Contracting systems

Commercial transactions class
Lecture 1.02

Introduction

Setting

- In every contract, the parties have expectations
- Contracts are a means to allocate risk between the parties.
- Those risks include a number of issues
- A contracting system provides a framework for those entering into business transactions

Objective

By the end of the lecture, you should be able to answer the following questions:

1. What are the expectations of a buyer?
2. What are the expectations of a seller?
3. What risks do the parties to a sales transaction encounter?

Expectations of the parties to a contract for the sale of goods

The buyer has certain expectations

- the buyer wishes to receive the bargained-for goods
- The buyer will want to confirm that the goods are satisfactory (right to inspect)
- The buyer not want to pay for the goods until it finishes inspection
    - otherwise the buyer will have paid for goods that are not the goods it ordered and for which it may not have a use

The seller has certain expectations

- The seller wishes to receive payment as expeditiously as possible
- The seller does not wish to endure an extended waiting period while the buyer inspects
- The seller wants to avoid shipping goods that may be rejected.
- It has now parted with his goods but has not received payment and it may have difficulty recovering them

A contracting system must provide for the assignment of risks between the parties

There are risks associated with performance

- Non-performance
- Late performance
- Unacceptable performance

- Early performance

There may be problems with unexpected conditions

- Acts of God
- Unexpected costs
- Diminished revenues
- Market forces

Contracts can shift the burdens of risk between parties

- Parties can contract with regard to any risk
- Parties can contract with regard to risks they have no control over, however absurd or improbable.
- The parties can contract regarding termination without performance

A contracting system must do three things

A contracting system must provide the requirements of a valid contract

- A contract is formed in any transaction in which one or both parties make a legally enforceable promise
- Contracts are enforceable promises.
- A contracting system must establish what kinds of promises that society will enforce

A contracting system must provide guidance for the performance of a contract

- The contracting system must provide rules as to when a party has performed according to the requirements of the contract
- The parties to a contract need to know with certainty when their obligations under the contract are complete
- A breach means a failure to keep your promise.

A contracting system must provide remedies for the failure to perform a contract

- The contracting system must provide a remedy for the breach of the promise
- A remedy gives the contract meaning
- These remedies may take different forms, depending on the nature of the contract

In the United States, different contracting systems apply

- The primary source of contract law in the US is common law (case law)
- Article 2 of the Uniform Commercial Code governs contracts for the sale of goods
- The Convention on Contracts for the International Sale of Goods (CISG) governs the sale of goods between parties of different nations

Conclusion

What did we learn today?

- Each party to a contract has expectations

- Buyers and sellers use contracts to manage risks
- There are three contracting systems in use in the US