

MUTUAL ASSENT

- The “Meeting of the Minds”
- Offer and Acceptance
- Objective Theory of Contract Formation & Interpreting Contracts
 - Agreement Based On Outward Manifestation of Intent, Not Subjective
 - To Interpret: Ask what Reasonable Person would Expect, based on Manifestations

THE OFFER – ELEMENTS

- INTENT: Intent to be Bound to Terms
 - STATEMENTS LACKING INTENT
 - INVITATIONS TO NEGOTIATE
 - ADVERTISEMENTS
- DEFINITE TERMS
 - Material/Essential Terms of the Bargain (P & Q Exceptions for Sales)
- COMMUNICATION BY OFFEROR TO OFFEREE

TERMINATION BY OFFEROR

- REVOCATION OF THE OFFER
- REVOCATION MUST BE COMMUNICATED, DIRECTLY OR INDIRECTLY, PRIOR TO ACCEPTANCE
- ALMOST ALL OFFERS ARE REVOCABLE
 - EXCEPTION – FIRM OFFERS (UCC)

TERMINATION BY OFFEREE

- REJECTION OF OFFER
- COUNTEROFFER
 - CONSTITUTES AN IMPLIED REJECTION
- LAPSE OF TIME
 - TIME STATED IN OFFER OR REASONABLE TIME IF NO TIME STATED IN OFFER

MIRROR IMAGE RULE

- ACCEPTANCE MUST BE ON THE SAME (MATERIAL) TERMS AS THE OFFER
- IF NOT, IT IS A COUNTEROFFER
- ACCEPTANCE CANNOT CHANGE TERMS OF OFFER OR ADD TERMS TO IT

DISPATCH / MAILBOX RULE

- ACCEPTANCE IS LEGALLY EFFECTIVE WHEN IT IS DISPATCHED (NOT RECEIVED)
- DISPATCH OCCURS WHEN LETTER IS MAILED (MAILBOX RULE) OR ACCEPTANCE OTHERWISE SENT
- REJECTION EFFECTIVE ON RECEIPT: What if Accept after Reject?

DEFENSES TO MUTUAL ASSENT

■ DURESS

- WRONGFUL THREAT THAT DEPRIVES OTHER PARTY OF FREE WILL
- Physical Duress: Agreement is Void

■ UNDUE INFLUENCE

- UNFAIR PERSUASION/ABUSE OF TRUST OFTEN IN A CONFIDENTIAL OR FIDUCIARY RELATIONSHIP

■ MISREPRESENTATION

■ MISTAKE

MISREPRESENTATION

■ FRAUDULENT MISREPRESENTATION (Fraud in the Inducement)

- Misrepresentation or concealment of material fact
 - not opinion/value / puffery
- Made with SCIENTER – knowledge of falsity and intent
- Reasonably or Justifiably Relied upon by the defrauded party
- Causes damages to that party

■ NON-FRAUDULENT (Negligent & Innocent) MISREPRESENTATION

MUTUAL MISTAKE OF FACT

■ CONCERNS BASIC ASSUMPTION UPON WHICH K IS MADE

■ AS A RESULT, PURPOSE OF K IS FRUSTRATED

■ UNILATERAL MISTAKE IS GENERALLY NOT A DEFENSE TO A CONTRACT