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Unit 4 - Performance of Contract

→ obligation of parties to contract (Section 37): The parties to the contract must either perform, or offer to perform their respective promises unless such performance is dispensed or excused (rescind) under provision of contract Act.

→ Promises bind the representatives of promisor in case of death before performance

Eg - A promises to deliver goods to B. A die before performance. A's representative is bound to deliver goods to B.

Eg - A promises to paint picture for B. A die before performance This contract can't be enforceable either by A's representative because it involves personal skills.

In other words, a contract being an agreement enforceable by Law, creates a legal obligation, which subsists until discharged. The promisor must perform what he has exactly promised to do. The promisor who wants to enforce promise made to him, It is necessary for party to perform his promise so that he can ask other party to perform his promise (principle enshrined in section 37)

→ Actual performance: Where a party has done what he had undertaken to do or either of the parties performed their obligations under the contract within time and in manner prescribed

Eg - X promises to pay borrowed money to Y after 1 Month. X Repays the amount on due date.

→ Attempted performance / tender (try) of performance / Offer to perform:
It may happen sometimes, when performance becomes due, the promisor offer to perform his obligation but promisee refuses to accept performance

Imp.

Refer sticky note

→ **Effect of refusal to accept offer of performance** (Section 38)

Where a promisor offer to perform his obligation but promisee refuses to accept performance. Promisor has made an offer of performance to promisee, but he has not accepted it.
Thus, promisor is not responsible for non-performance, nor does he thereby lose his rights under contract

→ Every such offer must fulfill certain conditions :-

1, It must be unconditional
2, It must be made at proper time and place

3,

→ **Effect of Refusal of party to perform wholly** (Section 39)

When a party to a contract has refused to perform or disabled himself from performing his promise, promisee (aggrieved party) may put an end to contract unless he had signified, by words or conduct his acquiescence in its continuance

eg - X, a singer enters into contract with Y, manager of theatre to sing 2 nights in every week for 2 months. On 6th night, X wilfully absents herself from theatre. Y is at liberty to put an end to the contract on this ground subsequently
terminate/Rescind/withdraw

→ The promisee would be able to claim damages

⇒ By whom a contract may be performed

By whom promise is to be performed - Section 40

→ Person by whom promise is to be performed - If it appears that it was the intention of parties then any promise contained should be performed by promisor, such promise must be performed

eg - A promises to pay B sum of money. A may perform by personally paying or by causing it to paid to B by another.
If A dies, his legal representative will pay.

eg - A promises to paint a picture, it must be performed by promisor himself.

⇒ Promise may be performed, as the circumstances may permit, by promisor himself / by his agent or his legal representative

(1) Promisor himself - If there is something to show that it was the intention of ~~promisor~~ parties that promise should be performed, then it must be performed by promisor
This means contracts which involve personal skill or diligence, or which are founded on personal confidence between must be performed himself.

(2) Agent: Where personal consideration is not the foundation of a contract, promisor or his representative may employ a competent person to perform it.

(3) Legal representatives: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on death of the promisor.
As regard any contract legal representative of deceased promisor is bound to perform it unless a contrary intention appears from contract but their ~~liability~~ liability is limited of property they inherit from deceased.

eg. A promises to pay B ₹10000 on delivery of goods. He perform this promise or causing someone else to pay.
If A dies, legal representative must pay or employ other person to pay.
If B dies, his representative shall be bound to deliver goods to A.

eg - A promises to make sketch. A is bound to perform promise himself. He cannot ask some other artist to do it.
If A dies, contract cannot be enforced by anyone

(4) Third persons → Effect of accepting performance from third person- Section 41

when promisee accepts performance of promise from a third person, he cannot afterwards enforce it against promisor.
That is, performance by a stranger, if accepted by promisee, this results in discharging the promisor and forming a valid contract, although the latter has neither authorised nor ratified act of third party

eg- A received certain goods from B and pays ₹1,00,000/-.
Later A expressed his inability to pay. C, who is unknown to A, make payment of ₹60,000/- to B on behalf of A
A was not aware of payment made by C.
∴ B can sue only for the balance amount ₹40,000/-

(5) Joint promisors (Section 42)
when 2 or more persons have made a joint promise, unless a contrary intention appears by the contract, they are bound to fulfill promise.
If any of them dies, legal representative must jointly with surviving promisors, fulfill promise. If all dies, then LR

eg- A, B, C jointly promised to pay ₹6,00,000 to D.
If A dies, his LR must jointly with B & C perform promise

→ Succession & Assignment (Refer sticky note)

In the case of Succession, both burden (Liabilities) and benefits attaching to contract, may sometimes devolve on legal heir.
These benefits are succeeded to by process of law.
eg- Son succeeds to estate of his dad after death, he will be liable to pay debts of his dad owned during life time
But if debts owned exceed value of estate inherited by son then he would not be called upon to pay excess.
∴ Liability of son will be limited to extent of property inherited by him

In case of assignment, only benefits can only be assigned but not liability there under. This is coz when liability is assigned, third party gets involved therein. Thus, debtor can't relieve himself of his liability to creditor by assigning someone else to pay obligation
→ If Creditor assigns benefit of promisor, he thereby entitles assignee to realise debt from debtor but where benefit/personal consideration has entered into making contract then benefit can't be assigned

→ Liability of Joint Promisor & Promisee

Devolution:- transfer of Delegation of power

Devolution of Joint promisors (Section 42)

→ When 2 or more persons have jointly promise, unless a contrary intention appears by the contract of all such persons, during their joint lives, after death of any one of them, legal representative with survivor or survivors, and, after death of all last survivor, the representatives of all jointly, must fulfill the promise

eg- X, Y, Z jointly borrowed money during joint lives. X dies, his representative along with Y & Z jointly repay loan.
If all dies, their representatives will pay off.

→ This rule is applicable if no contrary intention appears.
(Refer sticky notes Cases).

→ If any one of ~~just~~ joint promisors may be compelled to perform
Section-43

When 2 or more persons make a joint promise, promisee may, in the absence of express agreement to the contrary, compel any one of them or more of such promisors to perform the whole of promise.

Each of ~~p~~ 2 or more promisors may compel every other jointly promise to contribute equally with himself to the performance of promise, unless a contrary intention appears from contract

In other words, If one of promisors is made to perform the whole contract, he can call contribution from others.

→ In case of Loss by default in contribution:- If any of 2 or more joint promisors makes default in such contribution. (case of insolvent declared by law), remaining joint promisors must bear the loss arising from such default in equal shares

Section 43 defines nothing in this section shall prevent ~~a~~ a surety from recovering, from his principal, payments made by surety on behalf of promisor, or entitle principal to recover anything from surety on A/c of payment made by principal.

eg- A, B, C are Joint promisors to pay D ₹ 3,00,000. C is unable to pay anything. A is compelled to pay whole and he is entitled to receive from B ₹150000

eg- X, Y, Z are Joint promisors to pay A ₹6000. Z is compelled for the whole amount. X is insolvent his assets only recover to pay 1/2 of his debts. 1000 is recoverable rest 1000 will be the loss beared by Y and Z equally
∴ Z is entitled to receive ₹1000 from X'estate & 2500 from Y.

Refer sticky note

→ Effect of release of one joint promisor (Section 44)
When 2 or more have made a promise, a release of one of such joint promisors by promisee does not discharge other joint promisors, neither does it free joint promisors so released from responsibility to other joint promisors.

eg- A, B, C jointly promised to pay ₹9,00,000 to D. D released A from liability. In this case, B & C are not discharged from their liability, they will have to pay whole amount. A is not liable to pay but he remains liable to pay to B and C (contribution)

→ Rights of Joint Promisees Section 45
"When a person has made a promise to 2 or more persons Jointly, then unless a contrary intention appears from contract, the right to claim rests, as between him and them, with them during their joint lives, & after death of any of them, with representative of such deceased person jointly with survivor/survivors, and after death of last survivor, with representatives of all jointly."

eg- B & C lent 500000 to A jointly, B dies. In such case right to demand payment shall rest with B' Representative, jointly with C during life-time, after death of C, with LR of B & C jointly.

Time & Place for performance of promise (Section 46-50)

1, Time for performance of promise, where no application is made and no time is specified - Section 46
where, by contract, a promisor is to perform his promise without application by promisee, and no time is specified, it must be performed within a reasonable time according to facts & circumstances of case

2, Time and place for performance of promise, where time is specified and no application to be made - Section 47
where a promisor is to perform his promise, without application by promisee, (promisor has undertaken to perform) promisor may perform it at any time during business hours, on such day & place at which promise ought to be performed.
eg - If delivery of goods is offered say after 8:30pm, promisee may refuse to accept delivery, for usual business hours over (delivery must be made at usual place)

3, Application for performance on certain day to be proper time & place (section 48) - where a promisor is to perform his promise without application and promisor has not undertaken to perform without application by promisee, it is the duty of promisee to apply for performance at a proper place & within usual hours of business.
Section 48 states that question, "what is proper time & place", is, in each particular case, a question of fact

4, Place for performance of promise, where no application to be made and no place fixed for performance (Section 49)
where a promisor is to perform his promise without application by promisee, no place is fixed for performance, it is the duty of promisor to apply promisee to appoint a reasonable place for performance of promise, & to perform it such a place

5, Performance in manner or at time prescribed or sanctioned by promisee - Section 50

→ Performance of Reciprocal Promisor

1, Promisor is not bound to perform, unless a reciprocal promise ready and willing to perform - Section 51

The Section says that reciprocal promises may have to be performed simultaneously, or one after another.

eg - A promises to deliver rice and B promises to pay price on delivery, both promises are performed simultaneously, Both A & B be ready & willing to perform their respective promises.

→ Such promises constitute concurrent conditions and the performance of one of promises is conditional on performance of other. If one is not performed other promise need not to be performed. (eg - ticket booking before watching film)

eg - Say, if A is unwilling to deliver rice on payment, A will be guilty of breach of promise and breach would relieve B of obligation to perform his promise & would enable B to treat contract as at an end

2, Order of performance of reciprocal promise Section 52

When order of performance of reciprocal promise is expressly fixed by contract, they shall be performed in that order, where the order is not fixed it shall be performed in that order which nature of transaction requires.

eg - A & B contract that A shall build a house for B at a fixed price, A's promise to build house must be performed before B's promise to pay. (place security (gold, jwellery) then loan given by Bank

3, Liability of party preventing event on which contract is to effect (section 53) :-

When a contract contains reciprocal promises, and one party prevents the other from performing his promise, contract become voidable at the option of one party so prevented and he is entitled to compensation from other party for any loss / expenses incurred in consequence of non-performance eg – B shall execute somework for A for ₹1,000. B is ready & willing to execute, but A prevents him to do (voidable at option of B) he is entitled to recover from A claim for any loss

eg
⇒ A party comes from mumbai To Jammu for a contract but B refused to perform his promise. He prevents A to perform his promise. (contract rescind)
Now, A can get compensation of loss/expenses incurred in way to reach Jammu

(4) Effect of default as to that promise which should be first performed :-