

Discharge Of Contract

Mercantile Law

DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e., when the rights and obligations created by it come to an end.

DISCHARGE OF CONTRACT

A contract may be discharged –

1. By performance.
2. By agreement or consent
3. By impossibility or performance
4. By lapse of time
5. By operation of law
6. By breach of contract.

Discharge by Performance

Performance means the doing of that which is required by a contract. Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed. In such a case, the parties are discharged and the contract comes to an end. But if only one party performs the promise, he alone is discharged. Such a party gets a right of action against the other party who is guilty of breach.

DISCHARGE OF CONTRACT

Performance of a contract is the most usual mode of its discharge. It may be by

- (1) actual performance, or
- (2) attempted performance.

DISCHARGE OF CONTRACT

Actual performance : When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement. Most of the contracts are discharged by performance in this manner.

Attempted performance or tender :

Tender is not actual performance but is only an offer to perform the obligation under the contract. Where the promisor offers to perform his obligation, but the promisee refuses to accept the performance, tender is equivalent to actual performance.

The effect of a valid tender is that the contract is deemed to have been performed by the tenderer. The tenderer is discharged from the responsibility for non-performance of the contract without in any way prejudicing his rights which accrue to him against the promisee.

Essentials of valid tender:

1. It must be unconditional
2. It must be made at proper time and place
3. It must be for the entire obligation as contained in the contract
4. The tenderer must be able and willing to perform it then and there only

5. The tender must be made to proper person
6. Tender of goods must be made in such a manner that a reasonable opportunity is available to the buyer to inspect the goods
7. If there are more than one promisee, then tender may be made to any one of them

Discharge by Agreement or Consent:

As it is the agreement of the parties which binds them, so by their further agreement or consent the contract may be terminated.

The rule of law in this regard is as follows:
Eodem modo quo quid constituitur, eodem modo destruitur, i.e., a thing may be destroyed in the same manner in which it is constituted.

DISCHARGE OF CONTRACT

Types of discharge by agreement or consent:

- | | | | |
|-----|------------|-----|------------|
| (a) | Novation | (b) | Rescission |
| (c) | Alteration | (d) | Remission |
| (e) | Waiver | (f) | Merger |

DISCHARGE OF CONTRACT

Discharge by agreement or consent may be by express or implied agreement or consent.

DISCHARGE OF CONTRACT

Novation (Sec. 62) : Novation takes place when (i) a new contract is substituted for an existing one between the same parties, or (ii) a contract between two parties is rescinded in consideration of a new contract being entered into on the same terms between one of the parties and a third party.

DISCHARGE OF CONTRACT

Example of the second type of novation:

A common instance is where a creditor at the request of the debtor agrees to take another person as his debtor in place of the original debtor. The consideration for the new contract is the discharge of the old contract. It is essential for the principle of novation to apply that there must be the mutual or tripartite consent of all the parties concerned.

DISCHARGE OF CONTRACT

Novation should take place before expiry of the time of the performance of the original contract. If it does not, there would be a breach of the contract. If a new contract is subsequently substituted for the existing contract, it would only be to adjust the remedial rights arising out of the breach of the old contract. If for any reason the new contract cannot be enforced, the parties can fall back upon the old contract.

DISCHARGE OF CONTRACT

Alteration (Sec. 62) : Alteration of a contract may take place when one or more of the terms of the contract is/are altered by the mutual consent of the parties to the contract. In such a case, the old contract is discharged.

DISCHARGE OF CONTRACT

Differences between novation and alteration:

1. In novation, the change in the existing contract is substantial and in alteration it is less than that.
2. In novation parties *may* change but in alteration they would remain the same.

DISCHARGE OF CONTRACT

Rescission (Sec. 62) : Rescission of a contract takes place when the parties to a contract may decide that they will forget the contract and will not bring a new contract into existence to replace it. A promise not to demand performance from each other becomes the mutual consideration for discharge of contract. It may be noted that if the parties do not take steps towards performance of a contract for a long time, this will amount to abandonment of the contract and will bring about its implied rescission.

DISCHARGE OF CONTRACT

Mode of communicating or revoking rescission:
The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication, or revocation, of a proposal (Sec. 66).

The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received (Sec. 64).

DISCHARGE OF CONTRACT

Rescission : The agreement to mutually rescind the contract may take place either before its breach by a party or after its breach.

DISCHARGE OF CONTRACT

Remission (Sec. 63) : Remission means acceptance of a lesser fulfillment of the promise made, e.g., acceptance of a lesser sum than what was contracted for, in discharge of the whole of the debt.

It is not necessary that there must be some consideration for the remission of the part of the debt. Sec. 63 allows the promisee to dispense with or remit the performance of the promise by the promisor, or to extend the time for performance or to accept any other satisfaction instead of performance.

DISCHARGE OF CONTRACT

The one-sided concession of remission is given under a mutual agreement between the parties.

REMISSION

In England, an agreement spelling out remission (or concession) would be declared as a *nudum pactum* and hence void. (A *nudum pactum* is an agreement without consideration)

DISCHARGE OF CONTRACT

But if the same one-sided concession is given by a unilateral declaration of renunciation, then it is called '**Waiver**'. Strictly speaking, waiver is not a method of discharge by *mutual* agreement.

DISCHARGE OF CONTRACT

Merger : Merger takes place when an inferior right accruing to a party under contract merger into a superior right accruing to the same party under the same or some other contract.

DISCHARGE OF CONTRACT

Discharge by Impossibility of Performance : If an agreement contains an undertaking to perform an impossibility, it is void *ab initio*. The rule is based on the following maxims:

- (1) *Lexicon cogit ad impossibilia*, i.e., the law does not recognise what is impossible, and
- (2) *Impossibilium nulla obligatio est*, i.e., what is impossible does not create an obligation.

DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

1. **Impossibility existing at the time of agreement.** The first paragraph of Sec. 56 lays down that “an agreement to do an act impossible in itself is void”. This is known as pre-contractual or initial impossibility.

DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE

2. Impossibility arising subsequent to the formation of contract.

Impossibility which arises subsequent to the formation of a contract (which could be performed at the time when the contract was entered into) is called post-contractual or supervening impossibility.

DISCHARGE BY SUPERVENING IMPOSSIBILITY

1. Destruction of subject-matter of contract.
2. Non-existence or non-occurrence of a particular state of things.
3. Death or incapacity for personal service.
4. Change of law or stepping in of a person with statutory authority.
5. Outbreak of war.

IMPOSSIBILITY OF PERFORMANCE – NOT AN EXCUSE

“Impossibility of performance is, as a rule, not an excuse for non-performance,” observed Scrutton, L.J. in *Ralli Bros. v. Compania Nautera, etc.*, (1920) 2 K.B. 287.

IMPOSSIBILITY OF PERFORMANCE – NOT AN EXCUSE

In the following cases, a contract is not discharged on the ground of supervening impossibility.

1. Difficulty of performance.
2. Commercial impossibility.
3. Impossibility due to failure of a third person.
4. Strikes, lock-outs and civil disturbance.
5. Failure of one of the objects.

EFFECTS OF SUPERVENING IMPOSSIBILITY

1. When the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void (Sec. 56, para 3).

EFFECTS OF SUPERVENING IMPOSSIBILITY

2. Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, the promisor must make compensation to the promisee for any loss which the promisee sustains through the non-performance of the promise (Sec.66, para 3).

EFFECTS OF SUPERVENING IMPOSSIBILITY

3. Where 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 (Sec. 65).

DOCTRINE OF FRUSTRATION

In England, the doctrine of frustration is the concept that is analogous to 'supervening impossibility. It comes into play when the common object of a contract can no longer be achieved or when the contract, after it is made, becomes impossible of performance due to circumstances beyond the control or contemplation of the parties.

DISCHARGE BY LAPSE OF TIME

The Limitation Act, 1963 lays down that a contract should be performed within a specified period, called period of limitation. If it is not performed, and if no action is taken by the promisee within the period of limitation. He is deprived of his remedy at law.

DISCHARGE BY LAPSE OF TIME

The Limitation Act, 1963 lays down a period of three years for the enforcement of most types of rights.

DISCHARGE BY OPERATION OF LAW

A contract may be discharged independently of the wishes of the parties, i.e., by operation of law. This includes discharge –

- a. By death (in the case of contracts for personal service).
- b. By insolvency.
- c. By unauthorised alteration of the terms of a written agreement.
- d. By rights and liabilities becoming vested in the same person.

DISCHARGE BY BREACH OF CONTRACT

Breach of contract means a breaking of the obligation which a contract imposes. It occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it.

DISCHARGE BY BREACH OF CONTRACT

Breach of contract may be –

1. Actual breach of contract, or
2. Anticipatory or constructive breach of contract.

Actual Breach of Contract

It may take place –

- 1. At the time when the performance is due.** Actual breach of contract occurs, when at the time when the performance is due, one party fails or refuses to perform his obligation under the contract.

Actual Breach of Contract

- 2. During the performance of the contract.** Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under the contract. This refusal to perform may be by –
- a. Express repudiation (by word or act).
 - b. Implied repudiation (impossibility created by the act of a party to the contract).

Anticipatory Breach of Contract

It occurs when a party to an executory contract declares his intention of not performing the contract before the performance is due. He may do so –

1. By expressly renouncing his obligation under the contract.
2. By doing some act so that the performance of his promise becomes impossible.

Anticipatory Breach of Contract

The rights of the promisee (the party not in breach or the aggrieved party) in case of doctrine of anticipatory breach.

1. He can treat the contract as discharged so that he is absolved of the performance of his part of the promise.
2. He can immediately take a legal action for breach of contract or wait till the time the act was to be done.

MULTIPLE CHOICE QUESTIONS

DISCHARGE OF CONTRACT

MULTIPLE CHOICE QUESTIONS

On the valid performance of the contractual obligation by the parties, the contract-

- a. is discharged**
- b. become enforceable
- c. becomes void
- d. none of these

MULTIPLE CHOICE QUESTIONS

An agreement to do an act impossible in its self under sec.56 is—

- a. **void**
- b. valid
- c. Voidable
- d. Unenforceable

MULTIPLE CHOICE QUESTIONS

Under sec.62 the original contract need not be performed if there is—

- a. novation
- b. rescission
- c. alteration
- d. all of them**

MULTIPLE CHOICE QUESTIONS

Novation means—

- a. change in the term of the contract
- b. substitution of existing contract for a new one**
- c. cancellation of the existing contract
- d. none of these

MULTIPLE CHOICE QUESTIONS

Where the contract becomes impossible to be performed due to change in the circumstances beyond the contemplation of the parties, this is called—

- a. supervening impossibility**
- b. novation of contract
- c. rescission
- d. remission of contract

MULTIPLE CHOICE QUESTIONS

Any agreement which becomes impossible to perform under various circumstances—

a. voidable

b. void

c. valid

d. none of these

MULTIPLE CHOICE QUESTIONS

A contract discharged by rescission means

- a. change in one or more terms of the contract.
- b. acceptance of lesser performance.
- c. abandonment of rights by a party.
- d. cancellation of the existing contract.**

MULTIPLE CHOICE QUESTIONS

A contract discharged by novation means

- a. cancellation of the existing contract
- b. change in one or more terms of the contract
- c. substitution of existing contract for a new one**
- d. none of these.

MULTIPLE CHOICE QUESTIONS

Where the promisor absolutely refuses to perform the contract prior to the due date of performance, it is known as

- a. abandonment of contract.
- b. remission of contract.
- c. actual breach of contract.
- d. anticipatory breach of contract**

MULTIPLE CHOICE QUESTIONS

Discharge by mutual agreement may involve

- a. Novation
- b. Recission
- c. Alteration
- d. All of the above**

MULTIPLE CHOICE QUESTIONS

P promises to paint a picture for R at a certain price. Pick out the incorrect statement.

- a. P is not bound to perform the promise himself.
- b. P can appoint some other painter to paint the picture on his
- c. If P dies before painting the picture, the contract can still be enforced

d. All of the above are incorrect.

MULTIPLE CHOICE QUESTIONS

Where the Contracting parties change, then it is a case of

- a. Remission
- b. Recission
- c. Novation**
- d. Alteration

If a new contract is substituted in place of an existing contract, it is called --

- a. alteration
- b. novation**
- c. waiver
- d. remission

A lends Rs.500 to B. He later tells B that he need not repay the amount, the contract is discharged by -

- a. Breach
- b. Waiver**
- c. Novation
- d. Performance.

A contract has become more difficult of performance due to some unanticipated events or delays.

The contract -

- a. is discharged.
- b. is not discharged.**
- c. becomes void.
- d. Becomes voidable.

Where a contract could not be performed because of the default of a third person on whose work the promisor relied, it -

- a. is not discharged.**
- b. is discharged.
- c. becomes void.
- d. becomes voidable.

A creditor agrees with his debtor and a third party to accept that third party as his debtor. The contract is discharged by -

- a. performance.
- b. alteration
- c. novation**
- d. remission

In which of the following cases, a contract is not discharged on the ground of subsequent impossibility?

- a. Destruction of subject-matter.
- b. Death of the promisor in case of contract for personal service.
- c. Commercial hardships.**
- d. Change of Law.

The period of limitation for enforcement of contractual rights ordinarily is -

- a. 2 years,
- b. 3 years,**
- c. 4 years,
- d. 5 years.

MULTIPLE CHOICE QUESTIONS

A relief of specific performance in case of breach contract is:

- a. at the discretion of the court,
- b. a basic right of an aggrieved party,
- c. specifically provided in the Indian Contract Act,
- d. none of these

MULTIPLE CHOICE QUESTIONS

In case of breach of contract, which of the following remedies is not available to the aggrieved party?

- a. suit for rescission
- b. suit for damages
- c. suit for specific performance
- d. suit under Indian Penal Code

MULTIPLE CHOICE QUESTIONS

An amount of compensation stipulated in the contract for breach and which is fair and genuine pre-estimate of probable loss, is known as:

- a. Liquidated damages,
- b. Special losses,
- c. Special damages
- d. Penalty

MULTIPLE CHOICE QUESTIONS

Which of the following statements is incorrect?

- a. Ordinary damages are recoverable,
- b. Special damage are recoverable only if the parties knew about them,
- c. Remote or indirect damages are recoverable.**
- d. Exemplary damages may also be allowed.

THE END

Discharge Of Contract