

Performance of Contracts

WHO PERFORMS · JOINT PROMISES · TIME & PLACE · TENDER · RECIPROCAL PROMISES · APPROPRIATION · DISCHARGE · IMPOSSIBILITY

Comprehensive Exam Revision Handout

1 CORE CONCEPT — OBLIGATION TO PERFORM §. 37

Parties must either **perform** (actual performance) or **offer to perform** (attempted performance) their promises, **unless performance is dispensed with or excused** under the Contract Act or any other law.

✓ Actual performance

Promisor performs as per terms **and promisee accepts** it.
Cotton of agreed quality delivered on the day, in business hours; buyer takes delivery.

⚠ Attempted performance (Tender) §. 38

Promisor **offers to perform** but promisee **does not accept**. Also called **tender / offer of performance**.

2 BY WHOM MUST CONTRACTS BE PERFORMED?

Promisor himself §. 40

Where the parties intended **personal performance** (e.g. marry, paint a picture).

Legal representatives §. 37

Bound on promisor's death — **unless contrary intention or personal nature**. Liability limited to **value of deceased's estate**.

Competent person §. 40

In other cases, promisor or his representatives may **employ a competent person**.

Third person §. 41

If promisee **accepts performance from a third person**, he cannot later enforce it against the promisor.
Father repays son's loan → son discharged.

3 JOINT PROMISES — RULES

Devolution of joint liabilities §. 42

- All alive → **all promisors jointly**
- One dies → his **representatives jointly with survivors**
- All die → **representatives of all jointly**

Joint & several liability §. 43

Promisee may compel **any one or more** joint promisors to perform the **whole** promise (unless express agreement to the contrary).

Contribution §. 43

Each may compel others to **contribute equally**. If one **defaults** in contribution, the rest bear the loss in **equal shares**.

Release of one §. 44

Release of one joint promisor by promisee **does not discharge the others**, nor free the released one from **liability to co-promisors**.

Devolution of joint rights §. 45

Right to claim belongs to **all promisees jointly**; on death, to their representatives with survivors. One promisee **alone cannot sue**.

📖 Worked example

A, B, C jointly owe D Rs. 3,000. C pays all; A insolvent (estate pays ½). Shares Rs. 1,000 each → C gets **Rs. 500** from A's estate and **Rs. 1,250** from B (B bears half of A's Rs. 500 shortfall).

4 TIME & PLACE OF PERFORMANCE

Situation	Rule
No time specified; no application by promisee needed	Perform within a reasonable time (flag for Independence Day → before that day)
Day specified; no application needed §. 47	Perform on that day during usual hours of business , at the proper place (delivery after business hours = not performed)
Day specified; application to be made §. 48	Promisee must apply for performance at a proper place and within usual business hours
No place fixed; no application needed §. 49	Promisor must apply to promisee to appoint a reasonable place , and perform there
Manner/time prescribed by promisee §. 50	Perform in that manner and time (cheque posted as desired → debt discharged on posting; bank transfer as desired → good payment even if bank later fails)

⌚ Failure to perform at the fixed time §. 55

Time is of the essence

Contract (or unperformed part) becomes **voidable at promisee's option**; he may rescind and sue.
Birthday cake; books for an exhibition.

Time NOT of the essence

Not voidable; promisee must accept but is entitled to **compensation** for loss.

Accepting late performance

Promisee **cannot claim compensation** unless he gives **notice of intention** to claim **at the time of acceptance**.

5 VALID OFFER OF PERFORMANCE (TENDER) §. 38

1. Unconditional pay debt only if shares allotted ✖	+	2. Proper time cake 2 days early ✖	+	3. Proper place rent at a wedding ✖	+	4. Able & willing to do the whole instalments for lump sum ✖	+	5. Reasonable chance to inspect goods no inspection time ✖
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Joint promisees

An offer to **one of several joint promisees** has the same legal consequences as an offer to **all**.

Effect of refusal of valid tender

Promisor is **not responsible for non-performance** and does **not lose his rights** (compensation, rescission) under the contract.

Refusal to perform wholly §. 38

If a party **refuses** or **disables himself** from performing his promise in its entirety, the promisee **may put an end to the contract** — unless he has signified, by words or conduct, **acquiescence in its continuance**.
Singer absent on 6th night; manager allows her to sing on 7th → cannot end contract, but can claim compensation for 6th night.

6 RECIPROCAL PROMISES §. 2(f)

Promises which form the **consideration or part of the consideration for each other**.

Simultaneous §. 51

No promisor need perform unless the promisee is **ready and willing** to perform his reciprocal promise.

Order of performance §. 52

Order **fixed by contract**; if not fixed, the order the **nature of the transaction requires**.
House built before payment; security given before stock delivered.

Preventing performance §. 53

Contract **voidable at option of party prevented** + **compensation** for loss.

Default of first performer §. 54

Party who must perform first and fails **cannot claim** the reciprocal promise and must **compensate** the other.
Seller fails next-day delivery → buyer need not pay.

Legal + illegal things §. 57

First set (legal) = **contract**; second set (illegal) = **void agreement**.
House sale valid; extra price if used for gambling void.

Alternative promise §. 58

One branch legal, other illegal → **only the legal branch** can be enforced.
Rice or smuggled opium → rice enforceable.

7 APPROPRIATION OF PAYMENTS — ROADMAP

Applying a payment to a particular debt where a debtor owes **several distinct debts to one person**. Apply the rules **in order**:

1. Debtor indicates §. 59 express or implied — if accepted, apply accordingly	→	2. Creditor's choice §. 60 any lawful debt due — even time-barred , but not disputed	→	3. Neither appropriates §. 61 order of time (time-barred or not); equal standing → proportionately
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📖 Proportionate example

Debts: Rs. 150,000 (18 Apr), Rs. 300,000 (18 Apr), Rs. 400,000 (25 Apr). Payment Rs. 90,000 → **Rs. 30,000 + Rs. 60,000** to the two 18-April debts (1:2).

Interest & principal

General rule: **interest (mark-up) first**, then principal.
Rs. 30,000 paid: Rs. 20,000 interest + Rs. 10,000 principal.

Implied intimation: bulk payments equal to fuel invoices + earlier objection to surcharge → payment applies to fuel; a **disputed** surcharge is not a lawful debt for appropriation.

8 CONTRACTS WHICH NEED NOT BE PERFORMED

Novation §. 62

New contract substituted for old; old rights/obligations extinguished (may change parties).
Creditor accepts a new debtor with all three agreeing. No novation if the new creditor doesn't assent.

Rescission §. 62

Cancellation by mutual agreement.

Alteration §. 62

Variation in terms by mutual agreement; **parties remain the same**.

Remission §. 63

Accepting a **lesser amount**/performance than agreed. Promisee may also dispense with, extend time, or accept any satisfaction.
Rs. 2,000 accepted for Rs. 5,000 debt → discharged.

Waiver

Unilateral surrender of a legal right — releases the other party's obligation.

No reasonable facilities

If promisee **neglects/refuses reasonable facilities**, promisor is excused for resulting non-performance.
Owner doesn't point out places to repair.

9 IMPOSSIBILITY OF PERFORMANCE §. 56

Initial impossibility

An agreement to do an act **impossible in itself is void** (treasure by magic).

Supervening impossibility / illegality

Act becomes impossible, or **unlawful** by an event promisor could not prevent → contract becomes **void** when it becomes so.

✓ Valid grounds

- **Destruction of subject matter** (music hall fire)
- **Death / personal incapacity** in personal contracts (singer ill)
- **Declaration of war**
- State of things forming the **basis** ceases to exist
- Subsequent **law/ban** making performance illegal (import ban)

✖ NOT valid excuses

- More **difficult, costly** or less beneficial; **commercially unviable**
- **Default of a third party** relied upon
- **Strikes, lockouts, civil disturbances** (riots, political unrest)
- **Partial impossibility** of separable objects (naval review cancelled but fleet sail possible)

Partly impossible / unlawful

Separable parts → lawful/possible part survives (8 of 10 singing nights). **Inseparable** → whole void (essential machine component; one salary for lawful + unlawful work).

Compensation & restoration

Promisor who **knew (or should have known)** of impossibility/illegality, unknown to promisee, must **compensate** (already-married man's marriage promise).
Advance received under a void agreement (lost profits) be **refunded** (sick singer refunds advance; no lost profits).

10 APPLICATION & EXAM TRAPS

⚠ Creditor releases joint promisor Farhan → Farhan free only towards creditor ; still liable to co-promisors for contribution.	⚠ Creditor may apply payment to a time-barred debt — not to a disputed debt.
⚠ One of two joint promisees sues alone → fails ; both must join.	⚠ Price rise / higher diesel cost / new custom duty → impossibility → no discharge ; liable for breach.
⚠ Legal representative of deceased promisor liable fully → only up to inherited estate .	⚠ Supplier substitutes Taiwan goods for Singapore → buyer not bound ; it is an alteration.
⚠ Accepting late delivery silently → no compensation later; give notice at time of acceptance .	⚠ Demanding extra price under threat to cancel ≠ coercion (no PPC act); paying it = agreed alteration .
⚠ Delivery at 8:30 pm + "sign within 10 minutes" → invalid tender (conditional, no inspection).	⚠ Venue access denied by client (reciprocal promise) → voidable at option of the prevented party + compensation.

11 QUICK REVISION BOX

2 Types: actual & attempted (tender)	5 Essentials of valid tender	3 Appropriation: debtor → creditor → order of time	4 Contract need not be performed (§. 62–63, facilities, impossibility)
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- **S. 37–41** Obligation & who performs · **S. 42–45** Joint promises/rights
- **S. 47–50** Time & place · **S. 55** Time of essence · **S. 38–39** Tender, refusal

- **S. 2(f), 51–54, 57–58** Reciprocal promises
- **S. 59–61** Appropriation · **S. 62–63** Novation, rescission, alteration, remission · **S. 56** Impossibility

One-liners: Time essential → **voidable**; not essential → **compensation** · Prevented party → **voidable + compensation** · Costlier ≠ impossible.