



LEGAL THINKING > MEMORIZATION

Regurgitation is gross

- What is “legal thinking”?
- There are no Stupid Questions
- How big is your brain?
- Who you gonna call?
- IRAC
- Say “Hi”
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What is Contract Law?

The study of contracts is the legal enforcement of promises.

Among the basic conceptions of contract law, the most pervasive and indispensable is the principle of private autonomy. This principle "simply means that **the law views private individuals as possessing a power to effect, within certain limits, changes in their legal relations.**"

What is Contract Law?

What differences might you expect between the law of contracts in civil and common law?

What is a Contract?

A contract* is a **binding** agreement between two or more people or parties. In other words...

"A promise or a set of promises that the law will enforce"

What are some examples?

Credit Card Agreement

Signed agreement related to a job

Online Agreement when creating a Facebook or Email Account

An agreement to buy something from a friend

Sources of Law

Precedent set by prior court rulings

- Not set in stone
- Decisions vary by state and by court
- Principles of the US common law of contracts outlined in the Second Restatement of the Law - Contracts, publ. American Law Institute

US - Uniform Commercial Code (UCC)

- Uniform set of standards intended to regulate fairness in commercial transactions, primarily the sale of goods
- Adopted by nearly every state in the US
- 9 articles or laws and rules, Article 2 deals with Sales contracts
- Intention is to allow flexibility making contract formation easier to facilitate
- Terms do not have to be written or expressed (e.g. payment terms, delivery date, location), performance is enough (exception: Statute of Frauds)
- Might be codified in certain examples (i.e. deeds or land title)

Sources of Law: Outcomes

EXAMPLE

Don Julio's Mexican restaurant has been ordering jalapeños from Tico's farm for 10 years at \$50/case. When the peppers arrive, Don notices the price has increased to \$60/case.

- *Under the UCC, Don can either accept delivery at a higher price or reject the shipment*
- *In common law, the price could not be changed after the agreement has been made or the contract has been signed (mirror image rule), REMEDIES*
- *By accepting the delivery, Don changed the terms of the contract*

Elements of a Contract

THE MAIN ELEMENTS OF A CONTRACT ARE:

- Offer
- Acceptance
- Consideration

[*ENFORCABILITY*]

- Intention to create legal relations/mutual assent
- Capacity (age and mental ability)
- Legally enforceable terms and conditions (the object of the contract)

Elements of a Contract: OFFER

OFFER – Statement By One Party (Offeror) Of A Willingness To Enter Into A Contract On Stated Terms And Be Bound By Them If These Are In Turn Accepted By The Other Party/-les (Offeree(s)).



Elements of a Contract: ACCEPTANCE

Acceptance – unqualified, absolute expression of assent to the terms proposed by the offeror. No acceptance by silence.

- If you respond with changes to the offer, it is a counter-offer
- Mirror Image Rule – acceptance must be for the exact same terms and conditions set out in the offer *** *See UCC 2-207*
- Mailbox Rule – an offer is considered accepted upon dispatch (post/email) vs termination which is effective upon receipt

Elements of a Contract: OFFER + ACCEPTANCE

The Recipe

While Kramer was home recovering from a bad cold, he developed a recipe for a caffeine-free latte that soothed his sore throat and opened his nasal passages. The next day, Kramer brought a cup of the latte to his friend Jerry because he had a cold too. Immediately upon drinking the special brew, Jerry exclaimed, “Kramer, you’ve cured me. I can breathe again!” Then Jerry said, “I must have this recipe. It is far better than anything the Soup Meister has ever made. Would you consider selling the recipe to me?”

After thinking for a moment, Kramer responded, “You know, Jerry, I was thinking of calling my attorney, Mr. Jack Chiles, and having him get a patent for me. This is really special stuff. Still, I might be interested in selling if the price was right. **Would you pay me \$50,000?**” To which Jerry responded, “I accept. Here’s my check.”

Does Kramer have to hand over the recipe?

Elements of a Contract: CONSIDERATION

CONSIDERATION = A BENEFIT OR DETRIMENT THAT A PARTY RECEIVES WHICH REASONABLY AND FAIRLY INDUCES THEM TO MAKE THE PROMISE/CONTRACT.

- GRATUITOUS PROMISES (GIFTS) ARE NOT ENFORCEABLE
- IT DOES NOT HAVE TO BE REASONABLE OR FAIR - A ***'PEPPERCORN'*** QUALIFIES
- NO PAST CONSIDERATION OR CONSIDERATION TO A THIRD PARTY



Elements of a Contract: CONSIDERATION

Hamer v Sidway (1891)

- Story promised his nephew \$5,000 if the nephew would refrain from smoking, drinking, swearing, and gambling until he turned 21.
- The nephew turned 21, then wrote to his uncle that he had fulfilled the agreement.

Is he entitled to \$5000?

Elements of a Contract: CONSIDERATION

Hamer v Sidway (1891)

The court decided that the nephew should receive the money.

Consideration can be forbearance of something that someone is lawfully permitted to do; here, the nephew gave up things that he was allowed to do in exchange for \$5,000.

The better question, though, is what Story got in exchange. Happiness? Knowledge that his nephew wouldn't screw his life up?

Elements of a Contract: MUTUAL ASSENT

Mutual Assent - Intention to be legally bound; a meeting of the minds; assumed in commercial context

Lucy v. Zehmer 196 Va 493 (Va 1954)

- Zehmer writes a contract to sell his 471 acres of land to Lucy for \$50,000
- After drinking a bottle of whiskey, they argued at length over price and Zehmer wrote the contract on a restaurant check
- When Lucy tries to enforce it, Zehmer claims it was a joke



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- When Lucy tries to enforce it, Zehmer claims it was a joke
- Court ruled there was a valid contract. If the other party has a reasonable belief that the other party intends to enter an agreement, even if he does not, the contract is still enforceable



Elements of a Contract: CAPACITY AND ENFORCEABILITY

CAPACITY OF THE PARTIES

- Minors, insane persons, intoxicated persons, convicts, *not capable*

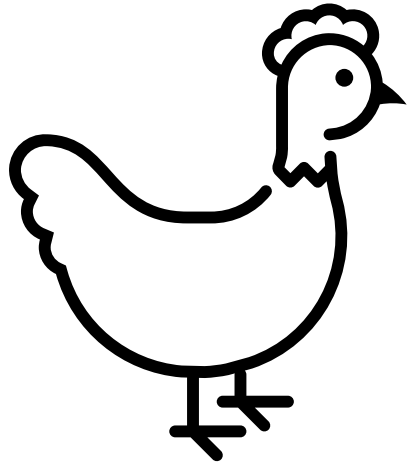
Legal Enforceability = Terms and conditions will be legally enforceable in a court of law

Not enforceable:

- Contracts for illegal actions or products cannot be enforced (e.g. gambling contracts)
- Undue Influence, Duress, Misrepresentation
- Unconscionability
- Public Policy and Illegality
- Mistake
- Force Majeure

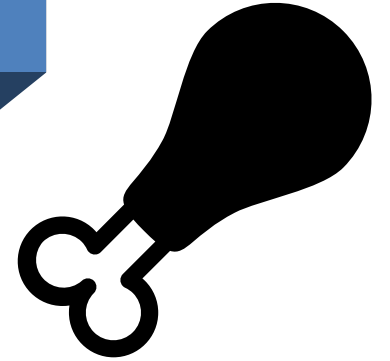
Contract Interpretation: When words matter

"WHAT IS CHICKEN?"



BNS sold chickens to Frigaliment. When the chickens arrived, Frigaliment discovered they were "stewing hens," not "broiler chickens," the former being lower-quality.

BNS was a German company, and in German, the word "*Huhn*" can mean either type of chicken; BNS claimed that "chicken" always means "broiler chickens." This case is about determining the definition of a word when each party has a different interpretation of an ambiguous word.



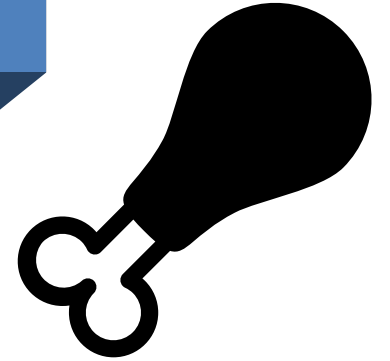
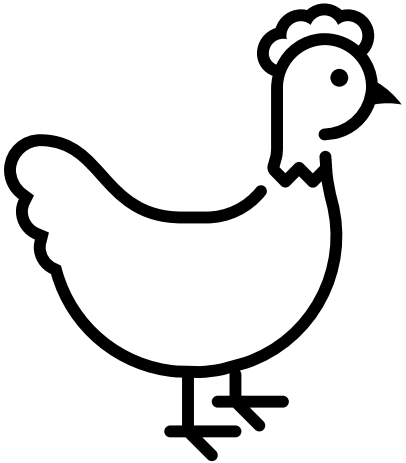
WHO WINS?

Contract Interpretation: When words matter

"WHAT IS CHICKEN?"

When one of the parties is not a member of the trade or other circle, his acceptance of the standard must be made to appear by proving either that he had actual knowledge of the usage or that the usage is so generally known in the community that his actual individual knowledge of it may be inferred.

Frigalment Importing Co. v BNS International Sales Corp
(New York 1960)



Types of Contracts: Express v Implied

Unlike express contracts where all elements are specifically stated, implied contracts can be binding through mutual agreement and intent

-Implied in Fact

- Facts and circumstances – intent can be determined by the behaviors of the parties

-Implied in Law/Quasi Contract

- Used as a remedy when one party received unjust enrichment resulting from not paying for a product or service rendered.

-Illusory Promise

- A statement that is not legally enforceable because it is too vague or impossible to fulfill.

Types of Contracts: Unilateral v Bilateral

**SIGN: LOST WALLET, BROWN WITH SEVERAL HUNDRED DOLLARS.
RETURN TO OWNER AND RECEIVE A \$500 REWARD**



Types of Contracts: Unilateral v Bilateral

UNILATERAL: an action undertaken by one person or group alone, allows only one person to make a promise or agreement.
E.g. Reward, insurance

BILATERAL (most contracts): an agreement between at least two people or entities, mutual “promises”.

Promissory Estoppel

Promissory Estoppel – Law of Equity

Idea of not allowing a promisor to go back on his word

If the promisee has relied on that word or there is detrimental reliance as a basis for recovery

Conditions:

- Clear and unequivocal promise/representation by the promisor to the promisee
- Promise/representation intended to be acted upon and was in fact acted upon by the promisee
- Reliance by the promisee to his detriment
- It must be unequitable to allow the promisor to go back on his promise
- Estoppel can only be used as a shield (for the promisee to defend themselves) and not as a sword (for the promisee to extract something)

Promissory Estoppel

Promissory Estoppel – Law of Equity

Idea of not allowing a promisor to go back on his word, if the promisee has relied on that word or there is detrimental reliance as a basis for recovery

NOTE: If requiring the contract be carried out this must be the only way to make the disadvantaged party “whole”.

How do we reconcile promissory estoppel when dealing with (physical) services? (13th amendment)

Promissory Estoppel - Example

- Murphy, owner of Murphy's Motors located in Hawaii, flew to California to recruit for his car dealership
- McIntosh was looking for work
- McIntosh & Murphy met twice for interviews and Murphy contacted McIntosh by phone and offered him a job to begin in 30 days. The offer was for one year employment.
- McIntosh sent a telegram confirming he would arrive in Honolulu on April 26, 1964
- McIntosh arrived with personal items and rented an apartment.
- On July 16 Murphy fired McIntosh
- McIntosh sued for promissory estoppel saying he relocated 2,200 miles from home based on the offer for one year of employment

Promissory Estoppel - Example

- Murphy, owner of Murphy's Motors located in Hawaii, flew to California to recruit for his car dealership
- McIntosh accepted work contract for 1 year
- McIntosh arrived with personal items and rented an apartment.
- On July 16 Murphy fired McIntosh
- McIntosh sued for promissory estoppel

Who wins? Or rather, who wins WHAT?

McIntosh v Murphy (1970)

Promissory Estoppel - Example

Who wins? Or rather, who wins WHAT?

McIntosh v Murphy (1970)

“In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant: (a) the availability and adequacy of other remedies, particularly cancellation and restitution; (b) the definite and substantial character of the action or forbearance in relation to the remedy sought; (c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence; (d) the reasonableness of the action or forbearance; (e) the extent to which the action or forbearance was foreseeable by the promisor.... There is no dispute that the action of the plaintiff in moving 2200 miles from Los Angeles to Hawaii was foreseeable by the defendant. In fact, it was required to perform his duties. The enforcement of the contract and the granting of money damages can only avoid injustice. No other remedy is adequate.”