

## 24. CONTRACT LAW: DISCHARGE OF CONTRACT

### How can a contract end?

A contract can end in *four* ways: performance, agreement, frustration, and breach.

### What is "performance"?

A contract comes to an end when the parties have performed their obligations under it. Generally, performance must be exact and entire, except where:

- (1) The contract can be sub-divided into smaller, identical contracts (*i.e.* is a severable contract), where the party in breach may nevertheless claim for those elements performed (*Ritchie v Atkinson* [1808]; *Atkinson v Ritchie* [1809]).
- (2) The party in breach was prevented from performing their obligations by the other party (*Planche v Colburn* [1831]).
- (3) Where the other party had a genuine choice to accept partial performance and did so (*Sumpter v Hedges* [1898]).
- (4) Where one party has substantially performed their obligations, subject to only a minor defect, they may enforce the contract subject to a reduction to compensate for the defect (*Hoernig v Isaacs* [1952]; *Bolton v Mahadava* [1972]).
- (5) Where one party tenders/offers performance (other than payment of a debt) and the other party rejects it.

### What is "agreement"?

Just as the contract was created by agreement, it may be ended by agreement. As with the original agreement, this must be supported by fresh consideration.

### What is "frustration"?

Frustration is where further performance of the contract is either impossible (*Taylor v Caldwell* [1863]; *Jackson v Union Marine Insurance* [1874]; *Morgan v Manser* [1948]), illegal (the *Fibrosa* case [1943]), or radically different from that anticipated by both parties when the contract was made (*Krell v Henry* [1903]; *Herne Bay Steamboat Co v Hutton* [1903]; *Davis Contractors v Fareham UDC* [1956]), and the frustrating event was not due to the fault of either party (*Maritime National Fish v Ocean Transporters* [1935]). Under the Law Reform (Frustrated Contracts) Act 1943, the consequences of frustration are:

- (1) The contract is immediately discharged and the parties released from any further obligations.
- (2) Money paid can be recovered.
- (3) Money due but not in fact paid ceases to be payable.
- (4) Expenses incurred can be recovered up to the limit of any sums paid/due to be paid.
- (5) A party that has acquired a valuable benefit can be required to pay a reasonable sum for it.

### What is "breach"?

A breach of contract occurs where one party fails to perform some or all of their obligations (*actual breach*), or gives a clear indication of an intention to do so (*anticipatory breach*—which gives rise to an immediate right to sue—*Hochster v De la Tour* [1853]). A breach of condition (*repudiatory breach*) gives the injured party a right to damages (see chapter 25) and the option to repudiate (regard as discharged) the contract. Breach of warranty (*mere breach*) gives rise to a right to damages only, and does *not* discharge the contract. Breach of an innominate term will be regarded as breach of condition where it substantially deprives the injured party of their anticipated contractual benefits, and as a breach of warranty where it has only minor consequences (*The Hansa Nord* [1976]).