




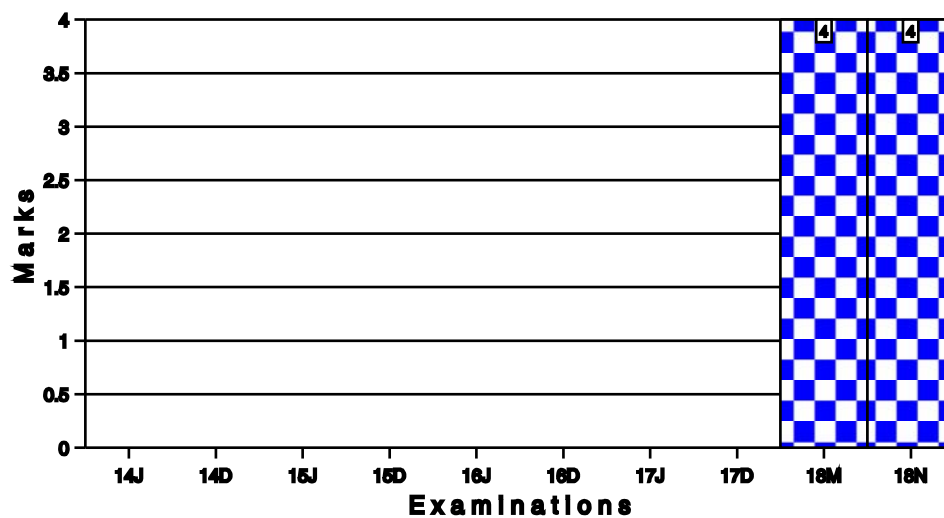


CHAPTER	<h1>The Indian Contract Act, 1872</h1>
<h1>1</h1>	
Unit: 4	Performance of Contract

Marks of Short Notes, Distinguish Between, Descriptive & Practical Questions

Legend

 Objective
  Short Notes
  Distinguish
  Descriptive
  Practical



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SELF STUDY QUESTIONS

Q.1: Describe the Obligations of parties to contract Under Indian Contract Act,1872.

Answer:

Performance of Contract: It is one of the modes of discharging the contract. It is the completion or fulfilment of obligations by the respective parties to a contract.

As per Section 37 of the Indian Contract Act, the parties to the contract must either—

1. Perform their respective promises, or
2. Offer to perform the same unless such performance is dispensed with or excused under the provisions of any other law.

Q.2: By Whom a contract may be performed.

Answer:

- **Promisor himself:** Section 40 — States that “if it appears from the nature of the case that it was the intention of the parties to a contract that any promise contained in it needs to be performed by the promisor himself, such promise must be performed by the promisor himself.” Contracts involving the exercise of personal skill or diligence, or which are formed on the personal confidence between the parties need to be performed by promisor himself.
- **Agent:** If the contract is not found on the personal consideration, the promisor or his representative may employ a competent person to perform it.
- **Representatives:** Contract involving the use of personal skill or found to be on personal consideration comes to an end on the promisor’s death. In other cases, the legal representatives of the deceased partner are bound to perform it unless the contrary intention appears from the contract; but their liability is limited to the value of the property they inherit from the deceased.

- **Third person:** As per Section 41, “if the promisee accepts the performance of the promise by a third person, he cannot afterwards enforce it against the promisor.
- **Joint promisors:** In case of joint promise, promisee may compel one or more of the joint promisors in the absence of contract to contrary. If any of them dies, his legal representatives must perform the promise jointly with the surviving promisors.

Q.3: Distinguish between Succession and Assignment.

Answer:

Succession	Assignment
1. Transfer of rights and liabilities of a deceased person to his legal representative is called succession.	Transfer of rights by a person to another person is called assignment.
2. It takes place on death of a person.	It takes place during the life time of a person.
3. It is not a voluntary act.	It is a voluntary act.
4. It may take place even without a written document.	It requires execution of assignment deed..
5. All rights and liabilities of a person are transferred.	Only rights of a person are transferred.
6. No notice is required to be given to any person.	Notice must be given to the creditor.
7. No consideration is required.	Consideration is required.

Q.4: Briefly explain the Effects of refusal to accept an offer of performance.

Answer:

The promisor makes an offer of performance to the promisee, but the offer to perform is not accepted by the promisee.

Q.5: How many types of tender are there and Describe the Cements of Tender?

Answer:

- **Tender of goods:** attempted performance to promise to do something.
- **Tender of money:** attempted performance of promise to pay something.

Essentials of valid tender:

- must be unconditional
- must be for the whole obligation
- must be given at proper time
- must be given at proper place
- must give a reasonable opportunity of inspection
- party giving tender must be willing to perform his obligation
- must be paid to the proper person
- must be made for the exact amount of money

Q.6: Describe the Effects of Refusal of party to perform promise.

Answer:

The aggrieved party can:

- (i) terminate the contract
- (ii) indicate by words or by conduct that he is interested in its continuance. If promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground immediately.

In both the cases, promisee would be entitled to claim damages that he suffered as a result of breach.

Q.7: What is the Liabilities of Joint Promisor and Promisee ?

Answer:

- **Section 42:**
If two or more persons have made a joint promise, ordinarily all of them during their life time must jointly fulfill the promise. After the death of any of them, his legal representative jointly with the survivor or survivors should do so.

- **Section 43:**
 1. All the joint promisors are jointly and severally liable. However, the contract between joint promisor may provide otherwise.
 2. A joint promisor may claim contribution from other joint promisors, if he is compelled to perform the whole promise.
 3. A joint promisor may claim contribution from other joint promisors, if any other joint promisor makes a default in performance of his promise.
- **Section 44:**

Where one of the joint promisor is released, other joint promisors shall continue to be liable.

Q.8: What are the Rights of joint promisees?

Answer:

- U/s 45, when a person has made a promise to several persons, then unless a contrary intention appears from the contract, the right to claim performance rests between him and them during their lifetime.
- When one of the promisees dies, the right to claim performance rests with the legal representative jointly with the surviving promisees.
- When all the promisees dies, the right to claim performance rests with their legal representatives jointly.

Q.9: Describe the Time and place of performance of the promise.

Answer:

- **Section 46:** Where no time is specified for the performance of the contracts, the performance must be done within a reasonable time.
- **Section 47:** Where the promisor undertaken to perform a promise on a certain day., he may perform it at any time during the usual hours of business, on that particular day and place as decided by the contract.
- **Section 48:** If a promisee is made to perform on a certain day and the promisor has undertaken to perform it without the application by the promisee, it's the duty of promisee to apply for performance at a proper place and within the usual business hours.

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- **Section 49:** If no specific place of performance is fixed by contract, it is the duty of promisor to apply to the promisee to appoint a reasonable place for performance.
- **Section 50:** Performance should be made in manner or at time prescribed or sanctioned by the promisee.

Q.10: What do you understand by Reciprocal Promise and Performance of Reciprocal Promise ?

Answer:

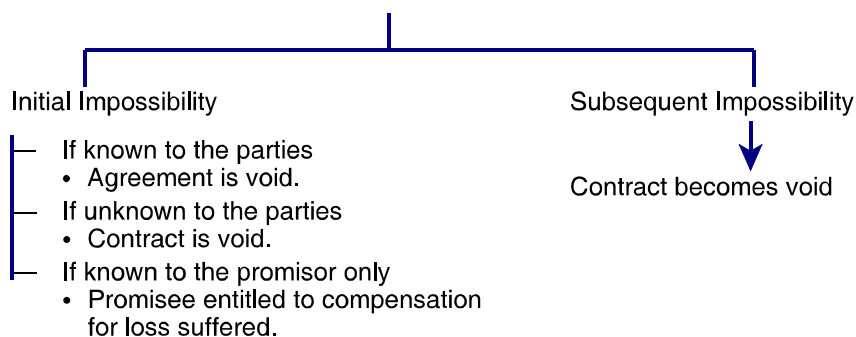
- If the contract consists of reciprocal promises, performance is not necessary unless the second party is willing to perform is reciprocal promise.
- Reciprocal promises constitute concurrent conditions and the performance of one of the promise is conditional on the performance of other, hence both the promises should be performed simultaneously.
- The order of performance may sometimes be indicated not expressly, but by nature of the transaction, where it is not expressly fixed by contract, they shall be performed in that order which the nature required.
- If the contract contains reciprocal promises, the contract becomes voidable if one party to the contract prevents the other from performing his promise and he is entitled for compensation for any loss suffered due to non-performance.
- If contract of reciprocal promises cannot be performed till the other promise is performed, promisor fails to perform his part, such promisor cannot claim compensation but has to pay compensation for any loss suffered by other party.
- **Section 55:** Where a party to a contract promises to do a certain 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 promisee, if the intention of parties was that the time should be the essence of the contract.

- If the time was not the essence of the contract and if contract is not performed at or before the specified time, then contract does not become voidable but promisee is entitled to compensation for any loss suffered.
- If due to failure of performance of contract at the agreed time, the contract became voidable, but promisee accepts performance at any other time, then he is not entitled to any compensation for loss unless he gives prior notice to the promisor of his intention to do so.
- Contract cannot be avoided where time is not essential, promisee there is only entitled to compensation for delay.
- Even where time was essential, promisee may waive his right to repudiate the contract and if promisor fails to perform the promise within stipulated time, promisee may accept performance at some other time and is not entitled to any compensation for delay unless he gives prior notice to the promisor of his intention to do so.

Q.11: How Many Types of Impossibilities are there ?

Answer:

- **Section 56:** An agreement to do an impossible act is void. Impossibility can be of two types.



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- If contract containing reciprocal promise, first to do certain thing which are legal and secondly, under specified circumstances, to do certain things which are illegal, first set of promise is valid while the second being illegal is void agreement.

Q.12: Describe the Appropriation of payments.

Answer:

- (i) If debt to be discharged is indicated while making payment, then payment is to be applied according to instruction.
- (ii) If debt to be discharged is not indicated while making payment, creditor may apply payment at his discretion to any lawful debt actually due and payable to him from debtor whose recovery is not time barred.
- (iii) If no appropriation regarding payment is made by both the parties, FIFO basis will apply on the basis of time.

Q.13: Which is a Contract which need not be performed — with the consent of both the parties ?

Answer:

- **Section 62:** If the parties to the contract agrees to
 - (i) substitute a new contract for it, or
 - (ii) rescind it, or
 - (iii) alter it,
- **Section 63:** If the promisee
 - (i) dispenses with or remits, wholly or in part, the performance of the promise made to him
 - (ii) extend the time for such performance
 - (iii) accepts any satisfaction for it
- **Section 64:** If the person at whose option it is voidable rescinds the contract
- **Section 65:** If the agreement contract is discovered to be void, the person who has received an advantage under such agreement or contract is required to restore the same or make compensation for it from whom he received it.
- **Section 66:** A rescission must be communicated to other party in the manner similar to communication of proposal.

- **Section 67:** If the promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promisee, contract need not be performed.

Q.14: How Many Modes of Discharge of Contract are there ?

Answer:

It means termination of contractual relations between the parties to a contract:

Modes of Discharge of Contract:

1. **By performance:** It occurs when the parties to the contract fulfill their obligations arising under the contract within the time and in prescribed manner. It may be:
 - (a) Actual performance
 - (b) Attempted performance
2. **By mutual agreement:** The parties may enter into a fresh agreement which provides for the extinguishment of their rights and liabilities of original contract. Important methods of discharge by fresh contract.
 - (a) **Novation:** It occurs when an existing contract is substituted by a new one, either between same parties or between the new ones.
 - (b) **Rescission:** It occurs when only the old contract is cancelled and no new contract comes to exist in its place.
 - (c) **Alteration:** It occurs when the terms of contract are so changed by mutual agreement that have the effect of substituting a new contract for the old one.
 - (d) **Remission:** It refers to acceptance of less fulfilment of the terms of promise.
 - (e) **Waiver:** It refers to the abandonment of the rights by the party who is entitled to claim performance of the contract.
 - (f) **Acceptance:** Of any other satisfaction it occurs when the party entitled to claim performance accepts any other satisfaction instead of the performance of the contract.

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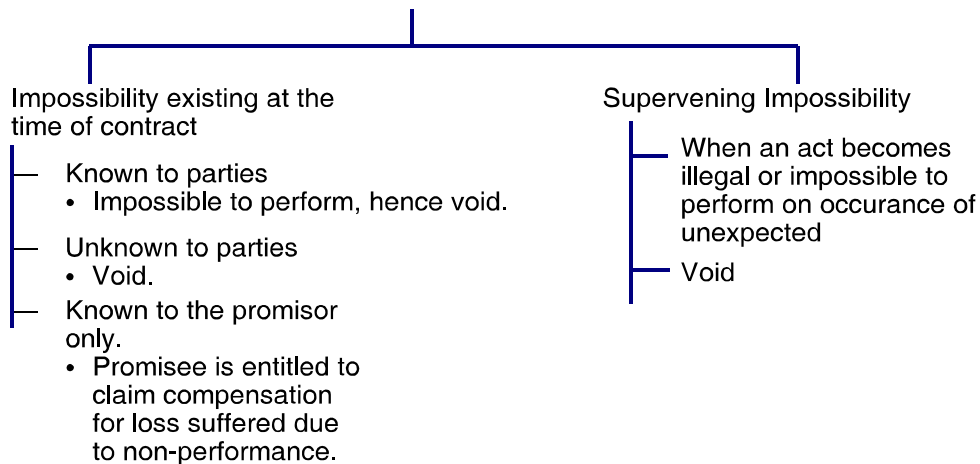
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3. **By Lapse of time:** It occurs if a contract is not performed within a specified period as prescribed by the Limitation Act, 1963.
4. **By operation of law:** It occurs when the contract is discharged by operation of law which includes
 - (i) **Material Alteration:** Where it is done without the knowledge and consent of the other, contract can be avoided by other party.
 - (ii) **Insolvency:** It can be done under certain particulars circumstances.
 - (iii) **Death of a promisor:** Contract involving personal skill or expertise of promisor. When promisor dies, it cannot be performed by anyone else and hence comes to an end.
 - (iv) **Merger of rights:** If an inferior rights in a contract is merged into a superior right by the party.

Q.15: How Many Types of Impossibilities of Performance/Frustration are there Describe them ?

Answer:

By impossibility of performance /frustration



- (ii) **Discharge by supervening impossible is done in following ways:**
 - (a) Death or personal incapacity

- (b) Destruction of subject – Manner
- (c) Non-existence or non-occurrence or certain essential things
- (d) Change of law
- (e) Declaration of war

(iii) Discharge by supervening illegality: If after making the contract, its performance becomes impossible due to alteration of law or act of any person, it is discharged.

(iv) Cases not covered by subsequent impossibility:

- (a) Partial impossibility
- (b) Commercial impossibility
- (c) Difficulty of performance
- (d) Default of a third party
- (e) Strikes, Lockouts, etc.

Q.16: Describe the Types of breach of contract.

Answer:

There are Two Types of Breach of Contract

(a) Actual Breach: If one party defaults in performing his part of the contract on due date.

(b) Anticipatory Breach: When a person repudiates the contract before the stipulated time for its performance has arrived.

SHORT PRACTICE QUESTIONS

1. Write short notes on:
 - (a) Novation
 - (b) Rescission
2. Distinguish between succession & Assignment.
3. When can a contract be said as discharge.

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PAST YEAR QUESTIONS AND ANSWERS

OBJECTIVE QUESTIONS

1994 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ii) A stranger to the contract can enforce the contract. (2 marks)

Answer:

Incorrect: Stranger can not enforce the contract, since there is no privity of contract between him and the contracting parties. [**Dunlop Pneumatic Tyre Co. vs. Selfridge Co. (1915)**].

1995 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) Performance of the contract may be made only by the parties to the contract. (2 marks)

Answer:

Incorrect: Except specifically required, a contract may be performed by the promisor's representative or any other person employed by the promisor. Contracts involving the exercise of personal skill, taste or credit or otherwise founded on special personal confidence between the parties cannot be performed by a deputy (Section 40).

1996 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (iii) A promise under a contract can be performed only by the promisor himself. (2 marks)
- (v) When persons reciprocally promise, first to do certain legal acts and secondly to do certain illegal acts, the whole agreement is void. (2 marks)

Answer:

- (iii) **Incorrect** : Where the promise under a contract is not founded upon a personal consideration, it may be performed as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.
- (v) **Incorrect**: According to Section 57 of the Indian Contract Act, 1872, where persons reciprocally promise, firstly, 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.

1996 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (ii) When the promisee does not accept the offer of performance, the promisor is not responsible for non-performance. (2 marks)

Answer:

Correct: The rule under section 38 of the Indian Contract Act is the “where a promisor has made an offer of performance, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his right under the contract. However, such offer is required to fulfill certain conditions prescribed in the said section.

1997 - May [1] State with reasons whether the following statements are Correct or Incorrect:

- (iii) Payments made by a debtor are always appropriated in a chronological order. (2 marks)
- (iv) Cancellation of a contract by mutual consent of the parties is called waiver. (2 marks)

Answer:

- (iii) **Incorrect**: Payments made by a debtor to the creditor are to be appropriated as per the provisions stated under section 59 to 61 of the Indian Contract Act.
- (iv) **Incorrect**: It is not a waiver but it is called Rescission.

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1998 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) In discharge of the whole claim a party to the contract agrees to accept a lesser amount than due, from the other party is a valid contract inspite of inadequate consideration. (2 marks)

Answer:

Correct : According to Section 63 of the Indian Contract Act, 1872, a party may dispense with or remit wholly or in part, the performance of the promise made to him. Thus, a promise to accept a lesser amount than due, from the other party is a valid contract inspite of the inadequate consideration

1998 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (vi) If the promisees are joint, the right to claim performance is joint and not joint and several. (2 marks)

Answer:

Correct: Section 45 of the Contract Act lays down that when a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with representatives of all jointly. This rule is applicable subject to contrary intention being shown by the contract. Accordingly, all the joint promisees should sue the promisor jointly and not joint and several.

1999 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) A promise to pay a time barred debt is not enforceable. (2 marks)

Answer:

Incorrect : A promise to pay a time barred debt is enforceable, if it is in writing and signed by the promisor or by his agent authorised to do so. The promise may be to pay the whole or any part of the debt [Section 25(3) Indian Contract Act, 1872].

2001 - May [1] State with reasons whether the following statement is Correct or Incorrect:

- (iv) Reciprocal promises to do certain things legal and other illegal, make such promises void. (2 marks)

Answer:

Corrects: Where persons reciprocally promises to do certain things legal and to do certain things illegal, the set to do the things legal is a contract, but to do the things illegal is void agreement (Section 57 of Indian Contract Act, 1872).

2001 - Nov [1] State with reasons whether the following statement is Correct or Incorrect:

- (iii) The original contract between the parties must be performed even when the parties agree to substitute it with a new contract. (2 marks)

Answer:

Incorrect: According to Section 62 of the Indian Contract Act, 1872, if the parties to a contract agree to substitute a new contract for the old contract, or to rescind or alter it, the original old contract is not required to be performed since substitution means rescinding the old contract or altering the terms in the old contract. The discharge of old contract is a consideration for the new one.

SHORT NOTES

1995 - May [7] (b) Write short note on:

Appropriation of payment.

(5 marks)

Answer:

Appropriation of Payments: Sections 59 to 61 of the Contract Act, 1872 enact the rules of appropriation of payment of English Law is laid down in Clayton's case with certain modifications, which may be reproduced below:

- (i) **Application of Payment where debt to be discharged is indicated (Section 59):** Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or

under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

- (ii) **Application of payment where debt to be discharged is not indicated (Section 60):** Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
- (iii) **Application of payment where neither party appropriates (Section 61):** Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.
- (iv) **Appropriation towards interest:** When the debtor makes a part payment without indicating the appropriation (whether towards principal or interest) in such cases, the payment must first be adjusted towards interest and the balance towards the principal amount.

1997 - Nov [7] (c) Write short note on:

Appropriation of payment.

(5 marks)

Answer:

Please refer 1995 - May [7] (b) on page no. 1179

1998 - Nov [7] (b) Write short note on:

Rescission

(5 marks)

Answer:

Rescission: Rescission is the electing to avoid a contract and treat as not binding when it is void or voidable or terminable by a party. It means when a contract is broken by one party, the other party may treat the contract as rescinded. In such a case is absolved of all his obligations under the contract as rescinded. In such a case is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

Rescission may occur:

- (i) by mutual consent of the parties, or
- (ii) where a party fails in the performance of his obligation, the other party may rescind the contract without prejudice to his right to claim compensation for the breach of contract, or
- (iii) by the party whose consent has not been given freely.

Rescission may be total or partial. Total rescission is the discharge of the entire contract. Partial rescission is the variation of the original contract by (a) rescinding some of the terms of the contract or (b) substituting new terms for the ones which are rescinded, or adding new terms without rescinding any of the terms of the original contract.

2000 - Nov [2] (b) Write short note on:

Appropriation is a right primarily of the debtor and for his benefit.

(5 marks)

Answer:

When a debtor who owes several debts to the same creditor makes a payment which is insufficient to satisfy the whole indebtedness, a problem arises as to how to appropriate the given payment. Sections 59 to 61 of i.e. Indian Contract Act, 1872 lay down the following rules:

1. if the debtor expressly states that the payment made by him is to be applied to the discharge of some particular debt, the creditor must act accordingly.
2. if there are no express instructions, then the debtor's implied intention should be gathered from the circumstances attending the payment and the appropriation must be done accordingly.
3. if there are no express or implied directions of the debtor then the creditor had an option to apply the payment to any debt lawfully due from the debtor including times observed debt (Clayton's case).
4. where the debtor as well as the creditor had not made the appropriation. Then the payment is to be applied in discharge of the debts in order of time, whether or not they are time barred. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

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5. if payment has been made without expressly stating whether it is interest or principal, payment is to be applied towards interest first and then the balance to principal.

Thus, it is quite clear from the above that it is always not the case where appropriation is a right primarily of the debtor and for his benefit. It depends upon circumstances of a particular case.

2001 - May [2] (b) Write short note on:

Reciprocal promises are to be performed simultaneously. (5 marks)

Answer:

According to Section 51 of the Indian Contract Act, 1872 "when a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.:

When the parties agree that the performance of the contract by each part is to be simultaneous, it is necessary that in exchange for the performance of the contract by one party the other party should also be in a position to give simultaneous performance, i.e. he should be ready and willing to perform his reciprocal promise. In a contract of sale of goods, unless otherwise agreed, the delivery of the goods and the payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer shall be ready to pay the price in exchange for possession of the goods. Readiness and willingness to perform the contract does not mean that the buyer should have the hard cash in his person, or the seller should always continue to have a ready stock of the goods after the making of the contract. It is enough that the buyer, has made arrangement to make the payment, which can be done without undue delay, and the seller on his part arranged for the goods which can be delivered soon after the payment is made. It is of course, necessary that the person should have the ability to perform the contract. If a person is merely mentally prepared or willing to perform the contract but does not have the ability to do so, the other party need not perform the contract. Thus a person who becomes insolvent does not have means of payment in exchange for the goods, he is deemed to be not ready and willing to perform the contract.

2001 - May [6] Write short notes on the following:

(a) State the rules of appropriation of payments, when :

(i) the order of discharge of debts is indicated;

(ii) the order is not indicated.

(10 marks)

Answer:

(a) As a normal rule, the debtor while making payment of debts should indicate to the creditor the order of payment or appropriation. This is needed in case several debts are payable by a debtor to his creditor. However, the debtor might not indicate the order or payment for one reason or the other. In such cases, the rules laid down in the Indian Contract Act, 1872 apply.

Section 59, lays down, "Where a debtor, owing several distinct debts to one person makes a payment to him either with express intimation or under circumstances implying that the payment is to or applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly." Thus in the instance case, the debtor has indicated the order of discharge of debts, the creditor has no other alternative except to appropriate the amount received by him according to the order indicated by the debtor.

In the second case i.e. where the debtor does not indicate or has not indicated the order of discharges of debts, Section 60 of the Act, makes the position clear. According to this Section 60, "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to applied, the creditor may apply the money received at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

Thus it is clear that in the second case, provisions of Section 60 shall apply and the creditor shall be within his rights to appropriate the money against the debts if any barred by law of limitation.

However, if there are several debts due on the same date and the debtor has not indicated the order of payment, the creditor shall have to apply the money proportionately in discharge of these debts.

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2002 - May [7] (c) Write short note on:

Doctrine of Frustration

(5 marks)

Answer:

Doctrine of Frustration: Part 2 of Section 56 of the Indian Contract Act, 1872 lays down that if the performance of a contract becomes impossible or unlawful after its making due to some event which is beyond the control of the parties, such contract becomes void when such event has accrued. This is known as doctrine of frustration. The performance may become impossible legally or physically.

Following are the causes of frustration:

1. Destruction of subject matter of contract.
2. Death or personal incapacity of the party.
3. Cancellation of an expected event.
4. Subsequent legal changes.
5. Declaration of war.

DISTINGUISH BETWEEN

1996 - May [4] (b) (i) Briefly explain the distinguish between Succession and Assignment. (5 marks)

Answer:

Distinguish between Succession and Assignment: When the benefits of a contract are succeeded to be process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. Suppose, a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life time. But if the debts owed by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess. The liability of the son will be limited to the extent of the property inherited by him. In the matter of assignment, however, the benefit of a contract can only be assigned but not the liabilities thereunder. This is because then the liability is assigned, a third party gets involved therein.

On the other hand if a creditor assigns the benefits of a promise, he thereby entitles the assignee to realise the debts from the debtor but where the benefits is coupled with a liability or when a personal consideration has entered into the making of the contract then the benefit cannot be assigned.

1996 - May [6] (b) (ii) Briefly explain the distinguish between Novation and Alteration. (5 marks)

Answer:

Novation and Alteration: The law pertaining to novation and alteration is contained in Sections 62 to 67 of the Indian Contract Act, 1872. In both these cases the original contract need not be performed. Still there is a difference between these two:

1. Novation means substitution of an existing contract with a new one. Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreements by the contracting parties but the parties to the contract will remain the same.
2. In case of novation there is altogether, a substitution of new contract in place of the old contract. But in case of alteration it is not essential to substitute a new contract in place of the old contract. In alteration there may be a change in some of the terms and conditions of the original agreement.

1999 - May [4] (b) (i) Briefly explain the distinguish between Succession and Assignment. (5 marks)

Answer:

Please refer 1996 - May [4] (b) (i) on page no. 1184

2001 - May [6] (b) (ii) Briefly explain the distinguish between Innovation and Alteration. (5 marks)

Answer:

Please refer 1996 - May [6] (b) (ii) on page no. 1185

2002 - May [6] (b) (i) Briefly explain the distinguish between Recession and Alteration. (5 marks)

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Answer:

Rescission and Alteration: Rescission means cancellation of the contract. If by mutual agreement the parties agree to cancel all or some of the terms of the existing contract, it is called rescission of the contract, and then the contract is discharged. A contract can be rescinded before its performance becomes due. Non-performance of a contract by both the parties for a long period, without any complaint, amounts to implied rescission. Rescission may be total or partial. When all the terms of the contract are cancelled, it is total rescission which results in the discharge of the entire contract. When some of the terms are cancelled and some new terms are added, it is partial rescission. Partial rescission results in the variation of the original contract. Section 62 of the Indian Contract Act, 1872 lays down that if the parties to a contract agree to rescind it, the original contract need not be performed. Alteration, other hand, means making a change in the terms of a contract with the consent of all the parties. Alteration discharges the old terms which have been changed and the parties become bound by the original contract with altered terms. Rescission of the contract may be total or partial but alteration is always partial and the original contract can not be altered wholly. The effect of alteration is the same as laid down in Section 62 of the Indian Contract Act, 1872 i.e. the original contract need not be performed.

DESCRIPTIVE QUESTIONS

1997 - May [5] (b) What is "Supervening Impossibility"? What are its effects upon the contract? (5 marks)

Answer:

An impossibility which makes the performance of a contract impossible or illegal, by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, is called Supervening Impossibility. It may arise on account of more than one reasons, which may be enumerated as below:

- (a) Accidental destruction of the subject-matter of the contract, such as loss of property by the occurrence of accidental fire, death of an artist or incapacity of an artist by long illness.
- (b) Non-existence or non-occurrence of a particular state of things, e.g. postponement of the music concert for which the hall was rented out.
- (c) Incapacity to perform a contract of personal services-long illness.
- (d) Change in law, e.g. acquisition of the property by the government.
- (e) Outbreak of war, making the contracting parties as citizens of enemy countries.

Effects: Supervening Impossibility makes the contract void and the parties are released out of their obligations. They need not perform their part of the promises which have not accrued till the date of the impossibility.

1998 - May [3] (a) State in brief the grounds upon which a contract may be discharged. (10 marks)

Answer:

Discharge of contracts: A contract is discharged when the obligation created by it come to an end. A contract may be discharged in any one of the following ways:

- (i) **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be (a) actual performance or (b) attempted performance. Actual performance is said to have taken place; when each of the parties has done what he has agreed to do under the a agreement. When the promiser offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender of performance.
- (ii) **Discharge by mutual agreement:** Section 62 of the Indian Contract Act provides 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. These principles come in the heads of novation, rescission, alteration remission, accord and satisfaction, owing to the occurrence of an event and waiver.

- (iii) **By impossibility of performance:** The impossibility may exist from its initial stage. In that case, it would be impossibility an initio. Alternatively, there may be supervening impossibility which may take place owing to (a) an unforeseen change in law; (b) the destruction of the subject matter essential to that performance; (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady; (e) the declaration of war (Section 56).
- (iv) **Discharge by lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken within the specified period of limitation, the party is deprived of remedy at law. For example, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time barred and hence not recoverable.
- (v) **Discharge by operation of law:** A contract may be discharged by operation of law which includes by death of the promiser, merger of inferior right in the superior right by which the inferior right vanishes, by complete loss of evidence, by insolvency etc.
- (vi) **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed a breach thereof. When on the other hand, a person repudiates a contract before the stipulate time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract. (Section 64).
- (vii) **Remission accord and satisfaction:** A promise may dispense with or remit the performance of the promise made to him or may accept any satisfaction of thinks fit. In the first case, the contract will be discharged by remission and in the second by accord and satisfaction.

(viii) **Refusal to afford reasonable facilities:** If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

1998 - May [5] (b) Is it required that parties to the contract must perform the contract personally? (5 marks)

Answer:

Who must perform the contract: Except the contracts which require personal skill and labour, the promise under a contract may be performed by the following persons:

1. **Promisor himself:** If it appears from the nature of the case that it was the intention of the parties to any contract, that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. Contracts involving personal skill or those depending upon personal trust and confidence must be performed by the promisor himself (Sec. 40).
2. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representatives may employ a competent person to perform it (Section 40).
3. **The Legal Representatives:** Promises bind the representatives of the promisers in case of the death of such promisers before performance, unless a contrary intention appears from the contract. On the death, of the promisor, the promisee can compel his legal representatives to perform the promise unless it involves the personal skill of the promisor. However, the liability of the legal representative will not be personal but shall be limited only to the extent of the value of the estate of the deceased promisor inherited by him. (Section 37).
4. **Third Persons:** When the promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party (Section 41).

5. **Joint Promisors:** When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly (Section 42).

1999 - May [5] (a) Explain the rules under the law of contract as regards to time and place for the performance of the promise. (5 marks)

Answer:

Time and place for the performance of the promise: Section 46 to 50 of the Indian Contract Act, 1872 are relevant regarding time and place for the performance of the promise which are as follows:

1. If no time is specified, the promise must be performed within a reasonable time. The expression 'reasonable' time is to be interpreted having regard to the facts and circumstances of a particular case (Section 46).
2. If a promise is to be performed on a specified date but hour is not mentioned, the promisor may perform it at any time during the usual hours of business, on such day. Moreover, the delivery must be made at the usual place of business (Section 47).
3. Where no place is fixed, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise. In all cases the promisor must apply to the promisee; here no distinction is made between an obligation to pay money to the promisee; here no distinction is made between an obligation to pay money and obligation to deliver goods or discharge any other obligation [Section 49].
The foregoing rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.
4. Where the promisor has not undertaken to perform the promise without an application by the promisee, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business (Section 48).
Generally, the performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

2000 - May [5] (b) (ii) State the circumstances under which an agreement may be void, since it is impossible to carry it out. (5 marks)

Answer:

Impossibility of Performance [Section 56 of the Indian Contract Act, 1872] : An agreement may be void since it is impossible to carry it out. A contract to do an act, which after the contract is made, becomes impossible, or, by reason of some event which are promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful under the following cases:

- (a) Impossibility existing at the time of contract:
 - (i) if known to the parties.
 - (ii) if unknown to the parties.
 - (iii) if known to the promisor only.
- (b) Supervening impossibility (arising subsequent to the formation of a contract) like destruction of subject matters, non-existence or non-occurrence of a particular state of things or incapacity to perform a contract of personal services or change of law, or outbreak of law or failure of the ultimate purpose.

2001 - May [3] (a) What is meant by Performance of a Contract? By whom the contract can be performed? (10 marks)

Answer:

Performance of contract consists in doing or causing to be done, that which the promisor has promised shall be done. Performance of contract is the completion of legal obligation which arises out of the contract. Every party to the contract is obliged to perform the contract accordingly, unless it is discharged or exempted from the performance.

The parties to a contract must either perform or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of the law of contract or any other law (Section 37 Indian Contract Act, 1872). In order that a party could enforce the promises made to him, he should perform his promise or offer to perform then he can ask to the other party to perform his promise unless a contrary intention appears from the contract. Either performance or readiness and willingness to perform the contract is the basic requirement of this section.

By whom contract must be performed?

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

- (i) **Promisor himself:** If there is something in the contract to show that there was an intention of the parties, that the performance should be made personally, such promise must be performed by the promisor (Section 40). Such contracts involve personal skill or diligence.
- (ii) **Agent:** Where personal consideration is not required, the promisor or his representative may employ a competent person to perform (Section 40).
- (iii) **Representatives:** Except the contract which involve personal skill and diligence all contracts may be performed by the legal representatives of the deceased promisors unless a contrary intention appears from the contract (Section 37). But their liability under a contract is limited to the value of the property they inherit from the deceased. Where personal skill and diligence is the foundation of the performance such contracts come to an end on the death of the promisor.
- (iv) **Third Persons:** When a promisee accepts performance from a third person, he can not afterwards enforce it against the promisor (Section 41).
- (v) **Joint Promisors:** When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract all such persons, during their joint lives, and after the death of any of them, his representatives jointly with the survivor or survivors, and after the death of lost survivor, the representatives of all jointly must fulfil the promise (Section 42 of the Indian Contract Act).

2001 - May [5] (b) When a contract may be discharged by Operation of Law?
(5 marks)

Answer:

A contract may be discharged by the operation of law in the following manner:

- (i) **By death:** In contract involving personal skill and/or ability, the contract is terminated on the death of the promisor. In other contracts the rights and liabilities of a deceased person pass on to the legal representatives of the deceased person.

- (ii) **By 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 same other contract.
- (iii) **By insolvency:** When a person is adjudged insolvent he is discharged from all liabilities incurred prior to his adjudication.
- (iv) **By unauthorised attraction of the terms of a written agreement:** Where a party to a contract makes any material alteration in the contract without the consent of the other party, the other party can avoid the contract. A material alteration is one which changes, in a significant manner, the legal identity or character of the contract or the rights and liabilities of the parties to the contract.
- (v) **By rights and liabilities becoming vested in the same person:** Where the liabilities and rights under a contract vest in the same person, for example, when a bill gets into the hands of the acceptor, the other parties are discharged.

2001 - May [6] (a) State the rules of appropriation of payments, when:

- (i) the order of discharge of debts is indicated;
- (ii) the order is not indicated. (10 marks)

Answer:

As a normal rule, the debtor while making payment of debts should indicate to the creditor the order of payment or appropriation. This is needed in case several debts are payable by a debtor to his creditor. However, the debtor might not indicate the order or payment for one reason or the other. In such cases, the rules laid down in the Indian Contract Act, 1872 apply.

Section 59, lays down, "Where a debtor, owing several distinct debts to one person makes a payment to him either with express intimation or under circumstances implying that the payment is to or applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly."

Thus in the instance case, the debtor has indicated the order of discharge of debts, the creditor has no other alternative except to appropriate the amount received by him according to the order indicated by the debtor.

In the second case i.e. where the debtor does not indicate or has not indicated the order of discharges of debts, Section 60 of the Act, makes the position clear. According to this Section 60, "Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply the money received at his discretion to any lawful debt actually due and payable to him from the debtor whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits."

Thus it is clear that in the second case, provisions of Section 60 shall apply and the creditor shall be within his rights to appropriate the money against the debts if any barred by law of limitation.

However, if there are several debts due on the same date and the debtor has not indicated the order of payment, the creditor shall have to apply the money proportionately in discharge of these debts.

2001 - Nov [3] (a) State and explain the various modes whereby a contract may come to an end. (10 marks)

Answer:

Various modes whereby a Contract comes to an end: A contract may be discharged either by an act of the parties or by an operation of law as stated below:

- 1. Discharge by performance:** When the parties to the contract fulfil their part of the promise, the contract comes to an end.
- 2. Discharge by mutual agreement:** When the parties to the contract agree not to perform the contract on the basis of the principles of rescission, or novation or alteration or remission, the original contract comes to an end.
- 3. Discharge by impossibility of performance:** When the performance of the contract becomes impossible owing to (1) an unforeseen change in law or (2) the destruction of the subject matter essential to the performance of the contract, or (3) the non-existence or non-occurrence of particular state of things such as personal incapacity like illness or meeting with an accident or (4) outbreak of war and the party being declared as an alien enemy.

4. **Discharge of lapse of time:** Where a contract is to be performed within a special time and it is not performed within that time or period, the law of limitation applies and the contract comes to an end e.g. creditor not taking any action against the debtor for the recovery of the debt within a period of 3 years.
5. **Discharge by operation of law:** Where law operates in the non-performance of a contract say death of the promisor or insolvency or merger etc.
6. **Discharge by breach of a contract:** Where the party to the contract makes a default in the performance of the contract.
7. Discharge by waiver on the part of either party.
8. Discharge by not providing reasonable facilities for performance by the party to the contract.

2002 - Nov [4] (a) Explain with examples the principles of Novation, Rescission, Alteration and Remission where contracts need not be performed. (10 marks)

Answer:

Novation, Rescission, Alteration and Remission:

(a) Novation (Section 62): Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

Example: A Owns B ₹ 10,000/-. A enters into an agreement with B. and gives B a mortgage or his (A's) estate for ₹ 5,000/- in place of the debts of ₹ 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.

Examples: 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 means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new one. However, parties to the new contract must not change contract.

Example: X promises to sell and deliver 100 bales of cotton on 1st October and Y Promises to pay for goods on 1st November. Afterwards X and Y mutually decide that the goods shall be delivered in five equal instalments at Z's godown. Here, original contract has been discharged and a new contract has come into effect.

(d) **Remission (Section 63):** Remission means acceptance by the promisee of a lesser fulfillment of the promise made. Accordingly to Section 63, "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 it any satisfaction which he thinks fit".

Example 1: A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer to perform the promise.

Example 2: A owes B ₹ 5,000/- A pays to B, and B accepts, in satisfaction of the whole debts, ₹ 2,000/- paid at the time and place at which ₹ 5,000/- were payable. The whole debt is charged.

Example 3: A owes B, under a contract a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of ₹ 2,000/-. This is a discharge of whole debt, whatever may be its amount.

PRACTICAL QUESTIONS

2018 - May [1] (a) X, Y and Z are partners in a firm. They jointly promised to pay ₹ 3,00,000 to D. Y become insolvent and his private assets are sufficient to pay 1/5 of his share of debts. X is compelled to pay the whole amount to D. Examining the provisions of the Indian Contract Act, 1872, decide the extent to which X can recover the amount from Z. (4 marks)

Answer:

According to Section 43 of Indian Contract Act, 1872, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel anyone or more of such joint promisor to perform the whole of the promise.

Also, each of two or more joint promisor may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appear from the contract.

In other words, if one of the joint promisor is made to perform the whole contract, he can call for a contribution from others.

It also say that if any one of two or more joint promisor makes default in such contribution, the remaining joint promisor must bear the loss arising from such default in equal shares.

In the given case X, Y and Z jointly promised to pay ₹ 3,00,000 to D. Y could pay only ₹ 20,000 (i.e. 1/5 of ₹ 1,00,000), hence loss due to his default i.e. ₹ 80,000 will be borne equally by X & Z. Now, since X is compelled to pay entire amount, he can call for contribution from Z of his share i.e. ₹ 1,00,000.

Thus, the extent to which X can recover the amount from Z is ₹ 1,40,000.

2018 - Nov [1] {C} (a) Mr. X and Mr. Y entered into a contract on 1st August, 2018, by which Mr. X had to supply 50 tons of sugar to Mr. Y at a certain price strictly within a period of 10 days of the contract. Mr. Y also paid an amount of ₹ 50,000 towards advance as per the terms of the above contract. The mode of transportation available between their places is roadway only. Severe flood came on 2nd August, 2018 and the only road connecting their places was damaged and could not be repaired within fifteen days. Mr. X offered to supply sugar on 20th August, 2018 for which Mr. Y did not agree. On 1st September, 2018, Mr. X claimed compensation of ₹ 10,000 from Mr. Y for refusing to accept the supply of sugar, which was not there within the purview of the contract. On the other hand, Mr. Y claimed for refund of ₹ 50,000, which he had paid as advance in terms of the contract. Analyse the above situation in terms of the provisions of the Indian Contract Act, 1872 and decide on Y's contention. (4 marks)

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Answer:

According to the facts of the case it can be clearly observed that the contract entered into by the parties Mr. X and Mr. Y demonstrates a case under the applicability of the provisions of Section 56 of Indian Contract Act, 1872 that States - "A contract to do an act which after the contract is made becomes impossible by reason of some event which the promisor could not prevent becomes void."

In this case Mr. X has promised to supply 50 tons of sugar to Mr. Y for which Mr. Y has paid an amount of ₹ 50,000 in advance according to the terms of the contract. But due to severe flood the only mode of transportation available between their places is damaged which clearly makes the execution of delivery of 50 tons of sugar to Mr. Y impossible within the stipulated time. Now Mr. X claims compensation of ₹ 10,000 from Mr. Y for non-acceptance of delivery after expiry of the stipulated time - period but since the contract has already gone void due to impossibility of performance within the stipulated time - period there remains no legal room for demanding compensation. But at the same time the contention of Mr. Y for refund of his previously advanced sum of ₹ 50,000 stands valid as under the provisions of Indian Contract Act, 1872 if a contract turns void due to any specific reason then all previously advanced sums have to be refunded.