

Corporate Laws

BBA(FIA)

Lecture 9

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Performance of Contract



- Undertake terms of contracts.
- Sec 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 representations of the promisors in case of the death of such promisors before performance unless a contrary intention appears from the contract.”

Types of Performance



- Actual Performance
- Attempted Performance or Tender of Performance
 - Tender of money
 - It must be unconditional
 - Must be made at a proper time and place
 - Must be of the whole obligation
 - The person making the tender must be willing to perform
 - In case of tender of goods reasonable opportunity must be given to the promisee for inspection of goods
 - Must be made to the proper person
 - Offer to one of the joint promisees
 - In case of tender of money, exact amount should be tendered in the legal tender money

By Whom Contracts Must be Performed



1. By the promisor himself (Sec.40)
2. By the agent of promisor (Sec.40)
3. By the legal representative (Sec.37)
4. By a third person (Sec.41)

If it appears from the nature of the case that it was the intention of the parties to the contract that any promise contain in it should be performed by the promisor by self, such promise must be performed by the promisor.

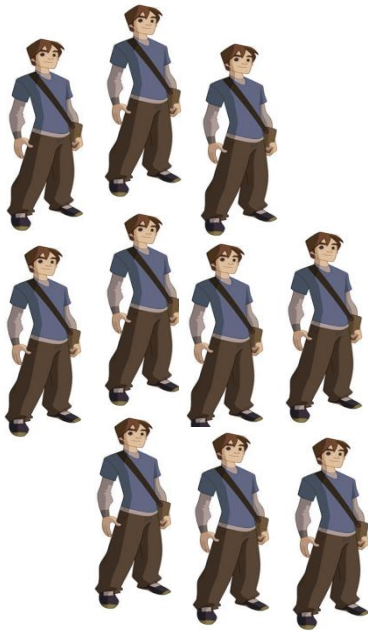
Who can Demand Performance?



- Only the promisee or
- promisee agent or
- legal representatives in case of death can demand performance.

Performance of Joint Promises

- Several Joint promisors and single promisee



Performance of Joint Promises



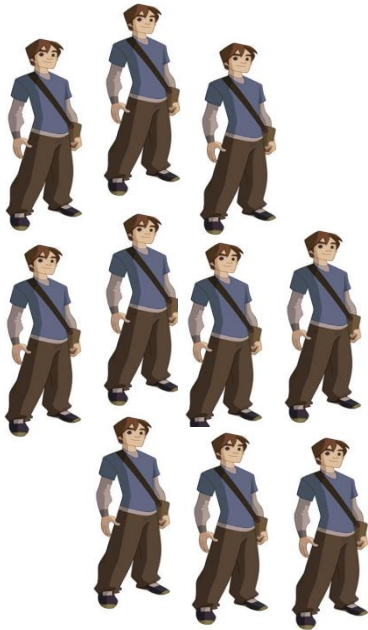
- Single promisor and several Joint promisee



Performance of Joint Promises



- Several Joint promisor and several Joint promisee



By whom Joint Promises must be Performed?

- All promisors / legal reps. must jointly fulfill the promise
- If any one or more of joint promisors are / may be compelled to perform: liability jointly and severally
- Right of contribution inter se between joint promisors
- Sharing of loss by default in contribution:
- Effect of release of one joint promisor



Who can Demand Performance of Joint Promises?



- All promisees jointly / legal reps jointly



Time & Place of Performance

Sec. 46 -50 Contd.



It is for the parties to a contract to decide about the time and place of contract for the performance of contract.

- Performance prescribed or sanctioned by promisee: specified time and place.
- Performance not prescribed or sanctioned by promisee:
 - Within reasonable time: based on usage of trade or intention of parties
 - At proper place: godown or shop or workplace

Effects of Failure to Perform a Contract within Stipulated Time



- Where 'time is of the essence of the contract'
 - Voidable
 - But if performance accepted then becomes valid
 - Loss can be claimed only when at the time of accepting delayed performance promisee gives notice to the promisor of his intention to claim for loss.

- Where 'time is not of the essence of the contract' & performance within reasonable time:
 - valid contract and compensation can be claimed for any loss caused.
 - performance beyond reasonable time: voidable contract

Time as the Essence of the Contract



1. Parties to the contract expressly agree to treat it as such.
2. Circumstances of the contract and nature of transaction or subject matter indicate such.

Mode of Performance



Sec 50 “The performance of any promise may be made in any manner,...which the promisee prescribes or sanctions”

Reciprocal / Mutual Promises



Promises which form consideration for each other are called **reciprocal promises or mutual promises**.

Classification of Reciprocal Promises

- Mutual and Independent:
 - Performed in the order expressly fixed by the contract
 - Order not fixed: Performed in the order which the nature of the transaction requires.
- Mutual and Dependent:
- Mutual and Concurrent:

- Consequences of prevention of performance by one party: voidable contract & claim for loss.

Appropriation of Payments



1. Appropriation by Debtor (Sec. 59)
 - payment where debt to be discharged is indicated with express intimation, or implied intention under circumstances must be applied accordingly.
2. Appropriation by Creditor (Sec.60)
3. Appropriation by Law (Sec.61)
 - In order of time
 - Debts are of equal standing: proportionately
4. Principal and Interest both due: Interest first

Contracts which Need Not be Performed

(Sec. 62 to 67)



1. If the parties to a contract agree to novation, rescission or alteration. (Sec.62)
2. The parties to the contract agree to dispense with or remit performance of promise either wholly or in part or may accept any satisfaction in lieu of thereof. (Remission Sec.63)
3. When a voidable contract is rescinded, the other party need not perform their promise. (Sec. 64)
4. When the failure of performance has been caused by the promisee's neglect or refusal, the promisor will be executed. (Sec. 67)

Assignment of Contracts



Transfer of contractual rights or liability by a party to the contract to some other person (not a party to the contract)

Assignment of liabilities: cannot be assigned except with the consent of promisee.

Assignment of rights: can be assigned

Assignment by operation of law: death or insolvency

Effect and Formalities of Assignment



- Consideration: is required between assignor and assignee
- Notice of assignment to the debtor



THANK YOU