

Quadrant II - Notes

Paper Code: CON0111 / CON0221

Module Name: Discharge of Contract: Discharge by Performance

Module No: 17

Notes

Meaning of Discharge

A contract binding on parties thereto, ceases to bind them, such a contract is said to have been discharged.

Meaning of Discharge by Performance

Liability of parties under the contract end when they perform their obligations, such contract is discharged by performance.

Section 37 of the Indian Contract Act, 1872 - It is the duty of the parties to the contract to perform or offer to perform unless performance is dispensed or excused under law.

Section 67 of the Indian Contract Act, 1872 - Neglect of promisee to afford promisor reasonable facilities for performance, discharges the promisor under the contract.

Section 38 of the Indian Contract Act, 1872

Refusal to accept offer of performance and its effect. In such case the promisor is not responsible for non-performance, nor does he lose his rights under the contract.

Essential conditions of Section 38

- Unconditional offer.
 - Offer to be made at proper place and time.
 - Opportunity to be given to the promisee to ascertain that the subject matter is as per the contract.
- In case of join promisees, offer of performance can be made in anybody's favour.

Section 40 of the Indian Contract Act, 1872 - Parties required to perform the contract – Either the promisor or his agent has to perform the Contract.

Section 42, 43 and 44 of the Indian Contract Act, 1872 – these sections deal with the liability of the Joint promisors, which means the contract has more than one promisor.

- Liability of the Joint promisors is joint and several, unless there is an express agreement to the contrary.

Reciprocal promises and Performance - Sections 51, 52, 53 and 54 of the Indian Contract Act, 1872

- Simultaneous performance in a contract. Then the contract has to be performed accordingly.
- Order of performance fixed under the contract. Then the contract has to be performed as per the order fixed under the contract.
- Party preventing the other from performing the reciprocal promise. Such a party preventing the performance of the contract is responsible for the loss caused.
- Non-performance of a reciprocal promise by the party who is required to perform first. The second party required to perform is not liable for non-performance of his promise under the contract.

Cases

Demby Hamilton & Co. v. Burden, (1949) 1 All. E.R. 435.

Brahadambal Agency v. Ramaswamy, A.I.R. 2002 Mad. 352.