

## How Contracts Come to an End

Classes have just let out for the day at Jefferson High. Jake and Eddie are at their lockers in the main hall discussing the day's events as they get ready to leave.

**Eddie:** Did your father pay your parking tickets like he promised?

**Jake:** Sure, but now he's making me work for him at his print shop to pay him back.

**Eddie:** He can't make you do that. You're not old enough. There's a new child labor law on the books against that type of thing.

**Jake:** Well, I'm not going to tell him that. He's been much too touchy lately.

**Eddie:** Now what happened?

**Jake:** He was all set to buy an antique printing press from Mr. Grillo at a really low price when he found out that it was destroyed. The truck it was being delivered in went off a cliff.

**Eddie:** Talk about bad luck. Had he paid for it already?

**Jake:** No. But now he's afraid they'll still make him pay for it.

**Eddie:** Won't your father's problems ever end?

**Jake:** Oh, there's more. He had a contract with Toth-VonMeader to print some labels and instructional brochures for something called biotheramyacin.

**Eddie:** That sounds like a good deal.

**Jake:** Well, it was, until the Federal Drug Administration made that drug illegal because it hadn't been thoroughly tested.

**Eddie:** I'm sure the drug company will still have to pay him. After all, it wasn't his fault that the drug was outlawed.

**Jake:** I don't think that will matter any more.

**Eddie:** Why not?

**Jake:** Because I read in the morning paper that the drug company went bankrupt.

(Just then Juleanne and Tony walk up to them.)

**Tony:** What are you doing here?

**Jake:** I go to school here.

**Tony:** Very funny! I mean I thought that you were supposed to be helping Mr. Lucas paint that new Ramirez Hotel on Michigan Avenue.

**Jake:** That job was canceled.

**Tony:** That figures.

**Jake:** It wasn't my fault. They have to tear the entire hotel down.

**Tony:** That can't be true.

**Jake:** It is so true. The contractor, Ziming Enterprises, put the wrong type of tile in the restrooms. They breached the contract.

**Eddie:** All that work for nothing.

**Jake:** Tell me about it. And I was all set to do the job.

**Juleanne:** Who are you trying to kid? I learned in business law that the doctrine of substantial performance would force the hotel to pay up. Besides, I overheard you on the phone last night. You told Mr. Lucas you wanted out of your contract and he let you go.

**Jake:** Maybe so, but you did the same thing when you just told that artist, Marc Marcel, that you weren't going to pay for your portrait even though it was perfectly good.

**Juleanne:** That's different. He agreed to paint it to my satisfaction. It was not a perfectly good portrait. I looked hideous.

**Jake:** Like I said. It was a perfectly good portrait.

### New Terms

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## The Spirit of the Law

Contracts, like everything else, eventually end. When contracts end, they are said to be **discharged**. The parties to the contract may enforce their rights and must perform their duties up to the time of discharge. The law specifies the ways that contracts end so that people will know when their rights and duties expire. Contracts may be discharged by (1) performance, (2) agreement, (3) impossibility of performance, or (4) operation of law.

### Legal Issues:

1. Can a contract be ended if one of the parties is not satisfied with the other's performance?
2. Will a slight deviation from the promised performance amount to a breach of the entire contract?
3. Can a contract be ended by the mutual agreement of the parties?
4. Does the destruction of the exact subject matter of a contract discharge that contract?
5. Does subsequent illegality make a contract void?

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## Discharge By Performance

Most contracts are discharged by **performance** when the parties fulfill the terms of the contract. This is the most common method by which contracts are discharged. Both parties do what they have agreed to do under the provisions of the contract. As long as all terms have been carried out properly and completely, the contract is discharged by complete performance.

### *Time for Performance*

Occasionally the time for completing a contract is very important to one or both of the parties. If the time for performance is not mentioned in the contract and there is a question of performance, the court will say it must be completed within a reasonable time. A reasonable time may be defined as the time that is suitable, fair, and proper to the objective in view. This time will vary with the circumstances of each individual case. For example, the reasonable time for the sale of a crate of ripe tomatoes would not be the same as the reasonable time for the sale of a house. If the parties specify a time limit for the performance of the contract, the court will usually allow a longer time for its performance unless time is of the essence. Time-is-of-the-essence means that time is a vital or essential element of the contract.

*Example 1.* Peter Miles agreed to paint Carol Wolloff's house and to begin on or before June 1. He showed up on June 3 to do the job. A court would probably excuse his tardiness because there was nothing to show that time was of the essence.

If the parties specify a time for performance in the contract and, in addition, state or imply that time is of the essence, the court will enforce the time period.

**Example 2.** The Seasons Store agreed to buy 5,000 chocolate rabbits from Northern Confectioneries. Their contract specified delivery three weeks before Easter and stated that time was of the essence. The rabbits arrived one week before Easter, by which time Seasons had ordered and received substitute products from another supplier. Seasons refused the late delivery of rabbits. The court would probably uphold Seasons's refusal.

### **Satisfactory Performance**

When people perform services for others, the law requires that the services be performed in a satisfactory manner. Sometimes contracts say nothing about satisfaction; at other times contracts state that the work will be done "in a satisfactory manner." In both of these situations, when one party believes the job to be unsatisfactory and the other believes it to be satisfactory, the court uses the *reasonable person test*. The court asks "would a reasonable person consider the job to be completed in a satisfactory manner?" The dispute will then be settled based on the answer, by a judge or jury, to this question.

Occasionally one party will agree to perform services for another "to the other's satisfaction." In such a case, the other party must be satisfied to be bound to the contract.

**Example 3.** In the opening vignette, Marc Marcel, an artist, agreed to paint Juleanne's portrait "to her satisfaction" for \$500. When the painting was completed, all of Juleanne's friends, relatives, and acquaintances thought that it was a perfect likeness of her. However, Juleanne thought the portrait was hideous. Specifically, she felt the nose was too long and the mouth too big. In many states, if Juleanne honestly did not like the portrait, she would not have to pay for it. Since a portrait is a highly personal matter and, therefore, subject to one's personal taste, and since Marcel had agreed to paint it "to her satisfaction," Juleanne could reject it. Juleanne could not keep the painting in such a case.

**LAW & Ethics**

You agree to work on your aunt's farm during the summer for \$1,000. You work one day, decide the work is too hard, and change your mind about working for her. What are the ethical issues? the legal issues?

### **Substantial Performance**

As noted above, to discharge a contract by complete performance, both parties must fully perform their parts of the bargain. They must do everything they agreed to do. Someone who has not fully performed cannot, in most instances, win a lawsuit against the other for money owed or other damages. An exception to this rule is known as the doctrine of **substantial performance**. Substantial performance is slightly less than full performance. Someone who has, in good faith, fulfilled the major requirements of the contract, leaving only minor details incomplete, has substantially performed. The courts will allow the person who substantially performed to recover the amount agreed upon under the contract, minus the cost of completing the job. Courts permit recovery if they can determine that it would be unfair to deny payment. The doctrine of substantial performance is often applied to construction contracts.

**Example 4.** In the opening vignette, Jake reports that Ziming Enterprises will have to tear down the new Ramirez Hotel on



▲Sometimes a custom designer, such as a dressmaker, must substitute materials, such as lace or other trim, to complete a contract. Can a customer refuse to pay for such work if the substitution does not affect the appearance, quality, or cost of the finished product?

Michigan Avenue because they installed the wrong type of tile in the restrooms. Juleanne, however, correctly points out that the doctrine of substantial performance would prevent such a drastic and unfair result. Ramirez will have to pay Ziming Enterprises for the construction of the building. The hotel may, however, deduct any damages suffered as a result of Ziming's failure to use the correct tile.

### *Tender of Performance*

A party can fulfill the terms of a contract by performing an act or by paying money. A tender is an offer to do what you have agreed to do under a contract. If you agree to buy a car, for example, making tender would be offering to pay the money at the agreed time for performance. If you agree to sell a car, making tender would be offering to give the car to the buyer at the agreed time. It is important to make tender even if you know the other party is not going to perform his or her part of the contract. In some states it is necessary to test the other party's willingness and ability to perform. If neither party has made tender, neither party is in a position to bring suit against the other.

An offer to perform a certain act to fulfill a contract is a tender of performance. If a person who must perform an act makes a tender of performance and is rejected, that person is excused from fulfilling the contract. The same is not true of a debt. An offer to pay a certain amount to fulfill a contract is a tender of payment. If a person makes a tender of payment and it is rejected, that person is not excused from the debt. He or she is only excused from paying further interest on the debt.

**Example 5.** Keith Hanson owed Carla Miller \$500, which was due on the first of July. Hanson did not tender payment until the first of August. Miller refused to take the money at that time and said, "You didn't pay the money when it was due. Now I'm going to sue you and make it cost you plenty."

Hanson still owes Miller \$500. However, if Miller did sue, she could collect \$500 plus interest on the \$500 at the legal rate for the one month between the due date and the actual tender of payment.

The person offering to pay the required amount of money must offer **legal tender**, that is, U.S. coins or currency (paper money). Offering a check is not a valid tender of payment, even if it is certified. However, the person who offered the check must be given reasonable time to obtain legal tender.

## Working in the Law

### Corrections Officer

Most corrections officers work in correctional institutions such as prisons and reformatories. Some, however, work in city or county jails. The corrections officer's duties fall into four categories: maintaining order, preventing escapes, assuring prisoners' safety, and counseling.

**Maintaining Order**—Corrections officers make sure rules and regulations are obeyed and report any violations. They also conduct searches for weapons or drugs, and they often settle disputes among prisoners.

**Preventing Escapes**—Corrections officers take precautions to prevent escapes. They inspect locks on windows, doors, and gates for signs of tampering, and they periodically count prisoners.

**Assuring Prisoners' Safety**—Corrections officers are responsible for assuring prisoners' safety. This requires, among other things, continually checking for potential health or fire hazards.

**Counseling**—Corrections officers may also act as counselors. They supplement the work of professional psychologists and social workers. For instance, they may cheer an unhappy prisoner by arranging a schedule change that will enable the prisoner to see family members. They may also help prisoners resolve personal problems or explore future job possibilities.

Departments of correction provide training programs for future corrections officers. These programs often include courses in psychology, criminology, self-defense, and/or physical fitness. After completing a training program, new corrections officers get on-the-job training under experienced officers. Most institutions require that corrections officers be at least 18 years old and have a high school education.

1. A corrections officer's duties relate to what four categories?
2. What kind of training does a corrections officer have?

## Discharge By Agreement

Contracts are created by mutual agreement and may be terminated by mutual agreement of the contracting parties.

**Example 6.** In the opening vignette, Jake contracted to help Mr. Lucas paint the rooms in the new Ramirez Hotel. Suppose that Jake suddenly changes his mind. He decides not to work for Mr. Lucas. Jake calls Mr. Lucas, prepared to defend his decision, but finds out that Mr. Lucas has

changed his mind also. Mr. Lucas has decided that he cannot afford to hire any new employees. Both parties agree to call the agreement off. Jake and Mr. Lucas say goodbye amiably after agreeing to terminate the original agreement, and the contract no longer exists.

Whatever the parties agree to do in the first place, they may later mutually agree not to do. The agreement to terminate may take any one of several forms.

### **Mutual Release**

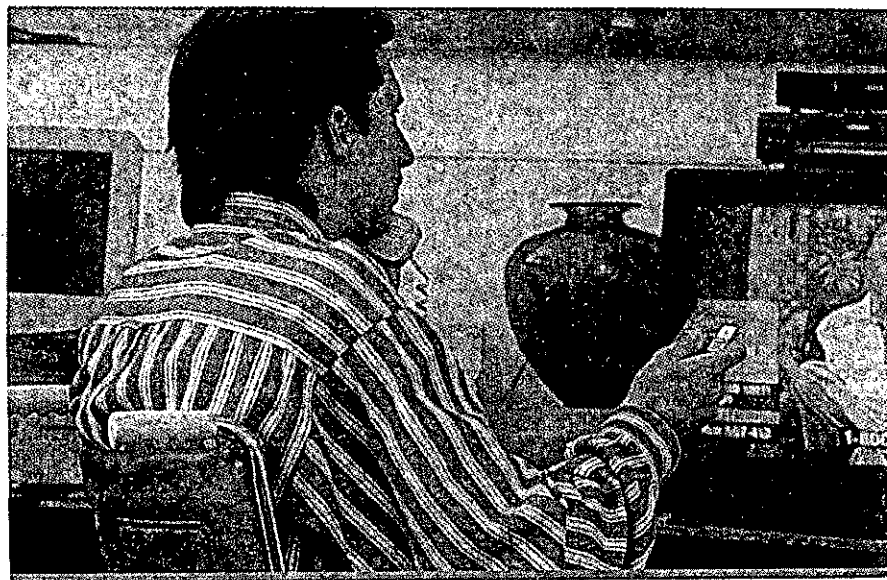
Jake and Mr. Lucas mutually agreed to end their agreement. Theirs was a **mutual release**. Each released the other from their contract. Each gave up something, so the agreement to terminate is binding. In answer to Legal Issue 3, the release must be mutual. Otherwise, there would be no consideration for the promised release.

### **Accord and Satisfaction**

An existing contract also can be discharged by one party to an agreement accepting performance from the other party that is different from the performance agreed upon in the original contract. In other words, one contract is substituted for another. This is called an **accord and satisfaction**. An accord and satisfaction is often used to settle an honest disagreement or unforeseen circumstance regarding an amount owed.

**Example 7.** Lawrence Langham has contracted to sell his tractor to Jerry Bodoni for \$1,200. Before the sale is completed, Bodoni suffers several financial reversals, and, as a result, no longer has the cash necessary to pay Langham. Since Bodoni still wants the tractor, he goes to Langham, explains the situation, and offers to give Langham his expensive VCR, video camera, and color television instead of the \$1,200. If Langham agrees and accepts the VCR, the video camera, and the television, Bodoni's promise to pay the \$1,200 is discharged.

► Sometimes purchased goods are damaged after they are sold but before they are delivered. If the buyer agrees to accept the altered goods, is the original contract discharged?



In the previous example, Langham must actually accept the items. His promise to accept would not be binding. The promise to do so is the accord. The carrying out of the promise is the satisfaction.

## Discharge By Impossibility Of Performance

A contract that becomes legally impossible to perform generally may be discharged and both parties released from the obligation. The situations in which the courts will allow a discharge for impossibility are (1) death or illness that prevents the performance of a personal service contract, (2) destruction of the exact subject matter or the means for performance, and (3) illegality—that is, when performance of a contract becomes illegal.

### *Death or Illness in a Personal Service Contract*

The death or illness of a party to a contract may be an excuse for non-performance. It is an excuse only if the contract requires the personal service of the person who has died or become ill. In Example 3, for instance, if Marcel were to die before completing the portrait for Juleanne, the contract would be discharged. She selected him for his particular ability to do the work.

However, suppose the contract is such that the party who became ill or died had the right to hire someone else to perform the obligation. In this situation neither death nor illness will discharge the contract. In the case of death, the person appointed to settle the deceased's affairs would be obligated to hire someone else to carry out the contract.

### *Destruction of the Exact Subject Matter*

If the subject matter that is essential to the performance of the contract is destroyed, through no fault of either party, the contract is discharged. The destruction must occur after the contract is entered into but before it is carried out.

*Example 8.* In the opening vignette, Jake reports that his father had been negotiating a contract for the purchase of a unique antique printing press from Mr. Grillo. The price had been set and the printing press was to be delivered the next day. That night, however, the press was destroyed when the delivery truck went off a cliff. The contract would be discharged because of the destruction of the particular subject matter that had been identified in the contract.

However, compare Example 8 with the following example:

*Example 9.* Broz Kucan went into the Kenney Industrial Supply Shop and picked out a particular type of printing press for his business. The salesperson told him that they had many of those presses in their warehouse and that one would be delivered to him the next day. That night a fire destroyed the Kenney Industrial Supply Shop's warehouse and all of its industrial supplies and equipment. The shop would still be obligated to obtain another press for Kucan, because a particular press had not been identified in the contract. A type of press had been selected, but the exact one had not been chosen.

**R**educing Legal Risks

*If you contract for personal services, remember that impossibility of personal performance discharges the contract. If the subject matter of the contract could be destroyed, discuss the potential risks with the other party. Decide how losses would be covered and make that decision part of your contract.*

Sometimes the means for performance of a contract is destroyed so that the contract cannot be completed. For example, suppose a person contracts to reshingle the roof of a house, and the house is destroyed before the job is done. The contract is discharged because the house must exist for the job to be performed.

### Illegality

Another type of impossibility of performance arises when performance of the contract becomes illegal. You have seen that a contract whose performance would be illegal at the time it was entered into is void. The same general rule applies when performance becomes illegal after the contract is entered into.

**Example 10.** In the opening vignette, Mr. Novak had contracted to print the labels and instructional brochures for the Toth-VonMeader Pharmaceutical Company's new wonder drug biotheramyacin. At the time the agreement was made, the drug was perfectly legal. Shortly afterward, however, the Federal Drug Administration made the drug illegal. Since the manufacture, distribution, sale, and use of the drug are now illegal, Mr. Novak and Toth-VonMeader have no choice in the matter. The contract is terminated. Legal performance has now become impossible.

▼Some street vendors contract with a business to sell their goods on the street. If an unlicensed street vendor made such an agreement with a business and a law was later passed that required all street vendors to be licensed, would the contract between the vendor and the business be legal?



## Discharge By Operation Of Law

At times, the best interests of society demand that a contract be terminated. Under these circumstances, the law declares contracts discharged by operation of law.





