

LAW122 DISCHARGE & BREACH

TEXTBOOK: McInnes, Kerr, & Vanduzer. (2018). Discharge and Breach in *Managing the Law* (5th ed., pp. 266-288). Canada: Pearson.

Method of Termination	Specific Method	Definition	General rules
Performance	Tender of Payment	Contract that requires payment of money.	Nay include debit/credit cards, cheques and PayPal.
	Tender of Performance	When parties fulfilled the obligations contained in the contract.	Usually time is not of the essence; <u>substantial performance</u> usually satisfies a contract.
Agreement	Option to Terminate	Contractual provision allows one or both parties to terminate the agreement.	Frequently subject to restrictions ex. reasonable notice.
	Conditional Contracts	<ol style="list-style-type: none"> 1. Condition subsequent – agreement will be terminated if certain event occurs. 2. True Condition precedent – agreement will come into existence only if certain event occurs 3. Condition precedent - contract is forced immediately, however it does not have to be performed unless certain event occurs 	<ol style="list-style-type: none"> 1. Condition subsequent – contract is immediately created, and condition terminates the existing contract 2. True condition precedent – contract is created only if condition is satisfied 3. Condition precedent – Contract is created immediately and if condition occurs, there is a suspension of primary obligation
	Rescission	Occurs when the parties agree to bring their contract to an end (given the party has not fully performed its obligations).	Consideration may be provided by either conferring a benefit on someone else or suffering a detriment to oneself.
	Accord and Satisfaction	Occurs when a party gives up the right to demand contractual performance in exchange for some new benefit.	Must have a new and mutual consideration! “Contract varied.”
	Novation	Process in which contract is replaced with another (contract varied or replaced).	2 Varieties – same parties and different obligations or different parties and same obligations.
	Release	Agreement under seal to terminate a contract.	Since under seal, no consideration needed.
	Waiver	Occurs when one party abandons a right to insist on contractual performance.	No consideration; contract varied.
Operation of the Law	Frustration	Impossible to perform or circumstances change so much it would be different from original expectations.	Relief from obligation to perform any remaining requirements.
	Limitation Period	There is a limitation period to sue for a breach of contract.	Usually 2 years.
	Bankruptcy	Debtor is usually discharged from contractual obligations if bankrupt.	Several exceptions and usually may not be caused by misconduct.
Breach	<p>Breach can be a breach of: 1) condition 2) warranty or 3) intermediate</p> <p>Breach can occur through 1) defective performance, 2) deviation 3) anticipatory breach and 4) self-induced impossibility</p>	<ol style="list-style-type: none"> 1. Condition – substantially deprives the party of expected benefit 2. Warranty – does <i>not</i> substantially deprive the party of expected benefit 3. Intermediate – upon circumstances may be considered as a condition or warranty 	<p>Generally, for a breach of:</p> <ol style="list-style-type: none"> 1) Condition – contract is discharged, and damages are claimed 2) Warranty – continue with the contract and claim damages 3) Intermediate - Depends upon circumstances
Rescission	Cancellation of a contract	Cancellation by parties or the court with the aim of restoring the parties to the greatest extent possible to their general positions.	General remedy for parties that were improperly induced into the contract or when none of the parties performed their obligations.