



Performance of a Contract



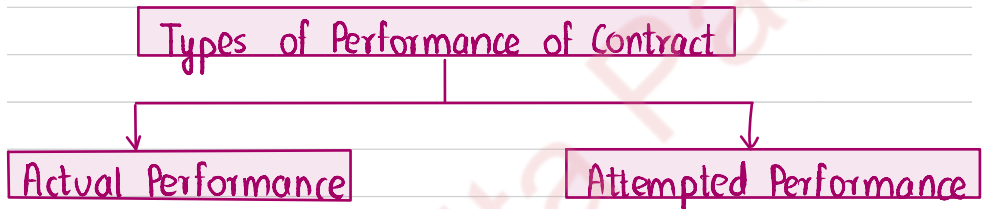
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Performance of Contract:-

Performance of Contract means fulfilment of obligations to the contract.

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 provisions of the Contract Act, or any Other law.



a) Actual Performance

Where a party to a contract has done what he had undertaken to do under the contract within the time and in the manner prescribed.

b) Attempted Performance:-

When the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance

Conditions to be satisfied for a valid attempted performance

- i] It must be Conditional
- ii] It must be made at proper time and place.
- iii] Reasonable opportunity to examine goods.
- iv] It must be for whole Obligation.

By whom a contract may be performed

1. Promisor himself :-

If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself such promise must be performed by the promisor.

Contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

2. Agent :-

Where the personal consideration is not the foundation of the contract, the promisor or his representative may employ a competent person to perform it.

3. Legal Representatives:-

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

As regards any other contract the legal representatives of the deceased promisor are bound to perform it but their liability under a contract is limited to the value of the property they inherit from the deceased.

4. Third persons:-

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

5. Joint promisors:-

Q1. May-18, Dec-21, Module Question Bank Pg. no. 24.	Q6, July-21. Dec-21 Module
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When two or more persons have made a joint promise then unless a contrary intention by the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly.

Distinction between succession and assignment

When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. But if the debts owed exceed the value of the estate inherited then successor would not be called upon to pay the excess.

The liability of the successor will be limited to the extent of the property inherited by him.

In the matter of assignment, however the benefit of a contract can only be assigned but not the liabilities there under.

Liability of Joint promisor & promisee.

Devolution of joint liabilities

If two or more persons have made a joint promise, ordinarily all of them during their lifetime must jointly fulfil the promise. After the death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise.

Any one of joint promisors may be compelled to perform

When two or more persons make a joint promise, the promisee may, compel any one or more of such joint promisors to perform the whole of the promise

If one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.

Sharing of loss by default in contribution:-

If any one of two or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payment made by the principal.

Effect of release of one joint promisor-

Where two or more persons have made a joint promise a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.

Devolution of Joint Rights:-

When a person has made a promise to two or more persons jointly then the right to claim the performance rests, as between him and them, with them during their joint lives and after the death of any of the representatives of such deceased person jointly with the survivor of survivors and after the death of the last survivor, with the representatives of all jointly.

Performance of reciprocal Promise:-

i) Promisor not bound to perform, unless reciprocal promisee ready and willing to perform -

When a contract consists of reciprocal promises to be simultaneously performed, no promisor needs to perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

ii) Order of performance of reciprocal promises -

When the order of performance of the reciprocal promises is expressly fixed by the contract, they shall be performed in that order and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

iii) Liability of party preventing event on which the contract is to take effect

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented, and he is entitled to compensation from the other party for any loss he may sustain in consequence of the non-performance of the contract.

iv] Effect of default as to that promise that should be first performed, in contract consisting of reciprocal promises.

If the promisor who has to perform his promise before the performance of the other's promise fails to perform it, he cannot claim performance of the other's promise, and is also liable for compensation for his non-performance.

v] • Effects of failure to perform at a Time fixed in a contract in which time is essential

When a party to a contract promises to do certain thing at or before the specified time, and fails to do any such thing at or before the specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of essence of the contract.

• Effect of such failure when time is not essential:-

If it was not the intention of the parties that time should be of essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

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

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed unless at the time of acceptance, he gives notice to the promisor of his intention to do so.

v) Agreement to do Impossible Act :-

The Impossibility of performance may be of the two types



a) Initial impossibility (Impossibility existing at the time of contract) :-

When the parties agree upon doing of something which is obviously impossible in itself the agreement would be void.

The fact of impossibility may be and may not known to the parties.

If known to the parties:-

It would be observed that an agreement constituted quite unknown to the parties, may be impossible of being performed and hence void.

If unknown to the parties:-

Where both the promisor and the promisee are ignorant of the impossibility of performance the contract is void.

If known to the promisor only:-

Where at the time of entering into a contract the promisor alone knows about the impossibility of performance or even if he does not though he should have known it with reasonable diligence, the promisee is entitled to claim compensation for any loss he suffered on account of non performance.

b) Subsequent or Supervening impossibility (Becomes impossible after entering into contract) :-

Sometimes, the performance of the contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful.

The effect of such impossibility is that it makes the contract void, and the parties are discharged from the further performance of the contract.

Reciprocal promise to do certain things that are legal, and also some other things that are illegal -

Where persons reciprocally promise, first to do certain things which are legal and secondly, under specified circumstances, to do certain things which are illegal, the first set of promises is a valid contract, but the second is a void agreement.

* Example :-



Ankita mam agrees to sell house to shahid kapoor for ₹ 50,00,000 and also agrees to pay ₹ 75,00,000 if he uses the house for gambling purpose

The first set of reciprocal promises i.e., to sell house and pay ₹ 50,00,000 for it, is a valid contract but the object of the second, being unlawful, is void.

‘Alternative promise’ - one branch being illegal -

In the case of the **alternative promise**, one branch of which is **legal** and the other **illegal**, the legal branch alone can be enforced.

* Example:-



Harshad sir and Bobby Deol agree that Harshad sir shall pay Bobby Deol ₹1,00,000 for which Bobby Deol shall afterwards deliver rice or smuggled opium.

This is a valid contract to deliver rice, and a void agreement as to the opium.

Appropriation of payments.

Sometimes, a debtor owes a several debts to the same creditor and makes payment which is not sufficient to discharge all the debts.

i] Application of payment where debt to be discharged is indicated (section 59)

Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under certain circumstances implying that the payment is applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

ii] Application of payment where debt to be discharged is not indicated (section 60)

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor.

iii] Application of payment where the neither party appropriates- (section 61)

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time.

Contracts which need not be performed - Q7, Dec-21
With the consent of both the parties. Question Bank 28.

i) Effect of Novation, Recession and alteration of contract:-

Effect of Novation:-

The parties to a contract may substitute a new contract for the old. On Novation, the old contract is discharged and consequently it need not be performed. Novation can take place only by mutual agreement between the parties.

Effect of Recession:-

When the parties to a contract agree to rescind it, the contract need not be performed.

In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place.

Novation also involves recession.

Both in novation and in recession, the contract is discharged by mutual agreement.

Effect of alteration of Contract:-

Where the parties to a contract agree to alter it, the original contract is rescinded with the result that it need not be performed.

A Contract is also discharged by alteration.

The terms of Contract may be so altered by mutual agreement that the alteration may have the effect of

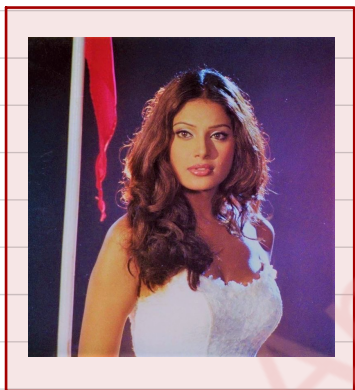
substituting a new contract for the old one

Difference between Novation and Alteration:-

Novation	Alteration
Novation means substitution of an existing contract with a new one. Novation may be made by changing in the terms of the contract or there may be change in the contracting parties.	In the case of alteration the terms of the contract may altered by mutual agreement by the contracting parties but the parties to contract will remain same.
In case of novation there is altogether a substitution of new contract in place of the old contract	But in case of alteration, it is not essential to substitutes a old contract In alteration, there may be change in terms and conditions of the original agreement.

ii) Promisee may waive or remit the performance of promise :-

Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract may be discharged by remission.



Anuradha owes Raju's ₹500,000. Anuradha pays ₹2,00,000 to Raju in satisfaction of whole debt at the time and place at which ₹5,00,000 were payable and Raju accepts it.
∴ The whole debt is discharged.

iii] Restoration of Benefit under a voidable Contract :-

When a person at whose option a contract is voidable rescinds it, the other party there to need not perform any promise therein contained in which he is the promisor. The party rescinding avoidable contract shall, if he has received any benefit there under from another party to such contract, restore such benefit, so far as may be the person from whom it was received.

iv] Obligations of person who has received Advantage under void Agreement contract that becomes void

When an agreement is 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, or to make compensation for it to the person from whom he received it.

v] Effects of neglect of promisee to afford promisor reasonable facilities for performance :-

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.

Discharge of a Contract

A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways.

i) Discharge by performance:-

It takes place when the parties to the contract fulfil their obligations arising under the contract, within the time and in the manner prescribed. Discharge by performance may be.



Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement.

When the promise offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

ii) Discharge by mutual agreement:-

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.

iii] Discharge by impossibility of performance:-

The impossibility may exist from the very start.

In that case, it would be impossibility ab initio (from start)

Alternatively, it may supervene. **Supervening impossibility may take place owing to:**

a] unforeseen **change in law.**

b] The destruction of the **subject matter** essential to that performance.

c] The **non-existence or non-occurrence** of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;

d] The **declaration of a war.**

vi] Discharge by lapse of time:-

A contract should be performed within a specified period as prescribed by the limitation Act 1963 .

If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

v) Discharge by operation of law:-

A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

vi) Discharge by breach of contract:-

Breach of Contract may be actual breach of contract or anticipatory breach of contract.

If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

vii) Promisee may waive or remit performance of promise:-

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit.

viii) Effects of neglect of promisee to afford promisor reasonable facilities for performance:-

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 at any non-performance caused thereby.

ix] merger of Rights:-

Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person.

In such cases, The inferior rights merge into the superior rights.

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