Chapter 17: Performance, Breach, and Discharge

CONDITIONS
- **Definition of a Condition**: an event whose happening or nonhappening affects a duty of performance
  - **Express Condition**: contingency explicitly set forth in language
  - **Satisfaction**: express condition making performance contingent on one party's approval of the other's performance
  - **Subjective Satisfaction**: approval based on a party's honestly held opinion
  - **Objective Satisfaction**: approval based on whether a reasonable person would be satisfied
  - **Implied-in-Fact Condition**: contingency understood by the parties to be part of the agreement, though not expressed
  - **Implied-in-Law Condition**: contingency not contained in the language of the contract but imposed by law; also called a constructive condition
- **Concurrent Conditions**: conditions that are to take place at the same time
- **Condition Precedent**: an event that must or must not occur before performance is due
- **Condition Subsequent**: an event that terminates a duty of performance

DISCHARGE BY PERFORMANCE
- **Discharge**: termination of a contractual duty
- **Performance**: fulfillment of a contractual obligation resulting in a discharge

DISCHARGE BY BREACH
- **Definition of Breach**: a wrongful failure to perform the terms of a contract that gives rise to a right to damages by the injured party
- **Material Breach**: nonperformance that significantly impairs the injured party's rights under the contract and discharges the injured party from any further duty under the contract
  - **Prevention of Performance**: one party's substantial interference with or prevention of performance by the other constitutes a material breach and discharges the other party to the contract
  - **Perfect Tender Rule**: standard under the UCC that a seller's performance under a sales contract must strictly comply with contractual duties and that any deviation discharges the injured party
- **Substantial Performance**: performance that is incomplete but that does not defeat the purpose of the contract; does not discharge the injured party but entitles him to damages
- **Anticipatory Repudiation**: an inability or refusal to perform, before performance is due, that is treated as a breach, allowing the nonrepudiating party to bring suit immediately
- **Material Alteration of Written Contract**: a material and fraudulent alteration of a written contract by a party to the contract discharges the entire contract

DISCHARGE BY AGREEMENT OF THE PARTIES
- **Mutual Rescission**: an agreement between the parties to terminate their respective duties under the contract
- **Substituted Contract**: a new contract accepted by both parties in satisfaction of the parties' duties under the original contract
- **Accord and Satisfaction**: substituted duty under a contract (accord) and the discharge of the prior contractual obligation by performance of the new duty (satisfaction)
- **Novation**: a substituted contract involving a new third-party promisor or promisee

DISCHARGE BY OPERATION OF LAW
- **Impossibility**: performance of contract cannot be done
  - **Subjective Impossibility**: the promisor—but not all promisors—cannot perform; does not discharge the promisor
  - **Objective Impossibility**: no promisor is able to perform; generally discharges the promisor
  - **Subsequent Illegality**: if performance becomes illegal or impractical as a result of a change in the law, the duty of performance is discharged
  - **Frustration of Purpose**: principal purpose of a contract cannot be fulfilled because of a subsequent event
  - **Commercial Impracticability**: where performance can be accomplished only under unforeseen and unjust hardship, the contract is discharged under the Code and the Restatement
Bankruptcy discharge available to a debtor who obtains an order of discharge by the bankruptcy court. Statute of Limitations after the statute of limitations has run, the debt is not discharged, but the creditor cannot maintain an action against the debtor.