

Contracts Big Picture

Threshold: Which law governs? Common Law or UCC?

Step One: Formation

Offer

Requirements:

1. INTENT TO BE BOUND
2. TO DEFINITE TERMS
3. COMM. TO OFFEREE

Termination:

1. LAPSE OF TIME
2. REVOCATION
3. REJECTION (includes COUNTEROFFER)
4. OPERATION OF LAW

Acceptance

Common Law

MIRROR IMAGE RULE

UCC Acceptance

ADD. & DIFFERENT TERMS

Methods

PROMISE; PERFORMANCE

Modes

AUTHORIZED OR REAS.

Mailbox Rule

EFFECTIVE AT DISPATCH

Offer + Acceptance = Mutual Assent
Mutual Assent + Consideration = Contract

Consideration

Benefit or Detriment Bargained-for Exchange

ADEQUACY IRRELEVANT
NO PAST CONSID.
PRE-EXISTING DUTY
ILLUSORY PROMISES

Promissory Estoppel

Consideration Substitute

Defenses to Formation

STATUTE OF FRAUDS
MISTAKE (MUTUAL OR UNILATERAL)
AMBIGUITY
ILLEGALITY
INCAPACITY
UNCONSCIONABLE
FRAUD, DURESS

Step Two: Performance

Contract Terms

Interpretation & Construction

CUSTOM & USAGE, COURSE OF DEALING

Parol Evidence Rule

IF K CLEAR AND UNAMBIG., NO EVID. OF PRIOR OR CONTEMP. AGREEMENTS

Modification

C/L: CONSID. REQ. UCC: GOOD FAITH OK
MAY NEED TO SATISFY SOF

Excuse of Condition

WRONGFUL PREVENTION
VOLUNTARY DISABLEMENT
ANTICIPATORY REPUDIATION
ACTUAL MATERIAL BREACH
WAIVER & ESTOPPEL
IMPOSSIBILITY, ETC.
SUBSTANTIAL PERFORMANCE

Discharge of Duty

BY PERFORMANCE
IMPOSSIBILITY, ETC.
MODIFICATION
MUTUAL RESCISSION
NOVATION OR SUBST. K
ACCORD & SATISFACTION
LAPSE, STATUTE OF LIMIT.

Third Parties

Third Party Beneficiaries

INCIDENTAL or INTENDED; DONEE or CREDITOR

Assignment, Delegation, Novation

Breach

Breach = Failure to Discharge an Absolute Duty

Material Breach vs. Substantial Performance

FACTORS: BENEFIT RECEIVED, ADEQUACY OF DAMAGES, EXTENT OF PARTIAL PERFORMANCE, HARDSHIP TO BREACHING PARTY, NEGLIGENCE OR WILLFULNESS

Step Three: Remedies

Damages for Breach

Compensatory Damages

BENEFIT OF BARGAIN; MUST BE CERTAIN
EXPECT. MEASR.; RELIANCE IF UNCERTAIN

Consequential Damages

MUST BE REAS. FORESEEABLE AT TIME OF K

Liquidated, Incidental & Nominal
BUT NO PUNITIVE UNLESS NON-ECON.

Defendant's Duty to Mitigate

APPLIES TO ALL CONTRACTS

Restitution

UNJUST ENRICHMENT OF DEF.
QUASI-CONTRACT = NO REAL K
MAY GO TO PARTY IN BREACH

Specific Performance

EQUITABLE REMEDY
REMEDY @ LAW INADEQUATE
REAL PROPERTY IS UNIQUE

Rescission

EQUITABLE REMEDY
COURT ORDERS K CANCELED
GROUNDS: MISTAKE, MISREP.
EQUITABLE DEFENSES APPLY

Reformation

EQUITABLE REMEDY
COURT ORDERS K MODIFIED
GROUNDS: MISTAKE, MISREP.
EQUITABLE DEFENSES APPLY