

Discharge of a contract

When the rights and obligations arising out of a contract are extinguished the contract is said to be discharged. 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 in any of the following ways :-

- 1) By performance - actual or attempted (Section 37,38).
- 2) By mutual consent or agreement (Section 62,63).
- 3) By subsequent or super vening impossibility or illegality (Section 56).
- 4) By lapse of time.
- 5) By operation of law.
- 6) By breach of contract (Section 39).

DISCHARGE BY PERFORMANCE :

Performance of a contract is the principal and most useful mode of discharge of a contract. 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.

Discharge by performance may be :

- (I) By 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.
- (II) By attempted performance or tender : When the promisor has made an offer by performance to the promisee but it has not been accepted by the promisee.

DISCHARGE BY AGREEMENT OR CONSENT :

What has been created by agreement may be extinguished by agreement. The rule of law in this regard is as follows "a thing may be destroyed in the same manner in which it is constituted". This means a contractual obligations may be discharged by agreement which may be express or implied. Section 62 and 63 deal with this subject and provide for the following methods of discharging a contract by mutual agreement.

- a) **Novation (Section 62)** : Where the parties to a contract substitute a new contract for the old contract, the old contract is discharged by novation. Section 62 of the Indian Contract Act deals with the effect of novation, rescission and alteration of the existing contract.

Example : A owes B Rs. 10,000. A enters into an agreement with B, and give B a mortgage of his (A's) estate for Rs. 5,000 in place of the debt of Rs. 10,000. This is a new contract and extinguishes the old.

b) **Rescission (Section 62)** : Rescission means cancellation of the contract by any party or all the parties to a contract. In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place.

Examples :

(A) 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.

(B) X promises Y to sell and deliver 100 bales of cotton on 1st October at his godown and Y promises to pay for goods on 1st November. X does not supply the goods. Y may rescind the contract.

c) **Alteration (Section 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. Alteration is valid if it is done with the consent of all the parties to the contract.

Example : A enters into a contract with B for the supply of a 1,000 bales of cotton at his ware house on 1st July 1980. Later both A and B agree to postpone the date of delivery to 1st September 1980. This change amounts to alteration of the contract.

d) **Remission (Section 63)** : It means acceptance of lesser amount or lesser degree of performance than what was actually due under the contract. It is a unilateral act of the promisee discharging at his will and pleasure of the obligation of another. The law in India is different from that in England. In England, a person cannot remit unless the fresh promise is supported by consideration. On the other hand, in India a promisee may remit or give a part of his claim and a promisee to do so is binding even though there is no consideration for doing so.

Example : A owed large sum of money to B. C offered to pay lesser sum in satisfaction of B's claim on A. B accepted it. It was held that the acceptance was in full satisfaction and B cannot claim balance from A after receiving payment in full satisfaction. [Kapur Chand vs Himayat Ali Khan AIR 1963].

e) **Waiver** : Waiver means intentional relinquishment of a right under the contract. Thus, it amounts to releasing a person of certain legal obligation under a contract. Consideration is not necessary for waiver.