

CONTRACT LAW AND FORMATION

- Theory of Contracts
 - An agreement between two or more parties enforceable under law
 - Purpose: to tie down the future (predictability)
 - Involves a bargain or trade, a “meeting of the minds”
- Types of Contracts, by Expression of Agreement
 - Express contracts
 - * Written contracts
 - * Oral contracts
 - Implied contracts
 - Quasi-contracts
- Bilateral and Unilateral Contracts
 - Bilateral contracts involve an exchange of mutual promises (or completed performance and a promise of future performance)
 - Unilateral contracts are like a contest, with no promise of performance by the contestant
- Types of Contracts as to Validity
 - Valid contract
 - Void contract
 - Voidable contract
 - Unenforceable contract

- Elements of a Valid and Enforceable Contract
 - Proper offer
 - Proper acceptance
 - Mutual consideration
 - Absence of a valid defense to enforcement

- Termination of the Offer and Timing of Acceptance
 - Recipient may reject offer or make a counter-offer; both terminate the offer
 - An offer terminates after a “reasonable” period of time
 - Offer terminates as a matter of law upon death or insanity of the parties or destruction of the subject matter
 - The offeror may revoke the offer, effective upon communication to the other party
 - Timing problems with acceptance/revocation
 - * Offers and their revocation are effective when received by the second party
 - * But acceptances are effective when made, even if not yet received by the offeror
 - * The “mailbox rule” and the risk of multiple acceptances

- The Legal Concept of “Consideration”
 - Giving or agreeing to give something of value
 - Doing or offering to do something of detriment
 - Examples: payment of money, performing a service, giving up ownership of something, agreeing to forego anything that has the possibility of being valuable
 - “Illusory” promises do not constitute consideration
 - Consideration may go to a third party (“third party beneficiary”)
 - A substitute for consideration: detrimental reliance/promissory estoppel

Defenses to an Otherwise Valid Contract

- Mutual Mistake of Fact
- Unilateral Mistake (*Not Usually a Defense*)
- Fraud
- Illegality
- Lack of Capacity to Contract
- Duress or Coercion
- Statute of Limitations
 - Ten years for written contracts
 - Five years for oral or implied contracts
 - Special statute for design/construction in Illinois (Section 13-214)
 - * Four years from discovery of problem
 - * Ten years from date of act or omission
- Unconscionability

Assignment of Rights and Delegation of Duties

- Assignment: Giving a Contract Right or Duty to Another Party and Being Disconnected from the Transaction
- Delegation: Same as Assignment, Except that the “Giver” Stays Involved in the Transaction
- What Can be Assigned or Delegated?
 - Personal duties usually cannot be assigned/delegated
 - General/generic duties usually can be assigned/delegated