FRUSTRATION OF CONTRACT AND DISCHARGE OF CONTRACT

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According to the **Section 56** of the Indian Contract Act 1872, "an agreement to do an act which is impossible in itself, such agreement is declared void". This section deals with initial impossibility and subsequent impossibility. It is as follows:

a. Agreement to do impossible act: An agreement to do an act impossible in itself is void.

b. Contract to do act after turning into impossible or unlawful:

c. Compensation for loss through non-performance of act known to be impossible or unlawful:

The overhead section relies on common law doctrine of Frustration. Supervening impossibility under section 56(2) means an impossibility which arises subsequent to the formation of the contract shall make the contract void. It is also termed as the doctrine of frustration. A contract become void on account of the subsequent impossibility only if the following conditions are satisfied:
i) The act should have become impossible after the formation of the contract. ii) The impossibility should have been caused by reason of some event which was beyond the control of the promisor.
iii) The impossibility must not be the result of some act or negligence of the promisor himself.

In ***Paradine v Jane***, the common law courts laid this doctrine. The theme of this doctrine was that when the law casts a duty upon a person and he is unable to perform for no fault of his, he is excused for non-performance.

In ***Taylor v Caldwell***, Blackburn J., giving the judgment of the Queen's Bench, held the contract is not to be construed as a positive contract, but as matter to an implied condition that the parties shall be excused in the case, before breach, performance becomes impossible from the destroying of the thing without default of the contractor.

The overhead rule is applicable to both physical destruction of subject-matter and as well as failure in object, this can be understood as an illustration.

GROUNDS OF FRUSTRATION

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. In Taylor v. Caldwell the promise to let out a music hall was held to have been frustrated by the destruction of the hall.

Change of Circumstances : If a contract envisages performance by a particular individual, as in a contract to paint a portrait, and no substitute is likely to be satisfactory, then the contract will generally be frustrated by the incapacity of the person concerned.

Non occurrence of Contemplated event : Sometimes, the performance of a contract remains entirely possible, but owing to the non occurrence of an event contemplated by both parties as the reason for the contract, the value of the performance is destroyed.

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

In Robinson v Davison, there was a contract between the plaintiff and the defendant's wife, to play the piano at a concert to be given by the plaintiff on a specified day but was barred from doing so due to her hazardous illness. The suit by the plaintiff claiming compensation was dismissed as the defendant's wife was incapacitated by performing her promise due to the illness.

Government, Administrative or Legislative Intervention : A contract will be dissolved when legislative or administrative intervention directly operates on the fulfilment of the contract. In Metropolitan Water Board v Dick Kerr & Co Ltd, in which a contract for the construction of a tank was ordered by the government to cease work during World War I was held to have frustrated the contract. But the government intervention need not be just during a war. Any change in law that will render the contract impossible to perform can also frustrate the contract and free the parties of any liabilities to each other

Intervention of War : Intervention of war or war-like conditions in the

performance of contracts also amounts to frustration.

Effects of frustration

1. **Frustration shall not be self induced**: For example, a sale of shares by a company to its employees and also to the employees of its subsidiary where the employees of the subsidiary company were allowed to buy shares though the same is sold in auction. It cannot be frustration.

2. **Frustration operates automatically to the extent of frustration**: For example, in a contract for sale of 250 tons of barley to be grown in a land, the defendant raised only 150 tons due to crop failure and sold to another. The sale is valid, as the frustration operates only to the extent of failure.

3. **Adjustment of rights**: When Section 65 is used to doctrine of frustration, then the effect of it will be restoration of benefits. For example; A, is a singer, contracts with B, the manager of a theatre, to perform at his theatre for three nights every week during the next two months, and B undertakes to pay her five hundred rupees for each night's performance. On the eighth night, A intentionally absents herself from the theatre, and B, as a result, cancels the contract. B must pay A for the seven nights on which she had performed.

DISCHARGE OF CONTRACT:

Just as a contract is created by means of an agreement, it can be terminated or discharged by mutual agreement. If the parties to a contract agree to make a fresh contract in place of the original contract, the original contract is discharged. According to Section 62 if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Discharge by Lapse of Time: The rights and obligations under a contract can be enforced only within a specified period called the 'period of limitation'. The Limitation Act has prescribed the period of limitation for various contracts: For example, period of limitation for exercising the right to recover an immovable property is twelve years and right to recover a debt is three years. After the expiry of this limitation period, the contractual rights Cannot be enforced. In other words, if a debt is not recovered within three years of its payment becoming due, the debt becomes time barred and is discharged by lapse of time

Discharge by Mutual agreement: A contract can be discharged by mutual agreement in any of the following ways:

Novation The term 'novation' means the substitution of a new contract for the existing one. This arrangement may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract. Since novation implies a new contract, all the parties to the existing contract must agree to it.. When the parties to a contract agree to replace the existing contract with a new contract, it is called Novation. This is a novation involving change of parties. When the parties to a contract decide to replace a new contract for it, the original contract is discharged and need not be performed. The replacement of a new contract is impossible after there has been a breach of the original contract.

Rescission : Rescission means cancellation of the contract. If by mutual agreement the contracting parties agree to rescind the contract, the contract is discharged. A contract can be rescinded before the performance becomes due. Non-performance of a contract by both the parties for a long period, without complaint, amounts to implied rescission.

Alteration It means a change in one or more of the terms of a contract with consent of all the parties. Alteration has the effect of terminating the original contract. In an alteration there is a change in the terms of a contract but no change of parties to it.

Remission : It means the acceptance of a lesser sum than what was contracted for or a lesser fulfilment of the promise made. According to section 63, every promisee may remit or dispense with it, wholly or in part, or extend the time of performance, or accept any other satisfaction instead of performance. Illustration: A owes B Rs. 5,000. A pays to B Rs. 3,000 who accepts it in full satisfaction of the debt. The whole debt is discharged.

Waiver : Waiver means abandonment or intentional relinquishment of a right under the contract. When a party waives his rights under it the other party is released from his obligation. For example, A promises to paint a picture for B. afterwards forbids him to do so. A is no longer bound to perform the promise..

Accord and Satisfaction An accord and satisfaction is a legal contract whereby two parties agree to discharge a tort claim, contract, or other liability for an amount based on terms that differ from the original amount of the contract or claim. Accord and satisfaction is also used to settle legal claims prior to bringing them to court. Accepting some other satisfaction instead of actual performance is known as the principal of "accord and satisfaction" under English Law, and this results in the discharge of obligation under the contract.

Discharge by Operation of Law : A contract may be discharged by operation of law in the following cases.

i) **Death of the Promisor**: Contracts involving the personal skill or ability of

the promisor come to an end with the death of the promisor.
ii) **Insolvency:** When a person is declared insolvent by an Insolvency Court, he is discharged from his obligation existing at that time. So, if a promisor is declared insolvent, he is discharged from his liability.
iii) **Merger**: When an inferior right accounting to a party in a contract merges into the superior rights accruing to the same party, the earlier contract is discharged. For example, A took a land on lease from B. Subsequently, A purchases that very land. Now A becomes the owner of the land and the earlier contract of lease stands terminated.
iv) **Material alteration:** In a written contract if any party makes some material alteration in the terms of the contract without the approval of the other party, the contract stands terminated. A material alteration is one which varies the rights, liabilities or the position of the parties as such, You should note that immaterial alterations, such as correcting the clerical errors or the spelling of a name has no effect on the validity of the contract

Discharge by Impossibility of Performance: Section 56 of Contract Act provides that an agreement to do an act impossible in itself is void. This rule is based on the principle that law does not recognise the impossible and what is impossible does not create any obligations.

Discharge by breach: In general sense, breach is a failure to act in a required or promised way. Breach of contract is failing to perform any term of a contract, written or oral, without a legal excuse. This may include not completing a job, not paying in full or on time, failure to deliver all the goods, substituting inferior or significantly different goods, not providing a bond when required, being late without excuse, or any act which shows the party will not complete the work. Breach of contract is one of the most common causes for filing suits for damages or suit for “specific performance” of the contract in the court.

In order to uphold a case of breach of contract the court must satisfy itself of all the following requirements:-

i. The contract must be valid. It must contain all the essential elements of the contract so that it can be heard by a court. If all the essentials are not present, the contract is not considered as a valid contract; hence no suit shall lie in the court.

ii. The plaintiff must show that the defendant has broken the contract.

iii. The plaintiff did everything required for the performance of the contract.

iv. The plaintiff must have given a reasonable notice to the defendant of such breach. If the notice is in writing, this will prove to be better than an oral notification

Types of breach

Thus, breach is of two kinds namely anticipatory breach, and actual or present breach.

Actual Breach: Actual breach of contract may take place either on the due date of performance or during the course of performance. For example, A agreed to deliver 100 bags of rice to B at a certain price on 10th July. If A refuses or fails to deliver ;.he goods on time, there occurs an actual breach. If the promisor has performed part of the contract and then refuses or fails to deliver the remaining goods, it is also an actual breach of contract.

Anticipatory Breach: It takes place even before the date for performance of contract that is fixed by the parties. The breach may be committed by the party either expressly by making a communication to the promisee about this intention or in an implied manner by disabling himself for the performance of the contract.

In Hochster v De la Tour, is the leading case on anticipatory breach. A appointed B to accompany him on a tour for three months from 1st June at a certain salary. Before 1st June, A told B that B was no more required by him. B sued A, without waiting for 1st June. A argued that there was no breach because 1st June had not arrived yet. But, the court said that since A had renounced the contract, B was not required to wait till 1st June to initiate any legal action. This shows that a contract becomes a legal entity not from the moment the performance becomes due but from the moment it is made.

Difference between Anticipatory Breach and Actual Breach

Basically, breaches of contract fall into one of these two categories. Both

anticipatory and actual breaches of contract are bad news for the parties to the contract. They can waste both time and money, and certainly lead to frustration for the parties to the contract. An actual breach occurs when one person refuses to fulfill his or her part of obligation on the due date or performs incompletely and anticipatory breach occurs when one party announces that he intends not to fulfill his or her part of obligation, before the due date for performance. This doesn't mean there aren't remedies in either case. A breach of contract, no matter what form it may take, entitles the innocent party to maintain an action for damages.