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| CHAPTER | |
| 1 | The Indian Contract Act, 1872 |
| Unit : 4 | Performance of Contract |

- [1] (a) According to Section 56, Para 2 of the Indian Contract Act, 1872, where an act becomes impossible after the contract is made the contract to do such an act becomes void when the act becomes impossible.
In this case where A lets out a theatre to B for a series of drama for a certain day. The theatre was completely destroyed by fire before the scheduled dates; the contract is discharged by impossibility of performance.
- [2] (c) Yes, C can recover ₹ 30,000 each from A and B. be according to Section 43 and 44, of the Indian Contract Act, 1872, where two or more persons make a joint promise, then each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
- [3] (d) The servant who wrong fully leaves the service after six months is not entitled to any salary and he cannot claim any compensation also because in the contract it was decided that the salary would be paid on the completion of one year.
Whereas if in the contract it was not decided then the servant would receive salary only after completion of one year then he had the right to claim compensation for the work already done on quantum meruit basis.
- [4] (b) The contract between R and S is discharged once the car is delivered to S and S pays ₹ 7 lacs, contract comes to an end as both the parties to the contract have performed their promises in accordance with the terms of the contract.
- [5] (c) As per the provisions of Indian Contract Act, 1872, the parties to a contract may substitute a new contract for the old one. This is the case of novation. On novation, the old contract is discharged and consequently it need not be performed. Thus it is a case where there being a contract in existence some new contract is substituted for it either between the same parties or between different parties, the consideration mutually being the discharge of old contract. Novation can take place only by mutual agreement between the parties.

- [6] (c) As per Section 43, Para 1 of the Indian Contract Act, 1872, in the absence of an express agreement to the contrary, the promisee may compel anyone or more of such joint promisors to perform the whole of the promise.
- [7] (d) A contract of personal violation is not performed by the agent, promisees and the legal representatives.
- [8] (d) B cannot claim damages from A because the reason of A absenting himself was that he became ill and if he would have absented himself willfully then B would have the right to claim proportionate damages.
- [9] (d) The original contract need not be performed if there is "Alteration of contract", "Recession of contract" or "Novation".
- (i) Alteration [Section 62] means a change in the terms of a contract with the mutual consent of the parties. Alteration discharges the original contract and creates a new contract.
 - (ii) Recession [Section 62] means cancellation of the contract by any party or all the parties to a contract.
 - (iii) Novation [Section 62] means substitution of a new contract from the original contract, such a new contract may be either between the same parties or between different parties.
- [10] (a) Reasonable time for performance of a contract is a **question of fact**.
- [11] (a) X. sold rice to Y by sample and Y thinking that they were old rice purchased them, but the rice was new. In this case Y is bound by the contract and he cannot rescind the contract as he was given the opportunity to examine whether the goods corresponds with the sample or not since he thought that the rice was old and accepted it as a result he can not terminate the contract after wards.
- [12] (d) The right of joint promisees to demand performance is joint and several i.e. the release of one of the joint promisors shall not relieve all the other promisors from their liability.
However, under English law, the liability of joint promisors is only joint and not joint and several.
- [13] (d) X and Y enter into a contract that, Y shall build a house for X for ₹ 20 lacs, Y is ready and willing to construct the house but X prevent him from doing so. In such a case Y. can rescind the contract and he is entitled to recover from X the compensation for any loss which he has incurred by its non performance.
- [14] (a) Rescission of a voidable contract is communicated and revoked in the same manner as the communication of revocation of proposal.

- [15] (b) When time is not an essence of a contract and time within which the contract was to be performed has expired, in such a case the contract does not become voidable at the option of the promisee and he is entitled to claim compensation for any loss occasioned to him for the non performance of the promisee at the agreed time.
- [16] (d) A contract is created by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following ways:
- (a) Novation
 - (b) Rescission
 - (c) Alteration
- [17] (c) As per Section 25 (3) of the Indian Contract Act, 1872 a written promise to pay a time barred debt is valid.
Where a promise is in writing, signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration.
Thus, mother has to make the payment.
- [18] (d) When time is essence of the contract and the promisor fails to perform the contract within the specified time, the contract becomes voidable at the option of the promisee.
- [19] (d) A contract can be discharged by –
- (a) **Mutual agreement:** A contract can be discharged by mutual agreement in any of the following ways:
 - (i) Novation
 - (ii) Rescission
 - (iii) Alteration
 - (iv) Remission
 - (v) Waiver
 - (b) **Lapse of time:** A contract is discharged if it is not performed or enforced within a specified period, called period of limitation. The Limitation Act, 1963 has prescribed the different periods for different contracts.
 - (c) **Operation of law:** A contract may be discharged by operation of law in the following cases:
 - (i) By death of the Promisor.
 - (ii) By insolvency
 - (iii) By unauthorised material alteration.
 - (iv) By the identity of promisor and promisee.

- (d) **Breach of contract:** A contract is said to be discharged by breach of contract if any party to the contract refuses or fails to perform his part of the contract or his act make it impossible to perform his obligation under the contract. A breach of contract may occur in the following two way:
- (i) Anticipatory Breach of contract
 - (ii) Actual breach of contract.
- [20] (d) Where time is the essence of the contract depends on the:
- (i) Provision of law
 - (ii) Intention of the parties
 - (iii) Facts and circumstances of each separate case.
- [21] (b) According to Section 45 of the Indian Contract Act, 1872, when a person has made a promise to two or more persons jointly, then unless a contrary intention appear from the contract, the right to claim performance rests between him and them, after the death of any of them, with the representatives of the survivor or survivors and after the death of the last survivor, with the representatives of all jointly.
- [22] (d) A debt becoming barred by limitation means that now it cannot be sued upon in a court of law. It no way means that a payment received cannot be appropriated towards this debt.
Thus, X's contention that ₹ 1000 can not be adjusted as ₹ 2000 is time barred can not be held as current.
It is also correct that Y can appropriate the payment of ₹ 1000 toward the first debt & X is bound to pay ₹ 2500 which is not yet barred by limitation.
Thus, option (d) is correct.
- [23] (b) Where the performance of a promise by one party depends on the prior performance of promise by the other party, such reciprocal promises fall under the category of conditional and dependent. Since, performance of one of the promises is **conditional** on the performance of the other. If one of the promises is not performed the other too need not be performed, hence **dependent**.
- [24] (b) When an inferior right accruing to a party in a contract merges into a superior right accruing to the same party, then the contract conferring the inferior right is discharged.
- [25] (a) To contracts of sale of movable properties, time is presumed to be the essence of the contract.

- [26] (c) As per Section 39 of the Indian Contract Act, 1872, when a party to a contract has refused to perform or has disabled himself from performing his promise in entirety i.e. the promisor may put an end to the contract, unless has signified by words or conduct that he is interested in its continuance. In this case W, a singer who enters into a contract with M, the manager of the theatre to sing at his theatre for two nights in every week during the next two months and M engages to pay her ₹ 5 lacs for each night's performance. On 7th night, W will fully absents herself from the theatre in such a case M is at liberty to put an end to the contract.
- [27] (d) Discharge of a contract through frustration means that contract becomes technically unviable to carry it on. It does not cover the grounds of commercial impossibility. Commercial impossibility can be no reason for not carrying forward the contract unless it is through mutual agreement.
- [28] (c) **Same as Ans. 5**
- [29] (b) One of modes of discharge of contract is discharge by mutual agreement which is laid down under **Section - 62** of the Indian Contract Act. It says that "if the parties to a contract agree to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed. If the parties agree to substitute a new contract for the old one, it will be a case of Novation. Novation can take place **only** by **mutual agreement** between the parties.
- [30] (b) Performance cannot be excused on the ground of commercial impossibility. A contract is **not discharged** merely because necessary raw material is available at a very high price, or depreciation or appreciation of currency, or where execution of contract becomes more expensive or less profitable, or where necessary transport is available at exorbitant rates. Therefore, commercial impossibility does not make the contract void as commercial impossibility is not a case of supervening impossibility.
- [31] (d) **Same as Ans. 9**
- [32] (b) **Same as Ans. 23**
- [33] (c) Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of its any satisfaction which he thinks fit. This is known as remissions. Therefore, acceptance lesser than that agreed is known as remission.
- [34] (d) A contract which is founded on personal consideration comes to an end on the death of the promisor. In other words contracts based on personal consideration can be performed only by the promisor. As regards any other contract, it can be performed by the legal representatives, or agents of the promisor.

[35] (c) When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, it is known as supervening impossibility and such contract becomes void.

[36] (a) Reciprocal promises are those promises which are to be performed simultaneously by both the parties. Such promises constitute concurrent conditions and the performance of one of the promises is conditional on the performance of another.

[37] (d) Novation is a situation when the old contract is discharged and a new contract is substituted at its place between the same or new parties. In case of alteration, the terms of the contract are altered by mutual agreement. It leads to discharge of the old contract.

Hence, novation, performance and alteration all are the ways of discharging a contract.

[38] (d) If there is something in the contract to show that it was the intention of the parties that the promise should be performed by promisor himself, such promise must be performed by the promisor and nobody else.

Thus, since A has died before painting the picture, the contract cannot be enforced either by A's representative or by B, thus the agreement lapses for both the parties.

[39] (d) A contract can be discharged by recession. In this case, only the old contract is cancelled and no new contract comes to exist in its place. Hence it is recession.

[40] (c) **Supervening Impossibility:** When performance of promise becomes impossible or illegal by occurrence of an unexpected event or a change in circumstances beyond the contemplation of parties, the contract becomes void on account of supervening impossibility.

[41] (b) Executory contract refers to the contract in which the reciprocal promises or obligation which serves as a consideration, is to be performed in future.

Thus, in the given case X has already performed his part of contract i.e. paid the amount for purchasing a flat while Y has made a reciprocal promise of giving possession of the flat after one year thus, resulting in an executory contract.

[42] (b) Sometimes the benefits of a contract are succeeded to by process of law then both the burden and benefits attaching to the contract, devolve on the legal heir, this is known as **succession**. Thus, a person succeeds the rights, interest and benefits of another person.

- [43] (c) A contract is said to be discharged by **rescission**, when the parties to a contract agrees to rescind it, and thus, the contract need not be performed. In this case, old contract is cancelled and no new contract is formed.
In the given case, a contract between Brown and Crown of selling a house comes to an end by mutual agreement, no new contract being formed in its place. Thus, it is a case of rescission.
- [44] (b) As per the Indian Contract Act, the legal representative has a right to enforce the contracts as well as are bound to perform it unless a contrary intention appears from the contract.
As Mr. B has died, his son C being his legal representative has a right to claim the amount from A.
Hence, C's claim is **enforceable**.
- [45] (a) Supervening Impossibility is also known as **Doctrine of Frustration**.
It means that when such changes in circumstances occur which was beyond the contemplation of the parties due to which now the contract cannot be performed.
- [46] (b) In alteration, the terms of the contract are altered by mutual agreement so that the alteration may have affect of substituting a new contract for the old contract. In alteration it is not essential to substitute a new contract in place of the old contract. There may be change in some of the terms and conditions of the original agreement. Hence it is **alteration**.
- [47] (c) Rescission is communicated and revoked in the same way as a promise. The effect is to dispense with further performance and to render the party rescinding liable to restore any benefit he may have received.
Such a contract can be terminated at the option of the party who is empowered to do so. Hence, the case of X and Y is the discharge of contract by **Rescission**.
- [48] (b) The contract is discharged by merger when an inferior right accruing to a party under contract mergers into a superior right accruing to the same party under the same or some other contract.
Thus, in the given case the contract is discharged by **merger**.
- [49] (c) When performance of promise become impossible or illegal by occurrence of an unexpected event i.e. due to the destruction of the subject matter, the contract becomes void. So, in this case also, the **contract becomes void**.
- [50] (b) If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfill the promise. After death of anyone of them, his legal representative jointly with the survivor or survivors should do so.[Sec.42]. After the death of the last survivor the legal representatives of all the original co-promisors must fulfill the promise. So, in the given question, the contract **should be performed by A and B along with C's legal representatives**.

[51] (b) If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence or which are founded on personal confidence between the parties.

Thus, the **contract is based on the personal skill of Amar**

[52] (b) **Reciprocal promises :**

- (i) Can be performed simultaneously
- (ii) Can be performed in order fixed by the parties
- (iii) The order of performance may be decided by the nature of transaction.

Thus, **option(b)** is not applicable in relation to performance of reciprocal promises.

[53] (c) When a party to a contract promises to do certain thing at or before the specified time and fails to do any such thing at or before the specified time, the contract or so much of it as has not been performed, **becomes voidable at the option of the promisee**, if the intention of the parties was that time should be of essence of the contract.

[54] (d) Yes, Shyam can recover ` **10,000 each for Ram and Lal**. According to Section 43 and 44 of the Indian Contract Act, 1872, where two or more persons make a joint promise, then each of two joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

[55] (c) Novation means when a party to a contract agrees to **substitute a new contract** for old contract, or to refund or remit or alter it, the original contract need not be performed.

[56] (d) If no time is specified for performance of contract, it must be performed within a reasonable time which may differ under the facts and circumstances of each case, Hence, **Option d** is the correct answer.

[57] (d) As per Sec 58 of the Indian Contract Act, in the case of the alternative promise, one branch of which is legal and other is illegal, the **legal branch alone can be enforced**.

[58] (d) If there is something in the contract to show that it was the intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor. This means contracts which involve the exercise of personal skill or diligence or which are founded on personal confidence between the parties must be performed by the promisor himself. e.g.: A promise to teach someone for the examination.

A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor.

- [59] (d) When a voidable contract becomes void the rule of recession applies. A contract is discharged by recession. When the parties to the contract agree to rescind it, the contract need not be performed. The contract is discharged by mutual agreement.
- [60] (c) Where two or more persons have made a joint promise, a release of one of such joint promisors by the promise does not discharge the other joint promisor or joint promisor, neither does it free the joint promisor so released from responsibility to the other joint promisors.
Hence, in this case the liability of Sunil to Shyam will not be discharged.
- [61] (d) As per Section 43 of the Indian Contract Act, 1872, if any of the joint promisors makes a default in making his contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.
- [62] (b) As per Section 58 of the Indian Contract Act, 1872. In the case of alternative promise, one branch of which is legal and the other is illegal, the legal branch alone can be enforced if it is separable from the illegal branch, else entire contract is void.
- [63] (a) This is a supervening impossibility and hence the contract between the Singer and the Opera house is discharged. Since, the amount was paid in advance to the Singer, it should be refunded by him to the Opera house on the principles of restitution of benefit received in case of void contract.
- [64] (c) A contract is discharged by recession. When the parties to a contract agree to rescind it, the contract need not be performed and the parties thereby are no more bound by it. In this case, only the old contract is cancelled and no new contract comes to exist in its place.
- [65] (a) When the parties agree upon doing of something which is obviously impossible in itself the agreement would be void. The fact of impossibility may be and may not be known to the parties.
Hence, promise by A to pay to B ₹ 71,000/- if B writes 1,000 pages in one minute is impossible of being performed and hence is **void**.
- [66] (d) Contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
A contract which involves the use of personal skill (like dance performance) or is founded on personal consideration, comes to an end on the death of the promisor.
Hence, answer is none of the above.
- [67] (d) The promise under a contract may be performed by promisor himself, or by his agent or his legal representative but the liability of the representative

under the contract is limited to the value of the property they inherit from the deceased.

- [68] (c) When persons reciprocally promise, first to do certain things which are legal and secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.
- [69] (a) When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void e.g. change in law etc.
- [70] (d) Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of its any satisfaction. In other words, a contract may be discharged by remission. Under this case may be partial or compute remission, no consideration is required.
- [71] (c) **Voidable contract** can be terminated at the option of the party who is empowered to do so. If one has received any benefit under the contract, then he must restore such benefit to the person from whom he has received it. Thus, a buyer will acquire good title for the goods sold by seller who has obtained possession under voidable contract.
- [72] (b) When the parties to the contract agree to cancel the contract, it is known as recession. A contract is also discharged by recession, and then it need not be performed. The old contract is cancelled and no new contract comes into existence.
- [73] (b) The parties to the contract may substitute a new contract for the old. If they do so, it will be a case of novation. On novation the old contract is discharged and consequently it need not be performed. Thus, it is a case where there being a contract in existence some new contract is substituted for it either between the same parties or between different parties, the consideration mutually being the discharge of old contract.
- [74] (b) Alok owes ₹ 25,000 to Laxmi. Laxmi promises to accept ₹ 15,000 in full settlement of the original debt, such an agreement is valid. It is known as remission.
- [75] (d) A contract may be discharged either by an act or the parties or by an operation of law in the different base set out below:
- i. Discharge by performance
 - ii. Discharge by mutual agreement
 - iii. Discharge by impossibility of performance
 - iv. Discharge by lapse of time
 - v. Discharge by operation of law

vi. Discharge by breach of contract

[76] (b) In this situation A, B & C jointly promises to pay D ₹ 75,000. But A being compelled to pay will then recover ₹ 25,000 each from the other parties i.e. B & C.

Thus, option (b) is correct.

[77] (c) Remission can be done where the party to the contract agrees to:

- a. Dispense with (waive the performance)
- b. Accept a lesser amount or lesser degree of performance for full discharged of contract.
- c. Extends the time of performance.

For remission, no consideration is required to be paid by benefiting party.

Once the party agrees for remission, it can be revoked.

Thus, option (c) is correct.

[78] (d) None of the above options is false as in all the above cases, recession can be made. It has to be done through mutual consent and aggrieved parties can rescind in case of failure to perform and also in case where contract is voidable.

[79] (c) This is a case of remission as the party having upper hand in contract accepts ₹ 12,000 in full settlement of ₹ 15,000 which is possible.

[80] (d) Supervening impossibility arises due to impossibility in performance arising after formation of contract. It is also known as doctrine of frustration in England.

[81] (b) Discharge of contract by mutual agreement includes novation because it provides if the parties to a contract agree to substitute a new contract for it, which is novation.

[82] (a) In this case R will be able to recover the money from Q as the contract was breached by P.

[83] (c) Attempted performance and actual performance are not same because when one party performed or try to discharge the contract but other party not showing interest to perform or perform after fixed time then it is attempted performance and examples of attempted performance Airline, Cinema Hall.

Attempted performance way to discharge contract

Actual performance means when both the parties performed their obligation.

Example: Cash Sales.

[84] (a) Contract can be performed by promisor himself or his agent, legal representative, third party also perform the contract but where contract is related with personal skill or diligence then promisor has to perform the contract himself.

If promisor died then the contract is void in case of contract is related, with personal skill and diligence.

- [85] (d)** Contract is discharged or discharging of contract means. Contract comes at an end or contract is done. There are too many ways to discharge the contract, these are:
- (a) By attempted performance
 - (b) By actual performance
 - (c) By mutual agreement
 - (d) By lapse of time
 - (e) By supervening impossibility
 - (f) By breach of contract.
- [86] (a)** Novation means replace the old contract with new one or changing in parties of contract and novation can take place only where mutual consent is present or consent given by both the parties.