

Unit: 04 Performance of Contract

Performance is doing what the promisor has promised to do.

Types of Performance

1. Actual performance.

When both the parties have performed their promises.
- legal representatives will perform in case of death of promisor.

2. Attempted performance [Sec: 38]

Sometimes promisor offers to perform his obligation on proper time and place but the promisee does not accept.

Features of Attempted performance

- * Attempted at proper place
eg. office, residence, decided place.
- * Attempted on proper time
- * All parts of the goods should be delivered together.

Personal Volition (Skill)

- Only party to contract can perform.
eg. Singing, Acting, Teaching, Playing, Drawing, Art, Dancing etc.

Person, who can demand Performance.

- 1) Promisee/Promisor
- 2) Legal representative
- 3) Agent
- 4) Third party (beneficiary)
- 5) Joint promisees.

Devolution of Joint Rights (rights) and liabilities [Sec. 43]

Two or more persons may enter into joint agreement with one or more persons.
• Promisee may seek performance from any of joint promisors.

Sec: 42: When two or more persons makes a joint promise such persons must jointly fulfill the promise.

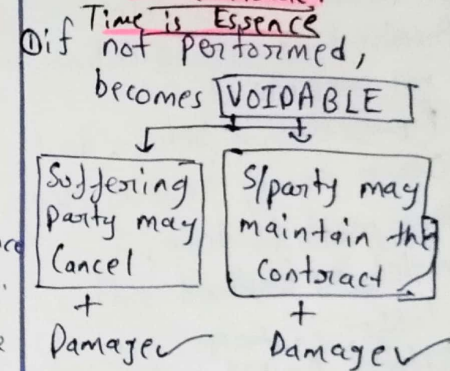
Succession: Devolves on his legal heir. However legal heir is responsible only upto value of assets & not personally. * Both rights & duties.
* Upto Assets only.

Assignment: Voluntary transfer of rights to another person. Only rights not duty.

Diff. Assignment & Succession

Assignment	Succession
* During life	* After death
* Only rights	* Both rights & duties
* Voluntary	* By operation of law

Time - as the Essence of Contract



② Time is not Essence.

- * Small delay → cannot be cancelled
- * ~~Reason~~ Unreasonable delay → May be cancelled.

③ Parties → decide among themselves; whether time is Important or not.

④ If not decided → (Facts & Circumstances are seen)

Normally → Perishable (Imp)
↳ Immovable (Not Important)

Settlement of Loan & Int. on Appropriation of payment

- Sec: 59 - Debtor will decide
- Sec: 60 - Creditor will decide
- Sec: 61 - "law generally in order of time"

Reciprocal Promises (Sec: 51)

A promise in response to promise.

Types

- ① Mutual & Independent
Sequence / order not decided.
- ② Mutual & Dependent.
Duties performed in decided order.
- ③ Mutual & concurrent - "एकसाथ" (Simultaneously) immediate.

Miscellaneous Points

- * When promisee accepts performance from third party, he cannot enforce against promisee.
- * Effect of refusal to accept performance, 2nd party not responsible for non-performance.

Discharge. (end of agreement)

- Duties comes to an end
- legal Effect comes to end.
- It becomes ineffective.

MODES OF DISCHARGE

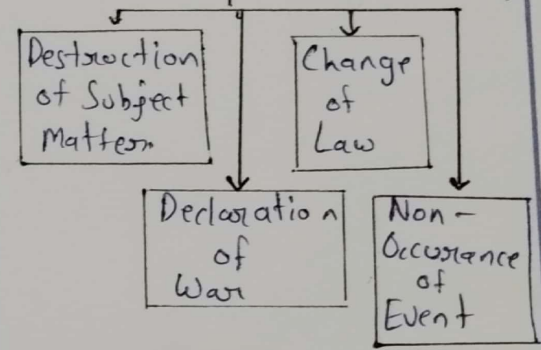
- * By Performance
 1. Actual
 2. Attempted.
- * By Mutual consent (Sec: 62)
 1. Novation: To make new contract discharging the old one.
 2. Rescission: To cancel the contract. → Paying Damages
 3. Alteration: Change in T & C.
 - (a) Waiver - To surrender one's rights
 - (b) Remission - Change in T&C to the benefit of one party.
 - (c) Accord & Satisfaction - Accepting something in satisfaction of full debt.
- * By operation of Law
 - (a) Death of Party
 - (b) Insolvency
 - (c) Merger - Addition of small right in a bigger right.
 - (d) Change in identity - When debtor becomes creditor himself.
- * By Supervening impossibility
 - (a) Initially impossibility (VOID), Damages claim ✓
 - (b) Subsequent impossibility
 - Destruction of Subject Matter

- Change of law
- Declaration of war.
- Non-occurrence of event.

Cases not covered in Supervening Impossibility

- Commercial Difficulty.
- Strikes & Lockouts.
- Partial impossibility.
- Default of third Party.

Doctrine of Frustration (Sec: 56)



- * By lapse of time
 - Law of limitation (timebarred debt).