

CA Foundation
Paper 2 - Business Law

Chapter 2 - ICA
The Indian Contract Act, 1872

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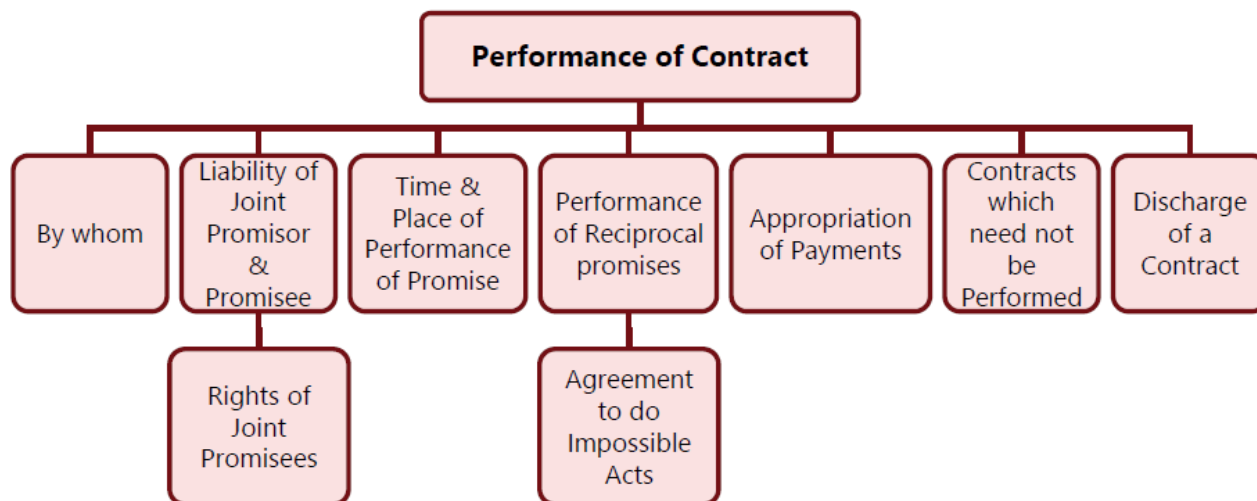
The Indian Contract Act, 1872

Unit 4 - Performance of Contract

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Unit 4 - Performance of Contract



PERFORMANCE OF CONTRACT

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Fulfilment of obligations to the contract. "Performance of Contract" may be actual or attempted.

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 of any other law.

Actual Performance	Offer to perform or attempted performance or tender of performance
<ul style="list-style-type: none"> • Where a party to a contract has done what he had undertaken to do or • either of the parties have fulfilled their obligations 	<ul style="list-style-type: none"> • It may happen sometimes, when the performance becomes due, • the promisor offers to perform his obligation • but the promisee refuses to

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Actual Performance	Offer to perform or attempted performance or tender of performance
under the contract <ul style="list-style-type: none"> within the time and in the manner prescribed 	accept the performance.
<i>Example 1: X borrows Rs. 5,00,000 from Y with a promise to be paid after 1 month. X repays the amount on the due date. This is actual performance.</i>	<i>Example 2: A promises to deliver certain goods to B. A takes the goods to the appointed place during business hours but B refuses to take the delivery of goods. This is an attempted performance as A the promisor has done what he was required to do under the contract.</i>

CONDITIONS FOR A VALID TENDER OR ATTEMPTED PERFORMANCE

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- Where a promisor has made an offer of performance to the promisee, and
- the offer has not been accepted,
- then the **promisor is not responsible for non performance**, nor
- does he thereby lose his rights under the contract.

Every such offer must fulfil certain conditions which are as follows, namely

unconditional	proper time and place	reasonable opportunity to examine the goods	whole obligation
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1. It must be **unconditional**;

Example 3: A offers to B to repay only the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

2. it must be made at a **proper time and place**

Example 4: If the promisor wants to deliver the goods at 2 a.m., this is not a valid tender unless it was so agreed.

3. **reasonable opportunity to examine the goods**

Example 5: A contract's to deliver B at his warehouse 1000 Kgs of wheat on certain date. A must bring the wheat to B's warehouse on the appointed day, under such circumstances that B may have reasonable opportunity of satisfying himself that the thing offered is wheat of the quality contracted for, and that there are 1000 Kgs.

4. it must be for **whole obligation**

Example 6: X, a singer enters into a contract with Y, the manager of a theatre to sing at his theatres two nights in every week during the next two months, and Y engaged to pay her ` 10,000 for each night's performance. On the sixth night, X willfully absents herself from the theatre. Y is at liberty to put an end to the contract.

Example 7: A promises to deliver 100 bales of cotton on a certain day. On the agreed day and place 'A' offers to deliver 80 bales only. This is not a valid tender.

BY WHOM A CONTRACT MAY BE PERFORMED

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The promise under a contract may be performed, as the circumstances may permit -

- By the promisor himself, or
- By his agent or
- His legal representative
- Third person
- Joint promisors

BY WHOM A CONTRACT MAY BE PERFORMED		
Category	Description	Example
Promisor Himself	If the contract specifies that the promisor must personally perform the promise, it must be done by the promisor. This typically involves personal skill, diligence, or trust between the parties.	Example 8: A promises to paint a picture for B, and this must be performed by A himself.
Agent	When personal skill or trust isn't crucial, the promisor or their representative can assign a competent person to perform the contract.	
Legal Representatives	- If personal skill or trust is involved, the contract ends on the promisor's death.	Example 9: A promises to pay B Rs. 100,000 on delivery of goods. If A dies before payment, his representative must pay.
	- For other contracts, legal representatives are bound to fulfill the promise but only up to the value of the inherited property.	Example 10 A promises to paint a picture for B. A must do it himself and can't ask another painter to do it. If A dies before painting, the contract ends and cannot be

BY WHOM A CONTRACT MAY BE PERFORMED		
Category	Description	Example
		enforced by A's representative or B.
Third Persons 41	If the promisee accepts performance from a third person, they cannot later enforce the promise against the promisor, even if the promisor was unaware of or did not authorize the third party's action.	Example 11: A owes B Rs. 100,000. C, without A's knowledge, pays Rs. 60,000 to B. B can now only claim the remaining Rs. 40,000 from A.
Joint Promisors 42	When two or more persons make a joint promise, they must jointly fulfill it. If one dies, their representatives, along with the surviving promisors, must fulfill the promise. If all die, the legal representatives of all must fulfill it.	Example 12: A, B, and C jointly promise to pay D Rs. 6,00,000. If A dies, his representatives must perform the promise with B and C, and so on.

DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT

BASIS	SUCCESSION	ASSIGNMENT
Definition	Transfer of both benefits and burdens of a contract by law (usually after death).	Transfer of the benefits of a contract to another person. Liabilities cannot be assigned.
Involvement of Liabilities	Both benefits and liabilities may pass to the legal heir.	Only the benefits are assigned; liabilities remain with the original party.
Example	A son inherits his father's estate, including debts and liabilities.	A creditor can assign the right to collect a debt to another person, but the debtor cannot assign their obligation.
Liability Limitation	Liability is limited to the value of the property inherited. If debts exceed the estate, the heir is not	Liabilities cannot be transferred, so the original debtor remains responsible for repayment.

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BASIS	SUCCESSION	ASSIGNMENT
	responsible for the excess.	
When Not Applicable	N/A	Cannot assign benefits if personal consideration is involved or if the benefit is coupled with a liability.

LIABILITY OF JOINT PROMISOR & PROMISEE

LIABILITY OF JOINT PROMISOR & PROMISEE	
42	Joint liabilities of Joint Promisors
43	Any one of joint promisors may be compelled to perform
44	Effect of release of one joint promisor
45	Rights of Joint Promisees

42 - Devolution of joint liabilities

- If two or more persons have made a joint promise,
- ordinarily all of them during their life-time
- 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.

Example 13: X, Y and Z who had jointly borrowed money must, during their life-time jointly repay the debt. Upon the death of X his representative, say, S along with Y and Z should jointly repay the debt and so on. If in an accident all the borrowers X, Y and Z dies then their

legal representatives must fulfil the promise and repay the borrowed amount. This rule is applicable only if the contract reveals no contrary intention.

Why 43 ?

- Section 42 deals with voluntary discharge of obligations by joint promisors.
- If joint promisors do not discharge their obligation on their own volition, what will happen? This is why...

43 - Any one of joint promisors may be compelled to perform -

❖ Liability of Joint Promisors

- **Performance by Any Joint Promisor:** If two or more persons make a joint promise, the promisee can require any one or more of them to perform the entire promise unless stated otherwise in the contract.

❖ Contribution Among Joint Promisors

- **Equal Contribution:** Each joint promisor can ask the other joint promisors to equally contribute to the performance of the promise unless the contract specifies otherwise.
- **Right to Contribution:** If one joint promisor fulfills the whole contract, they can ask the others to contribute their share.

❖ Default by a Joint Promisor

- **Sharing of Loss:** If one joint promisor fails to contribute, the remaining promisors must share the defaulted amount equally.

❖ Explanation to Section 43

- **Surety's Right to Recover:** A surety can recover from the principal any payments made on the principal's behalf.
- **Principal's Limitation:** The principal cannot claim recovery from the surety for payments the principal has made

Example 14: A, B and C jointly promise to pay D Rs. 3,00,000. D may compel either A or B or C to pay him Rs. 3,00,000.

Example 15: A, B and C are under a joint promise to pay D Rs. 3,00,000. C is unable to pay anything A is compelled to pay the whole. A is entitled to

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receive Rs. 1,50,000 from B.

Example 16: X, Y and Z jointly promise to pay Rs. 6,000 to A. A may compel either X or Y or Z to pay the amount. If Z is compelled to pay the whole amount; X is insolvent but his assets are sufficient to pay one-half of his debts. Z is entitled to receive Rs. 1,000 from X's estate and Rs. 2,500 from Y

43 - Conclusion - This section talks on -

- how to make the liability in the event of a joint contract,
- both joint & several,
- in so far as the promisee may, in the absence of a contract to the contrary,
- compel anyone or more of the joint promisors
- to perform the whole of the promise.

44 - 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.

Example 17

'A', 'B' and 'C' jointly promised to pay Rs. 9,00,000 to 'D'. 'D' released 'A' from liability. In this case, the release of 'A' does not discharge 'B' and 'C' from their liability. They remain liable to pay the entire amount of Rs. 9,00,000 to 'D'. And though 'A' is not liable to pay to 'D', but he remains liable to pay to 'B' and 'C' i.e. he is liable to make the contribution to the other joint promisors.

45 - Rights of Joint Promisees

- ❖ When a person has made a promise to
- ❖ two or more persons jointly,
- ❖ then unless a contrary intention appears from the contract -

The right to claim Performance rests between PROMISOR and JOINT PROMISEES	
During their joint lives	With the Joint Promisees
After the death of any of them	With the representative of such deceased person jointly with the survivor or survivors
After the death of the last survivor	With the representatives of all jointly

Example 18: A, in consideration of ` 5,00,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a specified day but B dies. In such a case right to demand payment shall rest with B's legal representatives, jointly with C during C's life-time, and after the death of C, with the legal representatives of B and C jointly.

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE	
46	No Time Specified, No Application Needed

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TIME AND PLACE FOR PERFORMANCE OF THE PROMISE	
47	Time and Place for Performance, Where Time is specified
48	Application for Performance on a Specific Day
49	Place for Performance, No Place Fixed

❖ 46 - No Time Specified, No Application Needed:

- **No time is mentioned in the contract** - The promisor must perform without the promisee's request, the promise must be performed within a reasonable time.
- **Explanation:** "Reasonable time" depends on the facts and circumstances of each case.

❖ 47 - Time and Place for Performance, Where Time is Specified

- **Time Specified, No Application Needed:** If a promise is to be performed on a specific day without the promisee's request, the promisor can perform it during business hours at the agreed location on that day.

❖ 48 - Application for Performance on a Specific Day

- **Promisee Must Apply:** If the promisor hasn't agreed to perform the promise without the promisee's request, it's the promisee's duty to apply for performance at a reasonable place and time during business hours.
- **Explanation:** What constitutes a "proper time and place" is a question of fact for each case.

❖ 49 - Place for Performance, No Place Fixed

- **No Place Specified, No Application Needed:** If no place is mentioned and the promisee doesn't need to request performance, the promisor must ask the promisee to appoint a reasonable place for the performance.

❖ 50 - Performance as Prescribed by the Promisee

- **Manner or Time Specified by Promisee:** The promise can be performed in the manner or at the time prescribed or approved by the promisee

Section 47 -

Example 19: If the delivery of goods is offered say after 8.30 pm, the promisee may refuse to accept delivery, for the usual business hours are over. Moreover, the delivery must be made at the usual place of business.

Section 48 -

Example 20: A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

PERFORMANCE OF RECIPROCAL PROMISE

PERFORMANCE OF RECIPROCAL PROMISE	
Section	Title
51	No Obligation if Promisee Not Ready
52	Order of Performance
53	Preventing Performance (Contract Voidable if Prevented)
54	Default in Reciprocal Promises (It's Effect)
55	Failure to Perform on Time When Time is Essential
57	Reciprocal Promises (Legal and Illegal Promises)
58	Alternative Promise (One Legal, One Illegal)
56	Agreement to do Impossible Act

❖ Reciprocal Promises

→ **51 - No Obligation if Promisee Not Ready** : If two promises must be performed simultaneously, the promisor isn't required to perform unless the promisee is ready and willing to perform their reciprocal promise.

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Example 21: A and B contract that A shall deliver the goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

- **52 - Order of Performance** : If the order of performance is fixed by the contract, promises must be performed in that order. If no order is specified, the promises should be performed in the order required by the nature of the transaction

Example 22: A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

❖ **53 - Preventing Performance**

- **Contract Voidable if Prevented**: If one party prevents the other from performing their promise, the contract becomes voidable at the option of the party prevented, who is also entitled to compensation for any resulting loss

Example 23: A and B contract that B shall execute some work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Example 24: In a contract for the sale of standing timber, the seller is to cut and cord it, whereupon buyer is to take it away and pay for it. The seller cords only a part of the timber and neglects to cord the rest. In that event the buyer may avoid the contract and claim compensation from the seller for any loss which he may have sustained for the non-performance of the contract.

❖ 54 - Default in Reciprocal Promises

- **Effect of Default:** When promises are dependent on each other, if the promisor who must perform first fails to do so, they cannot demand the other's performance and are liable for compensation due to non-performance.

Example 25: A hires B's ship to take in and convey, from Kolkata to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance. A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

Example 26: A hires B to make a shoe rack. A will supply the plywood, fevicol and other items required for making the shoe rack. B arrived on the appointed day and time but A could not arrange for the required materials. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

❖ 55 - Failure to Perform on Time When Time is Essential

- **When Time is Essential:** If time is essential and the promisor fails to perform at the specified time, the contract becomes voidable at the option of the promisee.
- **When Time is Not Essential:** If time is not crucial, failure to perform on time doesn't make the contract voidable, but the promisee can claim compensation for any loss caused by the delay.
- **Acceptance of Delayed Performance:** If the promisee accepts performance after the agreed time, they can't claim compensation for the delay unless they notify the promisor at the time of acceptance of their intent to do so.

❖ 57 - Reciprocal Promises

- **Legal and Illegal Promises:** If parties make reciprocal promises, where

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one part is legal and the other part is illegal, the legal part is valid, but the illegal part is void.

- **Example:** If A and B agree to do something lawful under normal circumstances and something illegal if certain conditions arise, only the legal part of the contract is enforceable.

Example 31: A and B agree that A will sell a house to B for 50,00,000 and also that if B uses it as a gambling house, he will pay a further sum of ` 75,00,000. The first set of reciprocal promises, i.e. to sell the house and to pay ` 50,00,000 for it, constitutes a valid contract. But the object of the second, being unlawful, is void.

❖ 58 - Alternative Promise

- **One Legal, One Illegal:** If an alternative promise has one legal option and one illegal option, only the legal option can be enforced.
- **Example:** If A promises to either sell a car (legal) or smuggle goods (illegal), only the legal option to sell the car is enforceable

Example 32: A and B agree that A shall pay B ` 1,00,000, for which B shall afterwards deliver to A either rice or smuggled opium.

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

AGREEMENT TO DO IMPOSSIBLE ACT

56 - Types of Impossibility of Performance -

- **Initial Impossibility:**
Impossibility existing at the time of contract formation.
- **Subsequent Impossibility:**
Impossibility arising after the contract is formed.

A. Initial Impossibility (At the Time of Contract)

- **Agreement to Do Something Impossible:** If the contract is to perform

something that is inherently impossible (impossible by nature),
 → The agreement is void.

Scenarios of Initial Impossibility	
Known to Both Parties	If both the promisor and promisee are aware of the impossibility, the contract is void
Unknown to Both Parties	If both parties are unaware of the impossibility, the contract is still void
Known Only to the Promisor	If the promisor alone knows or should have known (with reasonable diligence) about the impossibility, the promisee can claim compensation for any loss due to non-performance

Example 27 'A', a Hindu, who was already married, contracted to marry 'B', a Hindu girl. According to law, 'A' being married, could not marry 'B'. In this case, 'A' must make compensation to 'B' for the loss caused to her by the non-performance of the contract.

If known to the parties:

Example 28: B promises to pay a sum of ` 5,00,000 if he is able to swim across the Indian Ocean from Mumbai to Aden within a week. In this case, there is no real agreement, since both the parties are quite certain in their mind that the act is impossible of achievement. Therefore, the agreement, being impossible in itself, is void.

If unknown to the parties:

Example 29: A contracted B to sell his brown horse for Rs. 2,50,000 both

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unaware that the horse was dead a day before the agreement.

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

- **Definition:** This occurs when the performance of a promise becomes impossible or illegal after the contract has been entered into due to unforeseen events or changes in circumstances.
- **Characteristics of Subsequent Impossibility**
 - **Unexpected Events:** The impossibility arises from an unexpected event that was not contemplated by the parties at the time of the contract.
 - **Examples:** Changes in law, natural disasters, or other significant alterations in circumstances that make performance impossible or unlawful.
- **Effects of Subsequent Impossibility**
 - **Void Contract:** The contract becomes void due to the impossibility of performance.
 - **Discharge from Performance:** Both parties are released from their obligations under the contract, and no further performance is required.

Example 30: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

APPROPRIATION OF PAYMENTS

Why this Scenario ?

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

APPROPRIATION OF PAYMENTS		
SECTION	SITUATION	DESCRIPTION
59	Payment Indicating Specific Debt	When a debtor makes a payment with a clear indication of which specific debt it discharges, the creditor must apply the payment accordingly.
60	Payment Not Indicating Specific Debt	If the debtor does not indicate which debt the payment applies to, the creditor can apply it at their discretion to any lawful debt owed by the debtor.
61	Neither Party Appropriates Payment	If neither party specifies the application of the payment, it will be applied to discharge debts in the order of time. If debts are of equal standing, payments will be applied proportionately.

CONTRACTS WHICH NEED NOT BE PERFORMED

WITH THE CONSENT OF BOTH THE PARTIES

CONTRACTS WHICH NEED NOT BE PERFORMED	
Section	Title
62	Effect of novation, rescission, and alteration of contract
63	Order of Performance
64	Preventing Performance (Contract Voidable if Prevented)
65	Default in Reciprocal Promises (It's Effect)
66	Failure to Perform on Time When Time is Essential
67	Reciprocal Promises (Legal and Illegal Promises)

❖ 62 - EFFECT of novation, rescission, and alteration of contract

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→ **Overview:** When parties agree to substitute a new contract, rescind, or alter an existing contract, the original contract is no longer required to be performed.

Analysis of Section 62

NOVATION & ITS EFFECT		
DEFINITION	OUTCOME	CONDITIONS
Novation is the replacement of an old contract with a new one.	<p>Discharge of Original (OLD) Contract :</p> <p>Upon novation, the original contract is discharged, meaning the parties are no longer bound by it.</p>	<ul style="list-style-type: none"> • Requires mutual agreement between the parties involved. • Can occur with either the same or different parties, depending on the agreement.
<p><i>Example 33: A owes B Rs. 100,000. A, B and C agree that C will pay B and he will accept Rs. 100,000 from C in lieu of the sum due from A. A's liability thereby shall come to an end, and the old contract between A and B will be substituted by the new contract between B and C.</i></p>		

RECISSION & ITS EFFECT		
DEFINITION	OUTCOME	CONDITIONS
Rescission refers to the cancellation of an existing contract.	The original contract is nullified, and no new contract is created.	<ul style="list-style-type: none"> • Involves a mutual agreement to cancel the contract. • Results in the parties being released from their obligations.

ALTERATION & ITS EFFECT		
DEFINITION	OUTCOME	CONDITIONS
Alteration involves modifying the terms of an existing contract.	The original contract is altered but still exists.	<ul style="list-style-type: none"> Requires mutual consent to change specific terms. The original parties remain the same, although the terms may change

COMPARISON = Novation & Alteration	
In both these cases the original contract need not be performed	
NOVATION	ALTERATION
<ul style="list-style-type: none"> Substitutes a completely new contract. May change the parties involved in the contract. 	<ul style="list-style-type: none"> Modifies existing terms without creating a new contract. The original parties to the contract continue unchanged.

63 - Promisee may waive or remit performance of promise	
Overview	Implication
<p>The promisee can choose to:</p> <ul style="list-style-type: none"> Waive or remit the performance of the promise, either wholly or partially. Extend the time for performance. Accept an alternative satisfaction that they 	<p>This means a contract can be discharged by remission.</p>

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deem appropriate.

Example 34: A owes B Rs. 100,000. A, B and C agree that C will pay B and he will accept Rs. 100,000 from C in lieu of the sum due from A. A's liability thereby shall come to an end, and the old contract between A and B will be substituted by the new contract between B and C.

64 - Restoration of Benefit under a Voidable Contract

Overview

Key point

If a voidable contract is rescinded by the party who has the option to do so:

- The other party is not required to fulfill their promises.
- The rescinding party must restore any benefits received under the contract to the other party.

Restoration is required only if benefits were received.

Analysis of Section 64 - Such a contract can be terminated at the option of the party who is empowered to do so. If he has received any benefit under the contract, he must restore such benefit to the person from whom he has received it.

Example 35: An insurance company may rescind a policy on the ground that material fact has not been disclosed. When it does so, the premium collected by it in respect of the policy reduced by the amount of expenses incurred by it in this connection must be repaid to the policy holder.

65 - Obligations of Person who has Received Advantage under Void

Agreement or contract that becomes void

Overview	Key point
<p>If a contract is discovered to be void</p> <ul style="list-style-type: none"> • Any person who has received an advantage must restore it or provide compensation to the party from whom it was received. 	<ul style="list-style-type: none"> • The aim is to return the parties to their pre-contract position. • A party must give back whatever he has received under the contract. The benefit to be restored received under the contract (and not any other amount)

Analysis of Section 65 - From the language of the Section, it is clear that in such a case either the advantage received must be restored back or compensation, sufficient to put the position prior to contract, should be paid.

Example:

- *If a plaintiff paid rent (12 months) for a godown that was later (In 7 months) destroyed by fire (without fault or negligence on plaintiff part), plaintiff are entitled to a refund for the unexpired term of the contract.*
- *A agrees to sell land to B for Rs. 4,00,000, and B pays Rs. 40,000 as a deposit. The contract states that if B fails to complete the sale within a specified time, the deposit will be forfeited.*
- *B does not complete the sale on time and is not ready or willing to do so even after a reasonable period.*
- *In this case, A has the right to cancel the contract and keep the Rs. 40,000 deposit. The deposit isn't considered a benefit under the contract but serves as security to ensure B would fulfill the agreement. It is related to the contract but not considered a benefit to be returned.*

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Example 36:

A pays B Rs. 1,00,000, in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A Rs. 1,00,000.

66 - Communication of rescission

Overview and key point

- Rescission of a voidable contract must be communicated to the other party.
- The communication must follow the same rules as proposals under Sec. 4
- Rescission can also be revoked using the same communication method

67 - Effects of neglect of promisee to afford promisor reasonable facilities for performance

Overview

If the promisee fails to provide reasonable facilities for the promisor to perform their promise, the promisor is excused from any non-performance that results from this neglect.

Implication

The promisor cannot be held liable for failing to perform if the promisee has not facilitated the performance.

Example 37: If an apprentice refuses to learn, the teacher cannot be held liable for not teaching.

Example 38: A contracts with B to repair B's house. B neglects or refuses to appoint out to A the places in which his house requires repair. A is excused for the non-performance of the contract, if it is caused by such neglect or refusal.

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

Discharge of Contract	Explanation	Examples
By Performance	When both parties fulfill their obligations under the contract. This can be Actual or Attempted performance.	Example 39: A sells his car to B, and B pays the agreed price. The contract ends by performance.
	<p>Actual performance = When each of the parties has done what he had agreed to do under the agreement.</p> <p>When the promisor offers to perform his obligation, but the promisee refuses, it amounts to attempted performance or tender.</p>	Example 40: A offers timber to B at the agreed time and place, but B refuses to accept it (attempted performance).
By Mutual Agreement	The contract can be discharged by novation, rescission, or alteration, where the original contract need not be performed.	Example 41: A owes B Rs. 1,00,000, but they agree to mortgage A's estate for Rs. 50,000 instead.
	(CONNECT SECTION 62)	Example 42: A pays B Rs. 3,00,000 for a Rs. 5,00,000 debt, and B accepts it in full satisfaction.
By Impossibility of Performance	A contract is discharged when it becomes impossible to perform either from the start (ab initio) or due to subsequent impossibility.	Example 43: A agrees to discover a treasure by magic (initial impossibility).
	A contract can be discharged	Example 44: A and B

2.4 ► Performance of Contract

	<p>due to:</p> <ul style="list-style-type: none"> • Unforeseen change in law: If a new law makes the contract illegal. • Destruction of subject-matter: If the essential item for the contract is destroyed. • Non-existence of certain conditions: If a specific situation or condition expected to fulfill the contract no longer exists. • Personal incapacity: If a person involved becomes incapable, such as due to a serious illness. • Declaration of war: If war breaks out, making the contract impossible to perform 	<p>contract to marry, but A goes mad before the wedding (supervening impossibility).</p> <p>Example 45: A agrees to act at a theatre for six months, with B paying in advance. However, on several occasions, A is too sick to perform. The contract for those missed performances becomes void</p> <p>Example 46: X agrees to sell his horse to Y for ₹5,000. The horse dies in an accident, making it impossible to complete the sale. A valid contract becomes void due to the impossibility of performance.</p>
By Lapse of Time	<p>If a contract is not performed within a specified time, as prescribed by the Limitation Act, 1963, it may become time-barred and unenforceable.</p>	<p>Example 47: If a creditor does not sue for the price within three years, the debt becomes irrecoverable.</p>
By Operation of Law	<p>A contract may be discharged by law through events like the death of the promisor or insolvency.</p>	<p>Example: A contract terminates upon the death of the promisor.</p>
By Breach of Contract	<p>Breach may be actual (failure to perform on the due date) Or anticipatory (repudiation before performance is due)</p> <p>A party injured has a right of action for damages AND he is also discharged from performing his part of the contract.</p>	<p>Example 48: A failed to supply rice to B on the agreed date, resulting in an actual breach.</p>
By Waiver or Remission	<p>The promisee may choose to waive or remit performance, or</p>	<p>Example 49:</p>

	accept alternative satisfaction in place of the original promise.	A owes B Rs. 5,00,000, but B accepts Rs. 1,00,000 from C as full satisfaction of A's debt.
By Neglect of Promisee	If the promisee neglects or refuses to provide reasonable facilities for the performance, the promisor is excused from performance.	Section 67: If B prevents A from performing a task, A is excused from performing due to B's neglect.
By Merger of Rights	Inferior rights merge into superior rights when they coincide in the same person, eliminating the need to enforce the inferior rights.	Example 50: A leases land from B but later buys the land. The lease is terminated as A's ownership rights take precedence.

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“ PROBLEM KYA HAI ? - Unit 4 ”

Question Bank ICA

*This section is complied with questions and suggested answers
for the chapter - ICA*

- ❖ *ICAI Study material*
- ❖ *Previous year Question Papers (PYQPs)*
- ❖ *Mock Test Papers (MTPs)*
- ❖ *Revision Test Papers (RTPs)*

Compiled by - CA Chaitanya Jain

Question 1

X, Y and Z jointly borrowed Rs. 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:

1. Y can recover the contribution from X and Z,
2. Legal representatives of X are liable in case of death of X,
3. Y can recover the contribution from the assets, in case Z becomes insolvent.

(Module)

Answer 1

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfil the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisors, the representatives of all jointly must fulfil the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

1. Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
2. Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
3. Y also can recover the contribution from Z's assets.

Question 2

Mr. Rich aspired to get a self-portrait made by an artist. He went to the workshop of Mr. Can artist and asked whether he could sketch the former's

portrait on oil painting canvas. Mr. C agreed to the offer and asked for \$ 50,000 as full advance payment for the above creative work. Mr. C clarified that the painting shall be completed in 10 sittings and shall take 3 months.

On reaching to the workshop for the 6th sitting, Mr. Rich was informed that Mr. C became paralyzed and would not be able to paint for near future. Mr. C had a son Mr.K who was still pursuing his studies and had not taken up his father's profession yet?

Discuss in light of the Indian Contract Act, 1872?

1. Can Mr. Rich ask Mr. K to complete the artistic work in lieu of his father?
2. Could Mr. Rich ask Mr. K for refund of money paid in advance to his father?

(Module)

Answer 2

A contract which involves the use of 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 unless a contrary intention appears from the contract (Section 37 of the Indian Contract Act, 1872). But their liability under a contract is limited to the value of the property they inherit from the deceased.

1. In the instant case, since painting involves the use of personal skill and on becoming Mr. C paralyzed, Mr. Rich cannot ask Mr. K to complete the artistic work in lieu of his father Mr. C
2. According to section 65 of the Indian Contract Act, 1872, 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. Hence, in the instant case, the agreement between Mr. Rich and Mr. C has become void because of paralysis to Mr. C. So, Mr. Rich can ask Mr. K for refund of money paid in advance to his father, Mr. C.

Question 3

Mr. JHUTH entered into an agreement with Mr. SUCH to purchase his (Mr. SUCH's) motor car for Rs. 5,00,000/- within a period of three months. A security amount of Rs. 20,000/- was also paid by Mr. JHUTH to Mr. SUCH in terms of the agreement. After completion of three months of entering into the agreement,

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Mr. SUCH tried to contract Mr. JHUTH to purchase the car in terms of the agreement. Even after lapse of another three month period, Mr. JHUTH neither responded to Mr. SUCH, nor to his phone calls. After lapse of another period of six months. Mr. JHUTH contracted Mr. SUCH and denied to purchase the motor car. He also demanded back the security amount of Rs. 20,000/- from Mr. SUCH. Referring to the provisions of the Indian Contract Act, 1872, state whether Mr. SUCH is required to refund the security amount to Mr. JHUTH. Also examine the validity of the claim made by Mr. JHUTH, if the motor car would have destroyed by an accident within the three month's agreement period.

(Module)

Answer 3

In terms of the provisions of Section 65 of the Indian Contract Act, 1872, 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

Referring to the above provision, we can analyse the situation as under.

The contract is not a void contract. Mr. SUCH is not responsible for Mr. JHUTH's negligence. Therefore, Mr. SUCH can rescind the contract and retain the security amount since the security is not a benefit received under the contract, it is a security that the purchaser would fulfil his contract and is ancillary to the contract for the sale of the Motor Car. Regarding the second situation given in the question, the agreement becomes void due to the destruction of the Motor car, which is the subject matter of the agreement here. Therefore, the security amount received by Mr. SUCH is required to be refunded back to Mr. JHUTH.

MTPs, RTPs and PYQPs

Question 1

Mr. Singhania entered into a contract with Mr. Sonu to sing in his hotel for six weeks on every Saturday and Sunday. Mr. Singhania promised to pay \$ 20,000 for every performance. Mr. Sonu performed for two weeks but on third week his health condition was very bad, so he did not come to sing. Mr.

Singhania terminated the contract. State in the light of provisions of the Indian Contract Act, 1872:-

- Can Mr. Singhania terminate the contract with Mr. Sonu?

- b. What would be your answer in case Mr. Sonu turns up in fourth week and Mr. Singhania allows him to perform without saying anything?

What would be your answer in case Mr. Sonu sends Mr. Mika on his place in third week and Mr. Singhania allows him to perform without saying anything?

(RTP May 22)

Answer 1

According to Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Section 41 provides that when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Therefore, in the instant case,

- a. As Mr. Sonu could not perform as per the contract, Mr. Singhania can repudiate the contract.
- b. in the second situation, as Mr. Singhania allowed Mr. Sonu to perform in the fourth week without saying anything, by conduct, Mr. Singhania had given his assent to continue the contract. Mr. Singhania cannot terminate the contract however he can claim damages from Mr. Sonu.
- c. in case Mr. Singhania allows Mr. Mika to perform in the third week without saying anything, by conduct, Mr. Singhania had given his assent for performance by third party. Now Mr. Singhania cannot terminate the contract nor can claim any damages from Mr. Sonu.

Question 2

What will be rights with the promisor in following cases? Explain with reasons:

- a. Mr. X promised to bring back Mr. Y to life again.
- b. A agreed to sell 50 kgs of apple to B. The loaded truck left for delivery on 15 th March but due to riots in between reached A on 19th March.
- c. An artist promised to paint on the fixed date for a fixed amount of remuneration but met with an accident and lost his both hands.
- d. Abhishek entered into contract of import of toys from China. But due to disturbance in the relation of both the countries, the imports from China were banned.

(RTP Nov'22, May' 21) (SM)

Answer 2

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- a. The contract is void because of its initial impossibility of performance.
- b. Time is essence of this contract. As by the time apples reached B, they were already rotten. The contract is discharged due to destruction of subject matter of contract.
- c. Such contract is of personal nature and hence cannot be performed due to occurrence of an event resulting in impossibility of performance of contract.
- d. Such contract is discharged without performance because of subsequent illegality nature of the contract.

Question 3

Mr. Harish owes payment of 3 bills to Mr. Ashish as on 31st March, 2022. (i) Rs. 12,120 which was due in May 2018. (ii) Rs. 5,650 which was due in August 2020 (iii) Rs. 9,680 which was due in May 2021. Mr. Harish made payment on 1st April 2022 as below without any notice of how to appropriate them:

A cheque of Rs. 9,680

A cheque of Rs. 15,000

Advice under the provisions of the Indian Contract Act, 1872.

(RTP May'23) (SM) (MTP 6 Marks, Nov' 21)

Answer 3

If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either, the law will allow appropriation of debts in order of time.

In the present case, Mr. Harish had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Harish that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of Rs. 9,680 which was due in May 2021.

Cheque of Rs. 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Hence, Mr. Ashish can appropriate the same against the debt of Rs. 12,120 which was due in 2018 and balance against Rs. 5650 which was due in August 2020.

Question 4

Mr. Sohan, a wealthy individual provided a loan of Rs. 80,000 to Mr. Mukesh on 26th February, 2021. The borrower, Mr. Mukesh asked for a further loan of \$ 1,50,000. Mr. Sohan agreed but provided the loan in parts on different dates. He provided \$ 1,00,000 on 28th February, 2021 and remaining Rs. 50,000 on 3rd March, 2021. On 10th March, 2021 Mr. Mukesh while paying off part Rs. 75,000 to Mr. Sohan insisted that the lender should adjusted \$ 50,000 towards the loan taken on-3rd March, 2021 and balance as against the loan on 26th February, 2021. Mr. Sohan objected to this arrangement and asked the borrower to adjust in the order of date of borrowal of funds.

Now you decide:

1. Whether the contention of Mr. Mukesh correct or otherwise as per the provisions of the Indian Contract Act, 1872?
2. What would be the answer in case the borrower does not insist on such order of adjustment of repayment?
3. What would be the mode of adjustment/appropriation of such part payment in case neither Mr. Sohan nor Mr. Mukesh insist any order of adjustment on their part?

(RTP Nov'23)

Answer 4

Appropriation of Payments: In case where a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts, the payment shall be appropriated (i.e. adjusted against the debts) as per the provisions of Section 59 to 61 of the Indian Contract Act, 1872.

1. As per the provisions of 59 of the Act, where a debtor owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Therefore, the contention of Mr. Mukesh is correct, and he can specify the manner of appropriation of repayment of debt.

2. As per the provisions of 60 of the Act, 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

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any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Hence in case Mr. Mukesh fails to specify the manner of appropriation of debt on part repayment, Mr. Sohan the creditor, can appropriate the payment as per his choice.

3. As per the provisions of 61 of the Act, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

Hence in case where neither Mr. Mukesh nor Mr. Sohan specifies the manner of appropriation of debt on part repayment, the appropriation can be made in proportion of debts.

Question 5

Mr. Sooraj promises Mr. Manoj to paint a family picture for \$ 20,000 and assures to complete his assignment by 15th March, 2023. Unfortunately, Mr. Sooraj died in a road accident on 1st March, 2023 and his assignment remains undone. Can Mr. Manoj bind the legal representative of Mr. Sooraj for the promise made by Mr. Sooraj? Suppose Mr. Sooraj had promised to deliver some photographs to Mr. Manoj on 15th March, 2023 against a payment of \$ 10,000 but he dies before that day. Will his representative be bound to deliver the photographs in this situation?

Decide as per the provisions of the Indian Contract Act, 1872.

(RTP Jun'24) (PYP Jun'23 4 Marks)

Answer 5

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 this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. (Section 37 of the Indian Contract Act, 1872).

As per the provisions of Section 40 of the Indian Contract Act, 1872, if it appears from the nature of the case that it was the intention of the parties to any

contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representative may employ a competent person to perform it.

In terms of the provisions of Section 40 stated above, in case where Mr. Sooraj has to paint a family picture for Mr. Manoj, Mr. Manoj cannot ask the legal representative of Mr. Sooraj to complete the painting work on Mr. Sooraj's death, since painting involves the use of personal skill.

In terms of the provisions of Section 37 stated above, in case where Mr. Sooraj had promised to deliver some photographs to Mr. Manoj, the legal representatives of Mr. Sooraj shall be bound to deliver the photographs in this situation.

Question 6

Explain what is meant by 'Supervening Impossibility' as per the Indian Contract Act, 1872 with the help of an example. What is the effect of such impossibility?

(MTP Mar 22 5 Marks) (MTP Nov'22 5 Marks) (MTP May'23 5 Marks)

(PYP 5 Marks, Jul'21)

Answer 6

According to Section 56 of the Indian Contract Act, 1872, the impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

Subsequent impossibility is also known as Supervening impossibility i.e. becomes impossible after entering into contract. When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc. In other words, sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility.

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility, and thus discharged.

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

Question 7

A, B, C and D are the four partners in a firm. They jointly promised to pay Rs. 6,00,000 to F. B and C have become insolvent. B was unable to pay any amount and C could pay only Rs. 50,000. A is compelled to pay the whole amount to F. Decide the extent to which A can recover the amount from D with reference to the provisions of the Indian Contract Act, 1872.

(MTP Nov'22 4 Marks) (PYP Dec'21 4 Marks)

Answer 7

Joint promisors (Section 42 of the Indian Contract Act, 1872)

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.

Any one of joint promisors may be compelled to perform (Section 43)

As per Section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

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

In the instant case, A, B, C and D have jointly promised to pay \$ 6,00,000 to F. B and C become insolvent.

B was unable to pay any amount and C could pay only \$ 50,000. A is compelled to pay the whole amount to F. Hence, A is entitled to receive 7 50,000 from C and \$ 2,75,000 from D, as worked out below:

From C Rs. 50,000= (C's Liability Rs. 1,50,000 Less: Amount he could not pay Rs. 1,00,000).

From D Rs. 2,75,000= (D's Liability Rs. 1,50,000+ 1/2 of liability of B (Loss) (1,50,000*1/2) i.e. Rs. 75,000+1/2 of C's liability (Loss) (1,00,000*1/2) i.e. Rs. 50,000) in other words, equal proportion i.e., Rs. 5,50,000 (i.e. Rs. 6,00,000-Rs. 50,000) / 2.

Thus, total amount A can receive from C and D comes to Rs. 3,25,000 (50,000+2,75,000)

Question 8

Mr. Gaurav and Mr. Vikas entered into a contract on 1st July, 2022, according to which Mr. Gaurav had to supply 100 tons of sugar to Mr. Vikas at a certain price strictly within a period of 10 days of the contract. Mr. Vikas also paid an amount of * 70,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd July, 2022 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. Gaurav offered to supply sugar on 20th July, 2022 for which Mr. Vikas did not agree. On 1st August, 2022, Mr. Gaurav claimed compensation of \$ 20,000 from Mr. Vikas for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Vikas claimed for refund of \$ 70,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Mr. Vikas contention.

(MTP Apr'23 6 Marks) (MTP 6 Marks, Apr'21)

Answer 8

Subsequent or Supervening impossibility (Becomes impossible after entering into contract): When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.

Also, according to section 65 of the Indian Contract Act, 1872, 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.

In the given question, after Mr. Gaurav and Mr. Vikas have entered into the contract to supply 100 tons of sugar, the event of flood occurred which made it impossible to deliver the sugar within the stipulated time. Thus, the promise in question became void. Further, Mr. Gaurav has to pay back the amount of 7 70,000 that he received from Mr. Vikas as an advance for the supply of sugar within the stipulated time.

Hence, the contention of Mr. Vikas is correct.

Question 9

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Explain any five circumstances under which contracts need not be performed with the consent of both the parties.

(MTP Nov'23 7 Marks) (MTP Nov'22 7 Marks) (PYP Dec'21 7 Marks)

Answer 9

Under following circumstances, the contracts need not be performed with the consent of both the parties:

1. **Novation:** Where the parties to a contract substitute a new contract for the old, it is called novation. A contract in existence may be substituted by a new contract either between the same parties or between different parties the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties. On novation, the old contract is discharged and consequently it need not be performed. (Section 62 of the Indian Contract Act, 1872)
2. **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. (Section 62)
3. **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, a contract is also discharged by alteration. (Section 62)
4. **Remission:** 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. In other words, a contract is discharged by remission. (Section 63)
5. **Rescinds voidable contract:** When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor.
6. **Neglect of promisee:** 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 nonperformance caused thereby. (Section 67)

Question 10

Examine the validity of the following contracts as per the Indian Contract Act, 1872 giving reasons.

J contracts to take in cargo for K at a foreign port. J's government afterwards declares war against the country in which the port is situated and therefore the contract could not be fulfilled. K wants to file a suit against J.

(PYP Dec'21 6 Marks)

Answer 10

As per Section 56 of the Indian Contract Act, 1872 the subsequent or supervening impossibility renders the contract void. Supervening impossibility may take place owing to various circumstances as contemplated under that section, one of which is the declaration of war subsequent to the contract made. In the instant case the contract when made between J and K was valid but afterwards J's government declares war against the country in which the port is situated as a result of which the contract becomes void. Hence, K cannot file a suit against J for performance of the contract.

Question 11

Differentiate between Novation and Alteration as per the Indian Contract Act, 1872.

(PYP Nov'22 5 Marks)

Answer 11

Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases, the original contract need not be performed. Still there is a difference between these two.

1. Meaning: Novation means substitution of an existing contract with a new one. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties.
2. Change in terms and conditions and parties: Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
3. Substitution of new contract: 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 substitute a new contract in place of the old contract. In alteration, there may be a change in some of the terms and conditions of the original agreement.

Question 12

T owes G, the following debts as per the table given below:

Amount of Debt (In Rs.)	Position of debt
5,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
3,000	Time barred on 01st July, 2023 as per the provisions of the Limitation Act, 1963
12,500	Due on 1st April, 2022
10,000	Due on 15th July, 2023
7,500	Due on 25th November, 2023

G makes payment on 1st April, 2023 mentioned as below without any notice regarding how to appropriate the amount/ payment.

(i) A cheque of Rs. 12,500

(ii) A cheque of Rs. 4,000.

In such a situation how the appropriation of the payment is done against the debts as per the provisions of the Indian Contract Act, 1872 by assuming that T also has not appropriated the amount received towards any particular debt.

(PYP Dec 23 4 Marks)

Answer 12

As per the provisions of Section 59 of the Indian Contract Act, 1872, where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

As per the provisions of Section 61 of the Indian Contract Act, 1872, where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

In the present case, G made two payments by way of two cheques. Also, neither G nor T said anything as to the appropriation of the amount towards any particular debt.

Since one of the issued cheques was exactly the amount of the debt due i.e. of Rs. 12,500, by applying the provisions of Section 59 we can say that this is a circumstance indicating for appropriation against that particular debt.

Cheque of Rs. 4,000 can be appropriated in terms of the provisions of Section 61 since neither of the parties, have made any appropriation. The amount will be appropriated in discharging of the debts in order of time against any lawful debt whether they are or are not barred by the law in force for the time being as to the limitation of suits.

Hence cheque of Rs. 12,500 will be appropriated against the debt of & Rs. 12,500 which is due on 1st April, 2022.

As per the scenario given in the question, since two debts are persisting in order of time which were treated as time barred on 1st July 2023, the amount of Rs. 4,000 will be appropriated proportionately, i.e. in proportion of 5,000:3,000. Therefore as per the provisions of the Indian Contract Act, 1872, Rs. 2,500 will be appropriated for the first debt and Rs. 1,500 will be appropriated towards the second debt.

Question 13

In light of provisions of the Indian Contract Act, 1872 answer the following:

Mr. S and Mr. R made contract wherein Mr. S agreed to deliver paper cup manufacture machine to Mr. R and to receive payment on delivery. On the delivery date, Mr. R didn't pay the agreed price.

Decide whether Mr. S is bound to fulfil his promise at the time of delivery?

(RTP May'21)

Answer 13

As per Section 51 of the Indian Contract Act, 1872, 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. Such promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of the other. If one of the promises is not performed, the other too need not be performed

Referring to the above provisions, in the given case, Mr. S is not bound to deliver goods to Mr. R since payment was not made by him at the time of delivery of goods.

Question 14

X, Y and Z jointly borrowed Rs. 90,000 from L. Decide each of the following in the light of the Indian Contract Act, 1872:

1. Whether L can compel only Y to pay the entire loan of Rs. 90,000?
2. Whether L can compel only the legal representatives of Y to pay the loan of Rs. 90,000, if X, Y and Z died?
3. Whether Y and Z are released from their liability to L and X is released from his liability to Y and Z for contribution, if L releases X from his liability and sues Y and Z for payment?

(PYP 6 Marks, Jul'21)

Answer 14

1. Yes, L can compel only Y to pay Rs. 90,000/- since as per Section 43 of the Indian Contract Act, 1872, in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.
2. As per Section 42, when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly must fulfill the promise
In the instant case, if X, Y and Z died then the legal representatives of all (i.e. X, Y and Z) shall be liable to pay the loan jointly. L cannot compel only the legal representatives of Y to pay the loan of Rs. 90,000.
3. According to Section 44, 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.
In this case, the release of X does not discharge Y and Z from their liability. Y and Z remain liable to pay the entire amount of Rs. 90,000 to L. And though X is not liable to pay to L, but he remains liable to pay to Y and Z i.e. he is liable to make the contribution to the other joint promisors.

Question 15

Krish, Kamyra and Ketan are partners in a firm. They jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount to Dia. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which Krish can recover the amount from Ketan.

(MTP 4 Marks, Mar'21)

Answer 15

As per section 43 of the Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. In the instant case, Krish, Kamyra and Ketan jointly promised to pay Rs. 6,00,000 to Dia. Kamyra become insolvent and her private assets are sufficient to pay 1/5 of her share of debts. Krish is compelled to pay the whole amount. Krish is entitled to receive Rs. 40,000 from Kamyra's estate, and Rs. 2,80,000 from Ketan.

Question 16

State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872.

(MTP 7 Marks, Mar 21)

Answer 16

Discharge of a Contract:

A Contract may be discharged either by an act of parties or by an operation of law which may be enumerated as follows:

1. Discharge by performance which may be actual performance or attempted performance. 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 promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.
2. Discharge by mutual agreement: Section 62 of the Indian Contract Act, 1872 provides that if the parties to a contract agree to substitute a new contract for

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it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature

3. Discharge by impossibility of performance: The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a) unforeseen change in law (b) The destruction of subject matter (c) The non-existence or non-occurrence of particular state of things (d) the declaration of war (Section 56).
4. Discharge by lapse of time: A contract should be performed within a specific period as prescribed in the Law of Limitation Act, 1963. If it is not performed the party is deprived of remedy at law.
5. Discharge by operation of law: It may occur by death of the promisor, by insolvency etc.
6. Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. 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 (Section 64).
7. A 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 he thinks fit. In other words, a contract may be discharged by remission. (Section 63).
8. When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

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