**COURSE TITLE: LAW OF CONTRACT**

**COURSE CODE: LPB 202**

**TOPIC: Discharge by Agreement**

1. **Introduction**

As a general principle of contract that parties usually and freely agree to enter into a contract and create binding obligation and so is the same way that parties can terminate the contract by mutual agreement

To make a valid discharge of a contract by agreement, one must consider **the situation of parties’ obligations under the contract.** Where for example, one party has performed his obligation and the other has not performed; the defaulting party will be the one to seek to be discharge from his obligations under the contract.

In the above circumstance for instance, such a party seeking to be discharge must show/prove that he was released by agreement or he offered some consideration. This is what is known as **Accord and Satisfaction**.

In a different situation where both parties have not performed their obligations under the contract, the issue of consideration is not of essence, for each parties agrees to surrender his rights under the contract. This is called **bilateral discharge** because each party part with something of value.

In line with the above, the topic will focus on rescission of executor contracts, rescission of contract under seal and contracts required to be in writing. Aside this sub-heads, the topic will consider the difference between variation of a contract and discharge of contract (with the effect of both), waiver of right under a contract as well as Accord and Satisfaction.

* 1. **Rescission Of Executory Contracts**

In a situation where parties under the contract has some obligations to perform, it may be rescinded by mutual agreement (Bilaterally). The consideration for this kind of discharge is found in the abandonment by each parties of his right to performance. The effect of this is that **parties are completely discharged from the agreement and such agreement cannot be revived again.**

**1.2 Rescission of Contract under Seal**

The position of the Common Law in relation to the above sub-head is that a contract which is made under seal can only be otherwise rescinded by similar contract under seal. This was established in the case of ***West v Blakeway*** **(1841) 2 M & G 729.**

However, the present position of equity with the emergence of the Judicature Act of 1973 changed this common law position so that a contract which is under seal can now be rescinded by a written or oral agreement. This have been stamped in the cases of; ***Berry v Berry*** **(1929), 2 KB 316** and ***Plymouth Corporation v Harvey*** **(1971) 1 WLR 549.**

* 1. **Rescission of Contracts required to be in writing**

Contracts which are required by law to be evidenced in writing like deed of Assignment can be rescinded by written or oral agreement. This was confirmed in the Nigerian case of ***UAC v John Argo* (1958) 14 NLR 105**

* 1. **Variation of Contracts**

It is the correct position and a requirement of law flowing from the above that a contract which is evidenced by writing can be rescinded also by oral agreement but cannot be varied by the same oral agreement. A valid variation must be effected by another agreement in writing. This position was clearly stated in the case of ***GOSS V NUGENT*** **(1833) 5 B. & Ad. 58.**

However notwithstanding the above position variation of a written contract can be effected under circumstances provided under **Section 131(1) (b-d) Evidence Act 2011**. Some of these circumstances include but not limited to the following:

1. Where there is existence of any separate oral agreement as to any matter on which a document is silent and is not inconsistent with the terms of the contracts between the parties.
2. The existence of any separate oral agreement constituting a condition precedent to the attaching of any obligations under such contract, grant or disposition of property.
3. The existence of any subsequent oral agreement to rescind or modify any such contract, grant or disposition of property.

This provision under the Evidence Act 2011 was considered in the case of ***Mbonu v Nwobi*** **(1991) 7 NWLR, (pt 206) 737 @ 750**

* 1. **Waiver of rights under the contract**

A party may decide to voluntarily accedes at the request of the other party to renounce or forgo his rights under a contract.

Waiver can be described as the act of surrendering, renouncing or abandoning a legal right. It is a situation where a party under a contract actively or impliedly by conduct surrenders his rights under a contract and which is been acted upon by the other party.

It is a unilateral action taken by a promisor (the party surrending the right) to the promisee (the party in favour of the promise) to relinquish his right and is been acted on by the other party. The issue of waiver was succinctly considered in the case below:

1. ***Charles Rickards v Oppenheim*** **(1950) 1 K.B 616**
2. ***Mbeledogu v Aneto*** **(1996) 2 NWLR (pt. 429) 157**

It is important to note that a waiver must be a distinct and intentional act which the promisee based his action upon.

* 1. **Accord and Satisfaction**

Accord and Satisfaction is a legal contract concept whereby parties agree to discharge a contract for an amount based on terms that differs from the original terms of the contract. It could also mean the purchase of release from an obligation which arising under a contract by means of any valuable consideration which is not the actual performance of the obligation itself.

The Accord is the agreement on a new terms of the contract and the satisfaction is the performance of those new terms according to the agreement. The effect of this situation is that all prior claims relating to the matter are extinguished.