CONTRACT LAW: INTRODUCTION

Contract Law is one of the oldest areas of law, along with Property Law. Contracts are pervasive in society, our everyday lives, and particularly in business. Most of us engage in informal contracts on a daily basis, each time we make a purchase.

Contracts can be oral or written. Both are binding under most circumstances. There are, however, certain contracts that must be in writing in order to be valid and enforceable.

Contract Law is clearly established in the common law, and provides a consistent set of rules and remedies that govern contract formation, performance and breach of contract. The rules provide a framework that serves as an incentive to enter contracts, and the available remedies for breach of contract reduce the risk for parties entering into contracts. This consistency, and decreased risk is particularly important in commercial contracts. Without the relative consistency and availability of remedy for breach of contract, businesses would have less incentive to enter into contracts.

Contract Law requires a slightly different perspective and analysis than some other areas of law we have studied, i.e., negligence, constitutional law, etc. I hope you will enjoy studying Contract Law.

OFFERS and AGREEMENT

Semantics and the precise words of offerors and offerees are very important in contract law.

The concept of mutual assent can sometimes be a rather nebulous idea.

The first element of contract is finding mutual assent between the contracting parties. Mutual assent is defined as a reciprocal agreement based on a meeting of minds of all of the parties to a contract. The steps leading to mutual assent start with the offer and acceptance process. These steps can be broken down into subparts, and a familiarization of those subparts is essential to the study of contract law.

The offer is broken down into three main subcomponents: intent, certainty, and communication. There must be clear intent on the part of the offeror to enter into a contract, the offer must be clear in its terms, and the offer must be communicated in some way to the offeree.

Once a good offer is made, the other party is expected to make a response. The response is dictated in many ways by the terms of the offer. Under the traditional common law mirror image rule, the acceptance must reflect in exactly the same terms as the offer. If any terms are changed, or new terms are included, it will be considered a rejection of the original offer, and a counteroffer. A counteroffer is a new offer and the bargaining begins anew - the original offeror becomes the new offeree, the original offeree becomes the new offeror.

Once there is a good offer, and clear acceptance, the first element of contract, agreement or mutual assent, is met. There are many variations on this basic theme as illustrated by the common law rules on advertising,

auctions, and implied contracts based on the actions of the parties. They all have one common denominator: Sooner or later some sort of basis for mutual assent must be found before a court will go forward with enforcement of the agreement.

Bilateral vs. Unilateral Contracts

Just a point of clarification on bilateral v. unilateral contracts, as the concepts can be a bit confusing.

Bilateral contract: At the time of contract formation, both parties make mutual promises to do something. For example:

A promises to pay B $2000 to paint her house beginning in 1 week (or whenever...the time for beginning performance is irrelevant), and in exchange for A's promise, B promises to paint A's house. The promises are made NOW, so the contract is binding and enforceable NOW for both parties, even though performance will not begin until some time in the future. Bilateral contracts can be oral or written.

Unilateral contract: An offeror promises to do something in exchange for an act by the offeree; the offeree can accept the offer 2 ways: (1)by promising to do the act (thus, the agreement becomes a bilateral contract at the time the offeree made the promise to do the act in exchange for A's promise) or, (2)the offeree can accept merely by beginning to perform the act without making a oral/written promise, thus, the contract becomes binding and enforceable on both parties once performance begins. For example:

A promises to pay B $2000 to paint her house, beginning in 1 week; assume B says, "OK, I will think about it", then B shows up in 1 week and begins painting the house; at the time the painting begins, B has accepted A's offer by doing the act and a unilateral contract is formed. B COULD have accepted A's offer "on the spot" my saying, "OK, I will paint your house", or B could have thought about A's offer for a few days, then called A and said, "OK, I will paint your house"; in either case, B was making a promise in exchange for A's promise, and a ***bi***lateral, not a unilateral, contract would have been formed at the time B made the promise. ***Uni***lateral contracts are formed ONLY when acceptance is in the form of an act, not in the form of an oral or written promise.

Whether a contract is bilateral or unilateral actually has little significance, sort of a "Who cares?" situation. Whether a contract is bilateral or unilateral is relevant only when there is a dispute/or some question about whether a binding contract was formed. Then it is necessary to look at the words/actions of the offeror and offeree to determine whether a contract was formed. And that includes looking at the words/promise of the offeror and then looking at the words/promise or acts of the offeree.

Semantics and the precise words of offerors and offerees are very important in contract law.

Implied: - the offer and acceptance or not expressly bargained for, but are implied by the actions of the parties only, thus, it is not a bilateral contract

OBJECTIVE THEORY OF CONTRACTS

In ***all*** contracts, we apply the objective theory of contract rather than the subjective theory. Thus, we objectively assess the actions of the parties, the words of the parties in formation, the words of any written agreement, etc. The subjective theory means that we evaluate contract by what we subjectively think the parties meant in formation, subjectively what we think the words of any written agreement, or what either or both parties SAY they meant, subjectively, after the performance.

For example, A says I will pay you $50 to wash and clean my car, B says, I accept. B washes and cleans the car but A refuses to pay by SAYING, "I was only joking about my offer." Applying the objective theory, we see that nothing in what A said indicates A was joking, thus this is a valid offer. If we applied the subjective theory, any party could say after performance, "I was joking", "I didn't mean it", etc and this would be unfair and not ensure any guarantees in contracts, so there would be no protection for parties and thus no incentive to enter into contracts.