16.2

* Contract = set of promises
* Promise = manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promise in understanding a commitment has been made.
* Agreement shows that promisor has obligation and promise has right to expect obligation
* “Shall” is used to express promises NOT FUTURE
* “Will” is used to express future
* A shall do x for B
* Don’t make it vague but don’t be over specific including every provision

16.3

- promise creates obligation of future performance

- Representation: Misrepresentation or Warranties

- Actual Fraud (Intentional misrepresentation) or constructive fraud (innocent misrepresentation) = representations made to induce the contract

- Warranty = any affirmation of fact or promise which becomes part of the basis of the bargain

- Warranty = representation or promise

- Buyer should not rely on particular word like representation or warranty to convey precise meaning but identify legal consequences attached to those words

- Representation = statement not in document, warranty = condition of insurer’s obligation to pay rather than promise for breach

- If argument recites a promise, a representation or a warranty the drafter must ask:

- What if the promise is not kept

- What if the fact is not as represented

- What remedies are contemplated

8.2

- Recitals: State assumptions of parties in entering agreement

- Premises: Buyer intends to use property to build a primary residence. Seller intends to meet buyer’s needs by selling property that is suitable in all respects for said purpose

- Representations and Warranties: Party who articulates warranty may require other party to indicate it shares assumptions by making a representation of fact

- Representations: Seller represents that the property is suitable in all respects as the location of a primary residence. Buyer may rescind the transaction if any representation contained in agreement is substantially false

- Warranty: Seller warrants that property is suitable in all respects as location of primary residence. Seller shall indemnify buyer if any fact is not as warranted.