Contracts Outline

I. Formation of Contracts

- **Governing Law**
  - **UCC** governs contracts for the sale of goods (tangible, movable personal property). The UCC trumps any contrary common law rule.
  - **Common law** governs contracts not involving the sale of goods.
  - **Hybrid contracts (involve both goods and services)** are determined by the predominant purpose of the transaction.
- **Elements of a Valid Contract**
  - Mutual Assent (Offer and Acceptance)
    - Offer
      - Requires intent to be bound to definite terms.
      - Requires communication to the offeree.
      - Must have a reasonably certain basis to provide a remedy.
      - Must include words of promise, undertaking, or commitment.
      - Essential terms (parties, subject matter, price, quantity) must be covered under the common law. Courts may supply missing terms if the parties intended to contract.
      - Under the UCC, quantity is the only essential term.
        - Exception: requirements and output contracts (UCC implies "good faith").
        - UCC fills gaps if other terms are missing.
        - Output and requirement contracts must be in good faith and not unreasonably disproportionate.
      - Termination of Offer
        - Lapse of time
        - Revocation
        - Rejection (includes counter-offer)
        - Operation of law
      - Advertisements are generally not offers, unless they are in the nature of a reward or addressed to a specific person.
      - Auctions are generally invitations for offers (bids).
        - "With reserve": seller can withdraw the goods anytime before the hammer falls
        - "Without reserve": seller cannot withdraw the goods once bidding has started
    - Acceptance
      - Requires an objective manifestation of assent to the terms of the offer.
      - Offeree must know of the offer.
      - Must be communicated to the offeror.

        - Mailbox rule: acceptance is effective upon dispatch, not receipt, unless the offer specifies otherwise or an unauthorized method of acceptance is used.
        - If the offer specifies a particular manner of acceptance, then that method must be used.
        - If the offeree sends both an acceptance and rejection, the first to arrive is effective.
      - Mirror image rule: acceptance must be a "mirror image" of the offer (common law).
      - Battle of the forms: acceptance can add or change terms (UCC).
        - Acceptance is still valid even with different or additional terms, unless expressly made conditional on assent to those terms.
        - For merchants, additional terms in the acceptance become part of the contract unless they materially alter the offer, the offer expressly limits acceptance to its terms, or the offeror objects within a reasonable time.
        - For non-merchants, additional terms are treated as proposals for addition to the contract.
        - Different (conflicting) terms are knocked out and replaced with UCC gap fillers.
    - Certainty of Terms
      - Terms must be sufficiently definite to determine the parties, whether a breach has occurred, and the remedy.
      - Courts can supply reasonable terms if the parties intended to contract.
      - UCC provides gap fillers for missing terms.
    - Consideration
      - Consideration is a benefit to the promisor or detriment to the promisee that is bargained for and given in exchange for the promise.
      - Adequacy of consideration is generally not relevant.
        - Exceptions: sham consideration or evidence of fraud or duress
      - No past consideration is recognized.
      - Pre-existing duty rule: performing a pre-existing duty is not consideration (common law).
        - Exceptions: new or different performance is promised, unforeseen difficulties arise, a third party promises to pay, or there is a good faith modification under the UCC.
      - Illusory promises are not consideration.
        - A promise that is entirely optional on the part of the promisor is illusory.
        - Requirements and output contracts are valid, even though one party has discretion in determining the quantity. The quantity must be determined in good faith.
- **Alternatives to Consideration**
    - Promissory Estoppel
      - A promise is enforceable even without consideration if the promisee reasonably relied on the promise to their detriment and injustice can only be avoided by enforcing the promise.

        - Requires:
            - A promise
            - Reliance by the promisee that was reasonably foreseeable by the promisor
            - Actual detriment to the promisee
            - Enforcement is necessary to avoid injustice
    - Quasi-Contract
        - A legal obligation imposed by the court to prevent unjust enrichment.
        - Requires:
            - One party conferred a benefit on another
            - The recipient of the benefit knew of the benefit and accepted it
            - It would be unjust for the recipient to keep the benefit without paying for it
    - Moral Obligation
        - A promise made in response to a pre-existing moral obligation may be enforceable in some jurisdictions.
        - Examples: debts barred by the statute of limitations, debts discharged in bankruptcy
    - Statutory Substitutes
        - Some statutes create enforceable obligations without consideration, such as the firm offer rule under the UCC.

II. Defenses to Enforceability

- **Statute of Frauds**
    - Requires certain contracts to be in writing and signed by the party to be charged (the defendant).
    - Contracts within the Statute of Frauds: "MY LEGS"
        - Marriage: contracts in consideration of marriage
        - Year: contracts that cannot be fully performed within one year
        - Land: contracts for the sale of land or an interest in land
            - Exception: part performance, such as improvements to the land or payment
        - Executor: contracts by an executor to pay estate debts from personal funds
        - Guarantee/Suretyship: contracts to guarantee the debt of another
        - Sale of goods for $500 or more
    - Writing requirements:
        - Common law: must state the parties, subject matter, and essential terms
        - UCC: must indicate that a contract has been made, identify the parties, contain a quantity term, and be signed by the party to be charged
            - Need not include all essential terms or accurately state the terms, but the contract is only enforceable up to the quantity stated in the writing.
        - Signature can be any symbol adopted with the intent to authenticate, including typed or electronic signatures.
    - Exceptions to the Statute of Frauds:

        - Specially manufactured goods: oral contracts are enforceable if the goods are specially manufactured for the buyer and not suitable for sale to others.
        - Merchant's confirmation exception: if one merchant sends a written confirmation to another merchant within a reasonable time, the confirmation is enforceable against the receiving merchant even if they didn't sign it, unless they object within 10 days.
        - Admission in court: if the party to be charged admits in court that a contract was made, it's enforceable even if not in writing.
        - Performance: part performance can make an oral contract enforceable.
            - UCC: enforceable up to the quantity of goods delivered and accepted or paid for
            - Land: part performance, such as payment or improvements to the land, can make an oral contract enforceable
    - Effect of a Writing that Satisfies the Statute of Frauds:
        - Only enforceable up to the quantity of goods shown in the writing.
- **Parol Evidence Rule**
    - Prevents the introduction of prior or contemporaneous oral or written evidence that contradicts the terms of a fully integrated written contract.
    - Applies when there is a valid, final written agreement.
    - Integration:
        - Complete integration: the writing contains the entire agreement of the parties, and no parol evidence is admissible to supplement or contradict the terms.
        - Partial integration: the writing contains some but not all of the terms of the agreement, and parol evidence is admissible to supplement but not contradict the terms.
        - The intent of the parties determines whether the writing is integrated and whether it is completely or partially integrated.
            - Merger clause: a clause in the contract stating that the writing is the entire agreement of the parties is strong evidence of complete integration.
    - Exceptions to the Parol Evidence Rule:
        - Evidence to explain or interpret the terms of the written contract is always admissible.
        - Evidence to supplement the terms of a partially integrated written contract is admissible.
            - UCC: evidence of trade usage, course of dealing, and course of performance can be used to supplement a written contract, even if it's fully integrated.
        - Evidence to contradict the terms of the written contract is not admissible.
        - Evidence to show that the written agreement is invalid or unenforceable is admissible.
            - Examples: fraud, duress, mistake, lack of consideration, condition precedent
        - Evidence to show a collateral agreement is admissible.
            - A collateral agreement is a separate agreement that relates to the same subject matter as the written contract but does not contradict its terms.

        - Evidence to show reformation is admissible.
            - Reformation is a court-ordered correction of a written contract to reflect the true agreement of the parties.
            - Requires clear and convincing evidence that the writing does not accurately reflect the agreement due to a mutual mistake or fraud.
- **Lack of Capacity**
    - Infancy: contracts with minors are voidable at the option of the minor.
        - Exceptions: contracts for necessaries, contracts ratified after reaching the age of majority, or contracts where the minor misrepresented their age.
    - Mental Incompetence: contracts with mentally incompetent persons are voidable if the person was unable to understand the nature and consequences of the transaction.
        - If a guardian has been appointed, the contract is void.
        - Contracts can be ratified if the person regains competence.
    - Intoxication: contracts with intoxicated persons are voidable if the person was so intoxicated that they were unable to understand the nature and consequences of the transaction.
        - The other party must have known or had reason to know of the intoxication.
        - The contract can be ratified once the person becomes sober.
- **Defects in Mutual Assent**
    - Mutual Mistake: a contract is voidable if both parties made a mistake about a basic assumption of the contract that has a material effect on the agreement, and the adversely affected party did not bear the risk of the mistake.
    - Unilateral Mistake: a contract is generally enforceable even if one party made a mistake, unless the other party knew or should have known of the mistake and it would be unconscionable to enforce the contract.
- **Duress**
    - A contract is voidable if one party was forced to enter into the contract by an improper threat that left them with no reasonable alternative.
    - The threat must be wrongful or unlawful.
- **Undue Influence**
    - A contract is voidable if one party was induced to enter into the contract by unfair persuasion from a person in a position of trust or confidence.
    - Requires a showing of:
        - Susceptibility of the influenced party
        - Opportunity to exercise undue influence
        - Disposition to exercise undue influence
        - Unnatural or suspicious transaction
- **Unconscionability**
    - A contract is voidable if it is so unfair that it shocks the conscience of the court.
    - Requires a showing of both:
        - Procedural unconscionability: unfairness in the bargaining process (e.g., hidden terms, unequal bargaining power).
        - Substantive unconscionability: unfairness in the terms of the contract (e.g., excessive price, one-sided terms).
    - Rarely successful as a defense.

- **Illegality**
  - Contracts with an illegal subject matter are void.
  - Contracts that violate public policy are also unenforceable.

III. Contract Content and Meaning

- **Interpretation**
  - Courts interpret contracts to give effect to the intent of the parties.
  - Plain meaning rule: courts will enforce the plain meaning of the contract language.
    - Exception: ambiguous terms
  - Ambiguous terms are construed against the drafter.
  - The expression of one thing excludes the other.
  - UCC rules of interpretation:
    - Express terms control, then course of performance, course of dealing, and trade usage.
      - Course of performance: how the parties have acted under the current contract.
      - Course of dealing: how the parties have acted in past contracts.
      - Trade usage: the customs and practices of the industry.
    - UCC provides gap fillers for missing terms.
      - Examples: price, time for payment, delivery terms.
- **Conditions**
  - A condition is an event that must occur before a party's duty to perform arises or is discharged.
  - Types of conditions:
    - Express conditions: clearly stated in the contract.
      - Conditions precedent: must occur before a duty to perform arises.
      - Conditions subsequent: occur after a duty to perform arises and discharge the duty.
    - Implied conditions: implied by law or the circumstances.
      - Constructive conditions: imposed by law to ensure fairness.
        - Conditions of exchange: each party's performance is conditioned on the other party's performance.
          - Material breach excuses the non-breaching party's duty to perform.
          - Substantial performance does not excuse the other party's performance, but the non-breaching party can recover damages for any defects.
          - Factors to consider in determining whether a breach is material: extent of deprivation of benefit, availability of compensation for the defect, forfeiture suffered by the breaching party, likelihood of cure, good faith of the breaching party.
        - Independent covenants: each party's performance is not conditioned on the other party's performance, and a breach by one party does not excuse the other party's performance.

    - Excuse of Conditions:
        - Waiver: a party can voluntarily waive a condition.
        - Election: a party can choose to treat a condition as satisfied even if it has not been met.
        - Estoppel: a party can be estopped from asserting a condition if they have misled the other party into relying on the condition being waived.
        - Prevention: a party cannot hinder or prevent the occurrence of a condition and then claim that the condition has not been met.
    - Impossibility, Impracticability, and Frustration of Purpose:
        - Impossibility: performance is excused if it becomes objectively impossible due to an unforeseen event.
        - Impracticability: performance is excused if it becomes extremely and unreasonably difficult or expensive due to an unforeseen event.
        - Frustration of purpose: performance is excused if the purpose of the contract is frustrated by an unforeseen event.
- **Modification**
    - Common law: requires consideration.
        - Pre-existing duty rule: performing a pre-existing duty is not consideration for a modification.
            - Exceptions: new or different performance, unforeseen difficulties, third party promises to pay.
    - Restatement: allows modification without consideration if fair and equitable under the circumstances.
    - UCC: requires good faith but not consideration.
    - "No oral modification" clauses are generally enforceable, but courts may refuse to enforce them if they would result in injustice.
- **Warranties**
    - UCC: implied warranties are automatically included in contracts for the sale of goods, unless specifically disclaimed.
        - Warranty of title: seller warrants that they have good title to the goods and the right to transfer them.
        - Warranty of merchantability: seller warrants that the goods are fit for their ordinary purpose (merchants only).
            - Disclaimer must be conspicuous and mention merchantability.
        - Warranty of fitness for a particular purpose: seller warrants that the goods are fit for the buyer's particular purpose if the seller knows the purpose and the buyer relies on the seller's expertise.
            - Disclaimer must be in writing and conspicuous.
    - Express warranties are created by the seller's affirmations or promises about the goods.
        - Disclaimer cannot be inconsistent with the express warranty.
    - Disclaimers must be clear and conspicuous.
        - Attempts to exclude liability for personal injury in consumer goods are prima facie unconscionable.
    - Limited remedies restrict the buyer's remedies for breach.
        - Examples: repair or replacement only.

        - Exclusion of consequential damages is permitted unless unconscionable.
- **Risk of Loss**
    - Determines which party bears the loss if the goods are damaged or destroyed before delivery.
    - UCC rules:
        - Shipment contract: risk of loss passes to the buyer when the goods are delivered to the carrier.
        - Destination contract: risk of loss passes to the buyer when the goods are delivered to the buyer's destination.
        - If the contract doesn't specify, it's presumed to be a shipment contract.
    - Common law: risk of loss remains with the seller until delivery is complete.
        - Exceptions: if the buyer breaches the contract or assumes the risk of loss.
- **Performance and Breach**
    - Seller's obligations: transfer and deliver goods.
    - Buyer's obligations: accept and pay for goods.
    - Breach: failure to perform a contractual obligation.
        - Material breach: excuses the non-breaching party's performance.
        - Minor breach: does not excuse the non-breaching party's performance, but the non-breaching party can recover damages for the breach.
    - UCC: perfect tender rule requires the seller to deliver goods that conform to the contract in every respect.
        - Buyer has the right to reject non-conforming goods.
        - Seller has the right to cure a defective tender before the time for performance expires.
        - Installment contracts: buyer can reject an installment only if it substantially impairs the value of the installment and cannot be cured.
    - Anticipatory Repudiation: one party clearly states that they will not perform their obligations under the contract before performance is due.
        - Non-breaching party can:
            - Sue immediately for breach
            - Wait until performance is due and then sue
            - Suspend their own performance
            - Urge the breaching party to perform
        - Repudiation can be retracted if the non-breaching party has not yet relied on it.
- **Remedies**
    - Damages: monetary compensation for the loss caused by the breach.
        - Expectation damages: put the non-breaching party in the position they would have been in if the contract had been performed.
            - Calculated as the loss in value of the breaching party's performance plus incidental and consequential damages, minus any expenses saved as a result of the breach.
        - Reliance damages: put the non-breaching party in the position they were in before the contract was made.
            - Awarded when expectation damages are too speculative or uncertain.
        - Consequential damages: foreseeable damages that result from the breach but are not directly caused by it.

        - Must be foreseeable and certain.
        - UCC: buyer can recover consequential damages that the seller had reason to know about and that could not be avoided by cover.
    - Incidental damages: costs incurred as a result of the breach.
        - Examples: costs of storage, transportation, inspection.
    - Liquidated damages: a pre-determined amount of damages agreed to by the parties in the contract.
        - Enforceable if reasonable and not a penalty.
  - Restitution: prevents unjust enrichment by restoring to a party any benefit they conferred on the other party.
    - Awarded when the contract is unenforceable, the plaintiff is the breaching party, or the defendant breached but the plaintiff is not entitled to damages.
  - Specific Performance: a court order requiring the breaching party to perform their obligations under the contract.
    - Awarded only when damages are inadequate.
    - Not available for personal service contracts or contracts requiring ongoing cooperation.
        - Exception: negative injunctions can prohibit a breaching party from performing services for a competitor.
    - UCC: available if the goods are unique or if cover is not possible.
        - Available in output and requirements contracts.
  - Mitigation of Damages: the non-breaching party has a duty to mitigate their damages.
    - Failure to mitigate reduces the amount of damages recoverable.
- **Third-Party Beneficiaries**
  - A third party who benefits from a contract between two other parties.
  - Intended beneficiaries: have the right to enforce the contract.
    - Creditor beneficiaries: a promisee owes a debt to the third party, and the promisor promises to pay the debt.
    - Donee beneficiaries: the promisee intends to make a gift to the third party.
  - Incidental beneficiaries: do not have the right to enforce the contract.
  - Defenses: any defenses the promisor would have against the promisee are also available against the third-party beneficiary.
- **Assignment of Rights and Delegation of Duties**
  - Assignment: a transfer of rights under a contract to a third party.
    - Generally permissible unless the contract prohibits it or the assignment would materially alter the obligor's duties.
  - Delegation: a transfer of duties under a contract to a third party.
    - Generally permissible unless the contract prohibits it, the duty involves personal skill or judgment, or the delegation would materially alter the obligee's expectations.
  - Rights of the Assignee:
    - The assignee steps into the shoes of the assignor and can enforce the contract against the obligor.
    - The obligor can raise any defenses against the assignee that they would have had against the assignor.

- Liability of the Delegator:
  - The delegator remains liable on the contract unless the obligee agrees to release them.
  - The delegatee is also liable on the contract if they agree to perform the duties.

IV. Performance, Breach, and Discharge

- **Parol Evidence Rule (PER)**: When parties have a final written agreement (completely integrated), evidence of prior or contemporaneous agreements is not admissible to vary or contradict the writing.
  - A writing is "partially integrated" when it's a final expression but not complete; it can be supplemented with consistent additional terms.
  - **Exceptions to PER:** formation defenses, interpretation, failure of condition precedent, clerical error, and later modifications.
- **UCC Interpretation**: Assumes a written contract is partially integrated, allowing outside terms.
- **Breach** is the failure to discharge an absolute duty.
  - **Material Breach** vs. **Substantial Performance**
    - **Factors:** benefit received, adequacy of damages, extent of performance, hardship to breaching party, negligence/willfulness.
  - **Common Law**:
    - **Material breach** lets the non-breaching party withhold performance and pursue remedies.
    - **Minor breach** lets the non-breaching party pursue damages but they must still perform.
  - **UCC**:
    - **Perfect Tender Rule**: Goods and tender must match contract specifications.
      - **Seller's Breach**: For non-conforming goods, the buyer may reject all, accept some and reject the rest, or accept all and sue.
      - **Buyer's Right to Inspect**: Reasonable time, place, and manner; buyer pays unless goods are non-conforming and rejected.
    - Material breach applies only to installment contracts or by stipulation.
- **Excuse of Condition**
  - Wrongful Prevention
  - Voluntary Disablement
  - Anticipatory Repudiation
  - Actual Material Breach
  - Waiver & Estoppel
  - Impossibility, Impracticability, or Frustration of Purpose
  - Substantial Performance
- **Discharge**
  - **Impossibility**: When performance is objectively impossible due to unforeseen events.
  - **Impracticability**: Performance is extremely burdensome due to unforeseen events.
  - **Frustration of Purpose**: The purpose of the contract becomes commercially valueless because of unforeseen events.

    - **Modification**: Under common law, pre-existing duty rule applies. Under UCC, good faith is required.
        - **No Oral Modification Clause**: May not be enforced if it leads to unjust enrichment.
    - **Agreement**: Parties can agree to discharge duties.
    - **Waiver**: A party can waive a condition or right.
- **Anticipatory Repudiation**: A party unequivocally states they won't perform.
    - Non-breaching party can:
        - Suspend performance
        - Sue immediately
        - Rescind the contract
    - **Retraction**: Possible if the breaching party shows willingness and ability to perform.
    - **UCC**:
        - A party can demand assurances if there are reasonable grounds for insecurity about the other party's performance.
        - Failure to provide adequate assurances within a reasonable time (max 30 days) is treated as repudiation.

V. Remedies

- **Types of Damages:**
    - **Expectation Damages**: Put the non-breaching party in the position they'd be in if the contract was performed.
        - Must be foreseeable at contract formation.
        - Formula: Loss in value + other loss - cost avoided - loss avoided.
    - **Reliance Damages**: Costs incurred in reliance on the contract, awarded when expectation damages are too speculative.
    - **Consequential Damages**: Foreseeable losses resulting from the breach.
        - Must be foreseeable by the breaching party at contract formation.
        - **UCC**: Limited to those that couldn't be reasonably prevented by cover or otherwise.
        - Exclusion of consequential damages for personal injury in consumer goods is prima facie unconscionable, but exclusion for other commercial damages is allowed.
    - **Incidental Damages**: Costs incurred in dealing with the breach (e.g., storage, transportation).
    - **Liquidated Damages**: Predetermined damages for breach, enforceable if they are a reasonable estimate and not a penalty.
        - **UCC**: Expressly authorized.
    - **Nominal Damages**: Awarded when there's no real loss.
    - **Restitution**: Prevents unjust enrichment of the defendant.
        - Available even if there's no contract (quasi-contract).
        - May be awarded to the breaching party.
- **UCC Remedies**
    - **Buyer's Remedies for Seller's Breach**:

        - **Cancellation**: Available if the breach is of the whole contract or for installment contracts.
        - **Recovery of Payments**: Upon cancellation, the buyer can recover payments made; on rejection or revocation of acceptance, the buyer gets a security interest in possessed goods.
        - **Damages**: Market price minus contract price plus incidentals and consequentials.
        - **Cover**: Buyer can buy substitute goods and recover the difference between the cover price and contract price.
        - **Specific Performance**: Available when goods are unique or in other proper circumstances (e.g., requirements and output contracts).
    - **Seller's Remedies for Buyer's Breach**:
        - **Right to Identify Goods**: Seller can identify goods to the contract and resell them.
        - **Right to Complete Manufacture**: Even if it's commercially unreasonable, the seller can finish making the goods and recover the contract price.
        - **Right to Scrap**: If the goods are unfinished, the seller can scrap them and recover the difference between the contract price and the scrap value.
        - **Right to Stop Delivery**: If the buyer is insolvent or breaches, the seller can stop delivery.
        - **Damages**:
            - If the buyer has the goods, the seller gets the contract price.
            - If the seller has the goods, the seller gets the difference between the contract price and the market/resale price plus incidentals minus expenses saved.
            - **Lost Volume Seller**: Gets lost profits plus incidentals. This applies when there's an unlimited supply of the product.
- **Equitable Remedies**
    - **Specific Performance**: Compels a party to perform.
        - Available when the legal remedy is inadequate.
        - Usually granted for unique goods and land contracts.
        - **Not available** for personal service contracts or those needing ongoing cooperation.
        - **UCC**: Uniqueness requirement can be met by showing an inability to find reasonable substitutes; specific performance is allowed in output and requirements contracts.
    - **Rescission**: Cancels the contract.
    - **Reformation**: Corrects a mistake in the contract.
- **Duty to Mitigate Damages**: Applies to all contracts.
    - **Wrongfully discharged employees** must make reasonable efforts to find comparable work.
    - **Sellers** must resell goods in a commercially reasonable manner.
    - **Buyers** must try to cover.

VI. Third-Party Rights

- **Third-Party Beneficiaries**: A contract where one party (promisor) must perform for a third party (beneficiary).
  - **Intended Beneficiaries**: Have the right to sue.
    - Must either:
      - Receive performance directly
      - Be expressly designated in the contract
      - Have a relationship with the promisee implying intent to benefit
  - **Incidental Beneficiaries**: Cannot sue.
  - **Vesting of Rights**: Occurs when the beneficiary:
    - Detrimentally relies on the rights
    - Manifests assent at a party's request
    - Sues to enforce the contract
  - **Promisor's Defenses**: Can raise any defense they had against the original promisee.
- **Assignments**: Transfer of rights under a contract.
  - Generally allowed unless it materially increases the duty or risk of the obligor or reduces their chance of getting performance.
  - Clauses prohibiting "assignment of the contract" usually only bar delegation of duties, not assignment of rights.
- **Delegations**: Transfer of duties under a contract.
  - Not allowed for duties involving personal skill or judgment.
  - Generally valid even without an express promise to perform by the delegatee.

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