

Basics of a contractual obligation

Elements of a Contract

oral/ written agreement
exchange relationship/
consideration

at least one promise

enforceability

future action or promise

mutual assent offer and acceptance -
meeting of minds

objective manifestation

intention to be bound manifestation of mutual
assent

reasonable person
standard

Offer and Acceptance in Bilateral Contracts

Both sides make a promise

offer an invitation for contract but not
a contract

mailbox rule acceptance made when put in
mailbox

rejection when received

Offeree accept

response
to offer

reject

counter offer

option contract Meets elements of offer but
limits the promisor's power to
revoke through extra consid-
eration

Offer and Acceptance in Unilateral Contracts

i. Promisor makes a promise in return for
the act of another party

i. Consideration is Cannot revoke after act
the performance has been substantially
of the act performed

Postponed Bargaining: Agreement to Agree

classical view Future terms must be clear and
definite in order to be enforce-
able

modern view Letter of intent could be binding-
according to reasonable jury

Consideration

bargained for exchange

purely gratuitous promises wont be
enforced

Requirement of exchange performance or return
promise must be bargained
for

Classical definition benefit to promisor,
detriment to promisee

Exceptions grossly inadequate
conditions

moral consideration

Issues of agency

Agents can be binding

Kinds of Authority Actual Express

Implied

Apparent Not actual
authority

Based on
principle/ rank

Qualified acceptance

battle of the forms COMMON LAW

form contract preconstructed

mirror image rule terms and conditions must
be identical

last shot rule last form governs the
contract

Damages

direct follow a breach of contract

incidental losses related to actual
damages

consequ- result indirectly from act
ential

Electronic and Layered contracting

shrink wrap sellers terms come with
delivery, accept if you keep the
product

click wrap click to agree to terms- asserts
agreement

browse wrap you agree to the terms by
continuing on site- does not
assert agreement

when is contract made when purchase is made

sellers terms are additional
proposals

Interpreting contracts

shared intent words have different meanings

context of negotiation and
making the contracts

plain meaning dictionary definition/ commonly
understood meaning

contextual meaning circumstances surrounding
(purpose of terms, history of
negotiations, business context
)

theories subjective- meeting of the
minds

objective- reasonable person,
focus on words and conduct

Interpreting contracts (cont)

modified objective-intention and other evidence relevant to contract

principles of interpretations construe language consistently where possible

resolve ambiguity against drafter resolve ambiguity to make contract valid

handwritten/ typed preferred over preprinted

prefer interpretation that makes contract reasonable, lawful, and effective

customary practice terms usage of trade- meaning or word in industry

course of dealings- what has been used in past contracts

course of performance- has one party objected to the meaning in the past

hierarchy of interpretations express terms

course of performance

course of dealings

usage of trade

Restatement 201- whose meaning prevails same meaning

Interpreting contracts (cont)

i. Party does know of other meaning and other knew meaning attached by the first party

Party had no reason to know of other meaning and other knew meaning attached by the first party

iii. Except as stated in this section, neither party is bound by the meaning attached by the other, even though the results may be a failure of mutual assent

Rules in Aid of interpretation Circumstances

Writing interpreted as a whole unless different intention is manifested

Section 204 if terms are omitted, the court can apply reasonable terms

Determining word meaning P has burden of proof because their interpretation is more favorable because D drafted

what to look at to determine word meaning actual language

look at to determine word meaning

negotiating history

industry standards

Interpreting contracts (cont)

applicable government regulations

conduct of parties after the agreement

If contract made in good faith and still can't make clear, dismiss the claim

Doctrine of reasonable expectations (usually adhesion contracts) Any nondickered terms should be interpreted in accordance with the non drafting party's reasonable expectations, even if this contradicts the express language of the contract

Test for reasonable expectation bizarre or oppressive terms

Eviscerates dickered terms

Eliminates dominant purpose of transaction

Contract Formation under the UCC

Applies to sale of goods/ transfer of title not property

not services

not lease

not limited to commercial transactions

sometimes requires at least one party to be a merchant



UCC Article 1-103

underlying purposes: simplify, clarify, modernize

permit continued expansion of commercial practices

uniform law amongst various jurisdictions

UCC Article 2-204

contract must be made in a manner to show sufficient agreement

include conduct

agreement even if the moment is unclear

some terms can be left open if parties intend to make a contract

UCC Article 2-205

firm offer (similar to option contract)

offer by merchant in writing is not revocable for time stated: can't be more than three months

no consideration needed

Determining goods or services

contractual language

business

value

Article 2-207

Additional terms in acceptance/ confirmation:

Acceptance must be made conditional on assent to additional or different terms (if 0-1 merchants)

Become part of contract (if both merchants)

Unless: offer expressly limits terms

Article 2-207 (cont)

terms materially alter it

notification of objection is given

Statute of Frauds under the UCC

Need some sufficient writing: not insufficient if incorrect term but only enforceable to the extent of that term

signed by party against whom enforcement is sought

between merchants: if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

Statute of Frauds under the UCC (cont)

A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

Promissory Estoppel

Enforcement of a promise when the promisee relied on it to their detriment

not enforcing would be unjust



Promissory Estoppel (cont)

A promise which the promisor should reasonably expect to induce an action or forbearance of a definite and substantial character on the part of the promisee and which does not induce such action or forbearance is binding if injustice can be avoided by enforcement of the promise

Promissory Reliance

Pre-acceptance reliance hard to find outside of construction

Minority i. Contractor did not rely on promise to keep price but on promise to deliver product if accepted

Majority General contractors rely on subcontractors- detrimental reliance

Restitution

remedy for unjust enrichment contract is implied in law for the purpose of providing a remedy

Any person who is unjustly enriched at the expense of another is subject to liability of restitution

unjust intent to charge
no imposition on the recipient (request, emergency, acceptance)

enrichment benefit received (economic or something of value)

Quasi Contract Elements

p has conferred benefit from D

D has knowledge of the benefit

D has accepted or retained the benefit

it would be inequitable for D to retain the benefit without paying

Promissory Restitution

unjust enrichment

cannot rise off moral duties alone Except: material benefit rule promisor has been unjustly enriched

moral obligation
contract- no consideration

action is not induced by a promise

Statute of Frauds

classes of contracts subject to SOF contract of an executor or administrator to answer for the duty of his decedent

a contract to answer for the duty of another

a contract made upon consideration of a marriage

contract for the sale of an interest of land

a contract that cannot be performed within one year

sale of goods priced \$500 or more

- -
must be in writing does not have to be a formally executed document

Statute of Frauds (cont)

can use more than one document to form a memorandum that satisfies the statute of frauds (all essential terms, at least one signed by party being charged)

parol evidence can be used for unsigned writing to show assent

Exceptions to the Statute of Frauds

Part performance for real estate A contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific enforcement.



Exceptions to the Statute of Frauds (cont)

Reasonable reliance A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

Factors to take into account availability and adequacy of other remedies

Definite and substantial character of the action or forbearance

extent of action

reasonableness of action

extent of foreseeability of the action by the promisor

Parol evidence rule

Rule When the parties to a contract have mutually agreed to incorporate a final version of their entire agreement in a writing, neither party will be permitted to supplement that written agreement with "extrinsic evidence" of prior agreements or negotiations between them. When the writing is intended to be final only with respect to part of the agreement, the writing may not be contradicted but it may be supplemented by such extrinsic evidence

Parol evidence rule (cont)

exception: if meaning of word in contract is unclear, supplement with evidence

Fully integrated appears whole on its face (has all essential elements)

"four corners" approach (traditional approach)

merger clause- explains contract is final- not necessary but helpful

partial integration will appear to have things left out

plain meaning approach- Williston- four corners of document

contextual approach- Corbin/ restatement 210- focus on actual intentions of parties, consider circumstances

Exceptions (PE does not keep out evidence) evidence to explain meaning of the agreement

agreements made AFTER the execution of the writing

evidence to show the effectiveness of the agreement was subject to an oral condition precedent

Parol evidence rule (cont)

evidence to show the agreement is invalid or illegal

evidence to establish equitable remedy, such as reformation

evidence to establish collateral agreement between the parties

if you sign something that you didn't agree to, you cannot enter extrinsic evidence

Some courts hold that trade usage cannot contradict express terms

Some courts always look at trade usage

