

Business Law

Text & Exercises *6th Ed.*

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Chapter 16: Contract Discharge and Remedies

Learning Outcomes

- LO1** • Explain the difference between complete and substantial contractual performance.
- LO2** • Describe how parties can discharge their contract by agreement.

Learning Outcomes

- LO3** • Identify different types of damages.
- LO4** • Define the remedy of rescission and restitution.
- LO5** • Explain the remedy of specific performance.

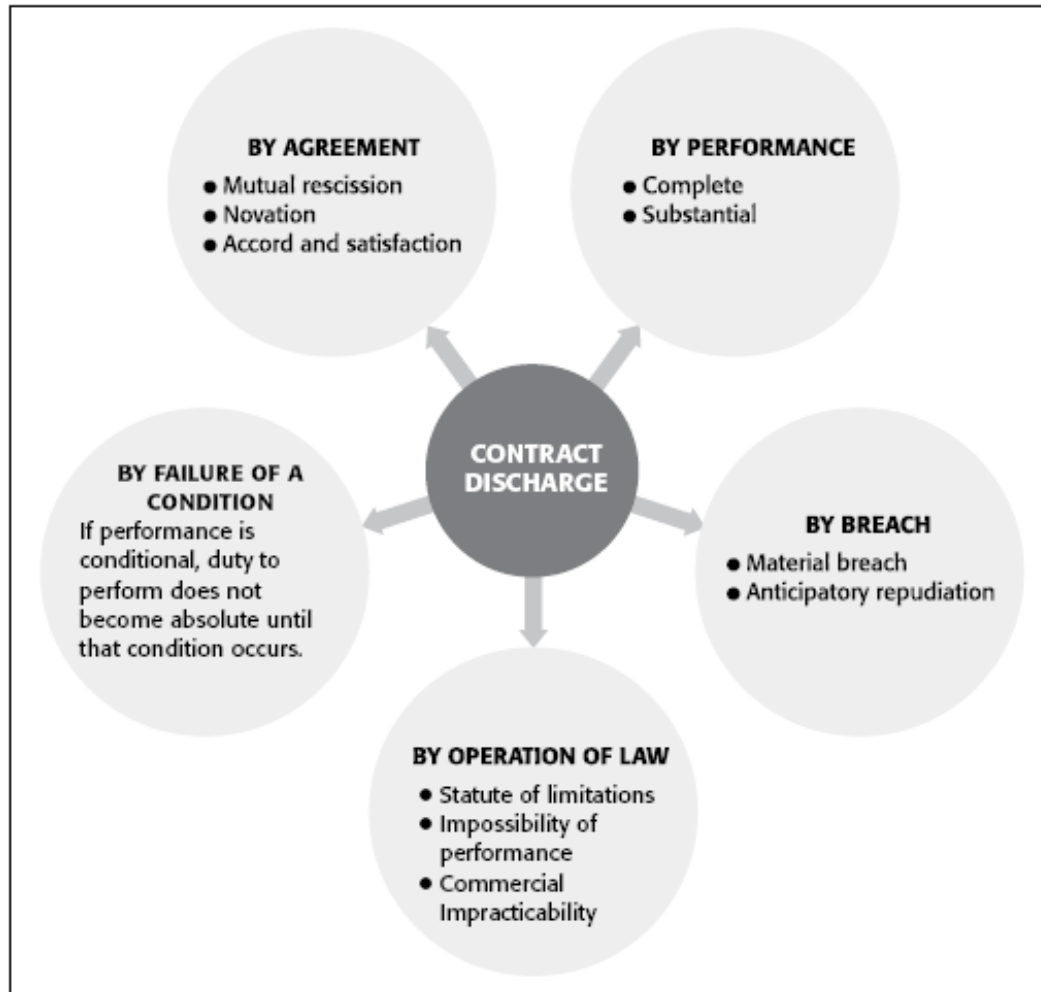
Breach of Contract

- **Breach of Contract: Failure, without legal excuse, of a promisor to perform the obligations of a contract.**
- **Once this occurs, the nonbreaching party can choose one or more remedies.**

Contract Discharge

- **The termination of one's obligation. In contract law, discharge occurs when the parties have fully performed their contractual obligations or when events, conduct of the parties, or operation of law releases the parties from further performance.**

Contract Discharge



Discharge by Performance

- **Performance:**

- In contract law, the fulfillment of one's duties arising under a contract with another; the normal way of discharging one's contractual obligations.

- **Tender:**

- An unconditional offer to perform by a person who is ready, willing, and able to do so.



Complete *vs.* Substantial

- Normally, conditions expressly stated in the contract must fully occur in all aspects for complete (or strict) performance to take place.
- To qualify as substantial, the performance must not vary greatly from the performance promised in the contract.

Performance to the Satisfaction of Another

- **When the subject matter of the contract is personal, performance must actually satisfy the party whose satisfaction is required.**
- **Contracts that involve mechanical fitness, utility, or marketability need only be performed to the satisfaction of a reasonable person unless they expressly state otherwise.**

- **Rescission: a process in which the parties cancel the contract and are returned to the positions they occupied prior to its formation.**
- **Novation: substitution of a third party for one of the original parties. →**
- **Accord and Satisfaction. →**

Requirements for Novation

- 1. The existence of a previous valid obligation.**
- 2. Agreement by all the parties to a new contract.**
- 3. The extinguishing of the old obligation.**
- 4. A new valid contract.**

Accord and Satisfaction

- **Accord and Satisfaction:**
 - An agreement and payment (or other performance) between two parties, one of whom has a right of action against the other. After the agreement has been made and payment or other performance has been tendered, the “accord and satisfaction” is complete.

Discharge by Operation of Law

- **Statute of Limitations. →**
- **Impossibility of Performance. →**
- **Commercial Impracticability. →**

Statute of Limitations

- **A statute setting the maximum time period during which a certain action can be brought.**

Impossibility of Performance

- **A doctrine under which a party to a contract is relieved of his or her duty to perform when performance becomes impossible or totally impracticable (through no fault of either party).**



Impossibility of Performance

- **Qualifying Situations:**

1. One of the parties to a personal contract dies or becomes incapacitated prior to performance.
2. The specific subject matter of the contract is destroyed.
3. When a change in the law renders performance illegal.

Commercial Impracticability

- **A doctrine under which a party may be excused from performing a contract when:**
 1. A contingency occurs.
 2. The contingency's occurrence makes performance impracticable.
 3. The nonoccurrence of the contingency was a basic assumption on which the contract was based.

Temporary Impossibility

- **An occurrence or event (such as war) that makes it temporarily impossible to perform the act for which a party has contracted operates to suspend performance until the impossibility ceases.**

Contract Remedies

- **Relief given to innocent parties, by law or by contract, to enforce a right or to prevent or compensate for the violation of a right.**

Damages

- **Money sought as a remedy for a breach of contract or for a tortious act.**
- **Types of Damages:**
 - Compensatory damages.
 - Consequential damages.
 - Punitive damages.
 - Liquidated damages.
 - Penalties.



Compensatory Damages

- **A money award equivalent to the actual value of injuries or damages sustained by the aggrieved party.**
 - Simply replace the loss caused by the wrong or injury.
 - Amount = difference between the value of the promised performance and the actual performance.
- **Incidental Damages.**

Consequential Damages

- **Special damages that compensate for a loss that is not direct or immediate (for example, lost profits).**
 - The special damages must have been reasonably foreseeable at the time the breach or injury occurred.
- **Mitigation of Damages: generally, the injured party has a duty to minimize her damages.**

Punitive Damages

- **Compensation in excess of actual or consequential damages. They are awarded in order to punish the wrongdoer and usually will be awarded only in cases involving willful or malicious misconduct.**

Liquidated Damages vs. Penalty

- **Liquidated Damages: fixed amount stipulated by the parties as a reasonable estimation of damages.**
- **Penalty: fixed amount, not as a measure of compensation for its breach, but rather as punishment for breach.**
 - The agreement as to the amount will not be enforced, and recovery will be limited to actual damages.

- **Rescission:**

- An equitable action by a court to undo, or cancel, a contract—to return nonbreaching parties to the positions that they occupied prior to the transaction.

- **Restitution:**

- A remedy under which a person is restored to his or her original position prior to formation of a contract.

Specific Performance

- **An equitable remedy requiring exactly the performance that was specified in a contract. Usually granted only when money damages would be an inadequate remedy and the subject matter of the contract is unique (for example, real property).**

Recovery Based on Quasi Contract

- **Plaintiff must show:**

1. The party conferred a benefit on the other party.
2. The party conferred it with the reasonable expectation of being paid.
3. The party did not act as a volunteer in conferring the benefit.
4. The party receiving it would be unjustly enriched by retaining it without paying for it.