Subject Name: Contract Act
Topic Name: Performance of Contract

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A contract involves the mutual commitment of two parties to fulfil specific obligations outlined within it. Thus, executing a contract entails the fulfilment of the obligations assumed by each party who has agreed to such terms. As stipulated by Section 37, the involved parties are obligated to either carry out or present an offer to fulfil their respective promises, unless circumstances allow for exemption or justification under the provisions of the Contract Act or any other applicable law.

Tender to Perform

What does 'tender' or 'attempted performance' entail? In situations where the promisor offers to fulfil their contractual obligation at the designated time and place, but the promisee declines acceptance, it constitutes a 'tender' or attempted performance. Section 38 asserts that if a valid tender is made but rejected by the promisee, the promisor is not liable for non-performance and retains their contractual rights.

When is an Offer to Perform or Tender of Performance considered valid?

To be deemed valid, a tender or offer of performance must meet the following criteria:

1. Unconditionality: The offer must be unconditional. Any conditional offer is deemed invalid, and the promisor remains bound by their obligations. A tender is conditional if it deviates from the contract terms.

   For instance, if A owes B a sum with interest but offers only the principal amount, it's not a valid tender since the agreement stipulates payment of both principal and interest.

2. Timeliness and Location: A valid tender must occur at the appropriate time and place, allowing the promisee a reasonable opportunity to confirm the promisor's readiness to fulfil their entire obligation as specified in the contract.

For instance, if A sends a letter to B offering payment, it's not valid as it implies A's absence at B's location.

3. Verification Opportunity: The promisee must have a chance to verify the goods being delivered. This entails ensuring the quality and quantity align with the contract terms.

   For example, if A contracts to deliver 100 quintals of sugar to B's warehouse, B must have the opportunity to verify the quality and quantity upon delivery on the specified date.

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Who bears the responsibility of performance under a contract?

The following individuals are empowered to fulfil the promise outlined in the contract:
(i) The promisor themselves;
(ii) The promisor's agent; and
(iii) The promisor's legal representative(s).

The Promisor Themselves (Section 40)
If the contract explicitly indicates that the promisor is expected to carry out the obligations personally, then it is imperative that the promisor fulfils the contract themselves, without delegation to any other party.

The Promisor's Agent
In instances where the contract does not specify personal performance by the promisor and allows for agency, the agent of the promisor, duly appointed for such tasks, may undertake the contract. However, the agent must possess the requisite competence to fulfil the obligations.

Legal Representative(s)
Upon the death of the promisor, it falls upon their legal representative(s) to execute the contract, unless the contract suggests otherwise.



Contracts Need Not Be Performed

Contracts may not require performance under the following circumstances:

(i) Mutual Agreement to Change Terms

If both parties mutually agree to modify the terms of the original contract through a new agreement or decide to rescind or amend it altogether (Section 62).

For instance, if A owes money to B under a contract, but a new contract is formed among A, B, and C, transferring A's debt to C, the original contract between A and B ceases to be obligatory.

(ii) Dispensation, Remission, or Extension by Promisee

When the promisee waives, wholly or partially, the performance of the promise, extends the time for performance, or accepts an alternative satisfaction (Section 63). For example:

- If P promises to paint a picture for R, but R later prohibits it, P is released from the obligation.

- If B owes Rs 60,000 to C and pays Rs 20,000, which C accepts as full payment, the entire debt is considered settled.

- Banks settling long overdue loans through one-time settlements for lesser amounts to reduce NPAs.

(iii) Rescission by Person at Option

If the individual with the right to void a contract exercises that right and rescinds the contract (Section 64).

(iv) Promisee's Neglect or Refusal to Facilitate Performance

When the promisee fails or refuses to provide reasonable facilities for the promisor to fulfil their promise (Section 67). For instance, if H neglects or refuses to indicate where repairs are needed in their house, C, contracted for the repairs, is not obliged to perform.