

# QB365 Question Bank Software Study Materials

## Performance of Contract Important 2,3 & 5 Marks Questions With Answers (Book Back and Creative)

11th Standard

Commerce

Total Marks : 75

### 2 Marks

10 x 2 = 20

1) State the ways of Performing a Contract?

**Answer :** There are mainly two ways of performing a contract such as:

1. Actual performance
2. Attempted performance

2) Who is a Legal Representative?

**Answer :** A legal representative can demand exception performance.

3) Who is an Agent?

**Answer :** According to Para 2 of Section 40, the promisor may employ a competent person such as agent to perform the promise, if the contract is not formed on personal condition. That person is called an agent.

4) What is meant by Reciprocal Promise?

**Answer :** (i) According to 2(f) of the Indian Contract Act 1872 defines reciprocal promise as "a promise which form the consideration or part of consideration for each other are called reciprocal promises."

(ii) In other words where a party gives a promise in consideration of other party's promise, both such promises are called the reciprocal promises.

For Example: If A and B Promise to marry each other.

5) By whom must contracts be performed?

**Answer :** 1. the promisor himself

2. agent

3. representatives

6) What are the different kinds of reciprocal promises?

**Answer :** **Reciprocal promises are of three types.**

They are:

(i) Mutual and concurrent

(ii) Conditional and dependent

(iii) Mutual and independent

7) A, B, and C are under a joint promise to pay D Rs 3000. C is unable to pay anything. D sues A for the entire sum of Rs 3000. What are A's liability?

**Answer :** (i) Section 43 of the Indian Contract Act, 1872 provides that when two or more persons make a joint promise, the promisee may, in the absence of a contract to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

(ii) Thus, A shall be liable to pay the entire sum of Rs 3000 to D.

8) Write note on representatives.

**Answer :** A contract which involves the use of personal skill or it is found on personal considerations, comes to an end if the promisor dies. Of course incase of other contracts, the legal representatives of a deceased promisor are bound to perform it as provided in Para 2 of Section 37.

9) Write short notes on Actual performance.

**Answer :** When the party has done what he had undertaken to do, it is called actual performance.

10) What are the ways of performing a contract?

**Answer :** There are two ways. Such as

- i. Actual performance
- ii. Attempted performance

**3 Marks**

10 x 3 = 30

11) Who can demand performance?

**Answer :** Only a promisee can demand performance and not a stranger demand performance of the contract.

12) What are the kinds of reciprocal promises?

**Answer :** **The kinds of reciprocal promises are:**

- (i) Mutual and Independent
- (ii) Mutual and Dependent
- (iii) Mutual and Concurrent

13) Who will perform the contract?

**Answer :** **i. Promisor himself**

Under Para 1 to Section 40, it is laid down that where it appears from the nature of the contract, the intention of the parties that any promise contained in it must be performed by the promisor himself or by his legal representatives or by any other competent person employed by him, then such promise must be performed by the promisor himself or by his legal representatives or by any other competent person employed by him.

**ii. Agent**

According to Para 2 of Section 40, the promisor may employ a competent person such as agent to perform the promise, if the contract is not formed on personal condition.

**iii. Representations**

A contract which involves the use of personal skill or it is found on personal considerations, comes to an end if the promisor dies. Of course in case of other contracts, the legal representatives of a deceased promisor are bound to perform it as provided in Para 2 of Section 37.

For Example M promises to sell his car for (Rs. 1,00,000) to N after a week. But, M dies after 5 days of the contract. M's representative will be liable to sell the car to N and N will be liable to pay Rs. 1,00,000/- to M's representative.

**iv. Third Person**

According to Section 41, if a promisee accepts the performance of the promise by a third person he cannot afterwards enforce it against the promisor.

14) Who can execute and perform a contract?

**Answer :** The promisor himself or his legal representatives or by any other competent person employed by him performs the contract.

15) Write a note on the benefits of Reciprocal Promise.

**Answer :** Promises which form consideration or part of consideration for each other are called 'reciprocal promise'. For example X promises to sell his house to Y for Rs. 5,00,000. The promises are reciprocal. X is the promisor to give the house and a promisee to receive Rs.5,00,000. Y is the promisee to receive the house and a promisor to pay Rs. 5,00,000.

16) Who is a Joint Promisors?

**Answer :** Those persons who have made a joint promise, then unless a contrary intention appears in the contract, all such persons, during their joint lives and after the death of the last survivor, representatives of all, jointly must fulfil the promise are called joint promisors.

**Benefits:**

1. The promises are mutual. So both the parties are benefited.
2. Reciprocal promises maybe independent (or) dependent (or) concurrent. So flexibility will be there.

17) Explain the ways of performing a contract

**Answer :** There are mainly two ways of performing a contract such as:

**i) Actual Performance:**

When the party has done what he had undertaken to do, it is called actual performance. In actual performance, the party is to fulfil all his obligations under the contract.

**ii) Attempted Performance:**

When the party offers to perform his obligation, it is not accepted by the promisee. A valid tender of performance is considered to be the performance of a promise.

18) Explain the term Devolution of Joint Rights

**Answer :** According to section 45 of Indian Contract Act Devolution means, "When a person has made a promise to two or more persons jointly, then unless there is a contract to the contrary, the right to claim performance rests as between him and them, with them during their joint lives: and after the death of them with representatives of such deceased person jointly with survivors, and after the death of last survivor, with the representatives of all jointly".

19) For what reasons contracts which need not be performed?

**Answer :** (i) When its performance becomes impossible.  
(ii) When the parties to it agree to substitute a new contract for it or to rescind or alter.  
(iii) When the person at whose option it is voidable rescinds it.  
(iv) When it is illegal

20) What are the essentials of Valid Tender of Performances?

**Answer :** A tender, to be valid, must satisfy the following essential requirements

(i) It must be unconditional.  
(ii) It must be for the whole obligation and must not be in instalments, if the contract requires in full.  
(iii) It must be by a person who is in a position and willing to perform the promise.  
(iv) It must be at the proper time and place.  
(v) It must be in proper form.  
(vi) It must be made to a proper person i.e. to the promisee or his authorized agent.  
(vii) In case of the tender of goods the promisee must be given a reasonable opportunity to inspect the goods.  
(viii) It may be made to one of the several joint promisees.

**5 Marks**

5 x 5 = 25

21) How do you think appropriation of payments takes place?

**Answer :** Appropriation means application of payments-The question of appropriation of payments arises when a debtor owes several debts to the same creditor and makes a payment that is not sufficient to discharge the whole indebtedness.

**1. Appropriation of Payments:**

1. Sometimes, a debtor owes several distinct debts to the same creditor and he makes a payment which is insufficient to satisfy all the debts.
2. In such a case, a question arises as to which particular debt the payment is to be appropriated.
3. Section 59 to 61 of the Act lay down following rules as to appropriation of payments which provide an answer to this question.

**2. Appropriation as per express instructions:**

1. Every debtor who owes several debts to a creditor has a right to instruct his creditor to which particular debt, the payment is to be appropriated or adjusted.
2. Therefore, where the debtor expressly states that the payment is to be applied to the discharge of a particular debt, the payment must be applied accordingly.
3. For Example X owes Y three distinct debts of Rs.20,000, 30,000 and 50,000. X sends Rs.50,000 and instructs Y that the payment should be appropriated against the third debt. He is bound to appropriate the payment against the third debt only.

**3. Application of payment where debt to be discharge is not indicated [60]:**

1. If section 60 is attracted, the creditor shall have the discretion to apply such payment for any lawful debt which is due to him from the person making the payment.
2. For Example P owes to Q, among other debts, the sum of Rs.10,000. Q writes to P and demands payment of this sum. P sends to Q Rs. 10,000. This payment is to be applied to the discharge of the debt of which Q had demanded payment.

**4. Application of payment where neither party appropriates [61]:**

The payment shall be applied in discharge of the debts in order of time whether they are or are not based by the limitation Act 1963, if the debt are of equal standing (i.e. payable on the same date) the payment shall be applied in discharge of each of these debt proportionately.

- 22) Explain the essentials of a valid tender of performance. (any 5)

**Answer : 1. Tender must be Unconditional :**

There must not be any condition associated with the tender. The tender should be unconditional. In order to be legally enforceable, a tender should not only be in accordance with the contractual terms, the promisor should also not attach any condition to it, because it is not reasonable to compel the other party to accept a changed or otherwise modified performance, whatsoever.

**2. Tender must be made at a proper time and place :**

A tender should be made at the proper time and place. Generally, the time and place of performance are fixed by the parties in their contract. If a person's obligation is to deliver goods or render services, they must be tendered at a reasonable hour, for example, not in the middle of the night. If such a tender is refused, it will not release the tendering party from further obligation.

**3. Chance of Adjudging :**

A tender must be made under such circumstances that the person to whom the tender is made shall have a fair amount of chance of adjudging that the person by whom the tender is made is able and eager and then proceed with what he is bound by his promise.

For example, if a debtor sends money by post and it is lost, he will have to pay again, unless the mode of delivery was requested by the creditor, and the debtor took reasonable care.

**4. Must be for Agreed Quantity and Quality :**

If the offer is to deliver a particular thing to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the same that the promisor is bound by his promise to deliver.

For example, if a seller tenders too few goods, too many goods, or the right amount of goods mixed with other goods, the buyer may reject all of them because the performance is not exact. The buyer can also reject the tender where the goods are not packed in accordance with the contract.

**5. Whole Obligation :**

The tender must be of whole and not of that part. Tender in part is no tender. Moreover, a tender by installment is not a valid tender unless the contract so provides.

**6. Should be made to the Proper Promisee :**

A tender of performance made to a stranger i.e. third party is not a valid tender. It should be made to the promisee or his duly authorized agent.

- 23) State the essential of a valid tender of performance.

**Answer : A tender must have the following essentials to be valid :**

- (i) It must be unconditional
- (ii) It must be for the whole obligation and must not be instalments, if the contract requires in full.
- (iii) It must be by a person who is in a position and willing to perform the promise.
- (iv) It must be at the proper time and place.
- (v) It must be in proper form.
- (vi) It must be made to a proper person i.e: to the promisee or his authorised agent.
- (vii) In case of the tender of goods the promise must be given a reasonable opportunity to inspect the goods.
- (viii) It may be made to one for the several joint promisees.

24) State the essentials of a valid tender of performance.

**Answer : A tender, to be valid, must satisfy the following essential requirements.**

- i) It must be unconditional
- ii) It must be for the whole obligation and must not be in instalments, if the contract requires in full.
- iii) It must be by a person who is in a position .and willing to perform the promise.
- iv) It must be at the proper time and place.
- v) It must be in proper form.
- vi) It must be made to a proper person i.e to the promisee or his authorized agent.
- vii) In case of the tender of goods the promisee must be given a reasonable opportunity to inspect the goods.
- viii) It maybe made to one of the several joint promisees.

25) Describe the legal provisions regarding time, place, and manner of performance of a contract?

**Answer : Legal provisions regarding the time, place and manner of performance of a contract:**

Various legal provisions are laid down under Section 46 to 50 regarding the time, place and manner of performance of a contract: So, as far as the time, place and manner of performance of a contract are concerned it must be agreed upon by the parties to the contract themselves. The legal provisions regarding these are given below :

**(i) Under Section 46, performance within a reasonable time:**

According to Section 46, a promisor is to perform his promise within a reasonable time. On the other hand, reasonable time will depend upon the circumstance of the case, the usage of trade or on the intention of the parties entering into the contract. For Example, A has given an order of supply of books in July which should be performed within 4 to 5 days of the month of July.

**(ii) Under Section 47, specified time and place for performance:**

If the promise is to be performed on a certain day, the promisor may undertake to perform it without application of the promisee. According to the Section 47, In such a case the promisor may perform the promise at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

**(iii) Under Section 48, performance on a certain day:**

If the promise is to be performed on a certain day the promisor may undertake to perform it after the application by the promisee to that effect.

**(iv) Under Section 49, performance of promise when no place is fixed and without application:**

If the promise is to be performed without application by the promisee and where no place is mentioned to be performed of the contract then it is the duty of the promisor to apply to the promisee to provide a reasonable place for the performance of the promise and to perform it at such place. For Example, M takes to deliver 1,000 kilos of wheat to N on a fixed day. M must apply to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.

**(v) Under Section 50, performance is prescribed by the promisee:**

According to Section 50, the performance of any promise may be made in any manner or at any time, which the promisee prescribes. Example: T owes Rs.2,00,000/- to accept T's car value of Rs.1,00,000/- in reduction of the debt. The delivery of the car will amount to a part payment of the debt.