Modes of Discharge of Contracts

Understanding how contractual obligations end and parties are released from their duties

What is Discharge of Contract?

A **discharge** means the **legal termination of contractual obligations**, releasing the parties from being bound forever. Once discharged, both parties are entirely free from commitments made under the agreement.

Governed by **Sections 37–67 of the Indian Contract Act, 1872**

Definition

Legal termination of contractual obligations, releasing parties from their binding duties

Purpose

Contracts must eventually come to an end—parties cannot remain bound indefinitely

Key Concept

Once discharged, both parties are free from all commitments made under the agreement

Performance of Reciprocal Promises

Promises that form the **consideration or part of the consideration for each other**—performance of one party's obligation is dependent upon the other party fulfilling its express or implied obligation.

Definition

Promises where each party's performance serves as consideration for the other's obligation

Key Principle

One party is **not obligated to perform** unless the other party is prepared and willing to perform

Concurrent Performance

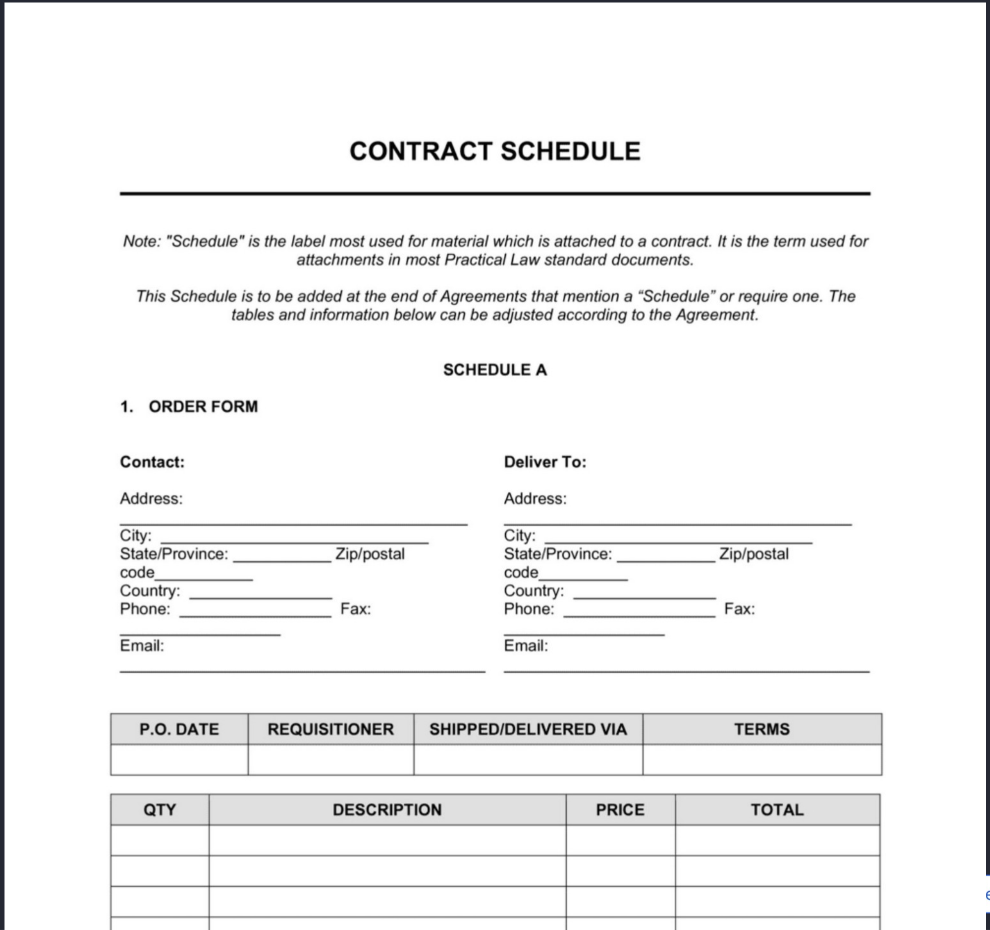
When obligations must be fulfilled **simultaneously**, both parties must tender performance at the same time

Legal Basis

Sections **51–54** of the Indian Contract Act, 1872

Example: Party A delivers goods to Party B; Party B pays cash upon delivery—neither is obliged unless the other shows willingness

Time and Place of Performance



CONTRACT SCHEDULE

Note: "Schedule" is the label most used for material which is attached to a contract. It is the term used for attachments in most Practical Law standard documents.

This Schedule is to be added at the end of Agreements that mention a "Schedule" or require one. The tables and information below can be adjusted according to the Agreement.

SCHEDULE A

1. ORDER FORM

Contact:

Address: ______________________

City: ______________
State/Province: __________ Zip/postal code__________
Country: __________
Phone: __________ Fax: __________
Email: ______________________

Deliver To:

Address: ______________________

City: ______________
State/Province: __________ Zip/postal code__________
Country: __________
Phone: __________ Fax: __________
Email: ______________________

P.O. DATE	REQUISITIONER	SHIPPED/DELIVERED VIA	TERMS

QTY	DESCRIPTION	PRICE	TOTAL

1 Express Time

If the contract specifies a time, that **deadline must be strictly observed**

2 Implied Time

When no time is fixed, a **reasonable time is implied** by law; money obligations without date are payable on demand

3 Designated Place

If specified in the contract, **performance must occur at that exact location**

4 Inferred Place

When no place is designated, the **place is inferred** from the contract's nature and circumstances

Discharge by Performance

The **most straightforward mode** of discharge—both parties fulfill their obligations exactly as agreed. Performance must be in accordance with the terms of the contract; a party is not entitled to substitute a different mode of performance unless permitted.

Full Performance

Complete and **exact fulfillment** of all contractual obligations—the gold standard

Substantial Performance

Performance **nearly complete** with only minor deviations; generally sufficient

Partial Performance

Incomplete performance—may not discharge unless the contract is **divisible**

Divisible Contracts

Obligations separated into **independent parts**; partial performance of one part may suffice

Indivisible Contracts

All obligations are **interdependent**; partial performance is generally insufficient

Discharge by Agreement (Mutual Consent)

Parties **mutually agree** to terminate or modify their contractual obligations. Both parties must consent—unilateral termination is **not** valid discharge by agreement. Fresh **consideration** is required.

Novation

Substitution of a **new contract** for the old one, with new terms or parties

Rescission

Cancellation of the contract, **returning parties to their original position**

Alteration

Modification of contract terms by **mutual consent** of both parties

Waiver

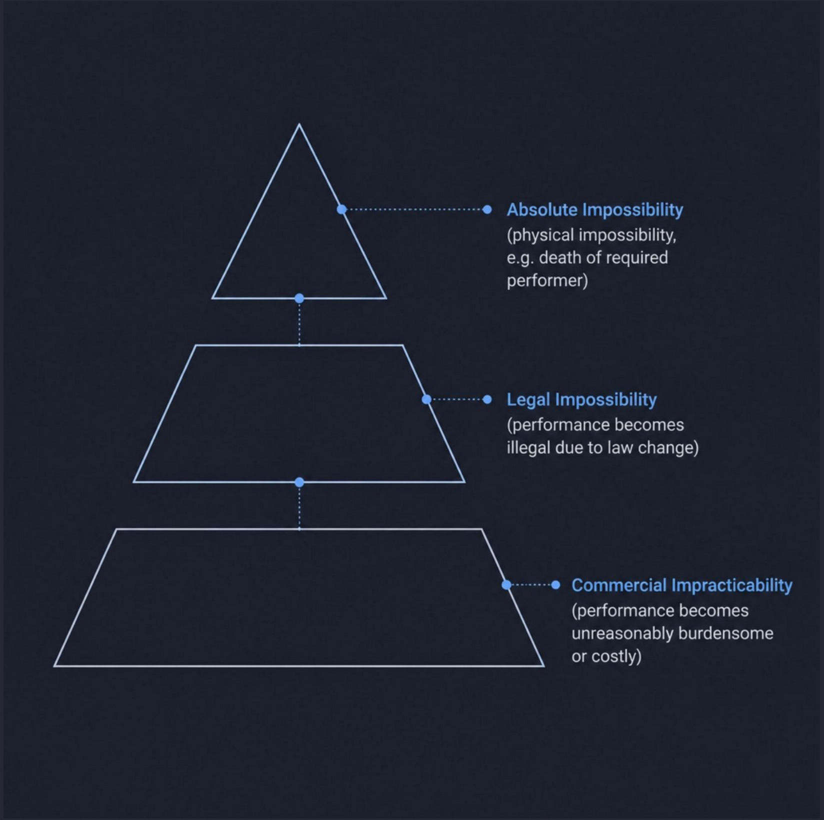
One party **voluntarily relinquishes** their right to enforce the contract

Discharge by Impossibility of Performance

A contract is discharged when performance becomes **impossible due to unforeseen circumstances**. The doctrine excuses performance when it would be unreasonably costly or downright impossible for a party to carry out its obligations.

Legal Standard: Performance must be truly **impossible**, not merely difficult, inconvenient, or unprofitable

- **Basic Assumption Test:** Non-occurrence of the circumstance must have been a **basic assumption** on which the contract was made
- **Effect:** Contract is rescinded **without liability** for non-performance
- **Hornback v. Wentworth (2006):** Zoning change made real estate contract performance illegal—court granted rescission based on impossibility



Breach of Contract — Anticipatory and Actual

Anticipatory Breach

One party indicates **before the performance date** that they will not perform:

- Can be **express** (explicit statement) or **implied** (conduct showing inability)
- Allows the other party to **sue immediately** without waiting for the performance date
- Gives the non-breaching party the right to **treat the contract as discharged**

Actual Breach

Non-performance occurs **at or after** the agreed time for performance:

- Party **fails to perform** or performs defectively
- Entitles the other party to remedies

Material vs. Minor Breach

- **Material Breach:** Goes to the heart of the contract; allows **discharge and damages**
- **Minor Breach:** Trivial deviation; does not discharge but **may allow damages**

Wisconsin Electric Power Co. v. Union Pacific Railroad (2009): Court examined whether a force majeure clause excused the railroad's breach of a coal transportation contract under the impossibility doctrine

Discharge by Operation of Law

Contract is discharged **automatically by operation of law**, without any action by the parties. No agreement or action required—the **law itself terminates the contract**.

Lapse of Time

Contract expires after a specified period or **reasonable time** has passed

Death or Insanity

For contracts requiring **personal performance**, death or legal incapacity discharges the contract

Merger

When a contract is **merged into a judgment** or higher obligation

Statute of Limitations

Right to sue is **barred after the statutory period** expires

Bankruptcy

Debtor's obligations may be **discharged through bankruptcy** proceedings

Key Case Laws and Principles

Case	Facts / Issue	Principle Established
Davis v. Jacoby (1934)	Offer presumed bilateral; accepted by a promise to perform	Reciprocal promises create enforceable **bilateral contracts**
Wisconsin Electric Power Co. v. Union Pacific Railroad (2009)	Force majeure clause and coal transportation breach	Impossibility excuses performance when circumstances make it **unreasonably costly**
Hornback v. Wentworth (2006)	Zoning change made real estate contract performance illegal	Court granted **rescission and restitution** based on impossibility doctrine
Tractebel Energy Marketing v. E.I. Du Pont (2003)	Commercial impracticability as a defense to breach	Changed circumstances may excuse performance under **impracticability doctrine**
T.S.I. Holdings, Inc. v. Jenkins (1996)	Stock sale—sellers claimed impossibility, impracticability, frustration	Court analyzed strict conditions for **impossibility defense** to apply

Summary: Modes of Discharge

01

Discharge by Performance

Both parties **fulfill their obligations** completely and exactly as agreed

02

Discharge by Agreement

Parties **mutually consent** to terminate or modify the contract (novation, rescission, waiver)

03

Discharge by Impossibility

Performance becomes **impossible due to unforeseen circumstances** beyond parties' control

04

Discharge by Breach

One party **fails to perform**, allowing the other to treat the contract as discharged

05

Discharge by Operation of Law

Contract ends **automatically** through lapse of time, death, bankruptcy, or statute of limitations

Reciprocal Promises & Time/Place: In bilateral contracts, neither party is obliged to perform unless the other shows readiness. Performance must occur at the **agreed time and place**; if unspecified, reasonable time and inferred place apply.