Chapter 16
Performance and Discharge

Discharge

✓ A party is discharged when she has no more duties under a contract.
✓ Most contracts are discharged by full performance. That’s why this chapter is called Performance and Discharge.

Discharge

✓ If one party materially breaches a contract, the other party will be discharged.
✓ Sometimes the parties are discharged by mutual agreement. (They agree to rescind their contract.)
✓ Sometimes a party can be discharged by raising a defense.
Defenses That Discharge

✓ Failure of a condition in the contract
✓ Impossibility
✓ Commercial Impracticability
✓ Frustration of Purpose

Conditions

✓ A condition is an event that must occur in order for a party to be obligated under a contract.
✓ If the condition does not occur, one party will probably be discharged without performing.
✓ Express conditions: No special language is required.

Implied Conditions

✓ Charlotte orally rents an apartment to Hakan for six months and promises to fix any problems in the unit.
✓ The shower stops working in month one. Hakan deliberately withholds this information from Charlotte.
✓ At the end of the 6 months, Hakan sues Charlotte for breach of contract, seeking a refund of his rent.
Conditions
Precedent/Subsequent
1. Condition precedent: A type of condition which must occur before a duty arises.
2. Condition subsequent: A type of condition which must occur after a duty arises. If the condition does not occur, the duty is discharged.
3. Concurrent conditions

<table>
<thead>
<tr>
<th>Condition Created</th>
<th>Does Condition Occur?</th>
<th>Duty Is Determined</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>Condition Precedent</td>
<td>“Fee to be paid when restaurant is filled to 80% capacity for one month,”</td>
<td>Condition DOES occur: restaurant is packed.</td>
<td>Duty is determined: Polly owes Robert $10.</td>
</tr>
<tr>
<td>Condition Precedent</td>
<td>“Fire must occur within 60 days.”</td>
<td>Condition DOES NOT occur: restaurant is empty.</td>
<td>Duty never arises: Polly is discharged.</td>
</tr>
</tbody>
</table>

Types of Conditions
✓ If the parties agreed to a condition precedent, the plaintiff has the burden to prove that the condition occurred.
✓ If the parties agreed to a condition subsequent, the defendant has the burden to prove that the condition failed.

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**Limits on Express Conditions**

✓ Sometimes a court will refuse to enforce an express condition in a contract on the grounds that it is unfair and harmful to the general public.

✓ Is that what happened in Anderson v. Country Life Insurance Co.?

YOU BE THE JUDGE!

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**Anderson v. Country Life Insurance Co.**

✓ Country Life Insurance sold Mr. and Mrs. Anderson a life insurance policy.

✓ Both the representative and the policy indicated that the policy was effective immediately, subject to the condition that the Country Life home office accepted the Andersons as medical risks.

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**Anderson v. Country Life Insurance Co.**

✓ How many think the appeals court overturned the trial court’s ruling and held the conditional clause void as against public policy?

✓ How many think the appeals court affirmed the trial court’s ruling?
Strict Performance

A party is generally not required to render strict (perfect) performance unless:
1. The contract expressly demands it, and
2. Such a demand is reasonable.

Substantial Performance

The substantial performance doctrine: “In a contract for services, a party that substantially performs its obligations will receive the full contract price, minus the value of any defects. A party that fails to perform substantially will receive nothing on the contract and will recover only the value of the work, if any.”

Substantial Performance

There is no perfect test, but here are some guidelines:
✓ Has the promisee received most or all of the benefits they had reason to expect?
✓ Can the owner use the thing constructed for its intended purpose? (Construction contracts only)
✓ Can the promisee be compensated with money damages for any defects?
✓ Did the promisor act in good faith?
Strategic Resources Group v. Knight-Ridder, Inc.

- The printed ads were 3.83% smaller than the originals.
- But after Brighton never complained in 6 years, and even after they discovered this fact, they did not complain, and continued to place ads.
- This is evidence that Brighton substantially received the benefits that they were seeking.

The Bad Faith Exception

- Even a relatively minor defect in performance may prevent a contractor from recovering any money if he caused the defect in bad faith.
- Example: A contractor who agrees to put springs under a dance floor.
- Courts refuse to use the doctrine of substantial performance to benefit a fraudulent contractor.
**Personal Satisfaction Contracts**

Contracts in which the promisee’s duty is *conditional* upon a personal, subjective evaluation of the promisor’s performance, to be made by the promisee.

Courts *will* enforce such contracts if:
1. Explicitly demanded in the contract, *and*
2. Reasonable given the nature of the work.

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**Good Faith**

✓ The Restatement says “every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”

✓ Elsewhere it says the parties must *remain faithful to the “agreed common purpose and justified expectations of the other party.”*

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**“Time is of the Essence”**

✓ Merely including a date for performance does not permit strict enforcement.

✓ Courts require each party to accommodate reasonable delays.

✓ A time of the essence clause, however, will generally make contract dates strictly enforceable.
**The Effect of Breach**

When one party *breaches* a contract, the other party:

1. Is *discharged* of their obligation to perform, and
2. May sue for damages

✓ If a party merely states that they don’t *plan* to show up, it is called an *anticipatory breach*.

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**Material Breach**

✓ Courts will only discharge a contract if a party committed a *material* breach.

A *material* breach is one that:

1. Substantially harms the innocent party, and
2. For which it would be *hard to compensate* without discharging the contract.

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**Anticipatory Breach and Statute of Limitations**

✓ If the other party *says* they’re not going to perform on the specified date, or does something that makes it *impossible* for them to perform, it’s called an *anticipatory breach*.

✓ If someone actually breaches, and you don’t file suit fast enough, *they* will be discharged from *their* duties.
True Impossibility
If something happens that makes performing the contract utterly impossible, a court will discharge the agreement.
1. Destruction of the subject matter
2. Death of a promisor in a personal services contract
3. Subsequent illegality

Commercial Impracticability
When something happens that:
1. Neither party anticipated, and
2. Creates a situation wherein fulfilling the contract would now be
   a. Extraordinarily difficult, and
   b. Unfair to one party,
courts sometimes will discharge the contract.

Frustration of Purpose
When something happens that:
1. Neither party anticipated, and
2. The contract now has no value for one party,
courts sometimes will discharge the contract.
**Force Majeure Clauses**

“Buyer agrees that seller shall not be liable for delays caused by acts of God, fire, labor disputes, accidents, or transportation difficulties.”

✓ The presence of a force majeure clause in a contract may strengthen the defendant’s case of commercial impracticability, but only a little.