

Chapter 12 - The Formation of Traditional and E-Contracts

Introduction

- Contract law reflects our social values, interests, and expectations at a given point in time.
 - Distinguishes between “moral” promises which are not legally binding, and promises that are legally binding.
 - Common law governs all contracts (such as services, real estate, employment) except when modified by statutory law such as the UCC.

An Overview of Contract Law

- A **contract** is “a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.”
- Sources of Contract Law
 - Common law governs all contracts except when it has been modified or replaced by statutory law, such as the UCC or by administrative agency regulations.
- The Objective Theory of Contracts
 - Determines intent in contract law
- Elements of a Valid Contract
 - A valid, enforceable contract includes the following four elements:
 - Agreement (Offer and Acceptance)
 - Consideration
 - Capacity
 - Legality
- Defenses to the Enforceability of a Contract
 - However even if all four elements are present, a contract may be unenforceable based on a *defense*.
 - Voluntary consent
 - Form

Types of Contracts

- Contract Formation
 - Bilateral contracts
 - Every contract has at least two parties: the offeror (promisor) and the offeree (promisee).
 - The contract is formed when the offeror and offeree exchange promises to each other.
 - Unilateral contracts
 - The offeror is ‘bargaining’ for performance in exchange for his promise. Contract is formed when the offeree *performs*.
 - Express vs. implied contracts
 - Express: terms of agreement are set forth either in writing or orally.
 - Implied: based on conduct
 - Plaintiff furnished service or property
 - Plaintiff expected to be compensated and defendant knew or should have

- known that payment was expected
- Defendant had a chance to reject and did not
- Contract Performance
 - Executed vs. executory contracts
 - Executed: fully performed by both sides
 - Executory: at least one of the parties has not performed
- Contract Enforceability
 - Voidable contracts
 - Unenforceable contracts
 - Void contracts

Agreement

- A mutual understanding or meeting of the minds between two or more individuals regarding the terms of a contract.
- Requirements of the Offer
 - The offeror must have a serious intention to become bound by the offer.
 - The terms of the offer must be reasonably certain, or definite, so that the parties and the court can ascertain the terms of the contract.
 - The offer must be communicated to the offeree.

- Intention
- Definiteness of terms
 - Identification of the parties
 - Identification of the object or subject matter
 - Consideration to be paid
 - Time of payment, delivery, or performance
- Communication

- Termination of the Offer
 - Termination by action of the parties
 - Revocation
 - Rejection
 - Counteroffer
 - Termination by operation of law
 - Lapse of time
 - Destruction of the specific subject matter of the offer
 - Death or incompetence of the offeror or offeree
 - Supervening illegality of proposed contract

- Acceptance
 - Shows agreement to the terms of an offer
 - Unequivocal acceptance
 - Communication of acceptance
 - Mode and timeliness of acceptance
 - The mailbox rule
 - Authorized means of acceptance
 - Substitute method of acceptance

E-contracts

- A contract that is formed electronically
- Online Offers
 - Provisions to include
 - Acceptance of terms
 - Payment
 - Return policy
 - Disclaimer
 - Limitation on remedies
 - Privacy policy
 - Dispute resolution
 - Dispute-settlement provisions
 - Forum-selection clause – location in which contract disputes will be resolved
 - Choice-of-law clause – specifies any dispute will be settled according to the law of a particular jurisdiction
- Online Acceptances
 - Click-on agreements
 - Shrink-wrap agreements
 - Browse-wrap terms
- E-Signature Technologies
- Federal Law on E-Signatures and E-Documents
 - Electronic Signatures in Global and National Commerce Act (E-SIGN Act)
- The Uniform Electronic Transactions Act (UETA)
 - Scope and applicability
 - Signatures on electronic records

Consideration

- Elements of Consideration
 - Legally sufficient value
 - A promise to do something that one has no prior legal duty to do
 - The performance of an action that one is otherwise not obligated to undertake
 - The refraining from an action that one has a legal right to undertake; forbearance
 - Bargained-for exchange
- Agreements That Lack Consideration
 - Preexisting duty – meant to prevent extortion and the so-called holdup game
 - Past consideration – an act that has already taken place at the time a contract is made and that ordinarily, by itself, cannot be consideration for a later promise to pay for the act

Contractual Capacity

- Legal ability to enter into a contractual relationship
- Minors – age of majority for contractual purposes = 18 years

- Intoxication – contract entered into by intoxicated person can be voidable or valid
- Mental Incompetence – contracts can be void, voidable, or valid

Legality

- Contracts Contrary to Statute
 - Gambling
 - Licensing statutes
- Contracts Contrary to Public Policy
 - Contracts in restraint of trade
 - Covenants not to compete and the sale of an ongoing business
 - Covenants not to compete in employment contracts
 - Enforcement problems
 - Unconscionable contracts or clauses
 - A contract or clause that is void on the basis of public policy because one party was forced to accept terms that are unfairly burdensome and that unfairly benefit the stronger party.
 - Exculpatory clauses
 - A clause that releases a contractual party from liability in the event of monetary or physical injury, no matter who is at fault.

Form

- A contract that is otherwise valid may be unenforceable if it is not in the proper form.
- Statute of Frauds – a state statute under which certain types of contracts must be in writing or in an electronic record to be enforceable