

**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

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**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  - CAN ALSO WAIT TO SEE IF REPUDIATION IS WITHDRAWN

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**ALTERNATIVES TO PERFORMANCE**  
(Discharge by Agreement)

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

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## 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

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## 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”)

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## 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.

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