

## Quadrant II - Notes

**Paper Code: CON0111 / CON0221**

**Module Name: Discharge of Contract: Discharge by Impossibility**

**Module No: 18**

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### Notes

#### *Meaning of Discharge*

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

#### Kinds of Discharge by Impossibility

- Initial – Contract cannot be performed due to impossibility that exists at the initial stage of entering into the contract. For e.g. death of either of the party, not known to the other party; Destruction of subject matter not known to the parties makes the contract void.
- Supervening – Also referred to as subsequent impossibility. Contract which is valid at the beginning but its execution becomes impossible due to subsequent happening of the events. Change of the circumstances or legislative intervention that changes the nature of the contract, makes the performance impossible.

#### **Doctrine of Frustration - Section 56 of the Indian Contract Act, 1872**

- Due to supervening impossibility, the performance of the contract becomes impossible and this frustrates the purpose kept by the parties in mind.
- Hence promisor is excused from contractual performance.
- This is referred to as the Doctrine of Frustration under English law.

Doctrine of Frustration has persuasive value before the Indian Courts. The Indian Contract Act makes a mention of impossibility under a statutory provision i.e. section 56 of the statute.

#### *Applicability of Section 56 of the Indian Contract Act, 1872*

- a) Section will not apply to executed contracts but covers only executory contracts.
- b) Mere delay in performance will not give rise to impossibility, hence section will be inapplicable.
- c) Impossibility will exclude commercial difficulty, so section will not apply.

### *Nature of Contract & Remedies*

If performance of the contract becomes impossible, contract becomes void.

### *Section 65 of the Indian Contract Act, 1872*

- Restoration of benefit if received under an agreement discovered to be void or upon contract becoming void.

Any benefit received by a party to the agreement that is void or upon contract becoming void must be returned back to that party from whom the benefit has been received. This is directly related to the principle against unjust enrichment in cases of contractual liability.

**Taylor v. Caldwell, (1863) 3 B & S. 826.**

**Krell v. Henry, (1903) 2 K.B. 740.**

**Satyabrata Ghose v. Mugneeram, A.I.R. 1954 S.C. 44.**

**Punj Sons Pvt. Ltd. V. Union of India, A.I.R. 1986 Delhi 158.**