

Quadrant II - Notes

Paper Code: CON0111 / CON0221

Module Name: Discharge of Contract: Discharge by Breach

Module No: 20

Notes

Meaning of Discharge

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

Discharge by Breach

- Failure on part of the party to perform the contract or doing an act which makes the performance impossible or refusal to perform the contract is called as Breach.

Kinds of Breach

a) Actual

- Refusal on part of the party to contract to perform, discharges the other party from further performance of obligations, which amounts to actual breach of contract by the former party.

- The breach can be on the date of performance or during the course of performance. Breach by one of the party when the contract involves part by part performance, is also referred to as actual breach.

- Here there is only action for breach by the aggrieved party.

b) Anticipatory - Section 39

- Contract is repudiated by a party before the due date of performance.

Effect of Anticipatory Breach

- 1) Rescission of Contract by the promisee – The promisee can directly break the contract and sue for damages against the party at default.
or
- 2) Promisee can keep the Contract alive – with a hope that the contract will be performed on the contractual date, the promisee may give an opportunity to the promisor for performance of the contract. This involves a risk as, if the performance of the contract becomes impossible due to supervening impossibility, the promisor is discharged from the contractual liability. Otherwise for non-performance of the contract the promisor can always be sued for damages for the breach of contract.

Frost v. Knight, 41 L.J. Ex. 78.

Avery v. Bowden, (1885) 5 E & B. 711.