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## Topic 1: Principles of Contractual Liability

### 1.1 Some basic concepts

- Central to a contract is the idea of **enforcement** – contracts are **‘binding’**, and thus enforceable.
  - Contracts are **enforceable** in a way that **non-contractual** voluntary or consensual relationships are usually not.
- **‘Enforcement’** of contractual promises – effectuated through **remedies**.

- The **goal** of a remedy for a **breach of contract** is to give the victim of the breach the **benefit** that they reasonably expected to receive through due performance of the contract.
- Courts **may** compel performance of the broken promise through **coercive order** for **specific performance** or through an **injunction**.
  - Such remedies are **discretionary**, and where an **award of damages** is deemed adequate, the **remedy of damages will prevail**.
- **Damages – most common** remedy available for breach of contract.
  - They are the **money equivalent** of performance
  - Damages are **usually unliquidated** – although they are available ‘**as of right**’, they must be **proved** in proceedings using the rules established for that purpose.
- **Alternative** form of money claim following a breach – for a **liquidated sum**.
  - Called an **action in debt**
  - E.g. the innocent party has fully performed their end of the bargain and is merely suing the breaching party for the **price** that he had agreed to pay under the contract.
- Claim for **liquidated damages** – sum by way of compensation that parties had already agreed would be paid upon the event of breach at the time of contract formation.
- **Note:** debt actions, where available are preferred as they are **not subject** to technical restrictions – such as rules about remoteness and mitigation – like actions for damages.
  - > “The important difference between a claim in debt and a claim for damages for breach of contract is that a claim in debt is a claim to enforce a primary obligation. Hence ‘[t]he question is whether the sum has been ‘earned’, not whether the contract has been breached’.” (*Advanced National Services Pty Ltd v Daintree Contractors Pty Ltd*)

## 1.2 The Discharge of Contractual Obligations

- Validly formed contracts may be ‘**discharged**’ in many ways:
  - (i) By **mutual performance** of the contract itself (automatic discharge; no residual liability)
  - (ii) By **consent** or ‘at will (what is created by consent can be undone in the same way; formality or consideration is usually required)
  - (iii) For **non-fulfilment of a contingent condition of performance** (depends on ‘election’, unless there is unequivocal agreement that discharge will occur automatically);
  - (iv) By termination for **breach of contract or repudiation** (depends on the unilateral election of the innocent party; right to sue for damages survives termination);
  - (v) By **operation of law** as a result of a **frustrating event** (automatic; no residual liability if nothing has unconditionally accrued before termination).

### 1.2.1 Discharge by Performance

- **Definition: Performance** refers to the acts that a **party must do** or cause to be done to **fulfil** (perform or discharge) the **primary obligations** created by the contract.