

Chapter 13 – Contract Performance, Breach, and Remedies

Voluntary Consent

- Mistakes
 - Unilateral mistakes of fact
 - Made by only one party
 - Two exceptions
 - Bilateral (mutual) mistakes of fact
 - Mutual misunderstanding
 - Mistakes of value
 - Concerns the future market value or quality of the object of the contract

- Fraudulent Misrepresentation
 - Consists of the following elements:
 - Misrepresentation of a material fact must occur
 - There must be an intent to deceive
 - Innocent party must justifiably rely on the misrepresentation
 - To collect damages, a party must have been harmed as a result of the misrepresentation.

- Undue Influence
 - A stronger party overcomes a weaker party's free will by exerting psychological influence.

- Duress
 - Agreement is not voluntary if one party was forced into it.
 - Can serve as basis for rescission of contract
 - Economic need, by itself, is not duress

Third Party Rights

- Assignments
 - Used in many types of business financing
 - All rights can be assigned, except:
 - The assignment is prohibited by statute
 - The contract is personal
 - The assignment significantly changes the risk or duties of the obligor
 - The contract prohibits assignment

- Delegations
 - Transfer duties by delegation
 - Delegation is prohibited when:
 - Special trust has been placed in the obligor
 - Performance depends on the personal skill or talents of the obligor
 - Performance by a third party will vary materially from that expected by the obligee
 - The contract expressly prohibits delegation by including an antidelegation clause

- Third Party Beneficiaries

- Exception to the doctrine of privity of contract arises when the contract is intended to benefit a third party
- **Third party beneficiary:** one for whose benefit a promise is made in a contract but who is not a party to the contract
- **Intended beneficiary:** a third party for whose benefit a contract is formed

Performance and Discharge

- Discharge is the termination of the obligation.
- Performance is the fulfillment of one's duties arising in a contract.
- Conditions of Performance
 - Qualification in a contract based on a possible future event
- Discharge by Performance
 - Both parties fulfill their duties by performing the acts they promised
 - Complete performance
 - Party performs exactly as agreed
 - Substantial performance
 - Party performs substantially all of the terms of a contract
 - Requirements
 - Performed in good faith
 - Performance must not vary greatly
 - Performance must create
- Performance to the satisfaction of another
 - Performance is conditioned on reasonable satisfaction.
- Material breach of contract
 - Failure, without legal excuse, of a promisor to perform the obligations of a contract
 - Innocent party is excused from performance and has the right to sue for damages.
 - Material versus minor breach
 - A minor breach may be cured.
 - Discharges nonbreaching party from further performance
- Anticipatory repudiation
 - Before either party has a duty to perform, one of the parties may refuse to carry out his or her contractual obligations
- Time for performance
 - If no time for performance is stated in the contract, a reasonable time is implied
- Discharge by Agreement
 - Discharge by mutual rescission
 - Parties must make another agreement.
 - Discharge by novation
 - New contract with substitution of a third party for one of the original parties.
 - Discharge by settlement agreement
 - Compromise that results from dispute
 - Discharge by accord and satisfaction
 - Settlement to discharge original contract.
 - Covenant not to sue

- Discharge by Operation of Law
 - Material alteration of the contract
 - Statutes of limitations
 - Bankruptcy
 - Impossibility of performance
 - When one of the parties dies or becomes incapacitated prior to performance
 - When the specific subject matter is destroyed
 - When a change in law renders performance illegal
 - Commercial impracticability
 - When it becomes much more difficult or expensive than originally contemplated at time contract was formed
 - Frustration of purpose
 - If supervening circumstances make it impossible to attain the purpose both parties had in mind when they made the contract

Damages

- Types of Damages
 - Compensatory
 - Consequential
 - Punitive
 - Nominal
 - Compensatory damages
 - Standard measure – difference between value of breaching party's promised and actual performance
 - Sale of goods
 - Sale of land
 - Construction contracts
 - Consequential damages
 - Special damages to compensate for a loss that does not directly or immediately result from breach
 - Punitive damages
 - Punish and deter wrongdoing
 - Nominal damages
 - Recognize wrongdoing with no monetary loss
- Mitigation of Damages
 - Injured party has a legal duty to mitigate (reduce) her damages.
 - Terminated employee has duty to take a similar job, if one is available.

Damages

- Liquidated Damages versus Penalties
 - Liquidated damages
 - Fixed, certain dollar amount agreed to by parties, paid in the event of breach.
 - Clauses for liquidated damages are enforceable.
 - Penalty

- Designed to penalize a party.
- Generally not enforceable.
- Waiver of Breach

Equitable Remedies

- Equitable remedies include rescission and restitution, specific performance, and reformation.
- Rescission and Restitution
 - Rescission – undo or terminate a contract
 - Restitution – return of goods, property, or funds
- Specific Performance
 - Performance of the act promised in the contract
 - Sale of land
 - Contracts for personal services
- Reformation
 - Used when parties have imperfectly expressed their agreement in writing.
 - Court can rewrite the contract to reflect the parties' true intentions.

Contract Provisions Limiting Remedies

- Contract may contain a clause stating.
 - (1) No damages
 - (2) Limited damages
 - (3) Product replacement, or:
 - Exculpatory clauses
 - Limitation-of-liability clauses