

Corporate Laws

BBA(FIA)

Lecture 10

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Discharge of Contracts



- Discharge of contract means ‘the end of contract as a legal entity’
- When rights and obligations arising out of a contract are extinguished the contract is said to be discharged or terminated.

Modes of Discharge of Contract



A contract may be discharged in any of the following ways:

- 1.By performance
- 2.By mutual agreement
- 3.By supervening impossibility
- 4.By lapse of time
- 5.By operation of law
- 6.By breach

1. Discharge by Performance



The most desirable way to bring an end to the contract is by the performance of the duties that the parties had taken upon themselves under the contract.

Performance may be of two types:

- Actual performance
- Attempted performance / tender

1. Discharge by Performance Contd.



Actual Performance:

- when each party fulfills its obligations in exactly the same manner in which it was intended in the contract.
- This amounts to the end of the contract. After this, no claims, whatever, would remain of one against the other.

Attempted Performance:

- when a promisor offers to the other party to do what he had promised, this is called 'offer to perform' or 'tender'.
- When tender is not accepted by the promisee, the performance remains only an attempted performance.
- In such a case, the promisor can claim that his/her obligation is over as he/she sincerely tried to perform his/her promise.

Essentials of a Valid Tender



1. Must be unconditional
2. Made at proper time and place
3. Must be of the whole obligation contracted for
4. Opportunity for Inspection of goods
5. Must be made by a person who is in position and willing to perform
6. Must be made to the proper person
7. Made to any one of the joint promisees
8. Exact amt. should be tendered in legal tender money.

Exception:

Money must be paid after the refusal of tender without the interest.
In case of 'suit cost' of defense can be recovered from plaintiff.

2. Discharge by Mutual Agreement



Just as a contract is formed by an agreement between two parties, similarly it can be brought to an end by another agreement of the same parties even before its performance.

Sections 62 and 63 lay down provisions on the matter.

Ways to discharge by mutual agreement:

- Novation
- Alteration
- Rescission
- Remission
- Waiver

Novation (sec 62)



Novation takes place when an existing contract is substituted by a new one either between the same parties or between the new ones.

Consideration for the new contract is the discharge of the old contract.

Novation must be done before the expiry of the time of performance of the original contract.

Eg:

X has to pay Rs. 1000 to Y, while Y has to pay the same amount to Z. the contract to pay Y by X may be substituted by a new contract between X and Z under which X will pay to Z.

Alteration (sec.62)



If the parties mutually make changes in the contract, making it a new one, this is called 'alteration' in the contract. Such an alteration causes a change in the rights, liabilities or legal position of the parties. Such an alteration will discharge the old contract.

Eg.:

Cat contracted to sell 150 units of a product to Rat. They later mutually decided that Cat will supply, instead of 150, 200 units. This is alteration.

Rescission



It takes place when all or some of the terms of the contract are cancelled. It may take place in any of the following ways:

1.By mutual agreement:

parties may enter into a simple agreement to rescind the contract before its breach.

2.By implied rescission:

non performance of contract by both the parties for long period without complaint.

Remission



It is the acceptance of lesser fulfillment of the terms of the promise, i.e., acceptance of a less sum of money where more is due. The remission is the valid discharge of the whole of the liability under the contract.

Eg.:

Tom owed Rs. 5000 to Jerry. Tom paid Rs. 2000 to Jerry and Jerry accepted it in full satisfaction. In this case Tom is discharged of his liability of Rs. 5000.

Waiver



Term 'waiver' may be defined as the abandonment (i.e., giving up) of the right which a party is entitled to under a contract.

On waiver, the other party to the contract is discharged from the performance of the liabilities under the contract.

Eg.:

Aladdin promised to paint a picture for Jasmine. Afterwards Jasmine forbade him to do so. In this case Jasmine has waived her right to claim the performance and thus Aladdin is no longer liable to perform the contract.

3. Discharge by Supervening Impossibility



Sec. 56(para 1): “an agreement to do an act impossible in itself is void.”

If impossibility is not obvious and promisor alone knows or might know after using reasonable diligence, such promisor is bound to compensate the promisee for loss suffered. (Sec. 56, para 3)

Eg.: Aladdin contracts to marry Jasmine. Aladdin being already married to Dalia, and being forbidden by the law to which he is subject to practice polygamy. Aladdin must make compensation to Jasmine for the loss caused to her by the non-performance of his promise.

Sec.56(para-2): “a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event that the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.”

Eg.: Tom contracted to sell his land to Jerry. Before sale could take place, the government took over the land under law. So sale by Tom has become impossible legally. The contract becomes void.

4. Discharge by Lapse of Time



A contract must be performed within the stipulated time or reasonable time. If time is of essence of the contract, then, performance must take place at the stipulated time.

The law of limitation lays down the limits within which different types of legal rights must be enforced. So, if contractual rights are not enforced within the specified period of limitation, they stand discharged. The Limitation Act 1963, lays down the period of three years for the enforcement of most types of rights.

5. Discharge by Operation of Law



- Death: in case of personal contracts, the death of either party before performance brings an end to the contract.
- Insolvency: when a person is declared insolvent, his/her assets vest in the official assignee. Therefore the insolvent person's unperformed contracts are discharged so that no new liability may be created upon the assets taken over by the official assignee.
- Merger: after having made a contract, the parties may later make another contract which is of the same type but broader in magnitude. E.g.: Huey may agree to work as a part-time employee of Dewey. Later, they may decide that Huey will work as full-time employee. This marks the discharge of first contract.
- Unauthorised Material Alteration: made in a written document and one party alters it in material particulars without the consent of the other party. This discharges the contract. Restitution is allowed.

6. Discharge by Breach of Contract



Where a party to a contract break the obligation which they have undertaken under the contract, the contract stands discharged by breach of contract.

The breach may be either

- Actual Breach of contract
- Anticipatory Breach of Contract

Actual Breach of Contract



It may occur:

1. At the time when performance is due:

When one party fails to perform their obligation under the contract.

2. During the performance of the contract:

When a party fails to perform the obligation under the contract during the performance of the contract. It may be either express or implied repudiation.

Anticipatory Breach of Contract



It occurs when a party repudiates the obligation under the contract before the time for performance arrives.

- Express repudiation: when one party renounces the liability under the contract expressly before the performance becomes due. Statement that 'probably not perform' is not sufficient. Express rejection is needed.
- Implied repudiation: promisor may before the time of performance arrives, by doing some act disables self from performing the contract.

Exception

- Anticipatory breach of contract does not apply to contracts for the payment of debt.

Effect of an Anticipatory Breach:

- Sue the other party for damages immediately or can wait till the time of performance.



THANK YOU