

Chapter 6: CRIMINAL LAW (vs. Civil Law...although you could be tried under both)

Level of proof:	Criminal Law Beyond a reasonable doubt Prison/fines Protect society	Civil Law 50%+ Monetary Compensate injured party
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- **NATURE OF CRIMES**

Definition: any act or omission forbidden by public law

Essential Elements

Actus reus: wrongful or overt act

Mens rea: criminal intent or mental fault

ACT

+ INTENT (bring about some result, can be transferred)
Must be together

- **CLASSIFICATION**

Mala in Se: wrongs in themselves or morally wrong

Mala prohibita: not morally wrong but declared wrongful by law

Felony: a serious crime

Misdemeanor: a less serious crime

Vicarious Liability: liability imposed for acts of his or her employees if the employer directed, participated in, or approved of the acts (liability imposed on one for acts of another)

Liability of a Corporation: under certain circumstances a corporation may be convicted of crimes punished by fines

- **WHITE-COLLAR CRIME**

Definition: nonviolent crime involving deceit, corruption, or breach of trust

Computer Crime: use of a computer to commit a crime

RICO: federal law intended to stop organized crime from infiltrating legitimate businesses (controversial)

- **CRIMES AGAINST BUSINESS**

Larceny: trespassory taking and carrying away of personal property of another with the intent to deprive the victim permanently (intent!) of the property

Embezzlement: taking of another's property by a person who was in lawful possession of the property

False Pretenses: obtaining title to property of another by means of representations one knows to be materially false, made with intent to defraud

Robbery: committing larceny with the use of threat or force

Burglary: under most modern statutes, an entry into a building (dwelling, home) with the intent to commit a felony (alternate definition: breaking and entering at night)

2 definitions: Classic (breaking & entering, dwelling, night), Florida (not at night)

Extortion: the making of threats to obtain money or property

Bribery: offering money or property to a public official to influence the official's decision (to do something they wouldn't otherwise do); Florida: public servant (elected officials, employee of the state)

Forgery: intentional falsification of a document in order to defraud

Bad Checks: knowingly issuing a check without funds sufficient to cover the check

- **DEFENSES TO CRIMES**

Defense of Person or Property: individuals may use reasonable force to protect themselves, other individuals, and their property

Duress: coercion by threat or serious bodily harm is a defense to criminal conduct other than murder

Mistake of Fact: honest and reasonable belief that conduct is not criminal in defense

Entrapment: inducement by a law enforcement official to commit a crime is a defense

- **CRIMINAL PROCEDURE**

Steps in Criminal Prosecution: generally include arrest, booking, formal notice of charges, preliminary hearing to determine probable cause, indictment or information, arraignment, and trial *** (NOT ON TEST)

Fourth Amendment: protects individuals against unreasonable searches and seizures

Search warrant: probable cause (reasonable belief of the offense charged)

Warrant not necessary: hot pursuit, voluntary consent, emergency requires action, lawful arrest (if you arrest a person, you don't need a warrant to search him or immediate surroundings), evidence of crime in plain view, delay would present significant obstacle to the arrest

Exclusionary Rule: information/evidence can be excluded if improperly found

Fifth Amendment: protects persons against self-incrimination (in speech, doesn't apply to DNA evidence), double jeopardy (can't be charged for the same offense twice), and being charged with a capital crime except by grand jury indictment. You cannot plead the 5th amendment if given immunity from prosecution.

Sixth Amendment: provided the accused with the right to a speedy and public trial (there is a limit to how long you can be held before trial), the opportunity to confront witnesses, have compulsory process for obtaining witnesses, and the right to counsel

Chapter 7: INTENTIONAL TORTS

TORT: a civil wrong causing injury to persons, their property, or their economic interests

A tort is committed when (1) a duty owed by one person to another (negative: don't hurt anybody, affirmative: lifeguard required to save someone) (2) is breached (violated), (3) proximately causing (your breach caused the injury) (4) injury or damage to the owner of a legally protected interest.

Professor added to book definition: Foreseeable injury

"Your rights end where your neighbor's nose begins"

There is no list of torts. An act could be both a tort and a crime, or just a tort, or just a crime.

Injuries may be inflicted (1) intentionally, (2) negligently (accidental), or (3) without fault (strict liability)

3 principal objectives:

1. to compensate persons who sustain harm or loss resulting from another's conduct
2. to place the cost of that compensation only on those parties who should bear it
3. to prevent future harms and losses

PUNITIVE DAMAGES: damages awarded in excess of normal compensation to punish a defendant for a serious civil wrong.

INTENT: desire to cause the consequences of an act or knowledge that the consequences are substantially certain to result from the act. (The younger you are, the less likely you are liable).

- **Harm to the Person**

1. **Battery:** intentional infliction of harmful or offensive bodily contact
 2. **Assault:** intentional infliction of apprehension of immediate bodily harm or offensive contact (causing someone to be afraid, instill fear with apparent ability to carry out a threat)
 3. **False Imprisonment:** intentional interference with a person's freedom of movement by unlawful confinement
 4. **Infliction of Emotional Distress:** extreme & outrageous conduct intentionally or recklessly causing severe emotional distress
- Recklessness: conduct that evidences a conscious disregard of or an indifference to the consequences of the act committed

- **Harm to the Right of Dignity**

1. **Defamation:** a false communication (a lie told to someone else) that injures a person's reputation by disgracing him and diminishing the respect in which he is held.
Elements of Defamation
 1. a false and defamatory statement concerning another
 2. an unprivileged publication (communication) to a third party
 3. depending on the status of the defendant, negligence or recklessness on her part in knowing or failing to ascertain the falsity of the statement
 4. in some cases, proof special harm caused by the publication
- Libel:** handwritten, typewritten, printed, pictorial or in any other medium with similar communicative power, such as television or radio broadcast
- Slander:** spoken or oral

Defense to Defamation ****NOT REQUIRED TO KNOW****

PRIVILEGE: immunity from tort liability granted when the defendant's conduct furthers a societal interest of greater importance than the injury inflicted upon the plaintiff (Examples: self defense, defense of property, defense of others).

Absolute privilege: protects the defendant regardless of his motive or intent (situations in which public policy clearly favors a complete freedom of speech such as (1) statements made by participants in a judicial proceeding regarding that proceeding; (2) statements made by members of Congress on the floor of Congress and by members of state and local legislative bodies; (3)

statements made by certain executive branch officers while performing governmental duties; (4) statements regarding a third party made between spouses when they are alone.

2. Invasion of Privacy

1. **APPROPRIATION** using a person's name or likeness for one's own benefit (right of publicity)
2. unreasonable **INTRUSION** on the seclusion (privacy, such as reading your email) of another (publicity not required)
3. unreasonable **public disclosure of private facts** (requires publicity)
(unlike defamation, this tort applies to truthful private information if the matter published would be offensive and objectionable to a reasonable person of ordinary sensibilities)
Example: financial or medical information but not civil or criminal records as they are public info
4. unreasonable (offensive) publicity that places another in a **FALSE LIGHT** in the public eye (defendant knew that the matter publicized was false or acted in reckless disregard for the truth)

	Appropriation	Intrusion	Public Disclosure	False Light
Publicity	Yes	No	Yes	Yes
Private Facts	No	Yes	Yes	No
Offensiveness	No	Yes	Yes	Yes
Falsity	No	No	No	Yes

3. Misuse of Legal Procedure (torts protecting an individual from unjustifiable litigation)

1. Malicious prosecution
2. Wrongful civil proceedings
3. Abuse of Process

• Harm to Property

1. Trespass to **REAL PROPERTY** (land and anything attached to it)
 1. enters or remains on land in the possession of another without permission
 2. causes a thing or a third person to so enter or remain (example: I push you onto someone's land or throw something, I am the trespasser)
 3. fails to remove from the land a thing that he is under a duty to remove (had permission but didn't leave when permission was withdrawn)
2. **NUISANCE**: no trespassory invasion of another's interest in the private use and enjoyment of land (no physical touching, like playing loud music)
 1. Trespass to **PERSONAL PROPERTY** (any property other than in interest in land)
Intentional dispossession or unauthorized use of the personal property of another
 - 1) dispossesses the other of the property, 2) substantially impairs the condition, quality, or value of the property, or 3) deprives the possessor of use of the property for a substantial time (borrowed for a short period of time) d
 2. **CONVERSION**: intentional exercise of dominion or control over another's personal property (requires the payment of full value for the property) (borrowed for long time = theft)

• Harm to Economic Interest

1. **Interference with contractual relations**: intentionally causing one of the parties to a contract not to perform the contract
2. **Disparagement**: publication of false statements resulting in harm to another's monetary interests (defamation to a business interest instead of a person)
3. **Fraudulent misrepresentation**: false statement made with knowledge of its falsity and with intent to induce another to act

INTENTIONAL TORTS

PERSON

Freedom from contact	Battery
Freedom from apprehension	Assault
Freedom of movement	False Imprisonment
Freedom from distress	Infliction of emotional distress

DIGNITY

Reputation	Defamation
Privacy	Appropriation
	Intrusion
	Public disclosure of private facts
	False light
Freedom from wrongful legal actions	Misuse of legal procedure

PROPERTY

Real	Trespass
	Nuisance
Personal	Trespass
	Conversion

ECONOMIC

Contracts	Interference with contractual rights
Goodwill	Disparagement
Freedom from deception	Fraudulent misrepresentation

Chapter 42: EMPLOYMENT LAW

A. Labor Law

Purpose: to provide the general framework in which management and labor negotiate terms of employment

1. Norris-La Guardia Act: 1932, established as U.S. policy the full freedom of labor to form labor unions without employer interference and withdrew from the federal courts the power to issue injunctions in nonviolent labor disputes (any controversy concerning terms or conditions of employment or union representation)

A. Limit Federal court's power

B. Yellow Dog provision no longer valid (promising not to join a union)

2. National Labor Relations Act (NLRA)

Right to Unionize declares it a federally protected right of employees to unionize and to bargain collectively

Prohibits Unfair Employer Practices: the act identifies 5 unfair labor practices by an employer

- a. To interfere with employee's rights to unionize and bargain collectively
- b. To dominate the union
- c. To discriminate against union members
- d. To discriminate against an employee who has filed charges against union members
- e. To refuse to bargain in good faith with duly established employee representatives

National Labor Relations board (NLRB) created to administer (enforce) these rights

3. Labor-Management Relations Act (LMRA), 1947

Prohibits Unfair Union Practices: the act identifies 7 unfair labor practices by a union

- a. Coercing an employee to join a union
- b. Causing an employer to discharge or discriminate against a non-union employee
- c. Refusing to bargain in good faith
- d. Levying excessive or discriminatory dues or fees
 - a. Causing employer to pay for work not performed
- e. Picketing an employer to require it to recognize an uncertified union
- f. Engaging in secondary activities (secondary boycott)

1. Prohibits Closed Shops: agreement that mandates that an employer can hire only union members

2. Allows Union Shops: an employer can hire nonunion members, but the employee must join the union

3. Right to Work: Workers do not have to join the union (Florida)

4. Labor-Management Reporting and Disclosure Act: aimed at eliminating corruption in labor unions, 1960s

Rights for workers against their own unions

B. Employment Discrimination Law

Equal Pay Act prohibits an employer from discriminating between employees on the basis of gender by paying unequal wages for the same work.

Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, gender, religion, or national origin (sponsored by President Johnson)

Proving Discrimination:

1. Disparate Treatment: burden of proof shifts to employee if you can prove in a protected class, applied for a job, qualified, denied the job, job remained open
2. Disparate Impact: appears neutral, using a screen device (such as employees must be 6 foot tall) but the device impacts one of the protected classes. There must be a reason related to the job.

Pregnancy Discrimination Act extends the benefits of the Civil Rights Act to pregnant women

Equal Employment Opportunity Commission (EEOC) enforcement agency for the act

Affirmative Action: the active recruitment of a designated group of applicants

Discrimination: the act provides four defenses

1. a bona fide seniority or merit system
2. a professionally developed ability test
3. a compensation system based on performance results
4. a bona fide occupational qualification

Reverse Discrimination: affirmative action that directs an employer to consider an individual's race or gender when hiring or promoting for the purpose of remedying under-representation of that race or gender in traditionally segregated jobs

Sexual Harassment is an illegal form of sexual discrimination that includes unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature

1998 Faragher v. Boca Raton

Tangible Employment Action: employer is liable

No tangible employer action (threatened but didn't do it), sexual harassment policy in place, individual did not report: employer is not liable

Comparable Worth: equal pay for jobs that are of equal value to the employer

Executive Order prohibits discrimination by federal contractors on the basis of race, color, gender, religion, or national origin on any work the contractors perform during the period of the federal contract

Age Discrimination in Employment Act prohibits discrimination on the basis of age in hiring, firing or compensating (age 40+)

Gen. Dynamic Land Systems v. Cline: offered post retirement medical benefits to age 50+, court ruled that there was no discrimination because the oldest group wasn't discriminated against

Disability Law: several federal acts, including the Americans with Disabilities Act, provide assistance to people with disabilities in obtaining rehabilitation training, access to public facilities and employment

C. Employee Protection

Employee Termination at Will: under the common law, a contract of employment for other than a definite term is terminable at will by either party (no long term obligation) - Florida

Statutory Limitations have been enacted by the federal government and some states

Judicial Limitations based on contract law, tort law, or public policy

Limitations Imposed by Union Contract

Occupational Safety and Health Act enacted to ensure workers a safe and healthful work environment

Employee Privacy

Drug and Alcohol Testing: some states either prohibit such tests or prescribe certain scientific and procedural safeguards

Lie Detector Tests: federal statute prohibits private employers from requiring employees or prospective employees to take such tests

Workers' Compensation: (employer funded) compensation awarded to an employee who is injured in the course of employment (not based on fault, cannot sue employer)

Example: homeowner is responsible for injuries to people working on his house if their company doesn't pay workman's comp

Social Security: (employee and employer funded) measures by which the government provides economic assistance to disabled or retired employees and their dependents (7.65%)

Unemployment Compensation: (employer funded) compensation awarded to workers who have lost their jobs (through no fault on their own) and cannot find other employment (doesn't apply to people who get fired or quit)

Fair Labor Standards Act: regulates the employment of child labor outside of agriculture (under age 18),
Regulates minimum wage laws

Worker Adjustment and Retraining Notification Act: federal statute that requires an employer to provide 60 days advance notice of a plant closing or mass layoff

Family and Medical Leave Act requires some employers to grant employees leave (unpaid) for serious health conditions or certain other events

Chapter 47: INTERNATIONAL BUSINESS LAW

- **The International Environment**

International Law: includes law that deals with the conduct and relations of nation-states and international organizations as well as some of their relations with persons; such law is enforceable by the courts of a nation that has adopted the international law as domestic law.

International Court of Justice: judicial branch of the United Nations having voluntary jurisdiction over nations
15 justices, only nations can sue nations (not people)

Regional Trade Communities: international organizations, conferences, and treaties focusing on business and trade regulations; the EU is the most prominent of these

International Treaties: agreements between or among independent nations, such as the General Agreement on Tariffs and Trade (GATT), now called the World Trade Organization (WTO)
Goal: treat all trading partners the way you treat your most favored country (not practiced however)

- **Jurisdiction over Actions of Foreign Governments**

Sovereign Immunity: foreign country's freedom from a host country's laws
Must be government officials on government business; worst that can be done: send them home

Act of State Doctrine: rule that a court should not question the validity of actions taken by a foreign government in its own country (one country should not interfere with judicial decisions of another country)

Taking of Foreign Property

Expropriation: governmental taking of foreign-owned property for a public purpose and with payment of just compensation

Confiscation: governmental taking of foreign-owned property without payment (or for a highly inadequate payment) or for a nonpublic purpose

- **Transacting Business Abroad**

Flow of Trade: controlled by trade barriers on imports and exports

Tariff: duty or tax imposed on goods moving into or out of a country

Nontariff Barriers: include quotas, bans, safety standards, and subsidies

Flow of Labor: controlled through passport, visa, and immigration regulations

Flow of Capital: the International Monetary Fund facilitates the expansion and balanced growth of international trade, assists in eliminating foreign exchange restrictions, and smoothes the international balance of payments

International Contracts: involve additional issues beyond those in domestic contracts, such as differences in language, legal systems, and currency

CISG: United Nations Convention on Contracts for the International Sales of Goods governs all contracts for international sales of goods between parties located in different nations that have ratified the CISG

Letter of Credit: bank's promise to pay the seller, provided certain conditions are met; used to manage the payment risks in international trade

Antitrust Laws of the United States apply to unfair methods of competition that have a direct, substantial, and reasonably foreseeable effect on the domestic, import, or export commerce of the United States

Securities Regulation: foreign issuers who issue securities in the United States, or whose securities are sold in the secondary market in the United States, must register them unless an exemption is available; the antifraud provisions apply where there is either conduct or effects in the United States relating to a violation of the federal securities laws

Protection of Intellectual Property: the owner of an intellectual property right must comply with each country's requirements to obtain from that country whatever protection is available (patents, trademarks, copyrights)

Foreign Corrupt Practices Act prohibits all U.S. companies from bribing foreign government or political officials

Employment Discrimination: Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act apply to U.S. citizens employed in foreign countries by U.S.-owned or U.S.-controlled companies

- **Forms of Multinational Enterprises**

Definition of Multinational Enterprise (MNE): any business that engages in transactions involving the movement of goods, information, money, people, or services across national borders

Forms of MNE: the choice of form depends on a number of factors, including financing considerations, tax consequences, and degree of control

Direct Export Sales: seller contracts directly with the buyer in the other country

Foreign Agents: a local agent in the host country is used to provide limited involvement for an MNE

Distributorship: MNE sells a foreign distributor who takes title to the merchandise

Licensing: MNE sells a foreign company the right to use technology or information

Joint Ventures: two independent businesses from different countries share profits, liabilities, and duties

Wholly Owned Subsidiary: enables an MNE to retain control and authority over all phases of operation

Chapter 2: BUSINESS ETHICS

- **DEFINITIONS**

Ethics: study of what is right or good for human beings

Business Ethics: study of what is right and good in a business setting

- **ETHICAL THEORIES**

Ethical Fundamentalism: individuals look to a central authority or set of rules to guide them in ethical decision making

Ethical Relativism: asserts that actions must be judged by what individuals subjectively feel is right or wrong for themselves

Situational Ethics: one must judge a person's actions by first putting oneself in the actor's situation

Utilitarianism: moral actions are those that produce the greatest net pleasure compared with net pain

Act Utilitarianism: assesses each separate act according to whether it maximizes pleasure over pain

Rule Utilitarianism: supports rules that on balance produce the greatest pleasure for society

Cost-Benefit Analysis: quantifies the benefits and costs of alternatives

Deontology holds that actions must be judged by their motives and means as well as their results

Social Ethics Theories: focus on a person's obligations to other members in society and on the individual's rights and obligations within society

Social Egalitarians believe that society should provide all its members with equal amounts of good and services regardless of their relative contributions

Distributive Justice stresses equality of opportunity rather than results

Libertarians stress market outcomes as the basis for distributing society's rewards

Other Theories

Intuitionism: a rational person possesses inherent power to assess the correctness of actions

Good Person: individuals should seek out and emulate good role models

- **ETHICAL STANDARD IN BUSINESS**

Choosing an Ethical System: Kohlberg's stages of moral development is a widely accepted model

- **ETHICAL RESPONSIBILITIES IN BUSINESS**

Chapter 9: INTRODUCTION TO CONTRACTS

- **DEVELOPMENTS OF THE LAW OF CONTRACTS**

Definition of a Contract: a binding agreement that the courts will enforce

Common Law: most contracts are primarily governed by state common law, including contracts involving employment, services, insurance, real property (land and anything attached to it), patents and copyrights

The Uniform Commercial Code: Article 2 of the UCC governs the sales of goods

Sale: the transfer of title from seller to buyer

Goods: tangible personal property (personal property is all property other than an interest in land)

Breach: failure to properly perform a contractual agreement

- **REQUIREMENTS OF A CONTRACT**

Mutual Assent: the parties to a contract must manifest by words or conduct that they have agreed to enter into a contract

Consideration: each party to a contract must intentionally exchange a legal benefit or incur a legal detriment as an inducement to the other party to make a return exchange

Legality of Object: the purpose of a contract must not be criminal, tortuous, or otherwise against public policy

Capacity: the parties to a contract must have contractual capacity

(Some contracts may also be required to be in writing)

- **CLASSIFICATION OF CONTRACTS**

Express and Implied Contracts

Implied in Fact Contract: contract where the agreement of the parties is inferred from their conduct

Express Contract: an agreement that is stated in words either orally or in writing

Bilateral and Unilateral Contracts

Bilateral Contract: contract in which both parties exchange promises

Promisor: person making a promise

Promisee: person to whom a promise is made

Unilateral Contract: contract in which only one party makes a promise (an offer in return for an act, such as individual who promises to pay \$50 to someone who finds my watch)

Valid, Void, Voidable, and Unenforceable Contracts

Valid Contract: one that meets all the requirements of a binding contract

Mutual assent, consideration, legality, capacity

Void Contract: no contract at all; without legal effect

Voidable Contract: contract capable of being made void

Unenforceable Contract: contract for the breach of which the law provides no remedy (example: contract which is required to be in writing was not written)

Executed and Executory Contracts

Executed Contract: contract that has been fully performed by all of the parties

Executory Contract: contract that has yet to be fully performed

- **PROMISSORY ESTOPPEL (will be discussed in a future chapter)**

Definition: a doctrine enforcing some non-contractual promises

Requirements: a promise made under circumstances that should lead the promisor reasonably to expect that the promisee would induce the promisee to take definite and substantial action, and the promisee does take such action

Remedy: a court will enforce the promise to the extent necessary to avoid injustice

- **QUASI CONTRACT**

Definition: an obligation not based upon contract that is imposed by law to avoid injustice; also called an implied in law contract (often applies to mistakes; example: painter paints the wrong house)

Must have: 1) benefit, 2) knowledge, 3) retention of benefit

Requirements: a court will impose a quasi contract when (1) the plaintiff confers a benefit upon the defendant, (2) the defendant knows or appreciates the benefit, and (3) the defendant's retention of the benefit is inequitable

Remedy: the plaintiff recovers the reasonable value of the benefit she conferred upon the defendant

Chapter 10: MUTUAL ASSENT

-----OFFER-----

- **ESSENTIALS OF AN OFFER** (must be objective)

Definition: indication of willingness to enter into a contract

Offeror: person making the offer

Offeree: person to whom the offer is made

Objective: using external standard

Subjective: using personal feelings

1. **Communication:** offeree must have knowledge of the offer and the offer must be made by the offeror or the authorized agent to the offeree
2. **Intent:** determined by an objective standard of what a reasonable offeree would have believed
3. **Definiteness:** offer's terms must be clear enough to provide a court with a basis for giving an appropriate remedy
Preliminary Negotiation is not an offer.
Advertisements, circulars, quotation sheets, displays of merchandise are not offers
Without reserve: (minimum price exists) auctioneer may not withdraw the goods from the auction

Good faith: honesty in fact

Commercial reasonableness: judgment of reasonable persons familiar with the business transaction

Output Contract: an agreement of a buyer to purchase the entire output of a seller's factory

Requirements Contract: an agreement of a seller to supply a buyer with all his requirements for certain goods

- **DURATION OF OFFERS (7 ways to terminate an offer)**

1. **Lapse of Time:** offer remains open for the time period specified or, if no time is stated, for a reasonable period of time
2. **Revocation:** generally, an offer must be terminated at any time before it is accepted, subject to the following exceptions

Option Contracts: contract that binds offeror to keep an offer open for a specified time (Example: I will give you \$100 for you to take your house off the market for 10 days while I decide if I want to buy your house)

Consideration: the inducement to enter into a contract, consisting of an act or promise that has legal value

Firm Offer: a merchant's irrevocable offer to sell or buy goods in a signed writing that ensures that the offer will not be terminated for up to three months.

Statutory Irrevocability: offer made irrevocable by statute

Irrevocable Offer of Unilateral Contracts: a unilateral offer may not be revoked for a reasonable time after performance is begun (Example: offered \$50 to someone who climbs flagpole, can't revoke if someone started the process (substantial compliance))

Promissory Estoppel: noncontractual promise that binds the promisor because she should reasonably expect that the promise will induce the promisee (offeree) to take action in reliance on it.

3. **Rejection:** refusal to accept an offer terminates the power of acceptance
4. **Counteroffer:** counterproposal to an offer that generally terminates the original offer
Conditional Acceptance: acceptance of an offer contingent upon the acceptance of an additional or different term
5. **Death or Incompetency** of either the offeror or the offeree terminates the offer
6. **Destruction of Subject Matter** of an offer terminates the offer
7. **Subsequent Illegality** of the purpose or subject matter of the offer terminates the offer (it was legal when the offer was made but then subsequently became illegal)

-----ACCEPTANCE OF AN OFFER-----

- **REQUIREMENTS**

Definition: positive and unequivocal expression of a willingness to enter into a contract on the terms of the offer

Mirror Image Rule: except as modified by the Code, an acceptance cannot deviate from the terms of the offer

- **COMMUNICATION OF ACCEPTANCE**

General Rule: acceptance effective upon dispatch unless the offer specifically provides otherwise or the offeree uses an unauthorized means of communication

*You can control the offer by putting stipulations on it. Example: if someone mailed an acceptance but you didn't receive the mail and offered it to someone else. Unless you put a stipulation on it such as "I will accept the first response I receive," you will have a legal problem if two people accept your offer.

Silence as Acceptance: generally does not indicate acceptance of the offer
Generally. There are exceptions based on repetition of behavior.

Effective Moment: generally upon dispatch

Stipulated Provisions in the Offer: the communication of acceptance must conform to the specifications in the offer

Authorized Means: Restatement and the Code provide that, unless the offer provides otherwise, acceptance is authorized to be in any reasonable manner

Unauthorized Means: acceptance effective when received, provided that it is received within the time within which the authorized means would have arrived

Acceptance Following a Prior Rejection: first communication received by the offeror is effective

Defective Acceptance: does not create a contract but serves as a new offer

Random Examples:

Person mails a rejection and then calls the offeror and accepts. The offer is accepted because it was received first (the mailed rejection hasn't arrived)

	Sent	Received
Communicated by Offeror		
Offer		x
Acceptance	x	
Communication by Offeree		
Rejection		x
Counteroffer		x
Acceptance	x	
Rejection follow by acceptance:		x

Refrigerator contract example (for merchants) where a company sends a purchase order with terms and the other company accepts with their terms (and the terms conflict).

- 1) Do the additional terms materially change the contract?
- 2) Were the additional terms objected to?
- 3) Specific reference to the terms in their offer?

If the answer to all questions are "no" than the terms of the counteroffer exist.

The 2 companies want to enter into a contract and do not want to go to court.

Chapter 11: CONDUCT INVALIDATING ASSENT

- **DURESS** (subjective...not a reasonable person)

Definition: wrongful act or threat that overcomes the free will of a party

Physical Compulsion: coercion involving physical force renders the agreement voidable (book says void instead of voidable but professor expects voidable)

Improper Threats: improper threats or acts, including economic and social coercion, render the contract voidable

- **UNDUE INFLUENCE**

Definition: taking unfair advantage of a person by reason of a dominant position based on a confidential relationship (must have a dominant person and a subservient position). Dominant person must make sure the subservient person has representation to avoid being presumed guilty.

Effect: renders contract voidable

- **FRAUD**

Fraud in the Execution: a misrepresentation that deceives the other party as to the nature of a document evidencing the contract; renders agreement voidable

Fraud in the Inducement: renders the agreement voidable if the following elements are present:

- **False Representation:** positive statement or conduct that misleads (a lie)
 - Misrepresentation:** some positive statement or conduct that is not in accord with the facts
 - Concealment:** action taken to keep another from learning a fact
 - Silence** or nondisclosure alone does not amount to fraud when the parties deal at arm's length
 - Arm's length transaction:** one in which the parties owe each other no special duties and each is acting in his or her self-interest.
 - Exception:** 1) a person fails to disclose a fact known to him; 2) he knows that the disclosure of that fact would correct a mistake of the other party as to a basic assumption on which that party is making the contact, and 3) nondisclosure of the fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing
 - Fiduciary:** person who owes a duty of trust, loyalty, and confidence to another
- **Fact:** an event that occurred or thing that exists (cannot be in the future)
 - Puffing:** sales talk that is considered general bragging or overstatement
- **Materiality** of substantial importance (on the test, you have to know what the purchaser has in mind. The fact of fraud may not affect the buyer's intention.) Example: buying a house with termites when the owner said there were no termites. The owner wanted to buy the land and tear the house down. This would not be fraud.
- **Knowledge of Falsity and Intention to Deceive** (called scienter) and includes (1) actual knowledge, (2) lack of belief in statement's truthfulness, or (3) reckless indifference to its truthfulness
- **Justifiable Reliance:** a defrauded party is reasonably influenced by the misrepresentation

- **NONFRAUDULENT MISREPRESENTATION**

Negligent Misrepresentation: misrepresentation made without due care in ascertaining its truthfulness (an error); renders agreement voidable

Innocent Misrepresentation: misrepresentation made without knowledge of its falsity but with due care; renders contract voidable

- **MISTAKE**

Definition: an understanding that is not in accord with existing fact

Mutual Mistake: both parties have a common but erroneous belief forming the basis of the contract; renders the contract voidable by either (injured) party (normally the purchaser)

Unilateral Mistake: erroneous belief on the part of only one of the parties to a contract. Courts are unlikely to grant relief unless the error is known or should be known by the nonmistaken party
Person sells an item for \$3 and it turns out to be worth \$500. Too bad, seller made a mistake.
Buyer sees an item in a garage sale for \$100 but thinks it may be worth more. He buys it and later decides it was only worth \$5. Too bad, buyer made a mistake.

Assumption of Risk of Mistake: a party may assume the risk of a mistake

Effect of Fault upon Mistake: not a bar to avoidance unless the fault amounts to a failure to act in good faith

Mistake in Meaning of Terms: parties misunderstand their manifestations of mutual assent. There is no contract.
Raffles v. Wichelhaus (known as the Peerless Case). Two ships with the same name and same cargo created a misunderstanding. Both were talking about a different ship.

Chapter 12: CONSIDERATION

- **CONSIDERATION**

Definition: the inducement to enter into a contract (what you give up in order to get what you want)

Gratuitous promises: promise made without consideration

Elements: legal sufficiency and bargained-for exchange (doesn't have to be equal to what you receive)

- **LEGAL SUFFICIENCY OF CONSIDERATION**

Definition: consists of either a benefit to the promisor or a detriment to the promisee

Legal Benefit: obtaining something to which one had no prior legal right

Legal Detriment: doing an act one is not legally obligated to do or not doing an act that one has a legal right to do

Adequacy of Consideration: not required where the parties have freely agreed to the exchange

Promisor: person making a promise

Promisee: person receiving a promise

In a unilateral contract, only one party, the offeror, makes a promise

In a bilateral contract, there is an exchange of promises

Illusory Promise: promise that imposes no obligation on the promisor; the following promises are not illusory

Output Contract: agreement to sell all of one's production to a single buyer

Requirements Contract: agreement to buy all of one's needs from a single producer

Exclusive Dealing Contract: grant to a franchisee or licensee by a manufacturer of the sole right to sell goods in a defined market (WILL NOT BE ON TEST)

Conditional Contract: a contract in which the obligations are contingent upon the occurrence of a stated event

Precedent: condition must be met before you have any obligation (I promise to buy your car for \$10,000 if I win the Florida lotto next Saturday) – this is a valid contract

Concurrent: unless otherwise agreed to, conditions are concurrent (same time)

Subsequent: condition on contract after its been completed (gifts...you give a gift of \$10,000 to a university but the money must go to a student who is [specific condition])

Preexisting Public Obligations: public duties such as those imposed by tort or criminal law are neither a legal detriment nor a legal benefit

Preexisting Contractual Obligation: performance of a preexisting contractual duty is not consideration

Modification of a Preexisting Contract: under the common law a modification of a preexisting contract must be supported by mutual consideration; under the Code a contract can be modified without new consideration

Substituted Contracts: the parties agree to rescind their original contract and to enter into a new one; rescission and new contract are supported by consideration

Settlement of an Undisputed Debt: payment of a lesser sum of money to discharge an undisputed debt (one whose existence and amount are not contested) does not constitute legally sufficient consideration (unliquidated)

Settlement of a Disputed Debt: payment of a lesser sum of money to discharge a disputed debt (one whose existence or amount is contested) is legally sufficient consideration (liquidated)

- **BARGAINED-FOR EXCHANGE**

Definition: a mutually agreed-upon exchange

Past Consideration: an act done before the contract is made is not consideration

- **CONTRACTS WITHOUT CONSIDERATION**

Promises to Perform Prior Unenforceable Obligations:

Promise to Pay Debt Barred by the Statute of Limitations: a new promise by the debtor to pay the debt renews the running of the statute of limitations for a second statutory period

Statute of Limitation: time period within which a lawsuit must be initiated

Promise to Pay Debt Discharged in Bankruptcy: may be enforceable without consideration

Voidable Promises: a new promise to perform a voidable obligation that has not been previously avoided is enforceable

Moral Obligation: a promise made to satisfy a preexisting moral obligation is generally unenforceable for lack of consideration

Promissory Estoppel: doctrine that prohibits a party from denying his promise when the promisee takes action or forbearance to his detriment reasonably based upon the promise (NOT ON TEST)

Contracts Under Seal: where still recognized, the seal acts as a substitute for consideration

Promises Made Enforceable by Statute: some gratuitous promises have been made enforceable by statute; the Code makes enforceable (1) contract modifications, (2) renunciations, and (3) firm offers

Exceptions to modification needing additional consideration: sale of goods, agreement between two people where seller offers higher amount;

Firm offer (in writing, signed by merchant, good for 90 days): no consideration but cannot be revoked

Chapter 13: ILLEGAL BARGAINS

- **VIOLATIONS OF STATUTES**

General Rule: the courts will not enforce agreements declared illegal by statute

Licensing Statutes: require formal authorization to engage in certain trades, professions, or businesses

License: formal authorization to engage in certain practices

Regulatory License: licensing statute that is intended to protect the public against unqualified persons; an unlicensed person may not recover for services he has performed (If there is any requirement other than money, it is regulatory. If it is just money, it is revenue)

Revenue License: licensing statute that seeks to raise money; an unlicensed person may recover for services he has performed (basically, it is a tax) Example: occupational license

Failure to have regulatory license: cannot charge \$\$; failure to have revenue license, can still charge \$\$

Gambling Statutes: prohibit wagers, which are agreements that one party will win and the other lose depending on the outcome of an event in which their only interest is the gain or loss

Florida: lotto, dog/horse racing (paramutual), poker rooms

1) Reward/Prize

2) Consideration (if you can enter without buying anything, there is no consideration)

3) Risk

Usury Statutes: establish a maximum rate of interest (state's attempt to limit loansharking)

Applies to banks, Savings & Loans and Credit Unions (credit cards are exempt)

- **VIOLATIONS OF PUBLIC POLICY**

Common Law Restraint of Trade: unreasonable restraints of trade are not enforceable

Restraint of trade: agreement that eliminates or tends to eliminate competition

1. Serves a business interest

2. Covenant not to compete (reasonable in time and area); 6 months is automatically valid in FL,

Market area = how far are you willing to drive

Sale of a Business: the promise by the seller of a business not to compete in that particular business in a reasonable geographic area for a reasonable period of time is enforceable

Employment Contracts: an employment contract prohibiting an employee from competing with his employer for a reasonable period following termination is enforceable provided the restriction is necessary to protect legitimate interests of the employer

Exculpatory Clauses: the courts generally disapprove of contractual provisions excusing a party from liability for his own tortious conduct (attempt to relieve oneself of liability)

Unconscionable Contracts: unfair or unduly harsh agreements are not enforceable

Procedural Unconscionability: unfair or irregular bargaining

Substantive Unconscionability: oppressive or grossly unfair contractual terms

Tortious Conduct: an agreement that requires a person to commit a tort is unenforceable

Corrupting Public Officials: agreements that corrupt public officials are not enforceable

- **EFFECT OF ILLEGALITY**

Unenforceability: neither party may recover (unenforceable) under an illegal agreement where both parties are *in pari delicto* (in equal fault)

Exceptions: permit one party to recover payments

Party Withdrawing Before Performance

Party Protected by Statute

Party Not Equally at Fault

Excusable Ignorance

Partial Illegality

Chapter 14: CONTRACTUAL CAPACITY

- **MINORS**

Definition: person who is under the age of majority (usually 18 years, Florida: 18)

Period of time where a minor can decide if they want the contract (disaffirm the contract) after turning 18: reasonable period of time - For purposes of this class: 30 days

Liability on Contracts: minor's contracts are voidable at the minor's option

Disaffirmance: avoidance of the contract; may be done during minority and for a reasonable time after reaching majority (for the purposes of this class: 30 days)

Minor sells real estate: cannot disaffirm until after reaching the age of 18

Minor purchases real estate: can disaffirm

If a minor sells a guitar and then the person who bought it sells it to someone else, the minor cannot disaffirm the contract. (Can't be a scam though, must be a good faith purchase)

Ratification: affirmation of the entire contract; may be done upon reaching majority

If minor continues to make payments after age 18, he has ratified by behavior

When a minor voids a contract or ratifies it, it applies to the whole contract; cannot do part

Can ratify by words or by not disaffirming it

Liability for Necessaries: a minor is liable for the reasonable value of necessary items (those that reasonably supply a person's needs); Examples: food, shelters, clothing, medical care (contract is not voidable, but price is subject to review – consideration paid by minor must be reasonable). Can void the unused portion of the contract (renting an apartment, lived in for months...still liable for used portion).

Liability for Misrepresentation of Age: prevailing view is that a minor may disaffirm the contract

FLORIDA: when a minor lies about his age to induce an adult to enter into a contract (signs an affidavit that he is 18), the minor is treated as being the age he claimed to be when he entered into the contract

Liability for Tort Connected with Contract: if a tort and a contract are so intertwined that to enforce the tort the court must enforce the contract, the minor is not liable in tort (when considering examples, first look at whether the contract and tort can be separated)

- **INCOMPETENT AND INTOXICATED PERSONS**

3 groups discussed in class:

Adjudicated: someone ruled by the court to be incompetent

Comes and goes: contract is voidable, will depend upon what state they were in when they entered into contract

Temporarily: voidable (reasonable time limit)

Person Under Guardianship: contracts made by a person placed under guardianship by court order are void

Mental Illness or Defect: a contract entered into by a mentally incompetent person (one who is unable to understand the nature and consequences of his acts) is voidable

Intoxicated Persons: a contract entered into by an intoxicated person (who who cannot understand the nature and consequences of her actions) is voidable

Chapter 15: CONTRACTS IN WRITING

- **Contracts within the Statute of Frauds**

Rule: contracts within the statute of frauds must be evidenced by a writing to be enforceable (under statute of fraud or within statute of fraud)

Electronic Records: full effort is given to electronic contracts and signatures

Suretyship Provision: applies to promises to pay the debt of another

Promise Must be Collateral: promisor must be secondarily, not primarily, liable (creditor & 3rd party)

Whose debt is it? If it is C's debt, it is not collateral (B pays A to do something for C – this is B's debt, not C, so therefore it is collateral)

Main Purpose Doctrine: if primary object is to provide an economic benefit to the surety, then the promise is not within the statute

Executor-Administrator (Personal Representative) Provision: applies to promises to answer personally for a duty of the decedent (the personal representative agrees to pay the debt from his/her own pocket)

Marriage Provision: applies to promises in consideration of marriage but not to mutual promises to marry

Land Contract Provision: applies to promises to transfer any right, privilege, power, or immunity in real property (real estate deed) Exception: the person who is buying the land makes (1) down payment and (2) takes possession of land or makes valuable improvement

One-Year Provision: applies to contracts that cannot be performed within one year

The Possibility Test: the criterion is whether it is possible, not likely, for the agreement to be performed within one year

Computation of Time: the year runs from the time the agreement is made (not when the action starts)

Full Performance by One Party: makes the promise of the other party enforceable under majority view

Sale of Goods: a contract for the sale of goods for the total price of \$500 or more must be evidenced by a writing or record to be enforceable

Exceptions on sales over \$500:

- 1) Goods which are received and accepted, no writing is required
Accepted: show control of taking possession (accepting package from UPS)
- 2) Partial payment on a non-fungible property
(Fungible is personal property that if you took a hammer to it, each of the pieces would have the same properties...coal, oil, gold, sand). Non-fungible...laptop, desk, chair, car (if you make a down-payment on the car, you can be stuck with buying it).
- 3) Specially manufactured goods (you can cancel before the manufacture incurs expense in making it "special")

The book definition of 3 exceptions:

Admission: an admission in pleadings, testimony, or otherwise in court makes the contract enforceable for the quantity of goods admitted

Specially Manufactured Goods: an oral contract for specially manufactured goods is enforceable

Delivery or Payment and Acceptance: validates the contract only for the goods that have been accepted or for which payment has been accepted

Modification of Recission of Contracts within the Statute of Frauds: oral contracts modifying existing contracts are unenforceable if the resulting contract is within the statute of frauds

- **Methods of Compliance**

General Contract Provisions: the writing(s) or record must

- Specify the parties to the contract
- Specify the subject matter and essential terms
- Be signed by the party to be charged or by her agent

Sale of Goods: provides a general method of compliance for all parties and an additional one for merchants

Writing(s) or Record Must: (1) be sufficient to indicate that a contract has been made between the parties, (2) be signed by the party against whom enforcement is sought or by her authorized agent, and (3) specify the quantity of goods to be sold

Written Confirmation: between merchants, a written confirmation that is sufficient against the sender is also sufficient against the recipient unless the recipient gives written notice of his objection within ten days

- **Effect of Noncompliance (did not cover in class)**

Oral Contract Within Statute of Frauds: is unenforceable

Full Performance: statute does not apply to executed contracts

Restitution: is available in quasi-contract for benefits conferred in reliance on the oral contract

Promissory Estoppel: oral contracts will be enforced where the party seeking enforcement has reasonably and justifiably relied on the promise and the court can avoid injustice only by enforcement

- **Parol Evidence Rule and Interpretation of Contracts**

Statement of Rule: when parties express a contract in a writing that they intend to be the final expression of their rights and duties, evidence of their prior oral or written negotiations or agreements of their contemporaneous agreements that vary or change the written contract are not admissible

Past oral

Past written

Present oral

Present written (this is the most important) – Parol Evidence Rule says the other 3 cannot contradict this

Situations to Which the Rule Does Not Apply:

- A contract that is not an integrated document (oral and written)
- Correction of a typographical error
- Showing that a contract was void or voidable
- Showing whether a condition has in fact occurred
- Showing a subsequent mutual rescission or modification of the contract

Supplemental Evidence: may be admitted

- **Course of Dealing:** previous conduct between the parties
- **Usage of Trade:** practice engaged in by trade or industry
- **Course of Performance:** conduct between the parties concerning performance of the particular contract
- **Supplemental Consistent Evidence**

- **Interpretation of Contracts (did not cover in class)**

Definition: the ascertainment of the meaning of a promise or agreement or a term of the promise or agreement

Rules of Interpretation include:

- All the circumstances are considered and the principal purpose of the parties is given great weight
- A writing is interpreted as a whole

- Commonly accepted meanings are used unless the parties manifest a different intention
- Wherever possible, the intentions of the parties are interpreted as consistent with each other and with course of performance, course of dealing, or usage of trade
- Technical terms are given their technical meaning
- Specific terms are given greater weight than general language
- Separately negotiated terms are given greater weight than standardized terms or those not separately negotiated
- The order for interpretation is express terms, course of performance, course of dealing, and usage of trade
- Where a term has several possible meanings, the term will be interpreted against the party who supplied the contract or term
- Written provisions are given preference over typed or printed provisions and typed provisions are given preference over printed provisions
- If an amount is set forth in both words and figures and they differ, words control the figures

Example from book (p 297, #4):

A: specially designed (1800); repudiated before beginning to manufacture	(he will win the suit)
B: 75 down, standard set, refused to accept it	(the down payment is the reason why he loses)
C: standard set, sent letter referring to contact advising cancellation	(he loses because he signed letter to cancel)
D: standard set	(he wins – sale of goods over 500 not in writing)
All refused to accept delivery	

Parties are identified, terms set, signed by parties