

TIME: AN ESSENCE OF A CONTRACT

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INTRODUCTION

Section 55 of the Indian Contract Act¹, 1872 specifies the laws relating to "time as the essence of a contract," which states that if someone promises something to be done at a specific time and it is not performed at the same time, the contract becomes voidable if the parties intended to make time the essence of the contract. Furthermore, it states that if the parties did not intend to make time the essential of the contract, the promisee is entitled to reimbursement for any losses incurred. Finally, this provision states that if time is supposed to be of the essence but performance is accepted in a manner other than what was agreed upon, compensation cannot be claimed unless the promisor is given notice.

MEANING OF TIME

The contract's most crucial factor is time. The basic definition of time is the timeframe or limit within which a commitment is fulfilled. In the absence of any period specified by the parties to a contract or agreement, the deal is performed within a reasonable time

LEGAL PROVISION²

Sec.46 . Time for performance of promise, where no application is to be made and no time is specified. –Where, by the contract, a promisor is to perform without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Sec.47. Time and place for performance of promise, where time is specified and no application to be made- When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the

¹ The Indian Contract Act, 1872 prescribes the law relating to contracts in India and is the key act regulating Indian contract law. |

² Legal provision, available at: <http://www.legalservicesindia.com/article/1396/Time-is-the-essance-of-the-Contract.html> (Last visited on-18/11/2022)

promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Sec.48 – Application for performance on certain day to be at proper time and place-

When a promise to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee , it is the duty of the promisor to apply for performance at a proper place and within the usual hours of business.

Sec.50 – Performance in manner or at time prescribed or sanctioned by promisee.-The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions

Sec.55-when a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that the time should be of the essence of the contracts.

TIME

Whether or not time is specified in a legal contract³, time nevertheless plays a significant role. In contracts, delivery dates are almost always expressly stated. Contracts for labour within businesses, the subcontracting of portions of a bigger project to other businesses, and purchase agreements for extensive projects like infrastructure and weapon systems are a few examples. In some of these situations, a deadline is chosen arbitrarily. For instance, if a production process uses a perishable resource, missing a production deadline may result in the loss of the relevant input. A scenario where one of the parties is constrained by a contract with a third party is another illustration. However, a deadline is frequently set endogenously by one of the parties in numerous circumstances.

In contract law, the phrase "time is of the essence" means that the parties must fulfil their obligations by the time specified in the contract. Time is typically of the essence in commercial matters. The parties' intentions affect the commercial matters. Because

³A contract is a legally enforceable agreement that creates, defines, and governs mutual rights and obligations among its parties.

construction is a commercial activity, time schedules are particularly important in construction contracts even when "a definite date is indicated of the completion for the contract." One of the terms of a joint venture agreement required the defendants to complete certain formalities within 5 years, and the deal would become void if they failed to do so. The timing factor is crucial to success in selling transactions. The significance of timing in a sale transaction. Any contract involving the use of land or property must also take time into consideration. The parties may specify that time is of the essence either verbally or by using language that makes it clear what they meant. Alternately, it may be implied that time is the core of a contract. It is intended to safeguard both buyers and sellers because the entire contract may be worthless if one party misses a deadline. When the promise is to be fulfilled on a specific day, the promise's duty is to fulfil the contract during normal business hours on that day. If the products to be provided are delivered after the regular closing time, the buyer has the option to reject them. When time is of the importance of the contract, failure to complete the contract on time would defeat the objective that the parties had in mind; therefore, if one party fails to perform on time, the other party has the right to avoid the contract.

SCOPE OF TIME AND ITS IMPORTANCE IN A VALID CONTRACT

Time is one of the most important factors of any legally binding contract. It is one of the most fundamental and important components of legitimate contracts. However, under the current context, the duration of legal contracts is determined by each case and situation. In certain circumstances, time is prescribed in the terms and conditions of a contract, but in others, reasonable time is also very significant. The nature of the contracts determines the reasonable time. If a contract does not mention a period for performance, the law will imply that the parties intended for the contract's duties to be fulfilled within a reasonable time.

If a party to a contract promises to do specific things at any time or before a certain length of time and fails to do the promise before the period of time or at a specified time, the contract becomes voidable if the party's intention is that time is the substance of the deal.

INTENTION OF THE PARTIES

In India, the question of whether time is of the essence to the contract is one that must be clarified at the time of contract execution. In this case, an express stipulation cannot be interpreted as the parties' desire. If a contract expressly states that time is of the essence, but other elements of the agreement reveal that the parties did not intend time to be of the importance, the court has ruled that time is not of the essence. The parties' intentions can be inferred from:

- The express words used in the content
- The nature of the contract itself
- The nature of the property which forms the subject matter of the contract
- The surrounding circumstances

EXTENSION OF TIME

Only an agreement reached between the promisor and the promisee can prolong the period for performance. Where the opposite party did not indicate any acceptance, the time for performance was not extended.

WHEN TIME IS NOT OF THE ESSENCE

When the contract provides for damages for late completion or even time extensions in specific instances, time is not of the essence. Despite clear provisions making time the essence of the contract, some contracts may be understood differently if these provisions are inconsistent with the objective of making time the essence of the contract. When the time for performance has been extended twice and the purpose of a purchase is not a business venture, time is not of the essence.

ACCEPTANCE AFTER THE SPECIFIED TIME AND WAIVER

If a party waives his rights by obtaining advantages under a contract established after the stipulated period, he cannot evade the contract by claiming that time is the substance of the transaction. A claim under this will be barred if the promisee accepts

performance after the specified period has passed, unless he has given the promisor notice of his intention to do so.

In the case of *State of Kerala v. M.A. Mathai*, it was held that if an employer delays in performing reciprocal obligations, the contractor has the right to avoid the contract; however, if he does not avoid the contract and accepts the belated performance, he cannot claim compensation for any loss sustained by him due to the delay in performance, unless he notifies the delaying party of the same.

CASE LAW⁴

S committed to sell 10 tonnes of oil to M and deliver it to him during the last 14 days of March in *Startups v. Macdonald*. On March 31st, around 8:30 p.m., delivery was made. M flatly refused. It was determined that the tender of the oil was equivalent to performance under the circumstances, and that S was entitled to claim damages for non-acceptance.

Bishamber Nath Agarwal v. Kishan Chand ⁶ is a case where. It was established that if an agreement stipulates that a particular act connected to the contracts must be done within a specific time or way, it must be done in such manner or time and it is not the parties' rights to perform it in their own method or time.

In the case of *Haryana Telecom Ltd. v. Union of India*⁷, it was determined that one of the contract clauses stated that deliveries made after the specified delivery period would not deprive the party of its right to recover liquidated damages, and that a reading of all clauses demonstrated that time was of the essence of the contract.

CONCLUSION

The importance of time varies according to the nature of the transaction as well as the situation and circumstance in each case. The value of time in contracts is determined by the parties' intentions. Time can be made the substance of the contract by the parties either expressly or by their behaviour. If the parties have not stated their intention, it is up to the nature of the contract.

⁴Case laws available at : <http://www.legalservicesindia.com/article/1396/Time-is-the-essance-of-the-Contract.html> (Last visited on 18/11/22)

<https://blog.ipleaders.in/time-essence-contract/> (Last visited on 20/11/22)

If the parties have a time-sensitive intention, the parties to the contract cannot postpone the transaction. However, if the parties make a deliberate mistake, the other parties have the right to seek restitution. If it is not possible to complete the contracts within the time specified in the contracts, the other party shall perform it within a reasonable time. However, the reasonable period is determined by each instance, circumstance, and contract context.

If the parties do not intend for time to be of the essence of the contract in the terms and conditions of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time, but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure. When time is of the importance of the contract, failure to complete the contract on time would defeat the purpose that the parties intended, and so if one party fails to perform on time, the other party has the right to avoid the contract.

When assessing whether "time is of the essence" in a contract, the court will consider the parties' intent at the time the contract was signed. Where time is of the essence of a contract, any failure to perform within the time specified is a material breach of the contract. To put it another way, when the parties stipulate that time is of the essence, they effectively agree that a breach of that commitment is substantial, or, in other words, that timely performance is an express condition prior to the other party's duty to perform under the contract.

This means you should be especially attentive for time is of the essence rules because your contractual responsibilities under such terms are expected on a strict timeframe, and failure to be aware of this and lack of timeliness could land you in legal hot water. **If the parties do not intend to make time the substance of a contract, the promisee should be able to recover any losses suffered.**