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## **Question no:2**

### Introduction

A contract places a legal obligation upon the contracting parties to perform their mutual promises, and it carries on until the discharge or termination of the contract. The most natural and usual mode of discharging a contract is to perform it. A person who performs a contract in accordance with its terms is discharged from any further obligations. As a rule, such performance entitles him to receive the other party's performance.

Exact and complete performance by both the parties puts an end to the contract. In expecting exact performance, the courts mean that, performance must match contractual obligations. In requiring a contract to be complete, the law is merely saying that any work undertaken must be carried out to the end of the obligations.

A contract should be performed at the time specified and at the place agreed upon. When this has been accomplished, the parties are discharged automatically and the contract is discharged eventually. There are, however, many other ways in which a discharge may be brought about. For example, it may result from an excuse for non-performance. In certain cases attempted performance may also operate as a substitute for actual performance, and can result in complete discharge of the contract.

### **State demand performance:**

It is only the promisee who can demand performance of the promise under a contract, for, the general rule is that "a person cannot acquire rights under a contract to which he is not a party". A third party cannot demand performance of the contract even if it was made for his benefit. In case of the death of the promisee, his legal representatives are entitled to enforce the performance of the contract against the promisor.

### **Promise:**

Only the promisee can demand the performance of the contract, and not a third party. Even if the contract is for its benefit. For example, A promises B to pay Rs. 500 to C. It's B who can demand performance and not C.

### **Legal Representative:**

In the event of death of the promise, it's the legal representative unless a contrary intention appears, may demand performance of the contract. For example, A agrees to marry B. However, before the marriage takes place, B dies. As this is a contract of personal nature the legal representative of B cannot demand performance of the promise from A.

### **Third Party:**

Only under some exceptional case, like beneficiary in case of trust, can also demand performance of the contract even though he is not a party to the contract.

### **Joint Promises:**

In case a promise is made. To two or more persons jointly, then, unless a. Contrary intention appears from the contract, the performance of the promise may be demanded either

#### **By all the promises jointly, or**

In case of death of any of the joint promises, by his surviving promises, or

In case of death of all the joint promises, by the representatives of all of them.

### **Question no 2:**

#### Answer:

Discharge of a contract implies termination of contractual obligations. This is because when the parties originally entered into the contract, the rights and duties in terms of contractual obligations were set up. Consequently when those rights and duties are put out then the contract is said to have been discharged. Once a contract stands discharged, parties to it are no more liable even though the obligations under the contract remain incomplete.

A Contract is deemed to be discharged, that is, concluded and no longer binding, in the following circumstances:

Discharge by performance.

Discharge of Contract by Substituted Agreement.

Discharge by lapse of time.

Discharge by operation of law.

Discharge by Impossibility of Performance.

Discharge by Accord and Satisfaction.

Discharge by breach.

We shall examine each of them as follows.

### **Discharge by performance**

Where both the parties have either carried out or tendered (attempted) to carry out their obligations under the contract, is referred to as discharge of the contract by performance. Because performance by one party constitutes the occurrence of a constructive condition, the other party's duty to perform is also triggered, and the person who has performed has the right to receive the other party's performance. The overwhelming majority of contracts are discharged in this way.

### **Discharge of Contract by Substituted Agreement**

A contract emanates from an agreement between the parties. It thus follows that, the contract must also be discharged by agreement. Therefore, what is required, inevitably, is mutuality. Discharge by substituted agreement arises when a contract is abandoned, or the terms within it are altered, and both the parties are in conformity,

A and B enter into some agreement, and A wants to change his mind and not to carry out his terms of the contract. If he does this unilaterally then he will be in breach of contract to B. However, if he approaches B and states that he would like to be released from his liabilities under the contract then the latter might agree. In that case the contract is said to be discharged by (bilateral) agreement. In effect B has promised not to sue A if he does not perform his part of the contract and the consideration for his promise is A's promise not to sue B. Discharge by agreement may arise in the following ways.

### **Novation:**

The term novation implies the substitution of a new contract for the original one. This arrangement may be either with the same parties or with different parties. For a novation to be valid and effective, the consent of all the parties, including the new one(s), if any, is essential. Moreover, the subsequent or second agreement must be one capable of enforcement in law, the consideration for which is the exchange of promises not to enforce the original contract.

### **Rescission:**

This refers to cancellation of all or some of the material terms of the contract. If the contracting parties mutually decide to do so, the respective contractual obligations of the parties stand terminated.

### **Alteration:**

This refers to a change in one or more of the terms of a contract with the consent of all the contracting parties. Alteration results in a new contract but parties to it remain the same. Here the assumption is that both the parties are to gain a fresh but different benefit from the new agreement. Remission This means the acceptance (by the promisee) of a lesser sum than what was contracted for, or a lesser fulfilment of the promise made. As per Section 63, 'every promise may (a) remit or dispense with it, wholly or in part, or (b) extend the time of performance, or (c) accept any other satisfaction instead of performance'.

### **Waiver:**

The term waiver implies abandonment or relinquishment of a right. Where a party deliberately abandons its rights under the contract, the other party is released of its obligations, otherwise binding upon it.

### **Discharge by lapse of time:**

A contract stands discharged if not enforced within a specified period called the 'period of limitation'. The Limitation Act, 1963 prescribes the period of limitation for various contracts. For instance, period of limitation for exercising right to recover an immovable property is twelve years, and right to recover a debt is three years. Contractual rights become time barred after the expiry of this limitation period. Accordingly, if a debt is not recovered within three years of its payment becoming due, the debt ceases to be payable and is discharged by lapse of time.

### **Discharge by Impossibility of Performance:**

Sometimes after a contract has been established, something might occur, though not at the fault of either party, which can render the contract impossible to perform, or illegal, or radically different from that originally undertaken.

However, if whatever happens to prevent the contract from being performed

Has not been caused by either party

Could not have been foreseen, and

Its effect is to destroy the basis of the contract

Then the courts will, generally, state that the contract has become impossible to perform. If that happens then the contract is discharged and neither party will have any liability under it. Section 56 of the Indian Contract Act clearly provides that an agreement to do an act impossible in itself is void The performance of a contractual obligation may become subsequently impossible on a number of grounds.

### **Question no 3:**

Answer:

## REMEDIES FOR BREACH OF CONTRACT

### **What are the Remedies for Breach of Contract?**

There are several remedies for breach of contract, such as award of damages, specific performance, rescission, and restitution. In courts of limited jurisdiction, the main remedy is an award of damages. Because specific performance and rescission are equitable remedies that do not fall within the jurisdiction of the magistrate courts, they are not covered in this tutorial.

### **What Damages Can Be Awarded?**

There are two general categories of damages that may be awarded if a breach of contract claim is proved. They are:

#### **Compensatory Damages.**

Compensatory damages (also called “actual damages”) cover the loss the nonbreaching party incurred as a result of the breach of contract. The amount awarded is intended to make good or replace the loss caused by the breach.

There are two kinds of compensatory damages that the nonbreaching party may be entitled to recover:

#### **General Damages.**

General damages cover the loss directly and necessarily incurred by the breach of contract. General damages are the most common type of damages awarded for breaches of contract.

**Example:** Company A delivered the wrong kind of furniture to Company B. After discovering the mistake later in the day, Company B insisted that Company A pick up the wrong furniture and deliver the right furniture. Company A refused to pick up the furniture and said that it could not supply the right furniture because it was not in stock. Company B successfully sued for breach of contract. The general damages for this breach could include:

- refund of any amount Company B had prepaid for the furniture; plus
- reimbursement of any expense Company B incurred in sending the furniture back to Company A; plus

- payment for any increase in the cost Company B incurred in buying the right furniture, or its nearest equivalent, from another seller.

**Special Damages.** Special damages (also called “consequential damages”) cover any loss incurred by the breach of contract because of special circumstances or conditions that are not ordinarily predictable. These are actual losses caused by the breach, but not in a direct and immediate way. To obtain damages for this type of loss, the nonbreaching party must prove that the breaching party knew of the special circumstances or requirements at the time the contract was made.

### **Example**

In the scenario above, if Company A knew that Company B needed the new furniture on a particular day because its old furniture was going to be carted away the night before, the damages for breach of contract could include all of the damages awarded in the scenario above, plus:

- payment for Company B’s expense in renting furniture until the right furniture arrived.

**Punitive Damages.** Punitive damages (also called “exemplary damages”) are awarded to punish or make an example of a wrongdoer who has acted wilfully, maliciously or fraudulently. Unlike compensatory damages that are intended to cover actual loss, punitive damages are intended to punish the wrongdoer for egregious behaviour and to deter others from acting in a similar manner. Punitive damages are awarded in addition to compensatory damages.

Punitive damages are rarely awarded for breach of contract. They arise more often in tort cases, to punish deliberate or reckless misconduct that results in personal harm.

### **How are Compensatory Damages Calculated?**

The calculation of compensatory damages depends on the type of contract that was breached and the type of loss that was incurred. Some general guidelines are:

#### **Standard Measure.**

The standard measure of damages is an amount that would allow the nonbreaching party to buy a substitute for the benefit that would have been received if the contract had been performed. In cases where the cost of the substitute is speculative, the nonbreaching party may recover damages in the amount of the cost incurred in performing that party’s obligations under the contract.

### **Contracts for the Sale of Goods.**

The damages are measured by the difference between the contract price and the market price when the seller provides the goods, or when the buyer learns of the breach.

### **Are There Any Limitations on the Award of Compensatory Damages?**

An important limitation on the award of damages is the duty to mitigate. The nonbreaching party is obligated to mitigate, or minimize, the amount of damages to the extent reasonable. Damages cannot be recovered for losses that could have been reasonably avoided or substantially ameliorated after the breach occurred. The nonbreaching party's failure to use reasonable diligence in mitigating the damages means that any award of damages will be reduced by the amount that could have been reasonably avoided.

### **Question no 4:**

Answer.

- WRITE DOWN THE AGENT'S DUTIES TO PRINCIPAL?

Agent duties to principle:

An agent has six duties towards the principle.

1. He has to conduct the business of the principle according to the directions of the principle.
2. An agent is bound to conduct the business he is supposed to conduct with as much skill as a person on his position or merely holds.
3. An agent is supposed to show a relevant account to the principle as and when the principle demands.
4. An agent has the duty to communicate with any difficulty what so ever he may come across while doing the principles business.
5. He is supposed to perform due diligence in this regard if any material is concealed or the business is not carried in the manner that the principle directed the principle can have repudiated the contract between them.
6. If the agent carries out the business in the manner, he wanted to perform it rather than on the directions of the principle. The principle may claim from the agent any benefit he may claim from the agent any benefit he may have achieved by doing so.

EXAMPLE:

A directs her agent B to buy certain house for him. B does not buy the house and tells A that it cannot be bought due to certain reasons but B bought the house for himself. In this case A has the right to claim the house from B at the price which B bought it for himself.

### **General rules of agency:**

There are four general rules of agency that rule the actions of agents and their relationship to insureds. They are:

“There is no presumption of an agency relationship Some evidences are needed for assuming that “one person can legally act as

An agent for another. For instance, if an individual doesn’t provide a business card, rate data, or application blanks supplied by the insurer, it would be impossible to prove an agency relationship between the individual and the

**Insurer B.** “Authority to represent the principal

Three sources of an agent’s authority are to express authority, to imply

Authority, and apparent authority.

The agent has certain powers holding in the agreement between the agent and the principal. Consequently, the agent can express authority that is in

### **That contract**

The agent has implied authority, which allows the agent to perform all indispensable acts, so the agent can achieve the purposes of the agreement The agent uses apparent authority to execute some actions with the third party that are not in the contract, without notifying the principal. For instance, the agent extends the due date of paying premiums for his or her

**Clients without consulting the principal:**

C “Principle responsible for acts of agents V If the agent performs with fraudulent actions or makes some misrepresentations, the principal would be responsible for the agent’s actions because the agency relationship between them

Three sources of authority that allows an agent to bind the principal are

A Express Authority

B Implied Authority

C Apparent authority

The doctrines of waiver and estoppel may legally require that an insurer pays a claim that the insurer typically didn’t have to pay A Waiver -the voluntary relinquishment of a known legal right.”

B Estoppel – when an individual makes a statement to another individual and this other individual represent this first individual, the first individual can’t change his mind and tells a different statement because the other individual can legally get perjured by this action.