

PERFORMANCE OF CONTRACTS

Contracts which must be performed:

The law, even after formed of contracts, distinguished those contracts into two categories, namely:

1. **Contracts which must be performed;**
2. **Contracts Which need not be performed.**

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Obligation of parties to contracts:

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.

Illustrations

(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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Rules regarding offer of performance:

Effect of refusal to accept offer of performance

38. Where 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.

Every such offer must fulfil the following conditions:-

(1) it must be unconditional:

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

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By whom contracts must be performed:

Person by whom promise is to be performed

40. 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 representatives may employ a competent person to perform it.

Illustrations

(a) A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

(b) A promises to paint a picture for B. A must perform this promise personally.

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Effect of accepting performance from third person:

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

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Rules regarding the performance of joint promises:

Devolution of joint liabilities:

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 the last survivor, the representatives of all jointly, must fulfil the promise.

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Analysis:

1. During their lives, all such joint promisors are liable to the promise
2. In case of the death of any of the joint promisors the representatives of the dead promisor will be jointly liable with the surviving promisor.
3. In case of the death of all promisors all representatives of the dead promisors will be jointly liable to perform the promise.

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Contracts Which Need Not be Performed

Effect of novation, rescission and alteration of contract

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Thus the section makes it clear that the original contract need not be performed in the following three circumstances:

- If the parties to a contract agree to substitute a new contract for it;
- To rescind; or
- To alter it.

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Promisee may dispense with or remit performance of promise

63. 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.

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Consequences of rescission of voidable contract

64. 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 promisor. The party rescinding a voidable contract shall, if he have 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.

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Agreement to do impossible act

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful:

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.

Compensation for loss through non-performance of act known to be impossible or unlawful

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, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.