Discharge of a Contract

A contract creates certain obligations on one or all parties involved. The discharge of a contract happens when these obligations come to an end. There are many ways in which a contract is discharged. In this article, we will look at various such scenarios.

1] Discharge by Performance

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount.

Since both the parties to the contract fulfil their obligation arising under the contract, then it is discharged by performance. Now, discharge by the performance of a contract can be by:

Actual performance

Attempted performance

As shown in the example above, actual performance is when all the parties to a contract do what they had agreed for under the contract. On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance or tender.

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2] Discharge by Mutual Agreement

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

Example: Peter owes Rs 100,000 to John and agrees to repay it within one year. They document the debt under a contract. Subsequently, he loses his job and requests John to accept Rs 75,000 as a final settlement of the loan. John agrees and they make a contract to that effect. This discharges the original contract due to mutual consent.

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3] Discharge by the Impossibility of Performance

If it is impossible for any of the parties to the contract to perform their obligations, then the impossibility of performance leads to a discharge of the contract. If the impossibility exists from the start, then it is impossibility ab-initio. However, the impossibility might also arise later due to:

An unforeseen change in the law

Destruction of the subject-matter essential to the performance

The non-existence or non-occurrence of a particular state of things which was considered a given for the performance of the contract

A declaration of war

Example: Peter enters into a contract with John to marry his sister Olivia within one year. However, Peter meets with an accident and becomes insane. The impossibility of performance leads to a discharge of the contract.

4] Discharge of a Contract by Lapse of Time

The Limitation Act, 1963 prescribes a specified period for performance of a contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not pay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

5] Discharge of a Contract by Operation of Law

A contract can be discharged by operation of law which includes insolvency or death of the promisor.

6] Discharge by Breach of Contract

If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.

Also, if a party repudiates a contract before the agreed time of performance of a contract, then he is said to have committed an anticipatory breach of contract.

In both cases, the breach discharges the contract. In the case of:

an actual breach, the promisee retains his right of action for damages.

an anticipatory breach of contract, the promisee cannot file a suit for damages. It also discharges the promisor from performing his part of the contract.

7] Discharge of a Contract by Remission

A promisee can waive or remit the performance of promise of a contract, wholly or in part. He can also extend the time agreed for the performance of the same.

In example 3 above, Peter only repays a part of the money he owes to John. However, John agrees to accept it as a final settlement of the debt. John’s act of remission discharges the contract.

8] Discharge by Non-Provisioning of Facilities

In many contracts, the promisee agrees to offer reasonable facilities to the promisor for the performance of the contract. If the promisee fails to do so, then the promisor is discharged of all liabilities arising due to non-performance of the contract.

Example: Peter agrees to fix John’s garage floor provided he keeps his car out for at least 6 hours. Peter approaches him a few times but John is reluctant to get his car out. John fails to provide reasonable facilities to Peter (an empty floor). This discharges him of all obligations arising under the contract.

9] Discharge of a Contract due to the Merger of Rights

In some situations, it is possible that inferior and superior right coincides in the same person. In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

Example: Peter rents John’s apartment for two years. One year into the contract, he offers to buy the property from John, who agrees. The enter a sale contract and Peter becomes the owner of the apartment. Here Peter has two rights; one accorded by the lease agreement making him the renter and second by the sale agreement making him the owner. The former being an inferior right merges with the superior one and discharges the lease contract.

[**The Sale of Goods Act 1979**](https://www.lawteacher.net/acts/sale-of-goods-act-1979.php)

[The Sale of Goods Act 1979](https://www.lawteacher.net/acts/sale-of-goods-act-1979.php) is an Act of the United Kingdom which regulates contracts in which goods are sold and bought. The Sale of Goods Act performs several functions.

Buyer is a person that who wants to buy something from seller and seller is a person that sells out something that a buyer wants. To purely define Sales of Goods Act, it is a contracts in which goods are sold and bought, it means whereby the seller transfer the property in the goods to the Buyer for a consideration called price.

The Sale of Goods Act lays down a small number of compulsory legal rules concerned with an array of presumptions and implied terms, which aim to reflect the commercial expectations in the most commonly agreed sales contracts. In the absence of contrary agreement these terms will govern a contract within the Act’s remit.

Now that the law has imposed more responsibility on the seller which will be able to protect all buyers, because, nowadays, the modern law has proved that buyers has become more and more driven to rely on the honesty, skill and judgment of the seller. In many situations, the rules contained in the act only apply where the parties have failed to make express arrangements as to their obligations.

Definition sale of goods

A contract of sale is a legal contract an exchange of goods, services or property to be exchanged from seller to buyer for an agreed upon value in money paid or the promise to pay same. It is a specific type of legal contract.

Meaning of Goods

In Section 61, good includes all personal chattels but excludes all the services or chooses in action or money. Products of the soil are generally sold with a view to severance and though they may sometimes be of the nature of land for the purpose of the Law of Property (Miscellaneous Provisions) Act 1989, they are usually goods within the meaning of the Act of 1979. Nor would crops sold with the land on which they are growing because they are not in such a case to be ‘severed before sale or under the contract of sale’ as section 61 requires.

Goods may be:

Existing goods: goods actually in existence when the contract is made. They may be either specific or unascertained in the sense that they have yet to be appropriated to the contract (section 5(1)).

Future goods, goods yet to be acquired or manufactured or grown by the seller (section 5(1)) as in Sainsbury V Street. Where the seller agreed to dell to the buyers a crop of some 275 tons of barley to be grown by him on his farm.

Specific goods, goods identified and agreed upon at the time the contract of sale is made (section 61(1)). The sale of a raincoat at a market stall.

Unascertained goods: as where A agrees to sell to B 200 bags of flour from a stock of 2000 lying in A’s warehouse. The main problem in examination terms arises in question which is concerned with when ownership in such goods passes from seller to buyer. This problem will be considered below.

Terms Implied By the Sale of Goods Act

These terms are implied into the contracts that including in the sale of goods act. The defendant will be given an action for the damages if they breach the terms of sale of goods act.

Where the slightness of the breach renders it unreasonable for a non-consumer buyer to reject the goods, for breach of the implied terms as to description, quality or fitness or sample, then the buyer can only claim damages for a breach of warranty. This amendment moderates the traditionally strict approach of English Law to contractual breach in a commercial context.

Implied Condition as To Title

In Section 12(1), there is an implied condition on the part of the sales that in the case of:

A sale, he has the right to sell the goods if the situations show a different intention.

An agreement to sell, he will have the right to sell the goods at the time when the property is to pass.

Section 12(1) provides that, unless the circumstances show a different intention, there is an implied condition on the part of the seller that in a case of a sale he has the right to sell the goods, and that in the case of an agreement to sell, he will have the right to sell the goods at the time when the property is to pass (Rowland v Divall) held that the rejection of the goods is found to be in breach of s 12 will allow the buyer to recover full price paid, with no payment for the buyer’s use of the goods.

In the case of Rowland v Divall (1923), plaintiff bought a car from defendant and used it for several months. It then realized that defendant has no title to this car and the plaintiff is bound to return it back to the true owner. He sued defendant for recover back the purchase-money that he had paid as on a total failure of consideration. The court held that he is entitled to recover the whole of it price because the consideration for the use of car had totally failed.

Section 12(1) might be construed as meaning that the seller must have the power to give ownership of the goods to the buyer, but if the goods can only be sold by infringing a trade mark, the seller has no right to sell for the purposes of s 12(1). For instance, the case of Niblett v Confectioners’ Materials Co, a firm who dealt in confectioners’ materials agreed in writing to sell condensed milk in tins and of a price including insurance and freight from New York to London. Payment was made in case on receipt of the shipping documents and the defendants were paid the price. There were 1,000 cans which bore labels with the word ‘Nissly’ on them. This make Nestle Company notice about it and recommended that this was a breach of its registered trade mark. The defendants were required to remove the name and brand in order to be able to sell the goods without being sued by Nestle for infringement of trade mark. They could only sell them at a loss without any mark.

Held by the court of appeal, that the seller were in breach of the implied condition set out in section 12(1) of the sales of good Act. A person who can sell goods only by infringing a trade mark has no right to sell, even though he may be the owner of the goods.

Implied Warranties as To Title

Section 12(2) provide that there is an implied warranty that the goods are free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made, and that buyers will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

In Section 12(2), an implied warranty is that the goods must be free from encumbrances not disclosed known to the buyer and the buyer will enjoy quiet possession of goods. This point can be illustrates in the case Microbeads AG v Vinhurst Road Markings Ltd (1975). In this case, the court of appeal held that they could include breach of section 12(2) but not breach of section 12(1). There had been no breach of section 12(1) at the time of the sale so that A had not infringed that sub-session but since B’s quiet possession had been disturbed after sale, A was in breach of section 12(2).

Sale by Description

Section 13(1) provides that, where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description.

A sale is by description where the purchaser is buying on a mere description, having never seen the goods. A classic example occurs in the case of mail-order transaction.

The goods are described by their contain package even though the goods are selected or examined by purchasers from seller’s stock in sale’s counter. Consequently, sale in a self-service store would be contained by s13 while no words were spoken by the seller.

Section 13(1) provides that where the buyer is sold goods by description, the goods must correspond with this description. The case of Beale v Taylor (1967) was provided the example of the sale by description in section 13(1). The defendant advertised a car for sale as being a 1961 Triumph Herald 1200 believing it to be true. The claimant inspected and checked the car and saw a metal disc at the rear of the car with “1200″ on it and purchased the car. He later discovered that the car was made up of a rear 1961 Herald Triumph 1200 welded to the front of an earlier model Triumph Herald 948.

It was held to be a breach of Section 13 despite the fact that claimant had inspected the car as he relied on the description in the advertisement and the metal disc at the rear of the car.

Moreover, in the case Harlington v Christopher Hull (1990) also held that the implied condition of sale by description might only breached if the buyer relied upon the description. Therefore, reliance may not be established if the buyer is an expert. Hull was a company of art dealers controlled by Mr. Christopher Hull which carried on business from a London gallery. He was asked to sell two oil paintings which had been described by a German artist of the Impressionist School, called Munter. Mr. Hull was specialized in young modern British artist. He had no trainings, experiences, or even knowledge which enables him to conclude from an examination of the paintings whether they were by Munter.

Finally, the Court held that the claim for the breach of sale by description was failed. He had not relied on Mr. Hull’s description of the painting as being by Munter but bought it. So, it had not been a sale by description for the Sale of Goods Act in section 13(1) because he had been sent the expert to examine the painting before purchased for it. It was become an essential term or condition of the contract as the ‘description’ had not.

Moreover, there is another case, it is Moore & Co v Landauer & Co (1921), the court held that although the method of packing made no different to the market value of the goods, the sale was by description under section 13 of the sale of good Act, and the description had not been complied with. Consequently, the buyers were entitled to reject the whole consignment by virtue of the provisions of what is now section 30(4) of the sale of good Act.

Implied Conditions as To Fitness

These terms are implied by section 14 and are only relevant where the seller is acting in the course of a business. There is no requirement as to the status of the buyer. The condition of Section 14(3) are where the seller sells goods in the course of a business and the buyer, expressly or by implication, make known to the seller or dealer of any particular purpose for which the goods are being bought, there is an condition that the goods supplied under the contract are reasonably fit for that purpose, whether or not that is a purpose for which such goods are commonly supplied, except where the circumstances show that the buyer does not rely, or that it is unreasonable for him to rely, on the seller’s skill or judgment.

Section 14 starts by stating that there is no implied condition or warranty as to quality or fitness for a particular purpose, except as provided by section 14 and 15. This preserves the principle of caveat emptor let the buyer beware. In the following case the court of appeal confirmed that the implied terms in section 14 apply to every sale by a business, even though the goods sold may not be part of the stock in trade.

The same principle applies in Priest v Last (1903). This case is demonstrates the principle if the buyer told the seller the particular purpose which he/she is purchasing the goods, then it is an implied condition that the goods are reasonable to for the purpose. From this case, the buyer who bought a hot-water bottle from the seller was a chemist. His wife uses the hot-water bottle and then after 5 times, the bottle burst and the wife was scalded. Evidence shows that, the bottle was not fit for use as a hot-water bottle. The buyer claimed for breach of section 14(3). The seller stated that, the buyer had not made known the purpose for the hot-water bottle would be used. However, this was rejected by the court. The court held that, the seller has entitled to recover the expenses in the treatment of the buyer’s wife injuries. It is because the buyer relied on the seller’s judgment and he had in fact used the hot-water bottle for the usual purpose.

Satisfactory Quality: The Current Test

An implied term in a contract for the sale of goods within the meaning of the Sale of Goods Act 1979 (SOGA).Goods are of satisfactory quality if they meet the standard which a reasonable person would regard as satisfactory, taking account of:

Any description of the goods;

The price; and

All other relevant circumstances

In addition, the quality of goods includes their state and condition and the following factors are to be taken into account in determining whether goods are of satisfactory quality:

Fitness for all the purposes for which goods of that kind are commonly supplied;

Appearance and finish;

Freedom from minor defects;

Safety; and

Durability

Merchantable Quality: an unsatisfactory test

The goods should be of such quality as would in all circumstances of the case be fully acceptable to a reasonable buyer who had full knowledge of their condition, quality and characteristics. For example, a buyer of goods had no rights at all where there were a number of minor defects, such as small scratches and dents in a new car. The car was not necessarily unmerchantable because of these defects, nor was it unfit for the purpose.

In case Shine v General Guarantee Corporations Ltd the courts held that a second hand car was not of merchantable quality where the manufacturers rust warranty had been terminated because it is unknown to the buyer that the car had been submerged in water for over 24 hours. The buyer brings up the action when he was aware of the car was being submerge for over 24 hours although there were no major problems with the car.

The court held that the car was not of merchantable quality since no one would have bought the car knowing if its condition without at least a substantial reduction of the price.

Sale by Sample

Where goods are bought by bulk and the buyer has tested or examined a small number of those goods, the seller is obliged to make sure that every item in the bulk corresponds with the quality of the sample tested or examined.

An example of the application of this provision can be found in case of Godley v Perry (1960). The court held that the first defendant was in breach of section 14(2) and (3) as the goods was not fit for its purpose and was not if merchantable quality. Besides that, the third and fourth parties were both in breach of section 15(2) (c) since the defect of the goods could not be discovered by reasonable examination of the sample.

Conclusion

In my conclusion, the Sale of Goods Acts 1979 section 12(1) and (2), section 13(1), section 14(3) and section 15 show the relationship between the buyer and seller and covers such issue as the correct and duties of the parties and their remedies in the result of a breach. For the Sales of Goods Acts1979, it help a lot for the customer to protect them self from getting cheated. From this the seller also has a difficulty to cheat their customer for their own use (profit).