

UNIT IX THE INDIAN CONTRACT ACT

CHAPTER

30

PERFORMANCE OF CONTRACT



Learning Objectives

To enable the students to

- i. Define offer of performance or tender and explain its essentials.
- ii. Discuss the rules regarding time and place of performance
- iii. Explain about the devolution of Joint Rights and Joint Liabilities

30.01 Introduction

Regarding the performance of contract, Section 37 of the Act states that the parties to a contract must be either (i) perform their respective promises or (ii) offer to perform the same (iii) such performance is dispensed with or (iv) excused under the provisions of the Act or of any other law. There are mainly two ways of performing a contract such as:

i. Actual Performance

When the party has done what he had undertaken to do, it is called actual performance. In actual performance, the party is to fulfil all his obligations under the contract.

ii. Attempted Performance

When the party offers to perform his obligation, it is not accepted by the promisee.

So, it is also called offer to performance or tender. Hence, a valid tender of performance is considered to be the performance of a promise.

Essentials of a Valid Tender of Performance (Section 38)

A tender, to be valid, must satisfy the following essential requirements

- i) It must be unconditional
- ii) It must be for the whole obligation and must not be in instalments, if the contract requires in full.
- iii) It must be by a person who is in a position and willing to perform the promise.
- iv) It must be at the proper time and place.
- v) It must be in proper form.
- vi) It must be made to a proper person i.e. to the promisee or his authorized agent.
- vii) In case of the tender of goods the promisee must be given a reasonable opportunity to inspect the goods.
- viii) It may be made to one of the several joint promisees.

Who can Demand Performance?

The following are those who can demand the performance of a valid contract



1. **Promisee** – only a promisee can demand performance and not a stranger demand performance of the contract.
2. **Legal Representative** – legal representative can demand Exception performance. Contrary intention appears from the contract. Contract is of a personal nature.
3. **Third party** – Exception to “stranger to a contract”

30.02 Who will Perform the Contract?

i) Promisor himself (Section 40)

Under Para 1 to Section 40, it is laid down that where it appears from the nature of the contract, the intention of the parties that any promise contained in it must be performed by the promisor himself or by his legal representatives or by any other competent person employed by him, then such promise must be performed by the promisor himself or by his legal representatives or by any other competent person employed by him.

For Example X promises to sketch a site map of Y's house. X will have to perform this promise himself. Because it requires the skill of X.

ii) Agent (Section 40)

According to Para 2 of Section 40, the promisor may employ a competent person such as agent to perform the promise, if the contract is not formed on personal condition.

iii) Representations (Section 37)

A contract which involves the use of personal skill or it is found on personal considerations,

comes to an end if the promisor dies. Of course in case of other contracts, the legal representatives of a deceased promisor are bound to perform it as provided in Para 2 of Section 37.

For Example M promises to sell his car for (Rs. 1,00,000) to N after a week. But, M dies after 5 days of the contract. M's representative will be liable to sell the car to N and N will be liable to pay Rs. 1,00,000/- to M's representative.

iv) Third Person (Section 41)

According to Section 41, if a promisee accepts the performance of the promise by a third person he cannot afterwards enforce it against the promisor.

v) Joint Promisors

(a) Devolution of Joint Liabilities (Section 42)

Section.42 of Indian Contract Act lays down that “When two or more persons have made a joint promise, then unless a contrary intention appears in the contract, all such persons, during their joint lives and after the death of the last survivor, representatives of all, jointly must fulfil the promise”

(b) Devolution of Joint Rights (Section 45)

“When a person has made a promise to two or more persons jointly, then unless there is a contract to the contrary, the right to claim performance rests as between him and them, with them during their joint lives: and after the death of them with representatives of such deceased person jointly with survivors, and after the death of last survivor, with the representatives of all jointly”.



vi) Time and place of Performance of Promise

It is only the promisee for whom the contract is performed. Only the promisee can demand the performance of the promise under a contract.

For Example: X promises Y to pay Z ₹ 10,000/-. X does not pay the sum to Z. Here Z cannot bind X for the payment. It is only promisee Y who can enforce the promise against the promisor X.

Of course, there are certain special cases, where a third party can enforce a promise though he is not a party to the contract. For example in respect of trust, marriage settlement etc. In case of death of promisee, the representative appointed by him can ask for the performance of the promise under a contract.

Legal provisions regarding the time, place and manner of performance of a contract

Various legal provisions are laid down under Section 46 to 50 regarding the time, place and manner of performance of a contract. So, as far as the time, place and manner of performance of a contract are concerned it must be agreed upon by the parties to the contract themselves. The legal provisions regarding these are given below –

1. Under Section 46, performance within a reasonable time:

According to Section 46, a promisor is to perform his promise within a reasonable time. On the other hand, reasonable time will depend upon the circumstance of the case, the usage of trade or on the intention of the parties entering into the contract.

Example: A has given an order of supply of books in July which should be performed within 4 to 5 days of the month of July.

2. Under Section 47, specified time and place for performance:

If the promise is to be performed on a certain day, the promisor may undertake to perform it without application of the promisee. According to the Section 47, In such a case the promisor may perform the promise at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

3. Under Section 48, performance on a certain day:

If the promise is to be performed on a certain day the promisor may undertake to perform it after the application by the promisee to that effect.

4. Under Section 49, performance of promise when no place is fixed and without application:

If the promise is to be performed without application by the promisee and where no place is mentioned to be performed of the contract then it is the duty of the promisor to apply to the promisee to provide a reasonable place for the performance of the promise and to perform it at such place.

For Example: M takes to deliver 1,000 kilos of wheat to N on a fixed day. M must apply to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.



5. Under Section 50, performance is prescribed by the promisee:

According to Section 50, the performance of any promise may be made in any manner or at any time, which the promisee prescribes. Example: T owes S Rs. 2,00,000/- to accept T's car value of Rs. 1,00,000/- in reduction of the debt. The delivery of the car will amount to a part payment of the debt.

30.03 Reciprocal Promises (Section 2 (f))

Promises which form consideration or part of consideration for each other are called 'reciprocal promise'.

For example X promises to sell his house to Y for Rs.5,00,000. The promises are reciprocal. X is the promisor to give the house and a promise to receive Rs.5,00,000. Y is the promise to receive the house and a promisor to pay Rs. 5,00,000

Kinds of Reciprocal Promises

1. Mutual and Independent

Where each party must perform his promise independently without the performance of the other, the promise are mutual and



- (i) Time place and manner form the core of the performance of a contract
- (ii) Valid tender of performance is always considered to be the performance of a contract

independent, For example Ramu agrees to pay Somu the amount for the rice supplied on 10th June. Somu promises to deliver rice on 18th June.

2. Mutual and Dependent

Where the performance of the promise by one party depends upon prior performance of promise by the other party, the promises are conditional and dependent. For example A agrees to construct a building for B. B agrees to supply cement for the construction. Hence A's promise to perform depends on B's promise.

3. Mutual and Concurrent

Where the two promises are said to be performed simultaneously, they are said to be mutual and concurrent.

Appropriation of Payments [Section 59 – 61]

Appropriation means application of payments – The question of appropriation of payments arises when a debtor owes several debts to the same creditor and makes a payment that is not sufficient to discharge the whole indebtedness.

1. Appropriation of Payments

Sometimes, a debtor owes several distinct debts to the same creditor and he makes a payment which is insufficient to satisfy all the debts. In such a case, a question arises as to which particular debt the payment is to be appropriated. Section 59 to 61 of the Act lay down following rules as to appropriation of payments which provide an answer to this question.



Appropriation as Per express Instructions

Every debtor who owes several debts to a creditor has a right to instruct his creditor to which particular debt, the payment is to be appropriated or adjusted. Therefore, where the debtor expressly states that the payment is to be applied to the discharge of a particular debt, the payment must be applied accordingly.

For Example X owes Y three distinct debts of ₹20,000, ₹30,000 and ₹50,000 X sends ₹50,000 and instructs Y that the payment should be appropriated against the third debt. He is bound to appropriate the payment against the third debt only.

2. Application of payment where debt to be discharge is not indicated [60]

If section 60 is attracted, the creditor shall have the discretion to apply such payment for any lawful debt which is due to him from the person making the payment.

For Example P owes to Q, among other debts, the sum of Rs.10,000. Q writes to P and demands payment of this sum. P sends to Q Rs.10,000. This payment is to be applied to the discharge of the debt of which Q had demanded payment.

3. Application of payment where neither party appropriates [61]

The payment shall be applied in discharge of the debts in order of time whether they are or are not based by the limitation Act 1963, if the debt are of equal standing (i.e. payable on the same date) the payment shall be applied in discharge of each of these debt proportionately.

Key Terms

Promise	Instalment
Promisee	Unconditional
promisor	Tender



For Own Thinking

1. To identify the performance and distinguish the performance as actual or attempted
2. To understand the time and place of performance, so that the contract is established to be discharged or not



For Future Learning

1. Suggest ways by which the nature of performance of a contract can be categorised
2. To identify those who are involved in the process of performance of contract and their legal status



Exercise

I Choose the Correct Answer

1. On the valid performance of the contractual obligations by the parties, the contract
 - a. Is discharged
 - b. Become enforceable
 - c. Becomes void
 - d. Becomes legal





2. Which of the following persons can perform the contract?

- a. Promisor alone
- b. Legal representatives of promisor
- c. Agent of the promisor
- d. All the above

3. A, B, C jointly promised to pay ₹ 50,000 to D. Before performance of the contract, C dies. Here, the contract

- a. Becomes void on C's death
- b. Should be performed by A and B along with C's legal representatives.
- c. Should be performed by A and B alone.
- d. Should be renewed between A, B and D.

4. Which of these parties cannot demand performance of promise?

- a. Promisee
- b. Any of the Joint Promisees
- c. On the death of a Promisee, his Legal Representative.
- d. Stranger to the Contract

5. A person is said to be a third person if he is not a

- a. promisor b. promise
- c. agent d. Legal Representative

Answers

1.a 2.d 3.b 4.d 5.c

II Very Short Answer Questions

- 1. State the ways of Performing a Contract.
- 2. Who is a Legal Representative?
- 3. Who is an Agent?
- 4. What is meant by Reciprocal Promise?

III Short Answer Questions

- 1. Who can demand performance?
- 2. Who will perform the contract?
- 3. What are the kinds of Reciprocal Promise?

IV Long Answer Questions

- 1. Explain the essentials of a valid tender of performance. (any 5)
- 2. How do you think appropriation of payments takes place?