

SECTION 55 & 56

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Effect of failure to perform at fixed time,
in contract in which time is essential

Sec 55: When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before a specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is
not essential

Performance of Reciprocal Promises:

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance he gives notice to the promisor of his intention to do so.

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 promissor 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.

Illustrations

a) A agrees with B to discover treasure by magic. The agreement is void.

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

Doctrine of supervening impossibility/Doctrine of Frustration: meaning

The doctrine of supervening impossibility or the doctrine of frustration becomes applicable when a contract becomes impossible to perform due to the happening of some unforeseen circumstances which were beyond the control or calculation of the parties involved. When such a contract becomes entirely impossible without the fault of the parties, the contract gets dissolved by this doctrine. This doctrine is based on the maxim '*Lex non cogit ad impossibilia*'. The maxim essentially means that "law does not compel the impossible". This can arise when there is a war, act of god, amendment of laws, death of a party, etc.

The following are the requisites for the application of this doctrine:

1. When an event or incident occurs that the parties were unable to contemplate when the contract was formed.
2. None of the parties are at fault for the occurrence of the event.
3. The contract if performed would turn out different from what the parties agreed to initially.

Applicability of the doctrine of supervening impossibility

The doctrine is also subject to some limitations or rules which are the following:

- 1.The doctrine is based on the presumed intention of parties. This means that no implied condition can be taken into consideration if it is in contravention with the express terms.
- 2.Where at least one of the parties is to be blamed for the occurrence of the event, the doctrine loses its force.
- 3.Commercial impossibility is not taken into consideration.
- 4.This doctrine applies only when the intentions or terms of both parties cannot be met.
- 5.Where the contract can be performed through multiple modes, the doctrine fails to apply.

Case laws

The case of *Taylor v. Caldwell* (1863) tremendously changed the law of contracts in England. In this case, an opera house was rented for the purpose of holding concerts. The opera house, however, was destroyed by fire before the night of the concert. Blackburn J held that on the frustration of a contract it gets discharged because the discharge of the contract can be considered to be an implied term that the parties agreed to on the happening of the uncertain events. This theory is called the implied term theory.

Obligation of person who has received advantage under void agreement or contract that becomes void

65. When 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.

Illustrations

(a) A pays B 1,000 Taka in consideration of B's promising to marry C, A's daughter. C is dead at the time of promise. The agreement is void, but B must repay A the 1,000 Taka.

(b) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day, and none after. B retains the 130 maunds after the first of May. He is bound to pay A for them.

Case laws

In the case of *Satyabrata Ghose v. Mugneeram Bangur and Co.* (1953), the defendant company promised the plaintiff that they would develop a plot of land by constructing roads and drains and then sell the plot to the plaintiff. Later, some portion of the land got requisitioned for military purposes. The Supreme Court decided that since only a portion of the land got requisitioned and not the whole of it, the contract had not become impossible as per Section 56.

Types of supervening impossibility

The following are the main types of supervening impossibility or post-contractual impossibility:

- 1. Destruction of the subject matter of the contract:** A contract gets discharged when its subject matter gets destroyed without the fault of the parties subsequent to its formation. The case of *Taylor v. Caldwell* is an example of this.
- 2. Death, illness or personal incapacity:** When the performance of a contract is dependent upon the personal skills or qualification of any party, the contract becomes discharged if the party becomes ill, incapable or dead before its performance.
In the case of *Robinson v. Davison* (1871), an artist promised to perform at a concert for a specified remuneration. She fell ill before she could perform her obligation. This led to the frustration of the contract.
- 3. Change of law:** In some cases due to unexpected subsequent changes in law, a contract may be rendered impossible by making it illegal.

Exceptions to the doctrine

1. Commercial impossibility:
2. Self-induced impossibility:
3. Inherent or foreseeable risks
4. Failure of a third party:
5. Failure of one of the objects:

Act of God' or 'Force Majeure

Act of God' or 'Force Majeure' is an event, where a party to a contract of non-performance is excused or has frustrated the contract rendering it impossible or impractical to perform. The term force majeure is a French phrase and literally translates to mean a 'superior or greater force'

- As per Black's law dictionary, 'Force Majeure' is an event or effect that can neither be anticipated nor controlled. It is a contractual provision allocating the risk of loss if performance becomes impossible or impractical, especially as a result of an event that the parties could not have anticipated or controlled.
- From the perspective of contracts, the 'Force Majeure' clause pardons a party from performing its obligations under a contract upon the occurrence of a force majeure event.

The term 'Force Majeure' is not defined anywhere but derives its reference from the Contract Act, 1872 which contemplates that if the contract contingent on the happening of an event which becomes impossible, then the contract becomes null and void.

If a Force Majeure event occurs dehors the contract, it is dealt with by a positive rule of law pursuant to Section 56 of the Contract Act-which provides that an arrangement to do an act impossible in itself is void; and that a contract which becomes impossible or unlawful to execute due to an intervening event is void in law after it has been entered into.

Example:

earthquakes, tsunamis, hurricanes, and storms.