

## DISCHARGE OF CONTRACT

Discharge of contract means termination of the contractual relationship between the parties. A contract is said to be discharged when it ceases to operate, i.e., when the rights and obligations created by it come to an end. A contract may be discharged: \_

1. By performance.
2. By agreement or consent
3. By impossibility of performance
4. By lapse of time
5. By operation of law
6. By breach of contract

### I. DISCHARGE BY PERFORMANCE

Discharge by performance takes place when the parties to the contract fulfill their obligations arising under the contract within the time and in the manner prescribed.

**a) Actual performance:** When both the parties perform their promises, the contract is discharged. Performance should be complete, precise and according to the terms of the agreement, most of the contracts are discharged by performance in this manner.

**b) Attempted performance or tender.** Tender is not actual performance but is only an offer to perform the obligation, under the contract. When the promisor offers to perform his obligation but promisee refuses to accept the performance.

### II. DISCHARGE BY AGREEMENT OR CONSENT

As it is the agreement of the parties which binds them, so by their further agreement or consent the contract may be terminated. This means a contractual obligation may be discharged by agreement which may be express or implied.

**Example:** - A sells a car to B on approval with the condition that it should be returned within seven days if it is found wanting in efficient functioning. B may return the car within seven days if it is found wanting. Consent to return the car is given to B at the time of the formation of the contract.

The various cases of discharge of a contract by mutual agreement are dealt within (Secs-62):

**a) Novation** takes place when a new contract is substituted for an existing one between the same parties, or a contract between two parties is rescinded in consideration of a new contract between third party. **Example:** - A owes money to B under a contract. It is agreed between A, B and C that B shall henceforth accept C as his debtor, instead of A. The old debt of A to B is an end, and a new debt from C to B has been contracted.

**b) Rescission (sec-62):** Rescission of a contract takes place when all or some of the terms of the contract are cancelled. It may occur

- i. By mutual consent of the parties, or
- ii. Where one party fails in the performance of his obligation.

**Example:** - A promises to supply certain goods to B six months after date. By that time, the goods go out of fashion. A and B may rescind the contract.

**c) Alteration (sec-62)** Alteration of a contract may take place when one or more of the terms of the contract is/are altered by the mutual consent of the parties to the contract. In such case, the old contract is discharged. **Example:** - A enters into a contract with B for the supply of 100 bales of cotton at his godown No.1 by the first of the next month. A and B may alter the terms of the contract by mutual consent.

**d) Remission (sec-63)** Remission means acceptance of a lesser fulfillment of the promise made. **Example :-** A owes B Rs. 5000 A pays to B and B accepts, in satisfaction of the whole debt for Rs.2,000 paid at the time and place at which Rs.5000 were payable. The whole debt is discharged.

**e) Waiver:** Waiver takes place when the parties to a contract agree that they shall no longer be bound by the contract. Consideration is not necessary for waiver.

**f) Merger:** Merger takes place when an inferior right accruing to a party under a contract merges into a superior right accruing to the same party under the same or some other contract. **Example:**

- P holds a property under a lease. He later buys the property. His rights as a lessee merge into his rights as an owner.

### **III. DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE**

If an agreement contains an undertaking to perform an impossibility. It is void. According to Sec-56, impossibility of performance may fall into either of the following categories.

1. Impossibility existing at the time of agreement, the first paragraphs of sec 56 lays down that "an agreement to do an act impossible in itself is void.
2. Impossibility arising subsequent to the formation of contract. Impossibility which arises subsequent to the formation of a contract is called post-contractual or supervening impossibility.

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#### **I) DISCHARGE BY SUPERVENING IMPOSSIBILITY:-**

1. **Destruction of subject-matter of contract.**

When the subject-matter of a contract, subject-matter of contract, subsequent to its formation, is destroyed without any fault of the parties to the contract, the contract is discharged. **Example:** - C let a music hall to T for a series of concerts for certain days. The hall was accidentally burnt down before the date of the first concert. Held, the contract was void. A contracted to sell a specified quantity of potatoes to be grown on his farms. The crop largely failed. Held, the contract was discharged.

2. **Non-existence or non-occurrence of a particular state of things.** Sometimes, a contract is entered into between two parties on the basis of a continued existence or occurrence of a particular state of things. **Example:** - A and B contract to marry each other, before the time fixed for the marriage, A goes mad. The contract becomes void.
3. **Death or incapacity for personal service:** - Where the performance of a contract depends on the personal skill or qualification of a party, the contract is discharged on the illness or incapacity or death of the party. Example:- An artist undertook to perform at a concert for a certain price. Before she could do so, she was taken seriously ill. Held, she was discharged due to illness.
4. **Change of law or stepping in of a person with statutory authority:-** When

subsequent to the formation of a contract, change of law takes place or the government takes some power under some ordinance or special Act, as for example, the Defence of India Act, So that the performance of the contract becomes impossible, the contract is discharged.

**Example:** - D enters into a contract with P on 1<sup>st</sup> March for the supply of certain imported goods in the month of September of the same year. In June by act of Parliament, the import of such goods is banned. The contract is discharged.

5. **Out break of war:-** A contract entered into with an alien enemy during is unlawful and therefore impossible of performance. **Example:** - A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which, the port is situated. The contract becomes void when war is declared.

#### **Impossibility of performance –not an excuse:-**

Impossibility of performance is, as a rule, not an excuse for non-performance.” In the following cases, a contract is not discharged on ground of supervening impossibility:

##### **a. Difficulty of performance:**

A contract is not discharged by the mere fact that it has become more difficult of performance due to some unanticipated events or delays.

**Examples:** - A sold a certain quantity of Finland timber to B to be supplied between July and September. Before any timber was supplied, war broke out in the month of August and transport was disorganized so that A could not bring any timber from Finland. Held, the difficulty in getting the timber from Finland did not discharge A from performance.

##### **b. Commercial impossibility:-**

A contract is not discharged merely because expectation of higher profits is not realized, or the necessary raw material is available at higher profits is not realized, or the necessary raw material is available at a higher price because of the outbreak of war, or there is a sudden depreciation of currency.

**Example:** - A promised to send certain goods from Bombay to Antwerp in September, before the goods were sent, war broke out and there was a sharp increase in shipping rates, held, the contract was not discharged.

##### **c. Impossibility due to failure of a third person: -**

Where a contract could not be performed because of the default by a third person on whose work the promisor relied, it is not discharged.

**Example:** - A, a wholesaler, entered into a contract with B for the sale of a certain type of cloth to be produced by C, a manufacturer of that cloth. C did not manufacture that cloth. Held, A was liable to B for damages.

**d. Strikes, lock out and civil disturbances.**

Events such as these do not discharge a contract unless the parties have specifically agreed in this regard at the time of formation of the contract.

**Example:** - A agreed to supply to B certain goods to be procured from Algeria. The goods could not be produced due to riots and civil disturbances in the country, held, there was no excuse for non performance of the contract.

**e. Failure of one of the objects.**

When a contract is entered into for several objects, the failure of one of them does not discharge the contract.

**Example:** - H & B agreed to let out a boat to H for viewing a naval review on the occasion of the coronation of Edward VII, and to sail round the fleet. Owing to the king's illness the naval review was abandoned but the fleet was assembled. The boat, therefore, could be used to sail round the fleet. Held the contract was not discharged.

## **V. DISCHARGE BY LAPSE OF TIME**

The Limitation Act, 1963 lays down that a contract should be performed within a specified period, called period of limitation, if it not performed, and if no action is taken by the promisee within the period of limitation, he is deprived of his remedy at law. In other words, we may say that the contract is terminated.

## **VI. DISCHARGE BY OPERATION OF LAW**

A contract may be discharged independently of the wishes of the parties, i.e., by operation of law. This includes discharge:

By death

By merge

By insolvency

By unauthorized alteration of the terms of a written agreement.

By right and liabilities becoming vested in the same person

## **VII. DISCHARGE BY BREACH OF CONTRACT**

Breach of contract means a breaking of the obligation which a contract imposes; it occurs when a party to the contract without lawful excuse does not fulfill his contractual obligation or by his own act makes it impossible that he should perform his obligation under it. It confers a right of action for damages on the injured party. Breach of contract may be:-

1. Actual breach of contract, or
2. Anticipatory or constructive breach of contract.