

Study Session3

Unit 3- Termination of Contracts

Study Session Outline

- i. Grounds of Termination of Contracts
- ii. Effects of termination of Contracts
- iii. Remedies for Breach of Contract

Study Session Duration
This Study Session requires a 2 hours of formal study time.

INTRODUCTION

Dear learners, as mentioned under the definition of contract, contracts can be created, modified or terminated. Under this unit we shall see how contracts are terminated. Moreover, this unit also discusses the remedies for breach of contracts. Those are forced performance and payment of compensation/damage.

Learning Outcomes of Study Session 3

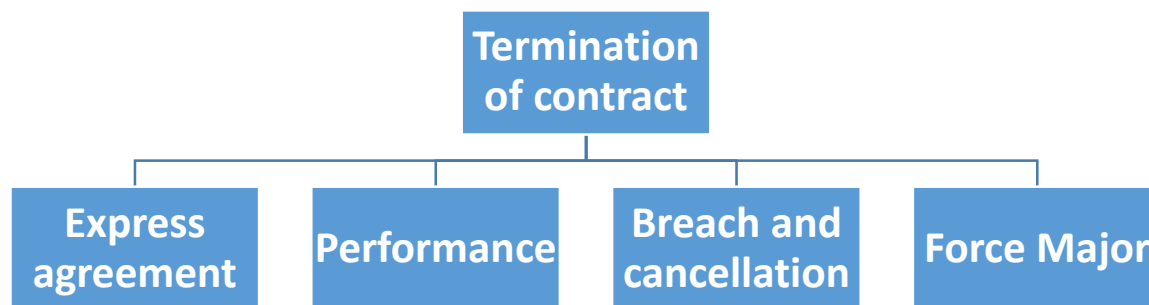
Upon completion of this study unit, you should be able to

- Identify the grounds of termination of a contract
- Appreciate the effects of termination of a contract
- Discuss the remedies for breach of contractual obligations

Unit Three -Termination of Contracts

3.1 Termination of Contracts

As mentioned under the definition of contract, contracts can be created, modified or terminated. Under this unit we shall see how contracts are terminated. There are several grounds to terminate contractual relationships, among them are listed below.



3.1.1 Express agreement of parties

Contracts can be terminated if both the contracting parties decide to terminate the contract. The motive to terminate may come from either side, but ultimately both parties have to agree on the termination.

3.1.2 Performance

Contracts can be terminated when both parties effectively perform as per the stipulations of the contract. If both parties have discharged their duties under the contract, they are assumed to have completed their duties created by that particular contract. In this case the contract is assumed to have ended or terminated.

3.1.3 Impossibility or Doctrine of Frustration/ Force major

Some situations may hinder either party or both from partial or total performance. This is called force major, or something which is not foreseen and expected to happen but has effectively hindered either or both of the parties from performing their duties. Since such situations are beyond their capacity and cannot control them, the contract will be forcefully terminated. In this case it is impossible for either party to demand performance of the contract.

3.1.4 Failure to perform-Cancellation

If a party couldn't discharge his/her duty fundamentally, the other contracting party may cancel the contract. In this case the other party seeking performance of the contract may demand the cancellation of the contract by giving notice to the defaulting party. More precisely one of the contracting parties may fail to partially or totally perform his/her duties stipulated under the contract. At this moment the other party seeking performance may demand cancellation of the contract by giving sufficient notice to the defaulting party. (Brietzke, 1974).

3.1.5 Death or bankruptcy of the contracting parties

When either or both parties to the contract are dead or declared absent, the other party may not demand the performance of the contract, unless other stipulations are provided under the contract. Hence, death of parties implies the termination of the contract. In a similar manner, when a company is declared bankrupt, parties who had contractual relationship with the company may not demand performance of the obligation, since the company has no legal capacity to perform.

3.1.6 Operation of Law

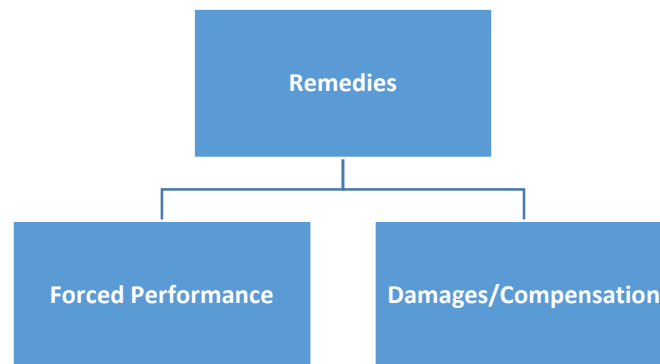
Contracts may also be terminated by the decisions of courts. For example, if the contract was concluded based on fraud, mistake, or either of both parties had no the required legal capacity to conclude a valid contract, courts, upon the application of the interested party may decide to terminate the contract.

3.2 Effects of termination of Contracts

Dear learners, the termination of contracts means that both parties are released from their obligations to effect and receive future performance. When a contract is terminated, either party may seek compensation for any goods delivered, provided that such party also makes restitution for any goods received. If reimbursement in kind is neither possible or suitable, compensation in terms of money should be offered wherever possible. However, if the performance of the contract was protracted over a period of time and the contract is separable, such reimbursement can be requested only for the period following termination (Entehawu, 2013).

Moreover, Termination of contracts doesn't have any effect on any provision of the contract that refers to dispute resolution or on any other term of the contract that persists to apply even after termination.

3.3 Remedies for Breach of Contract



3.2.1 Forced Performance

Dear learners, If a party to a contract is unable or unwilling to perform his duties without sufficient reason, we can say he has breached the contract. In this case the other party who would like the contract to be performed has two options. One of the options is that he can force the other party to perform, through the operation of courts or other legal means. We call this forced performance. The other party demands for the forced performance because performance of the other party's obligations is essential/vital for the other party.

For example, assume the contract was between an event organizer and a man whose wedding ceremony was to be concluded in few hours. If the Event organizer declares that he cannot perform his obligations, the other party, (the man) can demand forced performance, because he has no time and option even to conclude with other event organizer

3.2.2 Damages/Compensation

Damages are estimated as the actual economic loss that a party has sustained as a result of non-performance of the other party. Then the economic loss incurred has to be compensated by the defaulting party. If a party has placed reasonable reliance on the guarantees of the other party to his disadvantage, court may resort to the doctrine of ‘*Promissory Estoppel*’ and award the party who didn’t breach his promise. (Brietzke, 1974).

Unit Summary

Under this unit we have briefly seen that contracts can be created, modified and can also be terminated. We have seen several grounds for termination of contract. Among them are express agreement of parties, breach of contract, force major, operation of the law and death or bankruptcy of either or both of the parties. When a contract is terminated by either of the above grounds, parties to the contract have no more rights and obligations arising out of the contract.

As mentioned above, contracts may also be terminated when either of the parties fail to perform, this is called breach of a contractual agreement. When someone breaches his obligations under the contract without sufficient reason, the other party has remedies provided by law. Those remedies are either, he will demand forced performance of the contract by the defaulting party or demand for compensation for the damages /economic loss/ incurred subsequent to the breach.

Unit Quizzes

1. What are the legal implications of terminations of contract?
2. Mention the grounds for termination of contract?
3. Mention and discuss the effects of termination of contract?
4. What does’’ forced performance’’ mean? When do we seek forced performance?
5. How can the death or bankruptcy either party terminate contractual relationships?