Chapter 10: Contract Performance, Breach, and Remedies
Introduction

• How does a party know when his or her _______ under the contract are at an end?
• A party may be __________ from a valid contract by:
  – A condition __________ or ______________.
  – ____________________ or ______________ by the other party.
  – _________________ of the parties.
  – Operation of __________.
1: Performance and Discharge

EXHIBIT 10-1  •  Contract Discharge

BY AGREEMENT
- Mutual rescission
- Novation
- Accord and satisfaction

BY PERFORMANCE
- Complete
- Substantial

BY FAILURE OF A CONDITION
If performance is conditional, duty to perform does not become absolute until that condition occurs.

BY OPERATION OF LAW
- Material alteration
- Statute of limitations
- Bankruptcy
- Impossibility or impracticability of performance

BY BREACH
- Material breach
- Anticipatory repudiation
Performance and Discharge

• **Conditions**: Possible future event, the occurrence or nonoccurrence of which will trigger the performance of a legal obligation or terminate an existing obligation under a contract.
Conditions

• Types of Conditions:
  – Conditions ____________________.
  – Conditions ____________________.
  – Conditions Concurrent.
  – Conditions Concurrent.
    • ____________________.
    • ____________________.
    • ____________________.
    • ____________________.
Discharge by Performance

• The contract comes to an end when both parties fulfill their respective duties by performing the acts they have promised.
Types of Performance

• Complete Performance.

• Substantial Performance (minor breach).
  – Case 10.1 Jacobs & Young v. Kent (1921).

• Performance to the Satisfaction of Another.
Breach of Contract

- Breach of Contract - the nonperformance of a contractual duty.
- Material breach occurs when there has been a failure of consideration.
  - Discharges the non-breaching party from the contract.
Breach of Contract

• In a **minor breach**:  
  – Duty to perform is not excused and  
  – Non-breaching party must resume performance of the contractual obligations undertaken.  
  – Non-breaching party may sue for damages.

• **Time For Performance**: if none, stated, a ‘reasonable’ time is implied.
Anticipatory Repudiation

• Before performance is due, one party refuses to carry out the responsibilities of the contract.

• Treated as a present, material breach, and non-breaching party may immediately bring suit for damages, and look for a new contract.
Discharge by Agreement

• Discharge by Rescission.
• Discharge by Novation:
  – Previous obligation.
  – All parties agree to new contract.
  – Extinguishment of old obligations.
  – New Contract Formed.
• Discharge by Substituted Agreement.
• Accord and Satisfaction.
Discharge by Operation of Law

• Alteration of The Contract.
• Statutes of Limitations.
• Bankruptcy.
• Impossibility or Impracticability.
Impossibility or Impracticability of Performance

• Objective Impossibility of Performance.
  – Death or incapacitation prior to performance;
  – Destruction of the Subject Matter; or
  – Illegality in performance.

• Temporary Impossibility.
Impossibility or Impracticability of Performance

• Commercial Impracticability.
  – Key: Circumstances not foreseeable.

• Frustration of Purpose.
2: Breach of Contract and Remedies

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- ________________ Based on Quasi Contract.

EXHIBIT 10-2  Remedies for Breach of Contract
Damages

• Compensatory Damages—direct losses.
  – Construction Contracts: varies.

• Consequential (Special) Damages—foreseeable losses.
  – Breaching party is aware or should be aware, cause the injury party additional loss.
    – Case 10.3 Hadley v. Baxendale (1854).
Damages

• Punitive Damages—punish or deter future conduct.
  – Generally not available for mere breach of contract.
  – Usually tort (e.g., fraud) is also involved.

• Nominal Damages—no financial loss.
  – Defendant is liable but only a technical injury.
Mitigation of Damages

• When breach of contract occurs, the innocent injured party is held to a duty to reduce the damages that he or she suffered.
• Duty owed depends on the nature of the contract.
Liquidated Damages v. Penalty

- **Liquidated Damages.**
  - A contract provides a __________ ____________to be paid as _____________ in the event of future default or _____________ of contract.

- **Penalty.**
  - Specify a __________ __________to be paid in the event of a default or breach of contract and are designed to ________________ the breaching party.
Rescission and Restitution

• Rescission.
  – A remedy whereby a contract is canceled and the parties are restored to the original positions that they occupied prior to the transactions.

• Restitution.
  – Both parties must return goods, property, or money previously conveyed.

• **Note**: Rescission does not always call for restitution. Restitution is called for in some cases not involving rescission.
Specific Performance

• Equitable remedy calling for the performance of the act promised in the contract in following types of contracts:
  – Land. *Case 10.4 Stainbrook v. Low (2006).*
  – Scarce; or
  – Not available remedy in contracts for personal services.
Reformation

• Equitable remedy allowing a contract to be reformed, or rewritten to reflect the parties true intentions.

• Available when an agreement is imperfectly expressed in writing, or in oral covenants and covenants not to compete.
### Concept Summary

#### Equitable Remedies

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<th>Remedy</th>
<th>Description</th>
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| **Rescission and Restitution**   | 1. *Rescission*—A remedy whereby a contract is canceled and the parties are restored to the original positions that they occupied prior to the transaction.  
2. *Restitution*—When a contract is rescinded, both parties must make restitution to each other by returning the goods, property, or funds previously conveyed. |
| **Specific Performance**         | An equitable remedy calling for the performance of the act promised in the contract. Only available when monetary damages would be inadequate—such as in contracts for the sale of land or unique goods—and never available in personal-service contracts. |
| **Reformation**                  | An equitable remedy allowing a contract to be “reformed,” or rewritten, to reflect the parties’ true intentions. Available when an agreement is imperfectly expressed in writing, such as when a mutual mistake has occurred. |
Election of Remedies

• Doctrine created to prevent double recovery.
• Nonbreaching party must choose which remedy to pursue.
• UCC rejects election of remedies.
  – Cumulative in nature and include all the available remedies for breach of contract.
Waiver of Breach

• A pattern of conduct that waives a number of successive breaches will operate as a continued waiver.

• Nonbreaching party can still recover damages, but contract is not terminated.

• Nonbreaching party should give notice to the breaching party that full performance will be required in the future.
Contract Provisions
Limiting Remedies

• Exculpatory clauses.
  – Provisions stating that no damages can be recovered.

• Limitation of liability clauses.
  – Provisions that affect the availability of certain remedies.