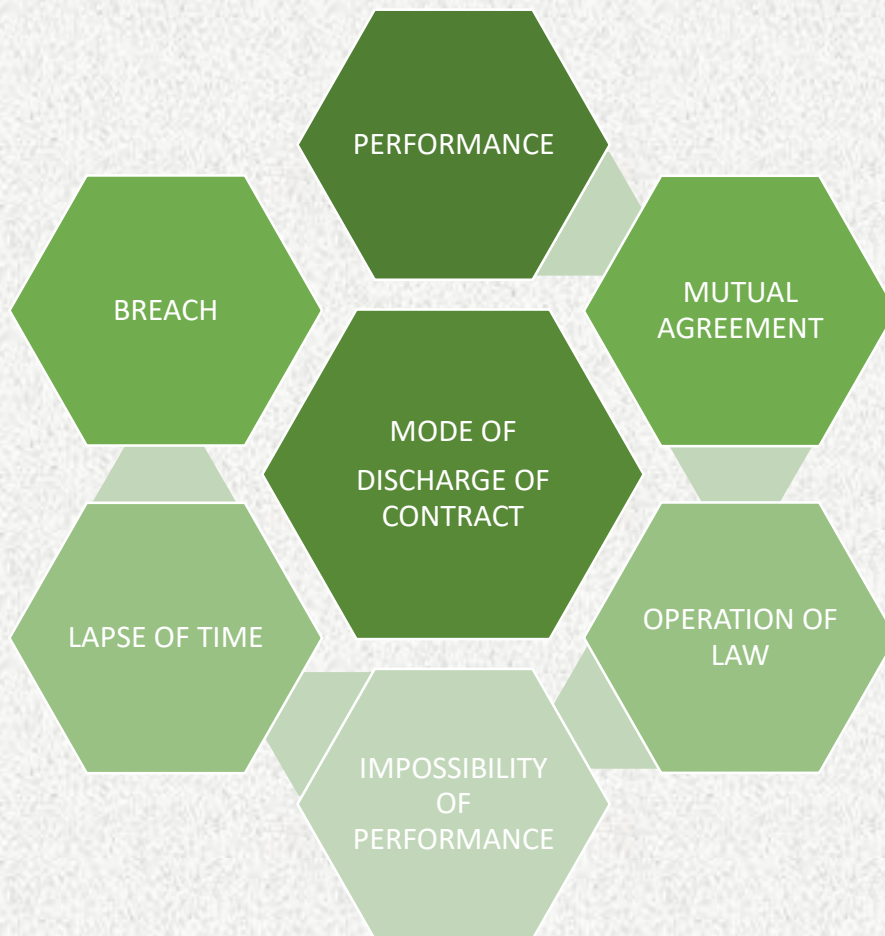


MEANING OF DISCHARGE OF CONTRACT

Discharge of contract also known as termination of contract means termination of the contractual relations between the parties to a contract. A contract is said to be discharged when the right and obligations of the parties under the contract come to an end.

MODE OF DISCHARGE



1. BY PERFORMANCE

A contract is said to be discharged when the parties to contract fulfil their obligation arising under the contract within the time and the manner prescribed. Performance is the best and simplest method of termination of contract. It is of two types:

A. BY ACTUAL PERFORMANCE

A contract is said to be discharged by actual performance when the parties to the contract perform their promises in accordance with the terms of the contract.

Example: B requests A to deliver 100 kg of oranges promising to pay the price on delivery. A complies with B's request and delivers the oranges on the due date. B makes the payment. Hence, contract is terminated by actual performance of contract.

B. BY ATTEMPTED PERFORMANCE

A contract is said to be discharged by attempted performance when the promisor has made an offer of performance to the promisee but it has not been accepted by the promisee.

Example: A enters into a contract with B to deliver 2 tons of fish by the end of January at B's cold store. A transports the fish to his cold store but B refuses to accept the delivery. Here, A (promisor) fulfils his obligation under the contract but B (promisee) refuses to accept the performance. Here A is discharged from his liability.

2. MUTUAL AGREEMENT

Since a contract is created by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following ways:

A. NOVATION

Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The term of contracts may or may not be changed. The consideration for the new contract is the discharge of the original contract.

Example: A is indebted to B. By mutual agreement between A, B and C, it is agreed that henceforth C, instead of A, shall be indebted to B. Here, the liability of A to B ceases and new liability of C to B arise as per the contract.

B. ALTERATION

Alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However, the parties to the new contract must not change.

Example: A agrees to supply 50 bags of rice to B at the rate of Rs 5000 per bag and the delivery is to be made in five instalment commencing from 15th June. Subsequently, both A and B agree that the delivery would be made in two instalments and the price of per bag would be Rs 5500. In this case the parties became bound by the altered contract. And the original contract need not be performed.

C. RESCISSION

Rescission means cancellation of the contract by any party or all the parties to a contract.

Example: A promises to deliver 100 TV to B @ Rs 5000 each on 31st March. Before the due date of performance. Both A and B mutually cancelled the contract. In this case, there is rescission of contract and thus the original contract need not be performed.

D. REMISSION

Remission means the acceptance by the promisee of a lesser sum than what was contracted for, or a lesser fulfilment of the promise made.

Example: A owes Rs 5,00,000 to B. However, A is not in position to meet his liability on the due date and as such makes a request to B for part payment of Rs. 3,00,000 for the final settlement of the debt. If B agrees and remits the balance sum, it discharges the contract.

E. WAIVER

Waiver means giving up of any one's right voluntarily. Thus, it amounts to releasing a person of certain legal obligation under a contract.

Example: X promises to supply goods to Y. Subsequently, Y exempt X from carrying out the promise. This amounts to waiving the right of performance on the part of Y.

F. MERGER

When inferior right and superior right coincide with the same person, then the rights combine or merge leading to discharge of the contract providing inferior right.

Example: A takes a car on hire, whereby he needs to pay monthly instalment to B. Subsequently, A buys the car and becomes its owner. By virtue of being owner he also inherits B's right of receiving rental for the car. However, as this right is inferior to the superior right of ownership, the hire purchase contract is terminated.

3. OPERATION OF LAW

A contract may be discharged by operation of law in the following cases

A. BY DEATH OF PROMISOR

A contract involving the personal skill or ability of the promisor is discharged automatically on the death of the promisor.

Example: Ram, a famous painter, contracted with Shyam to make 5 paintings. Before the paintings were made, Ram died in an accident. Here the contract is discharged as it involves the personal skill of Ram.

B. BY INSOLVENCY

When a person is declared insolvent, he is discharged from his liability up to the date of his insolvency.

Example: Mr A who was liable to pay Rs 500,000 under a contract was declared insolvent. Here A is discharged from paying his liability upto the date of his insolvency.

C. BY UNAUTHORISED MATERIAL ALTERATION

If any party makes any material alteration in the terms of the contract without the approval of the other party, the contract comes to an end.

Example: Ram contracted with Shyam to deliver 100 KGs of Basmati Rice but Ram alters the contract to deliver 100 KGs of Sabitri Rice without the consent of Shyam. Here Shyam can cancel the contract on account of unauthorised material alteration.

D. BY SAME PERSON BECOMING PROMISOR AND PROMISEE

When the promisor becomes the promisee, the other parties are discharged.

Example: A draws a bill receivable on B who accepts the same. A endorses the bill in favour of C who in turn endorses in favour of B. Here, B is both promisor and promisee and hence the other parties are discharged.

4. LAPSE OF TIME

Contract should be performed within the prescribed time or within the reasonable time as per the nature of the work. As per Section 525 (4) of MCCA, in case of a contract with the condition to perform at any specific time has not been performed on the time or within the said time, even

after serving a notice for performance, it may be cancelled by the aggrieved party.

Example: A enters into a contract with B to deliver raw materials within 25th December. B fails to make the delivery within the deadline as per the terms of contract. In this case, contract is terminated by lapse of time.

5. BY IMPOSSIBILITY OF PERFORMANCE

Impossibility can broadly be categorized under two types:

1. Initial impossibility
2. Supervening impossibility

The impossibility which existed at the time of forming of contract is known as initial impossibility. While the impossibility which was not present at the time of forming of contract but which arose subsequently is known as supervening impossibility.

A. EFFECT OF INITIAL IMPOSSIBILITY

CASE	EFFECT
I. Where both the promisor and promisee know about the initial impossibility	<p>Such agreement is void ab initio.</p> <p><i>Example:</i> X undertakes to put life into the dead wife of Y. This agreement is void.</p>
II. Where both the promisor and promisee do not know about the initial impossibility.	<p>Such agreement is void on the ground of mutual mistake.</p> <p><i>Example:</i> X agreed to sell his horse to Y. Unknown to both the parties, the horse was dead at the time of making the agreement. This agreement is void.</p>
III. Where the promisor alone knows about the initial impossibility	<p>Such promisor must compensate for any loss which such promise sustains through the non performance of the promise.</p> <p><i>Example:</i> A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practise polygamy. A must make compensation to B for the loss caused to her by the non performance of his promise.</p>

B. EFFECT OF SUPERVENING IMPOSSIBILITY

If a contract cannot be performed due to unanticipated changed circumstances, the parties to the contract are discharged from their duties and the contract is considered terminated. This is also known as the Doctrine of Frustration of contract.

The impossibility of contract can occur due to following reasons:

- Destruction of subject matter
- Change of law
- Death or personal incapacity
- Declaration of war
- Natural calamity

Example

1. X agreed to sell his crop of wheat. The entire crop was destroyed by fire though no fault of the party. The contract is discharged on the ground of destruction of subject matter.
2. X agreed to sell his land to Y. After the formation of the contract, the government issued a notification and acquired the land. The contract was discharged on the ground of change of law.
3. X agreed to sing on a specified day. X fell seriously ill and could not perform on that day. The contract was discharged on the ground on personal incapacity.
4. X contracts to take in cargo for Y at a foreign port. X's government afterwards declares war against the country in which the port is situated. The contract becomes void when the war is declared.
5. X contracts with Y to deliver his crop of vegetables. Due to flood his entire land was wiped out. Here X is discharged from the liability as it became impossible to perform the contract on account of natural calamities.

However, the following conditions will not make the promise impossible for performance

- Difficulty of performance
- Commercial impossibility
- Default of a third party
- Strike or lockout
- Additional taxes
- Partial impossibility

Example

1. X agreed to supply coal within a specified time. He failed to supply in time because of government's restriction on the transportation of coal from collieries. Here X will not be discharged because the coal was available in the open market from where X could have obtained it.
2. X, a furniture manufacturer agreed to supply certain furniture to Y at an agreed rate. Afterwards, there was a sharp increase in the rates of the timber and rates of wages. Since it was no longer profitable to supply at the agreed rate, X did not supply. X will not be discharged on the ground of commercial impossibility.
3. X entered into a contract with Y for the sale of goods to be manufactured by Z, a manufacturer of those goods. Z did not manufacture those goods. X will not be discharged and will be liable to Y for damages.
4. X agreed to supply to Y certain goods to be imported from Algeria. The goods could not be imported due to riots in that country. It was held that this was no excuse for non performance of the contract.
5. X agreed to let a boat to H for i) viewing the naval review at the coronation of king and ii) to cruise round the fleet. Due to the illness of the king, the naval review was cancelled but the fleet was assembled and the boat could have been used to cruise round the fleet. It was held that the contract was not discharged.