Contracts Outline

Four questions:
Is there a contract?
What are the terms of the contract?
Has there been performance, or discharge or breach?
What are the remedies?

Contract Formation:
Intent is judged by objective statements (judged subjectively by the jury)
GF is implied
A contract is an instinct with an obligation (imperfectly expressed) @Wood v. Lucy
- a promise doesn’t have to be explicit - look at intent to bind
- negotiations w/o objective expression of intent to bind are not enforceable
There must be actual agreement (not agreement based on mistake)
Contracts are interpreted based on context & consequences
It’s very difficult to foresee every eventuality & draft an airtight agreement
Expert testimony is only allowed if it has probative value @Eastern Air Lines v. McDonnell Douglas
Cts are less likely to interpret parties into a contract than to interpret portions of a contract
Contracts require OAC (Offer, Acceptance, Consideration)

Offer
Must be specific & made with the intent to bind
- RE - price & description
- serv - price & duration (or description)
- goods - measurable quantity (# or requirements/output) (UCC)
- rarely an ad (has to be clear, definite, explicit & leave nothing open for negotiation)
Must be actually known by offeree
Dies when notice of termination is received if:
- offeror explicitly revokes/modifyes (allowed b/f offeree accepts)
  - or time limit runs out (reasonable time if implied)
- offeree rejects
  - outright rejection or counteroffer, but not a mere inquiry
- terminates by law
  - death of parties/destruction of subject matter
  - or becomes illegal
Irrevocable offers:
- options (it’s a contract - requires consideration),
- a unilateral contract when performance has begun (creates an option),
- a firm merchants offer (UCC, CISG)
  - written assurance that an offer will remain open
  - if no time specified, ct will enforce a reasonable time ≤ 3 months
• when there is detrimental reliance by the offeree (CISG)
Unconscious traffic victims are assumed to have offered to pay for reasonable medical help

Acceptance
Must be in the method specified by the offer
• if not specified, use same or faster & more legally dependable method
Effective when sent (outgoing mailbox rule)
• CISG - all are effective when received
• unless offeree sends a rejection & then an acceptance (rejection must be received first)
Must be unequivocal
• Mirror Image Rule (common law) - new/diff terms means there is no contract
• Battle of the Forms (UCC & CISG) - elements that agree are kept, others are disregarded
  • unless the other party objects quickly
  • if material terms are in dispute, there was no agreement or contract
If acceptance is by performance, acceptor must be allowed a chance to finish the performance
Non-transferrable unless an option

Consideration - a bargained for detriment or benefit
Serves the function of making sure the parties intended a serious bargain
Can't be illusory - can't contain unrestricted conditions
Satisfactory clauses, exclusive dealership arrangements & requirements/outputs contracts are allowed when subject to GF (UCC)
• imposes a subjective test
Can't be prior condition/pre-existing duty, except:
• UCC - merchant modification
Parties can mutually rescind a contract & then enter a new contract to modify the terms
(Schwartzreich v. Bauman-Basch, Inc.)
An oral modification can be enforced even if expressly forbidden in the original contract as long as it supported by consideration (allowed w/o consideration in UCC & CISG)
Can't be the condition of a gift
Consideration doesn't have to pass from one party to the other
• can be one party acting to its detriment in reliance on the contract (Clausen v. Hamm Brewing)
Inadequacy of consideration creates a presumption of wrongdoing, it is reviewed when:
• parties have unequal bargaining strength
• consideration is egregiously inadequate

Condition - an event other than time that modifies the promise
If condition doesn't occur, there is no contractual obligation (no duty)
Condition precedent - must occur before a duty arises
Condition subsequent - ends the duty when it occurs
Cannot be consistently waived & then enforced w/o notice - estoppel
Cts will generally hold a term to be a promise, not a condition if it is unclear or immaterial
A condition can be implied into a contract based on what the parties reasonably intended at the
time of contracting (assuming GF)

**Promises**
Promises automatically create *duties* (if enforceable)
Cts usu won’t enforce promises:
- when they’re not part of a contract (a bargained for exchange)
- between relatives (Woods v. 5th 3rd)
  - unless the subject matter goes beyond the scope of the familial relationship & satisfies the criteria of a contract
- when they’re made with donative intent (except as PE)
- moral obligation (in addition to a promise) doesn’t create a duty (*Mills v. Wyman*), except:
  - reaffirmation of debt after a BK is enforceable b/c it is based on the original contract (*Mills v. Wyman*)
  - if following the minority rule (*Webb v. McGowin*)

*Promissory estoppel*

1. a promise made w/ the reasonable expectation that it will induce reliance
2. that is *reasonably* relied on
3. to the detriment of the promisee
4. when injustice can only be avoided by its enforcement
   - remedies are limited to the amount required to prevent injustice
Enforces promises made w/o consideration & made w/o bargaining
Equitable estoppel - inducement based on misrepresentation - no specific promise (2-4 are same)
- lower std of proof b/c of misrepresentation
A promisor can be held liable under promissory estoppel for detrimental actions done by a third party relying on the promise if those actions are foreseeable (*Hoffman’s wife v. Red Owl*)
Easier to prove than a contract, but damages awards are usually lower

**Defenses To Contract Formation:**
Balance the tension between reliance on contracts and protection of individuals
If a contract is discharged, neither side has to perform

**IF I FIND SUM**

**Impracticability** - substantial difference between assumptions of the parties & how things turned out s/t enforcement wld be unfair (makes the contract void)
- substantial difference can be that performance becomes *unreasonably* expensive
- pl must not have caused the change or borne the risk
- impracticability of one (minor) term will not render the contract void
- temporary impracticability will not render the contract void
- CISG - to be excused from a contract, df must have relied on a contract that was excused

**Frustration of purpose** - subject matter of the contract no longer exists

**Incapable parties** - Drunks, Insane people & Minors
voidable by the incapable party (minors can affirm when they reach majority)
- df has to know/hrtk of the incapacity
- minors are bound only by contracts for necessities
- an illiterate person won’t be responsible for a contract if he was Aullled into security or thrown off his guard & deceived. @Ellis v. Mullen) - look to inequity of the parties

**Fraud**
- in the inducement (EE) - fraudulent misrepresentations - voidable
  1. a false representation of fact
  2. made with knowlege of its falsity and intent to induce the other party
  3. which the other party reasonably believes
  4. to its detriment
- in the signing - void
- hyperbole is allowed in sales presentations (assumed by the context)

**Illegal agreements** - void
- inherently illegal, or
- for illegal purposes/performance made by illegal means
  - may have to decide on the lesser of 2 evils
- against public policy (possibly cohabitation)
  - legislature is better suited to decide matters of public policy - cts wl just enforce

**Non-serious** statements/settings (context) (Aserious & sensible, @Keller v. Holdeman)

**Duress** - voidable
10. an improper threat
11. that induces the other party≠assent when
12. the other party doesn≠have any meaningful choice
- judged by a subjective standard in the context (not RP of Anordinary firmness@
- business compulsion - voidable if:
  1. pl had no meaningful choice, and
  2. the deal was not fair
- df has to have caused the condition (shortage doesn≠nec = compulsion)
  - or knowingly taken advantage of it to pl≠detriment

**Statute of Frauds** - to be enforceable, the contract must be in writing and signed by df if:
- for goods > $500/$5000 !!!
- for land (any price)
- cannot be performed in 1 year
- unless df has admitted to the existence of a contract in his pleadings

**Unconscionability** - voidable (or reformable if not a material term) when there is:
1. unfairness in bargaining (no meaningful choice), and
2. unfairness in terms
- unconscionability judged by the community≠values (which community - jdg decides)
- adhesion presumes unconscionability, but does not prove it
- an extreme profit margin presumes unconscionability, but does not prove it
- recission periods allow freedom of contract and guard against abuse
- unfair contracts may be (formerly were) decided on the basis of a pretence to enforce equity

**Mistake**
- parties are bound regardless of a unilateral mistake
• unless the other side was trying to take advantage of it
• bilateral mistake makes contract voidable by the party who didn’t bear the risk
• disclosure of material latent defects is required (haunted house - "Stambovskiy v. Ackley")
• mistake in business jdgmt - bad business decision - usu not remediable
• mistake in integration - written down incorrectly - can be reformed
• misunderstanding - lack of clear communication/agreement - void unless taken advantage of
• mistake in basic assumptions - material fact later found to be incorrect - voidable by the party who didn’t assume the risk (Lenawee Co Board of Health v. Messerly)

Breach
Disappointed expectations can amount to a breach ("Jarvis v. Swans Tours, Ltd")
A party cannot consistently allow a breach (or modified term) and then declare the contract void without giving the other party notice to stop breaching (or return to original terms)

Rules of construction:
Contracts are construed against the drafter
• parties w/ greater bargaining power are interpreted against especially true of insurance policies
Handwritten terms trump pre-printed terms
Words trump numbers (as on a check)
Contract are interpreted (in part) by looking to
• Usage of trade
• Course of dealings
• Course of performance

Parol evidence rule - no evidence allowed to contradict final written memorandum of contract
Can be introduced to show fraud/duress/mistake
UCC allows evidence of Usage of trade, Course of dealings & Course of performance
Williston - look only within the four corners of the document
Corbin - context must be established to determine whether a term is ambiguous
• no term in inherently unambiguous ("Frigaliment Importing Co v. BNS Intl Sales Corp")

Remedies:
All damages must be foreseeable ("Hadley v. Baxendale") & ascertainable, not speculative
• very difficult to enforce a long term contract in its first years
Damages should not be punitive - cts want to encourage efficient breach@
Df’s conduct usually not considered (unless willful & wanton)

Primary: ERRS
Expectancy damages - put the party in the position they’d be in if the other party had performed
• loss of profit &
• consequential damages - reasonably foreseeable injury proximately caused by the breach
  • if substantial, the risk must have been bargained for (df had notice & assumed the risk - Hadley v. Baxendale)
  • rarely awarded to seller (whose consequence is not having $)
• non-breacher must mitigate
  • won±be allowed to replace with a more expensive alternative
  • pl±savings must be deducted from the award
  • doesn±have to take another job that±substantially different or inferior (Parker v. Twentieth Century-Fox)
  • lost volume - subsequent sale won±be deducted from damages if it wld have happened anyway (if seller has a large stock of the item) - UCC
• doesn±actually get non-breacher where he wld have been b/c TC

Restitution - breacher has to give back any value it received from non-breacher
• shldn±exceed the contract price
• the measure of damages for a quasi-contract action

Reliance - award for actions done in reliance on the contract
• if they±foreseeable at the time of breach (Anglia Television Ltd v Reed)
• can include expenses incurred before contract formation
• the appropriate award covers reliance expenses up to the time of breach (& expected profit)
• expenses incurred in verifying it±a good deal aren±reliance expenses

Specific performance - subject matter must be unique, rarely awarded
• cts don±want to enforce involuntary servitude & don±want to oversee specific perf

Secondary: PQRRSTA

Punitive damages - rare - usu only for tort based relief

Quasi-contractual relief - return of the value of an unjust enrichment
• enrichment doesn±have to have been part of a contract, but it can±have been a gift
• the breacher can claim unjust enrichment too
• damages are based on the value of services given, not on the benefit to the other party (Maglica v. Maglica)

Recission - the ending of a voidable contract

Reformation - error in contract is corrected

Stipulated/liquidated damages - specified in contract b/c hard to determine
• can±be a penalty

Tort remedies - non-economic (& punitive) damages may be awarded when ED is a likely outcome of the breach, or when there±a sense of morality involved (in interference)
• shorter statute of limitations
• more likely to award punitive damages

Arbitration

Interference with prospective advantage
Factors to consider to determine if interference occurred:
• Benefit (+ if df would benefit from the interference)
• Direct (+ if individual (++) if arm twisting), - if just an advertisement)
Contract (+ if yes, - if no)
  • if no contract, additional wrongful conduct is required
  • Legitimate reason to interfere (+ if no, - if yes)
  • Laws/rules/mores broken (+ if yes, - if no)
Cts don± want to inhibit contract or business interests

Third Party Beneficiaries
An intended third party beneficiary can enforce a contract

Methods of discharge:
Performance/tender of performance
Modification
Rescission
Impossibility/impracticability
Frustration
Condition subsequent fulfilled

One Liners
A statement is an offer/acceptance if it is made with the intent to bind and if it is specific.
A condition is a bargained for benefit or detriment.
Promissory estoppel is 1. a promise made w/ the reasonable expectation that it will induce
reliance 2. that is reasonably relied on 3. to the detriment of the promisee 4. when injustice can only be avoided by its enforcement

The Parol Evidence rule bars evidence that contradicts the final written memorandum.

A contract is void due to impracticability when there is a substantial difference between the assumptions of the parties and actual events such that performance becomes unreasonably expensive.

A contract is void due to frustration of purpose when its subject matter no longer exists.

A contract is void due to incapable parties when the plaintiff is a minor/mentally incompetent/drunken and the defendant knows or should know of the plaintiff’s incapacity.

A contract is voidable due to fraud when one party makes 1. a representation of fact which it knows to be false 2. with the intent to induce the other party 3. which the other party reasonably believes 4. to its detriment.

A contract is void if it has an illegal subject matter, is performed by illegal means, or is against public policy.

A contract is void when the parties are not serious.

A contract is voidable due to duress when one party makes 1. an improper threat 2. that induces the other party’s assent, when 3. the other party has no meaningful choice.

The Statute of Frauds makes unenforceable any contract that is not in writing and signed by the person against whom it is sought to be enforced if the contract price is $500 or more.

A contract is voidable or reformable due to unconscionability when there is 1. unfairness in bargaining (no meaningful choice), and 2. unfairness in terms.

A contract is voidable by the party who did not assume the risk of loss due to bilateral mistake when both parties assumed a fact that later became known to be false.

A contract is voidable by a party who made a unilateral mistake only when the other party has tried to take advantage of that mistake.

Expectancy damages try to put the party in the position he would have been in had the other party not breached. They include lost profits and consequential damages.

Restitution damages require one party to give back any value it received from the other party.

Reliance damages compensate a party for expenses incurred in reliance on the contract that are made worthless by the breach of the contract.

Specific performance is the judicial ordering of performance of a contract. To be awarded, it usually requires unique subject matter, and cannot involve personal service.

Unjust enrichment is an action that requires one party to return the value given to it by another party. It does not require a contract.