglects or refuses

5. If it is illegal.