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Extinction of Contractual Obligations and Breach of Contract

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Over the previous chapters we have seen that by engaging within a voluntary agreement or contract we may incur a variety of rights and obligations. Generally we may view rights as protective in that they may afford us certain legal protections, i.e. we can see for example that unfair contract terms may enable the party to withdraw from the obligations which the contract confers. It is important to note that such terms are generally considered on a case-by-case basis, although we do have statutory protections, most notably via the Consumer Rights Act 2015 in relation to unfair terms, under which certain terms are automatically unfair and void in consumer contracts, other terms are on the list of unfair terms, and yet others may be examined to see if they are unfair.

In the absence of any concerns or issues associated with the formation of the contract or its contents, most contracts will likely be performed without issue and the relationship between the parties will continue as before. Below is a discussion of the various ways in which obligations may be generally concluded. The chapter ends with a discussion of the remedies for breach of contract.

Extinction of contractual obligations

■ Performance or agreement

Fundamental to our understanding of contract law is the requirement that any contract will have at least two parties. These parties will have corresponding rights and obligations to one another, i.e. they may be seen as both creditor and debtor to one another, where a debt may not necessarily be an obligation to pay money: it can equally be a duty to perform. An example of this may be seen within a general contract of employment. Here the employer will have a duty to pay his employee for performance of contractual obligations, while the employee will have a corresponding right to that payment for the duties he has performed.

When these reciprocal arrangements are fulfilled, the contract is terminated because the obligations have been carried out, i.e. performance is complete. Generally we can say that the vast majority of contracts which take place on a day to day basis are terminated, without dramatic occurrence, by performance.

However, there are other ways by which a contract may come to an end: as discussed in Chapter 6, a void contract cannot be ended because technically it never existed. Nevertheless a court may have to declare that the contract is void and make judgement regarding the respective rights of the parties.

A voidable contract continues to exist unless or until it is set aside. Please note that it is the court that sets the contract aside and not the parties themselves. If third parties acquire rights under a voidable contract in good faith and for value, then that contract cannot be set aside.

In the interests of consumer protection, there are circumstances in which the law allows for the party with the obligation to be released from that obligation. See for example The Consumer Contracts (Information Cancellation and Additional Charges) Regulations 2013. These regulations allow consumers to cancel contracts which have been made during a visit by a trader to a consumer's home or place of work. The trader cannot enforce the contract unless the consumer was given written notice of the right to cancel within fourteen days and a statutory cancellation form. The consumer is free to cancel the contract within the time limit.

Tip

The general rule in bilateral contracts is that if one party completely fails to perform the obligations contained within the contract then the other party need not perform at all. We can define this in terms of the 'mutuality principle' under which the obligations of the parties to a contract are generally regarded as reciprocal.

This point is best illustrated by the case of:

Graham v United Turkey Red Co. Ltd 1922 S.C. 533

Facts of the case

Graham had a contract of agency with United under which he was required to sell goods for United. Contained within the contract was a restrictive covenant, which prevented Graham from selling the goods from other manufacturers. Graham started to sell the goods of rivals. His contract was terminated and he sued Turkey for commission he believed he was owed.

Court decision

The court held that if a party to a contract ceases to perform the contract according to its terms, he is entitled to commission up to the point when the breach occurred but under the mutuality principle, not in respect of work done after the breach.

It is important to note that the general rule is however subject to the following exceptions:

- A *severable contract* may consist of several independent obligations. It is therefore possible that a party who performs only some of these obligations may claim in respect of those performed, but will remain liable in damages for the obligations not performed. Please note that whether or not a contract is severable may depend on the intentions of the parties.
- Any party who had completed a large proportion of the contractual obligations may be said to have made *substantial performance*. Please note this will be decided on a case by case basis and the other party can insist that the party performs the contract. By failing to do so the party will remain liable in damages.
- *Voluntary acceptance* of partial performance may allow for a claim based on unjustified enrichment: i.e. the value or benefit received by a person at the expense of another who suffered the loss of the benefit.