

DISCHARGE OF CONTRACT

When the rights and obligations arising out of a contract are extinguished, the contract is said to be discharged or terminated.

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

1. By performance – Actual or Attempted.
2. By mutual consent or agreement.
3. By subsequent or supervening impossibility or illegality.
4. By lapse of time.
5. By operation of law.
6. By breach of contract.

1. Discharge by Performance.

Performance of a contract is the most popular manner of discharge of a contract. The performance may be either Actual performance or Attempted performance.

A. Actual performance:- When each party fulfils his obligations arising out of the contract within the time and in a manner prescribed , it is called the actual performance and the contract comes to an end.

B. Attempted performance or Tender:- When the promisor offers to perform his obligation, but is unable to do so because the promise does not accept the performance, it is called " Attempted Performance" or "tender". Thus tender is not

actual performance but is only an offer to perform the obligation under the contract. A valid tender of performance is equivalent to performance.

Essentials of a valid tender:-if it fulfils the following conditions:-

1. It must be unconditional. If A who is a debtor of company B, offers to pay if shares are allotted to him at par. IT is not a tender.
2. It must be made at proper time and place:- A is tenant of B. H offers him rent at a marriage party. B is not bound to accept as tender is not made at a proper place.
3. It must be of the whole obligation contracted for and not only of the part:- e.g. deciding of his own to pay in the installments and offering the first installment was held invalid tender as it was not of the whole amount due .
4. If the tender related to the delivery of goods, it must give a reasonable opportunity to the promisee for inspection of goods so that he may be sure that the goods tendered are of contract description.
5. It must be made by a person who is in a position and is willing to perform the promise.
6. It must be made to the proper person i.e. the promisee or his authorized person.
7. If there are several joint promisees, an offer to any one of them is a valid tender (but the actual payment must be made to all joint promisees, and not to any one of them.)
8. In case of tender of money, exact amount should be tendered in the legal tender money.

Effect of refusal to accept a valid tender:

The effect of refusal to accept a properly made “offer of performance” is that the contract is deemed to have been performed by the promisor. And the promisee can be sued for breach of contract. Thus we can say that “a valid tender discharges the contract.”

2. Discharge by Mutual Consent or Agreement: A contract is created by means of an agreement, it may also be discharged by another agreement between the same parties.-

A. Novation: “Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract.” If the parties are same, then small changes in the terms of contract is called “alteration” and not “Novation”. For being “Novation”, the changes must be of significant nature. Novation cannot be compulsory, it can only be with the mutual consent of all the parties.

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B. Alteration:- It means that change of one or more of the material terms of a contract. A material alteration is one which alters the legal effect of the contract. e.g. change in the amount of money, change in the rate of interest etc. that a material alteration made in a contract by one party without the consent of the other will make the whole contract void and no person can maintain an action upon it.

C. Rescission:- A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to “Rescission” or cancellation of the contract, the consideration being the abandonment by the respective parties of their rights under the contract.

Example A promises to deliver some goods to B on say 14th Nov. 2006. But before the date of performance i.e. 14th Nov. 2006, A and B mutually agree that the contract will not be performed. The contract stand discharged by rescission. If there is non performance of a contract by both the parties for a long time without complaint, it amounts to an implied rescission. Note: In rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

D. Remission:- It is defined as “Acceptance of lesser amount than what was contracted for or a lesser fulfillment of the promise made”

E. Waiver:- It means deliberate giving up of a right which a party is entitled to under a contract whereupon the other party to the contract is released from his obligation.

Example A promises to stitch a Shirt for B if B sings a song in A's party and accepting it B sings a song in A's party. Then later on B says there is no need to stitch shirt for me, to which A gives his consent. Thus the contract is terminated.

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3. Discharge by Subsequent or Supervening Impossibility or Illegality.

Impossibility at the time of contract. If you contract for something impossible, the agreement is void ab initio the promisor knows about the impossibility after using reasonable efforts, the promisor is bound to compensate the promisee for any loss he may suffer because of non performance of the promise, even if the agreement being void ab initio Subsequent impossibility.

Impossibility is found out after the contract is made, "A contract to do an act which, after making the contract, becomes impossible or unlawful, becomes void when the act becomes impossible or unlawful."

Conditions for It...

- (i) The act should have become impossible.
- (ii) The impossibility should be by reason of some event which the promisor could not prevent.
- (iii) The impossibility should not be self induced by the promisor or due to negligence. To be impossible, it is sufficient that it becomes impracticable or extremely hazardous or useless from the point of view of the object and purpose which the parties had in view, If the performance of a contract becomes impossible by reason of supervening impossibility or illegality of the act, it's logical to absolve the parties from further performance of it as they never did promise to perform an impossibility.

4. DISCHARGE BY LAPSE OF TIME.

In some circumstances, the laps of time may also discharge a contacts, e.g. the period of limitation for simple contracts is three years the under limitation Act and therefore on default by a debtor, if the creditor does not file a suit of recovery against him within three years of default, the debt becomes time barred and the creditor will not get the help of the law. This in effect discharges

the contract. 'Where time is of essence', if the contract is not performed on time, the contract comes to an end, and the party not at fault need not perform his obligation and may sue the other party for damages.

5. DISCHARGE BY OPERATION OF LAW

A contract is discharged by operation of law in the following cases:-

(A) Death: Sometimes a contract is of a personal nature and involves personal skills, of promiser, or promisor. In such cases the contract is discharged on the death of the promisor. In such cases the contract is discharged on the death of the promisor.

(B) Insolvency: When a person is adjudged insolvent he is released from his all liabilities in current order of adjudication. His rights (Assets) and liabilities are transferred to the official assignee or official receiver, on the case may be.

(C) Merger of rights: Sometimes, inferior right of a person under the same or other contract, in such a case the inferior right is vanished and is not required to be enforced. For example an ordinary debt can be merged. In to rights, of ownership in such case the inferior right need not to be enforced because this right have merge in to a superior right of mortgage or ownership.

(D) Loss of evidence of contract:- There the evidence of the existence of the contract is lost or vanished. The contract is discharged for example document of contract is lost or destroyed and not other evidence is available the contract is discharged.

6. DISCHARGE BY BREACH OF CONTRACT

A contract is sometimes discharged, by its breach generally, Breach of contract means refusal. Or failure of any one party to perform his contractual obligation under the contract specifically a breach of contract occurs when a party to a contract does any of the following things. (1) Fails or refuses to perform his obligation under the contract. (2) Disables himself from performing his past

of the contract. (3) Maker the performance of contract impossible by his own acts.