



The Legal Regime for The Discharge of Contract: A Legal Escape from Contractual Liabilities

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Abstract:

The discharge of a contract refers to the termination of contractual obligations, releasing parties from their duties under the agreement. Contracts can be discharged through various methods, including performance, agreement, frustration, breach, and operation of law. Discharge by performance occurs when parties fulfill their contractual duties as agreed. Discharge by agreement involves mutual consent to end the contract, often through novation, rescission, or accord and satisfaction. Discharge by frustration applies when unforeseen events render performance impossible or radically different from what was initially contemplated. In cases of discharge by breach, one party's failure to perform entitles the other party to terminate the contract and seek remedies. Lastly, discharge by operation of law may arise through insolvency, death (in personal contracts), or merger of rights. Each method of discharge has distinct legal implications, influencing the rights and liabilities of the parties involved. Understanding these methods is crucial for legal practitioners to effectively advise clients, manage risks, and ensure contractual compliance. This paper explores the legal principles, judicial interpretations, and practical implications of contract discharge, contributing to a nuanced understanding of contract law.

Keywords: Discharge of contract, performance, agreement, frustration, breach.

I. Introduction

A contract may be described to be discharged by performance where a promise is based on an executed consideration, a performance of the terms of that contract discharges parties from the contract.¹ In other words when a party performs his duties, roles and obligations in a contract then he or she is discharged from the contract. Each party must perform their part of the contract before the performance makes the contract solution obligations.²

However, there are instances where one of the parties has completed his or part of the contract and the other party has partially performed his responsibility. This situation will definitely lead to legal disputes. It is therefore important to know how the courts resolve issues surrounding incomplete performance of contracts. This paper shall examine its objective through the following sub headings such as, Status of partial and substantial performance, Acceptance, tender, and time of performance and the legal regime for discharge from contractual responsibilities such as Discharge by breach, performance, frustration and agreement

II. Partial performance

Contract law is settled on the case of full performance as a condition precedent for discharge especially when parties consented to same before the commencement of the contract. The common law principle in this stead is that when a contract stipulates the performance of an entire job for a specific consideration, then unless the party performs the entire job, such party is not entitled to any consideration. This was exemplified in the case of *Cutter V Powell*³ where an agreement was executed to the effect that the claimant will be paid the sum of 30 guineas if he sails the ship from Jamaica to Liverpool from August 2 , 1799 to October 9. Unfortunately , the claimant died before the completion of the voyage. The wife of cutter decided to sue for the value of work done. The Court held that by the terms of the contract must complete full performance before he is entitled to any consideration. In other words, full and complete performance of the contract was a condition precedent to payment. See *Schumpeter V Hedges*

¹ Reuben M. Benjamin “ General Principles of the American Law of Contract: In the form of Rules with comments and illustrations” 1896 McGill guide 9th ed. (Indianapolis Bowen- Merrill co)

² William R. Anson, “Principles of the English Law of Contract and of Agency in relation to the Law of contract” Chicago 17th ed.(Oxford Calderon Press 15)

³ (1795) 6 T.R 320

(1898) 1 Q.B 673.Despite the foregoing there is a need to examine the effect on an entire contract or separate contracts

III. Entire or separate contract

In the case of Jackie Philips V ARCO Ltd⁴ the courts held that substantial performance of a contract is determined by whether the contract is an entire contract or a part of a contract. The court further held that if at the inception of the contract, the terms were taken as a whole contract then only a full performance will entitle a party to any consideration. A very vital ingredient of discharge is the effect of substantial performance on contracts

IV. Substantial performance

Despite the strict liability on the full compliance being a condition precedent for payment of consideration, the Courts have developed an equitable principle to prevent the harshness of the common law principle of complete performance. In other words the strict law of full performance as a condition precedent for consideration can be qualified in certain circumstances. These equitable principles are;

- (i) Substantial Performance: This principle dictates that if a contract has been substantially performed and a small part of the work is undone then that party is entitled to the value of work done after the value of the work undone has been deducted. In the case of Ekwunife V Wayne Nnaemeka- Agu J.S.C ⁵ The court held that a strict application of the complete performance rule will lead to the unjust enrichment of the defendant who has gained some benefit irrespective of the complete performance

⁴ NO. S.C 149/1969 (1971) 10

⁵ (1989) 5 NWLR (PT 122) 422 @ 441

- (ii) Divisibility of contract : In the case of *MetclaiFFE V Britannia Iron works*⁶ the courts held that as a mitigating factor against complete performance , if a contract is divisible and the events in a contract are a series of separate actions with monetary consequences, then the principle of full compliance will not apply. This is also the rationale in the case of *Jackie Philips V ARCO Ltd supra* where the court held that if a contract is taken as a whole then full compliance is necessary but if it is separable in parts then full compliance is not necessary for payment of consideration.
- (iii) Quantum Meruit: The courts also decided in the case of *Ekwunife V Wayne* that even if a contract is indivisible and a party has performed a substantial part of his or her contract, he or she is entitled to sue for the value of the work done and accepted by the other party. In the case of *Dakin V Lee*⁷ where a project has been substantially performed but the project was done badly it was held that the builder was entitled to value of work done after deducting the defective work. The calculation of quantum meruit is discussed below;

Calculation of the Quantum Meruit Rule

The quantum meruit rule is not absolute rule. The rule is subject to circumstances that allows for deductions by the courts if the owner of the project can effectively counter claim for damages for partial performance, omissions or mistakes in the execution of the project.⁸ Another important performance ingredient is the acceptance of performance.

V. Acceptance Of Performance

Parties to a contract that accept partial performance can sue on quantum meruit and recover compensation proportionate to work and quality of work done. Section 30 (1) of the Sale of Goods Act provides that;

⁶ (1876) 1 Q.B.D 636

⁷ (1916) 1 K.B 566

⁸ *Darkin V Lee and Osinaike V Coronation Merchant Bank* (2021) LPELR 53591 (CA)

“ Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer may reject them, but if the buyer accepts the goods so delivered he must pay at least the contract rate”.

The case of *Roberts V Havelock*⁹ also held that if a party accepts partial performance, he must pay a reasonable price (quantum meruit) for the partial performance. However, the said acceptance of the partial performance must be reached by consensus and freely agreed. In other words accepting partial performance indicates a new agreement different from the initial agreement.

Also in the case of *Omoleye V okeowo*¹⁰ where a written contract was executed for the supply of 6000 yards of textile materials at 41 shillings per yard. The seller supplied materials specific material in the agreement and even supplied only 2910 out of the 6000 yards. The buyer accepted delivery and the courts held he must pay quantum meruit for goods delivered since he accepted the goods.

Despite the importance of acceptance of performance there are other instances where performance is prevented which is discussed below;

VI. Prevention Of Performance

Prevention of performance is defined in the case of *Debernandy V Harding* as;

“ where one party has absolutely refused to perform or has rendered himself incapable of performing his part of the contract, he puts it in the power of the other party either to sue for a breach of it, or to rescind the contract and sue on a quantum meruit to the work actually done.”¹¹

Also in the case of *Roberts v The Bury Improvement Commissioner*¹² where the court held that

⁹ 1832 3 B & Ad 404

¹⁰ (1973) 3 UILR 180

¹¹ (1853) 8 Exch 822 at 822 @ 824

¹² (1870) L.R. 5.C 310

“ It is a principle very well established in common law, that no person can take advantage of the non-fulfilment of a condition, the performance of which has been hindered by himself ... and also that he cannot sue for a breach of contract occasioned by his own breach of contract”.

The interpretation to be deduced from the foregoing is that a liability for breach of a contract is removed from a party when the party that perpetrated the breach has been prevented by the other party from executing his own part of the contract¹³

In *Planche V Colburn*¹⁴ where a party was engaged to write a book for another party for the sum of 100 pounds. After the party had written a substantial part of the book, the owner of the book abandoned the book project. The writer decided to sue for 50 pounds as value of work done. It was held that the claimant was entitled to quantum meruit.

The tender of performance is also closely linked in consequence to the prevention of performance but acts as a different variant as seen below;

VII. Tender Of Performance

Tender of performance is attempted performance. It is applicable to the performance of a promise to do an act, and /or a promise to pay something Nevertheless, the contract is frustrated by the party who is to benefit from the contract or from the act to take place after the benefiting party has been given the opportunity to check the goods.¹⁵

Tender Of Goods

In *Startup V McDonalds* ¹⁶ the courts held that where in an agreement the vendor has met all the standards for the contract delivery and the purchasers declines delivery of the goods, the vendor

¹³ *TMF Trustee Ltd v Fire Navigation* (2019) EWHC 2918 (COMM), *Budgett V Binnington* (1891) 1 QB 35.

¹⁴ (1831) 8 Bing 14.

¹⁵ William R. Anson, ``Priciples of the English Law of Contract and of Agency in relation to the Law of contract`` Chicago 17th ed.(Oxford Claredon Press 15)

¹⁶ 6 M& G 593

is discharged from his or her contractual liability and can sue for damages for breach of contract. Infact the sale of goods Act provides that;

“When the seller is ready and willing to deliver goods and requests the buyer to take delivery, and buyer does not within reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for reasonable charge for the care and custody of the goods: Provided that nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.”

Tender Of Money

In situations where the performance relates to the tender of money, the debtors' tender of money does not excuse the debtor from the liability to refund the money to the creditor. Although it can serve as a defence to a suit by the creditor.¹⁷ It is the legal responsibility of the debtor in the first instance to seek out the creditor to pay the debt and if the creditor declines acceptance, the debtor must always be in a state of being ready and willing to pay the debt so if the creditor decides to sue for debt recovery, the debtor can use the tenders as defense.¹⁸ The consequence of this is that the creditor will only be entitled to the amount originally owed and tendered and no damages will be paid. The amount owed must be paid in court. However, the debtor will be entitled to the cost of his defense against the claim of the creditor after successfully proving the tender of his debt.

The tender of performance is germane to discharge of contracts but the time of performance has been conventionally become the essence of some contracts irrespective of the tender of goods in a contract as elucidated below;

VIII. Time Of Performance

Time can be an important item of a contract to the extent of being the essence of the contract which gives the party the contractual right to terminate the contract for breach of time. In other words anytime a contract indicates that time is of essence in a contract then time becomes the

¹⁷ ibid

¹⁸ Walton V Mascall 13 M&W 458

essence of the contract and will be a ground for repudiating a contract when breached.¹⁹See *Leyland Nigeria Ltd V Dizengoff* 1990 2 NWLR (PT 1340 610@623

In addition, even if time was not originally made the essence of the contract but has been made so by one of the parties by giving the other reasonable notice of the change of time as essence of the contract then time becomes the essence of that contract.²⁰

Also, even if time is not stipulated as the essence of a contract the courts have opined that the nature of the subject matter can make time of essence of a contract for instance the sale and distribution of perishable goods or goods or property that fluctuates with time etc.²¹The time of performance has now exposed the need for the place of performance to be emphasized

IX. Place Of Performance

In a situation where the contract specifies the place of performance then the contract must be performed at that place. Any variation of the place of performance must be agreed to by parties to the agreement. However, when there is no agreed place of performance of a contract especially as regards the payment of money, It is the legal responsibility of the debtor to seek out his creditor and pay his debt and he does need to leave his jurisdiction to implement the contract but can implement the payment within the jurisdiction if the contract was executed in that jurisdiction. However, if the contract was executed out of the jurisdiction then the performance of the contract must be done where the contract was made.²²Also the location of a subject matter of a contract determines the place of performance especially when the contract is silent on the place of enforcement.²³

X. Discharge By Frustration

The rule guiding contracts before the inception of the concept of frustration was that of absolute contract which was to the effect those agreements were to be performed irrespective of the impossibility of performing the contract. In fact there were no circumstances where parties from their contractual liability

¹⁹ *Welspun Speciality Solutions ltd v ONGL LL* 2021 SC 646

²⁰ *Finikielkraut V Monahan* (1949) 2 ALL ER.

²¹ *Newman V Rogers* (1935) 4 Bro C.C 391

²² *Williams Payson Richardson*, 'Law of contracts'. Brooklyn New york (sn) 4 McGill Guide 9th editions.

²³ *House V Lewis* 108 Neb. 257,187 23 A.L.R 877

This was the case in *Paradine V Jane*²⁴ where Jane was sued to pay the rent for the occupation of the building he rented. Jane argued that he was unable to occupy the house because the war enemy had prevented them from occupying the house. The court still held stated that he was still liable for the payment of rent since there was no provision that catered for a situation where he could evade such responsibility.

The principle of frustration came as an effort by the courts to remedy the principle of absoluteness of contract and provide avenues for defence for defendants who had no control over their ability to perform their contract. The case of *Davis Contractors V Fareham* defines frustration as

“frustration occurs whenever the law recognizes that without the default of either party a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from what was undertaken by the contract.”²⁵

The deviation from the absoluteness of contract in the case of *Taylor V Caldwell* where a party wanted to use the Surrey Gardens and the music hall on four specified days to host musical concerts. However, before the conclusion of the agreement the hall was destroyed by fire. Despite the lack of provision indicating situations where parties can be excused from their contractual responsibilities in the contract. However the courts held that;

“Where from the nature of contract, it appears that the parties must from the beginning have known that it could not be fulfilled unless, when the time for the fulfilment of the contract arrived, some particular specified thing could continue to exist, so that when entering into the contract they must have contemplated such continued existence as the foundation of what has to be done, there, in the absence of any express or implied warranty that the thing shall exist, the contract should not be construed as a positive contract but subject to an implied condition that the parties shall be excused in the case before breach, performance becomes impossible from the perishing of the thing without default of the contractor.”²⁶

²⁴ (1648) Aleyn 26;82 E.R 897

²⁵ (1956) AC 696

²⁶ (1861- 73) ALLER 24@ 27

The authority of Taylor V Caldwell introduced the principle of an implied warranty to every contract that intervening acts or acts of god that render a contract impossible to execute just before the time of performance and was not induced by any of the parties may occur and will be implied as part of the contract.

Moreso, frustration is discovered by paying attention to specific criteria or tests;

Test For Frustration

The case of Folia V Trelinski ²⁷ insists that for the test of frustration to be successful in court. The following conditions must be fulfilled

- (a) The contract must have been rendered impossible not difficult
- (b) The frustrating act was not self-induced
- (c) The frustrating event must be permanent and not temporary
- (d) The subject matter must have been rendered impossible to perform before the actual performance of the contract
- (e) That the subject matter must turn to be radically different from the state after the frustrating the event

In the case of NWAOLISAH V NWABUFOH²⁸ the court further reiterated instances where the court will deploy the principle of frustration in contractual situations. The Courts held that a frustrated contract is one in which there is a premature termination of a contract lawfully executed by parties owing to an intervening event or act of God or change of circumstances regarded as law with the capacity to strike to the root of the contract entirely beyond the expectation of the parties when the contract was first executed.

The court further held that a defendant can only utilize the defense of frustration if the following standards are met;

- (i) A supervening event occurred as pleaded in the pleadings
- (ii) The intervening event was not contemplated by both parties

²⁷ (1997) 14 RPR 655

²⁸ (2011) LPELR 2115 (SC)

- (iii) The intervening event was not self induced
- (iv) That the subject matter of the contract has been fundamentally altered after the intervening event

In *Krell V Henry* where a party boarded a hotel room to view the coronation ceremony of King Edward VII, King Edward fell ill and the coronation was postponed. The hirer of the room attempted to get a refund of the money he paid for but the court held that both parties were aware that the coronation ceremony formed the basis of their contract. Therefore, the contract was frustrated by the postponement of the coronation because the value which the room was to provide was lost due to the postponement of the coronation ceremony.²⁹

The courts have held that a mere difficulty in executing a contract or an increased expense in the execution of contract does not amount to frustration. The case of *Tsakiroglou co ltd V Noble Thorl GmbH*³⁰ where the court held that increased expense does not frustrate a contract.

XI. Instances Of Frustrating Event

Frustrating events are quite unique and circumstantial especially as regards the discharge of contracts but there are some instances that have been judicially noticed as mentioned below;

Destruction Of Subject Matter

The destruction of the subject matter of a contract automatically frustrates a contract as seen in the *Taylor V Caldwell* case *supra* where the Music Hall was burnt by fire, the subject matter (which is the hall) got destroyed which frustrated the contract.

Also in the case of *Appleby v Myers*³¹ where there was contract for the installation of a machinery in the claimants factory. The factory and the installed machines were destroyed before

²⁹ (1903) 2 KB 740

³⁰ (1962) AC 93

³¹ (1867) LR 2 CP 65

the completion of the contract. The court held that court was frustrated since the subject matter of the contract had been destroyed and seized to exist.

Illegal Contracts

Another example of a frustrating event for contracts are contracts that contravene legislations of a country. This particularly refers to contracts whose subject matter was not illegal from inception but due to subsequent legal changes the subject matter becomes illegal, then that contract becomes illegal.³²

In the case of *Obayuwana V The Governor of Bendel State*³³ A member was reappointed as a member of the Oredo customary court from 1979 -1981 but the governor of the state revoked the contract of appointment by virtue of a new law which was the Customary courts (revocation of Presidents and Members) order which changed the nature of the contract of appointment and frustrated the previous contract due to a new law.

Outbreak Of War

The outbreak of wars will also naturally frustrate a contract because of its nature. The case of *United Cinema Film Distributing co v The Shell BP Petroleum co ltd*³⁴ where the Plaintiffs supplied cinema equipment on hire for two years and to be returned after the expiration of the contract. Then the Biafran civil war broke out and lasted for over two years . It was held that the war rendered the contract impossible to perform which made the contract impossible to perform.

Death Or Illness

³² *Denny, Mott and Dickson V James B. Fraser ltd* (1944) AC 265

³³ (1982) LCN?2153 (SC)

³⁴ (1973) 3 UILR 439

The death or illness of an individual expected to perform a personal service will render a contract frustrated. In the case of *Condor V Barron Knights*³⁵ where a party who was to drum for a musical concert for a couple of nights. It was held that the absence of the drummer frustrated the contract

Legal Effect Of A Frustrated Contract

The courts have held repeatedly that the effect of a frustrated contract is that it brings the contract to an abrupt end and this is irrespective of the feelings of the parties to the frustrating event i.e. irrespective of whether the parties want to treat the contract as continuing or not, the contract is void and not voidable.³⁶

Furthermore, all other legal responsibilities already undertaken and are due in the course of the contract should be performed but the pending obligations are discharged. As seen in the case of *APPLEBY V MYERS* supra where the courts held that since the installer was to be paid after the installation of the machinery then he could not be paid since the machinery got burnt before the complete installation of the machinery.

However in the case of *Fibrosa Spolka Akcyjna V Fairbairn, Lawson, Combe, Barbour Ltd* where an English company agreed to sell machinery at the cost of 4800 pounds but to be paid in installments of 1,000 pounds was the first tranche paid before the British declared war on Germany making it difficult for the other tranches of money to be paid which frustrated the contract. The courts held that the party that has made payments relinquishes his right of recovery of such funds.

The Law reform (Frustrated Contract Act) acts a statutory intervention to determine the financial consequence of a frustrated contract. The law states that;

³⁵ (1966) 1 WLR

³⁶ *Hirji Mulji V Cheong Yue Steamship co Ltd* 1926 AC 497

“where the money has been paid in advance or is payable in advance. It states that money already paid is recoverable, and money that is payable need not be paid. There must be a total failure of consideration in order for this to apply.”³⁷

In other words, this provision ensures that advance payments are not forfeited to parties in the custody of the money when the contract is discharged.

The law also provides that where no evidence of advance payment has been made or will be made under the contract there can be no compensation for expenses incurred in the performance of a frustrated contract. Again this seems very similar to the position in common law³⁸

However, if the performance has transferred considerable benefit in advance to the as payment in consideration of the contract before the frustrating event, the court has discretion to allow for incurred expenses which will be deducted from the amount recovered from the advance payment.³⁹

Furthermore, in the use of the discretion of courts to determine the deductible expenses from advance payments, the courts will use the following parameters;

- (i) Identify and value the benefit of the party receiving the benefit
- (ii) Based on the findings on the value found above decide what is fair considering expenses incurred in furtherance of the frustrated contract.⁴⁰

Despite the foregoing, the dispute on the financial consequence of a frustrated contract is not applicable where the contract has made an express and clears the consequence of frustration of a contract.⁴¹

XII. Discharge By Breach

³⁷ Section 1(2) Law reform (Frustrated Contract Act) 1943

³⁸ Section 1(3) Law reform (Frustrated Contract Act) 1943

³⁹ *Gamerco SA V ICM Fair warning Agency* 1995 WLR 1 1226

⁴⁰ *BP Exploration co V Hunt* 1979 1 WLR 783

⁴¹ Section 2(3) Law reform (Frustrated Contract Act) 1943

Responsibilities in a contract can be achieved by the breach of the contract by a party to the contract . A breach of contract can be defined as the conscious refusal to perform the legal obligations by a party in the contract.

There are two ways a contract may be breached as it relates to discharge from contract. These are anticipatory breach and Actual Breach.

Anticipatory Breach

An anticipatory Breach is a state where a breach is reasonably expected by one of the parties even if the duration of the contract has not elapsed and based on the words and conduct of parties it is reasonably expected that a breach of contract will occur.

The test of anticipatory breach was stated in the case of *Eminence Property Developments Ltd V Heaney*⁴² where the court stated that the test of anticipatory breach is that of a reasonable man in the non- breaching party's situation to predict whether the breaching party has shown a clear indication to not perform the contract,

Also, in the case of *Yukong Line of Korea v Rendsburg Investments Corporation of Liberia*⁴³ the term anticipated breach was also referred to as intended breach and the courts held that in situations where a party can anticipate a breach of contract, the non-breaching party can treat that contract has been discharged immediately and can sue for damages for the anticipated breach.

In the case of *Holchester V De la Tour*⁴⁴ the defendant was engaged contractually to courier for three months. The Defendant later changed its mind about the contract and the courier (claimant) sued for damages for the anticipated breach. The defendant argued that since the agreement had not commenced, the claimant cannot sue for damages. The court however held that this was an anticipated breach and the claimant need not wait till the expiration of the contract to sue for damages.

The courts also held in the case of *Alfred Toepfer International GmbH V Itexitagrani Export SA*⁴⁵ that the non-breaching party need not detect the anticipatory breach but can also be inferred from

⁴² (2010) EWCA Civ 1168

⁴³ (1996) 2 Llyods Rep 604

⁴⁴ (1853) 2 E & B 678

⁴⁵ (1993) 1 Lloyds rep 360

conduct of the breaching party and that the threshold of intention to breach should be based on balance of probabilities.

The courts have developed options available to the non-breaching party in the case of anticipatory breach. The case of *Fercometal SARL V Mediterrenian Shipping Co. SA*⁴⁶ the courts held that the innocent party has the options of repudiating the contract or affirming the contract as continuing and seeking damages.

Furthermore, where the innocent party intends to repudiate a contract because of an anticipated breach, a clear notice of termination must be given to the party guilty of anticipated breach. In some instances the refusal of the innocent party to continue performing his own part of the contract can serve as notice but this can also be interpreted as anticipated breach of the innocent party.⁴⁷

Actual Breach

The actual breach of a contract also discharges parties from the responsibilities of a contract by consequence and the options available to the innocent party is to seek specific performance or seek damages for the breach of the said contract.⁴⁸

XIII. Discharge By Agreement

Discharge by agreement means that legal obligations created by an agreement can also be terminated by another agreement. This is typified in the latin maxim *eodem modo quo, oriter eodem modo dissolvitur* i.e what has been executed by an agreement can be undone by another agreement.

This refers to a situation where parties that have existing obligations in a contract agree by another agreement to release their rights under the contract in consideration. In other words the willingness to terminate a contract by agreement must be bilateral.

⁴⁶ (1989) AC 788

⁴⁷ *Vitol SA V Norelf Ltd* (1996) AC 100.

⁴⁸ *Stocznia Gdanska SA V Latvian Shipping Co* 2001 1 LLYods Rep537.

The mutual abandonment of an agreement requires some level furnishing of consideration to be valid as a discharge of agreement and willful abandonment of legal responsibilities and benefits in a contract. The need for consideration for the validity of discharge by agreement was emphasized in the case of *The Hannah Blumenthal* case⁴⁹ where the court held that in a discharge agreement, the mutual abandonment of responsibilities in a separate contract can also act as consideration to enforce the abandonment in the previous contract. Discharge by agreement expresses itself in form of rescission, waivers, and variation and are discussed below;

Rescission

In instances where a contract is still executory i.e when parties have not executed promises or responsibilities in the contract, there is a willful abandonment of rights to perform the promises in the contract.

Rescission Of Contracts Under Seal

The old common law rule was that a contract under seal could only be rescinded by a contract under seal.⁵⁰ However, in equity a contract that is under seal can be rescinded orally or in writing. The position in common law has been altered by the Judicature Act of 1873 which now allows a contract under seal to be rescinded by a parole or written agreement. This is seen in the case of *Berry V Berry*⁵¹ where a man through an agreement covenanted to pay his wife 18 pounds per month during their separation. He later decided to pay 9 pounds a month by introducing a new agreement not under seal. The courts held that a new simple contract validly varies the previous contract of 18 pounds that was under seal.

Rescission Of Contracts Required To Be In Writing

Contracts in writing generally can be rescinded by written or oral agreement. In the case of *UAC V JOHN ARGO* ⁵² where a contract of employment mandated that the sales representative should

⁴⁹ (1983) 1 AC 854

⁵⁰ *West V Blakeway* (1841) 2 M & G 729

⁵¹ (1929) 2 K.B 316

⁵² (1958) 14 NLR 105

not sell on credit and will take personal responsibilities for any loss if he gave out a product on credit. However, the store keeper sold on credit and put up a defense that the manager at a time during the duration of the agreement gave him permission orally to sell on credit.

According to Pearson J in *UAC V ARGO* supra the court was of the view that when a contract is in writing, and required by law to be in writing can be rescinded by an oral agreement but an agreement which must by law be in writing can only be varied by an agreement in writing

The discharge of contract by parole agreement also requires mutual consent by both parties to form a simple contract capable of the rescission of a written contract.⁵³ In other words even if the parole agreement can rescind a contract but it must be bilateral in nature in terms of oral agreement from both parties to rescind a written agreement⁵⁴

Also in the case of *Morris V Baron co* ⁵⁵ Parties entered into an agreement for sale and the seller had delivered some of the goods agreed and the delivery of the other goods will be a condition for the full payment for the goods. However, the written agreement was followed by an oral agreement that absolved the responsibility of delivering the remainder of the goods except when expressly requested by the buyer. The Claimant decided to sue the defendant for the difference in price for delivering when the request was made. The courts held that the second oral contract validly rescinded the previous contract and created a new one.

Variation

Anytime a law is prescribed to be in writing it can be rescinded by an oral or written agreement. However, it cannot be varied by an oral agreement. The variation must be done by another written agreement.

In the case of *GOSS V NUGENT*⁵⁶ where land was sold under a written contract and it turned out the sellers title was defective and the defendant refused to pay for the land. The claimant alleged

⁵³ Pollock, Fredrick, Wald, Gustavus Henry; et al. Principles of Contract at law and Equity: A Treatise on the General Principles concerning the validity of Agreements in the Law of England and America. Newyork: Baker Chicago 17th edition.

⁵⁴ *ibid*

⁵⁵ (1917) 2 L.J.R (k.B) 145

⁵⁶ (1833) 5B & Ad 58

that the defendant orally agreed to accept the land with the defective title. However, the courts held that a land agreement could not be varied orally. Lord Denman held in this case that;

“ By the general rules of the common law , if there be a contract which has been reduced into writing, verbal evidence is not allowed to be given of what passed between parties either before the written instrument was made or during the time it was in a state of preparation so as to add or subtract from...”⁵⁷

However, there are statutory provisions that create exception to the rule against written agreements as the only way to alter agreements that are required to be in writing. For instance in section 128 of the evidence Act 2023;

“132 (1) When any contract or any grant or any other disposition of property has been reduced to the form a document or series of documents ,no evidence may be given ... of the terms of such contract, grant or disposition of property except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions herein before contained ; nor may the contents of any such document be contradicted, altered, added to or varied by oral evidence provided that the following matters may be proved;

(b)The existence of any separate oral agreement as to any matter on which a document is silent, and which is not consistent with its terms , if from the circumstances of the case the court infers that the parties did not intend the document to be a complete and final statement of whole of the transaction between them;

(c) The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property;

(d) The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property;

In other words, the above items are the valid exceptions to when a document that is required to be in writing to be varied orally.

The courts have also provided some exceptions in common law based on equitable principles. The case of MBONU V NWOTI where a party claimed sole ownership of a

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property but it turned out that the ownership was shared by the Appellant and the respondent. The Appellant claimed that the property was owned by both of them but bought it in the name of the respondent. The court held that oral agreements cannot vary written documents that ought to be in writing.

Waivers

A waiver in contractual situations is where a party to a contract voluntarily concedes or accedes to either at the request of the other party or voluntarily forgo some or all of his or her rights in an existing or subsisting contract. In other words, a waiver is usually a unilateral act influenced by the other party or voluntarily made by the waiving party.

In the case of *Charles Richards V Oppenheim*⁵⁸ where the courts explained waiver to mean

“ Whether it be called waiver or forbearance on his part, or an agreed variation or substituted performance, does not matter. It is a kind of estoppel. By his conduct he is evidenced an intention to affect their legal relations. He made, in effect, a promise not to insist on his strict legal rights. That promise was intended to be acted on, and was in fact acted on. He cannot afterwards go back on it..... “

The foregoing assertion means that waivers can be by conduct that acts to suspend the rights of a party to contract with the intention that the other party will indeed act on the said waiver or forbearance and it will be in justiciable for the waiving party to resume his or her position.⁵⁹

The case of *Mbedeledogu V Aneto*⁶⁰ presents a clear illustration of waivers. The facts were that the respondent contracted the Appellant to fabricate a palm kernel extracting machine for the sum of 95,000 naira and that 50% of the sum will be paid at the signing of the agreement and another 25% will be paid a month later and the last 25% at the delivery of the machine. At the signing of the agreement the 50% was paid as agreed. However, a month later the full time 25% was not paid and the appellant accepted it and paid the remainder of the unpaid

⁵⁸ (1950) 1 KB 616

⁵⁹ *Central London Property Trust Ltd V High Trees House Ltd* (1950) 1 KB 616

⁶⁰ (1996) 2 NWLR Pt 429 157.

25% after 3 months. It was held that the appellant cannot later sue for a breach of contract after accepting the altered way of performance. The court further held that;

“The law is that once a party waives his right in respect of an aspect of performance of the contract in accordance with the terms agreed by parties to the contract, that act prevents the party who waived his said right under the contract, from insisting upon his said legal right having regard to the dealings which had taken place between the parties”.

The factors or a standard that validates to detect when waivers have been established can be seen in the case of *Enavharo V Edosomwa*⁶¹ where the court held that a waiver must be intentional act with knowledge and for it to discharge a contract. It is important that the following conditions must be present namely (a) a distinct act (b) must be intentional i.e. such as either expressly or by imputation of law indicates an intention to treat the matter as if the condition did not exist and (c) with knowledge, that is there must be the knowledge of the circumstances of the breach. Despite the forgoing there is a need to discuss the position of the waiving party.

The Position Of The Waiving Party

There is a contention as to what happens to the waived right of the waiving party after the waiver has been established. The general rule is that the waiving party forfeits his or her right to resume the position of his legal right if the other party has acted on his waiver.⁶²

However, the Courts have held in the case of *Rickards V Oppenheim*⁶³ where the court indicated that extension of time gives room for the waiving party to resume his legal right in the contract after the waiver. In this case the defendant contracted the claimant to build the chassis of the Rolls Royce car to be delivered on a certain date and the defendant extended the contract twice and still failed to deliver the car. The plaintiff repudiated the contract. The defendants raised the defence of estoppel but the courts held that it is unreasonable after being lenient with the defendants waived the first delivery time to insist that he is unable to resume his previous legal position after reasonable time has been given to the defendant to finish the assignment and that reasonable time had been given for the Plaintiff to resume his legal position.

⁶¹ NO Sc 305/70

⁶² *Hughes V Metropolitan Railway co.* (1877) 2 App cas 349

⁶³ (1950) 1 KB 616

Despite the fact that it seems that the courts are not clear as to when a waiving party can resume his legal right when he had initially waived his or her contractual right. The solution to be deduced from the authorities for this problem are that;

- (i) A waiving party can resume his legal right in a contract if the other party has not acted on it.
- (ii) A waiving party can resume his legal right if in the opinion of the courts that it will still be equitable with respect to the other party
- (iii) A waiving party can resume his legal right if reasonable time is prescribed to the other party that he wants to resume his legal right in the contract

Accord And Satisfaction

Accord and satisfaction is the purchase of release from a legal duty whether arising under contract or tort by means of any valuable consideration, not being the actual performance of the contractual duty itself. The accord is the contract by which the obligation is discharged. This satisfaction is the consideration which makes the contract operative⁶⁴

In other words, if a party to a contract has failed to execute his part of his contract he can get a valid release from such performance by furnishing some other type of consideration which the other party accepts.⁶⁵

The principle of accord and satisfaction usually takes the shape of a claim been asserted and is disputed by the other party. In such instance they both make compromises to reach agreeable term or consensus and would have abandoned that previous legal obligations in the contract which then brings them to a place of compromise which entails accord and satisfaction.

In the case of *Alhaji Sanusi Dere V Pacific Insurance* ⁶⁶ where a claim from an insurance company by a client was 21,000 naira and the insurance company decided that it can only pay 16,000 naira for the insurance claim for a lorry that was originally insured for 22,000 naira. They both agreed to 13,000 naira and the sum of 10,000 naira was sent as advance to the client. The

⁶⁴ *British- Russian Gazette and Trade outlook ltd V Associated Newspaper ltd* (1933) 2 K.B 616

⁶⁵ *Ude V Osuji* (1990) 5 NWLR (PT 151) 488

⁶⁶ Suit no Ld/325/73 delivered in June 4 1976 at High Court Lagos

client took the money and immediately sued for the initial sum of 21,000 naira. It was held that the parties had reached an agreement with consideration furnished and it was now binding on the clients

In conclusion, the **discharge of contract** is a critical concept in contract law, determining how contractual obligations come to an end. Whether through **performance, agreement, frustration, breach, or operation of law**, each method has distinct legal implications for the parties involved. Understanding these mechanisms not only ensures compliance but also aids in effectively managing risks and resolving disputes within contractual relationships.

Recommendations

1. **Clear Contractual Terms:** Contracts should include precise and unambiguous terms regarding discharge methods to avoid disputes and ensure a smooth conclusion of contractual obligations.
2. **Incorporate Termination Clauses:** Contracts should explicitly state conditions under which they may be terminated, including force majeure, breach, and mutual agreement, providing a structured exit strategy.
3. **Regular Contract Review:** Parties should periodically review contracts to assess performance, identify potential risks, and take proactive measures to avoid unintentional discharge by breach or frustration.
4. **Alternative Dispute Resolution (ADR):** Encourage the inclusion of ADR mechanisms, such as mediation and arbitration, to handle disputes related to contract discharge efficiently and amicably.
5. **Legal Compliance and Updates:** Regularly update contracts to align with evolving legal standards and judicial interpretations regarding discharge of contracts, ensuring compliance and enforceability.