



Date: 13 Feb 2021

VIRTUAL COACHING CLASSES ORGANISED BY BOS, ICAI

FOUNDATION LEVEL PAPER 2A: BUSINESS LAWS

Faculty: CA. Harleen Kaur



Performance of Contracts

Section 37: “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 of any other law.”

Representative’s Liability: Promises bind the legal representative of the deceased promisor.



Example

- A promises to deliver goods to B on a certain day on payment of Rs.1000. Ashok dies before that day. A's representative is bound to deliver the goods to B who in turn is bound to pay the amount to A's representative.



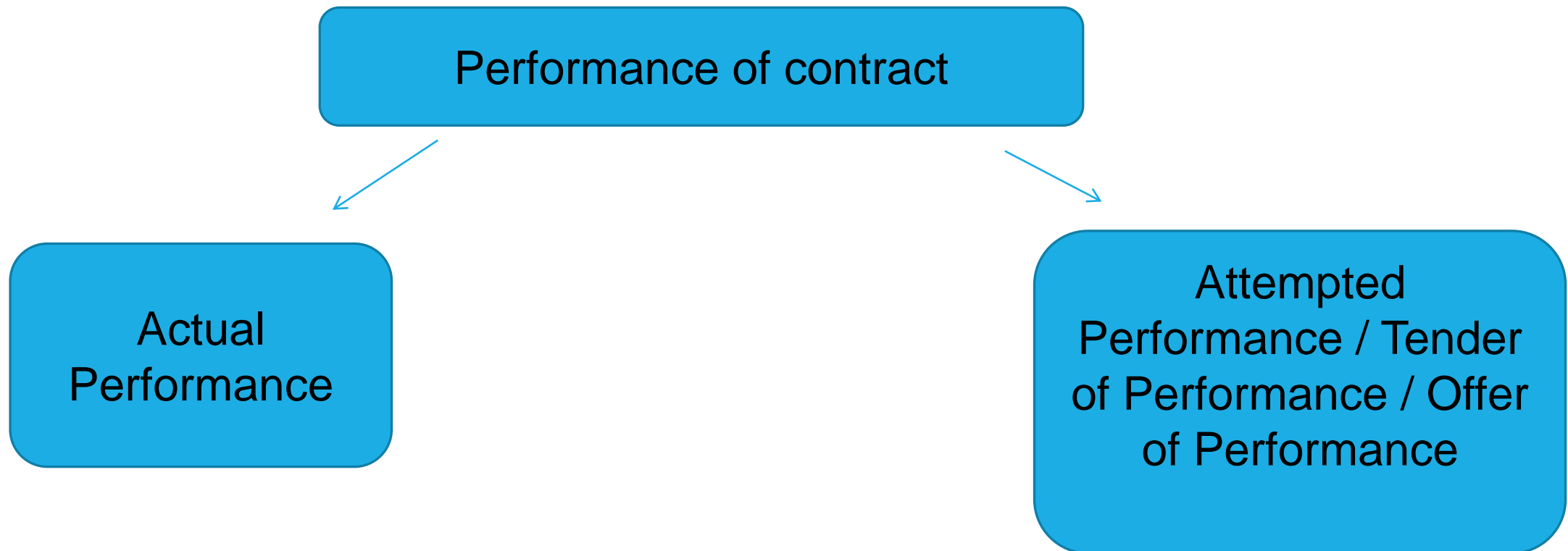


Example – Personal Skill

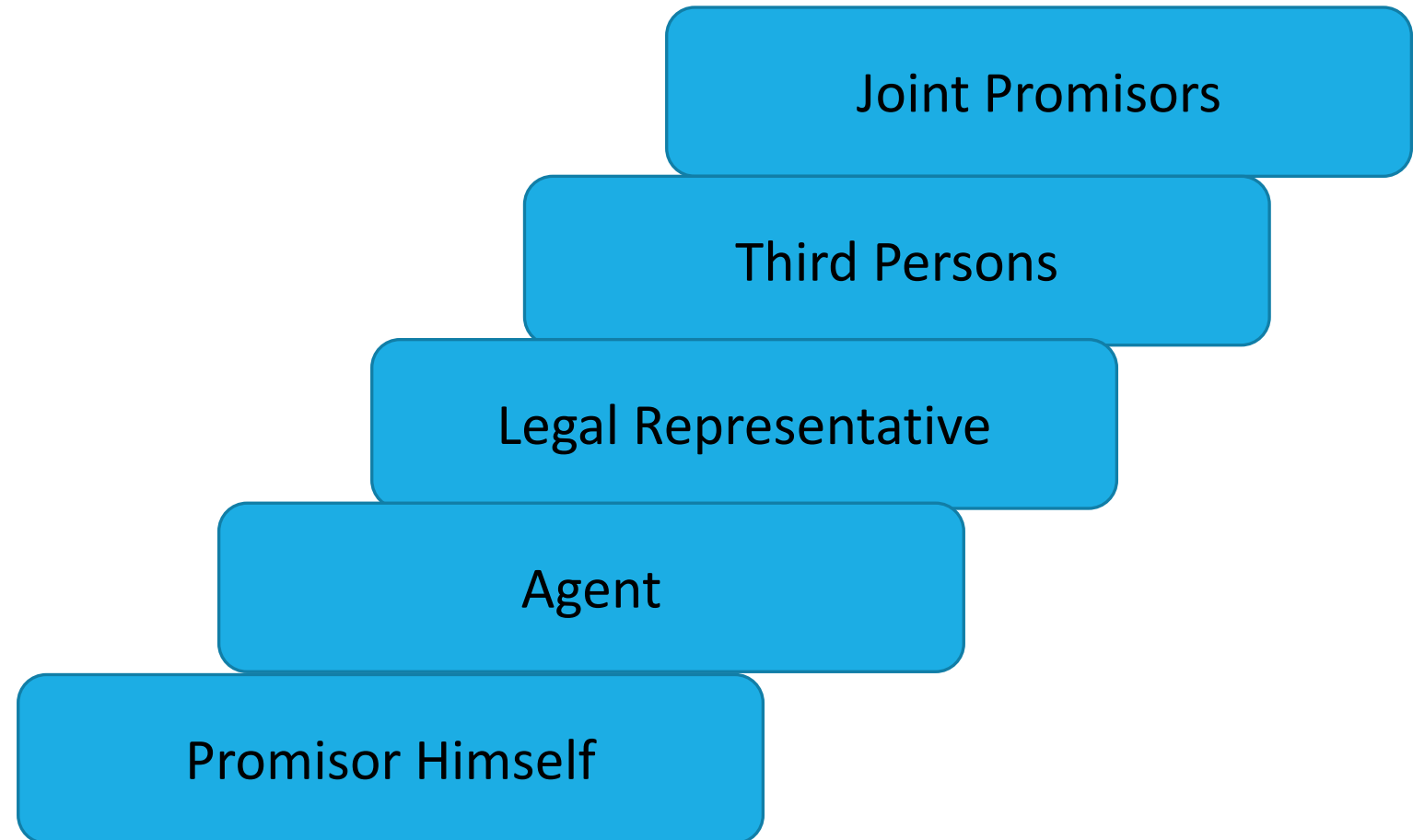
- Mr. A promises to paint a picture for Mr. B by a certain day, at a certain price. Mr. A dies before the day. The contract cannot be enforced either by Mr. A's representative or by Mr. B because it involves use of personal skill.



Contract is said to be performed



By Whom A Contract may be performed (Section 40,41,42)





What is Tender of Performance?

1. It must be unconditional
2. It must be made at proper time and place
3. A person to whom the tender is made must be given opportunity of inspection of goods or articles
4. The tender must be whole and not of the part
5. The tender must be in proper form – tender of money in current coins



What is Tender of Performance?

6. The tender must be made to proper person
7. Tender for the delivery of goods must be for the quantity and quality as stipulated in the contract
8. A tender made to one of the several joint promisees has the same legal consequences as a tender to all of them



Effect of refusal to accept the offer of performance

- **Section 38** - Where a promisor has made an offer of performance to the promisee and the offer has not been accepted :
 1. The promisor is not responsible for non performance;
 2. nor does he thereby loses his rights under the contract
- **Section 39** – When a party to a contract has refused to perform, or disabled himself from performing, the promisee may put an end to the contract.



Liability of Joint Promisor and Promisee(Section 42, 43 and 44)

Example

1. X, Y and Z borrowed jointly borrowed money/ On death of X, his representative along with Y and Z should jointly repay the debt.
2. A, B and C jointly promise to pay D Rs. 1 Lac. D may compel either A or B or C to pay him Rs. 1 Lac
3. A,B,C jointly promise to pay Rs. 9 Lacs to D. D released A from liability. In this case, the release of A does not discharge B and C from their liability. They still remain liable to D. Also A remains liable to B and C.



Time and Place for Performance of promise

It is for the parties to a contract to decide about the time and place of contract for the performance of contract.

- 1. Section 46 - Time for performance of promise, where no application is to be made and no time is specified**
Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.



Time and Place for Performance of promise

- 2. Section 47 - Time and place for performance of promise, where time is specified and no application to be made**
- When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without the application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.



Time and Place for Performance of promise

- 3. Section 48 - Application for performance on certain day to be at proper time and place** When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for the performance at a proper place within the usual hours of business.



Time and Place for Performance of promise

- 4. Section 49 - Place for the performance of promise, where no application to be made and no place fixed for performance**
When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.
- 5. Sec.50 Performance in manner or at time prescribed or sanctioned by promisee**



Performance of Reciprocal performances

- 1. Promises which form consideration or part of the consideration for each other are called reciprocal promises**
- 2. Simultaneous reciprocal promises (Sec. 51) – Where two promises are to be performed simultaneously, they are known as mutual and concurrent. When a contract consists of reciprocal promises to be simultaneously performed, a promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.**



Performance of Reciprocal performances

- 3. Section 52 - Order of performance of reciprocal promises**
- 4. Section 53 - Liability of party preventing event on which contract is to take effect**
- 5. Section 54 - Effect of default as to the promise which should be performed, in contract consisting of reciprocal promises**
- 6. Section 56 - Agreement to do impossible Acts**



Section 56

Agreement for impossible Acts

1. Initial Impossibility
2. Supervening or subsequent impossibility





Appropriation of Payments

1. Appropriation by Debtor(Section 59)
2. Appropriation by Creditor(Section 60)
3. Appropriation by Law(Section 61)



Contracts which need not be performed

1. If the parties to a contract agree to **novation, rescission or alteration**, the original contract need not be performed (**Section 62**)

Example : A owes to B Rs. 1 Lac. A, B and C agree that C will pay B and he will accept Rs.1 Lac from C in lieu of sum due from A. Here A's liability shall come to an end, and the old contract between A and B is substituted by new contract between B and C



Contracts which need not be performed

2. The promisee may dispense with or remit performance by the promisor in whole or in part or may extend the time for the performance or may accept any satisfaction in lieu of thereof. (**Section 63**)

Example – A owes B Rs.5 Lacs. A pays to B and B accepts Rs. 2 Lacs in satisfaction of whole of the debt paid at the time and place at which Rs. 5 Lacs were payable. Here the whole debt is said to be discharged.

3. When a voidable contract is rescinded, the other party need not perform his promise. (**Section 64**)



Contracts which need not be performed

4. When the failure of performance has been caused by the **promisee's neglect or refusal**, the promisor will be excused. **(Section 67)**

Example – A contracts with B to repair B's house. Now if B neglects or refuses to appoint out to A the places where his house needs repair, then A is excused for non performance of contract since it is caused by neglect or refusal of B.



Discharge of contract

- 1. Discharge by performance**
- 2. Discharge by Mutual Agreement**
- 3. Discharge by impossibility of performance**
- 4. Discharge by lapse of time**
- 5. Discharge by operation of law**
- 6. Discharge by breach of contract**
- 7. Promisee waive or remit performance**



THANK YOU