

Chapter 7

Excuse and Discharge

I. Excuse and Discharge of Contractual Obligations

- A. Excuse or Discharge – Party to perform can be legally excused to do so
 1. Mutual Rescission
 2. Release
 3. Novation
 4. Accord and Satisfaction
 5. Checks marked “payment in full”
 6. Contract Modifications
 7. Bankruptcy
 8. Statutes of limitations
 9. Doctrine of Impossibility
 10. Impracticability
 11. Frustration of Purpose
 12. Performance of Contractual Obligations (MOST COMMON)

B. Mutual Rescission

1. With a bilateral contract and no performance, parties may mutually agree to rescind the contract.
2. Rescission – cancellation of the contract by mutual agreement.
3. Only w/ a Bilateral contract
 - Unilateral contract does not have performance → cannot have rescission
4. Executory Contract – a contract where no performance has taken place
 - Rescission is not effective unless the contract is fully executory
5. Executed Contract – a contract where all performance has taken place (Think also the signing of the contract)

C. Release

1. A party to the contract voluntarily gives up some or all of his contractual rights
2. CL requires additional consideration
3. UCC §1-107 – No additional consideration is necessary, so long as written and signed by both parties.

A form of compromise

Ex. 7.1

Releasor – Party giving up rights

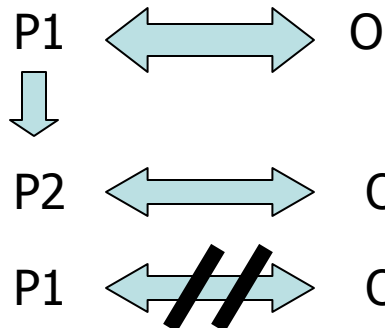
Releasee – party being discharged from liability for non-performance

Mutual Release – Each party discharges other's remaining duties

* Look at release language from contract handout.

D. Novation

1. A substituted contract that discharges a duty by adding a party who was neither the obligor or the obligee of that duty
 - → Creates a new contract between remaining party and the substitute.
2. Requires mutual agreement of all three parties
3. No recourse against original contract maker



E. Accord and Satisfaction

1. Discharge of performance because parties set up substituted performance
2. “Substituted Contract”
3. Confined to remedies under substituted contract
 - Duty under original contract is discharged
 - Debtor / Creditor

Accord – Agreement that different performance will be substituted for the original performance

Satisfaction – The performance of the accord

Discharge of duty under original agreement is upon satisfaction

Discharge of duty once the new agreement is made

F. Checks: “Payment in full”

1. Only for unliquidated debt (disputed or uncertain amount)
2. Payment of a debt with a check marked “payment in full” → Accord
 - Satisfaction is the deposit of the check
3. Liquidated Debt (Certain or undisputed amount of money owed)
 - Some JD keep original debt still owed
 - §1-207 A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as “without prejudice”, “under protest”, or the like are sufficient. (p. 140)
 - Colorado – Anderson v. Rosebrook, 737 P.2d 417 (Colo. 1987) - Common-law doctrine of accord and satisfaction as applied to “full payment” or “conditioned” checks is not altered by Uniform Commercial Code provision involving performance under reservation of right;

G. Modification

1. Mutual agreement to change terms of contract – some or all of the original duties are discharged
2. Additional consideration is typically required unless modification is in writing

II. Discharge by Operation of Law

A. Bankruptcy

1. Debts under the contract are discharged
2. Private contract debts are not enforceable against someone after filing bankruptcy

B. Statutes of Limitation

1. Law that places a time limit on the right to file a lawsuit
2. Cannot sue once time in the statute has run

C. Discharge by Full Performance

1. Legal effect of performance is discharge of any further obligation
2. MOST COMMON FORM OF DISCHARGE

III. Impossibility of Performance

A. Impossibility

- Where certain Acts under the contract have become objectively impossible → the contractual obligation is discharged

Compare w/

B. Impracticability

- Not impossible to perform, but can be done only with excessive or unreasonable efforts or costs
- **Case: Taylor v. Caldwell**
 - Facts: Rental hall burned down
 - Performance under the contract became impossible (w/o fault to either party)
 - Parties' duty of performance was discharged

C. Will likely occur when

1. Destruction of subject matter
2. Supervening illegality or govt. acts
3. Failure of specific and exclusive source of supply
4. Destruction of repair or remodel project
5. Destruction of goods BEFORE the risk of loss (ROL) has passed to buyer
 - Shipped goods: ROL passes when delivered to carrier
 - Shipped to particular destination: ROL passes at destination
 - No Shipment and Merchant Seller: When buyer receives goods
 - No Shipment and non-merchant: When Seller tenders delivery
 - UCC, F.O.B. "Place": Seller assumes responsibility until goods reach "Place"
 - UCC F.A.S. "Vessel": Seller must deliver goods alongside "Vessel"
6. Death or severe illness of performing party

IV. Partial Impossibility or Impracticability

A. Performance still due to extent possible unless useless or close to it

1. Can suspend rather than discharge
2. Courts will discharge only if hardship caused by delay is substantial

3. Audrey v. Republic Productions p. 148

Facts: Gene Autry the "Singing Cowboy"

Contract w/ Republic

Got drafted

Autry – Obligations were discharged

Studio – Only suspended

Court: So much had changed since being drafted, would be hardship if asked to continue → Discharged his responsibilities

V. Frustration of Purpose

- Changed circumstances demonstrate that contract cannot be performed for its essential purpose
 - Krell v. Henry
 - Facts: Henry wanted room to watch coronation of Edward VII
 - Krell advertised room with great view
 - King became ill, coronation did not take place
 1. What is the purpose of the contract?
 2. The Purpose was not fulfilled
 3. Parties had not foreseen the event