

CONTRACTS

A contract is a legally enforceable agreement between two or more parties whereby they make the future more predictable.

Contracts are in addition to the preexisting, involuntary social contract

ELEMENTS OF A CONTRACT

Agreement
Consideration
Capacity
Reality of Assent
Form
Legal Subject Matter

ELEMENTS OF A CONTRACT

AGREEMENT

offer identical to acceptance
mirror image rule

CONSIDERATION

legally sufficient
not necessarily "fair price"
objective intent

CAPACITY

ability to grasp the
natural consequences of
one's actions

REALITY OF ASSENT

voluntary

presume voluntary
disprove voluntary by the presence of

common law fraud
duress
mistake
undue influence

each of these strip a person of capacity

COMMON LAW FRAUD

knowing
intentional
misrepresentation of a material fact
justifiable reliance AND
causing injury

for future reference
SECURITY LAW FRAUD
drop the three subjective factors
and
expand the objective factors twice

MISTAKE

unilateral mistake

mistake is objectively known
to the non-mistaking party
and
the mistake is a material fact

mutual mistake

both parties make the
same mistake of the same material fact

DURESS

typically,
physical force
objectively sufficient warrant the decision made

can be,
emotional force
however, emotional force far less objective;
and also see undue influence

can be,
economic force
however, focus in on source of force
poverty or competitive, thus privileged
versus
created by opposing party, thus predatory

UNDUE INFLUENCE

The defendant objectively has the
opportunity and
inclination
to take advantage of the abused party
AND
the abused party's behavior shows a
result that is objectively consistent with
having been abused.

Note use of "abused party" rather than plaintiff.

Is Anna Nicole Smith an example of undue influence?

FORM

Statute of Frauds

IF

1. sale of "goods" of at least \$500
2. sale of land
3. must last more than one year
4. guarantee debts of another OR
5. in consideration of marriage

THEN

written memorandum of material terms

parties (signature [s?])
consideration
time AND
subject matter

need sufficient definiteness
to support court enforcement

LEGAL SUBJECT MATTER

public policy

e.g., protect competition

The government always is a third party to all contracts since the parties to a contract are seeking a legally enforceable promise.

Government will not enforce contracts that are contrary to public policy.

Capacity is about the ability to know.

Capacity does not go to whether the person does or does not know.

Capacity merely establishes that the person can know.

The amount of capacity required varies by the type of transaction. Some transactions require more ability to see the natural consequences of one's actions (either due to complex causation or more of consequences are in the future), in which case more capacity is required.

Very little capacity is required for a more for a more for a **will tort contract crime**
The most capacity is required for a

For **capacity** the law is asking different questions.

WHEN DO YOU LEARN:

how you harm your life after your death? **Wills**

it is bad to hit other people? **Torts**

the cause and effect of promises? **Contracts**

you hurt everyone when you hurt anyone? **Crimes**

Material is a term often used in the law,
but with **very different meanings**.

At its root meaning,
material is something that the law will recognize
as significant.

As capacity varied by type of transaction,
so does material.

Material varies by the parties'
type of relationship
and the
objective intent to harm.

Very small items are material for **security law fraud**
more for **common law fraud**
more for **unilateral mistake**
The **largest** items are barley material for **mutual mistake**

For material the law is asking **different questions.**

security law fraud

Has the **legislature** ordered
the courts to protect one party?

common law fraud

Did the defendant **create and take advantage**
of an opportunity to harm the plaintiff?

unilateral mistake

Did the defendant **merely take advantage**
of an opportunity,
but did not create the opportunity?

mutual mistake

Were **both** parties acting in **good faith**
but got entangled in a legal dispute?

TORTS

TORTS

part of social contract

PLAINTIFF IS AN INDIVIDUAL

wrong done to the individual
compensation, not punishment

TYPES OF TORTS

Intentional

create harm

Negligence

create risk of harm

Strict Liability

social risk allocation, not based on fault

GENERAL ELEMENTS OF ALL TYPES OF TORTS

- 1. **duty of care**
- 2. **breach of the duty**
res ipsa loquitur
per se negligence
statutory standard of care
- 3. **injury**
- 4. **proximate cause**
(i.e., **legal, not factual, cause**)

Proximate cause if the plaintiff's injury is reasonably foreseeable by the defendant at the time of the defendant's breach.

- 5. **no defenses**

DEFENSES TO NEGLIGENCE

- 1. **CONTRIBUTORY Negligence**
bar
old rule used with actual causation
- 2. **COMPARATIVE Negligence**
offset
new rule used with **proximate causation**
- 3. **ASSUMPTION OF THE RISK**
knowing AND voluntary
- 4. **MISUSE**

PRODUCT LIABILITY

RISK CANNOT BE ZERO

CHANGING REASONABLE EXPECTATIONS

Who is LIABLE?

**maker
seller
PRIVITY**

What is an ERROR?

**design
construction
label
goods v. service v. product**

What is an INJURY?

U.C.C. §2-318 Options A, B, or C

**person
corporation?**

property

**buyer v. guest
PRIVITY**

PRE-INDUSTRIAL REVOLUTION PRODUCTS

**simple products
information equal**

**equal control of risk
production (seller)
is equal to
use (consumer)**

**personal relationships
information rich**

**equal size
small absolute MES**

encourage production

POST-INDUSTRIAL REVOLUTION PRODUCTS

complex products

aggregate information
consumer
firm
industry
true market: CPSC

unequal control of risks

access to information
latent defects
impersonal transaction
mass marketing & advertising
loss of consumer information
loss of privity and standing to sue

POST-INDUSTRIAL REVOLUTION PRODUCTS

unequal size

small v. large MES
ability to bear cost
deep pocket
ability to spread cost
mass market
liability creates a natural monopoly?

POST-INDUSTRIAL REVOLUTION PRODUCTS

producer's incentives

safety as source of profit
sell high safety as high quality
and thus
increase TR and reduce TC

reduce producer liability
if
give consumer information

safety
cost minimization of safety costs
yields
profit maximization

STRICT LIABILITY

not fault based
based on social risk allocation

Restatement of Torts Section 402A

business
sells
defective product in
unreasonably dangerous condition
which
reaches user
without substantial change in condition,
and causes physical harm

MARKET SHARE LIABILITY

STATUTORY PRODUCT LIABILITY STATES

UCC WARRANTIES

implied for ordinary purpose
MERCHANTABILITY
implied for a particular purpose
seller knows of buyers reliance

express
seller's affirmation of fact &
basis of the bargain

DISCLAIMERS

clear and conspicuous
NOT for personal consumer injury 2-318

STATUTORY PRODUCT LIABILITY FEDERAL

define words used in warranty
Full v. Limited

Consumer Product Safety Act
standards
after
gather information

PROPERTY

PROPERTY

part of social contract,
but malleable to individual desires
bundle of rights

REAL PROPERTY

ground, water, air, and fixtures

FIXTURES

personal property that is still removable,
but so firmly affixed as to become part of
the realty
measured by objective intent

PERSONAL PROPERTY

any property that is not real property

tangible
"goods"

intangible
contract rights
securities
intellectual property

NUISANCE

interference with the
"reasonable use and enjoyment"
of real property

PRIVATE NUISANCE

PUBLIC NUISANCE

recall standing to sue
also may be partly private nuisance

BAILMENT

transfer only possession,
not transfer of ownership
half way between contract and property
need neither capacity nor consideration

ZONING

Police Power

State's power to regulate for the
People's health, safety, morals, and
general welfare

Eminent Domain

Power of a government to take
private property for a public purpose
upon due process and
payment of just compensation

"mere regulation" v. "taking"

ENVIRONMENTAL LAW

THE ENVIRONMENT

Pollution is not bad.

Too much pollution is bad.

Pollution in excess of the ecosystem's regenerative ability is too much pollution.

**STATIC LIMITS
DYNAMIC LIMITS**

Increased population and increased industry created the ability of humans to exceed the regenerative abilities.

Fundamentally, both the QUANTITY and the QUALITY of human generated pollution has changed.

world population

15 B

10 B

5 B

-2,000 BC

0 AD

2,000 AD

Pollution is a zero priced (public) good
because no one owns the regenerative ability.

Impact of pollution is unpredictable.

Geopolitical boundaries
restrain governmental solutions

starve today v. die of poisoning tomorrow

It is feasible
to have an ecology without economy,
but
it is not feasible
to have an economy without an ecology.

risk



COMMON LAW and the ENVIRONMENT
trespass: exclusive possession
physical invasion

nuisance: use and enjoyment
reasonable
standing to sue
public nuisance
private nuisance

REGULATION of the ENVIRONMENT
preemption v. concurrent

STATES

MUST implement Federal minimums

MAY set greater local protection

police power

versus

eminent domain

FEDERAL
AIR

primary standards

protect public

secondary standards

protect environment

cost not an issue

mobile v. stationary

if now dirty, then no new pollution

emission offset via **bubble**

if now clean, then prevent significant deterioration

maximum allowable increase

FEDERAL
WATER

commerce clause

especially transportation on

navigable waterways

point v. non-point

permits & variances

NEW: best available technology:) under

OLD: best practicable technology:) debate

conventional v. toxic: nonconventional

**FEDERAL
HAZARDOUS WASTES**

paper trail
notice
civil & criminal

TOXIC PRODUCTS

paper trail
regulate use (least restrictive)
notice to EPA

WILDLIFE

all life forms equal
Gene pool
extinction = irreversible?

C.E.R.C.L.A.

it is no longer feasible to abandon property
that you once owned or managed

CRIMES

CRIMES

part of social contract
PLAINTIFF IS THE STATE
wrong done to the state
punishment, not compensation

ELEMENTS

1. bad deed or *actus rea*
2. bad thought or *mens rea*
CAPACITY
minors
insane
3. no defense
be careful, a DEFENSE admits
both deed and thought,
but justifies the deed

recall civil versus criminal burden of proof

recall appellate court review of trial court

recall frequency of error found by appellate courts

CRIMES MUST BE CREATED BY THE LEGISLATURE

but, void for vagueness

but, punitive damages

but, contempt of court
