

PROFESSIONAL PRACTICE 544

CONTRACT LAW AND CONTRACT FORMATION – INTERPRETATION OF CONTRACTS

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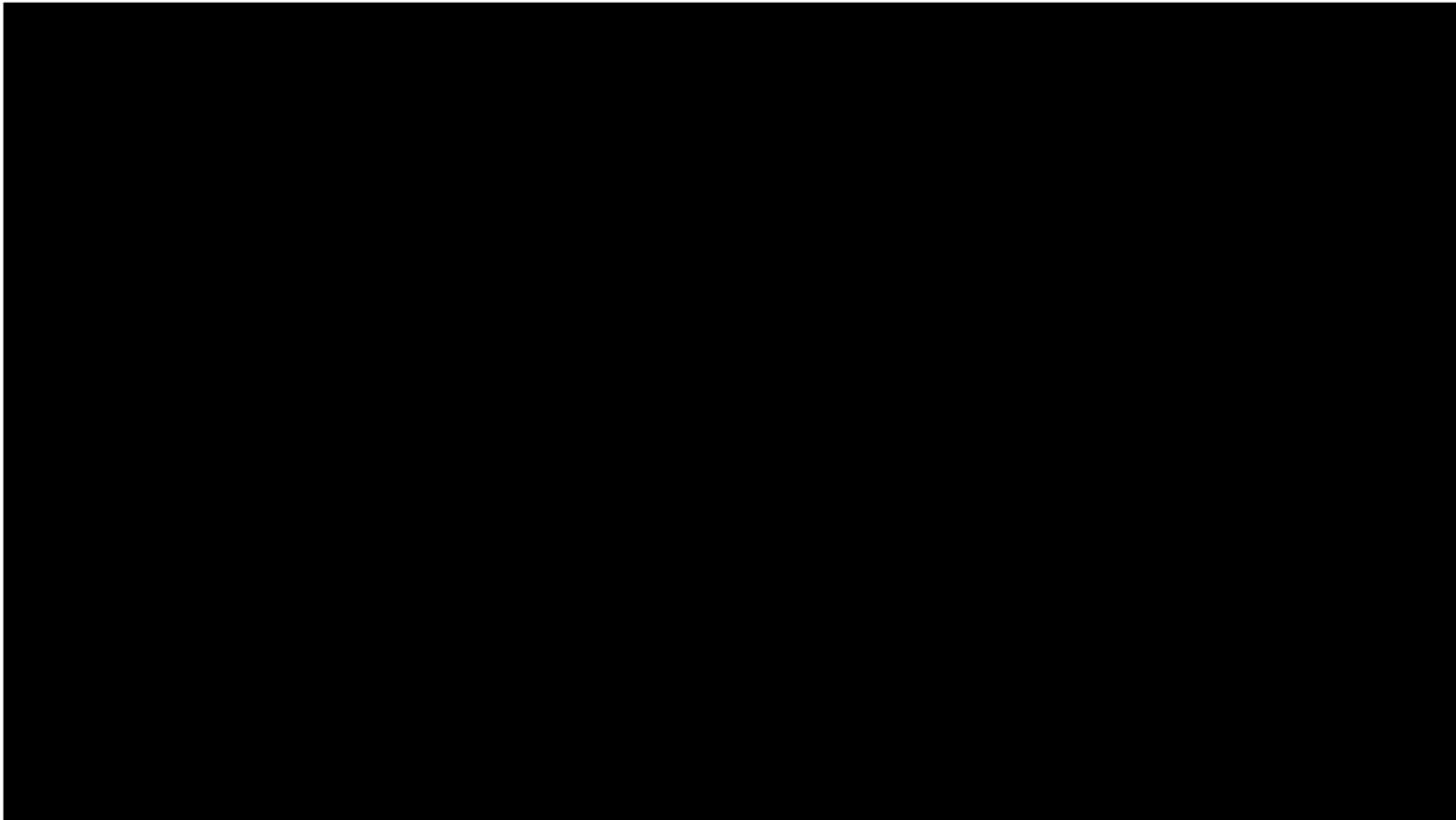
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Contract Law and Formation Interpretation of Contracts

Theory of Contracts

- ▶ An agreement between two or more parties that is enforceable under the law
- ▶ Purpose: To tie down the future (predictability)
- ▶ Involves a bargain or trade, a “meeting of the minds”





TYPES OF CONTRACTS

Types of Contracts – Express, Implied, Quasi

- ▶ Express contracts
 - ▶ Written contracts
 - ▶ Oral contracts
- ▶ Implied contracts – Implied-in-fact
 - ▶ Not written or oral
 - ▶ By the actions of the parties – e.g., visiting a vet
- ▶ Quasi-contracts – Implied-in-law
 - ▶ Agreement between two or more parties with no prior obligation to each other
 - ▶ Imposed even if neither party originally intended there to be a contract
 - ▶ Were you unjustly enriched – restitution
 - ▶ e.g., fixing a leak in a roof discovered later

Bilateral and Unilateral Contracts

- ▶ Bilateral contracts involve an exchange of mutual promises (or completed performance and a promise of future performance)
- ▶ Unilateral contracts are like a contest, with no promise of performance by the contestant

Types of Contracts as to Validity

- ▶ Valid contract
- ▶ Void contract
 - ▶ Not legally valid or enforceable at any point
 - ▶ e.g., illegal, against public policy, minor, against regulation
- ▶ Voidable contract
 - ▶ Seemingly valid and legal, except and until ...
 - ▶ Can be performed – but may be voided or may be cancelled
 - ▶ e.g., withheld information, misrepresentation, undue influence, mutual mistake, minor
- ▶ Unenforceable contract
 - ▶ Valid contract cannot be enforced in a court of law
 - ▶ e.g., capacity, duress/fraud, unconscionable/safety/unfair, mistake, public policy, also – statute of limitations and laches (delay)



ELEMENTS OF A VALID CONTRACT

Elements of a Valid and Enforceable Contract

- ▶ Proper **offer**
- ▶ Proper **acceptance**
- ▶ Mutual **consideration**
- ▶ **Absence of a valid defense** to enforcement

Offer and Acceptance – Timing and Termination

- ▶ Recipient may reject offer or make a counter-offer
 - ▶ both actions terminate the offer
- ▶ An offer terminates after a “reasonable” period of time
- ▶ Offer terminates as a matter of law upon death or insanity of the parties or destruction of the subject matter (fire, theft, etc.)

Offer and Acceptance – Timing and Termination

- ▶ The party making the offer may revoke the offer, the revocation is effective upon communication to the other party
- ▶ Timing problems with acceptance/revocation
 - ▶ Offers and their revocation are effective when **received** by the second party
 - ▶ Acceptance is effective when it is made, even if notice of the acceptance not yet received by the party who made the offer being accepted
 - ▶ The “mailbox rule” and the risk of multiple acceptances
 - ▶ What happens when you reject after you accept?
 - ▶ Timing here is important

What is Consideration

- ▶ Giving or agreeing to give something of value
- ▶ Performing or offering to perform something of detriment
- ▶ Examples of consideration:
 - ▶ Payment of money
 - ▶ Performing a service
 - ▶ Giving up ownership of something
 - ▶ Agreeing to forego anything that has the possibility of being valuable

What is Consideration

- ▶ “Illusory” promises do not constitute consideration
 - ▶ Where only one side is required to perform
 - ▶ Unenforceable; may include deception; unclear language
 - ▶ Sell you everything I want to; May sell you an item for a specific price
- ▶ Consideration may go to a third party (e.g., “third-party beneficiary”)
- ▶ A substitute for consideration: detrimental reliance/promissory estoppel

Defenses to an Otherwise Valid Contract

- ▶ Mutual Mistake of Fact
- ▶ Unilateral Mistake (not always a defense; reformation; rescission)
- ▶ Fraud
- ▶ Illegality
- ▶ Lack of Capacity to Contract
- ▶ Duress or Coercion

Defenses to an Otherwise Valid Contract *(Cont'd.)*

▶ Statute of Limitations

- ▶ Ten (10) years for written contracts
- ▶ Five (5) years for oral or implied contracts
- ▶ Special statute for design/construction in Illinois §13-214
 - ▶ Four (4) years from discovery of problem
 - ▶ Ten (10) years from date of act or omission

▶ Unconscionability

- ▶ Terms so extremely unjust or so overwhelmingly one-sided in favor of the party with the superior bargain power (no warranty v. implied warranty of habitability)
- ▶ Contrary to good conscience
- ▶ Entire contract invalid; partial; enforceable/modify

Assignment of Rights and Delegation of Duties

- ▶ Assignment: Giving a contract right or duty to another party and being disconnected from the transaction
- ▶ Delegation: Same as an assignment, except that the “giver” stays involved in the transaction
- ▶ What can be assigned or delegated?
 - ▶ Personal duties usually cannot be assigned/delegated
 - ▶ General/generic duties usually can be assigned/delegated



INTERPRETATION OF CONTRACTS

Goal: To Effectuate the Intent of the Parties

- ▶ The “trier of fact” looks to determine the actual bargain
- ▶ The court or arbitrator will not rewrite the contract

First Level of Analysis – The Objective Language of the Contract

- ▶ Clear and unambiguous language is always enforced as written
- ▶ No explanations or clarifications of the language is permitted
- ▶ Why this process of analysis? To resolve conflicts; To confirm the deal

Express and Implied Terms

- ▶ **Express terms** are spelled out either in writing or orally
- ▶ **Implied terms** are part of the agreement but not discussed or communicated
- ▶ Some commonly implied terms in construction contracts:
 - ▶ Neither party will hinder the other from performing the contract
 - ▶ Construction will be performed in a good and workmanlike manner
 - ▶ An architect will perform his duties in accordance with the appropriate standard of care



RESOLVING CONTRADICTIONS AND INCONSISTENCIES

Contradiction, Inconsistency, Contract Rules

Determine Whether There is an Actual Contradiction or Inconsistency

- ▶ Are the words contradictory? Is there an inconsistency?
- ▶ Is there an interpretation – a contract rule or judicial rule – that would allow the terms to be read consistently?

Rules Stated in the Terms of the Contract for Resolving Inconsistencies

- ▶ One document may supersede another, such as specifications superseding drawings
- ▶ Requiring the lengthier or more expensive procedure
- ▶ Identifying who has the duty of inquiring about the inconsistency

Contract Construction – Judicial Rules

Judicial Rules of Contract Construction

- ▶ Follow the specific rather than the general provision
- ▶ Construe the contract language against the party who drafted the contract
- ▶ Construe the contract as a whole, favoring the provision more consistent with the overall contract intent

Modification of Contracts - After the Execution of the Agreement

Modification by Agreement of the Parties

- ▶ The parties who sign a contract may **always** agree to modify that contract
- ▶ Even a contract that forbids modification can be modified
- ▶ There can even be oral modification of written contracts
- ▶ Timing of the modification is key

Modification of Contracts - After the Execution of the Agreement

Actions for “Reformation” of Contracts

- ▶ Reformation is when the written terms of the contract do not accurately reflect the actual agreement reached between the parties
- ▶ Requires a lawsuit seeking “reformation” making it the only time that a court may rewrite the contract
- ▶ The party seeking information must have a good reason
 - ▶ Mutual mistake of fact
 - ▶ Fraud
 - ▶ Unilateral mistake of fact, but need the other party's knowledge of the mistake



QUESTIONS?