

## CHAPTER 8 DISCHARGE OF CONTRACT AND CONTRACTUAL REMEDIES

After studying this chapter students should be able to:

### EXPLAIN HOW A CONTRACT CAN BE DISCHARGED THROUGH AGREEMENT BETWEEN THE PARTIES

- The parties to a contract may agree to bring a contract to an end before all the obligations under it have been completed.
- The agreement may be bilateral, where both parties have not completed all their obligations and have agreed to release each other.
- A unilateral agreement, where one party has performed all their obligations but the other has not, will only be binding if there is consideration or the agreement is by deed.

### OUTLINE THE ELEMENTS NECESSARY FOR A CONTRACT TO BE DISCHARGED BY PERFORMANCE

- The general rule is that performance must exactly match what was agreed by the parties.
- There are some exceptions to the rule: substantial performance, divisible contracts, partial performance accepted by the other party, and prevention of complete performance.

### DESCRIBE THE MEANING AND EFFECT OF FRUSTRATION OF A CONTRACT

- A contract will be frustrated if an event occurs, through no fault of either of the parties that makes performance of the contract impossible, illegal, or radically different from what had been agreed.
- There must be no commercial purpose left in the contract; the parties must not have actually foreseen or should have foreseen the event.
- There is no frustration if the parties have provided for the frustrating event in the contract through a *force majeure* clause.

### EXPLAIN THE MEANING OF A BREACH OF CONTRACT AND UNDERSTAND THE CONSEQUENCES OF BREACH OF CONTRACT

- A contract is breached if one of the parties breaks one or more of the terms of the contract, or indicates in advance that he does not intend to perform the contract.
- Where the term broken is a condition, the innocent party can claim damages and elect to repudiate the contract.
- Where the term broken is a warranty, the innocent party can claim damages but must continue with the contract.
- An anticipatory breach arises where one party, prior to the actual date of performance, expressly or impliedly informs the other party that they do not intend to perform their contractual obligations.
- When a breach of contract occurs the other party has a duty to mitigate his loss.

### DEMONSTRATE KNOWLEDGE OF THE REMEDIES FOR BREACH OF CONTRACT

- Damages may be liquidated or unliquidated.
- The aim of damages is to restore the party not in breach to the position he would have been in if the breach had not occurred.

- Assessment of damages is made using the rules relating to remoteness, how far the liability of the defendant extends, and measure, how much (measure) he must pay.
- An action for the agreed contract price may be brought in certain circumstances.
- Specific performance is an equitable court order obliging the party in breach of contract to perform his obligation.
- An injunction is an equitable court order directing a person not to take an action which breaks their contract.
- Claims may be paid on a *quantum meruit* basis.