

ASPEN PARALEGAL SERIES

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Basic Contract Law for Paralegals
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Chapter 10

DISCHARGE OF OBLIGATIONS

Learning Objectives

After studying this chapter you will be able to:

- ▶ List the methods whereby a contractual obligation may be discharged
- ▶ Define “voluntary disablement”
- ▶ Discuss the concept of “anticipatory breach”
- ▶ Understand what is meant by tendering performance
- ▶ Differentiate between a material and a minor breach
- ▶ Define “mutual rescission”
- ▶ Explain the concept of impossibility of performance
- ▶ Exemplify frustration of purpose
- ▶ Understand which contracts are divisible contracts
- ▶ Discuss the effect of discharge on the parties to the agreement

Methods of Discharge

1. Excuse of conditions
2. Performance
3. Breach of contract
4. Agreement of the parties
5. Impossibility of performance
6. Supervening illegality
7. Death or destruction of the subject matter or parties
8. Frustration of purpose

Conditions

- If the condition fails to occur, the performance does not come into play; conversely, a condition subsequent can terminate the obligation to perform.
- Situations in which the condition itself discharges the contractual obligation:
 - Performance prevented
 - Voluntary disablement
 - Insolvency
 - Anticipatory breach

Performance

- The simplest method of being excused from contractual obligations is to perform these obligations

Breach of Contract

- To breach a contract means to break one's obligation made under the agreement.
- If a party to a contract breaches, the other side, the innocent party, has an immediate cause of action.

Agreement of the Parties

- The parties to a contract are always free to rearrange their contractual agreements by mutual assent.
- As long as both parties agree to a change in the performances, the parties may be discharged from their original obligation without any negative consequences.

Six Types of New Agreements

- Mutual Rescission
- Release
- Accord and satisfaction
- Substituted agreement
- Novation
- Modification

Impossibility of Performance

- Under certain circumstances a contracting party's performance may become impossible to fulfill through no fault of his own.
- The law feels it would be unfair and unjust to hold the person responsible to a contractual obligation that could not possibly be met.

Supervening Illegality

- A supervening illegality will discharge contractual obligations because, since the inception of the contractual arrangement, the purpose for which the contract was created has become illegal.
- The law will not permit persons to engage in illegal activities, and therefore the parties are deemed discharged from their contractual duties.

Death of the Parties or Destruction of the Subject Matter

- If the subject matter of the contract is destroyed, obviously the contract cannot be fulfilled. This is true provided that the object in question is unique and is not destroyed by an act of one of the parties
- Death is self-evident; a person cannot be expected to perform from the grave.

Frustration of Purpose

- Probably the least common method of discharge, but the most interesting, is frustration of purpose.
- Frustration of purpose occurs when the contract, on its face, is both valid and apparently capable of performance, but the underlying reason for the agreement no longer exists.
- This reason is not specified in the contract itself but is discernible by the circumstances surrounding the contract's creation.