

Classifications

Classifications*either one of these

Valid: binding and enforceable agreement meeting all requirements

Voidable: When one or more persons can elect to get out of a contract

Void: There is no contract; lacking an element

Unenforceable: valid but for some reason cannot/will not be enforced in court

Illegal: made for an illegal purpose

AND

Bilateral: Promise for promise

Unilateral: Promise for act

Elements

Requirements for a contract

1. An agreement between 2 or more competent parties
2. based on genuine agreement
3. supported by consideration
4. not for illegal purposes
5. *sometimes* must be in writing

Definitions

Elements (cont)

Offer: A proposal to make a contract. Must have definite proposal [certain not invitation], made with intent to contract, communicated to the offeree.

Termination: Offers are valid until terminated. Possible through rejection, counteroffer, acceptance, etc

Acceptance: Unconditional acceptance in method specified by offeror

Problems Under Acceptance

Fraud: *requires all below

Can rescind contract and get damages if occurs

1. Misstatement of a material fact
2. Made with knowledge of falsity [or with reckless disregard of its truth]
3. With intention to deceive
4. Reliance by the other party
5. Resulting to injury to the other party

Misrepresentation:

Like fraud but *no intent* to deceive.

Can rescind contract but usually no damages

The difference between fraud and misrep is intent

Consideration

That which is bargained for

Requires a legal detriment or legal benefit to each parties (doesn't mean you have to get something)

No requirement that money be involved

Bargain need not be fair

Capacity to Contract

Parties must be legal age w/o mental disability or incapacity

Minors: contracts voidable by minors

NOT voidable by the adult in the contract

Disaffirm: May avoid both executed and executory contracts during minority and w/i a reasonable time after majority. Must return whatever received

Insanity: Do not understand the nature and consequences of the act when contracting

Adjudicated: contract void

Not adjudicated: voidable

Intoxication: Must be so terribly drunk that they don't know about contract execution, not just a few drinks

Statute of Frauds (writing req for an agrmt)

If action **cannot** be performed w/i a year

Sale of interest in real estate, lease >1 year

Sale of goods >\$500

Answer for the debt of another

Requires: Names of those bound, Subject & Consideration, and Signature of one attempting to enforce against

Commonly Forgotten

Parole Evidence Rule

assume contract completely on its face, no prior agreements not contained in written contract

Accord and Satisfaction

Mutual agreement to change contract

Contract Performance

Anticipatory Repudiation

One party says won't or can't perform before performance date

Discharge

Death, physically incapable, becomes illegal, bankruptcy

Rescission

Both agree to forget it

Remedies for Breach of Contract

Damages

Compensatory, nominal, or liquidated

Yes



Remedies for Breach of Contract (cont)

Punitive

Usually **not** (unless accompanied by tort or fraud)

Compensatory Damages

Compensate for losses caused by breach of contract

Special Damages: must be reasonably foreseeable and specifically proved

Profits, future business, costs to replace/repair, medicals, lost wages, etc

General Damages (rarely for breach of contract)

Pain and suffering, mental anguish, hedonic damages, etc

Rule of Mitigation:

Must do what is reasonable to avoid or minimize damages

Benefit Rule:

If violation also provides a benefit, then must reduce recovery by benefit

Equitable Remedies

Specific Performance: Where there is not adequate remedy at law

Usually unique not fungible goods (Rare/special Always land) Not personal service Only available against seller: can make sell

Fungible goods: goods that are interchangeable for commercial purposes, and whose properties are essentially identical (Ex: dollar bills, bond/shares, etc)

Nominal Damages

When it really is the principle of the thing and not the money

You don't NORMALLY sue for nominal damages, they happen when you win, but the jury doesn't think you deserve a significant award of damages.

Bailment

The contractual transfer of an asset or personal property from a bailor to a bailee for a certain period of time

Mutual benefit bailment

Bailee liable for negligence in its care
Bailor must warn of known dangers

Gratuitous bailment for benefit of bailor

Bailee liable for gross negligence in its care
EX: "take care of my dog while I'm on vacation"

Gratuitous bailment for benefit of bailee

Bailee liable for slight negligence in its care EX: "can I borrow your lawnmower to mow my yard?"

Bailee cannot use bailed object outside of bail agreements

Usually absolute liability if outside

Other requirements

Duty to return object Can't use outside of bailment limits
Usually not liable for wear and tear

