



Opus College of Business | UNIVERSITY OF St. Thomas

## Contracts: Extra slides Dale Thompson

### ELEMENTS OF A CONTRACT

- MUTUAL ASSENT (Offer & Acceptance)
  - AGREEMENT, MEETING OF THE MINDS
- CONSIDERATION
  - PRICE BARGAINED FOR AND PAID FOR A PROMISE
- CAPACITY
  - COMPETENT PARTIES
- LAWFUL PURPOSE
  - CONTRACT OBJECTIVE CANNOT VIOLATE THE LAW OR PUBLIC POLICY
- FORM OF CONTRACT
  - STATUTE OF FRAUDS – WRITING IS REQUIRED FOR SOME CONTRACTS

### THE OFFER – ELEMENTS

- INTENT: Intent to be Bound to Terms
  - Statements Lacking Intent
    - Invitations to Negotiate
    - Advertisements
  - Intent judged Objectively, Not Subjectively
  - Ask what Reasonable Person would Expect, based on Manifestations
- DEFINITE TERMS
- COMMUNICATION

### Key Concepts

- Unilateral Offer vs. Bilateral Offer
- Material Terms
- Statute of Frauds
  - Application: Goods > \$500; real estate; long-term contracts (that cannot be performed within 1 year of formation)
  - If applies, in order to enforce the contract, need a writing signed by the party you want to enforce against

### 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? Whichever gets there first counts

## FRAUDULENT MISREPRESENTATION



- Misrepresentation
- of Material
- Fact – not opinion/value / puffery
- Made with SCIENTER – knowledge of falsity and intent
- Reasonably
- Relied upon by the defrauded party
- Causing damages to that party

## PERFORMANCE



- **CONDITIONS:** No duty to perform if *condition precedent* not satisfied
- **COMPLETE PERFORMANCE**
- **SUBSTANTIAL PERFORMANCE**
  - IN GOOD FAITH
  - PERFORMANCE THAT DOES NOT VARY GREATLY FROM THAT PROMISED: “CAN THE PURPOSES OF THE CONTRACT BE ACHIEVED?”
  - EFFECTS
    - SUBSTANTIALLY PERFORMING PARTY IS DISCHARGED FROM PERFORMANCE
    - BUT MUST PAY DAMAGES CAUSED BY THE BREACH
  - If either requirement fails, MATERIAL BREACH

## DISCHARGE BY LAW



- **IMPOSSIBILITY**
  - MUST BE OBJECTIVE IMPOSSIBILITY
  - SUBJECTIVE IMPOSSIBILITY IS NOT A DEFENSE
- **ECONOMIC FRUSTRATION**
  - UNFORSEEABLE EVENT BEYOND THE CONTROL OF EITHER PARTY
  - ELIMINATES (“FRUSTRATES”) THE PURPOSE OF THE CONTRACT
- **COMMERCIAL IMPRACTICABILITY**
  - UNFORSEEABLE EVENT
  - UNREASONABLE COSTS TO PERFORM

## SALES WARRANTIES



- **Express Warranties**
  - Statement of Fact or Promise or Description of Goods
- **Warranty of Title**
- **Implied Warranties**
  - **Merchantability:** “reasonably fit for the ordinary purposes” of goods
  - **Fitness for a Particular Purpose**
    - Seller’s knowledge of buyer’s particular purpose
    - Reliance on seller’s judgment to select appropriate goods
  - Disclaimers of Implied Warranties
    - Both: “as is,” or “with all faults”
    - Merchantability: must mention “merchantability”
    - IWF4PP: must be in writing