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UNIT - 4

[Performance of Contract]

Performance of contract [Obligations]

[1] Parties to contract must either perform or offer to perform] their respective promise

Unless - - - - -

Such performance is dispensed with or excused] under provision of contract act / any other law.

→ Promises bind representatives of promisor even after death of promisor

Unless contrary intention appears from contract

- Legal representatives not liable if
- (a) Involves personal skill of promisor
 - (b) Terms of contract are such.

03

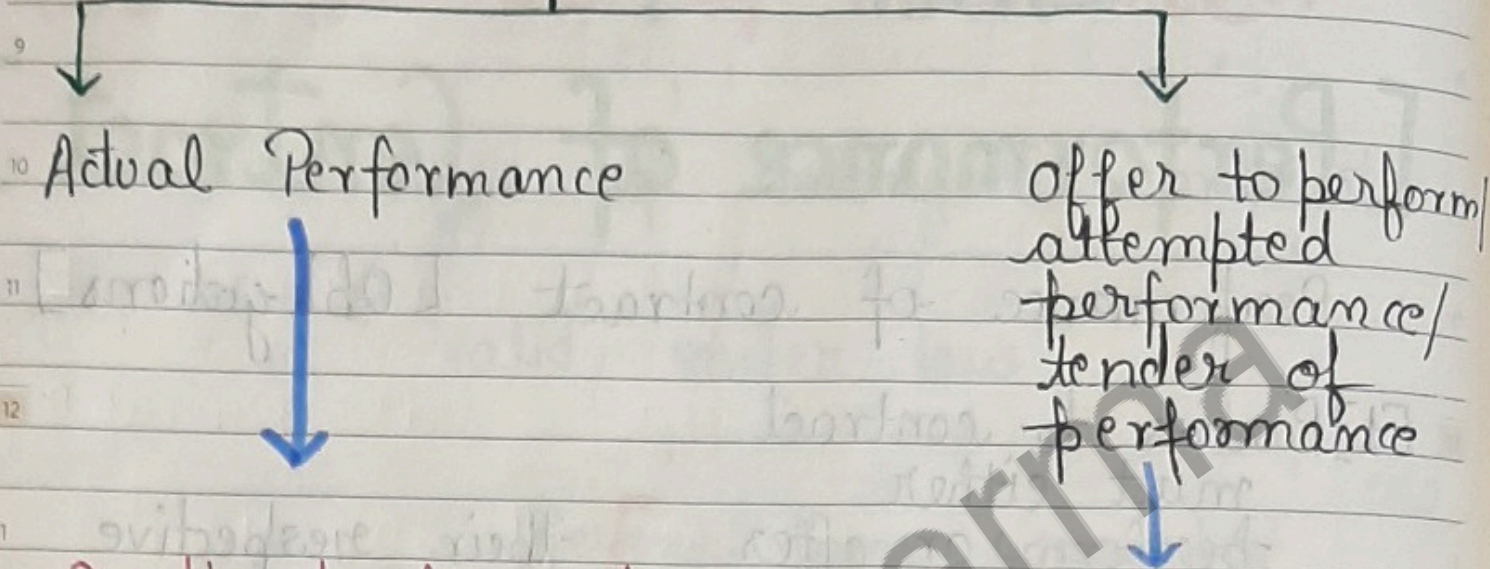
THURSDAY

MAY

2018

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Performance



Parties performed / fulfilled their obligations under the contract

Performance becomes due, promisor offer to perform his obligation

but promisee refers to accept performance

■ Conditions to satisfy for offer of performance

→ It must be unconditional.

→ It must be made at proper time & place

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→ Promisee have reasonable opportunity to see thing offered by promisor.

Effect of refusal of party to perform wholly ÷ [Sec 39]

- Party to contract refused to perform,
- disabled himself from performing promise entirely.
- promisee may put an end to contract
- unless he signified by words ^{Or} conduct his acquiescence in continuance

Rights to aggrieved party

- To terminate contract
- To indicate by words or by conduct that he is interested in his continuance.

In both cases, promisee able to claim damages that he suffers as a result of breach.

05

SATURDAY

MAY

2018

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By whom a contract may be performed?

[Sec 40, 41 & 42]

1. Promisor himself.

(a) Something in contract to show

it was the intention of the parties that promise to be performed by promisor himself.

(b) Contract involve • Personal skill
• Due diligence

(c) Personal confidence b/w parties - that promisor has to perform.

06 2. Agent.

SUNDAY

Promisor / legal representative

may employ an agent.

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3. Legal representative :-

Bound to perform it] unless a contrary intention appears from contract.

4. Third persons :

Effect of accepting performance from third person (Sec 41)

(a) Promisor accepts]

performance of promise from 3rd party

In this case, he cannot afterwards enforce it against promisor

Performance by stranger.

This,

A stranger's performance can't be accepted by promisee, results in discharging promisor even though promisor neither authorized nor satisfied] the act of third party

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5. Joint promisors (Sec 42)

Performance by Joint promisors.

During joint lives

All to fulfil promise

Death of any of them

Surviving promisors, & legal representatives of deceased

Death of all

Representative of all

Diff between succession and assignment :-

Succession : Liabilities of successor would be limited to extent of property inherited by successor.

Assignment : Benefit can be assigned, not the liabilities, if the benefit

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is coupled with liability then benefit cannot be assigned.

♦ Liability of joint promisor / promisee

1. Devolution of joint liabilities [Sec 42]

2 Any one of the joint promisors compelled
[to perform whole promises]

Two or person make a joint promise ...
so the promisee in the absence of agreement to the contrary, any one or much of such joint promisors to perform the whole promise

[If any one of them defaults
Remaining must bear loss equally.]

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3. Effect of release of one joint promisor
[Sec 44]

Two or person made joint promise

Release of one of such joint promisors
by the promisee does not
discharge the other joint
promisor

Neither does it free joint promisors
so released from responsibility
to other joint promisor.

Time and place for performance of promise :-

1. Time for performance of promise, where
no appⁿ to be made
&
no time specified [Sec 46]

Reasonable time

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JUN
2018

WK 19 • 131-234

2018

FRIDAY
MAY

11

2. Time & place for performance of promise where time specified & no application made [Sec 46]

Anytime during usual hours of business

3. Application for performance on certain day to be at proper place & within usual hours of business [Sec 48]

4. Place for performance of promise where no application is made & no place fixed for performance [Sec 49]

Duty of promise to apply for performance at proper place & within usual hours of business

5. Performance in manner or at time prescribed / sanctioned by promiser [Sec 50]

12

SATURDAY

MAY

2018

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APR	1	2	3	4	5	6	7
2018	8	9	10	11	12	13	14
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* Performance of reciprocal promise] & [Sec 51 to 58]

1. Promisor not bound to perform unless reciprocal promise ready and willing to perform [Section 51]

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

1 → fixed by contract
Performed in that order

2 → Not fixed by contract
Performed in order

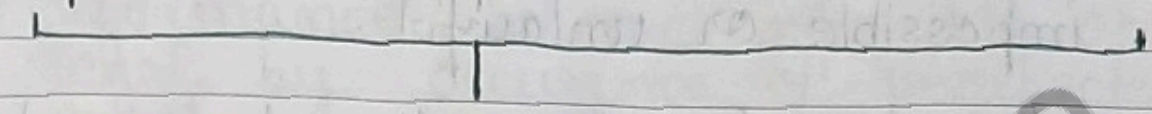
Nature requires

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

One party prevents another from performing his promise
Contract is voidable at the option of party so prevented & he is entitled to compensation for loss incurred

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4. Effect of default as to promise which is to be performed first, in contract of reciprocal promise



Voidable] → May be Promisor who has to perform first, fails, cannot claim performance of another, also compensate others.

5. Effects of failure to perform at time fixed in contract in which time essential [Sec 55]

If time not essence → Not voidable but promisee is entitled to compensate from promisor.

Effect of acceptance of performance at time other than agreed upon

- Promisee cannot claim compensation, unless at the time of acceptance - gives notice to promisor of his intention to do so.

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6. Agreement to do impossible act : [Sec 56] Void

Contract to do act afterwards becoming impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful

Compensation for loss] person knew or with reasonable diligence, might have known.

Promisor to compensate promisee for loss.] is impossible / unlawful.

① Initial impossibilities — at time of contract making.

Void

- (i) If known to party : Void
- (ii) If not known to parties : Void
- (iii) If known to promisor only : Promisee should be compensated

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② Subsequent or supervening impossibility
(after making contract)

Performance become impossible or illegal by occurrence of unexpected event or change in circumstance beyond parties control

Void (Eg: Change in law)

7. Reciprocal promise to do certain things that are

• legal (Valid)

• Some other one that is illegal (Void)

(Sec 57)

8. 'Alternative promise' one branch being illegal (Sec 58)

Legal branch can only be enforced.

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* Appropriation of payments :-

Debtor owes several debts to same creditor & makes payment not sufficient to discharge all debts.

How to appropriate?
(Adjust)

Appropriation of payments

Where debt discharge is indicated (Sec 59)

Express intimation or implying

Must be applied accordingly

Where debt discharged is not indicated (Sec 60)

Creditor applies at own direction, but not to limitation act.
[But cannot apply disputed debt]

Where neither party appropriates (Sec 61)

Discharge of all debts in order of time. Whether barred by limitation or not. If debts equal not proportionately

* Contracts which need not to be performed with mutual consent of parties.

1. Effect of novation, rescission & alteration of contract (Sec 62)

(a) **Novation**: Parties substitute new contract for old.

It can be

- (a) either between same parties.
- (b) different parties.

(b) **Rescission**: All contract is cancelled & new contract come to exist in it's place.

(c) **Alteration**: Terms of contract altered.

Novation

Alteration

- | | |
|----------------------------------|---|
| 1. New contract | 1. Terms altered |
| 2. Same / Different parties | 2. Same parties. |
| 3. New contract in place of old. | 3. Terms altered and is not possible to form new. |

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2. Promisee may waive or remit performance of promise [Remission] Sec 63.

Promisee may dispense or remit wholly or part performance of promise of performance, or may extend time for such performance, or may accept instead of it any satisfaction which he thinks fit

3. Restoration of benefit under voidable contract (Sec 64)

Where at option of aggrieved party, contract is voidable & he rescinds the contract he must restore any benefit if received to whom he received benefit from

20 4. Obligations of person who has received advantage under void agreement or void contract (Section 65)

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WK 21 • 141-224

2018 | MONDAY
MAY

21

- Agreement discovered to be void

When contract becomes void -

Any person who received any benefit must restore it to other person.

5. Communication of rescission (Sec 66)

Voidable contract can be rescinded but rescission must be communicated to other party in same manner as proposal is communicated, also rescission can be revoked as proposal is revoked

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

If promisee neglects / refuses to afford promisor, reasonable facilities for performance of promise, promisor excused.

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DISCHARGE OF CONTRACT :-

1 - Discharge by performance

- Actual performance
- Attempted performance

2 - Discharge of mutual agreement :-

- Novation
- Rescission
- Alteration
- Remission

3 - Discharge by impossibility of performance

(i) Initial impossibility → Void ab initio

Void agreement

(ii) Subsequent impossibility due to
- Void contract)

(a) Unforeseen change in law

(b) Destruction of subject matter essential to performance

(c) Non existence / non occurrence of particular things

(d) Declaration of war (Sec 56)

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(e) Death.

4 - Discharge by lapse of time :
(Limitation Act, 1963)

5. Discharge by operation by law.

- Death of promisor
- Insolvency.

6. Discharge by breach of contract.

7. Promisee may waive or remit performance of promise.

8. Effect of neglect of promisee to afford promisor reasonable facilities for performance (See 67)

9. Mergers of rights :

Inferior rights merge with superior rights

On merger inferior rights vanish and not required to be enforced.

COMPLETED :)