

Business Law

Study Guide 7

Chapter 18

1. What are three ways a contract may be discharged? Please describe each.
 - A contract can be discharged by full performance, or each party doing as the promised and finishing with the contract as expected.
 - A contract can also be discharged by agreement, if both parties agree to discharge the contract.
 - A court may discharge a party who has not performed, (non-performance) through breach or impossibility, meaning something went wrong and it is impossible for the person to go through with the contract or they breached the contract and the other person may be due to file a lawsuit.

2. What are the three ways that courts divide conditional clauses? Describe each condition? What do all conditional clauses have in common?
 - Condition precedent is when an event must occur before a duty arises.
 - Condition subsequent occurs after a particular duty arises. If the condition does not occur, the duty is discharged. Note that, with a condition subsequent, it is the defendant who must prove that the condition occurred, relieving him of any obligation.
 - Concurrent condition is when both parties have simultaneous duties.
 - What they have in common is that if the condition does not occur, one party will probably be discharged without having to perform his obligations under a contract.

3. What is the difference between strict performance and substantial performance?
 - Strict Performance requires one party to perform its obligations precisely, with no deviation from the contract terms. Strict performance is usually not required unless the contract expressly demands it and such demands are reasonable.
 - Substantial performance is when one party fills enough of its contract obligation to warrant payment usually minus defects.
 - The difference in strict and substantial is with strict there is no payment and with substantial there is payment.

4. What is a "time is of the essence" clause? What effect does it have on a contract?
 - A "time is of the essence" clause makes contract dates strictly enforceable.
 - This clause makes it so that there can be no delay on a contract or the party forfeits everything.
 - If there is no "time is of the essence clause" then there is usually room for delay.

5. What is the difference between a material breach and an anticipatory breach?
 - A material breach is one that substantially harms the innocent party and for which it would be hard to compensate without discharging the contract.

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