

PERFORMANCE

- **CONDITIONS:** Effects on whether Duty Exists / Breached
- **FULL PERFORMANCE:** Discharged from Performance
- **SUBSTANTIAL PERFORMANCE** PERFORMANCE NEED NOT BE PERFECT
 - ELEMENTS
 - IN GOOD FAITH
 - PERFORMANCE THAT DOES NOT VARY GREATLY FROM THAT PROMISED
 - DETERMINED BY ASKING, “CAN THE GOALS OF THE K BE ACHIEVED?”
 - EFFECTS
 - SUBSTANTIALLY PERFORMING PARTY IS DISCHARGED FROM PERFORMANCE
 - BUT MUST PAY DAMAGES CAUSED BY THE BREACH

BREACH OF CONTRACT

- **MATERIAL BREACH:**
 - BREACH THAT IS SIGNIFICANT – DEPRIVES THE INNOCENT PARTY OF THE BENEFIT OF THE BARGAIN
 - DETERMINED BY: BREACH THAT DOES NOT SATISFY SUBSTANTIAL PERFORMANCE TEST
 - OTHER PARTY IS EXCUSED FROM PERFORMANCE
- **ANTICIPATORY REPUDIATION**
 - PARTY REPUDIATES OBLIGATIONS PRIOR TO THE TIME FOR PERFORMANCE
 - REMEDIES CAN BE SOUGHT IMMEDIATELY
 - CAN ALSO WAIT TO SEE IF REPUDIATION IS WITHDRAWN

ALTERNATIVES TO PERFORMANCE (Discharge by Agreement)

- **MUTUAL RESCISSION**
 - AGREEMENT TO CANCEL A CONTRACT
- **NOVATION**
 - SUBSTITUTION OF PARTIES
- **ACCORD AND SATISFACTION**
 - SUBSTITUTED PERFORMANCE
- **SUBSTITUTED CONTRACT**

IMPOSSIBILITY

- **MUST BE OBJECTIVE IMPOSSIBILITY**
 - SUBJECTIVE IMPOSSIBILITY IS NOT A DEFENSE
- **EXAMPLES**
 - DESTRUCTION OF SUBJECT MATTER WITHOUT FAULT OF EITHER PARTY
 - DEATH OF A PARTY OBLIGATED TO PERFORM PERSONAL SERVICES
 - UNFULFILLED EXPRESS CONDITION

ECONOMIC FRUSTRATION & COMMERCIAL IMPRACTICABILITY

- **TWO RELATED DEFENSES WITH ONE COMMON ELEMENT**
- **UNFORSEEABLE EVENT BEYOND THE CONTROL OF EITHER PARTY**
- **ELIMINATES (“FRUSTRATES”) THE PURPOSE OF THE CONTRACT OR FORCES ONE PARTY TO INCUR UNREASONABLE COSTS TO PERFORM IT (MAKING IT “IMPRACTICABLE”)**

Cases on Performance & Discharge

- **Jacob & Youngs v. Kent**
 - What was the old rule here?
 - What did Cardozo come up with for this case?
 - Why did Cardozo do this?
- **Northern Corporation v. Chugach Electrical Association**
 - What happened here?
 - What category of “Discharge by Law” is this? Why?
 - Did the facts in this case meet the requirements for this category? Explain.