

## DEFENSES TO MUTUAL ASSENT

- DURESS
- UNDUE INFLUENCE
  - Unfair Persuasion / Abuse of Trust in a Confidential or Fiduciary Relationship
- MISREPRESENTATION
- MUTUAL MISTAKE OF FACT
  - Purpose of K is Frustrated

## CONSIDERATION

- To Enforce a Promise, must pay a Price: Consideration.
- Elements
  - THE PRICE MUST BE WHAT THE PARTIES BARGAINED FOR IN EXCHANGE FOR THE PROMISE
    - Contrary Examples: Gifts, Past Consideration
  - THE PRICE MUST BE A LEGAL PRICE – SOMETHING THE LAW RECOGNIZES AS LEGITIMATE CONSIDERATION (LEGAL DETRIMENT)
    - Contrary Examples: Illusory Promises, Pre-existing Duty

## LEGAL DETRIMENT vs PRE-EXISTING DUTY

| LEGAL DETRIMENT   | PRE-EXISTING DUTY   |
|---|---|
| PROMISE TO DO SOMETHING OR DOING SOMETHING THAT THE PERSON IS NOT LEGALLY OBLIGATED TO DO                                   | PROMISE TO DO SOMETHING THAT ONE IS LEGALLY REQUIRED TO DO                            |
| PROMISE TO REFRAIN OR REFRAINING FROM DOING SOMETHING THAT THE PERSON IS LEGALLY PRIVILEGED TO DO (GIVING UP A LEGAL RIGHT) | PROMISE TO REFRAIN FROM DOING SOMETHING THAT A PERSON IS NOT LEGALLY PRIVILEGED TO DO |

## NON-COMPETE AGREEMENTS

- Generally Non-compete Agreement Violates Public Policy And Is Unenforceable, unless (in some states)
  - Protect Legitimate Property Interest
  - Reasonably Tailored To Situation
- **Sale Of Business**
  - Protect Buyer's Interest In Goodwill Of Business
  - Must Be Reasonable In Terms Of Time, Geographic Area, And Business Activity Restricted By Agreement
- **Employment Contract**
  - Must Be Necessary To Protect Some Legitimate Interest Of Employer
  - Must Be Reasonable In Terms Of Time, Geographic Area, And Business Activity Restricted By Agreement

## Remedies for Breach

- Legal Remedies: Damages
  - Compensatory
    - Restitution
    - Reliance
    - Expectation
  - Consequential: Must be foreseeable
  - Liquidated
- Equitable Remedies: Injunction, Specific Performance

## What if no Contract? Equitable Doctrines

- Promissory Estoppel
  - Promise leading to Reasonable & Detrimental Reliance
  - Court Determines that Fairness Requires Enforcement of Promise
- Quasi-Contract (Quantum Meruit)
  - Obligation to Pay Reasonable Value
  - Purpose: Prevent Unjust Enrichment