

The Law of Contract: An Analytical Scenario of the Clarity in Agreements, Relationships, Rights and Duties of the Parties

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Abstract

Contracts can be considered as one of the fundamental legal instruments that reach deep into our daily life. Numerous numbers of contracts are entered into with a view to creating obligations and rights for the contracting parties. For the creation of a legal relation the contracting parties enter into a valid contract to perform their agreed task and there are also certain chances that the contract agreed to be performed may be breached. In this case, in order to protect the goals of the contracting parties along with providing them with justice, the parties who have been victims of the unlawful act of violation shall be granted such remedies. Apart from these in several cases the contract which was made between the parties is terminated due to various causes and the contracting parties of that contract may be relieved from performing their agreed task.

Keywords: Contract, Agreement, Performance, Obligation, Breach, Remedies, Termination

Introduction

It's well known that 'All contracts are agreements but all agreements are not contracts.' Agreements or contracts are historically ancient means of managing and regulating dyadic exchanges. We enter into several types of contracts at every sphere of our life either knowingly or unknowingly. To be formed a valid contract there will be required various ingredients like capacity of the contracting parties specially to be an offeror, free consent, intention to perform the undertaken obligation etc. Apart from these the consideration and the objects of the contract need to be lawful. When a lawful contract is formed, both the parties enjoy certain rights and duties in connection with the contract to be accomplished as well as if the contract is not accomplished accordingly then the parties will also have the rights to get remedy as the case may be.

Aims and objectives of the article

The study has undertaken with a view to achieving the following aims and objectives:

- a. How an agreement is formed as a valid contract by the contracting parties.
- b. Obligation which is undertaken by the parties to be performed and the remedies not to be complied with or the legal reparation/remedies for the violation of a contract.
- c. Identify the scenarios under which a party may terminate the contract.

Methodology

This study is based on secondary sources of information. Relevant data are collected from different books, journals and websites.

Human is a social being. As a social human being we need to establish several types of relations either legal or moral with others due to social or economical necessities. To maintain these relations with others we need to maintain applicable provisions or rules in these regards. In every sphere of our life we need to enter into several types of agreement knowing or even without realizing it to get the benefit from the agreement. In this view agreement plays an important role in the day to day life of every person.

Contract law lies at the heart of our system of laws and serves as the foundation of our entire society. This is not an exaggeration. It is a simple observation one that too often goes unobserved.

The law relating to contract in Bangladesh is contained in the Contract Act, 1872. The Act was passed by British Govt. and based on the principles of English Common Law. It is applicable in whole of Bangladesh and it'll come into force on the first day of September, 1872. It determines the circumstances in which promises made by the parties to a contract shall be legally binding on them. All of us enter into a number of contracts everyday knowingly or unknowingly. Each contract creates some rights and duties on the creating parties. Hence this legislation, the Contract Act of 1872, being of skeleton nature, deals with the enforcement of these rights and duties on the parties in Bangladesh.¹

A contract is a valid or legal agreement and its object is to create legal rights and obligations of the contracting parties. According to the section 2 (H) of the Contract Act, 1872- "An agreement enforceable by the law is a contract," analyzing by this section if the agreement is valid in the lights of the Contract Act, this will turn into a valid contract but if not valid then this will not create any

¹ Law of Contract- Mohammad Shahjalal & Md. Riad Hasan

contract. What are the requirements needed to be a valid contract can be discussed by the following ways-

(i) Two or more parties: No one can make contract with oneself. In order to make a contract two or more parties are needed. Because every contract gives rise to certain legal obligations or duties on part of contracting parties.

(ii) Lawful offer: The Contract Act, 1872, provides that when a person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal/offer. A proposal who accepted becomes a promise.

Note: Who makes proposal called--- promisor/ offeror

Who accepts the proposal called --- promisee/ offeree.

(iii) Accepting of the offer: There must be a lawful acceptance of the offer by the promisee or offeree.

(iv) Lawful consideration: Subject to certain exceptions, an agreement is legally enforceable only when the parties to it gives something and gets something. The something given or obtained is called consideration. The consideration may be an act (doing something) or forbearance (not doing something) or a promise to do or not to do something. Consideration may be past. It also may be present or future. But only those considerations are valid which are lawful.

(v) Capacity of the parties: The parties to an agreement must be capable of entering into an agreement; otherwise it cannot be enforced by a court of law. Want of incapacity arises from minority, lunacy, idiocy, drunkenness and similar other factors. If any of the parties to the agreement suffers from any such disability, the agreement is not enforceable by law.

(vi) Free consent of the parties: The enforcement of an agreement depends upon / on the free consent of the parties. If the agreement is induced by coercion, undue influence, mistake, misrepresentation and fraud that will not treated as genuine consent and that contract will not be treated as valid contract.

(vii) Lawful object: The object for which the agreement has been entered into must not be illegal or immoral, or opposed to public policy.

(viii) Agreement must not be in abuse of legal process: The following categories of agreements which are expressly declared to be void. They are-

1. Agreement in restraint to marriage, **Section 26**
2. Agreement in restraint of trade, **Section 27**

3. Agreement in restraint of legal proceedings, **Section 28**
4. Agreement having uncertain meaning, **Section 29**
5. Wagering agreement, **Section 30**

(ix) Writing, Registration and legal formalities: Agreement may be oral, written or registered. An oral contract is also good contract, except in those cases where writing and registration is required by some statute. The terms of an oral contract are difficult to prove. Therefore important agreements are usually entered into in written even in cases where writing is not compulsory.²

Considering the above essential and applicable elements the formation of contract is taken place. An enforceable agreement is a contract only if the contract is valid. A contract that is invalid, vitiated or irregular will either be void, voidable or unenforceable. Therefore, a contract must be formed keeping in mind certain conditions and terms that have to be met with before and during the formation of the contract.

Most of the aspects of civil law are based on the law of contract; this vast subject is classified under various categories. Classification of the contract is always important tool to foresee the future of a particular contract. The technicality of law relies on careful observation and dealing contract according to their classification.

Contracts on the basis of creation:

A. Express contract

Express contract is one which is made by words spoken or written.

B. Implied contract

An implied contract is one which is made otherwise than by words are spoken or written. It is inferred from the conduct of a person or the circumstance of the particular case.

C. Quasi or constructive contract

It is a contract in which there is no intention either side to make a contract, but the law imposes a contract. In such contract rights and obligations arise not by any agreement between the practice but by operation of law.

Contracts on the basis of execution:

A. Executed contract

It is a contract where both the parties to the contract have fulfilled their respective obligations under the contract.

B. Executory contract

² <http://aclawresearch.blogspot.com/2012/12/what-are-essential-elements-of-contract.html>

It is a contract where both the parties to the contract have still to perform their respective obligations.

C. Partly executed and partly executory contract

It is a contract where one of the parties to the contract has fulfilled his obligation and the other party has still to perform his obligation.

Contracts on the basis of enforceability:

A. Valid contract

A contract which satisfies all the conditions prescribed by law is a valid contract.

The term void contract is described as under section 2 (j) of The Contract Act, 1872; a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. In other words, a void contract is a contract which is valid when entered into but which subsequently became void due to the impossibility of performance, change of law or some other reason.

C. Void Agreement

According to Section 2 (g), an agreement not enforceable by law is said to be void. Such agreements are void- ab- initio which means that they are unenforceable right from the time they are made.

Example: an agreement with a minor or a person of unsound mind is void –ab-initio because a minor or a person of unsound mind is incompetent to contract.

D. Voidable contract

According to section 2 (i) of the Contract Act, 1872, arrangement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others, is a voidable contract.

In other words, a voidable contract is one which can be set aside or avoided at the option of the aggrieved party. Until the contract is set aside by the aggrieved party, it remains a valid contract. For Example, a contract is treated as voidable at the option of the party whose consent has been obtained under influence or fraud or misinterpretation.

E. Illegal Agreement

An illegal agreement is one the object of which is unlawful. Such an agreement cannot be enforced by law. Thus, illegal agreements are always void – ab- initio (i.e. void from the very beginning)

F. Unenforceable contract

It is a contract which is actually valid but cannot be enforced because of some technical defect (such as not in writing, under stamped). Such contracts can be enforced if the technical defect involved is removed.³

Considering the essential elements of a valid contract to be formed a valid agreement and also various types of contract, we need to know the performance of the contract of the contracting parties which will determine the relation, rights and duties of the concern parties.

The term performance in its literal sense means the performance of a task or action. In its legal sense “performance” means the fulfillment or the completion of the obligations which they have towards the other party by virtue of the contract entered into by them. Section 37 of the Contract Act talks about performance. According to the Section, there are two types of performance which are:

Actual performance: Actual performance of the contract means the actual discharge of the liability or obligation which a person has undertaken to perform and there remains no other task which he is obliged to discharge under the promise. He is said to have made the actual performance of the promise.

Attempted performance: At times when the performance becomes due. The promisor is not able to discharge his obligation or perform his duty because he is prevented by the promisee in doing so. This situation where the promisor actually intended to perform his obligation or discharge his duty but is prevented from doing so by an intervening disability is known as the attempted performance of a promise.

Attempted performance is also known as Tender. A tender can be of two types:

Tender of goods and services: The discharge of the contract to deliver goods and services is completed when the goods are tendered for acceptance in accordance with the terms of contract. If the goods and services so tendered are not accepted they are to be taken back by the offeror and he is discharged from his liability.

Tender of money: where the debtor tenders the money which is to be paid to the creditor but the debtor refuses to accept the money. The debtor is not discharged from the liability to pay back the money. Therefore, a tender of money can never result in the discharge of debt.

This article exhaustively deals with the tender of performance and its different aspects, the performance of a contract and joint promises and joint liabilities arising thereto.

³ <https://lawhelpbd.com/contract-act/classification-of-contract/>

Tender of performance

Section 37 to Section 39 specifically deals with the performance of the contract by the parties thereto. According to Section 37 of the Contract Act, 1872 the parties to a contract are under the obligation to either perform or offer to perform the promises which have been agreed upon under the contract. Section 2 (b) of the Contract Act defines the meaning of promise as a proposal made by the offeror which has been accepted by the offeree. Thus, each party is under a legal obligation to perform his obligation which has been agreed upon under the terms of the contract. Unless the terms of contract expressly exempts or dispenses the performance of obligation upon the person.

The promises made by the parties to the contract after their death binds their representatives provided that no contrary intention appears from the terms of the contract.

However, in the case where the promise is made with regards to the personal skills and art of the person then his representative will not be bound by the promise made by him.

The obligation of parties to perform

The obligations in a contract are those duties by which the parties to the contract have to abide by. In a contract, the parties to the contract usually exchange something of value in the eyes of the law. The thing which is decided to exchange can be the product, services, money, etc. An example of contract obligations is with the sale of a product such as an automobile. One party has the obligation to transfer ownership of the car, while the other has the obligation to pay for it. The contract will specify the terms that regulate the obligations, such as the method and amount of payment, and the time or place of delivery.

In the case of *M. Kamalakannan v. M. Manikanndan*, there was a contract between the plaintiff and the defendant for the sale of the property. The plaintiff, in this case, retained some part of the money which was stipulated under the terms of the contract in order to compel the defendant for the performance of some of the obligations like vacating the property which was occupied by the tenants and handing over the vacant property to the plaintiff. The contention by the defendant was that non-payment of some part of the consideration resulted in the infringement of the terms of the contract.

Submission of tender tantamounts to a proposal

When in response to an invitation a tender is submitted it is considered to be a proposal to contract and not the contract itself. In *M/S Great Eastern Energy vs M/S Jain Irrigation Systems Ltd*, the tender specified the validity period for four months. The court held that after the expiry

of the period of tender, no acceptance could be made. The forfeiture of the security deposit amount by acceptance of the tender after the expiry of its validity period and failure of performance by the tenderer was not improper.

Promises bind the representatives of the promisor

The proviso attached to Section 37 of the Act provides that in case of the death of the promisors the representative of such promisors would be bound by the promises made by them unless a contrary intention appears from the terms of the contract. In the case of *Basanti Bai vs Sri Prafulla Kumar Routrai*, that in case a person dies without leaving behind any legal representative, then, in that case, the liability to perform the promise on his behalf would fall upon the person who acquires interest over the subject matters of the contract through that deceased party. The Cuttack High Court, however, held that in the present case, the plaintiff was not able to enjoy the above mentioned legal proposition as she was unable to prove the existence of the agreement which was alleged by her.

Clause for renewal

The Clause for renewal is the provision by which the terms of the contract initially agreed upon are renewed or recommenced.

In *Hardesh Ores Pvt. Ltd vs M/S. Hede And Company*, the terms of the contract contained a renewal clause. The party which have the authority in accordance with the terms of the contract to renew the same exercised it. However, the other party refused to accept the new terms caused by renewal. The Supreme Court held that in such a case the best course of action for the party who is empowered by the terms of the contract to renew the terms of the contract is to get the renewal declared and enforced by the court of law or to get the declaration of renewal of contract by the court.

Tender of performance

The offeror should offer the performance of an obligation under the contract to the offeree. The offer is made is called the “tender of performance”. *It is the discretion of the promisee to accept the offer. In case the promisee chooses not to accept the offer then neither the offeror could be held liable for the non-performance of the terms of the contract nor he loses his rights under the terms of the contract.* Therefore, it is a settled principle that non-acceptance of the tender of performance would result in the exclusion of the promisor from further performance of the terms of the contract and he is also entitled to sue the other party for not performing the terms of the

contract. Section 38 of the Contract Act makes it clear that a tender of performance tantamounts to performance. Every tender of performance must fulfill a certain essential condition:

Section 38(1): The offer should be unconditional;

Section 38(2): The offer must be made at a proper time and place so as to allow the party to have a reasonable time for ascertaining that the person who is making the offer to him is competent to enter into a contract;

Section 38(3): If the offer to the offeree is such as to deliver some goods addressed to the offeree then it is the duty of the offeror to provide reasonable time to the offeree in which he can ascertain that the goods offered to him is the same by which the offeror is bound under the terms of the contract.

Tender of performance should be unconditional

Subsection 1 of Section 38 states that a tender to valid must be unconditional which means that it should not be accompanied with any clause, provision or condition precedent or subsequent. In Haji Abdul Rehman Haji Mahomed, the court, in this case, explained the situations in which the tender becomes conditional. According to the court, when a tender does not follow the terms of the contract which were originally drafted and agreed upon by the parties, the tender becomes conditional. The reason for making it a necessary is because of the fact that it is not reasonable to compel a party to accept the modified or altered terms of contract which were not initially agreed upon by the parties.

The tender of performance must be made at a proper time and place

Section 38(2) of the Act mandates that the tender of performance should necessarily be made at a time and place and under such circumstances so as to afford the person to whom the offer is made a reasonable opportunity to ascertain that the offeror is able and bound to do whatever he has promised under the terms of contract to do.

Section 138(2) of the Act also provides that the tender must be made under such circumstances so as to allow the other party to get reasonable opportunity to ascertain that the person who is making the tender is capable and willing to fulfil all the conditions mentioned under the contract. Section 138(3) of the Act provides that the goods which are subjected to tender must be same as mentioned under the description of the tender otherwise the tender will be invalid.

By whom contracts must be performed

Section 40 of the Contract Act contains provisions regarding the performance of the contract. The Section provides that if by the terms of the contract it appears that the intention of the parties

to the contract was such that any promise contained in it must essentially be performed by the promisor himself and no other person on his behalf can perform his promise. In all the other contracts the terms of which do not indicate any similar intention then in the absence of the promisor for the performance of the promise any other competent person can perform the promise on his behalf.

Effect of accepting performance by the third party

Section 41 of the Contract Act contains provisions regarding the effect of acceptance of performance of promise by the third party. The Section provides that where the promisee agrees to performance of a promise which is made to him by the offeror, by the third party. He cannot at a later point of time enforce the contract against the promisor who initially promised to perform the promise.

If the terms of the contract indicate that from the very beginning of entering into the contract the parties to the contract intended specific performance of the promise by the promisor himself. The effect of reflection of such intention would be that the promise should essentially be performed by the promisor himself and the promise cannot be enforced against his legal representative nor can his legal representatives can enforce the promise. This type of situation can usually be seen in cases which involve the personal skills of the promisor himself.

Generally, the rules laid down under Section 37 is that the promises of the deceased promisor will bind his representatives. Therefore, the general principle of the law of contract is that unless there appears a contrary intention in the terms of the contract. The representatives of a deceased promisor are bound by the promise of the deceased and the promises of the deceased are enforceable against his representatives.

In the case of Kapur Chand Godha vs Mir Nawab Himayatalikhan Azamjah, the court declared that the English and the law differs substantially on the point of performance of the contract by the representatives of the deceased promisor, in the British law system, the rule is that the third party or the representatives of the deceased promisor could discharge his obligations only in the cases where it is clearly evident from the promise that it was the intention of the parties while the formation of the promise to bind their representatives in case any of the promisors dies, in law, however, the position with respect to the performance of the promise by the representatives of the deceased on contrary to the English law and the same could be inferred from the words of Section 41 of the Contract Act, which leave no ray of doubt that in cases where the appellants

expressly declare the intention of the performance of their promise from the third party, they cannot afterwards enforce the promise against the promisor.

Joint promises

Section 42 of the Contract Act talks about the joint promises. When two or more promisors agree to perform the terms of the promise together they are said to have made a joint promise and the people who jointly agreed to perform the promise are called the joint promisors. The section provides that the promisors are jointly liable to fulfil the promise until the terms of the contract provide anything to the contrary. The Section also provides that in case of death of any one of the joint promisors his legal representatives will be bound by the obligation under which the promisor was in his lifetime.

Performance of joint promises

According to English law, in a case where one of the several joint promisors dies. The surviving joint promisor would be bound by the rights and liabilities of the deceased joint promisors until a single joint promisor is alive the representatives of the promisor will not acquire any rights or liabilities. This rule is sometimes considered to put the creditor in the loss as he has no security of solvency of the creditors. This lacuna of the rule is filled by Section 42 of the Contract Act.

Devolution of joint liabilities

Section 42 of the Contract Act deals with the devolution of joint liabilities. According to the Section in case, there are several joint promisors involved in a contract by making a promise then during the joint lives of the promisors they must fulfil the promise jointly. In case of death of any of the joint promisor, the representatives of the deceased promisor along with the surviving promisors should strive to fulfil the promise. On the death of the last surviving promisor, the representatives of all the deceased promisors would be jointly liable for fulfilment of the promise. However, this legal proposition is subject to any private arrangement between the parties to the contract.

Devolution of joint liabilities

When two or more persons enter into a joint promise then unless a contrary intention appears by the contract all promisors during their joint lives and after the death of any of them their representatives will be bound jointly along with the surviving promisor or promisors. After the death of all the promisors, the representatives of all the promisors will be bound by the promise jointly entered into by the deceased promisors.

This Section provides security to the promisee by assuring him that the promisors would be bound by the promise made by them during their joint life and after the death of either of the promisor, their representatives will be bound by the promise made by the deceased promisor.

In Gannmani Anasuya & Ors vs Parvatini Amarendra Chowdhary, the court held that Section 42 shifts the burden of the fulfilment of the promise on the representatives of the deceased promisors. However, this liability is subject to the express or implied prescription of such provision by the promisors. Such prescription by the promisors could be inferred expressly or impliedly.

Joint and several liability

Subsection 1 of section 43 of the Contract Act contains the important facets of the joint promises. According to the Section when two or more persons jointly make a promise. The promisee has the authority to compel any of such joint promisors in the absence of the contract expressly prohibiting the promisee to do so.

Each promisor may compel contribution

Subsection 2 of Section 43 provides that each of the promisors in a joint promise may compel the other promisors to contribute equally with him in the performance of the promise unless a contrary intention appears from the terms of the contract.

Sharing of loss by default in contribution

Subsection 3 of Section 43 provides that in the case where any two or more joint promisors makes default in making a contribution in the promise, then the burden of loss must be borne by the remaining promisors and should make good the loss suffered by the other party by contributing in equal shares.

The explanation attached to the Section provides that nothing contained under Section 43 of the Contract Act shall prevent the surety, from recovering the money which he has paid on behalf of the principal nor the Section empowers the principal from recovering anything from the surety on account of the surety's payment made on behalf of the principal.

Section 43 of the Contract Act lays down the following three rules:

Rule 1: When a joint promise without any express agreement to the agreement, the promisee has the discretion of specifically making only one of the joint promisors to pay the amount which was jointly promised by the promisors to pay him.

Rule 2: Where a specific joint promisor was compelled to pay the entire promised sum. Then he may compel the other joint promisors to pay him the amount which they were obliged to pay to the person to whom they had promised to pay the stipulated amount.

Rule 3: Where one of the joint promisors due to his inability to make payment defaults in making a contribution to pay the stipulated amount, the remaining joint promisors must bear the cost in equal shares.

Release of one joint promisor

Section 44 of the Contract Act grants the Right to release to the creditor under which he may release either of the joint promisors from liability. The section provides that where the creditor has released either of the joint promisors from the liability. The other joint promisors are not discharged from their liabilities and they are still bound to fulfill the promise which they have made to the person. The release of the promisor from his liability towards the promisee, however, does not result in his release from the liability which he has towards the other joint promisors.

Section 44 of the Contract Act marks a departure from the common law principle in which the release of one of the promisors from liability tantamount to the release of the other promisors from their liability towards the promisee. Unless the promisee expressly provides for the preservation of rights against them.

The term “offer” has been defined under Section 2 (a) of the Contract Act, 1872. An offer is an expression of willingness made by a person to do or abstain from doing any act or omission with a view to obtaining the assent of the person whom such an offer of act or abstinence is made.

The term performance in its literal sense means the performance of a task or action. In its legal sense performance means the fulfillment or the completion of the obligation of the parties which they have towards the other party by virtue of the contract entered into by them.⁴

Breach of contract and its remedies:

Where one party fails to fulfill the obligations made in contract or does not perform intentionally or does not perform in accordance with the terms made in the agreement is said to be breached the contract. In case of breach of contract, many people think that damages are the only available remedy available but there are many remedies which may sort by the aggrieved party or the party who had suffered loss and this paper will describe those available remedies which may demand before the court by the party aggrieved.

⁴ <https://blog.ipleaders.in/offer-of-performance/>

In many commercial agreements or contracts, they contain the express provision for remedies in case of no express provision than the following remedies are always available.

Rescission of the contract: where one party promises to do some act but he fails to do so, therefore, the other party or the party aggrieved may sue for such to treat the contract as rescinded along refuse further performance. Here the aggrieved party will be free from all obligations as the other party failed to fulfill his contractual obligations.

Suit for Damages: section 73 of the Contract Act states that the party aggrieved is entitled to receive for any loss or damages suffered by him for the breach of contract and for which he can file a suit for getting a decree or claiming damages. The compensation is usually pecuniary for a suit of damages and it may nominal or substantial. Unlike other equitable remedies like specific performance or injunction, damages are available as of right and not the discretion of the court. In the case of *Harley vs. Baxendale (1854) 9 Ex. 341* it was observed that the damages which ought to have received should be as much fairly and reasonably.

Suit upon Quantum and Meruit: It means as much as deserved or as reasonable the value of services. It may sort when a contract has been partly performed the aggrieved party and the other party has not fulfilled his part than a suit may be filled for the price to which portion performed before the breach of contract. In the case of *Ref. Day vs. Caton (1876) 119 Mass. 513* stated that when an agreement is discovered to be void or the completion of the contract has been prevented by the act of the other party or others than the claim for *quantum meruit* may arise.

Suit for Specific Performance of Contract: when it is found that the damages occurred cannot be compensated by the money of an act agreed to be done than a suit for specific performance of a contract may be filled. On another perspective specific Performance of the contract is granted when damages are not an adequate or appropriate remedy, this mostly happens in case of land sale contracts where the vendor refuses to convey title. According to section 12 of the Specific Relief Act, 1877 states that the specific performance of any contract is the discretion of the court to be enforced or not and provided four conditions where the court will consider to provide specific relief. It is to be kept in mind that the discretion of the court to provide the specific performance of the contract would be reasonable and guided by judicial principles so for demanding specific relief or suit for such the aggrieved party must have to prove that the compensation is not adequate for them. Also, the aggrieved party when asking for the specific performance of a contract may ask for compensation for the breach, in addition to or substitution to such performance as under section 19 of the Specific Relief Act, 1877.

Suit for Injunction: An injunction is such whereby one party is required to do or refrain from doing certain acts by the order of the court. Whereby a promisor undertakes to do something but he does not do so or promises not to do certain acts but carry on such means breaches terms and provisions than the party aggrieved may apply to the court for granting the injunction. The granting of an injunction by the court is discretionary but in certain cases to restrain the breach of contract the court will grant an injunction. Usually, the court will provide two types of injunction either a permanent or temporary injunction. Permanent or perpetual injunction is such where the aggrieved party have to file a separate suit for demanding this under section 54 of the Specific Relief Act, 1877 to prevent the breach of contract also in the case of *Prof MA Raquib vs. Prof Zillur Rahman 37 DLR 83* held that no permanent injunction can be granted unless the applicant has any personal interest or any breach of obligation in the contracts. On the other hand, temporary injunction is such whereby one has to establish prima facie case and have to show that the aggrieved party will suffer irreparable loss or damages if such is not granted and this temporary injunction can be asked before court at any stage of the suit through an application under Order 39 rule 1 and 2 of the Code of Civil Procedure, 1908. A temporary restraining order may be granted ex parte, therefore, the aggrieved party has to prove that there is an immediate prospective or reasonable apprehension of breach of the contract any time for which if happened he will suffer irreparable loss or damages.

Suit for Rectification or Cancellation of Contract: This is another sort of remedies in case of breach of contract. When by Fraud from the opposite party or through the mutual mistake of both parties a contract does not express their real intentions than the aggrieved party or both parties may apply for the rectification of the contract under section 31 of the Specific Relief Act, 1877. It was held in the case of *Lalbanu Bibi vs. NourjanBanu 41 DLR 519* that the court will rectify the contract where the real intention is misrepresented. On the other hand, where it is found that a contract which is void or voidable against a person and may cause serious injury to him or if a reasonable apprehension occurs of such than he may file a suit for the cancellation of the contract under section 39 of the Specific Relief Act, 1877. In the case of *Chitta Janjan Chakraborty vs. Md. Abdur Rob 1997 BLD 126* stated that when a contract is void ab initio and the transaction is a nullity or only voidable than the plaintiff may ask for relief under section 39 of the Specific Relief Act for the cancellation of such.

The remedies in case of breach of contract is a civil one and suit must be filled in the ordinary civil court before the time limits lapse and it is to be kept in mind that the limitations for bringing

a suit in case of specific performance of contract are only one year as per article 113 of the Limitation Act, 1908.⁵

Termination of contract

Completion of contract

The contract comes to an end when the parties have fulfilled their part of promises and carried out their obligations. Section 37 of the Act states that, “*the parties to a contract must either perform or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or any other law*”. When the parties to a contract perform their set of duties then the contract stands discharged.

Impossibility of performance

If a contract is or becomes impossible to perform then it leads to termination of the contract. Section 56 makes provisions regarding the impossibility of contract. The contract could be impossible from the very beginning or it could become impossible afterwards upon some change in circumstance.

- **Initial impossibility:** A part of Section 56 states, “*An agreement to do an act impossible in itself is void*”. A contract obligates parties to perform certain tasks and if those obligations are impossible to perform then the agreement is considered void. The maxim “*les non cogit ad impossibilia*” which means “*the law does not compel a man to do what he cannot possibly perform*”.
- **Subsequent impossibility:** The second part of Section 56 which talks about “contract to do act afterwards becoming impossible or unlawful” reads as “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 contracts are built on the premise that the parties are able to perform their set of duties and if the acts become impossible to perform the contract becomes void.
- **The doctrine of frustration:** It applies when a party is ‘excused’ from performing their obligation due to subsequent change in the events. In other words, the object of the contract becomes frustrated due to its impossibility. In the case of *Satyabrata*

⁵ <https://juralacuity.com/remedies-for-breach-of-contracts-in-bangladesh/>

Ghose v. Mugneeram (1953), the Court held, “the essential idea upon which the doctrine is based is that of impossibility of performance of the contract; in fact, impossibility and frustration are often used as interchangeable expressions. The changed circumstances make the performance of the contract impossible and the parties are absolved from the further performance of it as they did not promise to perform an impossibility”. It was also observed that the Doctrine of Frustration nullifies the contract and therefore, it should not be invoked very easily.

- **Impossibility by introduction of new laws:** If any new law is made after the parties enter into an agreement and it makes it impossible to perform, then the agreement becomes void.
- **Impossibility of contracts demanding personal performance:** The contracts which require some personal skills of the parties, become impossible to perform upon the death or incapacity of such parties and therefore, they come to an end upon happening of either of these two.
- **Non-fulfillment of object of the contract:** Along with physical impossibility, the contracts become void owing to the change in circumstances, the purpose behind the contract has got tampered with.
- **Application to executory contracts only:** The contracts which have been executed do not become void due to impossibility of performance as Section 56 applies only to the executory contracts. In the famous case of *K.J. Coal Co. Ltd. v. Mercantile Bank* (1981), K.J. Coal Co. took a huge loan from Mercantile Bank and the company got nationalised. Consequently, the company pleaded that their contract with the bank has been frustrated due to nationalisation of the company, hence they are not required to pay back the loan amount. The Calcutta High Court, however, held that a mere change in the management cannot frustrate a contract or make it void, thus the company still stands liable to pay the loan.⁶

Conclusion

This article is very helpful in providing the general and basic concepts on the law of contract to the reader in connection of making a valid contract, obligation of the parties, breach of contract as well as remedies and also way of termination of a contract. In our daily life with a view to

⁶ <https://blog.ipleaders.in/termination-of-a-contract-and-its-remedies/>

accomplishing various purposes to lead our life smoother, there are different types of contracts like oral, written or by conduct are agreed to enter into. By this we are obliged to do the agreed task to perform accordingly and if not done accordingly then we have arisen the right to get relief.

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