

### 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 performace 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

conseq- result indirectly from act  
uential

### 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)		Interpreting contracts (cont)		Interpreting contracts (cont)	
	modified objective-intention and other evidence relevant to contract		i. Party does know of other meaning and other knew meaning attached by the first party		applicable government regulations
principles of interpretations	construe language consistently where possible		Party had no reason to know of other meaning and other knew meaning attached by the first party		conduct of parties after the agreement
	resolve ambiguity against drafter resolve ambiguity to make contract valid		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		If contract made in good faith and still can't make clear, dismiss the claim
	handwritten/ typed preferred over preprinted			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
	prefer interpretation that makes contract reasonable, lawful, and effective	Rules in Aid of interpretation	Circumstances	Test for reasonable expectation	bizarre or oppressive terms
customary practice terms	usage of trade- meaning or word in industry		Writing interpreted as a whole unless different intention is manifested		Eviscerates dickered terms
	course of dealings- what has been used in past contracts	Section 204	if terms are omitted, the court can apply reasonable terms		Eliminates dominant purpose of transaction
	course of performance- has one party objected to the meaning in the past	Determining word meaning	P has burden of proof because their interpretation id more favorable because D drafted	<b>Contract Formation under the UCC</b>	
hierarchy of interpretations	express terms	what to look at to determine word meaning	actual language	Applies to sale of goods/ transfer of title	not property
	course of performance				not services
	course of dealings				not lease
	usage of trade				not limited to commercial transactions
Restatement 201- whose meaning prevails	same meaning		negotiating history		sometimes requires at least one party to be a merchant
			industry standards		



### 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



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### 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

