

Law 1 - Chapter 18: Performance and Discharge in Traditional and E-Contracts

By: Stephanie P. & Todd G.

Discharge and Performance

- Discharge: to terminate one's contractual duties
 - This occurs when both parties have performed their contractual duties
 - Performance of a contract may be absolute or conditioned (on occurrence or nonoccurrence of an event)
 - Absolute performance: must be performed, or the parties promising the acts will be in breach of the contract

Conditional Performance

- Conditioned performance: a qualification in a contract based on a possible future event. If the condition is not satisfied, the obligations of the parties are discharged
 - Conditions Precedent: the condition must be fulfilled before the party's performance is required
 - Conditions Subsequent: a condition the occurrence or nonoccurrence of which will terminate a party's absolute promise to perform
 - Concurrent Conditions: when each party's performance is conditioned on the other party's performance

Contractual Performance

- Performance can also be accomplished by tender.
 - Tender: an unconditional offer to perform by a person who is ready, willing, and able to do so.
- Complete Performance: when a party performs exactly as agreed
- Substantial Performance: when a party in good faith performs substantially all the terms of the contract
 - Qualifications for substantial performance:
 - Good Faith
 - Not much variance from what was performed and what was agreed to be performed under the terms of the contract
 - Benefits remain the same

Satisfaction Contracts

- Satisfaction Contracts: completed work must personally satisfy one of the parties or a third person
 - Personal satisfaction: when subject matter is personal
 - Reasonable person: most contracts need only to satisfy a reasonable person unless otherwise stated.

When personal satisfaction of a third party is required the courts will lean more towards a reasonable person standard than a personal satisfaction standard

Breach and Repudiation

- **Material breach** is when a party fails to perform most of the contractual obligations without a legal excuse.
 - When one of the party's breach is non-material the other party's duties may be suspended until they cured the breach. This does not excuse the non-breaching party from the contract. Only a material breach excuses the non-breaching party.
 - When time is not an issue, failure to perform by the time specified in the contract is not a material breach.
- **Anticipatory Repudiation** is a statement or action by one of the parties involved in the contract that they are not able to or will not perform some portion of the contractual obligation.
 - A repudiation excuses the non-repudiating party from performing their contractual obligations.
 - The repudiating party can retract their repudiation and restore their contractual rights and until the non-repudiating party treats the repudiation as a breach of contract.

Discharge by Agreement

- Rescission is the process is when all parties cancel the contract and return to the pre-contract status
- Novation is when you substitute a new contract for an old one. This would terminate any legal rights to the old contract. All parties must agree to the new contract and a valid new contract must be presented.
- Substituted Agreement is when all parties agree on a substitute the old contract for a new one and in doing this the old contract becomes void.
- Accord and Satisfaction can happen when all parties agree to a change in performance in a contact, but will not be valid until all parties have completed the accord.

Discharge by Operation of Law

- Material Alteration is when one or more of the material terms of a contract are altered without the other party being aware. When this takes place, the innocent party may be discharged from the contract.
- Statutes of Limitations requires to file suit within the time permitted by law. Failure do so will not discharge the parties, but it prevents the wronged from seeking remedies allowed by the law.
- Bankruptcy that has been discharged and has included the contact blocks any enforcement of the contract.

Impossibility, Impracticability and Frustration of Purpose

- Impossibility/Impracticability can excuse one of the parties when performance become either impossible or impractical through no fault of either party.
- Frustration of Purpose is when circumstances make it impossible for all parties to achieve their purpose for entering the contract.
- Temporary or Permanent changes in the circumstances that make it impossible or impractical and temporarily frustrates a party's purpose in the contract. This can suspend the obligation, but will not excuse the performance.