

Module 3: Contracts

3.1: Meaning of Contract Law Terms

- Sources of Contract Law
 - Common Law (codified in The Restatement (Second) of Contracts)
 - The Uniform Commercial Code for goods (anything moveable at the time of contract, as opposed to services), as adopted into state law

3.1 Meaning of Contract Law Terms

- What is a Contract: A legally enforceable promise
 - Must be in the future, not an immediately executed exchange
 - Can be Oral or Written, Express or Implied
- Quasi-Contract (or Implied-in-law Contract)
 - Claim for Unjust Enrichment and Restitution in the absence of a contract
- Unilateral Contract
 - Act of acceptance is also act of performance (e.g., \$100 to clean the house)

3.1 Meaning of Contract Law Terms

- Promisor: Person who makes the promise
- Promisee: Person to whom promise is made
- Beneficiary: Sometimes a third party who benefits from the promise
- Corporations are “persons” for contract law purposes
- Most (though not all) contracts involve reciprocal promises

3.2 Formation of Contracts

- Mutual Assent: Both parties must exhibit intent to be bound (meeting of minds)
- Intent to be bound is determined by objective criteria

3.2 Formation of Contracts

- Offer
- Acceptance
- Consideration (or Detrimental Reliance)

3.2 Formation of Contracts: Offers

- Offeror must communicate a specific offer to the offeree
 - an advertisement is not a contractual offer unless it invites acceptance through a specific action
 - A preliminary invitation to negotiate is not an offer

3.2 Formation of Contracts: Termination of Offers

- Offer can be revoked prior to acceptance
 - Implicit revocation is possible, but risky because it depends on the offeree knowing about actions taken by offeror
- Offer can be terminated if not accepted within specified time (or reasonable time period)
- Offer is terminated if offeror dies or is adjudged mentally incompetent before acceptance

3.2 Formation of Contracts: Termination of Offers

- No termination if
 - offeree has paid to keep offer open or
 - offeree has relied on a promise to keep offer open or
 - offeree has already begun performance of a unilateral contract

3.2 Formation of Contracts: Termination of Offers

- Offer can be rejected (objective standard)
- Counter-offer is both a rejection of original offer and a new offer
- A mere request for information or clarification is not a counter-offer

3.2 Formation of Contracts: Acceptances

- Only the person to whom offer is made can accept
- At common law, mirror image rule required acceptance in precisely the same formulation; now not so rigid so long as variations in acceptance are minor
- “Mailbox Rule”: offer deemed accepted when sent (not when received)

3.2 Formation of Contracts: Consideration

- Bargained-for Exchange
 - Not a gift
 - The promise induces the other party's action
 - Past consideration is insufficient
- Legal Detriment (Pre-existing Duty Rule)
 - The act or forbearance must not be something the promisor is already under a legal duty to do or refrain from doing
 - Note: UCC has no pre-existing duty rule

3.2 Formation of Contracts: Detrimental Reliance

- The doctrine of Promissory Estoppel
- In absence of consideration, a promise may still be enforced if the promisor knows it will be relied upon by the promisee, it is in fact relied upon, and enforcement is necessary to prevent injustice

3.3 Legal Incapacity to Enter Contracts

- Minors (except for life necessities or in cases of deception)
- Mental Incompetency (but other party must be returned to original position)
- Intoxication (but requires proof of true incompetency)

3.4 Third-Party Beneficiary Contracts

- A contract between two people to benefit a third party.
- Third party beneficiary has rights under such contracts and may sue for performance if the parties to the contract intended to benefit the third party.
- Rights must vest: third party assents, sues, or relies on contract

3.5 Assignment and Delegation of Contract Rights and Duties

- Assignment: A transaction that transfers contract rights from one party to another
 - Assignor must demonstrate intent to assign
 - Assignment must be effective immediately and assignor cannot retain any rights
 - However, assignor may condition the assignment on some act
 - Obligor need not consent to assignment, but must receive notice

3.5 Assignment and Delegation of Contract Rights and Duties

- Revocability of Assignments
 - Irrevocable if supported by consideration
 - A gratuitous assignment is revocable until
 - It is delivered to assignee in writing (or tangible object)
 - Assignee detrimentally relies on assignment
 - Obligor performs contractual duties for assignee

3.5 Assignment and Delegation of Contract Rights and Duties

- Whereas obligee can *assign* contractual *rights*, obligor can *delegate* contract duties
- When an obligor delegates duties, she becomes the delegator and the person who now owes duty is the delegate
- Obligee must accept performance from delegate, but delegator still remains the party who owes the duty
- Delegate may not be compelled to perform unless delegate promises with consideration.
- Duties that specifically rely on obligor's talent/skill cannot be delegated without consent of obligee.

3.6 Statute of Frauds

- Most oral contracts are valid and enforceable, but some types of contracts must be made in writing under the Statute of Frauds:
- MY LEGS

3.6 Statute of Frauds

- **M**arriage
- **Y**ear
- **L**and
- **E**xecutor
- **G**oods (worth more than \$500)
- **S**urety

3.6 Statute of Frauds

- Exceptions
 - If obligee admits in a pleading, testimony, or in court that contract was made;
 - If obligor performs and obligee accepts
- Note that promissory estoppel can be used when obligee detrimentally relies on an oral promise that would otherwise fall under the Statute of Frauds

3.7 Interpreting Contractual Terms

- Core terms must be definite and certain
- In interpreting contracts, courts will look to express terms, course of conduct of the parties, course of dealing of the parties, and trade usage.

3.7 Interpreting Contractual Terms

- Principles of interpretation of contracts
 - Interpret terms to make contract valid and enforceable
 - Interpret contract as a whole
 - Give specific provisions more weight than general ones
 - Prefer negotiated terms to boilerplate terms
 - Construe ambiguities against the drafter

3.7 Interpreting Contractual Terms

- If a written contract is deemed to be an integrated whole, then the Parol Evidence Rule generally excludes written or oral testimony designed to explain the contract because such testimony is inherently unreliable.
- Exception for testimony designed to show existence of additional agreement or condition

3.7 Interpreting Contractual Terms

- Contracts can be made subject to conditions (an event not certain to occur)
 - Condition precedent
 - Condition concurrent
 - Condition subsequent
- A condition is “excused by hindrance” triggering a duty to perform if party prevents condition from occurring or fails to cooperate to ensure condition happening

3.8 Breach of Contract and Remedies

- Failure to perform a contract is a breach, but extent of failure determines extent of damages
 - Partial/trivial breach (promisee can sue but must perform in the meantime)
 - Material breach (promisee can sue and suspend performance, but may not terminate the contract)
 - Total breach (promisee can sue, suspend performance, terminate contract & seek alternative arrangements)

3.8 Breach of Contract and Remedies

- Anticipatory Repudiation: Party indicates by words or action that she will not perform in advance of the time of performance
- Demand for assurances can be issued if party has reasonable grounds for worrying about whether other party will perform. If assurance not given, can be treated as anticipatory repudiation

3.8 Breach of Contract and Remedies

- Remedies
 - Expectation Damages: what the party would have received under the contract
 - Direct Damages + Consequential Damages – Costs Avoided – Loss Avoided
 - Duty to mitigate
 - If substantial performance, expectation damages may only be diminution in value between what was contracted and what was performed (particularly if replacement/completion would result in economic waste)

3.8 Breach of Contract and Remedies

- Remedies
 - Reliance Damages (if Expectation Damages are too speculative or hard to calculate): money damages to reward innocent party for losses incurred in reasonable reliance on the promise. Restores original position if no contract.
 - Duty to mitigate
 - If contract would have produced a loss for non-breaching party, reliance damages reduced by that amount

3.8 Breach of Contract and Remedies

Remedies

- Restitution: awarded to repay a party providing a benefit for the reasonable value of the benefit she provided.
 - Prevents unjust enrichment by breaching party
 - No duty to mitigate or reduction for loss to non-breaching party

3.8 Breach of Contract and Remedies

- Remedies
 - Specific Performance: order to perform contract
 - Injunction to refrain from conduct
 - Liquidated damages; if contract specifies damages, damages were difficult to determine when contract was formed, and the amount specified is reasonable
 - No punitive damages, emotional distress damages, or attorneys' fees awarded

3.9 Affirmative Defenses to Breach

- Lack of Capacity
- Violation of Statute of Frauds
- Duress
- Undue Influence
- Mutual Mistake
- Unilateral Mistake
- Misrepresentation
- Fraud
- Unconscionability
- Statute of Limitations

3.10 Discharge of Contracts

- Discharge by Performance
- Discharge by Impossibility
- Discharge by Impracticability
- Discharge by Frustration of Purpose
- Discharge by Rescission
- Discharge by Novation
- Discharge by Accord and Satisfaction

3.11 Illegal Contracts & Public Policy Concerns

- A contract that violates the law is void and unenforceable
 - Even if performance has begun, partial damages generally not available unless party seeking damages is significantly less culpable for illegality than breaching party
- A contract that is legal but violates a public policy expressed in a statute is not necessarily unenforceable, and courts may order restitution