

3: UNDERSTANDING CONTRACT LAW, PART 2

- mutual assent
 - two or more parties coming together to agree to the terms of the contract
 - situations that **lack** assent (i.e., you didn't really want to be bound by this contract)
 - fraud
 - when one party lies or hides facts, tricking the other party into entering contract
 - elements of fraud that must be proven
 - a false representation, concealment, or alteration
 - involving material fact
 - knowingly made
 - intent to deceive
 - innocent party justifiably relied on fact
 - (if victim seeking dmgs) innocent party suffered dmgs/detriment
 - 2 remedies
 - rescission:
 - voiding contract & putting parties back to original positions
 - usually means to cancel transaction & refund money
 - sue for dmgs
 - often used if rescission wouldn't make plaintiff whole (innocent party incurred other costs beyond what they paid to defendant)
 - (ex: actor backs out of movie, but studio lost more than just his salary)
- mistake
 - contract says something different than what was intended due to a mistake
 - not all mistakes make contract voidable or unenforceable (depends on circumstances)
 - bilateral mistake:
 - **both** parties' believed something other than what contract says
 - bilateral mistake about value of the contract's subject matter does **not** make contract voidable
 - (ex: both parties enter contract not realizing art is worth millions more)
 - unilateral mistake: **one** party believed something other than what contract says
 - parties **cannot** knowingly exploit mistake if error was obvious
- duress
 - use of restraint, violence, or threats to get someone to enter contract
 - threats that are **not** usually considered duress
 - threatening to sue
 - threatening that the other party will suffer economic loss
 - threatening to stop doing biz w/ someone
 - threatening to withhold payment for work already done until addt work is done
- undue influence:
 - improper use of power/trust to pressure or influence someone
 - (i.e., you feel like you can't say no due to pressure/guilt)
 - often a product of close/intricate relationship
 - (ex: nurse telling infirmed patient, mom telling daughter)

- **innocent misrepresentation**
 - similar to fraud, but without intent
 - can ask for contract to be rescinded, but not for monetary dmg
 - (ex: seller was mistaken about key product fact)
- statute of frauds
 - requires certain contracts to be in writing & signed by party whom contract is being enforced against
 - if not in writing, defendant can elect to get out of contract by raising this as a defense
 - oral contracts are not automatically void, as defendant can elect to be bound by it
 - **5 types of contracts that must be in writing**
 - **sale of real estate**
 - **real estate**: land, all structures attached to land, and whatever is growing on land
 - **long-term contracts that can't be performed in 1 yr (bilateral contracts only)**
 - sale of goods **totaling \$500 or more**
 - to pay someone else's debt
 - by executor of an estate who agrees to pay estate's debts from executor's own funds
- parol evidence rule
 - once agreement is in writing, no evidence from before that is admissible **if it contradicts terms** in written agreement
 - i.e., court assumes everything before was just negotiations to arrive at the written terms
 - 3 purposes of rule
 - to carry out parties' presumed intention
 - to achieve certainty & finality as to parties' rights & duties
 - to exclude fraudulent & perjured claims
 - exceptions (when pre-contract date evidence **is** admissible)
 - to help interpret/explain terms (but **not** to alter them)
 - when essential contract term is missing
 - contract contains ambiguous language
 - (if claim of fraud or illegality involved) to support allegation of wrongdoing
 - **to show that contract never became a true contract b/c of one party's failure to adhere to a condition of agreement**
- how courts interpret contracts
 - **main goal is effectuation of (to actualize) parties' intent**
 - in general, words are defined by their plain meaning
 - **however, individual clauses/words are considered in relation to main purpose of contract**
 - entire vs divisible
 - *divisible*: performance/payment are divided into multiple stages/sections
 - courts try to have parties pay for what's done so far, out of fairness
 - any clerical errors/omissions are corrected
 - **contradictory terms have priority for court's attention**
 - **handwriting prevails over printed words**
 - words prevail over figures (ex: "one hundred" vs. "100")
 - 2 types of ambiguities
 - when provision can be reasonably interpreted in more than 1 way
 - courts follow the *Contra Proferentem Doctrine/Ambiguity Doctrine* (choose the interpretation **least** favorable to party who wrote provision)
 - court interprets words re: offer **against** offeror
 - court interprets words re: acceptance **against** acceptor

- when meaning can't be determined, even after applying all tools of interpretation
 - evidence from outside the contract may be considered
 - prior agreements
 - concurrent agreements
 - industry standards
 - parties' own interpretations (based on their actions post-contract) carries a lot of weight
 - court assumes contract should be legal & fair
 - trade usage, course of dealings, and performance are considered
 - for sales contracts, applicable law is usually law where sale made
- assignment of contract
 - when a 3rd party formally replaces one of the original parties to the contract
 - *assignor*: original party to contract
 - *assignee*: new party to contract
 - once contract **assigned**, original assignor has no rights or duties or under contract
 - assignee completely takes over rights/responsibilities
 - *delegation*: asking a 3rd party to do your part of contract, but you agree to still be legally liable for ensuring your end of the bargain is properly upheld
 - **non-assignable** rights
 - law prohibits pre-assigning certain rights like VA benefits, pensions, wages, workers comp
 - if specified in contract that assignment **not** allowed
 - rights to personal service (ex: personal trainer)
 - when assignment would materially alter/vary a party's performance
 - generally, when judgment is still pending for personal inj case (inj'd party can't assign clm)
 - assignments are **not** contracts & do **not** need to be in writing (unless related to something covered by statute of frauds)
 - **promise** to assign can be an enforceable contract, if it meets all other requirements for a contract
 - valid assignment is effective **immediately**, even if other party to contract hasn't been notified yet
 - assignee's responsibilities/rights are same as assignor's
- third-party beneficiary:
 - person who is **not** party to contract but benefits from it and has legal right to sue to enforce contract if either party breaches
 - usually, only the two parties to a contract have rights to sue each other but there are some exceptions
 - to determine if 3rd party has right to sue:
 - binding contract must exist btwn promisor & promisee
 - parties to contract must intend for 3rd party to receive benefit & have rights
 - parties must clearly ID to whom performance is owed to
 - if performance owed to 3rd party, 3rd party can sue to enforce
 - if performance owed to promisee only, 3rd party **cannot** sue to enforce
 - 3rd party always subject to same defenses promisor might raise against promise
 - usually parties can cut off 3rd party's rights, unless 3rd party proves his position has materially changed in reliance on contracts
 - 3 types of 3rd party beneficiaries (when someone other than parties to contract has rights/benefits)
 - **creditor beneficiary**
 - 3rd party is owed debt, which can be satisfied by performance of contract

- elements:
 - A is to pay B under a contract
 - B happens to owe creditor some money
 - A & B agree to make A pay money directly to creditor, to satisfy B's debt
- 3rd party (creditor) can pursue A or B for money if not rcvd
- donee beneficiary
 - 3rd party is **not** formally owed debt but receives benefit from performance of contract
 - elements:
 - A is to pay B under a contract
 - B does **not** owe anything to C, but decides to give/donate money to C
 - A & B agree to make A pay money directly to C (donee)
 - 3rd party (donee) can only pursue A if money not rcvd
 - 3rd party (donee) **cannot** sue B, since B had no original obligation to give gift to 3rd party
- incidental beneficiary
 - 3rd party that happens to receive benefit from performance of contract, but parties to contract **did not** intend to give 3rd party any rights to sue
 - example:
 - A is to sell car to B
 - B tells a friend that B can drive them to work if B gets the car
 - A & B do **not** agree to give friend any rights to sue
 - sale does not go through
 - friend **cannot** sue A or B
 - has **no** enforceable rights
 - (ex: citizen can't sue either for breach of contract btwn county & water company, if fire hydrant doesn't get enough water)
- how a contract can end (be discharged)
 - complete performance (i.e, contract has played out properly)
 - you pay the debt/monies owed
 - you tender (offer) to perform your part & other party declines
 - good faith performance, if entire performance turns out to be too difficult
 - if satisfaction guaranteed, promisee experiences personal/subjective satisfaction
 - if no timeframe set, after reasonable timeframe has passed
 - agreement of parties to terminate contract
 - substitution of new contract
 - novation:
 - substituting 3rd party for 1 of parties to contract, **relieving original party of duties**
 - similar to **assignment**, but this requires a formal contract
 - differs from **delegation**, which does **not** relieve original party of duties
 - *accord & satisfaction*:
 - agree to do/exchange something else instead of what was originally agreed
 - ex: instead of paying \$4000 for car, will trade motorcycle for car
 - *impossibility* of performance
 - when performance **cannot** be completed
 - ex: contract to paint house, but house burns down
 - ex: contract for certain type of apple, but harsh winter destroys all crops of that type

- includes:
 - change in law that makes contract illegal
 - death or incapacitating illness of specific person who was to perform personal service
 - one party's act prevents other party from being able to fulfill contract
 - destruction of contract subject matter
- temporary impossibility suspends duty to perform, but does **not** eliminate it
- *objective impossibility*: the promisor cannot conceivably perform
- *subjective impossibility*:
 - promisor refuses to perform, even though it is technically possible
 - not sufficient for getting out of obligation to perform contract
- similar concepts to *impossibility*:
 - *frustration*:
 - inability to achieve the **purpose** that was served by contract
 - must arise from an unforeseeable circumstance that is neither party's fault
 - ex: if you lease a store w/ goal to open exotic snakes shop but law makes it illegal to sell snakes, ok to break lease
 - allows for parties to be discharged from contract
 - *impracticability*:
 - when performance becomes extremely/unreasonably difficult
 - applies when it is not completely impossible, but would be much more costly
 - ex: contract to lay concrete but then flood causes area to be submerged
- fraudulent alteration of contract
- contractual conditions
 - if condition doesn't occur, contract terminates & any innocent party may be entitled to dmgs
 - types of conditions
 - condition precedent
 - condition that must be fulfilled **before** performance required
 - ex: payment for goods is due **before** they are delivered
 - condition concurrent
 - condition that must be fulfilled when performance is being made
 - ex: payment for goods is due when they are delivered
 - condition subsequent
 - event that, if it occurs, allows contractual rights to be terminated
 - ex: tenant paid rent already, but then violates condo house rules
- contract breaches
 - repudiation:
 - a party's refusal to meet contract obligations, made at the time performance is due
 - ex: seller delivers goods to buyer, at which time buyer says they won't pay
 - must be positive & unequivocal to be considered breach (i.e., party **explicitly** refuses)
 - anticipatory:
 - party's unequivocal indication that they will breach, made **before** performance is due
 - ex: **before** seller delivers goods, buyer says they aren't going to pay
 - material breach:
 - violation of agreement that would justify termination of contract

- factors
 - extent to which breaching party has already performed
 - willfulness of breach
 - extent to which non-breaching party has obtained benefits & can receive adequate compensation
- minor breach can suspend duty to perform or allow for suing of dmgs caused but doesn't count as breach of entire contract
- remedies
 - recovering dmgs
 - compensatory dmgs: reimbursement for harm or loss actually suffered
 - consequential dmgs: compensation for foreseeable **indirect losses**
 - punitive/exemplary dmgs
 - penalty awarded strictly to punish defendant who:
 - acted in bad faith (intentional or reckless act)
 - caused intentional infliction of emotional distress due to outrageous conduct
 - isn't necessary related to the amt of plaintiff's losses (although courts try to be reasonable)
 - is considered extra-contractual (any payment awarded by court that exceeds what is owed under the contract itself)
 - liquidated
 - reasonable est of **dmgs** agreed to beforehand parties & included in contract to be paid in event of breach/negligence
 - i.e., pre-determined settlement amt agreed to by both parties
 - mitigation of dmgs:
 - duty owed by inj'd party to take reasonable measures to minimize further loss
 - (ex: if someone breaks your window, you should keep it covered up until you get it fixed)
 - equitable remedies (when monetary award is not enough)
 - specific performance:
 - court order requiring a party to perform a certain act
 - ex: order of eviction, when tenant is not paying rent
 - injunction:
 - court order requiring a party to act or refrain from acting
 - with contract law, usually used to **prevent** someone from acting