

Discharge of Contract

- A discharge of contract means that parties to the contract are no longer liable for any terms of the agreement, and no further promises may be enforced.

Important ways in which a contract may be discharged

- 1. By performance-actual or attempted.
- 2. By mutual consent or agreement.
- 3. By subsequent or supervening impossibility or illegality.
- 4. By lapse of time.
- 5. By operation of law.
- 6. By breach of contract.

1. Discharge by Performance

- Performance of a contract is the principal and most usual mode of discharge of a contract. Performance may be:
 - (1) Actual performance; or
 - (2) Attempted performance or Tender.
- **Section 37**

- Contracts which must be performed
- Section 37
- 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.

- (a) A promises to deliver goods to B on a certain day on payment of
 - Taka 1,000. A dies before that day. A's representatives are bound to
 - deliver the goods to B, and B is bound to pay the Taka 1,000 to A's
 - representatives.
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- (b) A promises to paint a picture for B by a certain day, at a certain
 - price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

1. Actual performance:

- When each party to a contract fulfills his obligation arising under the contract within the time and in the manner prescribed, it amounts to actual performance of the contract and the contract comes to an end or stands discharged.
- But if one party only performs his promise, he alone is discharged. Such a party gets a right of action against the other party who is guilty of breach.

2. Attempted performance or tender:

- When the promisor offers to perform his obligation under the contract, but is unable to do so because the promisee does not accept the performance, it is called “attempted performance” or “tender.”
- Thus “tender” is not actual performance but is only an “offer to perform” the obligation under the contract. A valid tender of performance is equivalent to performance.

Effect of refusal to accept a valid tender (Sec 38)

- The effect of refusal to accept a properly made “offer of performance” is that the contract is deemed to have been performed by the promisor, i.e., tenderer, and the promisee can be sued for breach of contract. A valid tender, thus, discharges the contract.

For example

- A contracts to deliver to B,c,d at his warehouse, on the 1st March,
- 2023, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

2. Discharge by Mutual Consent or Agreement:

- Since a contract is created by means of an agreement, it may also be discharged by another agreement between the same parties. Sections 62 and 63 deal with this subject and provide for the following methods of discharging a contract by mutual agreement:

(i) Novation

- “Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract.
- A is indebted to B and B to C. By mutual agreement B’s debt to C and B’s loan to A are cancelled and C accepts A as his debtor. There is novation involving change of parties.

Rules of Novation

- (a) Novation cannot be compulsory; it can only be with the mutual consent of all the parties.
- **Illustration:**
- A owes B tk 1,000 under a contract. B owes C tk 1,000. B orders A to credit C with tk 1,000 in his books, but C does not assent to the agreement. B still owes C tk 1,000 and no new contract has been entered into. [Illustration (c) to Section 62].
- (b) The new contract must be valid and enforceable. If it suffers from any legal flaw, e.g., want of proper stamp or registration etc., on account of which it becomes unenforceable, then the original contract revives.

(ii) Alteration:

- Alteration of a contract means change in one or more of the material terms of a contract. If a material alteration in a written contract is done by mutual consent, the original contract is discharged by alteration and the new contract in its altered form takes its place.

(iii) Rescission:

- A contract may be discharged, before the date of performance, by agreement between the parties to the effect that it shall no longer bind them.
- Such an agreement amounts to “rescission” or cancellation of the contract, the consideration for mutual promises being the abandonment by the respective parties of their rights under the contract. An agreement of rescission releases the parties from their obligations arising out of the contract.
- **Illustration:**
- A promises to deliver certain goods to B on a certain date. Before the date of performance, A and B mutually agree that the contract will not be performed. The contract stands discharged by rescission.

(iv) Remission:

- Remission may be defined “as the acceptance of a lesser sum than what was contracted for or a lesser fulfillment of the promise made.”
- Section 63
 - For example:
- A owes B 5,000 Taka. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 Taka paid at the time and place at which the 5,000 Taka were payable. The whole debt is discharged.

3. Discharge by Subsequent or Supervening Impossibility or Illegality:

- **Impossibility at the time of contract:**
- There is no question of discharge of a contract which is entered into to perform something that is obviously impossible, e.g., an agreement to discover treasure by magic, because, in such a case there is no contract to terminate, it being an agreement void ab-initio by virtue of Section 56, Para I, which provides: “an agreement to do an act impossible in itself is void.”

- **Subsequent impossibility:**
- In fact it is this case, where the impossibility supervenes after the contract has been made, which is material to our study of discharge of contracts. In this connection, Section 56, Para 2, declares: “A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful”.

- A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

Taylor v Caldwell

- Fact:
- The case centred on a musical hall which the claimant agreed to hire from the defendant. The hall was to be used for 'grand concerts' and fetes. However before the performance that the music hall was to be used for; there was a fire and the hall was destroyed. Neither party was at fault for this destruction. The claimant sued for breach of contract. The legal issue is whether because the hall that the claimants had contracted to use could no longer be used, this excuses the rights and liabilities of the parties' obligations under the agreement?

According to the agreement, they would no longer be able to perform their obligations that had been contracted for, namely the use of a music hall for four days. In the case, it was held that the defendant was released from their obligations under the doctrine of frustration.

Frustration

Change of circumstances is not the fault of one party performing the contract or a contract for the purpose of those activities where deprivation is probably a contract can be frustrating.

Examples:

Destruction of the subject matter.

4. Discharge by Lapse of Time:

- The Limitation Act lays down that in case of breach of a contract legal action should be taken within a specified period, called the period of limitation, otherwise the promisee is debarred from instituting a suit in a court of law and the contract stands discharged.
- Thus in certain circumstances lapse of time may also discharge a contract.

5. Discharge by Operation of Law:

- **(a) Death:**
- Where the contract is of a personal nature, the death of the promisor discharges the contract. In other contracts the rights and liabilities of the deceased person pass on to the legal representatives of the dead man.
- **(b) Insolvency:**
- A contract is discharged by the insolvency of one of the parties to it when an Insolvency Court passes an “order of discharge” exonerating the insolvent from liabilities on debts incurred prior to his adjudication.
- **(c) Merger:**
- Where an inferior right contract merges into a superior right contract, the former stands discharged automatically.

- **Illustrations:**

- (a) Where a man holding property under a contract of tenancy buys the property, his rights as a tenant are merged into the rights of ownership and the contract of tenancy stands discharged by operation of law. (b) Where a part-time lecturer is made full time lecturer, the contract of part-time lecturer ship is discharged by merger.

- **(d) Unauthorised material alteration:**
- A material alteration made in a written document or contract by one party without the consent of the other, will make the whole contract void.
- Thus, where the amount of money to be received is altered, or an additional signature is forged, on a promissory note by a creditor, he cannot bring a suit on it and the pro-note cannot be enforced against the debtor even in its original shape.

6. Discharge by Breach of Contract:

- Breach of contract by a party thereto is also a method of discharge of a contract, because “breach” also brings to an end the obligations created by a contract on the part of each of the parties.
- Of course the aggrieved party, i.e., the party not at fault can sue for damages for breach of contract as per law; but the contract as such stands terminated.
- Breach of contract may be of two kinds:
- (1) Anticipatory breach; and (2) Actual breach.

- (a) Anticipatory Breach of Contract: Anticipatory breach of contract occurs when party declares his intention of not performing the contract before the performance is due.
- A contracts with B to supply 100 bags of wheat for Tk. 60,000 on 1st March. On 15th February A informs B that he will not be supplying the wheat. There is express rejection of the contract. (anticipatory)

- (b) An Actual Breach of Contract refers to a breach that has already occurred, meaning the breaching party has either refused to fulfill their obligations by the due date or they have performed their duties incompletely or improperly.

Peter enters into a contract with John promising to deliver 50 bags of cotton to him on June 30, 2018. However, on the scheduled day, he fails to deliver the same. This is an actual breach of contract. Also, this breach is at the time the performance of the contract is due.