

Contracts: Performance, Breach and Discharge

Performance, Breach, and Discharge

- Conditions
- Discharge by Performance
- Discharge by Breach
- Discharge by Agreement
- Discharge by Operation of Law

Conditions

- If performance depends upon a condition and it does not occur, there is no duty to perform and thus no breach

Types of Conditions

- Condition Precedent
 - Requires the happening of an event before party is obligated to perform
- Concurrent Condition
 - Conditions that require a simultaneous performance by parties
- Condition Subsequent
 - Performance obligations are terminated by occurrence of subsequent event

Discharge by Performance

- Substantial Performance
 - Deviation from the agreement, but breaching party still entitled to some payment (not full contact price)
 - Factors to Consider: good faith; adequate substitute; can the party be compensated

Discharge by Breach

- Material Breach
 - If substantial performance does not apply, the breach is material
 - UCC Perfect Tender Rule:
 - Renders any deviation a material breach of contract

Anticipatory Repudiation

- Action by Party Prior to the Date of Performance Indicating that he will not Perform according to the Contract
 - Other party may sue at once

Discharge by Agreement

- Accord and Satisfaction
 - Different performance to satisfy contract
- Novation
 - New party replaces one of the original parties
- Mutual Rescission
 - Separate Contract in which parties agree to terminate an existing agreement

Discharge by Operation of Law

- Old Standard: Impossibility of Performance
 - No one could render performance
- Newer standard: Commercial Impracticality
 - Technically possible but events make it impracticable
- Bankruptcy
- Subsequent Illegality
- Statute of Limitations