

DISCHARGE OF A CONTRACT

A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways:

(i) Discharge by performance: It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

(1) Actual performance; or

(2) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

Example: A contracts to sell his car to B on the agreed price. As soon as the car is delivered to B and B pays the agreed price for it, the contract comes to an end by performance.

(ii) Discharge by mutual agreement: Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed. The principles of Novation, Rescission, Alteration and Remission are already discussed.

Example: A owes B Rs. 1,00,000. A enters into an agreement with B and mortgage his (A's), estates for Rs. 50,000 in place of the debt of Rs. 1,00,000. This is a new contract and extinguishes the old.

Example: A owes B Rs. 5,00,000. A pays to B Rs. 3,00,000 who accepts it in full satisfaction of the debt. The whole is discharged.

(iii) Discharge by impossibility of performance: The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:

(a) an unforeseen change in law;

(b) the destruction of the subject-matter essential to that performance;

(c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;

(d) the declaration of a war (Section 56).

Example 1: A agrees with B to discover a treasure by magic. The agreement is void due to initial impossibility.

Example 2: A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

Example 3: A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

(iv) Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

Example: If a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable.

(v) Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

(vi) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

(vii) Promisee may waive or remit performance of promise: 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. In other words, a contract may be discharged by remission. (Section 63)

Example: A owes B Rs.5,00,000. C pays to B Rs.1,00,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(viii) Effects of neglect of promisee to afford promisor reasonable facilities for performance: If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

(ix) Merger of rights: Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

Example: A took a land on lease from B. Subsequently, A purchases that very land. Now, A becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.