

# UNIT IX THE INDIAN CONTRACT ACT

## CHAPTER

# 31

## DISCHARGE AND BREACH OF A CONTRACT



### Learning Objectives

To enable the students to

- i. Understand the circumstances under which a contract is said to be discharged.
- ii. Analyse the impossibility of performance as a mode of discharge of contract.
- iii. Perceive the breach of contract as a mode of discharge of contract.
- iv Absorb the remedies available to an aggrieved party on the breach of contract.

### 31.01 Discharge of Contract

Discharge of contract implies termination of the contractual relationship between the parties. A contract is discharged if it ceases to operate and when the rights and obligations created by it come to an end. Sometimes, other rights and obligations may arise as a result of discharge of the contract. These are independent of the original contract.

#### Modes of Discharge Of Contract

Different modes of discharge of contract have been provided under different sections of the Act.

#### 1. Discharge by Performance

Performance implies carrying out the obligation of the contract. Performance must be completed according to the real intentions of the agreement. Performance must be done according to time and manner prescribed.

Performance of contract may be of two types namely

- (i) Actual performance
- (ii) Attempted performance

#### 2. By Agreement on Consent

Agreement between the parties comes to an end by mutually agreeing for it. Any contract is created by an agreement, hence in the same way, it can be discharged by an agreement. In this connection the rule of law is as follows. “*Eodem modo quus and quide constitutor, eodem modo destruitur*,” the meaning of which is that a thing may be destroyed in the same manner, in which, it is constituted. The consent may be of the following types

- (i) **Express:** Express consent may be given at the time of formation of the contract or subsequent to its formation
- (ii) **Implied:** The contracts are also discharged by implied consent, different modes of discharge by implied consent are mentioned below

- (a) Novation, (b) Alteration,
- (c) Recession, (d) Remission,
- (e) Accord and Satisfaction,
- (f) Waiver and (g) Merger

### 3. By Impossibility of Performance

A contract may be discharged if its performance becomes impossible. The rule of impossibility of performance is based on the following maxims

- i) the law does not recognize what is impossible and
- ii) what is impossible does not create an obligation.

According to the Section 56 of the Act, all acts to do impossible acts are void. There are two types of impossibility of performance such as –

- i) Impossibility existing at the time of agreement.
- ii) Impossibility arising subsequent to the formation of contract.

On the other hand, impossibility of performance existing at the time of performance of a contract may be either

- (a) known to the parties or (b) not known to the parties.

Likewise impossibility arising subsequent to the formation of a contract or supervening impossibility may be

- a) By some event beyond the control of the parties or
- b) By some act either of the promisor or of the promisee.

### 4. By Lapse of Time

According to the Limitation Act, 1963 a contract must be performed within a specified time. If it is not performed within this specified time limit and against which if no action is taken by the promisee in the Court of Law within specified time, then the promisee is deprived of his remedy at law. In such cases, the contract is discharged.

### 5. By Operation of Law:

A contract can be discharged by the operation of law. The operation of law by which contract can be discharged are as follows

- i) By Death: If the contracts depend on the personal skill or ability, then such contract may be discharged on the death of the promisor
- ii) By Merger: Merger will take place when an inferior right accruing to the same party either under the same or another contract.
- iii) By Insolvency: An insolvent is discharged from all liabilities incurred prior to his adjudication.
- iv) Unauthorized Alteration of the Terms of a Contract: If one party makes any material alteration in the contract without the consent of the other party, then the other party can avoid the contract.
- v) Rights and liabilities vesting in the same person: Where the right and liability become vested in the same person, the other parties are discharged.

## 31.02 Remedies for Breach of Contract

All parties to a contract are expected to perform their promises. When one party refuses to perform his promise, then the breach of contract takes place. The other party or parties are called aggrieved or injured party or parties.

### Remedies

There are various types of remedies for the injured parties listed as follows

- i) Rescission of Contract.
- ii) Claim for Specific Performance.
- iii) Claim for Injunction.
- iv) Claim for Quantum Merit and
- v) Claim for Damages.

#### (i) Rescission of Contract

In case of breach of contract by one party, then the other parties may rescind the contract and thereby the party is absolved from his all obligations under the contract.

**For Example:** *M* promises *N* to supply him a motor car on 1<sup>st</sup> January 2017, and *N* promises to pay for the motor car on 1st January 2017. *N* is absolved from paying its price.

#### (ii) Claim for Specific Performance

In some specific cases if the damages are not the adequate remedy, then the court can direct the party in breach for the specific performance of the contract. In such case, the promise is carried out as per terms and conditions of the contract.

Generally in the following cases, the court grants specific performance

- i) When the act agreed to be done is such that compensation in money for its non-performance is not sufficient
- ii) When it is probable that compensation in money cannot be received for the non-performance of the act agreed to be done
- iii) When there is no standard for ascertaining the actual damage caused by the non-performance of the act agreed to be done

On the other hand, the court does not grant specific performance in the following cases:

- i) Damages are an adequate remedy
- ii) The contract is not certain
- iii) The contract is inequitable to either party
- iv) The contract is of revocable nature
- v) The contract is made by the trustee in breach of trust
- vi) The contract is of personal nature i.e., contract to marry
- vii) The contract made by a company ultra-vires of its Memorandum of Association
- viii) The court cannot supervise its carrying out

#### (iii) Claim for Injunction

Injunction is an order passed by a competent court restraining a person from doing some act. Injunction can be defined as a mode of securing the specific performance of the negative terms of a contract. Negative terms of contract imply doing something, which a party has promised not to do. Injunction is an order which is granted by the court restraining the person to do what he had promised not to do.

The court may order injunction in the following cases –

- (a) if the contract is voidable.
- (b) if the contract becomes void or
- (c) on discovering the contract as void.

#### (iv) Claim for Quantum Merit

The claim for quantum merit may arise if a contract performed by one party has become discharged by breach of the other party. The meaning of the phrase quantum merit is ‘as much as earned’. The claim is not for the original contract that has been discharged or void, but on an implied promise by the other party to pay for what he has done.

#### Quantum merits arises in the following circumstances.

- a) If a contract is found to be void.
- b) If something is done without any intention to do so gratuitously.
- c) If one party abandons or refuses to perform the contract.
- d) If a contract is divisible.
- e) If a contract is performed badly.
- (v) Claim for damages

Damages are a monetary compensation awarded by the court to the injured party for the loss or injury suffered by him. As per contract, one party can claim damages if other party breach the contract. The main purpose of awarding the damages is to make good the loss suffered by him. It is known as doctrine of restitution. The Section 73 of the Indian Contract Act, 1872 deals with the compensation for loss or damages caused

by a party for breach of contract. There are mainly four types of damages, such as-

- i) Ordinary damages
- ii) Special damages
- iii) Vindictive or exemplary damages and
- iv) Nominal damages.

#### Key Terms

Breach of Contract	Rescission
Restitution	Novation
Injunction	Remission



#### For Own Thinking

- 1 To draw inference about the nature of contract and legal ways of discharging it
2. To understand the modes of discharge of contract



#### For Future Learning

1. To interpret the consequence of breach of performance of contract
2. Illustrate with example the modes of discharge of contract and if not discharged, the consequences
3. To foresee the suitability of remedies for breach of contract violation of which leading to legal consequences



## Exercise

### I. Choose the Correct Answer

- On the valid performance of the contractual obligation by the parties, the contract
  - Is discharged
  - Becomes enforceable
  - Becomes void
  - None of these
- An agreement to do an act impossible in itself under Section.56 is
  - Void
  - Valid
  - Voidable
  - Unenforceable
- Any agreement which becomes impossible to perform under various circumstances
  - Voidable
  - Void
  - Valid
  - None of these
- Discharge by mutual agreement may involve
  - Novation
  - Rescission
  - Alteration
  - All of the above
- The compensation given for breach of contract is
  - Damage
  - B. remuneration
  - Money
  - D. Cheque



### Answers

1. a    2. a    3. b    4. d    5. a

### II. Very Short Answer Questions

- What are the kinds of consent?
- What are the types of Impossibility of Performance?
- What is Quantum merit?

### III. Short Answer Questions

- What are the different modes of discharged by implied consent?
- Define discharge by Performance.
- What are reasons for impossibility arising after the formation of contract?
- What are the various rules regarding damages?

### IV. Long Answer Questions

- Explain the ways of discharge of Contract?
- Write about the various remedies for breach of contract
- Discuss the different types of damages awarded to the injured party.

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