

BUSA 324 – Business Law

Chapter 29: Small Business and Franchises	Condition: a possible future event that could trigger the performance of a legal obligation or terminate an existing one through a contract Condition precedent: when the condition must be completed before a party's performance Concurrent conditions: when both party's performances are conditioned on one another <u>Types of Performance</u> · Complete performance: when a party performs exactly as agreed. The performance has been completed "perfectly". · Substantial Performance: when a party is in good faith and can perform on all terms and acts of their contract Anticipatory Repudiation: when a party refuses to carry out their part of their contractual obligations before either party could perform. Discharge in bankruptcy: when the debtor's assets are allocated and have been made to be in fair and equitable fashion after proceeding with bankruptcy. Impossibility of performance: when a supervening event has caused the future performance to be made impossible after the contract has been made. Frustration of purpose: a theory closely related to the doctrine of commercial impracticability
Chapter 30: All forms of Partnerships	<u>Types of Damages:</u> Compensatory (covers direct losses and costs), Consequential (covers indirect and foreseeable losses), Punitive (punishes and deters defendant), Nominal (acknowledges the fault when no monetary loss is evident). Liquidated damages: specifies certain dollar amount to be paid in the event of a future default or breach of contract. Liquidated damages provisions are enforceable. Penalty: specifies a certain amount to be paid in the event of a future default or breach of contract <u>AND</u> meant to penalize the breaching party. Agreement amount is not enforced in court. Restitution: rescinding a contract by returning goods, property, or funds previously conveyed. If goods have been consumed, restitution equivalents are repaying the same dollar amount for the good. Reformation: neutral remedy for a court to rewrite a parties' true intentions as it was unclear in the written agreement.

**Chapter 31:
Limited
Liability
Companies and
Special Business
Forms**

Mistakes of Fact

11. **Bilateral (Mutual):** a “mutual misunderstanding concerning a basic assumption on which the contract was made” (p. 249) This occurs when both parties agree that a mistake has been made on the contract and either party can rescind it.

12. **Unilateral:** occurs when only one party is at fault for the mistake on the contract. The mistake usually doesn’t relieve the other party from the contract.

Mistakes of Value: occurs when the mistake is related to the future market value or quantity of the object in the contract. The contract is usually enforceable and mistakes can be bilateral or unilateral.

Fraudulent Misrepresentation: consists of false representation of material fact, must have an intent to deceive, and the innocent party must rely on the misrepresentation when justifying their case.

Undue Influence: surfaces from special relationships (fiduciary relationships) where one party’s free will is overcome by that of another due to undue influence.

Duress: threatening a party into a contract out of fear or force.

- Ex: violent threats, economic pressure, etc.

Adhesion Contracts and Unconscionability: usually concerning one-sided bargains where one party has superiority over another in terms of bargaining power and can dictate the terms of the contract.

- Results from standard-form contracts or take-it-or-leave-it adhesion contracts.

**Chapter 32:
Corporate
Formation and
Financing**

Contracts That Fall within the Statute of Frauds (p. 264)

- Contracts involving interests in land, contracts that can't be performed within a year from the day after the date of formation, collateral or secondary contracts, promises made regarding marriage, contracts under the Uniform Commercial Code (UCC) for goods being priced at \$500 or more for sale.

Parol evidence rule: if the written contract was intended to be a complete and final statement of each party's agreement, neither party can present parol evidence.

Exceptions to the Parol Evidence Rule

- Contracts are subsequently modified, voidable or void contracts, contracts with ambiguous terms, incomplete contracts, prior dealing, course of performance, usage of trade, contracts subject to an orally agreed-on condition precedent, contracts with an obvious or gross clerical (or typographic) error that clearly would not represent the agreement of the parties.

Integrated contracts: when a written contract is intended to complete and finalize the terms of the agreement when determining if parol evidence is allowed. Extraneous evidence is not needed.