ECE 290 Law Concept Summary  
A Review by Eliot Chan

**Contracts**

For a contract to be binding/enforceable:

* Offer made and accepted
* Mutual intent to enter
* Consideration
* Capacity of contractor
* Lawful purpose

Contracts consist of benefits and obligations. Benefits to a party can be assigned without permission from that party (e.g. payment for services). Can expressly deny ability to assign rights.

**Offer and Acceptance**

A promise made by one to another. Does not have to be written. Paper trails are recommended, but not necessary. Until accepted, offer can be withdrawn, and may expire after a certain time.

Business offers are usually made subject to specific terms (e.g. sell you X product at Y price for Z time).

Irrevocable Offers – can lock people into and prevent withdrawing of offers  
 -“contract consideration” is necessary

Option Contract – means of keeping an offer open for a time  
 -right to accept is always available until offer is accepted  
 -e.g. will buy house in 3 months, here is down payment, don’t sell until then

Manner of Communication – timing is a big factor  
 -accepting offers is okay once offeror has received notice of acceptance  
 -revoking offer is only okay when notice has been received AND offer  
 has not been accepted

For instance, A offers B something. Time delay on communication is 2 days. A revokes offer on the same day B accepts it. Acceptance wins over revocation.

Governing Law – laws of contract apply in jurisdiction they were accepted

**Intent**

Mutual intent – make sure contract specifies agreement between parties on all essential terms

Letters of intent – express interest in proceeding with a transaction  
 -agreements to agree are not enforceable  
 -IS NOT A CONTRACT

**Consideration**

The cause, motive, price or impelling influence that induces a party to enter a contract. Consideration is something, or anything, of value to be exchanged. Generally, courts don’t give a shit about the adequacy of consideration unless a contract was forced, or fraud occurs. When consideration is not present, a “seal” is used to make the contract legally binding. A literal sticker or imprint by machine.

A contract needs either consideration or a seal to be legally binding.

Equitable estoppel – aka promissory  
 -courts can apply this concept when a promise without consideration or a seal  
 is made, and not fulfilled  
 -usually only used in unfair circumstances  
 -cases if this nature occur when a party ignores or waives rights dictated by the  
 contract informally (e.g. “It’s okay to pay late”)

**Capacity**

Ability to enter contracts.

Minors – no ability unless contract provides essential good or service

Mental incompetence – no capacity when drunk or intoxicated  
 -mentally disabled cannot enter contracts  
 -only enforceable if they were “reasonably aware”  
 -must prove intoxication and that the other party was aware of the fact

Corporations – contracts must be within corporations powers (e.g. Food Basics cannot enter a contract  
 to build a space shuttle)  
 -corporations are bound by the acts of their officials, provided the acts are “regular  
 duties” and no suspicious circumstances occur

**Legality**

Contract cannot be enforced if unlawful (contrary to any existing statute). E.g. Cannot contract a maintenance electrician to do engineering work. Contracts or clauses against public policy are also void.

Courts decide if a specific contract or provision is reasonable, case by case (e.g. non-competition agreements).

**The Statute of Frauds**

Certain variations of contracts require a single written agreement that clearly details all terms and conditions to be enforceable. Specifically, two of note are ones related to land sale/purchase/use or guarantees of indebtedness.

Note that “guarantee” (promise that a third party will meet its obligations) differs from “indemnity” (promise to be responsible and compensate for losses incurred).

Unenforceable means that existence is recognized, but no action can be taken. Void means that the agreement cannot be honoured in any way whatsoever.

**Misrepresentation, Duress, and Undue Influence**

Misrepresentation – assertion of a false fact  
 -court treats contracts as void if they were entered based on misrepresentation  
 -innocent misrepresentation is a false statement made by someone who  
 believes it to be true  
 -deceit is intended misrepresentation  
 -e.g. We estimate it will cost $100. It turns out to cost $110 at the end.  
 -e.g. We say it costs $100 when we know it actually costs $110.

Duress – intimidation, threats, violence, etc.  
 -must be directed at person entering contract, or close relative or friend  
 -economic duress is also grounds for voiding contract, but only in **extremely exceptional cases**  
 where there are literally no other options but to enter the contract

Undue influence – like duress, but less drastic  
 -e.g. person coercing a dependent into a contract

**Mistakes**

Rectification – common mistakes (typos, secretarial errors) can be rectified through one party applying  
 for an order of rectification  
 -must persuade courts that the contract is inconsistent with terms

Unilateral mistake – made by only one party  
 -court can provide relief to party that made a mistake (e.g. quoting incorrect   
 estimate)

**Tendering Issues – Contract A/B**

The Ron Engineering case led to the introduction of two somewhat abstract concepts of the tendering/awarding process, known as Contract A and Contract B. However, we must first understand the tendering process itself.

The tendering process is a method that allows contractors to bid on an award of business by an owner. Tender documents, which detail the requirements of the bid, are given. Each contractor submits a bid (cost, time frame, etc), usually along with a security deposit. The owner then chooses the lowest bid.

Let’s talk about Ron Engineering

* Water Resources Commission opens up bids for work
* Ron Engineering submits a bid of 2.75 million, which is 750 thousand less than intended, along with a 150 thousand security deposit
* RE was unable to contact WRC before decision was made
* WRC listens to RE, awards contract to another company, but keeps deposit
* RE sues for their deposit back
* Ontario Court of Appeal rules in favour or RE
* Supreme Court overrules decision and makes RE give up their security deposit

Supreme Court came to this decision because the agreements in reference to JUST the bidding process (known as Contract A) were not affected by the mistake. As such, RE was responsible for the loss incurred by WRC, and needed to give up the deposit.

A “Contract A” is created with every bid submitted to the owners. One “Contract B” is created for each winning contractor. Each Contract A is legally enforceable, so an owner altering a Contract A so that the lowest bidder changes may be found in violation of that contract.

Express/Implied Term of Contract A – submissions of Contract A create contractual obligations, WHICH  
 DIFFER from the obligations set out in Contract B  
 -e.g. owner must treat all Contract A bids fairly and equally  
 -this is with the caveat that non-valid bids can be ignored  
 -e.g. We want 30 men on the job, so a bid that offers 20 can be   
 ignored

Option to Reject – instead of negotiation Contract As, it’s advised to reject all bids, amend terms of bids  
 and begin from the start

Potential Liabilities – ensure that Contract A is drafted in such a way that meets exactly the condition   
 the owner sets out

Bid Shopping – negotiating prices after contracts have been awarded  
 -this was more prevalent before introduction of Contract A/B  
 -deemed unfair by courts

**Contract Interpretation**

Parties can sometimes have disputes over wordings of contracts. These can be settled in court. Court can refer to wording, dictionary definition, and intent of the parties. The parties are then bound by what the courts consider reasonable.

Interpretation can be liberal (going by intent of parties) or strict (going by exact wording). Courts may bring in witnesses to discuss content or testify to intent.

Contra Proferentum – when a contract is ambiguous, this rule states that they will interpret it in the   
 favour of the party that DID NOT draft that specific provision

Parol Evidence Rule – rejects verbal agreements and terms in written contracts  
 -will not be used sometimes if a contract should only have been upheld upon  
 the occurrence of a mutually agreed upon condition  
 -e.g. Contract only comes into effect once our profits exceed X

Implied Terms – even the most obvious of terms must be covered  
 -e.g. We are not liable for damages of your car if you damage it yourself  
 -contrived example, but general catch-all clauses are almost always required

**Discharge of Contracts**

Performance as a Means – contract can be terminated once all obligations have been fulfilled

Agreement to Discharge – both parties can agree to terminate under mutually agreed terms

Discharge Pursuant to Express Terms – provisions that state a contract can be terminated if an  
 event occurs (e.g. bankruptcy)

Discharge by Frustration – changing circumstances may radically change the ability of a party to   
 meet obligations  
 -that party is “frustrated” and may be discharged  
 -only applied in exceptional and unforeseen circumstances  
 -e.g. ending a contract due to war

**Breach of Contract**

If a party fails to perform, then that defaulting party has breached the contract. Innocent party is entitled to certain remedies, dependent on the nature of the breach and terms.

An essential obligation is called a “condition”. A “warranty” is non-essential. Breaching obligations can entitle a party to damages, but only breaches of fundamental conditions gives way to discharge (when it renders the contract purposeless for the innocent party).

Repudiation – when one party explicitly declares they have no intention of fulfilling obligations  
 -can discharge contract by repudiation

Remedies – court assigns amount of damages  
 -damages should flow naturally from breach  
 -however, it’s also based on the information the breaching party has  
 -e.g. slow to deliver an essential part, but was not notified it was essential, only minor   
 damages may be awarded

Direct/Indirect Damages – damages that result because of a breach of contract are direct  
 -e.g. creating a faulty product  
 -damages that occur as a consequence of other actions are indirect  
 -e.g. information leaks leading to dropped stock prices

Duty to Mitigate – an innocent party must take all steps to minimize damages from breaches

Penalty Clauses – used to foresee damages that may occur (must be fair and reasonable)  
 -use “liquidated damages” instead of “penalty”

Quantum Meruit – if no agreement has been made on amount of pay, court can award “what one has  
 earned”, for time spent and materials supplied  
 -e.g. contractor repudiates contract midway, court awards them quantum meruit

Substantial Compliance – if only major obligations were completed, contractor is paid the regular  
 amount minus the losses incurred from breaching minor obligations

Specific Performance – courts may order a party to perform a contractual obligation if a dispute occurs  
 -granted mostly in land-related cases, when monetary damage award is  
 unsatisfactory  
 -THE COURT WILL NOT SUPERVISE THESE OBLIGATIONS

Injunction – court order that prevents a party from performing a certain act  
 -will not grant an injunction unless the contract contains negative covenants (X will not   
 do Y)  
 -only reasonable injunctions can be ordered

**Fundamental Breach**

Renders exemption clauses ineffective in the event a fundamental breach of contract occurs.

e.g. Negating limit of liability clauses in cases of exceptional damages.

Generally, clauses are only negated when they are unreasonable.

**Agreement Between Client and Engineer**

Must include all essential contract elements. Usually does not specify measure of care, which is implied. Specifies services needed. PEngs should have adequate professional liability insurance.

Agency Relationship – agent (engineer) must act only within the scope dictate by principal (client)  
 -exceeding scope of actions may make us liable for damages  
 -e.g. accepting contracts w/o principal’s consent

Engineer’s Remuneration – contract should be written and outline nature of projects and services  
 -basis of payment and mutually agreed terms  
 -quantum meruit if no payment agreed on

Estimated fee – emphasize that it’s only an estimate  
 -onus is on us to give reasonable estimates

Standard contracts – available from PEO and other organizations  
 -forms a good basis for agreements  
 -should be tailored for situation or job

Limiting Liability – should usually be at least fee for the services, but better to limit at what your  
 liability insurance covers  
 -notify client of insurance coverage

There are a multitude of statutes, regulations, bylaws, etc., we must comply with. Must be careful with real property because laws are old and fucked up.

**Concurrent Liability in Tort and Contract**

Yes, you can be liable under both tort and contract laws. (Lots of cases for this section)

**Duty of Honesty**

Implicitly within duty of care is absolute honesty. Engineer can be sued for tort of deceit or contractual fraud, a criminal offense.

Secret commissions, aka bribes are criminally punishable. In a specific case, government employees cannot accept gifts from anyone who does business with the government unless they have express written consent from the branch head.

**Arbitration and Alternative Dispute Resolution**

Courts aren’t always the best method of solving disputes. Arbitration is less formal, costly, and less public. It’s useful in technical disputes, and we generally bring in an arbitrator who is knowledgeable on the topic. An arbitration provision is usually included in engineering contracts.

Appointing arbitrators – usually the clause will state how and how many arbitrators are chosen

Statues – Arbitration Act of Ontario is one such statute  
 -deals with appointing arbitrators and the structure of arbitration  
 -parties can agree to stray from statute  
 -act limits court involvement and grants arbitrators ability to grant remedies like injunctions or  
 specific performance

Dispute Resolution Board – appointed members knowledgeable on the topic at hand  
 -helpful in solving technical disputes  
  
Mediation – mediator simply guides discussion of parties  
 -cannot award remedies or damages