

Discharge by Impossibility of performance and Frustration

Section 56 first lays down the simple principle that "an agreement to do an act impossible in itself is void". For example, an agreement to discover a treasure by magic, being impossible of performance, is void.

According to Section 56, impossibility of performance may fall into either of the following categories :-

1) **Impossibility existing at the time of agreement** : The first paragraph of Section 56 lays down that "an agreement to do an act impossible in itself is void". This is known as pre-contractual or initial impossibility.

(a) **Known to the parties** : This is known as absolute impossibility. In case of absolute impossibility, the agreement is void ab initio. For example, when A agrees with B to discover treasure by magic.

(b) **Unknown to the parties** : Where at the time of making the contract both the parties are ignorant of the impossibility. As in the case of destruction of subject matter to the ignorance of both the parties, the contract is void on the ground of mutual mistake. If however, the promisor also knows of the impossibility of performance at the time of making the contract, he shall have to compensate the promisee for any loss which such promisee sustains through the non performance of the promise.

2) **Supervening Impossibility or subsequent impossibility (Impossibility arising subsequent to the formation of contract)** : Impossibility which arises subsequent to the formation of a contract (which could be performed at the time when the contract was entered into) is called post-contractual or supervening impossibility. Sometimes the performance of a contract is quite possible when it is made, but some event subsequently happens which renders its performance impossible or unlawful. In this case the contract becomes void. Where, for example, after making a contract of marriage, one of the parties goes mad, or where a contract is made for the import of goods and the import is thereafter forbidden by the Government order, or where a singer contracts to sing and becomes too ill to do so, the contract in each case becomes void.

Contract to do act afterwards becoming impossible or unlawful :-

A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Discharge by Supervening Impossibility (Specific Grounds of Frustration) :

The principle of frustration of contract or of impossibility of performance is applicable to a great

variety of contracts. A contract is discharged by supervening impossibility in the following cases:

1) **Destruction of subject matter** : The doctrine of impossibility applies with full force " where the actual and specific subject matter of the contract has ceased to exist". When the subject matter of a contract is destroyed without any fault of the parties to the contract, the contract is discharged.

(I) **Leading Case** : *Taylor vs Caldwell (1863) 3 B&S 826* is the best example of this class. There, a promise to let out a music hall was held to have frustrated on the destruction of the hall. C let a music hall to T for a series of concerts on certain days. The hall was accidentally burnt down before the date of the first concert. Held, the contract was void.

(II) **Leading Case** : *Howell vs Coupland (1876) QBD 258* where the defendant contracted to sell a specified quantity of potatoes to be grown on his farms, but failed to supply them as the crop was destroyed by a disease, it was held that the performance had become impossible.

(III) **Leading Case** : *V.L. Narasu vs PSV Iyer 38 ILR 1953 Mad 831*: A contract to exhibit a film in a cinema hall was held to have become impossible of performance when on account of heavy rains the rear wall of the hall collapsed killing three persons, and its licence was cancelled until the building was re constructed to the satisfaction of the chief engineer.

2) **Death or Incapacity of party** : "A party to a contract is excused from performance if it depends upon the existence of a given person, if that person perishes" or becomes too ill to perform.

Where the nature or terms of a contract require personal performance by the promisor, his death or incapacity puts an end to the contract. The man's life is an implied condition of the contract.

Case Laws :

1) **Robinson Vs Darison (1871) L.R. 6 Ex 269** : There was a contract between the plaintiff and the defendant's wife , who was an eminent pianist, that she should play the piano at a concert to be given by the plaintiff on a specified day. On the morning of the day in question she informed the plaintiff that she was too ill to attend the concert. The concert had to be postponed and the plaintiff lost a sum of money. Held, that was discharged due to illness.

2) **Condor Vs Barron Knights Ltd (1966) 1 WLR 87** : Where a 16 years old boy was engaged for five years to perform as a drummer for all the seven nights in a week whenever the band had business and on account of illness, he was certified to be able to perform only four nights, the contract was held to have been frustrated.

3) **Declaration of war** : Whether the outbreak of war discharges a contract depends upon, the actual circumstances of each case. A contract made with an alien enemy during the period of

war should void ab initio. The pending contracts at the time of declaration of war are either suspended or declared as void.

Leading case :

Basanti Bastzalaya vs River steam Navigation Co. AIR 1907 : The plaintiff entered into contract with the defendant for the carriage by river. The carriage by river was intercepted by the enemy seizing boat along with cargo during hostilities between India and Pakistan. The Calcutta High Court allowed the carrier the plea of impossibility of performance.

4) **Non- occurrence of an event** : Another cause of frustration is the non- occurrence of some event which must reasonably be regarded as the basis of contract. This can be well illustrated by the Coronation Case.

Leading Case :

Krell Vs Henry (1903) : In this case, the defendant agreed to hire the plaintiff's flat for viewing the coronation procession. The procession had to be abandoned on account of the king's illness. It was held that the contract became impossible of performance.

5) **Government or Legislative Intervention** : Where the performance of a contract becomes impossible or unlawful as a result of legislative or administrative action of the state, the contract becomes void.

Example : There was a contract for the sale of the trees of a forest. Subsequently by an Act of Legislature, the forest was acquired by the state government. The contract was discharged because it had become impossible of performance.

Cases not covered by Supervening Impossibility (Limitations) :

"He that agrees to do an act must do it or pay damages for not doing it" is the general rule of the law of contract. Some of the cases where impossibility of performance is not an excuse are as follows :

1) **Commercial Hardship** :- A case of commercial hardship to perform the contract, will not discharge the contract i.e., when the contract becomes commercially unviable or unprofitable.

2) **Difficulty of performance** :- Increased or unexpected difficulty and expense do not, as a rule, excuse from performance. A contract is not discharged simply on the ground that its performance has become more difficult, more expensive, or less profitable than that agreed at the time of its formation.

3) **Strikes and Lock- Outs** :- A strike by the workers or a lock- out by the employer also does not excuse performance because the former is manageable and the latter is self induced. Where the impossibility is not absolute or where it is due to the default of the promisor himself, section

56 would not apply. As such these events also do not discharge a contract.

4) **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.

5) **Default of a third party** :- The doctrine of supervening impossibility does not cover cases where the contract could not be performed because of the impossibility created by the failure of a third person on whose work the promisor relied.

References :

1) **Business Law : MC Kuchhal and Vivek Kuchhal**

2) **Indian Contract Act : RK Bangia**