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DISCHARGE OF CONTRACTS UNDER UK CONTRACT LAW- Sama Praneetha¹**ABSTRACT:**

In the Indian context, according to section 2(h) of The Indian Contract Act 1872, “an agreement enforceable by law is called a contract”. So an agreement that is not enforceable by law is not a contract. All agreements are not contracts but all contracts are agreements. Indian Contract Act 1872 explains the concept of contracts and also deals with the ways through which a contract can be discharged. Every country has its own law which deals with contracts in their respective countries. In the United Kingdom (UK), legislation and common law deal with the concept of contracts in the UK. In the UK the rules regarding contracts and the mode to discharge those contracts are developed through different case judgments. According to UK legislation and common law, there are different modes through which a contract can be discharged. This current research mainly explains the modes through which a contract can be discharged in the UK.

INTRODUCTION:

Contracts are part of our everyday life. We do contracts in our daily life to obtain our daily life essentials such as food, and water or to sell certain goods and commodities. They play a crucial role in everyone’s life. In the context of the United Kingdom, common law and legislation are sources of contract law. Legislation can be simply explained as statutes made by Parliament. Common law can be referred as judge-made law which was evolved from the case-by-case analysis. The Law Commission of England, Wales and Scotland, in the year 1965 announced an ambitious plan to codify the contract law. But it was abandoned after eight years because of many disagreements. A contract is an agreement or promise made upon some sufficient

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consideration to do or refrain from doing something. It must include both offer and acceptance. There are various types of contracts as well. When a contract is formed it can be either terminated or discharged. Discharge of contract means ending of a contractual agreement between parties. According to common law in the United Kingdom a contract can be discharged through four modes. A contract may be discharged by agreement, by performance, by breach or by frustration. When parties enter into a contract it creates a legally binding rights and obligations for the parties involved and by discharging the contract these will be no longer enforceable. Discharge of contracts can be analysed through different case laws like *Cutter v. Powell*², *Hochster v. De la Tour*³ and *Taylor v. Caldwell*⁴. Depending on the mode in which a contract is discharged there are some additional legal and financial consequences. This research paper analyses four different modes in which a contract can be discharged and their consequences.

REVIEW OF LITERATURE:

The researcher referred some books and articles related to this topic. “Contract Law in England and Wales”⁵ which gives a brief introduction about history of UK and about contract law of UK. “Contract Law”⁶ book explains how contracts are formed, how they are regulated and also how they are enforced. The other book with the same name “Contract Law”⁷ written by Mindy Chen Wishart is one of the main sources for researcher as it explains how contracts are formed, about agreements, privity, enforceability, contents of contracts, breach and their remedies.

Researcher also referred to some articles to know more about discharge of contracts in UK contract law. One such article is “Comparative Genealogies of contract and society”⁸ which helped researcher to know more about contracts in UK. The book “English as a legal language”⁹ cleared all doubts regarding types of contracts, drafting and about common law. “What is discharge of contract?” was referred by the researcher to know about how contracts are discharged in UK. “Discharge of contract and case study”¹⁰ helped the researcher to know completely about different modes in which a contract can be discharged. All these sources of

² *Cutter v. Powell*(1795)101,Eng.Rep.573,576;6 T.R.320.

³ *Hochster v De la Tour*(1853),118,Eng.Rep.922,927;2EL.&BL.678

⁴ *Taylor v Caldwell*(1863),122,Eng.Rep.309,314;3 B.& S.826

⁵ James C. Fisher, *Contract Law in England and Wales*, (2018)

⁶ T.T Aravind, *Contract Law*,9,(2nd ed.2019)

⁷ Mindy Chen Wishart, *Contract Law*,6,(4th ed.2018)

⁸ Eller K.H, *Comparative Genealogies of “Contract and Society”*,21,Ger.L.J.,1393

⁹ Christine Rossini, *English as a Legal Language*,22,(2nd ed.1998)

¹⁰ Law essay, *Discharge of Contract and Case study*, Law Teacher(2019)

data were very useful to researcher as they provided wide range of information regarding the current topic and helped in understanding common law of United Kingdom.

RESEARCH METHODOLOGY:

Researcher conducted this research through doctrinal method of research. To analyze the current topic researcher took help of different books and articles and case laws. Using books and case laws constitute doctrinal method of research. Researcher is of a view that it is best to conduct a research through doctrinal method of research because it includes studying of existing data such as case laws. To perform an effective research researcher have done this research paper through doctrinal method of research.

UK COMMON LAW:

Common law is a system of laws which is developed by the courts through case by case analysis. The common law of England was adopted by many other british colonies and continually expanding because of its nature (developed through case by case analysis)¹¹. Until about thirteenth century common law of England was under the control of monarch. To bring justice among the people monarchy has set up courts. Like this common law developed through case by case analysis. There were problems because this system is based on writs. This problem was solved by Henry II by forbidding the issuance of writs. Court of equity came into existence with the ordinance of Edward III. A person who couldn't get justice in common law can seek relief in equity. If there is a conflict between these two courts then equity will prevail.¹²

Contract is an agreement made upon some sufficient consideration to do or refrain from doing a particular thing. Discharge of contract refers to ending the contract. This could be done when all the obligations are performed satisfactorily. In certain situations without performing all obligations also the contract is considered to be discharged. In UK common law a contract can be discharged in four ways. They are:

- (i) Discharge by agreement
- (ii) Discharge by performance
- (iii) Discharge by frustration
- (iv) Discharge by breach

¹¹ Christine Rossini, *English as a Legal Language*, 22, (2nd ed. 1998)

¹² Christine Rossini, *English as a Legal Language*, 22, (2nd ed. 1998)

DISCHARGE OF CONTRACT BY AGREEMENT:

Parties who are bound by a contract can discharge it through agreement. They can discharge the contract through agreement in two ways. They are (i) Unilateral discharge and (ii) Bilateral discharge.¹³

Unilateral Discharge:

In unilateral discharge one party of contract will completely perform his or her part of contract and has no obligations to perform but has rights to compel the other party to perform their obligations. Accord means agreement and satisfaction refers to consideration. Accord and satisfactions means if one party has entirely performed their part of contract and the other party wants themselves to be released from their obligations then the promise by the first party to release the other party from their obligations is valid only if the other party promises to give some consideration in return.

Bilateral Discharge :

In bilateral discharge both the parties of contract will have some rights to surrender. This may be due to the non-performance of the contract by either of the parties or partly performed by one or the both parties. If a contract is discharged through bilateral discharge then it may have one of the following effects: a) accord and satisfaction b) variation c) waiver d) rescission and substitution.

a) Accord and Satisfaction: If both the parties agree to release each other from their obligations under the first agreement then it is said that there is accord and satisfaction.

b) Variation: In this the parties of contract agree to alter the terms of the existing contract.

c) Waiver: In this one party will represent to other party that he or she will not claim his or her right of performance of the contract. In this situation it can be said that he or she has waived their right to performance.

d) Rescission and Substitution: Here the parties of contract will terminate (rescission) the original contract and substitute it with the new one.

Central London property v/s High Trees House¹⁴ :

In this case Central London Property Trust Ltd gave a block of flats to High Trees House Ltd for lease for a certain amount per year. But due to war and bombing in London occupancy rates have comedown in London. Now the rates were lower than the normal rates. So High Trees and Central London Property made an agreement to reduce the rent by fifty percent and the time

¹³ Law essay, *Discharge of Contract and Case Study*, Law Teacher (2019)

¹⁴ Central London Property Ltd. v High Trees House Ltd (1946), 1, ALL ER, 256, AC, KB

period for which this reduction is applicable is not mentioned in the agreement. For five years High Trees have paid only half of the rent and all the flats got filled by 1945. Now the Central London Property sued the other party to pay the full rent by 1945 onwards. The Court held that the reduction of rent was only a temporary measure which is known to both the parties which occurred due to the war. High Trees House has to pay full rent from 1945 as all the flats filled. It also said that if the other party claims to pay the full rent from 1940 then it is not correct.

DISCHARGE OF CONTRACT BY PERFORMANCE:

If both the parties of contract have completely performed their contractual obligations then it is said that they have discharged their contract by performance. If one party has not performed their contractual obligation then it amounts to breach of contract. The general rule is “parties must have to perform all the terms of the contract in order to discharge their obligations”. A contract can be discharged through other ways also like partial performance, substantial performance, and tender performance.¹⁵

Partial performance which is also known as part performance means fulfillment of obligations of contract which is less than the full performance. Substantial performance refers to performance of contract which is as complete as can be reasonably expected. If a party wants to perform the tender performance and the other party is not accepting it then the party which seeks to perform tender performance is discharged from the contract and the other party is liable for damages for non acceptance.

Cutter v Powell¹⁶ :

Brief facts of the case are Mr. Cutter has agreed to a contract to work on the ship named “Governor Parry” on a voyage. Duration of voyage is eight weeks. He will get his payment paid after the completion of voyage. The contract reads as follows : “Ten days after the ship 'Governor Parry,' myself master, arrives at Liverpool, I promise to pay to Mr. T. Cutter the sum of thirty guineas, provided he proceeds, continues and does his duty as second mate in the said ship from hence to the port of Liverpool. Kingston, July 31st, 1793.” But Mr. Cutter had died after six weeks of voyage and his wife claimed the sum of six weeks for which her husband had worked. But the Court held that the claim cannot be granted because as per the contract the sum will be provided only after the completion of the specified period i.e. eight weeks.

¹⁵ Christine Rossini, *English as a Legal Language*, 22, (2nd ed. 1998)

¹⁶ Cutter v. Powell (1795) 101, Eng. Rep. 573, 576; 6 T. R. 320.

DISCHARGE OF CONTRACT BY BREACH:

If one of the parties of contract have failed to perform their contractual obligation either fully or partly then it is said that they have breached the contract.. Breach of contract is of two types: a) actual breach and b) anticipatory breach. Actual breach occurs on the due date of performance where as anticipatory breach occurs before the due date of performance where the party puts forward an intention of not to perform his contractual obligations. Further, anticipatory breach is of two types: a) express anticipatory breach and b) implied anticipatory breach. Express anticipatory breach occurs when a party of contract before the date of performance declares that he or she have no intention of fulfilling their contractual obligation. Implied anticipatory breach occurs when an act of one of the parties makes subsequent performance of their contractual undertaking impossible.

Hochster v De La Tour¹⁷:

In the month of April the parties formed a contract in which the De la Tour had agreed that the Hochster will be his tour guide on a foreign tour which was to begin on 1 June. But before the commencement of the tour on 11 May the defendant informed the claimant that he is no longer needed for him .The court held that the claimant can sue the defendant immediately and he need not have to wait for the performance date.

DISCHARGE BY FRUSTRATION:

A contract may be discharged through frustration. If there is a change in the circumstances without the mistake of the parties of contract after the contract was made then the contract will get frustrated. If a contract is frustrated then the parties of contract are discharged from their future obligations and neither party can sue the other for breach. Law Reform (Frustrated contracts) Act 1943 decides the amount of loss which is to be awarded to each party. The following situations will frustrate a contract. They are:

(a) Destruction of the subject matter:

Destruction of the essential object (subject matter) which is essential for the performance of the contract will frustrate the contract.

(b) Personal incapacity:

Incapacity of one of the parties to perform the contract will frustrate the contract.

¹⁷ Hochster v De la Tour(1853),118,Eng.Rep.922,927;2EL.&BL.678

(c) Interference by the government:

Government interference will frustrate the contract which happens mostly in the times of national emergency or wars.

(d) Unforeseen delay:

Unexpected and excessive delays may frustrate a contract. Here there is no specified time mentioned as a party of contract should wait to state this delay as frustrating.

(e) Illegal :

At the time of forming a contract may be legal but it can become illegal because of the change in the law before the performance by both the parties. If a contract becomes illegal then it will frustrate the contract.

(f) Non-occurrence of a specified event :

If in a contract a specified event which is very important to the contract doesn't occur then it will frustrate the contract.

Taylor v Caldwell¹⁸ :

Caldwell agreed to give a music hall to Taylor in which four music concerts will take place. But before the commencement of the first concert only the hall got destroyed by fire without the fault of either parties. Taylor claimed damages from Caldwell as Caldwell failed to maintain the hall. The claim of the Taylor for breach of the contract failed because the contract became impossible to perform.

CONCLUSION :

Contracts play a very vital role in everyone's life. Discharge of contracts is different in different legal systems. In the view of the researcher it is best to discharge a contract through performance because in this both the parties will fulfill their obligations and then discharge the contract. How to discharge a contract is at the discretion of the parties of contract. Discharge of contract brings contract to an end but in certain modes of discharge the parties may held liable and have to pay some consideration to other party. In UK common law doctrine of frustration covers a wide range of circumstances and the court will look into various aspects while considering frustration. There are certain circumstances where a contract cannot be discharged through frustration. For some modes of discharge like discharge by breach have remedies like damages and injunction. So when the parties decides to discharge the contract they have to seek some legal advice which discharging and they must know the consequences they have to face

¹⁸ Taylor v Caldwell(1863),122,Eng.Rep.309,314;3 B.& S.826

after discharging the contract in that mode.

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- (i) James C. Fisher, *Contract Law in England and Wales*, (2018).
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- (iii) *Taylor v. Caldwell* (1863), 122, Eng. Rep. 309, 314; 3 B. & S. 826
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Legal Databases:

- (i) Hein Online
- (ii) EBSCO host

Website:

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