

Discharge of Contract

Performance	The strict rule is the performance must be complete and exact. This rule as however led to unfairness as in Cutter (window could not recover any of her husband's wages when he died at sea) Re Moore – tins delivered in different amounts to those stated in the contract.		Cutter v Powell (1795) Re Moore and Co. Ltd and Landauer and Co.'s Arbitration (1921)
However, the courts have tempered the harshness of the rule	Divisible Contracts	Where the contract can be seen in separate parts. I.e. X is contracted by Y to paint 10 for paintings for £3,000 and it was stated this equates to £300 per painting. He becomes ill after painting 5 and cannot continue. As the contract is divisible. X can recover £1500 for the paintings but Y may be able to recover damages for breach of contract.	Ritchie v Atkinson (1808)
	Substantial Performance	Is substantial performance applies there must be a payment of an amount that relates to what has been done. This does not apply to contracts that cannot be broken down. It generally applies to little contracts where little things are not done and the monetary amount to correct them is small in relation to the whole contract. What is substantial is decided by the circumstances of each case. The courts will use their discretion to reach a just and fair decision.	Dakin and Co. v Lee (1916) Hoenig v Isaacs (1952) Bolton v Mahadeva (1972) Young v Thames Properties Ltd (1999)
	Prevention of Performance	If one party prevents the other from performing his obligations under the contract, then the innocent party can claim to be paid on a quantum meruit (what its worth basis)	Planche v Colburn (1831)
	Acceptance of Part Performance	If one party agrees that the other party need not complete the contract then payment can be paid on a quantum meruit basis. However, the consent must be in the form of a specific acknowledgement that the defaulting party is entitled to be paid for what they have done and the agreement was made without undue pressure. If the innocent party has no other option then to take benefit of the partly done work done, this is not considered consent to part performance.	Sumpter v Hedges (1898)
The effect of a term as to time for performance of a contract	<p>Issues arise when considering how exactly a term to time must be performed. If it is a condition the injured party can repudiate the contract for breach of condition.</p> <p style="text-align: center;">The court will regard time as a condition if:</p> <ul style="list-style-type: none"> • The parties have expressly stated in the contract that time is of the essence • In the circumstances time for completion of the contract is critical, or • One party has failed to complete on time and the other has insisted on a new date for completion of the contract (making time of the essence) <p>If none of the above apply the then time is a warranty and V can seek damages rather than repudiation. Most contracts for sale of land/ property, if time being of the essence is waived it is important that it is reinstated if it is to be relied on.</p>		Charles Rickards Ltd v Oppenheim (1950) Union Eagle Ltd v Golden Achievement Ltd (1997) Hakimzay Ltd v Swailes (2015)
Time and the Consumer Rights Act	<p>S.52 – If the contract does not state a time for completion then s.52 states that it must be done in a reasonable time.</p> <p>S.54 – if not done in a reasonable time the consumer has the right to end the contract because of the breach</p> <p>S.56 – Gives a right to an appropriate price reduction linked to the time of the delay</p>		
Discharge by Breach	Actual Breach	<p>Where a party fails to perform his obligation under the contract. Terminating the contract depends on the type of term that was breached. Only a breach of condition will give rise to repudiation.</p> <p>Breach of condition can be a failure to perform (e.g. not deliver goods) or it could be part performance</p> <p>The three sets of circumstances giving rise to a breach of contract are</p> <ul style="list-style-type: none"> • Renunciation by a party of his or her obligations under a contract – e.g. not paying a bill on time. • Impossibility created by his/her own act – e.g. a hairdresser closing business during a time when they had appointments • Total or partial failure of performance, e.g. delivering defective goods <p>A Repudiatory Breach can only occur when there is;</p> <p>A breach of condition</p> <p>A refusal to perform the contract</p> <p>A sufficiently serious breach of an innominate term, so the breach is considered a breach of condition.</p> <p>If a repudiatory breach is established the party who is not in breach may terminate the contract and claim damages or continue and claim damages.</p> <p>A contract can contain a provision where the contract can be terminated in the event of a breach of any term in the contract.</p>	Stoczniak Gdynia SA v Gearbulk Holdings (2009)
	Anticipatory Breach	<p>Where one party to a contract gives advance notice to the other that they will not be performing the contract. The innocent party can</p> <ol style="list-style-type: none"> a) Sue at the time for breach of condition b) Wait until the contract should have been performed and sue if performance does not take place <p>The victim can also repudiate the contract under an anticipatory breach. Remember for a breach of warranty the victim can only claim damages.</p>	Hochster v de la Tour (1853) Geden Operations Ltd v Drybulk Handy Holdings Inc (Bulk Uruguay) (2014)
Frustration	Historic position	A party to contract was bound to perform his/her obligations whatever happened. Even is this seemed to be unfair. E.g. paying rent for a house you can no longer live in as a battle is taking place on the land.	
	Development of Doctrine of frustration	<p>In the 19th century the doctrine of frustration was developed and means that if a party is prevented from performing a promise because of an unforeseeable, intervening event he would not be liable for the breach.</p> <p>Some contracts contain a force majeure clause – it excludes parties for liability for delay or non-performance if there are extraordinary events. If the contract does not contain the clause it may be possible to rely on frustration. However, this depends on the circumstances of the case. The frustrating event must be an unanticipated event which is not the fault of either party.</p>	Taylor v Caldwell (1963) Davis Contractors Ltd v Fareham UDC (1956) National Carriers Ltd v Panalpina (Northern) Ltd (1980)

	Impossibility of Performance	Subject matter is destroyed or becomes unattainable through no fault of either party. This includes a party being unable to perform the contract because of an unexpected illness.	Taylor v Caldwell (1963) Jackson v Union Marine Insurance Co. Ltd (1874) Robinson v Davidson (1871) Condor v The Baron Knights (1966)
	The Contract becomes illegal to perform	E.g. a change in law makes the contract illegal to perform – e.g. because of a war	Denny, Mott and Dickinson Ltd v James B Fraser and Co. Ltd (1944) Re Shipton Anderson and Co. and Harrison Bros and Co (1915) Krell v Henry (1903) Herne Bay Steamboat Co. v Hutton (1903)
	Frustration cannot apply when	Self-induced frustration If either party has created the event/ situation which prevents the contract from being performed then frustration will not apply.	Maritime National Fish Ltd v Ocean Trawlers Ltd (1935) Gamerco SA v ICM Fair Warning (1995) J Lauritzen AS v Wijsmuller BV (The Super Servant Two) 1990
		The contract becomes less profitable	Davis Contractors Ltd v Fareham UDC (1956) Tsakiroglou and Co.Ltd v Noblee Thorl GMBH (1962)
		The event is a foreseeable risk or the event was mentioned in the contract	Amalgamated Investment and Property Co. Ltd v John Walker and Sons Ltd (1977) Armchair Answercall v People in Mind (2016)
Remedies for Frustration	Common Law	The frustrating event automatically terminates the contract. Obligations already existing must be completed but future obligations are terminated.	Fibrosa Case (1943) which led to the Law Reform (Frustrated Contracts) Act 1943
	Law Reform (Frustrated Contracts) Act 1943	This does not say when frustrated exists but states what happens when frustration is found to exist S.1(2) <ul style="list-style-type: none"> • Money paid before the frustrating event is recoverable – i.e. paying in advance for goods and then having the order cancelled because the goods are prohibited under new law • Money paid before the frustrating event ceases to be payable, whether or not there has been a total failure of consideration. There is no longer an obligation to pay the price for goods and services under a frustrated contract • If the party to who sums are paid or are payable as above incurred expenses before discharge of contract resulting from the frustrating event, the court may award him or her such expenses. The sum is limited to a maximum of the money paid or payable before the frustrating event S.1(3) <ul style="list-style-type: none"> • If one party has gained a valuable benefit from the contract before the frustrating event the court may order him or her to pay a sum in respect of it. • That sum is what the court considers just, having regard to all circumstances of the case S.1(4) provides that when estimating the amount of any expenses incurred by any party to the contract, the court may award such sums as appear to be reasonable in respect of: <ul style="list-style-type: none"> • Overhead expenses • Any work or services performed personally by a party to the contract 	Gamerco SA v ICM Fair Warning (1995) BP Exploration v Hunt (No.2) (1979)