

BLAW 201 - Study Guide

Dustin Ingram

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1 Chapter 12 – Contracts

- Contract Definitions:
 - Valid – good, proper contract. A non-valid contract is not a contract
 - Voidable – a valid contract, but either party can get out of the contract due to some law (rescind, set aside, disaffirm, avoid)
 - Void – null, never a valid contract, i.e. illegal
 - Unenforceable – valid but cannot be enforced in court due to law
- Statute of Limitations – expiration date, point at which a contract is unenforceable
- Types of Contracts:
 - Express – in words, either written or oral, the intention and the terms of the contract
 - Implied – words, actions, and circumstances which imply a contractual agreement, display intent
 - Quasi – Not a contract, doctrine created by the court to prevent unjust enrichment. Elements include:
 - * Plaintiff has conferred a benefit on the defendant (service, money, etc)
 - * Plaintiff has an expectation of payment or retribution
 - * To allow the “benefit” to be free, the Defendant would be unjustly enriched at the Plaintiff’s expense
- Bilateral and Unilateral contracts
 - Bilateral contract – One thing in exchange for another
 - Unilateral contract – The offeror may promise to do something or to pay a certain amount of money only when the offeree does an act

2 Chapter 13 – Offer & Acceptance

- Requirements of an offer:
 - Contractual Intention – invitation to negotiate or agreement to make a contract in the future
 - Definiteness – offer cannot be vague or indefinite
 - Communication of offer to offeree
- Termination of an Offer
 - Revocation:
 - * An offeror may revoke an offer in any way
 - * A revocation is only effective when it is made known to the offeree
 - Counteroffer:
 - * A counteroffer is a rejection of one offer, and the creation of a second offer
 - * Any change to the terms of an offer is a counteroffer

- Rejection:
 - * A rejection of an offer by the offeree terminates the offer
- Lapse of time:
 - * When an offer is open until a particular date, the offer is terminated if it has not been accepted by that date
 - * If an offer does not specify a time, it terminates after a reasonable amount of time
- Acceptance of an Offer
 - Only the offeree may accept an offer, and only after it is communicated to the offeree
 - An acceptance is effective upon dispatch by any means reasonable under the circumstances – when it leaves the control of the offeree and into the control of some means of transmittal
 - To protect the offeror, they can say “I must hear your acceptance by...” which requires the offeror to get the acceptance by the set termination date
 - Called the “Clang of the Mailbox” rule. Can only be prevented by:
 - * “I must hear acceptance by...” clause
 - * Intervening Rejection – if a rejection is in transit, the Clang of the Mailbox rule does not apply, but rather is effective upon receipt

3 Chapter 14A – Capacity

- Contractual capacity is the ability to understand that a contract is being made and to understand its general meaning
- Types of incapacity:
 - Status Incapacity – groups of people are incapable
 - Factual incapacity – mental condition
- Minors
 - A contract made by a minor is voidable at the election of the minor
 - The minor may affirm or ratify the contract on attaining majority by performing the contract, expressly approving the contract, or allowing a reasonable amount of time to lapse without avoiding
 - The fact that a minor has misrepresented their age does not affect the minor’s power to disaffirm the contract. The other party may disaffirm it because of the fraud.
 - Sword/Shield rule – PA law, which says a minor’s rights are different depending on how they are using their minority
 - * If sword – (initiation avoidance) must make an accounting to the adult for the damage and depreciation
 - * If shield – must give back what he has to the extent he has it and then account for the rest, getting back what he gave
 - Necessity – must pay a reasonable value for furnished necessities
 - Minors cannot avoid contracts for loans, medical care, while running a business, a contract approved by a court, or relating to banking, insurance policies, or corporate stock
 - A parent is not liable on a contract made by their minor child, unless the child is acting as the agent of the contract
 - Cosigners are bound independently
- Mentally Incompetent Persons
 - Same rights as minors (including ratification upon removal of the disability)
 - A court-appointed guardian may ratify or disaffirm previously made contracts

- Any contracts not made by a guardian after appointment are void
- Intoxicated Persons
 - The capacity of a party to contract and the validity of the contract are not affected by the party's being impaired by alcohol or other drugs
 - If the degree of intoxication is such that a person does not know that a contract is being made, the contract is voidable by that person.
 - The individual has a reasonable amount of time to avoid or rescind the contract

4 Chapter 14B – Mistake & Fraud

- Possible ground for avoiding a contract:
 - Lack of contractual capacity (status incapacity, factual incapacity)
 - Mistake (unilateral mistake induced by or known to the other party, mutual)
 - Deception (innocent misrepresentation, nondisclosure, fraud)
 - Pressure (undue influence, physical/economic duress)
- Types of Mistakes:
 - Unilateral mistake – a mistake made only by one of the parties does not affect the contract when the mistake is unknown to the other contracting party. However, the party making the mistake may avoid the contract if the other contracting party knew or should have known of the mistake
 - Mutual mistake – When both parties enter into a contract under a mutually mistaken understanding concerning a basic assumption of fact or law on which the contract is made
 - * The contract is voidable by the adversely affected party if the mistake has a material effect on the agreed exchange
 - * The contract is not voidable if it is based on a mutual mistake in judgement
- For fraud (intentional misrepresentation) to be proved, all must be true:
 - A material misrepresentation (not in accord with the facts)
 - Made with the intent to deceive or cause reliance
 - Reasonable reliance by the other party
 - Damage or Harm
- Matters of opinion of value or opinions about future events are not regarded as fraudulent
- In a bargaining transaction, there is no duty to disclose facts to the other side
- Exceptions – to the lack of duty to disclose information
 - Where a statute/regulation/law requires disclosure, this is concealment
 - Positive action designed to hide the truth, or to stymie the other party's discovery of the truth
 - Half-truth – type of concealment
 - Where a party makes a statement in good faith, but supervening events make it untrue
- Only in Fraud – you have a choice whether to avoid the contract, or to sue for damages, but not both
- Duress:
 - Grounds for: threat of imprisonment or injury to you or a close friend or loved one
 - Economic Duress – in the face of a wrongful threat of either-or, did the one threatened have a reasonable third alternative