

2.1 Discharge of Contract

A contract creates obligations and rights. Discharge of a contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the rights and obligations of the parties under the contract comes to an end.

2.2 Mode of Discharge of Contract

i) By Performance:

When the parties to the agreement fulfill their respective obligations, then the liability of the parties comes to an end.

Kinds of Performance

a) Actual Performance

The contract is completely terminated when both the parties perform the exact thing which each has agreed to do under exact thing which each has agreed to do under the contract.

b) Attempted Performance

A promisor has made an offer of performance to the promisee and the offer has not been accepted, the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract. If the valid

tender of performance is rejected by the promisee, then the promisor is excused from further performance.

2] By subsequent Agreement (or) Mutual Agreement :-

A contract may come into existence by the mutual consent of the parties, so parties may agree to terminate the existence of the contract.

a) Novation:

It means substitution of a new contract in the place of an existing contract. The new contract may be between the same parties or between different parties. The consideration for novation is the discharge of the old contract.

b) Alteration

It means introducing some changes in the terms of an existing contract. Alteration discharges the original contract and creates a new contract. But parties to the new contract must not change.

c) Rescission

It means cancellation of a contract. The parties can have a contract rescinded by mutual agreement. Avoidable

d) Remission

It is the acceptance of lesser sum than that was contracted for a lesser fulfillment of the promise made.

e) Waiver

It is the intentional abandonment of a right which a person is entitled to. It means that parties to the contract are no longer bound by the contract.

f) Accord and Satisfaction

A smaller amount is accepted in satisfaction of larger amount is valid and the contract is discharged.

3] By Impossibility of Performance

When the performance of the contract is not possible, the contract is discharged because parties cannot perform the contract.

- a) Impossibility existing at the time of agreement
- b) Impossibility arising subsequent to the formation of contract.

i) Destruction of the subject matter

When the subject matter of a contract, subsequent to its formation is destroyed without the fault of the parties to the contract it is discharged.

ii) Death

Where the performance of a contract depends on the personal skill or qualification of a party, the contract is discharged on the illness or death of the party.

iii) Legislative intervention:

Where a subsequent law of administrative order makes the performance of the contract illegal, the contract is discharged.

iv) Outbreak of war

'A' contracts to take in cargo for B at a foreign port. 'A' s government afterwards declare war against the country in which the port is situated. The contract becomes void when war is declared.

v) Non existence of a contemplated event

The contract is discharged if the state of things changes of cases to exist.

'A' and 'B' agree to marry each other before the time fixed for the marriage. 'A' goes mad. The contract becomes void.

4] Discharge By Operation of law

A contract is terminated by operation of law.

- i) Death of a promisor
- ii) Insolvency of promisor
- iii) Material alteration
- iv) Negotiation back

5] Discharge By Lapse of time

Every contract must be performed either within the period fixed or within a reasonable time of contract. If a contract is not performed and if no action is taken by the promisee than the contract is terminated.

6] Discharge By Breach

When one party of the contract fails to perform his obligation under the contract according to the terms of contract it is known as breach of contract.

Two Types

- i) Actual Breach of contract
 - * on due date of performance
 - * during the course of performance

ii) Anticipatory Breach of Contract

This contract occurs when the party declares his intention of not performing the contract before the performance is due.

2.3 Remedies for Breach of Contracts

Remedy means reliefs. If any of one of the parties refuses to perform his part of promise he is guilty of breach of contract. The other party may enforce his right in a court of law.

a) Recission of the Contract

It means a right not to perform obligation. It means cancellation of the contract. When one party to the contract commits breach the other party can rescind the contract and is himself absolved from all his obligations under the contract.

b) Damages:

On breach of contract, the aggrieved party can file a suit for damages against the defaulting party. Damages are monetary compensation payable to the aggrieved party for the loss or injury suffered by him.

Kinds of Damages

i) Ordinary damages

Ordinary damages are those damages which are given for the loss which naturally arise in the usual course of things of breach.

ii) Special damages

Special damages are those damages which are awarded for a breach on account of the special circumstances affecting the aggrieved party.

iii) Exemplary or Vindictive damages

Exemplary damages are those which are in the nature of punishment. These are also called as punitive damages. These damages are granted with the view to punish the defendant.

iv) Nominal damages

Nominal damages are very small in amount. These damages are awarded when the injured party has actually not suffered any loss by reason of breach of contract.

v) Liquidated damages

When the parties to a contract at the time of formation of contract specify a sum which will become payable by the party responsible for breach, such amount is known as liquidated damages.

c) Quantum Meruit

The term Quantum Meruit literally means as much as earned. It applied when a person has rendered goods or services to another person repudiates the contract or some event happens which makes the performance of the contract impossible, the party who has performed the work, though party can claim remuneration for the work he has already done.

d) Specific Performance of the Contract

Damages are not an adequate remedy. In such cases, the court may direct the party in breach for the specific performance of the contract.

It is granted in the following cases:

- i) Agreements to sell immovable property
- ii) Agreements relating to partitions
- iii) Agreements to make lease, family settlements.

e) Injunction:

Suit for injunction means demanding court's stay order. Injunction is an order of the court restraining a person from doing some act. Disobedience of an injunction is punishable as contempt of court.

2.4 Quasi Contract

It is a retroactive arrangement between two parties who have no previous obligations to one another. It is created by a judge to correct a circumstances in which one party acquires something at the expense of the other.

Example:

A person orders some perishable items online by providing his address and paying for the same. At the time of the delivery of the goods, the delivery man delivers them to the wrong address.

Instead of denying the delivery, the receiving party accepts the order and consumes the same.

2.5 Features of Quasi Contractual Rights

- * An quasi contract is not a real contract
- * It is not based upon the offer and acceptance rule.
- * It does not arise from any formal agreement but it is imposed by law
- * It is a right which is available not against the entire world, but against particular person only

2.6 Types of Quasi Contract

- * Supply of Necessaries to incapable person
- * Payment by interested person
- * Payment for Non-gratuitous act
- * Liability of finder of goods.
- * Payment of Delivery by mistakes

2.7 Rules of Quasi Contract

The rules regarding quasi contract govern a contract created by the court for the purpose of equal treatment when two parties are involved in a dispute in which no official agreement exists. The quasi contract is designed to prevent either party from being unjustly enriched.

2.8 Difference Between contract and Quasi contract

The contract refers to an agreement that is enforceable by law. Quasi Contract is one that is not exactly an agreement but it is similar to an agreement. Both parties give their consent voluntarily and freely.