**Termination Discharge of Contract**

1. **Discharge of a contract by performance:**

A contract can be discharged by performance in any of the followingways.

**a) By an actual performance:** When each party to a contract fulfils his obligation arising under the contract within the time and in the manner prescribed, it amounts to actual performance of the contract and there is nothing remaining to perform.

**b) Attempted performance or tender:** When the promisor offers to perform his obligation arising under the contract, but promise refuses to accept the performance. It is also known as tender. Thus attempted or tender performance is not actual performance but is only “an offer to perform” the obligation under the contract.

1. **Discharge by mutual consent or agreement:**

A contract may be terminated by mutual agreement of all the parties to the contract. It may be done by cancelled or its terms altered or a new agreement substituted for it. According to section 62 of the Contract Act, 1872, if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

**Discharge or termination of contract can be found in any of the following ways-**

1. **Novation:** Novation means a new contract is substituted for old contract with the same or different parties.

**Example:** A indebted to B and B to C. By mutual agreement B’s debt to C and B’s loan to A are cancelled and C accepts A as debtor. There is novation involving change of parties.

1. **Alteration:** Alteration occurs when one or more of the terms of a contract is/are altered by the mutual consent of parties to the contract. Alteration is valid if it is done with the consent of all the parties to the contract. The basis differences between novation and alteration there is change in the terms of the contracts but no change of the parties to it. In novation there may be change of parties.
2. **Remission:** Remission means acceptance of a lesser fulfillment of the promise made. According to section 63 of the Act, every promise may dispense with or remit, wholly or in part, the performance of the promise made to him or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit. **Example:** A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise. **Example:** A owes B 5,000 Taka. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 Taka paid at the time and place at which the 5,000 Taka were payable. The whole debt is discharged.
3. **Rescission:** Rescission means cancellation of the contract. It takes place when all or some of the terms of the contract are cancelled. It could be done by mutual consent or when the party fails in the performance of contract, the other party could rescind the contract without fear of claim of compensation. **Example:** A promises to deliver certain goods to B on a certain date. Before the date of delivery, A and B mutually agree that the contract will not be performed. The contract stands discharged by rescission where upon the other party to the contract is released from his obligation.
4. **Waiver:** Waiver means mutual abandonment of the right by the parties to contract. Where a party deliberately abandoned of giving up of a right which he entitled to under a contract.
5. **Merger:** When an inferior right accruing to a party to contract merges into a superior right accruing to the same party, the former stands discharged automatically. **Example:** Where a part-time lecturer is made full time lecturer, the contract of part-time lectureship is discharged by merger.
6. **Discharge by impossibility of performance or supervening impossibility**

A contract, which at the time it was entered into, was capable of being performed many subsequently become impossible to perform or unlawful. In such cases the contract becomes void. This is known as the doctrine of supervening impossibility. It is also known as the doctrine of frustration.

According to section 56(2) of the Contract Act, 1872, a contract to do an act which, after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

The doctrine of supervening impossibility can be applied in any of the following grounds. Such as-

**a. Destruction of a subject matter:** When the subject-matter of a contract, subsequent to its formation, is destroyed, without the fault of the promisor or promise, the contract is discharged. **Example:** A music hall was let for a series of concerts on certain days. The hall was burnt down before the date of first concert.The contract becomes void.

**b. Charge of law:** A contract may be discharged by a subsequent change of law. In such a cases, the original contract becomes void. **Example:** X sold to Y a specified parcel of wheat in a warehouse. Before delivery, the wheat was relinquished by the Government under statutory powers. The delivery being now legally impossible, the contract was discharged.

**c. Failure of pre-condition:** When a contract is entered into on the basis of the continued existence of a certain state of things, the contract is discharged if the state of things changes.  **Example:** A and B contract to marry each other. Before the time fixed for the marriage. Before the time fixed for the marriage, a goes mad. The contract becomes void.

**d. Death or personal incapacity:** When the performance of a contract depends upon the persons skill or qualification of the contracting parties, the contract is discharged on the illness or incapacity or the death of that person. **Example:** A piano player was prevented from performing by a dangerous illness. Held-The contract is discharged because the player could have insisted on performing when she was unfit to do so.[Robinson v Davison (1871) L.R.6 Ex.269].

**e. Outbreak of war:** All contracts entered into with an alien enemy during war are illegal and void ab-initio. Contracts entered into before the outbreak of war are suspended during the war and may be revived after the war is over provided they have not already become time-barred.

1. **Discharge by operation of law**

A contract may be discharged by operation of law in the following ways.

**a) Death:** Where the performance of the contract depends upon the personal skill of the contracting parties, then the death of any party discharges or terminates the contract.

**b) Insolvency:** When a person is declared as insolvent by the court, then all the contracts withhim is discharged orterminated. Because the person insolvent is incapable of forming a validcontract.

**c) Merger:** When an inferior right accruing to a party to contract merges into a superior right accruing to the same party, the former stands discharged automatically. **Example:** Where a part-time lecturer is made full time lecturer, the contract of part-time lectureship is discharged by merger.

1. **Discharge by lapse of time**

The Limitation Act, 1908 clearly states that a contract should be performed within a specified time called period of limitation. If it is not performed and if the promises takes no action within the limitation time, then he is deprived of his remedy at law. **Example:** A debtor has failed to repay the loan on the stipulated date the creditor must file the suit against him within three years of the default. If the limitation period of three years expires and he takes no action he will be barred from his remedy and the other party is discharged of his liability.

1. **Discharge by breach of contract**

A contract may be discharged by breach of contract. When breach of contract occurs by one party, the other party or parties are freed from the obligation ofperforming the contract. They can take the remedial measures to which they are entitled.

The breach of contract may be

1. actual or,
2. anticipatory.
3. **Actual Breach of Contract:** The actual breach may take place either at the time the performance is due, or when actually performing the contract. This happens when a party does not perform his promise in the manner and at the time stipulated by the contract.
4. **Anticipatory Breach of Contract:** Anticipatory breach of contract may occur, before the time for performance is due. This may happen where one of the parties definitely renounces the contract and shows his intention not to perform it or does some act which makes performance impossible. The other party, on such a breach being committed, has a right of action for damages.