

## 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