Contracts Big Picture

Threshold: Which law governs? Common Law or UCC?

Step One: Formation

Offer

Requirements:

- 1. INTENT TO BE BOUND 2. TO DEFINITE TERMS
- 3. COMM. TO OFFEREE

Termination:

- 1. LAPSE OF TIME
- 2. REVOCATION
- REJECTION (includes COUNTEROFFER)
- 4. OPERATION OF LAW

Acceptance

Common Law MIRROR IMAGE RULE

UCC Acceptance

ADD. & DIFFERENT TERMS

Methods PROMISE; PERFORMANCE

Modes

AUTHORIZED OR REAS.

Mailbox Rule EFFECTIVE AT DESPATCH

Offer + Acceptance = Mutual Assent Mutual Assent + Consideration = Contract

Consideration

Benefit or Detriment Bargained-for Exchange

ADEQUACY IRRELEVANT NO PAST CONSID. PRE-EXISTING DUTY ILLUSORY PROMISES

Promissory Estoppel Consideration Substitute

Defenses to Formation

STATUTE OF FRAUDS
MISTAKE (MUTUAL
OR UNILATERAL)
AMBIGUITY
ILLEGALITY
INCAPACITY
UNCONSCIONABLE
FRAUD, DURESS

Step Two: Performance

Contract Terms

Interpretation & Construction CUSTOM & USAGE, COURSE OF DEALING

Parol Evidence Rule IF K CLEAR AND UNAMSIG., NO EVID. OF PRIOR OR CONTEMP. AGREEMENTS

Modification C/L: CONSID. REQ. UCC: GOOD FAITH OK MAY NEED TO SATESPY SOF

Third Parties

Third Party Beneficiaries INCIDENTAL or INTENDED; DONEE or CREDITOR

Assignment, Delegation, Novation

Excuse of Condition

WRONGFUL PREVENTION VOLUNTARY DISABLEMENT ANTICIPATORY REPUBLIATION ACTUAL MATERIAL BREACH WAIVER & ESTOPPEL IMPOSSIBILITY, ETC.

SUBSTANTIAL PERFORMANCE

Discharge of Duty

BY PERFORMANCE
IMPOSSIBILITY, ETC.
MODIFICATION
MUTUAL RESCISSION
NOVATION OR SUBST. K
ACCORD & SATISFACTION
LAPSE, STATUTE OF LIMIT.

Breach

Breach = Failure to Discharge an Absolute Duty

Material Breach vs. Substantial Performance

FACTORS: BENEFIT RECEIVED, ADEQUACY OF DAMAGES, EXTENT OF PARTIAL PERFORMANCE, HARDSHIP TO BREACHING PARTY, NEGLIGENCE OR WILLFULNESS

Step Three: Remedies

Damages for Breach

Compensatory Damages BENEFIT OF BARGAIN; MUST BE CERTAIN EXPECT. MEASR.; RELIANCE IF UNCERTAIN

Consequential Damages MUST BE REAS. FORESEEABLE AT TIME OF K

Liquidated, Incidental & Nominal BUT NO PUNITIVE UNLESS NON-ECON.

Defendant's Duty to Mitigate APPLIES TO ALL CONTRACTS

Restitution

UNJUST ENRICHMENT OF DEF. QUASI-CONTRACT = NO REAL K MAY GO TO PARTY IN BREACH

Specific Performance

EQUITABLE REMEDY REMEDY & LAW INADEQUATE REAL PROPERTY IS UNIQUE

Rescission

EQUITABLE REMEDY COURT ORDERS K CANCELED GROUNDS: MISTAKE, MISREP. EQUITABLE DEFENSES APPLY

Reformation

EQUITABLE REMEDY COURT ORDERS K MODIFIED GROUNDS: MESTAKE, MISREP EQUITABLE DEFENSES APPLY

Washburn Bar Flowcharts Contracts

Patrick Vollmar

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