

Termination and Breach

Discharge of Contracts: Cases in Which a Contract is Discharged.

-Rights and Obligations End.

Discharge by Performance: Where BOTH Sides Fulfil Their Obligation Exactly.

-Cutter v Powell (1795): Agreed to Sail For Duration of the Voyage, Captain Refused to Pay Wages For Wife After Shipworker Died.

-NOT Able to Claim Money as Complete Performance NOT Upheld; Entire Obligation.

Division of Contracts

-Divisible: NOT the Default.

-Hall & Barker (1878): Shoemaker CANNOT Demand You Pay Half Price For Pair of Shoes.

-Entire: REQUIRE Exact Performance, the Default.

-Equity → Reduce Harshness of Common Law → Undue Influence and Unconscionable Conduct (Partial and Substantial Performance).

Substantial Performance: if Exact Performance is NOT a Condition of Contract.

-Depends on the Nature of Contract, Defects and Cost of Rectification.

-Offset INCOMPLETE Work Against Contract Price.

-Hoenig v Isaacs (1952): Agreement to Redecorate Property For Price → Only Some of Money Paid and Remainder of Work Defective and Was a Cost to Fix.

-Substantial Performance Claimed and Contractor Paid Additional Money Less Costs.

-Sumpter v Hedges (1898): Agreement to Build Two Houses For a Fixed Sum, Stopped Halfway When Ran Out of Money → Other Party Used Materials to Complete Project.

-Unable to Claim Part Payment as Contract Could NOT Be Divided, Until Completion.

Partial Performance: Total and Exact Performance NOT Read if Contract is Divisible → Customary Practices.

-Claim to **'Quantum Meruit:'** 'What One Has Earned' → Reasonable Value of Services (Under Partial Performance).

-if the Party Willing to Perform Contractual Obligations is PREVENTED From By the Other Party to the Contract.

-if the Party Has SUBSTANTIALLY But NOT Completely Performed Their Contract → Partial Recovery Under Contract.

Time For Performance

-Warranty: Gives Party Right to Damages and NOT Repudiation (Rejection).

-Condition: Contract CAN Be Repudiated.

Termination: Lapse of Time → Unenforceable.

-Limitation of Actions Act 1958 (Vic): CANNOT Sue For Breach of Contract MORE Than Six Years After Breach (Exceptions Involving Minors and Non-Discovery of Breach).

Discharge by Agreement:

-Under TERM of Contract.

-Condition Precedent: Something MUST Exist Before Contract Takes Effect.

-Condition Subsequent: Something That TERMINATES the Contractual Duty.

Termination by Breach: Actual Breach → Choice to Terminate and Claim Damages.

(1) Failure to Perform

(2) Refusal to Perform: Including Statement of NO Intention to Perform.

(3) Making Performance Impossible.

-Anticipatory Breach: Party Expressly/Impliedly Indicates an Intention NOT to Complete the Contract.

Discharge by Frustration: Unforeseen Events Making it Impossible to Carry Out Contract.

-Future Obligations Unable to Be Fulfilled Due to the Frustrating Event.

-Contracts For Personal Service → Illness, Death Making Performance Impossible.

-Government Intervention PREVENTING Performance.

-Paradine v Jane (1647): Leased Property → Dispossessed During War → Stopped Paying Rent.

-Contract Should Have Included a Provision → Liable to Pay Rent.

-Inflexible and Harsh View LEADING to the Doctrine of Frustration.

(1) Radically Alter Contractual Position of at Least One Party.

(2) Not Within the Parties' Contemplation at Time of Contract.

(3) Not Caused by Either Party to the Contract.

(4) Would Be Unjust to Hold at Least One Party to Original Contract.

-Taylor v Caldwell: Hired Building to Host Event → Building Burnt Down.

-Destruction of Building NOT Fault of Either Party and Loss Frustrated Performance of Contract.

-Codelfa Construction Pty Ltd v State Rail Authority of NSW: Injunction Prevented Work Being Done at Night on Railway Tunnels.

-Contractor Had Quoted Worker Ability to Work a Certain Amount of Shifts → Contract Frustrated.

-Esposito v Bowden: Law Changed to Make Performance Illegal.