

Quadrant II - Notes

Paper Code: CON0111 / CON0221

Module Name: Discharge of Contract: Discharge by Agreement

Module No: 19

Notes

Meaning of Discharge

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

Discharge by Agreement

- When obligation of parties to the contract end by consent, the contract is said to have been discharged by Agreement.

Types of Discharge

1) Novation – section 62

When existing contract is substituted by a new contract and this is defined as Novation.

Kinds of Novation

a) Novation by change in contractual terms – when the terms of the contract changes from the original contract, this is referred to as Novation. E.g. Ram has accepted a debt of 5000/- Rs. from Shyam, that will be paid in a period of 5 months. On a later date but within the validity period of the contract, Ram allows Shyam to pay the amount in a period of 12 months, amounts to Novation.

b) Novation by change in the parties to the contract – Considering the same illustration as given above, Brinda agrees to clear the dues of Shyam in a period of 5 months, this gives rise to a new contract between Ram and Brinda, which also will be referred to as Novation.

2) Remission – Section 63

When promisee agree to dispense with or remit (to leave or relinquish partly) the performance of the promise, that amounts to remission .

Different ways of Remission

- i) Dispense with / remit performance of the contract, wholly or partly.
- ii) Extend the contractual performance time.
- iii) Accept any other satisfaction instead of contractual performance.

Ram Khilona v. Sardar, A.I.R. 2002 S.C. 2548.

Lala Kapurchand v. Himayatali Khan, A.I.R. 1963 S.C. 250.

M/s. Saraswati Trading Agency v. Union of India, A.I.R. 2002 Cal. 51.