**Chapter 13: The Discharge of Contracts**

**Discharge a Contract** – cancel the obligations of a contract; make an agreement or contract null and inoperative

Can occur in 4 ways:  
a) Discharge by Performance  
b) Discharge by Agreement  
c) Discharge by Frustration  
d) Discharge by Operation of Law

**1) Discharge by Performance**  
- their contract ends when they have performed all their respective obligations satisfactorily  
- both parties must complete performance

**Tender of Performance** – an attempt by one party to perform according to the terms of the contract  
- one party may attempt to perform, but the other party refuses to accept the performance  
- the attempt to perform is called a *tender of performance* whether accepted or rejected

**2) Discharge by Agreement**

**Waiver** – an agreement not to proceed with the performance of a contract already in existence  
- the parties may agree between themselves not to perform their contract and discharge it  
- if neither party has performed fully at the time both agree to call off the bargain, there is automatically consideration for the waver of each party: each still has rights and obligations outstanding, and a promise by one party to waive its rights is sufficient consideration for it being released from obligations to the other

**Accord and Satisfaction** – a compromise between contracting parties to substitute a new contractual obligation and release a party from the existing one  
- a promisor may find it cannot perform its obligation according to the terms of the contract or that performance has become very difficult

**Novation** – another method of discharge – the parties to a contract agree to terminate it and substitute a new contract

Two types of novation: a) a material change in terms b) a change in parties

**A Contract Provides for Its Own Dissolution**

a) **Condition Precedent** – future or uncertain event that must have occurred before the promisor’s liability is established  
- a contract subject to a condition precedent *does* have a binding force from the outset, and the parties are not free to withdraw from their promises unless and until the condition precedent becomes impossible to fulfill

b) **Condition Subsequent** – an uncertain event that brings a promisor’s liability to an end if it happens

**Act of God** – the raging of the natural elements (in contracts for the shipment of goods)  
- this may be a condition subsequent if it results in the destruction of a shipment

**Option to Terminate**  
- a contract may include a term that gives one party, or both, the option of bringing the contract to an end before its performance has been completed, usually by giving notice  
- exercising the option results in discharge by agreement because the means of discharge was agreed upon when drawing up the contract

**3) Discharge by Frustration**

**Doctrine of Frustration** - the law excuses a party from performance when external causes have made performance radically different from that contemplated by the parties

**Self-Induced Frustration** – a party wilfully disables itself from performing a contract in order to claim that the contract has been frustrated  
- a breach of the contract

**The Sale of Goods**  
- in a contract for the sale of goods, we must examine the Sale of Goods Act to see whether it deals directly with the particular situation

The 3 conditions for this section to apply are:  
 1) The goods must be *specific* (identified and agreed upon when the sale is made)  
 2) The risk must still be with the seller (seller must be responsible for the safety of the goods)  
 3) The cause of the frustration must be the perishing of the goods

**When the Source of the Goods is Destroyed**  
- frustration may affect the sale of goods when the source of the goods, rather than the goods themselves, is destroyed  
- if the contract of sale contains no terms about how the goods will be produced and the source of the subject matter is destroyed, it will not frustrate the contract  
- ex. parties don’t specify where goods will be made but factory of source is destroyed by fire; supplier probably will not be excused from liability for failing to deliver goods according to the contract

**4) Discharge by Operation of Law**  
- bankrupt debtors can be discharged from contractual liabilities after the process of bankruptcy has been completed  
- the debtor is discharged only if he qualifies for a certificate stating that the bankruptcy was caused by misfortune and without any misconduct on his part

**Statute Barred** – an action that may no longer be brought before a court because the party wishing to sue has delayed beyond the limitation period in the statute