

Revision Summary Chapter 11

Discharge of the contract

- Where the parties precisely and completely perform their contractual obligations, the contract will be discharged by performance—but a discharge by performance may still occur where deviations in performance are ‘microscopic’ (the *de minimis* rule).
- A contract may be brought to an end by the mutual consent of the parties.
- Breach of contract occurs where a party to a contract, without lawful excuse, fails to perform its contractual obligations or performs them in a defective manner.
- If the breach is repudiatory, the non-breaching party is entitled to terminate the contract. Renunciation, incapacitation, and anticipatory breach are all repudiatory breaches.
- Breach of a condition allows the non-breaching party to terminate the contract and claim damages. Breach of warranty allows the recovery of damages only. Breach of an innominate term will provide a right to terminate where the breach deprives the non-breaching party of substantially the whole benefit of the contract.
- Instead of terminating the contract, the non-breaching party may affirm the breach and continue with the contract.
- Frustration provides the parties with a lawful excuse for breaching their contractual obligations where an event occurred that was outside of their control.
- Frustrating events include performance of the contract becoming physically impossible, where a common and fundamental assumption of the parties is destroyed, where performance becomes illegal, where something essential to performance becomes unavailable, and where performance becomes radically different from that for which the parties contracted.
- Frustration causes the contract to be discharged automatically. Any money payable ceases to be payable. Any money paid can be recovered, although this may be offset against any expenses incurred by the other party. Any party that gained some form or valuable benefit may have to pay a sum for such benefit.