

CHAPTER 2/3 - ELEMENTS OF A CONTRACT

- 1) Agreement
 - a. Offer
 - i. Intent to contract
 - ii. Definite terms
 - iii. Communication to other party
 - b. Acceptance
 - i. Acceptance made by offeree [not by other party]
 - ii. Unconditional & unequivocal
 - iii. Offeree communicates acceptance
- 2) Capacity to contract
 - a. Party is competent
 - b. (examples of parties that may not have capacity to contract)
 - i. Minors
 - ii. Insane
 - iii. Intoxicated
 - iv. Artificial entities restricted by law or corp charter from entering contract
- 3) Assent
 - a. (5 situations that lack assent)
 - i. Fraud
 - ii. Mistake
 - iii. Duress
 - iv. Undue influence
 - v. Innocent misrepresentation
- 4) Consideration
 - a. 5 types of acceptable consideration
 - i. Valuable consideration
 - ii. Forbearance (agreeing to give up a right)
 - iii. Present consideration
 - iv. Future consideration
 - v. Binding promises
 - b. 3 types of unacceptable consideration
 - i. Past consideration
 - ii. Promise to perform an existing obligation
 - iii. Compromise & release of claims for partial payments (*some exceptions*)
 - c. (exceptions to requirement for consideration)
 - i. Promissory estoppel
 - ii. Charitable subscriptions
 - iii. Promise to repay old debt that was initially barred by bankruptcy
- 5) Legal purpose
 - a. (9 types of illegal contracts)
 - i. Commit crimes/torts
 - ii. Harmful to public interest
 - iii. Usury (charging high interest rate)
 - iv. Wagering/gambling
 - v. Contracts w/ unlicensed practitioners
 - vi. Transfer liability for negligence

- vii. Restraint of marriage
 - viii. Unconscionable bargains (too-extreme terms)
 - b. (exceptions to requirement for legal purpose)
 - i. When specific group is protected by law
 - ii. In Pari Delicto agreements (both parties equally at fault)
 - iii. Severable contracts (contract w/ 2+ promises that court can enforce separately)
- 6) Made in the form required by law
 - a. Statute of Frauds (5 types of contracts that must be in writing)
 - i. Sale of real estate
 - ii. Long-term contracts that can't be performed in 1 year
 - iii. Sale of goods **totaling** \$500 or more
 - iv. To pay off someone else's debt
 - v. By an executor of an estate, who agrees to pay estate's debts from executor's own funds