

## DISCHARGE BY AGREEMENT

*This is where the parties agree to terminate a contract, so that one or both of the parties are released from their obligations.*

**Bilateral discharge:** Parties get a different benefit from a new agreement.

**Unilateral discharge:** Benefit is only to be gained by one party.

## DISCHARGE BY BREACH

*This is where a party fails to perform an obligation, performs an obligation defectively or indicates in advance that they will not be performing an agreed obligation under a contract.*

**Actual breach:** Where a party to a contract does not perform their obligations at all.

- Platform Funding Ltd v Bank of Scotland plc (2008)
- Pilbrow v Pearlless de Rougemont & Company (1999)
- Modahl v British Athletic Federation Ltd (1999)

**Anticipatory breach:** Where a party indicates in advance that they will not be performing their obligations:

- Frost v Knight (1872)
- Avery v Bowden (1855)
- White and Carter Ltd v McGregor (1962)

## DISCHARGE BY PERFORMANCE

*This is where all obligations under the contract have been met, and the obligations should match the requirements of the contract exactly. There are ways in which this can be limited:*

**Substantial performance:** If a party has done substantially what was required under the contract – Hoeing v Isaacs (1952).

**Severable contracts:** Where payment is due at various stages, the stage(s) that has been completed can be claimed.

**Acceptance of part performance:** Where one of the parties has performed the contract but not completely, but the other side has shown a willingness to accept the part performed – Sumpter v Hedges (1898).

**Prevention of performance:** If the other party prevents a party from carrying out their obligations because of some act or omission – Startup v McDonald (1843).

## DISCHARGE BY FRUSTRATION

*This is where something happens, through no fault of the parties, to make the performance of the contract impossible. The contract is said to be frustrated.*

**Impossibility:** Performance of the contract has become impossible – Taylor v Caldwell (1863).

**Illegality:** Where a change in the law after the contract has been formed has made its performance illegal.

**Commercial sterility:** Where the commercial purpose of the contract has disappeared as a result of the intervening event.

The Law Reform (Frustrated Contracts) Act 1943 stipulates that a person can recover money paid under a contract prior to the frustrating event.

Cases: Robinson v Davidson (1871), Krell v Henry (1903), Herne Bay Steamboat Company v Hutton (1903).