

BUSINESS LAW

UNIT 2: Discharge of Contract and Remedies for Breach

TOPIC- Discharge of Contract

DISCHARGE OF CONTRACT

Discharge of a contract means end of contractual relationships between the parties. When the rights and obligations arising out of a contract get extinguished, the contract is said to be discharged or terminated. Discharge of contract can take place in the following ways

- **By performance**
 - **actual performance** - when both parties fulfill their part of obligations
 - **attempted performance\offer to perform\ tender** - a valid tender is equivalent to performance
 - ✓ *It must be unconditional i.e. no ifs and buts while offering to perform*
 - ✓ *It must be made at proper place and proper time i.e. at due date and at agreed place.*
 - ✓ *It must be made by proper person i.e. by someone who is capable and willing to perform and not by a minor or idiot.*
 - ✓ *It must be made to proper person i.e. the promisee or agent of promisee and not to stranger.*
 - ✓ *It must be for whole obligation and not of part e.g. performance must in entirety and not in instalments, unless agreed otherwise*
 - ✓ *If there are several joint promisees, an offer to any one of them is a valid tender*
 - ✓ *In case tender relates to delivery of goods, promisee must be given reasonable opportunity to inspect the goods*
 - ✓ *In case of tender of money ,**exact amount** should be tendered in **legal tender** money*

If a valid tender is made but the other party refuses to accept it, then it is deemed as if performance has been done by the tenderer and the contract comes to an end. A valid tender thus discharges the contract.

DISCHARGE OF CONTRACT

- **By mutual consent or agreement**

The contract may be discharged by an agreement between the parties in the following ways

- ✓ **Novation** - *new contract substituted for an existing contract between same parties or between different parties - thus old contract stands discharged*
- ✓ **Alteration**- *one or more material terms of a contract are changed by parties mutually*
- ✓ **Rescission**- *agreement between parties ,before the date of performance, that it shall no longer bind them i.e. cancellation of contract by mutual agreement*
- ✓ **Remission**-*acceptance of lesser performance or lesser payment by the promisee*
- ✓ **Waiver**- *abandonment or giving up of a right under the contract voluntarily*

DISCHARGE OF CONTRACT

- **By supervening impossibility or illegality**

If subsequent to formation of contract, the contract becomes impossible to perform in certain situations, then the contract is said to have become void. The parties are thus excused from performance and contract gets discharged. This is known as **Doctrine of supervening impossibility** and it applies in the following situations only -

- ✓ Destruction of subject matter. **CASE - Taylor vs Caldwell**-A music hall was agreed to be let out for a series of concerts on certain days. The hall was destroyed by fire before the date of first concert. The plaintiff sued the defendant for damages for breach of contract. It was held that the contract has become void and the defendant is not held liable.
- ✓ Failure of ultimate purpose. **CASE-Krell vs Henry**- H hired a flat from K for two days to witness the coronation process of King Edward VII. Due to illness of the king, the procession was postponed. H therefore could not use that room and K filed suit against H for the recovery of the rent due. Held, H was under no obligation to pay the rent as the contract was discharged on failure of the ultimate purpose of witnessing the event which had got postponed due to king's illness.
- ✓ Death or personal incapacity of promisor. **EXAMPLE**- An artist undertook to paint a picture for a certain price, but before he could do so, he met with an accident and lost his arm. Held, the artist was discharged due to disablement.
- ✓ Change of law. **CASE- Man Singh vs Khajan Singh** -A contract between certain parties for the sale of trees of a forest was discharged when subsequently by an Act of Legislature, the state government forbade the cutting of trees in that area.
- ✓ Outbreak of war- contracts entered into with alien enemy before war stand suspended during war and cannot be performed. After the war is over, then they can be revived.

Cases not covered by Doctrine of Supervening Impossibility

- ✓ Difficulty of performance
- ✓ Failure of one of the objects **CASE- H.B.Steamboat Co. vs Hutton**-A steamboat company agreed to let out a boat to H, (a) for viewing a naval review on the eve of coronation of King Edward VII, and (b) to sail around the fleet. Due to illness of the King, the naval review was cancelled but the fleet was assembled. Held, the contract was not discharged because the naval review was not the sole basis of the contract. To sail around the fleet was equally basic object of the contract which was still capable of being attainment.
- ✓ Default of third person
- ✓ Commercial impossibility
- ✓ Strikes and lockouts- these events do not discharge a contract as strike is *manageable* and lockout is *self induced*.

DISCHARGE OF CONTRACT

- **By lapse of time**

- ✓ When debt becomes time barred- contract gets discharged and no action can be taken against debtor
- ✓ When **time is of essence** in a contract and contract is not performed at the fixed time, the contract comes to an end

- **By operation of law**

- ✓ Death - If contract is of personal nature, death of promisor discharges the contract. (In other cases, rights and obligations of deceased person pass on to legal representatives)
- ✓ Insolvency- When court passes an "order of discharge" ,then the insolvent is exonerated from all prior liabilities
- ✓ Merger- When an inferior right contract merges into superior right contract, the former stands discharged automatically.
- ✓ Unauthorised material alteration- alteration of some material term in a contract by one party without the consent of another makes the contract void and thus discharges the original contract. It has the same effect as cancelling of the original contract .

DISCHARGE OF CONTRACT

• By breach of contract

- Actual breach- Actual breach occurs when a party fails to perform its obligation on the stipulated date. In such a case, the other party can treat the contract as discharged and sue the other party for damages for breach.
- Anticipatory breach - Anticipatory breach is breach of contract occurring before the time fixed for performance has arrived . It takes place in ways below
 - ✓ Express breach- when , before the due date, a party communicates(orally or in writing)the other party of its intention not to perform
 - ✓ Implied breach- when, by his conduct or behaviour, a party indicates its intention not to perform on due date

Effect of anticipatory breach- whenever there is anticipatory breach by promisor, the promisee is excused from performance or further performance. Further promisee has two options

- ✓ he may immediately treat the contract as rescinded and sue the other party for damages for breach without waiting until the due date of performance
- ✓ he may elect not rescind but treat the contract as still operative and wait for the due date of performance. If on due date party performs, then its well and good . But if it does not perform ,then hold it guilty of nonperformance and sue for damages. But in such a case, there is a risk that the guilty party may take advantage of doctrine of supervening impossibility which may have the effect of discharging the contract.